

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

VIJAY KUMAR,

Petitioner,

v.

MICHAEL T. ROSE, *et al.*,

Respondents.

Case No. 2:26-cv-00155-JHS

RESPONDENTS' RESPONSE TO MOTION TO ENFORCE

Respondents submit this response to Petitioner Vijay Kumar's Motion to Enforce, and his argument that his bond hearing on February 9, 2026, did not comport with Due Process requirements, which he contends means this Court should therefore order his immediate release.

As described in the parties' joint status update, ECF No. 8, on February 9, 2026, Kumar was provided with a bond hearing in accordance with 8 U.S.C. § 1226(a). The Immigration Judge denied the petitioner's request for bond because he determined that Kumar presents a flight risk. Kumar was provided the opportunity to appeal that decision. Petitioner's appeal—if timely made by March 11, 2026—will be heard by the Board of Immigration Appeals ("the BIA") in accordance with the applicable regulatory framework and consistent with this Court's Order. *See, e.g.*, See 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38,

1236.1(d)(3)(i).

Kumar nonetheless argues in his Motion to Enforce that his bond hearing did not meet the due process requirements ordered by this Court, and therefore requests his immediate release. *See* ECF No. 9 at ¶¶ 10–19.

Respondents oppose Petitioner’s request on two bases. First, Petitioner’s arguments regarding the outcome of the bond hearing are brought properly to the BIA. *See, e.g., Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *1 (3d Cir. Feb. 25, 2022) (considering petitioner’s allegations that bond hearing failed to provide due process after petitioner exhausted his appeal to the BIA, describing jurisdiction as limited to reviewing whether the bond hearing was “fundamentally unfair”); *Saravia v. Green*, No. 17-4559, 2017 WL 6513345, at *3 (D.N.J. Dec. 15, 2017) (adverse decision of bond hearing must be appealed to the BIA). Here, Petitioner reserved his right to appeal to the BIA, and this Court should allow that established process to be completed.

Second, Petitioner has not shown that his bond hearing was fundamentally unfair, in violation of due process requirements. Due Process in a bond hearing requires that the individual seeking release on bond: “(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*, No. 21-

1908, 2022 WL 574624, at *2 (quoting *Kamara v. Att'y Gen. of U.S.*, 420 F.3d 202, 211 (3d Cir. 2005)). Kumar's bond hearing met these requirements.

As Petitioner explains in his Motion to enforce, “[o]n February 9, 2026, EOIR Immigration Judge Jacob T. Addicott conducted the bond hearing and *permitted Petitioner’s counsel to make arguments for release relying on evidence submitted.*” ECF No. 9 at ¶ 5 (emphasis added).

The record of the hearing confirms that the hearing comported with Due Process. An unverified transcript of the hearing is attached to this response as Exhibit A, and an audio file will be submitted to the Court.¹

The record reflects that Kumar had the opportunity to submit, and did submit, evidence before the bond hearing in support of his request for bond. *See id.* at ¶ 8. At the hearing, Kumar's counsel had the opportunity to present his arguments as to why Kumar is not a flight risk, including by describing that Kumar flew across the country, from his new residence in California, to attend his check-in with Immigration and Customs Enforcement (“ICE”). Ex. A at 1:52-4:54. During the hearing, the Immigration Judge indicated that he considered the evidence Kumar submitted and explained why he found Kumar presents a flight risk, despite that evidence. *See* Exhibit A at 08:32–10:29.

¹ Petitioner's counsel has stated she has no objection to the submission to the Court of this unverified transcript, which was created through a combination of speech-to-text technology and human edits, and the audio file.

Kumar nonetheless argues that the hearing did not comport with due process requirements because the Immigration Judge did not (1) accord weight to the fact that Petitioner flew from his new residence in California to Philadelphia to attend his ICE check-in, (2) did not accept a letter stating that Kumar resides in Oakland, California, as evidence that he has a “fixed address,” (3) did not give adequate weight to the fact that Kumar had a friend offering to sponsor his bond, and (4) gave undue weight to the fact that Petitioner has no family ties in the United States.

But these arguments challenge a discretionary determination of the Immigration Judge: whether and how much weight to give to the evidence before him. *See Ghanem*, 2022 WL 574624, at *2 (argument that immigration judge should have weighed police reports differently challenges a discretionary determination that is not reviewable).

Kumar does not allege a true due process violation, insofar as he does not contend that he was prevented from presenting evidence, his counsel was unable to make argument, or he did not receive an individualized determination on his bond request. Rather, he disputes the weight the Immigration Judge gave to the evidence and arguments presented.

In opposing bond, counsel for the government argued, *inter alia*, that Kumar had an obligation to report any change of address to ICE, but failed to do so, and had no family in the United States. Ex. A at 6:06-7:17.

The hearing reflects that the Immigration Judge made an individualized determination on the bond request, reflecting Kumar's circumstances. The judge asked if Kumar's current residence reflected where he has lived the last four years, and counsel explained Kumar "recently moved to California," and "had lived in Philadelphia prior to that." Ex. A at 05:14. Kumar's counsel also conceded that Kumar had not updated his address with ICE, but asserted that he intended to do so at his recent ICE check-in. *Id.* In explaining his decision to deny bond, the Immigration Judge said:

[W]hile the court does not find the respondent to be a danger, [the] court does find that he has not presented sufficient ties to the community. There's no family ties in the United States. He's not been in the United States for a[n] extended period of time. He has not shown a fixed address. There's insufficient in the evidence, in the record, presented to ensure that the respondent would not be a flight risk and the court does not find any amount of money would secure the respondent's presence. Based on the record before it, there are two letters from individuals that aren't here to testify, and they are two sentences each. The court does understand [] that the respondent has an asylum application. However, in light of the previous mentioned reasons, the court will deny bond on flight risk.

Ex. A at 8:32.

While Petitioner may disagree with the Immigration Judge's conclusion that he posed a flight risk, that disagreement is not sufficient to render the bond hearing unconstitutional. *Kamara*, 420 F.3d at 211 ("[T]he question for due process purposes is not whether the BIA reached the *correct* decision; rather, it is simply whether the Board made an individualized determination of [the petitioner's]

interest.”) (citation omitted).

In the absence of a clear challenge to the fundamental fairness of the hearing, the BIA is the proper tribunal to consider the merits of Kumar’s appeal. *See, e.g., De Souza v. Soto*, No. CV 25-18734, 2026 WL 102946, at *3 (D.N.J. Jan. 14, 2026) (finding the “record compels a finding that Petitioner received the individualized bond hearing as required under 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1(d)(1)” and holding that any challenge to the denial of bond must be presented to the BIA).

The recording of the proceedings shows that Petitioner submitted evidence, the Immigration Judge reviewed that evidence, and he based his denial of bond on that evidence. For these reasons, Respondents respectfully submit that no further action by the Court is required at this time and the Motion to Enforce should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Erin Lindgren
ERIN LINDGREN
Assistant U.S. Attorney

Exhibit A

Transcript of Bond Hearing

February 9, 2026 Kumar Bond Hearing

This transcript is unverified.

This transcript was generated through a combination of speech-to-text technology and human edits. As a result, it may contain errors, so please refer to the corresponding audio recording as primary evidence.¹

Last edited by Assistant U.S. Attorney Erin Lindgren; copy provided to Petitioner's counsel before submission.

This transcript is 10m 48s in length

[00:05]

Immigration Judge: *We are on the record. This is Immigration Judge Jacob Addicott, sitting at the New York Broadway I [REDACTED] Today's date is February 9th, 2026. This is a bond hearing in the matter of [REDACTED] in the matter of Vijay Kumar. Respondent is detained at Pike County Corr [REDACTED] of record is appearing via WebEx. Please state your appearance.*

[00:24]

Kumar's Counsel: *Ben Huvos for respondent.*

[00:27]

Immigration Judge: *Thank you. And the department today is represented by a ACC Clay.*

[00:37]

Speaker 3 *He's coming, your honor.*

[00:38]

Immigration Judge: *Thank you. Court notes that this is a bond redetermination request. It is based on the federal court order out of the Eastern Districts of Pennsylvania ordering bond hearing to be held. Counsel, do you wish to present testimony today or rely on the evidence that you submitted and arguments?*

[01:23]

Kumar's Counsel: *: Uh, your Honor, we'll just be relying on the evidence we submitted. Thank you.*

[01:28]

Immigration Judge: *Okay. Okay, counsel, you can present an argument on why Bond is appropriate here.*

[01:52]

Kumar's Counsel: *Thank you, your Honor. Uh, your Honor, the first thing I wanna impress about respondent is that there's nothing in the record showing that he's a flight risk, let alone*

¹ The audio recording will be submitted to the Court by email.

a danger to the community. And I want to emphasize, uh, to the court that respondent lives in California, and so it's not happenstance, uh, that he is, uh, here at the court today, uh,

[02:17]

Kumar's Counsel: To meet his obligations with ice check-ins. Respondent literally flew across the country to attend his ICE check-in, uh, at Philadelphia. Respondent has demonstrated that he is committed to a good faith, lawfully done immigration process, and this court should recognize his commitment in its judgment today. So I'll say again, respondent is not a flight risk. Instead, he's committed to lawful immigration, nor is there any evidence or even suggestion that he has criminal history. That conclusion also accords the conclusion made by DHS when they paroled him into the United States in 2022, deciding that he was neither a danger nor a flight risk. Instead, your Honor, having resided in the United States for four years, respondent uh, has made substantial ties in the United States. For example, uh, his close friend, Mr. Ramesh Kumar, who is a legal permanent resident in the United States, has submitted records to the court to demonstrate respondent's community support, uh, including a letter attesting to his relationship with the respondent, in addition to financial records demonstrating, uh, his friend's clear ability to sponsor respondent's bond.

[03:34]

Kumar's Counsel: Um, further, your Honor, this friend describes respondent as a hard worker, trustworthy, kind, genuine, and a good man. I think, your honor, that, uh, to my earlier point about his attendance, that, uh, all his ICE check-ins, including the recent one in Philadelphia, lend credibility to his close friend's account. Moreover, respondent has two other close friends that put forth letters for the court today. One of them, uh, is his roommate in California, uh, further attesting to his character and also showing that respondent has a fixed address in the United States. Finally, with regard to ties, respondent has worked in the United States, uh, so long as he's been authorized to do and filed U.S. taxes, uh, on that income. And so, your Honor, for the reason, uh, I just described, respondent has every reason to stay with his community of friends and continue to navigate his immigration lawfully, such as by pursuing his timely filed asylum application that is now with U-S-C-I-S and is before you in the record. Um, and so respectfully, we request respondent's release on bond in an amount that the court finds appropriate in light of respondent's submitted evidence. Thank you, your Honor.

[04:54]

Immigration Judge: Thank you. And does he have any family in the United States?

[04:58]

Kumar's Counsel: No, your Honor.

[05:10]

Immigration Judge: And where has he lived for the last four years?

[05:14]

Kumar's Counsel: So, your Honor, my understanding is that he recently moved to California. Um, however, uh, he had lived in Philadelphia prior to that. Um, that's why he had to fly back from California to Philadelphia to attend his check-in. And that is where he, uh, intended to change his address so that he could attend ICE check-ins in the future in California. Um, but my understanding is that sometime recently he moved to California.

[06:03]

Immigration Judge: *Okay. Thank you. And what's the Department's position?*

[06:06]

Government Counsel: *Your, your Honor, the Department's position is that, uh, although there, there's no, uh, there's nothing apparent that shows that he's a danger to the community, he is absolutely a flight risk. Uh, the respondent had a, an obligation to, uh, to report any change of address. And there's, there's no evidence that he did, uh, in this matter. There's no telling when respondent moved to California. Um, as counsel just stated, he has no family in the United States. The, it appears that he filled out a Form 1040 tax return and based on, uh, wages earned in 2024. But there's no, there's no documentation that he actually paid the taxes. Uh, it's not a transcript, it's just the 1040. Um, and so, based on lack of ties to the community, his, uh, failure to take the responsibility to notify the court and DHS of any address changes, the Department would argue for no bond.*

[07:17]

Immigration Judge: *Thank you.*

[08:32]

Immigration Judge: *Okay. The court will, court is going to deny bond in this case. The court does have jurisdiction and is ordered to hold this bond hearing per the federal court order and the record. However, while the court does not find the respondent to be a danger, court does find that he has not presented sufficient ties to the community. There's no family ties in the United States. He's not been in the United States for a extended period of time. He has not shown a fixed address. There's insufficient in the evidence, in the record, presented to ensure that the respondent would not be a flight risk and the court does not find any amount of money would secure the respondent's presence. Based on the record before it, there are two letters from individuals that aren't here to testify, and they are two sentences each. The court does understand he that the respondent has an asylum application. However, in light of the previous mentioned reasons, the court will deny bond on flight risk. Counsel, do you reserve?*

[10:29]

Kumar's Counsel: *Yes, your Honor. Thank you.*

[10:31]

Immigration Judge: *Okay, thank you. Any appeal would be due within 30 days of today. Department, is this final?*

[10:38]

Government Counsel: *Final for the government, your Honor.*

[10:39]

Immigration Judge: *Okay. Thank you. There's nothing further. We'll be adjourned. Thank you, counsels.*

[10:43]

Government Counsel: *Thank you.*

Kumar's Counsel: *Thank you.*

Government Counsel: *Have a good day counsel.*