UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CELESTE YULIANI BETANCOURT IZAGUIRRE,

Petitioner,

v. 25-CV-06672-EAW

JOSEPH FREDEN, in her official capacity as Deputy Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement, et al.,

Respondents.

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S MOTION TO ENFORCE (ECF NO. 8)

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PROCEDURAL BACKGROUND AND FACTUAL HISTORY

Petitioner Celeste Yuliani Betancourt Izaguirre filed a petition for writ of habeas corpus on November 17, 2025, alleging that she was being wrongfully detained under 8 U.S.C. § 1225(b), and that her proper detention authority was 8 U.S.C. § 1226, such that she was entitled to a bond hearing justifying her detention. ECF No. 1

On November 20, 2025, Respondents filed a response re-raising and preserving prior arguments that have been rejected by this Court previously, arguing that Izaguirre is properly detained as an applicant for admission under 8 U.S.C. § 1225(b), which mandates her detention. ECF No. 6.

Also on November 20, 2025, this Court issued an order granting the petition to the extent it sought a bond hearing with the burden of proof shifted to the government to prove by clear and convincing evidence that Izaguirre poses either a risk of flight or risk of danger. ECF No. 7 at pg. 3. Alternatives to detention were also to be considered in deciding whether continued detention was warranted. *Id.*

A bond hearing was held on November 26, 2025. ECF No. 8 at pg. 1.

Following the bond hearing, Izaguirre's counsel filed a letter arguing that the bond hearing was not conducted in accordance with this Court's requirements and that Izaguirre was wrongfully detained. *Id.* at pgs. 1-2. Izaguirre now seeks his immediate release. *Id.* at pg. 2.

This Court has construed the letter as a motion to enforce the Court's November 20, 2025 Order (ECF No. 7) and ordered Respondents to submit any response by December 5, 2025, along with a copy of the transcript of the bond hearing. This memorandum of law serves as the Respondents' response, and the transcript is submitted herewith.

LEGAL STANDARD FOR A MOTION TO ENFORCE A BOND HEARING

This Court has previously noted that "[i]n reviewing Petitioner's 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*[.]'" *Blandon v. Barr*, 434 F. Supp. 3d 30, 38 (W.D.N.Y. 2020) (quoting *Apollinaire v. Barr*, No. 19-CV-6285-FPG, 2019 WL 4023560, at *3 (W.D.N.Y. Aug. 27, 2019)).

A district court may confirm that the requirements of an order were complied with, but must not "overstep its bounds and set aside an immigration judge's bond determination on discretionary or evidentiary grounds" because to do so would violate the Immigration and Nationality Act's prohibition under 8 U.S.C. § 1226(e). *Nguti v. Sessions*, No. 16-CV-6703, 2017 WL 5891328, at *2 (W.D.N.Y. Nov. 29, 2017).

Additionally, in order to find that the 'clear and convincing' standard was not met, a court must determine that "the IJ 'relied upon proof that could not possibly establish by clear and convincing evidence—as a matter of law—that [Petitioner] was a danger to the community' or a flight risk." *Blandon*, 434 F. Supp. 3d at 38 (quoting *Nguti*, 2017 WL 5891328, at *2) (alteration in original).

An immigration judge's bond decision should be upheld where the judge "reviewed the record, identified the conflicting evidence, and reasonably resolved the conflicts to reach a conclusion." *Apollinaire*, 2019 WL 4023560, at *3.

ARGUMENT

Izaguirre's motion should be denied because: (i) she failed to exhaust administrative remedies available[1], (ii) this Court lacks jurisdiction to review the discretionary determinations of an immigration judge, and (iii) this Court's order was fully complied with.

I. IZAGUIRRE FAILED TO EXHAUST ADMINISTRATIVE REMEDIES, REQUIRING DENIAL OF THE MOTION

Although "[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court]," *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), exhaustion is generally required as a prudential matter before seeking relief from federal courts. *See Howell v. INS,* 72 F.3d 288, 291 (2d Cir. 1995) ("Under the doctrine of exhaustion of administrative remedies, 'a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.'") (quoting *Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)). Here, there is no evidence that Izaguirre appealed the bond decision to the Board of Immigration Appeals ("BIA"), which has jurisdiction over decisions by immigration judges, including bond decisions, and thus the Motion should be denied until the BIA renders its decision.

When an immigration judge denies bond, an alien may appeal the order to the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1003.19(f); 8 C.F.R. §§ 1003.38; 1236.1(d)(3). There is no evidence in the record that Izaguirre filed such an appeal. Thus, the prudential

[1] "Th[is] Court consistently has rejected this argument when raised by Respondent[s] in similar cases", *Mathon v. Searls*, 623 F. Supp. 3d 203, 213 (W.D.N.Y. 2022), but the government raises the argument again, nonetheless, to preserve it.

exhaustion doctrine should apply here, and Izaguirre should be required to exhaust the administrative remedies by appealing to the BIA before seeking redress from this Court.

Generally, courts apply the prudential exhaustion requirement when: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Hossain v. Barr*, No. 6:19-CV-06389-MAT, 2019 WL 5964678 at *4 (W.D.N.Y. Nov. 13, 2019) (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

This Court has previously held that due to the "clearly established administrative scheme for dealing with custodial determinations, including an appeals process to the BIA," the first factor weighs in favor of requiring exhaustion. *Hossain*, 2019 WL 5964678 at *4. That same logic applies in this matter. Izaguirre should avail herself of the appellate process within the immigration context, and has no justification for seeking intervention from this Court before the agency reviews the bond hearing.

Indeed, an appeal to the BIA is necessary to satisfy the first factor in the exhaustion requirement. Before the BIA has a chance to decide the issue and determine whether any errors occurred at the bond hearing, the record cannot be said to be complete, and the agency is not given the chance to reach a final decision. Thus, Izaguirre should be prevented from seeking relief before this Court until he appeals to the BIA and that appeal is decided.

With regard to the second factor, courts in this district have previously held that allowing detained aliens to circumvent the appeals procedure and apply to the district court for the same relief that could have been sought before the BIA would encourage the

deliberate bypass of the administrative scheme, which again weighs in favor of requiring administrative exhaustion. *Hossain*, 2019 WL 5964678 at *4.

This Court in *Hossain* did not explicitly address the third factor, but that factor also weighs in favor of allowing the BIA to review the immigration judge's order denying bond before permitting Izaguirre to seek redress from this Court. If the BIA finds errors in its review, it can rectify them, thereby precluding the need for judicial review here.

Although exceptions to the prudential exhaustion requirement exist, none would apply in this case. The exceptions arise where: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Hossain*, 2019 WL 5964678, at *4 (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), as amended (July 24, 2003)). These exceptions are narrow. Indeed, the Second Circuit has held that "[e]xhuastion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992).

Here, Izaguirre's situation meets none of these exceptions, and none apply based upon Izaguirre's submission to this Court. To the contrary, the available remedies provide adequate relief, there is no claim of possible irreparable injury[2], appeal would not be futile, and no substantial constitutional issues have been raised concerning the immigration judge's decision. Thus, all of the factors in favor of requiring exhaustion are present, and none of

[2] Courts in this circuit have rejected claims that continued detention is an irreparable harm. *See, e.g., Michalski v. Decker*, 279 F. Supp. 3d 487, 496 (S.D.N.Y. 2018) ("[petitioner's] claim that prolonged detention constitutes an irreparable injury that may excuse exhaustion has been rejected by courts in this District") (citing cases); *Paz Nativi v. Shanahan*, No. 16-CV-8496 (JPO), 2017 WL 281751 at *2 (S.D.N.Y. Jan. 23, 2017) ("[T]he harm Paz Nativi identifies—continued detention—is insufficient to qualify as irreparable injury justifying non-exhaustion.").

the exceptions would apply in this situation. By filing the instant Motion—before taking an appeal to the BIA—Izaguirre has circumvented an available administrative process that could have rendered this continued litigation unnecessary. The Court should therefore deny the Motion.

II. THIS COURT LACKS JURISDICTION TO REVIEW THE IMMIGRATION JUDGE'S DISCRETIONARY BOND DETERMINATIONS

This Court has limited subject matter jurisdiction to review an immigration judge's decision. The immigration judge's decision involved discretionary judgments, the review of which is explicitly prohibited from district court review under 8 U.S.C. § 1226(e), which states:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to judicial review. No court may set aside 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.

Section 1226(e) accordingly insulates from federal judicial review any "discretionary judgment" of the Attorney General (*i.e.*, the immigration courts) regarding bond. *Cf. Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (§ 1226(e) bars federal court review of a "discretionary judgment" or a "decision" of the Attorney General); *Hamilton v. Shanahan*, No. 09 Civ. 6869 (SAS), 2009 WL 5173927, at *3 (S.D.N.Y. Dec. 30, 2009) ("Section 1226(e) specifically divests this Court of jurisdiction to review the decisions of the IJ and the BIA (acting on behalf of the Attorney General) regarding detention of aliens under section 1226."). Habeas relief "is not available to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did exercise its discretion." *Gutierrez-Chavez v. I.N.S.*, 298 F.3d 824, 828 (9th Cir. 2002). Izaguirre's claims that the immigration judge failed to weigh certain

evidence or that the government failed to meet its burden are inappropriate for this Court's review. Likewise, any claims as to the immigration judge's consideration of alternatives to detention are an attempt to have this Court review the immigration judge's discretionary functions, which the Court cannot do pursuant to § 1226(e). Thus, the immigration judge's decision that the government met its burden of proof, and any other discretionary determinations by the immigration judge, are beyond review by this Court.

III. IZAGUIRRE RECEIVED A BOND HEARING IN ACCORDANCE WITH THIS COURT'S ORDER AND CONSISTENT WITH DUE PROCESS

By order dated November 20, 2025 (ECF No. 7), this Court granted Izaguirre relief and ordered:

(1) that a bond hearing be held on or before November 26, 2025;

(2) the bond hearing be held before an immigration judge;

(3) at the hearing, the government must bear the burden of proof;

(4) the evidentiary standard be clear and convincing;

(5) that Izaguirre's detention be justified by her present risk of flight or dangerousness; and

(6) if detention is justified based on a risk of flight, the immigration judge must consider less-restrictive alternatives to detention and Izaguirre's ability to pay any bond (if required).

ECF No. 7 at pg. 3.[3] Because all of the above requirements were met, Izaguirre's motion to enforce this Court's Order should be denied.

A. The Government Bore The Burden Of Proof At The Bond Hearing

[3] Izaguirre does not challenge the first two requirements, and thus they will not be addressed.

As required by this Court's Order, the government bore the burden of proof at the bond hearing, and thus Izaguirre's motion should be denied.

At the outset of the hearing, immigration judge Kandra Robbins acknowledged this Court's order and noted that the government would bear the burden of proof. Transcript of Bond Hearing ("Trans."), submitted herewith, at pg. 4 ("With that then I'm going to mark the Bond Redetermination Request which is a District Court order, the Western District of New York, ordering a bond hearing being held, shifting the burden from where it normally would be from the Respondent to the Department.").[4] This Court's order was even submitted as an exhibit to the bond proceeding. *Id.* Judge Robbins also allowed the government to proceed first in argument, again noting that the government bore the burden of proof. Trans. at pg. 4. At no point throughout the proceeding is there any indication that Judge Robbins shifted the burden to Izaguirre. Indeed, Mr. Borowski, Izaguirre's attorney in this matter and at the bond hearing, even clarified with the immigration judge that she had found that the government met its burden of proof, and the immigration judge confirmed it. Trans. at pg. 8. Thus, there is simply no evidence whatsoever that the burden was not placed on the government, as required by this Court.

B. The Immigration Judge Applied A 'Clear And Convincing' Evidentiary Standard

Izaguirre does not explicitly argue that the immigration judge failed to apply a "clear and convincing evidence" standard in her letter. ECF No. 8. Instead, Izaguirre contends that Judge Robbins did not engage in meaningful analysis or rationale. This sounds more akin to

[4] In immigration court, the government is the petitioner and the alien is the respondent.

a challenge to Judge Robbins' discretionary decision than the manner in which she reached it.

Also, Judge Robbins read and entered this Court's decision into evidence. Trans. at pg. 4. Thus, familiarity with the requirements set forth by this Court—including the evidentiary standard—can be assumed, even if not explicitly parroted on the record. There is no evidence in the record that Judge Robbins applied a lesser or wrong standard.

C. Izaguirre's Continued Detention Was Justified By Her Risk Of Flight

Izaguirre's detention is justified by her risk of flight, as Judge Robbins found. Thus, the government complied with this requirement of this Court's Order.

The Board of Immigration Appeals ("BIA") has held that the denial of applications for relief from removal—such as an asylum application—is grounds for finding a risk of flight. *See Matter of D-J-*, 23 I&N Dec. 572, 582 (A.G. 2003); *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987). Thus, although Judge Robbins considered other factors in reaching her decision, even if she only considered the likelihood of Izaguirre's success in staving off removal, that is sufficient for finding a risk of flight.

Judge Robbins noted numerous factors, though, that support her decision. Without shifting the burden to Izaguirre, Judge Robbins considered various factors approved by the BIA, which include: "(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration

violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States." *In Re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). Specifically, Judge Robbins noted that Izaguirre has only been in the United States for a short time (factor 2), lacks family ties (factor 3), lacks an employment history in the record (factor 4), lacks assets (not apparently a *Guerra* factor, but potentially indicative of flight) and that she entered the United States unlawfully (factors 7 and 9). Trans. at pgs. 6-7. Judge Robbins was by no means biased, also recognizing that weighing in Izaguirre's favor were her record of court appearances and lack of criminal history (factors 5 and 6). *Id.* at pg. 7. Nonetheless, in totality, Judge Robbins found that Izaguirre posed a risk of flight, which is a discretionary determination reached by the immigration court that this Court should not cast aside.

D. Even Though A Risk Of Danger Was Found, The Immigration Judge Addressed Alternatives To Detention To Assure Izaguirre's Appearance

Lastly, Judge Robbins made clear that she considered alternatives to detention that would suffice to guarantee Izaguirre's detention, but found them lacking. Specifically, attorney Borowski inquired of Judge Robbins whether she determined that the government met its burden to show that Izaguirre posed a risk of flight and that no amount of bond or any alternative to detention would ameliorate that risk, and the judge answered affirmatively. Trans. at pg. 8. Thus, this case is a far cry from one where "the IJ said not one word about any alternative to detention." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 242 (W.D.N.Y. 2019) (granting motion to enforce).

Even though Petitioner may have appreciated more analysis, it is clear that Judge Robbins considered alternatives to detention, including bond, before reaching her decision

to detain Izaguirre. *See Vides v. Searls*, No. 6:20-CV-06293 EAW, 2021 WL 6846277, at *4 (W.D.N.Y. May 13, 2021) (denying motion to enforce and recognizing that "the IJ is not required to discuss every piece of evidence [and] Petitioner's arguments largely amount to criticism that IJ Driscoll did not provided more detailed explanations for his consideration of ability to pay and alternatives to detention. While the Court agrees that greater detail could have been provided, the decision makes clear that IJ Driscoll did take those matters under consideration as directed, and resulted in the legally permissible conclusion that the alternatives considered were not appropriate under the facts before him."); *Thomas v. Whitaker*, 2020 U.S. Dist. LEXIS 266700, at * (W.D.N.Y. May 11, 2020) ("While not the most robust analysis of the issue, IJ Montante's discussion shows that he considered alternatives to detention."). "Since IJ [Robbins] explicitly considered alternatives to detention, Petitioner's challenge boils down to a request that this Court reweigh the evidence and testimony at the hearing, which is beyond this Court's purview." *Sheriff v. Searls*, No. 21-CV-6073-FPG, 2021 WL 6797495, at *7 (W.D.N.Y. Aug. 16, 2021).

IV. IF THIS COURT FINDS THAT THE IMMIGRATION JUDGE FAILED PROPERLY TO APPLY THE PROCEDURAL SAFEGUARDS ORDERED BY THIS COURT, IT SHOULD ORDER THAT A NEW BOND HEARING BE HELD AS OPPOSED TO SIMPLY ORDERING IZAGUIRRE'S RELEASE

"Ordinarily, the remedy in a lawsuit involving an administrative agency's actions is remand to the agency. This approach acknowledges the agency's unique expertise and its responsibility to execute the law by allowing the agency to reformulate its objectives and exercise its discretion in planning to fulfill them." *Montana Wilderness Ass'n v. United States Forest Serv.*, 146 F. Supp. 2d 1118, 1126 (D. Mon. May 21, 2001), rev'd, in part, on other grounds by 314 F.3d 1146 (9th Cir. 2003); *see Tomas v. Rubin*, 935 F.2d 1555 (9th Cir. 1991)

("In our opinion, we articulated a standard not previously applied by the Agencies . . . In light of the Agencies' 'interest in applying [their] expertise, correcting [their] own errors, making a proper record, and maintain an efficient, independent administrative system,' it is appropriate to give the Agencies the opportunity to apply the correct standard . . . made on the facts of this case.").

Even in cases where this Court has granted a motion to enforce, it has generally ordered further bond hearings. *See, e.g., Vides v. Wolf,* No. 6:20-CV-06293 EAW, 2021 WL 6797297, at *4 (W.D.N.Y. Jan. 7, 2021), enforcement denied sub nom. *Vides v. Searls,* No. 6:20-CV-06293 EAW, 2021 WL 6846277 (W.D.N.Y. May 13, 2021); *Blandon v. Barr*, 434 F. Supp. 3d 30 (W.D.N.Y. Jan. 22, 2020). Thus, should the Court find that the bond hearing was not properly conducted, it should order that another bond hearing be held, with clarifying instructions.

Respectfully submitted,

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