

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

Civil Action No. 26-cv-577-CYC

STANKO KUZMIC,

Petitioner,

v.

JUAN BALTASAR, Warden, GEO Group ICE Processing Center;  
GEORGE VALDEZ,<sup>1</sup> in his official capacity as Acting Field Office Director, Denver Field  
Office, U.S. Immigration and Customs Enforcement (ICE);  
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement;  
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; and  
PAMELA BONDI, U.S. Attorney General, in their official capacities,

Respondents.

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**RESPONSE TO ORDER TO SHOW CAUSE [ECF No. 4]**

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Respondents hereby respond to the Court's Order, ECF No. 4, directing them to respond to the habeas petition, ECF No. 1.<sup>2</sup> For the reasons explained below, the Court should deny the petition.

**FACTUAL BACKGROUND**

Petitioner is a native and citizen of Bosnia and Herzegovina. Declaration of

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<sup>1</sup> Acting ICE Field Office Director George Valdez is substituted for Robert G. Hagan pursuant to Fed. R. Civ. P. 25(d).

<sup>2</sup> The Court ordered that Petitioner serve Respondents with the Petition by email and overnight mail, on or before February 20, 2026. See ECF No. 4. Consistent with this, Petitioner emailed a copy of the Petition to the U.S. Attorney's Office on February 17, 2026, and mailed a copy of the Petition to Respondents on February 17, 2026. See ECF No. 6. The Court further ordered that Respondents respond to the Petition within seven days of service. See ECF No. 4. The U.S. Attorney's Office received the Petition by mail on February 19, 2026. See USPS Tracking Record, attached as Exhibit A. This response is therefore timely.

Jasper Manacop, attached as Exhibit B, ¶ 4. On May 28, 2021, Petitioner was admitted to the United States at Boston, Massachusetts on a nonimmigrant J-1 visa. *Id.* ¶ 5. Petitioner was authorized to remain in the United States for a temporary period not to exceed September 30, 2021. *Id.* Petitioner overstayed the temporary period without the authorization of DHS. *Id.* ¶ 6. Immigration and Customs Enforcement arrested Petitioner on October 23, 2025. *Id.* ¶ 7. Petitioner is detained pursuant to 8 U.S.C. § 1226. *Id.* ¶ 8.

On November 3, 2025, Petitioner filed a motion for custody redetermination hearing before the Immigration Judge (“IJ”). EOIR scheduled the hearing for November 7, 2025. On November 5, 2025, Petitioner filed a motion to withdraw bond request, which the IJ granted. *Id.* ¶ 11. On November 12, 2025, Petitioner filed a second motion for custody redetermination hearing. Petitioner later filed a motion to withdraw his bond request, which the IJ granted. *Id.* ¶ 12. On November 26, 2025, Petitioner filed a third motion for custody redetermination hearing. *Id.* ¶ 13.

On December 4, 2025, the IJ held a custody redetermination hearing. *Id.* ¶ 14. The IJ denied release on bond after finding that Petitioner failed to establish that he is not a flight risk. *Id.* On December 18, 2025, Petitioner appealed the IJ’s bond decision to the Board of Immigration Appeals (BIA). *Id.* ¶ 16. On January 13, 2026, the BIA issued a briefing schedule and set February 3, 2026, as the filing deadline for both parties. *Id.* ¶ 17. On February 3, 2026, Petitioner filed his brief on appeal in bond proceedings with the BIA. *Id.* ¶ 18. The appeal remains pending before the BIA. *Id.*

## STATUTORY FRAMEWORK

In the Immigration and Nationality Act, Congress authorized immigration officials to charge noncitizens (referred to as “aliens” in the Act) as removable from the country and to arrest such noncitizens. The Act specifies when immigration officials may (or must) detain those noncitizens while their removal proceedings are pending, and when those noncitizens may be released. For individuals detained under 8 U.S.C. § 1226(a), the Department of Homeland Security (“DHS”), acting on behalf of the Attorney General, has the discretionary authority to detain or release a noncitizen during removal proceedings. See 8 U.S.C. § 1226(a)(1)-(2). DHS’s procedures for making this determination are specified in regulations. See 8 C.F.R. §§ 236.1, 1003.19, 1236.1. A noncitizen does not have a right to release. See *Matter of D-J-*, 23 I. & N. Dec. 572, 575 (A.G. 2003) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)).

When a noncitizen is apprehended under § 1226(a), DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). Alternatively, DHS may, in its discretion, release the noncitizen, “provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8); see also 8 U.S.C. § 1226(a)(2) (DHS “may release the alien”). By regulation, a DHS officer makes this initial custody determination. See 8 C.F.R. § 236.1(c)(8).

If DHS determines that a noncitizen apprehended under § 1226(a) should remain detained during the noncitizen’s removal proceedings, the noncitizen may request a

custody redetermination hearing (a “bond hearing”) before an immigration judge (“IJ”). See *id.* §§ 236.1(d)(1), 1003.19, 1236.1(d). The IJ decides whether to detain or release the noncitizen, evaluating whether he poses a flight risk or a danger to the community. See *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); see also 8 C.F.R. § 1003.19(d) (“The determination of the [IJ] as to custody status or bond may be based upon any information that is available to the [IJ] or that is presented to him or her by the alien or [DHS].”). The Board of Immigration Appeals (“BIA”)—whose decisions are binding on the immigration courts—has placed the burden of proof at bond hearings on the noncitizen to show that he does not present a danger to persons, property, or national security, and does not pose a risk of flight. See *Matter of Guerra*, 24 I. & N. Dec. at 38, 40; *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1111-13 (BIA 1999).

If the IJ concludes that the noncitizen should not be released after the hearing, the noncitizen may appeal the IJ’s decision to the BIA. See 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3), 1003.38. Also, if circumstances materially change after an initial bond hearing but before the noncitizen receives a final order of removal, the noncitizen may request a subsequent bond hearing. See *id.* §§ 236.1(d)(1), 1003.19(e), 1236.1(d)(1). The noncitizen may appeal any adverse decision in a subsequent bond hearing to the BIA as well. See, e.g., *Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

## DISCUSSION

### **A. The review Petitioner seeks should be deemed precluded because he did not exhaust available administrative remedies prior to filing suit.**

Ordinarily, a petitioner must exhaust administrative remedies before seeking a

writ of habeas corpus under § 2241. See *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Though § 2241 does not expressly require administrative exhaustion, courts regularly require, as a prudential matter, that immigration detainees exhaust the available administrative remedies before seeking habeas relief. See, e.g., *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (holding that a § 1226(a) detainee's pursuing habeas review of the IJ's adverse bond determination before appealing to the BIA was an "improper" "short cut"); *Torres v. Decker*, No. 18-CV-10026 (VEC), 2018 WL 6649609, at \*1-2 (S.D.N.Y. Dec. 19, 2018) (staying habeas case brought by § 1226(a) detainee pending the BIA's disposition of his appeal of the IJ's bond denial); *Bravo v. Green*, No. 16-4937 (JLL), 2017 WL 2268315, at \*3 (D.N.J. May 24, 2017) ("A district court may not review the merits of an immigration detainee's habeas claims unless and until he has properly exhausted his administrative remedies." (citing cases)); see also *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.").

Here, Petitioner appealed the IJ's bond determination to the BIA, see 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3), 1003.38, but he did not wait for the BIA to decide the matter before filing this case. See ECF No. 1 ¶¶ 36. Instead, Petitioner argues that "an appeal to the BIA premised on the argument that the BIA's allocation of the burden of proof to the noncitizen violates the Constitution would be futile." *Id.* ¶¶ 21. In support, Petitioner cites BIA decisions affirming this allocation, noting that BIA decisions are binding both on IJs and on the BIA itself. *Id.* ¶¶ 21, 26 (citing *Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018), *In re Adeniji*, 22 I. & N. Dec. at 1116).

A “narrow exception” to administrative exhaustion exists where the petitioner demonstrates that exhaustion is futile. *Garza*, 596 F.3d 1203. However, no such exception is warranted here, because the burden-of-proof allocation adopted by the BIA does not preclude it from making a finding in his favor. Even assuming *arguendo* that it would have been futile to raise before the BIA the due process arguments Petitioner makes here, Petitioner could have raised other arguments. Most notably, Petitioner could have asked the BIA to reconsider the IJ’s determination that his “release would present an unacceptable flight risk.” ECF No. 1-2 at 2. As the IJ’s Memorandum of Bond Decision and Order makes clear, he found the question whether to grant bond to Petitioner to be a “close case.” *See id.* The IJ found, unequivocally, that Petitioner “is not a danger to persons or property,” and noted factors that suggest Petitioner is not a flight risk: he is economically self-sufficient, has his own business, has paid taxes since 2021, and has significant support from the community. *Id.* As such, it is possible—perhaps even likely—that the BIA will grant bond.

If Petitioner prevails on the merits before the BIA, that favorable decision will moot the constitutional question before the Court. *See Torres*, 2018 WL 6649609, at \*2 (“Regardless of who has the burden of proof, if the BIA is persuaded by [Petitioner’s other arguments], then it could grant Petitioner release on bond—thereby mooting the constitutional and statutory challenges Petitioner raises here.” (citing cases)). As such, the Petition should be denied, as Petitioner has not exhausted his administrative remedies.

**B. Petitioner received a bond hearing that comports with due process.**

Petitioner claims his bond hearing was not constitutionally adequate because he was required to carry the burden of proof. See, e.g., ECF No. 1 ¶ 2. But due process does not require that the government bear the burden of proof at a bond hearing.

**1. The statutory and regulatory text do not support Petitioner's argument that the government must bear the burden of proof at § 1226(a) bond hearings.**

As Petitioner acknowledges, Section 1226(a) is silent on the burden of proof in bond proceedings. ECF No. 1 ¶ 25. The statute simply states that the government “may continue to detain” an arrested noncitizen, or it “may release” him on bond. 8 U.S.C. § 1226(a) (emphases added). As the Supreme Court has observed, nothing in that statutory delegation of discretion “even remotely supports” imposing a clear-and-convincing burden of proof on the government at a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018). Moreover, the statute’s implementing regulations make clear that the burden of proof should fall on the noncitizen. See 8 CF.R. § 236.1(c)(8) (“[T]he alien must demonstrate to the satisfaction of the [DHS] officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” (emphasis added)).

**2. Supreme Court precedent suggests that noncitizens must bear the burden of proof at § 1226(a) bond hearings.**

The Supreme Court has long affirmed the constitutionality of detaining noncitizens pending removal proceedings, even though the government has not been required to bear the burden of proof to justify detention in those proceedings. See *Demore v. Kim*, 538 U.S. 510, 531 (2003); *Reno v. Flores*, 507 U.S. 292, 305-06 (1993);

*Carlson v. Landon*, 342 U.S. 524, 538 (1952). In *Zadvydas v. Davis*—a case involving noncitizens subject to final removal orders and detained under 8 U.S.C. § 1231 for extended periods—the Supreme Court placed the initial burden on the noncitizen to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001). Likewise, in *Demore*, the Supreme Court rejected a due-process challenge to § 1226(c) detention, even though § 1226(c) does not allow for any bond hearings and expressly puts the burden on the noncitizen in the only situation in which release is permitted under that provision. See 538 U.S. at 531; see also 8 U.S.C. § 1226(c)(2) (providing that a § 1226(c) detainee may be released if it is “necessary” for witness protection and the detainee “satisfies the Attorney General” that he “will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding”). It concluded that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore*, 538 U.S. at 531. Finally, in *Carlson*, the Supreme Court rejected a due process challenge by noncitizens detained pending removal proceedings under the predecessor to § 1226(a), reasoning that Congress intended the government’s discretionary detention decisions to be treated as “presumptively correct and unassailable except for abuse.” 342 U.S. at 540; see also *Nielson v. Preap*, 139 S. Ct. 954, 959-60 (2019) (a § 1226(a) detainee “may secure his release *if he can convince* the officer or [IJ] that he poses no flight risk and no danger to the community” (emphasis added)).

Relying on these Supreme Court cases, the Third, Fourth, and Ninth Circuits

have concluded that the Constitution does not require the government to bear the burden of proof at § 1226(a) bond hearings. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) (holding § 1226(a)'s procedures satisfy due process and petitioner was not entitled to a second bond hearing at which the government bore the burden); *Miranda v. Garland*, 34 F.4th 338, 361-65 (4th Cir. 2022) (rejecting the argument that due process requires the government to bear the burden at § 1226(a) bond hearings); *Borbot v. Warden Hudson County Corr. Fac.*, 906 F.3d 274, 279 (3d Cir. 2018) (“perceiv[ing] no problem” with placing burden on the noncitizen at § 1226(a) bond hearings).

Courts in this District have similarly concluded that due process does not require the government to bear the burden to justify detention at § 1226(a) bond hearings. See *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066, 1073-74 (D. Colo. 2020) (detainee had two bond hearings at which he bore the burden of proof; the court held those procedures comported with due process in light of *Demore* and *Jennings* and “the Supreme Court’s broad view of congressional and executive power in immigration proceedings”); *Molina v. Choate*, No. 19-cv-00207-LTB-GPG, 2019 WL 13214049, at \*3 (D. Colo. Mar. 22, 2019) (noting that, in the pre-removal-order context, “detention is pending adjudication of [the detainee’s] removability from the country and, as such, it is not ‘indefinite’” (citing *Demore*, 538 U.S. at 529)).

Petitioner relies on *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211 (D. Colo. July 19, 2019), in which the court held the burden of proof should fall on the government. See ECF No. 1 ¶ 28. The court’s reasoning there turned largely on

“the burdens and protections applicable in non-immigration contexts.”<sup>3</sup> *Diaz-Ceja*, 2019 WL 2774211, at \*8. But this reasoning fails to acknowledge that the process due to noncitizens in removal proceedings is less than in other detention contexts. See *Rodriguez Diaz*, 53 F.4th at 1213; *Miranda*, 34 F.4th at 358; *Basri*, 469 F. Supp. at 1072. In the immigration context, “any policy toward [noncitizens] is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Demore*, 538 U.S. at 522 (citation omitted). Consequently, “[i]n the exercise of its broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 521 (citation omitted). The reasoning in *Basri*—and *Rodriguez Diaz*, *Miranda*, and *Borbot*—is far more consistent with the special considerations in the immigration context and applicable Supreme Court precedent than *Diaz-Ceja* and other cases that have imposed the burden of proof on the government.

**3. The existing § 1226(a) bond procedures pass the *Mathews* test.**

Under the Supreme Court’s decision in *Mathews v. Eldridge*, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” 424 U.S. 335, 333 (1976) (citation omitted). Due process “is flexible and calls for such procedural protections as the particular situation demands.” *Id.* at 334 (citation omitted). In assessing whether a procedural framework affords due

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<sup>3</sup> *Diaz-Ceja* also relied on *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), a case that involved detention under a different provision, § 1226(c), and which has likely since been abrogated. See *Rodriguez Diaz*, 53 F.4th at 1202 & n.4, 1211.

process, courts typically look at three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest. *See id.* at 335. In the immigration context, courts must "weigh heavily" the fact "that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Under *Mathews*, the procedural protections afforded to noncitizens under § 1226(a) already provide ample due process. *See Rodriguez Diaz*, 53 F.4th at 1202, 1207-10; *Miranda*, 34 F.4th at 358-66.

**Factor 1 – Private interest.** As to the first *Mathews* factor, while Petitioner has a private interest at stake, that interest—as a noncitizen facing removal proceedings—is much weaker than if he were a citizen or were not facing removal. *See Demore*, 538 U.S. at 521-23 (this is because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government," which are core sovereign powers); *Miranda*, 34 F.4th at 359-61. In particular, Petitioner does not have a strong interest in avoiding the burden of proof at a bond hearing, given that he has the right to present evidence and have a neutral IJ assess it and rule in his favor if the preponderance supports release. Further, the private interest must also account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody pending removal proceedings. *See Demore*, 538 U.S. at 530.

**Factor 2 – Risk of erroneous deprivation.** As to the second factor, the framework governing noncitizens' detention under § 1226(a) and the applicable regulations provide extensive safeguards against erroneous deprivation of liberty, while also protecting the government's interests to ensure noncitizens do not abscond or commit crimes while removal proceedings are ongoing. *See Nielson*, 139 S. Ct. at 966 (recognizing that § 1226(a) reflects Congress's intent to afford "broad discretion" to the government in determining which individuals should remain detained during removal proceedings).

The procedural safeguards under § 1226(a) are "extensive." *Rodriguez Diaz*, 53 F.4th at 1202. First, DHS makes an individualized custody determination and may release a noncitizen if it determines that the noncitizen is not a danger and is likely to appear at removal proceedings. *See* 8 C.F.R. §§ 236.1(c)(8); 1236.1(c)(8). A noncitizen may request review of DHS's decision by an IJ at a bond hearing. *See id.* §§ 236.1(d)(1), 1236.1(d)(1). At the hearing, the IJ decides whether to release the noncitizen based on the evidence presented, with the noncitizen bearing the burden of proof that he is neither a danger to the community or a flight risk. *See id.* § 1003.19(d); *Matter of Guerra*, 24 I. & N. Dec. at 38, 40. If the IJ denies bond, the noncitizen may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3), 1003.38. Lastly, if the noncitizen's circumstances materially change, he may request another bond hearing. *See* 8 C.F.R. § 1003.19(e). These procedures ensure that the risk of erroneous deprivation is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1210 (citation omitted).

**Factor 3 – Government’s interest.** As to the third factor, the government has an important interest in maintaining the existing burden-of-proof framework. The noncitizen is often in the best position to provide evidence relevant to his lack of dangerousness. The government may have little to no information about a detained noncitizen apart from the fact that he is not a citizen and is not in the country legally. Placing a clear-and-convincing burden of proof on the government at § 1226(a) bond hearings—a higher burden than noncitizens currently have—would put the government in an untenable position at many bond hearings. That shifting burden and elevated proof standard could lead to the release of an inadmissible noncitizen, even where a neutral IJ determines the preponderance of the evidence shows he poses a danger or flight risk.

More generally, “the government clearly has a strong interest” in preventing noncitizens from “remain[ing] in the United States in violation of our law.” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). Detention during the removal process serves a valid governmental purpose by avoiding the risk of noncitizens “skipping their hearings and remaining at large in the United States unlawfully.” *Demore*, 538 U.S. at 528. It promotes the prompt execution of removal orders, in which “[t]here is always a public interest.” *Nken v. Holder*, 556 U.S. 418, 436 (2009) (citation omitted). Detention also increases the chance that, if ordered removed, the noncitizen will be successfully removed. See *Rodriguez Diaz*, 53 F.4th at 1208 (citing *Demore*, 538 U.S. at 528). “These are interests of the highest order that only increase with the passage of time” because as removal becomes more imminent, the

likelihood that the noncitizen will abscond increases. *Id.* at 1208-09.

In short, the *Mathews* balancing test shows that the § 1226(a) bond hearing procedures comport with due process.

**C. Petitioner's claim under the APA is without merit.**

Petitioner also asserts that his detention violates the APA. See ECF No. 1, ¶¶ 42-44. As an initial matter, the IJ's decision to deny bond is not a "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. As discussed above, Petitioner's initial recourse was to file an appeal to the BIA—which he did, but which has yet to be adjudicated. Therefore, the Court lacks jurisdiction to consider Petitioner's APA claim. See *id.*; *Colo. Farm Bur. Fed'n v. U.S. Forest Serv.*, 220 F.3d 1171, 1173 (10th Cir. 2000).

Even if the Court had jurisdiction, it should reject Petitioner's APA claim. Petitioner's APA argument amounts to a collateral attack on a twenty-five-year-old BIA decision, *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999). He contends that *Adeniji* was an arbitrary and capricious agency action. *Adeniji* determined that in § 1226(a) bond hearings, the detainee bears the burden of demonstrating to the satisfaction of the IJ (*i.e.*, by a preponderance of the evidence) that release did not pose a danger to the community or a flight risk. See *id.* at 1112-13. The BIA reasoned that the standards articulated in 8 C.F.R. 236.1(c)(8) for ICE's custody and bond determinations could be applied to bond hearings before an IJ because the predecessor to 8 C.F.R. § 1003.19(a) provided that the IJ could review those determinations. See *id.* This reasoning is sound, and is not arbitrary and capricious.

### CONCLUSION

For the reasons set forth *supra*, the Court should deny the Petition.

Dated: February 25, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on February 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:

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s/ Katherine Ross  
U.S. Attorney's Office