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, U.S. Attorney General; and, in their official capacities, **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 Second Motion to Enforce, ECF No. 20.

A. Respondents Misread the Court's August 18th Order to Permit DHS to Appropriate Petitioner's Evidence

In the August 18, 2026, motion hearing, this Court granted Petitioner's first Motion to Enforce, ECF No. 14, finding that Respondents had not complied with the Court's June 22, 2026, Order in the June 25, 2026, bond hearing. In granting the Motion to Enforce and ordering a new bond hearing, the Court further clarified that "[t]he clear and convincing must be met first and then only after it has been met should the Judge consider evidence submitted by Mr. Aleriano." ECF No. 18.

Nevertheless, in the August 21, 2026, bond hearing, DHS simply put its own cover page on the rebuttal evidence that Petitioner submitted in the prior, constitutionally-deficient bond hearing, and then submitted these documents as DHS evidence. Based on this evidence, the IJ denied bond. ECF No. 19-1 at 3.

Respondents attempt to justify this action, arguing that because the Court did not explicitly prohibit it, then it was allowed. ECF No. 22 at 3-4 ("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. Nor did the Order assign permanent ownership of particular documents based on which party had filed them in a prior hearing.") (internal citations omitted).

While it is true that the Court's August 18th Order did not contain these specific restrictions, Respondent's actions in submitting Petitioner's evidence under the guise of DHS evidence flouts the intention the Court's August 18th Order. During the August 18, 2026, motion hearing, the Court endorsed the framework for considering evidence in bond hearings that Judge Jackson articulated in *Cervantes*

Arredondo v. Baltazar as the most appropriate approach. *See Cervantes Arredondo v. Baltazar*. No. 1:25-cv-03040-RBJ, slip op. at 15-16 (D. Colo. Dec. 18, 2025) (explaining the IJ should first determine whether the government's evidence meets their burden,and only then consider whether evidence from the noncitizen rebuts the government's showing).

Here, when DHS simply repackaged Petitioner's prior rebuttal evidence and submitted it to the immigration court, they effectively ignored the *Cervantes Arredondo* framework for consideration of evidence. Allowing DHS to submit, as their own, Petitioner's evidence that he himself submitted in the prior, constitutionally-deficient bond hearing effectively penalizes Petitioner for filing evidence ahead of time.

a. *Advance submission of evidence is an administrative necessity of electronic filing in the immigration courts.*

In an immigration bond hearing in which the burden has been placed on the government, a noncitizen would ordinarily withhold rebuttal evidence until after the government presents its case, and submit it only if the immigration judge found that the government had met its burden. However, the immigration court's electronic filing system does not permit that course. Filing through the Executive Office for Immigration Review's Courts and Appeals System (ECAS) is a three-step process. A document is not filed when it is uploaded. It is filed only after the user uploads it, EOIR confirms successful upload, and EOIR confirms the document's inclusion in the electronic record of proceeding. Exec. Office for Immigration

Review, U.S. Dep't of Justice, ECAS User Manual § 3 (updated Sept. 25, 2022), https://www.justice.gov/eoir/ECAS.

Each uploaded document "enters an intake queue for the court," which "acts as a virtual 'filing window,'" and court staff must review and accept the document before it becomes part of the record. *Id.* § 2(f). A document is deemed filed on the date of successful upload only if it is later accepted, and a rejected document is not. *Id.* § 2(g); *see* 8 C.F.R. § 1001.1(dd). Because acceptance depends on staff review that does not occur in real time, a party cannot reliably tender documentary evidence during the hearing itself. Bond materials must also be uploaded separately from the removal proceeding and in advance. ECAS User Manual, *supra*, § 2(b)(vii); *see* 8 C.F.R. § 1003.19(d).

Here, Petitioner filed rebuttal evidence ahead of the first bond hearing on June 25, 2026, to ensure that Petitioner's evidence was available to the immigration court, should it be necessary, and to ensure an efficient process for the hearing. ECF No. 14-2, 14-3. Allowing DHS to now use that very evidence penalizes Petitioner for his foresight, and leads to a situation in which noncitizens will be incentivized to not submit any evidence prior to bond a hearing where the government bears the burden. Such an outcome would lead to practical difficulties and inefficiencies in conducting bond hearings.

B. Respondents Assertion that the IJ Did, In Fact, Consider Petitioner's Rebuttal Evidence is Without Merit

Respondents contend that after the IJ found DHS had met its burden, the immigration court did, in fact, consider all of Petitioner's rebuttal evidence that he

submitted in the August 21, 2026, bond hearing to demonstrate reform and rehabilitation and counter the dangerousness finding. ECF No. 22 at 10. Not so. Respondents misread the IJ's decision. Respondents point to the IJ's statement that "[t]he Court has considered the entirety of the evidence properly before it under the framework required by the District Court's Order" as evidence that the IJ considered Petitioner's rebuttal evidence. ECF No. 22 at 10 (citing ECF No. 19-1 at 3.). Yet, this statement from the IJ immediately precedes the IJ's finding that DHS has established their burden of proof in regard to dangerousness, and that the immigration court came to its conclusion without relying on evidence submitted by the Petitioner in the present proceeding. ECF No. 19-1 at 3. Thus, the "entirety of the evidence" statement from the IJ refers only to evidence the IJ construed as DHS evidence.

Under the *Cervantes Arredondo* bond framework, if the immigration judge determines that the government's evidence alone meets its burden, only then should it consider the noncitizen's evidence to determine if that evidence "sufficiently rebuts, mitigates, or undermines the government's showing." *Cervantes Arredondo,* No. 1:25-cv-03040-RBJ, slip op. at 9.

Here, the IJ's decision does not so much as acknowledge the rebuttal evidence submitted by Petitioner, or provide any analysis as to why the evidence was not

sufficient to overcome the immigration court's finding of dangerousness.[1] Such a failure to engage with, or even consider, the record does not satisfy due process. *See Perez Serrano v. Hagan*, No. 1:26-cv-01641-CNS, ECF No. 17 at *4–5 (finding 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); *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).

CONCLUSION

Petitioner does not ask this Court to reweigh the evidence presented at the bond hearing but simply to ensure that the Court's orders are followed. For the foregoing reasons, as well as the arguments presented in Petitioner's Second Motion to Enforce, ECF No. 20, Petitioner respectfully moves the Court to grant the motion and order Petitioner's immediate release.

[1] On the day of the August 21, 2026, bond hearing, Petitioner submitted a 192-page evidentiary filing titled "Respondent's Rebuttal Evidence." This evidentiary filing was nearly identical to the evidence submitted in two parts prior to the June 25, 2026, bond hearing. That evidence was previously submitted to the court as exhibits. ECF Nos. 14-2, 14-3. Because it is essentially a duplicate of previous evidence submitted, Petitioner has not submitted a copy of Petitioner's rebuttal evidence submitted at the August 21, 2026, bond hearing. Petitioner is ready to provide this evidence if requested by the Court.

Respectfully submitted this 18th day of September 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 September 18, 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