UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

ANTONIO JOSE LOPEZ PEREZ,

Petitioner,

v.

WARDEN, IRWIN COUNTY DETENTION CENTER,

Respondent.

Case No. 7:26-cv-00029-WLS-ALS

REPLY TO RESPONSE TO MOTION TO ENFORCE JUDGMENT

Respondents do not contest the evidence that the IJ's conduct at Mr. Lopez's February 13, 2026, bond hearing violated his due process rights. Instead, Respondents respond with a series of jurisdictional arguments and a flawed due process analysis that have been rejected by numerous courts deciding cases in this precise posture. Mr. Lopez respectfully requests that this Court grant his motion to enforce and order his immediate release or, at minimum, a new, constitutionally compliant bond hearing.

ARGUMENT

I. The Bond Hearing Did Not Comply with This Court's Order and Due Process.

Mr. Lopez agrees with Respondents that the Court ordered a bond hearing under 8 U.S.C. § 1226(a)(2) and that the regulations at 8 C.F.R. § 236.1(d)(1) and § 1003.19(d) and the BIA's decision in *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), govern that bond hearing. But, as Mr. Lopez has provided ample evidence to establish, the IJ did not actually follow any of this law during Mr. Lopez's bond hearing. Instead, she appeared to type up her decision before even hearing argument from Mr. Lopez's immigration counsel and she relied on the same generic "reasoning" to deny Mr. Lopez bond as she has done in numerous other cases in the application of her "no

bond" policy and practice. *See Argueta-Portillo v. Bondi, et al.*, No. l:26-cv-122-MSN-LRV, Dkt. No. 16 (E.D. Va. Mar. 2, 2026) ("[A]n individual's bond hearing fails to comport with due process where an Immigration Judge relies on considerations that would lead to an automatic denial of bond in all cases."). The IJ did not even state at the hearing that she had reviewed Mr. Lopez's evidence. These are the facts, uncontested by Respondents in their Response. Based on these facts, the IJ demonstrably failed to "provide a bond hearing under § 1226(a)(2)" and thereby violated this Court's order. Despite Respondents' mischaracterization of his arguments, Mr. Lopez's Motion to Enforce is not fundamentally or even primarily about the outcome of the hearing, but about the unconstitutional *process* that led to that outcome.

II. This Court Has Jurisdiction to Enforce Its Own Order.

Respondents claim that § 1226(e) and § 1252(a)(2)(B)(ii) strips this Court of jurisdiction to review the IJ's decision to deny Mr. Lopez bond. ECF No. 12 at 5-8.[1] But "district courts across the country" – including in this very district – "have exercised habeas jurisdiction to review challenges to the procedures used in immigration bond hearings." *Donouvo v. Bondi*, No. 1:26-CV-00192-KG-KK, 2026 WL 776365, at *1 (D.N.M. Mar. 19, 2026) (collecting cases); *D.G.S.D. v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-00395-CDL-AGH (M.D. Ga. Feb. 3, 2026) (considering noncitizen's motion to enforce on the merits, but denying relief after finding no legal error in IJ's bond decision). This is unsurprising, given that "claims that the discretionary process itself was constitutionally flawed are cognizable in federal court on habeas because they fit comfortably

[1] Respondents cite no authority in support of his novel application of § 1252(a)(2)(B)(ii) to this case. That is most likely because 8 USC 1252(a) *et seq.* governs "Judicial review of orders of removal," and is thus not applicable to Mr. Lopez's bond proceedings. *See* 8 U.S.C. 1252. In any case, because the terms of § 1252(a)(2)(B)(ii) are nearly identical to that of § 1226(e) in referring to discretionary decisions of the Attorney General, Respondents' mistaken argument about § 1252(a)(2)(B)(ii) fails for the same reasons as their mistaken argument about § 1226(e). For the sake of brevity, Mr. Lopez will focus only on § 1226(e) in this Reply.

within the scope of § 2241." *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (internal citation or quotation omitted).

Notably, Respondents cite extensively to *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331 (M.D. Ga. Nov. 16, 2020) throughout their Response, but fail to cite to the subsequent decision of this Court in *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-CV-93 (HL), 2021 WL 5413661 (M.D. Ga. Jan. 15, 2021), where the Court considered J.G.'s motion to enforce following the court-ordered bond hearing before an IJ. In the first *J.G.* decision, the Court ordered the IJ to hold a bond hearing for the noncitizen under § 1226(a), but with the added procedural protection of requiring DHS to prove, by clear and convincing evidence, that J.G. was a flight risk or a danger. 501 F. Supp. 3d at 1342. J.G.'s motion to enforce argued that the IJ had failed to comply with the court's order by not properly holding DHS to this heightened burden. 2021 WL 5413661 at *2. The Court held that § 1226(e) did not bar its review of this legal question since "[w]hether the IJ used the correct standard and correct burden is a legal question, not subject to the IJ's discretion." *Id.* (citing *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016), *overruled in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2 (2023)).

Here, Mr. Lopez is raising legal claims arising from the IJ's conduct at the February 13 bond hearing and is not merely "couching the issues in constitutional terms," as Respondents allege. ECF No. 12 at 2. These claims touch on the "fundamental requirement of due process . . . to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). It is not in the IJ's discretion to ignore the evidence before her, decide the case before hearing from both sides, or apply generic reasoning to deny release to numerous noncitizens, including Mr. Lopez, regardless

of their individual circumstances. Whether the IJ's conduct violated Mr. Lopez's due process rights is a legal question, and this Court has jurisdiction to answer that question.

III. Appealing to the BIA is not required and would be futile and inadequate.

Respondents urge this Court to require Mr. Lopez to seek redress for his due process claims by appealing to the Board of Immigration Appeals ("BIA"). ECF No. 12 at 9-10. However, the Court should not impose a BIA appeal as a prudential exhaustion requirement because doing so would not provide Mr. Lopez with adequate relief, would be futile due to the lengthy administrative resolution process, and would cause him irreparable harm by continuing to deprive him of his liberty. Additionally, administrative exhaustion is not necessary to develop the record because Mr. Lopez has submitted all the evidence he provided to the IJ ahead of his bond hearing, ECF Nos. 7-6, 7-7, and 7-8, and Respondents have graciously submitted the official audio recording from that hearing, ECF No. 12-1.[2]

As Respondents acknowledge, exhaustion of administrative remedies is not a jurisdictional requirement under § 2241. ECF No. 12 at 9 (citing *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015)). Moreover, "it is well established that exhaustion in the § 2241 context can be excused." *Alarcon v. Gallagher*, 2021 WL 9385236, at *3 (N.D. Ga. Apr. 30, 2021). *See also Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) ("[A] court may waive the prudential exhaustion requirement if administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void" (internal quotation marks omitted)); *J.N.C.G. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at *3 (M.D. Ga. Aug. 26,

[2] Mr. Lopez trusts that Respondents' submission of the official audio recording resolves the Court's questions regarding the recordings that Mr. Lopez sought to submit and obviates the need for further briefing on that matter. *Cf.* ECF No. 11, Order for further briefing on audio exhibits.

2020) (waiving exhaustion of administrative remedies for constitutional challenge to length of immigrant detainee's detention).

Requiring Mr. Lopez to appeal the IJ's bond decision to the BIA would necessarily prolong his unjustified detention for several more months at least, past the critical point of his removal proceedings adjudication. *See Picado v. Hyde*, No. 26-cv-65, 2026 WL 352691, at *6 (D.R.I. Feb. 9, 2026) ("This Court will not require Mr. Picado to sit in an ICE detention facility for six months while he awaits a BIA decision."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248–49 (W.D. Wash. 2025) ("According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024."). The immigration court is fast-tracking his removal proceedings, with a decision on his asylum application likely to come as soon as next month, well before the BIA could render a decision on his bond appeal. Because of these conflicting timelines, appealing the IJ's bond decision to the BIA would be futile.

Even if the BIA were to decide Mr. Lopez's bond appeal before his removal proceedings were resolved, it could not provide him with adequate relief, further rendering such an appeal futile and causing irreparable harm. The BIA is not equipped to determine whether the outcome of Mr. Lopez's bond hearing was predetermined under the IJ's "no bond" policy, let alone whether the bond hearing complied with an order from a federal court.[3] *See J.C.G. v. Genalo*, 1:24-cv-8755, 2025 WL 88831, at *5 (S.D.N.Y. Jan. 14, 2025) ("The Board lacks jurisdiction to reach Petitioner's constitutional claims."); *see also J.G.*, 501 F. Supp. 3d at 1349 (M.D. Ga. 2020) (requiring noncitizen to appeal to BIA to remedy alleged regulatory violation, but not requiring exhaustion of administrative remedies for constitutional claims). Appealing to an agency which would not be

[3] The assertions of current EOIR Director Daren K. Margolin denying any such policy and stating the obvious ("Immigration judges are required to follow all orders by United States district court judges.") should be given limited evidentiary weight, if any, given that the Director's declaration does not speak to the particular facts and circumstances of Mr. Lopez's case. ECF No. 12-2 at 2.

able to correct its own errors would thus be "inadequate or not efficacious," *Hernandez*, 872 F.3d at 988.

For these reasons, Mr. Lopez's situation is distinguishable from the handful of district court decisions Respondents rely on to support their exhaustion argument. *Cf.* ECF No. 12 at 9. The Court should not require Mr. Lopez to pursue a futile, inadequate BIA while he languishes in detention due to the government's refusal to follow this Court's prior order.

IV. As a Remedy for These Due Process Violations, This Court Should Order Mr. Lopez's Immediate Release or a Constitutionally Adequate Bond Hearing.

Mr. Lopez agrees with Respondents that "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." ECF No. 12 at 12 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Mr. Lopez also agrees that the three-factor *Mathews* test applies to Mr. Lopez's due process claims. However, Mr. Lopez strenuously disagrees with Respondents' analysis of the interests involved here and of procedures required to sufficiently protect those interests. Proper consideration of the *Mathews* factors shows that the balance of equities tips sharply in Mr. Lopez's favor, such that immediate release or, at minimum, a new bond hearing with additional procedural protections is required.

A. Mr. Lopez has a strong interest in being free from arbitrary government detention.

Mr. Lopez has a fundamental right to be free from detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("The interest in being free from physical detention" is "the most elemental of liberty interests."). Yet Respondents attempt to eviscerate Mr. Lopez's liberty interest by repeating the same flawed logic that *this Court already rejected when it conditionally granted Mr. Lopez's habeas petition*, arguing essentially that Mr. Lopez should be treated as if he were still at the U.S.-Mexico border waiting to be let in. ECF No. 12 at 14-16. This flawed logic is crystallized in Respondent's mistaken assertion that "Mr. Lopez's release on an order of recognizance was a form of humanitarian parole . . . under 8 U.S.C. § 1182(d)(5)(A)." ECF No. 12 at 12 n.3. Mr. Lopez's

release on recognizance was actually a form of conditional parole under § 1226(a)(2)(B), which is "legally distinct from release on humanitarian parole under" § 1182(d)(5)(A). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023). Significantly, *conditional* parole is only available to noncitizens like Mr. Lopez who are detained under § 1226(a) (and are thus bond eligible), while *humanitarian* parole is the sole mechanism of release for individuals detained § 8 U.S.C. 1225(b) (who are generally not bond eligible). In conditionally granting Mr. Lopez's habeas petition, this Court already ruled that Mr. Lopez is detained under § 1226(a). Yet Respondents still insist that Mr. Lopez should be treated, for due process purposes, as if he were in the class of noncitizens covered by § 1225(b).

Respondents also misread the first *J.G.* decision as supporting their argument that Mr. Lopez's liberty interest is *de minimis* because he has not been formally admitted into the United States. ECF No. 12 at 10-12, 14, 15-16. The strength of a noncitizen's liberty interest "may vary depending upon [the noncitizen's] status and circumstance[s]," including their manner of entry and ties to the United States. *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001). Accordingly, the strength of noncitizens' varying liberty interests is not delineated by a simple binary of whether the noncitizen has been formally admitted or not, as one might mistakenly conclude from relying solely on *J.G.*, but rather exists on a spectrum. *See Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950) ("The [noncitizen], to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society."). On the high end of the spectrum would be a lawful permanent resident ("LPR") with long-standing family and community ties to the U.S., but who has been charged as removable. *See, e.g., Demore v. Kim*, 538 U.S. 510, 547 (2003) ("The law therefore considers an LPR to be at home in the United States, and even when the Government seeks removal, we have accorded LPRs greater protections

than other aliens under the Due Process Clause.") (Souter, J., concurring in part and dissenting in part). On the low end stands an "arriving alien" with no substantial ties to the U.S. who is detained while attempting to enter the U.S. and remains detained for the duration of his expedited removal proceedings under § 1225(b)(1). *See generally Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

Mr. Lopez stands somewhere in the middle of this spectrum, and his liberty interest is therefore much more significant than Respondents would have the Court believe. Although he has not been formally admitted to the United States, he has developed significant ties to the country since seeking refuge here in 2021. DHS has granted him lawful employment authorization, and he has been gainfully employed and paid his taxes for the past several years. He has family members in the United States, including a U.S. citizen relative who is willing to be his bond "sponsor," and his elderly mother and sister, who are also asylum-seekers. Mr. Lopez has developed significant ties to the United States and has a strong liberty interest in being free from unjustified detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. This factor weighs heavily in his favor.

B. The Risk of Erroneous Deprivation Is Already Established, and the Probable Value of Additional or Substitute Procedural Safeguards Is High.

The risk of erroneous deprivation of Mr. Lopez's liberty under EOIR's current bond practices and the value of additional or substitute procedural safeguards could not be clearer in this case. Respondents insist at length that other courts not binding on this Court have repeatedly held EOIR's normal bond procedures under § 1226(a) past constitutional muster. ECF No. 12 at 13-14. But as Respondents acknowledge, in *J.G.*, the Court found that this factor weighed in the noncitizen's favor because "[t]he risk of erroneous deprivation under the [§ 1226(a)] bond

procedure is high," *J.G.*, 501 F. Supp. 3d at 1337. Respondents attempt to explain this holding away as inappropriate policy considerations and for allegedly failing to realize that the floor for constitutionally adequate bond procedures for noncitizens is actually much lower, in Respondent's opinion. *Cf.* ECF No. 12 at 16-17 *with J.G.*, 501 F. Supp. 3d at 1337-39. Nevertheless, the reasoning of *J.G.* on this point is persuasive.

Moreover, other courts' approval of the normal bond procedures under § 1226(a) still does not account for the IJ's conduct in Mr. Lopez's specific bond hearing, including her: failure to review the evidence in support of bond, apparent typing up of her decision before Mr. Lopez's immigration counsel presented any argument, and reliance on generic "reasoning" that did not account for Mr. Lopez's individual circumstances. Nor does it respond to the extrinsic evidence Mr. Lopez has provided of the systematic degradation of due process protections within EOIR in the past year and this IJ's "no bond" practice. This evidence leaves no doubt that the normal bond procedures under § 1226(a), *as applied in Mr. Lopez's case*, are insufficient to protect against erroneous deprivation of his liberty. This factor therefore favors Mr. Lopez.

In evaluating the probable value of additional safeguards, it would be reasonable for the Court to conclude that no additional safeguards can reasonably be expected to protect Mr. Lopez's significant liberty interest, given the IJ's prior conduct at the bond hearing and in other cases and the highly relevant current context at EOIR. The Court would not be alone in recognizing immediate release as the appropriate remedy for the agency's failure to follow its order. *See* ECF No. 7-3 at 17-19 (collecting cases).

In the alternative, and at a minimum, the Court can and should order a new bond hearing with the burden of proof on DHS, along with other procedural safeguards. *See* ECF No. 7-3 at 19-20 (requesting four procedural safeguards similar to what other courts have imposed). As

recognized in *J.G.*, "[w]here the risk of erroneous deprivation is high, and the deprivation the individual faces is severe, then modest, additional procedural safeguards carry high value." 501 F. Supp. 3d at 1338–39 (citing *Addington v. Texas*, 441 U.S. 418, 426 (1979)). Despite Respondents' protests, Mr. Lopez's proposed safeguards following Respondents' violation of the Court's order are modest, reasonable, and appropriate to the situation at hand.

C. The Government's Interest in Detaining Mr. Lopez Is Minimal.

"[D]etaining an alien requires more than the rationality of a general detention statute; any justification must go to the alien himself." *Demore*, 538 U.S. at 552 (Souter, J., concurring in part and dissenting in part). Unable to substantively justify the particular need for Mr. Lopez to remain detained, Respondents instead point to the Government's generic "interest in enacting and enforcing its immigration laws." ECF No. 12 at 18-20. This is a valid governmental interest, present in the background of every immigrant habeas case, but it says nothing about why Mr. Lopez must now be detained, nor does it acknowledge that ICE lawfully released Mr. Lopez on his own recognizance previously or that no circumstances justifying re-detention have since arisen. Respondents also point to "the Government's interest in controlling admission of noncitizens at the border," as recognized in *J.G.*, 501 F. Supp. 3d at 1339, *but that has nothing to do with Mr. Lopez's current detention*, which occurred years after he entered the United States. *Id.* at 1339 ("While the Government's power over immigration law is probably at its height at the border, those government interests do not justify Petitioner's detention."). All evidence in this case shows that the Government's interest in reducing flight risk and danger to the community was more than adequately served already by having Mr. Lopez regularly check in with ICE as he moved through the asylum process – at much lower costs to taxpayers – a requirement with which he had consistently complied. *Id.* at 1340 ("Incarceration that serves no legitimate purpose wastes taxpayers' money and hinders judicial efficiency." (citation omitted)). Neither in the bond hearing

nor in their Response here have Respondents articulated a legitimate reason for Mr. Lopez to be kept in custody hundreds of miles from his immigration counsel, his family, and his community. This factor therefore favors Mr. Lopez or is neutral at worst.

CONCLUSION

For the foregoing reasons, the Court should enforce its prior order and order Mr. Lopez's immediate release. Alternatively, the Court should order a new bond hearing with the additional procedural safeguards Mr. Lopez has requested.

Dated: March 23, 2026

Respectfully submitted,

/s/ F. Evan Benz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March 2026, a copy of the foregoing Reply to Response to Motion to Enforce was served via CM/ECF on all parties and counsel receiving electronic notice in this case.

/s/ F. Evan Benz
Pro Bono Counsel for Petitioner