UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

JOSE DE JESUS SAHAGUN ALERIANO, **Petitioner,** **v.** JUAN BALTASAR, Warden, GEO Group ICE Processing Center; GEORGE VALDEZ, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement; DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, Acting U.S. Attorney General; and, in their official capacities, **Respondents.**	Case No.: 1:26-cv-02502-STV

PETITIONER'S MOTION TO ENFORCE

INTRODUCTION

Petitioner, Jose de Jesus Sahagun Aleriano, by and through undersigned counsel, respectfully moves this Court to enforce its prior Order, ECF No. 11, dated June 22, 2026, which granted petitioner's writ of habeas corpus and ordered the

respondents to provide petitioner with a bond hearing under 8 U.S.C. § 1226(a) with the government bearing the burden of proof by clear and convincing evidence that the petitioner is a flight risk and/or danger to the community such that continued detention is warranted. *Id.* at 3-4.

Although a bond hearing was held on June 25, 2026, ECF No. 13-1, within the 7-day period ordered by this Court, the bond hearing conducted by the immigration judge ("IJ") did not comport with this Court's order or the minimum requirements of due process. The IJ failed to properly apply the burden of proof and failed to consider the evidence the petitioner submitted. Because the bond hearing failed to satisfy both the Court's Order and minimum due process requirements, and because the petitioner has already endured a constitutionally deficient bond hearings, the petitioner respectfully moves this Court for immediate release.

BACKGROUND

Petitioner was detained by Immigration & Customs Enforcement ("ICE") on May 21, 2026. ECF No. 1 ¶ 29. The petitioner filed a Petition for Writ of Habeas Corpus on June 5, 2026. ECF No. 1. The Court granted, in part, the Petition on May 22, 2026, and ordered the respondents to provide petitioner with a bond hearing under 8 U.S.C. § 1226(a) with the government bearing the burden of proving that the petitioner is a flight risk and/or a danger by clear and convincing evidence. ECF No. 11 at 3-4.

The bond hearing took place on June 25, 2026, and the IJ issued her decision denying bond one day later. ECF No. 13; 13-1. Respondents, in their attempt to

carry their burden of proof, submitted only one document into evidence: Form I-213, Record of Deportable/Inadmissible Alien. Exh. A, DHS Evidence. Counsel for petitioner objected to the Form I-213 being used to establish the existence of a criminal conviction. ECF No. 13-1 at 2. Counsel for petitioner argued at the bond hearing that petitioner's situation is analogous to the requirements of establishing deportability under 8 U.S.C. § 1229a(c)(3)(B), where the Form I-213 is not sufficient to prove the existence of a criminal conviction when the government bears the burden by clear and convincing evidence.[1] Nevertheless, the IJ overruled the objection. ECF No. 13-1 at 2. Neither the IJ nor government counsel elicited any testimony from the petitioner at the bond hearing.

While the burden of proof lay with the respondents to prove danger and flight risk, the petitioner preemptively submitted over 200 pages of rebuttal evidence. Exhs. B – C, Rebuttal Evidence. Before even considering whether respondents had met their burden of proof based on the sole piece of evidence they submitted, the IJ used petitioner's own rebuttal evidence against him to aid respondents in purportedly meeting their burden of proof. The IJ explains her reasoning:

> [Petitioner] argues that DHS carries the burden to establish that Respondent is a danger and that [Petitioner's] evidence was offered only as rebuttal evidence. However, the Court finds [Petitioner's] documents provide further evidence that within the last year [Petitioner] was convicted of an alcohol-related driving offense.
>
> ECF No. 13-1 at 2.

[1] An audio recording of the bond hearing is available for submission to the Court if needed.

Despite the lack of evidence provided by respondents, and without considering whether the petitioner's rebuttal evidence demonstrated reform or rehabilitation of any alleged danger, the IJ simply found that the respondents had carried their burden to prove by clear and convincing evidence that the petitioner is a danger and denied bond. ECF No. 13-1.

ARGUMENT

"Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose . . . submission to their lawful mandates." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 227 (1821)); *see also Shillitani v. United States*, 384 U.S. 364, 370 (1966) ("[C]ourts have inherent power to enforce compliance with their lawful orders."). A district court that has granted habeas relief retains jurisdiction to enforce its order and to ensure that the relief provided in fact comports with the Constitution. *See Cervantes Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, ECF No. 26, at *5 (D. Colo. Dec. 18, 2025).

I. This Court Has Jurisdiction to Hear Petitioner's Motion to Enforce

This Court has jurisdiction to determine whether respondents complied with its prior Order and whether the bond hearing afforded petitioner satisfied due process. A district court may grant a writ of habeas corpus to any person who demonstrates he is "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241. That authority extends to "[c]hallenges to immigration detention." *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004).

Where, as here, the Court has already determined that the petitioner's detention violated due process and ordered a remedy in the form of a constitutionally compliant bond hearing, the Court retains jurisdiction to ensure that the ordered remedy was, in fact, provided.

Although 8 U.S.C. § 1226(e) provides that "[t]he Attorney General's discretionary judgment regarding the application of [§ 1226] shall not be subject to review," that statute "only bars review of the Attorney General's discretionary judgment." *Mendez v. Dedos*, No. 1:26-cv-00394-KG-JHR, 2026 WL 973077, at *2 (D.N.M. Apr. 10, 2026) (quoting *Demore v. Kim*, 538 U.S. 510, 516–17 (2003)). "Section 1226(e) contains no explicit provision barring habeas review," and it does not preclude a constitutional challenge to the legislation authorizing detention without bail or to the constitutional adequacy of bond procedures. *Demore*, 538 U.S. at 517. As the Second Circuit has explained, "[w]hether [a petitioner] received the due process to which he was entitled is not a matter of discretion and is subject to judicial review." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (quotation marks omitted) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)).

Numerous federal courts — including courts within this District — have squarely held that a district court retains jurisdiction to enforce a prior habeas order and to review whether a subsequent bond hearing satisfied due process. *See Cervantes Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, ECF No. 26 at *4–7 ("[T]he Court directed respondents to file a status report following the bond hearing identifying whether bond was granted and, if denied, the reasons for denial. The

Court would not have imposed this reporting requirement if it lacked authority to address noncompliance with its mandate."); *Batz Barreno v. Baltasar*, 816 F. Supp. 3d 1255, 1258 (D. Colo. 2026); *see also Quiroz Zacarias v. Mullin*, No. 26-cv-00574-WJM, 2026 WL 1092162, at *7 (D. Colo. Apr. 22, 2026).

In conducting this review, the Court "does not weigh the evidence before the immigration judge or act as an appellate court conducting a review of the IJ's ultimate determination." *Lara Mejia v. Baltazar*, No. 1:26-cv-00385-NYW-TPO, ECF No. 26 at *4 (D. Colo. May 15, 2026). Instead, the Court "review[s] the nature and structure of the [IJ's decision] for the minimal indicia of due process." *Id.* (quoting *Lopez v. Paulk,* ---F. Supp. 3d ---, 2026 WL 961948, at *5 (M.D. Ga. Apr. 6, 2026)).

Here, petitioner does not ask this Court to conduct a bond hearing, to weigh the evidence, or to substitute its discretion for that of the immigration judge. Petitioner asks this Court to determine whether the bond hearing it ordered complied with due process and with the express terms of its prior Order. That question is squarely within this Court's jurisdiction.

II. Exhaustion of Administrative Remedies Is Not Required

Petitioner is not required to exhaust administrative remedies before seeking enforcement of this Court's Order. Exhaustion is not required for habeas claims to immigration detention in the Tenth Circuit. *See Hoang v. Comfort*, 282 F.3d 1247, 1254 (10th Cir. 2002) ("With regard to immigration laws, exhaustion of remedies is statutorily required only for appeals of final orders of removal."). While "courts may,

in their discretion, require exhaustion of administrative remedies," that requirement is prudential, not jurisdictional. *Id.*

Here, the petitioner does not seek review of a final order of removal; he seeks enforcement of a habeas order grounded in the Due Process Clause. Because Congress has not required exhaustion in this context, exhaustion is at most discretionary, and the Court should decline to require it here. *See Corona Arciniega v. Blanche*, No. 26-cv-00598-CYC, ECF No. 17, at *4-5 (D. Colo. May 15, 2026) (discussing administrative exhaustion in the context of a motion to enforce a court's order in a habeas case).

III. The Bond Hearing Did Not Comply with This Court's Order or Due Process

Although the IJ held a hearing in which the IJ purportedly placed the burden of proof on the government to prove flight risk and/or danger by clear and convincing evidence, due process requires more than the formal occurrence of a proceeding or reciting the standard. "Merely stating the proper standard does not discharge the obligation to correctly apply the standard." *Lara Mejia v. Baltazar*, No. 1:26-cv-00385-NYW-TPO, ECF No. 26 at *8 (quoting *Akinsanya v. Garland*, 125 F.4th 287, 297 (1st Cir. 2025)).

Furthermore, even where the IJ recites the correct burden of proof, and which party should bear the burden, the hearing fails due process where the IJ's decision reveals that the burden was not meaningfully applied or where the IJ failed to engage with the evidence presented. *See Lara Mejia v. Baltazar*, No. 1:26-cv-00385-NYW-TPO, ECF No. 26 at *8; *Perez Serrano v. Hagan*, No. 1:26-cv-01641-

CNS, ECF No. 17 at *9 (D. Colo. May 19, 2026); *Quiroz Zacarias*, 2026 WL 1092162, at *4–5.

Here, the IJ's bond ruling fails due process in several independent respects.

A. The IJ Failed to Properly Apply the Burden of Proof

In granting the petitioner's writ of habeas corpus, this Court required that the government bear the burden of proving danger and/or flight risk by clear and convincing evidence. ECF No. 11 and 3-4. However, the IJ's decision explains that when considering bond, an IJ may consider "any evidence in the record that is probative and specific," apparently without regard for which party offers the evidence or the order in which the court considers it. ECF No. 13-1 at 1 (quoting *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006), and citing 8 C.F.R. § 1003.19(d)). The IJ also points to a recent BIA decision for the proposition that "Immigration Judges may take into consideration all relevant and probative evidence, regardless of which party filed it, to determine if the evidence establishes custody factors." ECF No. 13-1 at 2 (quoting *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 213 (BIA 2025)).

Yet, as another court in this District recently explained, this approach where "the IJ properly weighs all of the evidence in the record cutting for and against release simultaneously" may be appropriate where the noncitizen bears the burden of proving he is not a danger or flight risk, such an approach is *not* appropriate where the government bears the burden. *Cervantes Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, ECF No. 26, at *9. That court further explained its reasoning:

> [W]here the government must prove a positive—that the noncitizen is a danger to the community or a flight risk—this mode of analysis risks subtly reassigning the burden to the noncitizen. To be clear, the court may consider evidence submitted by the noncitizen. But the strength or paucity of that evidence cannot substitute for the government's obligation to establish danger or flight risk. . . in the first instance.

Id.

Similar to the noncitizen's bond hearing in *Cervantes Arredondo*, here too the IJ did not make any determination as to whether the government's evidence (the Form I-213) was in and of itself sufficient to meet the clear and convincing burden of proof to establish that petitioner was a danger. *See* ECF No. 13-1. Indeed, the IJ's decision suggests that it was not, explaining that even while the petitioner argued that his submission of evidence in the bond hearing was offered only as rebuttal evidence, "the Court finds [Petitioner's] documents provide further evidence that . . . [Petitioner] was convicted of an alcohol-related driving offense." *Id.* at 2.

Because the IJ considered all evidence submitted by both parties interchangeably, "it is impossible to discern whether the government's evidence, standing alone, satisfied its . . . burden." *Cervantes Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, ECF No. 26, at *11. For this reason, the bond hearing failed to comport with the allocation of burden of proof ordered by this Court.

Moreover, the IJ provided no response to counsel's oral argument at the bond hearing that the Form I-213 could not be used to establish the existence of a criminal conviction. In removal proceedings under 8 U.S.C. § 1229a, where the burden of proof is on the government to establish by clear and convincing evidence

that a noncitizen who has been admitted to the U.S. is subject to removal, the statute requires that the decision to remove be based upon "reasonable, substantial, and probative evidence." 8 U.S.C. § 1229a(c)(3)(A). In this context, where the government bears the burden by clear and convincing evidence to prove a criminal conviction, only certain documents or records constitute proof, and the Form I-213 is not one of them. § 1229a(c)(3)(B). Similarly, in this bond proceeding, where the government must bear the burden to prove by clear and convincing evidence that the petitioner is a danger or a flight risk, the IJ erred when relying on the Form I-213 to establish that the petitioner had been convicted of a criminal offense. *See* ECF No. 13-1 at 2.

B. The IJ Failed to Consider the Evidence Petitioner Presented

A bond determination that fails to engage with, or even consider, the record before the IJ does not satisfy due process. In *Perez Serrano*, the court held that a bond proceeding failed due process where the IJ "referenced only the birth certificate for Petitioner's daughter" and ignored a "robust record offered in support of release," including a mortgage document, the death certificate of the petitioner's wife, utility bills, pay stubs, and twenty letters of support. *Perez Serrano v. Hagan*, No. 1:26-cv-01641-CNS, ECF No. 17 at *4–5. There, the court concluded that "this is not the individualized assessment that the IJ was required to provide." *Id.* at 6 (quotation marks omitted).

As noted previously, the petitioner provided more than 200 pages of rebuttal evidence Exhs. B - C. Assuming, arguendo, that the IJ determined that respondents

satisfied their burden of proof that petitioner was a danger based solely on the Form I-213, the IJ failed to provide any individualized assessment as to why the rebuttal evidence failed to refute respondents claims that the petitioner was a danger to the community. Specifically, the petitioner presented documents demonstrating that he successfully completed all useful public service ordered in the case, attended a DUI Victim Impact Panel, and completed an alcohol driving safety program evaluation and referral recommendation in which a probation officer found the petitioner to be cooperative, amenable to engagement in intervention services, and motivated to comply with court orders in his first alcohol-related driving offense. Exh. C, Supplemental Evidence.

While the IJ acknowledged the existence of these documents, it was for the sole purpose of helping respondents meet their burden of proof. ECF No. 13-1 ("[T]he Court finds [Petitioner's] documents provide further evidence that within the last year [Petitioner] was convicted of an alcohol-related driving offense."). Indeed, the IJ completely ignored this evidence for which it was submitted—to show rehabilitation and compliance with court orders. *See Guerrero Sanchez v. Sabol*, No. 1:15-cv-2423, 2016 WL 7426129, at *5 (M.D. Pa. Dec. 23, 2026) (explaining that evidence submitted by the noncitizen showing, for example, reform and rehabilitation must be considered as evidence contravening danger to the community).

To be clear, the petitioner does not point to this specific evidence asking this Court to substitute its own discretionary determination for the one made by the IJ.

Rather, it is to show that the petitioner did not receive "the procedural protections" he was due in this bond hearing. *Perez Serrano v. Hagan*, No. 1:26-cv-01641-CNS, ECF No. 17 at *8.

IV. Immediate Release Is the Appropriate Remedy

Petitioner seeks immediate release, and three considerations make it clear that this remedy is warranted here.

First, petitioner's unlawful detention, and separation from his two small children, is approaching six weeks. ECF No. 1 ¶ 4. This Court has already determined that petitioner's detention requires a bond hearing at which the government bears the burden. ECF No. 11 at 3-4. Petitioner has remained in custody and continues to be deprived of his liberty. "[E]ven after this Court ruled that Petitioner's constitutional rights had been violated, his due process rights were violated again at the deficient bond hearing." *Lara Mejia v. Baltazar*, No. 1:26-cv-00385-NYW-TPO, ECF No. 26 at *9. The continued unconstitutional detention weighs heavily in favor of immediate release.

Next, ordering a second bond hearing would risk yet another constitutional violation. As the court explained in *Lara Mejia*, "[t]he Court sees no reason to order another bond hearing — and risk [another] constitutional violation — and prolong the detention that this Court has already determined is unlawful." *Id.*; *see also Quiroz Zacarias*, 2026 WL 1092162, at *5 ("Requiring [the petitioner] to undergo yet another bond hearing would only add further insult to the constitutional injury to which Petitioner has already been subjected."). Where the immigration court has

already failed twice — once by detaining petitioner without an opportunity to request a bond, and again by conducting a hearing that violated due process — the equitable remedy is to end the unlawful detention rather than to grant respondents a third opportunity.

Third, ordering immediate release does not require this Court to "overrule" the IJ's bond determination, *see Lara Mejia*, ECF No. 26 at 9–10, or to substitute its discretion for that of the immigration judge. The IJ's defective ruling cannot justify Petitioner's continued custody. *See Perez Serrano v. Hagan*, No. 1:26-cv-01641-CNS, ECF No. 17 at *9 ("The Court is persuaded that immediate release is proper, considering the underlying constitutional violation and the legal authority cited above."); *Mendez*, 2026 WL 973077, at *2 (granting immediate release where the bond hearing did not comply with the court's order).

To prevent further unconstitutional detention, the Court should also enjoin respondents from re-detaining petitioner absent a constitutionally adequate, pre-deprivation bond hearing at which the government bears the burden of proof.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court enter an order:

(1) GRANTING Petitioner's Motion to Enforce;

(2) ORDERING Respondents to release Petitioner from custody within 24 hours of the Court's order;

(3) ENJOINING Respondents from re-detaining Petitioner under 8 U.S.C. § 1226 unless and until they demonstrate, by clear and convincing evidence at a pre-deprivation bond hearing at which the government bears the burden of proof, that Petitioner is a flight risk or a danger to the community such that his physical custody is legally justified; and

(4) GRANTING such further relief as the Court deems just and proper.

Respectfully submitted this 1st day of July 2026,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 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 e-mail address:

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