UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Isidro Alberto RAPALO CASTELLON, Petitioner, v. Warden of Florida Soft Side South; Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami Field Office, U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW. Respondents.	Case No. 2:26-CV-00732

PETITIONER'S MOTION TO ENFORCE
THIS COURT'S FINAL JUDGMENT

INTRODUCTION

Petitioner Isidro Alberto Rapalo Castellon, through undersigned counsel, respectfully moves this Court to enforce its prior judgment granting habeas relief. On March 27, 2026, this Court held that Petitioner's detention is governed by 8 U.S.C. § 1226(a), thereby ordering that Petitioner be released or receive a constitutionally compliant bond hearing within ten days of the order.[1] A bond hearing took place on April 02, 2026 before Immigration Judge Liviu Lungu in the Miami Krome Immigration Court. Petitioner respectfully submits that the hearing did not comply with this Court's order because the Immigration Judge ("IJ") failed to conduct a

[1] Doc. 12.

constitutionally adequate proceeding. Respondents continue to detain Petitioner under a framework that functionally mirrors mandatory detention, undermining the Court's order.

The IJ did not acknowledge any of the favorable *Guerra* factors—including his length of residence in the United States, nine people who wrote in support, steady employment, fixed address, marriage plans to a lawful permanent resident, relative with lawful status—and concluded that Petitioner is a flight risk due to the IJ's perceived speculative nature of immigration relief, unlawful entries, and lack of relatives with lawful status. Additionally, the IJ found that Petitioner failed to establish he is not a danger to the community resting exclusively on two DUI-related incidents that are approximately seventeen (17) and fourteen (14) years old, despite the record reflects that Petitioner has not reoffended in over a decade and has complied with all court-imposed conditions.

The IJ's reasoning was anchored not in a forward-looking assessment of whether Petitioner is likely to appear for future proceedings or Petitioner is a current danger to the community, but in a backward-looking account of Petitioner's unlawful entries and past criminal conduct, coupled with speculative assumptions, and a failure to engage with material evidence. In reaching his conclusion, the IJ: (1) speculated on the outcome of the immigration relief; (2) failed to meaningfully engage with material evidence; and (3) entirely ignored critical evidence, including Petitioner's rehabilitation.

Petitioner remains in the custody of the Department of Homeland Security at the Florida Soft Side South Detention Center. Petitioner respectfully requests that this Court find that the bond hearing failed to comply with this Court's order and order his immediate release, and in the alternative direct that a new hearing be conducted consistent with the requirements of procedural due process, at which the government bears the burden of justifying continued detention.

FACTUAL AND PROCEDURAL BACKGROUND

On March 27, 2026, this Court granted Petitioner's petition for a writ of habeas corpus, ordered his immediate release, and ordered that he receive a bond hearing. As this Court noted in its order, Petitioner has been in the United States since 2008, was not apprehended at the time of entry to the United States, and was apprehended by immigration officials on March 9, 2026.

The bond hearing took place on April 02, 2026 before IJ Liviu Lungu. Prior to that hearing, Petitioner submitted a voluminous evidentiary submission of approximately 60 pages in support of his request for release on bond. He submitted an employer letter, a lease agreement in effect since 2021 and corroborated utility records. He further submitted evidence related to DUI charges, including evidence that he successfully completed an alcohol education course and program. Petitioner also presented nine letters of support wherein the declarants included Petitioner's son residing in the United States, current employer, current landlord, numerous friends, and his fiancé, a lawful permanent resident, with whom he has maintained a committed relationship for over nine (9) years since 2017. Petitioner's fiancé's written statement establishes her willingness to support Petitioner, ensure his full compliance with all court obligations, their intention to marry and her plan to file a family-based immigrant petition on his behalf as an available form of immigration relief. Her statement further details Petitioner's rehabilitation over the course of their nearly decade-long relationship, describing the sustained and observable changes in his conduct, character, and sense of responsibility since 2017. Petitioner proposed a financial sponsor, his fiancé, who included proof of her lawful status in the United States, proof of her finances, and a letter of support.

The IJ found that Petitioner failed to establish that he is neither a flight risk nor a danger to the community, relying on a perceived speculative nature of immigration relief, unlawful entries, lack of relatives with lawful status, and reliance exclusively on Petitioner's old criminal record.

ARGUMENT

I. This Court has Jurisdiction to Review Petitioner's Due Process Claim.

As a threshold matter, this Court has jurisdiction to review Petitioner's due process claim. While 8 U.S.C § 1226(e) states that "the Attorney General's discretionary judgment regarding" detention or release of noncitizens under § 1226 "shall not be subject to review," the statutory provision does not bar review of constitutional challenges to those proceedings. *Miranda v Garland*, 34 F.4th 338, 352-53 (4th Cir. 2022). "[W]hether an immigration judge must consider certain factors" in § 1226(a) bond proceedings is a "'constitutional challenge' to the procedures adopted by the Attorney General for all detention decisions under § 1226(a). As a result, § 1226(e) does not bar [judicial] review." *Id.*, 34 F.4th at 353. *See also Mejia Orosco v. Lyons, et al.*, 1:25-cv-01762, Dkt. 20 at 4 (E.D. Va. Dec. 1, 2025) (Trenga, J.) (citing *Miranda*, 34 F.4th at 352-53, 358-59); *Mendez Trigueros v. Guadian, et al.*, 1:26-cv-00205, Dkt. 13 at 3-4 (E.D. Va. Feb. 18, 2026) (Trenga, J.); *Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025); *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991) ("[c]ourts have the inherent power to enforce compliance with their lawful orders[.]"); *Aguilon Fuentes v. Bondi, et al.*, 1:26-cv-00167, Dkt. 14 at 3 (E.D. Va. Feb. 24, 2026) (Trenga, J.); *Said v. Noem*, 3:25-cv-938, 2026 U.S. Dist. LEXIS 23475 (W.D. NC Feb. 4, 2026) (Cogburn, J.) ("Under § 1226(e), district courts have jurisdiction to review an Immigration Judge's discretionary bond denial only where that bond denial is challenged as legally erroneous or unconstitutional." (internal citation omitted)).

In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court held that § 1226(e) does not preclude "constitutional challenges to ... legislation authorizing [immigration] detention without bail." *Id.*, 538 U.S. at 517 (2003). In *Hatami v. Chertoff*, 467 F. Supp. 2d 637 (E.D. Va. 2006), Judge Ellis stated that if the petitioner "challenge[d] the constitutionality of the statutory framework permitting his detention without bail[,]" then § 1226(e) "would not preclude judicial review." *Id.*, 467 F. Supp. 2d at 640-41. However, Judge Ellis held that where a petitioner "challenges an IJ's bond decision and the adequacy of the procedures used in reaching that decision," *id.* at 639, the court does not have jurisdiction to review the decision. *Id.* at 641. Thus, he held that § 1226(e) precluded review of the petitioner's challenges to the IJ's decision to deny bond. *Id.* Respectfully, Petitioner disagrees. This Court ordered that the Federal Respondents provide Petitioner with his release or a bond hearing that comports with procedural and substantive due process. This Court has jurisdiction to decide whether the bond hearing Petitioner received was constitutionally adequate. Additionally, *Hatami* was decided before the Fourth Circuit issued its decision in *Miranda.*

In *Prieto-Romero v. Clark*, the Ninth Circuit held that § 1226(e) precluded review of the amount of the petitioner's bond set by the IJ. *Id.*, 534 F.3d 1053, 1067 (9th Cir. 2008). At the same time, the court stated that where a noncitizen "contends that an unreasonable bond amount precludes her release from detention that is statutorily unauthorized," such a challenge would be "a fit subject for judicial review." *Id.* Thus, the court suggested that § 1226(e) does not bar judicial review of constitutional challenges to bond proceedings. Later, in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), the Ninth Circuit held that the district court "had habeas jurisdiction to review Singh's claims of constitutional and legal error" in his habeas petition alleging that there were "various procedural and substantive due process violations" in his bond hearing. *Id.*, 638

F.3d at 1201-02. Although under § 1226(e), "the Attorney General's 'discretionary judgment … shall not be subject to review,' claims that the discretionary process itself was constitutionally flawed are 'cognizable in federal court on habeas because they fit comfortably within the scope of § 2241.'" *Id.*, 638 F.3d at 1202 (quoting *Gutierrez-Chavez v. INS*, 298 F.3d 824, 829 (9th Cir 2002)).

In *Portillo v. Hott*, this Court granted Rodriguez Portillo's habeas petition challenging his 14-month detention in immigration custody without a bond hearing. *Id.*, 322 F. Supp. 3d 698, 709 (E.D. Va. 2018) (Brinkema, J.) The IJ had found that the petitioner was subject to mandatory detention under § 1226(c) because he had been convicted of grand larceny. *Id.*, 322 F. Supp. 3d at 700. This Court held that "due process demands that Rodriguez receive an individualized inquiry into whether his continued detention fulfills the purposes of the statute," and that "at the bond hearing, the government must demonstrate that Rodriguez is either a flight risk or a danger to the community by clear and convincing evidence." *Id.* at 709. The petitioner requested that this Court "maintain jurisdiction to review the result of any bond hearing." *Id.* Pursuant to § 1226(e), this Court rejected the petitioner's request. *Id.* It appears that the jurisdictional question presented in this Petitioner's motion to enforce – whether § 1226(e) precludes judicial review of constitutional challenges to the adequacy of a bond hearing ordered by the Court – was not addressed in *Portillo*.[2]

This Court also has jurisdiction under § 1252(a)(2)(B)(ii). The statute provides that "no court shall have jurisdiction to review" any decision "of the Attorney General …. the authority for which is specified under this subchapter to be in the discretion of the Attorney General." *Id.* In *Miranda*, the court noted that in *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001), "the Supreme

---

[2] *See*, e.g., *Asemani v. Att'y Gen.*, 140 F. App'x 368, 376 (3d Cir. 2005); *Carrillo-Lozano v. Stolc*, 669 F. Supp. 2d 1074, 1079 (D. Ariz. 2009); *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453 (D.N.J. 2004).

Court held that § 1252(a)(2)(B)(ii) did not bar jurisdiction where the [noncitizens] 'challenge[d] the extent of the Attorney General's authority under the post-removal-period detention statute,' which 'is not a matter of discretion." *Miranda*, 34 F.4th at 353 n.6. "Section1252 (a)(2)(B), as interpreted by the Supreme Court, does not foreclose judicial review" of "challenges to the procedures used in a Section 1226 bond hearing." *Mejia Orosco*, Dkt. 20 at 4 (citing *Miranda*, 34 F.4th at 353 n.6). *See also Mendez Trigueros*, Dkt. 14 at 4; *Aguilon Fuentes*, Dkt. 14 at 3. Since Petitioner is not challenging the IJ's discretionary decision but rather that the IJ did not provide Petitioner with substantive and procedural due process, § 1252(a)(2)(B)(ii) does not preclude judicial review.

II. Petitioner's Bond Hearing Lacked Due Process

The question before this Court is not whether the IJ's bond determination was correct or incorrect. The question is whether the "standard bond hearing" this Court ordered—one that satisfies the requirements of procedural due process—actually took place. For the reasons set forth below, it did not.

Procedural due process requires, at minimum, a meaningful hearing—one in which the adjudicator considers the evidence presented, engages in reasoned analysis, and provides an explanation sufficient to permit review. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Supreme Court has identified three factors for evaluating whether a particular proceeding satisfies due process: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the Government's interest. *Id.* at 335.

The private interest at stake here is physical liberty—"the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("In our society liberty is the norm, and detention . . . is the carefully limited exception.") (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). When the private interest is this weighty, the procedures used to deprive an individual of that interest must be correspondingly robust.

As relevant here, due process requires that immigration detention "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas*, 533 U.S. at 690). Immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm, and must be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690–91. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

A bond hearing that has the form of due process but not the substance does not satisfy this standard. As set forth below, the IJ's proceeding failed to bear a reasonable relation to the legitimate purpose of assessing flight risk and dangerousness, was not accompanied by adequate procedural protections, and the risk of erroneous deprivation was high. The procedures used were deficient in multiple respects.

A. The IJ's Determination Relied on Speculation Regarding Petitioner's Likelihood of Immigration Relief

Petitioner intends to pursue withholding of removal in his removal proceedings. Notably, prior to his detention, Petitioner had filed an affirmative Form I-589, Application for Asylum and for Withholding of Removal with U.S. Citizenship and Immigration Services (USCIS) which remained pending.[3]

[3] Ex. A, p. 22. Petitioner's stamped appointment notice of a Form I-589 and Employment Authorization Document with the category of applicant of asylum (c8).

A noncitizen is eligible for withholding of removal when his life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. Petitioner claims he is afraid of returning to his country of origin, Honduras because his brother, Mario Rapalo, killed an individual in 2005. After this incident, members of the victim's family began to pursue, and attempt to harm Petitioner because of his familial association and physical resemblance to his brother. In the months preceding his departure to the United States in 2008, Respondent was subjected to multiple attempted attacks by these individuals. These incidents support a well-founded fear that he would face further harm if returned to Honduras on account of his membership in a particular social group defined by his family, which is a recognizable protected particular social group (PSG).[4]

The IJ nevertheless characterized Petitioner's claim as one involving generalized criminality and concluded that Petitioner had limited avenues for immigration relief disregarding long-standing jurisprudence recognizing family relations as a PSG. The record indicates that the IJ treated that conclusion as part of the flight-risk analysis. That reasoning is legally defective. A bond determination under 8 U.S.C. § 1226(a) requires an individualized assessment of whether the noncitizen is likely to appear for future proceedings. It does not permit the IJ to speculate about the ultimate merits of anticipated relief and then convert that speculation into evidence of flight risk.

Rather than grounding the flight-risk determination in a reasoned evaluation of Petitioner's likelihood of appearing, the IJ relied on his perceived speculative judgment about the

[4] *Perez-Sanchez v. U.S. Att'y Gen.*, 935 F.3d 1148, 1150 (11th Cir. 2019) ("A family debt wrongly inherited is still an inheritance. Absent the familial relationship between Mr. Perez-Sanchez and Mr. Martinez-Carasco, the cartel would never have hunted him and his partner down to begin with or continued persecuting them for months.
The evidence compels us to reject the BIA's conclusion that Mr. Perez-Sanchez's relationship to his father-in-law played only an 'incidental' role in the cartel's decision to persecute him. Id. at 1158.").

Petitioner's immigration case. That approach lacks a logical connection to flight risk and fails to satisfy due process. See *Alvarado Lopez v. Dillman*, 2026 WL 688958, at *7 (E.D. Va. Mar. 11, 2026) (finding that IJ's speculation as to the merits of the petitioner's I-130 Petition did not support an inference of flight risk and therefore "did not provide a constitutionally sufficient basis" for a flight-risk finding). See also *D.Y.E.H. v. Irwin Detention Center*, No. 7:25-cv-201 (WLS-AGH), (M.D. Ga. Apr. 6, 2026) ("[IJ]'s speculation as to Petitioner's success on future relief does not support any reasonable inference of flight risk."). The flaw is especially clear because eligibility for relief generally weighs in favor of appearance, not against it. A noncitizen who has a viable form of relief has a strong incentive to attend hearings and pursue that relief to completion. Treating possible relief as a negative factor in the bond analysis inverts the purpose of a custody determination. Accordingly, the IJ's reliance on the speculative nature of immigration relief reflects a legally erroneous and factually unsupported basis for finding flight risk.

B. The IJ Failed to Meaningfully Engage with Material Evidence Bearing on Flight Risk and Omitted Consideration for Mathews test.

Due process requires not merely that a hearing take place, but that it be meaningful. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) ("A fundamental requirement of due process is 'the opportunity to be heard at a meaningful time and in a meaningful manner.'") (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). "[I]n immigration bond hearings, due process requires the IJ to consider all relevant evidence proffered by the detainee to assess flight risk or danger." *Said v. Noem*, 3:25-cv-938, 2026 U.S. Dist. LEXIS 23475 at *14 (W.D. NC Feb. 4, 2026). A hearing is not meaningful if the adjudicator fails to consider material evidence, declines to provide a reasoned explanation, or reaches conclusions untethered to the record. The IJ's proceeding fell short of this standard in multiple respects.

A flight risk asks whether the individual is likely to appear for future proceedings. The *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006), factors encompass considerations such as (i) proof of fixed address; (ii) length of residence in the United States; (iii) family ties in the United States and whether any of these ties may entitle them to reside permanently in the United States; (iv) employment history; (v) record of appearance in court; (vi) criminal history, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (vii) history of immigration violations; (viii) any attempts to flee prosecution or otherwise escape from authorities; and (ix) manner of entry to the United States)—all of which speak to the likelihood of future compliance.

The Petitioner presented evidence of his extended period of residence in the United States for seventeen years; verified fixed address since 2021;[5] steady employment history;[6] his ties to the community including nine letters of support from his son, fiancé, employer, landlord, and numerous friends;[7] previous compliance with court orders;[8] a reliable sponsor, his fiancé, available and willing to support him, and his express willingness to comply with any conditions the Court may impose. Furthermore, the record establishes that Petitioner has substantial family ties in the United States. He has a son residing in the United States with a pending asylum application, four siblings, two of whom are U.S. citizens, and a lawful permanent resident fiancé with whom he has maintained a committed relationship for over nine (9) years. His fiancé submitted a written statement confirming her intent to marry Petitioner.[9] These are precisely the types of ties that bear directly on whether a noncitizen is likely to appear for future proceedings.

---

[5] Ex. A, p. 30. Petitioner's Lease agreement dated 2021 and Water Bill under Petitioner's name.
[6] Ex. A, p. 28. Petitioner's Employment Verification Letter.
[7]Ex. A, p. 64. Affidavit of Support from Petitioner's friends and family.
[8] Ex. A, p. 87. Petitioner's Community Service Work Sheet, Certificate of Completion of a Substance Abuse/Chemical Dependence Treatment Program, and a letter confirming completion of a DUI education curriculum.
[9] Ex. A, p. 90. Petitioner's Motion for Bond.

All of these factors weigh heavily on Petitioner's ability to receive correspondence and comply with court requirements as part of a flight risk assessment. Instead of considering those factors in their totality, the IJ focused only on the Petitioner's two unlawful entries, lack of family with lawful status, and the tangential fact, the IJ's perception that Petitioner's immigration relief was speculative. IJ failed to explain *how* Petitioner's lack of relatives with lawful status and backward-looking facts about Petitioner's manner of entry bear more heavily on the question of future appearance than the concrete ties that anchor Petitioner to this community and give him every reason to appear.

The letters of the other declarants—family, friends, and colleagues of Petitioner- were not given due weight. Similarly, the IJ did not engage with the network of family support reflected in the record. Instead, the IJ nevertheless focused narrowly on the absence of lawful status for his son and the fact that the marriage had not yet occurred, treating those facts as indicative of unreliability. A determination that selectively focuses on adverse facts while disregarding probative evidence of family support and stability does not satisfy Due process requirements.

All factors presented by Petitioner were not accounted for in the Immigration Judge's oral decision, nor his written decision, Rather they were simply not analyzed. The complete omission of this evidence from the IJ's analysis **heightens the risk of erroneous deprivation under the second *Mathews* factor**. The IJ's silence means the Court cannot determine whether the IJ considered and rejected this evidence or simply failed to consider it at all. Either way, the hearing was not the individualized assessment this Court's order contemplated. Procedural due process requires the adjudicator to consider the evidence presented; it does not permit the adjudicator to ignore it. *See Mathews*, 424 U.S. at 333, 349.

C. The IJ's Dangerousness Analysis Relied Exclusively on Old Criminal Records and Ignored Evidence of Petitioner's Rehabilitation.

The IJ relied exclusively on Petitioner's past criminal record in concluding Petitioner was presently dangerous. Reliance on seventeen (17) and fourteen (14) years old DUI records, with no other evidence indicating dangerousness and ignoring undisputed evidence of rehabilitation violated Due Process. Petitioner's DUI record sheds little light on the issue of Petitioner's potential danger to the community if released.[10] The record reflects that Petitioner has fully satisfied any obligations arising from his prior conduct and has demonstrated sustained rehabilitation over more than a decade. Petitioner successfully completed all court-imposed requirements, including community service, a Substance Abuse/Chemical Dependence Treatment Program, and a DUI education course[11]. Beyond formal compliance, Petitioner has not reoffended in over ten years, a fact that strongly evidences that the underlying conduct is neither ongoing nor likely to recur. During this extended period, Petitioner has remained compliant with all legal obligations and has made significant, documented changes to his lifestyle, including limiting alcohol consumption and maintaining stability in his daily conduct[12]. This combination of completed sanctions, sustained law-abiding behavior, and demonstrated behavioral reform establishes that Petitioner has paid his debt to society and no longer presents any basis to infer present danger.

In *Singh v. Holder*, 638 F.3d 1196, 1200–01 (9th Cir. 2011) the court made clear that "criminal history alone will not always be sufficient to justify denial of bond on the basis of

---

[10] In *Hayward v. Marshall*, 512 F.3d 536 (9th Cir. 2008), the Ninth Circuit held that old convictions are "no evidence" that release "would unreasonably endanger public safety."; See also *Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) ("The assessment of flight risk and danger to the community must be made on a current basis"); *Obregon v. Sessions, 2017 WL 1407889 (N.D. Cal. Apr. 20, 2017)* (Immigration judges must also consider the remoteness of the DUI and intervening events that might undermine a finding of dangerousness).

[11] Ex. A, p. 87. Petitioner's Community Service Work Sheet, Certificate of Completion of a Substance Abuse/Chemical Dependence Treatment Program, and a letter confirming completion of a DUI education curriculum.

[12] Ex. A, p. 64. Affidavit of Support from Petitioner's friends and family.

dangerousness. Rather, the recency and severity of the offenses must be considered." *See* also *Guerra*, 24 I. & N. Dec. at 40.[13] The immigration judge must also consider whether the immigrant's circumstances have changed such that criminal conduct is now less likely.[14] Here, the charges were imposed over a decade ago and there was no evidence that similar conduct, based on Petitioner's demeanor, temperament, or associations, was likely to recur. Evidence of criminal conduct grows less powerful as it becomes less current and the passage of time is undeniably relevant and the immigration judge must consider. Again, the record did not show that the IJ had adequately considered the full record before him, ignoring Completion of a Substance Abuse/Chemical Dependence Treatment Program, completion of a DUI education curriculum, and Petitioner significant changes like reduced access to alcohol considerably, and consumption only at his home.[15] Where Petitioner's only relevant record is nearly seventeen (17) and fourteen (14) years old and no other evidence indicating dangerousness was presented, the IJ's dangerousness finding is not rationally related to Petitioner's current risk and therefore violates Due Process.

Furthermore, other courts have declined to find that a DUI offense, or even multiple DUIs, can justify prolonged detention where the person has a strong record of rehabilitation and significant time sober. See *Ramos v. Sessions*, 293 F. Supp. 3d (N.D. California, 2018) at 1024 (with two recent DUIs, the most recent being sixteen months before the immigration judge's order, tin *Ramos*, the IJ found that the petitioner was a "danger to the community" based on two recent DUIs, the most recent being sixteen months before the IJ's order. 293 F. Supp. 3d at

---

[13] "Immigration Judges may look to a number of factors in determining whether an alien merits release from bond, as well as the amount of bond that is appropriate. These factors may include any or all of the following: ... (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses"

[14] *Id.* at 1205.

[15] Ex. A, ps. 47, 64 87, and 88.

1024-25. The district court held that "immigration judge overemphasized the seriousness of [the petitioner's] crimes and . . . gave unduly short shrift to her rehabilitation efforts.). *Id.* at 1037. In *Judulang v. Chertoff*, 562 F.Supp.2d 1119, 1125 (S.D. Cal. 2008), the IJ found that the petitioner was a present danger based on a twenty-year-old conviction for voluntary manslaughter, a seven-year-old conviction for DUI, and a five-year-old conviction for theft. 562 F. Supp. 2d at 1127. The district court held that "[w]here Petitioner's only relevant conviction for violence is nearly 20-years-old and no other evidence was put forward, the IJ's finding of present dangerousness was an error of law and the denial of bond was inappropriate." *Id.* Finally, in *Mau v. Chertoff*, 562 F. Supp. 2d 1107 (S.D. Cal. 2008), the IJ found that a petitioner who had been detained for three years posed a danger to the community based on three DUI convictions (two were misdemeanors, one was a felony) that were four to six years old. 562 F. Supp. 2d at 1116, 1118. The district court held that while the petitioner's past DUI convictions were serious, they alone could not meet the government's burden to show present and future dangerousness. *Id.* at 1118. The court based this holding on the length of detention, the petitioner's history of non-violent conduct, and his consistent record of institutional compliance. *Id.*

It is not constitutional error for an IJ to base their decision on the petitioner's criminal record, so long as the IJ analyzes the recency of the crimes and what (if any) actions the petitioner has taken to rehabilitate themselves. Here, the record did not show that the IJ had adequately considered the full record before him, ignoring Completion of a Substance Abuse/Chemical Dependence Treatment Program, completion of a DUI education curriculum, and Petitioner significant changes like reduced access to alcohol considerably, and consumption exclusively at his home, which the IJ did not appear to consider. Where Petitioner's only relevant record is nearly seventeen (17) and fourteen (14) years old and no other evidence indicating dangerousness was put forward, the IJ's finding of present dangerousness is not reasonably related to a legitimate regulatory purpose. **The second *Mathews* factor**—the risk of erroneous deprivation—is at its zenith when the adjudicator's framework makes a particular outcome functionally inevitable regardless of the evidence presented.

D. The Cumulative Effect of These Deficiencies Demonstrates That the Hearing Did Not Comply with This Court's Order.

Viewed in isolation, any one of the deficiencies described above would raise serious due process concerns. Viewed together, they demonstrate that the hearing this Court ordered did not take place.

The record before the IJ included ample evidence to mitigate any concerns related to flight risk and danger to the community. Against this record, the IJ relied on factors common to virtually every undocumented individual in removal proceedings— two illegal entries— lack of relatives with lawful status, and a perceived speculative nature of immigration relief, and concluded, without reasoned explanation, that these facts outweighed the totality of Petitioner's forward-looking evidence. He also relied on seventeen (17) and fourteen (14) years old DUI records, with no other evidence indicating dangerousness.

The IJ's decision had the form of a hearing but not the substance. The forward-looking evidence was not analyzed; the evidence that did not fit was ignored, mischaracterized, or weaponized. This is not the individualized, reasoned assessment that procedural due process demands and that this Court ordered.

Applying the *Mathews* framework, all three factors confirm that the procedures used were constitutionally inadequate. First, the private interest at stake—physical liberty—is of the highest order. *Hamdi*, 542 U.S. at 529. Second, the risk of erroneous deprivation through the procedures used, particularly the mischaracterization and disregard of record evidence, was high and increased the likelihood that the IJ reached an erroneous result. Third, the Government's legitimate interest in immigration enforcement does not require or justify proceedings that ignore evidence, make untested findings, and substitute a backward-looking catalog of past violations for the individualized, forward-looking assessment that due process requires. A new hearing that actually complies with due process imposes no undue burden on the Government; it simply requires the Government to prevail through constitutionally adequate procedures.

Moreover, the detention that results from the IJ's order does not "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. The IJ found that Petitioner is a flight risk and a danger to the community. But as demonstrated throughout the record, the IJ's flight risk determination was not grounded in a genuine, forward-looking assessment of whether Petitioner will appear or whether he is a current danger to the community. Detention premised on such reasoning—rather than on an individualized assessment of the evidence—is not reasonably related to the legitimate regulatory purpose of ensuring appearance. Due process does not permit it.

Where a federal court has ordered a constitutionally adequate bond hearing and the immigration court has failed to provide one, the district court possesses equitable authority to fashion an appropriate remedy—including ordering release. This Court gave the immigration court the opportunity to conduct a hearing that satisfies due process. That opportunity was not taken. Under these circumstances, remanding for yet another hearing before the same tribunal that produced these deficiencies would not adequately protect Petitioner's constitutional rights. Accordingly, this Court should exercise its equitable authority to order Petitioner's immediate release. In the alternative, this Court should order that a new bond hearing be conducted through constitutionally adequate procedures, at which the government bears the burden of justifying continued detention. *See Demore*, 538 U.S. at 527; *Marshall*, 446 U.S. at 242.

RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Find that the bond hearing did not comply with this Court's order requiring a hearing that satisfies the requirements of procedural due process;

2. Exercise its equitable authority to order Petitioner's immediate release, on such conditions as this Court deems appropriate, given the IJ's failure to conduct a constitutionally adequate hearing despite having been afforded the opportunity to do so;

5. In the further alternative, order that a new bond hearing be conducted before a different Immigration Judge, consistent with the requirements of procedural due process, including meaningful engagement with the evidence presented, reasoned analysis of the *Matter of Guerra* factors, at which the government bears the burden of proving—by clear and convincing evidence—that continued detention is necessary to serve a legitimate governmental purpose and that no less restrictive conditions of supervision would suffice, and notice and an opportunity to respond before adverse factual findings are relied upon; and

6. Grant such other and further relief as this Court deems just and proper.

CONCLUSION

Petitioner does not ask this Court to substitute its judgment for that of the Immigration Judge on the question of bond. But when this Court orders a hearing that satisfies procedural due process, the Court is entitled to conclude that the immigration court process has failed and to exercise its own equitable authority. Accordingly, the Court should order Petitioner's immediate release. In the alternative, order that a new bond hearing be conducted through constitutionally adequate procedures, at which the government bears the burden of justifying continued detention. Petitioner respectfully requests that the Court grant the Motion to Enforce the Court's Final Judgment requested herein.

Respectfully submitted,

Dated: April 16, 2026.

/s/ Calvin Azadi
Calvin Azadi (FL Bar #0124030)
Azadi Law P.A.
848 Brickell Ave., Ste. 747
Miami, FL 33131
P: (786)590-1529
F: (786)814-0715
E: calvin@azadilaw.com
Local Counsel for Petitioner

/s/ Fabbina Mosquera
Fabbina Mosquera(TX Bar #24140133)
Mosquera y Abogados PLLC
3350 NE 13th Cir Dr, Ste 109
Homestead, FL 33033
P: (786) 650-4640
E: fabbina@mosqueraimmigration.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Isidro Alberto RAPALO CASTELLON,

Petitioner,

v.

Warden of Florida Soft Side South; Garrett RIPA, Field Office Director of Enforcement and Removal Operations, Miami Field Office, U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

Respondents.

Case No. 2:26-CV-00732

Local Rule 3.01(g) Certification

Pursuant to Local Rule 3.01(g), undersigned counsel certifies that she conferred with counsel for Respondents on April 6, and 7, 2026 via email and telephone in a good-faith effort to resolve the issues raised in this motion. During these conferrals, undersigned counsel outlined the basis for this motion and requested that Respondents comply with the Court's Order and provide the relief sought. Respondents declined to do so. Accordingly, this motion is opposed.

Dated: April 16, 2026.

<u>/s/ Fabbina Mosquera</u>
Fabbina Mosquera (TX Bar #24140133)
Mosquera y Abogados PLLC
3350 NE 13th Cir Dr, Ste 109,
Homestead, FL 33033
P: (786) 650-4640
E: fabbina@mosqueraimmigration.com

CERTIFICATE OF SERVICE

The undersigned, attorneys, hereby certifies that, on April 16, 2026, they caused the foregoing Motion to be filed using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Calvin Azadi
Calvin Azadi
Florida Bar No. 0124030
Azadi Law P.A.
848 Brickell Avenue, Suite 747
Miami, FL 33131
P: (786) 590-1529
F: (786) 814-0715
E: calvin@azadilaw.com
Local Counsel for Petitioner

/s/ Fabbina Mosquera
Fabbina Mosquera
TX Bar No. 24140133
Mosquera y Abogados PLLC
3350 NE 13th Cir Dr, Ste 109
Homestead, FL 33033
P: (786) 650-4640
E: fabbina@mosqueraimmigration.com
Attorney for Petitioner