

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

Civil Action No. 1:26-cv-00777-NRN

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<sup>1</sup>, 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.

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**RESPONDENTS' RESPONSE TO MOTION TO ENFORCE COURT ORDERS [ECF 14]**

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Respondents respectfully request that the Court deny Petitioner's Motion to Enforce Court Orders ECF Nos. 11 and 13 (ECF 14).

Petitioner alleges that his bond hearing, which was held on March 17, 2026, did not comply with this Court's order. However, the Immigration Judge did conduct the hearing in a manner consistent with this Court's order, and therefore Petitioner's motion should be denied. If the Court believes that additional information is needed to determine whether the Immigration Judge followed this Court's order, then the Court should order that the Immigration Judge issue a clarification on any ambiguous points. If the Court finds that the bond hearing did not proceed in

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<sup>1</sup> Markwayne Mullin is substituted for Kristi Noem pursuant to Fed. R. Civ. P. 25(d).

accord with this Court's order, it should order that a new hearing be held.

However, the Court should not merely second-guess the outcome of the bond hearing, as doing so would go beyond enforcing this Court's orders, and would instead be a *de-facto* review of the immigration court without proper jurisdiction or administrative exhaustion.

### **Background**

Petitioner filed his habeas petition on February 25, 2026. ECF No. 1. This Court granted the petition in part on March 10, 2026, and ordered that Petitioner be given a bond hearing by March 17, 2026. ECF No. 11. On March 11, 2026, Petitioner filed his Emergency Motion to Clarify Court Order. ECF No. 12. Without ordering a response from Respondents, the Court issued a minute order clarifying that it was shifting the burden of proof by clear and convincing evidence onto Respondents. ECF No. 13.

A bond hearing was held in accordance with the Court's order on March 17, 2026, and Respondents filed a status report on March 20, 2026. ECF No. 15. Petitioner filed the instant motion to enforce on March 19, 2026. ECF No. 14. On March 25, 2026, Petitioner also filed a motion for Respondents to produce Petitioner in person for a hearing on his motion to enforce. ECF No. 17. The Court, again without ordering a response from Respondents, issued a minute order on March 26, 2026, granting Petitioner's motion. ECF No. 18.

### **Argument**

Petitioner alleges three faults with his bond hearing: first, that the Immigration Judge equivocated about whether there was jurisdiction to conduct the hearing; second, that the Immigration Judge equivocated about who bore the burden; and third, that the Immigration Judge did not properly weigh the evidence.

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. 11 at 6.

In this case, the Immigration Judge held a hearing as the Court required, applied the burden the Court ordered, and found that Respondents carried the burden to show that Petitioner was a flight risk and danger to the community. Whether or not the Immigration Judge questioned the basis of jurisdiction or the validity of the shifting of burdens, or made findings in the alternative, the actual findings were made in accord with the Court's order, and other comments or questions made by the Immigration Judge do not undermine the validity of those findings.

To the degree that Petitioner is seeking to have this Court review the ultimate outcome of the bond hearing, the Court lacks jurisdiction, and Petitioner has not exhausted his remedies. Accordingly, the motion should be denied.

**I. The record of the conduct of the hearing shows that the IJ complied with this 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. 11 at 6. It further ordered that "[a]t the bond hearing ordered by the Court . . . Respondents bear the burden of providing by clear and convincing evidence that Petitioner's continued detention is justified due to dangerousness or flight risk." ECF No. 13.

During the hearing, the Immigration Judge invited Petitioner to begin argument. ECF No. 14 at 15. However, after Petitioner's counsel clarified that this Court had ordered that the burden be shifted to the government, the Immigration Judge turned to counsel for the Department of Homeland Security to begin argument. *Id.* at 16. This procedure is consistent

with the Immigration Judge complying with this Court's order and shifting the burden. Finally, the Immigration Judge made alternative findings that the Department of Homeland Security 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.* at 18. The fact that the Immigration Judge made alternative findings does not undermine that the Immigration Judge complied with the Court's order.

The Immigration Judge also informed Petitioner as follows: "If you file an appeal, the court will issue a formal decision." *Id.* No such appeal has been filed.

Accordingly, the transcript shows that the Immigration Judge conducted a bond hearing in accord with this Court's order. To the degree that any ambiguity remains, Petitioner has not filed an appeal, which would trigger issuance of a formal decision.

**II. Congress has decided that the Court does not have jurisdiction to directly review the IJ's bond determination.**

The INA expressly prohibits judicial 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) (citation modified) (citation omitted). Put simply, the Immigration Judge's "discretionary decision[s]

with respect to the grant or denial of bond [are] not reviewable in this Court.”<sup>2</sup> *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).

Accordingly, this Court lacks jurisdiction under § 1226(e) to directly review the grant or denial of bond.

**III. Even if the Court had jurisdiction, Petitioner has not exhausted his 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 habeas 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 omitted).

Petitioner has failed to exhaust because he still has effective administrative remedies

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<sup>2</sup> 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).

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. 14 at 18 (noting Petitioner's right to appeal). Petitioner should not be permitted to use the Motion as a "substitute for direct appeal" to the BIA. *Soberanes*, 388 F.3d at 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.

#### Conclusion

For the reasons stated above, the Court should deny the Petitioner's motion. 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, or grant other unrelated relief that Petitioner requests.

Date: March 30, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on March 30, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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