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

ALISHER SMANOV	:	
	:	
Petitioner,	:	
	:	CASE NO. 26-cv-211
v.	:	
	:	
MICHAEL T. ROSE, ET AL.	:	
	:	
Respondents.	:	

RESPONDENTS' RESPONSE TO PETITIONER'S FEBRUARY 9, 2026 STATUS REPORT

Respondents submit this response to Petitioner Alisher Smanov's February 9, 2026 Status Report (ECF No. 10), in which Petitioner argues that the Court should order his immediate release because his February 7 bond hearing did not comport with due process requirements.

On February 7, 2026, the Executive Office for Immigration Review provided Petitioner a bond hearing, as ordered by this Court, in accordance with 8 U.S.C. § 1226(a), and the opportunity to appeal the decision rendered that hearing.[1] Petitioner's appeal—if timely made by March 9, 2026—will be heard by the Board of Immigration Appeals (BIA) in accordance with the applicable regulatory framework. *See*, *e.g.*, 8 CFR § 1003.3. Petitioner nonetheless argues that the bond

[1] Petitioner participated in a telephonic bond hearing before Immigration Judge Leila Mullican on February 7, 2026. *See* Unofficial Bond Hearing Transcript, attached as Exhibit A. The audio recording of the bond hearing was provided to Petitioner's counsel and can be made available to the Court at the Court's request.

hearing provided did not meet due process requirements and therefore seeks his immediate release. *See* ECF No. 10 at 4-6.

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 preserved 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 interests." *Ghanem*, No. 21-1908, 2022 WL 574624, at *2 (quoting *Kamara v. Att'y Gen. of U.S.*, 420 F.3d 202, 211 (3d Cir. 2005)). Petitioner's bond hearing met these requirements.

Petitioner had the opportunity to submit—and did submit—documentary evidence supporting his argument that he should be eligible for bond relief. *See* ECF No. 10, Exhibit 2. At the hearing, Petitioner's counsel had the opportunity to argue why Petitioner is not a flight risk or a danger to the community. As confirmed in the transcript 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 (or lack thereof) and outlined her decision on why she found Petitioner to be a flight risk and a danger to the community. *See* Exhibit A at 4 (Immigration Judge noting evidence indicating that Petitioner did not have a fear of return and a lack of evidence "regarding the substantive nature of [Petitioner's] criminal charge").

The bond hearing record reflects that the Immigration Judge made an individualized determination on the bond request, reflecting Petitioner's circumstances. In explaining her decision to deny bond, the Immigration Judge said:

> The court finds danger and flight risk at this time and denies bond. And for flight risk, the court's reviewed the respondent's asylum application. It's entirely blank, both in the bond record and in the removal record. He has not established any type of claim of fear of return, and in fact, in the 213, it indicates that he wasn't afraid to return. So there's conflicting evidence in that regard. And, in addition, there's – it's the respondent's burden to show he is not a danger. He has not provided any documents regarding the substantive nature of the criminal charge. And it was disposed on speedy trial grounds. So the court finds at this point, there's no showing that he is not a danger and not a flight risk at this point.

Ex. A at 4.

While Petitioner may disagree with the Immigration Judge's conclusion that he poses a flight risk and is a danger, that disagreement is not sufficient to render the bond hearing unconstitutional. *Kamara*, 420 F.3d at 211 ("[T]he question for due process purposes is not whether the BIA reached the *correct* decision; rather, it

is simply whether the Board made an individualized determination of [the Petitioner's] interest.") (citation omitted). Here the Immigration Judge, after reviewing the documentary evidence and hearing full argument from Petitioner's counsel, made an individualized determination as to flight risk and danger. The Immigration Judge found that Petitioner is a flight risk based on record evidence that Petitioner, with an "entirely blank" asylum application, was not afraid to return to his home country of Kazakhstan.

Petitioner argues that the bond hearing did not meet due process requirements because the Immigration Judge "did not meaningfully engage" with the factors identified in the BIA decision of *In re Guerra*, Interim Decision 3544, 2006 WL 3337627 (BIA Sept. 28, 2006). *See* ECF No. 10 at 3. However, that decision merely identified factors that the Immigration Judge "may look to" in making bond determinations. *In re Guerra.,* 2006 WL 3337627 at **3. The *Guerra* decision goes on to note that "[a]n Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations." *Id.* at **4. Here, regarding flight risk, the Immigration Judge gave dispositive weight to Petitioner's failure to establish a fear of return to Kazakhstan. Similarly, regarding danger to the community, the Immigration Judge made a specific finding—based on a lack of evidence concerning Petitioner's arrest for assault—that Petitioner failed to meet his burden to establish that he was not a danger.[2]

[2] Petitioner suggests that this finding is inconsistent with the joint stipulation (ECF No. 8) in this action regarding whether Petitioner is subject to the mandatory detention provisions of 8 U.S.C. § 1226(c). This was not a question before the

In the absence of a clear challenge to the fundamental fairness of the hearing, the BIA is the proper tribunal to consider the merits of Petitioner's appeal. *See, e.g., De Souza v. Soto*, No. CV 25-18734, 2026 WL 102946, at *3 (D.N.J. Jan. 14, 2026) (finding the "record compels a finding that Petitioner received the individualized bond hearing as required under 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1(d)(1)" and holding that any challenge to the denial of bond must be presented to the BIA); *see also Guerrero v. McShane*, E.D. Pa. Civ. No. 25-6974, Jan. 27, 2026 Order (ECF No. 8) (denying judicial review of a bond hearing based on "Petitioner's ability to seek administrative review of the immigration judge's custody determination before the Board of Immigration Appeals").

The recording and transcript of the bond hearing show that Petitioner submitted evidence, the Immigration Judge considered that evidence, and the Immigration Judge heard argument on behalf of Petitioner. The Immigration Judge then made an individualized determination based on the record before her. For these reasons, Respondents respectfully submit that no further action by the Court is required at this time.

Immigration Judge. Indeed, if Petitioner were subject to mandatory detention under Section 1226, it would entirely foreclose any need for a bond hearing.

Respectfully submitted,

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Dated: February 19, 2026

CERTIFICATE OF SERVICE

I certify that on this date, I caused a true and correct copy of the foregoing Response, which has been electronically filed and is available for viewing and downloading from the Court's ECF system, to be served upon all parties of record.

February 19, 2026

s/David A. Degnan
DAVID A. DEGNAN
Assistant United States Attorney

Exhibit A

ALISHER SMANOV BOND HEARING
February 7, 2026

UNOFFICIAL TRANSCRIPT

Last edited by David A. Degnan upon review of original audio recording of proceeding.

This transcript starts at Feb 7, 2026, 9:37 AM, and is 11 minutes 25 seconds in length.

Immigration Judge On the record in [redacted] and DHS, this is habeas bond request. Are you raising any danger or flight risk?

Petitioner's Counsel Yes, Your Honor. Both.

Immigration Judge Okay. Counsel, you can argue both.

Petitioner's Counsel Well, Your Honor, on the evidence submitted, I would turn you to page 112. I made a one-page evidence matrix based off *Matter of Guerra*, 24 I&N Decision 37 (BIA 2006), where we can just quickly go over why he meets all the factors for low or zero flight risk and why he does not meet a danger. Specifically, his family ties with his fiancée in New York who is financially dependent upon him. He has an LPR sponsor, Arystanbek Kaimoldayev, and a U.S. citizen sponsor who are both willing to support him. He's had family friends since 2019 that are here. He has several photos with them. In the time he's been here since 2023, he's had ties to the community, with nine reference letters from neighbors, coworkers, people who have known him in the community as friendly, tidy, respectful.

As to his employment history, he made over $50,000 last year as a trucker with a CDL license, and he will be able to pay his taxes when he is released for it. His fixed address is [redacted] He plans on eventually moving in with his fiancée in New York and we will be filing that change of address when they actually get moving, ready to go. The detention has obviously slowed that down a bit. His criminal record, he has a dropped charge in November 2023 for assault with a roommate. State attorney abandoned the prosecution a month later for failure to establish guilt and for the actual person claiming the charge not going through. Our client pleaded not guilty and wanted to go through with a trial to be proven innocent, but Cook County denied him that opportunity. ICE has been aware of this and he has been out of custody for almost two to three years after this charge was abandoned.

As for history of immigration violations, he was released on recognizance in 2023 and has complied with ICE check-ins and court hearings for nearly three years. No failures to appear. As for attempts to flee prosecution or escape, he has none and we cannot prove a negative because this is the first time he's been detained and then released. As for a manner of entry and length of time in the U.S., again, he came in 2023. He's been here for almost three years, and the NTA was issued after a positive, credible fear finding. Eligibility for relief and removal, he is pending asylum. Financial obligations and responsibilities, he has them. He has credit loan payments to help out his fiancée and himself. He supports his fiancée's new business. As for his education, he has a bachelor's degree in economics, international economics and trade concentration. He is not someone who crossed over and immediately sought to be looking for some quick job and trying to immediately go back to his home country. He is seeking asylum here and with his economics degree, once his asylum is granted, he could probably find more sophisticated work than his current role as a truck driver.

As for his prior ICE release decision, ICE has had three years to decide if he was actually a danger or a flight risk. And simply saying flight risk and danger based on three years of ICE saying otherwise is a change under *Chenery*. And in the Administrative Procedure Act, we do like to have compliance and non-arbitrary changes of thought and reason when deciding to detain someone, and that is why we had to seek a habeas to get him this bond hearing today. He has various tabs and exhibits that I have labeled and I made sure the pagination is on the PDF. So you can just type the page number with the exhibit and the table of contents and it will pop right up for you.

I did have to add last minute, so there are not listed as Tab Y, but it is on page 105, the second bond sponsor letter with her salary of  . And then on Tab X, I have the court disposition on page 101 that shows that this charge was stricken from Cook County, Illinois. Overall, I would just rest on the papers and that evidence matrix that I wanted to try and speed this up for you because I know you would only have these few minutes to look at over 100 pages of evidence. And so that's why I refer you to page 112. That's all.

Immigration Judge Thank you, counsel. DHS, any argument?

DHS Counsel Sure. So I think this case can be resolved on danger, right? And I'll address the – it was an aggravated assault with a deadly weapon charge and it was dismissed for speedy trial. With a charge of that serious of the nature it is incumbent on a respondent to not just provide a letter from a PD showing that the case didn't go forward for speedy trial, but actually to provide a copy of the criminal plea, which I'm sure the public defender has. This is a very, very serious charge. Dismissed charges are fair game in bond hearings. This is a recent arrest for a violent offense with a deadly weapon that was dismissed on speedy trial. With this bond record, respondent has not carried his burden on danger and the bond, which should be denied initially on that matter.

But even if the court were to go to and reach flight, which I don't believe is appropriate in this case, the respondent has been in the country for a very short time. His ties are significantly limited, and he also poses a significant risk of flight. But I think danger is going to be the primary issue in this case with this record, with a single letter from the public defender, with no criminal complaint, no arrest reports, really no context at all as why he was charged with aggravated assault with a deadly weapon back in 2023. Respondent hasn't carried his burden. Thank you, Your Honor.

Immigration Judge Thank you. And counsel, if you would like to respond to DHS's argument.

Petitioner's Counsel Yes. Under Docket 8 of the habeas petition, I do have a joint stipulation with a United Assistant U.S. attorney, who seemed to disagree with counsel and said that this is not a 236 Laken Riley issue, nor did he commit that, nor did he admit to committing the act. And if you want to file that as well. but the actual citation is 2:26-cv-00211 of the Pennsylvania Eastern District Court. *Smanov v. Rose,* Docket 8, stipulation regarding detention provision signed by David Degnan, Assistant U.S. Attorney. And if an Assistant U.S. Attorney is willing to look at this and have more access to the information than local counsel hired to do a bond in 24 hours, 48 hours, surely I would rather trust the Assistant U.S. Attorney than a blanket "Oh, it happened three years ago, and he must be dangerous." Because if we are looking at all of this, he has denied it from the get-go. And the assumption that this was dismissed by a speedy trial is not in the record. The fact of the matter is he wanted to fight out his case and show his innocence and they dismissed it on him. And I hate to say it, but we're not going to let assumptions about why it was dismissed get in the way of him staying in the U.S. for three years with no other criminal history or even a ticket.

DHS Counsel Judge, can I respond that I've absolutely no idea what the Laken Riley Act has to do with this at all. I have no idea what counsel is referring to. Some docket record. I'm reading the PD's letter, which is very clear that the prosecution in Cook County was not able to proceed within 160 days. That's why the case was dismissed. I just want to see a complaint. I want to see why he is arrested. I suspect there may be, it may not be particularly helpful to the respondent's case, but I don't know. But none of that is, this is entirely his burden. He hasn't established it at all. He's provided, the respondent has only provided a letter from his attorney in Illinois. We need to see a police report. We need to see an arrest report. Why this case, why he was arrested with such a serious felony offense. Thank you, Your Honor.

Immigration Judge Thank you. And DHS, what page are you referring to in the Clerk of Circuit Court of Cook County report?

DHS Counsel It's Tab M, Judge, there's a letter from the PD.

Immigration Judge Okay.

[*Inaudible*]

Immigration Judge Okay. All right. The court finds danger and flight risk at this time and denies bond. And for flight risk, the court's reviewed the respondent's asylum application. It's entirely blank, both in the bond record and in the removal record. He has not established any type of claim of fear of return, and in fact, in the 213, it indicates that he wasn't afraid to return. So there's conflicting evidence in that regard. And, and in addition, there's – it's the respondent's burden to show he is not a danger. He has not provided any documents regarding the substantive nature of the criminal charge. And it was disposed on speedy trial grounds. So the court finds at this point, there's no showing that he is not a danger and not a flight risk at this point. So the court denies bond and the appeal date is March 9, counsel.

Petitioner's Counsel Thank you. I'll get this filed with the district judge this afternoon. Anything else that you need from counsel today?

Immigration Judge Nope. Thank you. We are adjourned.

Petitioner's Counsel Thank you, Your Honor.