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

[redacted] ALEXANDER [redacted],	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	1:26-cv-603 (AJT-WEF)
JEFFREY CRAWFORD, *et al.*,	)	
	)	
Respondents.	)	

ORDER

Before the Court is Petitioner [redacted] Alexander [redacted]' Motion to Show Cause as to why the Petition for Writ of Habeas Corpus should not be granted and why the Court should not order Petitioner's immediate release from Immigration and Customs Enforcement ("ICE") custody for Respondents' failure to provide a constitutionally compliant bond. [Doc. No. 8] (the "Motion"). For the reasons stated below, the Motion is **GRANTED**.

I. BACKGROUND

Petitioner is a citizen of El Salvador, who entered the United States as a minor without inspection in 2015. [Doc. No. 1] ¶¶ 11, 16. Following Petitioner's entry, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") to Petitioner, and shortly thereafter, the Government filed the NTA with the immigration court, initiating removal proceedings. *Id.* Petitioner was subsequently placed in the custody of the Office of Refugee Resettlement ("ORR"), which then released him on December 20, 2015 into the care and custody of his relative in Manassas, Virginia, taking into account whether Petitioner is a "danger to self, danger to the community, and risk of flight." [Doc. No. 1-2] at 3; 8 U.S.C. § 1232(c)(2)(A).

On September 25, 2023, Petitioner applied for asylum, withholding of removal, and

protection under the United Nations Convention Against Torture, and based on those pending applications,[1] he was granted work authorization from March 13, 2024, valid until March 12, 2029. [Doc. No. 1] ¶ 21. On February 22, 2024, the immigration court dismissed Petitioner's removal proceedings and original charging document, the 2015 Notice to Appear. *Id.* ¶ 22. On July 22, 2025, Petitioner was arrested by ICE officers and taken to Farmville Detention Center, where he remains detained. *Id.* ¶¶ 23–25. On August 7, 2025, after filing a bond motion, the immigration court denied Petitioner's release based on its interpretation that Petitioner was detained under 8 U.S.C. §1225(b) and ineligible for release on bond. *Id.* ¶ 24.

On March 2, 2026, Petitioner filed a habeas petition alleging that his ongoing detention without any opportunity to post bond violates the Immigration and Nationality Act and the Constitution. *See id.* By Order dated March 6, 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 at which Respondents bear the burden of showing "changed circumstances" from those that existed in 2015 when the ORR released Petitioner after a custody determination that accounted for whether Petitioner is a "danger to self, danger to the community, and risk of flight." [Doc. No. 1] ¶ 17; 8 U.S.C. § 1232(c)(2)(A).

On March 16, 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 danger to the community." [Doc. No. 9]. Petitioner has provided the following transcript of the Immigration

[1] Although his application for asylum, withholding of removal, and protection under CAT was denied by the immigration court on December 9, 2025, his case is on appeal at the Board of Immigration Appeals, and therefore Petitioner does not have a final removal order. [Doc. No. 1] ¶ 25.

Judge's oral ruling, which comports with the recording of the bond hearing Respondents submitted to the Court:

> We're here on a habeas grant. In that habeas order, the district court, uh, shifted the burden to the government to demonstrate a change in circumstances of why they have detained the Respondent since releasing him in 2015. In the evidence submission that the Court has reviewed, DHS has submitted the I-213, which indicates that the Respondent, um, that the government has received information from El Salvador stating that the Respondent is a known - has a known alias of Paleta and Sombra and is associated with the international criminal gang of Mara Salvatrucha, commonly known as MS-13. The court finds that the government has met its burden to demonstrate that there is a change in circumstance since the 2015 release. That is significant information that the government has found since that time. Since 2025, MS-13 has been designated by the United States government as a terrorist organization. The Respondent, uh, from information, uh, from the El Salvadorian, from El Salvador, shows that the Respondent was an associate of the MS-13 gang and even goes so far to give the Respondent's aliases with this. Based on that, the Court finds that the government has met its burden to demonstrate changed circumstances. For that reason, the Court finds, the Court is going to deny bond in this case.

[Doc. No. 9-1] at 5.

Petitioner lives with his partner and their U.S. citizen daughter, who is two years old. [Doc. No. 1] ¶ 18. Petitioner has no significant criminal history; and he works in construction and owns his own company that specializes in installing heating and cooling (HVAC) systems. *Id.*

II. DISCUSSION

In the Motion, Petitioner argues that Petitioner's bond hearing was constitutionally inadequate because the Immigration Judge's determination that Petitioner is a danger to the community improperly relied on an unsupported allegation from Petitioner's I-213 Record of Deportable/Inadmissible Alien dated July 22, 2025 that Petitioner is associated with the MS-13

gang in El Salvador.[2] [Doc. No. 9] at 7. Petitioner argues that the Immigration Judge failed to consider Petitioner's statements, as reflected in the same I-213 Record, denying his affiliation with MS-13 and any other gangs, as well as the other evidence Petitioner submitted to counter any dangerousness finding, including the numerous letters attesting to his character, evidence of his employment and business ownership, and his overall lack of criminal history. *Id.* at 8.

The Government, in opposition, argues that the Court lacks jurisdiction over the Motion because Petitioner failed to exhaust his administrative remedies through the Board of Immigration Appeals, and the INA otherwise precludes this Court's review. [Doc. No. 13].

As an initial matter, the Court exercises its discretion under *Miranda v. Garland* to waive administrative exhaustion since there is no statute that clearly requires exhaustion for a noncitizen appealing an immigration judge's bond decision to a district court. 34 F.4th 338, 351 (4th Cir. 2022) (holding that "district court had discretion to decide if administrative exhaustion was required" where there is no statute requiring exhaustion). As this Court has previously held, any attempt by Petitioner to exhaust his administrative remedies would be futile given the BIA's interpretation that individuals like Petitioner are not entitled to a bond hearing. *See Duarte Escobar v. Perry*, 807 F. Supp. 3d 564, 572 (E.D. Va. 2025) (finding that Matter of Yajure Hurtado rendered Petitioner's appeal to BIA futile). The Court furthers concludes, as it did in *Mendez Trigueros v. Guadian*, 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.

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[2] The record states the following:

> The ICE/ERO Washington Field Office, Richmond Sub-Office received information from El Salvador stating the noncitizen, [redacted], [redacted] Alexander, also known as the alias, 'PALETA' and/or 'SOMBRA' is associated with the international criminal gang Mara Salvatrucha, commonly known as 'MS13.'

[Doc. No. 9-1] at 12.

Order at 3–4, *Mendez Trigueros v. Guadian*, No. 1:26-cv-205, (E.D. Va. Feb. 18, 2026), Dkt. No. 13 (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).

On the merits, the only issue before the Court is whether Petitioner received 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, 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).

The Immigration Judge determined that Petitioner is now a danger to the community and the Respondents have therefore carried their burden to establish a change in circumstances since his release in 2015 that justified the denial of bond. That determination appears to have been based solely on an entry dated July 22, 2025 in Petitioner's I-213 report that El Salvador provided information that Petitioner "also known as the alias, 'PALETA' and/or 'SOMBRA' is associated with the international criminal gang Mara Salvatrucha, commonly known as 'MS13.'" [Doc. No. 9-1] at 12.

The Immigration Judge apparently found this entry sufficient, without any substantiating or corroborating information, to overcome the evidence Petitioner provided that weighs against such a dangerousness finding. That evidence included that Petitioner has virtually no criminal history in the U.S. (his only conviction is for driving without a license, which the Immigration Judge determined not to be relevant), Petitioner's denials of any gang association or knowing any gang members (which is also recorded in his I-213), Petitioner's family ties, nearly a dozen letters attesting to his character, as well as evidence of his employment and business ownership. The information purportedly received from El Salvador was also apparently considered insufficiently reliable to conclude that Petitioner was a danger to the community when Respondents assessed whether he should be released following his initial detention in July, 2025. *See* [Doc. No. 9-5] ¶ 10 (declaration of ICE officer stating that Petitioner was detained because he "poses a flight risk and [is] likely to abscond").

By any measure, the single, unsubstantiated statement in Petitioner's I-213 concerning gang membership has limited, if any, degree of reliability. It would not be admissible in any judicial proceeding governed by generally applicable rules of evidence, including the Federal Rules of Evidence, and while such rules did not apply to proceedings before the Immigration Judge, any determinations as to whether Petitioner is a flight risk or danger to community must be "reasonable," such that the reliability of the information must be a factor to consider. *See In re Guerra*, 24 I. & N. Dec. at 40 (an "Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations . . . *as long as the decision is reasonable*") (emphasis added).

Here, the record contains no evidence concerning who requested the information from El Salvador, when or why it was requested, what identifying information was provided to El Salvador

about Petitioner, who from El Salvador provided the information, what efforts, if any, were made to ensure the correct individual was identified, what was the source of the information provided about his gang membership or aliases and why did the presumably relied upon files exist, including whether and to what extent the Petitioner, who left El Salvador when he was fifteen years old, was ever arrested, charged or involved in any criminal proceedings. Nor is there any information about the nature of the alleged association, or crucially, when Petitioner was allegedly associated with MS-13, including whether it was before or after he entered the United States over a decade ago in 2015, shortly after which the ORR released him into the custody of his relative based on a determination that Petitioner was not a "danger to self, danger to the community, and risk of flight." *See* 1232(c)(2)(A) (requiring the Office of Refugee Resettlement, in making custody determinations, to place an "unaccompanied [noncitizen] child . . . in the least restrictive setting that is in the best interest of the child" taking into account the child's "danger to self, danger to the community, and risk of flight").

As this and other Courts have concluded, a constitutionally adequate bond determination must be based on information with sufficient "probative value" as to whether Petitioner poses a flight risk, or, in this case, constitutes a danger to the community, such that there has been a change in circumstances from when he was released in 2015. *See Mendez Trigueros v. Guadian*, No. 1:26-cv-205, (E.D. Va. Feb. 18, 2026), Dkt. No. 13. The Court cannot make that finding on this record and given its previous Order, Petitioner's release is the appropriate remedy.

III. CONCLUSION

For the above reasons, it is hereby

ORDERED that the Motion is GRANTED; and that Petitioner be RELEASED immediately with all of his personal belongings; and it is further

ORDERED that Petitioner must live at a fixed address he must provide to Respondents upon release; and it is further

ORDERED that Respondents, together with their officers, agents, servants, employees, attorneys, successors, and all persons acting in concert with them, be and are ENJOINED from rearresting or detaining Petitioner unless he has committed a new violation of any federal, state, or local law, or has failed to attend any properly noticed immigration or court hearing, or pursuant to 8 U.S.C. § 1231(a)(2).

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

May 13, 2026
Alexandria, Virginia

/s/
Anthony J. Trenga
United States District Judge