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

MAXIM AVILOV	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 2:26-cv-2431
	:	
BRIAN MCSHANE, ET AL.,	:	
	:	
Respondents.	:	

ORDER

AND NOW, this day of , 2026, upon consideration of Petitioner's Amended habeas corpus petition (ECF 19), and the government's response in opposition (ECF 20), it is hereby **ORDERED** that:

Petitioner's habeas request for immediate release from custody and for this Court to conduct a bond hearing is **DENIED**.

BY THE COURT:

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JUAN R. SANCHEZ, J.

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RESPONSE IN OPPOSITION TO
AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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Dated: June 3, 2026

I. INTRODUCTION

Petitioner overstayed his visa after being lawfully admitted to this country. That made him removable under 8 U.S.C. § 1227(a)(1)(B) and subject to detention under 8 U.S.C. § 1226(a), which entitles him to administratively contest his detention through a custody redetermination hearing before an immigration judge. Petitioner received his statutory due process when an immigration judge conducted a custody review determination.

Despite receiving a constitutionally adequate hearing, Petitioner asks this Court, in an Amended Petition, to replace the statutory process established by Congress and assume the role of the immigration judge and the Board of Immigration Appeals (BIA) by making its own custody determination. Though the Amended Petition repeatedly asserts that Petitioner is not asking the Court to reevaluate the merits of the custody redetermination hearing, that is precisely what is asked of the Court. The petition admits that the constitutional test established by the Third Circuit to ensure that petitioner had the opportunity to present evidence and be heard was satisfied by the hearing.

On May 7, 2026, the Executive Office for Immigration Review (EOIR) provided Petitioner a bond hearing in accordance with 8 U.S. C. § 1226(a), and the opportunity to present evidence and argument regarding whether Petitioner is a danger to the community and presents a flight risk if not detained. ECF No. 14.1. Petitioner was denied bond, and his appeal—if timely made—will be heard by the BIA in accordance with the applicable regulatory framework. *See*, *e.g.*, 8 CFR § 1003.3. Petitioner nonetheless argues that the bond hearing provided did not meet the due process requirements ordered by this Court. *See* ECF No. 19.

II. Factual Background

Petitioner, a native and citizen of Russia, was admitted to the United States on a nonimmigrant visitor visa that has since expired.[1] *See* ECF No. 6.1, 19, ¶ 24. The terms of that nonimmigrant visa permitted him to remain in the United States for a temporary period. *Id.* Petitioner is alleged to have remained in the United States beyond this temporary period. *Id.* Accordingly, on April 7, 2026, Petitioner was arrested and concurrently issued a Notice to Appear (NTA), charging him as removable under 8 U.S.C. § 1227(a)(1)(B) as a nonimmigrant who allegedly violated the terms of his nonimmigrant visa. *Id*.

In 2018, Petitioner's wife filed an affirmative application for relief with USCIS that was not granted and instead referred to the immigration court following adjudication by USCIS. ECF No. 19, ¶ 29. Petitioner's wife's immigration proceedings, including the now defensive asylum application, were subsequently terminated. ECF 19, ¶ 30. Consequently, Petitioner did not have a pending asylum application at the time of his detention.[2] He filed a defensive asylum application on his own behalf following his detention. ECF 18, ¶ 28.

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[1] Respondents acknowledge that the administrative record is not clear as to the date of Petitioner's last arrival in the United States. However, Petitioner is not contesting that he is removable for having violated the terms of his nonimmigrant visa, and Respondents assert that any inconsistency in the administrative record is an issue to be resolved by the immigration court.

[2] At the hearing in this matter, the Court raised the relevance of a recent decision in this district. *See Doe v. Jamison,* 2026 WL 916568, at *1 (March 31, 2026, J. Rufe). That case, in the view of the government, was wrongly decided. More importantly, it is distinguishable from this case in two important respects. First, that decision rested on a finding that ICE failed to provide a bond hearing when requested. *Id.* at * 3. The bond hearing has been provided in this case. Second, the court went on to mistakenly find that a pending affirmative asylum application provided protection against detention. *Id.* at * 5–7. Here, there is no pending affirmative asylum application as Petitioner's wife's application was adjudicated and referred to immigration court in 2018. ECF 19, ¶ 30

On May 7, 2026, at Petitioner's request, custody redetermination (bond) hearing occurred before the immigration court. ECF 15.1. The immigration judge denied bond finding Petitioner failed to prove he is not a flight risk. ECF 14.1.

III. Legal Argument

A. Petitioner has not exhausted the administrative remedies available to him by virtue of his detention under 8 U.S.C. § 1226(a).

Petitioner's challenge to the immigration judge's denial of his bond request must be presented to the BIA for review in the first instance. *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 first exhausted his appeal to the BIA); *See Ubaid v. Jamison, et al.,* No. 26-CV-2681-JMY, 2026 WL 1346670, at *3 (E.D. Pa. May 14, 2026) ("Speculation that a claim is merely unlikely to prevail in the administrative process based on statistical trends does not make raising that claim futile. Thus, the merits of Petitioner's claims that he is being held in violation of federal law are no [sic] ripe for review."). Here, Petitioner has reserved his right to appeal to the BIA, and this Court should permit that established administrative process to run its course.

B. Petitioner's Bond Hearing Was Constitutionally Adequate

Petitioner has not demonstrated that his bond hearing was fundamentally unfair in violation of due process requirements. A constitutionally adequate bond hearing 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). As described in the Amended Petition, the bond hearing on May 7, 2026 satisfied each of these requirements. Petitioner

previously submitted the bond hearing transcript that shows Petitioner submitted evidence, presented argument, and was heard by the immigration judge. ECF 15.1.

As Petitioner acknowledges, his "counsel argued all of the factors under *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Paragraphs 37 through 41 of the Amended Petition review the hearing transcript in detail, demonstrating that the immigration judge heard the evidence and pursued a line of questioning with the Petitioner. ECF 19 at 10-11. Petitioner asks this Court to improperly review the evidence he presented to immigration judge and determine that the immigration judge insufficiently weighed the evidence. That type of review is available with the BIA. Petitioner's dissatisfaction with the outcome of the bond hearing does make it constitutionally inadequate.

After considering that record, the immigration judge denied the bond, finding that Petitioner "has not established that he is not a flight risk." *See* ECF No. 14.1. Petitioner nonetheless contends that the hearing was constitutional deficient because the immigration judge's "attitude." ECF 19, ¶ 43. Yet, Petitioner acknowledges that the immigration judge considered Petitioner's positive equities of owning his own house and business. *Id*.

Significantly, Petitioner identifies no actual due process violation. He does not, and cannot, claim that he was prevented from presenting evidence, that his counsel was unable to make arguments, or that he was denied an individualized determination. On the contrary, Petitioner admits that each of these procedural safeguards was afforded. Though he attempts to deny it, Petitioner's disagreement is instead with the weight the immigration judge assigned to the evidence and arguments presented.

That disagreement does not render the proceeding unconstitutional. While Petitioner may contest the immigration judge's conclusion regarding flight risk, that challenge is properly

directed to the BIA, not this Court. As reflected in Petitioner's own account, the immigration judge considered the evidence and issued a determination based on that record. *See Kumar v. Rose, et al.*, No. 2:26-cv-00155, Order (ECF No. 11) (E.D. Pa. Feb. 23, 2026) (Slomsky, J.)("Petitioner's Motion to Enforce … will be denied for two reasons: (1) this Court lacks jurisdiction to overturn the decision rendered by the immigration judge on February 9, 2026 and (2) Petitioner has not demonstrated the bond hearing was so fundamentally unfair as to deprive him of due process.")

Petitioner seems to argue that he need not exhaust his administrative remedies by appealing to the BIA because those administrative remedies would be futile. However, another Court in this district has already considered and rejected this argument in denying a habeas petition for an individual detained under 8 U.S.C. § 1226(a):

> Here, Petitioner makes no argument that he has exhausted his administrative remedies. Instead, he argues that pursuing the prescribed administrative appeals process would be futile because those processes are *unlikely* to afford him the relief he seeks. Specifically, Petitioner alludes to a "growing trend" of immigration courts denying bond and cites statistics that bond is only granted 27.8% of the time nationwide. ECF No. 8-1 at 3–4. Thus, Petitioner argues, he is facing a "one in five chance" of having his bond granted if he pursues the remedies he is afforded by statute, not to mention the additional months he will be detained if the bond decision is appealed. *Id.* Spurious math aside, Petitioner's argument is facially untenable. Speculation that a claim is merely unlikely to prevail in the administrative process based on statistical trends does not make raising that claim futile. Thus, the merits of Petitioner's claims that he is being held in violation of federal law are no [sic] ripe for review.

Ubaid, 2026 WL 1346670, at * 3 (emphasis in original). Therefore, as Petitioner has not exhausted his administrative remedies and instead seeks to avoid BIA review through allegations of a defective bond hearing, the Court should deny the Petition and allow the BIA to hear Petitioner's claim.

Numerous courts, including the Supreme Court, have looked favorably on the administrative procedures governing section 1226(a). For example, the Third Circuit Court of Appeals rejected a due process challenge to detention under section 1226(a). *See Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274 (3d Cir. 2018). In *Borbot*, a habeas petitioner argued that, based on the *length* of his detention under section 1226(a)—of more than one year—he was constitutionally entitled to a second bond hearing at which the Government would bear the burden of proof. *Id*. at 276–77. The Third Circuit rejected petitioner's argument, which relied on cases involving prolonged detention under the mandatory detention statute, 8 U.S.C. § 1226(c). The court there noted that, "unlike § 1226(c) detainees . . . who were detained for prolonged periods without being given any opportunity to apply for release on bond, [petitioner] *was granted meaningful process* prior to filing his habeas petition." *Id*. at 279 (emphasis added).

The alien in *Borbot* predicated his challenge to § 1226(a) on the length of his detention and did not take issue with his initial bond hearing. The Third Circuit's central holding was that no additional procedures were required because the existing procedures for bond hearings under § 1226(a) are constitutionally adequate. 906 F.3d at 278–29. The Court specifically noted that "Borbot was afforded a prompt bond hearing, *as required by § 1226(a) and its implementing regulations,*" and it was on this basis that the court concluded he was "granted meaningful process." *Id*. (emphasis added). *Borbot* thus stands for the proposition that section 1226(a) and its implementing regulations fully satisfy the requirements of due process.

Here, in detaining Petitioner under § 1226(a), Petitioner is afforded the same type of process that was afforded the petitioner in *Barbot,* and which the Third Circuit in *Barbot* found to be constitutionally adequate. Moreover, Petitioner's detention is not prolonged, as he has been detained since April 7, 2026. *See Contant v. Holder*, 352 Fed. Appx. 692 (3d Cir. 2009)

(affirming denial of a petitioner's habeas petition where he had received process under 8 U.S.C. § 1226(a) and his 19 months' detention was not overly prolonged). Therefore, because Petitioner's detention under § 1226(a) comports with constitutional due process, the Court should deny the petition. *See Guaman Guerrero,* Case No. 2:25-cv-06974, Order (ECF No. 8) (E.D. Pa. Jan. 27, 2026) (Gallagher, J.) (denying habeas petition challenging the constitutional adequacy of a bond hearing under 8 U.S.C. § 1226(a)); *Navarro v. Warden*, No. 2:26-cv-00305, Order (ECF No. 10) (E.D. Pa. March, 30, 2026) (Slomsky, J.) (denying motion to enforce that challenged bond hearing on due process grounds, noting that "while [p]etitioner may disagree with the outcome of the bond hearing, such disagreement does not mean [p]etitioner's due process rights were violated).

IV. CONCLUSION

For the foregoing reasons, respondents respectfully request that the Amended Petition for writ of habeas corpus be denied.

Respectfully submitted,

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Dated: June 3, 2026

CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Response in Opposition to Petition for Writ of Habeas Corpus via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: June 3, 2026

/s/ Anthony St. Joseph
ANTHONY ST. JOSEPH
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