

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WALTOAYNER DE OLIVEIRA-FARIAS,

*Petitioner,*

v.

BRIAN MCSHANE, *et al.*,

*Respondents.*

Civil Action No. 2:26-160-CFK

**RESPONDENTS' RESPONSE TO PETITIONER'S  
ARGUMENTS IN JOINT STATUS REPORT**

Pursuant to this Court's February 2, 2026 Order (ECF No. 10), Respondents submit this response to Petitioner Waltoayner De Oliveira-Farias's argument that his bond hearing on January 21, 2026 did not comport with Due Process requirements and that this Court should therefore order his immediate release.

As described in the parties' joint status update (ECF No. 9), on January 21, 2025, petitioner was provided with a bond hearing in accordance with 8 U.S.C. § 1226(a), and the opportunity to appeal that decision. Petitioner's appeal—if timely made by February 20, 2026—will be heard by the Board of Immigration Appeals (BIA) in accordance with the applicable regulatory framework and consistent with this Court's Order. *See, e.g.*, 8 CFR § 1003.3. Petitioner nonetheless argues in the joint status update that the bond hearing provided did not meet the due process requirements ordered by this Court and therefore asks for his immediate release. *See* ECF No. 9 at ¶¶ 10–19.

Respondents oppose Petitioner's request on two bases. First, Petitioner's arguments regarding the outcome of the bond hearing are brought properly to the BIA. *See, e.g., Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at \*1 (3d Cir. Feb. 25, 2022) (considering petitioner's allegations that bond hearing failed to provide due process after petitioner exhausted his appeal to the BIA). Here, Petitioner reserved his right to appeal to the BIA, and this Court should allow that established process to be completed.

Second, Petitioner has not shown that his bond hearing was fundamentally unfair, in violation of due process requirements. In a fundamentally fair bond hearing, due process requires that the individual seeking release: "(1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her; (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests." *Ghanem*, No. 21-1908, 2022 WL 574624, at \*2 (citation omitted). His bond hearing met these requirements.

Petitioner had the opportunity to submit, and did submit, a written brief before the bond hearing with exhibits arguing why he should be eligible for bond relief. *See* ECF No. 9 at ¶ 6. At the hearing, Petitioner's counsel had the opportunity to argue why Petitioner is not a flight risk, including by describing the timing of his asylum application. As confirmed in the recording of the proceedings, attached here as Exhibit A, Petitioner was provided with a full and fair opportunity to present evidence to the immigration court. During the hearing, the Immigration Judge

indicated that she considered the evidence Petitioner submitted and outlined her decision on why she found Petitioner to be a flight risk. *See Exhibit A at 03:51–07:47.*

Petitioner nonetheless argues that the hearing did not comport with due process requirements because of two statements the Immigration Judge made during the hearing. First, Petitioner asserts that the Immigration Judge erroneously stated that Petitioner filed his asylum application only after he was detained, though it was filed in April 2025, and he was detained in January 2026. Respondents do not contest this, but the Immigration Judge also accurately stated the date of Petitioner’s asylum application in describing her decision that he posed a flight risk. *See Exhibit A at 03:54.* In addition, the Immigration Judge directly discussed the claims Petitioner made in his asylum application, which had been submitted as an exhibit before the bond hearing. She described her conclusion that he posed a flight risk as also being based on her determination that Petitioner’s pending asylum application was highly unlikely to be granted and that he therefore had no avenue to relief and no incentive to remain engaged in and appear for removal or other immigration proceedings. *Id.* at 05:49.

In addition, in arguing he was not a flight risk, Petitioner submitted evidence of his community ties, including from his child’s school and regarding his housing, and his counsel addressed these during the bond hearing. *Id.* at 02:20. The Immigration Judge explained in her ruling that the analysis of flight risk does not pertain to whether Petitioner will leave the country or move without notice, but

whether he will appear for removal or other immigration proceedings. *Id.* at 7:03.

The recording of the proceedings shows that the Immigration Judge considered the evidence Petitioner submitted.

The second statement of the Immigration Judge to which Petitioner points is the Immigration Judge's statement that she was unaware the bond hearing was ordered in a district court habeas matter. But Petitioner does not assert that this affected the Immigration Judge's decision making, caused her to apply the wrong standards, or otherwise operated to render the hearing fundamentally unfair.

While Petitioner may disagree with the Immigration Judge's conclusion that he posed a flight risk, that disagreement is not enough to render the bond hearing unconstitutional. Rather, the BIA is the proper tribunal to consider the merits of his appeal. The recording of the proceedings shows that Petitioner submitted evidence, the Immigration Judge reviewed that evidence, and she based her denial of bond on that evidence. For these reasons, Respondents respectfully submit that no further action by the Court is required at this time.

Dated: February 6, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this date, a true and correct copy of the foregoing Response to Petitioner's Arguments in Joint Status Update was filed electronically via the Court's CM/ECF system and served via CM/ECF on all counsel of record.

/s/ Alanna N. Pawlowski  
ALANNA N. PAWLOWSKI  
Assistant United States Attorney

February 6, 2026

# **EXHIBIT A**

**to be hand delivered to the Court**

**Bond Hearing (unable to upload audio file on ECF)**