

**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 REPLY IN SUPPORT OF MOTION TO ENFORCE COURT ORDERS  
ECF NOS. 11 AND 13**

---

**INTRODUCTION**

Petitioner JOSE MILLAN OLIVAS, by and through undersigned counsel, respectfully submits this reply in support of his Motion to Enforce the Court's Order at ECF No. 14 and in response to Respondents' Response dated March 30, 2026, at ECF No. 19.

Respondents attempt to recast Olivas's Motion to Enforce as an improper appeal from an adverse bond decision, but that framing is wrong. Olivas is not asking this Court to second-guess an ordinary discretionary bond ruling. He is asking this Court to decide whether Respondents complied with this Court's unambiguous Orders requiring that he be provided a bond hearing under 8 U.S.C. § 1226(a), and that at that hearing Respondents bear the burden of proving by clear and convincing evidence that continued detention was justified. *See* ECF Nos. 11, 13.

The March 17, 2026, hearing did not comply with this Court's Orders. The Immigration Judge did not proceed as though jurisdiction to conduct the ordered § 1226(a) hearing was settled, did not actually conduct the hearing under the burden-shifting framework this Court imposed, and denied bond through expressly conditional and alternative findings that avoided committing to the legal framework this Court required. Respondents' effort to characterize those defects as immaterial "comments or questions" fails because those issues were not collateral. They were the core predicates of the hearing this Court ordered.

### **ARGUMENTS**

#### **I. The March 17 Hearing Did Not Comply with the Court's Order Requiring a § 1226(a) Bond Hearing.**

Respondents argue that the Immigration Judge "held a hearing as the Court required" and that any questions she raised about jurisdiction do not undermine compliance because "the actual findings were made in accord with the Court's order." ECF No. 19 at 3. The record shows otherwise.

The Immigration Judge repeatedly framed her authority in expressly conditional terms, stating in substance that she would rule only "if" the habeas order provided jurisdiction or "should" the habeas order provide authority to set bond. That conditional language is not incidental. It shows that the Immigration Judge did not actually accept as settled that she was conducting the § 1226(a) hearing required by this Court.

Respondents attempt to minimize this problem by characterizing the Immigration Judge's statements as mere "comments or questions." ECF No. 19 at 3. But jurisdiction was not a passing side issue. It was the threshold legal basis for the hearing. If the adjudicator proceeds only on the hypothetical premise that she may have authority to conduct the hearing, then the hearing is not being carried out under the settled legal framework the district court ordered.

The discrepancy between the hearing transcript and the written order confirms the problem rather than curing it. As Olivas explained, the written order later stated that DHS contested jurisdiction, even though the hearing transcript reflects that DHS stated, “there is jurisdiction” and the Immigration Judge initially acknowledged that concession. Respondents do not meaningfully address that inconsistency. Instead, they suggest that further “clarification” from the Immigration Judge could resolve any ambiguity. ECF No. 19 at 1, 6. But that fallback position only underscores that the hearing record does not reflect straightforward compliance with this Court’s Order. If the hearing had actually proceeded under the required legal framework, there would be nothing material to clarify.

For those reasons, the March 17 proceeding was not the § 1226(a) bond hearing this Court ordered. Because the Immigration Judge did not proceed from the settled premise that she had authority to conduct that hearing, Respondents failed to provide the hearing Olivas was entitled to under ECF Nos. 11 and 13. Olivas is therefore correct that the Court’s order was not obeyed.

**II. Even Assuming the March 17 Hearing Could Be Treated as a § 1226(a) Hearing, It Still Did Not Operate Under the Burden-Shifting Framework This Court Ordered.**

Respondents next argue that the Immigration Judge complied with this Court’s burden-shifting directive because she ultimately made “alternative findings” that DHS had carried its burden and that Olivas had failed to carry his. ECF No. 19 at 3-4. That argument fails because alternative findings are not the same thing as actually conducting the hearing under the ordered burden-shifting framework.

This Court ordered that Respondents bear the burden of proving by clear and convincing evidence that continued detention was justified. ECF No. 13. That meant the hearing was required to begin and proceed on the premise that DHS bore the burden from the outset. But as set forth in the Motion, that did not occur. When undersigned counsel invoked this Court’s burden-shifting

directive, the Immigration Judge did not simply accept and apply it. Instead, she questioned the source and applicability of the burden shift, minimized the order as “a Magistrate Judge’s order,” and invited DHS to argue Olivas’s bond eligibility “for the sake of argument.”

Moreover, even if that could amount to shifting the burden to DHS, the clear and convincing evidence standard was clearly not applied. Clear and convincing evidence requires more than a preponderance. It means that the party bearing the burden must present evidence that leaves the factfinder with a firm belief or conviction that is highly probable that the factual contentions are true. *See Colorado v. New Mexico*, 467 U.S. 310, 316 (1984). In the detention context, that standard matters because it reflects the weight of the liberty interest at stake. Once this Court ordered that Respondents bore that burden, DHS was required to come forward with actual evidence proving that continued detention was justified under that heightened standard, and the Immigration Judge was required to evaluate that evidence through that lens from the outset.

Clear and convincing evidence requires more than presenting some evidence that could support detention if viewed in the light most favorable to the government. It requires proof strong enough to produce a firm conviction that detention remains justified notwithstanding the noncitizen’s liberty interest and the evidence favoring release. Here, DHS did not present that kind of proof. To the extent DHS relied on brief summaries, untested allegations, or broad characterizations of risk, such assertions fall well short of the “highly probable” showing the standard demands. A record built on shorthand representations and conclusory concerns does not establish dangerousness or flight risk by clear and convincing evidence. At most, it invites inference. But inference is not enough where the government bears a heightened burden and continued physical detention is at issue.

That is especially true here because the relative weight of the evidence underscores the inadequacy of DHS's showing. Olivas presented a developed evidentiary record in favor of release. DHS, by contrast, did not present evidence of comparable depth, reliability, or persuasive force. A clear and convincing standard is not satisfied simply because DHS said something adverse while Olivas said something favorable. It requires Respondents' evidence to be strong enough to overcome the contrary evidence and still produce a firm conviction that detention is warranted. If the record, at most, reflects competing inferences—or worse, overwhelmingly favors release—then DHS necessarily has not carried its burden. Evidence that merely creates a possibility of flight risk or danger is not clear and convincing. Evidence that leaves substantial room for doubt, particularly in the face of extensive un rebutted evidence from Olivas, fails as a matter of law.

Put differently, the existence of substantial evidence favoring release does not automatically require release in every case, but it does make Respondents' burden materially harder to meet. Once Olivas submitted significant evidence showing he was an appropriate candidate for release, DHS was required to do more than gesture toward adverse facts and ask the Court to infer dangerousness or flight risk. It had to prove that those concerns were so substantial, and so well-supported, that they outweighed Olivas's evidence and established that continued detention remained highly probable to be necessary. That did not happen here. Instead, the imbalance in the record demonstrates the opposite: Olivas presented concrete evidence supporting release, while DHS offered an insubstantial showing that could not, as a matter of evidentiary weight, rise to the level of clear and convincing proof.

The Immigration Judge's alternative ruling confirms noncompliance. Rather than commit to the burden framework this Court ordered, she denied bond under both possible standards. That is not obedience to the Court's directive; it is an attempt to preserve the same result regardless of

whether the Court's directive is accepted. A conditional, alternative ruling designed to survive either legal framework does not satisfy an order requiring one specific framework.

Accordingly, even if the March 17 proceeding could somehow be characterized as a § 1226(a) hearing, it still did not comply with this Court's burden-shifting order. DHS was not actually held to proving by clear and convincing evidence that continued detention was justified, and Olivas's substantial evidentiary showing only underscores that failure. Olivas therefore established that Respondents did not carry out the hearing under the framework this Court required.

**III. Administrative Exhaustion Does Not Bar This Court from Determining Whether Its Own Orders Were Obeyed.**

Respondents argue that Olivas should have appealed to the BIA before filing his Motion to Enforce. ECF No. 19 at 5-6. That argument also fails.

An administrative appeal is the ordinary mechanism for challenging an adverse bond decision. But Olivas's Motion does not present an ordinary challenge to the Immigration Judge's discretionary conclusion. It asks whether the hearing complied with this Court's Orders in the first place. The BIA cannot retroactively convert a noncompliant hearing into a compliant one, nor can it displace this Court's authority to decide whether Respondents obeyed a federal habeas order.

Respondents note that the Immigration Judge stated that a "formal decision" would issue if an appeal were filed. ECF No. 19 at 4. But the absence of a formal appellate decision is beside the point. The relevant violation occurred at the hearing itself. If the hearing was conducted under conditional jurisdiction, conditional burden allocation, and alternative findings that avoided the framework this Court ordered, then the violation is already complete. Olivas was not required to pursue administrative review before asking the issuing court to determine whether its Orders had been followed.

Respondents' exhaustion argument is particularly unpersuasive here because this Court's own prior Order specified the consequence of noncompliance. As Olivas explained in his Motion, the Court already provided that if Respondents failed to provide the required § 1226(a) hearing, immediate release would follow. Olivas therefore does not seek to bypass administrative review of an ordinary bond denial. He seeks enforcement of the remedy this Court already attached to Respondents' failure to comply.

For that reason, administrative exhaustion poses no barrier here. Olivas is not asking this Court to review an ordinary adverse bond determination, rather, he is asking this Court to enforce its own orders after Respondents failed to comply with them. That question belongs to this Court, and Olivas is entitled to relief from this Court now.

#### **REQUESTED RELIEF**

Respondents finally argue that, if the Court concludes further information is needed, it should order clarification from the Immigration Judge, and if it finds the hearing did not proceed in accordance with its Order, it should order a new hearing rather than release. ECF No. 19 at 1, 6. Neither request is persuasive.

Respondents' proposed remedies ignore this Court's prior Order. Olivas's Motion does not ask the Court to invent a new consequence for noncompliance. It asks the Court to enforce the consequence the Court already established if Respondents failed to provide the required hearing. Motion at 12-13. Having failed to provide a hearing that actually complied with ECF Nos. 11 and 13, Respondents are not entitled to another opportunity to do what they were already ordered to do. Immediate release is warranted under the terms of this Court's own Order.

Furthermore, Respondents do not meaningfully explain how a new hearing would cure the defects that infected the first one, nor do they identify what would be materially different on

remand such that this Court could reasonably expect a lawful result. That omission matters. Where Respondents ask this Court to deny immediate relief in favor of another bond hearing, they should at minimum be able to articulate how a renewed proceeding would not simply reproduce the same errors under a different label. Here, Respondents do not explain what new evidence DHS would present, what different legal framework would be applied, or what concrete safeguards would ensure compliance with this Court's order requiring that DHS bear the burden by clear and convincing evidence. Absent such an explanation, a remand amounts to little more than an invitation to repeat the same deficient process.

In that sense, Respondents' requested relief rests on pure conjecture. They ask the Court to trust that a new hearing would be different, but they do not show how or why. They do not represent that DHS would proceed under a different theory. They do not disclaim the reasoning that infected the first hearing. And they do not acknowledge that Olivas's evidence already substantially outweighed DHS's showing. Without any concrete explanation of what would change, remand would serve only to prolong Olivas's unlawful detention while giving Respondents another chance to justify a result they already failed to lawfully obtain.

Because Respondents have not shown how a remand would cure the defects in the first hearing or produce a meaningfully different result, a new hearing would serve only to prolong Olivas's unlawful detention. Olivas is not seeking a second chance at the same deficient process; he is seeking enforcement of the consequence this Court already set for noncompliance. Immediate release is therefore the proper and necessary remedy.

### **CONCLUSION**

Respondents' Response does not refute the central point that the March 17, 2026, hearing was not the § 1226(a) bond hearing this Court ordered. The Immigration Judge did not treat

jurisdiction as settled, did not conduct the hearing under the burden-shifting framework this Court imposed, and denied bond through conditional and alternative findings that avoided committing to the legal framework this Court required. Those are not harmless irregularities. They establish that Respondents failed to comply with ECF Nos. 11 and 13.

Because Olivas seeks enforcement of this Court's Orders—not appellate review of an ordinary bond denial—neither § 1226(e) nor administrative exhaustion bars relief. The Court should therefore grant the Motion to Enforce, order Olivas's immediate release, and resolve the remaining Fourth Amendment issue as set forth in his Petition.

Dated this 1st day of April 2026.

Respectfully submitted,

*s/ Skylar M. Larson*

Skylar M. Larson, Esq.

8275 E. 11th Ave. # 200176

Denver, CO 80220

Tel: (970) 692-3156

Email: [skylarmlarsonesq@gmail.com](mailto:skylarmlarsonesq@gmail.com)

ATTORNEY FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2026, I electronically filed the foregoing **Petitioner's Reply in Support of Motion to Enforce Court Orders ECF Nos. 11 and 13** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

E. Garreth Winstead  
U.S. Attorney's Office  
1801 California Street, Suite 1600  
Denver, CO 80202  
Garreth.Winstead@usdoj.gov

s/ Skylar M. Larson  
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER