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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Rigoberto GARCIA ORTIZ, Petitioner, v. Brian HENKEY, Field Office Director of Enforcement and Removal Operations, Salt Lake City Field Office, Immigration and Customs Enforcement; Kenneth PORTER, Acting Director of the Boise U.S. Immigration and Customs Enforcement Field Sub-Office; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Mike HOLLINSHEAD, Sheriff of Elmore County, Respondents.	Case No. 1:26-cv-00043-BLW **MOTION TO ENFORCE COURT ORDER (Dkt. 11)**

On February 20, 2026, this Court denied the relief requested in Petitioner's titled "status report" because it was not properly labeled as a motion. Dkts. 15 and 18. Petitioner formally moves this Court to enforce its February 4th order, and order Petitioner's immediate release, as he was not granted a full and fair bond hearing by February 11th. *See* Dkt. 11.

On February 5, 2026, the Government set Petitioner's bond hearing to be conducted on February 10 at 8am before the Tacoma, Washington Immigration Court. Exh. B. Ramirez-Smith Law represented Petitioner in his bond proceeding, and entered a brief and evidence in support of his bond eligibility. Exh. C. The Immigration Judge determined Petitioner was a danger to the community and a flight risk, and denied granting him bond in any amount. Exh. E. The Immigration Judge's denial is unsupported by law or evidence, and denied Petitioner any meaningful day in Court, thereby further violating his due process rights.

I. THE IJ'S DENIAL BASED ON SPECULATION CONCERNING EVIDENCE NOT IN THE RECORD VIOLATED PETITIONER'S RIGHT TO DUE PROCESS

To determine whether civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Freedom from unlawful government detention lies at the heart of the liberty [the Due Process] Clause protects. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Ninth Circuit has held that when a substantial liberty interest is at stake, the government must prove by clear and convincing evidence that an individual poses a danger or flight risk before depriving him of liberty. *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011). Civil detention comports with due process only when a "special justification" outweighs the "individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690.

In his bond proceedings Petitioner submitted *iCourt* information as to his only criminal conviction for a DUI in August of 2025, reflecting Respondent was sentenced to 180 days in jail with 179 suspended, and 1 day credit for time served, with one year of unsupervised probation. Exh. F. Respondent likewise submitted proof that he had complied with all alcohol reeducation requirements since that conviction. Exh. C. Respondent likewise submitted several letters of

support further attesting to his moral character and the loving role he plays as a father to his children. Exh. C.

The only evidence the Government submitted in Petitioner's case was his I-213 from 2022, recording that Petitioner had no criminal history at that time. Exh. D. Despite Petitioner's scant criminal history, conviction totaling to just one day incarcerated, and total lack of any evidence evincing a danger beyond the mere existence of the said DUI with one day served, the IJ found Petitioner a danger to the community. This moreover despite the fact that Petitioner had been released on bond about five months prior to his ICE arrest in January. Exh. F. Petitioner had no pretrial violations, and had completed all of his court ordered classes. Exh. C. Petitioner was, in fact, arrested by ICE while appearing for his criminal court hearing, complying with the law, further evidence regarding the Judge's determination that he is a flight risk.

The IJ based his decision on a police report not presented as evidence. Exh. A. He questioned Petitioner's counsel, Jacob Rourk, at the hearing if they had the police report in their possession, and if they did, why they did not present it. *Id.* Counsel responded that he had not seen the police report, and believed Petitioner's short sentence spoke for itself and did not necessitate the inclusion of a police report for further proof of his non-dangerousness. *Id.* The IJ then drew an unsound inference that, because the burden of proof lays with the detainee in immigration bond proceedings, that he would have to assume that whatever was in the police report would have been harmful to him and indicate his danger. *Id.* At the time of the bond hearing, that police report was about 6 months old, preceded his suspended-sentence and class completion, and was in no way indicated by any other evidence to contradict Petitioner's peacefulness. It was not submitted by the government to demonstrate any risk to the community of flight risk.

In assessing dangerousness to the community, an IJ may consider "[a]ny evidence *in the record* that is probative and specific." *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (*emphasis added*). There is no support for the contention, however, that he may go further and consider evidence which neither party has submitted nor been asked to submit – much less, speculate on what it contained in a light least favorable to Petitioner *because of* its absence. It is not Petitioner's burden to present evidence which could feasibly indicate his dangerousness only to demonstrate that the evidence in fact does *not* so indicate. The IJ assumed that absent evidence would have been to Petitioner's detriment, thereby requiring Petitioner to negate evidence that did not exist in the record.

Petitioner appropriately carried his burden that he was not a danger with evidence showing he had only one criminal conviction with 1 day credited, and 179 suspended, with all classes and court requirements completed, and with over 5 years of presence in the United States without any other criminal history. Indeed, a judge's goals of sentencing in Idaho:

> "include the primary consideration of the protection of society, followed by the possibility of risk reduction through rehabilitation, deterrence of the individual and the public generally, and punishment or retribution for wrongdoing."

I.C. 19-2521(1)(a). The evidence Petitioner presented is therefore conclusive that his single DUI was not of such a nature as to convince the presiding judge that he was dangerous, and instead is highly indicative of the rehabilitative prospects and that his criminal conduct did not render him an ongoing danger to the community.

The Government offered neither contrary nor additional evidence concerning Petitioner's dangerousness. The IJ's speculation that the absent police report would have been to Petitioner's detriment was therefore the *only* indication of his danger available to the judge, beyond the mere existence of the DUI in the first instance. The IJ appears to have given his inappropriate speculation

inordinate weight to determine that Petitioner was a danger and to keep him detained. The impropriety of the inference, and its affect on Petitioner's eligibility for bond, so severely implicate the risk of deprivation of his substantial liberty interest that it amounts to a due process violation.

II. PETITIONER IS NOT A RISK, AND IF HE WAS, FLIGHT RISK SHOULD BE MITIGATED BY BOND AMOUNT AND DOES NOT SUPPORT OUTRIGHT DENIAL OF BOND

An IJ is to first consider whether a detainee is a danger to the community before proceeding to determine whether he is a flight risk. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009). If the detainee is a danger, no bond is appropriate, and the detainee should not be released, but if the detainee is not a danger, bond should be set "to ensure the alien's presence at proceedings." *Id. See also*, *Matter of Drysdale*, Interim Decision #3221 ("Unlike the standard of determining if there is a danger to the community, this language allows for flexibility. The likelihood, or probability, of appearance could vary from none to great. This enables the immigration judge to set bond according to his assessment of the amount *needed* to motivate the respondent to appear." (*emphasis added*).

Petitioner further presented as evidence birth certificates for his two United States citizen toddlers; his taxes filed over the past three years; and his custody agreement specifying the necessity for exchanges of his children between him and his ex-spouse at a fixed location in Idaho. Exh. C. It should also be noted that Petitioner was arrested by ICE at his court hearing for his DUI case, having prior completed all court ordered classes, and presumably with knowledge of the risk that ICE may so detain him. The Government's entered evidence indicated that Petitioner's I-213 from was given voluntary return in 2022. The IJ took it upon his own initiative to swear in Petitioner at his bond hearing, and to inquire first-hand into his means of attaining employment in the United States, his fear of return, and how long he spent in Mexico after his Voluntary Return.

Despite the uncontested fact that Petitioner had been living with his United States citizen children in Idaho for 5 years with a brief 1-month hiatus, and despite his undisputed involvement in their lives and his filing of taxes, securement of steady employment, permanent residence in Caldwell, Idaho, and past compliance with criminal court conditions, the IJ found Petitioner's lack of clear prospective relief, and entry method and timing made him a flight risk.

It is unclear whether Petitioner was, in the opinion of the IJ, considered a flight-risk so great that his appearance could not be secured on any amount of bond whatsoever, because he was found a danger to the community as well, and therefore subjected to detention without bond. As previously described, that assessment was in error. From the record presented, it does not appear that Petitioner's flight-risk is so great that it cannot be mitigated: he has no failures to appear for court hearings, and in fact was in the process of so attending when ICE detained him. He has complied with previous court instruction, he has permanent residence in the state, and strong family ties there to his children. Therefore, absent the erroneous danger to the community finding, the IJ should have granted bond in some amount.

III. THE DENIAL OF PETITIONER'S POST-HABEAS BOND MOTION IS PART OF A LARGER UNCONSTITUTIONAL SYSTEMIC CHANGE WITHIN THE IMMIGRATION COURTS.

Petitioner submits that the unlawful basis for denial of his bond follows from a wider systemic change in bond hearing outcomes which has occurred over the last several weeks, particularly for individuals granted habeas relief in the form of § 1226(a) bond hearings. Exh. G ("Since their reassignment, the Immigration Judges who replaced them on the detained docket have, based on my observations, *systemically denied bond* in post-habeas cases."). Former Legal Counsel to ICE, Jorge Artieda, notes that the rationales Immigration Judges have utilized to deny post habeas-corpus bond include: "Finding that unauthorized employment – a status violation

shared by millions of undocumented immigrants – constitutes a significant negative factor warranting denial of bond"; and, "Characterizing unlawful entry into the United States-*by itself*-as establishing flight risk." *Id.* at ¶17. Dustin Reed Baxter, an immigration attorney in Oregon and Georgia, declares that he finds "reason to believe that the judges have been instructed to deny bonds, as they all seem to be reading from a similar script as they deny bonds." Exh. H.

Petitioner's bond was denied under just the same kinds of unlawful pretense. Under 8 U.S.C. § 1226(a), the Immigration Judge should consider as factors in his bond redetermination: (1) whether the noncitizen has a fixed address in the United States; (2) the noncitizen's length of residence in the United States; (3) the noncitizen's family ties in the United States, and whether they may entitle him to reside permanently in the United States in the future; (4) the noncitizen's employment history; (5) the noncitizen's record of appearance in court; (6) the noncitizen's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the noncitizen's history of immigration violations; (8) any attempts by the noncitizen to flee prosecution or otherwise escape from authorities; and (9) the noncitizen's manner of entry into the United States. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006); *Matter of Andrade,* 19 I&N Dec. 488, 490 (BIA 1987).

Petitioner (1) has a permanent fixed address which he demonstrated to the immigration court; (2) has resided in the United States for about 5 years; (3) has two U.S. citizen children, and a U.S. citizen girlfriend; (4) made clear through his counsel that he had steady employment; (5) has never failed to appear in court, but in fact was taken by ICE while appearing for his one and only criminal offense; (6) has completed all court assigned classes associated with his DUI and received one day of credited jail time with 179 days suspended and unsupervised probation, and; (8) has never attempted to flee from the authorities. *See* Exh. C. In fact, the only negative factors

in his case were (7) and (9) since he has entered the United States without inspection in 2020 and 2022.

Instead of relying on these factors, however, the IJ inquired into Petitioner's means of obtaining work and the basis for his asylum case, and found he had obtained employment unlawfully and that his fear of persecution was general. *See* Exh. A. Neither of those findings figure into the BIA's multifactor analysis set-forth above, but are wholly in-line with the actions taken in recent weeks by other immigration judges in post-habeas bond proceedings. The IJ deemed Petitioner a danger to the community for the apparent sole reason that he had a single DUI, which is one of several pretextual denial bases being utilized across the country. Exh. J ("These rationales, which I believe to be pretextual, include but are not limited to . . . Denying bonds for . . . a single DUI conviction relying on *Matter of Siniauskas,* 27 I&N Dec. 207 (BIA 2018), even though a single arrest, without conviction or aggravating factors . . . does not automatically prove ongoing dangerousness.").

Petitioner presents the affidavit of Lawerence O. Burman, who served as an Immigration Judge from his appointment in April 1998 until his retirement on December 31, 2025. Exh. I. IJ Burman notes that, in his time as a judge, "bond was not denied solely due to a person's manner of entry into the United States . . . [and i]t was also extremely rare to see a bond denial based on flight risk where the alien had a fixed address, a job, a proposed application for relief, or family ties to the United States." *Id.* at ¶¶12-13. It is IJ Burman's understanding that the recent and abrupt removal of two other IJ's in Virginia was due to their "strong commitment to due process for those appearing before them." *Id.* at ¶19.

The denial of Petitioner's bond application – following from a single DUI for which he ultimately served one day sentence without supervised probation, for which he had already

completed all court order classes – is part of a larger and growing pattern of the immigration courts systematically denying bond to people like him, with work, homes, families, and scant criminal history.

The events at Petitioner's master calendar hearing of February 24, 2026 are further illuminative of this new, unconstitutional, pretensive shift of the Immigration Court to retaliating against habeas corpus petitioners. Undersigned counsel appeared there for Petitioner. The court indicated it's intention to set Petitioner's individual hearing – by which date he would need all evidence in supported of his claims identified, obtained, accumulated, organized, reviewed, and by which date he would need briefing complete – for March 2nd, 2026, 6 days from the date of the master calendar hearing. Undersigned counsel objected on the grounds that she would not be able to procure an expert witness declaration in less than two weeks. The judge indicated his intent to set the hearing for March 9th, 2026 instead, 13 days from the master calendar hearing, evidence due 3 days prior. Undersigned counsel again objected on the same grounds. The judge set the hearing for March 9, 2026, citing Petitioner's ongoing detention in spite of his habeas corpus petition as the rationale for the excessive expedition, and further chastised counsel for Petitioner's placement in a county jail in Idaho pursuant to the TRO requested before this court (which has since been denied as moot). Needless to say, there is no appropriate relationship between Petitioner's master calendar hearing, scheduling his asylum case, and any proceedings before this Court.

IV. THE IMMIGRATION COURT VIOLATED THE FIFTH AMENDMENT DUE PROCESS CLAUSE BY FAILING TO CREATE A DIGITAL AUDIO REOCRD OR OTHER RECORD OF PETITIONER'S BOND PROCEEDINGS.

Federal regulations impose a clear burden on Immigration Courts to create a record of proceedings for the purpose of appeal. 8 C.F.R. § 1003.36 provides that the court "shall" create

and be in control of the Record of Proceeding.[1] 8 C.F.R. § 1003.28 further prohibits the use of any recording device except equipment used by the Immigration Judge "to create the official record." Despite this sole authority and responsibility over creating the record, the Immigration Court Practice Manual today states that "[b]ond hearings are not generally recorded," and indeed Petitioner's Counsel, Jacob Rourk, called the Tacoma Immigration Court and was informed by the clerk that Judge Odell does not record his bond cases, that there was no Digital Audio Recording, and that there is furthermore not any written transcript or other record of proceedings from that hearing aside from the court's generic written order. *Immigration Court Practice Manual* 9.3(e)(3); Exh. A.

This practice is out of the ordinary, and blatantly problematic. The only Record of Proceedings that seemingly exists is the court's written order, which generically states that Petitioner is a danger to the community and a flight risk without further explanation. Exh. E. Such record-keeping makes appeal of the decision practically impossible, with any assertion about the contents of the hearing reduced to hearsay, and clear summation of its contents reduced to counsel's individual recollection.

V. CONCLUSION

As Respondents have now been given two opportunities to provide Petitioner with due process under the Constitution – both by placing him into lawful detention under 8 U.S.C. § 1226(a), and by offering him a full and fair hearing – and as Respondents have twice deprived Respondents of his due process in the same proceedings, Petitioner asks that this court issue his immediate release from custody.

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[1] 8 C.F.R. § 1240.9 provides that the content of such Record of Proceeding in Removal cases must include the hearing itself and that the "hearing shall be recorded verbatim."

Petitioner further asks this Court to stay his removal proceedings pending the outcome of this case, as the ongoing denial of his due process rights work to deprive him of the time he and his counsel would have to prepare his asylum case were he properly removed from the Immigration Court's expedited detained docket, and as the immigration court has placed his asylum case on calendar for March 9th with evidence due 3 days prior, over repetitious objection by undersigned counsel.

Respectfully submitted this 24th day of February 2026.

/s/Nikki Ramirez-Smith
Nikki Ramirez-Smith
Attorney for Petitioner
Ramirez-Smith Law