IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RAVIRAJH SIVANANTHARSHA, *Petitioner*, **v.** **FREDERICK J. AKSHAR II, in his official capacity as Warden of the Broome County Correctional Facility, et al;** *Respondents.*	**Civil Action No. 9:26-cv-00398-AJB**

PETITIONER'S NOTICE OF MOTION TO ENFORCE COURT ORDER

PLEASE TAKE NOTICE that Petitioner, through counsel, Matthew K. Borowski, Esq., hereby moves this Court to enforce its Order dated April 2, 2026 at Document 8 ordering Respondents to hold a bond hearing before an Immigration Judge within ten days at which "the government bears the burden of proving, by clear and convincing evidence that petitioner is either a flight risk or a danger to the community, justifying his continued detention without bond". Petitioner contends that while Respondents purported to hold a bond hearing, the considerations upon which it was determined that Petitioner constitutes a flight risk were so lacking in probative value as to that issue that their use in determining flight risk failed to provide the Petitioner with constitutionally sufficient due process. The Immigration Judge found Petitioner to be a flight risk and that no bond amount could ameliorate such flight risk, based solely on the fact that Petitioner's asylum matter was denied by an immigration judge and by the Board of Immigration Appeals, in addition to the IJ's misinterpretation that Petitioner was confused about his address, and the incorrect conclusion that Petitioner lacked community ties. The Immigration Judge did

not analyze or discuss why "Alternatives to Detention" could not serve to mitigate flight risk. This motion is supported by the accompanying Declaration of Anne Doebler, Esq., who represented Petitioner in the bond hearing.

PLEASE TAKE NOTICE THAT the motion will be heard at the Alexander Pirnie Federal Building & U.S. Courthouse, 10 Broad Street, Utica, NY 13501 on the papers as determined by the Court.

PLEASE TAKE FURTHER NOTICE that Petitioner intends to serve and file reply papers and, therefore, any papers in opposition to this motion are due twenty-one days after service of this motion, pursuant to Local Rule 7.1(a), unless otherwise ordered by the Court.

Dated: April 27, 2026

/s/ Matthew K. Borowski

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PETITIONER'S MOTION TO ENFORCE COURT ORDER AND INCORPORATED MEMORANDUM OF LAW

I. INTRODUCTION

Petitioner moves this Court to issue an order finding that Respondents failed to conduct a "bond hearing" as the hearing he was provided did not comport with due process. The immigration judge found Petitioner to be an flight risk and that no bond amount could ameliorate such flight risk, based solely on the fact that Petitioner's asylum matter was denied by an immigration judge and by the Board of Immigration Appeals, in addition to the IJ's misinterpretation that Petitioner was confused about his address, and the incorrect conclusion that Petitioner lacked community ties. The Immigration Judge failed to consider that Petitioner has a pending Petition for Review before the Second Circuit and the Second Circuit granted his Motion for a Stay of Removal, based upon a finding of a likelihood of success on the merits of the petition for review. The Immigration Judge did not analyze or discuss why any "Alternatives to Detention" could not serve to mitigate flight risk. The manner in which the hearing was held was violative of Petitioner's due process rights. Respondents are attempting to make an end-run

around the judiciary's near-unanimous rejection of the "bond denial policy" they attempted to promulgate through the flawed *Yajure Hurtado* decision.

II. LEGAL BACKGROUND

Where the considerations upon which an immigration judge relies in denying bond are lacking in probative value, the bond hearing is constitutionally deficient. *Manuel de Jesus Mendez Trigueros v. Robert Guadian, et al.*, No. 1:26-cv-205-AJT (Trenga, J.) (E.D.Va. February 18, 2026) (ordering new, "constitutionally compliant bond hearing" after finding that "the considerations upon which it was determined that Petitioner constitutes a flight risk were so lacking in probative value as to that issue that their use in determining flight risk failed to provide the Petitioner with constitutionally sufficient due process" after stating that "in assessing whether a bond hearing is constitutionally compliant, the Court must assess whether the considerations relied upon to determine whether bond is warranted has a similar evidentiary connection to the determining criteria of danger to the community or flight risk.").

Many Courts have gone further to address immigration judge end-runs around due process. *See, e.g., Solano v. Mason,* No. 2:26-cv-00045 (S.D.W.Va., Feb. 4, 2026) (ordering immediate release of detained noncitizen because "this Court has no faith that the Government would comply with an order to hold a bond hearing" and because "ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence," also finding that a bond hearing would be futile because noncitizens are being "systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier" and therefore there is "no chance any hearing that occurred would comport with due process.").

Other Courts are avoiding the bond hearing morass by concluding that re-detention without a pre-deprivation hearing violates due process and necessitates immediate release of the

Petitioner, particularly where the government has already determined a Petitioner is neither a flight risk nor a danger to the community and no material change in circumstances justifies the re-detention. See, e.g., *Morales Mendez v. Field Office Director,* No. 9:26-cv-337-ECC (Coombe, J.), (N.D.N.Y., March 16, 2026) (where "[p]etitioner's detention violates her rights under the Due Process Clause of the Fifth Amendment… [t]he appropriate remedy is release"); *see also*, e.g., *Perez v. Akshar,* No. 9:26-cv-00120-ECC (N.D.N.Y. Feb. 6, 2026) (Coombe, J.) (ordering immediate release in matter where detention was unlawful because Petitioner had previously been released on parole and re-detained without due process); *Gaspar v. Akshar*, No. 9:26-cv-00118-BKS (N.D.N.Y. Feb. 5, 2025) (Sannes, C.J.) (ordering immediate release in matter wherein detention was unlawful).

The Second Circuit has endorsed the *Mathews v. Eldridge* factors being used to determine what process is due to noncitizens in removal proceedings. *Black v. Decker*, 103 F. 4th 133, 147 (2d. Cir. 2024). Applying *Mathews* comports with the Supreme Court's guidance in *Jennings* that "`due process is flexible,' ... and ... `calls for such procedural protections as the particular situation demands.'" *Id.* citing *Jennings v. Rodriguez,* 583 U.S. 281, 314, (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)). The Supreme Court in *Mathews* identified three factors bearing on the constitutional need for procedural protections: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

III. THE BOND DENIAL POLICY

Bond hearings in immigration court sadly no longer provide even a semblance of adequate due process protection, in no small part because of Trump administration interference with the quasi-independence of the immigration courts. There has been an initiative to fire immigration judges based on perceived political lines. As of September 26, 2025, the administration has terminated 128 immigration judges ("IJs"). Former New York IJ David K.S. Kim explained the targeting criteria: "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."[1]

Former Baltimore IJ Emmett Soper stated: "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."[2] Former San Francisco IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."[3] Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation… Due process is dead in immigration courts."[4] Former Baltimore IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is

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[1] Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1.

[2] Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.

[3] Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.

[4] Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside.

exactly what they want."[5] Former Annandale, Virginia IJ Anam Petit observed: "There's a climate of fear…Judges feel like, if they step a toe out of line right now…or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings."[6] Former New York IJ Carmen Maria Rey Caldas similarly described immigration judges working "under 'constant threat' of getting fired if they don't follow certain rules from leadership."[7] Former San Francisco IJ Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'"[8] Former Boston IJ Sarah Cade reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice."[9]

The message to remaining immigration judges is unmistakable: neutrality is a terminable offense. No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. Any immigration judge assigned to Petitioner's bond hearing now operates under the understanding that granting bond may cost them their livelihood.

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[5] Poggio, *supra* note 8.

[6] Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/.

[7] Isabela Dias, *"Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9, 2025), https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/.

[8] Poggio, *supra* note 8.

[9] Poggio, *supra* note 8.

A parallel purge occurred at the BIA which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired.[10] The statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions.[11] Of those, 69 decisions (97%) favored the administration.[12] By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.[13] Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of one administration's appointees —speaks for itself.

To replace purged judges, the DOJ launched recruitment for what it explicitly marketed as "deportation judges."[14] DHS–a party in immigration proceedings before EOIR– promoted these openings on social media with enforcement-focused language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."[15]

Beyond personnel changes, EOIR's new acting director, Sirce E. Owen, quickly issued "a string of sharply worded policy memos" that immediately "[set] the tone for her leadership."[16]

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[10] Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undoc umented-immigrants/.

[11] Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29.

[12] Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration

[13] Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), https://www.justice.gov/eoir/volume-28. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

[14] Murphy Marcos *supra* note 2.

[15] dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

[16] *US army lawyer fired as immigration judge after defying Trump deportation agenda*, The Guardian (Dec. 19, 2025), https://www.theguardian.com/us-news/2025/dec/19/army-lawyer-fired-immigration-trump-deportation.

"Sources familiar with Owen described her as a "restrictionist loyalist" with a reputation for denying cases."[17] The Catholic Legal Immigration Network (CLINIC) observed that "these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration's clearly anti-immigrant views."[18] The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate "bias directed against DHS" or to be "adjudicatory outliers," at risk of "close examination and potential action";[19] a memorandum encouraging judges to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections;[20] and memorandums restricting immigration judges' ability to grant continuances[21] and administrative closure.[22]

Thus, it is clear that Petitioner cannot receive a fair bond hearing in compliance with due process from an immigration court system that has been co-opted into a deportation machine. Courts are increasingly finding that immigration court bond hearings do not comport with due process, and ordering immediate release instead. *See Solano v. Mason,* No. 2:26-cv-00045 (S.D.W.Va., Feb. 4, 2026).

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[17] Dias, *supra* note 8.

[18] Cath. Legal Immigr. Network, Inc., *Navigating EOIR Directives Under Trump 2.0: Practical Guidance for Advocates and Programs* (Apr. 22, 2025), https://www.cliniclegal.org/file-download/download/public/77642.

[19] Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf.

[20] Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), https://www.justice.gov/eoir/media/1396411/dl?inline.

[21] Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), https://www.justice.gov/eoir/media/1394086/dl.

[22] Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl?inline.

IV. ISSUES WITH PETITIONER'S PURPORTED "BOND HEARING"

Petitioner was granted a bond hearing on April 3, 2026, before immigration judge Kieran M. Lalor. **See Exhibit A**, Declaration of Anne Doebler. Bond was denied entirely, despite Petitioner's lack of any criminal history, his fixed address, possession of a work permit, strong employment history, strong character support letters, sponsor letters, and proof of support from the local Tamil community in Buffalo, New York.

The immigration judge made an inference that Petitioner is a "flight risk" because his asylum case was denied by the immigration judge and by the Board of Immigration Appeals, but did not seem to take into account the fact that the Second Circuit has found a likelihood of success on the merits and granted his motion for a stay of removal as it continues to adjudicate his Petition for Review.

Indeed, the immigration judge claimed several reasons for denial of bond, claiming that Petitioner was "confused" about his address and did not have strong community ties – but Petitioner has resided in Buffalo for years and has a fixed address.

It is unfathomable that no monetary bond amount, or combination of monetary bond amount along with alternatives to detention, could be issued for someone like Petitioner, who has followed all the rules and diligently pursued his asylum claim for years until he was unlawfully re-detained.

The Immigration Judge did not meaningfully assess whether any alternatives to detention, such as geographical restrictions, ankle monitoring devices, cell phone monitoring apps, or higher bond amounts, could mitigate the finding of "flight risk." IJs routinely consider, and order, such alternatives in their bond orders when they deem them necessary to mitigate flight risk.

Under *Mathews v. Eldridge*, the three-part test is satisfied:

1. **The private interest that will be affected by the official action:**

The private interest affected by the official action is the most significant private interest there is – that of liberty. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's private interest in his own liberty – to be free from confinement – is an interest so strong that many of the most fundamental concepts of our constitution exist to protect it. *See United States v. Haymond*, 588 U.S. 634, 637 (2019) ("Only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty. That promise stands as one of the Constitution's most vital protections against arbitrary government."). "In the United States, even a scoundrel has the right to remain free until due process has proven him a scoundrel." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025); see also *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (finding that even accused enemy-combatants have a due process right to challenge their status). Petitioner, being kept in conditions that mirror those of a medium to high security penal institution[23], has an inalienable liberty interest – and such an interest weighs extremely heavily against any competing interests.

2. **The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards:**

[23] Recent reports indicate that detainees at the Buffalo Federal Detention Facility have been sleeping on the floor due to overcrowding. There have been numerous reports of abuses at the facility. "In interviews, former detainees described the conditions as worse than the prisons they had previously spent time in." Freedom of movement is often restricted, and detainees are not permitted contact visits with friends or family. See "ICE abuse of detainees in Batavia facility," Investigative Post, available at: https://www.investigativepost.org/2025/02/20/521935/ and "Overcrowding rampant at ICE facility in Batavia," Investigative Post, available at: https://www.investigativepost.org/2025/10/03/ice-facility-batavia-overcrowded-2025/

The process used in the purported "bond hearing" held by the Government in response to this Court's Order clearly has resulted in the erroneous deprivation of Petitioner's liberty interest because it was wholly inadequate to comport with due process requirements.

The IJ used irrelevant factors to support her finding of "flight risk." The value of additional or substitute procedural safeguards would be high. This Court has, in fact, ordered the Government to consider relevant factors – specifically, non-bond alternatives to detention or, if setting a bond, the petitioner's ability to pay. This Court could also go even further, ordering that the IJ consider *all* relevant factors such as prior attendance at court hearings and ICE check-in appointments, availability of a sponsor, lack of a criminal record, *inter alia*; and not to consider irrelevant factors, such as the underlying merits of the asylum claim (which would require a full mini-trial to adequately consider).

Nevertheless, even if this Court issues concrete orders on how to conduct a bond hearing, the reality here is that many IJs have shown they lack respect for Court orders and will continue to "hold the line" on the bond denial policy.

The finding of flight risk here was, frankly, preposterous and the IJ's willingness to make that finding evinces a clear lack of impartiality and total bias for the marching orders given from above. This is not a surprising result when the DOJ is headed by a proponent of election falsehoods who was hand-picked by Trump to follow orders faithfully without regard for the rule of law, who then subsequently purges the ranks of immigration judges. The DOJ has even made job postings referring to the position as a "deportation judge."[24]

This Court could – and frankly, should -- order immediate release under these facts. See, e.g., *Morales Mendez v. Field Office Director,* No. 9:26-cv-337-ECC (Coombe, J.), (N.D.N.Y.,

[24] See https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges

March 16, 2026) (where "[p]etitioner's detention violates her rights under the Due Process Clause of the Fifth Amendment… [t]he appropriate remedy is release"); *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *7 (D. Or. Oct. 30, 2025) ("Petitioner's immediate release is required to restore the status quo, meaning the last uncontested status which preceded the pending controversy.") (citation omitted); *Maldonado v. Cabezas*, No. cv 25-13004, 2025 WL 2985256, at *7 (D.N.J. Oct. 23, 2025) (ordering immediate release of SIJS recipient despite government's provision of two bond hearings because the initial detention was unconstitutional); *F.S.S.M. v. Wofford*, No. 1:25-cv-01518-TLN-AC, 2025 WL 3526671 (E.D. Cal. Dec. 9, 2025) (granting TRO and ordering immediate release of a noncitizen re-detained by ICE years after release to a sponsor as an unaccompanied child, subsequent grant of SIJ and deferred action); *J.A.C.P. v. Wofford*, 2025 WL 3013328, at *8; *Chogllo Chafla v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 22, 2025)

3. The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail:

The government has little, to no, legitimate interest in detaining Petitioner. The cost of providing additional safeguards is not burdensome. Respondents' own regulations, as they intersect with due process rights, require notice and a pre-deprivation hearing, which they did not provide before re-detaining Petitioner. Indeed, it would be less of a fiscal and administrative burden for the Government to return Petitioner home to await a determination on his immigration proceedings than to continue to detain him. The Government's interest, as interpreted by this Court, a co-equal branch of government, is analogous to the interest of the people, and not necessarily the interest of the executive branch alone. Further, the Government "cannot

reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).

V. CONCLUSION

Based on the foregoing, Petitioner asks this Court to 1) find that Respondents are not in compliance with this Court's order to hold a bond hearing given that the hearing that took place did not comport with due process, and 2) order Petitioner immediately released and that Respondents may not re-detain him without a pre-deprivation hearing, with adequate advance notice of at least fourteen days, before a neutral arbiter, where the burden shall be on the government to establish by clear and convincing evidence that Petitioner is a danger to the community or a flight risk, and where the arbiter must take into consideration Petitioner's ability to pay any monetary bond amount that is set as well as any alternatives to detention that may be used to meet the government's interests in the least restrictive manner possible; or other such such relief as this Court may see fit.

Dated: April 27, 2026

Respectfully submitted,

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