

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

Civil Action No. 26-cv-00094-TPO

ABDERRAHMANE MAMADOU GUEYE,

Petitioner,

v.

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security;
PAMELA BONDI, U.S. Attorney General;
GEORGE VALDEZ,¹ Field Office Director, Denver Field Office, Immigration and Customs
Enforcement;
JUAN BALTASAR, Warden of Denver Contract Detention Facility;

Respondents.

RESPONSE TO PETITIONER'S MOTION TO ENFORCE JUDGMENT (ECF NO. 14)

Petitioner's Motion to Enforce Judgment (ECF No. 14, "Motion") should be denied because Respondents have complied with the Court's prior order. The Court ordered Respondents to conduct a bond hearing under 8 U.S.C. § 1226(a) at which the "government will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk." (ECF No. 11 at 9, "Order"). An immigration judge ("IJ") then conducted an individualized bond hearing, required the government to justify Petitioner's continued detention by clear and convincing evidence, weighed the evidence, and concluded that the government had met its burden. ECF No.

¹ George Valdez is the current Field Office Director and is hereby automatically substituted as a party for Robert Hagan in his official capacity, in accordance with Federal Rule of Civil Procedure 25(d).

14-4. The plain language of the IJ's decision demonstrates compliance with the Court's Order.

Petitioner argues that (1) the IJ did not abide by the Order because it did not correctly apply the clear and convincing burden, and the government did not satisfy that burden to justify Petitioner's continued detention; and (2) he was prejudiced because his counsel did not have adequate time to review the documents that the government relied upon at the hearing. He is wrong on both counts.

As explained in more detail below, the plain language of the IJ's decision belies Petitioner's allegations and demonstrates compliance with this Court's Order. Petitioner's arguments amount to a disagreement with the IJ's discretionary bond determination, which does not establish entitlement to relief. *See Vides v. Searls*, No. 6:20-cv-06293 EAW, 2021 WL 6846277, at *1 (W.D.N.Y. May 13, 2021) (in deciding a motion to enforce a court's order for a bond hearing, explaining that the court's task is "not to review the hearing evidence de novo" and "substitute its judgment for the IJ's determination," but merely to determine whether the government complied with the court's order (citation omitted)). Petitioner also has not demonstrated that he suffered substantial prejudice at the bond hearing resulting in fundamental unfairness.

Moreover, Petitioner has not exhausted his administrative remedies as would be required to challenge the IJ's bond decision. An IJ's bond determination is appealable to the Board of Immigration Appeals (BIA), 8 C.F.R. § 1003.19(f), and a prospective petitioner must exhaust that avenue before raising an issue in habeas. *See Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004) ("Generally, a habeas petition cannot be

used to substitute for direct appeal.”) (quotation marks and citation omitted). Petitioner has not done so here.

The Court should accordingly deny the Motion.

BACKGROUND

I. Petitioner’s Immigration History

Petitioner, a citizen and native of Mauritania, originally applied for asylum at a port of entry in 2018 but was placed in removal proceedings and released on bond in early 2019. ECF No. 8 at 2. In 2020, he was re-detained by ICE. *Id.* at 3. ICE subsequently released him on an order of supervision. *Id.* He was terminated from supervision in 2025 and re-detained. ECF No. 8-1, ¶ 25.

Petitioner has a criminal history—his re-detention by ICE in 2020 followed his conviction in Ohio of Criminal Damaging or Endangering. ECF No. 8 at 3. His re-detention in 2025 followed several violations of the conditions placed on him under the Alternatives to Detention (ATD) program.² See ECF No. 8-1, ¶ 25.

II. Petitioner’s Habeas Case, and this Court’s Order

Petitioner filed this habeas case in January 2026, arguing that his detention should be deemed as pursuant to 8 U.S.C. 1226(a), entitling him either to immediate release or a bond hearing. See *generally* ECF No. 1.

This Court granted the petition in part and ordered Respondents to provide

² “ICE’s Alternatives to Detention (‘ATD’) program exists to ensure compliance with release conditions and provide important case management services for non-detained aliens. ATD consists of multiple distinct subprograms . . . rel[ying] on different methods and levels of supervision.” *Alternatives to Detention (ATD)*, ICE Portal, <https://portal.ice.gov/immigration-guide/atd>.

Petitioner with a bond hearing under § 1226(a) by February 23, 2026, with the government bearing “the burden of justifying Petitioner’s continued detention by clear and convincing evidence of dangerousness or flight risk.” ECF No. 11, 9–10. Petitioner received a bond hearing on February 23, 2026, but was denied bond. ECF No. 13-1.

III. The Bond Hearing

The IJ conducted a bond hearing in compliance with the Court’s Order. Petitioner was represented by counsel at the hearing. ECF No. 14-3, ¶ 3. The government submitted evidence in advance of the hearing. ECF No. 14 at 1–2. Specifically, the government submitted Petitioner’s conviction records from the 2020 incident and an ICE Form I-23.³ ECF Nos. 14-1 and 14-2. Petitioner’s immigration counsel states that, due to a technical issue with the immigration court’s electronic filing system, he did not receive notice of the government’s documents prior to the hearing. ECF No. 14-3, ¶ 5, 6. However, he was familiar with the conviction documents submitted by the government. *Id.* ¶ 7.

The IJ issued a written decision denying the Petitioner bond. In doing so, the IJ recounted this Court’s Order for the government to bear the burden of proof by clear and convincing evidence, and the evidence submitted by the government. *See generally* ECF No. 14-4. The IJ explained that she considered the underlying facts of the 2020 conviction, which involved a stabbing and criminal damage. ECF No. 14-4 at 3. This conviction had

³ The Form I-213 (Record of Deportable/Inadmissible Alien) is a “presumptively reliable administrative document”, *Valles-Diera v. Lynch*, 659 F. App’x 480, 484 (10th Cir. 2016), that is “routinely” prepared by immigration officers as “a summary of information obtained at the time of the initial processing of an individual suspected of being an alien unlawfully present in the United States.” *Zhen Rong Lin v. Gonzales*, 230 F. App’x 795, 802 (10th Cir. 2007).

occurred while the Petitioner was released on a prior bond. *Id.* Moreover, the record showed several ATD violations, as well as Petitioner's adverse credibility when applying for asylum. *Id.* The IJ then concluded her written order by stating:

The Court recognizes that the Respondent has been in the United States for almost ten years, and has an application that has been denied but is also on appeal, which presents a flight risk. Here, 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 4.

ARGUMENT

The IJ followed the Court's Order. The IJ found that the government established, by clear and convincing evidence, the need for Petitioner's continued detention. The Motion amounts to a request for this Court to conduct a de novo review of the hearing evidence, which is outside of the Court's jurisdiction. The Motion should therefore be denied.

I. The IJ approach shows that she complied with this Court's order by holding the government to its burden to justify detention by clear and convincing evidence.

The IJ complied with this Court's Order. The IJ repeatedly noted, pursuant to this Court's Order, that the "clear and convincing evidence" standard must apply, and that she allocated that burden to the government. ECF No. 14-4.

Petitioner counters that the IJ did not apply the correct standard because she cited BIA cases that place the burden of proof on the petitioner and because she looked at the "general criteria for consideration of bond." ECF No. 14 at 5–6. These arguments lack

merit because the IJ's actual analysis demonstrates she applied the correct burden when weighing the evidence. The government presented evidence of Petitioner's dangerousness and flight risk, and the IJ explained in detail why she admitted and considered that evidence. *Id.* at 2–2. She then cited the evidence and explained how it justified Petitioner's continued detention. *Id.* at 3–4. Specifically, she cited the following:

- that Petitioner previously received bond but was then convicted of a crime;
- that the underlying facts for that conviction establish a stabbing and criminal damage;
- that Petitioner has several violations of his prior ATD conditions, and
- that Petitioner is currently waiting on an appeal of a denial of an asylum application. *Id.* at 3.

The IJ then concluded that this evidence established, "based on clear and convincing evidence," that Petitioner poses a danger to people or property, and the pending appeal demonstrates flight risk. *Id.* at 4.

The IJ did not, at any point, indicate that the Petitioner was required to submit contrary evidence to receive bond. Accordingly, even though the IJ cited BIA decisions that placed the burden on the Petitioner, she did not use those decisions to shift the burden onto Petitioner when conducting her analysis.

Petitioner next argues that the burden was shifted to him because the IJ recited the factors⁴ that she was allowed to consider to determine bond eligibility, thus

⁴ Those factors included "(1) a fixed address in the United States; (2) length of residence in the United States; (3) local family ties and whether the ties may entitle the applicant to reside in the United States; (4) employment history; (5) record of appearances in court;

demonstrating that she weighed all the evidence equally. This is not so. The IJ stated that she had latitude in deciding “which *factor* to consider, and the weight they hold,” *not* that Petitioner had the burden to establish any of those factors or that she considered all the evidence without applying the correct burden on the government. ECF No. 14-4 at 3 (emphasis added). Petitioner’s argument—that the IJ, by reciting the factors, did not place the burden on the government to demonstrate the need for bond—thus is not supported by the plain text of the IJ’s decision.

In sum, Petitioner has not shown that the IJ imposed the burden on Petitioner.

II. The IJ’s assessment of the evidence does not show that she violated this Court’s Order.

Petitioner also challenges the IJ’s conclusion. Specifically, Petitioner contends that the government did not establish, by clear and convincing evidence, the need for his continued detention. See ECF No. 14 at 6–7. But Petitioner’s arguments on this point all relate to the substance of the IJ’s analysis and how the IJ weighed the evidence, which are essentially requests for this Court to conduct its own *de novo* review of the hearing evidence.

Congress has generally deprived district courts of jurisdiction to review agency decisions on bond. See 8 U.S.C. § 1226(e) (“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

(6) criminal record and any pending criminal charges; (7) history of immigration violations; (8) attempts to flee prosecution or authorities; and (9) manner of entry.” ECF No. 14-4 at 3.

the detention of any alien or the revocation or denial of bond or parole.”). The Court’s task here in addressing the Motion thus “is narrow: it is to determine whether Respondent[s] complied with the [Order], not to review the hearing evidence de novo.” *Vides*, 2021 WL 6846277, at *1 (quoting *Apollinaire v. Barr*, No. 19-cv-625-FPG, 2019 WL 4023560, at *2 (W.D.N.Y. Aug. 27, 2019)).

Petitioner’s arguments about how the IJ analyzed the evidence does not demonstrate that the IJ failed to follow this Court’s Order. Petitioner first argues that the IJ should not have relied on an “uncorroborated police report” to deny bond because the felonious assault charge listed in the report is “not in any of the judicial conviction records.” ECF No. 14 at 6–7. Next, he argues that the IJ should not have found probative a Form I-213 presented by the Department because the Department did not present additional corroborating evidence for the criminal history description contained therein. *Id.* at 7.

These alleged deficiencies all go to the substance of the IJ’s decision, not to whether the IJ applied the correct burden of proof and are thus not reviewable by this Court. *Cf. Fuentes v. Lyons*, 808 F. Supp. 3d 733, 737 (S.D. Tex. 2025) (rejecting the petitioner’s argument that police reports are inadmissible in immigration court due to lack of jurisdiction to review the underlying IJ conduct). In any event, the IJ specifically addressed the reliability of this evidence, ultimately determining that the police and court records submitted were “probative and specific” because they were Court-issued and signed by a Judge; and the I-213 was authenticated by the signature of the Deportation Officers that created it. ECF No. 14-4 at 3.

Moreover, as discussed at length above, the government presented substantial

evidence to support the IJ's decision. Petitioner has a history of ATD violations, a criminal history involving a stabbing and damage to property, and was previously arrested after receiving bond. Petitioner's analysis of the evidence does not show that the IJ failed to comply with this Court's order by assessing whether the government presented clear and convincing evidence to justify continued detention.

III. Petitioner's due process challenge should be rejected.

Petitioner also argues that the IJ violated his due process rights at the bond hearing because his immigration counsel did not know that the government had filed two exhibits with the immigration court before the bond hearing. ECF No. 14 at 1–2, 7–8. He argues he was prejudiced because his immigration counsel was “unable to prepare rebuttal or discuss the documents” with him in preparation for the hearing. *Id.*

This argument should be rejected for multiple reasons. As an initial matter, this due process argument appears to be distinct from his argument that the IJ failed to comply with this Court's Order—which is, as explained above, the only proper focus of the Motion to Enforce. To the extent Petitioner seeks to bring a new challenge to his detention on this new alleged due process violation at the bond hearing, he would need to amend his habeas petition under 28 U.S.C. § 2242, but he has not done so.

In any event, Petitioner has not shown that the IJ violated his due process rights. He argues that because the government had previously released him on an order of supervision after the 2020 conviction, he did not expect it to use that same conviction to deny him bond now. ECF No. 14 at 8. But Petitioner's prior criminal history (and ATD violations) were circumstances that were known to him and that his immigration counsel

could have been prepared to address at the hearing, even without notice that the government would present the documents. Petitioner's immigration counsel even admits that he was familiar with these documents. ECF No. 14-3, ¶ 7. Petitioner and his immigration counsel knew that they would be scheduled for a bond hearing, were able to file evidence in support of bond, and present evidence and argument at the hearing. See *Fuentes*, 808 F. Supp. at 737 (finding that the late notice of petitioner's bond hearing "does not [rise] to the level of constitutional deficient notice"). Petitioner therefore received a fundamentally fair hearing.

Moreover, Petitioner has also failed to demonstrate substantial prejudice, as he must. "To establish fundamental unfairness sufficient to constitute a violation of due process, an alien must show that he suffered prejudice from the alleged unfairness." *Bagash v. Garland*, No. 22-9542, 2023 WL 3329344, at *2 (10th Cir. May 10, 2023) (cleaned up) (citations omitted). It is the noncitizen's burden to establish "substantial prejudice" by showing that, "but for the alleged defect, the result of the proceedings would have been materially different." *Gonzalez-Garcia v. INS*, 1995 U.S. App. LEXIS 32310, *8 (citing *Michelson v. INS*, 897 F.2d 465, 468 (10th Cir. 1990) and *Ka Fung Chan v. INS*, 634 F.2d 248, 258 (5th Cir. 1981)).⁵

Petitioner does not provide any argument that the outcome of the bond hearing would have been "materially different" had his counsel been given notice of the government's documents ahead of the hearing. He does not show how his own expectation about what evidence the IJ might rely on demonstrates that the IJ's approach

⁵ *Gonzalez-Garcia v. INS* is submitted to the Court as Exhibit B.

substantially prejudiced him at this bond hearing. Petitioner does not explain how, if his immigration counsel had prior notice and an opportunity to question him about these documents, he would have received bond.

IV. There are no grounds to release Petitioner.

Because the IJ complied with the Court's Order, there are no grounds to grant Petitioner's requested relief of immediate release. Even if there was non-compliance, the proper remedy would be to order compliance with the Court's Order, *i.e.*, to require another hearing before the IJ. Congress expressly delegated decisions on detention under § 1226(a) to the Attorney General. See 8 U.S.C. § 1226(a) ("[T]he Attorney General . . . may continue to detain the arrested alien; and . . . may release the alien . . . on bond"); see also *De La Cruz v. Baltazar*, No. 26-cv-00360-PAB, 2026 WL 439217, at *3 (D. Colo. Feb. 17, 2026) (citing 8 U.S.C. § 1226(a)(1) to deny immediate release). It would be improper for the Court to supplant that express delegation of authority by releasing Petitioner.

CONCLUSION

Respondents complied with the Court's Order by providing Petitioner, by February 23, 2026, an individualized bond hearing at which the government had the burden of showing by clear and convincing evidence that continued detention is justified. The IJ concluded that the government had carried its burden to justify continued detention on the ground that Petitioner would pose a danger to people or property in the United States. Petitioner's disagreement with the IJ's discretionary decision does not establish noncompliance with the Court's Order. The Court should therefore deny the Motion.

Dated: March 16, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record.

s/ Winnie D. Wu
U.S. Attorney's Office