Magistrate Judge S. Kate Vaughan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

M-A-C-C-,

Petitioner,

v.

JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations; TODD LYONS, Acting Director of U.S. Immigration Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; Attorney General of the United States; BRUCE SCOTT, Warden, Northwest ICE Processing Center; and DAREN K MARGOLIN, Director of Executive Office for Immigration Review.

Case No.: 26-CV-01550

PETITIONER'S TRAVERSE ISO PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

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PETITIONER'S TRAVERSE ISO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This case is about whether the government can detain a man indefinitely on the basis of a bond hearing marked by due process violations, administrative abuses of discretion, and a failure to apply any cognizable legal standard. Respondents invite this Court to normalize these legal violations as routine agency practice, but the Court should decline. The Court should grant the petition and order M-A-C-C's immediate release under reasonable conditions.

RESPONDENTS' POSITION

Respondents oppose the petition. First, they contend this Court should require Petitioner to exhaust his administrative remedy before the BIA, arguing that none of the *Laing* factors warrant waiving the prudential exhaustion requirement. Dkt. 14 at pp. 4-8. Second, they argue that Petitioner has not identified constitutional or legal errors entitling him to release, as the IJ was under no obligation to record the bond proceedings; the absence of a contemporaneous record does not constitute a due process violation; and the IJ's post-hoc bond memorandum reflects his contemporaneous reasoning and is entitled to deference. *Id*. at pp. 9-11. Respondents contend that M-A-C-C-'s detention is lawful under 8 U.S.C. § 1226(a), and that they provided him a constitutionally adequate court-ordered bond hearing. Return, Dkt. 14 at pp. 1, 2, 6, 8-14. Respondents characterize the Immigration Judge's conduct of the hearing, the IJ's refusal to create a recording, the checkbox order form, and the post-hoc bond memorandum as routine agency practice consistent with applicable regulations and binding caselaw. *Id*. at pp. 9-11 (citing 8 C.F.R. § 1003.10(b); ICPM Ch. 8.3(e)(7); *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)). Third, they assert the IJ's flight risk finding was

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reasonable and did not constitute an abuse of discretion. Dkt. 14 at pp. 14-16. They further assert that the Immigration Judge "carefully weighed the evidence and reasonably found" that Petitioner is a flight risk. *Id*. at p. 16. Fourth, Respondents argue the IJ's failure to consider whether bond or alternative conditions of supervision mitigate flight risk is not legal error, as the obligation to consider such conditions arises only after release is deemed appropriate. *Id*. at pp. 16-17.

None of the Respondents' arguments are convincing.

ARGUMENT

I. Respondents' exhaustion arguments are wrong.

Respondents assert that, under the doctrine of prudential administrative exhaustion described in *Laing*, the Court should dismiss the petition while Petitioner waits many months for the BIA to rule on his pending administrative appeal of the IJ's no bond order. Dkt. 14 at pp. 4-8. Respondents argue that the administrative process as a general matter is adequate and efficacious. *Id.* at p. 5. They principally rely on two cases, *Martinez v. Scott* and *Taha v. Bostock* in support of their argument. *Id.* at pp. 5-6. They further assert that there is no showing of irreparable harm here as a matter of law, and, on the facts, that the Petitioner has demonstrated no unique facts. *Id.* at p. 7. Their arguments are unpersuasive.

Courts may require prudential exhaustion if "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). These are called the "Puga" factors because they originate in the case of *Puga v.*

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Chertoff, 488 F.3d 812, 815 (9th Cir. 2007). Nonetheless, even if these three factors weigh in favor of prudential exhaustion, a court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* Here, the *Puga* factors weigh squarely against requiring exhaustion.[1]

In analogous cases, this Court has found waiver of prudential exhaustion warranted in cases where habeas petitioners, like M-A-C-C-, brought challenges to the legality of their § 1226(a) bond hearings. *See e.g., Escalante Perez v. Hernandez,* 2026 WL 1004559 at *2 (W.D. Wash. Apr. 14, 2026); *Martinez v. Scott*, 2025 WL 2689844 at *6 (W.D. Wash. 2025) (citing *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003 (N.D. Cal. 2018) (exhaustion waived for a petitioner who needed to care for a nine-year-old child when assessing petitioner's individualized harm); *Loya Medina v. Hernandez*, No. 2:26-CV-00772-GJL, 2026 WL 1260848, at *5 (W.D. Wash. May 7, 2026); *Moreno Porra*, Case No. 2:26-cv-01164-BAT, Dkt. 9 at pp. 5-8 (W.D. Wash. May 21, 2026).

A. All the *Puga* factors weigh against prudentially requiring administrative exhaustion.

The first *Puga* factor, whether "agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision[,]" weighs against requiring administrative exhaustion for at least two reasons. *Puga*, 488 F.3d at 815. First, while the BIA may have general subject-matter expertise in individual immigration bond decisions, the BIA

[1] Respondents cite *Laing v. Ashcroft*, 370 F.3d 994 (9th Cir. 2004) as applicable precedent on prudential administrative exhaustion. Dkt. 14 at p. 5. Petitioner relies on *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) and its application of *Puga v. Chertoff*, 488 F.3d 812 (9th Cir. 2007) as more apt and on-point precedent. Whereas *Laing* deals with removal proceedings, *Hernandez* has a more precise application to challenges to immigration detention. *Cf. Laing*, 370 F.3d at 999-1000 *with Hernandez*, 872 F.3d at 988-989.

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has no particular expertise in interpreting the Constitution or the particular questions of statutory and constitutional law that M-A-C-C- raises in his petition. *W.T.M. v. Bondi*, 2026 WL 262583 at *2 (W.D. Wash. Jan 30, 2026); Dkt. 1 at ¶¶ 94-120 (Counts Two and Three raising constitutional and statutory interpretation challenges). Indeed, that is the role of the judiciary. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 401 (2024). Petitioner's claim for relief following his inadequate bond hearing is in the main a constitutional challenge, which is "better suited to review by the federal courts." *W.T.M.*, 2026 WL 262583, at *2. Petitioner's detention is "fundamentally a question of law." *Scott v. Wamsley*, 2025 WL 3514304, at *4 (W.D. Wash. Dec. 8, 2025); *cf. Martinez*, 124 F.4th at 783–84 (federal courts have jurisdiction to review mixed questions of law and fact as to whether a person presents a danger).

Second, additional proceedings before the BIA are unnecessary to generate a proper record because the administrative proceedings have already generated two decisions: the contemporaneous check-box form order issued by the Immigration Judge on April 27, 2026, and the post-hoc bond memorandum issued by the Immigration Judge on May 14, 2026. Dkt. 3, Exh. 4 (IJ April 27, 2026 form order); Dkt. 15, Exh. 2 (IJ May 14, 2026 post-hoc memorandum). Additional administrative proceedings before the BIA will not generate any additional meaningful record. *Cf. Martinez v. Scott*, 2025 WL 2689844, at * 5 (W.D. Wash. 2025) (reasoning that "if petitioner were required to present his claims to the BIA, the BIA would expand the available record by requiring the IJ to provide a written decision fully explaining why Petitioner was denied bond") (cleaned up). Because here the written decision has already been issued by the IJ (*see* Dkt. 15, Exh. 2 (IJ's post-hoc bond memorandum issued

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May 14, 2026)), additional proceedings before the BIA will not generate any additional record which would aide this Court in its review. *Id.*

The second *Puga* factor likewise weighs against exhaustion. Relaxing the prudential exhaustion requirement will not lead to deliberate bypass of administrative relief. Rather, granting Petitioner's habeas petition will "provide concrete guidance for future administrative proceedings" as to assessing whether someone constitutes a flight risk or danger, ultimately mitigating the need to bring such claims before district courts in the future. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1251(W.D. Wash. 2025); *see also Hernandez*, 872 F.3d at 989 ("Any risk of deliberate bypass of administrative procedures is further reduced by the fact that district courts will only have jurisdiction in the 'rare case[s]' where future plaintiffs allege a 'colorable' constitutional or legal challenge to the government's procedures." (internal citations omitted)). Petitioner is not seeking a fact-intensive review of the Immigration Judge's discretionary weighing. *Cf. Martinez*, 2025 WL 2689844, at *5. This matter raises multiple legal questions that, once answered, may provide concrete guidance as to how immigration judges must weigh prior expulsions under Title 42 and prior unauthorized work in flight risk determinations under § 1226(a), thereby ultimately promoting clarity and "thus reduc[ing] the number of future habeas petitions." *Rodriguez Vazquez*, 779 F. Supp. 3d. at 1252.[2]

[2] In this regard, Respondents' reliance on *Martinez v. Scott* is unpersuasive. Dkt. 14 at p. 5.. Specifically, resolving the *legal* questions—*not* the fact-intensive questions presented in *Martinez*—of whether prior unauthorized work, prior unlawful entries and allegedly weak claims for immigration relief can alone, as a matter of law, support a flight risk finding should reduce the need to seek federal judicial review. If the Court resolves M-A-C-C-'s question here, IJs in this district will have guidance from the federal bench that will apply in a vast swath of the bond matters that go before them, and to the extent the IJs properly apply that guidance, significantly fewer litigants will need to bring petitions to federal court to request remedy of IJ error.

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The third *Puga* factor also weighs against exhaustion. While the BIA can correct evidentiary rulings by an Immigration Judge, M-A-C-C-'s case is about the constitutional and statutory adequacy of the bond hearing. Thus, his case is not one in which the BIA's "authority to correct the erroneous factual determinations and evidentiary errors alleged" justifies requiring administrative exhaustion. *W.T.M.*, 2026 WL 262583 at *3; cf. *Martinez*, 2025 WL 2689844 at *5 (finding that where a petitioner sought review of the IJ's factual errors, not legal errors, the third factor favors exhaustion). As such, the third *Puga* factor leans against requiring prudential exhaustion.

B. Irreparable harm is a separate, adequate basis to excuse administrative exhaustion.

The Court should excuse Petitioner from further administrative exhaustion beyond that which he has already done because he is suffering irreparable harm. Administrative exhaustion can be excused independent of the three *Puga* factors. Indeed, contrary to Respondents' contention otherwise, the logic employed in *Laing* supports waiver of exhaustion here where M-A-C-C-'s continued detention will result in "irreparable injury." *Laing v. Ashcroft*, 370 F.3d 994 (9th Cir. 2004). Administrative delay here carries concrete, individualized, and human consequences to M-A-C-C-, his longtime partner, and his children. *Rodriguez Vazquez*, 779 F. Supp. 3d at 1253-54 (an individualized showing of harm permits the court to waive exhaustion in spite of the *Puga* factors); *W.T.M.*, 2026 WL 262583 at *3 (same); *cf. Zuo v. Hermosillo*, Case No. 2:26-cv-00708-JHC, Dkt. No. 8, 2026 WL 809882 (W.D. Wash. Mar. 24, 2026) (finding against waiver of prudential exhaustion where the petitioner did not show that prolonged detention constitutes irreparable harm).

Respondents' reliance on *Taha v. Bostock* is misplaced. Dkt 14 at pp. 5-6. Respondents mischaracterize the record and further fail to acknowledge that *Taha* does not

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address prudential exhaustion whatsoever. No. 25-cv-649-RSM, 2025 WL 1126681, at *3 (W.D. Wash. Apr. 16, 2025). In *Taha,* the Court assessed whether the petitioner had met the exceedingly high burden required to establish entitlement to the "extraordinary remedy" of a temporary restraining order ("TRO"). 2025 WL 1126681, at *2. In support of his request for a TRO, the petitioner in *Taha* argued he had met the irreparable harm prong by citing the fact of separation from his family—that is, the fact of detention—was itself irreparable harm. The court denied the TRO, agreeing with the government that the petitioner's own "emotional harm" resulting from his loss of liberty was not unique to him but rather is common to all immigrant detainees. *Id.* at *3 (cleaned up).

But *Taha* is not this case. Here, the Petitioner "has presented evidence unique to him, that, while not an independent basis for relief, supports a finding that his continued detention pending a potentially months-long BIA appeal of the IJ's bond denial decision would risk continued irreparable harm." *W.T.M.*, 2026 WL 262583 at *3. Unlike *Taha*, Petitioner does *not* assert that the mere fact of his detention is irreparable harm. Rather, the record evidence reveals concrete harm occurring including his family's loss of home and their displacement. Dkt 3, Exh. 2 (Petitioner's bond evidence packet filed with the IJ) at p. 22, ¶ 3. This alone would be sufficient to uphold an irreparable harm finding. *See Rodriguez Vazquez,* 779 F. Supp. 3d at 1253–54 (where financial burdens and inability to support family demonstrated lead plaintiff's "unique harm"). Additionally, Petitioner presented written testimony from a Beaverton, Oregon elementary school teacher attesting to negative impacts on the academic progress of one of Petitioner's children, "despite [the provision of[multiple supports and instructional strategies." Dkt 3, Exh. 2 at p. 50. This is irreparable harm to Petitioner's child. The record also reflects that Petitioner's children lost weight as a result of Petitioner's

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detention because "they refused to eat much in the days following [Petitioner's] arrest by ICE." *Id.* at 22, ¶ 5. These are not generic harms that all or most detainees experience simply by the fact of their loss of liberty, rather they are facts that are specific to Petitioner and his family and they demonstrate a risk of irreparable harm if Petitioner is made to wait months for his pending appeal before the BIA to be fully exhausted.

C. The BIA is a futile forum.

The Court should excuse Petitioner from any additional administrative exhaustion because awaiting adjudication from the BIA is, in addition to the delays, futile because the BIA is unlikely to properly discharge their official duties and act with procedural regularity, and with bona fide, non-pretextual reasons. Dkt. 1 at ¶¶ 82-83.[3] "[A]cross the country the integrity of these bond proceedings has now been cast sharply into doubt." *Garcia Ortiz v. Henkey*, Case No. 1:26-cv-00043-BLW, Dkt. No. 28, 2026 WL 948275, *2 (D. Idaho Apr. 7, 2026). "Put bluntly," the bond proceedings at the Tacoma Immigration Court are "a sham." *Id*. For similar reasons, and the reasons described in the Petition, the bond proceedings before the BIA are not likely to provide a bona fide view of the facts or law as applied to M-A-C-C's case and therefore, additional exhaustion beyond what Petitioner has already undertaken is futile.

II. Respondents are wrong on the merits.

Petitioner has been detained and separated from his family for almost six months because Respondents failed to apply the law at his bond hearing. Petitioner's bond hearing lasted a

[3] Pursuant to statute, Petitioner concurrently files the NY Times article regarding bias by immigration judges and the BIA. 28 U.S.C. § 2243 ("The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts."); Dkt. 14 at p. 7, n.4 (stating that the federal government cannot access the NY Times news reporting).

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matter of minutes, and in that short time, the IJ did not manage to identify any legal standard or governing caselaw to apply to Petitioner's facts, the IJ neglected to reference – much less contend with – relevant record evidence going to factors the immigration court was legally required to consider, and the IJ provided no reasoned explanation of the ultimate findings. Dkt. 3 at pp. 3-7. This Court already found that Respondents violated Petitioner's rights once—when they detained him under § 1225(b) without a bond hearing—and ordered Respondents to provide him a bond hearing under § 1226(a). *M.A.C.C. v. Hernandez,* No. 2:26-cv-00958-TMC, Dkt. 12 (W.D. Wash. Apr. 20, 2026). Respondents' bond hearing did not satisfy the Court's mandate. *Id*.

A. Respondents deprived Petitioner of his right to a meaningful bond hearing.

Petitioner was entitled to a meaningful bond hearing. An Immigration Judge who provides no contemporaneous reasoning and fails to conduct a flight risk analysis has abused his discretion. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Civil immigration detention must be non-punitive and bear a reasonable relation to its purpose of ensuring compliance with immigration proceedings and preventing danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001). Here, the immigration judge conducted a proceeding and issued an order that does not bear any reasonable relation to the purpose of immigration detention.

1. The bond record demonstrates the no-bond order was unreasoned.

Respondents misstate the relevant issue. Dkt. 14 at p. 9-11. Petitioner is not challenging the failure to provide a contemporaneous audio recording of the bond hearing as a *per se* violation of law. Dkt 1 at pp 25-31, ¶¶ 94-120. Rather, he is challenging the failure of the immigration judge to make a reasoned decision based on the correct legal standard and

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the correct application of the legal standard to the facts adduced at the hearing. *Id.* Indeed, Respondents have not proffered any evidence to rebut Petitioner's evidence that "[a]t no point during the [bond] hearing did the Immigration Judge articulate what legal standard he had applied to the facts of M-A-C-C-'s case, nor did he identify any caselaw, binding or otherwise, which guided his decision." Dkt. 3 at p. 6, ¶ 18. Further, the only contemporaneous written decision, the IJ's April 27, 2026 form order, articulates no legal standard, contains no legal reasoning, and offers no explanation as to how the IJ concluded that Petitioner constituted such an extreme flight risk as to warrant a no bond decision. Dkt. 3, Exh. 4 at pp. 1-2.

The absence of any contemporaneous record is fatal to the Respondents' defense of the bond proceeding. Respondents defend the lack of a record as "adher[ence] to agency policy" and state that "by rendering the bond decision orally" the IJ provided an adequate hearing, "even if he did not record it or issue a detailed contemporaneous explanation for the legal bases for his conclusions[.]" Dkt. 14 at p. 11. But asserting that the IJ's conduct aligned with standard agency policy does not answer the question of whether such practice is constitutionally sufficient nor whether it is compliant with applicable regulations. It is neither.

First, the IJ's failure to offer any contemporaneous reasoned explanation of his decision violates the agency's own regulations, which dictate that the reasons for the bond decision must be provided at the time the decision is made. 8 C.F.R. § 1003.19(f). The regulation requires that the Immigration Judge's custody determination "shall be entered on the appropriate form *at the time such decision is made* and the parties shall be informed orally or in writing of the *reasons for the decision*." 8 C.F.R. § 1003.19(f) (emphasis added). Here, there is no oral decision in Petitioner's case. Dkt. 3 (Declaration of José G. Miranda) at p. 3, ¶ 7; Dkt 14 at p. 11 (Respondents' concession that IJ did not "issue a detailed contemporaneous

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explanation for the legal bases for his conclusions[.]"). The only form provided "at the time such decision [was] made" is the generic checkbox order form containing no reasons for the decision, thus violating the regulation. Dkt. 3, Exh. 4 (IJ's April 27, 2026 form order).

Second, the after-the-fact bond memorandum cannot stand as substitute for a reasoned decision. It does not satisfy the regulation because it was not issued "at the time such decision [was] made" in Petitioner's case. Dkt. 3 (Declaration of José G. Miranda) at pp. 3-7. Neither party disputes the memorandum was issued seventeen days later. *Id*. Moreover, it also was not created to serve the purpose of the *bond* hearing (which holds constitutional dimensions of notice) of informing M-A-C-C- of the reasons for the decision. 8 C.F.R. § 1003.19(f). Rather, it was created *after* he appealed for the purposes of the appellate proceeding as a matter of agency policy. 8 C.F.R. § 1003.38. That is, the immigration judge wrote the memorandum in response to Petitioner's appeal, not as the bond decision to provide him notice. Dkt. 15, Exh. 2 (IJ's May 14, 2026 post-hoc bond memorandum).

Third, the law forecloses Respondents' contention that the Court may take the IJ's post-hoc memorandum into consideration because "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency," and an agency's action "must be measured by what the [agency] did, not by what it might have done". *SEC v. Chenery Corp.*, 318 U. S. 80, 87, 94 (1943). Here, the IJ's contemporaneous decision provides no explanation as to how he reached his no bond decision in Petitioner's case, and the memorandum issued weeks later provides only post-hoc justifications that speak to how the IJ *might have* attempted to rationalize his decision at the time.

2. The bond record demonstrates the due process violation.

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The lack of any contemporaneous explanation of the IJ's decision violates the due process clause. Due process requires that during a bond proceeding, an Immigration Judge provides a reasoned explanation of their decision. *She v. Holder,* 629 F.3d 958, 963 (9th Cir. 2010) (affirming that due process requires a "minimum degree of clarity in dispositive reasoning" in decisions made by the EOIR). Indeed, it is fundamental to an ordered society of laws that the government should have to provide at least some contemporaneous justification of its reasons when depriving an individual of their liberty. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (recognizing freedom from physical detention as "the most elemental of liberty interests"); *Chenery Corp.*, 318 U.S. at 94 ("[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."). Here, the only contemporaneous decision from the Immigration Judge consists of checked boxes which state the conclusions reached – that Petitioner was a flight risk and release under bond or conditions would be denied – without speaking to *how* those conclusions were reached. Dkt. 3, Exh. 4 (IJ's April 27, 2026 form order) at pp. 1-2. Indeed, this Court recently explained that where the bond record contained "no explanation of the immigration judge's reasoning" as to the IJ's flight risk finding, the Court was "left without information concerning…whether the immigration judge considered the relevant (or indeed any) factors in reaching his decision." *Escalante Perez,* 2026 WL 1004559, at *2.

The absence of any contemporaneous record is independently fatal under the second *Mathews* factor, which requires this Court to evaluate the risk of erroneous deprivation through the procedures used. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Respondents argue that the existing procedures adequately protected Petitioner's liberty interest. Dkt. No.

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14 at p. 11-13. That evaluation is impossible here, as Petitioner's hearing produced nothing beyond a boilerplate checkbox order form. Dkt. 3, Exh. 4 (IJ's April 27, 2026 form order). Without a record of what procedures were actually followed, the risk of erroneous deprivation cannot be assessed, let alone safeguarded against. *Mathews*, 424 U.S. at 335. Moreover, the risk of erroneous deprivation is significant where the Government fails to follow its own procedures. *Caisa Telenchana v. Hermosillo*, Case No. 2:26-CV-00363-GJL, 2026 WL 696806, at *12 (W.D. Wash. Mar. 12, 2026).

The remaining *Mathews* factors likewise weigh in Petitioner's favor. As Respondents concede, the private interest at stake – here, Petitioner's freedom from confinement – is exceedingly weighty. *See* Dkt. 14 at 12, citing *Hamdi,* 542 U.S. 507 at 529 (recognizing freedom from physical confinement as "the most elemental of liberty interests"). The Respondents awkwardly argue that because Petitioner's detention has not yet become "prolonged" he is worthy of less due process *Id.* But that is mistaken. Practically, it is mistaken because Petitioner will reach the six-month mark in a matter of days, as of May 29, 2026, likely before this matter is decided. It is also mistaken because it is beside the point. Petitioner is not claiming his detention violates due process because it has become prolonged, he asserts that his detention is unlawful because DHS and EOIR have failed to follow the law and instead taken unlawful procedural shortcuts in making the initial custody determination and in making the decision to continue to detain him without bond. And importantly, this Court has repeatedly held that the individual liberty interest of the *Mathews* test weighed in favor of immigration habeas petitioners despite their detention having not yet reached the six-month mark. *See e.g. Loya Medina,* 2026 WL 1260848, at *7 (habeas petition filed by a noncitizen whose detention had not yet reached the six month mark wherein the court acknowledged the "significant liberty

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interest at stake for noncitizens in immigration detention"); *E-D-S-O- v. Hernandez*, No. 2:26-CV-00785-RAJ, 2026 WL 1067036, at *3 (W.D. Wash. Apr. 20, 2026) (finding strong private interest in liberty for parolee who was re-detained and whose detention had not yet become prolonged).

The government's interest here is minimal at best. Respondents claim that because Petitioner's removal proceedings are ongoing, the government's interest in detaining him is legitimate. Dkt. 14 at 13 (stating "[a]s Petitioner is in ongoing removal proceedings, there is no doubt that his continued detention is reasonably related to a legitimate purpose.") But the fact of ongoing removal proceedings is not, in and of itself, sufficient to show that the government has a legitimate interest in the *detention*. Rather, the government can only have a legitimate interest in detaining Petitioner if the government is seeking to remove him *and* he is a danger to the community and/or a flight risk. *Zadvydas,* 533 U.S. 678 at 690-91 (holding due process requires immigration detention be "'reasonabl[y] relat[ed]'" to the purpose of preventing flight and/or danger to the community). As explained in greater detail below, Petitioner is neither. Petitioner has a fixed address, steady employment, and immediate family which root him to the Beaverton, Oregon community where he resided prior to his detention (Dkt. 3, Exh. 2, Bond Evidence Packet), he made no attempt to flee when immigration authorities arrested him in November, 2025 (Dkt. 3, Exh, 3, Form I-213), and the government concedes he has no criminal history (*Id.*). Because Petitioner is neither a flight risk nor a danger, the government has no legitimate interest in his continued detention, and the final *Mathews* factor likewise weighs towards a finding for Petitioner.

B. The IJ's no bond order is an abuse of discretion.

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The no bond order issued in this case is an abuse of discretion. Respondents concede that this Court reviews the IJ's findings for an abuse of discretion. *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024); *Loya Medina,* 2026 WL 1260848, at *7. The Immigration Judge's flight risk determination is erroneous as a matter of law because unauthorized work with a fake social security number, Title 42 expulsions, without more, cannot justify a flight risk finding. Second, the IJ erred by failing to consider relevant and probative record evidence going to Petitioner's ties to the community. Third, the IJ committed plain legal error in failing to consider what combination of bond and conditions would be sufficient to mitigate any perceived flight risk.

1. The IJ based his flight risk finding on facts which cannot support a flight risk finding as a matter of law

The contemporaneous bond record, consisting of the IJ's April 27, 2026 order is silent as to what factual findings formed the basis of the IJ's no bond decision. Dkt. 3, Exh. 4 (IJ's April 27, 202 form order) at pp. 1-2. Respondents contend that the IJ based his flight risk finding on "adverse equities, including Petitioner's five prior expulsions under Title 42 and subsequent unlawful reentries, the fact his applications for relief have already been denied…his employment without authorization and use of a false Social Security number, as well as the fact that none of Petitioner's family members have lawful status in the United States." Dkt. 14 at p. 15. Without more, none of these facts can support a flight risk finding as a matter of law. The IJ's decision to the contrary constitutes an abuse of discretion.

a. Petitioner's Title 42 expulsions and alleged illegal entries cannot support the IJ's flight risk finding.

The IJ committed plain legal error in using Petitioner's prior Title 42 expulsions against him. Though the IJ does not explain in his April 27, 2026 form order nor indeed in his May

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14, 2026 post-hoc memorandum, *why* he believed Petitioner's expulsions under Title 42 rationally relate to the question of flight risk, the Respondents' counsel offer one: "Petitioner in this case was involuntarily expelled under Title 42 on five separate occasions…Where, as here, the record reflects a clear pattern of disregard for immigration laws, the IJ may reasonably infer a general disregard for immigration authority and conclude that Petitioner is unlikely to comply with immigration court mandates, bond conditions, or removal orders." Dkt. 14 at p. 15.

But there is a significant and fatal flaw in Respondents' logic: namely, Title 42 expulsions are *not* immigration violations, and conduct that does not constitute an immigration violation cannot rationally support a contention that the record evidence "reflects a clear pattern of disregard for immigration laws." Dkt. 14 at p. 15; *Gimenez v. Hernandez*, No. 2:26-cv-00966-GJL, 2026 WL 1156075, at *8 (W.D. Wash. April 29, 2026) (bond determinations must bear a *rational relationship* between the governing legal standards and the facts and evidence in a given case) (emphasis added). Title 42 expulsions are, as their name suggests, effectuated not under the Immigration and Nationality Act, but rather under Title 42, section 265 of the Public Health and Welfare provisions of the U.S. Code. Title 42 expulsions do not constitute deportations, removal orders, or voluntary departures under the INA. *See Huisha-Huisha v. Mayorkas,* 27 F.4th 718, 721 (D.C. Cir. 2022) (analyzing § 265 and the INA as distinct statutory schemes serving distinct purposes). As such, characterizing Petitioner's Title 42 expulsions as immigration violations would improperly conflate two distinct statutory schemes and penalize Petitioner for conduct that Congress explicitly did not intend to constitute a violation under the immigration laws. Conduct which was never intended to be

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understood as an immigration violation cannot provide a rational basis for a finding that Petitioner is unlikely to appear for future immigration proceedings.

To the extent that the IJ based his flight risk finding in whole or in part on the fact that Petitioner attempted to enter the United States on multiple occasions after his Title 42 expulsions, that likewise constitutes clear error. The IJ referenced, in his post-hoc memorandum Petitioner's "5 prior illegal entries" into the United States. Dkt. 15, Exh. 2 at p. 5. But this wholly mischaracterizes the record evidence. The government's Form I-213 affirms that each time Petitioner attempted to enter the United States, he was quickly apprehended at the U.S./Mexico border before he was able to make his way into the interior of the country. Dkt. 3, Exh. 3 (Form I-213). Under binding Ninth Circuit caselaw, an illegal entry into the United States "has not been accomplished until physical presence is accompanied by freedom from official restraint." *United States v. Pacheco-Medina*, 212 F.3d 1162, 1164 (9th Cir. 2000) (quoting *Matter of Pierre*, 14 I&N Dec. 467, 469 (BIA 1973)). Similarly, the government cannot sustain a criminal illegal entry or re-entry charge under 8 U.S.C. § 1325, 1326 if an individual is apprehended (or indeed even surveilled) by immigration or law enforcement officials upon crossing the border because the fact of immediate apprehension requires a finding that person failed to effectuate an "entry." *U.S. v. Gonzalez-Torres*, 309 F.3d 594, 598 (9th Cir. 2002). Because here it appears Petitioner was immediately caught at the border and was never free from physical restraint, he arguably did not effectuate multiple unauthorized entries.

Moreover, at the time Petitioner was attempting to enter the United States and was subjected to Title 42 expulsions (from 2020 through 2022) there was no manner by which Petitioner could have lawfully entered the United States to pursue his right to seek asylum.

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This is so because during the COVID-19 pandemic and prior to the publication of the CBPOne application in 2023 – through which individuals could request Title 42 exemptions – even those who lawfully presented themselves at ports of entry were immediately turned back by CBP officials and not permitted to enter.[4]

In sum, neither Petitioner's Title 42 expulsions nor his attempted entries into the United States can rationally support a flight risk finding. Petitioner's single *successful* unauthorized entry into the United States in 2022 is, alone, insufficient to demonstrate he is a flight risk under *Lima Soriano*. *Soriano v. Hernandez*, No. 2:26-cv-00900-DGE, 2026 WL 969764 at *5 (W.D. Wash. April 10, 2026). Respondents contend that Petitioner's case is distinguishable from *Lima Soriano* because there, the prior immigration history the court considered was from 25 years ago whereas here Petitioner's most recent entry occurred in 2022. Dkt. 14 at p. 15. Respondents' argument is unpersuasive. Just as in *Lima Soriano*, here, a single unlawful entry into the United States on the part of an asylum seeker does not bear a rational relationship to the question of whether Petitioner will appear for future proceedings in his asylum case. To be sure, certain kinds of immigration violations – violating an explicit order to voluntarily depart the United States by a certain date, or failing to present with ICE as scheduled for

[4] *See* Pritchard Decl., Ex. 2, "Practice Pointer: Title 42 and Asylum Porcessing at the Southern Border," American Immigration Lawyers Association ("AILA") (Jan. 13, 2023), available at https://www.aila.org/library/practice-pointer-title-42-and-asylum-processing (last visited May 26, 2026), affirming that during the COVID-19 pandemic, "Title 42 'turn-backs' appl[ied] to all nationalities at all southern Ports of Entry (POE). This occurs when a migrant approaches an official POE at the southern border and expresses fear and/or a desire to seek asylum to a Customs and Border Protection (CBP) officer while still on Mexican soil…While CBP officers standing at the POE do have the discretion to exempt individual asylum-seekers from Title 42 for humanitarian reasons, in practice, this is incredibly rare.3 Rather, the only way for an individual to be permitted to seek asylum at the Port of Entry is to request a Title 42 exemption in advance, through CBPOne" and "[a]ccess to the CBPOne Title 42 exemption process will begin on January 12, 2023," *after* Petitioner's attempted entries in 2020-2022.

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removal – arguably may bear a logical relationship to a petitioner's proclivity to flee future proceedings. But a single unauthorized entry to gain access to the legal asylum process cannot properly support a flight risk finding, particularly where the record evidence demonstrates the petitioner's substantial ties and tendency against flight: the government's own Form I-213 contains no allegations that Petitioner attempted to flee from immigration authorities during his arrest (Dkt. 15, Exh. 4); Petitioner has a fixed address (Dkt. 3, Exh. 2 at p. 18); a U.S. citizen sponsor attested he is committed to helping Petitioner follow the legal process (*Id.* at p. 43); Petitioner has steady employment (*Id.* at 30) and a long-time partner and minor children who are rooted in the Beaverton, Oregon community (*Id.* at pp. 22-23).

b. The perceived weakness of Petitioner's claim for immigration relief cannot support the IJ's flight risk finding.

Respondents argue that the fact of Petitioner's pending appeal in his removal case supports a finding that Petitioner constitutes an extreme flight risk warranting detention without bond. Dkt. 14 at pp. 15-16. In *Lima Soriano* the Court rejected the contention that the perceived weakness of the petitioner's immigration case was sufficient, without more, to warrant a no bond decision. *Soriano* 2026 WL 969764, at *5. Respondents attempt to sidestep that finding by arguing that Petitioner's case is distinguishable from Lima Soriano's in that Petitioner's removal case is currently on appeal. But the Court in *Lima Soriano* acknowledged that the reason the weakness of a claim is thought to have a rational relationship to the flight risk inquiry is that "a noncitizen who likely faces inevitable removal may be less likely to appear at future removal hearings." *Soriano* 2026 WL 969764, at *5. Here, Petitioner's ultimate removal is far from inevitable, and Respondents have not pointed to any evidence to the contrary. Rather, Respondents, as they must, acknowledge that Petitioner timely filed an appeal of the IJ's decision to deny his asylum application. Dkt. 14 at p. 3. Petitioner is represented by

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counsel in his removal appeal. Dkt. 3, Exh. 6 (Filing Receipt for Petitioner's BIA appeal of his removal case, listing Kathleen Pritchard of Innovation Law Lab as counsel for Petitioner). Nothing in the record evidence suggests that Petitioner's removal is inevitable, the IJ did not identify any specific facts with regards to the merits of Petitioner's claim which lead him to believe the case is weak (Dkt. 15, Ex. 2, IJ's post-hoc bond memorandum), and the fact that Petitioner retained counsel and timely filed his appeal demonstrates a desire to continue pursuing his asylum claim, not an intent to abscond.

c. Petitioner's employment without authorization and use of a false Social Security number cannot support the IJ's flight risk finding.

The Court in *Lima Soriano* unambiguously found that a noncitizen's unauthorized work, including unauthorized work made possible through the use of a fake Social Security card, was insufficient to support a flight risk finding. *Soriano* 2026 WL 969764, at *5. Respondents have not offered any argument as to why this holding should not apply here. Respondents have likewise not proffered any evidence which would distinguish the facts of Petitioner's unauthorized work from the facts of *Lima Soriano*. And this Court's logic in *Soriano* was sound. The Court reasoned that the petitioner's unauthorized work through the use of a fake Social Security number did not bear a rational relationship to the flight risk inquiry, holding that the IJ's flight risk finding was based on "an illogical conclusion" because "there was no evidence Petitioner used 'false identifies,' i.e. false Social Security numbers, for reasons other than to maintain employment." *Soriano* 2026 WL 969764, at *5. Here, similarly, there is no evidence that Petitioner used a false identity to deceive law enforcement or for any other purpose other than to work. Rather, the government's own Form I-213 shows Petitioner identified himself by his true and correct name after immigration officials pulled him over in

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a traffic stop. Dkt. 3, Exh. 3 (Form I-213) at p. 4. In sum, under *Soriano*, Petitioner's unauthorized work using a fake Social Security number does not form an adequate basis for the IJ's flight risk finding.

d. Petitioner's lack of family members with lawful status in the United States cannot support the IJ's flight risk finding.

The IJ does not explain, in his April 27, 2026 form order nor in his post-hoc bond memorandum issued weeks later why, in his view, Petitioner's lack of relatives with lawful status rationally relates to the question of whether Petitioner is likely to appear for future proceedings. Dkt. 3, Exh. 4; Dkt. 15, Exh. 2. Respondents' counsel likewise does not offer any such explanation. *See generally* Dkt. 14. Additionally, the IJ mischaracterized the record as to Petitioner's familial ties in that his post-hoc memorandum reads as though Petitioner's family members are simply undocumented and living under the radar of immigration authorities in the United States. Dkt. 15, Exh. 2 at p. 4. But the record evidence is to the contrary. Petitioner presented credible evidence that his long-time partner and his minor children have an application for asylum pending with the Portland Immigration Court with a preliminary hearing on that matter set for July 25, 2028. Dkt. 3, Ex. 2 (Petitioner's Bond Evidence Packet filed with the IJ) at p. 106. Petitioner's evidence establishes he is deeply connected to his family (Dkt. 3, Exh. 2 (Petitioner's bond evidence packet) at pp. 22-23, pp. 46-50) and that his family is pursuing lawful status in the United States and have a pending process with immigration authorities that will keep them rooted to the Portland, Oregon area until at least 2028 (*Id.* at p. 106). The IJ committed legal error by taking a *Guerra* factor which weighs *against* a flight risk finding – the "[noncitizen]'s family ties in the United States" – and using it to attempt to justify a flight risk finding, thereby abusing his discretion. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006); Dkt. 15, Exh. 2 at p. 3.

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2. The IJ abused his discretion in failing to consider relevant, probative record evidence.

An IJ commits plain legal error where they fail to duly consider relevant record evidence. *Martinez*, 124 F.4th at 785 (9th Cir. 2024) (internal citations omitted) (noting that though an Immigration Judge need not explicitly address every piece of evidence in order to establish they duly considered the record evidence, where an agency adjudicator "fail[s] to mention highly probative or potentially dispositive evidence," the federal courts will not defer to the agency's use of a " 'catchall phrase' to the contrary"). Here, the contemporaneous record of Petitioner's bond proceeding contains no evidence that the IJ considered any of the evidence Petitioner's counsel submitted establishing his significant ties and equities. Dkt. 3, Exh. 3 (IJ's April 27, 2026 form order) at pp. 1-2. Indeed, the IJ's contemporaneous written decision contains no factual findings whatsoever, much less any explanation as to how he applied the law to the facts of Petitioner's case. Moreover, Petitioner presented credible evidence, which Respondents have not rebutted, that during Petitioner's bond hearing, the IJ "did not address Petitioner's fixed address; his record of compliance with immigration proceedings" and likewise "did not substantively engage with" arguments raised by counsel regarding Petitioner's family ties to the community. Dkt. 3 at pp. 4-6, ¶¶ 11, 14, 17. To be sure, this Court is not empowered to reassess how the IJ weighed the evidence, and the IJ was permitted to afford little weight to Petitioner's evidence if he saw fit, but failure to *consider* Petitioner's evidence whatsoever constitutes an abuse of discretion reviewable by this Court. *Martinez*, 124 F.4th at 785 (9th Cir. 2024).

3. The IJ abused his discretion in failing to consider what combination of bond and conditions would sufficiently mitigate any perceived flight risk

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Respondents contend that having determined Petitioner posed a flight risk, the IJ was under no obligation to consider what amount of bond could ensure his appearance in future proceedings. Dkt. 14 at p. 17. In support of their position, Respondents cite to *Martinez*, where the Court noted "nowhere in *Singh* did we suggest that due process also mandates that immigration courts consider release conditions or conditional parole *before* deciding that an alien is a danger to the community" (emphasis added). 124 F.4th at 786. But this is entirely in line with Petitioner's theory of the case. Petitioner contends that the IJ must first determine if a noncitizen is a danger to the community and if the answer to that question is yes, the bond inquiry ends; if a noncitizen is not deemed a danger, the IJ should consider what amount of bond and/or conditions would mitigate flight risk, if any. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009) ("An Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community"). A flight risk finding entitles a noncitizen to consideration of what amount of bond could mitigate flight, but not danger, because "the setting of bond is designed to ensure an alien's presence at proceedings and is not properly utilized when an alien presents a danger to the community." *Id.* at 141. Though Respondents argue to the contrary, *Hernandez* affirms that individuals who are found to present at least some risk of flight remain eligible for consideration on bond, the "question remain[ing]," after the flight risk determination is made, being "what amount of bond is reasonably likely to ensure the non-citizen's appearance." 872 F.3d 976, 981 fn. 3. The IJ's failure to take up that question constitutes plain error. Though the IJ's form order includes a checkbox, which the IJ marked, which purports to allege "ability to pay considered," that conclusory statement is contradicted by Petitioner's unrebutted evidence that at the hearing, the IJ "did not ask about or discuss whether setting a monetary bond amount would mitigate Petitioner's flight risk,

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nor did he address the argument presented in Petitioner's briefing that a reasonable bond – specifically $5000 – tailored to his financial circumstances would be sufficient to ensure appearance." Dkt. 3 (Decl. of José G. Miranda) at 6, ¶ 19. The IJ's failure to consider what amount of bond money would be a meaningful sum, in the context of Petitioner's financial resources, to ensure his appearance constitutes plain legal error reviewable by this Court.

III. DHS never made an individualized custody determination.

The Court can grant this petition on Count One because DHS never complied with the law when it exercised its initial custody authority over him. Dkt. 1 at ¶¶ 86-93. Petitioner challenges the failure of the Department of Homeland Security to conduct the constitutionally (and statutorily) required custody determination at the moment he was detained and, in its absence, the maintenance of his detention. The specific violation here is that DHS failed to conduct an individualized determination as to his risk of flight or danger to the community, let alone afford him an individual notice or opportunity to be heard prior to or contemporaneous with the detention decision. *Cuy Comes v. DeLeon,* No. 25 Civ. 9283 (AT), 2025 WL 3206491, *6 (S.D.N.Y. Nov. 14, 2025) (reasoning that a post-detention bond hearing is an "inadequate substitute" for a deliberative pre-deprivation process) ; *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025) (finding that re-detention without reconsidering flight risk and danger violates due process). The specific remedy for this DHS violation of his rights must run to *DHS's* illegal action, which is distinct from a remedy that runs to the immigration court bond system (and the Tacoma Immigration Court's illegal practices). *Cuy Comes v DeLeon,* Case No. 25 Civ. 9283 (AT), 2025 WL 3206491 at *6. The only appropriate remedy here of DHS's violation is to order the agency to immediately release the Petitioner.

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A. Petitioner was denied his constitutional right to a deliberative DHS pre-detention proceeding.

Petitioner has a right under the Fifth Amendment's Due Process clause to a "deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, 2025 WL 2961626, *5 (S.D.N.Y. 2025). This is separate and apart from the immigration judge redetermination process. *Cuy Comes,* Case No. 25 Civ. 9283 (AT), 2025 WL 3206491 at *4-5.

Here, as the Respondents' own documentation demonstrates, ICE has detained and maintained detention of Petitioner under 8 U.S.C. § 1226(a). Dkt. No. 15-3 at p. 2. On November 29, 2025, one DHS agent S. Rili/SDDO "pursuant to section 236 and 287 of the Immigration and Nationality Act" commanded that Petitioner be "arrest[ed] and tak[en] into custody for removal proceedings under the Immigration and Nationality Act[.]" *Id.*; *Galvez v. Francis*, Case No. 26 CIV. 161 (AT), 2026 WL 84493 at *2 (S.D.N.Y. Jan. 12, 2026) (reviewing DHS documents to determine original custody authority); 8 U.S.C. § 1226(a) (providing that on a warrant issued by the Attorney General, DHS may invoke discretionary detention).

The Petitioner has a constitutional right that requires *DHS* to make a fulsome custody decision after the arrest. There is an ongoing violation of this constitutional right that stems from the failure to engage in the deliberative process because detention must always be justified by a constitutionally permissible reason. *Zadvydas*, 533 U.S. at 690-92. Under *Mathews*, the process due to Petitioner by DHS prior to or contemporaneous with the DHS decision to take her into custody requires DHS to provide: (1) a reasoned decision regarding flight risk and dangerousness based on reliable evidence, (2) meaningful notice to Petitioner

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of its findings and reasoning, and (3) a meaningful opportunity for Petitioner to be heard. *Cuy Comes*, Case No. 25 Civ. 9283 (AT), 2025 WL 3206491 at *5. This is because the "risk of erroneous deprivation [of liberty] is significant." *Id.* "The purpose of requiring an exercise of discretion *prior to* the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 495 (S.D.N.Y. Aug. 13, 2025) (emphasis added).

The record plainly shows that there was *no* valid exercise of DHS's discretionary detention authority consistent with due process because there is *nothing* to suggest that DHS exercised any discretion at all. Here, DHS's own documents and the undisputed facts show that DHS's custody determination contains no findings of fact and no reasoned analysis. Dkt. No. 15-3 at p. 2. The DHS decision speaks to no facts whatsoever. *Id.* There is no accompanying memorandum, separate set of factual findings, or even the hint of a reasoned analysis. *Id.* Indeed, the undisputed facts here show that "ICE summarily detained [Petitioner] without making an individualized determination as to his risk of flight or his danger to the community, let alone affording him notice or opportunity to he heard." *Cuy Comes*, Case No. 25 Civ. 9283 (AT), 2025 WL 3206491 at *5.

Nearly six months *after* his arrest, Respondents proffer a declaration from Supervisory Detention and Deportation Officer ("SDDO") Stanley Rili. Dkt. 14 at 4; Dkt. 16. It is unclear to Petitioner the purpose of the declaration because it merely restates—almost word for word—the official government record of the detention. *Cf.* Dkt. 16 ¶ 6 *with* Dkt. 15-3 at p. 2. Officer Rili needed to have sufficient authority to issue an arrest warrant under 8 U.S.C. § 1357, Dkt. 16 ¶ 6 (Rili attesting that he found "justif[ication for] the issuance of the warrant

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for his arrest") but the DHS must make a separate independent custody determination. 8 C.F.R. § 236.1(c)(8).

B. The remedy for the DHS violation is immediate release.

In a case such as this, the remedy for DHS's violation of Petitioner's constitutional rights is to order DHS to immediately release him. The "traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 484, 484 (1973); *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005) (acknowledging that federal courts have "a fair amount of flexibility" in habeas cases to discern an appropriate remedy to meet the specific constitutional defects found in a given case before them); *Cuy Comes*, Case No. 25 Civ. 9283 (AT), 2025 WL 3206491 at *6; *Galvez*, Case No. 26 CIV. 161 (AT), 2026 WL 84493 at *3. A bond determination hearing is an inadequate remedy for a DHS violation of Petitioner's constitutional rights. *Cuy Comes*, Case No. 25 Civ. 9283 (AT), 2025 WL 3206491 at *6 ("suggestion that any constitutional violation could be cured" by a "custody re-determination hearing before an immigration judge does not hold water."). A bond hearing as a remedy for the DHS violation "is an inadequate substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Id.* (cleaned up, citing *Lopez v. Sessions*, 18 Civ. 4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018)).

CONCLUSION

The Court should grant the petition and order the Petitioner's immediate release.

Dated: May 26, 2026

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