

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MELVIN GONZALEZ RAMIREZ,

Petitioner,

v.

MICHAEL A. WILLIAMS, in his official
capacity as Jail Commander for the
Cobb County Sheriff's Office; *et al.*

Respondents.

Civil Action No.
1:26-CV-03334-ELR-RDC

RESPONSE TO PETITION FOR HABEAS CORPUS

Petitioner Melvin Gonzalez Ramirez seeks a writ of habeas corpus releasing him from immigration detention. This Court should deny that request. Gonzalez Ramirez is properly being held under 8 U.S.C. § 1226(a), which states that an alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." That statute applies here. Gonzalez Ramirez is present in this country without authorization, and he is being detained pending a decision on whether to remove him. His substantive objections to his detention lack merit or are beyond this Court's jurisdiction to hear, and his procedural objections are inconsistent with a century of Supreme Court decisions. Therefore, no writ of habeas corpus should issue.

Facts

Gonzalez Ramirez admits that he entered the United States approximately five years ago “without inspection” —*i.e.*, without permission. (Pet. ¶ 1.) After he was arrested in Cobb County for misdemeanor loitering, local authorities notified U.S. Immigration and Customs Enforcement (ICE) about Gonzalez Ramirez’s lack of legal status. (Pet. ¶ 26.) ICE asked the locals to hold Gonzalez Ramirez until ICE could pick him up. (Pet. ¶ 27.) During this brief time when he was still being held by Cobb County, Gonzalez Ramirez filed his petition. His arguments will be summarized in the next section of this response, after finishing the facts.

ICE picked up Gonzalez Ramirez on June 15, 2026. (*See* Decl. of Robin Esperon (Doc. 9) ¶¶ 6–7.) An ICE officer, Officer Hayden, interviewed Gonzalez to determine whether he should be released or detained during his removal proceeding. The discretion to detain or release such an alien was granted by Congress in 8 U.S.C. § 1226(a), which says that such an alien “may” be detained.¹ The exercise of that discretion is further cabined by regulation 8 C.F.R. § 236.1(c)(8), which states that an officer has discretion to release an alien

¹ The statute says that the “Attorney General” decides whether to detain the alien, but the Homeland Security Act of 2002 transferred this responsibility to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, § 441, 116 Stat. 2135, 2192. The U.S. Code has not been updated to reflect the change.

“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.” This language is a prerequisite to release; it does not require release. Here, Officer Hayden decided that Gonzalez Ramirez would be detained while his removal proceeding continues. (Esperon Decl. ¶ 7 & Ex. B (notice of custody determination).)

Although Gonzalez Ramirez could have sought further review of Officer Hayden’s initial detention decision, he has not availed himself of that process. (Esperon Decl. ¶ 11.) The option for review is provided by 8 C.F.R. § 236.1(d), which says that after “an initial custody determination” the alien may “request amelioration of the conditions under which he or she may be released,” at which point an immigration judge reviews the case (using the same legal standard as the initial officer, *see In Re Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)) and may continue the detention, release the alien, or redetermine the bond amount, if any.² Since Gonzalez Ramirez did not request such a review, he remains in immigration detention today while his removal proceeding goes forward.

² Immigration judges work for the Department of Justice. That role was not transferred by the Homeland Security Act of 2002. As a result, the initial custody decision is made by one department (DHS) and then the decision can be reviewed by a different department (DOJ).

Arguments in the Petition

At the time he filed his petition, Gonzalez Ramirez did not yet know whether ICE would detain him or would simply process him and then release him on his own recognizance. (As it turned out, ICE decided to detain him.) Gonzalez Ramirez also did not know what authority ICE might rely on to detain him, if it decided to do so. As a result, Gonzalez Ramirez's petition raises two arguments that turned out to be irrelevant. First, he argues on "information and belief" that ICE failed to make an initial custody determination. (Pet. ¶¶ 2, 5, 78, 79.) That allegation is wrong; Officer Hayden made the initial custody determination on June 15, 2026, the same day that Gonzalez Ramirez entered ICE custody and the same day that he filed his petition. Second, Gonzalez Ramirez argues that ICE cannot rely on 8 U.S.C. § 1225(b)(2) to detain him. (Pet. ¶¶ 77-79.) This argument is irrelevant because ICE is not relying on § 1225(b)(2). This response brief will therefore say no more about § 1225(b)(2) and will focus on § 1226 & 8 C.F.R. § 236.1(c)(8).

As to those laws, Gonzalez Ramirez makes two arguments. First, he argues that his detention violates substantive due process because he is neither a flight risk nor a danger to the community, the only two bases (he says) that could justify detaining him. (Pet. ¶¶ 80-85.) Second, he argues that 8 U.S.C. § 1226 &

8 C.F.R. § 236.1(c)(8) violate procedural due process because the burden of proof rests on the alien. (Pet. ¶¶ 86–97.)

For relief, Gonzalez Ramirez asks this Court to either (a) order his release from custody, (b) to conduct its own hearing as to whether he is a flight risk, or (c) to order a bond hearing before an immigration judge, among other things.

Argument

This Court should make short work of Gonzalez Ramirez’s substantive due process claim. The purpose of his detention is to ensure that he appears for his removal proceedings, which he admits is a legitimate purpose. His real argument is that he is not a flight risk – that Officer Hayden got it wrong. He can pursue that argument by appealing Officer Hayden’s initial decision to an immigration judge. This Court, however, is barred by statute from second-guessing such decisions.

Gonzalez Ramirez’s procedural due process claim is more interesting, but it should still be denied. Courts have split on the question of whether the current detention procedures comport with procedural due process. (The “current” procedures have been in place for 30 years.) No decision binds this Court, but statements from the Supreme Court and from the Eleventh Circuit show that the existing procedures are constitutional. This Court should therefore join the courts that have upheld those procedures.

Even if this Court ultimately agrees with Gonzalez Ramirez on either of his two claims, the Court should decline to order the relief he requests. In particular, this Court should not hold its own custody hearing. This Court has no authority to hold such a hearing itself because the applicable statute commits such decisions to the Executive Branch, not the courts. Instead, the correct remedy would be to order ICE to make its determination anew, applying the standards the Court thinks are proper.

1. Gonzalez Ramirez's substantive due process claim fails by his own admission, and his non-constitutional claims cannot be heard here.

Gonzalez Ramirez's petition is structured as though he is challenging the purpose of his detention. For example, he points out that the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), identified only certain purposes that can justify immigration detention. (Pet. ¶¶ 4, 31–33.) From this introduction, the reader might expect Gonzalez Ramirez to argue that he is being detained for an improper purpose.

But he never actually argues that he is being detained for an improper purpose. Nor could he. Preventing risk of flight is an entirely legitimate reason for immigration detention. Even Gonzalez Ramirez admits this. (See Pet. ¶ 6 (admitting that preventing risk of flight is a “permissible purpose”).) Gonzalez Ramirez is being detained because Officer Hayden determined that detention was necessary to ensure that Gonzalez Ramirez appeared for his removal

proceeding. Whether that decision is correct or not, the purpose of the detention is legitimate.

Instead of contesting the purpose of his detention, what Gonzalez Ramirez actually argues is that Officer Hayden made the wrong decision. As he puts it in his petition, “Mr. Gonzalez Ramirez does not constitute a flight risk, in light of his significant ties to the community, years of residence in the United States, and family members with lawful status.” (Pet. ¶ 84.) He is not contesting the underlying legality of his detention — as in, whether the Constitution permits detention to prevent an alien from absconding — but rather he contests the outcome in his particular case. Detaining an alien to prevent flight may generally be legal, he says, but he asserts that *he* is not a flight risk and should not be detained.

His argument, properly understood, should be rejected because federal district court is not the right place to raise it. Congress barred federal district courts from second guessing detention decisions in 8 U.S.C. § 1226(e). Per that subsection, “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 of any alien or the revocation or denial of bond or parole.” Thus, this Court is not the right place for Gonzalez Ramirez to raise objections to the

outcome in his specific case. Instead, he can appeal the outcome to an immigration judge per 8 C.F.R. § 236.1(d). If he is still unsatisfied, he has further appellate options after that. See 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3), 1003.38; Matter of Uluocha, 20 I. & N. Dec. 133, 134 (BIA 1989) (all describing further review options). But, per § 1226(e), he can't ask a court to review the detention decision. Note that Gonzalez Ramirez does not discuss § 1226(e) in his petition.³

Gonzalez Ramirez may respond by pointing out that federal district courts can hear constitutional challenges to detention because of the Supreme Court's decision in *Demore v. Kim*, which read § 1226(e) narrowly to not preclude constitutional challenges. 538 U.S. 510, 517 (2003). But as shown above, he is not raising such a challenge. He is not arguing about the substantive constitutionality

³ Magistrate Judge Cannon ordered the government to address whether Gonzalez Ramirez exhausted his administrative remedies. (Doc. 7 at 2.) He has not, at least as to his argument that he shouldn't be detained. He could have sought review by an immigration judge. Thus, this Court could hold as a prudential matter that Gonzalez Ramirez has failed to exhaust his remedies. However, Respondents respectfully suggest that "exhaustion" is a secondary reason to deny his petition because, even if he had exhausted his remedies, this Court would still lack jurisdiction under 8 U.S.C. § 1226(e) to hear his complaints about Officer Hayden's discretionary decision.

As to the procedural due process issue, Respondents are not taking the position (at least not in this case) that exhaustion is required. Gonzalez Ramirez argues that the process itself is unconstitutional, so requiring him to exhaust the process misses the point. See *D.Y.E.H. v. Warden, Irwin Det. Ctr.*, No. 7:25-CV-201, 2026 WL 1230386, at *3-4 (M.D. Ga. Apr. 6, 2026) (excusing lack of exhaustion given petitioner's procedural due process challenge).

of detention; he is arguing about the application of the law to the facts in his specific case. That is a factual issue, not a legal one, so § 1226(e) prevents this Court from hearing it.

2. Gonzalez Ramirez's procedural due process claim fails because the Constitution allows aliens to be detained during their removal proceedings, so the lesser option of providing an opportunity to avoid detention is also constitutional.

Gonzalez Ramirez's second argument is that 8 C.F.R. 236.1(c)(8) is an unconstitutional exercise of the Attorney General discretion under 8 U.S.C. § 1226(a) because the regulation places the burden on the alien to "demonstrate to the satisfaction of the officer that [the alien's] release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." This procedure, he says, violates his right to procedural due process as recognized in *Mathews v. Eldridge*, 424 U.S. 319 (1976).⁴

This argument fails because the Supreme Court has repeatedly stated that aliens can be categorically detained during their removal proceedings. That is, the Attorney General could have exercised his discretion by stating that *all* aliens

⁴ Under *Demore*, subsection 1226(e) does not block the Court from hearing Gonzalez Ramirez's procedural due process claim because that is a constitutional claim (unlike his substantive due process claim, which merely seeks review of the officer's decision). However, the government respectfully submits that *Demore* read § 1226(e) too narrowly. This argument is made here solely for preservation purposes, as this Court is bound by *Demore* at least until the Supreme Court reconsiders the case or Congress changes the law.

will be detained during their removal proceedings. The government's vital interest in this area — the third *Mathews v. Eldridge* factor — is sufficient to tip the balance in favor of the government and against the alien. Put differently, in determining what process is due in a matter relating to immigration, "it 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." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982).

The Supreme Court has repeatedly recognized the legality of detaining aliens during their removal proceedings, stating that "detention during deportation proceedings is a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also id.* at 523 n.7 (observing that, "prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings") (emphasis in original); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

The *Demore* case is the most relevant decision in this area. That case involved the *categorical* detention during removal proceedings of all aliens with

criminal histories, as required by 8 U.S.C. § 1226(c). The Supreme Court upheld that statute and rejected the petitioners' arguments that § 1226(c) violated their right to procedural due process. In doing so, the Court noted the long history of requiring aliens to be detained during their removal proceedings. *See, e.g., Carlson, 342 U.S. 524* (holding that all alien Communists can be automatically detained during deportation proceedings). In light of this history, the Court concluded that the Due Process clause did not require an individualized opportunity for criminal aliens to avoid detention during removal proceedings.

Under the logic of *Demore*, 8 C.F.R. § 236.1(c)(8) is constitutional. The reasoning in *Demore* would allow detention of *all* aliens throughout their removal proceeding. Rather than take this severe approach, Congress stated that the Attorney General "may" release non-criminal aliens instead, and the Attorney General exercised that discretion by allowing some aliens to be released, but only if they prove they are not a danger and not a flight risk. If a more severe exercise of the Attorney General's discretion would have been permissible, then the more generous language of § 236.1(c)(8) is surely constitutional.

To be clear, Respondents are not arguing that aliens can be detained indefinitely. The detention discussed in this brief lasts only as long as the alien's removal proceeding is underway. Once the removal proceeding is complete, the detention ends (although a new detention authority might take its place, such as

8 U.S.C. § 1231(a)(2)). If the removal proceeding becomes especially complicated or drawn out, the alien may also be able to seek release earlier. (Whether and how an alien can seek early release will be addressed by the Supreme Court next term in *Genalo v. Black*, No. 25-886.) But so long as removal proceedings are underway and proceeding at a reasonable pace, the Constitution does not prevent the government from detaining aliens during such proceedings. Therefore, by giving aliens a chance to avoid detention if they first show they are not dangerous and not flight risks, the Attorney General has given aliens more protection than the Constitution requires, not less.

The Supreme Court has not yet had the chance to apply the logic of *Demore* to 8 U.S.C. 1226(a) & 8 C.F.R. 236.1(c)(8), nor has the Eleventh Circuit. But the Eleventh Circuit hinted that these laws are constitutional in *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016). That case involved whether the mandatory detention required by § 1226(c) has a time limit. The Eleventh Circuit held that it did have a reasonable time limit. The Court further ordered that after this reasonable time runs out, the alien must be given a custody determination *as if* the alien were being held under § 1226(a) & § 236.1(c)(8). Although the court specifically reserved the question of whether those procedures passed constitutional muster — see footnote 10 — the decision implies that those laws are constitutional; otherwise, the court was just shuttling the petitioners from one

unconstitutional regime into a different unconstitutional regime. This point was emphasized by Judge Jill Pryor in partial dissent. She understood the court to be implicitly blessing § 1226(a) & § 236.1(c)(8), and she argued that the court erred by doing so. *Id.* at 1232 (Pryor, J., concurring) (stating that the majority is “presumably satisfied that these procedures – which place the burden of proof on the alien at bond proceedings – fulfill the dictates of due process”). While nothing here is conclusive or binding on this Court, the outcome in *Sopo* strongly suggests that the Eleventh Circuit will approve of § 1226(a) & § 236.1(c)(8) if the court is ever directly confronted with a procedural challenge to those laws.⁵

Looking beyond the Eleventh Circuit, the Ninth and Fourth Circuits have both adopted the government’s position in published opinions recognizing the government’s categorical ability to detain aliens during removal proceedings. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205–06, 1211 (9th Cir. 2022) (“[W]e interpret the Due Process Clause consistent with longstanding precedent recognizing that the process due aliens must account for the government’s countervailing interests in immigration enforcement—considerations that do not

⁵ The Eleventh Circuit vacated its decision in *Sopo* after the alien was removed from the United States, thereby mooting the case. *See* 890 F.3d 952 (11th Cir. 2018) (vacating the earlier decision). To be clear, Respondents are not arguing that this Court is bound by the original decision in *Sopo*. Respondents argue only that the language in that opinion suggests that the Eleventh Circuit would adopt Respondent’s position here.

apply to U.S. citizens.”); *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (“Those procedures, for individuals already in the country unlawfully, do not violate the Constitution’s Due Process Clause.”). The Third Circuit also seems to have adopted the government’s position that the alien can bear the burden of proof, although the opinion confusingly states that the petitioner both raised and did not raise this issue. See *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018) (stating, “[Petitioner] complains that he has borne the burden of proof throughout his detention,” an argument that the court rejects, but then stating that Petitioner alleges “no constitutional defect” with his original bond hearing). The Second Circuit, in dicta, suggested that the government’s position is constitutional, at least as to the initial detention decision. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).⁶ Finally, the Eighth Circuit, in an unpublished decision, in dicta, announced that it was “skeptical” that § 1226(a) is unconstitutional, noting that the Supreme Court “has never indicated the bond hearing process set forth in the statute and accompanying regulations is

⁶ Some people claim that the Second Circuit ruled against the government because the alien won in that case, but the court clearly distinguished initial detention decisions from subsequent decisions and suggested that the initial hearing procedures, with the burden on the alien, are constitutional. *Id.* at 855 (“While **the Government’s interest may have initially outweighed** short-term deprivation of Velasco Lopez’s liberty interests, that balance shifted once his imprisonment became unduly prolonged.” (bold added).)

constitutionally deficient. To the contrary, Supreme Court precedent indicates such a framework is constitutionally permissible.” *Ali v. Brott*, 770 F. App’x 298, 301 (8th Cir. 2019). This Court should follow these cases.

Respondents acknowledge that the First Circuit and many district courts have ruled against the government on this issue. *See Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *see also, e.g., J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (collecting cases). Those courts have reached the opposite result primarily by relying on the following erroneous syllogism:

- (1) The Supreme Court has held, in the context of civil detention (e.g., when a state detains someone for mental-health reasons), that the government bears the burden of proving that detention is necessary.
- (2) Immigration detention is non-punitive and therefore civil in nature.
- (3) Therefore, immigration detention is subject to the same procedural requirements as other forms of civil detention.

The flaw in this syllogism is that aliens have fewer rights than citizens. “In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976). The Supreme Court has “firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 521–22. The current issue of detention during removal proceedings is one of those areas where the rights of aliens are categorically different. A citizen could not be subject to a

removal proceeding; an alien can be. This Court should therefore decline to follow the cases that have ruled against the government on this issue. *See Miranda*, 34 F.4th at 359 & n.9 (4th Cir.) (agreeing that civil commitment cases are inapposite because they “involved detention of United States citizens whereas § 1226(a) involves detention of aliens awaiting removal hearings”). This Court should thus decline to follow the cases going against the government.

3. Gonzalez Ramirez’s proposed relief is inappropriate because he is asking this Court to decide a question that Congress left to the discretion of the Executive Branch.

This section assumes that the Court agrees with one of Gonzalez Ramirez’s challenges above. In that event, the proper remedy would be for the Court to order ICE to either (A) release Gonzalez Ramirez, or (B) conduct a new initial custody determination, this time using the standards the Court finds to be required. This result would be consistent with the statutory scheme passed by Congress, which gives the Attorney General the discretion to decide whether aliens should be detained or released during their removal proceedings. *See 8 U.S.C. § 1226(a)* (pending the outcome of the removal proceeding, “the Attorney General – (1) may continue to detain the arrested alien; and (2) may release the alien”). If the Court concludes that this discretion was not exercised in an appropriate matter, or via an appropriate procedure, then the Court should order ICE to try again. A new initial custody decision could of

course be appealed to an immigration judge per the usual procedures, and the immigration judge would of course need to apply the same standards approved by this Court.

Gonzalez Ramirez has different suggestions. He suggests, first, that this Court should conduct the custody determination itself. That suggestion is inconsistent with the statutory scheme, which gives the decision to the Attorney General. Gonzalez Ramirez cites no authority that would allow this Court to take over that decision, and § 1226(e) directly prohibits it. Second, he suggests that this Court should order a bond hearing before an immigration judge. This suggestion is closer to the mark in that it at least allows the correct branch of government to make the decision, but the procedure is wrong. Immigration judges hear appeals from initial custody determinations, they do not make those determinations themselves. The immigration officer should act first.

For these reasons, if the Court agrees with either of Gonzalez Ramirez's substantive challenges, the Court should enter an order along the following lines:

Respondents are ordered to either Release Gonzalez Ramirez or to make a new initial custody determination using [the standards approved by the Court] within three days of this Court's order. In the event any party seeks review by an immigration judge, the immigration judge must apply [the same standards approved by the Court].

Conclusion

Gonzalez Ramirez is detained pursuant to a statutory scheme that has been in place for thirty years. The reason for his detention is legitimate, and the procedures used are constitutional. Therefore, his petition for a writ of habeas corpus should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify under Local Rules 5.1B and 7.1D that the above brief was typed using 13-point Book Antiqua font.

This 17th day of June, 2026.

s/ Anthony C. DeCinque
ANTHONY C. DECINQUE

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed using the Court's CM/ECF system, which will provide notice to all counsel of record.

This 17th day of June, 2026.

s/ Anthony C. DeCinque
ANTHONY C. DECINQUE