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

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| ABDERRAHMANE MAMADOU GUEYE,<br>*Petitioner,*<br>v.<br>KRISTI NOEM, et al.,<br>*Respondents.* | **Case No. 1:26-cv-94-TPO**<br><br>**MOTION TO ENFORCE** |

On February 16, 2026, this Court granted Petitioner Abderrahmane Mamadou Gueye's ("Mr. Gueye") petition for habeas corpus and ordered Respondents to conduct a bond hearing within seven (7) days. ECF No. 11, at 10 (Order). The Court further ordered that "[t]he government will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk." *Id.* at 9. On February 23, 2026, an immigration judge conducted a bond hearing, but despite stating that the government bore the burden of proof, the immigration judge disregarded the application of this standard. Because Respondents did not comply with this Court's order to "conduct the appropriate release determination/bond hearing under 8 U.S.C. § 1226(a)," Mr. Gueye now seeks an order of immediate release.

## FACTUAL BACKGROUND

Mr. Gueye's bond hearing took place the morning of February 23, 2026. In the early morning on February 23, counsel for the government filed two exhibits with the immigration court. Ex. 1, Conviction Records (uploaded at 7:10 am); Ex. 2, Form I-213 (uploaded at 7:32 am). The

immigration court's docketing system, known as ECAS, was not functioning for many attorneys across the country, and therefore, Mr. Gueye's counsel, Andrew Younkins could not access the documents filed by the government before the hearing, nor did he know that any documents had been filed. Ex. 3, Declaration of Mr. Younkins, ¶ 5. Without any knowledge of the government's filing, Mr. Younkins offered a proffer of evidence regarding many factors regarding flight risk, as he was unaware that the government believed Mr. Gueye to be a danger to community. *Id.* ¶ 9-11. It was only when the government made their proffer of evidence that Mr. Younkins learned of the conviction documents being submitted in the bond proceeding. *Id.* ¶ 12. Mr. Younkins indicated that he did not know that evidence had been filed in the bond proceedings. *Id.* ¶ 11-12. He was not provided additional time to review the documents with his client. *Id.* ¶ 11-12. The immigration judge stated at the bond hearing that she would deny bond based on dangerousness. *Id.* ¶ 13. Mr. Younkins raised several objections to the use of the police report as the sole piece of evidence that the government relied upon to meet their "clear and convincing" evidentiary burden of dangerousness. *Id.* ¶ 14. The immigration judge was unpersuaded and stated that she would issue a written decision, denying bond and overruling Mr. Younkins objects. *Id.* ¶ 15.

Later that same day, the immigration judge issued a written decision denying bond. Ex. 4, Order of the Immigration Judge. In this decision, the immigration judge stated that she was placing the burden of proof on the government to establish by clear and convincing evidence that Mr. Gueye is a danger to the community or a flight risk. *Id.* The immigration judge then cited multiple decisions from the Board of Immigration Appeals that specifically place the burden of proof on the noncitizen. *Id.* at 2 (citing *inter alia Matter of Urena*, 25 I. & N. Dec. 140, 141 (BIA 2009) ("An [immigration judge] should only set a bond if [the immigration judge] first determines that the [noncitizen] does not present a danger to the community."); *Matter of R-A-V-P-*, 27 I. & N.

Dec. 803, 804 (BIA 2020) (stating the burden of proof to establish bond eligibility is on the noncitizen)).

Relying on an August 10, 2020 police report, the immigration judge found that Mr. Gueye had "criminal charges for felonious assault and criminal damage or endangerment." *Id.* The court continued that even though Mr. Gueye's "plea agreement was to criminal damage" "the original arrest was due to the felonious assault. The Department argues that the Respondent is a danger to the community as the underlying facts of the conviction establish a 2020 stabbing and criminal damage." *Id.* The immigration judge noted Mr. Gueye's positive equities in that he has been present in the United States for eight years, that he previously received and paid a bond, that he has a pending I-360, Petition for Special Immigrant, and is eligible to apply for VAWA cancellation, and that he has a brother in the United States who is willing to support him. *Id.* The immigration judge held that "the Department has established based on clear and convincing evidence that the Respondent's criminal conviction establishes that he poses a danger to people or property in the United States and finds that the bond request is denied based on that record." *Id.* at 2. In denying bond, Mr. Gueye now remains detained until the conclusion of his immigration proceedings.

## ARGUMENT

### I. This Court Has Jurisdiction to Review the Bond Determination

This Court retains jurisdiction to review this motion because the Court possesses inherent authority to enforce its own orders. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("[C]ourts of justice are universally acknowledged to be vested, by their very creation, with power to impose … submission to their lawful mandates") (internal citation omitted). This authority derives 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." *Id.* (quoting *Link v.*

*Wabash R. Co.*, 370 U.S. 626, 630-31 (1962)). And while 8 U.S.C. § 1226(e) precludes jurisdiction to review an IJ's bond determination, "district courts do have jurisdiction under 28 U.S.C. § 2241 to consider any error of law in Petitioner's agency proceedings, including any claimed due process violation." *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1178 (D. Colo. 2024); *see Martinez Rodriguez v. Castro*, No. 2:25-CV-01294-KG-JFR, 2026 WL 252503, at *2 (D.N.M. Jan. 30, 2026) (holding that while § 1226(e) prevents a district court from reviewing an IJ's discretionary judgment, it does not preclude "habeas jurisdiction over constitutional claims or questions of law"); *Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *5 (N.D. Okla. June 12, 2025) (noting § 1226(e)'s restrictions but concluding that "[t]o the extent petitioner's claims challenge his detention as unconstitutional and challenge the extent of DHS's statutory authority to revoke a bond issued by an immigration judge, the Court finds that it has subject-matter jurisdiction").

This Court may review this motion without requiring Mr. Gueye to exhaust his claim before the Board of Immigration Appeals. As another judge in this district has held, "in the immigration context, 'exhaustion of remedies is statutorily required only for appeals of final orders of removal.'" *Cervantes Arredondo v. Baltazar*, No. 1:25-cv-03040-RBJ, Dkt. 26 (citing *Quintana Casillas v. Sessions*, Civ. 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. Jul. 20, 2017) (internal citations omitted)) (attached as Exhibit 5). "Here, exhaustion is merely prudential, not mandatory." *Id.* (citing *Molina Ochoa v. Noem*, 1:25-cv00881-JB-LF, 2025 WL 3125846, at *9 (D.N.M. Nov. 7, 2025) (finding that exhaustion was not a bar to consideration of habeas petition challenging denial of a bond hearing); *see also P.M. v. Joyce*, No. 22-CV-6321, 2023 WL 2401458, at *1 n.2 (S.D.N.Y. Mar. 8, 2023) ("[F]ailure to appeal the denial of bond does not preclude [a petitioner] from seeking a writ of habeas corpus for the unconstitutional deprivation of a bond hearing" especially if appealing to the Board of Immigration Appeals is futile). Exhaustion in this

case would unconditionally add to Mr. Gueye's lengthy time in detention and is unnecessary where this Court is able to review Respondents' noncompliance. *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024); *see also Luciano-Jimenez v. Doll*, 543 F. Supp. 3d 69, 71 n.1 (M.D. Pa. 2021) ("district courts have continuing jurisdiction to address alleged noncompliance with writs of habeas corpus.") (citations omitted).

## II. The Immigration Judge Violated Mr. Gueye's Due Process Rights

This Court should grant Mr. Gueye's habeas petition and order his release from detention. The Court explicitly placed the burden of proof on the government in the order bond proceeding to establish by clear and convincing evidence that Mr. Gueye would be a danger to society or flight risk, a burden-shift that the immigration judge recognized. *Compare* Dkt. 11, at 9, *with* Ex. 4, at 1. Yet, despite this recognition, the immigration judge then explicitly stated that "for a noncitizen to secure bond, the noncitizen must first demonstrate to the Court that their release would no pose a danger to people or property." Ex. 4, at 2. The immigration judge then cited 8 C.F.R. § 1236.1(c)(8), which places the burden of proof on the noncitizen and various decisions from the BIA, each of which also placed the burden of proof on the noncitizen. *Id.* (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006) (explaining that "[a]n alien in a custody determination under [8 U.S.C. § 1226(a) must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999) (same)). The immigration judge concluded by stating that "if the noncitizen is not considered a danger, the noncitizen must then establish that they are likely to appear for future immigration proceedings." *Id.* (citing *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 (BIA 2020)). At no point did the

immigration judge define the clear and convincing standard that the government was ordered to bear.

The immigration judge's decision establishes that she did not require the government to meet its burden of proof before reviewing Mr. Gueye's rebuttal evidence. Instead, as she explained in the decision, she looked at the general criteria for consideration of bond, weighed the evidence and reached a determination as to whether Mr. Gueye presented a danger to people or property. Ex. 4. This approach, however, is an incorrect application of the clear and convincing evidentiary burden being placed on the government. This "analytical approach is appropriate in a bond proceeding where, as is ordinarily the case, the noncitizen bears the burden of proving a negative—that he is not a danger to the community or a flight risk." *Cervantes Arredondo*, 25-cv-3040, at 9. When the noncitizen bears the burden, "the IJ properly weighs all of the evidence in the record cutting for and against release simultaneously and determines, based on the totality, whether the noncitizen has carried his burden." *Id.* This analysis is contrasted with the government bearing the burden of proof, as was ordered in this case. When the government bears the burden, it must first prove through evidence "that standing on its own, establishes 'a firm belief or conviction' that release on bond is not warranted should the court consider whether the noncitizen's evidence sufficiently rebuts, mitigates, or undermines the government's showing." *Id.*

Here, the immigration judge's analysis of the facts pits each factor against the others in reaching her decision, rather than a finding that DHS first met its burden of proof. *See* Ex. 4, at 2-3. In her analysis, the immigration judge refers to a police report, without more, to find that the government has met its burden of proof that Mr. Gueye is a danger to persons or property. For example, she concludes that Mr. Gueye had "criminal charges for felonious assault and criminal damage or endangerment." *Id.* (citing Ex. 1, conviction records, and Ex. 2, I-213). This conclusion,

however, is based on a paragraph where the immigration judge weighs the positive factors submitted by Mr. Gueye at his hearing against an uncorroborated police report. Moreover, there is no indication that the felonious assault charge was ever brought as it is only listed in the police report, and not in any of the judicial conviction records. *See generally* Ex. 1 (handwritten affidavit complaint only refer to vandalism, no other record of proceedings before the Hamilton County Municipal Court refers to felonious assault). The immigration judge's citation to the Form I-213 is also unavailing for the government to have met its burden of clear convincing evidence, which without more, simply states "on 09/29/2020, Gueye, Abderrahmane Mamadou was convicted of Criminal Damaging to property. Assault charges were dismissed." Ex. 2, at 4. However, it does not provide any context of proof that the charge was ever brought. The immigration judge relied on this police report of Mr. Gueye's misdemeanor conviction in holding that the government has "establish[ed] a 2020 stabbing and criminal damage" that leads the immigration judge to claim that the government met its burden of proof that Mr. Gueye's is a danger to persons or property. Ex. 4, at 2-3. A police report and a misdemeanor conviction for property damage do not establish a firm belief or conviction of his dangerousness that would meet the government's burden of proof. Based on the written decision from the immigration judge and Mr. Gueye's immigration counsel's recollection of the bond hearing, the immigration judge did not properly place the burden of proof on the government.

Moreover, even if these documents were sufficient to meet the government's burden of proof, Mr. Gueye's immigration counsel, Mr. Younkins did not have adequate time to review the documents that would be used against Mr. Gueye in his bond proceeding. Ex. 3, ¶ 12. While Mr. Younkins was familiar with the conviction documents, he was unable to prepare rebuttal or discuss the documents with his client because he was not aware that these records would be submitted in

Mr. Gueye's bond proceedings. *Id.* at ¶¶ 7, 10. 8 C.F.R. § 1003.19(d) provides that custody proceedings shall be "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." This regulation is significant because documents that are submitted in the removal proceedings are not permitted to be considered in a custody proceeding unless they are filed on the custody docket.

Moreover, the government had previously released Mr. Gueye on an order of supervision shortly after his September 2020 misdemeanor conviction for criminal damage. *See* Dkt. 8-1, ¶ 19 (On March 25, 2021, ICE released Petition from custody on an order of supervision). Because Mr. Younkins "knew that ICE had released Mr. Gueye on an order of supervision just five months after his conviction for criminal damage, there had been no change in circumstances that would warrant any reliance on these records to establish dangerousness, and the fact that the records were not filed prior to the day of the bond hearing, [he] did not fully prepare arguments against Mr. Gueye's danger to the community based on the allegations in a police report." Ex. 3, ¶ 10. This reasonable behavior prejudiced Mr. Gueye where, what was previously a nonconsequential conviction, has suddenly led to the government arguing that no bond would be sufficient to allow Mr. Gueye's release. This hearing did not comply with due process where Mr. Gueye's counsel was unaware of the evidence that would be used against him.

**CONCLUSION**

The bond proceeding held on February 23, 2026, did not comply with this Court's order. Not only did the immigration judge misapply the burden of proof as ordered by this Court, but she also prevented Mr. Gueye's counsel from rebutting the evidence submitted by DHS. Mr. Gueye requests that this Court order his immediate release. *See* ECF No. 1, Prayer for Relief ¶ 5; *Pena-Gil v. Lyons*, No. 25-CV-03268-PAB-NRN, 2026 WL 25143, at *2 (D. Colo. Jan. 5, 2026)

("'[B]ecause a federal court always retains jurisdiction to enforce its lawful judgments, including habeas judgments, the court has the authority to see that its judgment is fully effectuated.'") (quoting *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010)). Respondents should not be provided a second opportunity to conduct a bond hearing when it is clear that the immigration judge is predisposed to rule against Mr. Gueye and will not hold DHS to its burden of proof, she has previously weighed an unproven police report over all other evidence presented. Due process requires a neutral adjudicator and a fair hearing. Mr. Gueye received neither on February 23, 2026.

Dated: March 2, 2026

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

In accordance with D.C.COLO.LCivR 7.1(a), I certify that on February 27, 2026, during discussions with counsel for Respondents on the joint status report, I indicated that I would be filing a motion to enforce. As stated in the joint status report, "Respondents do not believe that any additional proceedings are necessary in this matter because the immigration judge properly considered the Court's Order and held a bond hearing pursuant to that Order." ECF 13. Thus, the parties were unable to come to agreement on how to proceed without the Court's involvement.

Dated: March 2, 2026

*/s/ Sarah L. Vuong*
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