

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-01558-RMR

CARLOS MANZANAREZ MENDOZA,

Petitioner,

v.

MARK BOWEN, Acting Warden,
Aurora ICE Processing Center, and
ROBERT GUADIAN, Field Office Director,
United States Immigration & Customs Enforcement,
Denver, Colorado¹

Respondents.

**CONSOLIDATED RESPONSE TO THE
APPLICATION FOR WRIT OF HABEAS CORPUS**

Pursuant to the Court's June 12, 2025 Order, Respondents submit this consolidated response to the application for writ of habeas corpus. See ECF No. 5.

In his Application under 28 U.S.C. § 2241, Petitioner Carlos Manzanarez Mendoza challenges two bond decisions by an immigration judge. See ECF No. 1 at 9–19. Petitioner asserts that those two decisions violated the Fifth Amendment's Due Process Clause because the immigration judge: (1) did not provide sufficient explanation for his original bond denial decision; and (2) violated a regulation, 8 C.F.R. § 1003.19(e), in denying him bond. See *id.*

¹ Mr. Guadian is automatically substituted pursuant to Fed. R. Civ. P. 25(d).

The Application should be denied. *First*, the Immigration and Nationality Act (INA) deprives this Court of jurisdiction to review Petitioner's claims regarding the immigration judge's bond decisions. See 8 U.S.C. §§ 1226(e), 1252(a)(2)(B)(ii). *Second*, Petitioner's claim regarding the immigration judge's explanation for denying Petitioner bond is moot because the immigration judge has since issued a written decision documenting that decision. *Third*, Petitioner failed to exhaust his claims. *Finally*, his Application is meritless: (1) the Application does not challenge the immigration judge's written decision explaining the bond denial, and (2) the immigration judge did not violate Section 1003.19(e). This Court should, therefore, deny Petitioner's Application.

BACKGROUND

Petitioner Carlos Manzanarez Mendoza is a native and citizen of Nicaragua who is in custody of Immigration and Customs Enforcement at a contract detention facility in Aurora, Colorado. See Exhibit A, Declaration of Damian Morales (Morales Decl.), ¶¶ 1, 3–4. Petitioner unlawfully entered the United States. *Id.* ¶ 5. After ICE officers encountered Petitioner at a local jail where he was being held after being arrested on a felony second degree assault charge, ICE, pursuant to its discretion under statute, took Petitioner into custody. *Id.* ¶¶ 10–11.

Petitioner had an initial appearance before an immigration judge on March 3, 2025. *Id.* ¶¶ 12–13. Despite being advised of his ability to seek a bond, Petitioner did not seek to schedule a bond hearing at that time. *Id.* ¶ 13. Petitioner filed a motion for a bond redetermination on March 27, 2025, but subsequently requested additional time to

consult with an attorney. *Id.* ¶¶ 14–15. He was later scheduled for a bond hearing on April 21, 2025. *Id.* ¶ 16.

At the bond hearing, the immigration judge took testimony and received documentary evidence from both parties. *Id.* ¶ 17. Pursuant to the Immigration Court Practice Manual, bond hearings are typically not recorded. See Immigration Court Practice Manual, § 9.3(e)(3), *available at* <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3> (last visited June 20, 2025). Additionally, an immigration judge's decision is typically "rendered orally," and a written decision is prepared "[i]f either party appeals, ... based on notes from the hearing." *Id.* § 9.3(e)(7). "Either party may appeal" an immigration judge's determination from a bond hearing. *Id.* § 9.3(f). The immigration judge denied Petitioner's request for release on bond because he determined that Petitioner had not demonstrated that he was not a flight risk. Ex. A, Morales Decl., ¶ 17.

Nine days later, on April 30, 2025, Petitioner filed a motion for bond reconsideration. *Id.* ¶ 18. Petitioner's motion was denied on May 12, 2025, because the immigration judge determined Petitioner had failed to show materially changed circumstances in the nine days after the first bond hearing on April 21, 2025, and before the bond reconsideration motion on April 30, 2025. *Id.* ¶ 24.

Petitioner appealed to the Board of Immigration Appeals ("BIA")—both the immigration judge's original bond decision as well as the decision denying the bond reconsideration—on May 29, 2025.² Ex. A, Morales Decl., ¶ 28. In line with the

² As reflected in the Petition, Petitioner initially sought to appeal to the BIA the same day that he filed in this Court, May 16, 2025, but that initial filing was rejected. See ECF No. 1 at 6–7; Ex. A, Morales Decl., ¶¶ 27–28.

Immigration Court Practice Manual, the immigration judge then wrote a bond memorandum regarding his decision to deny Petitioner's request for release on bond on April 21, 2025. *Id.* ¶ 29 & Attach. 3. That memorandum addressed a number of factors, including that Petitioner "has no family with lawful status in the United States" and that he "has no family support." *Id.* ¶ 29 & Attach. 3 at 2.³ Moreover, although Petitioner "seeks to marry his sponsor, who is a United States citizen," the immigration judge noted that "he is *presently married to another individual*." *Id.* (emphasis added). Finally, the immigration judge also highlighted that, although Petitioner sought various forms of relief, his qualification for such relief was speculative. *Id.* The immigration judge concluded that, "[c]onsidering all the factors, the Court determines that Respondent has not met his burden to establish he is not a flight risk or that there is any amount of bond that would ensure his appearance for his future proceedings." *Id.*

Petitioner, moreover, has already filed his brief on appeal with the BIA and has filed a motion to remand the bond proceedings. Ex. A, Morales Decl., ¶¶ 31, 34. The brief makes nearly identical arguments to those that Petitioner makes here, including that the initial documentation of the order on bond was too limited, that Petitioner's Due Process rights are implicated, and that the agency violated the regulation at 8 C.F.R. § 1003.19(e). See Ex. A, Morales Decl., ¶ 31 & Attach. 4.

Petitioner is scheduled for a final hearing on the merits of his application for relief or protection before the immigration judge on September 17, 2025. *Id.* ¶ 35.

³ Certain phrases in Attachments 3 and 4, that are immaterial to the results of this matter, have been redacted. If the Court requires unredacted copies of the Attachments filed under seal, Respondents request that the Court inform the parties.

ARGUMENT

At root, Petitioner's contentions in this case are that an immigration judge violated the Fifth Amendment's Due Process Clause by denying him: (1) bond without sufficient written reasons and; (2) a bond redetermination in violation of 8 C.F.R. § 1003.19(e). See ECF No. 1. The Court should deny the Application. First, the Court lacks jurisdiction over Petitioner's claims regarding the immigration judge's decisions. Moreover, Petitioner's claim regarding the lack of written reasons for his bond denial is moot given that the immigration judge has issued a written decision documenting his reasoning. Beyond those jurisdictional deficiencies, Petitioner failed to exhaust. Finally, even if the Court had jurisdiction here, Petitioner's Application is meritless.

I. Congress has deprived the Court of jurisdiction to review Petitioner's challenges to the immigration judge's decisions.

A. Legal Background

The Immigration and Nationality Act (INA) authorized immigration officials to arrest and charge aliens as removable from the country. Under the INA's framework, the Department of Homeland Security (DHS), acting on behalf of the Attorney General, has the discretionary authority to detain or release an alien during removal proceedings. See 8 U.S.C. § 1226(a)(1)-(2). That is, when an alien is apprehended, DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). DHS may also instead, in its discretion, release the alien, "provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8); see also 8 U.S.C. § 1226(a)(2) (DHS "may release the alien"). By

regulation, a DHS officer makes that initial custody determination. See 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien should remain detained during the alien's removal proceedings, the alien may request a custody redetermination hearing (a "bond hearing") before an immigration judge. See 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then decides whether to detain or release the alien, evaluating whether the alien poses a flight risk or danger to the community. See *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); 8 C.F.R. § 1003.19(d).

Finally, if the immigration judge concludes that the alien should not be released after the hearing, the alien may appeal the immigration judge's decision to the BIA. See 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3), 1003.38, 1003.19(f). Also, if circumstances change after an initial bond hearing but before the alien receives a final order of removal, the alien may request a subsequent bond redetermination. See 8 C.F.R. §§ 1003.19(e), 1236.1(d)(1). The alien may also appeal any adverse decision regarding a subsequent bond hearing to the BIA. See 8 C.F.R. § 1003.19(f).

Although BIA reviews an immigration judge's bond and bond redetermination decisions, the INA expressly prohibits judicial review of those decisions by federal district courts. *First*, federal statute precludes judicial review of a "discretionary judgment regarding the application" of 8 U.S.C. § 1226. § 1226(e). In particular, "[n]o 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." *Id.* And the law further clarifies that—"[n]otwithstanding" habeas corpus provisions—"no

court shall have jurisdiction to review” discretionary decisions of the Attorney General or Secretary of Homeland Security under statutes including § 1226. 8 U.S.C.

§ 1252(a)(2)(B). The Tenth Circuit has confirmed that, “to the extent [a petitioner] challenges the agency’s discretionary bond decision ... the court lack[s] jurisdiction” pursuant to § 1226(e). *Mwangi v. Terry*, 465 F. App’x 784, 787 (10th Cir. 2012). Put simply, under Section 1226(e), an “immigration judge’s discretionary decision with respect to the grant or denial of a bond is not reviewable” by a federal district court. *Molina v. Choate*, No. 19-cv-00207-GPG, 2019 WL 13214049, at *4 (D. Colo. Mar. 22, 2019).

B. This Court lacks jurisdiction over Petitioner’s challenges to the immigration judge’s bond decisions.

Petitioner brings Fifth Amendment claims challenging the immigration judge’s decisions to deny bond and deny a subsequent bond redetermination. See ECF No. 1. Those Fifth Amendment challenges, however, are jurisdictionally barred by Section 1226(e) and Section 1252(a)(2)(B)(ii).

First, Section 1226(e) deprives this Court of jurisdiction over the immigration judge’s decisions because both are a “decision by the Attorney General ... regarding the ... denial of bond...” 8 U.S.C. § 1226(e); *see also Molina*, 2019 WL 13214049, at *4 (discussing constitutional claims and concluding the court lacked jurisdiction over claim regarding “the immigration judge’s discretionary decision” to deny bond). Put simply, the immigration judge’s “discretionary decision[s] with respect to the grant or denial of bond [are] not reviewable in this Court.” *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at *3 n.2 (D. Colo. Dec. 6, 2019) (denying due-process challenge).

Second, Section 1252(a)(2)(B)(ii) also deprives this Court of jurisdiction over the immigration judge's decisions because both are a "decision ... of the Attorney General ... the authority for which is specified under [Subchapter II] to be in the discretion of the Attorney General..." 8 U.S.C. § 1252(a)(2)(B)(ii). Numerous federal courts have held that Section 1252(a)(2)(B)(ii) bars due-process challenges to bond decisions. *See, e.g., Mutebi v. Mukasey*, No. 07-CV-02654-REB-KLM, 2008 WL 4297035, at *5–*6 (D. Colo. Sept. 11, 2008) ; *Ammi v. Longshore*, No. 09-cv-01670-BNB, 2009 WL 2588715, at *2 (D. Colo. Aug. 21, 2009) ("[I]f § 1226(e) were not sufficient to resolve this case, Congress also has made clear that discretionary orders, including bond determinations under § 1226, are not subject to judicial review in a habeas corpus action pursuant to § 2241. *See* 8 U.S.C. § 1252(a)(2)(B)(ii)."). In sum, an immigration judge's "bond decisions, made pursuant to 8 U.S.C. § 1226, clearly involve such discretionary decisionmaking, and hence, § 1252(a)(2)(B)(ii) precludes judicial review of these decisions." *Hatami v. Chertoff*, 467 F. Supp. 2d 637, 640 (E.D. Va. 2006).

Accordingly, this Court lacks jurisdiction over Petitioner's Application under both Section 1226(e) and Section 1252(a)(2)(B)(ii).

II. Even if the INA did not bar Petitioner's Application, his Fifth Amendment claim challenging the written reasoning for his bond denial is moot.

The Petition is also moot to the extent that Petitioner seeks a reasoned written decision. *See, e.g.,* ECF No. 1 at 9, 10, 13, 15. A court has "no subject-matter jurisdiction if a case is moot." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010). In deciding whether a claim is moot, "[t]he crucial question is whether granting a present determination of the issues offered will have

some effect in the real world.” *Brown v. Buhman*, 822 F.3d 1151, 1165-66 (10th Cir. 2016) (citation omitted). “If, during the pendency of the case, circumstances change such that [a party’s] legally cognizable interest in a case is extinguished, the case is moot, and dismissal may be required.” *Green v. Haskell Cnty. Bd. of Comm’rs*, 568 F.3d 784, 794 (10th Cir. 2009) (cleaned up).

The immigration judge held a bond hearing for Petitioner and concluded that Petitioner had failed to demonstrate that he was not a flight risk on April 21, 2025. See Ex. A, Morales Decl., ¶¶ 16–17. Pursuant to the Department of Justice’s *Immigration Court Practice Manual*, the immigration judge did not prepare a written decision at that time. See *id.* ¶ 29 & n.1. After Petitioner appealed the bond denial, however, the immigration judge issued a written decision on June 2, 2025, pursuant to Department of Justice’s *Immigration Court Practice Manual*. See *id.* ¶ 29 & n. 1 & Attach. 3. In his written decision, the immigration judge explained that Petitioner had failed to demonstrate that he was not a flight risk because “he has not demonstrated family, property, employment, or other financial ties to the United States.” Ex. A, Morales Decl., Attach. 3 at 2. Moreover, the immigration judge noted that, although Petitioner “seeks to marry his sponsor,” that was “speculative relief” because he is “presently married to another individual.” *Id.* Finally, although Petitioner sought various forms of relief, his qualification for such relief was “speculative.” *Id.*

Petitioner has received a written decision documenting the immigration judge’s reasoning for denying him bond. His Fifth Amendment claim challenging the lack of reasoning behind his bond denial is, therefore, moot.

III. Even if the Court were to have jurisdiction over any claim here, the Court should dismiss without prejudice to allow the Petitioner to exhaust.

Ordinarily, a petitioner must exhaust administrative remedies before seeking a writ of habeas corpus under § 2241. *See Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Petitioner does not claim to have exhausted his administrative remedies. *See* ECF No. 1 at 5–7. Instead, Petitioner argues that he should not be required to exhaust his remedies because (1) at the time of filing his habeas petition, he did not know if the BIA would accept a filing he *made the same day*; (2) the BIA allegedly cannot determine if the immigration judge denied bond “without reasoned findings” and without “reasonably evaluat[ing] critical evidence” or if the immigration judge violated a regulation in denying bond (which Petitioner attempts to frame as constitutional issues); and (3) Petitioner’s continued detention would allegedly cause him irreparable harm because he disagrees with the immigration judge’s conclusions. *Id.* at 6–8. None of these are reasons to forego exhaustion here.

In a different immigration context, the Tenth Circuit has followed the “accepted view” that “the failure to exhaust issues before the BIA bars judicial review through habeas just as it does through a petition for review.” *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004). The Tenth Circuit there noted that the exhaustion requirement there “extends not only to substantive issues, but to *constitutional objections that involve administratively correctable procedural errors, even when those errors are failures to follow due process.*” *Id.* (emphasis added) (cleaned up).

Bond decisions can be appealed to the BIA. See 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3), 1003.38. Exhaustion protects administrative agency authority, gives an agency the opportunity to correct its own mistakes, discourages disregard of agency procedures, and promotes efficiency even if a controversy ends up surviving administrative review. See *Woodford v. Ngo*, 548 U.S. 81, 89 (2006).

Here, not only are additional agency procedures available, but Petitioner is *currently taking advantage of them*. That is, Petitioner has not exhausted but is instead simultaneously making the same arguments in this Court and in front of the BIA. See Ex. A, Morales Decl., ¶¶ 28, 30, 31, 33–34, & Attach. 4. As Petitioner argues to the BIA, the BIA can evaluate whether the immigration judge complied with an agency regulation, and whether the immigration judge provided a sufficient rationale for denying bond. See Ex. A, Morales Decl., ¶ 31 & Attach. 4. Indeed, on the latter point, Petitioner's Petition here recognizes as much, citing to a BIA decision as the basis for his argument. ECF No. 1 at 11. To promote efficiency and protect agency authority, the Court should require Petitioner to conclude his process with the BIA, the proper location for appealing his case here.

Finally, Petitioner's argument that exhaustion "should be excused," ECF No. 1 at 8, is conclusory. Petitioner bears the burden to show that he should be permitted to proceed with his petition despite his failure to exhaust. See *Garza*, 596 F.3d at 1204. Petitioner makes no attempt to demonstrate that the BIA could not address the

allegations of insufficient evidence that Petitioner raises.⁴ *Cf. Mackey v. Ward*, 128 F. App'x 676, 677 (10th Cir. 2005). Petitioner does not carry his burden, and the Court should dismiss the matter without prejudice.

IV. Even if the Court has jurisdiction over any portion of the Application, the arguments are meritless.

Even if this Court had jurisdiction over this proceeding and Petitioner had exhausted his claims, his Application fails on the merits because: (1) the Application does not challenge the immigration judge's written reasons for denying bond, and (2) the immigration judge did not violate Section 1003.19(e).

A. Petitioner does not challenge the written reasoning of the immigration judge.

As noted above, the immigration judge issued a written decision on June 2, 2025, documenting his reasons for denying Petitioner release on bond. See Ex. A, Morales Decl., ¶ 29 & Attach. 3. Filed before the immigration judge's written decision, Petitioner's habeas matter does not challenge the reasoning in that written decision and provides no grounds for granting habeas relief on that basis. See *generally* ECF No. 1. In any event, the immigration judge's decision to deny bond—as explained in the June 2 decision—was reasonable and accords with the immigration judge's broad discretion to deny bond under the INA. See 8 U.S.C. § 1226(a); see also *Ginori v. Holder*, No. 13-cv-03099-

⁴ While Petitioner briefly relies on *L.G. v. Choate*, F.Supp.3d 1172 (D. Colo. 2024), for its discussion of exhaustion, the case is largely inapposite. See ECF No. 1 at 6, 7. Petitioner does not make the same arguments that were at the heart of that case and, moreover, here he appears to argue that the immigration judge acted out of line with agency regulation and BIA precedent, not that the immigration judge was bound by incorrect BIA precedent. See, e.g., ECF No. 1 at 10–11, 15, 17–18.

MSK, 2014 WL 420444, at *4 (D. Colo. Feb. 4, 2014) (“[T]he immigration judge’s decision to deny bond is an exercise of executive discretion....”).

B. Applicant’s arguments about 8 C.F.R. § 1003.19 are not supported by the language of the regulation.

Applicant also argues that ICE violated 8 C.F.R. § 1003.19(e) in his bond proceedings. *See, e.g.*, ECF No. 1 at 1–2, 8, It is not clear from the Application precisely how Applicant alleges that the regulation was violated. Moreover, the regulation does not support such an application here. Rather, the provision says: “After an initial bond redetermination, an alien’s request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien’s circumstances have changed materially since the prior bond redetermination.” 8 C.F.R. § 1003.19(e). Here, the immigration judge denied the motion for bond reconsideration because Petitioner failed to show his “circumstances have changed materially since the prior bond redetermination.” Ex. A, Morales Decl., ¶ 24 & Attach. 2; *see also* ECF No. 1 at 4. Yet, beyond conclusory allegations that there was “material” evidence, Petitioner does not even attempt to identify evidence that his circumstances had materially changed. *See, e.g.*, ECF No. 1 at 17. Indeed, to the extent that Petitioner identifies any evidence submitted, it includes (1) his application for a form of relief (dated in 2023, *see* ECF No. 1-1 at 26), (2) certificates allegedly regarding the previous seventy-eight days; and (3) “extra proof from his sponsor, a United States citizen, who planned to marry him.” ECF No. 1 at 4. But those allegations—which included materials dated well before the previous bond hearing, which took place only *nine days* before those materials were submitted—do nothing to show how Petitioner’s circumstances may “have changed

materially since the prior bond redetermination,” § 1003.19. *Compare* Ex. A, Morales Decl., ¶¶ 16 – 18 & Attach. 1, with ECF No. 1 at 4. *Cf. In Re: Alfredo Taylor A.K.A. Fermin Taylor A.K.A. Alfredo Fermin*, 2008 WL 486832, at *1 (BIA 2008) (unpublished) (affirming denial of bond redetermination because no showing had been made that additional “evidence submitted ... was unavailable or could not have been presented at the [appellant’s] initial hearing”). The immigration judge did not violate Section 1003.19(e) in denying Petitioner’s request for a bond redetermination.

CONCLUSION

The Court should deny the Application.

Dated: June 26, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

s/ Benjamin Kapnik
U.S. Attorney's Office