

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

R.R.C., *et al.*,

Petitioners,

v.

Warden, Stewart Detention Center, et al.,

Respondents.

Civil Action No.: 4:25-CV-525 (CDL)

4:25-cv-527 (CDL)

4:26-cv-073 (CDL)

4:26-cv-076 (CDL)

4:26-cv-098 (CDL)

4:26-cv-163 (CDL)

4:26-cv-176 (CDL)

4:26-cv-226 (CDL)

4:26-cv-249 (CDL)

4:26-cv-266 (CDL)

4:26-cv-271 (CDL)

**PETITIONERS' SUPPLEMENTAL BRIEF ON JURISDICTION, BIAS, AND
ENFORCEMENT OF CONDITIONAL HABEAS JUDGMENT**

I. INTRODUCTION AND PROCEDURAL POSTURE

Petitioners return to the Court in the post-judgment posture of a conditional grant of habeas relief under 28 U.S.C. § 2241, where Respondents have not yet provided a constitutionally compliant bond hearing that the Order requires, leaving Petitioners in civil immigration detention without a constitutionally adequate custody determination. Despite the Court's orders, Petitioners received perfunctory hearings lacking individualized assessment, where DHS failed to bear its burden and alternatives to detention were ignored.

Petitioners respectfully request that the Court enforce its Orders in each of these consolidated matters, which required a bond hearing under 8 U.S.C. § 1226(a)(2) and applicable regulations that also comports with due process, or, in the alternative, direct Petitioners' immediate release from custody on reasonable conditions. Petitioners seek to enforce the Court's conditional habeas writ and address legal and constitutional questions regarding non-compliance, due process, and the neutrality of the administrative bodies. If the Court is not inclined to grant immediate release or a remand for a new bond hearing within 48 hours where the government bears the burden by clear and convincing evidence, Petitioners seek narrowly tailored jurisdictional and merits-related discovery into EOIR bond-hearing practices. This supplemental brief explains why 8 U.S.C. §§ 1226(e) and 1252(a)(2)(B)(ii) do not deprive this Court of jurisdiction to enforce its conditional grant of habeas relief or to prescribe baseline due-process protections. As explained below, Petitioners do not ask the Court to reweigh discretionary bond factors; they ask the Court to enforce its conditional grant of habeas relief by ensuring that the ordered § 1226(a)(2) bond hearings actually occur and meet basic due process requirements.

Accordingly, Petitioners respectfully request that the Court grant the relief as specified in the Conclusion and Requested Relief section below.

II. JURISDICTION NOTWITHSTANDING §§ 1226(e) AND 1252(a)(2)(B)(ii)

This Court has both inherent and statutory authority under 28 U.S.C. § 2241 to enforce its prior conditional habeas orders in these consolidated cases. A federal court possesses the inherent power to enforce compliance with its lawful orders and protect the integrity of its judgment. A conditional writ “would be meaningless if a habeas court could not order a noncompliant state to release a prisoner.” *Satterlee v. Wolfenbarger*, 453 F.3d 362, 369 n.5 (6th Cir. 2006). This authority includes the power to hold parties in civil contempt to secure obedience to a clear and unambiguous order. *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002); *see also Minarcaja Concha v. Lyons*, --- F. Supp. 3d ---, 2026 WL 307170, at *6 (E.D.N.Y. Feb. 4, 2026) (applying this standard in the habeas context); *Burdine v. Johnson*, 87 F. Supp. 2d 711, 714 (S.D. Tex. 2000).

Congress has affirmed this authority through the All Writs Act, 28 U.S.C. § 1651(a), and the federal contempt statute, 18 U.S.C. § 401. *J.G.G. v. Trump*, 778 F. Supp. 3d 24, (D.D.C. 2025) (outlining the federal court’s statutory contempt power, codified in 18 U.S.C. § 401). Federal Rule of Civil Procedure 70 also provides mechanisms for enforcing judgments that require a party to perform a specific act. Enforcing the terms of a conditional writ—including determining whether a court-ordered bond hearing actually occurred and whether any such hearing satisfied minimum due-process requirements—is itself a question of law within traditional § 2241 habeas jurisdiction, not a review of a particular exercise of bond discretion.¹ And as summarized *infra*, that conditional writ required Respondents to provide a § 1226(a)(2) bond hearing under the applicable regulations, which has not occurred.

¹ Courts likewise treat the choice of detention statute—§ 1226(a) vs. § 1225(b) or § 1231—as a reviewable legal question in § 2241 proceedings. *See, e.g., Sutaj v. Rodriguez*, 2017 WL 627400, at *4–7 (D.N.J. Jan. 5, 2017) (holding that a Visa Waiver Program violator was detained under § 1226(a), not some nonreviewable authority, and ordering a bond redetermination under 8 C.F.R. §§ 1236.1, 1003.19); *Nyamekye v. ICE*, 2024 WL 1887618, at *3–5 (M.D. Pa. Apr. 30, 2024) (treating the § 1226/§ 1231 classification as a pure legal issue, then granting relief in the form of an individualized bond hearing once detention under § 1226(c) became unreasonable).

Neither 8 U.S.C. § 1226(e) nor 8 U.S.C. § 1252(a)(2)(B)(ii) strips this Court of jurisdiction to exercise these enforcement powers. The Supreme Court has made clear that statutes alleged to curtail § 2241 habeas or foreclose constitutional review must speak with “unusual clarity” and are construed narrowly in the absence of such a clear statement. *INS v. St. Cyr*, 533 U.S. 289 (2001). Section 1226(e) bars review only of the Attorney General’s “discretionary judgment regarding the application of” § 1226 and prevents courts from “set[ting] aside” particular “action[s] or decision[s]” regarding detention, release, or bond. However, it “does not bar [a] constitutional challenge to the legislation authorizing ... detention without bail,” nor does it preclude challenges to “the extent of the Government’s detention authority under the statutory framework as a whole.” *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). Likewise, courts have held that § 1226(e) “does not limit habeas jurisdiction over constitutional claims or questions of law,” and that “**claims that the discretionary process itself was constitutionally flawed are cognizable in federal court on habeas because they fit comfortably within the scope of § 2241.**” *Velasco Lopez v. Decker*, 978 F.3d 842, 850, 855–57 (2d Cir. 2020).

Similarly, § 1252(a)(2)(B)(ii) limits review only over “decision[s] or action[s]” that the INA “specific[s]” to be discretionary. It does not bar habeas review of constitutional claims or questions of law concerning the legality of detention or the adequacy of bond procedures which is specifically excluded by the habeas statute. In this case, the Court is not being asked to reweigh an immigration judge’s *discretionary* bond factors but to enforce its own conditional habeas judgment by determining whether Respondents have provided the § 1226(a)(2) bond hearing that its Order requires and whether any such hearing satisfies minimum constitutional standards. These are classic questions of law and constitutional claims that fall outside the narrow bars of §§ 1226(e) and 1252(a)(2)(B)(ii) and lie at the heart of this Court’s § 2241 and contempt jurisdiction. *Yesil v.*

Reno, 958 F. Supp. 828, 836–38 (S.D.N.Y. 1997); see *Enoh v. Sessions*, No. 16-CV-85, 2017 WL 2080278, at *2–4 (W.D.N.Y. May 15, 2017) (treating an earlier *Lora*-type order as a conditional writ, retaining jurisdiction to decide whether the ordered bond hearing complied, and ordering immediate release when it did not).

Even if Respondents’ reading of §§ 1226(e) and 1252(a)(2)(B)(ii) were textually plausible, it would raise serious Suspension Clause concerns. The Supreme Court has emphasized that the writ of habeas corpus is a structural guarantee to secure freedom from unlawful restraint and that Congress must speak with “unmistakable clarity” before curtailing habeas review of executive detention. *Boumediene v. Bush*, 553 U.S. 723, 739–40, 771, 781 (2008); *INS v. St. Cyr*, 533 U.S. 289, 298–305 (2001). Early post-AEDPA/IIRIRA cases likewise treated § 2241 as preserved at least for “grave constitutional error” and “fundamental miscarriage[s] of justice” notwithstanding jurisdiction-stripping language, precisely to avoid Suspension Clause problems. See, e.g., *Felker v. Turpin*, 518 U.S. 651 (1996). In this enforcement posture—where Petitioners seek review of core constitutional questions about the legality and procedures of their ongoing detention and enforcement of a conditional writ—reading §§ 1226(e) and 1252(a)(2)(B)(ii) to eliminate § 2241 jurisdiction would implicate exactly the concerns that *St. Cyr* and *Boumediene* instruct courts to avoid by construing jurisdiction-stripping provisions narrowly.

III. THE COURT SHOULD EXERCISE ITS INHERENT AUTHORITY TO ORDER PETITIONERS’ RELEASE WHERE THEIR INITIAL DETENTION VIOLATED DHS’ STATUTORY AUTHORITY AND DUE PROCESS

Petitioners suffered multiple Due Process violations under 8 U.S.C. § 1226. First, they were never properly arrested under 8 U.S.C. § 1226. Respondents only—and erroneously—claimed detention authority under 8 U.S.C. § 1225. Once this Court determined Petitioners were not subject to mandatory detention under § 1225, the proper remedy was an order of release. By effectively converting the asserted detention authority from § 1225 to § 1226, the Court allowed Respondents

to keep Petitioners in detention without meeting the necessary statutory and regulatory provisions required in order to initially detain an individual under § 1226.

A. When Properly Assessed Under § 1226, DHS Violated Statutory and Regulatory Requirements When Arresting Petitioners Without a Warrant.

Petitioners' seizure and detention are unlawful *ab initio* because their arrests violated the clear statutory framework established by Congress and the Fourth Amendment's prohibition on unreasonable seizures. The primary authority for a civil immigration arrest in the interior of the United States requires that it be conducted "[o]n a warrant." 8 U.S.C. § 1226(a). The narrow exception for a warrantless arrest under 8 U.S.C. § 1357(a)(2) demands that the officer must have "reason to believe that the alien so arrested is in the United States in violation of [law] and is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2) (emphasis added). The implementing regulation, 8 C.F.R. § 287.8(c)(2)(ii), mirrors and reinforces that limit by requiring that "[a] warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." Read together, the statute and regulation make clear that the default rule for interior civil arrests is a warrant under § 1226(a), and that warrantless arrests are permissible only where the "likely to escape" criterion is actually satisfied and documented.

Here, DHS cannot show that Petitioners were "likely to escape" from where they were taken into custody when they voluntarily appeared at scheduled check-ins or when they were already under local police control and simply transferred to DHS. Respondents do not and cannot dispute that DHS failed to issue arrest warrants in Petitioners' cases or that, on these facts, the narrow § 1357(a)(2) exception for warrantless arrests is not satisfied.

B. Since At Least 2006, DHS Policy Has Required a Factor-Based Custody Review Before Exercising Discretion to Detain Under § 1226(a). That Never Happened.

In March 2006, ICE issued the Detention and Removal Operations Policy and Procedures Manual (DROPPM), expressly designating it as “the only approved source of DRO policy and procedures” and stating that, to the extent other materials conflicted with the manual, the DROPPM would be controlling going forward. The Introduction explains that the manual’s contents “represent official DRO policy” and that updates to detention policy are implemented by revising the DROPPM chapters, not by ad hoc field memoranda. Exhibit 1.²

The Custody Management section of the DROPPM makes clear that ICE detains noncitizens “for administrative purposes, not criminal and punitive, to ensure they comply with the immigration process,” and that detention determinations are supposed to be tied to articulated risk-based factors. As described in more detail below, DROPPM’s Custody Management guidance (p. 203) requires officers to assess specified, risk-based factors and to classify individuals into priority levels before deciding between detention, bond, or alternatives to detention, mirroring the individualized, factor-based approach required under *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (*Guerra*) and related custody precedent.³ Read together with 8 C.F.R. § 1236.1 and § 1003.19, this policy framework presumes that when DHS is exercising *discretionary* custody authority under 8 U.S.C. § 1226(a), officers will first conduct a structured, factor-based review using the DROPPM criteria and will be able to articulate, by reference to those factors and the

² The DROPPM is 629 pages in length. Therefore, Petitioners only include the cover page and pages 203-205 of the DROPPM detailing what DHS Officers must do prior to arresting noncitizens under § 1226.

³ It lists, among the “factors that DHS considers in making detention determinations,” the person’s prior criminal history, the severity of any crimes, history of failure to appear in court, equities in the U.S. and ties to the community, the availability of relief from removal and the likelihood of that relief being granted, and prior immigration-violation history. The same section explains that detention policy classifies noncitizens into four priority categories (mandatory, high-priority, medium-priority, and lower-priority) based on these factors, and that “not every alien taken into DRO custody has to be placed into traditional or hardened detention facilities,” because low-threat and low-risk individuals may be placed in alternatives to detention; *i.e.*, halfway houses or intensive supervision programs.

applicable priority category, why detention—as opposed to bond or alternatives—is warranted in a particular case. That did not occur here, because Petitioners were initially detained under 8 U.S.C. § 1225(b)—based on Respondents’ unlawful and repeatedly rejected statutory interpretation—, where detention is automatic rather than the product of any individualized risk assessment. At that initial stage, ICE did not and could not realistically weigh the DROPPM custody factors, because detention flowed directly from the statute’s mandatory “shall be detained” language, not from any DHS determination that this individual was dangerous or a flight risk in light of criminal history, failure-to-appear history, equities, relief posture, or health.

When custody jurisdiction later was construed as having “shifted” to § 1226(a), DHS had still never conducted a proper “initial custody determination” under its own regulatory and policy framework: no DROPPM-compliant, factor-based analysis; no written identification of what, if any, danger or flight-risk factors applied; and no priority classification keyed to those factors. In that posture, it is backwards—both as a matter of regulation and due process—for the IJ to (a) treat the mere fact of prior mandatory § 1225(b) detention as if DHS had already carried some evidentiary burden on dangerousness or flight risk, and then (b) place the burden on Petitioners at the bond hearing to prove a negative without first requiring DHS to come forward with evidence under the DROPPM factors. Notably, the regulations emphasize that IJ bond proceedings “shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding,” 8 C.F.R. § 1003.19(d),⁴ confirming that a § 1226(a) custody determination cannot be predetermined by the automatic, non-adjudicative detention that occurred under § 1225(b).

⁴ Related, 8 C.F.R. § 1003.19, entitled “Custody/bond” contains several references indicating that an IJ is **reviewing and reconsidering** a custody determination previously made by the government. For example, § 1003.19 states: “(a) Custody and bond determinations made by the service pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge”; “(b) Application for an initial bond redetermination”; “(c) Applications for the exercise of authority to review bond determinations shall be made to one of the following” immigration courts. (emphasis added).

This history reinforces two points central to Petitioners' enforcement motion. First, under DHS's own long-standing policy, discretionary detention under § 1226(a) is supposed to rest on a reasoned, evidence-based weighing of specified danger and flight-risk factors. Second, because no such factor-based determination was ever performed in Petitioners' cases before they were funneled into a § 1226(a) bond hearing, due process does not permit the IJ simply to assume risk from the fact of prior mandatory detention and then demand that Petitioners disprove a risk DHS has never actually tried to prove. That misallocation of burdens is precisely what this Court's prior decision in *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331 (M.D. Ga. 2020), and the out-of-circuit bond-hearing cases cited in the brief are designed to prevent.

C. Because DHS's Violations Have Deprived Petitioners of Any Lawful Custody Determination, Immediate Release Is the Proper Habeas Remedy

Under 28 U.S.C. § 2241, the core remedy for unlawful immigration detention is release, and courts routinely treat a bond-hearing order as a conditional grant of the writ: if the government fails to provide a constitutionally adequate custody determination, the court may “grant the petition in full and order the petitioner’s release.” In *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227 (W.D.N.Y. 2019), the court held that its earlier bond-hearing order was a conditional writ and emphasized that “conditional writs would be meaningless if a habeas court could not determine compliance with them”; it therefore retained jurisdiction to review whether the IJ had in fact applied the required burden and considered alternatives to detention, and ordered release when those conditions were not met. Likewise, in *Aguirre v. Barr*, 2019 WL 4511933 (S.D.N.Y. Sept. 18, 2019), the court enforced a prior injunction requiring a constitutionally adequate bond hearing by holding that, absent compliance, it had authority to order the petitioner’s release as the “very essence of habeas relief.” In *Enoh v. Sessions*, after DHS failed to provide the *Lora*-compliant hearing the court had ordered, the court directed ICE to release the petitioner under appropriate

conditions rather than simply remanding for yet another defective proceeding. 2017 WL 2080278, at *10–11. Those enforcement decisions reflect a principle directly applicable here: where the government has never performed a lawful § 1226(a) arrest and custody review consistent with 8 U.S.C. § 1226(a), 8 U.S.C. § 1357(a)(2), 8 C.F.R. §§ 1236.1, 287.8, and its own DROPPM Custody guidance, and where the subsequent IJ process fails to supply the missing individualized, factor-based analysis or apply the correct burden and consider alternatives to detention, ongoing confinement is not simply procedurally flawed—it lacks any constitutionally sufficient custody determination at all. In that posture, ordering yet another bond hearing before the same structurally compromised system does not cure the violation; it merely prolongs detention without the lawful predicate that § 1226(a) and due process demand. In circumstances like these, federal courts have not hesitated to move from conditional to absolute relief and order immediate release, recognizing that continued incarceration in the absence of any valid, DROPPM-compliant § 1226(a) custody determination is an ongoing Suspension Clause and Fifth Amendment problem that only release can halt. *See Cartagena Hueso v. Soto*, No. 3:26-cv-01455-ZNQ (D. N.J. Feb. 26, 2026).

IV. § 1226(a) AND DUE PROCESS REQUIRE MORE THAN WHAT IJS DID HERE

The Fifth Amendment’s Due Process Clause protects noncitizens in removal proceedings from arbitrary deprivations of liberty. Due process requires at minimum: (1) a neutral, impartial adjudicator; (2) an individualized, evidence-based assessment of flight risk and danger tied to the statutory purposes of detention; (3) procedures that place the ultimate burden on the Government to justify continued confinement; and (4) consideration of the detainee’s financial circumstances and less restrictive alternatives where release on bond is deemed appropriate.

A. Lack of Neutral Adjudicator.

The “guarantee of an impartial and disinterested tribunal” is a core requirement of due process, applying with full force when the government seeks to deprive a person of physical liberty

through civil immigration detention. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Immigration judges “ha[ve] 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); *see also Wang v. U.S. Att’y Gen.*, 423 F.3d 260, 261 (3d Cir. 2005).

In the context of a § 1226(a)(2) bond hearing ordered pursuant to a conditional habeas writ, a neutral adjudicator must independently apply statutory and regulatory custody standards, develop a factual record, and adjudicate flight risk and danger based on evidence, rather than simply adopting the enforcement agency’s litigation position or declining to take testimony or weigh evidence on the record. In all Petitioners’ cases, the IJs failed to conduct an individualized assessment, did not adequately consider Petitioners’ equities, and made a baseless risk of flight finding by summarily dismissing relief eligibility or pending applications as “speculative.” These hearing lasted only several minutes and DHS submitted no documentary evidence. Some Petitioners have years of compliance history with ICE reporting. This conduct indicates the IJ did not function as a neutral, prepared adjudicator but aligned with DHS’s position.⁵

B. The IJ Failed to Conduct an Individualized, *Guerra*-Based Risk Analysis.

Under *Guerra*, an IJ making a custody determination under § 1226(a) must engage in an individualized analysis of specific factors, including fixed address, length of residence, family ties, employment history, record of appearance, criminal record, history of immigration violations, attempts to flee, and manner of entry. DHS’s own DROPPM likewise instructs that “factors that DHS considers in making detention determinations include prior criminal history, the severity of

⁵ As noted in Petitioners’ briefs in support of their Motions to Enforce and in Exhibit A, DOJ / EOIR leadership have removed or forced out a large cohort of IJs—approximately twenty percent of the corps—disproportionately targeting judges with higher asylum-grant rates and those perceived as granting too many forms of relief. Simultaneously, enforcement-aligned “deportation judges” have been recruited and installed, including temporary “designation” judges drawn from the military justice system with markedly less immigration-law experience and training.

the crimes for which the alien was convicted, history of failure to appear for Court, equities in the United States and evidence of ties to the community, availability of relief from removal and the likelihood of relief being granted, and prior immigration violation history.” These agency-articulated factors mirror the *Guerra* criteria and underscore that detention decisions are expected to be individualized and factor-based, not automatic or categorical.

Board precedent also makes clear that the “likelihood of relief” from removal is, at most, one factor to be weighed with *Guerra* factors in assessing flight risk; it is not a stand-alone, dispositive ground to deny bond. *Matter of Andrade* recognized that a greater likelihood of being granted relief tends to increase a noncitizen’s incentive to appear for hearings. 19 I & N Dec. 488, 490 (BIA 1987); *see also* Exhibit 3 unpublished BIA cases from 2019.⁶ In these examples, the BIA reversed or mitigated IJ “no bond” rulings and insisted on: (1) **real** evidence of danger/flight beyond minor traffic or single DUI; (2) treating pending relief as a **positive** factor, not a dispositive negative (no “speculative” relief analysis); (3) crediting sponsors and community ties; and (4) correct burden allocation in prolonged-detention hearings. *Id.*; *see* Exhibit 4 Factual information on Defective Bond Hearings analyzing published and unpublished BIA caselaw to their particular fact pattern. Characterizing properly filed, documented relief as “speculative” to discount it to deny bond, particularly where the noncitizen-respondent presents strong *Guerra* equities,

⁶ Unpublished BIA bond decisions reflect the same principles in day-to-day practice. In *R-T-M-*, the Board reversed a no-bond order where the IJ relied on four convictions for driving without a license and the “prospect of relief” to find danger and unmitigable flight risk, holding that those factors did not establish danger and did not show that “no amount of bond” could ensure appearance. *R-T-M-*, AXXX XXX 273 (BIA May 17, 2019). In *G-C-S-*, the Board rejected a no-bond denial based solely on a single DUI arrest where the respondent had over 14 years’ residence, three U.S.-citizen children, a strong employment and tax record, and a pending cancellation application, and remanded for the IJ to set a reasonable bond. *G-C-S-*, AXXX XXX 032 (BIA Apr. 30, 2019). And in *R-C-K-C-* and *H-G-W-*, the Board overturned IJ findings that the respondent was “a flight risk such that no bond is warranted” where there was no danger finding and a credible sponsor willing to provide housing and ensure court appearances, and required that bond be set (in *H-G-W-* at \$10,000). *R-C-K-C-*, AXXX XXX 113 (BIA Mar. 11, 2019); *H-G-W-*, AXXX XXX 614 (BIA Dec. 19, 2019). These decisions confirm that minor traffic or DUI-type conduct, recent entry, and generalized concerns about relief do not justify categorical “no bond” findings where respondents have fixed addresses, family and community ties, and willing sponsors—features that are present, often more strongly, in Petitioners’ cases.

misapplies BIA precedent and exceeds § 1226(a)'s limited focus on danger and likelihood of appearance. The IJs in Petitioners' cases did not review the record, take testimony, or engage with evidence of compliance, family ties, or pending relief, and denied bond based on "speculative relief" and "flight risk" without individualized analysis.

C. Improper Burden of Proof and Lack of Evidence.

The Due Process Clause requires the government to justify continued civil immigration detention, typically by clear and convincing evidence that the noncitizen is a danger to the community or a flight risk. *See Velasco Lopez*, 978 F.3d at 855–57.⁷ Applying *Mathews v. Eldridge*, these courts hold that, given the fundamental liberty interest at stake and the practical obstacles faced by detained noncitizens, due process requires that the ultimate burden rest on the government—not the detainee—once detention becomes prolonged and that any bond hearing meaningfully consider less-restrictive alternatives to detention. In this enforcement posture, where DHS bore no individualized burden at the initial, automatic § 1225(b) detention stage and the ordered bond process failed to require the government to justify continued confinement at all, due process compels this Court to shift the ultimate burden to the government as part of enforcing its conditional writ. *See, generally*, Motion to Enforce. The statutory and regulatory scheme confirms that § 1226(a) custody is supposed to occur in two stages, with an initial DHS custody decision followed by an IJ "redetermination." DHS officers make the first custody call under § 1226(a), applying the DROPPM Custody Management criteria—which require officers to weigh prior criminal history, history of failure to appear, equities and community ties, etc., and to classify individuals into priority levels before choosing between detention, bond, or alternatives. That allocation of the burden to the respondent at the IJ stage, as in *Guerra*, **presupposes** that DHS has

⁷ *See also German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 213–14 (3d Cir. 2020); *J.G. v. Warden, Irwin Cty. Detention Center*, 501 F. Supp. 3d 1331, 1337–41 (M.D. Ga. 2020).

already made a good-faith, individualized custody determination under § 1226(a) using the *Guerra* factors and the DROPPM criteria, so that the IJ is reviewing and “redetermining” a genuine prior custody decision rather than acting as the first-instance decisionmaker. Here, however, DHS never performed any such DROPPM-compliant, factor-based custody review: Petitioners were initially detained under the automatic § 1225(b) “shall be detained” regime, without a warrant and without any articulated *Guerra* / DROPPM analysis, and only later re-labeled as § 1226(a) by this Court. In these circumstances, there has never been a valid initial § 1226(a) custody determination for an IJ to “redetermine,” and the bond hearings functioned as the first meaningful custody determinations rather than as true redeterminations. Due process therefore requires that, at that first constitutionally adequate § 1226(a) hearing, the burden rest with the *government* to justify detention—consistent with the statutory scheme and DHS’s own bond regulations and policies in the DROPPM—rather than on Petitioners to disprove risks that DHS has never actually tried to establish in any initial custody review.

District courts applying *Mathews* in the § 1226(a) context have reached the same conclusion, holding that due process requires the *government* to justify continued detention by clear and convincing evidence and to shoulder the ultimate burden in custody proceedings. *See, e.g., Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 688 (W.D. Tex. 2025); *J.G. v. Warden, Irwin Cty. Detention Center*, 501 F. Supp. 3d 1331, 1341–42 (M.D. Ga. 2020).

D. Failure to Consider Any Alternatives to Detention.

Due process also requires consideration of less restrictive alternatives before ordering civil immigration detention. Bond hearings are constitutionally deficient where IJs fail to consider non-monetary conditions of release or a detainee’s financial circumstances, as such omissions create a serious risk that detention will be imposed in a manner untethered from the statute’s limited

purposes. A custody proceeding that does not evaluate any less-restrictive alternatives, or that denies bond outright without addressing whether supervision or other conditions could reasonably address any articulated risk, is not a constitutionally valid § 1226(a)(2) bond hearing. Other courts have likewise held, on a class-wide basis, that due process in civil-immigration bond hearings requires consideration of a detainee's financial circumstances and non-monetary alternatives, and that setting bond at an amount the person cannot afford, without such findings, functions as a de facto detention order. *See Abdi v. Nielsen*, 287 F.Supp.3d 327, 336 (W.D. N.Y. 2018); *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017); *see also* Exhibit 2 Table of Precedential BIA Bond Cases, most notable are *Guerra, Andrade*, 19 I & N Dec. at 490, *Matter of R-A-V-P-*, 27 I & N Dec. 803 (BIA 2020) and *Matter of Iurii Dobrotvorskii*, 29 I & N Dec. 211 (BIA 2025), where the noncitizen's ability to pay, and any less restrictive alternatives to detention are considered.

V. EOIR'S STRUCTURAL BIAS AND ADMINISTRATIVE LIMITATIONS

EOIR and the BIA no longer function as neutral, impartial tribunals in bond matters and do not provide an effective forum for resolving Petitioners' constitutional claims, which in turn makes BIA review prudential, not jurisdictional, and futile in this enforcement posture.

A. Exhaustion and BIA Review Are Prudential and Futile in This Enforcement Posture

Neither 28 U.S.C. § 2241 nor 8 U.S.C. § 1226 contains a statutory exhaustion requirement for habeas challenges to immigration detention. Courts have consistently treated any exhaustion obligation in this context as prudential rather than jurisdictional.⁸ District courts therefore routinely entertain § 2241 detention challenges without prior BIA review and excuse prudential exhaustion where agency proceedings cannot grant the relief sought or would unduly prolong confinement.

⁸ The only express INA exhaustion provision, 8 U.S.C. § 1252(d)(1), applies to petitions for review of final removal orders in the courts of appeals, not to stand-alone § 2241 habeas petitions challenging the legality of civil detention or the adequacy of bond procedures.

See, e.g., *Singh v. Murray*, No. 1:17-cv-00739 (E.D. Cal. Dec. 8, 2017) (describing § 2241 exhaustion as prudential and excusable); *Hechavarria*, 358 F. Supp. 3d at 237–38 (enforcing conditional writ without requiring BIA appeal where further review would prolong detention and could not resolve constitutional issues). As noted above, the BIA has long recognized that neither it nor IJs may pass on the constitutionality of the statutes and regulations they administer. See *Matter of Rodriguez-Carrillo*, 22 I. & N. Dec. 1031, 1035 (BIA 1999); *Matter of Lei*, 22 I. & N. Dec. 113, 120 n.2 (BIA 1998); *Francis v. U.S. Att’y Gen.*, 603 F. App’x 908, 912 (11th Cir. 2015); *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). By definition, then, the BIA cannot grant the core relief Petitioners seek—enforcement of this Court’s conditional habeas judgment and specification of the minimum constitutional procedures (burden allocation, consideration of alternatives to detention and ability to pay, adherence to binding BIA custody precedent) that must govern a § 1226(a)(2) bond hearing ordered pursuant to that writ. Where the agency lacks authority to decide the constitutional issues or alter the burden-of-proof framework a federal court prescribes in enforcing a writ, prudential exhaustion is excused. See *Hechavarria*, 358 F. Supp. 3d at 237–38; *Davis v. Garland*, 708 F. Supp. 3d 283, 292–96 (W.D.N.Y. 2023).

In addition, the BIA’s own published decisions demonstrate overwhelming empirical futility. EOIR’s Volume 29 published-precedent compilation reflects that, following the recent purge and reconstitution of the BIA,⁹ 79 out of 80 published BIA precedents have favored the government, yielding an approximate one-percent success rate for noncitizens and 99% for the government. Out of all 80 cases, the only case the BIA decided in favor of a noncitizen in the past year was *Matter of Tepec-Garcia*, a non-substantive decision in which neither party appeared for the hearing. On February 19, 2026, the National Immigration Project (NIP) published a report,

⁹ Available at <https://www.justice.gov/eoir/volume-29> (last accessed March 3, 2026)

attached as Exhibit 5,¹⁰ which independently found that 75 of 76 published precedents (about 99%) had favored the government. After the last case in that report (*Jin*), four additional precedents were published, all deciding against the noncitizen, bringing the current running total to 79 pro-government decisions out of 80. With respect to custody-appeal decisions, between March 2025 and February 2026 the BIA decided 43 relevant custody appeals and granted relief to none of the noncitizens—not even a single case.

The BIA’s microscopic grant rate, coupled with the structural changes described above and in the Motion (mass terminations of higher-grant-rate IJs, installation of “deportation judges,” policy memoranda warning against being “adjudicatory outliers,” and directives to disregard court orders), shows that BIA review is not functioning as a meaningful corrective mechanism for unlawful detention or defective bond procedures. *See also* Exhibit 6, Sheikh Declaration, and the accompanying Jan. 22– Feb. 27 spreadsheet, Exhibit 7, drawn from the Georgia Asylum and Immigration Network (GAIN) court-watch program. GAIN’s data shows that beginning in late January 2026, Stewart and Folkston IJs—particularly IJs Brown and Harness—denied bond in nearly every case in which they reached the merits (with IJ Brown denying 100%). The overwhelming majority of denials were grounded solely in “flight risk,” often coupled with a new, frequent use of “speculative” or “very speculative” relief as the stated reason for denial, even where respondents had long residence, U.S. citizen family members, stable employment, and a record of compliance with ICE supervision. In these circumstances, the administrative process no longer provides the neutral, impartial tribunal that due process presumes. These same structural realities underscore why a BIA appeal would be futile and why a mere remand to EOIR cannot supply an effective or constitutionally adequate remedy.

¹⁰ Available at <https://nipnl.org/work/resources/bia-and-ags-systemic-destruction-noncitizens-rights-removal-proceedings> (last accessed March 3, 2026)

The practical delay inherent in BIA practice independently supports excusing exhaustion. Practitioner declarations and tracking data reflected in Exhibits 6-7 [Sheikh Decl. / spreadsheet] show that BIA bond appeals commonly take six to eight months to resolve, during which time detainees remain in custody. That delay is likely to increase given that the BIA has been reduced from 28 to 15 members, meaning detainees remain in unlawful custody for many months with no real chance of meaningful relief. In many cases, that lag is long enough for the merits of the underlying removal case to be adjudicated or for detention to become “unreasonably prolonged,” inflicting the very harm a prompt, court-ordered § 1226(a) bond hearing is designed to avert. *See Hechavarria*, 358 F. Supp. 3d at 237–38; *Franco-Gomez v. Noem*, No. 4:25-cv-00243, at 9–13 (N.D. Okla. June 12, 2025). As one court observed in an analogous posture, “if this Court does not hear his claim, no one will.” *Garcia v. Decker*, 448 F. Supp. 3d 297, 307 (S.D.N.Y. 2020).¹¹

In this enforcement posture—where Petitioners ask this Court to enforce its own conditional habeas judgment and define the minimum procedures a § 1226(a)(2) bond hearing must contain—any exhaustion requirement is therefore prudential and fully satisfied or excused. The BIA cannot adjudicate the constitutional and enforcement questions at issue; empirical evidence demonstrates an entrenched, near-zero success rate in BIA appeals and a lopsided pattern of pro-government precedents; and the months-long delay inherent in BIA review would severely prejudice Petitioners’ liberty interests and undermine this Court’s prior Orders. Under these circumstances, §§ 1226(e) and 1252(a)(2)(B)(ii) cannot be read to impose an extra-statutory

¹¹ This means that, for § 1226(a) detainees who are still in pre-final-order proceedings, forcing them to pursue a six-to-eight-month BIA bond appeal would itself produce “prolonged” confinement before any neutral court can assess the legality of their detention. Even for noncitizens with final orders whose detention is governed by 8 U.S.C. § 1231, the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001), construed the statute to avoid serious constitutional problems by recognizing that post-order detention is presumptively reasonable only for the first six months and becomes constitutionally suspect thereafter absent a special justification tied to removal, underscoring that it cannot be acceptable to impose an even longer period of pre-final-order incarceration simply to exhaust an empirically-futile administrative bond appeal.

exhaustion bar on this Court's § 2241 enforcement jurisdiction. These figures confirm that BIA review is not functioning as a meaningful corrective mechanism for unlawful detention or defective bond procedures and that requiring Petitioners to pursue BIA appeals before this Court may enforce its conditional writ would merely prolong confinement, often past the point at which detention becomes unreasonably prolonged, without any realistic prospect of relief.

B. DHS' and EOIR's Continued Reliance on a Vacated § 1225(b) Detention Policy, in non-compliance with the *Maldonado Bautista* Final Judgment and This Court's § 1226(a) Rulings, Requires Strong Enforcement Relief.

In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) the court entered final judgment for a nationwide class of noncitizens who entered without inspection but were not apprehended at the border, holding that they are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2), and therefore entitled to bond hearings under § 1226(a). In the final judgment, entered sub nom., the court also vacated, under the APA, DHS's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," which had directed officers to treat such individuals as § 1225(b)(2) "applicants for admission," as "not in accordance with law." Under settled APA principles, that vacatur nullified the Interim Guidance for everyone, and DHS was obligated to cease applying it in all future adjudications. EOIR leadership did the opposite.¹²

This Court has already determined that noncitizens like Petitioners, are not subject to mandatory detention under § 1225(b). Nevertheless, DHS and EOIR have persisted in classifying

¹² On January 13, 2026, Chief Immigration Judge Teresa Riley emailed all IJs instructing that *Maldonado Bautista* was "not a nationwide injunction," that *Yajure Hurtado* remained binding, and that the declaratory judgment "does not, by itself, have the effect of compelling specific action," and IJs who had begun providing § 1226(a) bond hearings in compliance with Judge Sykes's ruling reportedly reversed course after receiving this directive. In response, Judge Sykes warned EOIR that "Respondents' continued defiance of valid court orders and [the] final judgment" had already produced "unnecessary, voluminous filings of ex parte temporary restraining orders," and expressly cautioned that if Respondents continued to detain Bond Eligible Class members without § 1226(a) bond hearings, "the Court will set hearings for contempt." See Motion to Enforce. Respondents' conduct in this District replicates the same pattern.

similarly situated Petitioners as detained under § 1225(b) and have relied on that characterization to avoid providing the § 1226(a) bond process this Court has ordered. Respondents continue to apply the very § 1225(b)(2) framework and vacated July 8, 2025 Interim Guidance that *Maldonado Bautista* declared unlawful, and to disregard this Court’s rulings, in order to circumvent bond.¹³ Petitioners provide further evidence of EOIR’s biased restraint on IJ’s discretionary decisions in a decision from yesterday, in which an IJ denied a request for a bond reconsideration for Mr. Nava Orduno—based on a material change in circumstance where the noncitizen had been granted relief from removal—bizarrely claiming he did not have jurisdiction to provide a subsequent bond hearing where the district court only ordered the initial bond hearing under § 1226(a)(2) but did not address the right to a subsequent bond under 8 C.F.R. § 1003.19. Exhibit 8. First, that regulation explicitly allows for a subsequent bond redetermination upon a showing that the alien’s circumstances have changed materially since the prior bond redetermination. 8 C.F.R. § 1003.19(e). Second, the IJ alternatively found that if he had jurisdiction, he would grant bond. Exh. 8. Clearly, IJs have been told to deny bond for lack of jurisdiction despite *Maldonado Bautista* and hundreds of district court orders granting habeas petitions explicitly finding individuals eligible for § 1226(a) bond hearings.

In light of this blatant willingness to disregard a district court order as well as the clear bias evident in Petitioners’ unconstitutional and unjustified bond denials, another bare remand to EOIR would only reward non-compliance. The only way to realign incentives and vindicate the rule of law is through direct, meaningful enforcement of the writ: immediate release or, at a minimum, a

¹³ If such conduct is allowed to continue unchecked—despite a final APA vacatur in *Maldonado Bautista* and this Court’s clear § 1226(a) holdings—it signals that agencies may disregard nationwide vacatur and repeated Article III instructions with impunity. That would undermine the APA’s remedial scheme and uniformity interests and would guarantee that a continuous stream of individual habeas petitions from class members and similarly situated detainees denied the § 1226(a) bond process to which *Maldonado Bautista* and this Court’s decisions entitle them.

strictly conditioned, burden-shifted § 1226(a)(2) hearing held on a short timeline and governed by the procedural safeguards described above, rather than yet another remand into an administrative regime that has already demonstrated a willingness to disregard binding federal court judgments.

VI. CONCLUSION AND REQUESTED RELIEF

For the reasons set forth above and in Petitioners' Motion to Enforce Judgment, Petitioners respectfully request that the Court enforce its prior habeas Orders by (1) directing their immediate release from ICE custody; or, in the alternative, (2) setting a reasonable bond (in an amount no greater than \$1,500 absent case-specific reasons to depart)¹⁴ (3) or ordering a prompt, constitutionally compliant bond hearing under 8 U.S.C. § 1226(a)(2) at which the Government bears the burden of proving by clear and convincing evidence that any Petitioner is a flight risk or danger and the IJ must consider ability to pay and less-restrictive alternatives to detention; and, if the Court is not inclined to grant such relief on the present record, (4) granting the narrowly tailored expedited discovery described in Petitioners' contemporaneously filed Motion for Expedited Discovery.

¹⁴ Federal courts enforcing immigration habeas writs have repeatedly exercised their authority to set bond or order conditional release directly when agency proceedings fail to provide a constitutionally adequate custody determination. *See, e.g., Garcia v. Hyde*, No. 25-cv-585-JJM-PAS, 2025 WL 3466312, at *11 (D.R.I. Dec. 3, 2025); *see also L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached*, (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) ("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.")

Respectfully submitted this 3rd Day of March, 2026.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

/s/ Danielle M. Claffey
Danielle M. Claffey
KUCK BAXTER LLC
P.O. Box 501359
Atlanta, Georgia 31150
Tel.: (404) 949-8151
Dclaffey@immigration.net
Attorney for the Petitioner

/s/ Thomas Evans
Thomas Evans
KUCK BAXTER LLC
P.O. Box 501359
Atlanta, Georgia 31150
Tel.: (404) 949-8176
TEvans@immigration.net
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I certify that on March 3, 2026, I electronically filed the foregoing Document 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
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com