IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-02502-STV

JOSE DE JESUS SAHAGUN ALERIANO,

Petitioner,

v.

JUAN BALTAZAR, Warden of Denver Contract Detention Facility;
GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, Immigration and Customs Enforcement;
DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary, Department of Homeland Security; and
TODD BLANCHE, Acting U.S. Attorney General, in their official capacities,

Respondents.

RESPONSE TO MOTION TO ENFORCE (ECF No. 14)

Respondents hereby respond to Petitioner's Motion to Enforce (ECF No. 14). Petitioner contends that at her bond hearing, the immigration judge ("IJ") failed to meaningfully comply with this Court's Order (ECF No. 11), which had ordered Respondents to provide Petitioner with a bond hearing where "the Government bears the burden of proof by clear and convincing evidence under 8 U.S.C. § 1226(a)." ECF No. 11 at 4. For relief, Petitioner asks the Court to order her immediate release, among other requests. ECF No. 14 at 13-14.

The motion should be denied. The IJ conducted a bond hearing in accordance with this Court's order and burden-shifting directive. She explicitly acknowledged this burden-shifting and, applying the burden as this Court ordered, concluded that the Department of Homeland

Security ("DHS") "has met its burden to establish that [Petitioner] is a danger." ECF No. 13-1 at 2 (IJ's Bond Order). She therefore denied bond.

Because Petitioner received the relief that this Court ordered, there is nothing for this Court to enforce. Petitioner seeks appellate review of the merits of the IJ's custody redetermination order, but such review is prohibited by statute and not within this Court's jurisdiction. Moreover, the relief Petitioner requests—immediate release—would go beyond enforcing this Court's prior order.

BACKGROUND

On June 22, 2026, this Court granted the Petition for Writ of Habeas Corpus, ECF No. 1, and ordered Respondents to provide Petitioner a bond hearing within seven days of the Court's order, *i.e.*, by June 29, 2026, at which "the Government bears the burden of proof by clear and convincing evidence under 8 U.S.C. § 1226(a)." ECF No. 11 at 4. The Court did not otherwise dictate procedures for the IJ to follow in conducting the bond hearing. *See id.* Respondents provided Petitioner with a bond hearing on June 25, 2026, which Petitioner does not dispute. *See* ECF No. 14 at 2. At the conclusion of the hearing, the IJ denied bond based on her conclusion that "DHS has established that [Petitioner's] ongoing detention is justified because his release would pose a danger to persons or property." ECF No. 13-1 at 2. Petitioner then filed a Motion to Enforce.

ARGUMENT

I. The inquiry here is limited to whether Respondents have complied with the Court's order, and they have.

While this Court has inherent authority to ensure that its orders are carried out, see *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991), that authority is not equivalent to appellate

review of the IJ's bond decision. Rather, the Court's authority extends only to whether a party has failed to comply with this Court's order. *See, e.g.*, *Singh v. Baltazar*, No. 26-cv-01126-NYW (D. Colo. July 14, 2026), ECF No. 20 at 4 ("The Court cannot and does not reweigh the evidence or 'serv[e] as an appellate court over [the] IJ's bond decision.'" (citation omitted)); *A.A. v. Baltazar*, No. 25-cv-03174-CNS (D. Colo. Dec. 17, 2025), ECF No. 24 at 2 ("At this stage, in reviewing a petitioner's motion to enforce, it is important to emphasize that the Court's task is narrow: it is to determine whether the respondent complied with the Decision and Order, not to review the hearing evidence *de novo*.").

Here, Respondents complied with this Court's Order. The Court ordered Respondents to provide Petitioner with a bond hearing at which DHS would bear the burden of proving by clear and convincing evidence that Petitioner's continued detention was justified. ECF No. 11 at 4. Respondents provided Petitioner with that hearing. The IJ expressly recognized that DHS bore the burden of proof pursuant to this Court's Order and evaluated whether DHS satisfied that burden under the clear-and-convincing-evidence standard. ECF No. 13-1 at 1-2. After considering the evidence presented by both parties, the IJ concluded that DHS had met its burden to establish that Petitioner's release would pose a danger to the community. *Id.* at 2-3.

Because Respondents afforded Petitioner the Court-ordered custody hearing and the IJ applied the burden-shifting framework required by this Court's Order, "there is nothing left . . . to enforce." *Pena-Gil v. Lyons*, No. 25-cv-03268-PAB-NRN, 2026 WL 25143, at *2 (D. Colo. Jan. 5, 2026) (internal quotation marks omitted). As in *Pena-Gil*, Respondents provided the precise procedural relief ordered by the Court: a bond hearing conducted under the proper allocation of the burden of proof. Petitioner's disagreement with the IJ's evaluation of the

evidence does not establish noncompliance with this Court's Order.

Instead, Petitioner asks this Court to determine that the IJ should have assigned less weight to the Form I-213, credited Petitioner's rehabilitation evidence differently, and reached a different conclusion regarding dangerousness. *See* ECF No. 14 at 10-12. Those arguments challenge the merits of the IJ's discretionary custody determination, not Respondents' compliance with the Court's habeas order. This Court's enforcement jurisdiction does not authorize such review.

II. The record shows the bond hearing complied with this Court's Order.

In his Motion, Petitioner argues that the IJ acknowledged the applicable burden of proof as ordered by this Court but improperly relied on the Form I-213 and failed to accord sufficient weight to Petitioner's rehabilitation evidence. *See* ECF No. 14 at 8-10. In substance, however, Petitioner's arguments challenge the IJ's *evaluation* of the evidence, rather than her allocation of the burden of proof.

Petitioner's objections to the IJ's procedural rulings are not a basis to grant the motion to enforce. This Court, in placing the evidentiary burden on Respondents, did not dictate the weight that should be accorded to undisputed evidence. *See* ECF No. 11. The applicable regulations provide, "[t]he determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [noncitizen] or [DHS]." 8 C.F.R. § 1003.19(d). Moreover, the types of evidentiary objections that Petitioner identifies can be appealed to the Board of Immigration Appeals ("BIA"). *See* Order, *Martinez Cruz v. Mullin*, No. 26-cv-00312-PAB-NRN (D. Colo. Apr. 15, 2026), ECF No. 30 (denying a motion to enforce, stating that whether a "bond

decision failed to apply the appropriate administrative standards," is a matter "appealable to the BIA").

Here, the record makes clear that the IJ was aware of this Court's Order and complied with it. In her written decision, the IJ explained that the United States District Court for the District of Colorado granted Petitioner's application for a writ of habeas corpus in part and ordered that Petitioner receive a custody hearing under 8 U.S.C. § 1226(a), "where the government shall bear the burden of proof by clear and convincing evidence." ECF No. 13-1 at 1. The IJ further recognized that, pursuant to the Court's Order, the IJ had jurisdiction to consider Petitioner's request for bond and expressly stated that, after considering all evidence presented by both parties, the IJ would determine whether DHS had met its burden. *Id.*

As to the IJ's denial of bond, she reasonably relied on the arguments and evidence presented during the bond hearing in reaching that decision. DHS introduced as evidence Form I-213, Record of Deportable/Inadmissible Alien, reflecting Petitioner's immigration history, his May 2025 arrest by Immigration and Customs Enforcement ("ICE"), his admission that he entered the United States without inspection in approximately August 2019, and his August 12, 2025, conviction for Driving While Ability Impaired under Colorado law. *See* ECF No. 14-1 (Form I-213). The Form I-213 also reflected Petitioner's family ties, employment information, immigration history, and other biographical information relevant to the custody determination. *Id.*

Petitioner objected to DHS's reliance on the Form I-213 to establish the fact of Petitioner's criminal conviction at the bond hearing. ECF No. 14 at 3. The IJ considered that evidentiary objection and concluded that the Form I-213 is an inherently reliable document

containing relevant and probative evidence that may properly be considered in bond proceedings. ECF No. 13-1 at 2 (citing *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988)). Petitioner also submitted evidence concerning his alcohol-related driving offense, including documentation reflecting successful completion of community service, a DUI Victim Impact Panel, post-sentence release documents, and an evaluation and referral recommendation report. *Id.* The IJ specifically noted that the evaluation and referral report reflected that Petitioner had been originally charged with Driving Under the Influence ("DUI"), DUI Per Se, Lane Usage Violation, and Alcohol Open Container/Drink in Vehicle, and ultimately received a deferred conviction for Driving While Ability Impaired. *Id.*

Petitioner argued before the IJ that DHS bore the burden to establish dangerousness by clear and convincing evidence and that Petitioner's documentary submissions were offered as rebuttal evidence demonstrating rehabilitation. *Id.* The IJ nevertheless concluded that Petitioner's own evidence further confirmed that, within the preceding year, he had sustained an alcohol-related driving conviction. *Id.* Citing *Matter of Dobrotvorskii*, 29 I&N Dec. 211 (BIA 2025), the IJ explained that, in bond proceedings where DHS bears the burden of proof, the IJ may consider all relevant and probative evidence, regardless of which party introduced it, in determining whether the statutory custody factors have been established. ECF No. 13-1 at 2.

After considering the record as a whole, the IJ found that DHS had met its burden. Specifically, she concluded: "Based on [Petitioner]'s recent alcohol-related driving offense, the Court finds DHS has met its burden to establish that [Petitioner] is a danger." *Id.* The IJ further relied on *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018), recognizing that drunk driving presents a serious risk of physical injury to others and that both arrests and convictions for

alcohol-related driving offenses are properly considered in custody determination. *Id.* The IJ acknowledged that family ties and other favorable equities had been presented but concluded that those considerations did not overcome the dangerousness established by Petitioner's recent alcohol-related conviction. *Id.* She therefore determined that Petitioner's continued detention was justified because his release would pose a danger to persons or property, and she denied bond. *Id.* at 2-3.

The record thus demonstrates that the IJ expressly recognized that DHS bore the burden of establishing dangerousness by clear and convincing evidence per this Court's Order, admitted and considered evidence submitted by both parties, addressed Petitioner's evidentiary objections, evaluated Petitioner's rebuttal evidence, and ultimately concluded that DHS satisfied the burden imposed by this Court's Order and that bond should be denied. Accordingly, the evidence demonstrates that the bond hearing complied with this Court's Order, and the motion to enforce should be denied.

III. The Court lacks jurisdiction to review Petitioner's challenges to the sufficiency of the evidence relied on by the IJ, and the weight she gave the parties' evidence, in making her discretionary bond determination.

As set forth above, the IJ concluded that DHS met the burden this Court imposed by proving, by clear and convincing evidence, that Petitioner's continued detention was justified because his release would pose a danger to the community. *See* ECF No. 13-1 at 2-3. Whether the IJ reached the same conclusion this Court would have reached on the same evidentiary record is not the proper inquiry. Although Petitioner may contend that he is not requesting that this Court reweigh the evidence, he is effectively seeking precisely that relief. To the extent Petitioner asks this Court to substantively review the bond hearing evidence and conclude that

the IJ should have reached a different result, this Court lacks jurisdiction to do so for two independent reasons.

First, Congress expressly prohibited judicial review of discretionary custody and bond determinations under the Immigration and Nationality Act ("INA"). Section 1226(e) provides that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review" and that "[n]o court may set aside 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). Thus, Congress provided that discretionary judgments concerning detention or release under § 1226(a) are not subject to judicial review, and district courts may not evaluate the merits of an IJ's custody determination. *See Singh*, *supra*, at 8 (citing § 1226(e) and "[T]he Court lacks jurisdiction to review the IJ's discretionary determination that such evidence weighs heavily enough to satisfy the clear-and-convincing standard. § 1226(e). *Martinez Cruz*, *supra*, at 4-5 (holding that a challenge to an IJ's discretionary bond determination falls squarely within the jurisdictional bar established by § 1226(e)); *see also Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012) (holding that the Attorney General's exercise of discretion denying release on bond is not subject to judicial review).

Petitioner's principal contention is that the IJ improperly relied upon Form I-213 and failed to give sufficient weight to Petitioner's evidence regarding rehabilitation and the circumstances of his prior conviction. *See* ECF No. 14 at 10-12. Petitioner does *not* contend that DHS presented no evidence in support of its position, or that he was *not* convicted of Driving While Ability Impaired. Rather, Petitioner argues that the evidence presented, namely, the Form

I-213, was insufficient to satisfy DHS's burden and that the IJ should have weighed the parties' evidence differently. *See id.*

However, the record demonstrates that the IJ considered the entirety of the evidence presented by both parties. *See* ECF No. 13-1 at 1-2. Specifically, the IJ considered DHS's Form I-213, Petitioner's documentation relating to the completion of public service, the DUI Victim Impact Panel, post-sentence records, and the evaluation and referral recommendation submitted by Petitioner. *Id.* at 2. Evaluating the evidence, the IJ concluded the record established that Petitioner had recently been convicted of an alcohol-related driving offense and that such evidence was sufficient to establish dangerousness under applicable Board precedent. *See id.* The IJ further explained that arrests and convictions for alcohol-related driving offenses are appropriate facts to consider in bond proceedings and concluded that Petitioner's continued detention was justified because his release would pose a danger to persons or property. *See id.*

Indeed, the governing precedent of the BIA establishes that Form I-213 is presumptively admissible and inherently reliable in immigration proceedings. *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988); *see also Vera Punin v. Garland*, 108 F.4th 114, 127 (2d Cir. 2024) ("the presumption of reliability afforded to I-213s, and the corresponding shift in the burden of production it imposes, does not impermissibly shift the burden of proof away from the government, where it always remains"). The Tenth Circuit likewise recognizes that information contained in Form I-213 is presumed reliable absent evidence of material inaccuracies or coercion. *See Vladimirov v. Lynch*, 805 F.3d 955, 964 (10th Cir. 2015). The IJ therefore acted well within her discretion in considering the Form I-213 together with Petitioner's rebuttal evidence.

Although Petitioner would weigh the evidence differently, the record demonstrates that (1) the IJ's decision is supported by evidence contained in the administrative record, and (2) the IJ expressly found that DHS satisfied is burden of proof by clear and convincing evidence after considering all evidence presented. *See Singh*, *supra*, at 8 ("While Petitioner may wish that the IJ weighed the evidence differently, the Court concludes that the evidence relied on can support a denial of bond 'as a matter of law.'" (citation omitted)). Petitioner's request that this Court revisit the IJ's evidentiary determinations is therefore an impermissible request for appellate review of a discretionary bond determination.

Even where appellate courts review whether a clear-and-convincing evidence standard has been satisfied, "the court does not ask itself whether it believes that the evidence establishes [the required finding] by clear and convincing evidence, but rather whether the agency's judgment is supported by substantial evidence." *Valles-Diera v. Lynch*, 659 F. App'x 480, 482 (10th Cir. 2016) (quotation omitted). Unless any reasonable adjudicator would be compelled to reach the opposite conclusion, courts do not reweigh evidence or reassess witness credibility. *Id.* Again, however, Congress expressly prohibited this type of review in the context of discretionary immigration custody determinations. *See* 8 U.S.C. §§ 1226(e), 1252(a)(2)(B)(ii). Accordingly, the Court lacks jurisdiction to review Petitioner's challenge to the sufficiency of the evidence the IJ relied on, and how she weighed that evidence, in making her discretionary bond determination.

IV. Petitioner has not exhausted his administrative remedies.

Even if the Court were to conclude that Petitioner's Motion raises issues beyond mere compliance with this Court's Order, the Motion should nevertheless be denied because Petitioner

failed to avail himself of the administrative review process Congress provided for challenging an IJ's custody determination. *Cf.* Order, *Ramirez Salcedo v. Mullin*, No. 26-cv-01622-SKC (D. Colo. May 6, 2026), ECF No. 12, at 4-6 (dismissing without prejudice a habeas petition for failure to exhaust, where the petitioner claimed in his petition that the denial of bond violated due process). 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 non-jurisdictional. *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).[1]

An IJ's custody determination may be appealed to the BIA. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f). The BIA possesses authority to review an IJ's custody determination and to correct any alleged legal or factual errors committed during the bond proceedings. *See Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006). Thus, where a noncitizen believes that an IJ improperly admitted evidence, misapplied the burden of proof, or incorrectly weighed the evidence presented, the INA provides a direct avenue for administrative review.

Petitioner had not pursued that administrative remedy. Following the IJ's custody June 26, 2026, custody determination, Petitioner had until July 27, 2026, to file an administrative appeal to the BIA. *See* 8 C.F.R. 1003.38(b). Petitioner elected not to do so. Instead, Petitioner

[1] Respondents do not rely on *Soberanes* for the proposition that exhaustion is jurisdictional, only that exhaustion is required in § 2241 cases.

filed the Motion to Enforce with this Court.

The relief Petitioner seeks in the Motion extends well beyond enforcement of this Court's Order. *See* ECF No. 14 at 8-12. Petitioner asks this Court to review the IJ's evidentiary rulings, reassess the weight afforded to the evidence presented at the custody hearing, and conclude that the IJ should have reached a different result. Those arguments concern the correctness of the IJ's custody determination, not whether Respondents complied with this Court's Order requiring that DHS bear the burden of proof at the custody hearing. That is precisely the type of review entrusted in the first instance to the BIA—not to a district court adjudicating a motion to enforce a prior habeas order. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f).

Allowing a petitioner to bypass the administrative appeal process and instead obtain district court review through a motion to enforce would effectively transform this Court into an appellate tribunal reviewing discretionary bond determinations. Petitioner cannot circumvent the statutory jurisdictional limits established by Congress and the applicable regulatory review scheme by declining to pursue an available administrative appeal and instead asking this Court to revisit the IJ's factual findings and evidentiary determinations. Having elected not to seek BIA review, Petitioner should not now be permitted to obtain substantially the same relief through a Motion to Enforce.

V. Should Petitioner's Motion be granted, release is not the appropriate remedy.

Even assuming, arguendo, that the Court were to conclude that some aspect of the custody redetermination hearing did not fully comply with its prior Order, Petitioner's requested remedy—immediate release from custody—is neither warranted nor supported by law.

The Court's Order required Respondents to provide Petitioner with a custody hearing at

which DHS bore the burden of establishing, by clear and convincing evidence, that Petitioner's continued detention was justified under 8 U.S.C. § 1226(a). *See* ECF No. 11. As discussed above, Respondents complied with that Order. Accordingly, there is no violation for this Court to remedy.

Petitioner nevertheless asks the Court to order his immediate release because he disagrees with the IJ's evaluation of the evidence. *See* ECF No. 14 at 13. But disagreement with the outcome of the custody hearing does not justify the extraordinary remedy of release. Where a district court concludes that an immigration bond hearing was procedurally deficient, the appropriate remedy is ordinarily to require a constitutionally adequate hearing, not to order the noncitizen's unconditional release. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (recognizing Congress's broad authority to mandate detention during removal proceedings); *cf. Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020) (affirming order requiring a constitutionally adequate bond hearing, rather than unconditional release).

Here, however, even that relief would be inappropriate because Respondents have already afforded Petitioner the precise process this Court ordered. The IJ expressly applied the burden of proof required by this Court's Order and determined that DHS established by clear and convincing evidence that Petitioner's release would pose a danger to the community. ECF No. 13-1 at 1-2. Ordering Petitioner's immediate release under these circumstances would effectively nullify Congress's detention framework under 8 U.S.C. § 1226(a) and substitute this Court's judgment for that of the IJ on matters committed to the agency's discretion. Nothing in the statute or in this Court's Order contemplates such an outcome.

CONCLUSION

For the reasons set forth herein, this Court should deny Petitioner's Motion to Enforce.

Dated: July 15, 2026.

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CERTIFICATE OF SERVICE

I certify that on July 15, 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 persons who have registered for such notifications.

s/ Anh Weinberg
U.S. Attorney's Office