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.

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO COURT'S ORDER TO SHOW CAUSE AND THE COURT'S MINUTE ORDER, ECF NO. 18

Mr. Cervantes Arredondo's Motion to Enforce Judgment should be granted. The Court ordered Respondents to hold a bond hearing where "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. The immigration judge (IJ) failed to comply with this order. Mr. Cervantes Arredondo remains in detention, awaiting his individual hearing, which was scheduled for December 11 but has been delayed. The Court has the inherent power to enforce its order, and exhaustion is not required. Further, the IJ clearly failed to hold the government to their burden, relying on evidence from Mr. Cervantes Arredondo to fill the gaps in the evidence DHS provided and holding that DHS met their burden despite the small amount of evidence they supplied.

I. This Court has the inherent power to grant Mr. Cervantes Arredondo's Motion to Enforce, and to hold otherwise would result in absurd outcomes

Because Mr. Cervantes Arredondo's motion is a request for the enforcement of the Court's order (ECF No. 22-1), the Court has authority to enforce its order based upon its inherent

powers. *See United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch) 32, 34 (1812). Further, absurd outcomes would result if the Court adopted the respondents' argument as to jurisdiction. Under the respondents' argument, the Court would not have the authority to enforce its own order even if the IJ had explicitly stated that he refused to follow the Court-ordered burden shift. The respondents' argument would convert this Court's *order* to a *suggestion*. The respondents argue this Court cannot order compliance with its own order. This is not so.

The respondents mischaracterize Mr. Cervantes Arredondo's motion as a request for appellate review of a discretionary bond determination, when Mr. Cervantes Arredondo is requesting the enforcement of a Court order. Complying with a Court order is not a matter of discretion.

In support of their jurisdictional argument, the respondents cite cases with an easily distinguishable procedural history. In each case cited by the respondents, the Court is determining whether or not to grant a noncitizen's initial habeas petition. *Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012); *Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018); *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at *3 n.2 (D. Colo. Dec. 6, 2019); *Molina v. Choate*, No. 19-cv-00207-LTB, 2019 WL 13214049, at *4 (D. Colo. Mar. 22, 2019). In this case, the Court has *already* decided to grant Mr. Cervantes Arredondo's habeas petition. Mr. Cervantes Arredondo is asking this Court to hold the respondents to their obligations under its Order.

Because this is about the enforcement of a federal order, the Court's power to grant the relief requested in Mr. Cervantes Arredondo's motion comes not from any statute but from the federal Court's inherent powers. "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and

submission to their lawful mandates." *Anderson v. Dunn*, 6 Wheat. 204, 227 (1821); *see also Ex parte Robinson*, 19 Wall. 505, 510 (1874). In *Chambers v. NASCO*, the Supreme Court stated "these powers are 'governed not by rule or statute but by the control necessarily vested in Courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962)).

The Court is clearly authorized to enforce its own order and to hold otherwise would make the Court powerless to check non-compliant behavior by parties appearing before it.

II. Administrative Exhaustion is not required and would be lengthy and futile.

Exhaustion is not required in every case. Petitions under 28 U.S.C. § 2241 are not usually subject to statutory exhaustion requirements in the immigration context, and Mr. Cervantes Arredondo's Motion to Enforce arises from the order granting his habeas petition. Further, all of the cases the respondents cite supporting the assertion that exhaustion is required here pertain to filing a petition for habeas. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010); *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004); *Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015). In this case, Mr Cervantes Arredondo's habeas petition has already been granted and his motion pertains instead to the enforcement of a Court order. Additionally, exhaustion would be infeasible and futile.

Courts in this district have ruled that "exhaustion is not required in the immigration context when it would be futile…or when 'the interests of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own statutory authority.'" *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346 at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D.

Colo. 2000)). In this case, Mr. Cervantes Arredondo has a strong interest in retaining prompt access to a federal judicial forum because the federal forum is more equipped to enforce its own order and because BIA appeals are not timely and would be futile. According to statistics gathered by EOIR, detained appeals take an average of 190 days to complete. *See* Exhibit 1.

Awaiting a lengthy BIA appeal would also be futile because that agency provides no relevant expertise to the matter contested here—proper application of the burden to the government. As evidenced by the IJ's order relying on BIA precedent, the BIA is not familiar with the burden the Court ordered and so their review of the IJ's decision would be futile. BIA precedent decisions are based on the noncitizen bearing the burden of proof. Further, the BIA is not equipped to order compliance with another Court's order. On the other hand, this Court has the relevant experience to find that the IJ's order improperly applied the burden shift because, unlike immigration bond hearings, federal bond hearings consistently apply the burden of proof to the government.

Exhaustion is clearly not required for the Court to enforce its own order and exhaustion would be untimely and futile. The Court should so rule.

III. The IJ did not apply the burden this Court ordered.

The respondents' argument mostly relies on the IJ claiming that he followed the burden-shift but, as explained in Mr. Cervantes Arredondo's motion, this was merely lip-service. The substance of the IJ's order and the bond procedure he implemented show he did not apply the burden to the government as ordered by this Court. ECF No. 23 at 10. The miniscule evidence provided by DHS is clearly not enough to comply with what the 10th circuit has held to be a stringent burden of proof. *Cruz-Garza v. Ashcroft*, 396 F.3d 1125, 1130 (10th Cir. 2005). The IJ refused to issue a bond decision based on this (insufficient) evidence alone, both during the bond

hearing and in his written decision. The IJ denied Mr. Cervantes Arredondo bond based mostly on factors about which DHS presented no evidence or argument.

The respondents highlight that the IJ explicitly stated that he applied the burden to DHS, but they fail to account for the rest of the written decision, which shows the IJ did not do what he claims. The IJ was not persuaded that the evidence regarding Mr. Cervantes Arredondo's partner "was sufficient to adequately ensure [R]espondent's appearance for his removal proceedings and, if necessary, his removal from the United States." The IJ states "there is a lack of documentation to demonstrate mitigation of Respondent's flight risk," and that his sponsor "provided no indication of what her income looks like, nor how much is dispensable to support Respondent." ECF No. 23 at 10. The IJ's statement that he was applying the burden to the government notwithstanding, these statements show him applying that burden to Mr. Cervantes Arredondo. Such reasoning is consistent with the typical bond hearing in immigration court that the IJ is used to, but it violates this Court's order. *Id.*

The respondents attempt to salvage the IJ's decision, emphasizing that he weighed DHS' evidence (regarding failing to appear) "heavily", ECF No. 24 at 8-9, but this argument fails for two reasons. First, DHS' evidence was dismal and insufficient to meet its burden of clear and convincing evidence. *See* ECF No. 23 at 7-9. The IJ could not reasonably weigh it so "heavily" as to overcome that fact.[1] Second, the IJ did not feign to do that anyway. Faced with insufficient evidence from DHS, the IJ's decision rested mostly on the basis of factors about which DHS submitted no evidence or argument. ECF No.23 at 10. This demonstrates how the IJ defaulted to

[1] The documents DHS provided containing the failures to appear were outdated, and unreliable. ECF No. 23 at 7-8. The respondents have no response to this point.

the method of analyzing bond cases he knows best and improperly shifted the burden to Mr. Cervantes Arredondo. ECF No. 23 at 9-10.

The respondents argue that the IJ's order was not a misapplication of the burden shift, but instead that the IJ decided to "afford less weight to the evidence Petitioner submitted on other factors." ECF No. 24 at 9. However, one cannot weigh evidence that is not there. Neither DHS nor Mr. Cervantes Arredondo presented evidence as to the likelihood of discretionary relief. Further, it was not Mr. Cervantes Arredondo's burden to present such evidence. And yet, the IJ reasons at length about the likelihood of discretionary relief in his order. This again demonstrates how the IJ defaulted to the evidentiary standard he is familiar with, where the noncitizen has the burden of proving they are not a flight risk by demonstrating their likelihood of discretionary relief. While the respondents are correct that the clear and convincing evidence standard requires only an "abiding conviction," an abiding conviction certainly still requires that evidence be presented, and DHS presented no evidence regarding Mr. Cervantes Arredondo's likelihood of relief. It is clear from the IJ's order that the IJ's mention of the evidentiary burden is mere lip-service and the substance of the order is applying the burden to Mr. Cervantes Arredondo.

Dated: December 11, 2025

Respectfully submitted,

/s/ Elizabeth Jordan
Elizabeth Jordan
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Pro Bono Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that on December 11, 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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