UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NARESH KUMAR Petitioner, v. Brian MCSHANE, Field Office Director of Enforcement and Removal Operations, Philadelphia Field Office, IMMIGRATION AND CUSTOMS ENFORCEMENT; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Jamal LAWRENCE, Warden of PHILADELPHIA FEDERAL DETENTION CENTER Respondents.	Case No. 2:25-cv-6238 **PETITIONER'S MOTION TO ENFORCE**

PETITIONER'S MOTION TO ENFORCE

Petitioner is respectfully requesting that this Court enforce its order dated December 23, 2025, and order the Federal Respondents to immediately release him from detention. New information has come to light since the Executive Office of Immigration Review conducted Petitioner's bond hearing on December 29, 2025, which demonstrates that Petitioner's bond hearing did not comply with due process requirements, and was a *pro forma* act by the Federal Respondents. Petitioner asserts that the only proper remedy for his deprivation of due process rights is to be immediately released from detention.

Factual Background

On December 23, 2025, this Court found that Petitioner's continued detention without a bond hearing was a violation of the statute and in violation of the constitution. ECF No. 10. This Court found that immediate release was appropriate, however, chose to rule that the Federal Respondents were to conduct a bond hearing within 5 days of the court's order. *Id.* EOIR scheduled Petitioner for a bond hearing on December 29, 2025. This hearing was set at 8:48AM on the morning of December 29, 2025, for a 1:00PM bond hearing. At the conclusion of that hearing, Immigration Judge Tamar Wilson found that Petitioner had not met his burden to demonstrate he was not a flight risk. IJ Wilson was unaware that Petitioner's bond hearing was scheduled until the moment the hearing was taking place. *See,* Exhibit A, containing Affidavit of Attorney Taylor S. Adams.

On January 15, 2026, Petitioner filed his appeal with the Board of Immigration Appeals. That appeal remains pending at this time. On February 09, 2026, as part of the appeal process, IJ Wilson uploaded a written justification for her denial of Petitioner's bond. *See,* Exhibit B, containing IJ Wilson written bond justification. This motion to enforce follows.

Legal Analysis

A. Petitioner's December 29, 2025 bond hearing did not comport with Due Process

Petitioner contends that his December 29, 2025, bond hearing did not comport with Due Process. First, the bond hearing was scheduled a mere 4 hours in advance of when it took place, leaving Petitioner with little time to prepare for a bond hearing in which the Federal Respondents placed the burden on the Petitioner, and little time for the Judge to properly familiarize herself with the record. *See,* Exh. A, (stating, "Initially, the DHS trial attorney, Attorney Keith Hoppes, commented that they were unaware this case had been placed on the docket for today and

therefore had not reviewed the file beforehand. *IJ Wilson commented she also had not known this case was placed on the docket for that day until she saw Mr. Kumar on screen*."). Second, Petitioner has now received the Immigration Judge's written justification for bond denial. *See,* Exh. B. The Judge's written justification is nothing more than *post hoc* rationalization for a denying Petitioner's bond without conducting an individualized review. After listening to the Digital Audio Recording ("DAR[1]") in this case – the entire hearing lasts for 7 minutes and 2 second – it is clear the Judge did not familiarize herself with Petitioner's case prior to his bond hearing, despite claiming to do so. There are several instances during the hearing in which the Judge questions basic facts of Petitioners case, which she would have known had she actually reviewed Petitioner's case prior to making a decision on his bond. For instance, when the judge starts her decision, she mentions that Petitioner is not a danger to the community, due to his lack of criminal record. The immigration judge then goes on to state, "With regards to flight risk, um, [Petitioner is] subject to the circumvention of lawful pathway if he . . . let me just double-check here. Oh, never mind. **Wait, where did he come in at? Did he come in from the Northern Border?** Okay, he came in through the . . . **But he still entered without inspection, correct**? Okay so I've have had a chance to review his I-589 application . . ." DAR 4:26-4:48. The internal inconsistencies in the judge's justification cannot be squared by the statement that she "reviewed his I-589 application" when all of the information she was confused about is contained therein. Further, the judge stated, "While there is an application for relief, the court finds that that in and of itself is insufficient for me to find that he is not a flight risk. . . given the

[1] The DAR refers to the system that the Executive Office for Immigration Review uses to record immigration court hearings. In this case the DAR consists of two files, one containing audio of IJ Wilson, the other containing audio of Petitioner and DHS counsel. The DAR will be emailed directly to the Court and the Federal Respondent's counsel for review. Counsel is submitting the transcripts of the DAR, at Exh. C, which were created using Artificial Intelligence and may contain errors, however, Counsel did review the transcripts for accuracy and red-lined any errors noticed.

fact that, um, it's questionable whether Respondent is prima facie eligible for the relief sought." 5:54-6:08. The judge determined – after a cursory review of Petitioner's claim, that he is not "prima facie" eligible for relief. However, how could the immigration judge have made such a determination in such a short amount of time? In similar contexts the Third Circuit has repeatedly stated an applicant is required to show a reasonable likelihood that he can establish the merits of his claim, and that reasonable likelihood means merely showing a realistic chance that the petitioner can at a later time establish that relief should be granted. *Guo v. Ashcroft,* 368 F.3d 556, 564 (3d Cir. 2004). Finally, at the end of Petitioner's bond hearing, the judge casually inquired, "Is English his best language?" DAR at 6:21. This was after Petitioner had been presented for his bond hearing, and the judge had already made her decision. It is clear again that the judge had not familiarized herself with the record, and further, that she afforded Petitioner no opportunity for interpreter services.

Taken together, it is clear that Petitioner did not receive an individualized, constitutionally compliant bond hearing as a result of his successful habeas. The immigration judge did not familiarize herself with his case prior to making her decision. This decision was premeditated, and as discussed below, part of a systematic plan by the Federal Respondents

B. The Federal Respondents are Systematically Denying Bond After Habeas Relief

Non-citizen Petitioner's and their counsel across the country are recognizing an unsettling trend by EOIR following successful Habeas petitions – EOIR has been denying these bond requests systematically due to "flight risk" concerns – a trend that has no basis in law. Individuals who were career employees for the Department of Homeland Security and the Department of Justice are now coming forward to describe the institutional pressures on immigration judges at this time. *See,* Exh. D., containing Affidavit of former Immigration Judge

Lawrence O. Burman (stating, "It was also extremely rare to see a bond denial based on flight risk where the alien had a fixed address, a job, a proposed application for relief, or family ties to the United States. . . Although immigration judges are expected to act as neutral adjudicators, I have noticed increasing concern among members of the bench about institutional intimidation and the perception the decisions unfavorable to the government could negatively affect judicial tenure."; *see also,* Exh. E., containing Affidavit of former DHS employee Jorge Artieda (stating, "In my professional observation, the consistency, timing, and uniformity of these denials cannot be readily explained by coincidence, changes in individual case facts, or independent judicial decision-making. The pattern appears systematic and suggests coordinated institutional direction.").

When detention loses its relationship to its underlying purpose, such as when there is no significant likelihood of a lawful hearing or removal in the reasonably foreseeable future, it loses justification. *Zadvydas v. Davis,* 533 U.S. 678 (2001). Here, as elsewhere all over the country, it is clear that Petitioner will not get a fair hearing before a neutral arbiter, and therefore, immediate release is the only adequate remedy.

C. The Burden should be on the Federal Respondent's at any Bond Hearing

Section 1226(a) is silent as to what burden of proof applies in bond hearings and who bears that burden. *Hernandez-Lara v. Lyons,* 10 F.4th 19, 26 (1st Cir. 2021) (citing 8 U.S.C. § 1226(a)). The BIA has chosen to apply the standard articulated at 8 C.F.R. § 236.1(c)(8), which deals with initial custody determinations by an officer upon arrest. Under this standard, the burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond. *In Re Guerra,* 24 I&N Dec. 37, 40 (BIA 2006). Petitioner now argues that the

burden should be on the Federal Respondent's to demonstrate that his continued detention is justified because Petitioner is a danger to the community or a flight risk.

The Supreme Court has made clear that, "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas,* 441 U.S. 418, 423 (1979). Several District and Circuit Courts have previously found that due process requires the government bear the burden of proof. *See*, *Hernandez-Lara v. Lyons,* 10 F.4th 19, 39 (1st Cir. 2021) (concluding, "that the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)."); *Velasco Lopez v. Decker,* 978 F.3d 842, 855-57 (2d Cir. 2020) (holding that the government must bear the burden of proving danger and flight risk by clear and convincing evidence); *Soto-Medina v. Lynch,* No. 1:25-cv-1704, 2026 WL 161002 (S.D. Mich. Jan. 21, 2026) (holding that "the *Mathews* factors establish that due process requires the government to bear the burden of demonstrating the Petitioner is a flight risk or danger to the community to deny bond.") The Third Circuit has ruled in the past that in cases of prolonged detention, the alien bears the burden as to why they are not a flight risk or danger to the community. *See, Borbot v. Warden Hudson Cnty. Corr. Facility,* 906 F.3d 274, 277, 279 (3d Cir. 2018). However, the Third Circuit has not ruled on a case directly on point to the type of detention that Petitioner is facing, which is detention following a constitutionally noncompliant bond hearing in front of EOIR.

The Supreme Court has repeatedly reaffirmed that "due process places a heightened burden of proof *on the State* in civil proceedings in which the 'individual interests at stake . . . are both particularly important and more substantial than mere loss of money." *Cooper v. Oklahoma,* 517 U.S. 348, 363 (1996) (emphasis added). Additionally, it has adopted a "clear and convincing" standard in civil commitment proceedings because "the individual's interest in the

outcome of a civil commitment proceeding is of such weight and gravity that due process requires *the state* to justify confinement by proof *more substantial than a mere preponderance of the evidence." Addington v. Texas,* 441 U.S. 418, 423 (1979).

This Court has already found that Petitioner's due process interests have been violated and that the *Mathews* factors weigh in favor of Petitioner's claim. The *Mathews* factors further favor placing the burden on the government in these bond proceedings.

Conclusion

Based on the analysis above, Petitioner renews his request for immediate release from detention. It is clear based on the evidence in the record that Petitioner was not afforded a constitutionally compliant bond hearing in front of a neutral arbiter, and as such his continued detention continues to violate his due process rights – which this Court previously found to be the case. Alternatively, should this Court find that immediate release is not appropriate, Petitioner respectfully requests that this Court order he have an additional, constitutionally compliant bond hearing in which the government bears the burden to prove Petitioner is a danger to the community or a flight risk.

Respectfully Submitted,

Dated: February 17, 2026

/s/ Brendan Ryan
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Attorney for the Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KUMAR Petitioner, v. **MCSHANE et. al.,** Respondents.	Case No. 2:25-cv-6238

Exhibit List

CERTIFICATION OF SERVICE

I certify that on February 17, 2026, I electronically filed Petitioner's Motion to Enforce with the Clerk of Court using the ECF system, which will send notification of filing to all counsel of records.

Respectfully Submitted,

Dated: February 17, 2026

/s/ Brendan Ryan

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AFFIDAVIT OF TAYLOR S. ADAMS

I, Taylor S. Adams do hereby swear and affirm under penalty of perjury that the following statements are true and correct to the best of my knowledge.

1. My name is Taylor S. Adams and I am an attorney licensed in Pennsylvania (324161) working for Global Immigration Legal Team, LLC.

2. On December 29, 2025, I represented our firm's client, Naresh Kumar, at his bond hearing before IJ Tamar Wilson at the Elizabeth Immigration Court. The hearing was conducted virtually, with all parties appearing via the Webex platform. Mr. Kumar appeared from a courtroom at the Philadelphia Federal Courthouse, as was being housed at the FDC at the time.

3. The hearing was placed onto the court's docket at approximately 9 am on December 29, 2025 for a hearing at 1 pm on the same day.

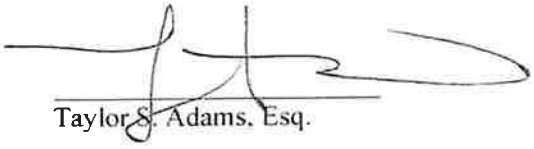
4. At the outset of the master calendar and bond hearings for that day, IJ Wilson immediately asked everyone in the virtual courtroom which Respondent was appearing from a separate courtroom, as all the other detainees (at Moshannon Valley Processing Center) were appearing from the same screen and Mr. Kumar was appearing from a different screen.

5. I informed IJ Wilson that Mr. Kumar was appearing from a courtroom at the Federal Courthouse in Philadelphia because he was currently detained at the FDC and has a recent grant of his habeas petition mandating he be given a bond hearing. IJ Wilson decided to take Mr. Kumar's case first for this reason.

6. Initially, the DHS trial attorney, Attorney Keith Hoppes, commented that they were unaware this case had been placed on the docket for today and therefore had not reviewed the file beforehand. IJ Wilson commented she also had not known this case was placed on the docket for that day until she saw Mr. Kumar on screen. IJ Wilson was not the judge assigned to Mr. Kumar's removal case, so she only saw the file when it was time for the bond hearing.

7. IJ Wilson took oral argument on the bond motion from myself and the DHS trial attorney and then paused for about 1-2 minutes to briefly look at the file. She then concluded that Mr. Kumar was a flight risk based, in her words, on the fact that he was a recent arrival to the United States and his wife and three children live in India. She also commented on the apparent strength of his asylum application; however, a copy of his asylum application had not been submitted into the bond record. Part of her initial reasoning for commenting on the strength of the asylum application was her belief that Mr. Kumar was subject to the Circumventing Lawful Pathways (CLP) bar to asylum, which applies to certain entrants without inspection at the southern border who entered between May 2023 and May 2025. She then asked me if Mr. Kumar had entered through the northern border, and I stated that he had entered through the northern border, so that particular barrier to asylum would not apply to him. After a brief moment, she then issued her decision finding that Mr. Kumar is not a danger to community, but he is a risk of flight.

I swear and affirm under penalty of perjury that all the above is true and accurate to the best of my recollection.



Taylor S. Adams, Esq.

02/17/2026
Date

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ELIZABETH, NEW JERSEY

File No.: [redacted]	**In Removal Proceedings**
In the Matter of	
KUMAR, Naresh,	**Bond Appeal**
Respondent.	

ON BEHALF OF RESPONDENT

Taylor S. Adams
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ON BEHALF OF ICE/DHS

Assistant Chief Counsel
Office of Chief Counsel
2350 Freedom Way, Suite 254
York, Pennsylvania 17402

BOND MEMORANDUM

Naresh Kumar ("Respondent") is a native and citizen of India. On May 31, 2024, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") charging Respondent as removable for being present in the United States without admission or parole, under section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"). *See* NTA.

On December 23, 2025, the United States District Court for the Eastern District of Pennsylvania granted Respondent's petition for a writ of habeas corpus and instructed the Court to conduct an individualized bond hearing within five days. *See* DHS Evidence (Dec. 4, 2025). The District Court for the Eastern District of Pennsylvania found the DHS had detained Respondent under INA § 235(b) pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that immigration judges lack the authority to hear bond requests to aliens who are present in the United States without admission, based on the plain language of INA § 235(b)(2)(A). *Id.* Relying on recent district court cases, the district court found Respondent should be detained under INA § 236(a), which requires an opportunity to seek bond. *Id.* On December 29, 2025, the Court conducted a custody hearing and denied Respondent's request for redetermination. *See* Order of the Immigration Judge (Dec. 29, 2025). Respondent subsequently filed an appeal before the BIA.

Bond Memorandum
[redacted]

Immigration judges have "broad discretion" in deciding which factors to consider in custody redeterminations and how much weight to assign those factors, so long as the decision is reasonable. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Custody and bond determinations are "[b]ased upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service." 8 C.F.R. § 1003.19(d). In determining whether a noncitizen presents a danger to the community, immigration judges are not restricted to considering criminal convictions and may consider any "probative and specific" evidence in the record. *Guerra*, 24 I&N Dec. at 40-41. As "[t]he question whether an alien poses a danger to the community is broader than determining if the record contains proof of specific acts of past violence or direct evidence of an inclination toward violence," an Immigration Judge may rely on circumstantial evidence and a respondent's misrepresentations to determine whether he poses a danger to the community. *Matter of Fatahi*, 26 I&N Dec. 791, 794 (BIA 2016). Moreover, "[i]n bond proceedings, it is proper for the Immigration Judge to consider not only the nature of a criminal offense but also the specific circumstances surrounding the alien's conduct;" "family and community ties generally do not mitigate an alien's dangerousness." *Matter of Siniauskas*, 27 I&N Dec. 207, 208-10 (BIA 2018).

In determining the risk of flight, immigration judges should assess the noncitizen's criminal record, ties to the community, length of residence in the community, immigration history, employment history, and the noncitizen's ability to pay the bond. *Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987). Immigration judges should also consider any factor which tends to indicate a respectful attitude toward our laws and court procedures, stability and reliability in complying with schedules and deadlines, and the respondent's motivation to attend any further court proceedings related to this case. A noncitizen will be considered a flight risk, even if he or she has a pending application for relief, if he or she has no family in the United States, no employment history, few community ties, and no probable path to obtain lawful status. *Matter of R-A-V-P-*, 27 I&N Dec. 803 (BIA 2020); *see also Matter of Shaw*, 17 I&N Dec. 177 (BIA 1979); *Matter of Spiliopoulos*, 16 I&N Dec. 561 (BIA 1978); *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *Matter of San Martin*, 15 I&N Dec. 167 (BIA 1974).

The Court finds Respondent met his burden of demonstrating to the satisfaction of the Court that he does not pose a danger to the community because he does not have a criminal history. *See Urena*, 25 I&N Dec. at 141. However, the Court finds Respondent failed to meet his burden of establishing to the satisfaction of the Court that he does not pose a flight risk. 8 C.F.R. § 1236.1(c)(8); *see Andrade*, 19 I&N Dec. at 489. Respondent has limited ties to the community and is a recent entrant. *See Andrade*, 19 I&N Dec. at 489. Indeed, Respondent's wife, three children, and parents remain in India. Moreover, while Respondent maintains he filed a timely application for asylum, the Court's review of the claim indicates his avenue to relief is speculative. *See R-A-V-P-*, 27 I&N Dec. at 803. Lacking an avenue to relief increases Respondent's risk of flight

significantly as he lacks any incentive to appear for immigration proceedings. *Id.*; *see Andrade*, 19 I&N Dec. at 489.

Accordingly, the Court will deny Respondent's request for custody redetermination because he failed to meet his burden to demonstrate to the satisfaction of the Court that he does not pose a flight risk. *See R-A-V-P-*, 27 I&N Dec. at 803. Accordingly, Respondent's request for a bond redetermination is denied.

02/09/2026
Date

Tamar Wilson
Immigration Judge

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00:00:00,700 --> 00:02:20,660 [speaker_0]
We are on the record today, December twenty-ninth, two thousand and twenty-five. This is Immigration Judge Tamar Wilson in Elizabeth, New Jersey. These are custody proceedings for two two six zero seven five three seven three. The respondent is detained in Philadelphia at the FDC center. His-- He is appearing via WebEx. His counsel is also on WebEx. Counsel, can you state your name for the record, please? All right. So given that... [pause] Okay. All right. So this is, um... Uh, here, just looks a little different. Uh, based off of a habeas petition, the, the, the district court judge signed an order December twenty-third and granted the respondent's petition, stating he is not subject to mandatory detention, and that within five days of that order, he had to be provided with a bond hearing, and that is why it is scheduled today. Um, so... And it's just a regular bond hearing. Just wanted to make sure. So the burden is on the respondent. Uh, all right, so, counsel, why don't you summarize why I should grant bond?

00:02:23,480 --> 00:03:42,200 [speaker_1]
Yeah.

00:03:43,320 --> 00:03:46,740 [speaker_0]
Okay, uh, department's position?

00:03:46,780 --> 00:04:17,490 [speaker_2]
Yes.

00:04:17,490 --> 00:06:24,560 [speaker_0]
Okay. So the court, uh, first determined, determines that the respondent has established that he's not a danger. Don't have anything in the records to indicate that he is. With regards to flight risk, um, he's subject to the circumvention of lawful pathways if he... Let me just double-check here. Oh, never mind. Wait, where did he come in at? Did he come in from the northern border? Okay, he came in through the... But he still entered without inspection, correct? Okay, so I've had a chance to review the I-five-eighty-nine application, and while counsel thinks that, um, there's a viable avenue to relief, uh, I, I think it's questionable whether or not that application is legally sufficient. Um, I've, I've looked at the claim for relief. Uh, so the, the fact is, is he's been here for a fairly short period of time. He does have limited, very limited ties to the United States. Um, according to his application, his, uh, family, um, uh, being his wife and his three children, uh, all live in India. His parents live in India, including his father, who the respondent, uh, also says in his application, uh, is an active member of the ~~INLB~~ Party. - INLD Um, and, uh, so he has very little ties to the United States. Um, employment, uh, is just one factor that the court looks at, but he has very-- he's established very little since he, uh, has been here for such a short period of time. Uh, and while there is an application for ~~other needs~~, relief the court finds that that in and of itself is insufficient for me to find that he is not a flight risk. To limit, uh, given the fact that, um, it's questionable whether or not the respondent is prima facie eligible for relief sought. The court is going to find that no amount of bond would mitigate the respondent's flight risk, and I'm going to deny bond. Counsel, would you like to reserve appeal? Is English his best language?

00:06:26,300 --> 00:06:27,060 [speaker_1]
Uh.

00:06:27,100 --> 00:07:02,320 [speaker_0]
Okay, can you change it over to... The last three are... Okay. [pause] And the appeal is due on January twenty-eighth. Okay. All right, counsel. Thank you, sir.

00:00:28,800 --> 00:03:44,720 [speaker_0]
Taylor Adams for the respondent. Of course, Your Honor. So the respondent's been living in the United States since, uh, approximately May of twenty twenty-four, um, and he has created community and family ties, um, in the country since he arrived. He is lawfully, uh, employed out of Dunkin' Donuts in Media, Pennsylvania, and he supports himself financially. He has a US citizen brother-in-law who is willing to-- who's, you know, agreed to provide a place for respondent to live and to ensure he appears at all future hearings. He is also agreeing to financially assist respondent in any way that he might need. Um, and his tax returns are in the evidence packet we submitted this morning, um, as well as his US passport and ID. Um, importantly, a respondent has appeared at every ICE check-in he's ever been asked to appear at. He's appeared at every hearing and every appointment. Um, that is actually what led to his detention, is he was, uh, detained at his check-in. Uh, so there's no indication that he would fail to appear at any future hearings set by this court or any other court. Um, he has a Five eighty-nine that's, uh, already filed with the court, that's been pending since October of twenty twenty-four, um, and it was filed timely, so he has a strong avenue for relief in that regard. So that is further evidence that he has an incentive to appear at all future hearings. Uh, he's not a danger to the community because he's, he's never been arrested outside of his immigration arrest. He's never been criminally arrested for any reason or criminally, uh, charged or convicted of any crimes, so there's no indication that he would be a danger to any person or property. So that's a, a quick summary of your, Honor.

00:03:46,740 --> 00:04:28,840 [speaker_1]
Yeah, our position is the respondent is a very recent entry, um, entering the be-- like, the few, first few months of two thousand twenty-four. Um, I know he has a, a, uh, United States citizen brother-in-law, but I'm not sure that there's many other, um, significant connections here in the United States due to his, uh, limited family ties, as well as his, uh, limited time here in the United States. Uh, so we are arguing that the respondent is a flight risk, and we would ask that bond be denied, but ultimately, we'll defer to the court.

00:04:39,580 --> 00:06:28,260 [speaker_0]
Um, that's correct, Your Honor. That's correct. Yes, Your Honor. Thank you. Uh, he does speak English, but no, his best language is Hindi.

00:06:28,300 --> 00:06:58,580 [speaker_2]
Change the language in any place.

00:06:58,620 --> 00:07:02,240 [speaker_0]
All right. That's it, Your Honor. Thank you.

AFFIDAVIT OF LAWRENCE O. BURMAN

I, Lawrence O. Burman, swear under penalty of perjury, that the following information is true and correct to the best of my knowledge, information, and belief:

Experience

1. I am over 18 years of age, and a citizen of the United States.
2. I was admitted to the Maryland Bar in November 1978 and have maintained active status since that time.
3. I was employed by the United States Department of Justice from September 1988 until my retirement on December 31, 2025.
4. I served as an Immigration Judge from my appointment in April 1998 until my retirement.
5. Before that, I worked as an assistant district counsel for the former Immigration and Naturalization Service (INS) in Baltimore, Maryland, from 1991 to 1998 – a role now absorbed by the Department of Homeland Security.
6. Prior to that, from 1990 to 1991, I served as assistant general counsel at INS Headquarters in Washington, D.C.
7. From 1988 to 1990, I worked as a general attorney for INS in Baltimore.

Experience as an Immigration Judge

8. During my 27 years as an Immigration Judge, I presided over both detained and non-detained dockets in Memphis TN and NorthernVirginia. I also heard detained cases on detail to detention facilities in Texas, California, New Mexico, Louisiana and Pennsylvania. I was assigned to the Annandale VA detained docket most recently in December 2025 for a short period to cover judges who were on leave.
9. While presiding over the detained docket, I adjudicated requests for custody redetermination (also known as bond hearings). In making these adjudications, I considered whether the alien was a flight risk or a danger to the community.
10. I have been asked to prepare this affidavit to explain my decades of experience as an Immigration Judge regarding the application of "flight risk" when denying a bond, as well as my professional observations regarding recent adjudicatory patterns and their potential implications.
11. Over my time on the bench, I found that concerns about flight risk were usually addressed by setting an appropriate bond amount. It was rare for a bond to be denied solely based on flight risk; more often, a higher bond amount was imposed to ensure the individual's appearance at future hearings.
12. In my experience, bond was not denied solely due to a person's manner of entry into the United States or because they had not yet applied for relief before being encountered by immigration officials. Such factors werer never the main reason for denial, and generally not considered at all.

13. It was also extremely rare to see a bond denial based on flight risk where the alien had a fixed address, a job, a proposed application for relief, or family ties to the United States.
14. In my experience, bonds in excess of $15,000 were relatively uncommon on the dockets on which I served. This is largely because a person's ability to pay a bond should be considered when adjudicating a bond request, and because immigration delivery bonds generally require payment of the full amount to post.
15. Earlier in my tenure, judges typically maintained a regular detained docket. In the last decade, the Immigration Court in Annandale, Virginia, assigned certain judges to detained matters on a full-time basis, while others would substitute when needed.
16. Since around 2017, Immigration Judges Raphael Choi and Karen Donoso-Stevens had been assigned to the detained dockets. IJ Choi was previously the Chief Counsel of the Office of Principal Legal Advisor for Arlington, Virginia, and IJ Donoso-Stevens was a senior attorney for the detained docket for the Office of Principal Legal Advisor for Arlington, Virginia
17. I recently learned that both IJ Choi and IJ Donoso-Stevens were abruptly removed from the detained docket in January 2026, in the middle of their morning dockets, and were replaced by newly-appointed judges.

Concerns about the Immigration Court System

18. Since January 2025, I have observed a troubling trend of Immigration Judges being terminated without explanation or notice. In all my years on the bench, I have never witnessed such a high level of turnover.
19. From conversations within the immigration bench and professional organizations, including the National Association of Immigration Judges (of which I was an officer), it is clear that judges were removed for their strong commitment to due process for those appearing before them.
20. Although immigration judges are expected to act as neutral adjudicators, I have noticed increasing concern among members of the bench about institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure.
21. I am concerned that the notable rise in bond denials and adverse case outcomes undermines due process and erodes confidence in the Immigration Court system.

Signed this 14th day of February 2026 in the County of Arlington, Commonwealth of Virginia.

February 14, 2026 _____

Lawrence O.Burman

DECLARATION OF JORGE E. ARTIEDA

I, Jorge E. Artieda, declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

I. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

1. I am an attorney licensed to practice law in the Commonwealth of Virginia and am admitted to practice before the United States District Courts for the Eastern and Western Districts of Virginia.

2. I have over two decades of experience in immigration law and federal law enforcement, including:

a. Service as a prosecutor in New York City;

b. Service as legal counsel to Immigration and Customs Enforcement (ICE) Headquarters in Washington, D.C.;

c. Service as Assistant Chief Counsel for ICE in Virginia;

d. Service as a Special Assistant United States Attorney in Virginia; and

e. For the past decade, private practice as an immigration attorney specializing in detention and removal defense, including routine representation of detained individuals in bond proceedings before Immigration Judges in the Eastern District of Virginia.

3. I am proud of my years of service as a government attorney. My time working within the City of New York, Immigration and Customs Enforcement, and as a federal prosecutor was among the most meaningful work of my career. I remain grateful for the opportunity to have served the public in those capacities and continue to hold deep respect for the dedicated public servants who work within these institutions to faithfully administer our immigration laws.

4. Based on this extensive experience on both sides of immigration enforcement and litigation, I am intimately familiar with the standards, practices, and norms governing bond determinations in immigration proceedings in this district.

II. PURPOSE OF THIS DECLARATION

5. I submit this declaration to provide the Court with direct, firsthand observations of a dramatic and systematic change in bond hearing outcomes that have occurred over the past three weeks in immigration proceedings in Virginia and Maryland, particularly before Immigration Judges assigned to the detained docket.

6. This declaration is based on: (a) my personal observations of bond hearings I have attended; (b) my review of written bond decisions issued to clients; (c) communications with numerous immigration attorneys practicing in this district; and (d) my professional knowledge of historical bond practices in this jurisdiction spanning more than a decade.

7. I authorize any attorney representing detained individuals in habeas corpus proceedings or emergency motions for immediate release to use and file this declaration in support of their clients' cases.

III. THE SEISMIC SHIFT: SYSTEMATIC DENIAL OF BOND IN POST-HABEAS CASES

8. Beginning in or around the first week of January 2026, I began observing what can only be described as a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings by this Court and other judges in the Eastern District of Virginia.

9. Prior to this shift, while bond amounts had increased in recent months, bond was *routinely granted* in post-habeas cases where individuals demonstrated: (a) lack of significant criminal history; (b) strong family ties in the United States; (c) lengthy residence in the country; (d) viable claims for relief from removal; and (e) community support including stable housing and employment prospects.

10. Beginning approximately three weeks ago, this pattern *abruptly and uniformly ceased*. In numerous cases I have personally observed or learned about from colleagues, Immigration Judges have denied bond in circumstances that, weeks earlier, would have resulted in bond being set.

11. In my professional observation, the consistency, timing, and uniformity of these denials cannot be readily explained by coincidence, changes in individual case facts, or independent judicial decision-making. The pattern appears systematic and suggests coordinated institutional direction.

IV. THE REASSIGNMENT OF IMMIGRATION JUDGES CHOI AND DONOSO-STEVENS

12. What I believe to be compelling evidence of possible institutional coordination occurred in early January 2026, when two Immigration Judges who had been assigned to the Annandale detained docket for years—Immigration Judge Raphael Choi and Immigration Judge Karen Donoso-Stevens—were abruptly reassigned to the non-detained docket.

13. Prior to their reassignment from the detained docket, these judges were conducting what appeared to be meaningful individualized bond assessments in

post-habeas cases. They were granting bond in appropriate cases and, critically, had begun questioning—*on the record*—the government's blanket detention positions and the Department of Justice's insistence on maintaining detention under circumstances that appeared not to justify continued custody.

14. The timing and circumstances of their reassignment are, in my view, extraordinary. Judges who appeared to be fulfilling their duty to conduct individualized bond assessments and who were openly questioning government positions were removed from the very docket where such assessments are most critical.

15. Since their reassignment, the Immigration Judges who replaced them on the detained docket have, based on my observations, *systematically denied bond* in post-habeas cases. This pattern suggests that the reassignment may not have been administrative happenstance but rather a deliberate effort to ensure predetermined outcomes—continued detention—regardless of individual circumstances.

V. PRETEXTUAL AND LEGALLY INSUFFICIENT RATIONALES FOR DENYING BOND

16. Over the past three weeks, Immigration Judges have, in my observation, relied on a remarkably narrow and predictable set of rationales to deny bond—rationales that appear to bear little relationship to genuine individualized risk assessment and that would not have been deemed sufficient to justify denial just weeks earlier.

17. These rationales, which I believe to be pretextual, include but are not limited to:

a. Treating the absence of a financial sponsor as dispositive of flight risk, even when other equities (family ties, length of residence, employment history, community support) overwhelmingly favor release;

b. Finding that a sponsor who is not a *financial* sponsor is insufficient, despite no legal requirement that sponsors provide financial guarantees;

c. Treating the fact that an individual did not seek relief from removal until after being detained as evidence of lack of intent to comply with immigration proceedings;

d. Finding that applications for relief under INA § 240A(b) (cancellation of removal) are "speculative" and therefore do not mitigate flight risk, despite the fact that all immigration relief applications involve some degree of uncertainty and merit assessment;

e. Characterizing unlawful entry into the United States—*by itself*—as establishing flight risk, a rationale that would render bond impossible for the vast majority of detained individuals;

f. Treating the accumulation of unlawful presence (which is a civil violation, not a crime) as evidence of danger or disregard for the law;

g. Finding that unauthorized employment—a status violation shared by millions of undocumented immigrants—constitutes a significant negative factor warranting denial of bond;

h. Treating minor discrepancies in addresses listed on various documents as evidence of "deceitfulness," even when such discrepancies are readily explained and do not reflect any intent to mislead;

i. Questioning the accuracy of tax returns and suggesting "underreporting" based on subjective assessments of lifestyle (such as photographs showing children at Disneyland or a respondent in a vehicle), without any actual evidence of fraud or misrepresentation;

j. Imposing on respondents the burden of proving that they *will* appear for future court proceedings—an impossible burden that requires proving a negative—even though many respondents have never failed to appear for any prior proceeding because *they have never been required to appear* until being placed in removal proceedings; and

k. Dismissing applications for cancellation of removal as "pro forma" when they have not been fully completed or developed, even though detained individuals often lack access to the resources and legal support necessary to perfect such applications while in custody.

18. In my professional assessment, these rationales do not appear to be grounded in legitimate risk assessment. They appear to be pretexts designed to ensure denial of bond regardless of the individual facts of each case.

19. The rationales being employed to deny bond appear to depart significantly from the standards articulated in BIA precedent governing bond determinations.

20. The rationales I have observed over the past three weeks—treating unlawful entry alone as establishing flight risk, dismissing relief applications as inherently "speculative," requiring financial sponsorship as a prerequisite, and treating any immigration violation as dispositive—appear to represent a departure from these precedential standards. BIA case law requires that Immigration Judges consider the *specific circumstances* of each case and weigh multiple factors in reaching bond

determinations. The systematic application of categorical exclusions based on status violations common to the detained population does not appear consistent with the individualized, fact-specific analysis that BIA precedent mandates.

VI. OBSERVATIONS FROM JANUARY 14 and JANUARY 28, 2026, DETENTION DOCKET

21. On January 14 and January 28, 2026, I personally observed bond hearings before Immigration Judge Gardey at the Annandale Immigration Court. What I witnessed confirmed the systematic pattern of denial that has emerged over the past three weeks.

22. Multiple cases that would have resulted in bond being set just weeks earlier were denied. The denials were based on the same rationales I have described above: lack of financial sponsors, unauthorized work, the "speculative" nature of relief applications, and immigration violations that are endemic to the detained population.

23. In each instance I observed, the Immigration Judge appeared to apply factors that, if consistently applied, would make bond impossible for virtually any detained individual in removal proceedings. There did not appear to be meaningful individualized assessment. The hearings appeared to be perfunctory exercises designed to create a veneer of due process while ensuring predetermined outcomes.

24. The cases I observed on the above dates, involved individuals with no criminal history, or only minor criminal history unrelated to violence or flight. These individuals had family members present in court, stable housing, employment prospects, and pending applications for relief. Under the standards that prevailed in this district for years—and indeed, as recently as three weeks ago—these individuals would have been granted bond.

VII. CORROBORATION FROM THE IMMIGRATION LEGAL COMMUNITY

25. My observations are not isolated. In recent weeks, I have communicated with numerous immigration attorneys practicing all over the United States who handle detention cases. These conversations have confirmed that the pattern I have observed is widespread and consistent.

26. Colleagues have reported the same experience: clients who were granted federal habeas relief and ordered § 1226(a) bond hearings are now being systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier.

27. These attorneys have described bond hearings as appearing to be "pro forma" exercises where the outcome seems predetermined. Meaningful individualized

review appears to have been replaced by boilerplate language and cookie-cutter denials.

28. The consistency of these reports across multiple practitioners, representing different clients before different Immigration Judges, suggests that this is not a matter of individual judicial discretion or case-specific circumstances. It appears to be a coordinated institutional effort.

VIII. PROFESSIONAL ASSESSMENT AND CONCLUSION

29. Based on my two decades of experience in immigration law, including my service within the ICE, the pattern of events over the past three weeks—the abrupt reassignment of judges who were granting bond and questioning government positions, the immediate and uniform shift to systematic denial of bond, and the reliance on a narrow set of rationales across multiple judges and cases—suggests what appears to be a coordinated effort by the Executive Office for Immigration Review (EOIR) and the Department of Justice to undermine federal habeas relief.

30. In my professional judgment, this apparent coordination is the most plausible explanation for what I and my colleagues have observed. Independent adjudication does not typically produce this level of uniformity in outcome and reasoning across multiple judges and cases in such a compressed timeframe.

31. The bond hearings being provided to individuals who have been granted federal habeas relief do not appear to be genuine adjudications. They appear to be illusory remedies—proceedings designed to create the appearance of due process while ensuring that individuals remain detained indefinitely.

32. What I have witnessed over the past three weeks appears to be a systematic effort to nullify the constitutional protections that federal courts have recognized and enforced through habeas corpus. It appears to be a deliberate campaign to render meaningless the bond hearings that this Court and others have ordered.

33. I am profoundly concerned by what I have witnessed. As an attorney who has dedicated my career to the fair administration of immigration law—having served both as a government attorney enforcing those laws and as a private practitioner defending individuals subject to them—I find what appears to be a coordinated effort to undermine judicial authority and deny due process to be deeply troubling and inconsistent with the values I learned and embraced during my years of public service.

34. The individuals affected by this systematic denial of bond are not abstractions. They are human beings with families, with children, with jobs, with lives in this country. They have been found by federal courts to be entitled to bond hearings.

They are now being denied those hearings in any meaningful sense, held in detention not because they pose a danger or a flight risk, but because, in my observation, the Executive Branch appears to have decided to circumvent federal court orders through institutional means.

35. I submit this declaration in the hope that it will assist courts in understanding the reality of what appears to be occurring in immigration proceedings in this district and in ensuring that the constitutional right to habeas corpus is not rendered meaningless.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of January 2026, in Arlington, Virginia.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NARESH KUMAR *Petitioner,* v. BRIAN MCSHANE, et. al., *Respondents.*	CIVIL ACTION No. 25-cv-6238

[PROPOSED] ORDER

AND NOW, this ___ day of February 2026, it is **ORDERED** that Petitioner's Motion to Enforce (ECF No. 21) is **GRANTED**. It is thus **ORDERED** that:

1. The Federal Respondents shall **RELEASE** Petitioner from custody immediately and certify compliance with this Order by filing on the docket no later than ____ on _____.

BY THE COURT:

_____

Nitza I. Quinones Alejandro, J.