

Matter of Roberto MORALES CUXUN, Respondent

*Decided by Board August 31, 2026*¹

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

The respondent did not meet his burden to show he is not a danger to the community where he has a conviction and arrests for driving and boating under the influence and a very recent arrest for domestic assault.

FOR THE RESPONDENT: Pro se

FOR THE DEPARTMENT OF HOMELAND SECURITY: Molly Bowen, Counsel

BEFORE: Board Panel: RADICS, Deputy Chief Appellate Immigration Judge; GALLOW, Appellate Immigration Judge; WANG, Temporary Appellate Immigration Judge.

RADICS, Deputy Chief Appellate Immigration Judge:

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s June 24, 2026, decision granting the respondent’s release on \$9,000 bond. The respondent has not responded to the appeal. The appeal will be sustained, the Immigration Judge’s decision will be vacated, and the respondent will be ordered detained without bond.

A respondent in a custody determination under section 236(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a) (2024), must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight. *Matter of Adeniji*, 22 I&N Dec. 1102, 1112–13 (BIA 1999). A respondent who presents a danger to persons or property should not be released during the pendency of proceedings to remove him or her from the United States. *Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994). The purpose behind detaining criminal respondents is to ensure their appearance at removal proceedings

¹ Pursuant to Order No. 7209-2026, dated September 24, 2026, the Attorney General designated the Board’s decision in *Matter of Morales Cuxun* (BIA August 31, 2026), as precedent in all proceedings involving the same issue or issues. See 8 C.F.R. § 1003.1(g)(3) (2026). Editorial changes have been made consistent with the designation of the case as a precedent.

and to prevent them from engaging in further criminal activity. *Matter of Kotliar*, 24 I&N Dec. 124, 127 (BIA 2007).

Upon de novo review, we agree with DHS that the respondent did not meet his burden of establishing that he is not a danger to the community. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2026); *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

The respondent has an extensive criminal record in the United States, including a March 8, 2022, conviction for third degree driving while intoxicated, a September 13, 2021, arrest for operating a motorboat under the influence, a June 20, 2021, arrest for driving while impaired, and another arrest on May 2, 2026—less than 2 months before his bond hearing—for domestic assault, which the record indicates is pending adjudication, as well as several motor vehicle violations. *See generally Matter of Guerra*, 24 I&N Dec. at 41 (observing that an Immigration Judge may consider arrests that did not result in convictions as unfavorable evidence of an alien’s conduct). The circumstances of the respondent’s domestic violence charge are particularly troubling. In response to the Immigration Judge’s questioning during the bond hearing, the respondent reluctantly admitted to striking his partner in the face in the presence of their children and his partner’s nephew. A nephew called the police in this incident.

Upon our de novo review, we find that the respondent’s equities, including, inter alia, his employment, lengthy presence in the United States, family and community ties, and character letters, do not meet his burden of proof. *See Matter of Siniauskas*, 27 I&N Dec. 207, 210 (BIA 2018) (noting that “family and community ties generally do not mitigate an alien’s dangerousness”). We afford substantial weight to the respondent’s 2021 and 2022 arrests for driving and boating under the influence, to include the circumstances surrounding the arrests. *See id.* at 209 (explaining that driving under the influence is a significant adverse consideration in determining whether a respondent is a danger to the community in bond proceedings); *see also Begay v. United States*, 553 U.S. 137, 141 (2008) (recognizing that “[d]runk driving is an extremely dangerous crime” which creates a serious potential risk of physical injury to others), *abrogated on other grounds by Johnson v. United States*, 576 U.S. 591 (2015). Indeed, the seriousness, recidivism, recency, and circumstances surrounding the respondent’s criminal history in the United States weigh heavily against him meeting his burden of establishing that he is not a danger to the community. *See Matter of Guerra*, 24 I&N Dec. at 38, 40; *Begay*, 553 U.S. at 141 (recognizing that drunk driving is an extremely dangerous crime creating a risk to the lives and property of others); *Matter of Siniauskas*, 27 I&N Dec. at 209 (“Driving

under the influence is a significant adverse consideration in bond proceedings.”).

While we recognize that the respondent has presented evidence of his equities in the United States, we agree with DHS that this evidence is insufficient to overcome the seriousness of the respondent’s criminal history or otherwise demonstrate that he is not a danger to the community. *See Matter of 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 . . . [and] may choose to give greater weight to one factor over others, as long as the decision is reasonable.”). Neither the respondent’s family, community ties, nor his apparent efforts to comply with rehabilitation programs are sufficient to mitigate his dangerousness, particularly given the severity and recency of his arrests. *See Matter of Siniauskas*, 27 I&N Dec. at 209–10. Under the totality of the circumstances presented and after careful review, we disagree with the Immigration Judge that the respondent’s positive factors outweigh his identified criminal history.

ORDER: DHS’ appeal is sustained.

FURTHER ORDER: The Immigration Judge’s June 24, 2026, decision granting bond is vacated, and the respondent will be held without bond.