UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ALAIN ECHEVARRIA-HERNANDEZ,

Petitioner,

v. Case No.: 5:25-CV-1631-JKP

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, *et al.*,

Respondents.

PETITIONER'S REPLY BRIEF

Upon order from this court (*see* ECF No. 9), Alain Echevarria-Hernandez (Mr. Echevarria-Hernandez), Petitioner, by and through counsel of record, addresses Immigration Judge McKee's (IJ McKee) alternative finding that Mr. Echevarria-Hernandez did not merit bond because he was a flight risk. Specifically, Mr. Echevarria-Hernandez addresses: 1) the events leading to IJ McKee's denial of bond, 2) whether IJ McKee's flight risk finding has any impact on the matters before this Court, and 3) if so, what is the impact.

A. Factual Background Regarding Flight Risk Determination

The relevant events leading to IJ McKee's denial of bond are as follows:

1. Mr. Echevarria-Hernandez entered the United States in April 2022. He was fleeing from Cuba and claimed fear of return. He was subsequently released from the border with a Notice to Appear before an Immigration Judge (IJ) and with a scheduled check in with ICE in San Antonio, Texas. *See* ECF No. 1, ¶¶ 57-59.

2. Within a year, through his immigration counsel, Mr. Echevarria-Hernandez filed Form I-589, Application for Asylum and Withholding of Removal, claiming fear of persecution in Cuba.

Separately, based on his marriage to a United States citizen in June 2025, Mr. Echevarria-Hernandez and his wife filed Form I-130, Petition for Alien Relative. *See* ECF No. 1, ¶¶ 60-61.

3. Mr. Echevarria-Hernandez has lived at the same address with his partner (now his spouse) in San Antonio, Texas since June 2024.

4. Mr. Echevarria-Hernandez has been employed as a diesel engine roadside mechanic.

5. DHS has not alleged any criminal history against Mr. Echevarria-Hernandez. Mr. Echevarria-Hernandez has asserted that he does not have any criminal history in the United States nor in Cuba.

6. Mr. Echevarria-Hernandez attended all of his regularly scheduled ICE check-ins. Upon information and belief, he has attended all but one of his hearings before the IJ. His one missed hearing was while he was in detention, because he was in the infirmary.

7. On August 6, 2025, Mr. Echevarria-Hernandez went into his regularly scheduled ICE check-in. He was re-detained without notice or any redetermination regarding whether he was a flight risk or a danger to the community.

8. On September 3, 2025, Mr. Echevarria-Hernandez's counsel requested bond redetermination from the IJ, which was denied on jurisdictional grounds, and in the alternative, finding Mr. Echevarria-Hernandez a flight risk.

9. On September 11, 2025, IJ McKee denied Mr. Echevarria-Hernandez's bond request. Upon information and belief, IJ McKee asserted on the record that because Mr. Echevarria-Hernandez's asserted immigration relief was "speculative" then he was a flight risk. IJ McKee's written denial of bond does not offer any additional analysis on this determination.

B. The Redetermination of Whether Mr. Echevarria-Hernandez is a Flight Risk is Properly Before this Court

Because IJ McKee found that Mr. Echevarria-Hernandez was a flight risk, this Court must additionally determine if IJ McKee abused his discretion in making such a finding. That redetermination is properly before this Court.

1. Administrative Exhaustion of a Bond Determination Is Not Required

Either party may administratively appeal an IJ's bond decision to the Board of Immigration Appeals (BIA). *See* 8 C.F.R. § 236.1(d)(3). However, no statute requires exhaustion of administrative remedies before seeking judicial review of an immigration judge's bond determination. Accordingly, Mr. Echevarria-Hernandez's regulatory ability to appeal his bond determination to the BIA (*see* 8 C.F.R. § 1003.19(f)), must not be conflated with the exclusive mechanism for judicial review of removal orders via a petition for review in the court of appeals (*see* 8 U.S.C. § 1252(a)(5)). That jurisdictional channel applies only to challenges to final orders of removal—not to challenges to detention or bond determinations. *See Hernández v. Gonzales*, 424 F.3d 42, 42–43 (1st Cir. 2005) (holding that § 1252 does not apply to habeas petitions challenging detention rather than removal). Accordingly, a petition for a writ of habeas corpus filed in the appropriate district court is the exclusive mechanism by which a noncitizen may obtain judicial review of an IJ's bond decision. *See Romero v. Hyde*, No. 24-cv-10903, 2025 WL 2403827, at *6 (D. Mass. June 9, 2025); Fed. R. App. P. 22(a) ("An application for a writ of habeas corpus must be made to the appropriate district court.").

Section 1226(e) does not eliminate habeas jurisdiction. Rather, it bars only "review of the Attorney General's discretionary judgment regarding the application of this section." 8 U.S.C. § 1226(e). Thus, under § 1226(e), district courts retain jurisdiction to review an immigration

judge's bond denial where the denial is challenged as legally erroneous or unconstitutional, even though purely discretionary weighing of factors remains unreviewable.

2. Whether IJ McKee Correctly Applied the Relevant Factors is Reviewable by this Court

The application of a statutory legal standard to an established set of facts is a quintessential mixed question of law and fact and is reviewable. *Wilkinson v. Garland*, 601 U.S. 209 (2024), *see also*, *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024).

Critically, *Wilkinson* emphasizes that courts may review whether the agency correctly applied the governing legal standard, even where the standard involves discretion. 601 U.S. at 221-223. Even though what constitutes "a flight risk" is malleable and involves agency discretion, *Wilkinson* instructs that this is still the legal standard so long as federal courts assess whether the agency correctly applied the statutory standard to a given set of facts. *Id.* Thus, *Wilkinson* compels the conclusion that the application of the *Matter of Guerra* factors is a reviewable mixed question of law and fact. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

The district court's review of the agency's determination is for abuse of discretion. *Martinez*, 124 F.4th at 785. Although the court may not review the immigration judge's discretionary judgment, the immigration judge does not have discretion to fail to apply the burden of proof that due process requires. *R.i.L-R v. Johnson*, 80 F. Supp. 3d 164, 176 (D.D.C. 2015) (it is not within DHS's discretion to decide whether it will be bound by the law), citing *Zadvydas v. Davis*, 533 U.S. 678 (2001), at 688

In a discretionary bond hearing under § 1226, the Petitioner bears the burden of proving flight risk by a preponderance of the evidence. An immigration judge must provide a reasoned explanation sufficient to demonstrate that the correct legal standard and burden of proof were applied. *See Matter of Guerra*, 24 I&N Dec. at 40; *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804–05

(A.G. 2020). While an immigration judge is not required to mechanically recite every factor or piece of evidence, the decision must reveal the logical path connecting the facts found to the legal standard applied. *See Matter of Guerra,* generally. This rule does not involve reweighing evidence; it enforces the minimum legal requirement that agency adjudicators explain their decisions in a manner that permits judicial review.

C. IJ McKee Abused His Discretion When He Determined that Mr. Echevarria-Hernandez is a Flight Risk

1. The District Courts Review the Agency's Flight Risk Determination for Abuse of Discretion

To show abuse of discretion, Mr. Echevarria-Hernandez may either point to the language of IJ McKee's opinion or demonstrate that the evidence itself could not—as a matter of law—have supported IJ McKee's decision to deny bond. *Martinez* 124 F.4th at 784. IJ McKee necessarily failed to apply the correct burden of proof because he did not at all explain his reasoning; the logical underpinnings his findings are not clear from the written decision. IJ McKee's denial is so devoid of reasoning that it is impossible to determine if he applied any standard at all. The written decision does not identify the burden of proof, does not indicate which *Guerra* factors were dispositive, and does not explain how Mr. Echevarria-Hernandez failed to meet the burden under § 1226(a). *See* ECF No. 8-1. In bond proceedings, the BIA has made clear that an IJ must articulate the reasoning underlying a custody determination so that the Board can determine whether the correct legal standard—dangerousness and flight risk—was applied. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). *At most*, upon information and belief, IJ McKee's analysis was a statement on the record that because Mr. Echevarria-Hernandez's asserted immigration relief was speculative, then he was a flight risk. Whether immigration relief is speculative or not is not one of the *Guerra* factors. *See Matter of Guerra,* generally.

2. Evidence Could Not, as a Matter of Law Support IJ McKee's Decision to Deny Bond

In a discretionary bond hearing under § 1226, the petitioner bears the burden of proving flight risk by a preponderance of the evidence. *See Matter of Guerra*, 24 I&N Dec. at 40; *Matter of R-A-V-P-*, 27 I&N Dec. 803, 804–05 (A.G. 2020). The "significant factors" ordinarily relevant to a determination of whether a detainee poses a flight risk:

> [T]he respondent's length of residence in the United States; whether the respondent has a fixed address in the United States; the respondent's family ties in the United States, particularly those which could confer immigration benefits on the respondent; the respondent's employment history; the respondent's criminal and immigration records; whether the respondent is eligible for relief from removal; any previous attempts to escape from authorities or avoid prosecution; and any prior failures to appear for court proceedings.

See Matter of Guerra, 24 I&N Dec. at 40.

Here, Mr. Echevarria-Hernandez has resided in the United States for over three years. He entered the United States only once, to seek asylum. Mr. Echevarria-Hernandez diligently applied for asylum and currently is preparing for his final hearing on that application. Separately, his wife has petitioned for Mr. Echevarria-Hernandez, the application has been pending since June 2025. *See* ECF No. 1, ¶¶ 57-61. His actions indicate a strong desire to fix his immigration status via every legal avenue available to him. Mr. Echevarria-Hernandez has strong incentive to appear before the immigration court and ICE check ins. In fact, Mr. Echevarria-Hernandez continued to show up at ICE check-ins despite rampant fear of detention. He has missed only one hearing before and IJ, and that was because he was in the infirmary at the LaSalle Detention Center. Further, he does not have any criminal history in the United States, nor in Cuba. Accordingly, IJ McKee's finding that Mr. Echevarria-Herandez's relief was "speculative" and therefore he would be a flight risk, is not supported by the record nor case law.

CONCLUSION

Accordingly, Mr. Echevarria-Hernandez asks this Court to find that:

a. IJ McKee's determination that Mr. Echevarria-Hernandez's flight risk is properly before this Court;

b. Find that IJ McKee's fact-finding regarding flight risk was erroneous;

c. Grant Mr. Echevarria-Hernandez's habeas corpus petition and,

d. Grant immediate release to Mr. Echevarria-Hernandez.

Respectfully submitted,

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December 15, 2025

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, a true and accurate copy of the foregoing Petitioner's Reply Brief was served on all counsel of record via the Court's CM/ECF system in accordance with Fed. R. Civ. P. 5(b)(2) and Local Rule CV-5.

/s/ Maria R. Osornio
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December 15, 2025