

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 25-CV-25296

LUCIANO ZANELLA CASTILLO,

Petitioner,

vs.

GARRETT RIPA, Field Office Director of
Enforcement and Removal Operations,
Miami, Field Office, Immigration and
Customs Enforcement, et al.

Respondents.

**RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION TO ENFORCE HABEAS ORDER AND FOR IMMEDIATE RELEASE**

Respondents, by and through the undersigned Assistant United States Attorney, hereby respond in opposition to Petitioner's Motion to Enforce Habeas Order and for Immediate Release. The appropriate recourse for a petitioner who is dissatisfied with the contents or outcome of a bond hearing is a bond appeal to the Board of Immigration Appeals, not a do over of the habeas petition. The bond hearing was held in compliance with the district court's order issued on November 21, 2025 and comported with Due Process. After inquiring with the Petitioner, through counsel, if additional time was needed to prepare for the case, and determining that Petitioner sought to proceed with the bond hearing, the Immigration Judge proceeded to conduct a meaningful bond hearing considering the parties' arguments and submissions. (ECF No. 6). Any other action or inaction by the Executive Office for Immigration Review (EOIR) would have been violative of the order requiring that a bond hearing take place on or before November 24, 2025. Consequently, a full and meaningful bond hearing was conducted by the Immigration Judge on November 24, 2025, and this Court should decline Petitioner's invitation to circumvent the

appellate process and resort to this Court to review the substance of the bond hearing. In accordance with the Court's November 25, 2025 Order (ECF No. 10), the Respondents have also attached, a copy of the transcript of the Bond Proceedings conducted on November 24, 2025 (Exhibit A) and the information relied on by the Department of Homeland Security at the hearing on November 24, 2025 (Exhibit B). In support of its opposition to Petitioner's instant motion, Respondents state the following:

A. Petitioner had Adequate Notice of the Bond Hearing, the Opportunity to Be Heard, and was Represented by his counsel of choice at the hearing.

As a preliminary matter, the Petitioner raises the issue of lack of notice regarding the bond hearing. However, Mr. Joel Caminero, and his law partner, were, in fact, present and represented the Petitioner at the bond hearing on November 24, 2025, before the Immigration Court. **Exhibit A**, Tr. at 1, lines 1-25 and Tr. at 2, lines 1-3. The Petitioner's claim that "This deprived Petitioner of meaningful representation and the opportunity to respond" (ECF No. 9 at page 5) is wholly inaccurate. Not only was the Petitioner represented at the bond hearing held on November 24, 2025, he was represented by his attorney of choice who was afforded the opportunity to advocate for his client and to object to any portion of the proceedings he deemed necessary, but he chose not to do so there and instead to file the instant motion in the District Court.

Furthermore, like Respondents' counsel, counsel for the Petitioner was noticed with this Court's Order requiring a bond hearing by Monday, November 24, 2025. ECF No. 6. The Court's Order was issued at 4:16 pm on Friday, November 21, 2025, and thus the only day the bond hearing could take place in compliance with the Court's Order was Monday, November 24, 2025. Consequently, counsel was aware that the bond hearing had to be set and heard by November 24, 2025. The fact that the bond hearing occurred on the date it was required to occur—consistent with this Court's order of which both parties were in receipt--should not have been a surprise to

counsel.

Additionally, to the extent Petitioner's counsel avers that he was unprepared to proceed with the Court-ordered bond hearing or challenge the integrity of the bond hearing based on the Immigration Judge's familiarity with the record, this is belied by (1) Petitioner's statement to the court, through counsel, that he was ready to proceed with the bond hearing; (2) his failure to request additional time to prepare or to otherwise continue the case to present additional evidence; and (3) the fact that the arguments he raises before this Court mirror those he made to the Immigration Judge.

As evidenced by the transcript of the bond hearing, at the head of the hearing, the Immigration Judge inquired whether "everyone [was] ready to go, or is anyone asking for a no action so that we can refile it at some other point." Without pause, argument, or objection, Petitioner's counsel replied: "We're ready to go, your Honor." **Exhibit A**, Tr. at 2, lines 22-25. The Immigration Judge proceeded to review the record, including filings made by both parties on the same date, take testimony, consider argument by the parties, and conduct the hearing, as required to do so. Notably, the immigration judge invited Petitioner's counsel to present his case – in light of Petitioner's burden to establish that he is not a danger or a flight risk. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009), "the burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond." *See also Matter of Fatahi*, 26 I&N Dec. 791 (BIA 2016) finding that in determining whether an alien presents a danger to the community at large and thus should not be released on bond pending removal proceedings, an Immigration Judge should consider both direct and circumstantial evidence of dangerousness, including whether the facts and circumstances present national security considerations," :

JUDGE TO MR. CAMINERO

Okay. All right. So, go ahead, counsel. Why should I give him a bond? **Exhibit A**, Tr. at 5, line 7-8.

Then, in the presentation of argument to the Court, Petitioner, through counsel, challenged the veracity of the Form I-213. **Exhibit A**, Tr. at 5, lines 21-25 and Tr. at 6, lines 1-2. Petitioner electronically filed the Form I-213 filed in these habeas proceedings, as evidence for the Immigration Judge, and noted the apparent “discrepancies” between that document and the Form I-213 filed in the Department's Notice of Filing.¹ Petitioner had an opportunity to make the argument before the Court, despite any implication that he was surprised and lacked notice or inability to prepare for the hearing. Unhappy with the Immigration Judge’s discounting of Petitioner’s argument and the immigration court’s decision to provide proper weight to the documents, the Petitioner's counsel now improperly seeks appellate redress before this Court.

B. The I-213 introduced at the bond hearing is the same as the one filed in this case.

Petitioner contends that the Form I-213 introduced at the bond hearing is “materially different” than the one provided to this Court in ECF No. 4-1. This allegation is completely inaccurate and unfounded. There is only one October 2, 2025, Form I-213. The Form I-213 presented to the Immigration Judge was the same as the one filed as an exhibit to the Respondents’ Return, ECF No. 4-1. The only difference between the two is the database formatting and redactions in the filings before this Court. The Form I-213 filed before the Immigration Judge was retrieved from an ICE ERO system titled “ENFORCE Alien Removal Module,” which is a repository of the electronic versions of the Form I-213s. The Form I-213 filed with this Court is the paper version that was scanned. Importantly, both Form I-213’s contain the same information.

Additionally, the copy filed with this Court was redacted to exclude law enforcement

¹ As discussed below, these two Form I-213s were one and the same.

sensitive information (including gang affiliation) and Personal Identifying Information (PII). Upon obtaining authorization from the investigating agency—Homeland Security Investigations—to raise the previously-redacted information from the Form I-213 in the custody redetermination hearing, ICE filed the unredacted Form I-213. The gang affiliation information was redacted from the Form I-213 filed with this Court as the gang affiliation was law-enforcement sensitive. Additionally, information regarding gang affiliation is not a determinative factor in the habeas proceeding which centered around a legal issue regarding the statutory interpretation of 8 U.S.C. § 1225(b)(2)(a). If the two copies of the Form I-213 are compared, it is evident that the one filed with this Court is the same, containing all of the same headers or categories and that the one filed with this Court in support of the Return to the Writ of Habeas is redacted with black marking after the section labelled “Military Service”, which is where the section for “Gang Affiliation” appears. The only material difference between these two forms is the redactions, of which Petitioner, through counsel, received notice when it was filed at the head of the custody redetermination hearing by DHS. See ECF No. 4, Exhibit 4 and **Exhibit B**, Section A, on page 7, attached hereto.

C. Petitioner carried the burden to establish he was neither a danger nor flight risk, and DHS did not provide patently false allegations.

Petitioner also alleges that the government made patently false statements regarding images of a minor on the Petitioner’s phone. Petitioner declares that DHS counsel’s statements regarding child sexual material on the Petitioner’s phone are patently false and unsupported, while at the same time advising that he was unable to view the items the government was referring to as child sexual abuse material. The determination by the Immigration Judge as to custody status or bond may be based upon any information available to the Immigration Judge or upon any evidence that is presented during the bond hearing by the alien or by DHS. 8 C.F.R. § 1003.19(d). If there was a question as to the presence of child sexual material or whether it properly amounted

to Petitioner being a danger to the community, this was certainly proper for Petitioner to present to the Immigration Judge. Significantly, when given the opportunity by the Immigration Judge to put anything else on the record, such as eliciting testimony from Petitioner in order to establish he was neither a danger nor a flight risk, Petitioner's counsel declined. **Exhibit A**, Tr. at 7, lines 11-15.

While Petitioner argues that, "DHS submitted no evidence in support of this claim. There was no exhibit, no affidavit, no forensic report, no chain of custody, and no written summary." ECF No. 9 at page 3, no such evidence is required at a bond hearing. When considering a request for redetermination of custody status, the Immigration Judge may, pursuant to regulations, base his or her determination *upon any information that is available to him*. Significantly, 8 C.F.R. § 1003.19(d) provides as follows:

d) Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding. *The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service.*

8 C.F.R. § 1003.19(d) (emphasis added).

The information presented to the Immigration Court at the hearing was information obtained by Department of Homeland Security Agents which the DHS attorney was permitted to relay to the Court as it was "any information available". See **Exhibit B**, pages 34-36. The information regarding the child sexual material on the phone was provided to the Court in such a manner that the Court found the allegations credible and relied upon the information, among other things, to form a decision on bond.

D. The Immigration Judge Conducted a Meaningful Bond Hearing Consistent with this Court's Order.

Contrary to Petitioner's assertions about the demeanor of the Immigration Judge, the full transcript of the hearing (attached hereto as Exhibit A) reveals that a meaningful hearing was conducted. Prior to the Immigration Judge stating, "So yeah, this is Judge Williams..." as quoted in Petitioner's Motion, there was an interaction where the Immigration Judge said he understood this was short notice and specifically asked the parties including Mr. Caminero, counsel for the Petitioner, "is everyone ready to go or is someone asking for a no action so that we can refile it at some other point." **Exhibit A**, Tr. at 2. Line 22-23. Petitioner's counsel, Mr. Caminero, then responded "we are ready to go," indicating he was ready to proceed. **Exhibit A**, Tr. at 2, line 25. He made no objection to notice or scheduling on the record.

The audio of the hearing is also completely at odds with paragraph 5 of Petitioner's instant Motion where Petitioner states that the judge "demonstrated reluctance to fully engage with the record." The Immigration Judge asked about Petitioner's length of time in the United States and any relief he has from removal, including the viability of those applications. Petitioner's counsel did not contest that his intended applications for relief were time-barred. **Exhibit A**, Tr. at 4. He did claim Petitioner had filed the application with United States Citizenship and Immigration Services, but he did not have the information available at that moment. **Exhibit A**, Tr. at 5. When asked if the application was timely, counsel responded "the one I am looking at does not seem like it was." **Exhibit A**, Tr. at 4, lines 20-23. When presented with derogatory information regarding gang affiliation and images on his phone, Petitioner's counsel was provided an opportunity to respond, wherein he focused mostly on the alleged two different Form I-213s. **Exhibit A**, Tr. at 5, lines 21-25 and Tr. at 6, lines 1-9. And, when the Immigration Judge invited the parties to present any additional evidence for the court's consideration, even after making its

findings regarding danger and flight risk, the Petitioner declined. **Exhibit A**, Tr. at 7, lines 11-15. Any dissatisfaction with the Immigration Judge's "discretionary judgment regarding the application of [1226]" and the ultimate outcome of the custody hearing is properly brought before the Board of Immigration Appeals pursuant to 8 C.F.R. § 1003.19(f) ("The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision. *An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 1003.38*), and not this Court. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section 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 of any alien or the revocation or denial of bond or parole.") In addition, Petitioner also has the option to bring before the Immigration Judge a motion for custody redetermination based on changed circumstances, assuming any exist. *See* 8 C.F.R. § 1003.19(e).

WHEREFORE, the Petitioner was afforded an individualized bond hearing consistent with 8 U.S.C. § 1226(a) with meaningful judicial process as ordered by this Court on November 21, 2025. Therefore, Petitioner's Motion to Enforce Judgment should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2025, I electronically filed the foregoing document with the Clerk of Court using CM/ECF

/s/Danielle Croke
Danielle Croke