


UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

R.R.C.,  
,  
Petitioner,  
vs.  
JASON STREEVAL, in his official capacity as  
*Warden of Stewart Detention center*; and  
LADEON FRANCIS, *Field Office Director for ICE*  
*Atlanta Field Office*, and  
TODD LYONS, in his official capacity as *Acting*  
*Director of Immigration and Customs Enforcement*; and  
KRISTI NOEM, *Secretary of Homeland Security*; and  
PAMELA BONDI, *U.S. Attorney General*.  
Respondents.

CASE NO.:  
4:25-cv-525-CDL-CHW

**MOTION TO ENFORCE JUDGMENT AND TO SHOW CAUSE RE: CONTEMPT  
IMMEDIATE HEARING REQUESTED**

## I. INTRODUCTION AND BACKGROUND

Petitioner, R.R.C., through undersigned counsel, respectfully moves this Court to enforce its Order of January 22, 2026 [ECF Dkt. 9]. In that Order, this Court granted Petitioner’s Habeas Petition and ordered Respondents to “provide Petitioner with a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations. *See* 8 C.F.R. §§ 236.1 & 1236.1.” This motion seeks immediate enforcement of the Court’s Order because Respondents failed to provide Petitioner with a **constitutionally valid** bond hearing. Specifically, the immigration judge (IJ) who was substituted at the last minute and was admittedly unprepared, failed to conduct an individualized assessment of Petitioner’s circumstances, did not adequately consider his strong community ties or years-long record of compliance with ICE supervision, and made a baseless risk of flight finding by summarily dismissing his pending applications for relief as “speculative.” The IJ then denied bond entirely, resulting in Petitioner’s continued unlawful detention. *See* Exhibit 1 – IJ Decision; Exhibit 2 – Adams Affidavit; Exhibit 3 –Hearing Transcript.

Therefore, Petitioner requests an immediate hearing on this motion and/or an Order for Petitioner’s immediate release from detention **without bond** or, alternatively, with a reasonable bond amount of \$1,500, as allowed by 8 U.S.C. § 1226(a)(2)(A). This motion does not ask the Court to reweigh the IJ’s *discretionary* balancing; it asks the Court to enforce its conditional grant of habeas by requiring the kind of hearing the Court ordered and due process demands.

As set out below, Petitioner’s primary request is immediate release (or Court-set bond of \$1,500) as the only effective enforcement of the January 9, 2026 Order; in the alternative, he seeks a new bond hearing with a properly allocated burden of proof on the government and a required consideration of ability to pay and alternatives to detention.

In seeking this relief, Petitioner invokes this Court's inherent authority to enforce its own orders and protect the integrity of its judgments, as well as its powers under the All Writs Act, 28 U.S.C. § 1651(a), its contempt authority under 18 U.S.C. § 401, and its authority under Federal Rule of Civil Procedure 70 to ensure specific performance of its January 9, 2026 Order. The legal grounds for this Motion are set forth more fully in the accompanying Brief in Support of Petitioner's Motion to Enforce Judgment and to Show Cause re: Contempt.

## **II. FACTUAL ALLEGATIONS SUPPORTING ENFORCEMENT**

Petitioner is a noncitizen who has resided in the United States for several years. He is married to a United States citizen and lives with her at a fixed address. Petitioner has no criminal history and has multiple avenues for relief from removal pending, including a Form I-130 Petition for Alien Relative filed by his U.S. citizen wife and a Form I-589 Application for Asylum.

When Petitioner entered the United States, several years ago, ICE granted him permission to enter under an Order of Release on Recognizance (OREC). Petitioner has no criminal history, no history of violence, and no record of noncompliance with immigration supervision. Prior to his detention, Petitioner had a long and undisputed history of compliance with immigration supervision. ICE had previously placed Petitioner on an ankle monitor and later, based on his record of compliance, affirmatively removed the monitor and placed him on a lower level of supervision under the Intensive Supervision Appearance Program (ISAP). He consistently complied with all in-person reporting requirements for years.

Petitioner was arrested when he appeared, as instructed, at the ICE offices at 180 Ted Turner Drive SW, Atlanta, Georgia, for his regularly scheduled ISAP check-in. He was detained while voluntarily complying with the very supervision conditions meant to ensure his appearance

at future proceedings. At no point was he informed of any alleged violation of his supervision. He was subsequently transferred to the Stewart Detention Center.

Upon filing a habeas petition, this Court, on January 22, 2026, ordered Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a). Pursuant to the Court's Order, an IJ conducted a bond hearing on January 30, 2026. However, that hearing was constitutionally defective and failed to comply with this Court's mandate. The hearing was constitutionally defective under 8 U.S.C. § 1226(a) and the regulations at 8 C.F.R. §§ 236.1 & 1236.1 and violated Petitioner's due process rights. The IJ did not provide a fundamentally fair hearing and impermissibly found Petitioner to be a "flight risk" based on a cursory and legally insufficient rationale, against the evidence of years of compliance with ISAP and denying bond altogether.

### **III. PETITIONER'S BOND HEARING DID NOT COMPLY WITH THIS COURT'S ORDER**

#### **A. The Immigration Judge Did Not Provide Bond Hearing that Comported with § 1226(a)(2) or Due Process.**

The immigration court did not provide the requisite bond hearing ordered by this Court. Instead of conducting a § 1226(a)(2) bond determination under 8 C.F.R. §§ 236.1 and 1236.1.

The record shows a straightforward three-step mismatch between what this Court ordered and what the IJ—controlled by the Executive Office of Immigration review (EOIR), which falls under the Department of Justice, a named party in the habeas action—actually provided. As a result of this constitutionally defective hearing, Petitioner remains detained in violation of this Court's Order.

#### 1. What the Court ordered

The Order ordered "a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations. *See* 8 C.F.R. §§ 236.1 & 1236.1." *R.R.C. v.*

*Warden, Stewart Detention Center, et al.*, No. 4:25-cv-00525-CDL-CHW (M.D. Ga. Jan. 22, 2026). In light of *J.G.* and the authorities discussed above, that meant a bond proceeding before a neutral IJ that: (a) applied the § 1226(a) / 8 C.F.R. §§ 236.1, 1236.1 framework (including the *Matter of Guerra* factors (24 I. & N. Dec. 37, 40 (BIA 2006)); (b) required the Government to justify continued detention with individualized, record-based evidence of flight risk or danger; (c) allowed Petitioner to present testimony and documentary evidence; and (d) set any bond amount only after considering Petitioner's financial circumstances and less restrictive alternatives to detention.

## 2. What actually happened at the January 30, 2026 hearing

On January 30, 2026, the immigration court convened a proceeding labeled as a § 1226(a) bond hearing pursuant to this Court's Order. Exhibit 2 – Adams Affidavit and Exhibit 3 - Bond Hearing Transcripts. The bond hearing was originally scheduled before IJ Fuller. Upon arrival at the Stewart Immigration Court, counsel and Petitioner were informed that IJ Fuller was not present and that IJ Bianca Brown would preside over the docket. When IJ Brown entered the courtroom, she was informed by the clerk that she would be hearing Fuller's bond docket and appeared surprised and frustrated by the last-minute reassignment. Prior to the hearing, Petitioner's counsel filed approximately seventy-five (75) pages of exhibits and briefing in support of bond, addressing jurisdiction, flight risk, danger, supervision history, strong family ties, and compliance with ICE requirements. Despite IJ Brown's on-the-record assertion that she had reviewed the filings, the hearing lasted only five minutes from start to finish, and the IJ took no recess to review the file. This timeline makes any meaningful review of the 75 pages of evidence a practical impossibility. At the hearing, the Department of Homeland Security (DHS) submitted no documentary evidence whatsoever. DHS counsel made an oral assertion that Petitioner had "missed check-ins," but

provided no documentation to support this claim. This assertion was directly contradicted by the fact that Petitioner was detained while *attending* a check-in, a fact that counsel raised on the record. The IJ did not address this contradiction. The IJ took no testimony from Petitioner or from his U.S. citizen wife. The entire hearing consisted of a brief colloquy between the IJ and counsel. The IJ failed to address or meaningfully engage with the undisputed facts in the record, including Petitioner's lack of criminal history, his marriage to a U.S. citizen, his pending I-130 and asylum applications, his fixed address, and his years-long history of perfect compliance with ICE supervision, including ICE's own prior decision to reduce his supervision level. After approximately three minutes of argument, IJ Brown denied bond, finding Petitioner had not met his burden to show he is not a significant flight risk. The sole rationale provided was that his pending asylum application was "speculative" and his pending I-130 could not be adjudicated by the immigration court. The IJ ignored all countervailing evidence and effectively established a categorical rule that a pending asylum application is insufficient to mitigate flight risk, a standard that would preclude bond for a vast number of individuals and which does not comport with the individualized analysis required by law. As a result of this constitutionally defective hearing, Petitioner remains detained in violation of this Court's Order.

3. Why this proceeding failed to satisfy the ordered standard

The proceeding on January 30, 2026, was not the constitutionally valid bond hearing this Court ordered. Due process in § 1226(a) bond proceedings requires, at a minimum: (1) a neutral, impartial adjudicator who develops a sufficient record; (2) an individualized, evidence-based assessment of flight risk and danger under *Matter of Guerra*; (3) procedures that place the ultimate burden on the government to justify continued confinement; and (4) consideration of less restrictive alternatives to detention. The bond hearing for Petitioner failed on all four counts.

**(a) *The IJ Was Not a Neutral, Prepared Adjudicator and Failed to Develop the Record.***

Because DHS declined to assert flight risk and produced no supporting evidence, the only “flight risk” concern in the record came from DHS counsel asserting flight risk but without rationale or evidence to support it. The “guarantee of an impartial and disinterested tribunal” is a core requirement of due process. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Here, the circumstances of the hearing call that neutrality into serious question. The hearing was conducted by a last-minute substitute, IJ Bianca Brown, who was admittedly unprepared, expressed frustration upon learning of her new assignment, and proceeded to call the case without taking any recess to review the approximately 75 pages of evidence Petitioner had submitted. Her on-the-record claim to have reviewed the filings is not credible given that the entire hearing lasted only three to four minutes. An adjudicator who has not reviewed the evidence cannot provide a meaningful hearing. Furthermore, the IJ failed to develop the record, refusing to take testimony from Petitioner, who was present and prepared to testify. The IJ also failed to call Petitioner’s U.S. citizen wife. This cursory process, conducted by an unprepared judge, was a procedural sham, not the fair and impartial hearing required by due process.

The IJ disregarded un rebutted evidence of long-term compliance and deep community ties, and then denied bond. By doing so, the IJ ceased to function as a neutral adjudicator testing the government’s justification for detention and instead filled the role of advocate for continued confinement. *See* Exhibit 3 - Bond Hearing Transcripts and Exhibit 2 - Adams Affidavit. Taken together, these features show that the January 30, 2026 proceeding was not the individualized, evidence-based § 1226(a)(2) bond hearing this Court ordered. It omitted the required *Guerra* analysis, placed no meaningful burden on the government to justify detention, and ignored Petitioner’s long-term compliance with ISAP. As a result, Respondents have not complied with

the January 22, 2026 Order, and Petitioner remains detained without ever having received the constitutionally adequate bond hearing that this Court’s conditional grant of habeas relief requires. Petitioner is not asking for error-correction on a discretionary bond decision, but for enforcement of a specific mandate—consistent with courts’ distinction between non-reviewable *discretionary* determinations and reviewable fundamental-fairness, Due Process and enforcement questions. *Morgan v. Oddo*, No. 3:24-CV-221, 2025 WL 2653707, at \*4 (W.D. Pa. Sept. 16, 2025) (“[E]ven in the wake of Section 1226(e), and on a motion to enforce a grant of habeas relief, federal courts retain the authority to review whether a resulting immigration bond hearing is fundamentally unfair.”); *De Souza v. Soto*, No. CV 25-18734 (JXN), 2026 WL 102946, at \*3 (D.N.J. Jan. 14, 2026) (“This Court lacks jurisdiction to review any discretionary determinations underlying the immigration judge’s bond decision, but it can review whether the bond hearing was fundamentally unfair in violation of this Court’s order.”) citing *Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at \*2 (3d Cir. Feb. 25, 2022).<sup>1</sup>

**(b) *The IJ Failed to Conduct an Individualized, Guerra-Based Risk Analysis.*** Bond determinations under § 1226(a) require an individualized assessment of specific factors, including family ties, length of residence, compliance history, and avenues for relief. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). The IJ ignored this mandate. Petitioner presented overwhelming, un rebutted evidence of his low flight risk: he is married to a U.S. citizen, has a pending I-130 petition, has a fixed address, has no criminal history, and has a years-long history of perfect compliance with ICE supervision—so compliant that ICE itself had previously removed

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<sup>1</sup> The *Ghanem* court explained that in a fundamentally fair bond hearing, due process has three essential elements. The noncitizen “(1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her; (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests.” 2022 WL 574624, at \*2.

his ankle monitor. The IJ disregarded all of this evidence. Instead, she denied bond based on a single, legally insufficient rationale: that Petitioner’s pending asylum application was “speculative.” This is not an individualized analysis; it is a categorical, pretextual rule that improperly dismisses a valid form of relief and substitutes a premature and speculative merits determination for a genuine bond analysis. An IJ’s findings must be based on “reasonable inferences from direct and circumstantial evidence of the record as a whole,” not on “rank speculation and conjecture.” *See Matter of D-R-*, 25 I. & N. Dec. 445, 454 (BIA 2011). By converting a pending relief application into an automatic basis for detention, the IJ violated the core tenets of *Guerra* and rendered the hearing an empty formality.

(c) ***The IJ Improperly Relieved the Government of its Burden of Proof.*** The Due Process Clause requires the government to justify continued civil detention, typically by clear and convincing evidence of flight risk or dangerousness. *See J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020). Here, the government utterly failed to meet that burden. DHS submitted no documentary evidence and offered only the unsubstantiated and false oral assertion from counsel that Petitioner had missed check-ins—a claim directly contradicted by the fact that Petitioner was arrested while attending a check-in (due to DHS’s new policy of detaining all noncitizens who entered without inspection under 8 U.S.C. § 1225(b)). Rather than hold the government to its constitutional burden, the IJ disregarded its failure of proof and *sua sponte* developed her own rationale—the “speculative” nature of Petitioner’s relief—to deny bond. This role reversal, where the IJ supplies the justification for detention that the government cannot, is the antithesis of a fair hearing and a

flagrant violation of the burden-of-proof framework this Court and others have repeatedly mandated.

(d) *The IJ Failed to Consider Any Alternatives to Detention.* Due process requires consideration of less restrictive alternatives before ordering detention. *See Hernandez v. Sessions*, 872 F.3d 976, 991–92 (9th Cir. 2017). This principle applies with special force where, as here, the Petitioner has a proven track record of complying with such alternatives. The IJ denied bond outright without any on-the-record consideration of whether a reasonable bond amount or non-monetary conditions, such as the ISAP supervision Petitioner had been complying with for years, could ensure his appearance. This failure is particularly egregious because Petitioner’s own history demonstrated that less restrictive conditions work. ICE itself had already determined that he was a low enough risk to be released from ankle monitoring. The IJ’s decision to deny bond entirely, without explaining why no condition of release would suffice, renders the detention order arbitrary and punitive, rather than a legitimate regulatory measure.

**B. Petitioner’s Bond Hearing Was Constitutionally Defective**

As explained above, and as explained in further detail in Petitioner’s Brief in Support, due process was not afforded to Petitioner in the bond hearing.

1. Bond Consideration Under 8 U.S.C. § 1226(a)

Under § 1226(a) and its implementing regulations, detention is discretionary; an IJ may release a noncitizen on bond during this period pending resolution of removal proceedings. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d at 1334. Importantly, the statute at § 1226(a) authorizing detention has two regulatory goals: “ensuring the appearance of aliens at future immigration proceedings” and “[p]reventing danger to the community.” *Zadvydas*, 533 U.S. at

690.<sup>2</sup> As interpreted by the BIA, “[s]ection 1226 provides for the release on bond for all persons—except [for certain situations not applicable here]—unless there is a finding that the alien is either a threat to the public safety, a threat to national security, or is likely to abscond.” *Jimenez v. Decker*, 2021 WL 826752, at \*5 (S.D.N.Y. Mar. 3, 2021) (citing *Matter of Patel*, 15 I. & N. Dec. 666 (B.I.A. 1976)).

In determining whether an alien poses a flight risk, an IJ may consider (1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; and (4) the alien’s manner of entry into the United States. *Matter of Guerra*, 24 I. & N. Dec. at 40. Importantly, the “evidence must be individualized and support a finding that continued detention is needed to prevent him from fleeing or harming the community.” *German Santos v. Warden Pike Cnty. Corr. Fac.*, 965 F.3d 203, 214 (3d Cir. 2020). An IJ’s findings may be “based on reasonable inferences from direct and circumstantial evidence of the record as a whole,” but not on “rank speculation and conjecture”. See *Matter of D-R-*, 25 I. & N. Dec. 445, 454 (BIA 2011) (citation omitted), remanded on other grounds by *Radojkovic v. Holder*, 599 F. App’x 646 (9th Cir. 2015); see also *Coalition For Humane Immigrant Rights v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at \*3 (D.D.C. Aug. 1, 2025) (an IJ must be a licensed attorney and “has a duty to develop the record”).

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<sup>2</sup> The Supreme Court has explained that by definition, the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best. *Zadvydas*, 533 U.S. at 690. As to the second, the Supreme Court stated that preventive detention based on dangerousness should be limited to especially dangerous individuals and subject to strong procedural protections. *Id.* at 691-92 (also noting “the alien’s removable status itself, bears no relation to a detainee’s dangerousness.”).

2. Petitioner demonstrated he is not a flight risk or danger to society

“In a fundamentally fair bond hearing, due process has three essential elements. An alien: (1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her; (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests.” *Ghanem*, 2022 WL 574624, at \*2.

In advance of his bond hearing, Petitioner submitted substantial evidence of his strong ties to the community and proof that he is not a flight risk and has no criminal history. Specifically, Petitioner submitted proof he was married to a U.S. citizen and was living with her in a fixed address, letters of support and Proof that ICE released him on an Order of Release on Recognizance, a total of 75 pages of evidence.

3. DHS claimed flight risk and offered no evidence into the record.

DHS did not submit any evidence in advance of the hearing or during the hearing. Further, at the hearing, the transcript shows that when the court discovered DHS’s purported IRM submission was not actually in the record, IJ Brown stated “we don’t have anything from you, Mr. Campbell,” yet then permitted DHS counsel to make an unsworn oral proffer that agency systems reflected ATD participation, out-of-state movement without approval, and missed biometric check-ins, after expressly noting that respondent’s counsel “doesn’t have a computer” and had not seen those materials. Attorney Adams further attests that DHS submitted no documentary evidence to support these allegations and that counsel’s assertions are not considered evidence in immigration court. This sequence is improper because it invites the court to rely on undisclosed, unsworn government hearsay in lieu of record exhibits, deprives the respondent of a fair opportunity to review and confront the basis for the allegations, and effectively shifts the burden

by forcing the respondent to disprove opaque database notations instead of requiring DHS to substantiate its claims with admissible, individualized evidence. *See* Exs. 2-3.

4. The IJ failed to serve as a neutral arbiter at the bond hearing.

“[A]n immigration judge has a responsibility to function as a neutral, impartial arbiter and must be careful to refrain from assuming the role of advocate for either party.” *Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006); *Kamara v. Garland*, No. 24-CV-743-LJV, 2025 WL 1651063, at \*2 (W.D.N.Y. June 11, 2025). IJ Brown failed to uphold this responsibility here.

The record shows that IJ Brown did not function as a neutral, prepared adjudicator but instead aligned herself with DHS’s position and failed to develop an adequate record. Attorney Adams attests that the bond hearing had originally been scheduled before IJ Fuller; that when he and his client arrived they were told IJ Brown would “be assuming [Fuller’s] docket for that session”; and that when the clerk informed IJ Brown of this reassignment, she “appeared surprised and expressed frustration.” He further attests that he had filed approximately 75 pages of exhibits and briefing in advance of the hearing, addressing jurisdiction, flight risk, danger, supervision history, and family ties, yet the entire hearing lasted only three to four minutes from start to finish and the IJ took no recess to review the file. In Adams’s view, there was “no indication that she conducted a detailed review” of the 75-page submission or any “meaningful review of the evidence.” A judge who is unexpectedly substituted onto the docket, expresses frustration at the assignment, and then proceeds to decide custody in a matter of minutes without time to review the record or take testimony is not acting as a neutral, fully informed fact-finder.

Further, the way the IJ handled DHS’s allegations about supposed supervision violations underscores the lack of neutrality. At the outset, DHS counsel asserted that “in IRM that I filed this morning, it showed that the respondent moved to another state without prior approval and

missed check-ins,” and asked for “no bond.” When the IJ attempted to retrieve that filing, she instead pulled up Petitioner’s (respondent in removal proceeding) supplemental documents, marked those as Exhibit 2, and then stated on the record, “we don’t have anything from you, Mr. Campbell.” DHS counsel then acknowledged that nothing was actually in the record and offered instead to “just state it on the record,” adding that he “see[s] respondent’s counsel doesn’t have a computer” and that he would summarize what “we had in our system”: alleged movement to another state without approval and “missed biometric check-ins.” Adams separately attests that DHS had submitted no documentary evidence in advance of the hearing and that, consistent with immigration-court practice, “counsel’s assertions are not considered evidence.” Rather than require DHS to support its claims with exhibits or sworn testimony, the IJ accepted this unsworn proffer and immediately turned to defense counsel with, “All right. Counsel, what about all that?” Allowing DHS to introduce undisclosed, unsworn agency “system” notations in lieu of evidence—while acknowledging that defense counsel lacked access to those materials—abandoned the neutral fact-finding role and placed the IJ in the posture of facilitating DHS’s case.

At the same time, the IJ declined to take any testimony from Petitioner himself and did not engage with the central, undisputed equities in the record. Adams’s affidavit explains that DHS “did not submit any documentary evidence in advance of the hearing,” that its only opposition consisted of the alleged missed check-in, and that this allegation was inconsistent with the undisputed fact that Petitioner was detained while appearing for an in-person ICE check-in at 180 Ted Turner Drive SW in Atlanta. Adams further attests that the IJ “did not address or meaningfully engage” with the un rebutted evidence that Petitioner has no criminal history, is married to a U.S. citizen with whom he lives at a fixed address, has a pending Form I-130 and I-589 applications for relief, and has a long record of compliance with ICE supervision—including ICE’s prior decision

to remove his ankle monitor and reduce his level of supervision. The unofficial hearing transcript corroborates that the IJ took no testimony, limited the proceeding to a brief colloquy with counsel, and then concluded—after only a few minutes—that Petitioner “has not met the burden to show he is not a significant flight risk,” explicitly stating that she was “considering the information provided by the government” and that his asylum application was “speculative” while his I-130 “remains pending.” The written custody order reflects this same rationale: denial of bond because “[r]espondent has not met his burden to show that he is not a significant flight risk” and because his “relief filed before the Court is speculative and his I-130 remains pending.”

Taken together, these features—the IJ’s evident lack of preparation and refusal to recess to review the 75-page bond record, her acceptance of unsworn, off-record assertions from DHS after acknowledging that no government exhibit had been filed and that defense counsel lacked access to DHS’s systems, her failure to take testimony or develop the record, and her disregard of the undisputed evidence of strong family ties and long-term compliance while crediting only DHS’s unsupported narrative—demonstrate that she did not function as a neutral, impartial arbiter at Petitioner’s bond hearing. Instead of testing whether DHS could justify continued detention on an adequate evidentiary record, she effectively assumed the role of advocate for detention, filling in gaps in the government’s proof and denying bond on a perfunctory, categorical rationale that bore little relation to the actual record or evidence presented.

5. The IJ’s Bond Decision Lacks Neutrality, Ignores Petitioner’s Evidence and Equities, Gives Unwarranted Weight DHS Allegations Without Evidence.

The IJ’s subsequent written bond memorandum further demonstrates the constitutionally defective hearing and decision. The IJ’s Decision (Ex. 1) states: “Respondent has not met his burden to show that he is not a significant flight risk. Respondent’s relief filed before the Court is speculative and his I-130 remains pending.”

**First**, the IJ stated that his asylum relief is “speculative” without any evidence. Petitioner would argue that since he passed a Credible Fear Interview when he was given permission to enter the U.S. and released on an OREC, his relief was found, at least in part credible by DHS to allow him to enter on an OREC. While the BIA has recognized that the likelihood of relief may be one relevant consideration, *see Matter of Andrade*, 19 I. & N. Dec. 488, 490 (BIA 1987) (stating that the likelihood of being granted relief from removal may indicate a stronger motivation to appear for a removal hearing), it has never treated that factor as dispositive of flight risk, and it has remanded where IJs failed to consider “all relevant factors” and whether some bond amount would suffice to secure appearance. *See In re Lildio Castro-Hernandez*, No. AXXX XX8 396 – POM, 2009 WL 2437195, at \*1–2 (DCBABR July 31, 2009); *cf. In re Gilberto Gaspar-Gerbacio*, No. AXXX XX8 175 – BAT, 2010 WL 5559174, at \*2 (DCBABR Dec. 20, 2010).

Notably, because removal proceedings are separate and distinct from bond proceedings, an individual’s removability or possible avenues for relief is not directly applicable or particularly informative as to whether the person is a flight risk. This separation is reflected in 8 C.F.R. § 1003.19(d), which requires that custody and bond determinations be “separate and apart from, and [] form no part of, any deportation or removal hearing or proceeding,” underscoring that speculative merits predictions cannot substitute for an individualized bond assessment focused on flight risk and danger.

Moreover, Petitioner’s removal proceedings have only just begun. Petitioner has not yet had an individual merits hearing or the opportunity to present applications for relief. The IJ’s conclusion that Petitioner lacks any good-faith basis to contest removability or any significant prospect of relief is therefore speculative and premature, and it cannot substitute for the required

individualized evaluation of actual risk of flight. *See also Zadvydas*, 533 U.S. at 690 (detention to “prevent[] flight [] is weak or nonexistent where removal seems a remote possibility at best”).

Furthermore, not only is the IJ’s conclusion speculative, but it is also contradicted by the record where Petitioner fully complied with every ISAP condition and every check-in with DHS while on his OREC for the past several years, including appearing voluntarily at the very appointment where ICE arrested him. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 687 (W.D. Tex. 2025) (“But the decision to release [petitioner] on his own recognizance three years ago, in and of itself, ‘reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.’” (citation omitted)).

**Second**, the IJ discounted Petitioner’s extensive evidence of strong family and community ties, long-term residence, stable address, and steady employment. Those factors lie at the core of the flight-risk inquiry under *Matter of Guerra*, a binding BIA precedent on the IJ, yet the written decision does not even consider them. The decision does not explain why these substantial equities, together with Petitioner’s perfect record of appearances, do not demonstrate that he is likely to appear as required. All noncitizens in removal proceedings are subject to the same inherent risks.

**Third** and most egregious, the IJ was basically penalizing Petitioner for DHS government delays that have caused his pending I-130 to not yet be adjudicated, notwithstanding his marriage to a U.S. citizen and the fact that now adjudication is even more urgent since he is detained.

The IJ offered no real or proper justification to deny bond, failed to explain why a lower amount or ISAP compliance would not alleviate any flight-risk concern, and failed to consider or make any findings regarding Petitioner’s actual individual circumstances. Petitioner highlights that the statute allows for release on bond beginning at only \$1,500. 8 U.S.C. § 1226(a)(2)(A), and nothing in the record suggests that such a lower amount, combined with conditions of supervision

if needed, would be inadequate to ensure Petitioner's appearance. Historically, IJs have set bond, if any, between \$1,500 and \$10,000. Congress and the agencies anchored non-criminal bonds at a \$1,500 statutory minimum. 8 U.S.C. § 1226(a)(2)(A) and (B) (the Attorney General "may release the alien on— bond of at least \$1,500 [. . . or conditional parole]"). BIA decisions over time include multiple examples of IJs and the BIA setting or approving bonds in the \$1,000–\$7,500 range as sufficient for appearance. *See, e.g.*, recent bond determinations (first two cases are undersigned counsel's, and these bond amounts were set for noncitizens who do not have Petitioner's 3-year OREC compliance history): *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025) (\$1,500 bond issued for a non-criminal with pending asylum petition); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025) (\$7,500 bond issued for non-criminal with pending EOIR-42B application); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at \*7 (D. Mass. Sept. 9, 2025) (\$3,500 bond determined); *Garcia Picazo v. Sheehan*, No. 5:25-cv-4057-LTS-MAR (N.D. Iowa Sept. 19, 2025) (\$6,000 bond determined). When bonds are granted even in more serious cases, IJs still often operate within that low to mid-thousands band, reserving higher or "no bond" findings for exceptional flight-risk or danger cases. Given that Petitioner has a perfect record of compliance with his OREC since 2023, and significant family ties, the IJ should have authorized either no bond, or a minimal bond in the amount of \$1,500.

Because of this, Petitioner remains in detention. Such punitive action further violates Petitioner's due process rights and does not serve the only two permissible purposes of civil immigration detention. *See Zadvydas*, 533 U.S. at 690 (immigration proceedings "are civil, not criminal, and we assume that they are nonpunitive in purpose and effect"); rather, the statute has

only two regulatory goals: “ensuring the appearance of aliens at future immigration proceedings” and “[p]reventing danger to the community”).

Taken together, these errors show that the IJ did not conduct the individualized, evidence-based bond assessment that § 1226(a), the governing regulations, and due process require. Instead, the IJ relied on a generalized presumption of “inherent” flight risk from the mere fact of pending removal proceedings, disregarded unrebutted evidence of long-term compliance and deep community ties, speculated about future eligibility for relief, denied bond without analyzing Petitioner’s ability to pay or considering less restrictive alternatives.

### **C. The IJ’s Conduct Violated Petitioner’s Due Process**

The IJ decision’s shortcomings are particularly incompatible with the now-settled due process principle that, at a § 1226(a) (or analogous) bond hearing, the government—not the detainee—must justify continued civil detention, typically by clear and convincing evidence, through individualized proof of flight risk or dangerousness. *See Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 852–53 (E.D. Va. 2020); *Oscar M-S. v. Garland*, 21-cv-1341 (WMW/KMM), 2021 WL 6063232, at \*4–6 (D. Minn. Dec. 20, 2021); *Ranchinskiy*, 422 F. Supp. 3d at 800; *Banegas*, 2021 WL 1997033, at \*8–10.

The reasoning in those cases stemmed from the fact that the liberty interest at stake—freedom from physical incarceration—is so fundamental; a detained noncitizen faces serious practical obstacles to gathering evidence while incarcerated; and that the government, by contrast, has substantial resources available and ready access to the very information bearing on flight risk and danger. *See id.*; *J.G. v. Warden*, 501 F. Supp. 3d at 1337–39; *see also Soto-Medina v. Lynch*, No. 1:25-CV-1704, 2026 WL 161002, at \*10-11 (W.D. Mich. Jan. 21, 2026) (holding that the

government must show by clear and convincing evidence that petitioner is a flight risk or danger to the community and noting that ICE is required by federal law to keep detailed statistics regarding detainees, including comprehensive information about their criminal history and attendance in immigration proceedings). Further, it is very hard for a noncitizen to prove a negative rather than making the government justify detention by presenting evidence of danger to society or likelihood of absconding, especially where the only purpose of immigration detention is to effectuate removal if and after the noncitizen is ordered removed.

In addition, due process requires that, once release on bond is deemed appropriate, the bond amount be set only after consideration of the individual's financial circumstances and less restrictive alternatives to detention. Courts have repeatedly recognized that a bond determination process that disregards a detainee's financial circumstances and available alternative conditions of release is unlikely to produce an amount reasonably related to the government's legitimate interests in ensuring appearance and protecting the community, and instead risks accomplishing little more than detaining people because of their poverty. *See Hernandez v. Sessions*, 872 F.3d 976, 991–92 (9th Cir. 2017); *Ranchinskiy v. Barr*, 422 F. Supp. 3d 789, 800 (W.D.N.Y. 2019); *Banegas v. Decker*, 21-CV-2359 (VEC), 2021 WL 1997033, at \*10 (S.D.N.Y. May 7, 2021); *Diaz v. Genalo*, 22-CV-3063 (VSB) (BCM), 2023 WL 3818464, at \*7 (S.D.N.Y. July 6, 2023).

In *Abdi v. Nielsen*, the court held that an IJ “must consider the detainee's ability to pay, as well as alternative conditions of release, in setting the amount of bond,” because a bond set beyond a person's means is “for all practical purposes, a denial of bond” and raises serious due process concerns. 287 F. Supp. 3d 327, 334–42 (W.D.N.Y. 2018). The Ninth Circuit likewise affirmed a class-wide injunction requiring IJs to consider detainees' financial circumstances and non-monetary alternatives, emphasizing that “no person may be imprisoned merely on account of

his poverty.” *Hernandez v. Sessions*, 872 F.3d 976, 990–96 (9th Cir. 2017). And applying *Mathews* in the asylum seeker context, a court held that detained noncitizens are entitled to bond hearings at which the decisionmaker considers ability to pay and alternatives to detention, because detention is permissible only when it actually serves the government’s interests in ensuring appearance and protecting the community. *Padilla v. U.S. Immigr. & Customs Enf’t*, 387 F. Supp. 3d 1219, 1235–38 (W.D. Wash. 2019).

*Abdi* further explained that, once an IJ determines that release is appropriate, the bond amount must be “appropriate” and “necessary” to ensure the person’s appearance, so that setting bond at a level plainly outside the individual’s reach—without considering ability to pay and alternative conditions—“amounts, for all practical purposes, to a denial of bond” unmoored from the government’s legitimate interests in preventing flight or danger. That requirement is especially salient where Congress has authorized release on bond in amounts beginning at \$1,500 for individuals detained under § 1226(a)(2)(A).

In sum, the aggregate of the IJ’s errors demonstrates that Petitioner was not afforded a constitutionally valid bond hearing. He did not receive a full and fair hearing, and the bond denial decision violates his due process right to freedom. Again, the Supreme Court has repeatedly affirmed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). For this reason, “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

**D. EOIR’s Institutional Bias Prevents Petitioner from Receiving a Constitutionally Valid Bond Hearing.**

These case-specific defects align point-for-point with the systemic problems documented in the Adams Affidavit (Ex. 2): IJs discouraged from providing robust due process, pressured to

prioritize DHS enforcement positions, and instructed—explicitly or implicitly—to resist adverse federal-court rulings that constrain detention authority. Far from being an isolated misstep, IJ Brown’s conduct is a concrete manifestation of those broader institutional failures, underscoring why a remand to EOIR for yet another bond hearing would be an illusory remedy.

As the Adams Declaration details, IJ Brown’s foregoing of live testimony, her willingness to entertain DHS allegations that were unsupported by the record yet ignore Petitioner’s evidence in the record and her final decision to deny bond are not aberrations; they reproduce the very institutional pressures, expectations, and practices the Declaration documents nationwide. In light of that record, a remand for yet another EOIR bond hearing would not meaningfully reduce the risk of the same structural defects recurring; it would simply send Petitioner back into the same compromised system this Court is now being asked to enforce against. Rather, it confirms the necessity of this Court’s exercise of its habeas enforcement authority, including its inherent power, the All Writs Act, 28 U.S.C. § 1651(a), its contempt authority under 18 U.S.C. § 401, and Rule 70, to ensure that its January 22, 2026 Order is given effect and that Petitioner’s liberty is not conditioned on proceedings before a structurally compromised tribunal.

Further, as outlined in Petitioner’s accompanying Brief in Support of this Motion, EOIR has recently taken actions that demonstrate an institutional willingness to disregard federal court rulings that protect noncitizens’ bond-hearing rights. As detailed in the Declaration of Adams Ex. 2, as well as a Declaration from a retired IJ (Exhibit 4) and several other Attorney Declarations (Exhibits 5-12), these institutional developments are not abstract; they manifest in day-to-day custody adjudications, including Petitioner’s own January 30, 2026 bond hearing, where the IJ mirrored the very patterns of deference to enforcement priorities and disregard of federal-court mandates that the Declaration documents. These actions prove that EOIR and the IJs within it are

no longer neutral arbiters. Rather, they collaborate and cooperate with DHS and its enforcement objectives. As a result of this shift, district court judges have been changing their ordered relief from previously granting a § 1226(a) bond hearing to immediate release. *See, e.g.*, Judge George C. Hanks, Jr.'s decision in *Avilez Aguinaga v. Warden, Joe Corley Processing Center, et. al.*, No. 4:26-0137, (S.D. Tex., Feb 2, 2026).

#### **IV. RELIEF SOUGHT AND ENFORCEMENT REQUEST**

##### **A. This Court Should Issue an Order to Show Cause and Schedule an Immediate Hearing**

The Court should issue an order to show cause, as Petitioner can demonstrate by clear and convincing evidence that the January 22, 2026 Order was clear and unambiguous, that Respondents failed to comply with its straightforward mandate, and that they have not taken all reasonable steps within their power to do so.

To succeed on an inability defense, the alleged contemnor must demonstrate that they have made in good faith all reasonable efforts to meet the terms of the court order. It is impossible to conclude that an experienced IJ with many years of experience as an IJ did not understand how to conduct the constitutionally adequate § 1226(a)(2) bond hearing this Court ordered. Furthermore, counsel for DHS, Assistant Chief Counsel Campbell, should likewise be required to show cause why he should not be held in civil contempt, because he persisted in objecting to bond despite having DHS record of compliance for Petitioner. Despite advancing no evidence that Petitioner was a flight risk, he perpetrated and participated in a proceeding that plainly failed to provide the individualized § 1226(a) bond determination, with proper allocation of the burden and consideration of alternatives to detention, that the Order requires. Thereafter, an immediate Show Cause hearing should be scheduled.

**B. This Court Should Order Petitioner’s Immediate Release from Detention**

Respondents’ constitutionally defective bond hearing constitutes a flagrant violation of this Court’s January 22, 2026 Order. Where the government fails to comply with a conditional grant of habeas relief, federal courts have not hesitated to employ the full range of enforcement tools—ordering the petitioner’s immediate release, directing specific-performance-style relief under Rule 70, and imposing civil contempt sanctions as necessary to secure compliance with their prior judgments. *See, e.g., Solis v. Koresko*, Civ. No. 09-988, 2016 WL 4547167, at \*6–8 (E.D. Pa. Aug. 31, 2016) (discussing inherent enforcement power, civil contempt, and the All Writs Act as mechanisms to compel obedience to a prior injunction). Other courts likewise recognize that a district court retains continuing jurisdiction to address noncompliance with habeas writs and to ensure that the relief it ordered is actually provided. *See Sanchez v. Sabol*, No. 1:15-CV-2423, at \*5–7 (M.D. Pa. Dec. 23, 2016). *See also Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1035 (W.D. Wash. 2019) (rejecting “the Government’s position [ ] that the court’s only job is to ensure that the immigration courts recite the correct legal standard”).

In *Y.S.G. v. Andrews*, No. 2:25-cv-1884-SCR, 2025 WL 2979309 (E.D. Cal., Oct. 22, 2025) the court grappled with a similar issue. A noncitizen filed and was granted a writ of habeas and a subsequent bond redetermination hearing was ordered. Unfortunately, the IJ’s decision was deficient and the court ordered immediate release. Ordering a new bond hearing before EOIR is not a sufficient remedy in light of the patently deficient first hearing and the institutional pressures described above that systematically skew adjudications in DHS’s favor. Furthermore, in Petitioner’s case, the Court has a transcript of the hearing and other than two driving without a license convictions that are over a decade old, DHS presented no other evidence as to why he should remain detained. The Adams Affidavit and attached exhibits supply detailed, un rebutted

evidence that the structural changes within EOIR—personnel purges, enforcement-oriented recruitment, and policy directives discouraging “outlier” adjudications—have already shaped how IJs handle cases like Petitioner’s, including IJ Brown’s conduct at the January 30, 2026 hearing, making it unreasonable to expect that a second EOIR bond hearing would cure the very systemic defects this Court has now seen firsthand.

In these circumstances, this Court’s habeas enforcement authority—including its inherent power, the All Writs Act, 28 U.S.C. § 1651(a), its contempt power under 18 U.S.C. § 401, and its authority under Rule 70—fully supports ordering Petitioner’s immediate release or, at a minimum, setting a constitutionally reasonable bond amount itself rather than remanding him to another unreliable administrative proceeding. It is also not a sufficient remedy in light of the plethora of evidence of bias generally by EOIR that prevents Petitioner from receiving a fair hearing before a neutral arbiter.

**C. Alternatively, A Bond Hearing Where the Government Bears the Burden and the IJ Must Consider Ability to Pay**

If the Court is not inclined to grant either of those requests for relief, at a minimum, this Court should Order Respondents to provide Petitioner with a new—constitutionally valid—bond hearing at which the government bears the burden of proof by clear and convincing evidence to show Petitioner is a flight risk and where the IJ must consider Petitioner’s individual circumstances and ability to pay the bond as well as alternatives to detention that would also guarantee his appearance at his removal proceedings.

1. Due Process Requires Government Carry the Burden of Proof

The weight of authority of federal courts holds that when ordering a bond hearing under § 1226(a) as a habeas remedy, the burden of proof should be on the government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *See, e.g., Trejo v. Warden*

of *ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at \*10 (W.D. Tex. Oct. 24, 2025). This Court already decided that the government must bear the burden of proof to justify a noncitizen’s detention pending removal proceedings. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. at 1335. In doing so, it joined several Circuit courts and an overwhelming majority of district courts that have held the same.<sup>3</sup> “Allocating the burden in this manner reflects the concern that ‘[b]ecause the alien’s potential loss of liberty is so severe ... he should not have to share the risk of error equally.’” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d at 688 (quoting *German Santos*, 965 F.3d at 214). As the Second Circuit has explained, due process calls for the burden-shifting in a bond hearing because “the Government had substantial resources to deploy” and “to the extent the Government did not have the necessary information at its fingertips, it had broad regulatory authority to obtain it.” *Velasco Lopez*, 978 F.3d at 853. Conversely, for a petitioner to prove the

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<sup>3</sup> See e.g., *Velasco Lopez v. Decker*, 978 F.3d 842, 853 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (As of 2020, the “vast majority” of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.); *Dubon Miranda v. Barr*, 463 F. Supp. 3d 632, 646–47 (D. Md. 2020); *Chavero v. Bondi*, No. EP-25-CV-00638-DB, 2025 WL 3679768, at \*5 (W.D. Tex. Dec. 18, 2025); *Acosta Dominguez v. Noem*, No. EP-25-CV-00741-DB, 2026 WL 67200, at \*4 (W.D. Tex. Jan. 8, 2026); *Velasquez Salazar v. Dedos*, No. 25-CV-835, 2025 WL 2676729, at \*1, \*9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-CV-221, 2025 WL 2653707, at \*1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-CV-4987, 2025 WL 2614688, at \*1 (S.D.N.Y. Sept. 10, 2025); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at \*1, \*14 (E.D. Cal. Sept. 5, 2025); *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at \*1, \*12 (D. Colo. Aug. 8, 2025); *Cruz-Zavala v. Barr*, 445 F. Supp. 3d 571, 576 (N.D. Cal. 2020) (“[A]t a § 1226(a) bond hearing, the government must prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond.”) (internal quotation omitted); *Vargas v. Wolf*, No. 2:19-cv-02135-KJD-DJA, 2020 WL 1929842, at \*7 (D. Nev. Apr. 21, 2020) (“In sum, the Fifth Amendment’s Due Process Clause requires the government to prove a detainee’s flight risk or dangerousness, by clear and convincing evidence, to justify continued detention.”); *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at \*7 (D. Colo. July 2, 2019) (“Requiring a non-criminal alien to prove that he is not dangerous and not a flight risk at a bond hearing violates the Due Process Clause. The clear weight of authority from courts to have considered the question after the Jennings Court’s deferral and remand of the constitutional question have come to the same conclusion.”) (internal citation omitted); *Al-Sadeai v. USCIS*, 540 F. Supp. 3d 983, 991 (S.D. Cal. 2021) (“[N]oncitizens still face such a significant possible deprivation of liberty at the time of their initial bond hearing under Section 1226(a) that the Due Process Clause requires the burden of proof to justify detention to be placed on the Government ...”); *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018); *M. D. v. Garland*, No. 21-CV-1343 (NEB/TNL), 2021 WL 7161831, at \*10 (D. Minn. Dec. 29, 2021), report and recommendation adopted, No. 21-CV-1343 (NEB/TNL), 2022 WL 542426 (D. Minn. Feb. 23, 2022) (“[D]ue process requires the Government prove by clear and convincing evidence that his detention is necessary to justify his confinement under Section 1226(a).”).

negative as to risk of flight (or danger) can be difficult. *See Elkins v. United States*, 364 U.S. 206, 218 (1960) (“[A]s a practical matter it is never easy to prove a negative.”). The Second Circuit further concluded that requiring the government to prove that the noncitizen was a danger to the community or a flight risk *by clear and convincing evidence* to justify his continued detention “strikes a fair balance between the rights of the individual and the legitimate concerns of the state.” *Velasco Lopez*, 978 F. 3d at 857 (quoting *Addington v. Texas*, 441 U.S. 418, 431 (1979)).

In *J.G. v. Warden*, this Court applied the *Mathews v. Eldridge* balancing test and emphasized three features of § 1226(a) bond proceedings: (1) the liberty interest at stake—freedom from physical incarceration—is fundamental; (2) a detained noncitizen faces serious practical obstacles to gathering evidence, contacting witnesses, and obtaining records while incarcerated; and (3) the government, by contrast, “has substantial resources available” and ready access to the very information bearing on flight risk and danger. 501 F. Supp. 3d at 1337–39. The court concluded that placing the burden on the detainee in this setting creates a high risk of erroneous deprivation and that due process therefore requires the **government**—not the noncitizen—to justify continued detention at a § 1226(a) bond hearing. *Id.* at 1341.

Other courts addressing immigration detention have explained why the government must meet a clear and convincing standard, rather than a mere preponderance, when it seeks to continue depriving a person of physical liberty. The First Circuit, applying *Mathews*, affirmed that the Due Process clause of the Fifth Amendment entitled the petitioner—a noncitizen detained under § 1226(a)—to a bond hearing at which the government must bear the burden of proving danger or flight risk by clear and convincing evidence. *Hernandez-Lara*, 10 F.4th at 46; *Brito v. Garland*, 22 F.4th 240, 244 (1st Cir. 2021) (affirming on a class-wide basis that noncitizens “detained pursuant to 8 U.S.C. § 1226(a) are entitled to receive a bond hearing at which the Government

must prove the alien is either dangerous by clear and convincing evidence or a risk of flight by a preponderance of the evidence.”). Related, the Third Circuit, applying *Mathews* in the § 1226(c) context, held that because “the alien’s potential loss of liberty is so severe, he should not have to share the risk of error equally” with the government, and required the government to justify continued detention once it has become unreasonably prolonged, “by clear and convincing evidence.” *German Santos*, 965 F.3d at 213–14 (citing *Zadvydas* and *Addington*). District courts applying the same reasoning in pre-removal detention cases have likewise required the government to prove flight risk or dangerousness by clear and convincing evidence at bond hearings ordered to remedy unlawful or unreasonable detention. *See, e.g., Sanchez v. Sabol*, No. 1:15-CV-2423, at \*7–9 (M.D. Pa. Dec. 23, 2016).

Although *J.G.* arose after detention had already become prolonged, the court’s *Mathews* analysis does not turn on a formal time threshold; it turns on the nature of the interest (freedom from physical confinement) and the structural risk of error when an incarcerated noncitizen is tasked with disproving flight risk or danger despite severe informational and logistical constraints, while the government has superior access to the relevant evidence. 501 F. Supp. 3d at 1337–39. Those same features are present here. Petitioner is incarcerated; DHS offered no evidence of flight risk at the court-ordered bond hearing; and the IJ again placed the entire risk of error on Petitioner. There is no principled basis to dilute the standard now that this Court is enforcing its own habeas judgment. To make the January 9, 2026 Order effective, the same due process framework that governed *J.G.*—including a clear-and-convincing burden on the government at a § 1226(a)(2) bond hearing—must apply in this enforcement posture as well.

## 2. Due Process Requires IJs to Consider Ability to Pay

This Court should also order that the IJ must assess Petitioner’s ability to pay when setting any bond amount. In *Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017), the Ninth Circuit affirmed a preliminary injunction requiring IJ’s to consider detainees’ financial circumstances or alternative conditions of release in making bond determinations.<sup>4</sup> The court explained that “[w]hile the temporary detention of non-citizens may sometimes be justified by concerns about public safety or flight risk, the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process: no person may be imprisoned merely on account of his poverty.” *Id.* at 991. Similarly, the Second Circuit in *Black v. Decker*, 103 F.4th 133, 155 (2d Cir. 2024), also concluded that the district court properly directed the government to justify Black’s continued detention (under § 1226(c)) by clear and convincing evidence and the IJ to consider both Black’s ability to pay and any alternatives to detention. The court reasoned that “refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons.” *Id.* at 158. District courts have held the same. *See e.g., Baghdasaryan v. Warden of CA City Detention*, No. 1:25-CV-01555-KES-EPG-HC, 2026 WL 381620, at \*8 (E.D. Cal. Feb. 11, 2026) (holding that IJs should consider a petitioner’s financial circumstances or alternative conditions of release);

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<sup>4</sup> Upon remand to the district court, the parties agreed to a settlement in which the IJ will (1) consider the detainee’s financial circumstances and financial ability to pay a bond; (2) not set bond at a greater amount than necessary to ensure the detainee’s appearance at all future immigration proceedings, including for removal if so ordered; and (3) consider whether the detainee may be released on alternative conditions of release, alone or in combination with a lower bond, that are sufficient to mitigate flight risk. The agreement further required that the IJ must affirmatively inquire into the detainee’s financial circumstances and make an individualized assessment of the detainee’s current ability to pay the bond amount to be set. And in assessing a detainee’s ability to pay, the IJ should consider all relevant evidence in the record—including any information solicited by ICE—and may inquire into any additional evidence presented relevant to an ability to pay. Also, the IJ may assess a detainee’s financial circumstances based on their sworn testimony alone or, where necessary, may require the detainee to provide corroborative evidence concerning the detainee’s financial circumstances. Finally, when rendering a decision in which a bond is set, if the parties have not stipulated to the bond amount or conditions of release, the IJ should explain why—whether orally or in writing—the bond amount is appropriate in view of any evidence of the detainee’s financial circumstances. *Hernandez v. Garland*, No. EDCV16620JGBKX, 2022 WL 1176752, at \*4 (C.D. Cal. Mar. 28, 2022).

*Abdi v. Nielsen*, 287 F. Supp. 3d 327, 338 (W.D.N.Y. 2018) (holding IJs must consider the detainee’s financial situation in setting bond and noting that “when a judge fails to consider ability to pay and alternative conditions of release and sets a bond amount plainly outside the reach of an individual’s financial resources, such a decision amounts, for all practical purposes, to a denial of bond.”); *Yuehua Li v. Noem at al.*, No. 26-CV-00989 (JAV), 2026 WL 366849, at \*2 (S.D.N.Y. Feb. 10, 2026) (ordering a bond hearing at which “the Immigration Judge must also consider non-bond alternatives to detention or, if setting a bond, Petitioner’s ability to pay.); *Imran H., v. Warden of Golden State Annex Detention Facility, et al.*, No. 1:25-CV-01710-JLT-SAB-HC, 2026 WL 366750, at \*6 (E.D. Cal. Feb. 10, 2026) (ordering bond hearing where the IJ “should consider Petitioner’s financial circumstances and alternative conditions of release.”).

## V. CONCLUSION

WHEREFORE, for the reasons stated herein, Petitioner respectfully requests that this Court enforce its January 9, 2026 Order and grant the following relief:

1. **An Order retaining jurisdiction over this matter** to ensure compliance;
2. **An Order to Show Cause:** Issue an order compelling Respondents, Immigration Judge Bianca Brown, and DHS Assistant Chief Counsel Paul Campbell to appear and show cause why they should not be held in civil contempt for violating this Court’s clear and unambiguous January 22, 2026 Order, and set the matter for an emergency hearing this week;
3. **Immediate Release:** As the primary and most effective remedy, issue an immediate and unconditional order directing Respondents to release Petitioner from custody;

4. **An Order requiring Respondents to file a notice of compliance** with this Court within twenty-four (24) hours of this Order's entry;
5. Grant Petitioner his attorney's fees expended in the preparation of this motion; and
6. Grant any and all other relief this Court deems just and proper.

For the foregoing reasons, Respondents have acted in clear violation of this Court's lawful Order and have unlawfully deprived Petitioner of his liberty. To protect the integrity of the judicial process and vindicate Petitioner's rights, this Court should grant the requested relief and enforce its prior judgment.

Respectfully submitted this 16<sup>th</sup> Day of February, 2026.

/s/ Karen Weinstock  
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**CERTIFICATE OF SERVICE**

I certify that on February 16, 2026, I electronically filed the foregoing Motion with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock  
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