

Gina Herrera
Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)
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DETAINED

Robert G. Cummings
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650-363-7280

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

DANIEL JAMES CUMMINS

Petitioner,

vs.

MOISES BECERRA, Field Office Director,
ICE/San Francisco;
RON MURRAY Warden, Mesa Verde ICE
Processing Center;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA BONDI, Attorney General of the
United States

Respondents.

Case No.1:25-cv-01853-DC-AC

**EMERGENCY MOTION TO ENFORCE
AND MODIFY HABEAS RELIEF AND
FOR ORDER OF IMMEDIATE
RELEASE**

**EMERGENCY MOTION TO ENFORCE AND MODIFY HABEAS RELIEF AND FOR
ORDER OF IMMEDIATE RELEASE**

I. INTRODUCTION

Petitioner Daniel James Cummins respectfully moves this Court, on an emergency basis, to **enforce and modify its December 23, 2025 habeas order** and to **order Petitioner's immediate release from civil immigration detention**.

This Court previously granted habeas relief in part, holding that Petitioner was entitled to a **constitutionally compliant bond hearing** at which the government bears the burden to justify continued detention by **clear and convincing evidence**. Despite the Court's directive, the bond hearing conducted on January 2, 2026 **failed to satisfy the constitutional minimum** required by this Court and the Ninth Circuit.

At that hearing, the Department of Homeland Security ("DHS") presented **no live testimony, no**

1 **police reports, no certified convictions, no fingerprint or identity corroboration, and no**
2 **documentary evidence of current dangerousness or flight risk.** DHS relied exclusively on an
3 I-213 (which Petitioner concedes is administratively accurate) and an FBI rap sheet containing
4 **dismissed charges, uncorroborated allegations, and entries Petitioner credibly disputes as**
5 **not pertaining to him.**

6 Nevertheless, the Immigration Judge concluded—without evidentiary support—that DHS met its
7 burden. That determination rests on **speculation, dismissed allegations, and unsupported**
8 **assumptions**, and therefore does not comply with this Court’s order or with due process.
9 Because DHS has failed to justify continued detention and because Petitioner continues to suffer
10 **ongoing irreparable harm**, the only effective remedy is **immediate release under this Court’s**
11 **habeas authority.**

11 **II. PROCEDURAL AND FACTUAL BACKGROUND**

12 **1. Entry and Residence.**

13 Petitioner entered the United States under the Visa Waiver Program in 2018 and has
14 resided continuously in this country for over eight years.

15 **2. Criminal Proceedings.**

16 In 2021, Petitioner was arrested and charged in connection with a single incident. **All**
17 **charges—including the most serious—were dismissed in their entirety.** Petitioner has
18 **no convictions for any violent offense. He has a single misdemeanor wet reckless**
19 **conviction from 2020.**

20 **3. Medical Condition.**

21 Petitioner suffers from [REDACTED] a rare and life-threatening
22 lung disease caused by Valley Fever exposure in California. Medical evidence submitted
23 to DHS and this Court confirms the need for **specialized, continuous care** unavailable in
24 detention and not realistically accessible in Ireland.

25 **4. Detention History.**

26 Petitioner spent approximately **ten months in county custody** before ICE assumed
27 custody. He has now been held in **civil immigration detention for over three additional**
28 **months, totaling more than one year of continuous confinement**, despite the dismissal
of all criminal charges.

5. Federal Habeas Relief.

On December 23, 2025, this Court granted habeas relief in part, ordering DHS to provide a **constitutionally compliant bond hearing** within fourteen days and placing the burden on DHS to justify detention by **clear and convincing evidence**.

6. **Bond Hearing and Denial.**

The January 2, 2026 bond hearing resulted in a denial of release. DHS relied solely on an FBI rap sheet and the I-213. The IJ did not require corroboration, did not address Petitioner's rebuttal evidence, and did not meaningfully analyze whether DHS met its burden.

III. JURISDICTION AND AUTHORITY

This Court retains **continuing habeas jurisdiction** to enforce and modify its prior order. See *Zadvydas v. Davis*, 533 U.S. 678, 688–90 (2001). Where the government fails to comply with the **substantive requirements** of a habeas order, the Court may grant further relief, including **immediate release**. See *Singh v. Holder*, 638 F.3d 1196, 1208–10 (9th Cir. 2011).

IV. LEGAL STANDARD

A constitutionally compliant bond hearing requires that:

1. The government bears the burden;
2. The burden is **clear and convincing evidence**; and
3. Continued detention is justified by **actual, individualized evidence** of danger or flight risk.

Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011);

Hernandez v. Garland, 50 F.4th 942 (9th Cir. 2022);

Alec L. v. Garland, 63 F.4th 1083 (9th Cir. 2023).

V. ARGUMENT

A. DHS Failed to Comply with This Court's Order

Although DHS technically convened a bond hearing, **procedural form cannot substitute for constitutional substance**. A hearing in which the government presents **no admissible or corroborated evidence** cannot satisfy the Court's directive.

DHS produced:

- No police reports;

- No arrest reports;
- No certified convictions;
- No fingerprints tying disputed entries to Petitioner;
- No witnesses.

Instead, DHS relied on **dismissed charges and disputed rap-sheet entries**, which courts have repeatedly held are **insufficient as a matter of law**.

A hearing conducted in this manner does not comply with *Singh* and does not satisfy this Court's order.

B. Reliance on Dismissed or Uncorroborated Charges Violates Due Process

Arrests and dismissed charges **cannot establish dangerousness** without reliable evidence. See:

- *Singh v. Holder*, 638 F.3d at 1209 (speculation insufficient);
- *Garcia v. INS*, 204 F.3d 769, 772 (9th Cir. 2000);
- *Pastor-Camarena v. INS*, 964 F.2d 365, 367 (5th Cir. 1992);
- *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

Here, the IJ relied on:

- Charges that were fully dismissed;
- Rap-sheet entries Petitioner credibly disputes as not his;
- No corroborating evidence tying those entries to Petitioner.

That approach **collapses the distinction between accusation and proof**, violating fundamental due process.

C. The Record Does Not Support a Finding of Flight Risk

Petitioner's circumstances strongly negate any flight risk:

- Over eight years of residence in the United States;
- Serious, progressive medical condition requiring U.S.-based care;
- Prior compliance with supervision;
- Active litigation of his immigration case.

Flight would be **medically irrational** and legally self-defeating. DHS offered no evidence to the contrary.

D. Continued Detention Is Unlawful and Unjustified

Where the government fails to meet its burden, **detention becomes arbitrary**. See *Zadvydas*, 533 U.S. at 690. Civil detention cannot continue by inertia once its justification collapses.

VI. IRREPARABLE HARM

Petitioner is suffering **ongoing, irreparable harm**:

1. Medical Deterioration.

 poses a real risk of permanent lung damage, respiratory failure, or death. ICE has not provided consistent specialist care.

2. Physical and Psychological Harm.

Petitioner has been assaulted in custody and remains exposed to unsafe conditions.

3. Loss of Liberty.

“[T]he loss of liberty for even minimal periods of time constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

4. Ongoing Due Process Violations.

Continued detention based on a constitutionally defective hearing compounds the injury. See *Alec L.*, 63 F.4th at 1092.

VII. RELIEF REQUESTED

Petitioner respectfully requests that the Court:

1. **Enforce and modify** its December 23, 2025 habeas order;
2. **Find that DHS failed to comply** with the requirement of a constitutionally compliant bond hearing;
3. **Order Petitioner’s immediate release** from ICE custody, with appropriate conditions if the Court deems necessary; and
4. Grant such other relief as justice requires.

VIII. CONCLUSION

DHS was given the opportunity to justify continued detention and failed to do so. The Constitution does not permit continued civil confinement based on dismissed allegations and speculation. Because the bond hearing did not comply with this Court’s order or with due process, **immediate release is required**.

IX. EXHIBITS IN SUPPORT

Exhibit 1 – A true and correct copy of the Immigration Judge’s Bond Order.

Exhibit 2 – A true and correct copy of the Department of Homeland Security’s Form I-213 filed in this matter.

Exhibit 3 – A true and correct copy of the additional evidence submitted by the Department of Homeland Security in support of detention.

Exhibit 4 – A true and correct copy of the evidence submitted by Petitioner in support of release on bond, filed with the Immigration Court.

Exhibit 5 – A true and correct copy of Petitioner’s Brief in Support of Release on Bond, filed with the Immigration Court.

Date: January 2, 2026

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner

LAW OFFICES OF ROBERT G. CUMMINGS
The Fitzpatrick Building
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Exhibit 1



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADELANTO IMMIGRATION COURT**

Respondent Name:

CUMMINS, DANIEL J.

To:

Cummings, Robert Gary

Redwood City , CA 94063

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

01/02/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

- ☒ Denied, because
the Department has met its burden to show by clear and convincing evidence that
Respondent is both a danger and a flight risk.
- ☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
 - ☐ released from custody under bond of \$
 - ☐ other:
- ☐ Other:



Immigration Judge: MULLINS, KATIE 01/02/2026

Appeal: Department of Homeland Security: ☒ waived ☐ reserved
Respondent: ☐ waived ☒ reserved

Appeal Due: 02/02/2026

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : CUMMINS, DANIEL J. | A-Number :



Riders:

Date: 01/02/2026 By: ESCOBAR, ESMERALDA, Court Staff

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Exhibit 2

U.S. Department of Homeland Security

Subject ID :

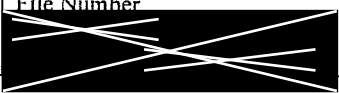


Record of Deportable/Inadmissible Alien

Family Name (CAPS) CUMMINS, DANIEL JAMES		First	Middle	Sex M	Hair BRO	Eyes BRO	Complexion LGT
Country of Citizenship IRELAND	Passport Number and Country of Issue			Height 71	Weight 190	Occupation Unemployed	
U.S. Address				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry 02/15/2018 Unknown Time, LVG, WAR-Visa Waiver Program (VWP) - Removal			Passenger Boarded at See Narrative		F.B.I. Number		
Number, Street, City, Province (State) and Country of Permanent Residence				☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated			
Date of Birth 		Age: 34	Date of Action 02/25/2025	Location Code RED/SFR			
City, Province (State) and Country of Birth Dublin, IRELAND		AR ☒	Form : (Type and No.) Lifted ☐ Not Lifted ☐				
NIV Issuing Post and NIV Number		Social Security Account Name					
Date Visa Issued		Social Security Number					
Immigration Record NEGATIVE			Criminal Record See Narrative				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)						Number and Nationality of Minor Children None	
Father's Name, Nationality, and Address, if Known (UNKNOWN) NATIONALITY: IRELAND			Mother's Present and Maiden Names, Nationality, and Address, if Known CUMMINS, AISLING NATIONALITY: IRELAND				
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? ☒ Yes ☐ No		Systems Checks See Narrative		Charge Code Word(s) See Narrative	
Name and Address of (Last)(Current) U.S. Employer		Type of Employment		Salary		Employed from/to	
				Hr			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FIN: Left Index fingerprint Right Index fingerprint							
OTHER ALIASES KNOWN BY: ----- Burke, Jordan Burke, Daniel							
SCARS MARKS AND TATTOOS ----- None Indicated - None ... (CONTINUED ON I-831)							
Alien has been advised of communication privileges 9-4-2025/10 (Date/Initials)				RICHARD SEALANA Deportation Officer (Signature and Title of Immigration Officer)			
Distribution: A-file A-file A-file				Received: (Subject and Documents) (Report of Interview) Officer: RICHARD SEALANA on: February 25, 2025 (time) Disposition: VWP Removal Examining Officer: XAYAPHACHAN, S 2165			

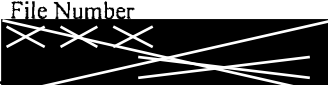
U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name CUMMINS, DANIEL JAMES	File Number 	Date 02/25/2025
Subject Health Status ----- The subject claims good health. Current Administrative Charges ----- 09/03/2025 - 237a1B - NONIMMIGRANT OVERSTAY Previous Criminal History ----- On 11/05/2024, the subject was arrested for the crime of "Aggravated Assault - Weapon" which resulted in a dismissed charge. On 11/05/2024, the subject was arrested for the crime of "  ill-Gun" which resulted in a dismissed charge. On 09/22/2020, the subject was arrested for the crime of  which resulted in a conviction on 07/21/2021. The subject was sentenced to 1 day (s). BOARDED AT ----- London, UNITED KINGDOM RECORDS CHECKED ----- CIS Neg NCIC Pos Record of Deportable/Excludable Alien: ----- On November 5, 2024 Daniel James Cummins (A# ) was arrested and booked into the Trinity County Jail in Weaverville, California for California Penal Code section 187(a) At  a California Penal Code section  eapon. Cummins fingerprints were submitted to the California Department of Justice and the United States Federal Bureau of Investigations. Cummins was a match to United States Department of Homeland Security information systems through biometric identification and an alert was sent to the Office of Enforcement and Removal Operations. Upon review of the biometric alert information system checks showed that Cummins last entered the United States under the VISA Waiver program and has remained in the United States beyond the time allowed. On September 3, 2025 I learned that Cummins was to be released from the Trinity County jail. At approximately 1100 hours Supervisory Detention and Deportation Sammy Xayaphachan encountered Cummins in the release area of the Trinity County jail. Xayaphachan verbally identified himself as an official with the, United States, Immigration and Customs Enforcement. Cummins was advised that he would be taken into custody for an immigration violation. Cummins was placed under arrest without incident. Cummins was placed into handcuffs and patted down (searched). The handcuffs were checked for tightness and double-locked for safety. Cummins, along with his property, were transported to the Redding sub office for		
Signature RICHARD SEALANA 	Title Deportation Officer	

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name CUMMINS, DANIEL JAMES	File Number 	Date 02/25/2025
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further processing.

ALIENAGE AND REMOVEABILITY:
Cummins is a thirty-five (35) year-old-male, native and citizen of Ireland. Cummins is not a citizen or national of the United States. Cummins is a native of IRELAND and a citizen of IRELAND. Cummins was admitted to the United States at Las Vegas, California on or about February 15, 2018 as a nonimmigrant Visa Waiver Program (VWP) with authorization to remain in the United States for a temporary period not to exceed May 15, 2018. Cummins remained in the United States beyond May 15, 2018 without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security.

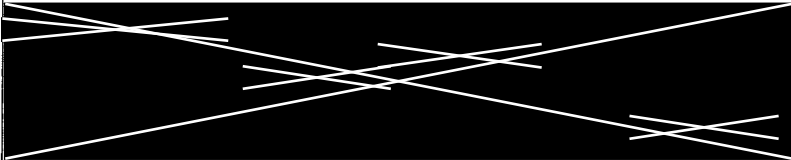
CRIMINAL HISTORY:
Cummins is identified by the following numbers.
FBI#

July 21, 2021:
Humboldt County, California
California Vehicle Code section 23103 Reckless Driving
Disposition - Convicted

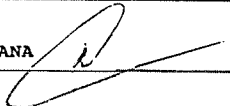
November 5, 2014:
Trinity County, California
California Penal Code section 187(a) Attempt Murder
Disposition - Dismissed

HEALTH AND HUMANITARIAN ASPECTS:
Cummins claims and appears to be good health.
Cummins does claim fear of torture or persecution should he be removed to his country of citizenship.
Cummins claims to be single with no children.
Cummins did not claim to have any appeals pending for his convictions.
Cummins did not serve in the United States Military.
Cummins was advised of his rights to communicate with his Consulate and was provided a personal phone call.
Cummins was provided with a list of legal service providers and immigration detainee handbook.

RECOMMENDATION:
Cummins shall be processed as a VWP removal and charged under section 237(a)(1)(B) of the Immigration and Nationality Act.

Other Identifying Numbers


(UNITED STATES)

Signature RICHARD SEALANA 	Title Deportation Officer
--	------------------------------

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Exhibit 3

Sandra Anderson
Chief Counsel
Philip J. Betz Jr.
Deputy Chief Counsel
Holly Te
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
10250 Rancho Road
Adelanto, California 92301

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
ADELANTO, CALIFORNIA

In the Matter of:

CUMMINS, DANIEL J.

In bond proceedings

File No.: A



Immigration Judge: Katie Mullins

Next Hearing: January 2, 2026 at 8:30 AM

**U.S. DEPARTMENT OF HOMELAND SECURITY'S
FILING IN CUSTODY REDETERMINATION PROCEEDINGS**

The Department of Homeland Security hereby submits the following documents for the
above captioned hearing.

December 31, 2025

RESPECTFULLY SUBMITTED,



Holly Te
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

INDEX

TAB	DOCUMENT	PAGE
A	FBI rap sheet	1 - 9

Tab A

CUMMINS, DANIEL J.

A 

PROOF OF SERVICE

On December 31, 2025, I, Holly Te, caused to be served a copy of this **U.S DEPARTMENT OF HOMELAND SECURITY'S FILING IN CUSTODY REDETERMINATION PROCEEDINGS** and any attached pages through the EOIR Courts and Appeals System (ECAS), which will automatically send service notifications to both parties that a new document has been filed.

Holly Te

December 31, 2025

Holly Te
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

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Exhibit 4

Gina Herrera

Law student intern appearing pursuant to 8 C.F.R. 1292.1(a)(2)

DETAINED

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Robert G. Cummings

Lead Attorney

Law Offices of Robert G. Cummings

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650-363-7280

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ADELANTO, CA

In the Matter of:

File No.: A#:



DANIEL JAMES CUMMINS

In Bond Proceedings.

Judge: Hon. Mullins, Katie G

Next Hearing Date: January 2, 2026, 10:00 am

**RESPONDENT'S EVIDENCE IN SUPPORT OF MOTION FOR BOND
REDETERMINATION HEARING AND REQUEST FOR RELEASE ON REASONABLE
BOND**

A#: 1



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
ADELANTO, CA

In the Matter of:) File No.: A#: 
DANIEL JAMES CUMMINS)
In Removal Proceedings.)
_____)

Judge: Hon. Neumeister, William David
Next Hearing Date: September 26, 2025, 10:00 am

RESPONDENT'S EXHIBIT LIST

Exhibit #	Description	Page #
Exhibit 1	A true and correct copy of Respondent's passport.	0002
Exhibit 2	A true and correct copy of Respondent's receipt of his I-589 Application.	0004-0005
Exhibit 3	A true and correct copy of Respondent's I-589 Application with USCIS.	0007-0210
Exhibit 4	A true and correct copy of Respondent's fiancée and sponsor letter in support of Respondent's bond request.	0212-0215
Exhibit 5	A true and correct copy of Respondent's fiancée 2023 and 2024 W2's.	0217-0218
Exhibit 6	A true and correct copy of photographs of Respondent and fiancée throughout their three-year relationship.	0220-0225
Exhibit 7	A true and correct copy of the Trinity County minutes dismissing all of Respondent's criminal charges.	0227-0228
Exhibit 8	A true and correct copy of the letter from Respondent's criminal defense attorney regarding the nature of the criminal case.	0230
Exhibit 9	A true and correct copy of the letter of support from Ms. Aisling Cummins, Respondent's mother.	023-0234
Exhibit 10	A true and correct copy of the letter of support from Mr. Mohammed Awadalla, Respondent's friend.	0236-0238
Exhibit 11	A true and correct copy of the letter of support from Mr. Mark Perlmutter, Respondent's friend.	0240-0242
Exhibit 12	A true and correct copy of the letter of support from Mr. Karl Smyth, Respondent's friend.	0244-0246
Exhibit 13	A true and correct copy of the letter of support from Mr. David Houlihan, Respondent's friend.	0248-0250
Exhibit 14	A true and correct copy of the letter of support from Ms. Amy Cummins, Respondent's sister.	0252-0254

File No.: A # 
NAME: DANIEL JAMES CUMMINS

PROOF OF SERVICE

On the following date: January 2, 2026, I sent a copy of **RESPONDENT'S EVIDENCE IN SUPPORT OF MOTION FOR BOND REDETERMINATION HEARING AND REQUEST FOR RELEASE ON REASONABLE BOND** by:

By electronic service through the EOIR Courts and Appeals System (ECAS), as both parties are participating in ECAS. ECAS will automatically send service notifications to both parties that a new document has been filed. Therefore, no separate service was completed

/S/GinaHerrera
Signature

1/2/2026
Date

Gina Herrera
The Law Offices of Robert G. Cummings