

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TX
(San Antonio Division)**

ALISHAN ZULFIKAR KAREDIA,

Petitioner,

v.

CIVIL ACTION NO. 5:26-CV-01144-FB

ROSE THOMPSON, *et. al*,

Respondents.

PETITIONER'S MOTION TO ALTER OR AMEND THE JUDGMENT

On March 12, 2026, Petitioner filed a Motion to Enforce, arguing that the bond hearing provided by Respondents did not meet the terms of the Court's order. ECF #8, 13. The Court denied the motion for lack of jurisdiction. ECF #14.

Respectfully, Petitioner urges the Court to reconsider and to alter or amend this decision pursuant to Rule 59(e). A plain reading of the statute relied upon by the Court, as well as substantial case law, makes clear that this Court does retain jurisdiction not only to enforce its own order but also to ensure that the IJ applied the correct burden of proof and the correct factors to the analysis. This Court's clear presence of jurisdiction to review does not impinge on the IJ's discretionary analysis, but simply ensures that constitutional requirements have been met, and that the Court's order has been obeyed. It is well within this Court's power.

Respectfully, because the Court's order denying the motion to enforce did not address this body of law, and erroneously found a lack of jurisdiction, it should be amended.

I. The INA does not preclude jurisdiction here

The Court found that it “lacks jurisdiction to sit in review of an immigration judge’s discretionary finding that an alien is a flight risk and therefore should be denied bond,” citing *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 678-79 (W.D. Tex. 2025), which in turn cited 8 U.S.C. § 1226(e). Neither *Lopez-Arevelo* nor § 1226(e) preclude jurisdiction in these circumstances.

A. Section 1226(e) does not apply to this case

1. Section 1226(e) only bars review of hearings conducted under § 1226

The INA provides that the agency’s “discretionary judgment regarding the application of *this section*”—in other words, detention under § 1226 — “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) (emphasis added).

By its own terms, therefore, the jurisdiction-stripping language only applies to bond hearings held pursuant to § 1226. *Nielsen v. Preap*, 586 U.S. 392, 401 (2019) (plurality opinion); *see also Demore v. Hyung Joon Kim*, 538 U.S. 510, 517 (2003) (“Section 1226(e) contains no explicit provision barring habeas review....”).

2. This Court did not order a § 1226 hearing

This limitation on the provision’s reach is crucial here, since the hearing ordered by this Court *was not a § 1226 bond hearing*. Those are not available to “arriving aliens” such as Petitioner, according to the recent holding of the Fifth Circuit. *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, __ F.4th __, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026).

INA § 1226 hearings differ in critically important procedural respects from constitutional hearings such as the one ordered by this Court. The latter follow “requirements [that] are set forth in case law, rather than by statute or regulation.” *Sanchez v. Sabol*, No. 1:15-CV-2423, 2016 U.S. Dist. LEXIS 177914, at *10-11 (M.D. Pa. Dec. 23, 2016) (citing *Leslie v. Holder*, 865 F. Supp. 2d 627, 636 (M.D. Pa. 2012)). As another court in this very district has very recently found, “once it is determined that the due process clause applies, the question remains what process is due. The answer to that question is not to be found in the ... statute.” *Singh v. Bondi*, No. SA-26-CA-00541-XR, 2026 U.S. Dist. LEXIS 54857, at *9 (W.D. Tex. Mar. 16, 2026) (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985)).

[T]he respondents’ invitation to substitute agency regulations for the dictates of the court of appeals also fails because it fundamentally misconstrues the nature of this Court’s responsibility. We do not sit as an administrative agency review board, whose authority and discretion is narrowly cabined by agency regulations. Quite the contrary, our authority and responsibility in this matter springs from something more profound than the code of federal regulations. Our responsibility is derived from a source which is as old as our nation, and deeply rooted in our Constitution, the guarantee of the writ of habeas corpus as a legal means to challenge what is alleged to be unlawful detention.

Leslie, 865 F. Supp. 2d at 636.

Thus, when this Court issued an order for a hearing conducted according to constitutional requirements, it did not order a hearing conducted under the statute and the implementing regulations. For instance, this Court placed a heavy burden of proof on the government, in contrast to the burden that § 1226 hearings place on the noncitizen. 8 C.F.R. § 236.1(c)(8); 8 C.F.R. § 1236.1(c)(8); *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

Likewise, § 1226(e) only applies to *discretionary* decisions of the IJ, but the Court’s order has circumscribed that discretion. As another federal district court has explained an IJ does not retain the discretion he usually employs in a § 1226 bond hearing when, instead, he conducts

“a constitutionally mandated proceeding involving a heightened burden on DHS like the one at issue in this case.” *Y.S.G. v. Andrews*, No. 2:25-cv-1884-SCR, 2025 U.S. Dist. LEXIS 208276, at *30 (E.D. Cal. Oct. 22, 2025). The Court’s ruling that the government must “show by clear and convincing evidence that the detainee presents a flight risk or a danger to the community at the time of the bond hearing ... did not leave room for an added layer of agency discretion; if the IJ found that petitioner was not dangerous, the IJ would have had to release him.” *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024).

Accordingly, the assessment of whether due process was afforded in the hearing is a separate issue from whether § 1226 procedures were followed, and it is one that the Court retains jurisdiction over, as other courts, even in this district, have found. *Najera v. United States*, 926 F.3d 140, 143-44 (5th Cir. 2019) (recognizing that § 1226(e) does not preclude constitutional and statutory challenges); *Phalita Pun v. Noem*, No. 5:26-CV-0534-JKP, 2026 U.S. Dist. LEXIS 33697 (W.D. Tex. Feb. 18, 2026) (finding jurisdiction to hear a case in which a petitioner claimed “that the Fifth Amendment requires an individualized hearing, not merely a bond hearing in name only.”); *Cepeda v. Shanahan*, No. 15 Civ. 09446, 2016 U.S. Dist. LEXIS 61661, at *6-7 (S.D.N.Y. 2016) (“To the extent Cepeda complains that his bond hearing was constitutionally deficient—that is, that the government’s evidence could not, as a matter of law, establish clearly and convincingly that Cepeda was dangerous, and therefore he was not accorded the process he is due—he can seek redress from this Court.”); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 236 n.2 (W.D.N.Y. 2019) (noting that the Supreme Court has held that, because of Article I, § 9, cl. 2, of the Constitution, “some ‘judicial intervention in deportation cases’ is unquestionably ‘required by the Constitution.’” Thus, the government’s argument that § 1226(e)

strips this Court of its authority to enforce the order it issued on November 2, 2018, ‘raise[s] serious constitutional questions.’”) (quoting *INS v. St. Cyr*, 533 U.S. 289, 300 (2001)).

3. The finding that Petitioner is not eligible for a § 1226 hearing renders § 1226(e) inapplicable under Western District case law

Furthermore, courts in this district have rejected the notion that § 1226 *can* apply to the extent that it would block a court’s review, while at the same time *not* applying to the extent that it would authorize an IJ to hold a hearing.

[Section 1226(e)] is (of course) located in Section 1226, which is not the detention authority that Respondents argue applies to Petitioner. In other words, Respondents simultaneously argue that Section 1226 doesn’t apply where it would entitle Petitioner to a bond hearing but does apply where it would limit Petitioner’s ability to seek judicial review. The Court finds this argument completely untenable.

Luna v. Warden, No. EP-25-CV-00565-DCG, 2025 U.S. Dist. LEXIS 269677, at *8-9 (W.D. Tex. Dec. 29, 2025). Accordingly,

In this Court’s view, even setting aside Petitioner’s constitutional claims, Section 1226(e)’s jurisdictional bar is inapplicable for a much simpler reason: by taking the position that Petitioner’s detention is *mandatory* under Section 1225(b)(2), the Attorney General has waived any argument that Petitioner’s detention was an exercise of her discretion protected from judicial review under Section 1226(e).

Granados v. Noem, No. SA-25-CA-01464-XR, 2025 U.S. Dist. LEXIS 232321, at *9 (W.D. Tex. Nov. 25, 2025).

Thus, because Respondents have already determined that Petitioner is not subject to § 1226 — a finding whose legal basis has been approved by the Fifth Circuit—a jurisdiction-stripping provision that is limited by its own terms to bond hearings under § 1226 has no relevance here.

B. Recent Supreme Court jurisprudence compels review of Petitioner's bond hearing

Even if § 1226(e) could apply to this kind of constitutional hearing, a recent case from the Supreme Court clearly establishes that a challenge to the IJ's application of the standards governing bond, such as that at issue here, represents a mixed question of law and fact that is reviewable by the federal courts, entirely notwithstanding § 1226(e).

1. District courts can consider whether an IJ applied the correct standard to established facts in bond hearings

With respect, like this Court, prior to 2024, the Ninth Circuit believed that § 1226(e) prevented federal courts from reviewing all agency decisions regarding immigration detention under § 1226. *Martinez v. Clark*, 36 F.4th 1219, 1228 (9th Cir. 2022), *cert. granted, judgment vacated*, 144 S. Ct. 1339 (2024). *Martinez* concerned a challenge to the IJ's finding that a detainee posed a danger to the community, one of two main considerations at issue in a § 1226 hearing (the other being flight risk, which is the prong at issue in Petitioner's case). 8 C.F.R. §§ 236.1, 1003.19; *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

Referring to § 1226(e), which prevents judges from reviewing a "discretionary judgment" on detention, the Ninth Circuit had found that the dangerousness assessment "was discretionary ... because it was 'fact-intensive' and required 'the equities to be weighed,'" while "BIA precedent appeared to only provide 'malleable guidance' that did not" provide federal courts with "sufficient standards to review the agency's judgment." *Id.* at 1229-30. As such, it had concluded that this decision did not fall into the category of "constitutional claims or questions of law," over which federal courts retain jurisdiction. *Id.* at 1224.

The Supreme Court granted certiorari, vacated the decision, and remanded the case for determination in light of *Wilkinson v. Garland*, 601 U.S. 209 (2024), which established that

“[t]he application of a statutory legal standard ... to an established set of facts is a quintessential mixed question of law and fact,” and thereby may be reviewed by a federal court despite the INA’s jurisdiction-stripping provisions. *Martinez v. Clark*, 144 S. Ct. 1339 (2024) (mem.); *Wilkinson*, 601 U.S. at 212.

On remand, the Ninth Circuit found that *Wilkinson* compelled the conclusion that a district court, *sitting in habeas*, could review whether the government had met its burden of proving, by clear and convincing evidence, that the petitioner should not be released. *Martinez v. Clark*, 124 F.4th 775, 779, 781 (9th Cir. 2024). Since, under *Wilkinson*, the question of how to apply a legal standard to a “given set of facts presents a mixed question of law and fact,” the Ninth Circuit found that whether the IJ had applied the correct legal standard when assessing the agreed-upon evidence in a bond hearing was reviewable, even though it “require[d] close engagement with the facts.” *Id.* at 782 (quoting *Wilkinson*, 601 U.S. at 212).

Furthermore, the specific circumstances of that case argued in favor of jurisdiction. Section § 1226(e) protects the IJ’s *discretionary* decisions. But the district court in *Martinez* had issued a writ of habeas ordering that the government must establish the appropriateness of bond by clear and convincing evidence, just as this Court did here. This order “did not leave room for an added layer of agency discretion; if the BIA found that Martinez was not dangerous, it would have had to release him.” *Id.* at 784. Thus, review of this decision does not run afoul of the INA’s jurisdiction-stripping provisions for discretionary decisions. *Id.*; *see also Sanchez*, 2016 U.S. Dist. LEXIS 177914, at *9-10 (“It is true that a discretionary determination by an immigration judge regarding bail for an alien being detained under section 1226 is not reviewable in this court. It is likewise true, however, that issues of constitutionality and law are

fair game for the district court to consider under its habeas corpus jurisdiction.”) (internal citations omitted).

Petitioner respectfully notes that while *Wilkinson* does not itself address § 1226(e) or habeas review of bond hearings, the Supreme Court relied on it to vacate the Ninth Circuit’s decision in *Martinez*, which presented circumstances materially indistinguishable from this case. This is an undeniable message that the Court believes that bond determinations are reviewable in habeas, to the extent that the petitioner argues not over pure factual determinations (such as whether his testimony should be credited) but as to whether the IJ properly applied the correct legal standard. *Id.* at 782-83. Purely factual determinations, on the other hand, remain unreviewable.

The jurisdiction-stripping provision still precludes federal courts from reviewing ‘underlying factual determinations’ in a claim for cancellation of removal, like credibility, the seriousness of a family member’s medical condition, or the level of financial support a noncitizen currently provides. Likewise, factfinding underlying a denial of immigration relief, such as whether an alien intentionally lied on a state driver’s license form, is unreviewable.

Id. at 782-83 (cleaned up).

The question of whether an immigration judge properly applied the *Guerra* factors in the bond decision is likewise reviewable. “Even though what constitutes ‘dangerousness’ is malleable and involves agency discretion, *Wilkinson* instructs that this is still a legal standard so long as federal courts can ‘assess whether an IJ correctly applied the statutory standard to a given set of facts.’” *Martinez*, 36 F.4th at 783.

2. This case concerns the application of a legal standard to established facts

This case is functionally identical to *Martinez*. Here, as there, the dispute does not center on the facts. Indeed, Petitioner and Respondents likely are in complete agreement as to the facts of this case. Rather, Petitioner's Motion to Enforce raised the issue of whether the IJ (1) reviewed those facts (2) in light of the proper analytical framework and (3) while applying the proper burden of proof. According to the Ninth Circuit, on pointed remand from the Supreme Court, this Court retains jurisdiction over this issue.

C. This Court does retain jurisdiction to enforce its order

Finally, this Court, like all federal district courts, has "jurisdiction to issue an order enforcing its prior judgment." *Ford Motor Co v. Woods*, 165 F. App'x 345, 346 (5th Cir. 2006) (per curiam) (unpublished) (citing *Test Masters Educ. Servs. v. Singh*, 428 F.3d 559, 577 (5th Cir. 2005)); see also *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 194 (3d Cir. 2020) ("each court has the inherent power to enforce its own orders") (internal quotation marks omitted).

Multiple circuit courts of appeals have held that "[w]hen a district court issues a conditional habeas writ, it retains jurisdiction to determine compliance." *Jensen v. Pollard*, 924 F.3d 451, 454 (7th Cir. 2019); see also *Gibbs v. Frank*, 500 F.3d 202, 205 (3d Cir. 2007) ("The District Court had continuing jurisdiction under 28 U.S.C. §§ 1331 and 2254 over Gibbs' application for release from confinement.") (internal citations omitted); *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011) (agreeing with an immigration detainee "that the district court had authority to review compliance with its earlier order" for a bond hearing); *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010) ("a federal court always retains jurisdiction to enforce its lawful judgments, including habeas judgments, [and] the court has the authority to see that its judgment is fully effectuated."). Indeed, "conditional writs would be meaningless if a

habeas court could not determine compliance with them.” *Mason v. Mitchell*, 729 F.3d 545, 549 (6th Cir. 2013) (internal quotation marks omitted).

Accordingly, when a district court grants a habeas petition and orders a bond hearing, the government must comply with the standards the court outlines, such as the correct burden of proof and consideration of the proper legal factors. “If Petitioner’s bond hearing failed to comport with the law, this court—under its inherent power to enforce its habeas rulings—can take appropriate measures to ensure compliance.” *Sanchez*, 2016 U.S. Dist. LEXIS 177914, at *15.

Multiple federal district courts have found likewise, notwithstanding § 1226(e). *Massingue v. Streeter*, No. 19-cv-30159, 2020 U.S. Dist. LEXIS 64600, at *9 (D. Mass. Apr. 14, 2020) (“most district courts that have considered the issue have rejected the contention that the court cannot review an immigration judge’s decision denying bond when a district court has previously entered a conditional grant of habeas relief.”); *Diaz Ortiz v. Smith*, 384 F. Supp. 3d 140, 142-43 (D. Mass. 2019) (finding jurisdiction to consider the petitioner’s argument that the IJ had failed to hold the government to its burden of proof because it had previously “granted a conditional writ of habeas corpus that gave the Government a chance to cure the constitutional defect in Diaz Ortiz’s detention,” and a “district court retains jurisdiction to review compliance with its earlier order conditionally granting habeas relief.”); *Hechavarria*, 358 F. Supp. 3d at 235-36 (“even assuming that the IJ’s hearing was somehow conducted under § 1226, the Court is not reviewing a ‘discretionary judgment’ of the IJ under § 1226, and it is not ‘set[ting] aside any action or decision by the Attorney General’ under § 1226.... Instead, the Court is determining whether the order it issued ... was followed—that is, whether Hechavarria received the due process to which he was entitled.”); *Cepeda*, 2016 U.S. Dist. LEXIS 61661 at *6-7 (determining

that § 1226(e) did not deprive the court of jurisdiction over claims of constitutional deficiency in an immigration bond hearing, including claims “that the government’s evidence could not, as a matter of law, establish clearly and convincingly that [the alien] was dangerous”).

The Fifth Circuit has also upheld a district court’s enforcement of its own authority when it found that § 1226(e) did not preclude the court from “prohibit[ing] ICE from retaking custody” of a noncitizen it had ordered released. *United States v. Baltazar-Sebastian*, 990 F.3d 939, 944 (5th Cir. 2021).

II. *Lopez-Arevelo* does not undermine this Court’s jurisdiction

Lopez-Arevelo is not to the contrary; indeed, it supports jurisdiction here. The court begins its discussion of § 1226(e) by affirming that “the Court retains jurisdiction to review a noncitizen’s detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition.” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 679 (W.D. Tex. 2025) (cleaned up) (quoting *Oyelude v. Chertoff*, 125 F. App’x 543, 546 (5th Cir. 2005) (unpublished)).

Lopez-Arevelo presented different circumstances from the case at bar. There, the question was whether a district judge could review an IJ’s refusal to apply § 1226 to the petitioner at all, based on the DOJ and DHS’s new mandatory detention policy. The court noted that its fact pattern “is unlike a case in which a bond hearing was held, an individualized assessment was made regarding the appropriateness of detaining a noncitizen, and, *in the IJ’s discretion*, they were denied bail.” *Id.* Thus, the court’s conclusion that “[i]n such circumstances, the Court would likely lack jurisdiction to consider a collateral attack on that denial” is dicta, and hardly definitive dicta at that. *Id.*

However, even that description is different from the instant case, which does not challenge the IJ’s exercise of his discretion, but his failure to apply the burden of proof that this

Court found renders it constitutionally adequate, as well as to consider all of the evidence and the proper analytical framework, which are also crucial components of due process.

Moreover, due to its posture (and its issuance before the Fifth Circuit issued *Buenrostro*), *Lopez-Arevelo* also does not consider that, by its terms, § 1226(e) only applies to § 1226 hearings, which this is not. Nor does it address the impact of *Wilkinson* and *Martinez* and their interpretation of what decisions are discretionary and what may be reviewed. For the same reasons, *Pineda-Romero v. Olsen*, Cause No. EP-26-CV- 257-KC (ECF No. 8 at page 2) (W.D. Tex. Feb. 20, 2026) should not be considered persuasive.

III. Conclusion

This Court ordered that Respondents give Petitioner a bond hearing at which they would be required to prove by clear and convincing evidence that Petitioner was either dangerous or a flight risk. If this did not occur by March 11, the Court ordered that Petitioner be immediately released.

For the reasons listed above, this Court has jurisdiction to enforce this order. Section 1226(e) does not even apply to this case; and even if it did, review would still be appropriate under current Supreme Court precedent.

Alternatively, Petitioner respectfully requests that the Court alter or amend its judgment and acknowledge its jurisdiction over this matter and order Petitioner's release pursuant to is original order.

Dated: March 20, 2026, and,

Respectfully Submitted.

/s/ Simon Azar-Farr

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing

MOTION TO ALTER OR AMEND THE JUDGMENT

was filed with this Court on March 20, 2026, through its electronic CM/ECF filing system. Notice of this filing will be sent to the counsel for the Defendants, who is named below, by operation of this Court's CM/ECF electronic filing system.

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