

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BRAYAN RUBIO RUBIO,

Petitioner,

Case No. 2:26-cv-00125-KCD-NPM

v.

DAVID HARDIN, et. al.,

Respondents.

**RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS
(ECF NO. 17)**

This Court granted Petitioner Brayan Rubio Rubio a bond hearing pursuant to 8 U.S.C. § 1226 in an order dated February 24, 2026. ECF No. 13. Respondent U.S. Immigration and Customs Enforcement (“ICE”) worked with the Executive Office for Immigration Review (“EOIR”) to schedule this hearing promptly and Petitioner was indeed provided with a hearing on March 5, 2026. At that hearing Immigration Judge Stuart Siegel examined the factors set forth in *Matter of Guerra* before ultimately denying bond and concluding that Petitioner was a flight risk. The due process challenged presented in Petitioner’s Amended Petition seeks to unwind that order, an impermissible overreach which this Court is not permitted to do. Because Federal Respondents have fully complied with this Court’s order, Petitioner’s renewed due process claims should be dismissed.

PROCEDURAL HISTORY

This case commenced on January 22, 2026 with the filing of a petition for writ of habeas corpus. ECF No. 1. Petitioner alleged that his custody violated the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. *Id.* On January 26, 2026, the Court issued an order to show cause why the petition should not be granted ECF No. 6. Meanwhile, on January 29, 2026, Petitioner was ordered removed by Immigration Judge Stuart A. Siegel, his applications having been deemed waived for abandonment. *See* ECF No. 11-1, Order of the Immigration Judge. On February 19, 2026, Federal Respondents filed their opposition brief. ECF No. 11. Four days later this Court granted Rubio Rubio's petition as to the statutory claims but declined to reach the due process claims. ECF No. 13. Respondents were directed to facilitate a bond hearing considering the appropriate factors related to detention pursuant to 8 U.S.C. § 1226. *Id.*

On February 24, 2026, notice was issued to Petitioner and his counsel advising that a bond hearing had been scheduled for March 5, 2026. *See* Notice of Hearing, attached as Exhibit B, p. 1. Petitioner was provided the bond hearing as scheduled. *See* Order of the Immigration Judge, attached as "Exhibit C." Thirty-two days later, he filed a supplemented amended petition. *See* ECF No. 15. Petitioner then amended the petition consistent with the Court's order addressing certain deficiencies. ECF Nos. 16, 17. On April 24, 2026, the Court directed Respondents to submit any opposition by April 24, 2026. Respondents hereby comply.

DISCUSSION

I. Petitioner Has Failed to Exhaust Other Available Remedies.

When an Immigration Judge (“IJ”) makes an unfavorable bond determination, federal courts have no jurisdiction to review those discretionary decisions:

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.

8 U.S.C. § 1226(e). If an alien disagrees with a bond decision, the alien has the right to appeal the decision to the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 1003.19(f). As Judge Steele has recognized previously, “Petitioner’s remedy for any alleged error by the immigration judge in the bond denial is to appeal that decision pursuant to the normal appellate procedures.” *Chox v. Hardin*, 2:26-cv-00165-JES-DNF, Doc. 17 at 2 (M.D. Fla. Mar. 24, 2026).

The answer here is no different. Rubio Rubio challenges the merits of an IJ bond denial as incorrect. The avenue for his disagreement is appeal to the BIA—not misplaced habeas relief with which Respondents already complied. Petitioner has presented no evidence that he has pursued appeal of this decision through the BIA before turning to this Court for intervention. There is simply no jurisdiction for the Court to review the IJ decision nor is there anything to enforce since Respondents provided what the Order required.

II. Petitioner's Bond Hearing Did Not Violate Due Process.

Even were the Court's review of his claims proper—and again, it is not—Petitioner cannot show a due process violation where the IJ considered the proper factors before ultimately concluding that Petitioner did not merit a bond. Rubio Rubio makes two primary complaints in the Amended Petition: that the IJ did not consider his evidence and that the IJ “summarily concluded” that he was a flight risk. Am. Pet., ¶ 3. The overarching theme that Petitioner suggests is that his bond decision is reflective of a redetermined outcome. *Id.*, ¶¶ 25-26, FN 1.

In support, Petitioner relies on the declaration of his counsel which, in pertinent part states that IJ Siegel made his bond determination without addressing on the record detailed evidence of Petitioner's pending I-130, pregnant U.S. citizen wife, U.S. Citizen child, and lack of a criminal record. *See* ECF No. 15-1, ¶ 7. Counsel states that IJ Siegel did not make particularized findings explaining how those factors weighed into his determination that Rubio Rubio presented a flight risk. *Id.* Counsel states “Immigration Judge Siegel did not provide any other reasons for denying bond and did not consider any alternatives to detention that would ameliorate the concerns he identified.” *Id.* at ¶ 9. He goes on to state that IJ Siegel did not engage in the bond evidence submission “in any form.” *Id.* at ¶ 11. However, review of the audio recording of the bond proceedings paints a different picture.

A. Petitioner submitted his documentary evidence shortly before his hearing.

Start first with what Petitioner describes as the IJ's failure to consider the evidence. *See* Am. Pet, ¶¶ 3, 7, 16, 31, 36, 38, 45. Rubio Rubio asserts that he submitted "an extensive packet of bond evidence" addressing his ties to the community, familial relationships, pending I-130 petition, and lack of criminal record. ECF No. 15, ¶¶ 4-5. He claims that IJ Siegel admitted to not having reviewed this evidence. Am. Pet., ¶ 3. Federal Respondents agree that the documentary evidence submitted the evening prior to the bond hearing was not considered in reaching Rubio Rubio's bond determination. *See* Audio Recording, March 5, 2026 Bond Hearing at three minute mark (3:00), submitted to the Court via hard copy and referred to as "Exhibit D."¹

At roughly the three minute mark IJ Siegel indeed states that he had not had the opportunity to review the documentation. Ex. D at 3:00. What Rubio Rubio fails to mention, however, is that that documentation was submitted very shortly before the hearing was scheduled making timely consideration difficult. *Id.* (noting that the bond exhibits consisted of two submissions—one 60 pages and another 68 pages—that were transmitted to the court at 4:40pm and 4:53pm the evening before the bond hearing); *see also* Exhibit B (8:00am bond hearing). Put simply, Petitioner did not allow much time to have those documents considered because he waited until the

¹ Respondents lack an adequate mechanism to transmit the audio bond hearing file via ECF. Accordingly, Respondents will be submitting a copy via USB drive shortly after filing. A copy will also be provided to Petitioner through counsel.

eleventh hour to provide them notwithstanding having had notice of that hearing since February 24, 2026. *See* Exhibit B. And the IJ has the ability to set and extend document filing deadlines as well as the authority to deem the opportunity to submit documents waived if not timely. *See* 8 C.F.R. § 1003.31(h).

Given the inability to comprehensively review that documentation, IJ Siegel noted them as received but did not mark them into the record. Exhibit D at 3:30. He then proceeded to examine each of the nine relevant *Matter of Guerra* factors, allowing argument from ICE counsel and Petitioner via his counsel. Exhibit D. Notably absent from the bond hearing recording is any objection to IJ Siegel's decision to move forward in this manner nor any request for a continuance of the bond hearing. *Id.* Given that the purpose of the habeas petition—filed in January—was to secure a bond hearing on the merits, it makes little sense that Petitioner would not be prepared to timely submit his evidence for a March 5, 2026 hearing.

B. Documentary evidence aside, the IJ's bond decision withstands scrutiny.

Aliens who are not subject to mandatory detention are considered for bond under the nine factors set forth in *Matter of Guerra*, 24 I & N Dec. 37 (B.I.A. 2006). The audio recording of Rubio Rubio's bond hearing is replete with evidence that that is exactly what happened. The hearing starts with IJ Siegel explaining the proceeding to Rubio Rubio and confirming that his counsel was still representing him and entitled

to speak on his behalf.² Exhibit D at 0:01-3:00. He then discusses the issue of the late-filed documentation before turning to the absence of the removal order in the bond proceedings record. *Id.* at 4:00. The court and the Parties clear up this issue concluding that the removal order is in fact in the record at which point IJ Siegel expresses concern over Petitioner's risk of flight at which time he asks to hear from Rubio Rubio's counsel. *Id.* at 4:00-5:30. Counsel argues in favor of a \$3,000.00 bond for roughly one and one-half minutes highlighting Petitioner's ten years of presence in the United States, that he is the father of one—soon to be two—U.S. citizen children, that he is married to a U.S. citizen, has no criminal history, and that he is a person of good moral character. *Id.* at 5:30. Counsel states that Petitioner is the intended beneficiary of an I-130 petition, has a capable and willing sponsor, and is potentially eligible for cancellation of removal should his appeal be successful. *Id.*

IJ Siegel then turns to the government for argument. Exhibit D at 7:00. The government's primary concern is that Petitioner has been issued an order of removal and that the potential relief from removal is speculative. The government notes that even if the I-130 was approved his case would need to be administratively closed so he could pursue an I-601A waiver. *Id.* After hearing from both sides—*id.* at 5:30-8:30—IJ Siegel then begins his analysis. He starts with jurisdiction, finding that he has jurisdiction given the district court order. *Id.* at 8:15. He notes Petitioner's lack of

² This refutes Petitioner's suggestion that he was not provided with the opportunity to be heard. *See* Am. Pet., ¶ 18 ("Petitioner was present at the hearing, but Judge Siegel did not ask him any questions.").

a criminal record and concludes that there is no basis to find him to be a danger to the community. *Id.* IJ Siegel notes that the decision ultimately comes down to Petitioner's risk of flight then considers the factors as set forth in *Matter of Guerra*. *Id.* at 9:30. Specifically, IJ Siegel considers Petitioner's ten years of presence in the United States, his child, sponsor, absence of a criminal record, and pending I-130 petition. *Id.* But IJ Siegel expresses reservation in granting appeal where there is a lack of incentive to continue to appear. *Id.* He notes Petitioner's abandoned applications and choice to decline voluntary departure in favor of appeal and expresses concern given the long road ahead with the I-130/I-601A process. *Id.* at 11:40. He also notes that this process can be done on the papers and does not require his actual presence. *Id.* After a roughly three-minute discussion of those factors, IJ Siegel then concludes that Petitioner has not met his burden in establishing that a bond is warranted here. *Id.* at 12:12. Rubio Rubio then reserves appeal. *Id.* at 12:30.

The audio recording of the bond hearing very clearly establishes that Rubio Rubio was considered for bond under the appropriate factors, that the IJ rigorously considered those factors, and that his decision is reflective of that consideration. Petitioner's statement that IJ Siegel "summarily concluded" he was a flight risk—Am. Pet., ¶ 3—is simply incongruous with the record. Furthermore, for these reasons Petitioner's suggestion that the IJ reached a predetermined outcome here—Am. Pet., FN 1, ¶¶ 25-26; *see also* ECF No. 15, ¶¶ 3, 30; ECF No. 15-5—is unsupported.

III. Should the Court Find a Due Process Violation, the Appropriate Remedy Would be the Proper Process.

For the reasons explained above, the Court should dismiss Petitioner's due process claims. But should it conclude that there was indeed a violation, the solution would be additional process, not outright release. *See Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 n.19 (noting "even if these procedures have not yet been completed, courts have found that such procedures may take place after the detention has occurred") (N.D. Ohio Aug. 7, 2025). The proper remedy to any procedural deficiency would be—at most—ordering whatever additional process the Court deems appropriate. *See, e.g., I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) ("And while habeas is a proper vehicle to challenge detention that is without statutory authority or violative of the Constitution, it is not a proper vehicle for vindicating every procedural error the Government may have committed along the way.").

CONCLUSION

Rubio Rubio's Amended Petition for Writ of Habeas Corpus should be denied.

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DATED: April 23, 2026

Respectfully submitted,

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