Immigration Court: BIA

Case: ***Matter of A-L-S-*, 29 I&N Dec. 794 (BIA 2026)** **Date:** July 28, 2026

Adjudicated by: Hunsucker, Gemoets, Chaban **Opinion:** Hunsucker

Tags: Bond hearings, flight risk, speculative eligibility

Question Presented: Did Respondent carry his burden of establishing that he is not a flight risk, for purposes of bond?

Holdings:

- "Inherent in the concept of flight risk is not only whether the alien will appear at future hearings before the [IJ], but also whether the alien is likely to comply with future orders of the [IJ]." 794, 797
- "Speculative future eligibility for relief based upon conjecture or hypothetical future events does not materially diminish flight risk." 794

Rationale:

- "In this case, there is nothing to support the findings of the [IJ] that the respondent is even potentially eligible for relief from removal. Thus, the findings of the [IJ] in this regard are clearly erroneous." 797

Facts: Mexican citizen overstayed B2 visa in 2013. Detained 9/9/2025.

History of the Case:

- **October 2, 2025:** IJ granted bond based on family ties & business ownership & possibility that he may seek relief from removal in the future. DHS appeals.

Appeals to Statute & Precedent:

- **INA §237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B) (2024):** alien removable because remained in US for a time longer than permitted.
- **INA § 236(a), 8 U.S.C. § 1226(a) (2024):** Custody redetermination statute; burden is on the alien to establish that he is not a flight risk or danger to the community.
- **8 C.F.R. § 1236(c)(8) (2026):** Respondent's burden to show that "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding."
- **8 C.F.R. § 241.4(f) (2026):** including the likelihood that an alien "may abscond to avoid removal" as a factor in assessing whether continued detention is warranted
- ***Matter of Salas Pena*, 29 I&N Dec. 173, 174 (BIA 2025):** R's burden in custody redeterminations

- ***Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009):** Same
- ***Matter of Adeniji*, 22 I&N Dec. 1102, 1112-13 (BIA 1999):** Same
- ***Matter of D-J-*, 23 I&N Decc. 572, 575 (A.G. 2003):** Statute does not create a right to release on bond; it's up to IJ's discretion.
- ***Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006):** factors IJ must consider to determine whether an alien merits release on bond & amount of bond (see Discussion below)
- ***Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (BIA 2020):** "The [IJ] may also consider the likelihood that relief from removal will be granted in determining whether an alien warrants bond."
- ***Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987):** "A respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief."
- ***Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003):** "Even where there is evidence to support it, '[a] finding is clearly erroneous when . . . the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" (internal quotation marks omitted) 796
- ***Demore v. Kim*, 538 U.S. 510, 528 (2003):** noting that detention of aliens pending their removal proceedings "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed."
- ***Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021):** dicta: aliens who previously violated removal orders "may be less likely to comply" with future removal orders.
- ***INS v. Doherty*, 502 U.S. 314, 323 (1992):** "every delay works to the advantage of the deportable alien who wishes merely to remain in the United States."
- ***Nken v. Holder*, 556 U.S. 418, 436 (2009):** "There is always a public interest in prompt execution of removal orders," and that interest "may be heightened by the circumstances," such as if "the alien is particularly dangerous, or has substantially prolonged his stay by abusing the process provided to him."

Relevant U.S. History: Trump 2.0

DHS Arguments:

- "DHS argues that the [IJ] erred in assessing flight risk and improperly relied on speculative and unsupported forms of potential relief from removal." 795

Discussion

- ***Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) –** bond factors:
    - Fixed address; length of residence; family ties; future adjustment possibilities; employment history; record of appearance in court; criminal record

(extensiveness, recency, seriousness); history of immigration violations; attempts to flee; manner of entry into US.

- Other factors that the IJ may consider:
  - Likelihood of success in relief from removal (*R-A-V-P-*)
  - Likelihood of showing up for their hearing (tied to ^^) (*Andrade*)

Re. Speculative Relief:

- ". . . the respondent failed to demonstrate that he was potentially eligible for any form of relief from removal." 796
- ". . . the [IJ] failed to address the fact that the respondent never sought such relief despite residing unlawfully in the [US] for over a decade, or how the respondent would be eligible for such relief since he claimed to have no fear of return to Mexico when he was arrested in August 2025." 796
- Cancellation relief was also speculative, in that IJ failed to determine whether the respondent was already married to his USC "partner." 796

Re. Incentive to Show Up:

- Some respondents show up just so they can prolong their removal proceedings and stay in the U.S. longer. 797
  - "However, that incentive does not necessarily demonstrate that the alien will comply with an adverse ruling or final order of removal, particularly where, as here, the respondent has resided and worked unlawfully in the [US] for many years." 797
- "The fact that an alien has filed, or intends to file, an application for relief from removal does not meaningfully indicate that the alien will comply with a future order of removal." 797
- ". . . speculative future eligibility for relief based upon conjecture or hypothetical future events does not materially diminish flight risk." 797
- **"The mere ability of an alien to prolong immigration proceedings by filing applications for relief does not meaningfully demonstrate that an alien is not a flight risk." 797** (See below for the implied logic here)

Commentary:

- **"Speculative" relief in this case has these characteristics:**
  - Respondent never sought it (asylum)
  - Respondent denied having fear of return to Mexico (asylum)
  - IJ didn't determine whether the respondent was already married to his USC partner, so that both eligibility and outcome of the potential 42B was "speculative"
- Turning these things around, perhaps we can overcome the charge of "speculative" by…
  - Submitting with bond a draft of the relief and documents showing eligibility
  - Explaining delay in filing asylum / withholding / CAT

- Note that "speculative" in DHS-speak during Trump 2.0 usually means "that application hasn't been adjudicated yet, so we can only *speculate* about how it's going to turn out." Here, though, DHS can point to some specific facts that call into question whether the respondent is even *eligible* for the forms of relief in view.

- **Motivation to Show Up at Final Hearing:**
  - The Board's (and DHS's) logic goes like this:
    - Premise 1: Filing for relief is a way to prolong a person's stay in the US while their application is adjudicated. (IOW, it's presumptively suspect (implied)) 797
    - Premise 2: There is no real motivation to show up for their final hearing unless it's a REALLY GOOD case. (implied)
    - Conclusion: Therefore IJs conducting bond hearings should pre-adjudicate the applications to decide if the case is "good enough" to motivate a respondent to show up for that final hearing. (implied)

  - Even if Premise #1 is often true for respondents, the bad-faith presumptions and assumptions here should be resisted!
  - Also, most of the syllogism is implied, not stated directly in this decision. So it's not set in concrete, just influential where an IJ is probably already inclined to think that way.