Appeal Nos. 24-CO-295 & 24-CO-296

DISTRICT OF COLUMBIA COURT OF APPEALS

MUHAYMIN MUHAMMAD,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the Superior Court of the District of Columbia
Criminal Division

REPLY BRIEF FOR APPELLANT

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ARGUMENT

In his opening brief, Mr. Muhammad argued that the trial court erred by finding he was still dangerous based on a lack of sex offender programming that he could not access in BOP and a disciplinary infraction from 2016 for filing administrative grievances after being warned to stop. He also argued the trial court's dangerousness analysis imposed an erroneously elevated burden of proof, dismissing his "minimum" PATTERN score because it did not "guarantee" non-dangerousness, and devaluing an unrebutted expert report and Mr. Muhammad's letter of remorse because the defense offered them as written submissions rather than through live testimony, even though IRAA permits written submissions and the judge affirmatively told Mr. Muhammad his decision not to testify would not be held against him. Additionally, Mr. Muhammad argued the trial court erred in its interests-of-justice analysis when it relied on the determinate sentencing statute and the voluntary sentencing guidelines to find that the 42 years Mr. Muhammad had already served was not enough to "reflect the seriousness of the offense" or "achieve the goals of punishment and general deterrence."

This Court's recent decisions in *Doe v. United States*, 333 A.3d 893 (D.C. 2025), and *Riley v. United States*, 338 A.3d 1 (D.C. 2025), establish that courts err when they "look[] beyond IRAA to the sentencing goals captured by distinct statutes"—including the determinate sentencing scheme—to determine whether it

would be in the interests of justice to order a litigant's release. *Riley*, 338 A.3d at 9; *Doe*, 333 A.3d at 910. In *Riley*, this Court held that Judge Iscoe "committed the same error . . . identified in *Doe*," where—as in this case—he based an interests-of-justice analysis on the determinate sentencing statute and the sentence he inaccurately believed the petitioner would receive if sentenced "today." *Riley*, 338 A.3d at 9-10. Since *Riley* and *Doe* conclusively establish that the trial court erred in its interests-of-justice analysis, the only questions this Court must resolve concern the trial court's dangerousness analysis.

The government asserts that the trial court did not abuse its discretion in finding Mr. Muhammad dangerous because the nature of his offenses and his 2016 infraction established an "on-going need" for sex offender treatment, despite the assessments of BOP and Dr. Keller that he did not need such treatment and posed a "minimal" risk of recidivism. Without disputing that this treatment has not been available to Mr. Muhammad in BOP, it argues that it was nonetheless "reasonable" for the judge to deny release "until that treatment occurs." Gov. Br. 24. The government does not argue that the 2016 disciplinary infraction serves as a separate rationale from which to find current dangerousness, thereby waiving that argument. And despite the trial court's language suggesting it sought a "guarantee" that Mr. Muhammad would not reoffend if released, and its after-the-fact demand for live testimony over written submissions, the government argues that this Court

should "presume" the trial court applied the correct preponderance standard when evaluating Mr. Muhammad's evidence. But the government does little more than reiterate the trial court's rationale in a conclusory fashion, failing to explain how the record could support the trial court's conclusion that Mr. Muhammad is still dangerous, despite the unrebutted assessments of both BOP and a forensic psychologist expert that he presents a low risk of recidivism, his clean disciplinary record since 2016, and his letter of remorse.

I. THE TRIAL COURT ERRED IN FINDING DANGEROUSNESS BASED ON MR. MUHAMMAD'S FAILURE TO COMPLETE SEX OFFENDER TREATMENT THAT WAS UNAVAILABLE TO HIM AND A 2016 INFRACTION FOR SUBMITTING ADMINISTRATIVE GRIEVANCES AFTER BEING INSTRUCTED NOT TO DO SO.

The government does not dispute that recent assessments, including the government's own PATTERN score and a psychologist's expert report, indicate that Mr. Muhammad presents a "minimal" risk of reoffending and does not need sex offender treatment. Nor does it dispute that he has not been able to access sex offender treatment in BOP, or that his counsel represented that he would be willing to participate in such programming in the community should CSOSA "deem it appropriate." Instead, it defends the trial court's conclusion that he remains dangerous without sex offender treatment based solely on the nature of his underlying offenses and a non-sexual, non-violent disciplinary infraction from 2016. Significantly, even though the trial judge relied heavily on this infraction in its dangerousness analysis, the government does not argue that the 2016 disciplinary offense provides independent support for a finding of dangerousness—

and thereby waives any such argument.

A. THE TRIAL COURT ERRED IN FINDING MR. MUHAMMAD DANGEROUS BASED ON A LACK OF SEX OFFENDER TREATMENT, BECAUSE THE RECORD DID NOT ESTABLISH HE NEEDED THE TREATMENT AND THIS PROGRAMMING HAS NOT BEEN AVAILABLE TO MR. MUHAMMAD IN BOP.

Mr. Muhammad argued in his opening brief that the judge lacked a factual basis for the conclusion that Mr. Muhammad needed sex offender treatment to establish that he is no longer dangerous, despite the unrebutted conclusions of BOP's own assessment tools and a psychologist expert that he was at low risk of recidivism even without such treatment. He also argued that the judge misapplied Factor (c)(3) by denying IRAA relief in large part based on failure to complete treatment that was *not* "available" to Mr. Muhammad, as evidenced by the fact that he had been on the waitlist for eight years, and erred in inferring dangerousness from the fact that he did not join the waitlist *before* 2015, where there was no evidence that he could have done so and where his pre-2015 state of mind was not relevant to current dangerousness. For all of these reasons, the trial court abused its discretion in relying on the lack of sex offender treatment to deny relief.

The government doesn't dispute the contemporary evidence that Mr. Muhammad does not need sex offender treatment to establish his non-dangerousness, including his "minimum" BOP PATTERN score, lowest possible custody classification, and Dr. Keller's expert report. Instead, the government defends the trial court's ruling on only two dated bases: the nature of Mr. Muhammad's underlying offenses, which occurred 41 years before he filed his

IRAA petition, and the 2016 disciplinary offense for an undisputedly non-sexual, non-violent infraction. Gov. Br. 23-24. The government simply ignores IRAA Factor (c)(3) that directs judges to look at completion of *available* programming, reiterating that this treatment is needed even after acknowledging "[t]he inability of the prison to provide these services." Gov. Br. 24. It doesn't try to defend the judge's groundless assumption that Mr. Muhammad could have joined the program waitlist before 2015, merely asserting that his "pre-2015 state of mind" is relevant because he presented his entire programming record to show rehabilitation. *Id.*

The trial court's ruling is legally and factually deficient, and the government's brief fails to show otherwise. First, the evidence the government points to as "ample"—the nature of Mr. Muhammad's 40-year-old offenses and his non-sexual, non-violent 2016 infraction for filing inappropriate grievances—cannot justify a finding that Mr. Muhammad needed sex offender treatment to establish his non-dangerousness in 2023, especially in light of BOP's own determinations, corroborated by Dr. Keller's expert opinion, that Mr. Muhammad poses a "minimum" risk of reoffending and does not need sex offender treatment. The government ignores the wealth of evidence that Mr. Muhammad is not dangerous. It does not dispute that BOP's PATTERN risk assessment reflected a "minimum" risk of recidivism or that his BOP custody classification was the "lowest possible," permitting "community" placement. Def. Motion 32, 36. In addition, BOP's most recent individualized programming plan for Mr. Muhammad did not include sex offender treatment as a short- or long-term goal. Tr. 39. Similarly, Dr. Keller provided an unrebutted expert opinion that Mr. Muhammad

did not need sex offender treatment, and that he was already "of relatively low risk to sexually and violently reoffend." Order 19; Def. Ex. 2 at 18-19. The government summarily dismisses this evidence that Mr. Muhammad poses no danger even without sex offender treatment.

Instead, the government asserts that the nature of Mr. Muhammad's offenses in 1982 and his 2016 infraction alone justified the trial judge's conclusion that Mr. Muhammad needed to complete sex offender treatment to establish that he poses no danger. It points to nothing else in the record to show that sex offender treatment is necessary to render someone non-dangerous where other risk assessments uniformly indicate a low risk of any type of recidivism. The government's reliance on the nature of the underlying offense from more than 40 years ago to infer a present need for sex offender treatment, despite unchallenged evidence to the contrary, is inconsistent with the purpose of IRAA, as the statutory scheme was enacted to offer relief to people who "have *all* served long sentences for *exclusively* serious offenses . . . ." D.C. Council, Comm. on the Judiciary & Pub. Safety, Rep. on Bill 23-0127 at 19 (Nov. 23, 2020) ("2020 Committee Report"). Given the unrebutted conclusions from BOP and Dr. Keller that he does not need this treatment, the nature of Mr. Muhammad's decades-old offense did not provide the trial court with a sufficient factual basis from which to conclude that Mr. Muhammad is presently dangerous without this treatment. *See Cruz v. United States*, 165 A.3d 290, 294 (D.C. 2017) (holding that a trial court abuses its discretion when its decision lacks a "firm factual foundation" (quoting *Johnson v. United States*, 398 A.2d 354, 364 (D.C. 1979))).

The government similarly fails to explain how Mr. Muhammad's 2016 infraction could provide a firm factual foundation for the court's conclusion that Mr. Muhammad remained dangerous without sex offender treatment, when all parties agreed the 2016 infraction was not sexual, violent, or even physical in nature, and more recent assessments, including BOP's own tools, took the 2016 disciplinary incident into account when determining that he was at "minimum" risk of recidivism. The trial court drew impermissible inferences about the nature of the infraction based on BOP's use of the term "stalking," even though the government acknowledged that the term carried connotations that did not apply to Mr. Muhammad's conduct. Tr. 27. *See infra*, 11 - 13. Because the 2016 infraction does not "reasonably support the conclusion" that Mr. Muhammad needs sex offender treatment to establish non-dangerousness, the trial court abused its discretion in relying on it. *See Johnson*, 398 A.2d at 365 (citation omitted).

The government does not dispute—and therefore concedes—that Mr. Muhammad cannot access sex offender treatment in BOP, and that this program therefore is not "available" to him as contemplated by Factor (c)(3).[1] As the opening brief contended, the trial judge misapplied the statute by relying on Mr. Muhammad's failure to complete this unavailable program as a basis to deny relief. Br. 27. The government does not address the statutory language directing judges to

[1] The situation is particularly challenging for Mr. Muhammad, as his current placement site does not even offer this treatment. *See* Dep't of Just., Bureau of Prisons, *Custody & Care, Sex Offenders,* https://www.bop.gov/inmates/custody_and_care/sex_offenders.jsp (Last Accessed: August 25, 2025).

consider "whether the defendant has completed any educational, vocational, or other program, *where available*." D.C. Code § 24-403.03(c)(3) (emphasis added). Nor does it address this Court's recognition that "a lack of programming opportunities" may excuse "programming shortcomings." *Bishop v. United States*, 310 A.3d 629, 642 & n.7 (D.C. 2024). Instead, the government argues that the "inability of the prison to provide these services (or the length of the waitlist) does not override the court's responsibility under IRAA to protect the community," and asserts that because he needed sex offender treatment, "it is reasonable to deny the defendant's motion for release until that treatment occurs." Gov. Br. 24.

The government's suggestion that Mr. Muhammad should stay in prison awaiting programming he cannot access despite BOP's own assessment that he is at a low risk for recidivism is fundamentally inconsistent with IRAA's purpose. A "realistic, meaningful opportunity" for release based on demonstrated maturity and rehabilitation, *Williams v. United States*, 205 A.3d 837, 849 (D.C. 2019), is impossible if release is contingent upon completion of programming that a petitioner cannot access. As this Court has noted in *Walls v. United States*, "an inmate's prospect for further rehabilitation is a pretty lousy and potentially limitless reason to further incarcerate them" particularly where, as here and in *Walls*, an IRAA movant has applied for additional programming but, "through no fault of his own," has been denied or waitlisted. *Walls v. United States*, No. 24-CO-0321, 2025 WL 2166286, at *7 (D.C. July 31, 2025). In fact, the very BOP assessment tools showing that Mr. Muhammad does not need this treatment likely explain in part why he cannot, and will not, be assigned one of the limited

treatment spots offered by BOP. Br. 27 n.14.[2] The government does not attempt to square this result with IRAA's purpose or text.

This Court should not seriously consider the government's defense of the trial court's ruling that Mr. Muhammad's supposed lack of "effort to enroll" in sex offender treatment before 2015 speaks to current dangerousness. Order 25. The government argues that even though it was clear Mr. Muhammad had signed up for the waitlist in 2015, he should be penalized for not having established that the program was unavailable to him prior to that date. Gov. Br. 24. First, the government does not dispute the absence of evidence that Mr. Muhammad *could* have joined the waitlist any sooner than he did, or the general dearth of support for the trial court's finding of a lack of "effort to enroll" in such programming.[3] There was no evidence that sex offender treatment even existed at the facilities where Mr. Muhammad was incarcerated prior to 2015. Thus, its argument that Mr. Muhammad's pre-2015 state of mind is relevant because he "proffered the entirety of his programming record . . . as evidence of his rehabilitation," Gov. Br. 24, is

[2] Indeed, because BOP limits access to the limited places in these treatment programs to those who pose a higher risk of recidivism, Br. 27 n.14, the government's proposal would put Mr. Muhammad in a Catch-22 situation where he remains stuck in prison because a judge has decided—albeit groundlessly—that without the program he is too dangerous to release, but he cannot participate in the program because BOP does not think he is dangerous enough to need it.

[3] The government is incorrect to suggest (at 24) that Mr. Muhammad, as an IRAA petitioner, "bears the burden" to show that sex offender treatment was *not* available to him before 2015. The burden to establish non-dangerousness by a preponderance of the evidence does not require Mr. Muhammad to disprove the government's wholly unsupported suggestion that BOP provided this particular programming more than a decade ago.

beside the point, because the record simply does not show there was anything more he could have done. And regardless, he did sign up for the program in 2015 and remained on the waitlist at the time of his IRAA hearing eight years later, clearly demonstrating an effort to complete the programming. The judge's groundless speculation about a choice he believed Mr. Muhammad made before 2015, a decade ago, sheds no light on current dangerousness, especially in light of the ample up-to-date evidence of non-dangerousness from BOP itself and Dr. Keller's report. *See* 2020 Committee Report at 12 (explaining that IRAA focuses on whether a petitioner's "*current* conduct proves further incarceration is not in the public interest" (citation modified)).

By assuming without record support that Mr. Muhammad needed sex offender treatment, despite unrebutted evidence in the record to the contrary; misapplying Factor (c)(3) by requiring unavailable sex offender treatment; and inferring current dangerousness based on a groundless assumption that Mr. Muhammad was able to sign up for this treatment before 2015 but decided not to do so, the court abused its discretion. This error was integral to the judge's finding that Mr. Muhammad was dangerous and warrants reversal.

B. THE TRIAL COURT ERRED IN RELYING ON THE 2016 BOP DISCIPLINARY INFRACTION IN FINDING CURRENT DANGEROUSNESS AND THE GOVERNMENT WAIVED ANY ARGUMENT TO THE CONTRARY.

The trial court also abused its discretion by relying on Mr. Muhammad's 2016 infraction for filing repeated grievances to find dangerousness. The trial court relied heavily on the 2016 infraction in its dangerousness analysis, using BOP's

shorthand description of the infraction as "stalking" to draw an unsubstantiated analogy between the 2016 infraction and Mr. Muhammad's underlying convictions. Mr. Muhammad argued that the facts did not support this inference, particularly in light of other record evidence establishing his current non-dangerousness, and that therefore the dangerousness ruling was fatally flawed. As the government conceded at the hearing, "stalking might mean one thing in the general public as it means something separate in BOP" and "looking at the language of the DHO might carry more weight than the title." Tr. 27.

Notably, the government does not argue on appeal that the 2016 infraction for filing grievances in itself supported a finding of current dangerousness. Rather, it takes the much more limited position that the trial court "did not abuse its discretion by viewing [Mr.] Muhammad's 2016 infraction as evidence of the need for sex-offender treatment." Gov. Br. 26. The government has thus waived any argument that the 2016 incident offered an independent basis from which to conclude that Mr. Muhammad was currently dangerous. *See Rose v. United States*, 629 A.2d 526, 535 (D.C. 1993) ("It is a basic principle of appellate jurisprudence that points not urged on appeal are deemed to be waived."). The government's waiver of this argument requires reversal, as the 2016 infraction played a central role in the trial court's dangerousness analysis.

In claiming that the trial court "did not rely solely on the title" of the "stalking" infraction and "instead identified the specific nature of [the] conduct" that caused "concerns," Gov. Br. 25, the government merely reiterates the trial court's ruling; it fails to explain in anything other than the broadest terms how the

conduct at issue in the 2016 disciplinary offense resembled the facts of Mr. Muhammad's convictions. It also glosses over the trial court's express reliance on the connotations of the word "stalking" in inferring dangerousness. The record is clear that the judge conflated BOP's shorthand name for the infraction with Mr. Muhammad's offenses of conviction. "[W]hen I see stalking," the judge said, "it seems to me in some ways similar to following somebody in a vehicle, smashing into a vehicle and then sexually assaulting them." Tr. 30. "[W]hen I see conduct that arguably is similar to that he engaged in prior to being placed in custody, it gives me some concern for the safety of the community." *Id.*

The facts of the 2016 infractions simply do not support any analogy to Mr. Muhammad's offenses or any inference that nearly a decade later Mr. Muhammad presents a danger or needs sex offender treatment—particularly in conjunction with the assessments to the contrary from BOP itself and Dr. Keller. The conduct leading to the infractions was the filing of repeated administrative grievances. There was no allegation of any sexual, violent, or even physical conduct. Although the two BOP employees who were the subject of the grievances were both women, there was no evidence that Mr. Muhammad "targeted" either of them *because* they were women. The grievances complained about how they did their jobs, and although they called the employees names, the names were not sexual or gender-based. *Cf. Colbert v. United States,* 310 A.3d 608, 615 (D.C. 2024) ("If a court is going to gauge a person's present dangerousness based partly on their past offenses [] it is critical that it demonstrate an accurate understanding of the core facts of the underlying offenses."). Moreover, the record rebuts the government's suggestion

that Mr. Muhammad used the BOP complaint system to target female staff members in particular. Gov. Br. 25. As one of his supporters noted, Mr. Muhammad "filed administrative remedies against unfair policies and practices . . . because he was attempting to better conditions for all inmates regardless of race, creed or color. Never violent, just relentless in his pursuit of institutional judgement and justice." Def. Ex. 8. A former BOP counselor likewise remembers that he often would "file a lot" "for himself or other inmates" because "he wanted everyone to be treated a certain way," but said he was "not a problem." Def. Motion 22. Regardless this incident was non-violent and occurred a decade ago. *See Bryant v. United States*, No. 24-CO-0255, 2025 WL 2413791, at *8 (D.C. Aug. 21, 2025) (observing that even the more serious offense of importing heroin "may not be an especially potent piece of evidence" of current dangerousness where the offense was over a decade old and non-violent).

The judge plainly relied on the prejudicial connotations of the term "stalking" to make the inferential leap that Mr. Muhammad remains dangerous because of the repeated administrative complaints he filed in 2016, and the record otherwise lacked a factual basis for such an inference. The trial court therefore abused its discretion in relying on the infraction as either direct evidence of current dangerousness or a basis for requiring sex offender treatment.

C. THE TRIAL COURT HELD MR. MUHAMMAD TO AN ERRONEOUSLY HIGH STANDARD OF PROOF.

Mr. Muhammad argued in his opening brief that the trial court compounded the errors made in its dangerousness analysis by holding Mr. Muhammad to an

erroneously high burden of proof, dismissing his uncontested "minimum" PATTERN score because it did not "guarantee" that he would not reoffend, and discounting the unrebutted expert opinion of Dr. Keller and Mr. Muhammad's own statement of remorse because the defense offered them as written submissions rather than live testimony. In fact, the trial court's order faulted Mr. Muhammad for failing to testify even though at the hearing it told him directly, "Failure to say anything will not be held against you." Tr. 47. Because IRAA requires petitioners to establish non-dangerousness by only a preponderance of the evidence, *Doe v. United States*, 333 A.3d 893, 900 n.6 (D.C. 2025); expressly permits applications for relief to "include affidavits or other written material," D.C. Code § 24-403.03(b)(1); and does not require live testimony, the trial court held Mr. Muhammad to an erroneously elevated burden of proof and abused its discretion in demanding live testimony and a "guarantee" of non-dangerousness.

The government argues this Court should presume the trial court used the correct standard, insisting the trial court engaged in a routine application of the preponderance standard. It does not dispute that requiring a "guarantee" that Mr. Muhammad would not reoffend, or holding the lack of live testimony against him, despite the statute's express authorization of affidavits and "written materials," would be a misapplication of the preponderance standard. Instead, the government insists the trial court did not do what it explicitly said it was doing. It dismisses the trial court's own words, arguing the use of the word "guarantee" was "perhaps [] inartful" phrasing and not the application of an elevated standard. Gov. Br. 28. The government further dismisses the trial court's after-the-fact demand for live

testimony as a discretionary choice, and argues that even though the trial court explicitly told Mr. Muhammad his failure to speak would not be held against him he still made a "knowing" and "voluntary" choice not to testify. Gov. Br. 29-30. These arguments fail, as the record shows the trial court erroneously required Mr. Muhammad to prove his non-dangerousness beyond the preponderance standard.

This Court's decision in *Bailey v. United States*, 251 A.3d 724, 729 (D.C. 2021), forecloses the government's effort to dismiss the trial court's demand for a "guarantee" of non-dangerousness as mere "inartful" phrasing, but the government effectively ignores this precedent. In *Bailey*, this Court rejected the government argument that it should dismiss trial court statements that were "in serious tension with a preponderance standard" and "presume" that the judge applied a preponderance standard because "(1) the [compassionate release] statute does not articulate a clear standard; (2) before today, neither had we in this precise context; and (3) the trial court never plainly articulated a preponderance standard as guiding its determination." 251 A.3d at 730. The same is true here. Although the government asserts that "there is no controversy" as to which standard of proof applies in IRAA cases, Gov't Br. 27, the IRAA statute—like the compassionate release statute—"does not articulate a clear standard," and this Court had not yet ruled on that question when the trial court denied Mr. Muhammad's motion.[4] And

[4] In *Bishop v. United States*, 310 A.3d 629, 636 n.3 (D.C. 2024), decided a month after the trial court's order in this case, this Court declined to address the appellant's argument that the "reasonable probability" standard applied, rather than the preponderance standard, because the appellant raised the argument for the first time in the reply brief implicitly acknowledging the standard was an open question.

here, as in *Bailey*, the trial court never identified the preponderance standard or any other standard as the governing framework, as the government acknowledges. Gov't Br. 27. In citing *Bailey* for the principle that the preponderance standard is the "default rule," *id.*, the government conspicuously ignores this analysis.

The government does not dispute that refusal to credit evidence that does not "guarantee" non-dangerousness is "in serious tension with a preponderance standard," 251 A.3d at 730, but instead asks this Court to ignore the trial court's stated reasoning and strains to posit other reasons why the trial court might have dismissed the government's own uncontested PATTERN risk assessment showing a "minimum" risk of recidivism. It urges that, in the government's view, "the trial court's reasoning is simply that the PATTERN score alone (after discrediting Dr. Keller and [Mr.] Muhammad's letter) did not satisfy the defendant's burden of establishing a lack of danger." Gov't Br. 28. None of these reasons overcomes *Bailey*'s holding that the mere possibility that the trial court "*may have applied* a higher standard of proof" required reversal, 251 A.3d at 729 (emphasis added).

Nor are the government's efforts to explain away the "guarantee" language plausible, even on their own terms. The judge's statement at the hearing that "one side or the other is always citing to the PATTERN score and the other side is not," Tr. 31-32, was not a basis to discredit uncontested evidence. The government's reliance (at 28) on the compassionate release case of *United States v. Facon*, 288 A.3d 317 (D.C. 2023), to suggest the trial court does not have to rely on evidence of a movant's good behavior while incarcerated as a predictor of their behavior on release is misplaced, because the IRAA statute explicitly directs judges to consider

"[w]hether the defendant has substantially complied with the rules of the institution to which the defendant has been confined, and whether the defendant has completed any educational, vocational, or other program, where available"—the very facts underlying the PATTERN assessment—when determining whether a movant is dangerous. D.C. Code § 24-403.03(c)(3). And the contention that the judge did not demand an impermissible "guarantee" but instead legitimately dismissed Mr. Muhammad's PATTERN score because it "incorporate[d] BOP's assessment that sex-offender treatment was not warranted (A. at 125), an assessment with which the trial court disagreed," Gov. Br. 28, compounds the trial court's abuse of discretion in deciding with no evidentiary basis that sex offender treatment is necessary for a finding of non-dangerousness, *see supra* 5-7. The trial court lacked discretion to rely on a groundless conclusion to reject the uncontested BOP PATTERN score. *See Johnson*, 398 A.2d at 364.

Moreover, as Mr. Muhammad argued in his opening brief, the trial judge's erroneously elevated burden included an uncommunicated demand for live testimony and related dismissal of Dr. Keller's uncontested expert report and Mr. Muhammad's letter to the court as inherently inferior forms of evidence simply because they were written, even though IRAA expressly authorizes "affidavits or other written material" in support of the application, D.C. Code § 24-403.03(b)(1), and the trial judge told Mr. Muhammad his failure to speak would not be held against him. The government fails to acknowledge either that the statute authorizes written evidence or that written submissions are a widely accepted practice in IRAA proceedings, and merely argues that the trial court did not have an

obligation to accept the written statements. Gov't Br. 29-31. In characterizing Mr. Muhammad's decision to proceed with a written expert report and letter of remorse as "strategic" decisions, Gov't Br. 29, it ignores the lack of any indication before or during the hearing that the court expected live testimony and would hold reliance on written submissions against him. The government glosses over the fact that it did not oppose the submission of Dr. Keller's written report, nor did it seek to rebut the report with competing expert evidence of any kind. Similarly, the trial court did not request the presence of the expert at the hearing, did not ask defense counsel any questions about Dr. Keller's methodology, and did not avail itself of its ability under D.C. Code § 24-403.03(b)(2) to "direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the motion." The trial court's dismissal of the unrebutted expert report and Mr. Muhammad's letter of remorse simply because they were submitted in writing further indicates that the trial court unlawfully held the defense to a burden of proof beyond preponderance of the evidence.

The trial court's conclusion that Mr. Muhammad failed to carry his "burden . . . to demonstrate that he is not dangerous" in part because he submitted a letter of remorse rather than choosing to testify, Order 17—despite the judge's unambiguous statement at the hearing that his "[f]ailure to say anything will not be held against [him]", Tr. 47—was an even more egregious dismissal of defense evidence and inflation of the evidentiary burden. The government attempts to minimize this plainly unlawful about-face by the judge by asserting that the apparently untrue representation did not matter because earlier in the hearing Mr.

Muhammad "made a knowing and voluntary waiver of his right to be heard . . . ." Gov't Br. 30. It offers absolutely no support for the notion that an IRAA petitioner has only one chance to decide whether to speak at an IRAA hearing—an assertion at odds with the record of the hearing here—or that "waiving" that opportunity absolves the trial judge of the responsibility to give full and accurate advice about the consequences of a decision not to speak.[5] Like the court's desire for a "guarantee" of non-dangerousness, the erroneous evidentiary preference for live testimony impermissibly elevated Mr. Muhammad's burden of proof. *See Vining v. District of Columbia*, 198 A.3d 738, 754 (D.C. 2018) ("A court by definition abuses its discretion when it makes an error of law." (citation modified)).

Mr. Muhammad established by far more than a preponderance that he posed no risk of harm if released and that the interests of justice warranted release through his "minimum" BOP PATTERN score and "lowest possible" custody classifications; Dr. Keller's expert report concluding that he presented a low risk of recidivism and did not need sex offender treatment; his clean record since 2016; and a re-entry plan that demonstrated he would have the support to avoid reoffending after release. The record and the judge's findings below "le[ft] the trial court with but one option it may choose without abusing its discretion," *Johnson v.*

[5] In light of the impermissibly exacting burden of proof the trial court imposed, the government's arguments that the trial court was "not obligated to accept" the letter because of the "intrinsic bias" of "any statement made by a prisoner requesting release," and its suggestion that the judge could credit a 2016 statement to BOP officials as a better reflection of Mr. Muhammad's "true state of mind" at the time of the hearing, are beside the point. Gov't Br. 30.

United States, 398 A.2d 354, 364 (D.C. 1979)—and that was to find that Mr. Muhammad was not dangerous and should be released.

II. *DOE* AND *RILEY* ESTABLISH THAT THE TRIAL COURT ERRED WHEN RELYING ON FACTORS OUTSIDE IRAA TO DETERMINE THAT IT WAS NOT IN THE INTERESTS OF JUSTICE TO RELEASE MR. MUHAMMAD.

This Court's recent decisions in *Doe* and *Riley* establish that the trial court erred when using the determinate sentencing scheme and the voluntary sentencing guidelines as factors in its interests-of-justice analysis, and foreclose the government's argument to the contrary. Gov. Br. 26. Trial courts err when they "look[] beyond IRAA to the sentencing goals captured by distinct statutes"—including the determinate sentencing scheme—to determine whether it is in the interests of justice to order a litigant's release. *Riley v. United States*, 338 A.3d 1, 9 (D.C. 2025); *Doe v. United States*, 333 A.3d 893, 910 (D.C. 2025). In *Doe*, this Court held that whether "the interests of justice warrant a sentence modification" "is not an invitation for the trial court to engage in an unconstrained . . . inquiry untethered from the enumerated factors." *Doe*, 333 A.3d at 910. And in *Riley*, the Court determined that Judge Iscoe "committed the same error . . . identified in *Doe*," where—as in this case—he based an interests-of-justice analysis on the determinate sentencing statute and the sentence he inaccurately believed the petitioner would receive if sentenced "today." *Riley*, 338 A.3d at 9-10. *Riley* and *Doe* conclusively establish that the trial court erred in its interests-of-justice analysis. Because the trial court also erred in finding current dangerousness, reversal is required.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing reply has been served electronically via the Appellate E-Filing System, upon Chrisellen Kolb, Esq., Chief, Appellate Division, Office of the United States Attorney on this 28th day of August, 2025.

/s/ Areeba Jibril
Areeba Jibril