

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

KARIM ALY AHMED HAMDY,

Petitioner,

v.

WARDEN, IRWIN COUNTY
DETENTION CENTER, *et al.*,

Respondents.

Case No. 7:26-cv-112-WLS-ALS

PETITIONER'S REPLY

Despite asking the Court to deny the relief sought in the petition, Respondents' opposition briefing confirms that Petitioner is entitled to relief from this Court. Specifically, Petitioner is entitled to a constitutionally adequate bond hearing during which the burden of proof lies with the government by clear and convincing evidence and the immigration judge's ("IJ") determination is not based on speculation. Because this Court maintains jurisdiction to grant this relief, Petitioner respectfully requests that it do so.

ARGUMENT

A. This Court Has Jurisdiction

"Section 1226(e) [of Title 8] prohibits judicial review of an IJ's 'discretionary judgment' regarding § 1226's application to particular cases." *J.G.*

v. Warden. Irwin Cnty. Det. Cntr., 2021 WL 541366, at *2 (M.D. Ga., Jan. 15, 2021). However, “[t]hat language does not foreclose judicial review of all challenges to a noncitizen’s bond,” such as “habeas claims and constitutional challenges.” *Id.* This Court retains jurisdiction to review whether an immigration judge afforded an individual due process under the Constitution. *Id.*

This petition does not challenge the IJ’s exercise of discretion in weighing the applicable *Matter of Guerra* factors and the evidence submitted in Petitioner’s case. Rather, the petition challenges the IJ’s requirement that Petitioner bear the burden at the bond hearing, all in violation of his due process rights.

This Court has jurisdiction to review this constitutional challenge. *Demore v. Kim*, 538 U.S. 510, 517 (2003).

B. The Bond Hearing Did Not Comport with the Requirements of Due Process

The IJ did not provide a bond hearing that applies with due process requirements because the burden of proof was improperly placed on Petitioner.

Due process requires that immigration detention “‘bear[] a reasonable relation to the purpose for which the individual was committed.’” *Demore*, 538 U.S. at 527 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Specifically, immigration detention must be reasonably related to the government’s goals of preventing flight and protecting the community from harm, and it must be accompanied by adequate procedural protections to ensure that those goals are

being served. *See Zadvydas*, 533 U.S. at 690–91. Chief among these procedural protections is “the guarantee of an impartial and disinterested tribunal,” which the Due Process Clause requires “in both civil and criminal cases.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

In Petitioner’s context, the applicable statute—section 1226(a)—“is silent as to what burden of proof applies in bond hearings and who bears that burden.” *D.Y.E.H. v. Warden, Irwin Detention Center*, 2026 WL 1230386, at *6 (M.D. Ga. Apr. 6, 2026) (quoting *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021)). The burden of proof used by IJs in bond hearings is instead in the Code of Federal Regulations (8 C.F.R. § 236.1(c)(8)), which the Board of Immigration Appeals (“BIA”) has concluded is appropriate in immigration court bond proceedings. But as this Court held in *D.Y.E.H.*, it must exercise its independent judgment rather than deferring to the BIA’s interpretation. *See D.Y.E.H.*, 2026 WL 1230386, at *6 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024)). Applying *Loper Bright*, in *D.Y.E.H.* this Court concluded that the Supreme Court’s “clear and convincing” standard for civil commitment cases is the appropriate standard in immigration detention cases. *See D.Y.E.H.*, 2026 WL 1230386, at *6. *See also id.* (Supreme Court “regularly relies upon civil commitment cases to inform its due process analysis in immigration cases,” quoting *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1336 (M.D. Ga. 2020)).

Thus, the IJ erred by failing to hold Respondents to the burden of proof by the clear and convincing evidence standard.

Respondents acknowledge that the Court will likely follow its prior determination and assign the burden to Respondents. But they also argue that Petitioner's bond hearing was constitutionally adequate either way. They argue that even if the burden was misallocated, Petitioner got a fair shake because he had an "individualized opportunity to present evidence." Respondents' Opp. at 8.

This argument confuses the opportunity to present evidence with the legal standard against which that evidence is evaluated. The issue here is not whether the IJ wholesale prevented Petitioner from making arguments or presenting evidence at the bond hearing. It is that the IJ denied bond because it misapplied the burden: **"It is Respondent's burden to satisfy the Court that he is not a danger and he has failed to do so based upon the evidence presented."** (Doc. 1-6) (emphasis supplied).

The government's argument is also circular. For purposes of Petitioner's claim that the IJ should not be permitted to deny relief based on speculation, the Court is precluded from "impermissibly re-weigh[ing] discretionary evidentiary findings," Opp. at 11, but for purposes of allocating the burden, the Court should consider what evidence Petitioner presented at the hearing. That cannot be so. There is a difference between applying the wrong burden or evidentiary standard

and asking this Court to engage in *de novo* review. And even for Petitioner's claim regarding speculation, Petitioner is not asking the Court to look at the facts or weigh evidence but instead ensure that his hearing is constitutionally adequate by ensuring that the IJ does not improperly speculate. *See D.Y.E.H.*, 2026 WL 1230386, at *5 ("Further, IJ Doughty's speculation as to Petitioner's success on future relief does not support any reasonable inference of flight risk."). *See also Alvarado Lopez v. Dillman*, 2026 WL 688958, at *7 (E.D. Va. Mar. 11, 2026) (same); *Wilkins v. Doll*, 2018 WL 3388032, at *2 (M.D. Pa. July 12, 2018) (finding that IJ erred by "rel[ying] entirely on the purported lack of relief available to [the non-citizen]").

In sum, the IJ hearing was not constitutionally adequate under *Mathews v. Eldridge*, 424 U.S. 319 (1976) for the same reasons the Court found in *D.Y.E.H.* Petitioner is being detained under a Notice to Appear that includes wrong information about the basis of his alleged violation. He is being held apart from his community and lawful permanent resident spouse. The government's only real challenge to the *Mathews* factors is that Petitioner, in their view, had his chance already at the bond hearing and perhaps did not present enough evidence. *See Opp.* at 9 ("The framework provided a path for review, and his failure to satisfy his evidentiary burden under that framework does not create an unconstitutional risk of erroneous deprivation."). But again, just because Petitioner had an opportunity to

challenge the government at the hearing, does not mean it was constitutionally adequate. Here, where the burden was applied against him and where the IJ reached conclusions without evidentiary foundation, the hearing was outside the guardrails of the Due Process Clause to the Fifth Amendment.

CONCLUSION

In sum, habeas corpus is, at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). The Supreme Court has consistently held that the relief granted to habeas petitioners is broad. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). Here Petitioner asks for release, or in the alternative that the Court follow its prior decision in *D.Y.E.H.* and require Respondents to convene a bond hearing under 8 U.S.C. § 1226(a), where the burden of proof will lie with the government, the standard of proof will be clear and convincing evidence, and the IJ will be ordered not to rely on speculation or speculative evidence when rendering a decision.

Dated: May 15, 2026

Respectfully Submitted,

/s/ James M. Slater

James M. Slater (Ga. Bar No. 169869)

Slater Legal PLLC

2296 Henderson Mill Rd NE #116

Atlanta, Georgia 30345

james@slater.legal

Tel. (404) 458-7283

Attorneys for Petitioner Hamdy