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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Cesar Estuardo Charuco-Urrutia,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; MICHAEL BERNACKE, Field Director, West Valley City Office; TODD LYONS, Acting Director; JOHN MATTOS, Nevada Southern Detention Center,

Respondents.

Case No. 2:26-cv-00012-CDS-NJK

Federal Respondents' Response to the Petition for Writ of Habeas Corpus, ECF No. 5.

The Federal Respondents hereby submit this Response to Petitioner Cesar Estuardo Charuco-Urrutia's ("Petitioner" or "Charuco-Urrutia) Petition for Writ of Habeas Corpus, ECF No. 5.

I. Introduction

Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging the legality of his immigration detention. ECF No. 5, at 2.

Petitioner's detention is governed by 8 U.S.C. § 1226(a), which authorizes discretionary detention pending a decision on removal and provides a mechanism—through a bond hearing—for an individualized custody determination. Petitioner received precisely

that process. Exhibit B, at 1; Exhibit C, at 1. After a bond hearing at which Petitioner bore the burden of establishing that he was not a danger to the community, the Immigration Judge denied bond based on Petitioner's recent and serious criminal history. *Id.*

The Petition does not identify any procedural defect in the bond proceedings or any misapplication of the governing legal standard. Instead, it seeks habeas relief as a substitute for administrative review and invites this Court to revisit the Immigration Judge's discretionary assessment of dangerousness. That is not the function of habeas review.

Because Petitioner received the process contemplated by § 1226(a), failed to exhaust available administrative remedies, and remains lawfully detained pursuant to a reasoned bond determination, the Petition should be denied.

II. Factual and Procedural Background

Charuco-Urrutia is a native and citizen of Guatemala. According to the Notice to Appear ("NTA"), he last entered the United States on December 21, 2001, at or near Los Angeles, California, as the child of a United States citizen. Exhibit A, at 1.

On June 10, 2025, Immigration and Customs Enforcement ("ICE") encountered Petitioner while he was in state custody in Utah and took him into immigration custody. Exhibit D, at 2. That same day, the Department of Homeland Security ("DHS") served Petitioner with the NTA and placed him into removal proceedings. Exhibit A, at 1. DHS charged Petitioner as removable under the Immigration and Nationality Act ("INA"), stating that Petitioner violated a protection order issued by a District Court of the State of Utah because Petitioner engaged in conduct consisting of credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued. Exhibit A, at 1; Exhibit D.

Petitioner's placement into removal proceedings followed a series of criminal convictions in the State of Utah. DHS records reflect that in June 2022, Petitioner was convicted of aggravated assault and sentenced to a term of five years' incarceration. Exhibit D, at 2. In August 2022, Petitioner was convicted of two counts of violation of a pretrial

protective order, resulting in a sentence of five years' incarceration. *Id.* Most recently, on April 2, 2025, Petitioner was convicted of assault by a prisoner, arising from conduct while in custody, and was sentenced to a term of 364 days' incarceration, with a portion of that sentence suspended. *Id.* at 2, 4–6.

Following his transfer to ICE custody, Petitioner requested a custody redetermination hearing before an Immigration Court. Exhibit B, at 1. On December 10, 2025, the Immigration Court conducted a bond hearing and, after considering the evidence presented, *denied Petitioner's request for release*. Exhibit B, at 1.

The Immigration Judge concluded that Petitioner "*is a danger to the community* based on his recent and serious criminal history." *Id.* (emphasis added); Exhibit C, at 1. The Immigration Judge specifically cited Petitioner's criminal record, including his convictions for assault and violations of court orders, and even noted that Petitioner's convictions resulted in aggregate sentences totaling approximately sixteen years. Exhibit B, at 1.

In a written bond memorandum issued on January 15, 2026, the Immigration Judge reiterated that Petitioner had failed to meet his burden of establishing that he was not a danger to the community and denied bond on that independent basis. Exhibit C, at 1. Both DHS and Petitioner waived appeal of the custody determination. Exhibit B, at 2.

Petitioner remains in ICE custody pending the resolution of his removal proceedings.

III. Argument

A. Petitioner's Continued Detention is Lawful under 8 U.S.C. § 1226(a)

Section 1226 "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, at 288 (2018). Section 1226(a) provides that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of

removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions").

When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8)). Section 1226(a) thus places the burden on the alien to justify release and does not create any presumption in favor of release during removal proceedings. If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). Even after DHS decides to release an alien, it may "at any time revoke such release, "rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien's ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("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 [DHS]."). Where the immigration judge concludes that the alien has not met his burden, continued detention during the pendency of removal proceedings is expressly authorized by statute.

That process occurred here. Following a custody redetermination hearing, the Immigration Judge concluded that Petitioner failed to meet his burden of establishing that

he was not a danger to the community and denied bond on that basis. *See* Exhibit B; Exhibit C. Where, as here, an alien has received the bond hearing provided by § 1226(a) and release has been denied based on a danger finding, continued detention during the pendency of removal proceedings is expressly authorized by statute.

Section 1226(a) does not provide an alien with an absolute right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, Section 1226(a) grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release an alien during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the alien, who "must establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros,* 10 I. & N. Dec. 536, 537 (BIA 1964).

Here, because Petitioner failed to carry his burden at the bond hearing, his continued detention is lawful under § 1226(a). Respondents note that habeas review is not the proper forum to challenge the alleged legal factual errors in Petitioner's bond determination. If, after the bond hearing, the immigration judge concludes that the alien should not be released, that determination is subject to administrative review in the first instance. Specifically, if the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). That administrative appeal mechanism provides the proper forum to challenge alleged legal or factual errors in a bond determination.

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B. Petitioner Failed to Exhaust Available Administrative Remedies

Petitioner's habeas challenge independently fails because he did not exhaust the administrative remedies available to him. Under governing regulations, an alien may appeal an immigration judge's bond determination to the Board of Immigration Appeals ("BIA"). See 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1236.1(d)(3). That appeal mechanism exists specifically to permit administrative review of custody determinations, including findings regarding dangerousness, flight risk, and the weighing of evidence.

The Ninth Circuit has made clear that habeas petitioners challenging detention under § 1226(a) are generally required to exhaust available administrative remedies before seeking judicial relief. *See Leonardo v. Crawford*, 646 F.3d 1157, 1159 (9th Cir. 2011). In *Leonardo v. Carwford*, the Ninth Circuit issued its opinion "to clarify the proper procedure for challenging a [] bond determination: Once an alien has received a [] bond hearing before an immigration judge (IJ), he may appeal the IJ's decision to the Board of Immigration Appeals (BIA)." *Id.* "If the alien is dissatisfied with the BIA's decision, he may then file a habeas petition in the district court, challenging his continued detention." *Id.* "The district court's decision on the habeas petition may be appealed to this court." *Id.*

Utilizing that logic, the Ninth Circuit found that Leonardo's approach was improper because he "pursued habeas review of the IJ's adverse bond determination before appealing to the BIA." *Id.* at 1160. The Ninth Circuit found that Leonardo "should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision." *Id.* (citing *Rojas–Garcia v. Ashcroft,* 339 F.3d 814, 819 (9th Cir. 2003). Because Leonardo did not follow the correct procedure, he failed to exhaust administrative remedies before pursuing habeas relief, and the Ninth Circuit thus instructed the district court to dismiss his petition. *Id.* at 1159.

Here, as in *Leonardo v. Crawford*, the Petition should be dismissed for failure to exhaust administration remedies. Petitioner received an individualized bond hearing, after which the Immigration Judge denied bond based on a determination that Petitioner posed

a danger to the community. Petitioner did not appeal that determination and did not seek BIA review. Having declined to pursue the administrative remedy provided by regulation, Petitioner may not now use habeas review as a substitute for an administrative appeal.

The Ninth Circuit's rationale in *Leonardo v. Crawford* applies with full force where, as here, the petitioner received the precise process contemplated by § 1226(a) and bypassed available administrative review.

C. The Court May Not Reweigh the Bond Determination, and Release Is Not an Available Remedy

Assuming *arguendo* that the Court in this case would not require Petitioner to exhaust administrative remedies, then Respondents respectfully submit that the Court's role in reviewing the Immigration Court's finding of "dangerousness" would be limited.

A "dangerousness" determination for immigration-detention purposes is a mixed question of law and fact, and a district court's review of the IJ's and BIA's dangerousness determination is for abuse of discretion. *Martinez v. Clark*, 124 F.4th 775, 779-80 (9th Cir. 2024). Under an abuse of discretion standard, the Court "cannot reweight evidence;" it can only "determine whether the BIA applied the correct legal standard." *Id.* at 785. The IJ's discretionary judgment regarding detention of an alien shall not be subject to review. 8 U.S.C. § 1226(e). When the Immigration Court or the BIA relies on the totality of the evidence to make a "dangerousness" determination and considers the factors set forth in *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)), the Court must find that the Immigration Court or the BIA did not abuse its discretion in finding that the pertinent alien was a danger to the community. *Id.* at 785.

Here, the Immigration Judge concluded that Petitioner is a danger to the community based on his recent and serious criminal history and further cited *In re Guerra* in its bond decision. Exhibit B, at 1; Exhibit C, at 1. Respondents thus submit that the Immigration Judge applied the correct legal standard, which effectively should sufficiently complete the Court's review of the propriety of the bond determination in this case. In other words, while the Court may review whether the bond hearing complied with the

requisite legal standard, it may not reweigh evidence, reassess dangerousness, or substitute its judgment for that of the Immigration Judge. Petitioner does not identify any procedural defect in his bond hearing or issues with the legal standard applied during his bond hearing. Instead, he seeks to relitigate the Immigration Judge's discretionary determination that he failed to meet his burden under § 1226(a). Habeas review does not permit that result.

Moreover, even if Petitioner could establish some defect in the bond proceedings—which he cannot—the appropriate remedy would be a new bond hearing, not immediate release. *See id.* at 1208. Because Petitioner already received an adequate bond hearing—under the Ninth Circuit's standard set forth in *Martinez*—and the Immigration Judge was denied bond, no habeas relief is warranted in this case.

VI. Conclusion

For the foregoing reasons, Federal Respondents respectfully submit the Petition should be denied in its entirety.

Respectfully submitted this 30th day of January 2026.

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