

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

RICARDO SALGADO,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-295-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,	:	
	:	
Respondent.	:	

RESPONSE

On September 24, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”) asserting his mandatory pre-final order of removal detention pursuant to 8 U.S.C. § 1226(c) violates his constitutional rights. Pet. 2, ECF No. 1. On October 7, 2025, the Court ordered Respondent to file a response. ECF No. 3. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Mexico. Declaration of Deportation Officer Hal Waters (“Waters Decl.”) ¶ 4. Petitioner is mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c). *Id.* ¶ 16. On February 1, 2008, Petitioner was admitted into the United States on an IR1 visa as a spouse of a United States Citizen. *Id.* ¶ 4 & Ex. A. On February 8, 2008, Petitioner became a lawful permanent resident. *Id.* ¶ 4 & Ex. A.

On November 17, 2022, Petitioner was convicted of simple battery/family violence and disorderly conduct in the Superior Court of Whitfield County, Georgia. *Id.* ¶ 5 & Ex. B. He was sentenced to 12 months, with 30 days in confinement. *Id.* ¶ 5 & Ex. B. On the same day Petitioner was also sentenced for having violated a family violence protective order on or about August 27,

2022. Waters Decl. ¶ 5 & Ex. C. On August 22, 2024, Petitioner was convicted of two counts of simple assault/family violence in the Superior Court of Whitfield County, Georgia. *Id.* ¶ 6 & Ex. D. Petitioner was sentenced to 12 months on each count, with 79 days to be served in confinement. *Id.* ¶ 6 & Ex. D.

On February 27, 2025, Petitioner was encountered by Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) following his arrest in Whitfield County, Georgia for probation violation and failure to appear. *Id.* ¶ 7. On March 4, 2025, Petitioner was sentenced to serve 60 days on those charges. *Id.* ¶ 7. On March 28, 2025, ICE/ERO took Petitioner into custody and issued and served Petitioner with a Form I-862 Notice to Appear (“NTA”) charging him with removability pursuant to the Immigration and Nationality Act (“INA”) § 237(a)(2)(E)(i) (8 U.S.C. § 1227(a)(2)(E)(i)) based on his conviction of a crime involving domestic violence. *Id.* ¶ 8 & Ex. E.

On May 6, 2025, Petitioner appeared, *pro se*, for his initial master hearing before an immigration judge (“IJ”). Waters Decl. ¶ 9. The IJ advised Petitioner of his rights in removal proceedings, and reset the case to July 16, 2025, to afford Petitioner the opportunity to prepare for his case. *Id.* ¶ 9. Also on May 6, 2025, Petitioner filed a request for a custody redetermination hearing. *Id.* ¶ 10. On May 13, 2025, the IJ held a bond hearing and determined that Petitioner was mandatorily detained “due to his conviction for Battery Family Violence in Georgia with a 12-month sentence.” *Id.* ¶ 10 & Ex. F. The IJ later detailed her findings in a written decision on September 18, 2025, in which she found Petitioner had been convicted of an offense specified in INA § 237(a)(2)(A)(iii) (8 U.S.C. § 1227(a)(2)(A)(iii)), specifically an offense meeting the

definition of an aggravated felony, which places him within the mandatory detention provision of 8 U.S.C. § 1226(c)(1). *Id.* ¶ 10 & Ex. G.¹

On July 16, 2025, Petitioner appeared, *pro se*, for his master hearing. Waters Decl. ¶ 12. On this day, Petitioner admitted and conceded to the allegations and charge on the NTA, the NTA was sustained, and the Immigration Judge reset the case to August 26, 2025, to afford Petitioner an opportunity to file any and all applications for relief from removal. *Id.* On August 26, 2025, Petitioner appeared, *pro se*, for his master hearing. *Id.* ¶ 13. Petitioner confirmed he only wants to proceed with the application for relief from removal filed on May 6, 2025, and the Immigration Judge scheduled the case for a merits hearing on September 15, 2025. *Id.* ¶ 13.

On August 27, 2025, Petitioner filed a second request for a bond hearing. *Id.* ¶ 14. On September 9, 2025, Petitioner appeared, *pro se*, for a bond hearing, at which the IJ denied bond citing no change in circumstances. *Id.* ¶ 14 & Ex. I. On September 15, 2025, the IJ reset the merits hearing, *sua sponte*, for September 18, 2025. Waters Decl. ¶ 15. On September 18, 2025, Petitioner appeared, *pro se*, for the hearing. *Id.* ¶ 16. The Department of Homeland Security (“DHS”) moved to pretermite the application for relief from removal asserting Petitioner’s criminal convictions made him ineligible for the relief he seeks. *Id.* ¶ 16. The Immigration Judge agreed and ordered Petitioner removed to Mexico. *Id.* ¶ 16. Petitioner timely appealed his removal order, which appeal remains pending with the EIA. *Id.* ¶ 16.

Petitioner remains detained at Stewart Detention Center pursuant to INA § 236(c) (8 U.S.C. § 1226(c)). *Id.* ¶ 17. To the extent Petitioner’s order of removal to Mexico becomes final, there is a significant likelihood of his removal in the reasonably foreseeable future. Mexico is open for

¹ Petitioner attempted to appeal the bond redetermination to the Board of Immigration Appeals (“BIA”), but did not timely file the appeal and the BIA dismissed the appeal on September 22, 2025. Waters Decl. ¶ 11 & Ex. H.

international travel. Waters Decl. ¶ 18. ICE/ERO is currently removing non-citizens to Mexico. *Id.*

LEGAL FRAMEWORK

Petitioner is mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c). Under 8 U.S.C. § 1226(a), ICE/ERO may arrest and detain an inadmissible non-citizen “pending a decision on whether the [non-citizen] is to be removed from the United States.” Whereas pre-final order of removal detention is generally discretionary, in 8 U.S.C. § 1226(c)(1), Congress mandated the detention of non-citizens who have committed certain criminal or terrorist offenses until removal proceedings are completed. The statute states unambiguously that the “Attorney General *shall* take into custody any alien” who is inadmissible or removable for having committed an offense in one of four listed categories. 8 U.S.C. § 1226(c)(1) (emphasis added).

The statute does not provide for bond or parole for non-citizens detained under § 1226(c). Rather, they may be released only if (1) release is necessary for witness protection purposes, and (2) ICE/ERO determines that the non-citizen “will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C. § 1226(c)(2). The Supreme Court has recognized that § 1226(c) mandates detention apart from the narrow exception described in § 1226(c)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (“§ 1226(c) makes clear that detention of aliens within its scope must continue pending a decision on whether the alien is to be removed from the United States.” (internal quotations and citation omitted)).

ARGUMENT

Petitioner asserts that he should not be considered detained under § 1226(c)’s mandatory detention provision because he has filed “motions to vacate underlying criminal convictions and [submitted] an EOIR-42A application for cancellation of removal.” Pet. 1. He claims that he filed

a motion to vacate his prior criminal convictions on August 26, 2025. Pet. 8. Petitioner also seeks to challenge the finding that his appeal was improperly or untimely filed with the BIA and that his EOIR-42A application for cancellation of removal was improperly considered. Pet. 2.² The Court lacks jurisdiction over all of Petitioner's claims. First, as to his claims that the IJ incorrectly determined that he is subject to § 1226(c)'s mandatory detention, regardless of the reason he gives, the Court is without jurisdiction under 8 U.S.C. §§ 1252(a)(5) and (b)(9). Sections 1252(a)(5) and (b)(9) also bar this Court's consideration of Petitioner's argument that the IJ erred in pretermining his application for cancellation of removal. Second, to the extent Petitioner is challenging the denial of bond in general, the Court is without jurisdiction under 8 U.S.C. §§ 1226(e) and 1252(a)(2)(B)(ii).

As to Petitioner's claims that the IJ erred in determining that his convictions satisfy the statutory requirements for mandatory detention under § 1226(c), the Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) provides in full:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

² Petitioner does not appear to claim that mandatory detention under 1226(c) violates due process based on the absence of a bond hearing. Instead, he challenges only the IJ's and BIA's findings that he is mandatorily detained under 1226(c) because he believes either his convictions do not satisfy the statutory requirements or that the IJ and BIA misapplied the rule to him. These challenges do not implicate due process or any constitutional argument. Therefore, Respondent does not address any such hypothetical due process argument here. If the Court construes the Petition as asserting such a claim, which, even construing the Petition liberally, it does not, Respondent respectfully requests the opportunity to respond to such a claim.

The Supreme Court has described section 1252(b)(9) as an “unmistakable zipper clause” that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *AADC*, 525 U.S. at 483. In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a “general jurisdictional limitation” on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes his claim. *Mata v. Sec’y of Dep’t of Homeland Sec.*, 426 F. App’x 698, 700 (11th Cir. 2011) (per curiam). Those claims may only be raised through a petition for review to the appropriate court of appeals. 8 U.S.C. § 1252(a)(5); *Alexandre v. U.S. Att’y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006).

Here, Petitioner claims that he does not meet the statutory requirements for mandatory detention under § 1226(c) and that the IJ erred in finding otherwise. Pet. 2. Specifically, he claims that he has filed motions to vacate the convictions underlying the IJ’s findings in the appropriate Superior Court. Pet. 2. Setting aside the fact that Petitioner only alleges that he has *filed* such motions, and not that they have been granted or that his convictions have been vacated, the IJ’s determination that his convictions satisfy the statutory requirements is unquestionably a legal and factual determination made in removal proceedings. *See Waters Decl.* ¶ 10 & Ex. G. Because the IJ has now ordered Petitioner removed as charged in the NTA, Petitioner necessarily challenges a factual and legal determination made by the IJ in removal proceedings. Section 1252(b)(9) specifically prohibits the Court from exercising jurisdiction over this claim, and § 1252(a)(5) vests jurisdiction only with the court of appeals. *Themus v. U.S. Dep’t of Justice*, 643 F. App’x 830, 832 (11th Cir. 2016) (per curiam). The claim should be denied.

The same finding should be made as to any other claims that Petitioner may be asserting with regard to the decisions of the IJ or BIA in his removal proceedings. Petitioner appears to argue that there were “procedural inconsistencies” in the appeal he attempted to file after the IJ’s first bond denial in May 2025. Pet. 2. He also claims that his EOIR-42A application was not properly considered. Pet. 2. These decisions likewise fall within the ambit of § 1252(b)(9) and the Court lacks jurisdiction over them.

As to Petitioner’s challenge to the IJ’s decision to deny bond, the Court lacks subject matter jurisdiction under both 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii). Section 1226(e) provides in full:

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 or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226(e). “§ 1226(e) precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release.” *Jennings*, 583 U.S. at 295 (internal quotations, alterations, and citations omitted). Rather, section 1226(e) permits only “challenges to the statutory framework.” *Id.* (internal quotations, alterations, and citation omitted). Section 1252(a)(2)(B)(ii) deprives the Court of subject matter jurisdiction to judicially review “any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]” If the challenged decision or action is committed to agency discretion by statute, the Court lacks jurisdiction over any challenge to that decision or action. *Kucana v. Holder*, 558 U.S. 233, 241-52 (2009).

Here, Petitioner appears to claim that the IJ should not have denied bond because he has filed motions to vacate his convictions, or because his convictions do not meet the requirements

of § 1226(c). Pet. 2, 8. Petitioner recognizes that the IJ acknowledged the motions to vacate but stated that until the convictions were vacated, they put him within the bounds of § 1226(c). Pet. 8. Section 1226(e) deprives the Court of subject matter jurisdiction because Petitioner directly challenges his bond decision. *See Hernandez v. Warden, Etowah Cty. Det. Ctr.*, No. 4:19-cv-00746, 2020 WL 5172423, at *3 (N.D. Ala. July 24, 2020), *recommendation adopted*, 2020 WL 5110761 (N.D. Ala. Aug. 31, 2020); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 (S.D. Ga. Jan. 29, 2020), *recommendation adopted* 2020 WL 821005 (S.D. Ga. Feb. 18, 2020). Similarly, because § 1226(e) commits bond determinations to agency discretion by statute, § 1252(a)(2)(B)(ii) also deprives the Court of subject matter jurisdiction to judicially review the IJ's bond determinations. *Kucana*, 558 U.S. at 541-52. Petitioner's challenges to the IJ's rulings regarding the application of § 1226(c) and denials of bond should therefore be denied.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 28th day of October, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY


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CERTIFICATE OF SERVICE

This is to certify that I have this date filed Respondent's Response with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Ricardo Salgado
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 28th day of October, 2025.

BY: /s/ Michael P. Morrill
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