

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
District Judge S. Kato Crews**

Civil Action No. 1:25-cv-3688-SKC-SBP

DENIS ALEMAN HERNANDEZ

Petitioner,

v.

JUAN BALTAZAR, *et al.*,

Respondents.

PETITIONER'S MOTION TO ENFORCE ORDER (ECF NO 11)

Petitioner, DENIS ALEMAN HERNANDEZ, by and through undersigned counsel, respectfully moves the Court to enforce its prior habeas order. Aleman Hernandez seeks either (1) his immediate release from immigration detention, or (2) in the alternative, an order requiring a new bond hearing conducted in compliance with this Court's prior habeas order and constitutional due process, with the burden placed on the Government to justify continued detention by clear and convincing evidence.

This Motion does not ask the Court to reconsider the merits of the Immigration Judge's bond decision or to reweigh evidence. It asks the Court to determine whether Respondents complied with the remedial conditions imposed by this Court when it ordered a bond hearing under 8 U.S.C. § 1226(a). They did not. The bond hearing that followed was not grounded in record-based factfinding, failed to consider multiple categories of un rebutted and material evidence, and did not result in an individualized custody determination. Continued detention based on that proceeding violates both this Court's Order and fundamental due process.

CONFERRAL ON MOTION

Pursuant to D.C.COLO.LCivR 7.1, undersigned counsel for Aleman Hernandez conferred with counsel for Respondents. Respondents indicated that they oppose the Motion.

PROCEDURAL BACKGROUND

On December 23, 2025, this Court granted Aleman Hernandez's habeas petition and ordered Respondents to provide him with a bond hearing pursuant to § 1226(a) within seven days. ECF No. 11. The Court further ordered Respondents to report back regarding the outcome of that hearing and the reasons for any denial of bond. ECF No. 11.

A bond hearing was held on December 30, 2025. On December 31, 2025, the Immigration Judge issued a written decision denying bond, concluding that Aleman Hernandez failed to establish that he was not a danger to the community and not a flight risk. *See Written Decision of the Immigration Judge, attached hereto as Attachment A.* The decision rested heavily on Aleman Hernandez's December 2022 arrest, which the Immigration Judge treated as indicative of serious, unresolved criminal conduct. The decision repeatedly characterized Aleman Hernandez as facing "serious pending charges" and asserted that he had been arrested for evading arrest. At the same time, the decision also ignored individualized hardship evidence concerning Aleman Hernandez's U.S. citizen child with Autism, characterizing the equities of his application as mere "family separation" without addressing the documented, child-specific needs and ongoing harm caused by Aleman Hernandez's detention. *See Aleman Hernandez's evidentiary submissions to the Immigration Court, attached hereto as Attachment B.*

Respondents' Status Report failed to provide the Court with these reasons for denial as expressly required by the Court's Order. ECF No. 12. Therefore, Aleman Hernandez submitted his own response and indicated that he would seek reconsideration with the Immigration Court.

ECF No. 13. Aleman Hernandez's Motion to Reconsider remains pending with the Immigration Court. ECF No. 15.

Although Aleman Hernandez initially requested that this Court hold the matter in abeyance while reconsideration was pending, Respondents have continued to detain Aleman Hernandez based on the same bond determination, and he therefore seeks enforcement of this Court's Order. *See* ECF No. 14.

JURISDICTION

This Court retains jurisdiction to enforce its prior habeas order. While 8 U.S.C. § 1226(e) limits judicial review of discretionary custody determinations, it does not preclude review of constitutional claims or questions of law, including whether a bond hearing complied with due process or with a prior district court order. *See Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *2 (3d Cir. Feb. 25, 2022).

Enforcement review does not require the Court to reassess the weight of the evidence. It requires the Court to determine whether the hearing ordered was conducted in a manner consistent with the Constitution and the Court's directives. Where detention rests on a bond hearing infected by legal error, factual misstatements, or failure to conduct an individualized assessment, § 1226(e) poses no jurisdictional bar to relief.

LEGAL STANDARD

A bond hearing under § 1226(a) must satisfy basic due process requirements. At minimum, a fundamentally fair hearing requires: (1) factfinding based on a record before the decisionmaker; (2) a meaningful opportunity for the noncitizen to present evidence and argument; and (3) an individualized determination of the noncitizen's circumstances. *Ghanem*, 2022 WL 574624, at *2.

Even where the noncitizen bears the burden of proof, these requirements remain essential. A noncitizen cannot meet any burden in a proceeding where the adjudicator relies on incorrect

facts, substitutes allegations for adjudicated conduct, or collapses individualized evidence into generalized conclusions.

ARGUMENTS

I. The Bond Hearing Failed as a Matter of Law Because Factfinding Was Not Conducted Pursuant to the Record.

The bond hearing was fundamentally unfair because the Immigration Judge failed to consider material evidence that was unrebutted, highly probative, and central to the statutory inquiries of dangerousness, flight risk, and incentive to appear. These omissions were not matters of discretionary weighing; they were failures of consideration. The failure to consider any one of these would undermine the fairness of the proceeding, and the failure to consider all of them rendered the bond hearing constitutionally deficient and noncompliant with this Court's habeas order.

A. Failure to consider mitigating evidence of dangerousness.

The Immigration Judge's decision does not meaningfully address evidence that cuts against a dangerousness finding. Aleman Hernandez submitted evidence of prior participation in U.S.-based military training, including formal leadership and military instruction conducted in coordination with U.S. institutions. That evidence is material to the dangerousness analysis. Participation in U.S.-based military training reflects vetting and screening by governmental or quasi-governmental entities; demonstrated ability to operate within structured command, discipline, and rules of engagement; and affirmative conduct consistent with responsibility and compliance, not disregard for public safety.

When this evidence and Aleman Hernandez's otherwise nonexistent criminal history is weighed against an uncorroborated arrest report, the mitigating evidence should have substantially altered the Immigration Judge's analysis. The decision does not engage with this evidence at all.

Instead, it allows an uncorroborated arrest narrative to serve as the sole driver of the dangerousness determination. The omission of this mitigating evidence demonstrates that the Immigration Judge's analysis was not grounded in a balanced evaluation of the record.

B. Failure to consider evidence undermining flight risk.

The Immigration Judge's flight risk analysis likewise failed to engage with evidence directly contradicting any inference of flight. The record reflects that Aleman Hernandez affirmatively appeared for a scheduled USCIS Asylum interview, despite the known risk that doing so could result in ICE custody. Aleman Hernandez was detained only because he complied with federal immigration requirements. There is no evidence that Aleman Hernandez has ever failed to appear for an immigration proceeding or attempted to evade immigration authorities.

Voluntary appearance at a USCIS Asylum interview is among the strongest indicators that a noncitizen is likely to appear for future proceedings. A noncitizen who presents himself for adjudication—rather than remaining undocumented or unlocated—is demonstrating willingness to submit to lawful process.

The Immigration Judge's decision does not mention this USCIS appearance at all. That omission is significant, particularly where the Immigration Judge relied on alleged evasion in a non-immigration context to infer flight risk. A noncitizen who has repeatedly placed himself before government authorities is not accurately characterized as someone likely to abscond.

The failure to account for this pattern of compliance mirrors the evidentiary imbalance identified in the dangerousness analysis: unproven allegations were given decisive weight, while affirmative, documented conduct demonstrating reliability and compliance was disregarded.

C. Failure to consider evidence of incentive to appear based on pending Asylum relief.

The Immigration Judge also failed to meaningfully address Aleman Hernandez's pending Asylum application. His Asylum claim has been pending for years and was actively being pursued at the time of his detention. A pending Asylum application reflects an affirmative decision to submit to U.S. legal process and pursue protection through lawful channels. Abandoning proceedings would result in forfeiture of relief Aleman Hernandez has pursued over an extended period.

The decision does not explain why a noncitizen who has invested years in an Asylum claim and voluntarily appeared for interview would rationally choose to abscond. The absence of any engagement with this evidence further demonstrates that the factfinding process was not anchored to the record.

D. Failure to consider individualized hardship evidence.

The Immigration Judge failed to consider individualized hardship evidence submitted in support of Aleman Hernandez's application for Non-LPR Cancellation of Removal. The decision characterized the equities as mere "family separation," notwithstanding unrebutted evidence that Aleman Hernandez's U.S. citizen son has a documented diagnosis of Autism and is experiencing ongoing emotional harm as a result of his father's detention.

Reducing documented disability-related hardship to generic family separation is not discretionary weighing; it is mischaracterization of the record. This evidence bears directly on incentive to appear and the equities relevant to custody and required individualized consideration.

* * *

Taken together, these omissions establish that the bond denial did not result from a reasoned evaluation of the evidentiary record. Evidence undermining dangerousness, flight risk,

and incentive to appear was not weighed against adverse allegations; it was disregarded. The Immigration Judge's analysis instead allowed an untested arrest narrative to dominate the proceeding, leaving no meaningful engagement with contrary, individualized evidence that bore directly on the custody determination. Because the factfinding process was not grounded in the record before the decisionmaker, the bond hearing failed as a matter of law and cannot support continued detention.

II. The Bond Hearing Failed as a Matter of Law Because the Immigration Judge Did Not Make an Individualized Determination to Aleman Hernandez's Circumstances.

Independent of the evidentiary omissions described above, the bond hearing also failed because the Immigration Judge did not make the individualized determination required by due process and by this Court's habeas order. An individualized determination requires more than listing evidence and announcing conclusions; it requires engagement with the noncitizen's specific circumstances based on accurate facts and lawful evidentiary principles. That did not occur here.

The bond denial rested almost entirely on unadjudicated arrest allegations that were treated as established fact, contrary to *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995). In *Arreguin*, the Board squarely held that it was inappropriate to give substantial reliance to an arrest report where the allegations had not resulted in a conviction because they are untested allegations, reflect only law enforcement's version of events, and do not establish culpability absent further evidentiary development. *Id.* at 42.

Although the Immigration Judge acknowledged that Aleman Hernandez has not been convicted of the offenses referenced in the police report, it nonetheless treated the report's narrative as sufficiently reliable to establish present dangerousness. The record contains no docket reflecting service or arraignment, no judicial finding of probable cause, and no certified

disposition. Indeed, the only contemporaneous criminal document generated at the time of arrest—the offense report itself—states that the matter was “cleared by arrest.”

Rather than weighing the arrest report with the caution required by *Arreguin*, the Immigration Judge treated the absence of dismissal or disposition as a deficiency attributable to Aleman Hernandez. That inversion of evidentiary caution is precisely what *Arreguin* forbids. Where the State has not constitutionally placed a person in the posture of a felony accused, the absence of corroboration is not neutral—it affirmatively undermines the probative value of the allegations.

The consequences of this error are evident in the Immigration Judge’s reasoning. By relying on the arrest narrative as proof of dangerousness, the Immigration Judge evaluated Aleman Hernandez not as an individual presumed innocent and entitled to contest the allegations, but as though the alleged conduct were established fact. For example, the Immigration Judge held that “heavily weighing in the Court’s determination of flight risk is [Aleman Hernandez]’s *arrest for evading arrest or detention*.” See ECF No. 15 at Attachment A (emphasis added). The record contains no criminal complaint, indictment, or information charging Aleman Hernandez with evading arrest. The Immigration Judge’s incorrect assertion confirms that the dangerousness determination was driven by untested allegations rather than by reliable, adjudicated evidence.

In *Morgan v. Oddo*, the Western District of Pennsylvania analyzed whether that petitioner’s bond hearing had been fundamentally unfair, and concluded it was not by reasoning that:

[The IJ] examined the evidence of Petitioner's criminal history, found that Petitioner's 2022 firearms trafficking conviction was "serious and relatively recent[.]" after examining the facts underlying that conviction as related by the PSIR, and noted Petitioner's prior murder conviction, acknowledging that it was "relatively long ago." *Id.* at 6-7. The IJ weighed this evidence against Petitioner's rebuttal evidence, but found that the latter should be

accorded little weight, either because the various declarants were not subject to cross examination, or that the evidence did not mitigate the evidence of danger. *Id.* at 7. *Morgan v. Oddo*, No. 3:24-cv-221 (W.D. Penn. Sept. 16, 2025).

The written decision in Aleman Hernandez's case differs significantly. In *Morgan*, the Immigration Judge's dangerousness analysis was grounded in adjudicated criminal convictions—specifically, a 2022 firearms trafficking conviction and a prior murder conviction. The IJ examined the facts underlying those convictions, as documented in a PSIR, acknowledged their relative recency or remoteness, and then weighed them against rebuttal evidence.

By contrast, Judge Wood's decision is not anchored in any conviction at all. An IJ who evaluates the seriousness of a conviction based on a PSIR is engaging in materially different factfinding than an IJ who treats an arrest narrative as if it were proven criminal conduct. The latter is not individualized adjudication; it is assumption. The decision erroneously misstated that Aleman Hernandez was charged with evading arrest. The decision does not analyze Aleman Hernandez's actual criminal history (which contains no conviction for the alleged conduct), does not assess rehabilitation in any meaningful sense, and does not explain how danger is assessed in the absence of adjudicated guilt.

Because the decision in *Morgan* relied on convictions, explains how evidence was weighed, and applies the correct burden, a reviewing court can meaningfully assess whether discretion was exercised. Here, Immigration Judge Wood's decision demonstrated the absence of individualized adjudication.

The Immigration Judge's treatment of Aleman Hernandez's family equities further demonstrates the absence of individualized adjudication. The record included un rebutted evidence that Aleman Hernandez's U.S. citizen son has Autism and is experiencing ongoing harm as a result of his father's continued detention. Rather than engage with this evidence, the Immigration Judge

characterized Aleman Hernandez's equities as mere "family separation." That characterization is not a discretionary weighing choice; it is a factual misdescription of the record. By erasing a documented disability from the analysis, the Immigration Judge failed to consider evidence that directly bears on both hardship and Aleman Hernandez's incentive to appear. The resulting determination cannot be reconciled with due process or with this Court's requirement that the bond hearing be individualized.

The contrast between this case and decisions upholding bond denials underscores the defect. Unlike cases in which Immigration Judges evaluated adjudicated convictions, applied defined legal standards, and explained how competing evidence was weighed, the decision here rested on untested allegations, factual misstatements, and the erosion of individualized evidence into generalized conclusions. By treating arrest allegations as dispositive and collapsing documented hardship into "family separation," the Immigration Judge deprived Aleman Hernandez of the individualized custody determination that due process requires. Because the bond hearing failed to comport with this Court's order and constitutional standards, enforcement relief is warranted.

REQUESTED RELIEF

Because the bond hearing was fundamentally unfair and noncompliant with this Court's Order, enforcement relief is warranted. The appropriate remedy is either immediate release or, at minimum, a new bond hearing conducted in compliance with due process. Given the extent of the factual mischaracterizations and failures of consideration, any new hearing must ensure record-based factfinding and genuine individualized analysis, which should mean the government bearing the burden of proof that Aleman Hernandez's continued detention is warranted by clear and convincing evidence that he is a danger to the community and a flight risk.

CONCLUSION

Respondents' continued detention of Aleman Hernandez rests on a bond hearing that did not comply with this Court's Order and did not satisfy constitutional due process. The Immigration Judge failed to consider multiple categories of material evidence and did not make an individualized custody determination. Because the denial of bond flowed from legal error rather than lawful discretionary judgment, enforcement relief is required. The Court should order Aleman Hernandez's immediate release, or, in the alternative, a new bond hearing conducted in accordance with law.

Dated this 20th day of January 2026.

Respectfully submitted,

/s/ Skylar M. Larson

Skylar M. Larson, Esq.

8275 E. 11th Ave. # 200176

Denver, CO 80220

Tel: (970) 692-3156

Email: skylarmlarsonesq@gmail.com

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing **Petitioner's Motion to Enforce Order (ECF No 11)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Timothy Bart Jafek
U.S. Attorney's Office for the District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202
Email: timothy.jafek@usdoj.gov

/s/ Skylar M. Larson

Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER