

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ELVIS CARLOS AGUILON FUENTES,)
)
 Petitioner,)
)
 v.)
)
 PAMELA BONDI, *et al.*,)
)
 Respondents.)

1:26-cv-167 (AJT-WEF)

ORDER

Before the Court is Petitioner Elvis Carlos Aguilon Fuentes’s Motion to Enforce the Court’s Order to Conduct a Bond Hearing, [Doc. No. 8], (the “Motion”) in which he challenges the constitutional adequacy of the bond hearing he received pursuant to the Court’s Order dated January 23, 2026, [Doc. No. 6]. Upon consideration of the Motion, the memoranda in opposition thereto, [Doc. No. 12], the audio recording of Petitioner’s bond hearing and for the reasons stated herein, the Court concludes that the Petitioner did not receive a constitutionally compliant bond hearing. The Motion is GRANTED and the Respondents are ordered to either release Petitioner or conduct an individualized bond hearing consistent with this Order.

Petitioner is a citizen of Guatemala, who entered the United States without inspection in February 2008. *Id.* ¶ 1. On January 18, 2026, Petitioner was arrested by ICE officers and taken to Riverside Regional Jail, where he remains detained. *Id.* ¶¶ 7, 16. On January 19, 2026, Petitioner filed a Petition for Writ of Habeas Corpus, (the “Petition”), seeking release from his ICE custody, or in the alternative, a bond hearing pursuant to 8 U.S.C. § 1226(a) on the grounds that his ongoing detention violates the Immigration and Nationality Act (the “INA”), the Administrative Procedure Act, and his constitutional due process rights. [Doc. No. 1].

By Order dated January 23, 2026. [Doc. No. 6], the Court determined that Petitioner's ongoing detention pursuant to 8 U.S.C. § 1225(b)(2) violates the INA and the Fifth Amendment of the Constitution and ordered that Respondents provide Petitioner with a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the date of the Court's Order and that Respondents file a status report with this Court within three days of the bond hearing, stating whether Petitioner has been granted bond, and, if his request for bond was denied, the reasons for that denial. On January 30, 2026, the Respondents filed a Notice that "[t]he Immigration Court held a bond hearing for petitioner, at which time petitioner was denied bond as a flight risk." [Doc. No. 7]. No further explanation of the Immigration Court's decision was provided in that Notice. However, Respondents, with the Court's leave, also filed a recording of his bond hearing, which the Court has considered, [Doc. Nos. 11, 13].

On February 12, 2026, Petitioner filed the Motion stating that the Immigration Judge impermissibly denied bond based on his conclusion that Petitioner is a flight risk. In their response to the Motion, the Respondents contend that the Court lacks jurisdiction to review the Immigration Judge's bond decision under 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii). As reflected in the recording of the bond hearing, Petitioner was denied bond as a flight risk based on evidence that Petitioner had entered the country illegally and continued to reside and work without authorization for fifteen years; that Petitioner failed to pay any taxes¹; that Petitioner failed to seek immigration relief during that time; and that cancellation of removal was unlikely. [Doc. No. 12] at 2.

This Motion presents substantially identical issues as those presented in *Mendez Trigueros*

¹ It is unclear what evidence, if any, the Immigration Judge relied on to conclude that Petitioner had failed to pay taxes and what, if any, taxes were owed based on Petitioner's income.

v. Guardian, where the Court granted the petitioner’s Motion for Respondents to Show Cause as to why they found Petitioner to be a flight risk and ordered a new bond hearing or the petitioner’s immediate release because the considerations upon which the Immigration Judge “determined that Petitioner constitutes a flight risk were so lacking in probative value as to that issue that their use in determining flight risk failed to provide the Petitioner with constitutionally sufficient due process.” Order at 6, *Mendez Trigueros v. Guardian*, No. 1:26-cv-205, (E.D. Va. Feb. 18, 2026), Dkt. No. 13.

For the reasons discussed in *Mendez Trigueros*, the Court concludes that it retains jurisdiction under 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii) to review whether Respondents provided Petitioner with a constitutionally compliant bond hearing. As the Fourth Circuit recognized in *Miranda v. Garland*, Section 1226(e) does not deprive the federal courts of jurisdiction to review whether the factors and procedures used in bond determinations are constitutionally compliant. 34 F.4th 338, 352-54 (4th Cir. 2022); Order, *Mejia Orozco v. Lyons, et al.*, No. 1:25-cv-01762, (E.D. Va. Dec. 1, 2025), Dkt. No. 20 (rejecting government’s argument that Sections 1226(e) and 1252(a)(2)(B) strips the Court of jurisdiction to review whether the Immigration Judge’s denial of bond to the Petitioner because he is a flight risk based solely on the denial of his application for cancellation of removal proceedings complies with constitutional due process requirements).

As to the merits of the Motion, the Court further concludes that the Petitioner failed to receive a constitutionally compliant bond hearing, consistent with the factors the Fourth Circuit laid out in *Miranda v. Garland*, where it recognized as useful “guidance” the following non-exclusive factors that the BIA had recognized in *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006) “in determining whether bond is warranted and under what conditions” to ensure “substantial

process”:

(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

34 F.4th at 362 n.10 (citing *In re Guerra*, 24 I. & N. Dec. at 40).

At his bond hearing, Petitioner presented unchallenged evidence supporting a favorable bond decision based on each of the considerations laid out by the BIA in *In re Guerra* and recognized in *Miranda*. That evidence included strong ties to the United States, including a U.S. citizen son and two other children residing in the United States; a fixed address, where Petitioner resides with his children; a lack of any criminal history beyond a conviction from more than a decade prior that was voluntarily disclosed; eligibility for cancellation of removal; and declarations of support from community members, including one in the form of a “sponsor letter” vouching for Petitioner's continued compliance with his removal proceedings. *See* [Doc. No. 8].

Based on the evidence provided, the Immigration Judge found that the Petitioner is not a danger to the community, but a flight risk. In support of his decision to deny bond, the Immigration Judge cited Petitioner's unlawful entry into the country, his alleged violations of tax laws, and his unauthorized work in this country, none of which, alone or together, provide a constitutionally sufficient basis upon which to deny bond based on “flight risk.” As this Court previously recognized in *Mendez Trigueros*:

Petitioner's unauthorized employment is inextricably related to the unlawful status that has caused his detention and request for a bond hearing in the first place. Were a noncitizen's unlawful status, and the unauthorized employment that often, if not typically attaches to it, in and of itself, a proper basis upon which to deny bond, the discretionary detention under

§ 1226(a), with its prescribed bond hearing, which allows for a noncitizen to be released if they are not a danger to the community or a flight risk, 8 C.F.R. § 236.1(c)(8), would become a *de facto* mandatory § 1225 detention. Moreover, it is difficult to see how any reasonable inference of flight risk could be drawn from a history of steady employment, even if unauthorized; if anything, such employment undercuts any finding of flight risk. Accordingly, denial of bond based on those considerations does not satisfy constitutionally required due process with respect to the determination of flight risk.

Order at 6, *Mendez Trigueros*, No. 1:26-cv-205, Dkt. No. 13. Likewise, any purported tax violations are “not a consideration that would provide the evidentiary support due process constitutionally required in determining flight risk.” *Id.* Similarly, Petitioner’s intent to file an application for cancellation of removal—and the Immigration Judge’s speculation as to the merits of that application—supports no inference of flight risk. Therefore, the Court concludes that the considerations upon which it was determined that Petitioner constitutes a flight risk were so lacking in probative value as to that issue that their use in determining flight risk failed to provide the Petitioner with constitutionally sufficient due process.

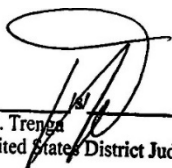
For the above reasons, it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that within 3 days of this Order, the Respondents either release Petitioner or provide him with an individualized constitutionally compliant bond hearing consistent with this Order; and that if a bond hearing is provided, Respondents notify this Court within 24 hours of the bond hearing’s decision and if bond is denied, the reasons for denial of bond.

The Clerk is directed to send copies of this Order to all counsel of record.

Alexandria, Virginia
February 24, 2026


Anthony J. Trenga
Senior United States District Judge