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 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, U.S. Attorney General,

Respondents.

RESPONDENTS' RESPONSE TO PETITIONER'S SECOND MOTION TO ENFORCE (ECF No. 20)

Respondents respond as follows to Petitioner's Second Motion to Enforce, ECF No. 20 ("Motion"). In the Motion, Petitioner seeks to enforce the Court's August 18, 2026, Order and seeks judicial review of the second bond denial. That order directed Respondents to provide Petitioner with a second bond hearing before a different immigration judge within seven days at which the government would bear the burden of proof by clear and convincing evidence. ECF No. 18. That order further directed that the clear and convincing evidence standard be met first before the immigration judge ("IJ") considers evidence submitted by Mr. Aleriano. *Id.* at 1.

Pursuant to the Court's Order, a second bond hearing before a different IJ was held in Petitioner's immigration proceedings on August 21, 2026. *See* ECF No. 19-1. After making an independent custody determination based on the evidence admitted in the new proceeding, the

second IJ denied bond based on a finding that "the Department of Homeland Security has met its burden of establishing by clear and convincing evidence that the Respondent presents a danger to persons or property." *Id.* at 4. Petitioner's Motion alleges that at the August 21, 2026, bond hearing, the IJ failed to follow this Court's order by relying on "Petitioner's own evidence, repackaged as 'DHS Evidence' to find that the Government had met its burden ultimately denying bond." ECF 20 at 2. As relief, Petitioner asks this Court to order immediate release and enjoin the respondents from re-detaining petitioner unless certain criteria are met. *Id.* at 5. For the reasons set forth below, Respondents complied with this Court's Order, and Petitioner's Motion should be denied. *Pena-Gil v. Lyons*, No. 25-cv-03268-PAB-NRN, 2026 WL 25143, at *2 (D. Colo. Jan. 5, 2026) ("[A] motion to enforce the Court's order lacks a basis for relief where respondents have complied" with the order.).

BACKGROUND

Per the Court's August 18, 2026, Order, a different IJ held an independent second bond hearing in Petitioner's case on August 21, 2026, within one week of the Court's Order. *See* ECF No. 18; ECF 19-1. At that hearing, the IJ placed the burden on the Department of Homeland Security ("DHS") "to establish dangerousness or flight risk by clear and convincing evidence." ECF 19-1 at 1. The IJ further noted that the burden "must be met first and then only after it has been met should the judge consider evidence submitted by respondent." *Id.* at 1 (quoting this court's August 18, 2026, Order). Applying that burden, the IJ first considered whether "the evidence affirmatively submitted by DHS, standing on its own," established dangerousness by clear and convincing evidence before considering evidence submitted by Petitioner in the new proceeding. ECF No. 19-1 at 2-3. The IJ found that based on admitted conduct contained within

DHS's evidence that DHS "has met its burden of establishing by clear and convincing evidence that the [Petitioner] presents a danger to persons or property." *Id.* at 4.

ARGUMENT

Petitioner's challenge to the IJ's reasoning should be rejected. Petitioner contends that the immigration judge erred in finding that the evidence offered by DHS at the second bond hearing was DHS' own evidence. *See* ECF No. 20 at 2. That contention fails for numerous reasons.

I. Petitioner's argument first conflates the allocation of the burden of proof with the provenance of particular evidence.

The Supreme Court has explained that the phrase "burden of proof" historically encompasses two distinct concepts: the burden of persuasion – i.e., which party loses of the evidence is closely balanced – and the burden of persuasion – i.e., which party must come forward with evidence at different points in the proceeding. *Schaffer ex. rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005); *Dir., Off. Of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 272 (1994). A "standard of proof," by contrast, identifies the degree of certainty by which the factfinder must be persuaded. *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 100 n.4 (2011). Clear and convincing evidence is a heightened standard requiring that the asserted fact be "highly probable." *United States v. Dear*, 104 F.4th 145, 147 (10th Cir. 2024) (quoting *Florida v. Georgia*, 592 U.S. 433, 438-39 (2021)).

The Court's August 18 Order placed the burden on the Government, required the Government to satisfy that burden by clear and convincing evidence, and prescribed the sequence by which the IJ was to consider the parties' evidence. ECF No. 18. The Order did not state that a document previously filed by Petitioner in an earlier proceeding could never be

affirmatively offered by DHS in the new proceeding. *See id.* Nor did the Order assign permanent ownership of particular documents based on which party had filed them in a prior hearing. *See id.*

Even if the Order is understood to place both the burden of production and the burden of persuasion on DHS, the August 21 record shows that DHS bore both burdens. Before the new hearing, DHS affirmatively filed the materials at issue as part of its own evidentiary submission, and DHS itself offered those documents into the record at the hearing. ECF No. 19-2 at 2; ECF No. 20-1 at 1-2. The IJ admitted the documents as DHS's Exhibit 3 and expressly determined that, whatever characterization those documents had received in the prior proceeding, DHS had affirmatively presented them in the August 21 proceeding. ECF No. 19-1 at 2. The IJ then considered whether "the evidence affirmatively submitted by DHS, standing on its own," satisfied the clear-and-convincing standard before considering evidence submitted by Petitioner in the new proceeding. *Id.* at 2-3. Thus, DHS came forward with the evidence on which it relied, retained the burden of persuasion, and was required to satisfy the clear-and-convincing standard before the IJ proceeded to Petitioner's evidence.

Petitioner's repeated characterization of DHS's Exhibit 3 as merely his prior "rebuttal evidence" also does not account for the contents of the exhibit the IJ relied upon. *See* ECF No. 20 at 3-4. Although Petitioner had previously filed the larger packet in support of release, the alcohol-and-drug evaluation within that packet contained evidence concerning the underlying offense, including a reported blood-alcohol concentration of .131 and Petitioner's own account that he consumed three beers and a shot before driving a coworker home. ECF No. 20-1 at 18-20. DHS affirmatively offered that material at the August 21 hearing, and the IJ relied on those

portions of DHS's Exhibit 3 in determining that DHS established dangerousness by clear and convincing evidence. ECF No. 19-1 at 2-4. That Petitioner had previously placed the same documents before a different IJ for a different purpose does not mean that DHS could not affirmatively offer and rely on the documents in the new proceeding.

Petitioner also asserts that, after finding DHS has met its burden, the IJ "did not consider whether any of Petitioner's rebuttal evidence of reform and rehabilitation countered the dangerousness finding." ECF No. 20 at 3. The written decision states otherwise. After explaining and applying the sequencing required by this Court, the IJ stated that she had "considered the entirety of the evidence properly before it under the framework required by the District Court's order." ECF No. 19-1 at 3. Her subsequent statement that the dangerousness finding rested on DHS's Exhibit 3 "without relying upon evidence submitted by the [Petitioner] in the present proceeding" identifies the evidence that the IJ found sufficient to satisfy DHS's burden. It does not state that the IJ refused to consider Petitioner's evidence after that burden was met. *Id.* at 3-4. The Court's August 18 Order required the IJ to consider Petitioner's evidence only after DHS first met its burden, but it did not require a particular custody outcome. ECF No. 18.

II. The INA expressly prohibits review of an IJ's discretionary bond decision by federal district courts.

In challenging the IJ's reasoning, Petitioner's argument improperly goes beyond enforcing the Court's August 18 Order. Section 1226(e) bars judicial review of "[t]he Attorney General's discretionary judgment regarding the application of this section" and provides that "[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). The Tenth Circuit has confirmed that "to the extent [a petitioner] challenges the

agency's discretionary bond decision ... the court lack[s] jurisdiction" under § 1226(e). *Mwangi v. Terry*, 465 F. App'x 784, 786-87 (10th Cir. 2012). So, while § 1226(e) "does not preclude challenges to the statutory framework that permits the alien's detention without bail," *Jennings v. Rodgriguez*, 583 U.S. 281, 295 (2018) (cleaned up), an immigration judge's "discretionary decision[s] with respect to the grant or denial of bond [are] not reviewable in this Court." *Rani v. Barr*, No. 19-cv-02017-RBJ, 2019 WL 6682834, at *8 n.2 (D. Colo. Dec. 6, 2019).

A court has inherent authority to ensure that its orders are carried out. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). But that authority extends only to whether a party has failed to comply with a court order in some respect. Where a party has complied with a court's order, "there [is] 'nothing left ... to 'enforce.'" *Pena-Gil*, 2026 WL 25143, at *2 (quoting *Rahman v. Bondi*, No. 24-cv-02132, 2025 WL 3158061, at *1 (W.D. Wash. Nov. 12, 2025)); *see also Vides v. Searls*, No. 20-cv-06293 EAW, 2021 WL 6846277, at *1 (W.D.N.Y. May 13, 2021) (in deciding a motion to enforce a court's order for a bond hearing, the court's task is "not to review the hearing evidence *de novo*" and "substitute its judgment for the IJ's determination," but merely to determine whether the government complied with the court's order (citation omitted)).

Here, as explained *supra*, Respondents complied with the Court's Order. To the extent the Motion asks whether the IJ followed the Court's August 18 Order regarding the allocation and sequencing of the burden, the Court may assess compliance with its own Order. *See Maldonado Ochoa v. Baltazar*, No. 26-cv-01449-PAB, ECF No. 21, at 3-6 (D. Colo. June 5, 2026). In *Maldonado Ochoa*, the court denied a motion to enforce because the IJ had applied the burden required by the district court and the petitioner's remaining sufficiency arguments

"invite[d] the Court to reweigh the evidence presented at the bond hearing." *Id.* at 4-6.

The same distinction applies here. Once the record shows that the IJ applied the Court-prescribed burden and sequence, a request that the Court reassess the sufficiency or weight of the evidence asks the Court to reweight the bond record and substitute its judgment for the IJ's. *Id.* The Court may not decide anew whether DHS's Exhibit 3 was sufficiently persuasive, whether Petitioner's mitigating evidence deserved greater weight, or whether the evidence ultimately warranted a finding of dangerousness. *Id.*; *Mwangi*, 465 F. App'x at 786-87.

III. To the extent Petitioner seeks review of the merits of the second bond determination rather than enforcement of the Court's August 18 Order, Petitioner has not exhausted the available administrative remedy for that challenge.

Respondents do not contend that exhaustion prevents the Court from determining whether its own order was followed. Rather, the exhaustion argument applies to Petitioner's separate effort to obtain judicial review of the evidentiary and discretionary merits of the bond denial. *See* ECF No. 20 at 2-5. Generally, as to such merits-based review, "[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). 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] Importantly, the habeas exhaustion requirement in the immigration context "extends not only to

[1] Respondents do not rely on *Soberanes* for the proposition that exhaustion is jurisdictional, only that exhaustion is required in § 2241 cases, particularly as to challenges to immigration judge bond hearing decisions. Post-*Soberanes*, the Supreme Court clarified that exhaustion, when a requirement, is ordinarily regarded as an affirmative defense. *See Jones v. Bock*, 549 U.S. 199, 212 (2007).

substantive issues, but to constitutional objections that involve administratively correctable procedural errors, even when those errors are failures to follow due process." *Id.* (internal quotation marks and citation omitted).

Courts—including those in this District—thus often require immigration detainees challenging bond decisions to first exhaust the available administrative remedies before seeking habeas relief. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (habeas review of the immigration judge's adverse bond determination before appealing to the BIA was an "improper" "short cut"); Exhibit 1 – *Manzanarez Mendoza v. Bowen*, No. 25-cv-01558-RMR (D. Colo. Aug. 12, 2025), ECF No. 14 at 12 ("This Court is not convinced that waiting for the result of Petitioner's appeal to the BIA would be futile, in part, because it is not predetermined how the BIA is likely to rule."); Exhibit 2 – *Barahona Torres v. Bowen*, No. 25-cv-1434-GPG (D. Colo. July 22, 2025), ECF No. 18 at 6 (habeas challenge to bond hearing decision "counsel[ed] administrati[ve] exhaustion rather than immediate resolution").

Here, Petitioner has not exhausted his administrative remedies. The regulations provide an appellate remedy for detainees who were denied bond by an immigration judge: an appeal to the BIA. *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."). The IJ's August 21 Order reflects that Petitioner reserved appeal. ECF No. 19-1 at 5. The regulations further provide that, on appeal, the Board reviews IJ factual findings for clear error and questions of law, discretion, judgment, and other issues de novo. 8 C.F.R. § 1003.1(d)(3)(i)-(ii). Because the BIA may review the evidentiary and analytical issues Petitioner raises, an administrative appeal is the appropriate forum for Petitioner's challenge, not this Court. Petitioner should not be permitted to

use a motion to enforce as a "substitute for direct appeal." *Soberanes*, 388 F.3d at 1309-10 (quotation marks and citation omitted). Thus, "[t]he appropriate next step for [Petitioner] is the Board of Immigration Appeals, not a writ of habeas corpus from this Court." *Barahona Torres*, No. 25-cv-1434-GPG, ECF No. 18 at 6.

CONCLUSION

For the reasons stated above, Respondents respectfully submit that the Court should deny Petitioner's Motion to Enforce.

Dated: September 11, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 11, 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.

s/ Anh Weinberg
Anh Weinberg
United States Attorney's Office