

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

PREMANAND MOHAN SARANG,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-925-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondents.	:	

RESPONSE

On June 10, 2026, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. On June 11, 2026, the Court ordered Respondent to file a response within twenty-one days. ECF No. 16. For the hereinbelow reasons, the Petition should be denied.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Robin C. Esperon (“Esperon Decl.”), submitted with this filing. The declaration accurately summarizes the circumstances underlying Petitioner’s custodial status and immigration history, and Respondent refers the Court to it for the factual record.

¹ Petitioner names the United States Department of Homeland Security, the Attorney General, and the Acting Director of Immigration and Customs Enforcement in his Petition. “[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

LEGAL FRAMEWORK

ICE/ERO has the discretion to detain certain non-citizens “pending a decision on whether the [non-citizen] is to be removed from the United States.” 8 U.S.C. § 1226(a); *see* 8 U.S.C. § 1226(c). Provided the non-citizen does not fall under the § 1226(c) mandatory detention provisions, ICE/ERO may either “continue to detain the” non-citizen or “release the [non-citizen] on” bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

When a non-citizen is taken into ICE/ERO custody pursuant to 8 U.S.C. § 1226(a), ICE/ERO makes an initial custody determination, including consideration of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). ICE/ERO may “in [its] discretion, release an alien. . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). The ability to pay a cash bond is one factor among many that ICE/ERO may consider in making the initial custody determination. 8 C.F.R. § 236.1. The regulations further provide ICE/ERO with discretion to set a bond amount and/or prescribe other conditions for release. 8 U.S.C. § 1226(a); *see also* 8 C.F.R. §§ 236.1(c)(8), (d)(1). ICE/ERO makes these determinations based on the likelihood a non-citizen may abscond and whether the non-citizen poses a danger to property or persons. 8 C.F.R. § 236.1(c)(8).

A non-citizen may seek review of ICE/ERO’s initial custody determination before an IJ, commonly referred to as a “bond hearing.” 8 C.F.R. § 236.1(d)(1); 8 C.F.R. § 1003.19. Upon a non-citizen’s “[a]pplication to an immigration judge” to “request amelioration of the conditions under which he or she may be released[.]” the IJ may decide “to detain the [non-citizen] in custody, release the [non-citizen], and determine the amount of bond, if any, under which the [non-citizen] may be released[.]” 8 C.F.R. § 236.1(d)(1). To seek such review, the non-citizen must submit a request to the IJ either orally or in writing. 8 C.F.R. § 1003.19(b). In a bond hearing, the burden is

on the non-citizen to establish to the satisfaction of the IJ, that he or she is not “a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Non-citizens may present evidence in support of their request for a bond determination. *See* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [non-citizen] or the Service.”).

IJs have broad discretion in deciding whether to release a non-citizen on bond. *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors, including any information that the IJ may deem to be relevant. *Id.* at 40. These nonexclusive factors include:

(1) whether the [non-citizen] has a fixed address in the United States; (2) the [non-citizen’s] length of residence in the United States; (3) the [non-citizen’s] family ties in the United States, and whether they may entitle the [non-citizen] to reside permanently in the United States in the future; (4) the [non-citizen’s] employment history; (5) the [non-citizen’s] record of appearance in court; (6) the [non-citizen’s] criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the [non-citizen’s] history of immigration violations; (8) any attempts by the [non-citizen] to flee prosecution or otherwise escape authorities; and (9) the [non-citizen’s] manner of entry to the United States.

Id. In considering these or other relevant factors, IJs “may choose to give greater weight to one factor over others, as long as the decision is reasonable.” *Id.* Further, the INA in no way “limit[s] the discretionary factors that may be considered” in bond determinations. *Id.*; *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [non-citizen] or [ICE].”).

After an initial bond hearing, a non-citizen may request subsequent bond hearings by showing that his or her “circumstances have materially changed since the prior bond” hearing. *See* 8 C.F.R. § 1003.19(e). Non-citizens can then seek administrative review of the IJ’s bond decision

from the BIA by filing an appeal of the IJ's order within 30 days. *See* 8 C.F.R. § 236.1(d)(3) ("An appeal relating to bond and custody determinations may be filed to the Board of Immigration Appeals[.]"); 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38.

The Secretary's "discretionary judgment" regarding "the detention or release of any [non-citizen] or the grant, revocation, or denial of bond or parole[]" is not subject to judicial review. 8 U.S.C. § 1226(e). The bond decision does not statutorily have to be revisited at any point in the removal process and the length of detention does not have to be considered in the bond decision. *Jennings v. Rodriguez*, 583 U.S. 281, 304-07 (2018).

ARGUMENT

Petitioner raises six claims for relief all of which appear to challenge the determination of Petitioner's bond hearing before an Immigration Judge. Pet ¶¶ 65–99. The Petition should be denied for three reasons. *First*, the Court lacks subject matter jurisdiction to review an IJ's bond determinations. *Second*, Petitioner's pre-final order detention under section 1226(a) is statutorily permitted. *Third*, to the extent Petitioner challenges the procedures applied at his bond hearings, those procedures complied with his procedural due process rights.

I. The Court lacks jurisdiction to judicially review legal determinations in removal proceedings and bond decisions.

Petitioner challenges legal determinations made by the IJ in his removal proceedings. Petitioner's claims should be denied because the Court lacks jurisdiction over these claims. 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). 8 U.S.C. § 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.

“§ 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). 8 U.S.C. § 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 claims that the IJ should not have denied bond for multiple reasons. Pet. ¶¶ 65–99. All of Petitioner’s reasons should be denied because they challenge the IJ’s determination to deny Petitioner bond. 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 section 1226(e) commits bond determinations to agency discretion by statute, section 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 denials of bond should therefore be denied.

II. Petitioner’s detention is statutorily permitted under section 1226(a).

Because Petitioner is not subject to mandatory detention under section 1226(c), ICE/ERO has the discretion to detain him during removal proceedings. 8 U.S.C. § 1226(a)(1). When

Petitioner entered custody on April 22, 2026, ICE/ERO determined the Petitioner should be detained. Esperon Decl. ¶ 7 & Ex. A. Under the statute, the only remedy to which Petitioner is entitled is a bond hearing seeking redetermination of ICE/ERO's custody decision. 8 C.F.R. § 236.1(d)(1); 8 C.F.R. 1003.19. Here, Petitioner has already received two bond hearings pursuant to these provisions, and the IJ has denied bond at each. Esperon Decl. ¶¶ 8, 13 & Exs. B, D. Accordingly, his detention complies with the statutory scheme, and Petitioner cannot establish that ICE/ERO lacks authority to detain him.

To the extent Petitioner claims he is entitled to release because his detention under section 1226(a) has become unconstitutionally prolonged, his claim fails. Even assuming Petitioner's detention resulted in a due process violation,² the only remedy for that violation would be a bond hearing before an IJ—which he has already received. In *Sopo v. U.S. Attorney General*, 825 F.3d 1199 (2016), *vacated*, 890 F.3d 952 (11th Cir. 2020),³ the Eleventh Circuit addressed a non-citizen's claim that his mandatory detention under section 1226(c) had become unconstitutionally prolonged. 825 F.3d at 1202-03. The Court held that if a criminal non-citizen established a due process violation arising from the length of detention, the appropriate remedy was a bond hearing applying the procedures set forth in section 1226(a). *Sopo*, 825 F.3d at 1214.

Here, as explained above, Petitioner has already received bond hearings that adhered to section 1226(a) and its accompanying regulations. As the Eleventh Circuit and other courts in this circuit have recognized, this is the only available remedy. *Sopo*, 825 F.3d at 1214; *Aham*, 2020 WL 806929, at *3 n.3 (“Even where prolonged detention would warrant an individualized bond hearing,

² Respondent specifically denies that there is any due process violation.

³ *Sopo* has been vacated even as applied in its original context and is no longer the appropriate test for analyzing detention under section 1226(c). However, the case still stands for the proposition that the only remedy for purportedly prolonged pre-final order of removal detention is a bond hearing—not release.

such as in the § 1226(c) context, the burden typically remains with the detainee, as all that is required is an individualized bond hearing in accordance with 8 C.F.R. § 1236.1(c).” (citing *Sopo*, 825 F.3d at 1220)), *see also Duncan v. Gartland*, No. 5:19-cv-45, 2020 WL 812962, at *3 n.2 (S.D. Ga. Jan. 29, 2020) (same), *recommendation adopted* by 2020 WL 820288 (S.D. Ga. Feb. 18, 2020).⁴

III. To the extent Petitioner challenges the procedures applied at his previous bond hearings, those procedures comply with due process.

Because Petitioner is detained under section 1226(a) and been denied bond, Petitioner may be alleging that the section 1226(a) bond procedures are unconstitutional. Petitioner, however, fails to show that the procedures applied at his bond hearing violate his procedural due process rights.

A. Procedural Due Process Standards

“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). To determine whether procedural protections satisfy due process, courts apply the test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which analyzes three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

In applying the *Mathews* test in the immigration context, courts “must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the

⁴ To the extent Petitioner challenges either ICE/ERO’s original custody determination or the IJ’s legal determination that he is not entitled to bond, those claims are barred by section 1226(e) and section 1252(a)(2)(B)(ii) as explained above. *See supra* sec. I. Respondent specifically incorporates those arguments herein by reference.

control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Congress has “emphatic[ally] . . . inten[ded] to make the [Government’s] exercise of discretion presumptively correct and unassailable except for abuse” in the immigration detention context. *Carlson v. Landon*, 342 U.S. 524, 540 (1952). For this reason, the Supreme Court has held that “the role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy.” *Plasencia*, 459 U.S. at 35.

B. The section 1226(a) bond procedures satisfy the *Mathews* test.

As an initial matter, Respondent recognizes that this Court has previously applied the *Mathews* test in this context. In *J.G. v. Warden, Irwin County Detention Center*, 501 F. Supp. 3d 1331 (M.D. Ga. 2020), an IJ denied bond after holding a bond hearing at which the non-citizen bore the burden of proving that he was not “a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.” *J.G.*, 501 F. Supp. 3d at 1333. The non-citizen filed a habeas petition, claiming, *inter alia*, that the allocation of the burden of proof to him violated his procedural due process rights. *Id.* The Court applied the *Mathews* test and agreed that the burden allocation set forth by the applicable regulations and caselaw violated the non-citizen’s procedural due process rights. *Id.* at 1335-41.

Respondent respectfully contends that this holding should be revisited. While the Eleventh Circuit has not addressed this issue, the Third Circuit, Fourth Circuit, and Ninth Circuit have held that the section 1226(a) bond procedures comply with non-citizens’ procedural due process rights. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203-14 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338, 358-66 (4th Cir. 2022); *Borbot*, 906 F.3d 274, 276-80 (3d Cir. 2018). These decisions rely in part on recent Supreme Court decisions concerning bond hearings. In particular, both the Third Circuit and Ninth Circuit declined to extend their existing caselaw requiring bond hearings

for section 1226(c) detainees based on the Supreme Court’s holding in *Jennings* that “[n]othing in § 1226(a)’s text . . . even remotely supports the imposition” that “the Attorney General must prove by clear and convincing evidence that the alien’s continued detention is necessary.” 583 U.S. at 306; *see Borbot*, 906 F.3d at 276-80; *Rodriguez Diaz*, 53 F.4th at 1198-1203.

Additionally, courts in the Eleventh Circuit have similarly declined to order section 1226(a) bond hearings which place the burden of proof on the Government. *See Stephens v. Ripa*, No. No. 1:22-cv-20110, 2022 WL 1110104, at *8-9 (S.D. Fla. Feb. 18, 2022), *recommendation in part adopted by* 2022 WL 621596 (S.D. Fla. Mar. 3, 2022); *Aham*, 2020 WL 806929, at *3 n.3; *Khan v. Whiddon*, No. 2:13-cv-638, 2016 WL 4666513, at *7 (M.D. Fla. Sept. 7, 2016). In reaching this outcome, those courts noted that in *Sopo*, the Eleventh Circuit ordered that a non citizen mandatorily detained under section 1226(c) be provided a bond hearing applying the section 1226(a) bond procedures. 890 F.3d at 1220. In doing so, the Eleventh Circuit acknowledged that “[l]ike non-criminal aliens, the criminal alien carries the burden of proof and must show that he is not a flight risk or danger to others.” *Id.* Although *Sopo* was later vacated, the fact that the Eleventh Circuit *remedied* a due process violation by ordering a bond hearing applying the § 1226(a) bond procedures shows that those procedures are, themselves, compliant with procedural due process.

This Court should reach the same conclusion here. A reanalysis of the *Mathews* factors shows that the allocation of the burden of proof to the non-citizen complies with due process.

1. The Private Interest

The first *Mathews* factor—the private interest—weighs in Respondent’s favor. In *J.G.*, the Court found that the private interest factor weighed in the non-citizen’s favor by emphasizing that immigration detention affects a non-citizen’s “fundamental liberty interest.” *J.G.*, 501 F. Supp. 3d at 1336 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). The Court relied on “civil

commitment cases” which “inform[ed] its due process analysis in immigration cases.” *Id.* (citing *Zadvydas*, 533 U.S. at 690).

However, “[t]he requirements . . . which apply to the detention of citizens[] do not apply in the context of immigration removal proceedings. Due process is not a one size fits all proposition.” *Miranda*, 34 F.4th at 359. Whereas for United States citizens the “Court repeatedly has recognized that civil confinement for any purpose constitutes a significant deprivation of liberty,” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (citations omitted), in the immigration context, “detention during deportation proceedings is a constitutionally valid aspect of the deportation process,” *Demore*, 538 U.S. at 523; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993). In other words, unlike civil commitment of United States citizens, detention of non-citizens during removal proceedings is an integral part of the removal process.

But the Supreme Court has even upheld bond procedures similar to those in section 1226(a) bond proceedings when they are applied to United States citizens. Specifically, in *United States v. Salerno*, 481 U.S. 739, 755 (1987), the Court found that the Bail Reform Act was constitutional, including its rebuttable presumption provisions which require individuals (including United States citizens) to bear the burden of showing that they do not pose a danger to the community or a flight risk. *See* 18 U.S.C. § 3142(e); *Salerno*, 481 U.S. at 755. “If, in the criminal context, requiring citizens to bear the burden to show that they are not a danger to the community and a flight risk is not unconstitutional, it cannot be unconstitutional for the government to place a similar burden on an alien facing removal proceedings[.]” *Miranda*, 34 F.4th at 363; *see also Demore*, 538 U.S. at 522 (“In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” (citations omitted)).

The Supreme Court has also recognized distinctions in the liberty interests among different classes of non-citizen immigration detainees. In *Zadvydas*, the Court established a temporal

limitation on post-final order of removal detention by distinguishing pre-final order of removal detention because the former “has no obvious termination point.” *Zadvydas*, 533 U.S. at 697. Pre final order of removal detention under section 1226 is “materially different” because “the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings” and has a “definite termination point.” *Demore*, 538 U.S. at 511-12; *see also Jennings*, 138 S. Ct. at 846 (“[W]e distinguished § 1226(c) from the statutory provision in *Zadvydas* by pointing out that detention under § 1226(c) has a definite termination point: the conclusion of removal proceedings.” (internal quotations omitted)); *Miranda*, 34 F.4th at 360 (“[T]he Supreme Court held that the due process concerns regarding post-removal hearing detention described in *Zadvydas* did not apply to detention pending the removal hearing.”). Thus, even if *Zadvydas* permits release for non-citizens detained post-final order of removal, non-citizens—like Petitioner—who are detained pre-final order of removal stand on a different footing. These distinctions among the relevant liberty interests must be considered, and they show that this first *Mathews* factor weighs in Respondents’ favor.

2. The Risk of Erroneous Deprivation

The second *Mathews* factor—the risk of erroneous deprivation—also weighs in Respondent’s favor. In *J.G.*, the Court found that this factor weighed in the non-citizen’s favor because “[t]he risk of erroneous deprivation under the [§ 1226(a)] bond procedure is high.” *J.G.*, 501 F. Supp. 3d at 1337. In particular, the Court was concerned that “[t]he Government is not required to present a shred of evidence, yet it has substantial resources available,” emphasizing the difference between DHS’ “substantial resources” and a non-citizen’s difficulty in obtaining records or testimony. *Id.* at 1337-38. But these concerns go to “congressional choices of policy” which are not appropriate considerations when analyzing the procedural due process protections supplied by the INA. *Plasencia*, 459 U.S. at 35. And the Court did not consider that the bond procedures provide

the “fundamental features of due process—notice and opportunity to be heard.” *Miranda*, 34 F.4th at 362 (citing *Mathews*, 424 U.S. at 333).

The Court’s concerns about agencies “shat[ing] information through interagency databases,” the inability to obtain some information through Freedom of Information Act requests, and the difficulty in preparing a case while confined can also be true of civil commitment or pretrial bond hearings involving United States citizens. *See J.G.*, 501 F. Supp. 3d at 1337-38. Moreover, section 1226(a) permits the pre-final order of removal detention of non-citizens who unlawfully enter the United States without admission. *See* 8 U.S.C. § 1182(a)(6)(A)(i). In those circumstances, “the government likely has very little information about how an alien entered the United States, how long an alien has remained in the United States and what the alien has been doing while in the United States.” *Miranda*, 34 F.4th at 362.

The section 1226(a) bond procedures also mitigate a risk of erroneous deprivation by providing three levels of custody review: (1) an initial custody determination by an immigration officer, 8 C.F.R. §§ 236.1(c)(8), 236.1(d); (2) a bond hearing before an IJ, 8 C.F.R. § 236.1(d)(1); and (3) an appeal to the BIA, 8 C.F.R. § 236.1(d)(3). *Rodriguez Diaz*, 53 F.4th at 1210 (“[T]he agency’s decision to detain [the non-citizen] was subject to numerous levels of review, each offering [the non-citizen] the opportunity to be heard by a neutral decisionmaker.”). At each level, the reviewing authority considers whether the non-citizen poses a danger to the community or flight risk. *See* 8 C.F.R. § 236.1(c)(8); *In re Guerra*, 24 I. & N. Dec. at 40. The procedures also provide IJs with a non-exhaustive list of factors to consider and do not limit the non-citizen from presenting any available information. *Id.* at 39. Even after review by the officer, IJ, and BIA, a non-citizen can seek a custody redetermination from an IJ by showing that the “circumstances have changed materially since the prior bond redetermination.” 8 C.F.R. § 1003.19(e).

In *J.G.*, the Court also found that these “review procedures do not sufficiently mitigate the risk of an erroneous deprivation because the administrative review process takes several months to conclude.” *J.G.*, 501 F. Supp. 3d at 1338 (citing *Mathews*, 424 U.S. 341-42). However, under the regulations, the immigration officer makes an initial custody determination as soon as ICE/ERO takes a non-citizen into custody. 8 C.F.R. §§ 236.1(c)(8), 236.1(d). And if the officer denies bond, the non-citizen may immediately request a bond hearing before an IJ. 8 C.F.R. § 236.1(d)(1). Here, Petitioner received his initial custody determination the day after he was detained. Esperon Decl. ¶ 7 & Ex. A. Shortly after, Petitioner then received his first bond hearing. *Id.* ¶ 8 & Ex. B. Petitioner also received an additional bond redetermination hearing. *Id.* ¶¶ 13 & Ex. D. Thus, over the last three months, Petitioner has received three separate custody determinations from either ICE/ERO or an IJ. And unlike with post-final order of removal detention, detention under section 1226(a) “has a definite termination point: the conclusion of removal proceedings.” *Jennings*, 138 S. Ct. at 846; *see also Demore*, 538 U.S. at 511-12. Additionally, Petitioner did not appeal the IJ’s bond determinations. *See* Esperon Decl. ¶ 8, 13 & Exs. B, D.

The fact that Petitioner was denied bond, alone, does not establish that the procedures applied in reaching that determination were inadequate from a procedural due process standpoint because “Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.” *Flores*, 507 U.S. at 306 (citations omitted). Rather, “detention during deportation proceedings is a constitutionally valid aspect of the deportation process,” *Demore*, 538 U.S. at 523. The extensive and multi-faceted bond procedures provided by section 1226(a) minimize any risk of erroneous deprivation.

3. The Government Interest

The third *Mathews* factor—the Government’s interest—weighs in Respondents’ favor as well. In *J.G.*, the Court held that this factor was neutral, primarily by distinguishing the

Government's interest in detaining "noncitizens seeking initial entry to the United States at the border [with] those who entered the country legally." *J.G.*, 501 F. Supp. 3d at 1339-40 (citing *Zadvydas*, 533 U.S. at 693), *see also id.* at 1339 ("[T]he Government's interest in controlling admission of noncitizens at the border does not justify his detention." (citation omitted)). The Court found the petitioner in *J.G.* to have been lawfully admitted, and thus concluded that he was entitled to "procedural protections not afforded to noncitizens seeking initial entry[.]" *Id.*

The Court, however, neither acknowledged the Government's interest in establishing immigration procedures generally nor weighed that interest in making its finding as to this factor. Rather, the Court framed the Government's interest in economic terms. *Id.* at 1340 ("Incarceration that serves no legitimate purpose wastes taxpayers' money and hinders judicial efficiency. (citation omitted)). In *Miranda*, the Fourth Circuit reversed a district court for focusing on "financial costs" but "fail[ing] to even identify, much less address, the government's other interests in the current procedures, especially its control over matters of immigration." *Miranda*, 34 F.4th at 364. And while in *J.G.*, the Court acknowledged a Government interest in "preventing noncitizens from fleeing the country[.]" it focused on "whether [the individual detainee's] detention [was] serving the Government's purpose of preventing him from absconding[.]" *Id.* at 1340-41.

But this conclusion does not overcome the Government's interest in enacting and enforcing its immigration laws. To the contrary, "the Supreme Court has specifically instructed that in a *Mathews* analysis, [courts] 'must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Plasencia*, 459 U.S. at 32); *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.").

This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings. *Id.* “There is always a public interest in prompt execution of removal orders. The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009) (internal quotations, alterations, and citation omitted). In fact, the Supreme Court has recognized that section 1226(a) affords DHS “broad discretion” in determining whether to detain or release a non-citizen awaiting a removal order. *Nielsen v. Preap*, 586 U.S. 392, 409 (2019). Congress provided this discretion specifically based on “evidence that one of the major causes of the . . . failure to remove deportable criminal aliens was the agency’s failure to detain those aliens during their deportation proceedings.” *Demore*, 538 U.S. at 519 (citing H.R. Rep. No. 104-469, at 123 (1995)). “And Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest, so vital that it has tried to cabin judicial review of immigration enforcement.” *Miranda*, 34 F.4th at 364 (citing 8 U.S.C. §§ 1226(a), 1226(e), 1252(f)(1)). Both the Government’s strong interest in enforcing immigration laws generally and its interest in detaining non-citizens during removal proceedings specifically show that the third *Mathews* factor also weighs in the Government’s favor.

For all of these reasons, the Court should revisit its ruling in *J.G.* in light of new caselaw discussing this very issue. Consistent with rulings from the Third, Fourth, and Ninth Circuits, this Court should now find that the current section 1226(a) bond procedures—including the requirement that the non-citizen bear the burden of proof—satisfy non-citizens’ procedural due process rights. Accordingly, to the extent Petitioner requests that the Court order a bond hearing at which the Government bears the burden of proof, the Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondent requests that the Petition be denied.

Respectfully submitted this 2nd day of July, 2026.

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