

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

FRANCISCO D'COSTA, Petitioner,)
)
v.)
)
WARDEN, JOE CORLEY)
)
DETENTION FACILITY; DIRECTOR,)
)
U.S. IMMIGRATION AND CUSTOMS)
)
ENFORCEMENT; SECRETARY, U.S.)
)
DEPARTMENT OF HOMELAND)
)
SECURITY, Respondents.)

CIVIL ACTION NO.

4:25-CV-06177

SUPPLEMENTAL BRIEF

**I. The Court's Injunctive Order Was Entered to Preserve the Same Core Due-
Process Interest Identified in *J.G.G. v. Trump***

As the Court clarified at the January 5, 2026 hearing, the injunctive order in this case was entered to preserve Petitioner's statutory right to **meaningfully pursue a Motion to Reopen**. That framing is dispositive under *J.G.G. v. Trump*,

which identifies the controlling due-process inquiry as whether government action has **materially interfered with a noncitizen's meaningful access to pending U.S. legal process.**

A Motion to Reopen is not a ministerial filing. It is a statutory mechanism designed to permit adjudication of new claims, often asylum, withholding of removal, and protection under the Convention Against Torture, based on newly available facts and evidence. The statutory right is not merely the ability to submit documents, but the ability to pursue reopening **in a posture that allows effective consultation with counsel, evidence development, and adjudication on a complete record.**

The injunctive order in this case froze that posture. Removal after entry of the injunction altered it. The question before the Court is therefore not whether Petitioner was removed pursuant to a valid order, but whether removal **after issuance of the injunction** interfered with the statutory process the Court expressly sought to preserve. Under *J.G.G.*, that is a due-process question squarely within this Court's authority.

II. J.G.G. v. Trump Provides the Proper Due-Process Framework, and This Court Has Jurisdiction to Enforce Its Order

A. Under *J.G.G.*, the Threshold Question Is Interference with Pending Process, Not the Fact of Removal

J.G.G. v. Trump establishes that when noncitizens are removed in a manner that interferes with their ability to pursue pending U.S. legal process, habeas jurisdiction persists and equitable remedies are available to restore meaningful access to that process. The court in *J.G.G.* rejected the notion that post-removal procedures automatically cure due-process violations, emphasizing instead that courts must assess whether government action has **materially impaired practical access to pending proceedings**.

The framework articulated in *J.G.G.* is not limited to the Alien Enemies Act or to “zero-process” cases. Rather, it applies whenever removal itself creates the constitutional injury by depriving petitioners of the posture necessary to pursue ongoing legal process. Where that occurs, *J.G.G.* recognizes that habeas remedies are “adaptable and equitable,” including relief necessary to **“undo the effects” of unlawful removal**.

This case fits squarely within that framework. Petitioner does not seek review of the merits of his removal order. He seeks enforcement of this Court’s injunction after removal itself impaired the statutory reopening process the

injunction was entered to protect. Under *J.G.G.*, that claim sounds in due process and enforcement of judicial authority, not in review of removal.

B. Section 1252(g) Is Not Implicated Under the *J.G.G.* Framework

Respondents argue that 8 U.S.C. § 1252(g) strips this Court of jurisdiction because Petitioner's claim "arises from" the execution of a removal order. That argument misapprehends the nature of the claim and the governing framework set forth in *J.G.G.*

Under *J.G.G.*, jurisdiction does not turn on whether a removal order was executed. It turns on whether government action **interfered with meaningful access to pending U.S. legal process**. Claims seeking enforcement of a court's injunctive order and restoration of the procedural posture that order preserved do not challenge discretionary removal decisions; they challenge **post-order conduct that frustrates judicial process**.

Petitioner does not ask this Court to second-guess the Attorney General's decision to execute removal. He asks the Court to enforce its own order and restore the posture necessary to pursue reopening in a meaningful way. Under *J.G.G.*, such claims fall outside the scope of § 1252(g) and remain cognizable in habeas.

C. *J.G.G.* Confirms the Court’s Authority to Order Relief That Restores the Status Quo

J.G.G. makes clear that where removal itself creates the due-process injury, courts are not limited to declaratory relief or post-hoc procedural substitutes. Rather, courts may order remedies sufficient to **restore the status quo ante** and ensure meaningful access to pending proceedings.

The Supreme Court’s decision in *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025) (per curiam), confirms this authority, holding that courts may require the government to “facilitate” a removed individual’s return to restore the procedural posture that existed before an improper removal, ensuring the case is “handled as it would have been had [the petitioner] not been improperly sent” abroad.

Recent cases ordering facilitation of return following post-order removals reflect straightforward application of this principle. Those decisions do not create new jurisdiction; they apply the jurisdiction *J.G.G.* confirms already exists when courts must remedy interference with pending process.

The relief sought here is of the same character. Enforcement of the injunction through facilitation of return would restore the posture the Court

expressly preserved and allow Petitioner to pursue reopening as if the violation had not occurred.

III. A Remote EOIR Hearing From Abroad Does Not Cure the Due-Process Harm Identified in J.G.G.

Respondents have indicated that EOIR may be able to conduct a remote hearing on Petitioner's Motion to Reopen while he remains abroad. Anticipating that argument, Petitioner respectfully submits that **J.G.G. forecloses the notion that remote or alternative procedures automatically cure material interference with statutory process.** *Id.* at 65-66 (allowing alternatives only if they "satisf[y] the requirements of due process" and provide a "meaningful opportunity to contest removal").

A. Due Process Requires Meaningful, Not Merely Formal, Participation

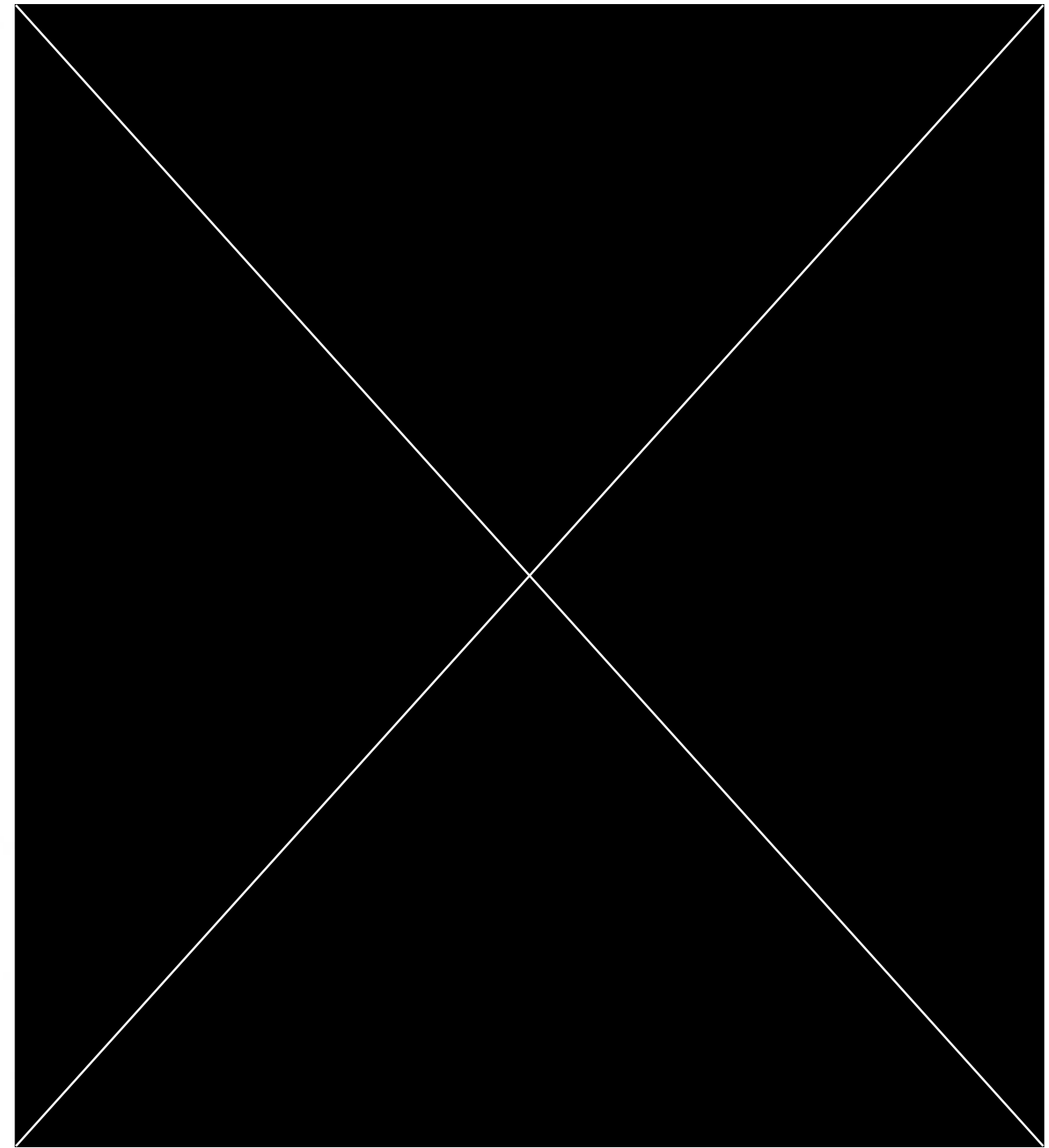
As J.G.G. makes clear, the constitutional inquiry focuses on whether the petitioner retains a **meaningful opportunity to be heard.** *Id.* at 62, 64. A **remote hearing from Goa does not replicate the conditions under which reopening proceedings are designed to operate.** Petitioner's ability to consult confidentially with U.S.-based counsel, to gather and authenticate evidence, to prepare affidavits, and to meaningfully participate in credibility-sensitive adjudication is substantially

impaired by removal, due to factors like unreliable connectivity, time-zone differences, and safety risks in developing sensitive asylum/CAT evidence.

The question is not whether EOIR can convene a hearing, but **whether the proceeding remains functionally equivalent to the one the Court issued an injunctive order to preserve.**

Here, removal has placed Petitioner in conditions that **materially impair his ability to meaningfully pursue reopening.** Petitioner is currently unemployed in Goa  which aggravates his opportunities to secure work and financial stability. As a result, he lacks reliable access to resources necessary to participate effectively in remote proceedings. Compounding these barriers, Goa operates on a roughly twelve-hour time difference from this Court and Petitioner's U.S.-based counsel, making real-time communication during U.S. business hours virtually impossible.

For instance, a **1:00 PM U.S. hearing would require Petitioner to appear at approximately 1:00 AM local time,** and given that immigration **hearings can extend for multiple hours or days,** this imposes severe sleep deprivation and detriment to his ability to participate coherently, affecting credibility assessments and real-time decision-making.



like Petitioner to avoid certain areas
and limiting safe evidence gathering for CAT claims.

Under *J.G.G. v. Trump*, due process requires **practical, meaningful access** to the statutory process at issue, which removal here has eliminated. *Id.* at 52-53, 65-66.

The **fact that EOIR can technically convene a remote proceeding does not answer whether Petitioner can meaningfully exercise his statutory right to reopening under those conditions.** *J.G.G.* instructs **courts to look past formality** and assess practical access to justice. *Id.* at 52-53. Petitioner requests an evidentiary hearing to demonstrate these impairments, forcing Respondents to prove that remote access satisfies due process under *J.G.G.* *Id.* at 66.

B. Remote Proceedings Are Not an Adequate Substitute

Respondents may argue that noncitizens routinely appear remotely or litigate from abroad. But that general proposition misses the point. This Court did not issue an injunctive order to preserve a hypothetical or degraded process; it halted removal to preserve Petitioner's ability to pursue reopening in the posture he occupied at the time of the injunctive order.

Removal altered that posture in ways that cannot be cured by remote appearance alone. The Motion to Reopen here depends on sworn applications for asylum, withholding, and CAT protection (including Form I-589), corroborating

affidavits and documentary evidence, effective attorney-client collaboration, and adjudication of claims that may turn on credibility and factual nuance.

Forcing Petitioner to litigate those claims from abroad substitutes a **materially inferior process** for the one the Court sought to protect. *J.G.G.* makes clear that due process does not permit the Government to justify such degradation by pointing to alternative procedures after removal. *Id.* at 65 (remedy must "undo the effects of their unlawful removal").

C. Allowing Remote Proceedings to Cure the Violation Would Undermine the Purpose of the injunctive order

Accepting Respondent's position would **create a rule under which an injunctive order designed to preserve statutory process could be nullified so long as the Government later offers some form of remote participation**. That approach would effectively convert injunctive orders into conditional or advisory orders, enforceable only at the Government's discretion.

J.G.G. **rejects** that logic. The case recognizes that where removal itself creates the due-process problem by depriving petitioners of meaningful access to pending proceedings, courts must assess **whether the remedy restores the status**

quo the injunctive order was intended to preserve, not whether the Government can offer a post-hoc workaround. *Id.* at 63, 65-66.

D. The Requested Remedy Seeks Only Procedural Restoration

Petitioner does not seek substantive relief on the merits of his asylum, withholding, or CAT claims. Rather, **enforcement of the injunctive order would restore the procedural status quo**, allowing Petitioner to pursue reopening in the U.S. as if removal had not occurred. **This aligns with J.G.G.'s directive to remedy unlawful removals by facilitating "meaningful opportunity,"** whether through return or a due-process-compliant alternative. *Id.* at 65-66. The difficulties in communicating with Petitioner from Goa, exemplified by the challenges in obtaining a declaration, further illustrate the practical barriers remote proceedings cannot overcome.

IV. Anticipated Government Distinctions and Arguments Do Not Undermine the Applicability of J.G.G.

Respondents argue that Petitioner received due process prior to removal, pointing to the immigration judge's denial of an initial stay and the inadvertent nature of the injunction's violation. Under *J.G.G.*, neither argument is dispositive.

The immigration judge's denial occurred on a materially incomplete record, before Petitioner's asylum, withholding, and CAT applications were filed and before the deficiencies identified by the court were cured. Removal prevented adjudication on a complete record in the posture the injunction was designed to protect. The supplementation cured the issues the judge identified, but removal prevented meaningful consideration on the complete record. *J.G.G.* assesses whether the petitioner had a real opportunity to pursue relief in the protected posture, not interim decisions on undeveloped records. *Id.* at 62, 64 (requiring "practical opportunity" before "hasty removal").

Nor does inadvertence matter. *J.G.G.* evaluates **effect, not intent**. Removal after issuance of the injunction materially altered the procedural posture preserved by the Court and deprived Petitioner of meaningful access to reopening. *Id.* at 52-53, 64.

Respondents distinguish *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025), but *J.G.G.* **extends remedies to procedural violations like this injunctive order breach**, citing *Abrego Garcia* favorably. *Id.* at 65.

The government's narrow reading of *J.G.G.*, limiting it to "zero-process" cases under the Alien Enemies Act, ignores its broader framework, which **applies to any interference with pending U.S. processes**, even with a "valid order." *Id.* at

61 (rejecting insufficient notice). Factual distinctions (e.g., removal to home country vs. CECOT prison) are irrelevant; *J.G.G.* focuses on access impairments, and Goa's persecution create analogous dangers.

Claims of futility or jurisdictional bars under 8 U.S.C. § 1252(g) and *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), misapprehend the remedy, which **seeks only procedural restoration via habeas enforcement** (28 U.S.C. § 2241), **not review of the order's merits**. *J.G.G.* at 57-59, 62-63 (habeas survives to **enforce process**, not merits; courts retain inherent power over their orders).

V. Conclusion

J.G.G. v. Trump provides the correct analytical lens. Removal after the issuance of an injunctive order materially impaired Petitioner's meaningful access to reopening. A remote hearing from Goa does not restore the protected status quo, given documented persecution risks and infrastructure failures.

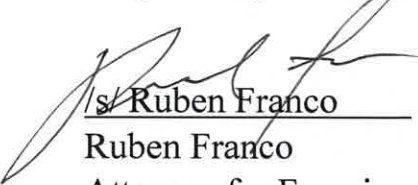
Under *J.G.G.*, this Court retains jurisdiction to enforce its order and to order relief sufficient to undo the effects of the violation. Ordering facilitation of return is not extraordinary relief; it is the ordinary means of restoring the posture the Court expressly sought to preserve.

Petitioner respectfully requests that the Court enforce its injunctive order by directing facilitation of return, or by ordering an equivalent remedy that genuinely restores meaningful access to reopening, together with an evidentiary hearing.

CERTIFICATE OF SERVICE

I certify that on January 6, 2026, a copy of this filing was served via CM/ECF on all counsel/parties per S.D. Tex. L.R. 5.1.

Respectfully submitted,



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