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

MICHAEL OBASOLUYI,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-169-CDL-ALS**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On June 4, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. The Court received Petitioner's Supplemental Petition on June 20, 2025. ECF No. 4. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Nigeria who is mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(c). Waters Decl. ¶¶ 4, 6, 8. On October 20, 2016, Petitioner was admitted into the United States as a conditional permanent resident. *Id.* ¶ 4. On September 3, 2019, he adjusted status to lawful permanent resident. *Id.* ¶ 4 & Ex. A. On or about November 18, 2021, Petitioner was convicted of Felony Hit and Run/Serious Injury/Death in Mecklenburg County, North Carolina Superior Court. Waters Decl. ¶ 5 & Ex. B. Petitioner was sentenced to 13 to 25 months in custody with a suspended sentence of supervised probation for 30 months. *Id.* ¶ 5 & Ex. B.

On or about January 23, 2024, Petitioner entered Immigration and Customs Enforcement ("ICE") custody pursuant to 8 U.S.C. § 1226(c) and was transported to the Alamance County Detention Facility in Graham, North Carolina. Water Decl. ¶ 6. On the same date, Petitioner was served with a Notice to Appear ("NTA") charging him with removability pursuant to 8 U.S.C. § 1227(a)(2)(A)(i) based on his conviction of a crime involving moral turpitude ("CIMT") committed within five years after admission for which a sentence of one year or longer may have been imposed. *Id.* ¶ 6 & Ex. C. The NTA set an initial hearing for February 7, 2024. *Id.* ¶ 6 & Ex. C. On January 24, 2024, Petitioner was transferred to Stewart Detention Center in Lumpkin, Georgia where he remains to date. *Id.* ¶ 6.

On January 31, 2024, the Immigration Judge ("IJ") rescheduled the initial master hearing to February 20, 2024. *Id.* ¶ 7. On February 20, 2024, Petitioner appeared *pro se* for the initial master hearing. Waters Decl. ¶ 8. The IJ accepted the Department of Homeland Security's ("DHS") oral motion to amend the NTA to reflect that Petitioner is a native and citizen of Nigeria as opposed to Liberia on the original. *Id.* The IJ sustained the charge of removability in the NTA and reset the hearing for April 4, 2024 to allow Petitioner an opportunity to seek counsel and file an application for relief from removal. *Id.*

On March 6, 2024, Petitioner filed his first request for bond. Waters Decl. ¶ 9. The parties appeared for a bond hearing on March 13, 2024, and the IJ denied bond for lack of jurisdiction because Petitioner was subject to mandatory detention. *Id.* ¶ 9. However, the IJ found, in the alternative, that Petitioner also was not entitled to bond because he failed to show that he was not a danger to the community. *Id.* ¶ 9 & Ex. D. On March 13, 2023, the IJ rescheduled the master hearing for May 14, 2024. Waters Decl. ¶ 10. On that date, Petitioner appeared *pro se* and submitted an Application for Cancellation of Removal for Certain Permanent Residents ("42-A Application"). *Id.* The case was set for a merits hearing on July 31, 2024. *Id.* On May 31, 2024, filed a second request for bond, and the parties appeared for a bond hearing on June 5, 2024. *Id.* ¶ 12. The IJ advised Petitioner to gather additional information and therefore took no action on the request for bond. *Id.* ¶ 12 & Ex. E.

On July 18, 2024, DHS filed a Motion to Pretermit the 42-A Application. *Id.* ¶ 13. On July 31, 2024, Petitioner appeared *pro se* for his master hearing and contested whether his conviction was a CIMT. Waters Decl. ¶ 14. The IJ set a deadline of September 10, 2024, for all parties to submit caselaw on the CIMT issue. *Id.* ¶ 14. A master hearing was scheduled for September 17, 2024, and the merits hearing was reset to October 2, 2024. *Id.*

On August 12, 2024, Petitioner submitted a third request for bond, and the parties appeared for a bond hearing on August 15, 2024. *Id.* ¶ 15. At the hearing, Petitioner withdrew the request for bond to allow the IJ an opportunity to review his evidence and caselaw. *Id.* Therefore, the IJ took no action on the request for bond. *Id.* ¶ 15 & Ex. 15. On August 15, 2024, Petitioner submitted a fourth request for a bond hearing, and the parties appeared for a bond hearing on August 21, 2024. *Id.* ¶ 16. The IJ denied bond finding no material change in circumstances. *Id.* ¶ 16 & Ex. G.

On September 17, 2024, Petitioner appeared *pro se* for the master hearing. Waters Decl. ¶ 17. Petitioner continued to argue he was not convicted of a CIMT and requested additional time to confer with an attorney to potentially file applications for other forms of relief. *Id.* The IJ set a deadline of September 23, 2024 for Petitioner to file all documents. *Id.* On September 20, 2024, Petitioner requested a continuance of the October 2, 2024 merits hearing date so he could hire counsel. *Id.* ¶ 18. On September 25, 2024, the IJ granted Petitioner's request and reset the merits hearing to January 8, 2025. *Id.* On that same day, the IJ also granted DHS's Motion to Pretermit, finding that Petitioner failed to establish eligibility for cancellation of removal. Waters Decl. ¶ 19. On December 26, 2024, Petitioner submitted a fifth request for bond, and the parties appeared for a bond hearing on January 2, 2025. Id. ¶ 20. The IJ denied bond citing no material change in circumstances. *Id.* ¶ 20 & Ex. I.

On January 7, 2025, Petitioner filed a motion to terminate removal proceedings on the basis that his conviction is not a CIMT. Waters Decl. ¶ 21. On January 28, 2025, he filed a second motion to terminate. *Id.* On February 21, 2025, the DHS filed an opposition to the motion to terminate, and the Petitioner filed a reply on February 25, 2025. *Id.* On April 2, 2025, the IJ granted Petitioner's motion to terminate finding that DHS failed to show that Petitioner is removable as charged. *Id.* ¶ 21 & Ex. J. DHS reserved appeal. *Id.* ¶ 21.

On May 2, 2025, the DHS filed a Notice of Appeal of the Immigration Judge's order terminating removal proceedings to the Board of Immigration Appeals ("BIA"). Waters Decl. ¶ 22 & Ex. K. The BIA required both parties to submit legal briefs by June 20, 2025. *Id.* ¶ 22 & Ex. L. DHS filed its brief on June 20, 2025, while Petitioner filed his brief on June 27, 2025. *Id.* ¶ 22. The appeal of the termination order remains pending with the BIA. *Id.*

On May 7, 2025, Petitioner submitted a sixth request for bond. *Id.* ¶ 23. On May 15, 2025, the parties appeared for a bond hearing, and the IJ granted a $5,000 bond. *Id.* ¶ 23 & Ex. N. On May 16, 2025, DHS filed an Executive Office of Immigration Review ("EOIR") Form-43, Notice of ICE Intent to Appeal Custody Redetermination, which triggered an automatic stay of the IJ's May 15, 2025, bond decision pursuant to 8 C.F.R. § 1003.19(i)(2). *Id.* ¶ 24 & Ex. O. On May 30, 2025, DHS filed a Notice of Appeal of the IJ's bond order. Waters Decl. ¶ 25 & Ex. P. The BIA issued a briefing schedule requiring all parties to submit a legal brief by July 8, 2025. *Id.* ¶ 25 & Ex. Q. The appeal of the bond grant remains pending with the BIA. *Id.* ¶ 25. Petitioner remains detained at Stewart Detention Center pursuant to INA § 236(c). *Id.* ¶ 26.

In the event Petitioner is ordered removed, there is a significant likelihood of his removal in the reasonably foreseeable future. *Id.* ¶ 27. Nigeria is open for international travel, and ICE is currently removing non-citizens to Nigeria. *Id.*

LEGAL FRAMEWORK

Petitioner's removal proceedings have been complex and touch on multiple issues. Two primary authorities govern his detention: (1) mandatory pre-final order of removal detention under

8 U.S.C. § 1226(c), and (2) DHS's discretionary decision to invoke an automatic stay of the IJ's bond order under 8 C.F.R. § 1003.19(i)(2).

I. Mandatory Detention Under 8 U.S.C. § 1226(c)

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 detention of non-citizens charged with removability based on commission of certain criminal or terrorist offenses until removal proceedings are completed. The statute states unambiguously that ICE "*shall* take into custody any alien" who is 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 permit bond for non-citizens detained under section 1226(c). Rather, they may be released only if (1) release is necessary for witness protection purposes as described in 18 U.S.C. § 3521, 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 section 1226(c) mandates detention apart from this narrow exception. *Jennings v. Rodriguez*, 538 U.S. 281, 283 (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)).

If an IJ finds that a non-citizen is not removable based on a charge subjecting him to mandatory detention under section 1226(c), DHS may appeal the IJ's decision to the BIA. 8 C.F.R. § 1003.3(a). The BIA is vested with appellate jurisdiction over, *inter alia*, "[d]ecisions of [IJs] in removal proceedings[.]" 8 C.F.R. § 1003.1(b)(3). When an appeal of an IJ's decision is filed, the

IJ's decision is not final and "shall not be executed." 8 C.F.R. § 1003.6(a). The decision is not final and executable until the BIA issues its ruling. 8 C.F.R. § 1003.1(d)(7)(i).

Here, the NTA charged Petitioner with removability for committing a CIMT under 8 U.S.C. § 1227(a)(2)(A)(i). Waters Decl. ¶ 6 & Ex. C. This charge subjects Petitioner to mandatory detention pursuant to section 1226(c) because a CIMT is enumerated at 8 U.S.C. § 1226(c)(1)(C). An IJ granted Petitioner's motion to terminate his removal proceedings based on a finding that Petitioner is not removable because his conviction does not constitute a CIMT. *Id.* ¶ 21 & Ex. J. However, DHS timely appealed the IJ's termination order to the BIA. *Id.* ¶ 22 & Ex. K. The appeal has been fully briefed and remains pending with the BIA. *Id.* ¶ 22. Thus, Petitioner remains mandatorily detained pursuant to section 1226(c) because the IJ's order is non-final and cannot be executed until the BIA issues its decision. 8 C.F.R. §§ 1003.1(d)(7)(i), 1003.6(a).

II. The Automatic Stay of the IJ's Bond Decision Under 8 C.F.R. § 1003.19(i)(2)

When a non-citizen is discretionarily detained pre-final order of removal pursuant to 8 U.S.C. § 1226(a)—which Petitioner is not—an IJ may review the non-citizen's custody status through a bond hearing. 8 C.F.R. §§ 236.1(d)(1), 1003.19(a), (d). Both the non-citizen and DHS have the right to appeal an IJ's bond decision to the BIA. 8 C.F.R. §§ 236.1(d)(3)(i), 1003.19(f). When DHS appeals an IJ's order granting bond, DHS may invoke an automatic stay of that order:

> In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the [IJ] authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and . . . shall remain in abeyance pending decision of the appeal by the [BIA].

8 C.F.R. § 1003.19(i)(2). Invocation of the automatic stay is committed to DHS's discretion. *Id.*

To invoke the automatic stay, DHS must "file a notice of appeal with the [BIA] within ten business days of the issuance of the [IJ's bond] order[.]" 8 C.F.R. § 1003.6(c)(1). Thereafter, the IJ prepares a written decision explaining his bond decision and transmits it to the BIA. 8 C.F.R. § 1003.6(c)(2). The automatic stay is of short duration: if the BIA does not issue a decision on the appeal, the automatic stay terminates after 90 days unless the non-citizen request an extension of the briefing period. 8 C.F.R. § 1003.6(c)(4). Once the short period of the automatic stay expires, DHS may request a discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5).

Here, as explained above, Petitioner has been mandatorily detained under section 1226(c) since he first entered custody on January 23, 2024. Waters Decl. ¶¶ 4, 6, 26. As the Supreme Court has clearly held, Petitioner has no statutory right to a bond hearing while section 1226(c) applies. *Jennings*, 583 U.S. at 283, 304. Indeed, the IJ denied Petitioner's first bond request based on a finding that Petitioner is "subject to mandatory custody." Waters Decl. Ex. D. And as outlined above, section 1226(c) continues to apply even though the IJ issued an order terminating removal proceedings because that order is non-final and inexecutable until the BIA rules on DHS's appeal.

Despite this clear statutory prohibition, the IJ nevertheless granted Petitioner bond on May 15, 2025. Waters Decl. ¶ 23 & Ex. M. In accordance with 8 C.F.R. § 1003.19(i)(2), DHS determined that Petitioner should remain detained and filed an EOIR Form-43 notifying the IJ of its intent to appeal the bond order. *Id.* ¶ 24 & Ex. O. On May 30, 2025—ten days after the IJ's bond decision—DHS timely filed its notice to appeal with the BIA. *Id.* ¶ 25 & Ex. P; *see* 8 C.F.R. § 1003.6(c)(1). The BIA issued a briefing schedule requiring DHS and Petitioner to file briefs on the bond appeal by July 8, 2025. Waters Decl. ¶ 25 & Ex. Q. DHS duly filed its brief on that date. *Id.* ¶ 25. The 90-day automatic stay will terminate on August 28, 2025. *See* 8 C.F.R. § 1003.6(c)(4).

ARGUMENT

Petitioner asserts that his continued detention violates due process and requests immediate release from custody as a remedy. Pet. 2-4, ECF No. 1; Suppl. Pet. 2-4, ECF No. 4. However, he appears to raise two separate claims: (1) his detention pursuant to section 1226(c) has become unconstitutionally prolonged, Suppl. Pet. 2-4; and (2) his detention pursuant to DHS's invocation of an automatic stay of the IJ's May 15, 2025 bond decision violates due process, Pet. 2-4.

The Petition should be dismissed for four reasons. ***First***, Petitioner's mandatory detention under section 1226(c) complies with due process. ***Second***, even if Petitioner could establish that his detention under section 1226(c) violates due process, the claim is moot because he has already received multiple bond hearings, and that is all the relief he is due. ***Third***, Petitioner's temporary detention pursuant to the automatic stay of the IJ's bond decision complies with due process.

I. Petitioner's mandatory detention under section 1226(c) complies with due process.

Petitioner claims that his mandatory detention pursuant to section 1226(c) violates due process because it has become unconstitutionally prolonged. Suppl. Pet. 2-4. This claim lacks merit.

"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." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* at 792 (collecting cases). For over a century, the Supreme Court has definitively and consistently affirmed that detention pending removal is constitutional. *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings . . . ." (citations omitted)); *Carlson v. Landers*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.").

In *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court affirmed the constitutionality of mandatory detention without a bond hearing under section 1226(c). The Court discussed the legislative history of the statute, noting that Congress enacted section 1226(c) in light of the "near-total inability to remove deportable criminal aliens" and reports showing a recidivism rate for criminal aliens approaching 80 percent. *Demore*, 538 U.S. at 518. "Congress also had before it 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." *Id.* at 519 (citations omitted). In particular, Congress considered multiple reports showing that "deportable criminal aliens failed to appear for their removal hearings." *Id.* (citations omitted).

In addressing the due process rights at issue, the Court noted that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 521 (citations omitted). The Court then distinguished the case in two key respects from its decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), where the Court applied the canon of constitutional avoidance to read into the post-order detention statute an implicit temporal limit. *Id.* at 527. First, the Court emphasized that for the non-citizens challenging their detention in *Zadvydas*, removal was "no longer practically attainable," and the detention therefore "did not serve its purported immigration purpose." *Id.* (citing *Zadvydas*, 533 U.S. at 690) (internal quotations omitted). Conversely, mandatory detention pending removal proceedings "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings." *Demore*, 538 U.S. at 528. Second, the Court emphasized that the post-order detention in *Zadvydas* was "indefinite" and "potentially permanent" while pre-order detention has an "obvious termination point"—the conclusion of removal proceedings. *Id.* at 528-29.

Thus, the considerations that justified the imposition of a temporal limit on post-order immigration detention in *Zadvydas* were absent for the mandatory pre-final order of removal detention in *Demore*, and the Court found that mandatory detention without a bond hearing under section 1226(c) complied with due process. The Court concluded by reiterating its century-old rule that "[d]etention during removal proceedings is a constitutionally permissible part of that process. *Id.* at 531 (citing *Wong Wing*, 163 U.S. at 235; *Carlson*, 342 U.S. at 538; *Flores*, 507 U.S. at 306).

After *Demore*, the Eleventh Circuit decided *Sopo v. U.S. Attorney General*, 825 F.3d 1199 (11th Cir. 2016), which applied the canon of constitutional avoidance and read into section 1226(c) an implicit temporal limit on mandatory detention to avoid perceived procedural due process issues. 825 F.3d at 1212-13. Specifically, the Court created a multi-factor test to determine whether continued detention under section 1226(c) was reasonable. *Id.* at 1217-19. If application of the factors demonstrated that the detention was unreasonable, the Court held that the non-citizen would be entitled to a bond hearing using the procedures set forth in 8 U.S.C. § 1226(a). *Id.* at 1220.

However, the Supreme Court then decided *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which reversed the Ninth Circuit's analogous application of the canon of constitutional avoidance to section 1226(c). The Supreme Court stated that section 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" and "expressly prohibits release from that detention except for narrow, witness-protection purposes." *Jennings*, 583 U.S. at 283; *see also id.* at 304 ("[T]he statute expressly and unequivocally imposes an affirmative prohibition on releasing detained aliens under any other conditions."). The Court found that the statute contained no limitation on the length of section 1226(c) detention, describing the Ninth Circuit's attempt to interpret any such limitation under the canon of constitutional avoidance as "textual alchemy." *Id.* at 304. Rather, the "definite termination point" of section 1226(c) detention is "the conclusion of removal proceedings." *Id.*

Following *Jennings*, the Eleventh Circuit vacated its opinion in *Sopo*. *Sopo v. U.S. Attorney Gen.* (*Sopo II*), 890 F.3d 952, 953-54 (11th Cir. 2018). Its conclusion as to the application of the canon of constitutional avoidance and use of a multi-factor test to impose temporal limits on section 1226(c) is no longer good law, and it has no utility in resolving Petitioner's claim. Moreover, *Sopo* did not define the constitutional limits of pre-final order of removal detention in the first instance. The Court created its multi-factor test based on its statutory interpretation of section 1226(c)—namely, its finding that the statute contains implicit temporal limitations. *Sopo*, 825 F.3d at 1212-1219. The Supreme Court has rejected this interpretation. *Jennings*, 583 U.S. at 303-304.

Rather, *Demore* remains the sole analysis necessary to resolve the constitutional question presented here. Petitioner is detained pursuant to section 1226(c) based on his pending CIMT charge. His detention continues to "serve its purported immigration purpose"—ensuring his appearance at his removal proceedings and protecting the community from non-citizens who have committed crimes which Congress concluded warrant mandatory detention. *Demore*, 538 U.S. at 518-19, 527. The risks that a non-citizen will commit further crimes or fail to appear for removal proceedings if released do not dissipate after any arbitrary amount of time passes. Further, unlike the non-citizens in *Zadvydas*, Petitioner's detention is not potentially indefinite. It will plainly terminate once his removal proceedings conclude. For these reasons, *Demore* compels a finding that Petitioner's mandatory detention is constitutional.

II. Even if Petitioner could establish a due process violation, his claim is moot because he has already received multiple bond hearings.

Even assuming the Court finds that Petitioner's detention under section 1226(c) violates due process through application of *Sopo* or another test—which it should not—the claim should be dismissed as moot because Petitioner has already received multiple bond hearings, and that is the only available remedy for prolonged detention under section 1226(c).

Respondent acknowledges that this Court has previously held that section 1226(c) detainees' due process challenges to their detention are still governed by the test set forth in *Sopo* despite its vacatur.[1] *J.N.C.G. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-62, 2020 WL 5046870, at *3-7 (M.D. Ga. Aug. 26, 2020). As a remedy for any due process violation, the Eleventh Circuit held that a section 1226(c) detainee should be provided a bond hearing applying the procedures set forth in section 1226(a) and 8 C.F.R. § 236(d)(1). *Sopo*, 890 F.3d at 1220.

Here, Petitioner's claim is moot because he has already received a bond hearing at which an IJ applied the bond procedures set forth in section 1226(a) and 8 C.F.R. § 236(d)(1) despite not being entitled to that relief. In fact, Petitioner has received six bond hearings and has even been granted bond pending DHS's appeal to the BIA. *See* Winters Decl. ¶¶ 9, 12, 15, 16, 20, 23–25. Thus, to the extent Petitioner could establish a due process violation arising from the length of his mandatory detention under section 1226(c), he has already received the sole relief available—an individualized bond determination. *Sopo*, 890 F.3d at 1220. This Court has reached this exact conclusion under nearly identical factual circumstances. *See D.J.A. v. Warden, Stewart Det. Ctr.*, No. 4:21-cv-141-CDL-MSH, R. & R. at 5-6 (M.D. Ga. Dec. 7, 2021), ECF No. 18, *recommendation adopted by* Order (M.D. Ga. Jan. 20, 2022), ECF No. 21 (holding that "*Sopo* is inapplicable" to a section 1226(c) detainee's due process challenge where the non-citizen had received an individualized bond hearing before an IJ over a year prior); *O.D. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-222-CDL-MSH, 2021 WL 5413968, at *5 (M.D. Ga. Jan. 14, 2021), *recommendation adopted* 2021 WL 5413968 (M.D. Ga. Apr. 1, 2021) (denying non-citizen's *Sopo* claim where he "ha[d] been provided with a bond hearing [and] a custody re-determination"). At least one other district court in the Eleventh Circuit has reached this same conclusion. *Seydou v. Immigr. &*

[1] For the reasons set forth above, *supra* I, Respondent respectfully contends this holding should be revisited.

Customs Enf't, No. 17-CV-21383, 2018 WL 11448766, at *4-5 (S.D. Fla. May 2, 2018), *recommendation adopted* 2018 WL 11448766 (S.D. Fla. May 31, 2018).

Petitioner, however, claims he is entitled to release from custody to remedy his allegedly prolonged detention under section 1226(c). Even under *Sopo*, however, a bond hearing under section 1226(a) is the only available remedy for a due process violation arising from prolonged section 1226(c) detention. *See J.N.C.G.*, 2020 WL 5046870, at *7 n.5 (citing *Maldonado v. Macias*, 150 F. Supp. 3d 788, 811-12 (W.D. Tex. 2015) ("The consensus is that ordering a bond hearing is the appropriate remedy when the length of detention has become unreasonable." (collecting cases))). As the Eleventh Circuit made clear, if a section 1226(c) detainee establishes a due process violation arising from the length of his mandatory detention, "[t]he government is not required to free automatically a criminal alien[.]" *Sopo*, 825 F.3d at 1218. Thus, even assuming Petitioner establishes a due process violation—which he has not—his claim is moot because he has received multiple bond hearings, and he is not entitled to release from custody as a remedy.

III. Petitioner's temporary detention pursuant to the automatic stay of the IJ's bond decision complies with due process.

Apart from his challenge to the length of his detention under section 1226(c), Petitioner also claims that DHS's refusal to release him pursuant to the IJ's order granting bond violates his due process rights. Pet. 2-4. This claim should be dismissed because (1) the Court lacks jurisdiction to judicially review DHS's discretionary decision to invoke the automatic stay, and (2) the claim otherwise lacks merit because detention pursuant to the automatic stay comply with due process.

A. To the extent Petitioner challenges DHS's decision to invoke the automatic stay, the Court lacks jurisdiction over this claim.

It appears Petitioner, at least in part, challenges DHS's "invocation of an automatic stay provision related to [the IJ's] bond determination violates his due process rights." Pet. 2. To the extent Petitioner challenges DHS's *decision* to invoke the automatic stay, the Court lacks jurisdiction over that claim pursuant to 8 U.S.C. § 1226(e). That subsection 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 (quoting *Demore*, 538 U.S. 516) (internal alterations and quotations omitted). Rather, § 1226(e) permits only "challenges to the statutory framework." *Id.* (quoting *Demore*, 538 U.S. at 517) (internal alterations and quotations omitted).

Here, the Court lacks subject matter jurisdiction to review DHS's decision to invoke the automatic stay at to Petitioner specifically because that decision falls within the scope of the section 1226(e) jurisdictional bar for two reasons. First, the decision to invoke of the automatic stay is plainly committed to DHS's discretion. 8 C.F.R. § 1003.19(i)(2) ("The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary."). As the Supreme Court has recognized, section 1226(e) precludes challenges to such discretionary determinations. *Jennings*, 583 U.S. at 295. Second, by its very nature, the invocation of the automatic stay also constitutes an "action or decision . . . regarding the detention or release of an[] alien or the . . . denial of bond," 8 U.S.C. § 1226(e), by temporarily preserving the status quo of detention pending appeal of a bond decision to the BIA. Because invocation of the stay is a decision "regarding [Petitioner's] detention or release," *Jennings*, 583 U.S. at 295, section 1226(e) bars Petitioner's claim challenging that decision. Thus, the Court should deny the Petition to the extent Petitioner seeks to challenge that decision. *See Al-Siddiqi v. Nehls*, 521 F. Supp. 2d 870, 875 (E.D. Wis. 2007) (holding that section 1226(e) bars judicial review of DHS's decision to invoke the automatic stay).

B. The automatic stay complies with procedural and substantive due process.

As noted above, the Supreme Court has held that section 1226(e) allows "challenges to the statutory framework." *Jennings*, 583 U.S. at 295. Petitioner may raise such a challenge, as he asserts that "invocation of an automatic stay provision related to [an IJ's] bond determination violates his due process rights." Pet. 2. However, it is unclear whether Petitioner raises a procedural or substantive due process claim. *See id.* at 2-5. Thus, in an abundance of caution, Respondent addresses both types of claims. Analysis of the substantive and procedural due process frameworks largely overlap, and the automatic stay complies with due process under both frameworks.

1. Procedural Due Process

"[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 have applied 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* factors in the immigration context, 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." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Application of the factors here shows that the narrow and temporary detention pursuant to the automatic stay complies with procedural due process.

As to the first *Mathews* factor, Petitioner's liberty interest is limited. For more than a century, the Supreme Court has held that detention during removal proceedings without bond complies with due process. *Demore*, 538 U.S. at 511 ("[D]etention during [removal] proceedings is a constitutionally valid aspect of the process."); *Flores*, 507 U.S. at 306 ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings."); *Carlson*, 342 U.S. at 538 ("Detention is necessarily a part of this deportation procedure."); *Wong Wing*, 163 U.S at 235 ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid."). Indeed, "Congress [has] eliminated any presumption of release pending deportation, committing that determination to the discretion of" ICE/ERO. *Flores*, 507 U.S. at 306 (citations omitted). Petitioner's interest in release pursuant to the IJ's bond order is even *more* limited here because he was not even entitled to a bond hearing *at all* due to his mandatory detention under section 1226(c). *Jennings*, 583 U.S. at 304.

As to the second factor, the risk of erroneous deprivation is minimal. Under the existing procedures, the automatic stay remains in effect for a limited 90-day period. 8 C.F.R. § 1003.6(c)(4). The current regulation was amended to add this time limitation in an effort to expedite the process of appealing a bond decision. *See* 8 C.F.R. § 1003.1(e)(8) (prioritizing BIA resolution of appeals in "cases or custody appeals involving detained noncitizens"). The regulation incorporates this short 90-day duration based on evidence that the BIA had "been able to issue a decision within a 90-day time frame in most automatic stay cases[.]" Review of Custody Determinations, 71 Fed. Reg. 57873 (Oct. 2, 2006). Thus, there is little likelihood of prolonged detention pending a ruling on the bond appeal. In the post-final order of removal context, the Supreme Court has held that six months of detention pursuant to one detention authority—twice the length of the automatic stay period—is a presumptively reasonable period of detention. *Zadvydas*, 533 U.S. at 700. And the Eleventh Circuit has recognized the same as to pre-final order of removal detention. *Sopo*, 825 F.3d at 1217.

Despite this brief period of application under narrow prescribed terms, Petitioner claims that the automatic stay "render[s] [the] IJ's [bond] decision an empty gesture," Pet. 2, and "a mere formality with no legal significance," *id.* at 4. But "[t]he automatic stay . . . does not turn the IJ decision into a meaningless formality because it affords the BIA time to consider an appeal." *Altayar v. Lynch*, No. CV-16-02479, 2016 WL 7383340, at *4 (D. Ariz. Nov. 23, 2016), *recommendation adopted*, 2016 WL 7373353 (D. Ariz. Dec. 20, 2016). To this end, the 90-day stay "avoid[s] the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues." 71 Fed. Reg. 57873.

Moreover, during this brief 90-day period, Petitioner was advised of his right to submit a brief in support of the IJ's bond order to the BIA. *See* Waters Decl. Ex. Q (permitting both parties to file briefs by July 8, 2025). Thus, Petitioner had the opportunity to be heard regarding the bond appeal less than two months after invocation of the automatic stay. *See* Waters Decl. ¶ 24. In *Mathews* itself, the Supreme Court held that "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." 424 U.S. at 333 (internal quotations and citations omitted). Because the automatic stay affords Petitioner this opportunity in an expeditious manner, the Court should find that this second factor favors the Government.

As to the third *Mathews* factor, the Government has a key interest in detention during removal proceedings. "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." *Diaz*, 426 U.S. at 81. In enacting and enforcing immigration laws, the Government's interest is at its zenith. *Fiallo*, 430 U.S. at 792. Mandatory pre-final order of removal detention serves two Government interests: ensuring criminal non-citizens' presence during removal proceedings and preventing the further criminal activity. *Demore*, 538 U.S. at 521.

In addition to these overarching interests, the Government also has a strong interest in the automatic stay specifically. "[T]he purpose of the automatic stay rule is to provide a means for DHS to seek an expedited review of custody decisions by the Board before being obligated to release certain detained aliens whom DHS has strong reason to believe should not be released." 71 Fed. Reg. 57873; *see also* 8 C.F.R. § 1003.19(i)(2) (committing the decision to invoke the automatic stay to DHS's discretion). The Government's interest in determining whether a non-citizen should be detained or released during removal proceedings is so strong that Congress has cabined judicial review of that exercise of discretion. 8 U.S.C. § 1226(e). Further, "[a]n automatic stay of limited duration allows the Government to pursue its appeal before the subject might post bond and flee." *Altayar v. Lynch*, No. CV-16-02479, 2016 WL 7383340, at *4 (D. Ariz. Nov. 23, 2016) (citation omitted), *recommendation adopted*, 2016 WL 7373353 (D. Ariz. Dec. 20, 2016). Thus, the availability of the automatic stay is a valid means of achieving the underlying purposes of pre-final order of removal detention, which is "preventing deportable criminal aliens from fleeing prior to or during their removal proceedings[.]" *Demore*, 538 U.S. at 528.

Other courts have considered the automatic stay and held that its use complies with due process. *See Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031-32 (E.D. Wis. 2007); *Altayar*, 2016 WL 7383340, at *4-6; *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 454-55 (D.N.J. 2004). This Court should reach the same conclusion. The automatic stay's limited applicability, short duration, and allowance for both sides to brief issues to the BIA complies with procedural due process. *See Plasencia*, 459 U.S. at 35 ("[T]he 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.").

2. Substantive Due Process

Where a law affects a "fundamental liberty interest," it complies with due process if it "is narrowly tailored to serve a compelling state interest." *Flores*, 507 U.S. at 302 (internal quotations and citations omitted). "Substantive due process analysis must begin with a careful description of the asserted right[.]" *Id.* (internal quotations and citations omitted). The automatic stay is narrowly tailored to a Government interest and does not unduly infringe on Petitioner's limited interest.

Petitioner argues the automatic stay infringes upon his fundamental liberty interest. Pet. 2-3. While it is true as a general matter that freedom from physical restraint "lies at the heart of the liberty that [the Due Process] Clause protects," *Zadvydas*, 533 U.S. at 690, the Supreme Court has held that pre-final order of removal detention—like Petitioner's here—"is necessarily a part of the deportation process," *Carlson*, 342 U.S. at 538. Thus, at the outset, because Petitioner's removal proceedings remain ongoing during the appeals to the BIA, his liberty interest is limited. Additionally, Petitioner's claim regarding the automatic stay concerns only a discrete subset of pre-final order of removal detention: the 90-day period during which the automatic stay is in place. Thus, "[t]he liberty interest at issue in this case is [even more] narrow: [P]etitioner's right to be released on bond pending the BIA's review of the [IJ's] bond redetermination." *El Dessouki v. Cangemi*, No. 06-3536, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006). And again, given that Petitioner was *never* entitled to bond due to his mandatory detention under section 1226(c), *Jennings*, 583 U.S. at 304, he cannot establish a liberty interest to release on bond.

As explained above in reference to the third *Mathews* factor, the Government also has a compelling interest in the 90-day detention during the automatic stay. Namely, pre-final order of removal detention prevents both flight and further crimes through recidivism. *Demore*, 538 U.S. at 521. And the automatic stay preserves the status quo to permit appeal of a bond decision.

For many of the reasons set forth above regarding the second *Mathews* factor, the automatic stay provision is narrowly tailored to serve this Government interest. Central to this prong of the substantive due process analysis is the Supreme Court's admonition that "when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Demore*, 538 U.S. at 528. Rather, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at 522 (citations omitted). To this end, the Supreme Court has recognized that pre-final order of removal detention "*necessarily serves the purpose* of preventing [such] aliens from fleeing prior to or during their removal proceedings." *Id.* at 527-28 (emphasis added).

As to the automatic stay specifically, the procedure is narrowly tailored because it does not apply in all cases. Instead, DHS has the discretion to invoke the automatic stay when it believes a non-citizen should not be released. 8 C.F.R. § 1003.19(i)(2); 71 Fed. Reg. 57873. This allows DHS to accomplish its purpose of preventing flight and ensuring community safety while pursuing its appeal of the IJ's bond decision. *Altayar*, 2016 WL 7383340, at *4. Further, the length of the automatic stay's application is also narrowly tailored to a brief 90-day period to permit expeditious resolution of DHS's appeal of a bond order. 8 C.F.R. § 1003.6(c)(4). Whereas the original version of the automatic stay incorporated no temporal limit, DHS amended the regulation in 2006 to incorporate this 90-day limit based on evidence that most bond appeals were resolved within 90 days. Review of Custody Determinations, 71 Fed. Reg. 57873 (Oct. 2, 2006). For these reasons, the automatic stay also complies with substantive due process.

CONCLUSION

The record is complete in this matter and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 11th day of July, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Motion to Dismiss 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:

Michael Obasoluyi
A#[redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 11th day of July, 2025.

BY: *s/ Roger C. Grantham, Jr.*
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