

**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

**REPLY TO RESPONDENTS' RESPONSE TO AMENDED
SUPPLEMENTAL PETITION**

Petitioner Brayan Rubio Rubio hereby submits this reply in support of his Amended Supplemental Petition (Doc. 17) and addressing Respondents' Response (Doc. 19).

ARGUMENT

I. The Court Retains Jurisdiction Over Petitioner's Renewed Due Process Claim

Respondents argue that 8 U.S.C. § 1226(e) strips this Court of jurisdiction and that Petitioner must exhaust administrative remedies by appealing to the Board of Immigration Appeals ("BIA"). Doc. 19 at 3. Both arguments fail. Petitioner challenges the adequacy of the bond hearing he received, whereas § 1226(e) bars review of discretionary bond determinations.

See Jennings v. Rodriguez, 583 U.S. 281, 295–96 (2018); *D.Y.E.H. v. Warden, Irwin Det. Ctr.*, No. 7:25-cv-201-WLS-AGH, Doc. 17 at 4 (M.D. Ga. Apr. 6, 2026) (finding § 1226(e) did not preclude review where “[p]etitioner challenges the procedures used at the bond hearing, alleging that the hearing he received violates this Court’s Order and due process.”) Moreover, this Court has inherent authority to review Petitioner’s claim that his bond hearing was constitutionally deficient, and if needed, enforce its Order. *See Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991).

As to exhaustion, Petitioner is not filing an initial § 2241 petition. Instead, he is renewing a constitutional claim this Court expressly preserved. Exhaustion is not jurisdictional in this context but discretionary. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474–75 (11th Cir. 2015). The Court should exercise its discretion to excuse exhaustion because a BIA appeal cannot resolve Petitioner’s constitutional claims. *In Re Rodriguez-Carrillo*, 22 I. & N. Dec. 1031, 1035 (BIA 1999) (“neither the Immigration Judge nor this Board may rule on the constitutionality of the statutes that we administer.”); *D.Y.E.H.*, Doc. 17 at 6–8 (excusing exhaustion where petitioner raised due process challenge following conditional habeas grant because BIA lacks jurisdiction over constitutional claims); *see also McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (exhaustion excused where agency lacks institutional competence to resolve the issue presented).

II. Respondents Characterization of Events Does Not Excuse Clear Due Process Violation

Respondents contend that Immigration Judge (“IJ”) Siegel “rigorously considered” the *Matter of Guerra* factors and essentially blame any failure to review Petitioner’s documentary evidence on Petitioner. Doc. 19 at 5–8. The record does not support this characterization.

First, Petitioner’s bond evidence was not new. It had been part of the immigration court record since December 2025, when counsel filed a bond redetermination request and supporting bond evidence in connection with that request. *See* Exhibit G, December 2025 eROP. That bond request and the IJ’s subsequent denial for lack of jurisdiction gave rise to Petitioner’s initial habeas petition before this Court. When the post-habeas bond hearing was scheduled, counsel discovered that the immigration court had not linked the previously filed evidence to the new bond proceeding and re-submitted the documentation. The government’s characterization of this as an “eleventh hour” filing misrepresents what occurred.

Second, while Respondents invoke 8 C.F.R. § 1003.31(h) to suggest the IJ could have deemed the evidence waived, they notably do not claim that the IJ set a filing deadline or that Petitioner missed one. To be clear, the IJ never set a deadline for bond evidence. And U.S. Department of Homeland Security (“DHS”) counsel’s own evidence was filed only an hour before the hearing.

Audio Recording, Respondents' Exhibit. D at 4:48–4:56. The IJ received that evidence and relied on it. Yet the IJ declined to review Petitioner's evidence that had been in the court's record for months. Considering the government's last-minute submission while disregarding Petitioner's evidence is a fundamental fairness problem that cannot be reconciled with the Court's order or due process. In any event, the government's timing arguments do not explain how a bond determination made without considering any of Petitioner's documentary evidence can satisfy this Court's habeas order requiring "the statutory process required under § 1226" (Doc. 13) or due process.

Third, the IJ's oral decision reveals that his flight risk finding rested heavily on the conclusion that Petitioner had no "incentive to appear at any future hearing date." Respondents' Ex. D at 9:30–10:40. When undersigned counsel attempted to correct this reasoning—explaining that Petitioner would in fact need to appear before the court to seek administrative closure and pursue affirmative relief through his I-130 and I-601A—the IJ cut him off. The IJ stated, "Okay, counsel, you had your chance. I get my chance now to issue my decision." Respondents' Ex. D at 10:07. The IJ then issued his denial based on the very premise counsel was attempting to correct. Due process requires not only that a party be permitted to present evidence, but that the decisionmaker consider it. *Kamara v. Att'y Gen.*, 420 F.3d 202, 211 (3d Cir.

2005). Where the IJ admits he did not review the documentary record, refused to hear counsel's correction of a factual error central to the bond determination, and based his denial on a single factor while acknowledging but not meaningfully weighing the substantial countervailing evidence, the hearing did not provide the individualized assessment that *Guerra* requires and this Court ordered. *See D.Y.E.H.*, Doc. 17 at 9 (finding bond hearing not individualized where IJ "equate[d] the mere fact of being in removal proceedings with a categorical presumption of flight risk").

CONCLUSION

For the foregoing reasons and those set forth in the Amended Supplemental Petition, Petitioner respectfully requests that the Court find Respondents did not comply with its February 24, 2026 Order and that Petitioner's continued detention without a constitutionally adequate bond hearing violates the Due Process Clause. Petitioner renews his request for immediate release. In the alternative, Petitioner requests a new, individualized bond hearing before a different Immigration Judge consistent with the procedural protections prayed for in the Amended Supplemental Petition.

Date: April 29, 2026

Respectfully submitted,

/s/ Martin D. Rosenow

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