

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JIANGFEI GU,	)	CASE NO.: 3:26CV36
	)	
Petitioner,	)	JUDGE BRIDGET MEEHAN BRENNAN
	)	
v.	)	
	)	
KEVIN RAYCRAFT ¹ , Acting Field Office	)	<u>RESPONENT'S SUPPLEMENTAL BRIEF</u>
Director, Detroit Field Office, Immigration	)	
and Customs Enforcement,	)	
	)	
Respondent.	)	
	)	

Pursuant to this Court's February 12, 2026, Order (ECF No. 5, PageID # 139-40), Respondent submits this Supplemental Brief. As an initial matter, Respondent maintains that aliens like Petitioner, who are in removal proceedings under 8 U.S.C. § 1229a, are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. (*See* Response to Pet. For Writ of Habeas Corpus ECF No. 3, PageID # 24-54.) Notwithstanding this, Respondent hereby responds to this Court's questions and the issues raised in in Petitioner's Supplemental Brief (ECF No. 6).

As the Immigration Judge ("IJ") noted at Petitioner's October 28, 2025, bond redetermination hearing, "Petitioner's detention status is governed by [8 U.S.C. § 1225(b).]" (Bond Memo. ECF No. 3-1, PageID # 56.) Thus, although the IJ discussed Petitioner's risk of flight and whether Petitioner presented a danger to the community at the October 28, 2025,

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Respondent U.S. Immigration and Customs Enforcement Acting Director Kevin Raycraft is substituted for Robert Lynch.

bond redetermination hearing, the IJ's comments and findings were made pursuant to 8 U.S.C. § 1225(b) – not § 1226. (*Id.*)

Notwithstanding the authority under which the bond redetermination hearing was conducted, the October 28, 2025, hearing amounted to a de facto bond hearing thereby providing Petitioner with the relief he seeks in his petition. The IJ's Bond Memorandum sets forth the evidence submitted by the parties in support of their respective positions. (*Id.*, Page ID# 56.) It does not appear that Petitioner submitted any evidence in support of his request for bond (*id.*), and the IJ's alternative finding confirms that Petitioner "submitted no evidence to establish that he is not a risk of flight or danger to the community." (*Id.*, PageID #57.) Petitioner does not allege that he was denied the meaningful opportunity to present evidence at the bond redetermination hearing. (*See* Respondent's Brief in Response to Feb. 12, 2026, Court Order, ECF No. 141, PageID #141-47.) Indeed, the Executive Office for Immigration Review Policy Manual encourages the parties to submit relevant evidence. *See* EOIR Policy Manual, 8.3 – Bond Proceedings (<https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3>) ("[w]hile the Immigration Judge decides how each hearing is conducted, parties *should* submit relevant evidence")

Instead, Petitioner argues that the burden to establish that Petitioner is a flight risk and/or danger to the community should be on the government. (Respondent's Brief in Response to Feb. 12, 2026, Court Order, ECF No. 141, PageID #143-46.) Petitioner concedes that long-standing immigration precedent places the burden of proof on the alien. (*Id.* at PageID # 143 (quoting *In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006)) (the burden is "'on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond.'")) The burden rests with the petitioner to demonstrate that he is "not present a danger to persons or property, is not a

threat to the national security, and does not pose a risk of flight.” *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting *In re Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006)); see also *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008); *Matter of Rodriguez Pena*, 29 I&N Dec. 358 (BIA 2025). If the alien satisfies the burden, the immigration judge may release the alien on bond or subject to other conditions of release. *Hernandez*, 872 F.3d at 983 (citing 8 C.F.R. §§ 236.1(d), 1003.19). Petitioner offers no binding authority that would require this Court to deviate from established immigration precedent that places the burden on the alien to establish that he/she is not flight risk or danger to the community. *Id.*; see also *Matter of Cotrufo*, 29 I&N Dec. 264 (BIA 2025).

While Petitioner attempts to shift the burden, Petitioner fails to address the fact that the evidence before the immigration court demonstrated that Petitioner, who was apprehended as he attempted to cross the Ambassador Bridge from the United States to Canada, was a flight risk. (*Id.*) Indeed, the IJ noted that there was no contrary evidence. (Bond Memo. ECF No. 3-1, PageID # 57.) Therefore, even if Petitioner’s detention was governed by 8 U.S.C. § 1226, the IJ assessed the evidence showing that Petitioner was attempting to leave the United States and determined that Petitioner offered no evidence that he was not a flight risk. (*Id.*) Having held a hearing where the IJ assessed whether Petitioner is a flight risk or danger to the community, Petitioner has already received the relief he seeks in his petition.

It is undisputed that if Petitioner wants to challenge his bond determination, “the procedure available to Petitioner is an appeal to the [BIA]” pursuant to 8 C.F.R. § 1003.19. (Respondent’s Brief in Response to Feb. 12, 2026, Court Order, ECF No. 141, PageID #142.) Indeed, Petitioner has appealed the IJ’s bond determination decision to the BIA. See Exhibit A – Notice of Appeal from a Decision of an Immigration Judge, attached hereto. If unhappy with the

decision of the BIA, “judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”). Petitioner offers no authority that would allow him to bypass an appeal to BIA and argue his case in this forum.

While not requested in by this Court’s February 12, 2026, Order (ECF No. 5, PageID # 139-40), there have been updates in Petitioner’s immigration case that are worth noting. On February 25, 2026, Petitioner appeared before an IJ who found Petitioner to be removable. *See* Exhibit B – Order of Immigration Judge, Feb. 25, 2026. Petitioner’s applications for asylum and withholding of removal were denied, and he was ordered removed to China. *Id.* Petitioner reserved his right to appeal (*id.*), and thus, his removal order will not become administratively final until the BIA affirms the order, or until the appeal period expires – whichever is earlier. *Alcan v. Secretary*, No. 1:25-cv-961, 2026 U.S. Dist. LEXIS 33941, at * 7 (S.D. Ohio Feb. 19, 2026) (citing 8 U.S.C. § 1101(a)(47)(B)). Therefore, Petitioner’s detention is still governed by 8 U.S.C. § 1225(b).

In sum, this Court should deny the petition in its entirety. Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Even if Petitioner’s detention was viewed under § 1226, the IJ made an alternative finding that Petitioner, who was apprehended while attempting to enter Canada (Bond Memo. ECF 3-1, PageID # 55-57), failed to offer evidence showing that he was not a flight risk or danger to the community. Finally, Petitioner’s appeal of the IJ’s bond determination remains pending with the BIA, and Petitioner offers no authority that would grant this Court the jurisdiction to review the IJ’s bond determination.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

Pursuant to 28 U.S.C. § 1746, the undersigned declares under penalty of perjury that this Response to Petition for Writ of Habeas Corpus is four (4) pages in length and complies with the page limitations for a matter assigned to the standard track.

/s/ Kimberly L. Lubrani

KIMBERLY L. LUBRANI