

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSE CRUZ GARCIA PESCADOR,	§	
	§	
Petitioner	§	
	§	
v.	§	
	§	Civil Action No. 4:25-cv-06070
GRANT DICKEY, et al,	§	
	§	
Respondents,	§	

**PETITIONER’S REPLY IN SUPPORT OF
MOTION TO ENFORCE HABEAS ORDER AND FOR IMMEDIATE RELEASE**

**I. THE GOVERNMENT MISCHARACTERIZES BOTH THE MOTION AND THIS
COURT’S ORDER**

The Government’s response rests entirely on a mischaracterization of Petitioner’s Motion. Petitioner does not ask this Court to reweigh evidence, second-guess an Immigration Judge’s discretionary judgment, or “set aside” a bond denial.

Petitioner asks this Court to do something far more modest and far more fundamental: to enforce its own habeas judgment after the Government failed to provide the process the Court ordered.

This Court did not direct the Government to merely refer Petitioner to an Immigration Judge. It ordered a bond hearing under 8 U.S.C. §1226(a), with all attendant burdens of proof, or release. A hearing that misallocates the burden, ignores controlling legal standards, and produces a conclusory outcome does not satisfy that order.

The Government's insistence that any proceeding labeled a "bond hearing" constitutes compliance is incorrect as a matter of law.

II. §1226(e) DOES NOT BAR ENFORCEMENT OF A FEDERAL HABEAS JUDGMENT

The Government's jurisdictional argument overreads §1226(e) and ignores controlling Fifth Circuit precedent.

Section 1226(e) bars judicial review of discretionary detention decisions. It does not bar courts from reviewing constitutional claims or questions of law, nor does it strip courts of authority to enforce their own judgments.

The Fifth Circuit has been explicit on this point:

"Section 1226(e) bars review of discretionary judgments, but it does not bar constitutional challenges or questions of law."

Pierre-Paul v. Barr, 930 F.3d 684, 692 (5th Cir. 2019).

Likewise:

"While §1226(e) limits judicial review of discretionary decisions, courts retain jurisdiction over claims that detention violates the Constitution or exceeds statutory authority."

Miranda v. Garland, 34 F.4th 338, 350 (5th Cir. 2022).

Petitioner's Motion falls squarely within that preserved jurisdiction. He does not challenge the outcome of a discretionary decision. He challenges whether the process required by due process, and ordered by this Court, was ever provided.

III. ENFORCEMENT OF A HABEAS ORDER IS NOT “REVIEW” OF DISCRETION

The Government’s reliance on *Loa-Herrera v. Trominski* and similar cases is misplaced. Those cases involved direct challenges to bond denials, not enforcement of a prior habeas judgment.

None of the Government’s cited authorities stand for the proposition that §1226(e) allows the Executive Branch to render habeas relief meaningless through procedural formalism aimed at finding a way to deny.

To the contrary, the Fifth Circuit has recognized that habeas relief must be real and effective, not merely nominal:

“Habeas relief must provide a real and effective remedy, not merely a formal one.”

Oduote v. Barr, 773 F. App’x 236, 238 (5th Cir. 2019).

A court does not lose jurisdiction simply because the Government performs the bare minimum act necessary to claim compliance. Where the ordered process is constitutionally defective, the underlying violation remains unremedied.

IV. THE HEARING PROVIDED DID NOT COMPLY WITH THIS COURT’S ORDER

A. “All Attendant Burdens of Proof” Was Substantive, Not Decorative

The Government’s suggestion that this Court’s “all attendant burdens of proof” language was merely “unspectacular” ignores the procedural history of this case.

Petitioner was previously denied bond on jurisdictional grounds. This Court therefore ordered a §1226(a) bond hearing applying the correct legal framework, including the burden allocation required by due process.

Under §1226(a), DHS bears the burden of justifying continued detention. A hearing that effectively shifts that burden to the detainee is not a §1226(a) hearing in substance, regardless of how it is labeled.

B. The Flight-Risk Finding Underscores the Defect

The Immigration Judge found Petitioner a flight risk despite undisputed facts that:

- Petitioner has lived in the United States for more than 27 years;
- He has three U.S.-citizen children;
- His 42B cancellation of removal case is on appeal to the BIA;
- The appeal triggers an automatic stay of removal;
- He has no criminal history; and
- Removal is not imminent.

Flight risk concerns the likelihood that a noncitizen will abscond to avoid removal. Here, there is no executable removal order and no rational incentive to flee.

The IJ's decision does not explain how these facts support flight risk, nor why any perceived risk could not be mitigated through conditions of release. A conclusory label is not an individualized determination and does not satisfy due process.

**V. ADMINISTRATIVE APPEAL DOES NOT DEPRIVE THIS COURT OF
ENFORCEMENT AUTHORITY**

The Government's suggestion that Petitioner should appeal the bond denial to the BIA misses the point.

This Court ordered a constitutionally adequate bond hearing or release. Whether Petitioner may also pursue administrative review does not deprive this Court of authority to enforce its own judgment or to remedy an ongoing constitutional violation.

Exhaustion is not required where, as here, the question is whether the Government complied with a federal court order and whether continued detention remains unlawful.

**VI. ACCEPTING THE GOVERNMENT'S POSITION WOULD NULLIFY HABEAS
RELIEF**

If the Government's position were correct, habeas relief would be satisfied by any proceeding (no matter how arbitrary or outcome-driven) so long as it bears the correct label.

That is not the law. It is not what this Court ordered, and it is not what the Constitution permits.

VII. CONCLUSION

Petitioner does not ask this Court to substitute its judgment for that of an Immigration Judge. He asks the Court to enforce its habeas judgment and ensure that unlawful detention ends when the ordered process was never meaningfully provided.

For these reasons, Petitioner respectfully requests that the Court:

1. Grant the Motion to Enforce its January 9, 2026 habeas order;
2. Order Petitioner's immediate release from ICE custody; or
3. In the alternative, require a new bond hearing under §1226(a), before a different Immigration Judge, with DHS bearing the burden of proof.

Respectfully submitted,

/s/ Matthew R. Mendez

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CERTIFICATE OF SERVICE

On January 16, 2026 Counsel for Plaintiff served a copy of the attached document via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at USATXS.CivilNotice@usdoj.gov.

/S/ Matthew Mendez
Matthew Mendez

01/16/2026
Date