**UNITED STATES DISTRICT COURT**
**DISTRICT OF COLORADO**

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

**PETITIONER'S REPLY BRIEF**

Petitioner, Jose de Jesus Sahagun Aleriano, respectfully submits this reply in support of Petitioner's Motion to Enforce. ECF No. 14. Respondents contend that the bond hearing did, in fact, comply with this Court's order. ECF No. 16. However,

Respondents' fail to address Petitioner's primary arguments in the Motion to Enforce and misconstrue Petitioner's arguments

**A. The IJ Failed to Allocate the Burden of Proof to the Government when the IJ "Considered" Evidence Interchangeably**

Throughout the response, Respondents repeatedly state that the IJ considered evidence presented by both parties, seemingly interchangeably, and then made a determination that DHS had met its burden. "After considering the evidence presented by both parties, the IJ concluded that DHS had met its burden." ECF No. 16 at 3; "The IJ recognized that . . . after considering all evidence presented by both parties, the IJ would determine whether DHS had met its burden." *Id.* at 5; "The record thus demonstrates that the IJ . . . considered evidence submitted by both parties . . . and ultimately concluded that DHS satisfied the burden. . . ." *Id.* at 7. Yet, Respondents never address the main thrust of Petitioner's argument—that by considering evidence submitted by both parties interchangeably, "it is impossible to discern whether the government's evidence, standing alone, satisfied its . . . burden." ECF No. 14 at 9 (*quoting Cervantes Arredondo v. Baltazar*, No. 25-cv-03040-RBJ, ECF No. 26, at *11).

When the Court ordered the Government to bear the burden by clear and convincing evidence at the bond hearing that Petitioner was a danger and should not be released, the Court made clear that it was the responsibility of the Government, and the Government alone, to produce evidence to meet this burden. *See* ECF No. 11 at 4. But here, as the record shows, and as Respondents themselves admit, the IJ never made an initial determination that the Government's evidence

alone was sufficient to satisfy its burden. In fact, when the IJ "considered evidence by both parties," in practice this meant that the IJ considered Petitioner's evidence for the sole purpose of establishing the existence of an alcohol-related driving offense. *See* ECF No. 16 at 6. "Petitioner argued before the IJ that DHS bore the burden . . . and that Petitioner's documentary submission were offered as rebuttal evidence demonstrating rehabilitation, [but] [t]he IJ nevertheless concluded that Petitioner's own evidence further confirmed that, with the preceding year, he has sustained an alcohol-related driving conviction." (*citing* IJ Bond Memorandum, ECF No. 13-1 at 2.)

In sum, when the IJ announced at the conclusion of the written decision that "[b]ased on [Petitioner's] recent alcohol-related driving offense, the Court finds DHS has met its burden to establish that [Petitioner] is a danger," ECF No. 13-1 at 2, the IJ failed allocate the burden squarely on the government. By using Petitioner's own evidence against him to aid the Government in purportedly meeting their burden, the IJ failed to hold the Government responsible as the party required to bear the burden.

### B. The IJ's Complete Disregard for Petitioner's Evidence Does Not Satisfy Due Process

Respondents misconstrue Petitioner's arguments in the Motion to Enforce, contending that Petitioner is simply challenging the IJ's "evaluation" of the evidence and asking the Court to "reweigh" the evidence in the record. ECF No. 16 at 4, 7. No so. As explained in the Motion to Enforce, Petitioner argues that the IJ's

wholesale failure to even consider the rebuttal evidence submitted by Petitioner does not satisfy due process. ECF No. 14 at 10.

As noted previously, Respondents repeatedly assert that the IJ considered Petitioner's evidence before making the decision to deny bond. *See, e.g.*, ECF No. 16 at 7 ("The record thus demonstrates that the IJ . . . considered evidence submitted by both parties . . . and ultimately concluded that DHS satisfied the burden. . . ."). Moreover, Respondents even contend that "[t]he 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." ECF No. 16 at 7 (citing IJ Bond Memorandum, ECF No. 13-1 at 2.).

In reality, the record reflects that the IJ disregarded all rebuttal evidence submitted, and never even acknowledged "family ties" or "favorable equities" as Respondents claim. *Id.* It appears that Respondents assumed that when the IJ recited legal standards and holdings established by BIA precedent, which mention factors such as family ties, that Respondents assumed the IJ considered Petitioner's evidence. Yet, nowhere in the IJ's decision does it reflect that the IJ considered Petitioner's family ties, any favorable equities, or any of Petitioner's rebuttal evidence. *See* ECF No. 13-1.

As to the evidence submitted by Petitioner that the IJ did acknowledge, the IJ's decision indicates it was considered for the sole purpose of helping Respondents establish the existence of an alcohol-related driving offense. *See* ECF 13-1 at 2

("[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, this is evident in the way the IJ described the evidence Petitioner submitted, such as:

> [A]n evaluation and referral recommendation report indicating that Respondent was charged with Driving Under the Influence (DUI), DUI Per Se, Lane Usage Violation, and Alcohol-open Container/Drink in Vehicle for an August 12, 2025 offense, and "conviction/deferred" for Driving While Ability Impaired.

ECF No. 13-1 at 2.

It is telling that the IJ did not acknowledge the actual substance of this evaluation and referral recommendation, which found that

> The Defendant was cooperative throughout the evaluation . . . [and] desires to remain sober and presented as amenable to engagement in intervention services. The Defendant appeared motived to comply with Court orders." And finally, the evaluator recommended that "[a]s the present offense before the Court is the Defendant's first alcohol-related driving offense, Level II Education should suffice at this time."

ECF No. 14-3, at 17-18.

The IJ's description of the rebuttal evidence provided, such as this evaluation and referral recommendation, shows that the IJ was simply looking for evidence to establish the existence of a an alcohol driving-related offense, regardless of which party submitted it.

To be clear, Petitioner does not ask the Court to reweigh the evidence and/or give more weight to Petitioner's evidence of rehabilitation, as Respondents contend. ECF No. 16 at 8. Rather, Petitioner highlights these specific items from the record to demonstrate that the IJ failed to engage with, or even consider, any of

Petitioner's evidence for the purpose for which is was submitted. ECF No. 14 at 10. Such failure to engage with the record fails due process.

## CONCLUSION

For the foregoing reasons, as well as the arguments presented in Petitioner's Motion to Enforce, ECF No. 14, Petitioner respectfully moves the Court to grant the motion.

Respectfully submitted this 22nd day of July 2026,

*/s/ Luke Niermann*
Luke Niermann
Colorado Reg. No. 55462
Joseph & Hall, P.C.
12203 East Second Avenue
Aurora, CO 80011
303-297-9171
luke@immigrationissues.com

*Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 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:

Abby.weinberg@usdoj.gov
Anh Weinberg

*Attorney for Respondents*

/s/ *Luke Niermann*
Luke Niermann
Colorado Reg. No. 55462
Joseph & Hall, P.C.
12203 East Second Avenue
Aurora, CO 80011
303-297-9171
luke@immigrationissues.com