

Magistrate Judge Grady J. Leupold

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Maria LOYA MEDINA

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,

Respondents.

Case No.: 2:26-cv-00772-GJL

**PETITIONER'S REPLY TO
RESPONDENT'S
SUPPLEMENTAL BRIEFING**

PETITIONER'S REPLY TO RESPONDENTS' SUPPLEMENTAL REPLY
INTRODUCTION

The Court's supplemental briefing Order directs Respondents to address three specific issues that bear directly on the merits of Ms. Loya's habeas petition. Dkt. No. 18 at pp. 1-2. First, the Court asks whether the defects in Ms. Loya's bond hearing constitute legal error within this Court's habeas jurisdiction. *Id.* Second, the Court instructs Respondents to address the "legally sufficient basis, if any, for the IJ's bond denial decision," and to "identify where in the *record*, and based on what *evidence*, the IJ relied on" to reach a negative flight risk finding. *Id.* at p.2. (emphasis added). Third, the Court ordered Respondents to submit supporting evidence demonstrating whether the Immigration Judge's post-hoc bond memorandum reflects routine practice, and to explain the "legal basis" upon which the memorandum cured the legal defects at Petitioner's hearing. *Id.*

The Respondents' answers demonstrate why the petition must be granted and why Ms. Loya should be immediately released from unlawful executive detention. Respondents concede that under 8 U.S.C. § 1226(e) the Court has jurisdiction, Dkt. No. 20 at p. 4, but then set forth in their response a series of arguments that avoid the Court's questions, and that are contrary to law and have no factual support whatsoever, *Id.* at pp. 6-9. Their responses failed to articulate the actual legal framework the Immigration Judge applied at Petitioner's hearing and did not identify any record evidence upon which the Immigration Judge based his negative flight risk finding. *Id.* Their responses evaded this Court's question, because no substantive record exists in Petitioner's case—only a checkbox, generic order with no findings, no applied legal standard, and no evidentiary basis. Dkt. No. 5-11 at p.2; Dkt. No. 15-1 at p. 2. They again sidestepped the Court's question on the post-hoc bond memorandum. Dkt. No. 20 pp. 10-11.

The law forecloses reliance on a later-written memorandum to supply what the

1 contemporaneous record lacked. *W.T.M. v. Bondi*, Case No. 2:25-CV-02428-RAJ-BAT, 2026
 2 WL 262583, at *4 (W.D. Wash. Jan. 30, 2026); *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943).
 3 Respondents' inability to identify any legally sufficient basis for the Immigration Judge's bond
 4 determination, or any legal basis upon which even the post-hoc bond memorandum could
 5 possibly cure the constitutional defects at Petitioner's original proceeding, is itself telling.

6 The record shows Petitioner's bond proceedings before the Tacoma Immigration Court
 7 were "a sham." *Garcia Ortiz v. Henkey*, Case No. 1:26-cv-00043-BLW, Dkt. No. 28, 2026 WL
 8 948275, at *2 (D. Idaho Apr. 7, 2026). Respondents' failure to answer this Court's questions
 9 confirms why. Ms. Loya has been detained for over three months on the basis of a checkbox
 10 order form lacking any factual or legal analysis whatsoever. The only adequate remedy is her
 11 immediate release. *Perez-Velasquez v. Bondi*, Case No. 3:26-cv-01759-GPC-DDL, Dkt. 11, at
 12 p. 13 (S.D. Cal. April 16, 2026) (after finding bond hearing legally and constitutionally
 13 inadequate, ordering immediate release with reasonable conditions).

14 ARGUMENT

15 **I. The Absence of Any Contemporaneous Record is Fatal to Respondents' Defense 16 of Petitioner's Bond Hearing.**

17 Respondents misstate the relevant issue. Dkt. 20 at p. 3. Ms. Loya is not challenging the
 18 failure to provide a contemporaneous recording of the bond hearing as a per se violation of
 19 law. Dkt 1 at pp. 22-23; Dkt. 17 at pp. 7-10. Rather, she is challenging the failure of the
 20 immigration judge to make a reasoned decision based on the correct legal standard and the
 21 correct application of the legal standard to the facts adduced at the hearing. *Id.* The regulation
 22 the Respondents cite wholly contradicts their argument and the evidence in this case
 23 underscores the nature of the sham proceeding.

1 The regulation that Respondents assert in their defense of the proceedings, 8 C.F.R. §
 2 1003.19(f), actually contradicts their argument and proves why the Immigration Judge's
 3 decision in Ms. Loya's case is unlawful. Respondents argue that for bond hearings oral
 4 decisions satisfy due process but as a general matter of agency policy are not recorded. Dkt.
 5 No. 20 at pp. 3–4, 10–12 (citing ICPM ch. 8.3(e)(3), (e)(7)). In support of this position, they
 6 invoke 8 C.F.R. § 1003.19(f). *Id.* at pp. 10–11. But Respondents interpret and emphasize the
 7 regulation incorrectly. The regulation requires that the Immigration Judge's custody
 8 determination "shall be entered on the appropriate form *at the time such decision is made* and
 9 the parties shall be informed orally or in writing of the *reasons for the decision*." 8 C.F.R. §
 10 1003.19(f) (emphasis added). Here, there is no oral decision in Ms. Loya's case. Dkt. No. 5-
 11 11. The Respondents' assertion that "the IJ ... orally rendered his bond decision" is false and
 12 there is certainly no evidence of that oral decision. Dkt. 20 at p. 11. The only form provided
 13 "at the time such decision is made" is the generic checkbox order form containing no reasons
 14 for the decision, thus violating the regulation. Dkt. No. 5-10 at p.2; Dkt. No. 15-1 at p. 2.¹

15 The Respondents point to the "Memorandum of the Immigration Judge" of February 26,
 16 2026—eighteen days after the bond decision was made—as the form that satisfies the
 17 regulation. Dkt. 20 at pp. 10-11. But that fails as a matter of law for at least two reasons. First,
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19 ¹ Respondents' reliance on 8 U.S.C. § 1226(a) as providing for no procedural requirements in
 20 bond hearings is misplaced. The statute must be interpreted to be constitutional and in any event
 21 8 U.S.C. § 1226(e) would have to require the agency to create a record upon which judicial
 22 review is possible. In order to permit meaningful judicial review, an agency must "disclose the
 23 basis" of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 167–169 (1962)
 (internal quotation marks omitted); *see also SEC v. Chenery Corp.*, 318 U. S. 80, 94 (1943)
 ("[T]he orderly functioning of the process of review requires that the grounds upon which the
 administrative agency acted be clearly disclosed and adequately sustained."). That § 1003.19(f)
 permits oral delivery of a bond decision does not mean that decision may go unrecorded if that
 forms the basis of the agency action. Indeed, the failure to provide a reasoned decision at the
 time of the hearing is a per se abuse of discretion.

1 it was not issued “at the time such decision [was] made” in Ms. Loya’s case. Dkt. No. 5-14;
2 Dkt. No. 15-2. No one disputes the memorandum was issued eighteen days later. *Id.* Second,
3 it also was not created to serve the regulation’s purpose (which holds constitutional dimensions
4 of notice) of informing Ms. Loya of the reasons for the decision. 8 C.F.R. § 1003.19(f). Rather,
5 it was created *after* she appealed for the purposes of the appellate proceeding as a matter of
6 agency policy. 8 C.F.R. § 1003.38. That is, the immigration judge wrote the memorandum in
7 response to Petitioner’s appeal, not as the bond decision. Dkt. 20 at p. 12. The Immigration
8 Judge himself explained that he issued the bond memorandum “in the event that the Board of
9 Immigration Appeals finds that [Petitioner’s] initial waiver of appeal was not knowing,
10 voluntary, and intelligent.” Dkt. No. 5-14 at p. 4; Dkt. No. 15-2 at p. 4. The purpose of the
11 memorandum in the Immigration Judge’s own words, therefore, was not to articulate the
12 “reasons” for the bond decision under 8 C.F.R. § 1003.19(f); rather, it was issued as part of a
13 wholly separate legal appeal process to anticipate an appellate proceeding that had not yet
14 materialized. *Id.* There is no way of verifying that the memorandum accurately reflects what
15 occurred at the hearing, since the only contemporaneous record is devoid of any factual
16 findings or legal analysis. Dkt. No. 5-11 at p.2; Dkt. No. 15-1 at p. 2.

17 The evidence in this case underscores the nature of the sham proceeding. Respondents
18 cannot cure the due process defects at Ms. Loya’s hearing by pointing to the bond
19 memorandum. Under *SEC v. Chenery Corp.*, a reviewing court may not affirm agency action
20 on grounds the agency did not invoke at the time of the decision. 318 U.S. 80, 87 (1943). A
21 document prepared eighteen days after a hearing, only after Petitioner invoked her right to
22 appeal, is not a record of reasoning given at the time of the decision—it is a post-hoc
23 reconstruction of the hearing. *Chenery* forecloses reliance on such a record. *Id.* at 87.

1 The absence of any contemporaneous record is independently fatal under the second
2 *Mathews* factor, which requires this Court to evaluate the risk of erroneous deprivation through
3 the procedures used. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Respondents argue that
4 the existing procedures adequately protected Ms. Loya's liberty interest. Dkt. No. 20 at p. 14.
5 That evaluation is impossible here, as Ms. Loya's hearing produced nothing beyond a
6 boilerplate checkbox order form. Dkt. No. 5-11 at p.2; Dkt. No. 15-1 at p. 2. Without a record
7 of what procedures were actually followed, the risk of erroneous deprivation cannot be
8 assessed, let alone safeguarded against. *Mathews*, 424 U.S. at 335. Moreover, the risk of
9 erroneous deprivation is significant where the Government fails to follow its own procedures.
10 *Caisa Telenchana v. Hermosillo*, Case No. 2:26-CV-00363-GJL, 2026 WL 696806, at *12
11 (W.D. Wash. Mar. 12, 2026).

12 **II. The Immigration Judge's Bond Determination Lacks Any Legally Sufficient Basis**
13 **in the Record.**

14 The Court directed Respondents to provide the "legally sufficient basis, if any, for the
15 IJ's bond denial decision," and to "identify where in the *record*, and based on what *evidence*,
16 the IJ relied on" to reach a negative flight risk finding. Dkt. No. 18 at p. 2 (emphasis added).
17 Respondents fail to answer the Court's question. Rather than identify specific record evidence
18 establishing flight risk as a matter of law, Respondents point only to conclusions in a
19 memorandum this Court cannot lawfully rely upon. Dkt. No. 20 at p. 8.

20 Respondents invoke the abuse of discretion standard and argue that the Immigration
21 Judge's bond determination is entitled to deference. Dkt. No. 20 at p. 7 (citing *Martinez v.*
22 *Clark*, 124 F.4th 775, 784–85 (9th Cir. 2024)). But *Martinez v. Clark* arose from a full BIA
23 record with expressed reasoning, specific evidence considered, and relevant caselaw cited and
applied—precisely the kind of record that makes deference meaningful. 124 F.4th at 784.

1 Indeed, the Court in *Martinez v. Clark* instructs that where there is “an indication that
2 something is amiss, like if the [agency] misstates the record or fails to mention highly probative
3 or potentially dispositive evidence,” a reviewing court does not credit a “catchall phrase” to
4 the contrary. *Id.* Respondents’ reliance on the presumption that “the IJ satisfies the due process
5 requirement to consider all the evidence presented” fares no better, as that presumption too
6 requires a record to review. Dkt. No. 20 at p. 7 (citing *Larita-Martinez v. INS*, 220 F.3d 1092,
7 1095-96 (9th Cir. 2000)). Here, the only contemporaneous record lacks factual and legal
8 findings and, therefore, there is no basis to presume the Immigration Judge considered
9 anything. Dkt. No. 5-11 at p. 2; Dkt. No. 15-1 at p. 2. Respondents invoke a deference
10 framework that requires a record while simultaneously defending a proceeding that produced
11 none.

12 This Court has recently held that the same three predicates the Immigration Judge relied
13 on here—decades-old entry without inspection, use of a false Social Security number to work,
14 and supposed weakness of claims to immigration relief—cannot, without more, support a flight
15 risk finding as a matter of law. *Lima Soriano v. Hernandez*, --- F. Supp. 3d ---, 2026 WL
16 969764, at *5 (W.D. Wash. Apr. 10, 2026). It has further held that a conclusory bond denial
17 leaves the court “to speculate concerning how the immigration judge viewed the evidence in
18 light of the applicable factors,” which constitutes an abuse of discretion. *Vasquez Lopez v.*
19 *Hernandez*, --- F. Supp. 3d ---, 2026 WL 984151, at *3 (W.D. Wash. Apr. 13, 2026).

20 On April 14, 2026, this Court found abuse of discretion in a bond denial where no
21 record of the hearing was created. *Escalante Perez v. Hernandez*, Case No. C26-0956-TSZ,
22 Dkt. 19 at 3–4 (W.D. Wash. Apr. 14, 2026). As in Ms. Loya's case, *Escalante Perez* received
23 a bond hearing before the Tacoma Immigration Court pursuant to a federal court order, and

1 she was a long-term resident with no criminal history, steady employment, strong community
 2 ties, and two young children in need of her parental care. Case No. C26-0956-TSZ, Dkt. 19 at
 3 p. 5. The court concluded that because “no record of the bond hearing was created or provided
 4 for the Court’s review, and no explanation of the immigration judge’s reasoning has been
 5 offered, the Court is left without information concerning...whether the immigration judge
 6 considered the relevant (or indeed any) factors in reaching his decision,” constituting an abuse
 7 of discretion. *Id.* at p. 6. Ms. Loya’s case presents this Court with the same evidentiary void
 8 and warrants the same conclusion.

9 CONCLUSION

10 Respondents failed to comply with due process upon detaining Ms. Loya and then, again,
 11 when providing her a bond hearing. Respondents have conceded jurisdiction over the core
 12 claim, offered no record evidence supporting the Immigration Judge’s bond determination, and
 13 provided no legal basis on which the bond memorandum cures the defects in the original
 14 proceeding. Given the complete absence of due process in Ms. Loya’s case, immediate release
 15 is the only adequate remedy. Petitioner respectfully requests that this Court grant the petition
 16 and order her immediate release under reasonable conditions of supervision.

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 18 Dated: April 17, 2026

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**Appearing pro hac vice*