



U.S. Department of Justice

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BY ECF

Honorable Susan D. Wigenton
United States District Judge
Martin Luther King, Jr. Federal Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *Guaman Naula v. Noem, et al.*, Civil No. 25-16792 (SDW)
Response to Challenge to Bond Hearing Result**

Dear Judge Wigenton:

This Office represents Respondents in the above habeas matter filed by a noncitizen challenging the legality of his detention by U.S. Immigration and Customs Enforcement (“ICE”) pursuant to 8 U.S.C. § 1225(b)(2). We write in response to Petitioner’s December 9, 2025 letter, ECF 12, in which he asserts that he did not receive due process during his bond hearing. The Court should deny the request to review the Immigration Court’s bond decision.

On November 12, 2025, the Court issued an order granting Petitioner’s writ of habeas corpus. ECF 9 (Nov. 12, 2025 Order). The Court held that Respondents shall treat Petitioner as detained under § 1226(a) and “provide him with an individualized bond hearing before an immigration judge.” *Id.*

On November 18, 2025, Immigration Judge Ryan Fisher held a bond hearing and issued an order denying Petitioner’s request for release on bond. ECF 12-1 (Nov. 18, 2025 IJ Order). Counsel for Petitioner filed a motion in support of bond with the Immigration Court on November 17, 2025. ECF 12-2 (Transcript of Nov. 18, 2025 bond hearing) at 4. Immigration Judge Fisher retained and swore in a Spanish interpreter, took two recesses to permit counsel for Petitioner and counsel for DHS to research relevant issues, resolved the issue raised by Petitioner’s counsel regarding who has the burden at a bond hearing, held the hearing, heard Petitioner’s testimony, addressed the documents submitted in support of release on bond—including a copy of the front pages of Petitioner’s and his uncle’s Ecuadorian passports, Petitioner’s uncle’s affidavit indicating that he would support Petitioner financially and ensure

his appearances at court proceedings and that he abides by the laws of the United States. *Id.* The Court heard Petitioner testify that he has not paid taxes on income but would pay taxes on future income, *id.* at 17, 19, and he heard Petitioner testify that he has not filed any applications for asylum, *id.* at 19-20. Immigration Judge Fisher concluded that Petitioner did not provide sufficient evidence of financial stability, strong ties to the community, or viable relief from removal. *Id.* at 21. Accordingly, Immigration Judge Fisher found that Petitioner is a flight risk and thus not eligible for bond. *Id.* Petitioner has reserved appeal of the decision. ECF 12-1 at 5.

Petitioner claims that his bond hearing was legally deficient, and he asks this Court to release him. ECF 12 at 1-2. He claims that Immigration Judge Fisher failed to consider alternatives to detention, that Immigration Judge Fisher's finding that Petitioner poses a risk of flight is contrary to BIA decisions, and that Immigration Judge Fisher erred by not applying the clear and convincing burden of proof standard at the bond hearing as required by this Court.¹ *Id.* at 4.

On December 10, 2025, the Court issued a text order stating it "lacks jurisdiction to review any discretionary determinations underlying the immigration judge's bond decision, but it can review whether the bond hearing was fundamentally unfair." ECF 13 (citing *Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *2 (3d Cir. Feb. 25, 2022)). The Court directed Respondents to respond by December 12, 2025, at 9 a.m. *Id.*

The Court should reject Petitioner's collateral attack on the bond hearing. "This Court does not have jurisdiction to review Petitioner's challenges to the denial of bond by the immigration judge or any of the ongoing immigration proceedings being conducted by the immigration judge." *Magassouba v. Holder*, No. 10-5989 (FSH), 2011 WL 3859735, at *2 (D.N.J. Aug. 31, 2011); see 8 U.S.C. § 1226(e) ("No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole."); *Alvarado Vargas v. U.S. Dep't of Homeland Sec.*, No. 18-03831 (CCC), 2019 WL 13565712, at *1 (D.N.J. Nov. 25, 2019) ("To the extent that Petitioner is seeking a review of the bond determination, this Court is without jurisdiction to review that determination.").² Rather, the proper avenue for relief, as Petitioner demonstrated,

¹ Respondents are unaware that this Court required the Immigration Court to apply the clear and convincing burden of proof standard to the bond hearing. The clear and convincing standard applies to a prolonged detention matter and, at the bond hearing, counsel for Petitioner did not contend that this is a prolonged detention matter. ECF 12-2 at 7-8.

² See also *Asemani v. Att'y Gen. of U.S.*, 140 F. App'x 368, 376 (3d Cir. 2005) ("[T]he [Illegal Immigration Reform and Immigrant Responsibility Act] specifically prohibits direct review of bond orders."); *Pena v. Davies*, No. 15-7291, 2016 WL 74410,

is appellate review of the Immigration Judge's order to the Board of Immigration Appeals.

This case also does not fall under the "fundamentally unfair" exception to continued habeas jurisdiction. *Ghanem* describes the narrow exception, and the Third Circuit rejected its application in that case for similar reasons as here. A fundamentally fair bond hearing requires that the alien "(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." *Id.* at *2.

There, the panel found the proceedings were fair. The petitioner claimed the Immigration Judge relied on inadmissible and unreliable police reports when considering that petitioner posed a danger to the community. 2022 WL 574624, at *2. The petitioner argued that the Immigration Judge "should have weighed the police reports differently given concerns about hearsay and reliability." *Id.* at *2-3. The petitioner further claimed that the Immigration Judge did not read the evidence submitted at the hearing and the court "did not conduct any individualized analysis of Ghanem's evidence." *Id.* at *3. The Third Circuit rejected the petitioner's claim that the bond hearing was fundamentally unfair. It reasoned that a credibility determination is "a discretionary determination that we may not review," that disputes over what documents the Immigration Judge considered and how he interpreted them were "evidentiary quibbles" that do not amount to fundamental unfairness, and that petitioner's claims to not receiving an individualized analysis of evidence "amounts to an allegation of improper evidence weighing," which is "not within our authority to consider." *Id.* at *2-3. "Again, just because there are disagreements about the outcome of the bond hearing, this does not mean that the IJ violated due process in conducting the bond hearing." *Id.* at *3.

The same reasoning applies here. Counsel for Petitioner presented submissions and made arguments, both parties engaged in an adversarial proceeding before the decisionmaker, and Immigration Judge Fisher evaluated the record appearing to consider the factors enumerated by the Board of Immigration Appeals in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) and *Matter of Andrade*, 19 I&N Dec. 488 (BIA 1987). See ECF 12 at 7. That Petitioner believes Immigration Judge Fisher improperly weighed the record evidence and reached a conclusion with which Petitioner disagrees strongly does not make the proceeding fundamentally unfair.

We thank the Court for its consideration of this matter.

Respectfully submitted,

at *2 (D.N.J. Jan. 6, 2016) ("This Court, does not have the power to second guess the discretionary decision of the IJ to deny Mr. Pena's release on bond.").

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