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
"PETITIONER'S MOTION TO ENFORCE ORDER" (ECF No. 19)

Petitioner received the immigration bond hearing that the Court ordered, after which the Immigration Judge (IJ) issued a thorough decision that considered the evidence and, ultimately, determined that bond should be denied. Petitioner now asserts that the hearing did not provide due process. The Court should deny the Motion to Enforce Order (ECF No. 19) (Motion) for at least two reasons. First, Petitioner has not exhausted his claim challenging the bond hearing. Second, the due process required in immigration bond hearings is minimal, and Petitioner received that due process. The Court should reject Petitioner's arguments and decline his invitation to second-guess the IJ's weighing of the evidence. *See A.A. v. Baltazar*, No. 1:25-cv-03174-CNS, ECF No. 24 (D. Colo. Dec. 17, 2025) (observing a similar motion to enforce was "in essence an appellate brief seeking reversal of the [IJ's] bond order" and denying the motion).

FACTUAL BACKGROUND

Petitioner filed a petition for a writ of habeas corpus seeking an order that Respondents provide a bond hearing within seven days. *See* ECF No. 1. The Court granted the petition that ordered that Respondents hold a bond hearing under 8 U.S.C. § 1226(a) within seven days of the Court's order on December 23, 2025. *See* ECF No. 11 at 17. The Court noted that "[i]n so ordering, the Court makes no comment regarding whether Petitioner is ultimately entitled to bond or whether the provisions of § 1226 are applicable." *Id.* at n. 7.

Respondents complied with that order when the immigration court held a

bond hearing on December 30, 2025. *See* ECF No. 19-1 at 5-8 (bond decision). The immigration court issued a three-page single-spaced bond decision. *See* ECF No. 19-1 at 5-8. The IJ did so after holding a hearing. *Id.* at 5. The IJ explained that "[b]oth parties submitted documentary evidence and arguments before the Court. [And he] consider[ed] all the evidence presented." *Id.* The IJ considered the criteria to be considered in making a bond determination: dangerousness and, if no danger is found, likelihood of appearing for future immigration proceedings. *Id.* at 6. *See* 8 C.F.R. § 1236.1(c)(8) (in immigration bond hearing, noncitizen must demonstrate the "such release would not pose a danger to property or persons, and that the alien is likely to appear for future proceedings.")

The IJ first considered dangerousness. He recognized that, among other things, Petitioner has two U.S. citizen children; owns his own business; pays taxes; and letters from family, friends, and his church described him as "dependable and kind." *Id.* The IJ specifically cited the pages from Petitioner's evidence that provided that information. *Id.* He also summarized an arrest report that Petitioner included in his submission:

> On December 11, 2022, Respondent was arrested and charged with a violation of Texas Penal Code § 20.05(b), felony smuggling of persons, § 20.05(b)(1)(B), felony smuggling of persons under eighteen years of age, and § 38.04(b)(2)(A), felony evading arrest or detention. *Id.* at 37–38.[1] On the date of the incident in question, Respondent was speeding in his vehicle when police officers activated their overhead lights to conduct a traffic stop. *Id.* at 43. Instead of stopping, Respondent sped

[1] The entire record referred to appears at ECF No. 19-1 at 47-54.

> up his vehicle to eighty-seven miles per hour and fled for four or five miles. *Id.* Only after a police vehicle bumped into the rear of his vehicle did Respondent stop. *Id.* When Respondent's vehicle came to a stop, "the doors to the vehicle [i]mmediately swung open and multiple subjects began to flee into the brush."[2] *Id.* Respondent was finally detained the next morning when police located him.[3] *Id.* at 44.

See id. (summarizing ECF No. 19-1 at 47-54). The IJ wrote that he "carefully considered [Petitioner's] evidence and conclude[d] that [Petitioner] has not shown that he would not pose a danger to persons or property if he were to be released." *Id.* The IJ "acknowledge[d] that the charges are still pending" but cited authority holding that "in bond proceedings, [IJs] are not limited to considering only criminal convictions in assessing whether an alien is a danger to the community." ECF No. 19-1 at 6-7 (quoting *Matter of Salas Penas*, 29 I&N Dec 173, 174 (BIA 2025)).

The IJ also found that Petitioner would pose a flight risk. *See id.* at 7. He considered Petitioner's "evidence of employment, family, and property ties," which weighed in Petitioner's favor. *Id.* Also in his favor was a letter from his cousin and proposed sponsor. *Id.* Weighing against were the fact that it was unclear whether he would be successful in contesting removal and, in particular, his arrest for evading arrest or detention. *Id.* Petitioner's "refusal to cooperate with law enforcement officials erodes the Court's confidence that he will respect the Court's orders." *Id.* Thus, the IJ found that on balance, Petitioner was a flight risk. *Id.*

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[2] There were six passengers, including a minor child. *See* ECF No. 19-1 at 53.
[3] Petitioner matched the description of the male who fled the vehicle, and there was mail in the car with his name on it. *See* ECF No. 19-1 at 54.

The Motion contends the IJ's decision violated Petitioner's due-process rights because the bond hearing was "fundamentally unfair." ECF No. 19 at 3.

ARGUMENT

I. The Court should deny the Motion because Petitioner has not exhausted.

Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for § 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 failed to exhaust because he still has effective administrative remedies available to him. In fact, Petitioner has filed a motion to reconsider the bond decision. *See* ECF 15-1 (Petitioner's motion to reconsider). If that does not succeed, Petitioner may appeal the IJ's denial of bond to the BIA. *See* 8 C.F.R. § 1003.19(f). Petitioner cannot 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.").

As a matter of judicial efficiency and per applicable regulations, Petitioner should be required to exhaust his administrative remedies before the BIA.

II. The Court's jurisdiction is very limited.

As discussed in the response to Petitioner's motion to hold the case in abeyance, *see* ECF No. 21 at 3-4, 8 U.S.C. § 1226(e) generally bars jurisdiction for review of an immigration court's bond decision under § 1226(a) like the one here. Section 1226(e) bars judicial review of "any action or decision by the Attorney 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). 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). Specifically, the Court cannot "overstep its bounds and set aside an immigration judge's bond determination on discretionary or evidentiary grounds. Such action would violate 8 United States Code Section 1226(e)." *Nguti v. Sessions*, No. 16-CV-6703, 2017 WL 5891328, *2 (W.D.N.Y. Nov. 29, 2017). The very limited exception to § 1226(e) is that this Court may consider whether the bond hearing complied with due process.

See Demore v. Kim, 538 U.S. 510, 517 (2003) (finding that § 1226(e) does not bar constitutional challenge). As discussed below, it did.

Petitioner argues he should prevail because the Court "retains jurisdiction to enforce its prior habeas order." ECF No. 19 at 3. But Respondents complied with the Court's prior Order: the Court ordered Respondents to "provide Mr. Aleman Hernandez with a bond hearing under 8 U.S.C. § 1226(a) within SEVEN DAYS of the date of this Court's order," ECF No. 11 at 18, and they did that, *see* ECF No. 12; ECF No. 19-1 at 5-8. Petitioner does not show that Respondents have not complied with the Court's order for a bond hearing—he simply disagrees with how the IJ weighed the evidence at that hearing. *See, e.g.*, ECF No. 19 at 2, 6 (contending the IJ's decision "decision rested heavily on [Petitioner's] December 2022 arrest" and "ignored individualized hardship evidence" by mischaracterizing "the equities of his application"); *id.* at 5 (contending the IJ's decision "allows an uncorroborated arrest narrative to serve as the sole driver of the dangerousness determination"); *id.* at 5 ("[U]nproven allegations were given decisive weight, while affirmative, documented conduct demonstrating reliability and compliance was disregarded.").

"That Petitioner objects to the manner in which the IJ considered evidence in arriving at this conclusion is no basis to essentially reverse the IJ, or grant the relief that Petitioner seeks." *A.A.*, No. 25-cv-03174-CNS, ECF No. 24, at 3. Because Respondents complied with the Court's prior order, and the Court lacks jurisdiction to overturn the IJ's discretionary bond decision, Petitioner lacks a basis for relief.

See Pena-Gil v. Lyons, No. 1:25-cv-03268-PAB-NRN, ECF No. 26, at 4; *Rahman v. Bondi*, No. 2:24-cv-02132-JHC-TLF, 2025 WL 3158061, at *1 (W.D. Wash. Nov. 12, 2025) (denying petitioner's motion to enforce the Court's prior order granting habeas petition because that order "merely require[d] the Government to provide Petitioner with an individualized bond hearing" and, because the government did so, there was "nothing left in the [prior] order to 'enforce'").

III. Due process for Petitioner is very limited.

The due process required for aliens in removal proceedings is very limited. "Because aliens do not have a constitutional right to enter or remain in the United States, the only protections afforded are the minimal procedural due process rights for an 'opportunity to be heard at a meaningful time and in a meaningful manner.'" *Arambula-Medina v. Holder*, 572 F.3d 824, 828 (10th Cir. 2009) (citing *de la Llana–Castellon v. I.N.S.*, 16 F.3d 1093, 1096 (10th Cir. 1994)). The Tenth Circuit summarized those minimal rights as follows:

> The only protections afforded to a petitioner in an immigration proceeding include the [1] "opportunity to be heard at a meaningful time and in a meaningful manner," [2] "factfinding based on a record produced before the decisionmaker and disclosed to" the petitioner, "and [3] an individualized determination of his interests.".

Izaguirre Corea v. Garland, No. 24-9500, 2024 WL 3287958, at *2 (10th Cir. July 3,

2024) (quoting *de la Llana-Castellon*, 16 F.3d at 1096).[4]

The third element—an individualized determination—is primarily at issue in the Motion. An individualized determination does not require much. It only requires "look[ing] at the specific facts of the case." *Chong v. Dist. Dir., I.N.S.*, 264 F.3d 378, 387 (3d Cir. 2001). In that case, the court found an individualized determination because "the [BIA] looked at the specific facts of Chong's case—engaging in the 'individualized determination' that *Abdulai* requires—rather than blindly following a categorical rule, i.e., that all drug convictions qualify as 'particularly serious crimes.'" *Id.* A decision should provide "sufficient indicia" that an individualized determination was made. *Abdulai*, 239 F.3d at 550.

These minimal due-process standards "do[] not provide an opportunity to reweigh the evidence submitted at the bond hearing, or to review the IJ's determination de novo," as explained by one case cited by Petitioner, *Morgan v. Oddo*, No. 3:24-CV-221, 2025 WL 2653707, at *6 (W.D. Pa. Sept. 16, 2025) (denying motion to enforce because petitioner did not show that IJ bond hearing violated due process). *See* ECF No. 19 at 8-9. Another case cited by Petitioner, *Ghanem*,

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[4] The Tenth Circuit's standard is very similar to that of the Third Circuit, which Petitioner discusses in the Motion. *See* ECF No. 19 at 3. Indeed, the Tenth Circuit's *de la Llana-Castellon* case was relied upon by one of the cases underpinning the Third Circuit case Petitioner cites (*Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *2 (3d Cir. Feb. 25, 2022)). *See Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001). Whether the Tenth and Third Circuits' standards are identical is not necessary for the Court to determine.

emphasizes that "[a] motion to enforce a judgment is not the proper avenue to relitigate the merits of a bond order, which [petitioner] is attempting to do through this appeal." 2022 WL 574624, at *2. Furthermore, under the "presumption of regularity," courts presume that public officers have properly discharged their official duties in the absence of clear evidence to the contrary. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996). In short, in reviewing a motion to enforce, "it is important to emphasize that the Court's task is narrow: it is to determine whether Respondent complied with the Decision and Order, not to review the hearing evidence *de novo*." *A.A.*, No. 25-cv-03174-CNS, ECF No. 24, at 3 (quoting *Tucker v. Searls*, No. 22–CV-608–LJV, 2023 WL 3267085, at *3 (W.D.N.Y. May 5, 2023)). Respondents did so here.

IV. Petitioner received due process.

A. The immigration court provided Petitioner an opportunity to be heard at a meaningful time and in a meaningful manner.

Petitioner submitted a seven-page brief and about 140 pages of exhibits prior to the bond hearing. *See* ECF No. 19-1 at 11-192. The hearing was held, and the IJ considered Petitioner's argument and evidence. *See* ECF No. 19-1 at 5-8. Petitioner does not seem to argue the IJ did not provide him an opportunity to be heard at a meaningful time and manner—nor could he under the circumstances.

B. The immigration court included factfinding based on a record produced before the decisionmaker and disclosed to the Petitioner.

As to whether the IJ conducted factfinding based on the record before him,

Petitioner argues the IJ improperly weighed the arrest report against evidence such as "prior participation in U.S.-based military training." ECF No. 19 at 4. Petitioner focuses on this alleged error: "When this evidence and Aleman Hernandez's otherwise nonexistent criminal history is weighed against an uncorroborated arrest report, the mitigation evidence should have substantially altered the [IJ's] analysis." ECF No. 19 at 4. But the Court's limited review of an immigration bond decision does not allow for re-weighing evidence. *See, e.g.*, *Morgan*, 2025 WL 2653707, at *6 (motion to enforce for alleged due-process deficiencies "does not provide opportunity to reweigh the evidence submitted at the bond hearing").

Petitioner also alleges the IJ's decision did not adequately explain his reasoning. Petitioner alleges that the IJ "failed to engage" with certain evidence, "did not mention" other evidence, and "failed to consider" other evidence. *See* ECF No. 19 at 5-6. Petitioner's arguments here are really to whether the immigration court made an individualized determination which is discussed below.

C. The immigration court made an individualized determination.

As discussed above, an individualized determination does not require much. It requires an immigration court to "look[] at the specific facts of the case" and provide "some indicia" that that was done. *See Chong*, 264 F.3d at 387; *Abdulai*, 239 F.3d at 550. That was done here.

Here, the IJ looked at the specific facts of this case and provided indicia that he did so in the three-page single-spaced decision, which discussed various evidence

Petitioner himself provided. With respect to dangerousness, the IJ considered that Petitioner has two U.S. citizen children, owns property, pays taxes, and submitted letters from family, friends, and his church that is dependable and kind. *See* ECF No. 19-1 at 2. The IJ also considered the arrest report and described the specific facts that led to his conclusion that Petitioner was dangerous: he was speeding, when officers activated their lights he sped up to 87 miles an hour and led them on a chase of four to five miles, he only stopped after a police car bumped the rear of his vehicle, and he fled the scene and was not apprehended until the next day. *See* ECF No. 19-1 at 6. The IJ explained those facts showed that Petitioner put himself, others in the car, and others on the road in danger and, therefore, Petitioner did not show that he would not be dangerous to people and property if released. *Id.* That is, the IJ did not simply conclude Petitioner was dangerous because of the charges he faced. Instead, the IJ considered the specific facts included in the arrest report.[5]

To same is true for flight risk. The IJ weighed positive factors such as Petitioner's employment, family, property ties, and a letter from his cousin and

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[5] Petitioner challenges the arrest report in various ways, none of which suggest that the IJ did not make an individualized determination. For example, Petitioner calls the arrest report "uncorroborated." ECF No. 19 at 4-5. But the report was based on the officer's own eyewitness experience. *See* ECF No. 19-1 at 53 ("I observed," "I then activated," "I then observed," etc.). And Petitioner does not challenge the *facts* in the report that the IJ considered. Petitioner also notes that the report indicates "cleared by arrest." ECF No. 19 at 8. He does not explain why that matters. From the context, "cleared by arrest" simply means the incident resulted in arrest. *See* ECF No. 19-1 at 19-1 at 47-54 (each page stating "Status: Cleared by Arrest.").

proposed sponsor. *See* ECF No. 19-1 at 7. As negative factors, he weighed the uncertainty that Petitioner will be granted relief from removal (citing BIA caselaw that allows IJs to consider that) and the facts that led to Petitioner's arrest, specifically that Petitioner's "refusal to cooperate with law enforcement erodes the confidence that he will respect the Court's orders." *Id.* The IJ weighed those factors and found that Petitioner failed to show he was not a flight risk. *Id.*

In sum, the IJ's decision provides indicia that the IJ considered the specific facts that led him to conclude Petitioner did not meet his burden to show that he was not a danger and not a flight risk. That is enough to provide due process in this situation. In fact, it exceeds the due process the Third Circuit has found to be sufficient. *See, e.g., Kamara*, 420 F.3d at 212 (finding adequate individualized determination when BIA decision "describe[d] in detail the CAT[6] petition submitted by petitioner, the procedural posture of the case, the basis for the IJ's decision, and the relevant statutes and regulations."); *Tiang Jian Wang v. Att'y Gen. of the U.S.*, 189 F. App's 67, 73 (3d. Cir. 2006) (finding adequate individualized determination when three-page BIA opinion shows that it was aware that petitioner was a citizen of China seeking asylum on the basis of his sympathy for the Falun Gong movement, that petitioner had suffered adverse employment actions for that reason, and petitioner was a credible witness).

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[6] The Convention Against Torture, which provides a basis for relief from removal. *See* 8 C.F.R. § 1208.16(c)(2).

Petitioner's main argument regarding the individualized determination is that the IJ relied too much on Petitioner's arrest record. Petitioner argues that the IJ erred in that regard because a BIA decision found that it was "inappropriate" to give substantial reliance on an arrest report without a conviction. *See* ECF No. 19 at 7 (citing *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995)). However, that decision was not about a bond hearing; it was about whether the noncitizen should be admitted as a legal permanent residence "in the best interests of the country." *See Arreguin*, 21 I&N at 39.[7] The IJ expressly recognized that he was considering pending charges, not a conviction, and he cited a newer BIA decision that *was* about bond hearings, which held that "in bond proceedings, Immigration Judges are not limited to considering only criminal convictions in assessing whether and alien is a danger to the community." ECF No. 19-1 at 6-7 (citing *Manner of Salas Pena*, 29 I&N at 174)). Furthermore, Petitioner points to no argument he made to the IJ, nor does he argue to this Court, that the underlying facts in the arrest report are not accurate. Petitioner's argument here mostly challenges the IJ's weighing of evidence, and as discussed, that is not within the ambit of any limited due-process analysis the Court may conduct. *See, e.g., Morgan*, 2025 WL 2653707, at *6.

Petitioner also argues the IJ did not explain enough in his decision.

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[7] Petitioner also overstates the case. It did not hold that it was "inappropriate" to consider the arrest report. It merely stated that the court was "hesitant to give substantial weight to the arrest report," under certain circumstances present in that case, including that prosecution was declined. *Arreguin*, 21 I&N at 42.

Petitioner alleges the IJ "failed to engage" with certain evidence, "did not mention" other evidence, and "failed to consider" other evidence. *See* ECF No. 19 at 5-6. He specifically asserts the IJ "failed to consider individualized hardship evidence" including that Petitioner's U.S. citizen son has autism and is experiencing harm because of his detention. *Id.* at 6. For none of the alleged shortcomings does Petitioner cite to a specific page in his submission to the IJ where the purported evidence can be found. Nor does Petitioner state that he raised the specific point the IJ is alleged to have omitted during the bond hearing. The Court should set aside Petitioner's arguments for those reasons alone. But in any event, due process in this context does not require that the IJ address every bit of evidence in the 140 pages of documents submitted. It only requires that the IJ's decision provide indicia that he considered the specific facts that led to his conclusion. As discussed, it did.

V. Even if Petitioner were not provided due process, he is not entitled to the relief he seeks.

The immigration court provided Petitioner with due process, as described above. However, even if it did not, Petitioner would not be entitled to the relief he seeks—immediate release or a new bond hearing where the government must bear the burden of proof by clear and convincing evidence.

Immediate release is not an appropriate remedy. Petitioner offers no argument or authority to support that relief, and the Court should not consider it. *See, e.g.*, *United States v. Wooten*, 377 F.3d 1134, 1145 (10th Cir. 2004) ("The court will not consider . . . issues adverted to in a perfunctory manner, unaccompanied by

some effort at developed argumentation." (citation omitted)). If the Court were to consider it (and if the Court were to find the bond hearing did not provide due process), it should order Respondents to provide a bond hearing that does provide due process. *See Morrisey v. Brewer*, 408 U.S. 471, 481 (1972) (the appropriate remedy is "procedural protections as the particular situation demands"). Here that would be a new bond hearing. *See, e.g., Ford v. ICE's Interim Field Off. Dir. for Det. & Removal for Phila. Dist.*, 294 F. Supp. 2d 655, 662, 665 (M.D. Pa. 2003) (finding BIA did not provide an individualized determination because it "failed to offer any explanation" why petitioner did not meet an exception; remanding to BIA to do so).

If the Court were to order a new bond hearing, the government should not bear the burden of proof by clear and convincing evidence. As an initial matter, Plaintiff offers no argument to support that relief, and the Court should not consider it for that reason. *See, e.g., Wooten*, 377 F.3d at 1145. Furthermore, due process does not require that the government bear the burden by clear and convincing evidence. *See, e.g., Miranda v. Garland,* 34 F.4th 338, 362-365 (4th Cir. 2022); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202-14 (9th Cir. 2022) (same).[8]

CONCLUSION

The Court should deny the Motion.

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[8] Respondents acknowledge not all courts agree. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1179-1180 (D. Colo. 2024) (acknowledging split of authority and finding government should bear burden by clear and convincing evidence). The issue is currently on appeal. *See Munoz Ramirez v. Bondi,* No. 25-1263 (10th Cir.).

Dated: January 27, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 27, 2026, 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:

skylarmlarsonesq@gmail.com

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

None.

s/Timothy B. Jafek
Timothy B. Jafek
Assistant U.S. Attorney