

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

B.A.M.A.,	)	
	)	
Petitioner,	)	
	)	CASE NO.:
vs.	)	7:26-cv-00095-WLS-ALS
	)	
CODY YOUGHIN, <i>in his official capacity as</i>	)	
<i>Sheriff of Irwin Detention Center;</i>	)	
LADÉON FRANCIS, <i>Field Office Director for ICE</i>	)	
<i>Atlanta Field Office,</i>	)	
TODD LYONS, <i>in his official capacity as Acting</i>	)	
<i>Director of Immigration and Customs Enforcement;</i>	)	
MARKWAYNE MULLINS, <i>Secretary of Homeland</i>	)	
<i>Security; and</i>	)	
TODD BLANCHE, <i>Acting U.S. Attorney General.</i>	)	
	)	
Respondents.	)	
	)	

PETITIONER'S REPLY IN SUPPORT OF
EMERGENCY MOTION TO ENFORCE JUDGMENT

This Court's May 13 Order required that "the Department of Homeland Security shall bear the burden of establishing by clear and convincing evidence that Petitioner is either a danger to the community or a flight risk." ECF No. 9. The IJ's written order says Petitioner bears the burden. That irreconcilable conflict is the core issue. Respondents now claim the Immigration Court "placed the burden on DHS in accordance with the Court's Order" and applied "the correct burden." But the IJ's written order states the opposite: "The respondent¹ carries the burden of demonstrating, (1) he is not a danger to the community; and (2) he is not a flight risk." ECF No. 11-3 (Bond Order).

The transcript confirms the problem rather than curing it: Petitioner's counsel twice advised the IJ that DHS bore the burden by clear and convincing evidence under this Court's Order, yet the written custody order entered the same day applied the ordinary agency rule and placed the burden on Petitioner. *See* ECF No. 11-2 (Transcript). Despite being on notice of the Court-ordered burden, the IJ issued a written custody order that reverted to the agency's default rule rather than the standard this Court mandated. As explained in Section IV.A, EOIR regulations make the written custody order the operative decision. The May 13 Order required DHS to bear the burden by clear and convincing evidence. The written IJ order placed the burden on "the respondent" and cited 8 C.F.R. § 1236.1(c)(8), *Matter of Urena*, and *Matter of Guerra*.

Those positions cannot be reconciled. This is not a request for appellate review of a discretionary bond denial. It is a motion to enforce a federal habeas judgment requiring a specific procedure that the written bond order facially did not apply.

¹ In immigration court proceedings, the term "respondent" is used to reference the non-citizen alien. *See* <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-3> ("The parties in removal proceedings are the alien and the Department of Homeland Security (DHS). See Chapter 1.2(d) (Relationship to the Department of Homeland Security). To avoid confusion, the parties and the Immigration Judge should be referred to as follows: the alien should be referred to as "the respondent [and] the Department of Homeland Security should be referred to as "the Department of Homeland Security" or "DHS"")

I. THE COURT RETAINS JURISDICTION TO ENFORCE ITS HABEAS JUDGMENT

This Court granted habeas relief and ordered Respondents to provide a § 1226(a) bond hearing within seven days at which DHS bore the burden by clear and convincing evidence. Federal Rules of Civil Procedure, Rule 70 authorizes enforcement of judgments requiring a party to perform a specific act and permits contempt for noncompliance.

District courts retain authority to determine whether habeas relief has actually been implemented. In *K.A. v. Green*, No. 18-3436 (D.N.J. Sept. 28, 2018), the court recognized continuing jurisdiction to address alleged noncompliance with a habeas order. In *Sanchez v. Sabol*, No. 1:15-CV-2423 (M.D. Pa. Dec. 23, 2016), the court held that habeas jurisdiction includes the power to ensure compliance with writs the court has granted. In *Sophia v. Decker*, No. 19 Civ. 9599 (S.D.N.Y. Apr. 23, 2020), the court explained that a motion to enforce presents a narrow question: whether respondents complied with the prior order, not whether the district court would reweigh the hearing evidence.

That is the posture here. Petitioner asks the Court to compare its May 13 Order with the written order the IJ entered. The written order applied the wrong burden on its face.

The question before this Court is therefore limited: whether Respondents provided the specific, burden-shifting hearing the Court ordered, not whether the IJ's discretionary assessment can be second-guessed.

II. SECTIONS 1226(e) AND 1252(a)(2)(B)(ii) DO NOT BAR ENFORCEMENT

Respondents rely on 8 U.S.C. § 1226(e) and § 1252(a)(2)(B)(ii). Those provisions do not bar this Court from enforcing its own judgment. In *Demore v. Kim*, 538 U.S. 510, 516–17 (2003), the Supreme Court held that § 1226(e) bars review of discretionary custody judgments but does

not bar challenges to the statutory framework authorizing detention. That is, § 1226(e) precludes review of how discretion is exercised in a particular case, not enforcement of a court-ordered procedure governing how that discretion must be exercised. In *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), the Supreme Court similarly held that § 1226(e) does not foreclose challenges to the extent of the Government's detention authority. District courts have applied that distinction to permit habeas review of constitutionally defective bond procedures, including challenges to burden allocation and standard of proof. In *Pensamiento v. McDonald*, 315 F. Supp. 3d 684 (2018), the court held—on the jurisdiction question, separately from its exhaustion analysis—that § 1226(e) does not bar constitutional challenges to the immigration bond framework or to a constitutionally flawed process, including burden allocation. And in *Aparicio-Larin v. Barr*, No. 6:19-cv-06293-MAT (W.D.N.Y. July 19, 2019), the court distinguished between unreviewable discretionary bond outcomes and reviewable due-process challenges to the allocation of burden and standard of proof.

Petitioner does not ask the Court to set aside the IJ's discretionary weighing of evidence. Petitioner asks the Court to enforce the required procedure: DHS bears the burden by clear and convincing evidence. The IJ's written order instead assigned the burden to Petitioner.

Section 1252(a)(2)(B)(ii) fails for the same reason. This motion challenges noncompliance with a federal court order, not the Attorney General's discretionary custody judgment.

III. EXHAUSTION DOES NOT BAR ENFORCEMENT

There is no statutory exhaustion requirement in 28 U.S.C. § 2241. *Pensamiento*, 315 F. Supp. 3d 684, held that § 2241 contains no statutory exhaustion requirement and that BIA review would be futile where Board precedent places the burden on the noncitizen in ordinary § 1226(a)

bond proceedings. *Y.S.G. v. Andrews*, No. 2:25-cv-01884 (E.D. Cal. Oct. 22, 2025), likewise recognized that § 2241 does not impose statutory exhaustion and that prudential exhaustion may be waived for futility and irreparable harm. The court in *Pedro O. v. Garland*, 543 F. Supp. 3d 133 (D. Minn. 2021), held that requiring exhaustion of burden-of-proof challenges would be futile where BIA precedent requires IJs to place the burden on the detainee.

That is precisely what occurred here. The IJ's order cited 8 C.F.R. § 1236.1(c)(8), *Matter of Urena*, and *Matter of Guerra*, and then placed the burden on Petitioner. A BIA appeal cannot enforce this Court's habeas judgment, adjudicate Respondents' compliance, or cure the facial contradiction between the Court's order and the IJ's written order.

The May 13 Order stated that Petitioner should file a notice of dismissal once "a bond hearing is provided." That language necessarily means a compliant bond hearing. A hearing that applies the opposite burden is not the hearing the Court ordered.

IV. RESPONDENTS DID NOT COMPLY WITH THE MAY 13 ORDER

A. The written IJ order applied the wrong burden.

This Court ordered DHS to bear the burden of proving danger or flight risk by clear and convincing evidence. The IJ's written decision states that "The respondent carries the burden of demonstrating: (1) he is not a danger to the community; and (2) he is not a flight risk." ECF No. 11-3.

Respondents' assertion that the hearing placed the burden on DHS cannot override the written order. The transcript shows that Petitioner's counsel twice put the correct burden on the record before the IJ ruled, stating that "under the federal court order, the government bears a burden by clear and convincing evidence" and that "the burden in this case is on the government to prove

by clear and convincing evidence that he is a flight risk.” ECF No. 11-2. The IJ therefore had notice of the Court-ordered burden before issuing both the oral ruling and the written custody order.

The transcript also contains the sentence Respondents are likely to emphasize: the IJ orally stated that “the Department of Homeland Security has met their burden to show that respondent is a flight risk.” ECF no. 11-2. But that oral statement—that also does not reference the clear and convincing standard—does not cure the written order’s facial defect. At most, it creates an irreconcilable conflict between the oral ruling and the operative written custody order.

Additionally, EOIR regulations require the IJ’s custody determination to be entered on the appropriate form at the time the decision is made, and permit the parties to be informed orally or in writing of the reasons for the decision. 8 C.F.R. § 1003.19(f). Here, the written form expressly assigns the burden to Petitioner. Because the regulation at 8 C.F.R. § 1003.19(f) makes the written form the operative custody record, Respondents cannot cure a facially defective written order by pointing to an inconsistent oral statement.

B. The IJ relied on a categorical presumption, not individualized clear-and-convincing proof.

Even accepting the IJ’s oral statement that DHS “met their burden,” the transcript confirms that DHS did not present individualized evidence sufficient to satisfy a clear-and-convincing standard. DHS’s only concrete fact was the existence of the IJ removal order—an order Petitioner himself disclosed and showed was already on appeal. DHS offered no documents, exhibits, sworn declarations, or testimony establishing missed hearings, absconding, supervision violations, false addresses, criminal history, failure to report, or any other case-specific conduct showing that Petitioner is likely to flee. The IJ may consider information available to the IJ or presented by the parties in custody proceedings, but the May 13 Order required DHS to carry a clear-and-

convincing burden. 8 C.F.R. § 1003.19(d). Argument plus administrative notice of a nonfinal procedural status is not individualized clear-and-convincing proof.

DHS did not attempt to prove danger, and the IJ found that Petitioner was not a danger to persons, property, or national security. The IJ nevertheless denied bond because Petitioner “does constitute a flight risk” and because “having a removal order constitutes a dramatic flight risk.” The transcript confirms that the removal order drove the decision. The transcript shows substantial individualized evidence: nearly four years of continuous residence at the same address, a U.S. citizen spouse and child, a home purchased by the spouse, consistent employment as a delivery driver, no criminal history, compliance with immigration reporting, community support letters, and a pending I-130. The IJ stated orally that “the risk of flight due to having a pending removal order that the court acknowledges is under appeal, but there is no pending hearing before any court. Therefore, the flight risk is drastic, dramatic, however you wish to refer to it. It is large. That outweighs all of the positive factors listed by respondent’s counsel.” The IJ’s conclusory statement, without any individualized explanation beyond the removal order itself, further reflects that the IJ did not require DHS to prove flight risk by clear and convincing evidence and instead, placed the burden on Petitioner to show positive factors to prove he is not a flight risk. *See id.*

Furthermore, the IJ’s categorical reasoning that having a removal order on appeal constitutes a “dramatic” flight risk shows she failed to require DHS to make an individualized flight risk assertion by clear and convincing evidence. Instead, IJ treated a nonfinal removal order on appeal as overriding all individualized evidence that Petitioner presented. A categorical inference drawn from procedural status cannot constitute individualized clear-and-convincing evidence. If every noncitizen with an appealed removal order is deemed a “dramatic” or “large” flight risk based on that status, the individualized inquiry disappears.

The transcript reinforces that point. The IJ expressly acknowledged that the removal order was “under appeal.” The IJ’s acknowledgment of the appeal in the same breath as the flight-risk finding, forecloses any assertion that the IJ lacked awareness that the removal order was nonfinal and non-executable while the BIA appeal remained pending. Under 8 C.F.R. § 1241.1, an IJ removal order becomes final only upon dismissal of the appeal, waiver, expiration of the appeal period without appeal, or another specified event. Under 8 C.F.R. § 1003.6(a), an EOIR decision generally may not be executed while an appeal is pending. Petitioner also submitted the appeal notice in the bond package, and the written order acknowledges the pending appeal. Related, Respondents do not dispute that Petitioner’s BIA appeal is pending. Under 8 C.F.R. § 1241.1, an IJ removal order becomes final only upon dismissal of the appeal, waiver, expiration of the appeal period without an appeal, or another specified event. Under 8 C.F.R. § 1003.6(a), an EOIR decision generally may not be executed while an appeal is pending. Thus, a nonfinal, non-executable removal order may be considered as one fact, but it cannot substitute for individualized evidence that this Petitioner is likely to abscond.

The IJ’s later clarification does not cure the defect. When Petitioner’s counsel stated that the IJ had effectively ruled that any person with an order on appeal is a flight risk that cannot be mitigated, the IJ responded that she had found that “in your case, with your situation, you constitute a flight risk because of your removal order.” ECF no. 11-2. That clarification still identified no individualized conduct beyond the removal order itself. It confirms that the removal order was treated as the operative reason for detention.

In *Sanchez v. Sabol*, No. 1:15-CV-2423 (M.D. Pa. Dec. 23, 2016), the court emphasized that a constitutionally adequate bond hearing must be individualized and that mechanistic reliance on factors common to detainees is insufficient. The IJ’s reasoning here did exactly

what *Sanchez* cautioned against: it converted a procedural status common to many respondents into a near-dispositive finding of flight risk.

C. This is not de novo review of bond discretion.

Respondents repeatedly argue that Petitioner seeks review of the IJ's discretionary weighing. He does not. Instead, he seeks review of the IJ's written order that failed to comply with the Court's order. The IJ erroneously assigned the burden to Petitioner and then relied categorically on a nonfinal removal order. The transcript confirms the same defect: DHS offered no individualized evidence of flight risk beyond argument and administrative notice of the removal order, and the IJ treated that nonfinal order as outweighing all positive factors. This Court need not decide whether, under a properly applied standard, bond could ever be denied. It need only decide whether the ordered standard and individualized inquiry were in fact applied.

D. Respondents never answer the core contradiction.

Respondents say the May 13 Order did not require "any particular outcome." Petitioner agrees. The Court did not order release. The Court ordered a process in which DHS bore the burden by clear and convincing evidence. Respondents do not explain how a written order stating that Petitioner bore the burden complies with an order stating that DHS bore the burden. That omission is dispositive.

V. PETITIONER'S PAROLE-TERMINATION ARGUMENT REMAINS UNREBUTTED

The May 13 Order recognized that Petitioner "was inspected and paroled upon entry to the United States." Petitioner's motion argued that Respondents had not shown lawful termination of that parole before his later interior arrest. Respondents' opposition did not attach a parole-termination notice or documentary proof of lawful termination.

Respondents instead characterize the parole issue as unrelated to compliance. But the parole issue remains an independent and alternative basis for relief because it goes to the lawfulness of Petitioner's current detention. Petitioner preserves the parole authorities cited in the Motion, including *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128 (W.D.N.Y. 2025), *Hernandez v. Raycraft*, No. 1:25-CV-1719 (W.D. Mich. Dec. 26, 2025), *Y-Z-L-H v. Noem*, 792 F. Supp. 3d 1125 (W.D. Mich. 2025), *Kudyrkulov v. Martin*, No. 6:26-cv-3035 (W.D. Mo. Feb. 5, 2026), *Andreu v. Baltazar*, No. 26-cv-1045187 (D. Colo. Apr. 17, 2026), *Chourio Herrera v. Bondi*, No. 0:26-cv-1895 (D. Minn. Mar. 25, 2026), and the additional parole-revocation cases identified in the Motion.

The Court need not reach the parole question if it grants enforcement based on the facial burden error. But Respondents have not rebutted it.

VI. RELIEF SHOULD BE TIERED

The appropriate primary relief is immediate release as enforcement of the already-granted habeas judgment, given that Respondents have failed to provide the specific remedy ordered. Respondents were ordered to provide a specific habeas remedy: a compliant § 1226(a) bond hearing at which DHS bore the burden by clear and convincing evidence. The written IJ order shows that the ordered remedy was not provided.

Alternatively, the Court should order a prompt new bond hearing before a different Immigration Judge with express instructions that:

1. DHS bears the burden by clear and convincing evidence;
2. no categorical presumption of flight risk may arise from a nonfinal removal order on appeal;

3. the IJ must make individualized findings based on case-specific evidence;
4. the IJ must address whether alternatives to detention can reasonably mitigate any proven risk; and
5. Respondents may not transfer Petitioner in a manner that interferes with this Court's continuing jurisdiction or the effective enforcement of its judgment.

If Respondents again fail to comply, Rule 70 authorizes coercive enforcement, including contempt.

VII. CONCLUSION

The issue is not whether the IJ could have denied bond after a compliant hearing. The issue is whether Respondents provided the hearing this Court ordered. They did not. The Court should grant the motion to enforce and order immediate release. If the Court declines immediate release, it should order a new compliant bond hearing before a different IJ under the burden and standard specified in the May 13 Order.

Respectfully Submitted,

This 8th Day of June, 2026

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CERTIFICATE OF SERVICE

I certify that on the 8th Day of June, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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