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**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLORADO**

**Gilberto Quiroz Zacarias,**
**Petitioner,**

v.

**Markwayne Mullin**, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting Director U.S. Immigration and Customs Enforcement, in his official capacity; **Garrett J. Ripa**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Field Office, in his official capacity; **Sirce Owen**, Acting Director of Executive Office for Immigration Review, in her official capacity; **Juan Baltasar**, Warden of the Denver Contract Detention Facility, in his official capacity,
**Respondents**.

**Case No. 1:26-cv-00574-WJM**

[redacted]

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241**

## INTRODUCTION

Petitioner remains unlawfully detained notwithstanding this Court's prior Order granting habeas relief and directing that he be afforded a bond hearing under 8 U.S.C. § 1226(a). Although Respondents conducted a bond hearing on March 20, 2026, the proceeding did not comply with the substance of this Court's Order or the requirements of the Fifth Amendment.

The Immigration Judge issued a conclusory denial that failed to engage with the evidentiary record, disregarded binding precedent governing custody determinations, and relied on improper and unsupported arguments advanced by the Department of Homeland Security.

As reflected in the Immigration Judge's written order, the Court found that DHS met its burden but provided no analysis of the evidence submitted by Petitioner. See Exhibit 1. The record demonstrates that Petitioner submitted substantial evidence addressing the relevant custody factors, yet none of that evidence was meaningfully considered.

Accordingly, Respondents have complied with the form—but not the substance—of this Court's Order. Because the Government has already been afforded a full opportunity to justify detention and failed to do so in a constitutionally adequate manner, Petitioner's continued detention is unlawful and immediate release is required.

This case is therefore no longer about whether Petitioner is entitled to a bond hearing, but whether Respondents complied with this Court's Order in a constitutionally adequate manner.

**JURISDICTION AND VENUE**

This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Petitioner's detention and to enforce compliance with its prior habeas Order. See *Jennings v. Rodriguez*, 583 U.S. 122, 138 (2018); *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004).

This Court previously granted habeas relief and ordered Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within seven days, placing the burden on the

Government to justify detention. The Court retains authority to determine whether that Order was meaningfully complied with.

Venue is proper because Petitioner remains detained in this District.

## PROCEDURAL HISTORY

Petitioner filed a petition for writ of habeas corpus challenging the legality of his detention. On March 13, 2026, this Court granted habeas relief and ordered Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days.

On March 20, 2026, a bond hearing was conducted before an Immigration Judge, and bond was denied. See Exhibit 1. Respondents thereafter filed a notice asserting compliance based solely on the occurrence of that hearing. See Doc. 14. Following that filing, Respondents moved to vacate in part this Court's Order. See Doc. 15. Petitioner filed a response opposing vacatur, asserting that the bond hearing was not constitutionally adequate. See Doc. 17.

The Court subsequently granted Petitioner leave to file an amended petition seeking alternative habeas relief, and this Amended Petition follows. See Doc. 18.

## STATEMENT OF FACTS

Petitioner has resided in the United States since 2004 and has substantial equities, including four U.S. citizen children, longstanding employment, business and property ownership, tax history, a stable residence and a sponsor with a sworn affidavit attesting to his commitment to support him upon release. Petitioner submitted a comprehensive evidentiary record in support of release, including proof of physical presence, family ties, criminal history, and sponsor

documentation. See Exhibit 2. This evidence was submitted to meet Petitioner's burden of proof and directly addressed the factors required under *Matter of Guerra*, 24 I&N, Dec. 37. BIA 2006, including family ties, length of residence, and community support.

Respondents' submission to the Immigration Court included a Record of Deportable /Inadmissible Alien reflecting prior immigration encounters and minor, nonviolent offenses. See Exhibit 3. However, neither DHS nor the Immigration Judge relied on this information in any meaningful way to support a finding that Petitioner posed a danger to the community or a flight risk. The Immigration Judge's decision contains no discussion of this evidence and no explanation of how any facts in the record support continued detention. See Exhibit 1.

This omission is not harmless—it is dispositive. Under this Court's Order, the Government bore the burden to justify continued detention by clear and convincing evidence. While Petitioner bore the burden of producing evidence demonstrating that he is not a danger or flight risk, Petitioner satisfied that burden through substantial documentary evidence, including proof of long-term residence, family ties, employment history, and a verified sponsor. See Exhibit 2. The Government, in turn, was required to meet its burden with competent, evidence-based findings.

That did not occur. DHS presented no probative evidence connecting Petitioner to danger or flight risk and instead relied on unsupported assertions, inaccurate characterizations of the record, and arguments outside the proper scope of a bond proceeding. DHS improperly shifted the focus of the hearing to the merits of Petitioner's cancellation of removal application, arguing that hardship had not been sufficiently established. Such arguments are legally impermissible in custody proceedings, which must remain distinct from adjudication of the

underlying relief. See *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999). Although an Immigration Judge may consider the existence of relief in a limited sense, the proceeding cannot become a substitute merits determination. See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

DHS further relied on arguments not grounded in the evidentiary record, including assertions regarding the geographic location and financial capacity of Petitioner's sponsor, despite the record demonstrating that Petitioner's sponsor is his brother-in-law who submitted a sworn affidavit confirming housing and financial support. See Exhibit 2. DHS also mischaracterized Petitioner's criminal history by asserting that he had been convicted of driving without a license, when the record reflects only withheld adjudications and a pending matter. Id. DHS additionally relied on a purported 1999 "conviction" referenced in its own submission, despite the undisputed fact that Petitioner did not enter the United States until 2004—a fact established in the record and not disputed by DHS. See Exhibits 2 and 3.

The Immigration Judge did not address or resolve any of these deficiencies. Instead, the decision consists of a conclusory assertion that DHS met its burden, without identifying any supporting facts, weighing any evidence, or explaining any reasoning. A bare conclusion is not proof.

The Immigration Judge's ruling further reflects a failure to properly apply the governing burden framework mandated by this Court. During the bond hearing, the Immigration Judge expressly stated that she would not "comment on the District Court Judge's interpretation of the burden in bond hearings," despite this Court's explicit directive assigning the burden to the Government to justify continued detention by clear and convincing evidence. See Exhibits

1 and 4 . This demonstrates a refusal to meaningfully engage with the legal standard required by this Court's Order.

Moreover, the Immigration Judge issued alternative rulings, stating both that DHS met its burden and that, if the burden were on the respondent, Petitioner had not met his burden. See Exhibits 1 and 4. Where the Government bears the burden of justifying detention, due process requires that the adjudicator apply that burden through a reasoned evaluation of the evidence. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). A determination that simultaneously invokes both frameworks—without identifying the evidence supporting either—demonstrates that neither standard was meaningfully applied and confirms the absence of a reasoned adjudication.

Equally significant is the Immigration Judge's failure to evaluate Petitioner's evidence or reconcile DHS's assertions with the record. Petitioner's submission overwhelmingly demonstrated that he is neither a danger nor a flight risk, and counsel specifically rebutted DHS's contentions at the hearing. See Exhibit 2. The decision contains no reference to that evidence and no explanation of why it was insufficient.

This record reveals not merely error, but the absence of the process that this Court ordered. A proceeding in which the governing burdens are not applied, the evidence is not evaluated, and the adjudicator relies on improper merits-based reasoning cannot satisfy due process and cannot serve as a lawful basis for continued detention. Counsel's firsthand observations of the hearing are set forth in the accompanying declaration. See Exhibit 4.

## LEGAL FRAMEWORK

The Fifth Amendment prohibits deprivation of liberty without due process of law. Detention must be reasonably related to the purposes of preventing flight or danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Under 8 U.S.C. § 1226(a), detention requires an individualized custody determination.

The Board of Immigration Appeals requires Immigration Judges to consider specific factors, including family ties, length of residence, employment history, and community support. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Bond proceedings must remain distinct from merits adjudication. *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999). Evidence must be probative and fundamentally fair. *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988). Due process requires a meaningful opportunity to be heard and a reasoned decision. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

## CLAIMS FOR RELIEF

### FIRST CLAIM

Violation of Substantive Due Process

Petitioner's continued detention is not justified by danger or flight risk and violates *Zadvydas v. Davis*, 533 U.S. 678 (2001).

### SECOND CLAIM

Violation of Procedural Due Process

Petitioner was denied a meaningful opportunity to be heard.

Despite submitting extensive evidence in Exhibit 2, the Immigration Judge failed to address or evaluate that evidence. The decision contains no reasoning and no individualized analysis. See Exhibit 1.

**THIRD CLAIM**

Failure to Comply with Habeas Order

Respondents' submission to the Immigration Court included a Record of Deportable /Inadmissible Alien reflecting prior immigration encounters and minor, nonviolent offenses. See Exhibit 3. However, neither DHS nor the Immigration Judge relied on this information in any meaningful way to support a finding that Petitioner posed a danger to the community or a flight risk. The Immigration Judge's decision contains no discussion of this evidence and no explanation of how any facts in the record support continued detention. See Exhibit 1.

This omission is not harmless—it is dispositive. The Government bore the burden, as required by this Court's Order and by due process, to justify continued detention through an individualized, evidence-based determination. Yet the record reflects that DHS presented no competent evidence linking Petitioner to danger or flight risk, and the Immigration Judge made no findings grounded in the evidentiary record. Instead, the decision consists of a conclusory assertion that the burden was met, without identifying any facts, weighing any evidence, or explaining any reasoning. A bare conclusion is not proof.

The failure to engage with Exhibit 3 is particularly telling. Even assuming arguendo that the information contained therein could be relevant, due process requires that such evidence be meaningfully evaluated and connected to the statutory factors governing detention. See *Matter of Guerra*, 24 I&N Dec. at 40; *Mathews v. Eldridge*, 424 U.S. at 333. That did not occur. Neither DHS nor the Immigration Judge explained how prior immigration encounters or minor, nonviolent conduct establish present danger or a likelihood of flight. The complete absence of analysis demonstrates that the proceeding was not an individualized custody determination, but a perfunctory exercise inconsistent with due process and this Court's Order.

Equally significant is the Immigration Judge's failure to address Petitioner's substantial evidence supporting release. Petitioner submitted extensive documentation establishing more than twenty years of residence, four U.S. citizen children, consistent employment and tax history, and a verified sponsor prepared to provide housing and financial support. See Exhibit 2. Under binding precedent, this evidence was required to be considered. *Matter of Guerra*, 24 I&N Dec. at 40. The decision contains no reference to any of it. The failure to evaluate both favorable and unfavorable evidence confirms that no reasoned adjudication occurred.

This record reveals not merely error, but the absence of the process that this Court ordered. The Government was afforded a full and fair opportunity to justify detention and failed to do so.

**FUTILITY OF ADMINISTRATIVE REVIEW**

Administrative review is not a meaningful remedy.

Based on counsel's experience, including a recent appeal, the Board of Immigration Appeals has dismissed bond appeals on jurisdictional grounds without reaching the merits of custody determinations.

As a result, an appeal would not provide meaningful review of the evidentiary deficiencies present here and would only prolong detention.

## RELIEF IS REQUIRED

Petitioner has already been detained for a prolonged period and has undergone a constitutionally deficient bond proceeding.

The Government had a full opportunity to meet its burden and failed.

Petitioner, by contrast, met his burden through substantial documentary evidence. See Exhibit 2.

Requiring further proceedings would only prolong unlawful detention and reward non-compliance.

Immediate release is the appropriate remedy.

## PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Declare that Respondents failed to comply with this Court's prior Order;
2. Declare that Petitioner's continued detention violates the Fifth Amendment;

3. Order Petitioner's immediate release from custody;

4. Grant any other relief the Court deems just and proper.

**Dated this 6th day of April, 2026.**

Respectfully submitted:

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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner Gilberto Quiroz Zacarias and submit this verification on behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 6th day of April, 2026.

By: */s/ Nera Shefer*
Nera Shefer, Esq.

| LIST OF EXHIBITS | |
|---|---|
| Exhibit 1 | *Decision of the Immigration Judge* |
| Exhibit 2 | Petitioner's evidence of physical presence; criminal record; children born in the U.S. and sponsor. This evidence was submitted with the bond packet filed with the Immigration Court to support his burden of proof. [1] |
| Exhibit 3 | DHS's filing with the Immigration Court in support of their burden or proof for continued detention. |
| Exhibit 4 | Counsel's affidavit |

[1] The original bond packet filed was larger containing several letters of support no part of this filing.

## CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

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