

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

Civil Action No. 1:26-cv-00777

JOSE MILLAN OLIVAS,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S.
Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs
Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland
Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

PETITIONER’S EMERGENCY MOTION TO CLARIFY COURT ORDER

INTRODUCTION

Petitioner, JOSE MILLAN OLIVAS, by and through undersigned counsel, respectfully moves for clarification of the Court’s March 10, 2026, Order granting habeas relief in part and directing that Respondents to provide Olivas with a bond hearing within seven days before an Immigration Judge. ECF No. 11.¹ Olivas seek clarification whether Respondents bear the burden of proving by clear and convincing evidence at that hearing that Olivas’s continued detention is justified.

¹ Pursuant to D.COLO.LCivR 7.1, undersigned counsel conferred with Respondents’ counsel, Garreth Winstead, who indicated that Respondents oppose this Motion.

This Court has already determined that Olivas is entitled to a bond hearing. ECF No. 11. But unless the Court clarifies the governing burden of proof, the hearing ordered by the Court risks proceeding under an incorrect or inconsistent framework. That question is not secondary to the relief the Court has already granted. In an immigration custody proceeding, the allocation of the burden of proof often determines whether the hearing functions as a meaningful safeguard against unjustified detention or merely as a formal exercise.

The issue is especially consequential here, where Olivas remains detained and the Court has already concluded that he is entitled to greater process than he has received. If Respondents are permitted to argue at the hearing that Olivas bears the burden of proving why he should be released, the practical effect would be to dilute the relief this Court ordered. Clarification is therefore necessary to ensure that the bond hearing proceeds under the correct legal standard and in a manner consistent with the Court's intent.

DISCUSSION

On March 10, 2026, this Court issued an Order granting in part the Petition for Writ of Habeas Corpus and ordering that Respondents provide Olivas with a bond hearing before an Immigration Judge within seven days by March 17, 2026. ECF No. 11. The Order, however, does not specify whether Respondents bear the burden of proving by clear and convincing evidence that Olivas's continued detention is warranted. ECF No. 11.

This issue is material to the implementation of the Court's Order. In immigration custody proceedings, the allocation of the burden of proof can determine the outcome of the hearing. Without clarification from this Court, the parties and the Immigration Court may apply differing legal frameworks when attempting to implement the Court's directive. This is not a hypothetical concern. As undersigned counsel has experienced in practice, when a district court orders a bond

hearing but does not expressly identify the burden of proof, confusion results as to whether the Government must justify detention or whether the noncitizen must prove entitlement to release—even where the recent decisions in this District overwhelmingly place that burden on Respondents by clear and convincing evidence. Clarification from this Court would eliminate that uncertainty and ensure that the hearing is conducted under the correct legal framework and provides the process this Court intended to require.

The law in this District strongly supports placing the clear and convincing burden on Respondents. Courts in the District of Colorado have repeatedly concluded that where continued civil immigration detention is at issue, and liberty is at stake, the Government must justify detention by clear and convincing evidence. *See also, e.g., Cervantez Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, slip op. at 9 (D. Colo. Oct. 31, 2025) (concluding that “the clear and convincing standard that generally applies to civil detention where liberty is at stake is appropriate here as well”); *Garcia Abanil v. Baltazar*, ___F. Supp. 3d___, 2026 WL 100587, at *8 (D. Colo. Jan. 14, 2026) (finding clear and convincing standard appropriate where noncitizen's "liberty interest hangs in the balance"); *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR, 2025 WL 2962908, at *10 (D. Colo. Oct. 17, 2024) (imposing clear and convincing standard on Government), *appeal docketed*, No. 25-1460 (10th Cir. Dec. 16, 2025); *cf. Addington v. Texas*, 441 U.S. 418, 432-33 (1979) (ordering "clear and convincing" standard in civil commitment proceedings and observing that the Supreme Court had imposed a comparable burden in "deportation" and "denaturalization" cases).

That same principle applies here. As the Court already found, Olivas is detained under 8 U.S.C. § 1226(a) and is entitled to an individualized bond hearing. ECF No. 11. Because Olivas’s physical liberty is at stake, and because this Court has already concluded that he was denied the

process due to him, it follows that Respondents should bear the burden of establishing by clear and convincing evidence that continued detention is warranted. Anything less would undermine the significance of the hearing this Court has ordered.

This conclusion is also consistent with the weight of recent authority in this District. In *Garcia Abanil*, the court observed that “the weight of authority in this District” makes clear that “it is the Government’s burden to justify a noncitizen’s continued detention at a bond hearing.” *Garcia Abanil v. Baltazar*, __F. Supp. 3d__, 2026 WL 100587, at *8 (D. Colo. Jan. 14, 2026). Other decisions are in accord. *See Arauz v. Baltazar*, 2025 WL 3041840, at *4 n.3 (D. Colo. Oct. 31, 2025); *Espinoza Ruiz v. Baltazar*, 2025 WL 3294762, at *2 (D. Colo. Nov. 26, 2025) (ordering that the Government would carry the burden for bond hearing under §1226(a)); and *Loa Caballero v. Baltazar*, 2025 WL 2977650, at *9 (D. Colo. Oct. 22, 2025) (“During such [§ 1226(a) hearing, the Respondents bear the burden of justifying detention.”).

Accordingly, clarification is warranted. The Court has already ordered the remedy of a bond hearing. Olivas asks only that the Court clarify the legal standard necessary to ensure that the hearing is conducted as a meaningful safeguard against erroneous detention and in conformity with the prevailing law of this District.

CONCLUSION

Olivas therefore respectfully requests that the Court clarify whether, at the bond hearing ordered by this Court, Respondents bear the burden of proving by clear and convincing evidence that Olivas’s continued detention is justified.

Dated this 11th day of March 2026.

Respectfully submitted,

/s/ Skylar M. Larson

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2026, I electronically filed the foregoing **Petitioner's Emergency Motion to Clarify Court Order** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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