UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESUS ALEJANDRO CONTRERAS-ZAMBRANO

Petitioner,

KEVIN RAYCRAFT, Acting Field Director for U.S. Immigration and Customs Enforcement, Detroit Field Office, in his official capacity; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General.

Respondents.

Case No. 1:26-cv-802

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. On March 4, 2026, this Court ordered Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a).
2. Petitioner's bond hearing was held before Immigration Judge ("IJ") Ellen Karesh on March 10, 2026.
3. The IJ did not discuss the burden of proof on the record at the bond hearing.
4. Petitioner presented unrebutted documentary evidence establishing family and community ties in the United States, a path to relief via his own asylum application or his stepfather's asylum application, proof of previous employment, and a stable address.
5. Most importantly, Petitioner's counsel highlighted the fact that Petitioner arrived here with his family when he was 15 years old and is currently only 18 years old. Petitioner lives with his mother and stepfather and has a new baby brother at home.

6. DHS presented no evidence except for the I-213 Record of Deportable/Inadmissible Alien which confirmed that Petitioner had no criminal record.

7. DHS argued that the Petitioner had not met his burden.

8. The IJ denied the bond due almost exclusively to the fact that his asylum application and the application of his stepfather were speculative.

9. The IJ stated the Petitioner "has not met his burden."

10. However, the IJ's written order issued later that day bizarrely includes the following:

> The Court finds that the Department of Homeland Security has proven by a preponderance of the evidence, and even at the higher standard of clear and convincing evidence, that the Respondent is a flight risk and there are no conditions or combination of conditions that would reasonably assure the Respondent's future appearances at immigration proceedings.
> Ex. A, Bond Order.

11. Regardless of what the IJ later wrote in her written opinion, based on the conduct of the hearing, the uncontested assertion of DHS that Petitioner bears the burden of proof, and the IJ's statement that "Petitioner has not met his burden," it is clear the IJ conducted the hearing as BIA precedent requires – by forcing the detainee to bear the burden of proving he is not a flight risk or danger.

12. This does not comport with due process – the overwhelming weight of authority requires the government to prove, by clear and convincing evidence, that a noncitizen is a flight risk or danger to the community.

13. Moreover, it is an error of law for the IJ to deny bond based almost exclusively on their finding that relief is speculative. A finding of speculative relief, without more, cannot meet the clear and convincing evidence standard.

14. Thus, the IJ's decision is legally erroneous and therefore unlawful.

15. This Court can, and should, issue a writ either immediately releasing Petitioner or ordering him released upon payment of a reasonable bond.

16. In other words, this Court can, and should, hold its own bond hearing.

17. Given that a court already deemed his initial detention without a bond hearing to be a violation of his constitutional rights, Respondents should not get a third bite at the apple – release is the proper remedy.

JURISDICTION

18. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus); 28 U.S.C. § 1331 (federal question); and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

20. In the context of challenges to bond hearings under § 1226(a), this Court has "habeas jurisdiction over constitutional claims or questions of law." *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017) (*quoting Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011)).

21. Thus, under § 1226(e), "district courts have jurisdiction to review [an] Immigration Judge's discretionary bond denial only 'where that bond denial is challenged as legally erroneous or unconstitutional.'" *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669, 676 (E.D. Mich. 2020).

22. Further, this Court has jurisdiction to review the IJ's decision because the "flight risk" determination is a mixed question of fact and law, so 8 U.S.C. § 1226(e) does not insulate

that decision from judicial review. *See, Wilkinson v. Garland*, 601 U.S. 209, 222 (2024) (discussing what discretionary judgments are reviewable as mixed questions).

23. Thus, the Court can review the IJ's bond denial on the merits.

VENUE

24. Venue is proper in the Western District of Michigan under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is detained at the direction, and is in the immediate custody, of Respondent Kevin Raycraft. *See Roman v. Ashcroft*, 340 F.3d 314, 320-21 (6th Cir. 2003).

25. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims and relevant facts occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

26. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," why the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

27. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

28. Petitioner is barely 18 years old; he came here with his mother and stepfather when he was 15 after they fled Venezuela to seek asylum here.

29. Respondent Kevin Raycraft is the Acting Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division. As such, Acting Raycraft is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

30. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

FACTS

31. Petitioner was arrested by ICE a week after he turned 18.

32. Petitioner has work authorization, a pending asylum application, and no criminal record. He lives with his mom, stepfather, and new baby brother.

33. Petitioner is not flight risk nor a danger to her community.

34. On March 4, 2026, this Court ordered Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a).

35. Petitioner's bond hearing was held before Immigration Judge ("IJ") Ellen Karesh on March 10, 2026.

36. The IJ did not discuss the burden of proof on the record at the bond hearing.

37. Petitioner presented unrebutted documentary evidence establishing Petitioner was not a flight risk: he has family and community ties in the United States, a path to relief via his own asylum application or his stepfather's asylum application, proof of previous employment, and a stable address.

38. Most importantly, Petitioner's counsel highlighted the fact that Petitioner arrived here with his family when he was 15 years old and is currently only 18 years old. Petitioner lives with his mother and stepfather and has a new baby brother at home.

39. DHS presented no evidence except for the I-213 Record of Deportable/Inadmissible Alien which confirmed that Petitioner had no criminal record.

40. DHS argued that the Petitioner had not met his burden.

41. The IJ denied the bond due almost exclusively to the fact that his asylum application and the application of his stepfather were speculative.

42. The IJ stated the Petitioner "has not met his burden."

43. However, the IJ's written order issued later that day bizarrely states:

> The Court finds that the Department of Homeland Security has proven by a preponderance of the evidence, and even at the higher standard of clear and convincing evidence, that the Respondent is a flight risk and there are no conditions or combination of conditions that would reasonably assure the Respondent's future appearances at immigration proceedings.
> Ex. A, Bond Order.

44. Regardless of what the IJ later wrote in her written opinion, based on the conduct of the hearing, the uncontested assertion of DHS that Petitioner bears the burden of proof, and the IJ's statement that "Petitioner has not met his burden," it is clear the IJ held the hearing as BIA precedent requires – by forcing the detainee to bear the burden of proving he is not a flight risk or danger.

45. Petitioner remains in ICE custody. She is scheduled for a master calendar hearing before IJ Ellen Karesh on March 26, 2026, where she will almost certainly pretermit his asylum application based on the legally specious Asylum Cooperative Agreements, and order him deported to Honduras or another third country to "pursue" his claim for asylum.

LEGAL FRAMEWORK

A. Due Process Requires the Government to Bear the Burden of Proof

46. The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. *See United States v. Silvestre-Gregorio*, 983 F.3d 848, 852 (6th Cir. 2020).

47. Under *Mathews,* courts balance three factors to determine whether a given process satisfies the Fifth Amendment:

> (1) the private interest at stake;
> (2) second, the risk of erroneous deprivation and the value, if any, of additional procedural safeguards;
> (3) and third, the government's countervailing interests.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)).

48. Here, each factor establishes that the government must bear the burden of proving danger or flight risk by clear and convincing evidence. *Soto-Medina v. Lynch*, No. 1:25-cv-1704, 2026 U.S. Dist. LEXIS 11113, at *28 (W.D. Mich. Jan. 21, 2026)

B. The IJ's Decision Was an Abuse of Discretion

49. The BIA has established a list of factors an IJ can consider when deciding whether the detainee warrants release on bond and in what amount:

> (1) whether the alien has a fixed address in the United States;
> (2) the alien's length of residence in the United States;

(3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future;
(4) the alien's employment history;
(5) the alien's record of appearance in court;
(6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
(7) the alien's history of immigration violations;
(8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and
(9) the alien's manner of entry to the United States.

Matter of Guerra, 24 I&N Dec. 37, 40 (BIA 2006)

50. Moreover, IJs "may also consider the likelihood that relief from removal will be granted in determining whether an alien warrants bond." *Matter of R- A- V- P-*, 27 I&N 803, 805 (BIA 2020).

51. The Ninth Circuit, following a remand[1] by the Supreme Court based on its decision in *Wilkinson v. Garland*, 601 U.S. 209 (2024), found that "*Wilkinson* compels the conclusion that application of the 'dangerousness' standard [in a bond hearing ordered under the Due Process Clause] is a reviewable mixed question [of fact and law]." *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

52. Even though what constitutes "dangerousness" is "malleable and involves agency discretion, *Wilkinson* instructs that this is still a legal standard so long as a district court can "assess whether an IJ correctly applied the statutory standard to a given set of facts." *Id.* (quoting *Wilkinson,* 601 U.S. at 221).

53. The *Guerra* factors provide such a standard, so there is no jurisdictional bar to review of an IJ's decision to deny bond where the claim relates to the application of the law to the undisputed facts. *See, id.*

[1] *Martinez v. Clark*, ___U.S.___, 144 S. Ct. 1339 (2024)

54. In the context of a bond hearing ordered under the Due Process Clause, there is no difference between the dangerousness determination and the flight risk determination because they are both mixed questions of fact and law and both use the same standards (i.e., the *Guerra* factors).

55. Thus, district courts can review an IJ's denial of bond based on a finding of flight risk. *Martinez v. Clark*, 124 F.4th 775, 780 (9th Cir. 2024)

56. In this case, there are no undisputed facts, so the IJ's determination of flight risk should not be afforded any deference, and this court should review that decision *de novo.*

57. But even under the extremely deferential abuse of discretion standard, the IJ's decision must be set aside and Petitioner released: there is no legal basis for the IJ to deny bond based exclusively a finding that relief is speculative.

58. The "setting of bond is designed to ensure an alien's presence at proceedings." *Matter of Urena*, 25 I. & N. Dec. 140, 141.

59. The undisputed evidence submitted by Petitioner all weighs heavily in favor of release on low or no bond under *Matter of Guerra.*

60. The IJ's decision to deny bond was based exclusively on her finding that relief was speculative – the IJ ignored every other factor from *Matter of Guerra.*

61. But speculative relief, without more, is not, as a matter of law, clear and convincing evidence that an individual is so great a flight risk that no amount of bond and/or conditions of supervision could mitigate the risk.

62. Such evidence is neither probative nor specific. Moreover, when applied mechanically as a per-se bar to release on bond, it violates the due process requirements for an individualized determination of flight risk.

63. In other words, the IJ's decision was clearly impermissibly based on a non-existent 'rule' – i.e. a misapplication of the law to the facts.

64. Speculative relief, standing alone, is not, as a matter of law, clear and convincing evidence of flight risk.

65. The IJ's conclusion to the contrary is thus legally erroneous and Petitioner's continued detention on that basis alone is unconstitutional.

66. Even if it does not rise to the level of legal error, the IJ's decision was so unreasonable that is nonetheless an abuse of discretion.

CLAIMS FOR RELIEF

COUNT I
Violation of Due Process

67. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

68. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

69. Petitioner has a fundamental interest in liberty and being free from official restraint.

70. Placing the burden of proof on the Petitioner to establish whether he is a flight risk or danger to others violated his right to due process such that his continued detention is unlawful.

COUNT II
Legal Error

71. Petitioner remains in detention because of the IJs legally erroneous decision which found that speculative relief standing alone was clear and convincing evidence of a level of flight risk that could not be mitigated by bond or conditions of release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Maintain jurisdiction over this matter;

b. Find that due process requires the government to prove, by clear and convincing evidence, that Petitioner is not a flight risk or danger;

c. Find that speculative relief, standing alone, does not meet the clear and convincing evidence standard for flight risk;

d. Issue a writ of habeas corpus requiring that Respondents release Petitioner from custody under reasonable conditions of supervision;

e. Or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 5 days where the government bears the burden of proof by clear and convincing evidence that Petitioner is a flight risk or danger to the community;

f. Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper.

Dated: March 11, 2026

Respectfully submitted,

/s/ Michael Drew
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Attorneys for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have either independently confirmed the events described in this Petition and Complaint or discussed the events with Petitioner's mother. On the basis of those discussions and my own investigation, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

/s/ Michael Drew

Attorney for Petitioner