

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

NARESH KUMAR,

Petitioner,

v.

BRIAN MCSHANE, *et al.*,

Respondents.

Case No. 25-cv-6238

ORDER

AND NOW, this day of , 2026, upon consideration of the Motion to Enforce (ECF 21) of Petitioner Naresh Kumar, and Respondents' response thereto (ECF 22), it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

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RESPONSE TO PETITIONER KUMAR’S MOTION TO ENFORCE

In his Motion to Enforce (ECF 21), Petitioner Naresh Kumar contends that his December 29, 2025 bond hearing before Immigration Judge (IJ) Tamar Wilson was inconsistent with due-process requirements, thus necessitating his immediate release. In fact, however, he received all process due to him.

Mr. Kumar was provided with a timely December 29, 2025 bond hearing that was fully compliant with 8 U.S.C. § 1226(a). *See* ECF 13 (Respondents’ “Response to Petitioner’s ECF 12 Status Report”), at p. 1. At the hearing, IJ Wilson denied bond because Mr. Kumar had “not established that he is not a flight risk.” *See* ECF 17 (Second Joint Update), ¶ 1.b. Mr. Kumar has since administratively appealed that decision to the Board of Immigration Appeals (BIA) under the applicable regulatory framework. *See* ECF 13 (Response), at p. 1; *see also* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i).

This is not the first time that Mr. Kumar has made his due-process argument. In a December 30, 2025 Status Report to this Court, he contended that the bond hearing on the previous day was fundamentally unfair and, on that basis, requested release or a

judicial bond hearing. *See* ECF 12 (Kumar Status Report); *see also* ECF 13 (Gov't Response), at p. 2 (arguing that Kumar's request was premature because the BIA had not yet heard his appeal).

On December 31, 2025, this Court denied as premature that request and directed the parties to file, by January 16, a joint report on the "status of Mr. Kumar's detention matter and his BIA appeal[.]" *See* Order (ECF 14), at p. 1 & n. 1.

In their January 16, 2026 "Joint Update," the parties noted that: (1) at Mr. Kumar's request, the immigration court had scheduled an additional bond hearing for January 20, 2026; and (2) on January 15, 2026, Mr. Kumar had appealed IJ Wilson's bond denial to the BIA. *See* Update (ECF 15), at ¶¶ 1-3. In a January 16 Order, this Court stated: "Should Mr. Kumar be denied bond [at the January 20 supplemental hearing], he is to be returned to the Federal Detention Center [in Philadelphia] within five days . . . and be permitted an opportunity to appeal that decision to the BIA." *See* ECF 16 (Order), ¶ 2 (underline added).

On January 22, in a second "Joint Update," the parties reported that, at the January 20 subsequent bond hearing, Mr. Kumar appeared, and the IJ again denied bond, this time on grounds that no demonstrated changed circumstances existed to modify the December 29 bond denial. *See* Second Update (ECF 17), ¶¶ 1, 5; *see also* 8 C.F.R. § 1003.19(e) (when an IJ denies bond, a noncitizen may request a new bond hearing if he can show materially changed circumstances since the last hearing); *Garcia v. Attorney General*, 667 F.3d 496, 501 n.5 (3d Cir. 2011) (recognizing the changed circumstances requirement for a subsequent bond hearing).

In that second update, Mr. Kumar again contended that his bond hearing(s) did not satisfy due-process notice and opportunity-to-be-heard requirements. *See* ECF 17,

¶ 3 (arguing that: (1) the initial bond hearing was held four hours after it was scheduled, which prevented Mr. Kumar from showing that he is not a flight risk; and (2) there was insufficient evidence on which a neutral, reasonable arbiter could find him to be a flight risk). In the same update, the Government Respondents reiterated their positions that this federal-district-court habeas case should be closed because: (1) Mr. Kumar has had the bond hearing that his ECF 1 Petition sought as the *raison d'être* for this civil action; and (2) he is pursuing relief regarding the already-held bond hearing(s) through his BIA administrative appeal, over which this Court lacks jurisdiction. *See* ECF 17, ¶ 5; *see also* ECF 15, ¶ 6.

Now, in his Motion to Enforce, Mr. Kumar previews his appellate arguments to the BIA and argues to this Court—again on due-process grounds—that he should be immediately released. *See* ECF No. 21 (Motion), at pp. 2-3 (contending that the IJ “was unaware” that the initial bond hearing was scheduled on the morning that it occurred). He emphasizes that IJ Wilson waited until February 9, 2026 to “upload[] a written justification” memorializing the bond-denial reasons that she had orally stated on the record at the hearing. *Id.* According to Mr. Kumar: (1) this written justification amounts to a “*post hoc* rationalization” devoid of “an individualized review”; (2) IJ Wilson, when determining that Kumar had failed to show that he is not a flight risk, gave short shrift to Kumar’s application for relief; and (3) the IJ’s decision should be viewed in the context of the Executive Office of Immigration Review (where the IJ works), in cases around the country, having (according to Kumar) systematically denied bond based on flight-risk concerns. *See id.* at pp. 3-6 (also contending that the government, not Kumar, should have the burden of proof at any bond hearing).

Respondents oppose Mr. Kumar’s motion on two grounds.

First, as a matter of subject-matter jurisdiction, the BIA is the proper forum to adjudicate Mr. Kumar’s arguments about the outcome of the bond hearing. *See, e.g., Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *1 (3d Cir. Feb. 25, 2022) (recognizing that the Third Circuit and federal district court: (1) “lack[ed] jurisdiction to review any discretionary determinations underlying the IJ’s bond hearing”; and (2) were limited in their review—where the BIA appeal had already been exhausted—to considering whether the bond hearing had been “fundamentally unfair”); *Saravia v. Green*, No. 17-4559, 2017 WL 6513345, at *3 (D.N.J. Dec. 15, 2017) (adverse bond-hearing decision must be appealed to the BIA).

Mr. Kumar’s BIA appeal is undisputedly pending. When on January 30, 2026 he urged this Court to return him from the Moshannon Valley Processing Center (where his subsequent bond hearing was held) to FDC-Philadelphia, he acknowledged that the BIA appeal process would play out while he remained in custody. Specifically, he stated: “Respondents could seek permission to transfer [Mr. Kumar] back to Moshannon Valley Processing Center following the adjudication of [his] currently pending appeal with the Board of Immigration Appeals, should the [BIA] find that [Kumar’s] bond request was properly denied.” *See* ECF 20 (Kumar Response), at p. 2 (underline added).

Respondents agree that this Court should allow the established BIA appeal process to be completed.

Second, Mr. Kumar fails to show that his bond hearing was fundamentally unfair.

Due process requires that, at a bond hearing, the individual seeking release: “(1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him . . .; (2) must be allowed to make arguments on his . . . own behalf; and

(3) has the right to an individualized determination of his . . . interests.” *Ghanem*, No. 21-1908, 2022 WL 574624, at *2 (quoting *Kamara v. Att’y Gen. of U.S.*, 420 F.3d 202, 211 (3d Cir. 2005)).

Mr. Kumar’s December 29, 2025 hearing met these requirements.

The parties received this Court’s decision on Mr. Kumar’s federal-district-court habeas petition by ECF notice at 5:52 p.m. on Tuesday, December 23, 2025, in a year when the following three weekdays—Wednesday December 24, Thursday December 25, and Friday December 26—were all federal holidays. *See* ECF 10 (Memorandum Decision); ECF 11 (Order). *See also* <https://www.whitehouse.gov/presidential-actions/2025/12/providing-for-the-closure-of-executive-departments-and-agencies-of-the-federal-government-on-december-24-2025-and-december-26-2025/> (last visited Feb. 17, 2026).

This Court’s late-day, holiday-eve Order gave the parties notice that the bond hearing had to occur within “five days from this Order.” On December 23, the parties thus knew to expect the hearing to occur on Monday December 29 (the next non-holiday weekday) and to be prepared for it. Considering that the hearing notice went out early in the day on the only day (December 29) when the hearing could occur, a full four-hours advance notice of the start time was reasonable.

At the December 29 bond hearing, as reflected in the unverified transcript of the hearing that is attached to Mr. Kumar’s Motion to Enforce, Kumar appeared with counsel, who (as Kumar acknowledges) was able to submit evidence and make oral arguments on his behalf, including on: (1) his ties to the United State; (2) why (in his view) he is not a flight risk; and (3) the pendency of his application for relief.

Consistent with due process, the hearing reflects that IJ Wilson made an

individualized determination on the bond request. Her oral decision reflected Mr. Kumar's circumstances and her conclusions, including that: (1) Kumar established that he is not a danger; (2) he entered at the northern border, without inspection; (3) he has been in the United States for a short period; (4) he has limited ties to the United States; (5) his wife and three children still live in India; (6) his application for relief was in itself an insufficient basis for finding him not to be a flight risk, because "it's questionable whether or not [he] is actually eligible for the relief sought"; and (7) "no amount of bond will mitigate" the flight risk. *See* ECF 21-1, at pp. 5-6 (unverified transcript).

As Mr. Kumar states, IJ Wilson recently issued a "Bond Memorandum" that notes the pending appeal to the BIA and that memorializes her earlier oral decision. In that memorandum, the IJ explained:

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.

See ECF 21-1, at pp. 3-4 (Bond Memorandum at 2-3).

Although Mr. Kumar may disagree with IJ Wilson's conclusion that he failed to

meet his burden of demonstrating that he does not pose a flight risk, that disagreement is not sufficient to render the bond hearing unconstitutional. *See, e.g., Kamara v. Attorney General of U.S.*, 420 F.3d 202, 211 (3d Cir. 2005) (“[T]he question for due process purposes is not whether the BIA reached the *correct* decision; rather, it is simply whether the [BIA] made an individualized determination of [the petitioner’s] interest.”) (citation omitted).

Because Mr. Kumar has not articulated a well-grounded basis for challenging the fundamental fairness of the bond hearing, the BIA is the proper tribunal to consider the merits of Mr. Kumar’s appeal of IJ Wilson’s decision. *See, e.g., De Souza v. Soto*, No. CV 25-18734, 2026 WL 102946, at *3 (D.N.J. Jan. 14, 2026) (reasoning that the “record compels a finding that Petitioner received the individualized bond hearing as required under 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1(d)(1),” and any challenge to the denial of bond had to be presented to the BIA).¹

In sum, Mr. Kumar submitted evidence and argument to the Immigration Court, which IJ Wilson reviewed as a basis for denying bond. No further action by this Court is required, let alone while Mr. Kumar’s appeal to the BIA is pending.

The Motion to Enforce should therefore be denied.

¹ *See generally Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 275-79 (3d Cir. 2018) (affirming—where Russian-citizen petitioner had been detained under 8 U.S.C. § 1226(a) and had been denied release on bond pending removal/deportation proceedings—the district court’s dismissal of the habeas petition, because: (1) the petitioner—who had overstayed a tourist visa and been identified by Russia as a fugitive from criminal prosecution—was not, by virtue of the length of his detention, entitled to a second bond hearing, let alone with the burden of proof shifted to the government; (2) an IJ had already given him meaningful process when determining that continued detention was necessary; (3) the BIA had upheld the IJ; and (4) circumstances had not materially changed following the initial bond hearing).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 23rd day of February, 2026, I caused a true and correct copy of the foregoing Response to Motion to Enforce to be filed electronically via the Court's CM/ECF system, which will serve notice on all counsel of record.

/s/ Gerald B. Sullivan
GERALD B. SULLIVAN
Assistant U.S. Attorney