

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSE CRUZ GARCIA PESCADOR,

Petitioner,

v.

GRANT DICKEY, *et al.*,

Respondents.

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Civil Action No. 4:25-CV-06070

**THE FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S MOTION
TO ENFORCE HABEAS ORDER AND FOR IMMEDIATE RELEASE**

The Federal Respondents hereby responds to Petitioner Jose Cruz Garcia Pescador's motion to enforce the Court's habeas order, which dangerously misrepresents that the Government did not comply with the Court's previous order—which is categorically untrue—and misunderstands the law as to the judicial reviewability of the bond determination which Petitioner acknowledges did in fact occur.

A brief summary of the relevant events is useful. On January 9, 2026, this Court ordered the Federal Respondents to provide Petitioner with a bond hearing within seven days from the date of its order. The agency did precisely that, referring Petitioner to an immigration judge (“IJ”) for an individualized bond determination, wherein the IJ denied bond upon finding Petitioner a flight risk. This motion takes issue with the *substance* of the immigration judge's decision, despite that such decisions are patently unreviewable by the plain text of the INA. Petitioner now attempts to attack the immigration judge's decision as “procedurally defective” because the purportedly committed legal errors such as having “misapplied the

burden of proof” and finding Petitioner a flight risk “despite overwhelming, undisputed evidence to the contrary.” Dkt. No. 15 at 1–2. Disagreeing with the result of the immigration proceedings, counsel for Petitioner has the brazenness to accuse the Federal Respondents of “fail[ing] to comply” with the Court’s order. This argument has no legal merit and is a thinly-veiled attempt to have this Court overturn the IJ’s bond determination, which the INA has expressly precluded from judicial review.

I. RELEVANT LAW

Federal courts “are courts of limited jurisdiction and possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005). It is well-taken, and Petitioner surely does not dispute, that “Congress can limit district court jurisdiction if it so chooses.” *See, e.g., Cochran v. SEC*, 20 F.4th 194, 200 (5th Cir. 2021) (en banc), *aff’d sub nom., Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 143 S. Ct. 890, 215 L. Ed. 2d 151 (2023); *Bowles v. Russell*, 551 U.S. 205, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007) (“Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider.”); *Rubrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583–84, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999) (“Subject-matter limitations . . . keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level.”).

II. DISCUSSION

Here, Petitioner sought, and this Court provided for, a bond hearing during removal proceedings pursuant to 8 U.S.C. § 1226(a). It is undisputed that what Petitioner sought, and

what the Federal Respondents provided to him, was a Section 1226(a) bond hearing. In the same Section of the INA, Congress provided that:

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No 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). It is axiomatic that this provision divests federal courts of jurisdiction to review discretionary decisions made by an IJ regarding bond. *See, e.g., Fuentes v. Lyons*, No. 5:25-CV-00153, 2025 WL 3022478 (S.D. Tex. Oct. 29, 2025) (“[D]istrict courts do not have jurisdiction to review discretionary decisions made by an IJ regarding bond.”) (citing *Nielsen v. Preap*, 586 U.S. 392, 401, 139 S.Ct. 954, 203 L.Ed.2d 333 (2019)); *El Gamal v. Noem*, 790 F.Supp.3d 551 (W.D. Tex. 2025) (acknowledging courts “lacks authority to review an exercise of the Attorney General’s discretion under § 1226(a) to detain pending a decision on whether an alien is to be removed from the United States”); *Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 WL 3051601, at *10 (W.D. Tex. Oct. 18, 2007) (“[T]he Court finds that it does not have jurisdiction to review the decision to deny release on bond itself or the Attorney General’s discretionary judgment regarding the application of 1226(a), ‘including the manner in which that discretionary judgment is exercised, and whether the procedural apparatus supplied satisfied regulatory, statutory, and constitutional constrains.’”); *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668 (W.D. Tex. 2025) (acknowledging that while detention without a bond hearing can be challenged, Section 1226(e) “shields [] the Attorney General’s discretionary detention decisions”); *accord Bravo v. Ashcroft*, 341 F.3d 590, 592 (5th Cir. 2003) (“[T]here is no jurisdiction to review denials of discretionary relief.”).

III. ARGUMENT

It is hard to imagine controlling caselaw being any more unequivocal on the matter. To zoom out, there is never a situation under Section 1226(a) where the IJ is *required* to grant bond. Like many other immigration benefits, a grant of bond in a Section 1226(a) is up to the IJ's discretion, and never a matter of right; it is referred to as the *discretionary* detention statute for a reason. That exercise of discretion is unreviewable. 8 U.S.C. § 1226(e).

The text of the jurisdiction-stripping provision speaks for itself. But to be absolutely, unmistakably sure, this bar against review of discretionary judgments explicitly “includ[es] the manner in which that discretionary judgment is exercised, and whether the procedural apparatus supplied satisfies regulatory, statutory, and constitutional constraints[.]” *Loa-Herrera v. Trominski*, 231 F.3d 984, 991 (5th Cir. 2000) (interpreting 8 U.S.C. § 1226(e)); *see also Kambo*, 2007 WL 3051601 at *10 (quoting *Loa-Herrera*, 231 F.3d at 991).

The present Motion at issue is squarely and comfortably resolved by the aforementioned authorities. Petitioner alleges that the IJ misapplied the burden framework, failed to adequately explain a finding of flight risk, and overall that his decision was erroneous. *See* Dkt. No. 15 at 2–6. If there were ever a textbook example of the proper application of Section 1226(e), it would be here.

Recently, Judge Saldaña was confronted with this issue, albeit on a different posture, where a detainee similarly received a bond hearing under Section 1226(a), was denied bond, and in turn alleged “that there were constitutional deficiencies in her bond hearing.” *Hernandez-Almanza v. Noem*, 5:25-CV-00215, Dkt. No. 21 (S.D. Tex. Jan. 12, 2026). Judge Saldaña denied the petition, “recogniz[ing] that 8 U.S.C. § 1226(e) strips the Court of

jurisdiction to review Petitioner’s claims regarding the IJ’s discretionary denial of bond.” *Id.* Silence can be deafening, as it is here where while the Government supplies the relevant provisions and on-point caselaw, yet Petitioner’s Motion omits any reference to such authorities and indeed does not muster a single favorable analogous case in support of his Motion. And for good reason, as alleged infirmities in an IJ’s bond determination under Section 1226(a) cannot be challenged in federal court, full stop.

Even if Petitioner had brought this lawsuit as a separate, distinct challenge—whether styled as an APA claim, as a habeas action, or otherwise—it would be dead on arrival for the very reasons set forth above. Yet Petitioner goes much farther, attempting to assail the IJ’s reasoning through a post-judgment motion in *this* case under the pretense that the Government “did not comply with the Court’s order”—a serious charge that should not be made lightly, much less recklessly and, most importantly here, incorrectly. This Court ordered ICE to provide a bond hearing under 8 U.S.C. § 1226(a), and ICE did precisely that. The agency has no control over the IJ’s decision and reasoning, and IJs exercise their own independent judgment as to the facts and law. Inextricably embedded in this effort to “enforce” what the Court ordered is a request for this Court to review—and set aside—the IJ’s decision. But the IJ’s discretionary judgment is just that, discretionary, and is unreviewable, “including the *manner* in which that discretionary judgment is exercised, and whether the procedural apparatus supplied satisfies regulatory, statutory, and constitutional constraints[.]” *Loa-Herrera*, 231 F.3d at 991. This “denial of bond” is a “discretionary judgment” which “[n] court may set aside[.]” 8 U.S.C. § 1226(e).

A. THE COURT’S BOND ORDER

To be sure, Petitioner’s focus on the Court’s order providing for a bond hearing under 8 U.S.C. § 1226(a), “with all attendant burdens of proof,” makes much ado over nothing. Read in context, the Court’s “all attendant burdens of proof” language makes the unspectacular point that the bond hearing should be a full bond determination made pursuant to 8 U.S.C. § 1226(a) (as opposed to a hearing where the IJ asserts a lack of jurisdiction as a basis for denying bond). The Court did not purport, nor would it have had the authority, to impose some sort of legal scrutiny over the IJ’s analysis, which is unreviewable. 8 U.S.C. § 1226(e). By Petitioner’s line of persuasion, had this Court hypothetically ordered for “a bond hearing by an IJ that correctly construes every possible legal question,” that language would successfully create a loophole to the unmistakable jurisdictional bar and allow this Court to do what it is expressly forbidden from doing: reviewing the IJ’s discretionary decision. *See Loa-Herrera*, 231 F.3d at 991 (precluding from review “the *manner* in which that discretionary judgment is exercised, and whether the procedural apparatus supplied satisfies regulatory, statutory, and constitutional constraints”). Petitioner offered zero legal support for this proposition which flies in the face of not only established law but also basic intuition.

B. PETITIONER MAY APPEAL HIS DENIAL TO THE BIA

Finally, to be sure, Petitioner is not without recourse. He enjoys the ability to challenge his bond determination via appeal to the BIA, which is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation

assign to it,” including IJ custody determinations.¹ 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. Indeed, the issue of “[w]hether an alien poses a flight risk is a question of judgment that [the BIA] review[s] de novo[.]” *See Matter of Dobrotvorskii*, 29 I. & N. Dec. 211, 212 (BIA 2025) (citing 8 C.F.R. § 1003.1(d)(3)(i)–(ii)). But again, what he may not do is challenge the bond denial in federal court, as it is a “discretionary judgment” which “[n] court may set aside[.]” 8 U.S.C. § 1226(e).

IV. CONCLUSION

The Motion can be swiftly rejected as its argument is expressly precluded by the text of the INA and runs in direct conflict against controlling caselaw. The Court can order no more relief here than what it has already provided, and what the Federal Respondents have provided: a (discretionary and unreviewable) bond hearing. For the foregoing reasons, the Federal Respondents respectfully request that the Court deny Petitioner’s motion to enforce.

Dated: January 15, 2026

Respectfully submitted,

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¹ Petitioner reserved appeal, and the appeal window does not close until after February 13, 2026, roughly one month from now.

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CERTIFICATE OF SERVICE

I certify that on January 15, 2026, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

/s/ Shawn D. Ren
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