

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-CV-24078-MOORE/Elfenbein

JOSE SERRANO,

Petitioner,

v.

CHARLES PARRA, in his official capacity as
Assistant Field Office Director,
Miami Field Office, Enforcement and
Removal Operations, U.S. Immigration and
Customs Enforcement *et al.*,

Respondents.

RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

Charles Parra, in his official capacity as Assistant Field Office Director, Miami Field Office, Enforcement and Removal Operations, U.S. Immigration and Removal Operations, U.S. Immigration and Customs Enforcement, *et al.*, (“Respondents”)¹ through the undersigned counsel, maintains that Jose Serrano’s (“Petitioner”) Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (“Petition”) should be denied because (1) his detention is lawful under 8 U.S.C. § 1226(a), (2) Petitioner has undergone several bond hearings culminating in the immigration judge denying bond finding Petitioner is a danger to the community and a flight risk, and (3) the

¹ A writ of habeas corpus must “be directed to the person having custody of the person detained.” *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that “the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Id.* at 439. As Petitioner is currently detained at Krome Service Processing Center (“Krome”), a detention facility in Miami, Florida, his immediate custodian is Charles Parra, the Assistant Field Office Director (AFOD) in charge of Krome. Accordingly, the only proper Respondent in this case would be AFOD Parra, in his official capacity.

immigration judge's denial of bond is unreviewable under 8 U.S.C. § 1226(e) because it is a decision regarding the denial of bond.

I. BACKGROUND

Petitioner is a native and citizen of Ecuador, and a subject of interest of the Ecuadorian National Police. *See* (ECF No. 13-1 at 1-3).

On May 19, 2021, Petitioner was admitted to the United States at Miami, Florida as a nonimmigrant visitor for pleasure (B2) with authorization to remain in the United States for a temporary period not to exceed November 18, 2021. *See (Id. at 3)*

On August 18, 2025, Petitioner was scheduled for his first bond hearing before the immigration court. *See* (ECF No. 13-4). The Court took "no action" at that hearing. *(Id.)*.

On August 21, 2025, the Attorney General's Office in Ecuador formally charged Petitioner with murder. *See generally* (ECF No. 13-5). The charges allege that Petitioner is the mastermind behind the murder of Fernando Alcibiades Villavicencio Valencia, the former presidential candidate of Ecuador in the 2023 elections. *(Id. at 1)*. Ecuadorian National Police have identified Petitioner as a subject of interest and known associate of the "Metastasis" criminal organization, which includes several corrupt former Ecuadorian government officials. *See* (ECF No. 13-1 at 2-3).

On August 25, 2025, Petitioner was scheduled for his second custody redetermination hearing before the immigration court. *See* (ECF No. 13-6). The Court took "no action" at that hearing. *(Id. at 1)*.

On September 16, 2025, Petitioner was scheduled for his third bond hearing. *See* (ECF No. 13-6). The immigration judge denied Petitioner's request for bond finding Petitioner to be a danger

to the community and a flight risk. (*Id.* at 1). Petitioner has not filed an appeal of the denial bond. *See* (ECF No. 13-8 at ¶ 23).

II. ARGUMENT

Petitioner argues his detention is unlawful due to equities such as a pending asylum application, an alleged lack of criminal history, and strong family ties to the community. *See* (ECF No. 1 at ¶ 31). Petitioner is lawfully detained pursuant to § 1226(a), which provides, in pertinent part:

(a) Arrest, Detention and Release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General---

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on---
 - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
 - (B) conditional parole

§ 1226(a).

Contrary to Petitioner's argument, a pending asylum application does not confer an immigration benefit or otherwise bar Respondents from detaining Petitioner during removal proceedings. Form I-797C acknowledging receipt of Petitioner's asylum application, which is attached to the Habeas Petition, expressly states that it "DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT." (ECF No. 1-4). Further, Petitioner does not cite any caselaw or statute that precludes Respondents from detaining Petitioner because he has a pending asylum application or other alleged equities such as family and community ties. "It is the petitioner's burden to establish his right to habeas relief[,] and he must prove all facts necessary to

show a constitutional violation.” *Blankenship v. Hall*, 542 F.3d 1253, 1270 (11th Cir. 2008) (citation omitted).

Relatedly, Petitioner also argues that his detention has been unreasonably prolonged because he has a pending asylum application, strong family ties, and has cooperated with the United States. *See* (ECF No. 1 at ¶ 26).

Petitioner had been detained for one month when he filed his Petition. He was detained on August 7, 2025, and filed his Petition on September 8, 2025. Currently, Petitioner has been detained for almost two months.

“Due Process requires only that the government provide ‘adequate procedural protections’ to ensure that the government’s asserted justification for physical confinement ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” *Hernandez v. Warden, Etowah Cty. Det. Ctr.*, 19-cv-00746-LSC-SGC, 2020 WL 5172423, 2020 U.S. Dist. LEXIS 158977, at *7 (N.D. Ala. July 24, 2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001) (internal citations omitted).

Petitioner’s current approximate two-month detention has not been unreasonably prolonged due to the simple fact of length: two months. Further, Petitioner’s detention does not violate due process under the Fifth Amendment because Petitioner has been afforded several bond hearings since his detention is discretionary under § 1226(a). Petitioner had bond hearings, and meaningfully contested his detention, on August 18, 2025, August 25, 2025, and on September 16, 2025. On September 16, 2025, the immigration judge denied bond finding Petitioner to be a danger to the community and a flight risk.

In similar scenarios involving petitioners detained under § 1226(a), courts have found that there has not been a prolonged detention in violation of due process under the Fifth Amendment

when petitioners have had bond hearings in immigration court. *See Borbot v. Warden Hudson Cnty. Correctional Facility*, 906 F.3d 274, 277 (3d Cir. 2018) (“Borbot cites no authority, and we can find none, to suggest that duration alone can sustain a due process challenge by a detainee who has been afforded the process contemplated by § 1226(a) and its implementing regulations”); *Hernandez*, 2020 U.S. Dist. LEXIS 158977, at *7 (finding no Due Process violation when a petitioner detained under § 1226(a) had bond hearing and other appellate review); *Aham v. Gartland*, Case No. 5:19-cv-46, 2020 U.S. Dist. LEXIS 28426, at *8, 2020 WL 806929, at *3-4 (S.D. Ga. Jan. 29, 2020) (finding petitioner who received two bond hearings before an immigration judge failed to establish a Fifth Amendment Due Process violation).

Notably, in *Hernandez*, the District Court explained that the remedy where there is a finding of prolonged detention, is a bond hearing. Similarly, Petitioner, just like Hernandez, already received a bond hearing, which is “the sole relief this court could provide.” *See Hernandez*, 2020 U.S. Dist. LEXIS 158977, at * 8.

Further, to the extent that Petitioner is challenging the immigration judge’s denial of bond finding he is danger to the community and a flight risk, that decision is unreviewable by this Court under § 1226(e)².

§ 1226(e) provides:

The Attorney General’s discretionary judgment regarding the application of [§ 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

§ 1226(e).

² Notably, Petitioner may appeal the immigration judge’s determination to the BIA, which has jurisdiction over his appeal. *See* 8 C.F.R. § 1236.1(d)(3)(i); see also 8 C.F.R. § 1003.38. Petitioner has reserved his right to appeal the immigration judge’s bond decision but has not yet perfected an appeal of that decision.

Therefore, “§ 1226(e) precludes an alien from challenging a ‘discretionary judgment’ by the Attorney General or a ‘decision’ that the Attorney General has made regarding his detention or release.” *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018).

The immigration judge’s discretionary decision to deny bond to Petitioner explicitly falls within the purview of § 1226(e) because it is a decision regarding the denial of bond. *See United States v. Velasquez*, 524 F.3d 1248, 1252 (11th Cir. 2008) (stating that district court lacked authority to review “IJ’s decision to release [appellant] on bond pending his immigration proceedings”); *Aham*, 2020 U.S. Dist. LEXIS 28426, at *7 (stating the district court lacked jurisdiction under § 1226(e) to review the immigration judge’s decision to deny bond finding petitioner was a danger to society and flight risk); *Hernandez*, 2020 U.S. Dist. LEXIS 158977, at * 8 (“To the extent Hernandez challenges the immigration judge’s determination he was not entitled to be released on bond, this court cannot revisit the denial of bond.”). Thus, the Court lacks jurisdiction under § 1226(e) to overturn the immigration judge’s decision denying bond finding Petitioner is a danger to the community and flight risk.

For the above reasons, the Court should deny the Petition.

Respectfully submitted,

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