

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Franklin SANCHEZ Henao

Petitioner,

v.

Julio HERNANDEZ et al.,

Respondents.

Case No. 2:26-cv-00707-LK

**REPLY ON MOTION TO
ENFORCE PRIOR COURT ORDER
AND FOR RELEASE FROM
CUSTODY**

INTRODUCTION

On April 2, 2026, this Court granted Petitioner's habeas petition and ordered the government to provide a meaningful bond hearing within seven days where the government would bear the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk. The Court specified that if such a hearing was not provided, Petitioner would be released immediately. While a bond hearing was held on April 9, 2026, it failed to comply with this Court's mandate. The Immigration Judge issued only a bare conclusory statement that the government had met its burden, without any factual findings, analysis of relevant factors, or reasoned explanation. As the government was not held to their burden as ordered by this Court, Mr. Sanchez should be released immediately.

The government's opposition fundamentally mischaracterizes the nature of Petitioner's motion. Petitioner does not ask this Court to reweigh evidence or second-guess the Immigration Judge's discretionary bond determination. Rather, Petitioner seeks enforcement of this Court's order requiring a meaningful hearing with reasoned decision-making. The government presented only an I-

213 form with unsupported allegations of Alternative to Detention violations, without documentation, records, or corroborating evidence. The Immigration Judge accepted these bare allegations without analysis or explanation. This falls far short of the clear and convincing evidence standard this Court mandated.

The government argues that Petitioner must exhaust administrative remedies by appealing to the Board of Immigration Appeals before seeking enforcement of this Court's order. This argument fails because the BIA cannot retroactively provide the meaningful hearing this Court ordered. A post-hoc written memorandum prepared on appeal cannot cure the absence of contemporaneous reasoned decision-making at the hearing itself. Moreover, requiring exhaustion would effectively nullify this Court's order by allowing indefinite delay through administrative appeal.

For these reasons, this Court should grant Petitioner's motion and order his immediate release as specified in the April 2, 2026 order.

SUMMARY OF THE ARGUMENT

The Respondents fundamentally mischaracterize this case as a disagreement with the outcome of the bond hearing, when in fact it is a challenge to the government's failure to comply with this Court's mandate for a meaningful hearing where the government is held to a specific burden. The government conflates three distinct inquiries: whether the Immigration Judge's bond determination was correct on the merits, whether the government presented sufficient evidence, and whether the April 9 hearing complied with this Court's order. Only the third inquiry is properly before this Court.

First, the April 9 hearing did not comply with this Court's order requiring a meaningful bond hearing. A meaningful hearing requires more than procedural form; it requires actual consideration and reasoned analysis. The Immigration Judge's bare conclusory statement without any factual findings, analysis of statutory factors, or explanation of how the evidence satisfied the clear and convincing standard falls far short of this requirement. The Ninth Circuit has held that an

administrative decision must be announced in terms sufficient to enable a reviewing court to perceive that the decision-maker has heard and thought and not merely reacted. The Immigration Judge's refusal to provide any explanation when asked demonstrates that no reasoned consideration occurred.

Second, the government failed to present evidence sufficient to meet the clear and convincing burden. The government presented only an I-213 form containing conclusory allegations of Alternative to Detention violations without supporting documentation, records, or corroborating evidence. The gap between the alleged violations and the bond hearing, combined with Petitioner's subsequent compliance and voluntary appearance, affirmatively undermines any finding of flight risk. Petitioner presented substantial evidence of community ties, employment, and family relationships that the government failed to overcome with clear and convincing proof.

Third, this Court retains jurisdiction to enforce its own order despite 8 U.S.C. § 1226(e). Federal courts retain habeas jurisdiction over constitutional claims and questions of law in immigration detention cases. The question of whether the April 9 hearing complied with the constitutional and procedural requirements established in this Court's order is precisely such a claim. The government's attempt to invoke the abuse of discretion standard misunderstands the distinction between reviewing the bond decision on the Merits and reviewing compliance with a judicial mandate.

Fourth, prudential exhaustion should not be required where Petitioner seeks enforcement of this Court's order. The Board of Immigration Appeals cannot retroactively provide the meaningful hearing this Court mandated. A post-hoc written memorandum prepared on appeal cannot cure the absence of contemporaneous reasoned decision-making at the hearing itself. Moreover, requiring exhaustion would effectively nullify this Court's order by allowing indefinite delay through administrative appeal. The obvious cure to the "floodgates" concern articulated by the Respondents is simple: follow this Court's order in the first instance.

The remedy specified in this Court's original order-immediate release from custody-should

be granted because the government has failed to comply with the Court's mandate for a meaningful bond hearing with reasoned decision-making.

ARGUMENT

I. The April 9 Proceeding Did Not Comply With This Court's Order Requiring a Meaningful Bond Hearing

This Court's April 2, 2026 order required a meaningful individualized bond hearing under 8 U.S.C. § 1226(a). The concept of a meaningful hearing is rooted in fundamental due process principles. The foundational requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. This principle is not satisfied by mere procedural formality or the occurrence of a hearing in name only.

An alien detained under 8 U.S.C. § 1226(a) is entitled to release on bond unless the government establishes that the alien is a flight risk or will be a danger to the community. In the context of prolonged detention, the government must prove dangerousness or risk of flight by clear and convincing evidence. These procedural protections exist to safeguard an alien's due process rights.

A. A Meaningful Hearing Requires Reasoned Decision-Making

A meaningful hearing necessarily requires that the decision-maker's order reflect reasoned consideration of the evidence and arguments presented. The Ninth Circuit has consistently required immigration judges and the Board of Immigration Appeals to state their reasons and show proper consideration of all factors when denying relief. Conclusory statements are inappropriate, and decision-maker must explain sufficiently how each factor figures in the balance so that a reviewing court is able to discern that it has heard, considered, and decided.

The Board of Immigration Appeals does not have to write exhaustively on every contention. What is required is merely that the decision-maker consider the issues raised and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought about the matter and not merely reacted. This standard applies with equal force to immigration judges conducting bond hearings, particularly where, as here, a federal court has explicitly ordered a meaningful hearing with specific procedural requirements.

B. The Immigration Judge's Conclusory Denial Fails to Meet the Standard

The April 9 hearing fell short of this Court's mandate in multiple respects. The Immigration Judge denied bond with only a conclusory statement that the Department of Homeland Security met its burden. No factual findings were made regarding Petitioner's flight risk or danger to the community. No analysis was provided explaining how the evidence presented at the hearing supported the conclusion that the government had satisfied its burden by clear and convincing evidence. When counsel asked the Immigration Judge to explain his reasoning to Petitioner through the interpreter, the judge simply repeated the conclusory statement.

This is precisely the type of decision that fails to satisfy the requirement that the adjudicator's order reflect that it heard and thought about the matter. The Immigration Judge's response demonstrates that no reasoned consideration of the evidence occurred. A decision that merely restates the legal standard without applying it to the facts presented does not constitute a meaningful hearing.

The government argues that compliance was achieved because a hearing occurred and the correct standard was stated. This argument conflates procedural formality with substantive compliance. This Court's order required more than the recitation of a legal standard; it required a hearing at which the government's burden would be meaningfully applied to the evidence. Due process requires immigration courts to make contemporaneous records of bond hearings. A bare

conclusory statement without contemporaneous findings or reasoning does not satisfy this requirement.

C. The Government's Reliance on Counsel's Response Does Not Cure the Deficiency

The government argues that because counsel responded no when asked if there was anything else, the hearing was adequate and the government complied with this Court's order. This argument fails for several reasons.

First, counsel's response does not waive the government's or the Immigration Judge's obligation to provide reasoned findings and analysis. This Court's April 2 order imposed a mandatory requirement that the hearing be meaningful and that the government bear the burden of proving its case by clear and convincing evidence. These are obligations of the government and the Immigration Judge, not conditions that can be waived by a litigant's colloquy. The absence of findings and reasoning is not cured by counsel's failure to demand them on the record after already requesting an explanation.

Second, the record shows that counsel did request an explanation. Counsel asked the Immigration Judge to explain his reasoning to Petitioner through the interpreter, and the Immigration Judge declined to provide any explanation beyond repeating the same conclusory statement. The government cannot now rely on the absence of a formal written motion to excuse the Immigration Judge's failure to comply with this Court's mandate.

Third, this Court's order itself imposed the obligation to conduct a meaningful hearing. That obligation does not depend on the parties' subsequent conduct or colloquy. The government and the Immigration Judge were bound by this Court's directive regardless of whether counsel explicitly renewed a request for findings at the conclusion of the hearing. To hold otherwise would allow the government to evade judicial orders through procedural manipulation.

II. The Government Failed to Present Evidence Sufficient to Meet the Clear and Convincing Standard

A. The Clear and Convincing Evidence Standard Imposes a Heightened Burden

The habeas order in this case requires the Department of Homeland Security to satisfy a heightened burden of proof at the bond hearing. The clear and convincing evidence standard demands more than a preponderance of the evidence; it requires proof that produces in the mind of the trier of fact a firm belief as to the truth of the allegations sought to be established. This standard reflects the serious nature of prolonged detention and the fundamental due process protections owed to aliens facing removal.

B. The Government's Evidence Falls Short

The Department of Homeland Security's case rests almost entirely on allegations contained in an I-213 form regarding three purported Alternative to Detention violations in April, July, and August 2025. However, the Department of Homeland Security presented no underlying Alternative to Detention or Intensive Supervision Appearance Program records, no testimony from government witnesses, and no corroborating documentation to substantiate these allegations. The bare assertion of violations in a form document, without supporting evidence, cannot satisfy the clear and convincing standard.

Affidavits and documentary evidence submitted in immigration proceedings must contain specific facts in order to carry the burden of establishing the requisite findings. A prima facie case cannot be established from speculative conclusions or vague assertions. A conclusory allegation standing alone does not constitute clear and convincing proof. The government's failure to produce the underlying records, to call witnesses who could testify to the alleged violations, or to provide any corroborating documentation demonstrates that the Department of Homeland Security has not met

its burden.

Even accepting that Alternative to Detention violations occurred as alleged, the gap between those violations and the bond hearing is significant. The alleged violations occurred in April, July, and August 2025, yet Petitioner continued to check in for months after these dates. This pattern of continued compliance following the alleged violations contradicts any inference that Petitioner poses a substantial flight risk. Moreover, Petitioner's voluntary appearance at the Immigration and Customs Enforcement appointment that ultimately led to detention demonstrates a willingness to comply with government processes rather than to abscond.

C. Petitioner's Community Ties Establish Stability

Petitioner presented substantial evidence of community ties and stability that directly address the flight risk inquiry. Petitioner demonstrated a fixed address in Yakima, steady employment with an employer letter welcoming return, and a family unit consisting of a wife and son residing in the United States. These factors are precisely the type of evidence that courts consider when evaluating whether an alien presents a flight risk. To determine dangerousness in section 1226(a) bond hearings, immigration judges must consider relevant factors including criminal record, extensiveness of criminal activity, recency of such activity, and seriousness of offenses. Similar consideration of relevant factors applies to flight risk determinations.

The presence of immediate family members in the United States creates powerful incentives for Petitioner to remain in the country and to comply with removal proceedings. The fixed address and steady employment further demonstrate that Petitioner has established roots in the community. Petitioner's consistent attendance at hearings prior to detention provides additional evidence of compliance with legal obligations.

D. The Asylum Denial Does Not Independently Establish Flight Risk

The Department of Homeland Security argued that Petitioner's asylum denial on appeal increased flight risk. However, the mere fact of an adverse immigration decision does not, standing alone, constitute clear and convincing evidence of flight risk. Many aliens receive adverse decisions in their immigration proceedings yet remain in the country to pursue available remedies or to comply with removal orders. The government must present specific evidence demonstrating that the particular alien's response to an adverse decision creates a substantial likelihood of flight.

In this case, the Department of Homeland Security presented no evidence that Petitioner has expressed an intent to flee, has made arrangements to leave the country, or has taken any steps inconsistent with remaining in the United States pending resolution of the appeal. The asylum denial, combined with Petitioner's demonstrated ties to the community and history of compliance, does not support a finding by clear and convincing evidence that Petitioner presents a flight risk.

III. This Court Retains Jurisdiction to Enforce Its Own Order

A. Federal Courts Retain Habeas Jurisdiction Over Constitutional Claims

The government's reliance on 8 U.S.C. § 1226(e) to bar this Court's jurisdiction fundamentally misunderstands the scope of that statute and the nature of the relief sought. While § 1226(e) restricts jurisdiction in certain respects, it does not eliminate federal courts' traditional habeas jurisdiction over constitutional claims or questions of law.

The Ninth Circuit has clarified that § 1226(e) restricts jurisdiction only with respect to the executive's exercise of discretion, but that discretionary judgment does not include constitutional claims or questions of law. This distinction is critical to the present case. When this Court issued its April 2 habeas order, it was not exercising discretionary review of the bond amount itself; rather, it

was establishing constitutional and procedural requirements that must govern any bond hearing. The April 9 hearing's compliance with those requirements presents a constitutional question and a question of law—precisely the categories of claims over which federal courts retain habeas jurisdiction.

Federal district courts have habeas jurisdiction under 28 U.S.C. § 2241 to review bond hearing determinations for constitutional claims and legal error. An alien who contends that a bond determination process itself was constitutionally flawed may bring that claim in federal court on habeas because such claims fit within the scope of traditional habeas jurisdiction. The present case involves exactly such a constitutional claim: whether the April 9 hearing complied with the due process requirements this Court established in its April 2 order.

B. Enforcement of a Court Order Is Distinct From Merits Review

This Court's authority to review compliance with its April 2 habeas order is not discretionary review of the bond decision on the merits; it is enforcement of a federal court mandate. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. When this Court ordered a meaningful bond hearing with the government bearing the clear and convincing burden, it was not merely suggesting a preferred procedure—it was establishing a constitutional requirement that the government must satisfy.

The distinction between impermissible reweighing of evidence and permissible enforcement of a federal court order is dispositive here. The government frames this case as if Petitioner is asking this Court to second-guess the Immigration Judge's discretionary assessment of the bond amount or to reweigh the evidence presented. That is not the case. Rather, Petitioner contends that the April 9 hearing did not comply with this Court's mandate because the Immigration Judge issued only a conclusory denial without findings or reasoning, and the government presented minimal, uncorroborated evidence.

This is a question of whether the ordered process occurred. It is a question of law and constitutional compliance, not a question of discretionary bond-setting. The government's abuse of discretion framing misses the point entirely. This Court is not reviewing the bond denial on the merits or substituting its judgment for the Immigration Judge's discretionary determination. Rather, this Court is determining whether the Immigration Judge complied with the procedural and constitutional requirements established in the April 2 order.

C. The Government's Discretion Does Not Encompass Ignoring Court Orders

The government's argument that § 1226(e) shields its discretionary decisions from review conflates two distinct concepts: the government's initial discretion to set bond conditions and the government's obligation to comply with a federal court order once issued. While the statute may protect the former, it cannot shield the latter.

When a federal court issues a habeas order establishing the procedures and standards that must govern a bond hearing, that order becomes binding law within the scope of the case. The government's subsequent failure to comply with that order-by conducting a hearing that does not meet the ordered standards-presents a question of law and constitutional compliance, not a discretionary judgment entitled to deference. The fact that bond-setting ordinarily involves discretion does not mean the government may disregard a federal court's constitutional mandate regarding how that discretion must be exercised.

IV. Prudential Exhaustion Should Not Be Required

A. Exhaustion Is Prudential and May Be Waived

The requirement to exhaust administrative remedies before pursuing habeas claims is prudential rather than jurisdictional. Accordingly, courts may waive exhaustion when circumstances warrant. The Ninth Circuit has recognized that exhaustion may be waived when the claims presented are purely legal questions that do not require development of an administrative record, when waiver would not encourage future habeas petitioners to bypass the administrative scheme, and when administrative review would be futile because the agency's position is already established. Here, all three factors weigh decisively against requiring exhaustion.

The Ninth Circuit applies three factors to determine whether exhaustion should be required: first, whether agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; second, whether relaxation of the requirement would encourage deliberate bypass of the administrative scheme; and third, whether administrative review is likely to allow the agency to correct its own mistakes and preclude the need for judicial review. , .

B. The Puga Factors Support Waiver of Exhaustion

The first factor does not support exhaustion here. This case does not present factual disputes requiring agency expertise to develop a record. Rather, Petitioner challenges whether the April 9 hearing satisfied the constitutional and statutory requirements mandated by this Court's April 2 order. These are legal and constitutional requirements, not factual matters requiring agency development. The Board of Immigration Appeals' expertise in immigration law cannot cure the fundamental procedural defect: the absence of a meaningful hearing conducted in compliance with this Court's explicit mandate.

The second factor also supports waiver. Petitioner does not seek to bypass the administrative scheme; rather, Petitioner seeks enforcement of a federal court order that has already been issued. The discreteness of the legal questions presented-whether the April 9 hearing complied with this Court's

April 2 order-makes clear that waiving exhaustion will not encourage future habeas petitioners to circumvent the administrative process. Petitioner is not attempting to avoid the Board of Immigration Appeals' review of the underlying bond determination; Petitioner is attempting to enforce a specific judicial mandate requiring a meaningful hearing within seven days. Requiring exhaustion would effectively nullify this Court's April 2 order by allowing the government to delay compliance through administrative appeal.

The third factor is dispositive: administrative review cannot correct the fundamental defect or provide the relief this Court has ordered. This Court's April 2 order required a meaningful bond hearing within seven days. That deadline has passed. An appeal to the Board of Immigration Appeals cannot retroactively provide the timely hearing this Court mandated. More fundamentally, the Board of Immigration Appeals cannot supply what the April 9 hearing lacked: contemporaneous reasoned findings and articulation by the immigration judge.

C. A Post-Hoc Written Memorandum Cannot Cure the Deficiency

The government contends that if Petitioner appeals to the Board of Immigration Appeals, the immigration judge would prepare a written memorandum explaining the decision. This argument misses the constitutional and procedural point. This Court's order requires a meaningful hearing with contemporaneous reasoning not a post-hoc memorandum prepared after the fact to justify a decision already made. Due process requires immigration courts to make contemporaneous records of bond hearings. A written memorandum prepared after an appeal is filed does not constitute the contemporaneous record required by due process. Such a memorandum would be prepared for appellate purposes, not as part of the hearing process itself, and would not cure the absence of meaningful process at the time the decision was made.

Furthermore, requiring Petitioner to appeal in order to obtain the basic procedural safeguards this Court has already ordered shifts the burden improperly. This Court's April 2 order contemplated that the immigration judge would provide findings and reasoning at the hearing itself, not months later in response to an appeal. Petitioner should not be forced to exhaust administrative remedies to obtain compliance with a federal court order that has already been issued.

D. The Board of Immigration Appeals Cannot Correct the Absence of a Meaningful Hearing

While the government correctly notes that the Board of Immigration Appeals can correct errors, the Board of Immigration Appeals cannot correct the absence of a meaningful hearing that has already occurred. Once an alien has received a bond hearing before an immigration judge, he may appeal the immigration judge's decision to the Board of Immigration Appeals. The Board of Immigration Appeals reviews the immigration judge's decision; it does not conduct a new hearing. If the April 9 hearing was not meaningful then no amount of Board of Immigration Appeals review can supply what was missing from the original hearing process. The Board of Immigration Appeals cannot retroactively create the contemporaneous record and reasoned decision that due process required at the time of the hearing.

The remedy contemplated by this Court's April 2 order was release from custody or, alternatively, a new hearing conducted in compliance with this Court's requirements. Requiring exhaustion would delay that remedy indefinitely and would effectively nullify this Court's order. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. A hearing that has already occurred cannot be made meaningful retroactively through administrative appeal.

CONCLUSION

For all of the foregoing reasons, Petitioner Franklin Sanchez Henao respectfully requests that this Court grant his Motion to Enforce Prior Court Order and for Release from Custody and order his immediate release from Immigration and Customs Enforcement custody on the terms of his most recent Order for Release on Conditions, as specified in this Court's April 2, 2026 habeas order.

In the alternative, if this Court determines that a new bond hearing is appropriate, Petitioner respectfully requests that the Court issue an order requiring an immediate new bond hearing before a different Immigration Judge, with explicit requirements that: first, the government present clear and convincing evidence of Petitioner's flight risk or danger to the community, supported by documentary evidence, testimony, or other corroborating proof; second, the Immigration Judge make contemporaneous findings of fact addressing the relevant statutory factors; third, the Immigration Judge provide a reasoned explanation articulating how the government's evidence satisfies the clear and convincing standard and how each relevant factor weighs in the bond determination; and fourth, the Immigration Judge issue a written decision contemporaneously with the oral pronouncement of the bond determination, explaining the factual and legal basis for the decision.

Respectfully submitted this 20th day of April, 2026

/s/Stephen C. Robbins

Stephen C. Robbins

Attorney for Petitioner