IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00318-RBJ

MOVSES MIKAELYN,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Aurora ICE Processing Center, in his official capacity,
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, in his official capacity,
TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, in his official capacity,
PAMELA JO BONDI, in her official capacity as Attorney General of the United States, in her official capacity,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE, ECF No. 4

Respondents[1] respond to the Court's Order to Show Cause, ECF No. 4, in which it directed Respondents to respond to Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241, ECF No. 1 (the "Petition").[2]

The Court should deny the Petition. In the Petition, Petitioner challenges his detention as improper because, according to him, his state conviction—which is the basis for his detention

---

[1] Pursuant to Fed. R. Civ. P. 25(d), Markwayne Mullin, in his official capacity as Secretary, U.S. Department of Homeland Security, has automatically been substituted as a party.

[2] In the Order, the Court ordered Respondents to "show cause within twenty-one days from the date of service why the Petition [#1] should not be granted." ECF No. 4. Respondents received service via email on March 2, 2026, and received service via FedEx on March 4, 2026. Undersigned counsel conferred with Mr. Brian Green—who signed the Petition on behalf of

without a bond hearing—has been overturned. As explained below, Petitioner has not provided proof that his conviction has been overturned. Instead, the Colorado Court of Appeals decision attached to his Petition establishes only that Petitioner would receive a new hearing before the trial court about whether he was entitled to a new trial. It did not address the validity of his state conviction or otherwise purport to overturn it.

BACKGROUND

Legal background. The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Detention during removal proceedings for certain categories of noncitizens is governed by 8 U.S.C. § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Such detention "gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made." *Id.* at 285. 8 U.S.C. § 1231, in turn, provides the framework for detention *after* a noncitizen has been ordered removed.

During removal proceedings—before a removal order has been issued—8 U.S.C. § 1226(a) permits the government to "issue a warrant for the arrest and detention of an alien pending a decision on" removal. *Id.* at 288 (citation modified). Section 1226(c) then *requires* the detention of certain categories of noncitizens "who may *not* be released under § 1226(a)." *Id.* at 289 (emphasis in original). Specifically, the government "'shall take into custody any alien' who falls into one of several enumerated categories involving criminal offenses and terrorist

---

Petitioner, ECF No. 1 at 8—regarding the response deadline. Mr. Green agreed the deadline for Respondents' response was March 25, 2026, based on receipt of service via FedEx.

activities." *Id.* (quoting 8 U.S.C. § 1226(c)(1)). This includes those convicted of an aggravated felony. *See Demore*, 538 U.S. at 517-18; *see also* 8 U.S.C. § 1226(c)(1)(B) & § 1227(a)(2)(A)(iii). The Immigration and Nationality Act defines what constitutes an aggravated felony, and includes an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." 8 U.S.C. § 1101(a)(43)(M)(i).

Section 1226(c) does not provide individuals detained under that provision with a right to a bond hearing. Rather, it authorizes the government to release noncitizens detained pursuant to that section only if the government decides relief is necessary for witness-protection purposes *and* "the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." *Id.* § 1226(c)(4). Otherwise, § 1226(c) mandates detention "pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a).

Factual background. Petitioner is a native and citizen of Armenia. Ex. A, Decl. of A. Luquin, ¶ 4. In 2008, he was admitted to the United States at the New York, New York porty of entry on an F1 student academic nonimmigrant visa. *Id.* ¶ 5. He failed to maintain or comply with the conditions of nonimmigrant status. *Id.* ¶ 6. In February 2024, he failed to appear before an immigration judge for a hearing in removal proceedings. *Id.* ¶ 9. The immigration judge ordered him removed in absentia. *Id.* ICE subsequently detained Petitioner for removal. *Id.* ¶ 10. In June 2024, Petitioner filed a motion to reopen his removal proceedings, a request that the immigration judge granted. *Id.* ¶ 11.

Petitioner has a criminal history in the United States. *Id.* ¶ 12. On March 6, 2024, he was convicted of the unauthorized use of a financial transaction device and theft under and theft under C.R.S. § 18-5-702(1) and C.R.S. § 18-4-401(1), (2)(g), respectively. *Id.* ¶ 12.

On September 11, 2024, an immigration judge denied Petitioner's request for bond, concluding that his conviction for unauthorized use of a financial transaction device constituted an aggravated felony fraud offense. *Id.* ¶ 13. Petitioner appealed that decision and the Board of Immigration Appeals affirmed the Immigration Judge's decision. *Id.* ¶ 14. He has filed several requests for reconsideration of his bond, which have been denied. *Id.* ¶ 15.

On June 9, 2025, Petitioner filed a motion for a new bond hearing with the immigration court based on his claim that his conviction had been reversed. *Id.* ¶ 16; *see also id.*, Att. 1, Order of the Immigration Judge (June 12, 2025). The immigration judge denied the motion for a bond hearing. Ex. A ¶ 17. The immigration judge explained that Petitioner still had a conviction that qualified as an aggravated felony. *Id.*

On July 22, 2025, Petitioner filed another motion for a new bond hearing. *Id.* ¶ 18. He claimed that his criminal conviction had been reversed. *Id.* With that motion, he filed a mandate from the Colorado Court of Appeals which announced that "Judgment Reversed and Case Remanded." *Id.*; *see also id.*, Att. 2, Order of the Immigration Judge (July 28, 2025). The immigration judge denied Petitioner's motion for a new bond hearing. Ex. A ¶ 19. The immigration judge explained that Petitioner had originally filed a copy of a decision in case number 202CA705 entitled "Judgment Reversed and Case Remanded with Directions (Judgment)" with his June 6, 2025, motion for a new hearing. *Id.* That Judgment addressed Petitioner's motion for a new criminal trial, which he requested shortly after his criminal

conviction. *Id.* The immigration judge explained that the Colorado Court of Appeals had not addressed Petitioner's underlying criminal conviction in the attached decision. *Id.* Instead, the Colorado Court of Appeals determined that the trial court had improperly gone forward with a hearing on Petitioner's motion for a new criminal trial without giving him a proper advisement concerning his rights of self-representation. *Id.* The case was remanded for a new hearing on Petitioner's motion for a new trial. *Id.* Petitioner did not provide the immigration judge with proof that his conviction had been reversed. *Id.* And Petitioner has not provided proof in a request for a new bond hearing since the immigration judge denied his request. *Id.* ¶ 20.

Petitioner's conviction for Unauthorized Use of a Financial Transaction Device in violation of C.R.S. § 18-5-702(1) constitutes an aggravated felony pursuant to 8 U.S.C. § 1101(a)(43)(M) and subjects him to deportation pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii). *Id.* ¶ 21. Petitioner is detained pursuant to 8 U.S.C. § 1226(c) at the Denver Contract Detention Facility in Aurora, Colorado, while his removal proceedings are pending. *Id.*

Petitioner filed the Petition on January 26, 2026. ECF No. 1. He argues that he was improperly denied bond by an immigration judge based on his Colorado conviction of an aggravated felony—that is, for an offense involving fraud or deceit in which the loss exceeded $10,000. *Id.* at 6. He alleges that his state conviction has been overturned and that, as a result, he should be eligible for bond. *Id.* He attaches a Colorado Court of Appeals decision that he argues supports his challenge to his detention. *Id.*; *see also id.* at ECF No. 1-3. He requests that the Court issue a stay of his removal from the United States and from transfer out of Colorado while the Petition is pending. ECF No. 1 at 7. He also requests that the Court order Respondents to provide him with release on supervision or a new bond hearing within "5 or 7 days." *Id.*

ARGUMENT

Petitioner has not established that he is entitled to habeas relief. A district court may grant a writ of habeas corpus to any person who demonstrates he is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241(c)(3). "The individual in custody bears the burden of proving that their detention is unlawful." *Alfaro Herrera v. Baltazar*, 25-cv-04014-CNS, 2026 WL 91470, at *5 (D. Colo. Jan. 13, 2026) (citing *Walker v. Johnston*, 312 U.S. 275, 286 (1941)).

Here, the Court should deny Petitioner habeas relief for two reasons: (1) he has not carried his burden of demonstrating that his prior criminal conviction has been overturned and that he therefore should not be subject to mandatory detention under 8 U.S.C. § 1226(c); and (2) to the extent that he does have any proof that his prior conviction has been overturned, he has not exhausted his administrative remedies by presenting such evidence to the immigration court.

I. Petitioner has failed to establish his mandatory detention under 8 U.S.C. § 1226(c) is unlawful.

Petitioner has not carried his burden of demonstrating that his detention is unlawful. In the Petition, he appears to argue that he should not be detained under 8 U.S.C. § 1226(c) because his state conviction based on fraud has been overturned, meaning that he does not meet the conditions for mandatory detention under § 1226(c). ECF No. 1 at 6. Petitioner appears to acknowledge that if his conviction has not been overturned, he remains subject to mandatory detention under § 1226(c). *See id.* ("Now that my Colorado criminal conviction has been overturned, I should be eligible for bond."). But Petitioner has not provided the Court or Respondents with any proof that the conviction on which his § 1226(c) mandatory detention is based has been overturned.

The sole support he provides for his argument that his prior criminal conviction has been overturned is a decision from the Colorado Court of Appeals he attaches to the Petition. *See* ECF No. 1-3. But the Colorado Court of Appeals decision that Petitioner attaches did not address the validity of his conviction and did not otherwise purport to overturn his conviction. In that decision, the Colorado Court of Appeals explained that Petitioner had been convicted of the state crime of unauthorized use of a financial transaction device and theft. ECF No. 1-3 at 3; *see also People v. Mikaelyan*, 24CA0705, 2025 WL 1139993 (Colo. App. Apr. 17, 2025) (unpublished). It further explained that after the jury returned its guilty verdicts, Petitioner's lawyer withdrew from the case and Petitioner then filed a pro se motion for a new trial, based on various alleged deficiencies at the trial. ECF No. 1-3 at 3-4. The trial court appointed Petitioner new counsel for purposes of the hearing on the pro se motion for a new trial. *Id.* Ten days before the hearing, Petitioner's court-appointed counsel withdrew. *Id.* at 4. Petitioner then appeared at the hearing without counsel. *Id.* When asked by the judge whether he wished to proceed with the hearing without counsel, he indicated that he wanted to proceed. *Id.* The trial court ultimately denied the motion for a new trial. *Id.*

On appeal, the Colorado Court of Appeals determined that the trial court could not have resolved the motion for a new trial without either appointing counsel to represent Petitioner or properly advising Petitioner to ensure he had validly waived his right to counsel. *Id.* at 4-5. The Colorado Court of Appeals determined that the trial court "failed to conduct any inquiry or give [Petitioner] any advisement concerning his right of self-representation." *Id.* at 6. So, it determined that Petitioner had not validly waived his right to counsel at the hearing on his motion for a new trial. *Id.* It remanded to the trial court for further proceedings related to the

new trial motion. *Id.* Nowhere in the attached decision did the Colorado Court of Appeals reverse Petitioner's underlying conviction.

Beyond the Colorado Court of Appeals decision, Petitioner has provided no other proof that his conviction has been overturned. Accordingly, without proof of that conviction being overturned, he has not established that his mandatory detention under 8 U.S.C. § 1226(c) is improper. *Cf. Gomez v. ICE Field Office Director*, 2:25-cv-02242-TL-TLF, 2026 WL 449536, at *3 (W.D. Wash. Jan. 27, 2026) (rejecting a challenge to detention under § 1226(c) where the petitioner did "not argue or present evidence that his criminal conviction has, at this point, been reversed"). The Court should deny the Petition.

II. If Petitioner does have new evidence that his conviction has been overturned, he must first present that evidence to an immigration judge.

In addition, to the extent that Petitioner has any proof that his conviction has been reversed, he must first present that evidence to an immigration court before filing suit before this Court. 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). Exhaustion serves a key purpose as it "might result in satisfactory resolution of the issue, thereby obviating the need for judicial intervention." *Rodriguez v. Wiley*, No. 05-cv-02616-MSK-CBS, 2007 WL 496693, at *2 (D. Colo. Feb. 13, 2007). "[A]t a minimum, it will develop the factual record at the agency level, preserving necessary evidence and reducing the burdens on the courts." *Id.* Exhaustion of remedies is not required if exhaustion would be futile. *Goodwin v. State of Okla.*, 923 F.2d 156, 157 (10th Cir. 1991).

The regulations governing detention of noncitizens under 8 U.S.C. § 1226 provide for bond redeterminations by immigration judges. First, the regulations provide that when a noncitizen is detained under § 1226, they can apply for an initial bond redetermination. *See* 8 C.F.R. § 1003.19(a)-(b). Then, after an initial bond redetermination, any subsequent requests for bond redetermination "shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." *Id.* § 1003.19(e).

Petitioner has previously requested bond redeterminations from the immigration court, arguing that he should not be subject to mandatory detention because the Colorado Court of Appeals overturned his conviction. Ex. A ¶ 19. In doing so, he apparently attached the same decision that he attaches here. *Id.* But since making that argument to an immigration judge and having his request for a bond redetermination denied, Petitioner has not sought a new bond hearing before an immigration judge in which he has provided proof of his criminal conviction actually being overturned. *Id.* ¶ 21. To the extent that Petitioner possesses proof that his state conviction has been overturned, he should— before making an argument to this Court based on such proof—present that argument to the immigration court first through a request for a subsequent bond redetermination. Petitioner has made no argument about why it would be futile for him to do so.

CONCLUSION

The Court should deny Petitioner's request for immediate release or a bond hearing. Petitioner has not provided evidence that his prior criminal conviction was overturned, and thus has not established that he is improperly detained under 8 U.S.C. § 1226(c). Even if Petitioner

had such proof of his prior conviction being reversed, he must first present that evidence to an immigration judge.

Dated March 25, 2026

PETER MCNEILLY
United States Attorney

s/ Benjamin Gibson
Benjamin Gibson
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0181
benjamin.gibson@usdoj.gov

Counsel for Respondents Juan Baltazar, Todd M. Lyons, Markwayne Mullin, and Pamela Jo Bondi in their official capacities

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 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 e-mail addresses:

briangreen@greenusimmigration.com

s/ Benjamin Gibson
U.S. Attorney's Office