IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00574-WJM

GILBERTO QUIROZ ZACARIAS,

Petitioner,

v.

MARKWAYNE MULLIN,[1] Secretary, U.S. Department of Homeland Security
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
GEORGE VALDEZ,[2] Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operation's Field Office; and
JUAN BALTAZAR, Warden of the Denver Contract Detention Facility,

Respondents.

RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 19) AND ORDER TO SHOW CAUSE (ECF Nos. 18, 21)

Respondents hereby respond to the Court's Orders to Show Cause (ECF No. 18, 21), directing them to respond to the Amended Habeas Petition (ECF No. 19) by April 13, 2026. Petitioner's Amended Petition should be denied for three reasons. First, the Court lacks jurisdiction to review the substance of the Immigration Judge's ("IJ") discretionary bond decision, including the weight of the evidence or analysis conducted by the Immigration Judge. Second, Petitioner has not exhausted his administrative remedies as would be required to challenge the IJ's bond decision. Third, to the extent Petitioner contends that the IJ failed to comply with the Court's Order, the plain

---

[1] Markwayne Mullin, Secretary, U.S. Department of Homeland Security, is substituted for Kristi Noem pursuant to Fed. R. Civ. P. 25(d).
[2] George Valdez, Field Office Director, is substituted for Robert Guadian pursuant to Fed. R. Civ. P. 25(d).

language of the IJ's decision demonstrates compliance with the Court's Order.

BACKGROUND

On February 12, 2026, Petitioner filed his original habeas petition in which he challenged the basis for his detention. ECF No. 1. As relief he sought, "immediate[] release" or, in the alternative, "a bond hearing under 8 U.S.C. § 1226." *Id.* at 12. Respondents responded to the Petition. ECF No. 12. The Court granted the Petition, finding Petitioner's "detention properly falls under section 1226(a)." ECF No. 13 at 7. The Court ordered Respondents to conduct a bond hearing under 8 U.S.C. § 1226(a) at which the "Government shall bear the burden to justify [Petitioner's] continued detention by clear and convincing evidence." ECF No. 13 at 8 ("Order").

Petitioner received a bond hearing before an IJ on March 20, 2026. ECF No. 14 at 1-2 (status report). The IJ found "that [the Department of Homeland Security, "DHS"] has met its burden to establish that [Petitioner] is both a danger and a flight risk" and denied Petitioner release from custody. ECF No. 14-1 at 1. The IJ stated that she "consider[ed] the totality of the circumstances and all relevant factors" in denying bond. *Id.* She also made an alternative finding that Petitioner "has not met his burden to establish that he is neither a danger to the community nor a significant flight risk such that release from custody is warranted." *Id.*

After the bond hearing, Respondents moved unopposed to vacate the Court's Order only as to the portion of the Order that enjoins Respondents from "removing, transferring, or causing the removal or transfer [of Petitioner] from the District of Colorado until such time as this Court, or the Tenth Circuit Court of Appeals, vacates

this Order." ECF No. 15. In response, the Court ordered Petitioner to respond to the motion and "address how granting the Motion would be in Petitioner's best interest and in the interest of justice." ECF No. 16. Petitioner filed a response in which he stated that his counsel "previously indicated to government counsel that Petitioner would not oppose the Motion," but after further consideration Petitioner asserts that the bond hearing did not comply with the Court's Order. *See* ECF No. 17. The Court denied Respondents' motion to vacate and granted Petitioner leave to file an "Amended Petition seeking Alternative Habeas Relief." ECF No. 18.

In his Amended Petition, Petitioner argues that the bond hearing "did not comply with the substance of the Court's Order or the requirements of the Fifth Amendment." ECF No. 19. Specifically, Petitioner contends that (1) the IJ improperly weighed the evidence presented at the bond hearing, including failing to "meaningfully consider[]" the evidence presented by Petitioner and relying on "improper and unsupported arguments advanced" by DHS, (2) DHS failed to meet its burden to justify Petitioner's continued detention, (3) the IJ failed to "properly apply the governing burden framework mandated by this Court," and (4) the IJ issued a "conclusory" decision that "contains no reasoning or individualized analysis." ECF No. 19 at 2, 5, 8. Petitioner asserts that the bond hearing violated his substantive and procedural due process rights and failed to comply with the Court's Order. *Id.* at 7-9. As relief, Petitioner seeks immediate release from custody. *Id.* at 10-11.

ARGUMENT

The Court should deny the Amended Petition for three reasons. First, the

Amended Petition 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. Second, Petitioner failed to administratively exhaust his claims before bringing them to this Court. Third, 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 Amended Petition should therefore be denied.

I. The Court does not have jurisdiction to review the merits of the IJ's bond determination.

In the Amended Petition, Petitioner challenges the substance of the IJ's conclusion denying him release on bond. Specifically, Petitioner contends that the government did not establish, by clear and convincing evidence, the need for his continued detention, the IJ "failed to address or evaluate" the evidence he submitted, and the IJ failed to explain why the evidence DHS submitted supported denying bond. *See* ECF No. 20 at 7-9. But this Court lacks jurisdiction to review the merits of the IJ's discretionary bond decision, including the IJ's analysis and how the IJ weighed the evidence presented at the bond hearing.

The INA expressly prohibits review of an IJ's discretionary bond decision by federal district courts. Section 1226(e) bars judicial set-aside 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). Here, the Court determined that Petitioner's detention is governed by § 1226. ECF No. 11 at 6. 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); *see also Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018) (concluding that § 1226(e) does not bar challenges to "the statutory framework that permits detention without bail" but continues to preclude challenges to a discretionary judgment to detain (internal citation and quotation marks omitted)). Put simply, the IJ's "discretionary decision[s] with respect to the grant or denial of bond [are] not reviewable in this Court."[3] *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at *3 n.2 (D. Colo. Dec. 6, 2019) (explaining the Court lacked jurisdiction over Fifth Amendment due-process challenge as to bond denial); *see also Molina v. Choate*, No. 19-cv-00207-LTB, 2019 WL 13214049, at *4 (D. Colo. Mar. 22, 2019) (under Section 1226(e), an "immigration judge's discretionary decision with respect to the grant or denial of a bond is not reviewable" by a federal district court).

Here, to the extent Petitioner argues that the IJ failed to consider his evidence, improperly considered DHS's evidence, or failed to properly analyze the evidence in justifying her decision, the Court lacks jurisdiction to review those claims. 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. Accordingly, this Court lacks jurisdiction under § 1226(e) to directly review the grant or denial of bond.

---

[3] In light of § 1226(e), even those district courts that have reviewed an IJ's bond determination have usually done so very deferentially. *See, e.g.*, *Fernandez Aguirre v. Barr*, No. 19-cv-7048 (VEC), 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019) (reviewing bond determination only to determine whether the government's evidence at the bond hearing could not, as a matter of law, establish clearly and convincingly that the petitioner is a danger to the community).

II. Even if the Court had jurisdiction, Petitioner has not exhausted his administrative remedies with regard to denial of his bond.

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 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 and quotation marks omitted).

Petitioner has failed to exhaust because he still has effective administrative remedies available to him. Petitioner may appeal the IJ's denial of bond to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.19(f) ("An appeal from the [bond] determination by an Immigration Judge may be taken to the Board of Immigration Appeals. . . ."); ECF No. 20 at 3 (noting Petitioner's right to appeal). Petitioner should not be permitted to use the Amended Petition 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."). Instead, as a

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

III. The IJ complied with this Court's order by holding the government to its burden to justify detention by clear and convincing evidence.

To the extent Petitioner challenges whether the IJ's decision complied with the Court's order, as an initial matter, Respondents agree that the Court has inherent authority to ensure that its orders are carried out. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). But such authority extends to whether the process of the bond hearing complied with the Court's order. The Court ordered that a bond hearing be held, and clarified the *process*, but did not order a particular *outcome*. *See* ECF No. 13 at 8.

In this case, the IJ held a hearing as the Court required, applied the burden the Court ordered, and found that Respondents carried the burden to show that Petitioner's continued detention was justified. Whether or not the IJ made findings in the alternative, the actual findings were made in accord with the Court's order.

As explained above, in granting Petitioner's habeas petition in part, the Court required Respondents to "provide [Petitioner] a bond hearing under" 8 U.S.C. § 1226(a). ECF No. 13 at 8. It further ordered that "[a]t the bond hearing, the Government shall bear the burden to justify [Petitioner's] continued detention by clear and convincing evidence." *Id.* The IJ issued an order stating that "[a]fter considering the totality of the circumstances and all relevant factors, the Court denies bond." ECF No. 20 at 2. The IJ made alternative findings that the DHS had carried its burden, and that Petitioner had failed to carry his burden, regardless of which party bore the burden under the law and

this Court's order. *Id.* The fact that the IJ made alternative findings does not undermine that the IJ complied with the Court's order.

Accordingly, the IJ's Order shows that she conducted a bond hearing in accord with this Court's order. To the degree that any ambiguity remains regarding how the IJ evaluated the evidence or analyzed the Government's burden, Petitioner has not filed an appeal, which would trigger issuance of a formal written decision.

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. *See* ECF No. 19 at 11 (requesting "immediate release from custody"). Even if the Court finds that the IJ did not comply with the Court's order, the proper remedy would be to order compliance, *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

For the reasons stated above, the Court should deny Petitioner's Amended Petition. However, if the Court believes that additional clarification of the reasons for denial of bond is needed, the Court should order such clarification. If the Court believes

that the bond hearing did not comply with the Court's Order, the Court should order a new bond hearing. But the Court should not simply order release. *See* ECF No. 19 at 11.

Dated: April 13, 2026

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: julia.prochazka@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka
Julia M. Prochazka
Assistant United States Attorney
Counsel for Respondents