

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
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6 JUAN MOISES YAC PASTOR,

7 Petitioner,

Case No. 25-cv-1301

8 v.

9 Kevin RAYCRAFT, et al.,

10 Respondents.
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1 **MOTION TO GRANT IMMEDIATE RELEASE**

2 Petitioner, through counsel, respectfully moves this Court for immediate release
3 following a procedurally defective bond hearing conducted on November 24, 2025. The
4 procedural defects constitute violations of his due process rights. In support thereof, Petitioner
5 states as follows:

6 **I. INTRODUCTION**

7 Pursuant to the Memorandum Opinion and Judgment from this Court on November 19,
8 2025, Petitioner's writ of habeas corpus was granted, and Respondents were ordered to provide
9 petitioner with a release hearing under 8 U.S.C. § 1226(a) within seven days of this order or
10 otherwise release him (ECF Nos. 7 and 8).

11 On November 24, 2025, Immigration Judge Horton denied Petitioner bond, claiming that
12 he was a “danger to the community”. The hearing was constitutionally deficient because the
13 Immigration Judge failed to articulate and apply the correct standard of proof for prior arrests
14 and the Immigration Judge failed to apply the factors set forth in *In re Guerra*, 24 I. N. Dec. 37
15 (B.I.A. 2006).

16 **II. FACTUAL BACKGROUND**

- 17 1. Petitioner filed a habeas corpus petition on October 27, 2025, challenging unlawful
18 detention under 8 U.S.C. § 1225(b)(2) and violation of Due Process.
- 19 2. On November 19, 2025, this Court granted the habeas petition and ordered a bond
20 hearing be provided within 5 business days or immediately release of Petitioner.
- 21 3. On November 24, 2025, a bond hearing was held in front of Immigration Judge,
22 Horton.
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1 4. Respondents openly stated that they had not reviewed any evidence the Petitioner had
2 submitted and made a generic, single argument during the hearing: that Petitioner was
3 a danger to the community.

4 5. Respondents' justification for claim was based on a single conviction from July 2025,
5 "Driving too fast for conditions" which is a petty offense.

6 6. Based on Respondents' argument, the Immigration Judge rejected Petitioner's request
7 for release without any further explanation.

8 III. LEGAL STANDARD AND ARGUMENT

9 A. Legal Standard of Review

10 District courts have jurisdiction over petitions for habeas corpus where a petitioner is "in
11 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
12 2241(c)(3). It has been well-established for over 100 years that habeas corpus is the vehicle
13 through which noncitizens may challenge the fact of their detention. *See Chin Yow v. U.S.*, 208
14 U.S. 8, 13, 28 S. Ct. 201, 52 L. Ed. 369 (1908). The Supreme Court has more recently
15 recognized the continued viability of the writ in cases involving the detention of noncitizens.
16 *Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); *Demore v.*
17 *Kim*, 538 U.S. 510, 517, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003).

18 There are several statutes within the Immigration and Naturalization Act that divest the
19 district court's authority to hear cases in the immigration context, including under § 2241.

20 However, in the Sixth Circuit, it is well-established that district courts retain jurisdiction over
21 due process claims where a habeas petition challenges only the constitutionality of the arrest and
22 detention. *Kellici v. Gonzales*, 472 F.3d 416, 419-20 (6th Cir. 2006); *see also Hernandez v.*

23 *Gonzales*, 424 F.3d 42 (1st Cir. 2005). In *Elgharib v. Napolitano*, the Sixth Circuit reaffirmed
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1 this principle, noting that a "habeas petition was properly filed in the district court because it
2 challenged only the government's failure to give notice and the due process implications of the
3 undocumented petitioner's arrest and detention, and because the petition did not address the
4 merits of the underlying order of removal." 600 F.3d 597, 605-06 (6th Cir. 2010).

5 Moreover, courts in this district have found jurisdiction in the context of a habeas petition
6 challenging the fact of detention, including the validity of pre-removal detention. *Malam v.*
7 *Adducci*, 452 F. Supp. 3d 643, 649 (E.D. Mich. 2020) (citing *Jennings v. Rodriguez*, 138 S.Ct.
8 830, 200 L. Ed. 2d 122 (2018)). Further, "§ 1226(e) does not preclude challenges to 'the extent of
9 the Government's detention authority under the statutory framework as a whole.'" *Velasco Lopez*
10 *v. Decker*, 978 F.3d 842, 2020 U.S. App. LEXIS 33752, 2020 WL 6278204, at *4 (2d Cir. 2020)
11 (citing *Jennings*, 138 S.Ct. at 841); see also *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017)
12 (holding that "§ 1226(e) does not preclude 'habeas jurisdiction over constitutional claims or
13 questions of law'"). In addition to the above grounds, a district court retains jurisdiction to
14 enforce its orders even if "it is related to or in connection with an immigration proceeding." *Arce*
15 *v. United States*, 899 F.3d 796, 801 (9th Cir. 2018); *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669,
16 675-76 (E.D. Mich. 2020).

17 In the context of an immigration bond hearing, district courts have jurisdiction to review
18 Immigration Judge's discretionary bond denial only "where that bond denial is challenged as
19 legally erroneous or unconstitutional." *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762 (N.D. Cal.
20 2019) (citing *Kharis v. Sessions*, 2018 U.S. Dist. LEXIS 190082, 2018 WL 5809432, at *4 (N.D.
21 Cal. 2018); followed by *Diaz-Calderon*, 669, 676 (E.D. Mich. 2020). It is true that a district court
22 may not encroach on an Immigration Judge's discretionary findings, but courts must decide
23 whether the IJ "relied upon proof—that as a matter of law—could not establish" that a petitioner
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1 is a danger to the community. *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669, 676 (E.D. Mich.
2 2021) (quoting *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008)). The
3 Supreme Court has limited "preventive detention based on dangerousness only when limited to
4 specially dangerous individuals and subject to strong procedural protections." *Zadvydas*, 533
5 U.S. at 691. Detention based on dangerousness, without an adequate showing by the government,
6 "would be antithetical to the Fifth Amendment's Due Process Clause protections." *Diaz-*
7 *Calderon v. Barr*, 535 F. Supp. 3d 669, 676 (E.D. Mich. 2021) (quoting *Hamama v. Adducci*,
8 2019 U.S. Dist. LEXIS 58119, 2019 WL 1492038, at *2 (E.D. Mich. 2010).

9 **B. The Immigration Judge's Failure to Apply the Mandatory Guerra Analysis**
10 **Deprived Petitioner of the Procedural Protections Guaranteed by Due Process.**

11 Pursuant to 8.C.F.R. §236(c)(8), an alien must demonstrate to the satisfaction of the
12 officer that release would not pose a danger to property or persons, and that the alien is likely to
13 appear for any future proceeding. *See also Matter of Adenjii*, 22 I&N Dec. 1102, 1112 (BIA
14 1999). In bond redetermination proceedings, the respondent's criminal record may be taken into
15 consideration when determining the necessity for a bond or the appropriate amount of bond.
16 Criminal records that may lead to bond denial can include charges such as aggravated felonies
17 and controlled substance trafficking. *See Matter of Andrade*, 19 I&N Dec. 488 (BIA 1987)
18 (where the respondent had been recently convicted for multiple crimes including attempted
19 robbery, two burglary convictions, a conviction for receipt of stolen goods and a conviction for
20 receiving stolen property); *In Matter of Guerra* 24 I&N Dec. 37 (BIA 2006)) (where the
21 respondent was currently facing criminal charges involving an alleged controlled substance
22 trafficking scheme which included possession with intent to distribute five kilos of a controlled
23 substance).

1 In this case, the Petitioner's criminal history is mild. He has had few arrests over the
2 years, but he complied with all of his court proceedings; all but one was stricken from his record.
3 The one criminal conviction on his record is from July 2025, for "Driving too fast for
4 conditions" and it is classified as a petty offense. Nevertheless, the Respondents' seized on this
5 offense as being indicative of dangerousness. The dismissals of prior charges demonstrate that
6 the Petitioner did not violate Illinois law and instead he was found innocent of all prior charges.
7 *See Taylor v. Kentucky*, 436 U.S. 478 (1978)[finding it is a violation of due process and
8 reversible error to fail to instruct the jury that the defendant is entitled to a presumption of
9 innocence, although the defendant bears a heavy burden to show that an erroneous instruction or
10 the failure to give a requested instruction tainted his conviction]. Sixth Circuit case law cautions
11 against the use of unproven allegations to support immigration decisions. In *Billeke-Tolosa v.*
12 *Ashcroft*, the Sixth Circuit held that an Immigration Judge contravenes BIA precedent and
13 therefore commits reversible error when it relies on "consideration of unproven allegations that
14 lack any other corroboration." 385 F.3d at 712-13. BIA precedent prohibits consideration of
15 unproven allegations. *Id.* As such, the prior charges that were dropped against Petitioner cannot
16 be used when evaluating his dangerousness to the community.

17 Counsel for Petitioner raised these concerns with the Immigration Judge, who
18 nevertheless rejected the bond request. In doing so, the Immigration Judge committed a statutory
19 violation of Petitioner's right to due process by allowing prior arrest records to weigh against all
20 of the other evidence that was submitted in his favor, upending the balancing test set forth in
21 *Guerra*, 24 I&N Dec. 37 (BIA 2006). *See, e.g., Matter of Melo-Pena*, 21 I&N Dec. 883, 886
22 (BIA 1997); *Guerra*, 24 I&N Dec. at 40; *see also Matter of Drysdale*, 20 I&N Dec. 815, 815-17
23 (BIA 1994). *Guerra* clearly "contemplates that criminal history alone will not always be
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1 sufficient to justify denial of bond on the basis of dangerousness. Rather, the recency and
2 severity of the offenses must be considered.” *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669, 681)
3 (*citing Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011)). The fact that Petitioner carries a
4 single charge for driving fast in poor weather conditions cannot stand against the overwhelming
5 evidence he submitted in support of his release.

6 To rely so heavily on a matter that must only be given little weight is not consistent with
7 due process; this Court must conclude that Petitioner was not accorded sufficient due process
8 protections. Any further continuation of Petitioner's detention would be a violation of his rights
9 to due process of the law.

10 **IV. REQUESTED RELIEF**

11 Petitioner respectfully requests that:

- 12 1. Petitioner's motion for an order compelling immediate release be GRANTED;
- 13 2. Respondents release Petitioner forthwith;
- 14 3. Petitioner be ordered to comply with any and all orders of USCIS or the Immigration
15 Court to appear for immigration proceedings;
- 16 4. Respondents be ENJOINED from re-arresting Petitioner until his removal process is
17 completed, barring any significant change in circumstances;
- 18 5. Grant such other relief as the Court deems just and proper.

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20 Dated: December 3, 2025

Respectfully Submitted by:

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23 /s/ William A. Quiceno

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