

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

ANTONIO JOSE LOPEZ PEREZ,

Petitioner,

v.

**WARDEN, IRWIN COUNTY
DETENTION CENTER,**

Respondent.

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**Case No. 7:26-CV-029-WLS-ALS
28 U.S.C. § 2241**

RESPONSE TO MOTION TO ENFORCE JUDGMENT

On February 3, 2026, Petitioner filed a petition for a writ of habeas corpus. ECF No. 1. On February 5, 2026, the Court granted the Petition and ordered Respondents “to provide Petitioner with a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations.” ECF No. 3. On March 10, 2026, Petitioner filed the instant Motion, in which he argues that Respondent failed to provide Petitioner with a constitutionally valid bond hearing. ECF No. 7. The Court ordered Respondents to respond by March 20, 2026. ECF No. 10.

The Motion should be denied for at least four reasons. First, Respondent fully complied with the Court’s Order granting the Petition, and therefore the Motion should be denied. Second, the only way to determine, as Petitioner argues, that the bond hearing did not satisfy this Court’s Order is to review, and, if appropriate, set aside the IJ’s decision regarding Petitioner’s detention. But the Immigration and Nationality Act (“INA”) explicitly and in no uncertain terms *precludes* judicial review of the merits of an IJ’s bond decision, and therefore the Court is without jurisdiction to do so here. *See* 8 U.S.C. § 1226(e). Third, in addition to the specific jurisdictional bar in § 1226(e), the INA further precludes judicial review over decisions committed therein to the discretion of the Attorney General and Secretary of Homeland Security, which encompasses the

decisions of IJs over bond requests and provides an alternative basis to find the Court lacks jurisdiction over the Motion.

Fourth, and finally, in an effort to avoid the jurisdictional bars, Petitioner argues that the bond hearing which was provided to Petitioner was so devoid of individualized consideration that it cannot be characterized as a constitutionally valid process. Mem. in Supp. of Mot. to Enforce, ECF No. 7-3 (“Mem. in Supp.”) at 8-9. Petitioner’s arguments are more appropriate for resolution at the proper forum for an appeal of an IJ’s bond decision: the Board of Immigration Appeals (“BIA”). The deficiencies Petitioner cites are exactly the type of procedural errors that the BIA appeals process is intended to resolve, and couching the issues in constitutional terms does not justify the claim that this Court must consider what is essentially an appeal that the BIA is better suited to resolve. Thus, the Court should require that Petitioner exhaust the BIA appeals process before considering the challenge brought here. Moreover, if the Court reaches it, such a constitutional challenge should fail. For all these reasons, the Motion should be denied.

ARGUMENT

I. Respondent complied with the Court’s Order.

As an initial matter, Respondent fully complied with the Court’s habeas order. The Court ordered “a bond hearing to determine if the Petitioner may be released on bond under § 1226(a)(2) and the applicable regulations.” ECF No. 3 at 2. That is exactly what was provided. The relevant regulations state that upon a request from the detained non-citizen, 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). In a bond hearing before the IJ, the burden is on the non-citizen to establish to the satisfaction of the IJ that he 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).¹ 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 extremely 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].”).

¹ IJs are bound to apply precedential decisions of the Board of Immigration Appeals (“BIA”). *See* 8 C.F.R. §§ 1003.10(d); 1003.19, 1236.1. Thus, by directing a bond hearing governed by the applicable regulations, the Court at least implicitly directed the IJ to follow its normal procedures, including applying relevant BIA precedent. *Id.* Petitioner acknowledges as much in his Motion, stating that application of the *Guerra* factors is part of “what the Court ordered.” ECF No. 12 at 5.

By directing that Petitioner receive a bond hearing “under § 1226(a)(2) and the applicable regulations,” the Court signaled its intent that the ordered bond hearing should be conducted in the same manner as any other bond that would be provided to a detainee held under § 1226(a), including those who did not seek and obtain a favorable ruling in a habeas petition. ECF No. 3. And Petitioner does not argue otherwise. Instead, Petitioner digs into the record of the IJ’s decision and details for the Court why, in his opinion, the IJ failed to properly apply the statute and regulations. *See* Mem. in Supp. 9-11. Petitioner then details specific issues with the bond hearing to explain why he believes the IJ’s conduct at the bond hearing was constitutionally insufficient.

But the points raised by Petitioner exemplify why the Motion is simply an after-the-fact challenge to the IJ’s discretionary decision, rather than a proper motion to enforce judgment. It is not that Petitioner did not receive the relief ordered by this Court; rather, Petitioner does not like the result of the relief he received and wants this Court to order a re-do on terms more likely to result in success or to completely throw it out and conduct the bond analysis itself by deciding whether Petitioner should be released and under what conditions. This is not the appropriate use of a motion to enforce judgment. *See, e.g., Tahir G. v. Sessions*, No. 18-17175(ES), 2020 WL 14050379 at *2 (D.N.J. Apr. 30, 2020) (denying motion to enforce habeas order in similar circumstance where detained petitioner sought district court review of IJ’s bond decision following grant of habeas relief because the court lacked jurisdiction under § 1226(e) and petitioner had not exhausted the remedy of BIA review).

Notwithstanding Petitioner’s complaints to the contrary, the IJ held the ordered bond hearing.² The IJ considered the evidence along with the burden imposed by the regulations and

² The Court ordered Petitioner to verify the authenticity of the recording that he provided with his Motion. In order to clean up any issue, Respondent submits for the Court’s consideration the official recording of the bond hearing which was provided to counsel for Respondent by the Executive Office of Immigration

determined that Petitioner was not entitled to release. *See* Exhibit A, Recording of Feb. 13, 2026 Bond Hearing. Thus, Petitioner received the bond hearing that the Court ordered, and the Motion to Enforce should be denied.

II. Section 1226(e) expressly precludes district courts from reviewing decisions regarding the grant, revocation, or denial of bond.

The INA *expressly* precludes judicial review of the merits of an IJ’s bond decision. *See* 8 U.S.C. § 1226(e) (“No court may set aside *any* action or decision by the Attorney General under [] section [1226] regarding the detention of any noncitizen or the revocation or *denial* of bond or parole.”) (emphasis added). The language of this section is crystal clear—this Court does not have jurisdiction to review Petitioner’s bond decision. “[Section] 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 v. Kim*, 538 U.S. 510, 516 (2003)) (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).

Petitioner’s request unquestionably constitutes a challenge to an “action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.” 8 U.S.C. § 1226(e). District courts in the Eleventh Circuit have recognized that they lack jurisdiction over such challenges. *See Hernandez v. Warden, Etowah Cty. Det. Ctr.*, No. 4:19-cv-00746, 2020 WL 5172423, at *3 (N.D. Ala. July 24, 2020) (“To the extent [the § 1226(a) detainee] challenges the immigration judge’s determination he was not entitled to be released on bond, this court cannot revisit the denial of bond. . . . In other words,

Review for submission to the Court. Respondent has provided a flash drive with the recording to the Clerk of Court by overnight delivery.

[the detainee] has already received the sole relief this court could provide. Nor can the length of his detention alone entitle him to additional bond hearings under § 1226(a).” (citing *Borbot*, 906 F.3d at 277)), *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) (“The immigration judge’s decision to deny [the § 1226(a) detainee] bond was based on his finding, after two hearings, that [the detainee] did not establish he is not a danger to society or a flight risk was within the discretion afforded under § 1226(a). Thus, this Court cannot review this decision under § 1226(e).”), *recommendation adopted* 2020 WL 821005 (S.D. Ga. Feb. 18, 2020). The Court should reach the same conclusion here and deny Petitioner’s Motion.

To be sure, the statute and regulations do not foreclose any review of the IJ’s decision, it merely routes those appeals to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.19(f) (“An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 1003.38.”). And the BIA is the appropriate forum for Petitioner’s complaints regarding the IJ’s alleged failures to follow BIA precedent and properly apply the factors outlined in *In re Guerra* and other precedential decisions. *See* Mem. in Supp. 9-13. Insofar as Petitioner is challenging the conduct of the bond hearing by the IJ, there should be no question that the appropriate place to raise those challenges is with the BIA. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3)(i).

To the extent Petitioner insinuates that a policy of some kind dictated the outcome of his bond hearing, he offers only speculation—and the personal views of attorneys who represent immigrant detainees and who believe that more individuals should be granted bond—to support this assertion. But the Executive Office of Immigration Review (“EOIR”), which oversees the immigration courts, has advised that it has issued no policy guidance directing IJs to deny bond when bond hearings have been ordered by district judges in habeas cases. *See* Exhibit B,

Declaration of Daren K. Margolin, submitted in *R.R.C. v. Streeval*, No. 4:25-cv-525-CDL, ECF No. 15-1. Petitioner thus uses attorney observations about trends in bond decisions to argue that *he personally should have been granted a bond*. But as the Supreme Court recognized in *Jennings*, “§ 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.” 583 U.S. at 295 (quoting *Demore*, 538 U.S. at 516) (internal alterations and quotations omitted). This is exactly what Petitioner seeks to do here—challenge the IJ’s bond decision in his individual case. The Court should reject this attempt as expressly precluded by § 1226(e).

III. Because the decision of whether to grant or deny bond is committed to the discretion of the IJ, 8 U.S.C. § 1252(a)(2)(B)(ii) precludes judicial review over decisions regarding bond.

In the alternative, if the Court does not believe that § 1226(e) bars the review of the IJ’s decision that Petitioner seeks, Respondent directs the Court to 8 U.S.C. § 1252(a)(2)(B)(ii) as an alternative basis to find it lacks jurisdiction. In the immigration context, the INA limits federal courts’ jurisdiction to review discretionary determinations made by the Executive Branch as follows:

[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to 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[.]

8 U.S.C. § 1252(a)(2)(B). This jurisdiction stripping provision also applies to decisions of IJs regarding the grant or denial of bond under § 1226(a), as the decision to detain or release on bond is entrusted to the discretion of the Attorney General. Specifically, the statute provides that the Attorney General “(1) *may* continue to detain [an] arrested alien; and (2) *may* release the alien on—(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed

by, the Attorney General[.]” 8 U.S.C. § 1226(a). Indeed, the statutory provisions governing bond decisions contain only discretionary language. Because it is fully within the IJ’s discretion whether to grant bond, § 1252(a)(2)(B)(ii) precludes district court review.

IV. A motion to enforce is not the appropriate procedural mechanism for Petitioner’s challenge.

A. Petitioner asks for more than mere “enforcement” of the Court’s Order.

In attempt to avail himself of the Court’s jurisdiction while remaining within the confines of his Motion to Enforce, Petitioner shifts the framework of what he asks the Court to do. The bottom line, however, is that Petitioner seeks to have the Court issue an entirely new order, not for it to enforce the clear directive of its previous Order. Instead of enforcing the Order, Petitioner asks the Court to change it and replace it with one more to Petitioner’s liking. But this is not the proper subject of a motion to enforce.

Rule 70 of the Federal Rules of Civil Procedure, which deals with efforts to enforce a court order, states, “If a judgment requires a party . . . to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party’s expense—by another person appointed by the court.” Fed. R. Civ. P. 70(a). The basic prerequisite to the operation of Rule 70 has not been met. Here, the Court ordered a hearing under the terms of a specific statute and regulations, and Petitioner received the hearing that was ordered. *See* Sec. I, *supra*.

Rather than asking for the Order to be enforced, then, Petitioner asks the Court to reach a new decision on the underlying merits of the Petition. He requests that the Court either release him outright or find that the procedures previously ordered by the Court to be utilized in the bond hearing fail to satisfy due process (a finding that the Court could have but did not make on the merits of the habeas petition), and order that a new bond hearing be held during which the

Government bears the burden on the question of bond and bond amount. This is a new request, rather than an effort to enforce the Court's Order for a bond hearing. This relief is therefore not available at this procedural posture and it should be denied on that basis alone.

B. The proper remedy for the alleged failures in the bond hearing is appeal to the BIA, not a motion to enforce.

Additionally, this procedural mechanism is also inappropriate because Petitioner has not availed himself of the appropriate appellate remedy: an appeal to the BIA. As such, he has not exhausted all administrative remedies available to him, which should be required before resorting to the drastic request Petitioner seeks. “[T]he general rule [is] that parties exhaust prescribed administrative remedies before seeking relief from the federal courts.” *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006). Although it is not jurisdictional in nature, “[t]he exhaustion requirement is still a requirement” for petitioners seeking relief under 28 U.S.C. § 2241. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015). “[C]ases . . . are ripe for dismissal unless administrative remedies [have] been exhausted before the cases [are] brought to the district court.” *Perez-Perez v. Hanberry*, 781 F.2d 1477, 1481 (11th Cir. 1986) (citing *Garcia-Mir v. Smith*, 766 F.2d 1478, 1483 n.6, 1486 n.8, 1489, 1492 (11th Cir. 1985)).

Where non-citizens detained pre-final order of removal file habeas petitions seeking release from custody, district courts in the Eleventh Circuit have dismissed those petitions where the non-citizens failed to exhaust available administrative remedies for obtaining bond before seeking habeas relief. *See M.A.M.M. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:21-cv-47-WLS-MSH, 2022 WL 452452, at *3 (M.D. Ga. Feb. 14, 2022), *recommendation adopted*, 2022 WL 794716 (M.D. Ga. Mar. 14, 2022); *Douglas v. Gonzalez*, No. 8:06-cv-890, 2006 WL 5159196, at *2 (M.D. Fla. June 12, 2006); *Sequeira-Blamaceda v. Reno*, 79 F. Supp. 2d 1378, 1381-82 (N.D. Ga. 2000).

Because he has not pursued an available administrative remedy to possibly secure release on bond, Petitioner has deprived the agency of the opportunity to review his claim under the administrative bond scheme set forth by Congress and the applicable regulations. “Preventing petitioners from doing that is what the exhaustion requirement is all about.” *Sundar v. I.N.S.*, 328 F.3d 1320, 1325 (11th Cir. 2003) (citations omitted). This is particularly important in a situation where the most straightforward allegation is that the IJ failed to properly apply BIA precedent in determining whether to grant Petitioner a reasonable bond. This alleged error is precisely what the administrative remedy of appeal to the BIA is intended to correct. Petitioner should be required to exhaust this remedy prior to seeking the extraordinary relief sought in the Motion.

V. Alternatively, Petitioner’s due process challenge fails on the merits.

If the Court reaches the merits of Petitioner’s due process challenge, it should find that the procedures utilized in the bond hearing Petitioner received satisfy due process. Judge Lawson’s decision in *J.G. v. Warden* is informative on this point and is helpful to a proper understanding of the appropriate framework for considering Petitioner’s due process argument. *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331 (M.D. Ga. Nov. 16, 2020).

In *J.G.*, an immigration detainee sought habeas relief pending his ongoing removal proceedings. 501 F. Supp. 3d at 1333. Unlike Petitioner here, J.G. was initially admitted to the United States on a B-1 visa, but he overstayed that visa and was placed in removal proceedings. *Id.* After the IJ initially denied J.G.’s bond request under the same statute and regulations ordered to be utilized here, J.G. remained detained throughout his proceedings. *Id.* After J.G.’s asylum request was denied by the IJ, he was ordered removed. *Id.* J.G. appealed the denial of his asylum request to the BIA, which reversed the decision in part and remanded to the IJ for further proceedings. *J.G.*, 501 F.Supp.3d at 1333. The IJ denied J.G.’s subsequent request for bond based on the changed circumstances of the BIA’s remand order, and again denied his asylum application

and ordered him removed. *Id.* J.G. appealed the second removal order to the BIA, and he had been detained for nearly two years by the time his petition for habeas relief reached this Court. *Id.*

The question presented in *J.G.* was precise: whether procedural due process concerns mandate a bond procedure different from the procedure outlined in the statute, regulations, and BIA precedent for a non-citizen detainee who was lawfully admitted to the United States but later became removable, and who had been detained for nearly two years. *J.G.*, 501 F.Supp.3d at 1334. Applying the test from *Mathews v. Eldridge*, he concluded that it did *in that circumstance*. *Id.* at 1335-41. In doing so, however, Judge Lawson noted that:

Supreme Court due process jurisprudence distinguishes between noncitizens seeking initial entry to the United States at the border and those who entered the country legally. *See Zadvydas*, 533 U.S. at 693, 121 S. Ct. 2491 (“The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.”); *Dep’t of Homeland Sec. v. Thuraissigiam*, — U.S. —, 140 S. Ct. 1959, 1982–83, 207 L.Ed.2d 427 (2020) (discussing the “century-old rule regarding the due process rights of an alien seeking initial entry”). “Any analysis of the constitutional rights of [noncitizens] in the immigration context must begin by taking note of th[is] fundamental distinction” *Jean v. Nelson*, 727 F.2d 957, 967 (11th Cir. 1984). A noncitizen “seeking initial admission to the United States ... has no constitutional rights regarding his application, for the power to admit or exclude [noncitizens] is a sovereign prerogative.” *Landon*, 459 U.S. at 32, 103 S. Ct. 321. In contrast, “once [a] [noncitizen] gains admission to our country ... his constitutional status changes accordingly.” *Id.*; *see Thuraissigiam*, 140 S. Ct. at 1983 (“[A]n alien [detained at the border] has only those rights regarding admission that Congress has provided by statute.... [T]he Due Process Clause provides nothing more”).

J.G., 501 F.Supp.3d at 1339. This distinction is important. Judge Lawson found that, “[J.G.] was admitted to the United States legally and overstayed his previously-valid visa. He thus receives procedural protections *not afforded to noncitizens seeking initial entry*, and the Government’s interest in controlling admission of noncitizens at the border does not justify his detention.” *Id.* (emphasis added). The reverse is true here. Petitioner was not and has never been admitted to the United States. Following his apprehension in 2021, Petitioner was processed for removal, issued

a Notice to Appear, and released into the United States on an order of recognizance.³ Petition, ECF No. 1 at ¶ 2. As Judge Lawson recognized in *J.G.*, the procedural protections that he recognized for J.G. are “not afforded to noncitizens seeking initial entry,” such as Petitioner. As such, application of the test from *Mathews v. Eldridge* demonstrates that current bond procedures satisfy Petitioner’s procedural due process rights.

“[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*, 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. As the Court recognized in *Mathews*, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (internal quotations and citations omitted).

³ Petitioner’s release on an order of recognizance was a form of humanitarian parole exercised at the discretion of the Executive Branch under 8 U.S.C. § 1182(d)(5)(A). See Pet. ¶¶ 19-22. Section 1182(d)(5)(A) provides that “[t]he Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]” However, § 1182(d)(5)(A) also makes clear that “such parole of such alien **shall not be regarded as an admission of the alien**[.]” See also *Jennings*, 583 U.S. at 288 (emphasis added). Based on this language, the Eleventh Circuit has recognized that “[p]arole is not admission.” *Sookhoo v. U.S. Attorney Gen.*, 596 F. App’x 771, 772-73 (11th Cir. 2015) (per curiam) (citing 8 U.S.C. § 1101(a)(13)(B); 8 U.S.C. § 1182(d)(5)(A); *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) (“The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien’s status”). Thus, Petitioner’s release does not alter his status as an applicant for admission who has never been lawfully admitted into the United States. “Since an alien’s legal status is not altered by detention or parole[,] it seems clear that [paroled aliens] can claim no greater rights or privileges under our laws than any other group of aliens who have been stopped at the border. *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984).

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 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). “[O]ver 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 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.” *Landon*, 459 U.S. at 35.

While the Eleventh Circuit has not addressed this issue, the Third Circuit, Fourth Circuit, and Ninth Circuit have held that the § 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) (holding that the § 1226(a) burden allocation does not violate a non-citizen’s procedural due process rights); *Miranda v. Garland*, 34 F.4th 338, 358-66 (4th Cir. 2022) (same); *Borbot*, 906 F.3d at 276-80 (same). These decisions rely in part on recent Supreme Court decisions concerning bond hearings for different classes of non-citizens. In particular, both the Third Circuit and Ninth Circuit declined to extend their existing caselaw requiring bond hearings for § 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.” *Jennings*, 583 U.S. at 306; *see Borbot*, 906 F.3d at 276-80; *Rodriguez Diaz*, 53 F.4th at 1198-1203.

Additionally, district courts in the Eleventh Circuit have similarly addressed this issue and declined to order § 1226(a) bond hearings at which the burden of proof rests with the Government. *See Stephens v. Ripa*, No. No. 1:22-cv-20110, 2022 WL 1110104, at *8-9 (S.D. Fla. Feb. 18, 2022) (declining to order that the Government bears the burden of proof at a § 1226(a) bond hearing), *recommendation adopted in part*, 2022 WL 621596 (S.D. Fla. Mar. 3, 2022); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 n. 3 (S.D. Ga. Jan. 29, 2020) (same), *recommendation adopted*, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020); *Khan v. Whiddon*, No. 2:13-cv-638, 2016 WL 4666513, at *7 (M.D. Fla. Sept. 7, 2016) (same).⁴ This Court should reach the same conclusion in this case.

Nonetheless, application of the *Mathews* factors applied to Petitioner's circumstance shows that the § 1226(a) bond procedures—including the allocation of the burden of proof to the non-citizen—comply with procedural due process. 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

⁴ In reaching this conclusion, those courts noted that in *Sopo v. U.S. Att'y Gen.*, the Eleventh Circuit ordered that a non-citizen mandatorily detained under § 1226(c) be provided a bond hearing applying the § 1226(a) bond procedures. 890 F.3d 1199, 1220 (11th Cir. 2016). 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 overturned, the fact that the Eleventh Circuit remedied an apparent 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.

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) (“Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings . . .”). In other words, unlike civil commitment of United States citizens, the Supreme Court has already recognized that detention of non-citizens pending a removal order is an integral part of the removal process.

The Supreme Court has upheld bond procedures similar to those in § 1226(a) bond proceedings even 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)).

As Judge Lawson noted in *J.G.*, 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 § 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*, 583 U.S. at 304 (“[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. And a pre-final order detainee who has never effected an entry into the United States is in another category altogether. *See J.G.*, 501 F.Supp.3d at 1339. These distinctions among the relevant liberty interests must be considered, and they show that this first *Mathews* factor weighs in Respondent’s favor.

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. *Landon*, 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 “shar[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, § 1226(a) permits the pre-final order of removal detention of non-citizens—like Petitioner here—who unlawfully enter the United States without admission. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

The § 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.”). To be sure, Petitioner was initially detained under a reading of the INA that all applicants for admission who entered the United States without inspection are mandatorily detained under 8 U.S.C. § 1225(b), but the Court reached a different conclusion and ordered that he be provided the bond hearing described in step (2) of the custody review process, and as discussed above, Petitioner could avail himself of the step (3) BIA appeals process, but has not done so. 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 IJ and BIA, Petitioner could 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). Petitioner argues the same in justifying his failure to exhaust the administrative remedies available to him. *See* ECF No. 7-13 at 10-11 (Declaration of Karen Weinstock). The fact that Petitioner was denied bond, by itself, 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.” *Reno*, 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 § 1226(a) minimize any risk of erroneous deprivation.

The third *Mathews* factor—the Government’s interest—weighs in Respondent’s 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 *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.* Here, of course, Petitioner was not lawfully admitted, and therefore the “Government’s interest in controlling admission” justifies his detention, notwithstanding his previous temporary release from custody.

The Court in *J.G.* also framed the Government's interest in purely 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 *Landon*, 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.”). Indeed, in enacting and enforcing the United States’ immigration laws, the Government’s interest is at its zenith. *Fiallo*, 430 U.S. at 792 (“[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” (internal quotations and citations omitted)).

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*, 556 U.S. at 436 (internal quotations, alterations, and citation omitted). In fact, the Supreme Court has recognized that § 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 weighs in the Government’s favor.

For all these reasons, consistent with rulings from the Third, Fourth, and Ninth Circuits, as well as multiple district courts in the Eleventh Circuit, this Court should find that the § 1226(a) bond procedures—including the requirement that the non-citizen bear the burden of proof—satisfy non-citizens’ procedural due process rights, and that the bond hearing provided to Petitioner, specifically, satisfied the Court’s Order. Accordingly, if the Court determines that a full due process analysis is appropriate, that analysis indicates Petitioner’s due process challenge fails

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court deny the Motion.

Respectfully submitted, this 20th day of March, 2026.

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