



U.S. Department of Justice

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December 5, 2025

The Honorable Elizabeth A. Wolford
Chief United States District Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

**Re: De Oliveria v. Moniz, et al.
25-CV-06663-EAW**

Dear Chief Judge Wolford:

Please accept this letter as the government's response to the Court's Order (ECF No. 25), in lieu of a more formal response. Also, the transcription service was able to prepare a transcription faster than I anticipated, and a copy of the transcript of the bond hearing is enclosed.

Regarding the bond hearing that was held for Mr. de Oliveira, this Court required that:

- (1) The bond hearing be held on or before November 26, 2025;
- (2) The government bear the burden of proof;
- (3) The burden of proof is a clear and convincing evidence standard;
- (4) Less-restrictive alternatives to detention must be considered; and,
- (5) Ability to pay must be considered if setting bond.

ECF No. 7 at pg. 3.

De Oliveira has argued that he challenged the submission of evidence in immigration court and offered explanations behind his arrest for assault and battery. ECF No. 22 at ¶¶ 5-6. He argues that the immigration judge failed to require that the government meet the clear and convincing standard of proof and that he failed to consider alternatives to detention. *Id.* at ¶ 8. De Oliveria does not appear to challenge that the burden of proof was placed on the government, but this Court's Order seems to make reference to that. ECF No. 25. De Oliveria does not argue that the bond hearing was not held on or before November 26, and

does not address consideration of ability to pay bond (since none was set). Thus, the only three factors to consider are the burden of proof, the standard applied, and whether alternatives to detention were considered.

Based on a review of the transcript, it appears clear that the burden was placed on the government. The immigration judge acknowledged it, as did the government attorney. Transcript (“Trans.”) at pgs. 3, 5-7. Notably, the government attorney argued that he met the initial burden of proof, and only after that showing did he argue that it should “shift” to de Oliveira. Trans. at pgs. 6-7. This should not be viewed as a “shift” of the burden of proof but as an opportunity to allow de Oliveira to respond to the evidence presented by the government. De Oliveira did so by offering his counter-argument that the assault arrest was based on his wife’s anger towards him for their separation, which the immigration judge wholly understood and acknowledged. Trans. at pg. 7. This is not a shifting of the burden or a lessening of the standard of proof, it is merely a determination of assigning weight to the various evidence offered, which is wholly within the realm of the immigration judge. *Sheriff v. Searls*, No. 21-CV-6073-FPG, 2021 WL 6797495, at *7 (W.D.N.Y. Aug. 16, 2021) (“Petitioner’s challenge boils down to a request that this Court reweigh the evidence and testimony presented at the hearing, which is beyond this Court’s purview.”).

With regard to the clear and convincing evidence standard, a recent arrest for assault and battery on a family member should be sufficient to meet such a standard, and de Oliveira’s attack on the credibility of the evidence is for the immigration judge to decide. *See Vides v. Searls*, No. 6:20-CV-06293 EAW, 2021 WL 6846277, at *4 (W.D.N.Y. May 13, 2021) (denying motion to enforce and recognizing that an immigration judge need not fully discuss evidence and that petitioner’s arguments amounted to criticism of the level of detail in the order).

Admittedly, the immigration judge wholly failed to address alternatives to detention that could lessen any risk of danger he found. Arguably, alternatives to detention (such as check-ins/reporting requirements, ankle or GPS monitors, or bond) cannot assure that a violent person will not harm someone; it will merely provide his location when or after harming someone. Nonetheless, the immigration judge’s failure to discuss alternatives to detention whatsoever does appear to fail to comply with this Court’s Order.

Lastly, in the past where this Court has granted a motion to enforce, it has generally ordered further bond hearings. *See, e.g., Vides v. Wolf*, No. 6:20-CV-06293 EAW, 2021 WL 6797297, at *4 (W.D.N.Y. Jan. 7, 2021), enforcement denied sub nom. *Vides v. Searls*, No. 6:20-CV-06293 EAW, 2021 WL 6846277 (W.D.N.Y. May 13, 2021); *Blandon v. Barr*, 434 F. Supp. 3d 30 (W.D.N.Y. Jan. 22, 2020). Thus, should the Court find that the bond hearing was not properly conducted, it should order that another bond hearing be held, with clarifying instructions.

Respectfully submitted,

MICHAEL DIGIACOMO
Acting United States Attorney
Western District of New York

BY: /s/ ADAM A. KHALIL
Assistant United States Attorney

Encl. – Bond Hearing Transcript (9 pages)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
EL PASO SPC IMMIGRATION COURT

IN THE MATTER OF .
.
PEDROSO DE OLIVEIRA, . IN CUSTODY
CLAUDIO .
REDETERMINATION PROCEEDINGS

Respondent .

. A#: 

TRANSCRIPT OF BOND HEARING
BEFORE THE HONORABLE DEAN S. TUCKMAN

November 26, 2025

APPEARANCES:

For the Respondent: VINICIUS DAMASCENO, ESQUIRE
(via Webex) 277 Main Street, Suite 305
Marlborough, MA 01752

For the Government: Mr. Guzelas (Ph.)

Transcription Service: Free State Reporting, Inc.
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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P R O C E E D I N G S

THE COURT: All right, so we're on the record, Judge Dean Tuckman, in the El Paso, Texas Immigration Court, El Paso Processing Center. Today is the 26th of November, 2025, having a bond hearing today. The Respondent's here with me at EPD. His attorney, Mr. Damasceno, is appearing by Webex today. Mr. Guzelas (Ph.) is here at EPD. And we have a Webex interpreter assisting us.

Sir, tell me what your full name is, please.

MR. DeOLIVEIRA: Claudio Pedroso De Oliveira.

THE COURT: And Spanish, your best language?

MR. DeOLIVEIRA: I speak Portuguese, but I can speak in English too.

THE COURT: Oh, you want to proceed in English, okay.

MR. DeOLIVEIRA: If I don't understand something, I think the lawyer can help me.

THE COURT: Okay. So I know we're here for a bond hearing in your case. This is following a District Court order to hold a bond hearing. So I'm going to be chatting with the lawyers for a minute. They might have some questions for you.

MR. DeOLIVEIRA: Okay.

THE COURT: So, Mr. Guzelas, according to the District Court, the court has put upon DHS the burden to

1 prove a dangerousness or flight risk by clear and convincing
2 evidence. So, I don't know if you have -- I saw that I-213
3 you submitted. I don't know if you have questions for the
4 Respondent.

5 MR. GUZELAS: Yes, it's a recent charge, so he's
6 represented by an attorney. I don't know the disposition of
7 it. We don't have it. In September 25, he was charged and
8 arrested for assault and battery of family household member
9 in Laurel, in Maryland, and we don't know what happened with
10 that. So that would be in our estimation (Ph.), your Honor,
11 the dangers to the community issue.

12 THE COURT: Counsel, what do you have to say on
13 that with this recent arrest for assault and battery?

14 MR. DAMASCENO: Your Honor, the Respondent, first
15 of all, I would point to the Court that because the District
16 Court has put -- placed the burden on DHS to submit that the
17 Respondent is either a flight risk or a detriment to the
18 community, I would claim that the I-213 is not by itself a
19 proof that the Respondent is dangerous. There's not a police
20 record; there's not a court docket.

21 However, I will point out that in this specific
22 case, the Respondent does deny the charge. He is in the
23 process of separation with his current partner, like, his
24 ex-partner, and he claims that she made a false report
25 against him. She -- he never harmed her in any way. There

1 was a discussion that he was -- I mean, he went to pick up
2 his kids, and then based on that discussion, she filed a
3 police report, but he never touched her. Respondent affirms
4 that, and he's very adamant that he did not touch her,
5 that he did not harm her, and that the Respondent -- the
6 police report was made because she's upset about the
7 separation. And he does intend to prove that he's innocent
8 as soon as he's released, because the reason that the Court
9 does not have, the criminal docket was not able to have a
10 disposition in this case is because the Respondent was
11 detained by ICE.

12 So in this case, the Respondent intends to be
13 released. He has two U.S. children, and he intends to prove
14 his innocence before the criminal court.

15 THE COURT: And it is DHS's burden, but based on
16 the recency and the seriousness of the charge against the
17 Respondent, that being assault and battery of a family
18 household member, I'm going to find DHS has met its burden on
19 dangerousness in this case, and so I'm going to deny
20 the Respondent's request for a bond.

21 Of course, Counsel, you can reserve on that.
22 Is that your plan?

23 MR. DAMASCENO: Yes, Your Honor. I would just
24 point out that the Respondent is willing to provide testimony
25 regarding the incident as well, if that would help with the

1 Court. Like I said, this was only a charge, Your Honor.
2 There's no police records. There's nothing in the record
3 that shows even what happened on that day. I would support
4 that DHS has not met its burden simply because the I-213
5 mentions that the charge, especially because, like I said,
6 there is no evidence of what happened in the records.

7 THE COURT: Yeah, I don't think -- go ahead.

8 MR. GUZELAS: I mean, I understand that a District
9 Court, right, issue an order here, but the I-213, right, if
10 we follow the procedure that we follow in Immigration Court,
11 we cannot say that we are acting in on a vacuum (Ph.). We're
12 in a court here. You're a judge. There's procedures.
13 There's longstanding precedent, right? So if the court, the
14 District Court, with respect (Ph.), decided to do that, it's
15 not entering an order (Indiscernible). So right here, right
16 now, we submitted a document that is a reliable document,
17 and it's not, although the Court, again, put the burden on
18 us, longstanding jurisprudence says that it's the respondent
19 who has to show, number one, that he's admissible into United
20 States, that he's not a danger to the community,
21 that he's not a flight risk, and that doesn't go out of the
22 window just because the District Court decided, well, I got
23 to put the initial burden.

24 I think we met the initial burden by showing that
25 there's a document that purports that the Respondent was

1 arrested, and we have no disposition on that, Your Honor..

2 Now, it shifts, the burden shifts to the respondent
3 to show, a) I don't have -- I'm not a flight risk
4 or a danger to the community.

5 THE COURT: So the District Court put the burden on
6 DHS to prove by clear and convincing evidence a
7 dangerousness. I'm finding that the recent arrest, like I
8 said, just restating what I said, the recent arrest for that
9 serious crime meets DHS's burden.

10 And Counsel, I understand you said your client
11 would be willing to testify. I don't see a need for it
12 unless you do. I take what you say as kind of a proffer of
13 his testimony. He's going to deny it and say that his, you
14 know, as estranged partner falsely accused him. If you want
15 to have him testify to that, you can. But, like I said, I
16 was just taking your representation as what he would say.

17 MR. DAMASCENO: In that case, no, Your Honor, yeah.

18 THE COURT: Okay.

19 MR. DAMASCENO: Well, I'll just -- yes.

20 THE COURT: And then the appeal's due by December
21 26th.

22 So, sir, what you're going to want to do is stay in
23 touch with your lawyer. He can walk you through the appeal
24 process. You have until December 26 to appeal my decision.
25 And so, again, just stay in touch with your lawyer in case he

1 needs any of your help on that. And he can also keep you up
2 to date on what's going on with that, okay?

3 MR. DeOLIVEIRA: Okay.

4 THE COURT: All right. Thanks, everyone. We'll be
5 adjourned in this case.

6 (Proceedings concluded.)

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CERTIFICATION

I, Debbie Serio, court-approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

Debbie Serio
Signature of Transcriber

December 4, 2025
Date