IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03040-RBJ

HUGO CERVANTES ARREDONDO,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora Contract Detention Facility,
ROBERT HAGAN, Field Office Director, Denver, U.S. Immigration and Customs Enforcement,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD LYONS, Director, U.S. Immigration and Customs Enforcement, and
PAMELA BONDI, Attorney General of the United States,

Respondents.

RESPONSE TO PETITIONER'S MOTION TO ENFORCE JUDGMENT (ECF No. 23)

Petitioner's Motion to Enforce Judgment (ECF No. 23, the Motion) should be denied. The Court ordered Respondents to "provide [Petitioner] a bond hearing under" 8 U.S.C. § 1226(a) at which "the government bears the burden of proving by clear and convincing evidence that if petitioner is released, he poses a danger to the community or a risk of flight." ECF No. 21 at 10. A few days later, the Immigration Judge (IJ) held a bond hearing under 8 U.S.C. § 1226(a) at which he held the government to that burden of proof. *See* ECF No. 22-1 at 9, 11 (Memorandum of Bond Decision and Order finding that government proved by clear and convincing evidence that Petitioner is a flight risk). Indeed, in his written decision, the IJ explicitly stated that "[t]he Department [of Homeland Security (the Department)] must prove by clear and convincing evidence that [Petitioner]'s release would pose a danger . . . or that [Petitioner] poses a flight risk," and correctly

explained what the clear-and-convincing-evidence standard requires. That should be enough to deny the Motion.

Petitioner argues, however, that despite the explicit language of the IJ's ruling, the IJ did not actually hold Respondents to their burden of proof, and so Petitioner should be released or given another bond hearing at which the IJ must make an oral ruling whether the government has met its burden. He is wrong.

First, the Court does not have jurisdiction to take up what is, in essence, an appellate review of a discretionary bond determination. The Immigration and Nationality Act (INA) provides that "[n]o court may set aside any action or decision by the Attorney General" to deny bond under 8 U.S.C. § 1226(a). 8 U.S.C. § 1226(e). Here, the Attorney General, acting through the IJ, has decided to deny Petitioner bond under § 1226(a). This Court therefore lacks jurisdiction to set that decision aside.

Second, even if this Court had jurisdiction, Petitioner has not exhausted his administrative remedies as would be required to challenge the IJ's bond decision. An IJ's bond determination is appealable to the Board of Immigration Appeals (BIA), 8 C.F.R. § 1003.19(f), and a prospective petitioner must exhaust that avenue before raising an issue in habeas. *See Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004) ("Generally, a habeas petition cannot be used to substitute for direct appeal.") (quotation marks and citation omitted). Petitioner has not done so here.

Third, those first two issues notwithstanding, the IJ complied with this Court's order. He considered the documentary record submitted by the Department and found that it was sufficient to find Petitioner a flight risk. Specifically, Petitioner's substantial history of failures to appear and flight from prosecution "[h]eavily weigh[ed] in the Court's determination," and the IJ did not think

that the other evidence in the record was sufficient to offset that history. ECF No. 22-1 at 10-11. Petitioner simply disagrees with how the IJ weighed the evidence.

The Court should deny the Motion.

BACKGROUND

I. Factual and procedural background

Petitioner is a native and citizen of Mexico who entered the United States without inspection. ECF No. 17-1 ¶¶ 4-6. He has never been admitted or paroled into the United States. *Id.* ¶¶ 7-8. In June 2025, a routine records check by U.S. Immigration and Customs Enforcement (ICE) showed that Petitioner had a recent arrest in Douglas County, Colorado. *Id.* ¶ 10. On June 26, 2025, Petitioner was released from local custody, and ICE took custody of him and transferred him to the Denver ICE Contract Detention Facility. *Id.* ¶ 13. On the same date, ICE issued a Notice to Appear initiating removal proceedings against Petitioner and charging him with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 15.

On September 26, 2025, Petitioner filed his habeas petition. ECF No. 1 (the Petition). In it, he challenged his detention as violating: (1) the provisions regarding detention in § 1226(a); (2) the regulations implementing § 1226; (3) the APA insofar as he was detained under § 1225; (4) the APA based on Defendants allegedly adopting a policy without any rulemaking or public notice; and (5) due process. *Id.* ¶¶ 71-94. In brief, he argued that his detention under § 1225 (which provides for mandatory detention) was improper and that he should instead be detained under § 1226 (which provides for the possibility of release on bond). *See generally id.* He sought immediate release or a bond hearing within seven days. *Id.* at 24 (prayer for relief).

On October 31, 2025, the Court granted the Petition in part, concluding that Petitioner is properly detained under § 1226, not § 1225, and is thus entitled to a bond hearing. ECF No. 21 at 8. It further ruled that at the ordered bond hearing, Respondents would "bear[] the burden of providing by clear and convincing evidence that if [P]etitioner is released, he poses a danger to the community or a risk of flight." *Id.* at 10.

II. The IJ's bond ruling

In compliance with the Court's order, the IJ held a bond hearing on November 4, 2025, and issued a written decision on the same day. ECF No. 22-1 at 8. The IJ explicitly placed the evidentiary burden on the Department, stating: "The Department must prove by clear and convincing evidence that [Petitioner]'s release would pose a danger to people or property or that the [Petitioner] poses a flight risk." *Id.* at 9 (citation omitted). Citing Supreme Court case law, the IJ articulated the clear-and-convincing-evidence standard as requiring "an 'abiding conviction' on the part of the fact-finder that the truth of a fact is 'highly probable.'" *Id.* (citing *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

After finding that the Department had failed to carry its burden with respect to whether Petitioner would pose a danger to the community, the IJ found that it *had* met its burden to show that Petitioner "would present an unacceptable flight risk." *Id.* at 9-10. In support of that finding, the IJ explained that Petitioner's "history of failures to appear in criminal court and attempts to flee prosecution" as shown in the documents the Department submitted "[h]eavily weigh[ed]" in his decision. *Id.* at 10; *see also* ECF No. 23-2 at 7 (I-213 form submitted to IJ showing history of flight). The Department's documentary evidence also showed that Petitioner is unmarried, has no children, and claims to be self-employed at various locations in Aurora, Colorado. ECF No. 23-2

at 7-8. From this documentation, the IJ found "insufficient evidence of family, property, employment, or other financial ties to the United States" to allay the concern arising from Petitioner's history of flight. ECF No. 22-1 at 10. The IJ further found that Petitioner is not likely eligible for discretionary relief from removal, *id.*, and that it was not clear how Petitioner's proposed sponsor would mitigate his flight risk. *See id.* at 11. From all the evidence presented, the IJ concluded "that the Department has established by clear and convincing evidence that [Petitioner]'s ongoing detention is justified because his release would pose a significant risk of flight that no amount of bond or combination of conditions could mitigate." *Id.*

The IJ advised Petitioner that he has the right to appeal this decision to BIA. *See id.* at 11 (explaining appeal rights); 8 C.F.R. § 1003.19(f) (providing appeal to BIA from IJ's bond determination). Petitioner has not filed a BIA appeal. *See* EOIR Automated Case Information, *available at*: https://acis.eoir.justice.gov/en/caseInformation/ (noting that no appeal has been received for this case).

ARGUMENT

The Motion should be denied for three reasons. *First*, Congress has deprived the Court of jurisdiction to set aside the IJ's discretionary bond determination. *Second*, Petitioner has not exhausted the administrative review process. And *third*, even if all that were not true, the IJ did what the Court ordered and held the Department to the appropriate burden of proof.

I. The Court does not have jurisdiction to set aside the IJ's bond determination.

The INA expressly prohibits judicial review of an IJ's discretionary bond decision by federal district courts. Section 1226(e) bars judicial set-aside of "any action or decision by the Attor-

ney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). Here, the Court determined that Petitioner's detention is governed by § 1226. ECF No. 21 at 8. 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); *see also Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018) (concluding that § 1226(e) does not bar challenges to "the statutory framework that permits detention without bail" but continues to preclude challenges to a discretionary judgment to detain) (citation modified) (citation omitted). Put simply, the immigration judge's "discretionary decision[s] with respect to the grant or denial of bond [are] not reviewable in this Court."[1] *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at *3 n.2 (D. Colo. Dec. 6, 2019) (explaining the Court lacked jurisdiction over Fifth Amendment due-process challenge as to bond denial); *see also Molina v. Choate*, No. 19-cv-00207-LTB, 2019 WL 13214049, at *4 (D. Colo. Mar. 22, 2019) (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).

Accordingly, this Court lacks jurisdiction under § 1226(e) to order the relief requested.

II. Even if the Court had jurisdiction, Petitioner has not exhausted the issue raised in his Motion.

Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for

[1] In light of § 1226(e), even those district courts that have reviewed an IJ's bond determination have usually done so very deferentially. *See, e.g.*, *Fernandez Aguirre v. Barr*, No. 19-cv-7048 (VEC), 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019) (reviewing bond determination only to determine whether the government's evidence at the bond hearing could not, as a matter of law, establish clearly and convincingly that the petitioner is a danger to the community).

§ 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Exhaustion is ordinarily nonjurisdictional. *Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023). In a different immigration context, the Tenth Circuit has held 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). Importantly, the habeas exhaustion requirement in the immigration context "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) (citation omitted).

Petitioner has failed to exhaust because he still has effective administrative remedies available to him. Petitioner may appeal the IJ's denial of bond to the BIA. *See* 8 C.F.R. § 1003.19(f) ("An appeal from the [bond] determination by an Immigration Judge may be taken to the Board of Immigration Appeals. . . ."); ECF No. 22-1 at 11 (noting Petitioner's right to appeal). Petitioner should not be permitted to use the Motion as a "substitute for direct appeal" to the BIA. *Soberanes*, 388 F.3d as 1309 (citation omitted); *see also Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) ("[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review."). Instead, as a matter of judicial efficiency and per applicable regulations, Petitioner should be required to exhaust his administrative remedies before the BIA.

III. The plain language of the IJ's bond decision shows that the IJ complied with this Court's order.

As explained above, in granting Petitioner's habeas petition in part, the Court required Respondents to "provide [Petitioner] a bond hearing under" 8 U.S.C. § 1226(a). ECF No. 21 at 10.

It further ordered, in relevant part, that "[a]t that bond hearing, the government" would bear "the burden of providing by clear and convincing evidence that if [P]etitioner is released, he poses a danger to the community or a risk of flight." *Id.* In compliance with that order, the IJ expressly placed the appropriate burden on the Department and, after weighing all the evidence, concluded that the Department had met its burden of proving that Petitioner would be a flight risk. ECF No. 22-1 at 11. The IJ heavily weighted the evidence showing Petitioner's history of flight from criminal prosecution and found that the evidence on other factors, including family and economic ties and Petitioner's likelihood of success in winning relief from removal, was not enough to rebut that history. *Id.* at 10-11.

Unsatisfied with this weighing of the evidence, Petitioner argues that the Department's evidence "was unreliable, nonprobative, irrelevant, or some combination thereof," and that the IJ's reliance on it means he "did not hold [the Department] to its burden." ECF No. 23 at 7-8. But the clear-and-convincing-evidence standard, while greater than the preponderance-of-the-evidence standard, still requires only an "abiding conviction." *Colorado*, 467 U.S. at 316. It is less than the beyond-a-reasonable-doubt standard, which itself does not require the elimination of all doubt. *See* Tenth Circuit Pattern Criminal Jury Instruction No. 1.05 (explaining that proof beyond a reasonable doubt does not require "proof that overcomes every possible doubt"); *see also Fontenot v. Crow*, 4 F.4th 982, 1018 (10th Cir. 2021) (explaining in the context of review under 28 U.S.C. § 2254 that the clear and convincing evidence standard "is demanding but not insatiable.") (quotation marks and citation omitted). And nowhere does Petitioner argue that he does not, in fact, have the history of flight from prosecution that the record before the IJ showed.

Petitioner further argues that the IJ "effectively placed th[e] burden on" him at the bond

hearing because the Department's attorney apparently made minimal argument and presented no live witnesses, and because the IJ's decision "rested mostly on the basis of factors about which [the Department] submitted no evidence or argument." ECF No. 23 at 9-10. But as discussed above, the factor that the IJ weighed most heavily—Petitioner's history of flight to evade the criminal justice system—came directly from the documents the Department submitted. The IJ's decision to afford less weight to the evidence Petitioner submitted on other factors did not improperly shift the burden to Petitioner.

CONCLUSION

For the reasons set forth above, the Court should deny the Motion.

Dated: December 8, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 8, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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