Sample Language on Remedies in Pre-Final Order Habeas Petitions

Updated June 2026

This language is intended to be useful in petitions, briefing, or motions to enforce, urging federal district court judges to consider remedies for unlawful detention that are more effective than an "ordinary" immigration judge bond hearing with the burden of proof on the noncitizen.[1] Most citations pertain to "§ 1225(b)/§ 1226(a)" detention cases or re-detention cases for individuals previously released or paroled from DHS custody, but a few pertain to § 1226(c) or § 1225(b) prolonged pre-final order detention cases, or other postures. Please check all cites, conduct additional research, and adapt to the individual facts and claims in your case.

I. General Principles

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco*

[1] This memo is a general resource and is not a substitute for individualized legal advice. This language is not exhaustive and contains examples of helpful cases from many districts rather than many cases from the same district. This memo does not address in detail arguments that EOIR bond hearings do not provide a neutral review of custody or that the BIA does not fairly and neutrally review bond appeals. *See, e.g.*, resources on the Acacia Practitioner Hub to develop these issues further. This memo also does not address government arguments in enforcement proceedings about exhaustion of remedies or the 8 U.S.C. § 1226(e) jurisdictional bar, although many of the below decisions have detailed discussions of these issues before reaching the merits issues cited here.

Lopez v. Decker, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

II. Immediate Release is the Appropriate Remedy

Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas should shall "dispose of the matter as law and justice require."); *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a case like this, where Petitioner has been detained in violation of both the INA and due process, is release on recognizance without further conditions of release. *See Ambroladze v. Maldonado,* No. 26-CV-00474 (HG), 2026 WL 280182, at *3 (E.D.N.Y. Feb. 3, 2026) (given that the typical remedy for unlawful detention is release, "the government's ongoing detention of Petitioner, in the face of yet another complete failure of process, entitles him to immediate release").

Hundreds of courts across the country have agreed.[2] *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); *Gonzalez*

[2] Because of the extremely high volume of habeas case law in 2026, we have only made minor updates to sections I-III since the March 2026 update, focusing instead on new case law about compliance and enforcement issues in sections IV-V.

Centeno v. Lowe, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); *Feisal O. v. Noem,* No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); *Garcia Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same); *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich. Dec. 29, 2025) (same); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary where there was no indication petitioner was a danger or flight risk); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025) (same); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D. Mo. Jan. 8, 2026) (same); *see also Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 154 (W.D.N.Y. 2025) (ordering release and that petitioner could not be detained without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (same); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (same).

Release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Petitioner's arrest, which cannot be remedied by a post-deprivation hearing. *See, e.g., Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released by ICE and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (post-deprivation

review cannot remedy the due process violation of detention with no individualized assessment); *Noyola v. Bondi*, 822 F. Supp. 3d 720, 736 (W.D. Tex. Mar. 4, 2026) (same); *Bethancourth v. Tate*, 822 F. Supp. 3d 762, 771 (S.D. Tex. Mar. 6, 2026) (same, where the government alleged no changed circumstances justifying re-detention); *Diallo v. Trump*, 25-cv-2012-JE-JMP (W.D.L.A. Mar. 5, 2026) (granting immediate release as the appropriate remedy for illegal re-detention, and in light of medical hardship petitioner was suffering in detention); *Moctezuma Macias v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing); *Briceno Solano v. Mason*, 818 F. Supp. 3d 802, 836 (S.D.W. Va. 2026) (ordering release because "there is little chance the Government would actually hold a bond hearing, and there is no chance any hearing that occurred would comport with due process"); *see also Garrison G. v. Bondi*, No. 26-CV-172, 2026 WL 157677, at *4 (D. Minn. Jan. 17, 2026) (finding that ICE's violation of the Fourth Amendment by entering petitioner's home without a warrant or consent alone also warranted immediate release); *Vasquez Gonzalez v. Oddo*, No. 3:25-CV-424, 2026 WL 1139544, at *4 (W.D. Pa. Apr. 28, 2026) (given the petitioner's unreasonably prolonged detention, immediate release, not a bond hearing, was the only remedy that comported with the Fifth Amendment).

III. The Habeas Court May Hold a Bail Hearing or Set Release Conditions

In the alternative, the habeas court can hold its own custody hearing and determine whether ICE can prove by clear and convincing evidence that Petitioner must remain in custody, or whether Petitioner may be released on recognizance, an appropriate bond that considers his ability to pay, or supervised release. This is a more efficient and effective remedy than ordering

an immigration judge (IJ) to conduct a hearing, which may lead to additional enforcement proceedings and delays before the unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 474-78 (D. Mass 2010) (granting petition and discussing at length habeas court's equitable power, which includes power to hold its own bail hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not individualized and did not comport with due process, and granting motion to enforce to hold the court's own bond determination); *Luciano-Jimenez v. Doll*, 543 F. Supp. 3d 69, 72 (M.D. Pa. 2021) (same); *Ramirez v. Watkins*, No. 10-cv-126, 2010 WL 6269226, at *19-20 (S.D. Tex. Nov. 3, 2010), *rep. and rec not reached,* (S.D. Tex. Dec. 8, 2010) (dismissing case as moot) (recommending the habeas court conduct its own bail inquiry, as it would be more efficient, ensure supervision over any compliance issues, and avoid further proceedings); *G.F.F. v. Francis*, No. 25-CV-7368 (JGK), 2026 WL 924072, at *4 (S.D.N.Y. Apr. 4, 2026) (after IJ failed to consider alternatives to detention as ordered by court, declining to give the agency "yet another" chance at compliance and setting specific release conditions through the court).

IV. Pervasive Enforcement Problems in Court-Ordered Bond Hearings

A bond hearing by an IJ is not the most appropriate or efficient use of this Court's equitable authority. Actions by ICE attorneys and IJs during and after habeas court-ordered bond hearings have necessitated enforcement proceedings across the country, creating significant extra work for the court and the parties while petitioners' unlawful detention continues.

A. ICE's Use of the "Automatic Stay" of an IJ Bond Grant

Since 2025, ICE has frequently appealed the IJ's grant of bond to the Board of Immigration Appeals (BIA) and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2). This stay, which keeps the petitioner detained despite an IJ bond grant, was rarely invoked in prior years but has now become common. Dozens of habeas courts have ruled that the automatic stay violates due process and have ordered Respondents to allow a petitioner to post his bond. *See, e.g.*, *Merchan-Pacheo v. Noem*, No. 1:25-cv-03860, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026) (finding automatic stay violates due process); *Funez Veliz v. Baltazar*, No. 26-CV-01886-NYW, 2026 WL 1493086, at *7 (D. Colo. May 28, 2026) (same); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay violates or likely violates due process, and collecting cases at n.6); *see also Garvey v. Noem*, No. 6:26-CV-3109-MDH, 2026 WL 612302, at *3 (W.D. Mo. Mar. 4, 2026) (granting TRO and ordering immediate release given the "blatant absence of procedural due process" in ICE's use of automatic stay); *Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic stay likely violates due process and granting preliminary injunction); *Guasco v. McShane*, No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting that other habeas courts have "assailed the Government's practice of acting both as the prosecution and the judge in making a unilateral and unreviewed decision as to detention") (internal citation omitted). ICE has also violated its own regulations in invoking the stay. *See, e.g., Santiago v. Warden*, No. 1:26-CV-01879, 2026 WL 1679303, at *1 (E.D. Cal. June 10, 2026) (finding such violations where the 90-day stay lapsed and ICE did not release petitioner and ordering immediate release).

B. ICE Unilaterally Imposing GPS Ankle Monitors and Harsh Conditions of Release

In other cases, ICE has applied painful GPS ankle monitors or other unnecessary conditions of release that neither the habeas court nor the immigration court ordered, requiring additional litigation. *See, e.g., Gonzalez Centeno v. Lowe,* No. 3:25-cv-2518, 2026 WL 196513, at *2 (M.D. Pa. Jan. 26, 2026) (ordering ICE to remove ankle monitor it imposed after habeas court had ordered immediate release, noting "the government continues to provide unsupported or even Kafkaesque arguments to justify DHS's noncompliance with court orders"); *Diahn v. Lowe*, No. 1:24-cv-1936, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026) (ordering ICE to remove ankle monitor it had unilaterally put on after IJ granted bond without further conditions); *Montes Aguillon v. Bondi*, No. 26-cv-71-KC, 2026 WL 531899, at *2 (W.D. Tex. Feb. 25, 2026) (same, and collecting cases); *Muniz v. Noem*, No. 25-CV-00671-DB, 2026 WL 803134, at *3 (W.D. Tex. Mar. 6, 2026) (same); *Batz Barreno v. Baltasar*, 816 F.Supp.3d. 1255, 1258 n.3 (D. Colo. Jan. 15, 2026) (same, noting that removal of the ankle monitor was required by "[f]undamental fairness and compliance with the rule of law" and the general notion of "fairness and fairplay"); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 70 (D. Mass. 2025) (same, finding this presented a "real constitutional risk" and defeated the purpose of neutral third-party review of custody); *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187, 2025 WL 3089712, at *9 (E.D. Cal. Nov. 5, 2025) (same, in preliminary injunction context); *Abdeltawab v. Armant, et al.,* No. 26-cv-01520-MWF (DTB), 2026 WL 1710301, at *3 (C.D. Cal. June 4, 2026) (finding ICE requiring an ankle monitor, ISAP enrollment, and travel restrictions violated the court's order to restore petition to his status before being detained); *Sanchez Arcos v. Semaia*, No. 2:26-CV-01975-AYP, 2026 WL 1771048, at *5 (C.D. Cal. June 17, 2026) (same); *N- N- v. McShane*, No. 25-cv-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025) (finding ICE's imposition of an

ankle monitor, check-ins, and travel restrictions, which the IJ did not order in setting bond, violated due process and the *Accardi* doctrine); *da Silva v. LaForge*, No. 25-cv-17095, 2026 WL 45165, at *4 (D.N.J. Jan. 7, 2026) (requiring ICE to vacate conditions including electronic monitoring, home confinement days, unscheduled ICE home visits, and travel restrictions, as their imposition violated the bond regulations and substantially prejudiced petitioner).

C. Widespread Noncompliance with Federal Habeas Court Orders

Hundreds, if not thousands, of other cases have involved Respondents' outright refusal, inability, or failure to hold a timely bond hearing after being ordered to do so. These failures have occurred in both classwide cases and individual petitions. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *4 (C.D. Cal. Feb. 18, 2026) (granting motion to enforce classwide declaratory judgment that thousands of noncitizens are eligible for bond, noting that "Respondents' noncompliance with the Final Judgment has taken a toll on wrongfully detained noncitizens, courts, and government and Petitioners' attorneys," and noting over 400 individual habeas petitions that were granted for individuals who should have benefited from class membership); *Rodriguez Vazquez v. Hermosillo*, No. 3:25-CV-05240-TMC, 2026 WL 102461, at *1 (W.D. Wash. Jan. 14, 2026) (granting in part motion for further relief in similar class action concerning a single ICE facility and noting that "more than 100 unlawfully detained noncitizens—left with no other recourse due to Defendants' noncompliance"— had to file habeas petitions to access the bond hearings the court had already ordered for the class); *Gonzalez v. Leyva*, No. 2:26-CV-01218-RFB-EJY, 2026 WL 1431003, at *3 (D. Nev. May 21, 2026) (noting that 50 days after the court had granted classwide relief, "Federal Respondents have not been deterred from continuing to detain Class Members like Petitioner without appropriate custody determinations…undermining their credibility and the rule of law. Their

conduct also causes unnecessary trauma and harm to petitioners."); *Juan T.R. v. Noem*, No. 26-CV-0107 (PJS/DLM), 2026 WL 555601, at *1 (D. Minn. Feb. 26, 2026) (habeas court attaching appendices cataloging 210 court orders the Department of Justice had violated in 143 habeas cases, which included over 15 instances of failing to provide a court-ordered bond hearing);[3] *Kumar v. Soto*, No. 26-cv-777, Dkt. No. 21. (D.N.J. Feb. 13, 2026) (filing from the New Jersey U.S. Attorney's Office admitting to violating 56 orders in habeas cases, including holding bond hearings in the required time period, and failing to file 16 required status updates).

Noncitizens have had to spend considerable resources raising these failures in individual cases. *See Fernandez Alvarez v. Noem*, No. 2:26-CV-00313-SPC-DNF, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026) (ordering immediate release after IJ found petitioner was detained under 8 U.S.C. § 1225(b)(2) and ineligible for bond even after habeas court had ordered otherwise); *Kumar v. Carnes*, No. 2:26-CV-01391-DHU-KRS, 2026 WL 1686070, at *3 (D.N.M. June 10, 2026) (same, noting the habeas court was "no longer confident that further orders meant to redress constitutional infirmities and concerns will be followed"); *Martinez Ortiz v. ICE*, No. 2:26-CV-01159-TMC, 2026 WL 1724213, at *1 (W.D. Wash. June 15, 2026) (same, noting IJ's position was "directly contrary" to the court's order); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354, at *1 (S.D.N.Y. Nov. 25, 2025) (granting motion to enforce where DHS invoked automatic stay after habeas court-ordered bond hearing). These

[3] Other violations in *Juan T.R.* and in cases around the country include failure, after being ordered, to: prevent transfer of a petitioner out of state; return a petitioner to his or her home state; timely release a petitioner; return personal IDs and property; and file status updates showing compliance. *See also* Kyle Cheney, *How ICE defies judges' orders to release detainees, step by step,* Politico, Feb. 10, 2026, *available at* https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727; Maria Sacchetti, *How ICE officers defied court orders as immigrant arrests soared in Minneapolis*, Washington Post, Mar. 9, 2026, *available at* https://www.washingtonpost.com/immigration/2026/03/10/trump-immigration-detention-minneapolis-courts/ .

failures extend to matters as simple as telling noncitizens and their attorneys when their hearings are. *See Gurpreet v. Warden, Golden State Annex*, No. 1:26-CV-00437-TLN-JDP, 2026 WL 1678332, at *6 (E.D. Cal. June 10, 2026) (granting release where Respondents failed to send petitioner proper notice for his court-ordered bond hearing, the IJ held the hearing without him and denied bond, and Respondents illegally re-detained him); *Ortiz-Chavez v. Chestnut*, No. 1:26-CV-01182-JLT-SAB, 2026 WL 1759592, at *2 (E.D. Cal. June 18, 2026) (granting motion to enforce where Respondents failed to notify petitioner or her counsel of the bond hearing and petitioner was forced to appear pro se without any evidence and was denied bond).

Many cases have presented multiple rounds of ICE actions to frustrate habeas court orders that have taken significant attorney and court time and resources to correct. In *Romero Perez v. Francis*, No. 25-cv-8112, 2025 WL 3110459 (S.D.N.Y. Nov. 6, 2025) the court ordered a burden-shifted bond hearing, but compliance with that order required two emergency motions to enforce before the petitioner was given an actual bond hearing and ICE withdrew their automatic stay and permitted his release. *See* No. 25-cv-8112, ECF No. 31 (Nov. 10, 2025) (first motion to enforce); ECF No. 33 (Nov. 13, 2025) (second motion to enforce); ECF No. 34 (status update). Many cases have presented the same ICE actions frustrating the court's orders. *See Diahn v. Lowe,* No. 1:24-cv-1936, 2026 WL 84576, at *2 (M.D. Pa. Jan. 12, 2026) (explaining that petitioners had filed two motions to enforce, first when ICE invoked the automatic stay after the IJ granted bond, and second when ICE withdrew the stay but placed a painful ankle monitor on the petitioner that the IJ had not ordered); *Ren v. Tsoukaris*, No. 26-CV-00767, 2026 WL 1602178, at *5 (D.N.J. June 4, 2026) (finding further hearings would be futile after habeas court ordered a second bond hearing and IJ decided the first hearing had complied with the court's order and refused to hold the second hearing; court found failure to provide ordered process was

contributing to petitioner's serious mental health deterioration); *Cartagena Hueso v. Soto*, No. 26-cv-1455 (ZNQ), 2026 WL 539271, at *3 (D.N.J. Feb. 26, 2026) (granting immediate release after Respondents failed to comply with two court orders to hold a bond hearing within 10 days and to prevent petitioner's transfer out of state); *Villasenor v. Valdez*, No. 221-489-91, 2026 WL 1275649, at *1 (D. Colo. May 8, 2026) (granting motion to enforce where petitioner was granted bond after court-ordered hearing but ICE refused to accept the bond payment twice and release him); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2984913, at *2 (S.D.N.Y. Oct. 23, 2025) (finding DHS's use of multiple "one-sided" stay mechanisms to prevent release after habeas-court ordered bond hearing violated due process, and granting motion to enforce); [4] *El Gamal v. Noem,* No. SA-25-CV-01261-FB, 2026 WL 1104363, at *15 (W.D. Tex. Apr. 20, 2026), *report and recommendation adopted sub nom. El Gamal v. Mullin*, No. SA-25-CV-1261-FB, 2026 WL 1108593 (W.D. Tex. Apr. 23, 2026) (after prior rounds of bond hearings and ICE's invocation of the automatic stay, granting release because "a third bond hearing would be an inadequate remedy to ensure due process is preserved").

D. Immigration Judge Failures to Conduct a Fair Bond Hearing as Ordered

Finally, in many cases, IJs have failed to conduct a neutral, individualized bond hearing as ordered or to place the burden of proof as directed by the habeas court – so many that the rise of motions to enforce habeas grants has drawn national media attention.[5]

[4] In *J.M.P.*, the DHS attorney at the habeas-ordered bond hearing continued to insist the IJ lacked jurisdiction to consider bond in the face of the habeas court's order. 2025 WL 2984913, at *5.
[5] *See* Kyle Cheney, *Judges keep ordering immigration hearings – but say the results are a sham*, Politico, Mar. 6, 2026, *available at* https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660; Kyle Cheney, *Immigration judges are denying ICE detainees release. Federal judges are stepping in*, Politico, June 17, 2026, *available at* https://www.politico.com/news/2026/06/17/trump-administration-immigration-court-00965963.

1. Immediate Release vs. A Second Bond Hearing After IJ Non-Compliance

In some cases, habeas courts have ordered a "do-over" through a second bond hearing. *See, e.g., Akhemedov v. Pittman*, No. 25-cv-13734 (MCA), 2026 WL 323404, at *4 (D.N.J. Feb. 6, 2026) (ordering second bond hearing because at the first court-ordered hearing, the IJ did not put the burden of proof on DHS as the habeas court had required); *Kim v. Rokosky*, No. 2:26-CV-00448 (BRM), 2026 WL 1492772, at *3 (D.N.J. May 28, 2026) (same, and expressing skepticism that the existence of a removal order that was stayed on appeal could be clear and convincing evidence of flight risk); *Diallo v. Raycraft*, --- F. Supp. 3d ---, No. 1:26-CV-423, 2026 WL 1487286, at *2 (S.D. Ohio May 18, 2026) (ordering new hearing where IJ did not place burden on DHS nor consider alternatives to detention as ordered); *Marco Antonio B.R. v. Warden*, No. 1:26-CV-00810-TLN-CSK, 2026 WL 1649601, at *4 (E.D. Cal. June 8, 2026) (ordering second bond hearing where at first one, ICE counsel "did not even attend the hearing before the IJ to meet its burden to establish by clear and convincing evidence" that detention was justified, yet the IJ still denied bond); *Brena v. Olson*, No. 1:26-CV-00931-JMS-MJD, 2026 WL 1625379, at *6 (S.D. Ind. June 5, 2026) (ordering new bond hearing where first one violated due process, as the IJ provided 24 hours' notice of the hearing along with impossible orders to file all evidence 2 days before the hearing and have all witnesses appear in person); *Garay-Mercado v. Castro*, No. 2:26-CV-01119-MIS-KK, 2026 WL 1361548, at *2 (D.N.M. May 15, 2026) (ordering second hearing because court could not tell whether IJ's short and "comically deficient" explanation for denying bond was constitutionally adequate); *Lopez v. Paulk*, No. 7:26-CV-00029-WLS-ALS, 2026 WL 961948, at *10 (M.D. Ga. Apr. 6, 2026) (granting second bond hearing, now with the burden of proof on DHS, which was petitioner's requested remedy;

bond hearing was not individualized where IJ issued two sentence denial with no reference to having read or considered petitioner's 560-page evidence packet).

More commonly, however, habeas courts have recognized the poor use of resources in ordering a noncompliant agency to re-do a hearing and ordered immediate release. As one district judge put it after an IJ refused to hold an ordered bond hearing and insisted the petitioner was not eligible for bond, the government's "request for a do-over here is not just legally unsupportable, it is a masterclass in litigation cynicism…because the Government has shown a complete inability to follow judicial directions, the only remedy that 'law and justice require' is immediate release." *Iastrebov v. Warden, Baker Cnty. Det. Facility*, No. 2:26-CV-1697-KCD-NPM, 2026 WL 1694050, at *1 (M.D. Fla. June 11, 2026).

Dozens of judges have had to issue similar orders. *See, e.g., Timbigamba v. FCI Berlin, Warden,* No. 26-CV-281-LM-AJ, 2026 WL 1470320, at *12 (D.N.H. May 26, 2026) (finding it would be "inequitable and a waste of resources" to grant another bond hearing after first one violated due process); *Ulloa Bueno v. Soto*, No. 26-CV-896, 2026 WL 509102, at *2 (D.N.J. Feb. 24, 2026) (granting release after immigration judges twice failed to conduct a neutral bond hearing with the burden on DHS: "Continued detention in the face of repeated noncompliance with explicit judicial directives constitutes an ongoing deprivation of liberty without constitutionally sufficient process."); *A.D. v. Oddo*, 3:25-cv-460-SLH-MPK, Dkt. No. 40 (W.D.P.A. Feb. 12, 2026) (ordering release where IJ did not provide correct interpreter, then incorrectly called the petitioner "evasive" in denying bond); *Pedroso de Oliveira v. Freden*, No. 6:25-CV-6663 2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025) (granting motion to enforce where "the IJ wholly failed to follow the Court's directions" to place the burden of proof on DHS by clear and convincing evidence and consider alternatives to detention.); *Mathon v. Searls*, 623

F. Supp. 3d 203, 208 (W.D.N.Y. 2022) (ordering immediate release after the IJ did not hold DHS to the court-ordered burden of proof or consider alternatives to detention, and thus "failed to provide him with the bond hearing to which he was constitutionally entitled"); *Mendoza v. Noem,* No. 26-CV-1260 (LJL), 2026 WL 1470652, at *7 (S.D.N.Y. May 26, 2026) (granting release where IJ did not comply with order to consider alternatives to detention); *Salazar-Lopez v. Mullin*, No. 2:26-CV-00871-RFB-MDC, 2026 WL 1414066, at *3 (D. Nev. May 20, 2026) (granting immediate release where IJ failed to place the burden of proof on the government by clear and convincing evidence); *Donouvo v. Bondi*, No. 1:26-CV-00192-KG-KK, 2026 WL 776365, at *2 (D.N.M. Mar. 19, 2026) (same); *Mejia v. Baltazar*, No. 26-CV-00385-NYW-TPO, 2026 WL 1361514, at *3 (D. Colo. May 15, 2026) (same, and IJ did not "mention any evidence" she considered); *Mederos-Ortega v. Anda-Ybarra*, No. 2:26-CV-00802-KG-JFR, 2026 WL 1363074, at *2 (D.N.M. May 15, 2026) (granting release where IJ announced "I'm not going to grant you bond" at start of court-ordered bond hearing and did not hold DHS to its burden or even hear argument from the parties); *see also Alvarez Felix v. United States Dep't of Just. et al.*, No. 2:26-CV-03304-HDV-AYP, 2026 WL 1719418, at *2 (C.D. Cal. June 10, 2026) (granting preliminary injunction and release where the IJ "used the incorrect burden of proof at the hearing, did not seriously consider whether any flight risk could be mitigated by reasonable conditions of supervision, and failed to give sufficient weight" to petitioner having a sponsor in the community); *Said v. Noem*, 3:25-cv-938-MOC (W.D.N.C, Feb. 4, 2026) (granting TRO where IJ's refusal to consider evidence, or let petitioner defend himself against assertion he had not complied with a prior condition of release, likely violated due process).

2. Unlawful Denials Based on Flight Risk

Compliance failures also include IJs denying bond in numerous cases for reasons that were not individualized, did not apply EOIR's own standards for bond in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), or otherwise did not provide due process. Many such hearings involve baseless flight risk denials. *See, e.g., Lemus Crispin v. Bondi*, --- F. Supp. --- No. 1:26-cv-191 (LMB/WEF), 2026 WL 768859, at *6 (E.D. Va. Mar. 18, 2026) (finding "the link between Lemus's unauthorized employment and any risk of flight is so tenuous that the Immigration Judge's reliance on that fact deprived Lemus of constitutionally sufficient process."); *Lozhkina v. Noem*, 6:26-cv-3001-MDH (W.D. Mo. Feb. 10, 2026) (granting motion to enforce where IJ's denial of bond based on flight risk lacked any record support and had "indications of predetermined outcome based on disagreement over [habeas court's] previous order"); *Villa v. Mullin*, No. 5:26-CV-01690-JDE, 2026 WL 1583941, at *2 (C.D. Cal. June 2, 2026) (finding court-ordered bond hearing violated due process and granting release where IJ relied on illegitimate flight risk factors like illegal entry to the U.S. 33 years ago and having worked without authorization); *Singh v. LaRose*, No. 26-CV-1425 JLS (GC), 2026 WL 1387428, at *5 (S.D. Cal. May 18, 2026) (granting release where, at court-ordered bond hearing, there was "no evidence that the IJ considered the *Guerra* factors" and the IJ appeared to ignore all evidence in petitioner's favor); *Paredes v. Warden, Fla. Soft Side Det. Ctr.*, No. 2:26-CV-01131-SPC-DNF, 2026 WL 1353224, at *1 (M.D. Fla. May 15, 2026) (same, where IJ was ordered to apply the *Guerra* factors, and the IJ instead issued a two-word order: "flight risk"); *Sanchez Henao v. Hernandez*, No. 2:26-CV-00707-LK, 2026 WL 1492714, at *6 (W.D. Wash. May 28, 2026) (granting release where IJ at court-ordered bond hearing gave no reasons for flight risk denial, and noting that the mere existence of a removal order is not clear and convincing evidence of

flight risk); *Soriano v. Hernandez*, No. 2:26-CV-00900-DGE, 2026 WL 969764, at *5 (W.D. Wash. Apr. 10, 2026) (granting release where IJ abused his discretion by finding an unlawful entry from 25 years ago and working with false Social Security numbers made him a flight risk, despite 25 years of presence and work history, which BIA precedent holds are positive bond factors); *D.Y.E.H. v. Warden, Irwin Det. Ctr.*, No. 7:25-CV-201 (WLS-AGH), 2026 WL 1230386, at *5 (M.D. Ga. Apr. 6, 2026) (finding bond hearing violated due process where IJ set $40,000 bond at a hearing where DHS made no flight risk arguments; IJ's presumption that the "mere fact of being in removal proceedings" created flight risk was "the opposite of an individualized assessment"); *Perez Serrano v. Hagan*, No. 1:26-CV-01641-CNS, 2026 WL 1396534, at *3 (D. Colo. May 19, 2026) (the IJ's denial of bond by failing to discuss almost all of petitioner's strong evidence he was not a flight risk and assumption his relief from removal was "speculative" was "error on a constitutional scale"); *Martinez Aguilar v. McDonald*, No. CV 25-13638-LTS, 2026 WL 1623077, at *1 (D. Mass. June 5, 2026) (ordering release where IJ ignored petitioner's "ample" evidence and found flight risk based solely on petitioner being denied relief by another IJ, which was on appeal; the court noted this was the *fourth* recent case in which it found constitutionally deficient bond hearings by the same IJ).

3. Unlawful Denials Based on Dangerousness

These deficient hearings also include denials based on unsupportable findings of future danger. *See Picado v. Hyde*, 26-cv-65-JJM-PAS (D.R.I. Feb. 9, 2026) (granting immediate release where Picado had "two bond hearings that two separate judges have found to be deficient," including an IJ finding that an uncorroborated police report that Picado was speeding constituted clear and convincing evidence he was a danger to the community); *Espana v. Nessinger*, No. 26-CV-014-JJM-PAS, 2026 WL 821788, at *13 (D.R.I. Mar. 25, 2026) (granting

release where IJ danger finding relied only on uncorroborated accusations in DHS's Form I-213, which contained errors and inconsistencies and could not be clear and convincing evidence); *Santos v. Lowe*, No. 1:18-cv-1553, No. 2020 WL 4530728, at *3 (M.D. Pa. Aug. 6, 2020) (after court-ordered bond hearing for § 1226(c) prolonged detention claim, finding that "[m]echanistic reliance on factors that are common to all 1226(c) detainees will not suffice"); *Garcia Ortiz v. Henkey*, No. 1:26-CV-00043-BLW, 2026 WL 948275, at *4 (D. Idaho Apr. 7, 2026) (granting immediate release where IJ did not record the hearing, made a danger finding that "strains credulity" by speculating about a police report that was not in the record, and issued a "rubber-stamp" denial that violated due process); *Timbigamba v. FCI Berlin, Warden,* No. 26-CV-281-LM-AJ, 2026 WL 1470320, at *8-9 (D.N.H. May 26, 2026) (finding a "Kafkaesque spiral" where IJ found danger based only on a pending larceny charge for which petitioner had exculpatory evidence and where ICE refused to transport him to criminal hearings to defend himself); *Lu v. Divver*, No. 26-CV-781-JES-DEB, 2026 WL 1755174, at *6 (S.D. Cal. June 2, 2026) (finding bond hearing violated due process where IJ made danger finding based only on statement in Form I-213 that petitioner drove onto a military base without authorization, for which he was not criminally charged and which even the IJ acknowledged could have been a wrong turn); *Segura Serrano v. Scott*, No. 2:26-CV-01268-LK, 2026 WL 1674357, at *9 (W.D. Wash. June 1, 2026) (ordering release where IJ failed to give rationales for her denial of bond and "concocted a dangerousness finding out of thin air after the fact" by adding it to her written decision when she had not found it at the hearing); *see also Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 398 (3d Cir. 1999) (cautioning that "presenting danger to the community at one point by committing crime does not place them forever beyond redemption. Measures must be taken to assess the risk of flight and danger to the community on a current basis."); *Collado Nunez v.*

Oddo, No. 25-CV-143J, 2026 WL 1170973, at *9 (W.D. Pa. Apr. 30, 2026) (granting motion to enforce and release where respondents violated *Chi Thon Ngo* by relying "solely on the bare record of temporally distant convictions").

As a general matter, federal courts are recognizing "mounting evidence that bond determination hearings conducted in Immigration Court ... have preordained outcomes." *Singh v. Valdez*, No. 1:26-cv-1109-WJM, at *10-11 (D. Colo. Apr. 1, 2026) (doc. no. 11); *see also Zheng v. Rokosky*, No. 26-CV-01689, 2026 WL 800203, at *7 (D.N.J. Mar. 23, 2026) (granting release where bond hearing violated due process, and noting that judges "cannot ignore that the circumstances surrounding these proceedings raise substantial concerns as to whether any non-citizen can receive the impartial hearing that due process require," referencing the mass firings of over 100 IJs); *Sabillon v. Barnett*, No. CV 3:26-0292, 2026 WL 1180071, at *2 n.7 (S.D.W. Va. Apr. 30, 2026) ("Ordering a bond hearing would be futile given the reports of systematic denial of bond"); *Segura Serrano v. Scott*, No. 2:26-CV-01268-LK, 2026 WL 1674357, at *4 (W.D. Wash. June 1, 2026) ("The threadbare rationale of the IJ [ ] suggests her decision was results-oriented rather than based on the applicable legal standards.").[6] To avoid a wasteful round of enforcement proceedings – or even two – while unlawful detention continues, this court should grant release or hold any bail hearing itself.

V. Strong Procedural Protections If the Court Orders a Bond Hearing

As a final option, this court could grant an immigration court bond hearing that follows clear guidelines and keep jurisdiction over this case to until satisfied that an individualized,

[6] *See* Nicholas Nehamas et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. Times, Apr. 9, 2026, *available at* https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html (reporting that EOIR's Chief Immigration Judge emails individual IJs asking for explanations of why they granted bond, and quoting a current IJ that "the pressure to deny bond is overt" and that judges must inform a supervisor when they grant bond).

constitutionally adequate review was held. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (holding that the proper remedy given the due process concerns is a bond hearing where the government bears the burden of proof); *Gomez v. Olson*, No. 25-cv-15300, 2025 WL 3768242, at *6 (N.D. Ill. Dec. 31, 2025) (noting the "overwhelming consensus" that the burden in a court-ordered bond hearing should be placed on the government); *F.B. v. Oddo*, No. 3:26-CV-717, 2026 WL 1265352, at *6 (W.D. Pa. May 8, 2026) (ordering a bond hearing before a "neutral adjudicator" where petitioner has a right to make arguments on her behalf and receives an "individualized" determination").

The court should order that in that hearing, DHS bears the burden of proof to justify continued detention by clear and convincing evidence, and DHS is barred from invoking the automatic stay regulation if the IJ grants bond. *See, e.g., O.F.C. v. Almodovar*, No. 25-cv-9816, 2026 WL 74262, at *16 (S.D.N.Y. Jan. 9, 2026); (to ensure due process, ordering DHS to justify detention by clear and convincing evidence, and enjoining DHS from invoking the automatic stay on a bond grant or arguing that the IJ lacked jurisdiction); *Uluan Lopez v. Mullin*, No. 26-CV-4335 (LJL), 2026 WL 1493531, at *1 (S.D.N.Y. May 28, 2026) (same, and IJ must consider alternatives to detention and ability to pay); *Lopez-Romero v. Lyons*, No. 2:25-cv-01113, 2026 WL 92873, at *7 (D.N.M. Jan. 13, 2026) (to ensure due process, requiring the government justify detention by clear and convincing evidence, and that the IJ consider ability to pay bond); *Perez-Regalado v. Feeley*, No. 2:25-cv-02409, 2026 WL 36112, at *6 (D. Nev. Jan. 6, 2026) (enjoining ICE from invoking an automatic stay after a bond grant); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (same); *Garay v. Perry*, No. 1:25-CV-2215, 2025 WL 3540070, at *4 (E.D. Va. Dec. 10, 2025) (releasing petitioner immediately, ordering a bond hearing within 14 days, and enjoining ICE from arguing the IJ lacks jurisdiction

or from invoking the automatic stay). ICE should also be ordered to return all of the petitioner's property. *See, e.g., Meza-Colindre v. Hoover*, No. 3:26CV1127, 2026 WL 1497186, at *4 (M.D. Pa. May 28, 2026) (ordering immediate release, no electronic monitoring, the return of all clothing and personal property).

The parties should submit a status update to the Court promptly after any hearing. *See Dominguez v. Noem*, 25-cv-0074, 2026 WL 67200, at *4 (W.D. Tex. Jan. 8, 2026) (ordering bond hearing with burden on the government by clear and convincing evidence, and ordering "an expedited timeline for compliance" given multiple past cases where the government had violated the court's orders). However, because this may still be inefficient and result in additional litigation, release or a detention hearing held by this court are the most appropriate and efficient remedies. *See Salazar-Lopez v. Mullin*, No. 2:26-CV-00871-RFB-MDC, 2026 WL 1414066, at *3 (D. Nev. May 20, 2026) (raising the possibility of contempt sanctions in the future in case where government filed alleged joint status update with content petitioner did not agree to using petitioner's e-signature; ordering immediate release with no electronic monitoring or other conditions of release).