

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

Civil Action No. 25-cv-03688-SKC-SBP

DENIS ALEMAN HERNANDEZ,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract  
Detention Facility;  
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field  
Office, U.S. Immigration and Customs Enforcement;  
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and  
Customs Enforcement;  
KRISTI NOEM, in her official capacity as Secretary of U.S. Department of  
Homeland Security;  
PAM BONDI, in her official capacity as Attorney General of the United States;

Respondents.

---

**RESPONSE TO MOTION TO HOLD IN ABEYANCE (ECF 14)**

---

This case is done. Respondents have complied with the Court's order granting this habeas petition, and no further relief is available.<sup>1</sup> The Court should therefore deny "Petitioner's Motion to Hold in Abeyance." ECF No. 14 (Motion). Any challenge

---

<sup>1</sup> Respondents acknowledge that Petitioner may still file a request for attorneys' fees. See ECF No. 11 at 17 n. 6. Petitioner has also filed a Motion to Enforce (ECF No. 19), which Respondents will separately respond to by January 27, 2026, consistent with the Court's Order (ECF No. 20). It is not clear why Petitioner filed the Motion and the Motion to Enforce, especially because he did not withdraw the Motion once he filed the Motion to Enforce. But the outcome of that motion and this one should ultimately be the same: the Court should reject Petitioner's invitation to second-guess the immigration judge's weighing of evidence.

Petitioner may have to the immigration judge's decision on bond should be presented via the usual appeal process in the immigration court—a process Petitioner acknowledges he is currently pursuing even as he seeks relief from this Court. But this Court is barred from reviewing bond decisions, and any further legal challenges are not properly brought in this habeas case.

In his Petition, Petitioner requested, among other things, that he be provided with “a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days of the Court’s order.” ECF No. 1 at 16. On December 23, 2025, the Court granted Petitioner’s request “on the statutory basis that his detention under § 1225 is unlawful, and therefore, he is only properly detained under § 1226.” ECF No. 11 at 17. The Court ordered a bond hearing under § 1226(a) within seven days of the Court’s order. *Id.* The Court also stated in a footnote that it “makes no comment regarding whether Petitioner is ultimately entitled to release on bond . . . .” *Id.* at 17 n.7.

In compliance with the Court’s order, an immigration judge held a bond hearing for Petitioner on December 30, 2025. *See* ECF No. 12. The immigration judge denied bond. *Id.*<sup>2</sup> By providing a bond hearing, Respondents complied with the Court’s order granting a writ of habeas corpus.

---

<sup>2</sup> In the order granting habeas relief, the Court also ordered Respondents to include in their status report the reasons for denying bond, if bond was denied. *See* ECF No. 11 at 18. Respondents did not include that information in their status report, *see* ECF No. 12, and apologize to the Court for that oversight. Respondents note the Petitioner informed the Court the same day Respondents filed their status report of the reasons the immigration judge denied bond, that is, that Petitioner failed to meet his burden to establish that he is not a danger to the community and not a flight risk. *See* ECF No. 13.

Petitioner now makes a new claim, that the immigration judge made mistakes in his findings relating to bond. *See* ECF No. 13. He filed the Motion to ask the Court to hold this matter in “temporary, limited abeyance . . . before the Court determines its next steps.” *Id.* at 1. But there are no next steps in addressing this habeas petition. The Court has habeas jurisdiction to determine whether Petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The Court has already made that determination, ordered relief, and Respondents complied with the Court’s order.

Petitioner wants the Court to potentially “interven[e] to order release or bond.” ECF No. 14 at 5. The Court has no jurisdiction to do so. The bond determination was made under 8 U.S.C. § 1226(a), as the Court ordered in resolving the habeas petition. Congress has specifically barred jurisdiction for review of that discretionary bond determination:

The Attorney General’s discretionary judgment regarding the application of *this section* shall not be subject to review. No 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.

8 U.S.C. § 1226(e) (emphasis added).

Section 1226(e) bars this Court from doing what Petitioner is asking it to do. Numerous courts have held that “Section 1226(e), therefore, precludes judicial review of the Executive Branch’s decisions of whether to grant bond and under what conditions.” *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at \*5 (D. Colo. Jan. 27, 2021) (Arguello, J.); *see also Pelletier v. United States*, 653 F.

App'x 618, 622 (10th Cir. 2016) (unpublished); *Mwangi v. Terry*, 465 F. App'x 784, 786-87 (10th Cir. 2012) (unpublished) (“[Petitioner] is therefore eligible for release on bond under 8 U.S.C. § 1226(a) . . . But the Attorney General’s exercise of discretion is not subject to judicial review. See 8 U.S.C. § 1226(e.)”); *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at \*3 n. 2 (D. Colo. Dec. 6, 2019) (“[T]he agency’s discretionary decision with respect to the grant or denial of bond is not reviewable in this Court. 8 U.S.C. § 1226(e.)”); *Wilson v. Choate*, No. 19-cv-02069-WJM, 2019 WL 13214057, at \*4 (D. Colo. Nov. 4, 2019).

Petitioner argues that this Court may review “whether the agency actually exercised discretion under 8 U.S.C. § 1226(a),” ECF No. 14 at 4, but neither explains what this means nor cites to any caselaw to support that proposition. It is not clear how examining “whether the agency actually exercised discretion” would fall outside the statutory bar, which precludes review of “the Attorney General’s exercise of discretion.” 8 U.S.C. § 1226(e). To the extent Petitioner is suggesting that the immigration judge has committed an error in making its decision on bond that is beyond its “exercise of discretion,” that type of allegation is still barred from review by § 1226(e), because it is still a decision about whether to grant or deny bond that is statutorily prescribed to the Attorney General and her delegees. See *id.* §§ 1103(g)(2); 1226(a).

In any case, Petitioner has other avenues to challenge the immigration judge’s bond decision. Petitioner has already filed a motion for reconsideration with the immigration court, which, as Petitioner asserts, is currently pending. See ECF

No. 14 at 1; ECF No. 15; ECF No. 19 at 3. Furthermore, if Petitioner does not prevail in that motion, he may appeal the immigration judge's decision to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.19(f) ("An appeal from the determination of an Immigration Judge [regarding bond] may be taken to the Board of Immigration Appeals pursuant to § 1003.38."). But what he cannot do is have this Court review the immigration judge's bond decision. *See* 8 U.S.C. § 1226(e).

Habeas relief is limited, and the Court has granted Petitioner the habeas relief he requested. There is no reason to hold this case in abeyance, and the Court should deny the Motion.

Dated January 22, 2026.

Respectfully submitted,

PETER MCNEILLY  
United States Attorney

s/Timothy Bart Jafek  
**Timothy Bart Jafek**  
Assistant U.S. Attorney  
United States Attorney's Office for the  
District of Colorado  
1801 California Street, Ste. 1600  
Denver, Colorado 80202  
Telephone: 303-454-0100  
Email: timothy.jafek@usdoj.gov

Attorney for Respondents

**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on January 22, 2026, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to all counsel of record.

s/ Timothy Bart Jafek

U.S. Attorney's Office