

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

BRAYAN RUBIO RUBIO,

Petitioner,

v.

SHERIFF DAVID HARDIN,
GARRET J. RIPA, ACTING
DIRECTOR TODD M. LYONS,
SECRETARY KRISTI NOEM,
DAREN K. MARGOLIN,

Respondents.

Case No. 2:26-cv-00125-KCD-NPM

**SUPPLEMENTAL PETITION PURSUANT TO THE COURT'S
CONDITIONAL HABEAS ORDER**

INTRODUCTION

1. Petitioner Brayan Rubio Rubio, through undersigned counsel, hereby renews his challenge of unlawful detention in violation of the Due Process Clause of the Fifth Amendment. Petition, Doc. 1, Count II. On February 24, 2026, the Court granted in part and denied in part Petitioner's habeas petition and ordered "the Government to provide Petitioner with the statutory process required under § 1226, which includes a bond hearing." Order, Doc. 13. The Court did not address Count II, alleging a violation of Petitioner's due process rights because relief was granted based on interpretation of 8 U.S.C. § 1226(a). *Id.* However, the Court noted "if the Government does not provide Petitioner with a bond hearing as ordered, he

can renew his other claims in a subsequent complaint.” *Id.*

2. Although a custody redetermination hearing was held following the Court’s Order, that hearing did not provide Petitioner with statutory process that this Court mandated and to which Petitioner was entitled. As described in counsel’s declaration, the Immigration Judge (“IJ”) began the hearing by admitting he did not review any of Petitioner’s evidence supporting release on bond. Without considering Petitioner’s evidence, the IJ summarily concluded that Petitioner was a flight risk based solely on a recently-issued removal order, and denied Petitioner bond. *See Exhibit C, Bond Decision.* Petitioner’s removal order is currently on appeal to the Board of Immigration Appeals (“BIA”) since February 20, 2026. *Exhibit D, BIA Appeal.*

3. Petitioner does not ask the Court to reweigh the IJ’s determination. Rather, he asks the Court to find that a predetermined bond hearing where the IJ openly admits that he did not review the record before him, cannot comport with the Court’s Order, the statutory requirements of § 1226(a), its implementing regulations, or BIA decisions providing guidance on what IJs must consider when making a custody redetermination.

4. Out of respect for the Court’s time, Petitioner will not restate all the factual allegations in his petition. *See Doc. 1 ¶¶ 43–53.* However, Petitioner would like to emphasize that it is undisputed that he has resided in the United States since January 2015, has never been arrested, accused, or convicted of

any crimes, and has been subject to immigration detention since October 12, 2025. *Id.* ¶¶ 43–47; *See Resp.*, Doc. 11 at 2 (providing facts but not raising any dispute with the factual allegations in the Petition). He is married to a U.S. citizen who is currently pregnant with the couple’s child. Doc. 1 ¶ 47; Exhibit E, OBGYN Letter. His daughter is also a U.S. citizen and is only a year old. *Id.*

5. On January 10, 2026, just shortly before this case was initiated, Petitioner’s brother had a sudden medical emergency and died in his sleep. Counsel submitted a request to U.S. Immigration and Customs Enforcement (“ICE”) seeking humanitarian parole to allow Petitioner to attend his brother’s funeral. ICE denied the request.

6. On March 26, 2026, counsel raised the deficiencies in Petitioner’s bond hearing with counsel for Federal Respondents and again asked if ICE would consider releasing Petitioner on parole or under an Order of Supervision, so that he may return home to his family pending the outcome of his removal proceedings. On March 30, 2026, ICE denied the request. Federal Respondents also indicated they would oppose any relief sought in a motion to enforce. Petitioner, however, only seeks a determination on his due process claim before this Court.

7. As someone without any criminal history and significant ties to the United States, including a pathway to legalize his immigration status through his wife, Petitioner has a profound interest in being free from detention. His

arrest and detention without an immediate bond hearing as required by § 1226(a) violated federal law. 8 C.F.R. §§ 236.1(d)(1), 1003.19; *see Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (noting “[f]ederal regulations provide that aliens detained under §1226(a) receive bond hearings at the outset of detention.”). Independently, Respondents’ failure to provide Petitioner a bond hearing during his continued custody and the legally deficient bond hearing Petitioner received many months later is a clear violation of his due process.

8. Petitioner has received a bond hearing in name only which did not substantively comply with the Court’s Order. This is not merely because the IJ denied Petitioner bond. Rather, it is because the IJ conducted a custody redetermination hearing without considering the record before him or performing an individualized assessment.

9. Accordingly, Petitioner respectfully requests a determination on his due process claim and asks the Court to grant the core relief he sought in his original petition—immediate release. *See Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (finding a bond hearing would not be an adequate remedy for the due process violations in petitioner’s sudden arrest and detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (finding post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment).

INCORPORATION BY REFERENCE

10. Petitioner incorporates by reference the following sections of his original habeas petition, Doc. 1, as though fully set forth herein: the jurisdictional basis for this action, venue, the identification of the parties, the factual allegations, and the legal framework governing Petitioner's detention.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. Petitioner has not appealed the IJ's denial to the Board of Immigration Appeals because he is not initiating a new habeas action. He is merely renewing his constitutional claim because his bond hearing was fundamentally unfair and did not comply with the Court's Order. *See P.M v. Joyce*, No. 22-CV-6321, 2023 WL 2401458, at *1 n.2 (S.D.N.Y. Mar. 8, 2023) ("failure to appeal the denial of bond does not preclude [a petitioner] from seeking a writ of habeas corpus for the unconstitutional deprivation of a bond hearing" especially if appealing to the Board of Immigration Appeals is futile). After the bond hearing, Petitioner sought administrative remedies before ICE. ICE was not amenable to releasing Petitioner in any capacity.

SUPPLEMENTAL FACTS

12. Following the Court's Order, Petitioner was scheduled for a bond hearing on March 5, 2026, before Immigration Judge Stuart A. Siegel at the Broward Transitional Center in Pompano Beach, Florida. Declaration of Martin Rosenow ("Rosenow Decl.") ¶ 3. An extensive packet of bond

documentation for Petitioner was submitted to the immigration court in advance of the hearing. *Id.* ¶ 4.

13. The bond packet provided evidence of Petitioner's long-term residence in the United States, lack of criminal history, and ties to his community, that he is married to U.S. citizen who is pregnant, and that he is the father to the couple's U.S. citizen daughter who is only one year old. *Id.* To support a showing that Petitioner is not a flight risk or a danger to the community, the bond packet included letters of support from his wife, employers, community members, and co-workers. *Id.* ¶ 5. It also included proof that Petitioner is the beneficiary of a pending I-130, Alien Relative Petition. *Id.*

14. At the bond hearing, Immigration Judge Siegel began by stating on the record that he had not reviewed Petitioner's bond documentation. *Id.* ¶ 6. He then proceeded with the hearing without the benefit of the full record before him. *See id.*

15. The only evidence provided by counsel for the Department of Homeland Security ("DHS") in opposition of bond was a copy of Petitioner's removal order, which has been on appeal to the BIA since February 20, 2026. *Id.* ¶ 8. Petitioner was present at the hearing, but Judge Siegel did not ask him any questions. *Id.* ¶ 9.

16. Although Judge Siegel noted that Petitioner's removal order is on

appeal, he denied Petitioner bond, finding that Petitioner “ha[d] not met his burden in establishing he is a suitable bail risk as he is under an Order of Removal.” *Id.*; Ex. C. No other reasons were given, and Judge Siegel did not consider how alternatives to detention might mitigate the concerns he identified. Rosenow Decl. ¶ 9.¹

17. On March 26, 2026, Petitioner’s counsel sought administrative remedies through ICE that might permit Petitioner’s release on parole or under an Order of Supervision. ICE did not agree.

18. Petitioner has been detained since October 15, 2025. More than five months have passed and Petitioner has not received a meaningful, individualized assessment as to whether his detention is justified.

LEGAL FRAMEWORK

19. Section 1226(e) does not strip this Court’s jurisdiction over Petitioner’s due process claim for two reasons. First, Count II was asserted in Petitioner’s original habeas petition, and he merely renews that claim now, consistent with the Court’s conditional habeas order. Second, § 1226(e) only bars review of discretionary bond determinations, not constitutional

¹ There is some indication from recent IJ decisions that post-habeas bond denials are increasingly based on predetermined outcomes that fail to meaningfully assess the individualized factors required in bond decision. Kyle Cheney, *Judges keep ordering immigration hearings—but say the results are often a sham*, Politico (March 6, 2026), <https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660> (Last accessed Apr. 1, 2026); see also Exhibit F, Third Party Declarations.

challenges to the adequacy of the process itself. *Jennings v. Rodriguez*, 583 U.S. 281, 295–96 (2018); *Picado v. Hyde*, No. 26-cv-065-JJM-PAS, 2026 WL 352691, at *4 (D.R.I. Feb. 9, 2026). Petitioner does not ask this Court to review the IJ's discretionary judgment. To determine whether Petitioner may renew his due process claim, the Court must reach whether a bond hearing where the IJ plainly admits he did not review Petitioner's evidence can comply with the Court's Order and the law.

A Bond Hearing Where the IJ Did Not Review the Record Does Not Satisfy the Court's Order

20. The Court's Order directed the government to provide Petitioner "with the statutory process required under § 1226(a), which includes a bond hearing. Doc. 13. For Respondents to meaningfully satisfy the Court's Order, "the [bond] hearing must include consideration of all evidence properly submitted by the petitioner and the factors announced in *In re Guerra*." *Bone Romero v. Warden, Fla. Soft Side Det. Ctr.*, No. 2:26-CV-00540-SPC-NPM, 2026 WL 717978, at *2 (M.D. Fla. Mar. 16, 2026) (Polster Chappell, J.).

21. Section 1226(a)'s, implementing regulations require an IJ to conduct a custody redetermination upon request. 8 C.F.R. §§ 1236.1 (d)(1), 1003.19(b). Under the applicable regulatory standard, an individual seeking bond must demonstrate that his release would not pose a danger to property or persons and that he is likely to appear for future proceedings. 8 C.F.R. §

1236.1(c)(8).

22. The BIA has established the framework for individualized assessments in custody redetermination hearings. An IJ “may look to a number of factors” in conducting a custody redetermination, including: (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; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record; (7) the alien’s history of immigration violations; (8) any attempts to flee prosecution; and (9) the alien’s manner of entry. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006); *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 212 (BIA 2025).

23. These factors provide a non-exhaustive but flexible framework and no single factor is per se dispositive. *Lozano Rosales v. Simon*, No. 1:26-cv-86, 2026 WL 688858, at *2 (E.D. Va. Mar. 11, 2026) (citing *Miranda v. Garland*, 34 F.4th 338, 362 (4th Cir. 2022)). 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).

Due Process Is Not Satisfied When an IJ Predetermines the Outcome Without Reviewing the Record Before Him

24. Similar to the framework discussed by the BIA, due process requires an individualized determination of a noncitizen's interests. *Shonhai v. Lowe*, No. CV 3:24-229, 2026 WL 538865, at *8 (M.D. Pa. Feb. 26, 2026). Due process in an administrative proceeding entitles a noncitizen to: (1) factfinding based on a record produced to the decisionmaker and disclosed to the noncitizen; (2) the opportunity to make arguments on his own behalf; and (3) the right to an individualized determination of his interests. *Kamara v. Att'y Gen. of U.S.*, 420 F.3d 202, 211 (3d Cir. 2005).

25. In the context of immigration detention, due process demands "adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint. *Hernandez v. Sessions*, 872 F.3d 976, 990. (9th Cir. 2017). "Merely stating the proper standard does not discharge the obligation to correctly apply the standard." *Akinsanya v. Garland*, 125 F.4th 287, 297 (1st Cir. 2025).

Petitioner's Continued Detention Without a Meaningful Bond Hearing Violates Procedural Due Process

26. The Fifth Amendment's Due Process Clause prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. This protection extends to all persons within the United States, including noncitizens, regardless of immigration status. *Zadvydas v.*

Davis, 533 U.S. 678, 693 (2001); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (reiterating the well-established rule that noncitizens, even those without legal status, are entitled to due process of law requiring “notice and an opportunity to be heard.”)

27. The constitutional adequacy of the procedures afforded before the government may deprive a person of this interest is evaluated under the three-factor balancing test established in *Mathews v. Eldridge*, which consider: (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and (3) the government’s interest, including the administrative burden of additional procedures. 424 U.S. 319, 335 (1976).

28. All three factors favor Petitioner. First, Petitioner’s liberty interest is substantial and is “arguably the most important one there is.” *Rincon v. Hyde*, 810 F. Supp. 3d 101, 115 (D. Mass. 2025). Petitioner has lived in the United States for over a decade, has no criminal history, and significant ties to the country. Doc. 1 ¶¶ 43, 47. His I-130 relative petition remains pending, and his marriage presents a pathway to legalize his status.

29. Second, the risk of erroneous deprivation is high and has already occurred. “Our immigration law has long recognized that noncitizens have an interest in an individualized hearing prior to detention in connection with immigration proceedings.” *Alonso Ibarra v. Noem*, No. SA-26-CA-00498-XR,

2026 WL 752261, at *13 (W.D. Tex. Mar. 13, 2026). Petitioner was detained while fishing in October 2025, Doc. 1 ¶¶ 44–45, and he has remained in ICE custody based on the government’s theory of mandatory detention under §1225(b)(2)(A). No individualized assessment occurred at the start of Petitioner’s detention to determine whether he poses a flight risk or a danger to the community.

30. Respondents never asserted in this matter that Petitioner was dangerous, nor have they claimed that Petitioner resisted arrest or tried to abscond when ICE detained him. *See generally* Doc. 11. Significantly, even after the Court’s Order finding that § 1226(a) applies, Petitioner has yet to receive a custody redetermination hearing that meaningfully assesses whether his detention is justified. When Judge Seigel proceeded to make a bond determination after acknowledging that Petitioner’s evidence was never considered, the bond hearing no longer functioned as a safeguard against erroneous deprivation and instead predetermined Petitioner’s continued detention.

31. The government’s interest in detaining Petitioner without any procedures is minimal when compared to Petitioner’s significant liberty interest. *Alonso Ibarra*, 2026 WL 752261, at *14. While the government has an interest in ensuring community safety and compliance with removal proceedings, those interests would be adequately served by the procedures that

Petitioner seeks. *Id.* There is no additional administrative burden in requiring the government to comply with what statute, regulation, and due process already require.

Core Habeas Relief is Warranted Under the Circumstances

32. The Court denied Petitioner immediate release, reasoning that § 1226(a) grants the government discretion to determine custody while an individual is in removal proceedings. Doc. 13 at 6–7. While it is true that custody redeterminations under § 1226(a) fall within the government’s purview, Respondents improperly detained Petitioner under § 1225 and have never departed from that position in this matter. *See Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *5 (S.D. Tex. Feb. 3, 2026) (emphasizing that courts are not required to consider the application of § 1226(a) when the government itself does not assert authority under that provision.)

33. When courts find ongoing detention unlawful, “the typical remedy for such detention is, of course, release.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). “It is not incumbent upon the Court to fix the Government’s flawed application of § 1225(b)(2) by converting Petitioner’s detention into a potentially lawful alternate form under a different statute.” *Perez v. Bondi*, Civil Action No. 26-3305 (ZNQ), 2026 U.S. Dist. LEXIS 72523, at *4 (D.N.J. Apr. 2, 2026). “The very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of

justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

34. Ordering another bond hearing only prolongs Petitioner’s continued detention, when he has already established that he is not dangerous or a flight risk. *Kobilov v. O’Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (finding a bond hearing unnecessary where there was no indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (granting injunctive relief and ordering immediate release because the government offered “no evidence that Petitioner’s continued presence in the United States poses a threat to public safety or national security.”); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (same, collecting cases).

35. Even setting aside the statutory violation, Petitioner has an independent basis for release. Petitioner has been deprived of his due process rights both in his detention without adequate procedural protections and in a post-habeas bond hearing where the IJ admittedly did not review the evidence Petitioner presented.

36. Many courts have found that immediate release is appropriate for detention in violation of constitutional rights. *See, e.g., Moctezuma*, 2026 WL 18809, at *5 (collecting cases); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025

WL 2792588, at *14 (W.D. Tex. Oct. 2, 2025) (“immediate release appropriately remedies Respondents’ violation of [petitioner’s] due process rights through her continued detention.”); *Qasemi*, 2025 WL 3654098 at *14 (bond hearing is an inadequate remedy for the due process violations in arrest and detention); *Crespo Tacuri*, 2026 WL 35569, at *7 (same); *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025) (same); *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025) (same).

37. Courts have ordered immediate release where the government has failed to articulate a legitimate interest in detention. *Santiago*, 2025 WL 2792588, at *13; *Perez v. Dedos*, No. 1:26-CV-00436-MIS-JHR, 2026 WL 622670, at *1 (D.N.M. Mar. 5, 2026). Here, the government detained Petitioner under the wrong statutory authority without any procedures, then provided a bond hearing at which the IJ completely ignored Petitioner’s evidence. The statutory and constitutional rights implicated by continued detention without procedural protections “contemporaneous with the deprivation” can only be remedied by release. *See J.U. v. Maldonado*, 805 F. Supp. 3d 482, 498 (E.D.N.Y. 2025). Ordering another bond hearing would not cure the violation of Petitioner’s due process rights, because a bond hearing is “no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that

lies at the heart of the Due Process Clause.” *Cruz-Reyes*, 2026 WL 332315, at *5 (citation and quotations omitted).

38. If the Court remains unpersuaded that immediate release is the appropriate remedy here, then Petitioner respectfully requests: (1) a constitutionally compliant custody redetermination hearing before a different immigration judge, (2) where DHS bears the burden to prove by clear and convincing evidence that Petitioner is a flight risk, such that his continued detention is justified, (3) where the immigration judge must fully consider the record before the court, including any evidence Petitioner submits, and (4) where the immigration judge must consider alternatives to detention that would mitigate any flight risk concern raised at the hearing.

39. Given the constitutional violations that Petitioner has been made to suffer, shifting the burden to the government “provides the appropriate level of procedural protection” and “strikes a fair balance between the rights of the individual and the legitimate concerns of the state.” *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (citation omitted).

40. Accordingly, the Court should find that Petitioner did not receive a bond hearing that satisfied the Court’s February 24, 2026, Order, determine his due process claim, and order his immediate release. In the alternative, the Court should order a burden-sifted custody redetermination hearing before a different immigration judge that affords Petitioner appropriate procedural

protections.

CLAIMS FOR RELIEF

RENEWED COUNT II

Violation of Fifth Amendment Due Process

41. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

42. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas*, 533 U.S. at 690.

43. Petitioner’s statutory and due process rights were violated when he was detained for months without a bond hearing. His due process rights have been further violated by his continued detention without an individualized assessment as to whether his detention is justified.

44. Petitioner has a fundamental interest in liberty and being free from official restraint. The post-habeas bond decision following an express admission that none of Petitioner’s evidence was reviewed or considered, compounds the risk of erroneous deprivation. Weighed against Petitioner’s significant liberty interest, the government’s interest in detaining Petitioner without any meaningful process to determine whether his detention serves a legitimate governmental interest is low.

45. The *Mathews* factors weight decisively in Petitioner’s favor, and

the bond hearing he received did not satisfy the Court's Order or minimal due process requirements for administrative bond proceedings.

46. The government's detention of Petitioner without a meaningful custody redetermination hearing to determine whether he is a flight risk or danger to others violates his due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Declare that Petitioner's continued detention is unlawful in violation the Due Process Clause of the Fifth Amendment.
- c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately.
- d. In the alternative, order Respondents to provide Petitioner with a constitutionally compliant custody redetermination hearing before a different immigration judge, where DHS bears the burden to prove by clear and convincing evidence that Petitioner is a flight risk, such that his continued detention is justified. Further order that the immigration judge must fully consider the record before the court, including any evidence Petitioner submits, and must consider alternatives to detention that would mitigate any flight risk concern raised at the hearing.
- e. Award Petitioner attorney's fees and costs under the Equal Access

to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Date: April 6, 2026

Respectfully submitted,

/s/ Martin D. Rosenow

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