

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

SALMA AMIN JIWANI,

Petitioner,

v.

**WARDEN, STEWART
DETENTION CENTER,**

Respondent.

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**Case No. 4:26-cv-950-CDL-AGH
28 U.S.C. § 2241**

RESPONDENT'S MOTION TO DISMISS

On June 18, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. She asserts three claims: (1) that ICE/ERO unlawfully re-detained her without an individualized determination under 8 U.S.C. § 1182(d)(5)(A), *see* Pet. ¶¶ 49–52; (2) that her redetention violated the Fifth Amendment because she did not receive notice, an opportunity to respond, or a *pro* deprivation hearing, *see* Pet. ¶¶ 31–48, 53–59; and (3) that she is entitled to a bond hearing before a neutral adjudicator under 8 C.F.R. § 1003.19(h)(2)(i)(A), *see* Pet. ¶¶ 60–61. The Petition should be dismissed because Petitioner is detained under 8 U.S.C. § 1226(a), a statutory scheme that affords her the right to request a bond hearing before an Immigration Judge—yet she has never exercised that right.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer David M. Bush (“Bush 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.

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 § 1226(c)’s 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 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).

A non-citizen may seek review of ICE/ERO’s initial custody determination before an Immigration Judge (“IJ”). 8 C.F.R. § 236.1(d)(1); 8 C.F.R. § 1003.19. At such a hearing, the IJ may continue detention or set bond. 8 C.F.R. § 236.1(d)(1). The burden is on the non-citizen to show that he or she is not a danger, a flight risk, or otherwise a poor bail risk. *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). IJs may consider any relevant information in exercising this discretionary authority. *Id.*; *see* 8 C.F.R. § 1003.19(d). Following an initial bond hearing, a non-citizen may seek a subsequent bond hearing upon a showing of materially changed circumstances. *See* 8 C.F.R. § 1003.19(e). IJ bond decisions may be appealed to the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 236.1(d)(3); 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38.

The INA provides that 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). *Jennings v. Rodriguez*, 583 U.S. 281, 304–07 (2018),

confirms that the statute does not require repeated custody reviews based solely on length of detention.

ARGUMENT

Petitioner's core claims rest on the erroneous premise that ICE/ERO lacked authority to re detain her absent advance notice, a hearing, or an individualized "revocation" of parole. *See* Pet. ¶¶ 31–48, 49–57, 61. Those assertions are inconsistent with 8 U.S.C. § 1226(a) and the governing regulations.

Section 1226(a) expressly authorizes ICE/ERO to arrest or re-arrest a noncitizen "pending a decision on whether the [noncitizen] is to be removed from the United States." Petitioner was encountered after unlawfully entering the United States without inspection, was charged as inadmissible under INA § 212(a)(6)(A)(i), and was placed in removal proceedings. Bush Decl. ¶ 5; Ex. A. ICE/ERO initially released her on recognizance on December 1, 2022. Bush Decl. ¶ 6; Ex. B. On June 7, 2026, ICE/ERO arrested Petitioner, conducted a custody determination under § 1226(a), and determined she should remain detained pending her removal proceedings. Bush Decl. ¶ 7; Ex. C. Nothing in § 1226(a) requires ICE/ERO to provide pre-detention notice or a pre-arrest hearing.

Instead, the INA and regulations provide a mechanism for the noncitizen to seek custody review. A noncitizen detained under § 1226(a) "may request" a bond hearing before an Immigration Judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19. At that hearing, the burden rests squarely on the noncitizen to show that release is warranted because she is not a danger or a flight risk. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). If she disagrees with the Immigration Judge's determination, she may appeal to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(d)(3), 1003.38.

The Eleventh Circuit recently reaffirmed that noncitizens detained under § 1226(a) are not subject to mandatory detention and remain fully eligible to seek release on bond. *See Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026). *Hernandez Alvarez* confirms the precise point controlling here: individuals detained under § 1226(a) may request bond, and federal courts may not require ICE/ERO to provide additional procedures beyond those Congress established.

Yet Petitioner has never invoked the bond procedures available to her. Although she now claims she was “denied” access to a bond hearing, *see* Pet. ¶ 1, the administrative record shows that she has “not filed a custody redetermination request with the Immigration Court.” Bush Decl. ¶ 11. Petitioner has been in removal proceedings since 2022, *see* Pet. ¶ 16, has appeared with counsel at multiple hearings, Bush Decl. ¶¶ 8–9, and has actively pursued other forms of relief—yet she has never sought custody review. Her continued detention therefore flows not from any unlawful action by ICE/ERO, but from her own decision not to pursue the procedures Congress and the Executive Branch have made available.

Petitioner’s reliance on a “revocation of parole” theory fundamentally rests on a mistaken premise. She was never paroled under 8 U.S.C. § 1182(d)(5)(A), and no such parole determination appears anywhere in her immigration record. Instead, ICE/ERO released her in December 2022 pursuant to an Order of Release on Recognizance (Form I-220A)—a discretionary custody-release decision made under 8 U.S.C. § 1226(a) and its implementing regulation, 8 C.F.R. § 236.1(c)(8). The issuance of an OREC is simply a § 1226(a) custody determination, not parole. Accordingly, when ICE/ERO encountered Petitioner again in June 2026 and made a new custody determination under § 1226(a), no “revocation of parole” occurred and no individualized termination finding under § 1182(d)(5)(A) was required. Petitioner remains detained solely under § 1226(a) and is fully entitled—but has never attempted—to seek a bond hearing before an Immigration Judge. Even if

Petitioner had been paroled, any alleged improper revocation would not be cognizable in habeas because it challenges a collateral issue rather than the legal authority for her current detention. *See* 8 U.S.C. § 1226(c)

Because Petitioner is detained under § 1226(a), because she is statutorily entitled to request a bond hearing but has never done so, and because the Court cannot impose additional procedures beyond those set forth in the INA, Petitioner has not sought the remedy available to her. Her claims under 28 U.S.C. § 2241 therefore fail, and the Petition should be dismissed.

CONCLUSION

Petitioner is detained pursuant to 8 U.S.C. § 1226(a), a statutory scheme that provides a clear and exclusive mechanism for seeking custody review through a bond hearing before an Immigration Judge. Despite having full access to that process, Petitioner has never requested such a hearing. Because she has not pursued the remedy Congress provided, her claims fail to state a cognizable basis for habeas relief. The Petition should be dismissed.

Respectfully submitted, this 8th day of July, 2026.

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*Acting Under Authority Conferred by 28 U.S.C. § 543