

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 BERNIS SANTIAGO RIVERA-CRUZ,

5 Petitioner,

6 v.

7 SAMUEL OLSON, et al.,

8 Respondents.
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Case No. 1:25-cv-1250

Honorable Robert J. Jonker

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1 **MOTION FOR IMMEDIATE RELEASE**

2 Petitioner, through counsel, respectfully moves this Court for immediate release
3 following the Respondents' failure to hold a complete bond hearing within the timeline set by
4 this Court on December 2, 2025. In support thereof, Petitioner states as follows:

5 **I. INTRODUCTION**

6 Pursuant to the Opinion and Order from this Court on December 2, 2025, Petitioner's writ
7 of habeas corpus was conditionally granted, and Respondents were ordered to provide petitioner
8 with a bond hearing under 8 U.S.C. § 1226(a) within five business days of the order or, in the
9 alternative, immediately release Petitioner from custody.

10 On December 8, 2025, Respondents scheduled Petitioner for a bond hearing on Tuesday,
11 December 9, 2025, at 1:00EST before Immigration Judge Ian Simons. Petitioner, through
12 Counsel, filed three sets of documents supporting his bond request, including 16 letters of
13 support from family and friends and his church, tax records, and financial documents.
14 Respondents offered no argument in opposition, only offering an unsubstantiated claim that
15 Petitioner was a "flight risk". The Immigration Judge said that the case was "complicated" and
16 that he would take everything inconsideration and complete the bond hearing by issuing a bond
17 decision by the end of the day. As of the date and time of this filing, the bond hearing has not
18 been completed, and there has been no bond decision issued, and Petitioner remains in custody.
19 Since Respondents have not complied with this Court's order and failed to provide a complete
20 bond hearing that includes a decision, Petitioner, through Counsel, requests immediate release.

21 **II. FACTUAL BACKGROUND**

- 22 1. Petitioner filed a habeas corpus petition on October 16, 2025, challenging unlawful
23 detention under 8 U.S.C. § 1225(b)(2) and violation of Due Process.

- 1 2. In an order entered on October 29, 2025, Respondents were directed to show cause
2 within 21 days, why the writ of habeas corpus and other relief requested should not be
3 granted. (Order, ECF No. 4.)
- 4 3. Respondents did not file an appearance or any response to Petitioner's petition.
- 5 4. On December 2, 2025, this Court issued an Order conditionally granting Petitioner's
6 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondents were
7 ordered to provide Petitioner with a bond hearing within 5 business days or
8 immediately release Petitioner.
- 9 5. On December 8, 2025, Respondents scheduled Petitioner for a bond hearing. *See*
10 *attached "Notice of Custody Redetermination Hearing In Immigration Proceedings"*.
- 11 6. On December 9, 2025, Petitioner and Counsel appeared via Webex for the bond
12 hearing. The Immigration Judge declined to issue a decision, claiming the case was
13 "complicated", and said he would issue a decision by end of day.
- 14 7. As of the date and time of this filing, there has been no decision regarding bond
15 redetermination and Petitioner remains in custody.
- 16 8. The bond hearing was not held in entirety, within 5 business days, as per this Court's
17 order. Since Respondents have not fully complied with the Order, Petitioner
18 continues to be denied due process.

20 III. LEGAL STANDARD AND ARGUMENT

21 A. Legal Standard of Review

22 District courts have jurisdiction over petitions for habeas corpus where a petitioner is "in
23 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
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1 2241(c)(3). It has been well-established for over 100 years that habeas corpus is the vehicle
2 through which noncitizens may challenge the fact of their detention. *See Chin Yow v. U.S.*, 208
3 U.S. 8, 13, 28 S. Ct. 201, 52 L. Ed. 369 (1908). The Supreme Court has more recently
4 recognized the continued viability of the writ in cases involving the detention of noncitizens.
5 *Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Demore v.*
6 *Kim*, 538 U.S. 510, 517, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003).

7 There are several statutes within the Immigration and Naturalization Act that divest the
8 district court's authority to hear cases in the immigration context, including under § 2241.
9 However, in the Sixth Circuit, it is well-established that district courts retain jurisdiction over
10 due process claims where a habeas petition challenges only the constitutionality of the arrest and
11 detention. *Kellici v. Gonzales*, 472 F.3d 416, 419-20 (6th Cir. 2006); *see also Hernandez v.*
12 *Gonzales*, 424 F.3d 42 (1st Cir. 2005). In *Elgharib v. Napolitano*, the Sixth Circuit reaffirmed
13 this principle, noting that a "habeas petition was properly filed in the district court because it
14 challenged only the government's failure to give notice and the due process implications of the
15 undocumented petitioner's arrest and detention, and because the petition did not address the
16 merits of the underlying order of removal." 600 F.3d 597, 605-06 (6th Cir. 2010).

17 Moreover, courts in this district have found jurisdiction in the context of a habeas petition
18 challenging the fact of detention, including the validity of pre-removal detention. *Malam v.*
19 *Adducci*, 452 F. Supp. 3d 643, 649 (E.D. Mich. 2020) (*citing Jennings v. Rodriguez*, 138 S.Ct.
20 830, 200 L. Ed. 2d 122 (2018)). Further, "§ 1226(e) does not preclude challenges to 'the extent of
21 the Government's detention authority under the statutory framework as a whole.'" *Velasco Lopez*
22 *v. Decker*, 978 F.3d 842, 2020 U.S. App. LEXIS 33752, 2020 WL 6278204, at *4 (2d Cir. 2020)
23 (*citing Jennings*, 138 S.Ct. at 841); *see also Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)

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1 (holding that "§ 1226(e) does not preclude 'habeas jurisdiction over constitutional claims or
2 questions of law"). In addition to the above grounds, a district court retains jurisdiction to
3 enforce its orders even if "it is related to or in connection with an immigration proceeding." *Arce*
4 *v. United States*, 899 F.3d 796, 801 (9th Cir. 2018); *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669,
5 675-76 (E.D. Mich. 2020).

6 This Court retains jurisdiction over Petitioner and his claim of unlawful detention. In
7 light of his continued detention without proof otherwise, this Court has authority to order
8 immediate release as a remedy for the violations of due process imposed upon him by the
9 Respondents.

10 **B. Without an Oral or Written Ruling, the Required Bond Hearing Was Never**
11 **Completed.**

12 According to the Executive Office for Immigration Review ("EOIR") "In a bond hearing,
13 the Immigration Judge determines whether the alien is eligible for bond."¹ If the detainee is
14 eligible for bond, the Immigration Judge considers whether the alien's release would pose a
15 danger to property or persons, whether the alien is likely to appear for further immigration
16 proceedings, and whether the alien is a threat to national security.² The Immigration Judge's
17 decision is based on any information that is available to the Immigration Judge or what is
18 presented by the parties.³ EOIR guidance explains that the Immigration Judge "usually" renders
19 a decision orally.⁴

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23 ¹ See Immigration Court Practice Manual, Chapter 9.3(3) "Bond Proceedings > Bond Hearings".
<https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3>.

24 ² *Id.*

³ 8 C.F.R. § 1003.19(d)

⁴ EOIR Immigration Practice Manual Chapter 9.3(e)(7)

1 In this case, there is uniform agreement between this Court, Petitioner, and Respondents
2 that the Petitioner has no criminal history and is in no way a threat to national security or a
3 danger to property or persons. The only issue raised by the Respondents was an unsupported
4 assertion of flight risk. In response, Petitioner submitted substantial evidence addressing the
5 *Guerra* factors,⁵ including sixteen letters from family, friends, and Petitioner's church; records of
6 stable employment; proof of compliance with all immigration proceedings to date; and proof of
7 address.

8 Despite the presentation of this evidence, the Immigration Judge issued no oral or written
9 decision granting or denying bond, release on recognizance, or any other form of custody
10 redetermination. Without a ruling, the Immigration Judge never completed the bond
11 determination required by EOIR regulations and by this Court's prior order. The absence of any
12 decision at all rendered the proceeding fatally deficient: a bond hearing without an actual
13 adjudication is no bond hearing at all.

14 **IV. REQUESTED RELIEF**

15 Petitioner respectfully requests that:

- 16 1. Petitioner's motion for an order compelling immediate release be GRANTED;
- 17 2. Respondents be ordered to release Petitioner forthwith;
- 18 3. Petitioner be ordered to comply with any and all orders of USCIS or the Immigration
19 Court to appear for immigration proceedings;

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21 ⁵ See *Matter of GUERRA*, 24 I&N Dec. 37 (BIA 2006). The factors that Immigration Judges may consider include
22 any or all of the following: (1) whether the alien has a fixed address in the United States; (2) the alien's length of
23 residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien
24 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.

1 4. Respondents be ENJOINED from re-arresting Petitioner until his removal process is
2 completed, barring any significant change in circumstances;

3 5. Grant such other relief as the Court deems just and proper.
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5 Dated: December 10, 2025

Respectfully Submitted by:

6
7 /s/ William A. Quiceno

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