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

KARIM ALY AHMED HAMDY,	:	
	:	
Petitioner,	:	
	:	**Case No. 7:26-cv-112-WLS-ALS**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, IRWIN COUNTY DETENTION CENTER,	:	
	:	
Respondents.	:	

RESPONDENT'S RESPONSE

On April 20, 2026, Petitioner filed an application for habeas corpus relief ("Petition"). ECF No. 1. Petitioner challenges his detention alleging that (1) his detention is unlawful, constitutes *ultra vires* agency action, and violates the Administrative Procedure Act because his pending Form I-485 adjustment of status application and valid Employment Authorization Document place him in an authorized stay; (2) his bond hearing was conducted under constitutionally defective procedures by placing the burden of proof on him rather than the government under *Mathews v. Eldridge*, 424 U.S. 319 (1976); and (3) the Immigration Judge improperly relied on speculation regarding a dismissed domestic assault charge. Pet. ¶¶ 31–52. For the reasons stated below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Egypt. Declaration of Deportation Officer Jonathan Murphy ("Murphy Decl.") ¶ 4. Petitioner last entered the United States on or about November 28, 2024, pursuant to a non-immigrant B-2 visitor visa at New York, New York, with authorization to remain in the United States for a period not to exceed May 27, 2025. *Id.* ¶ 4. On May 1, 2025, Petitioner filed a Form I-539 to extend his stay, which USCIS granted through November 26, 2025.

Id. ¶ 6. On March 28, 2025, Petitioner's spouse filed a Form I-130 on his behalf, and on August 26, 2025, Petitioner filed a Form I-485 application to adjust status, both of which remain pending. *Id.* ¶¶ 5, 7.

On March 3, 2026, ICE/ERO encountered Petitioner at the Guilford County Jail in Greensboro, North Carolina, following his arrest on February 10, 2026, for second degree trespass and assault on a female. *Id.* ¶ 8. On the same date, ICE/ERO took Petitioner into custody and issued him a Notice to Appear ("NTA") charging him as deportable pursuant to 8 U.S.C. § 1227(a)(1)(B). *Id.* ¶ 8. Petitioner was subsequently transferred to the Irwin County Detention Center in Ocilla, Georgia. *Id.* ¶ 8.

On March 20, 2026, Petitioner filed a bond redetermination request with the Immigration Court. *Id.* ¶ 9. On March 24, 2026, Petitioner appeared with counsel before an Immigration Judge ("IJ") at the Stewart Immigration Court for a custody redetermination hearing. *Id.* ¶ 9. The IJ denied Petitioner's bond redetermination request, finding that he had failed to meet his burden to show that he was not a danger to the community based on his criminal history. *Id.* ¶ 9 & Ex. F.

On March 27, 2026, Petitioner appeared with counsel for an initial master calendar hearing and requested a continuance, which was granted. Murphy Decl. ¶ 10. On April 14, 2026, Petitioner again appeared with counsel, at which time he admitted the allegations and conceded removability as charged in the NTA. *Id.* ¶ 11. The IJ continued the matter for the filing of applications for relief. *Id.* ¶ 11.

On April 27, 2026, ICE/ERO transferred Petitioner to the Folkston D. Ray ICE Processing Center in Folkston, Georgia, and filed a Form I-830, causing the matter to be transferred to the Atlanta Immigration Court. *Id.* ¶ 12. Petitioner's next master calendar hearing is set for May 26, 2026. *Id.* ¶ 12. Petitioner is currently detained pursuant to 8 U.S.C. § 1226(a). *Id.* ¶ 13.

LEGAL FRAMEWORK

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

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

A non-citizen may seek review of ICE/ERO's initial custody determination before an IJ, commonly referred to as a "bond hearing." 8 C.F.R. § 236.1(d)(1); 8 C.F.R. § 1003.19. Upon a non-citizen's "[a]pplication to an IJ" to "request amelioration of the conditions under which he or she may be released[,]" the IJ may decide "to detain the [non-citizen] in custody, release the [non-citizen], and determine the amount of bond, if any, under which the [non-citizen] may be released[.]" 8 C.F.R. § 236.1(d)(1). To seek such review, the non-citizen must submit a request to the IJ either orally or in writing. 8 C.F.R. § 1003.19(b). In a bond hearing, the burden is on the non-citizen to establish to the satisfaction of the IJ, that he or she is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Non citizens may present evidence in support of their request for a bond determination. *See* 8 C.F.R. § 1003.19(d) ("The determination of the IJ as to custody status or bond may be based upon any information that is available to the IJ or that is presented to him or her by the [non-citizen] or the Service.").

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

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

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

After an initial bond hearing, a non-citizen may request subsequent bond hearings by showing that his or her "circumstances have materially changed since the prior bond" hearing. *See* 8 C.F.R. § 1003.19(e). Non-citizens can then seek administrative review of the IJ's bond decision from the BIA by filing an appeal of the IJ's order within 30 days. *See* 8 C.F.R. § 236.1(d)(3) ("An appeal relating to bond and custody determinations may be filed to the Board of Immigration Appeals[.]"); 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38.

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

ARGUMENT

Petitioner essentially raises three claims for relief across his filings: (1) his detention is unlawful, constitutes *ultra vires* agency action, and violates the Administrative Procedure Act ("APA") because his pending Form I-485 adjustment of status application and valid Employment Authorization Document ("EAD") place him in an authorized stay; (2) his bond hearing was conducted under constitutionally defective procedures by placing the burden of proof on him rather than the government under *Mathews*; and (3) the IJ improperly relied on speculation regarding a dismissed domestic assault charge. Pet. ¶¶ 31–52.

Petitioner's claims should be denied for the following reasons. First, Petitioner's detention complies with the statutory scheme, and his pending Form I-485 and EAD do not bar lawful immigration detention. Second, while Respondent acknowledges this Court's recent precedent regarding the burden of proof, the procedure otherwise complied with procedural due process. Third, the Court lacks subject matter jurisdiction to judicially review the IJ's discretionary bond decision.

I. Petitioner's Detention Complies with the Statutory Scheme, and His Pending Form I-485 and EAD Do Not Bar Lawful Immigration Detention.

Petitioner is discretionarily detained pursuant to 8 U.S.C. § 1226(a). Unlike detainees held under 8 U.S.C. § 1226(c), Petitioner's charge of removability remaining in the United States beyond his authorized stay under 8 U.S.C. § 1227(a)(1)(B)—is not a basis for mandatory detention. *See* Pet. ¶ 8; 8 U.S.C. § 1226(c)(1). Under this discretionary scheme, ICE makes an initial custody determination and the noncitizen may seek redetermination before an IJ. 8 C.F.R. § 236.1(d)(1). Petitioner has already received the process authorized by statute, having been afforded an individualized bond hearing before the Stewart Immigration Court on March 24, 2026. Pet. ¶ 11; Murphy Decl. ¶ 9.

Petitioner's claim that his pending Form I-485 adjustment of status application and his valid EAD strip the agency of authority to detain him—constituting an *ultra vires* act and an APA violation—fails as a matter of law. Under 8 U.S.C. § 1226(a), Congress granted explicit statutory authority to arrest and detain any noncitizen pending a decision on whether they are to be removed from the United States. This statutory enforcement mechanism operates independently of parallel administrative applications for immigration benefits.

Furthermore, Petitioner's challenge to the legality of his underlying removal charge is moot. On April 14, 2026, Petitioner, while represented by counsel, appeared before the Immigration Court, admitted the factual allegations in the NTA, and conceded removability as charged. Murphy Decl. ¶ 11.

Binding administrative precedent establishes that the physical possession of an EAD or a pending Form I-485 adjustment application does not immunize a noncitizen from the initiation of removal proceedings or subsequent immigration detention if a ground of removability exists. *Matter of Chery and Hasan*, 15 I. & N. Dec. 380 (BIA 1975). Because Petitioner's underlying B-

2 nonimmigrant status expired on November 26, 2025, and he conceded he is now deportable, DHS acted entirely within its statutory boundaries. Murphy Decl. ¶¶ 6, 11. Having been afforded the individualized custody hearing authorized by regulations, and because his pending applications do not bar detention, Petitioner has received all the process he is due under the statutory scheme.

II. The Allocation of the Burden of Proof Under 8 U.S.C. § 1226(a).

Petitioner asserts that placing the burden of proof on him during his March 24, 2026, bond hearing violated his due process rights. Pet. ¶ 30. Petitioner relies on *J.G. v. Warden*, 501 F. Supp. 3d 1331 (M.D. Ga. 2020), where this Court held that the Fifth Amendment requires the Government to bear the burden of proof in discretionary bond hearings under 8 U.S.C. § 1226(a). *Id.* at 1335.

Respondent acknowledges that the facts of Petitioner's case—involving a non-immigrant B-2 visitor who remained beyond his authorized stay—are identical to the circumstances in *J.G.* Respondent further recognizes that this Court recently reaffirmed this position in *D.Y.E.H. v. Warden*, No. 7:25-cv-201, 2026 WL 1230386 (M.D. Ga. Apr. 6, 2026), where it found that the Due Process Clause requires a bond hearing at which the Government bears the burden to show either dangerousness or flight risk. *Id.* at *5–6.* While Respondent maintains for the record that the burden allocation applied by the IJ complies with the statutory framework as interpreted by other circuits,[1] Respondent acknowledges that if the Court follows its own recent precedent in *J.G.* and *D.Y.E.H.*, it is likely the Court will agree with Petitioner on this point.

A. Procedural Due Process Standards

Due process is a flexible concept that "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Under *Mathews v. Eldridge*,

[1] *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022); *Borbot v. Warden*, 906 F.3d 274 (3d Cir. 2018) (holding that § 1226(a) procedures—placing the burden on the noncitizen—comply with due process). *See also Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018). Respondent acknowledges this Court's recent decisions to the contrary and recognizes that Petitioner's March 24, 2026, hearing did not employ the burden-shifting framework established by this Court's prior rulings.

424 U.S. 319 (1976), courts balance (1) the private interest affected; (2) the risk of erroneous deprivation and the value of substitute safeguards; and (3) the Government's interest, including administrative burdens. *Id.* at 335. In the immigration context, courts must weigh these factors heavily against the "sovereign prerogative" of the political branches to control immigration matters. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The judiciary's role is limited to ensuring essential fairness, not displacing congressional policy choices. *Id.* at 35.

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

Although the Eleventh Circuit has not addressed this burden allocation, the Third, Fourth, and Ninth Circuits have held that 8 U.S.C. § 1226(a) procedures comply with due process. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338 (4th Cir. 2022); *Borbot v. Warden*, 906 F.3d 274 (3d Cir. 2018). These courts rely on *Jennings v. Rodriguez*, which noted that nothing in the text of 8 U.S.C. § 1226(a) supports requiring the Government to prove dangerousness by clear and convincing evidence. 583 U.S. 281, 306 (2018).

While Respondent acknowledges that the outcome of the *Mathews* analysis here is likely governed by *J.G. v. Warden*, Respondent maintains for the record that Petitioner received the robust process authorized by the regulations. Petitioner had an individualized opportunity to present evidence, submit documentation, and offer a written declaration from his spouse to meet his evidentiary burden before the Stewart Immigration Court on March 24, 2026. Pet. ¶ 11. Presentation of evidence to meet the evidentiary burden satisfies the Fifth Amendment. *See* 8 C.F.R. § 1003.19(d). Consequently, the application of the *Matter of Guerra* standard aligns with the prevailing view and established regulations. *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

1. The Private Interest

Petitioner identifies a liberty interest, but "detention during deportation proceedings is a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Unlike the civil commitment of citizens, immigration detention serves the specific regulatory purpose of ensuring presence at removal. *Id.* at 511. Furthermore, if it is constitutional to require a United States citizen to demonstrate non-dangerousness to obtain bail, "it cannot be unconstitutional for the government to place a similar burden on an alien facing removal proceedings." *Miranda*, 34 F.4th at 363 (citing *Salerno*, 481 U.S. at 755).

2. The Risk of Erroneous Deprivation

The 8 U.S.C. § 1226(a) framework provides robust protections: (1) an initial officer determination; (2) a de novo bond hearing before an IJ; and (3) an appeal to the BIA. *Rodriguez Diaz*, 53 F.4th at 1210. Petitioner received an initial determination following his release from state criminal custody and a full written bond decision from the IJ. Pet. ¶¶ 8, 11. The IJ noted that Petitioner failed to meet his burden because he did not submit underlying police or investigation reports regarding his arrest for assault on a female, and his wife's written statement omitted any mention of the incident. Pet. ¶ 11. The framework provided a path for review, and his failure to satisfy his evidentiary burden under that framework does not create an unconstitutional risk of erroneous deprivation.

3. The Government Interest

The third *Mathews* factor weighs heavily in Respondent's favor. While Respondent recognizes this Court's holding in *J.G.* regarding the framing of the Government's interest, Respondent maintains for the record that the Fourth Circuit recently noted that courts must prioritize the Government's "sovereign prerogative" to regulate alien visitors. *Miranda*, 34 F.4th at 364; *Plasencia*, 459 U.S. at 32.

The Government has a compelling interest in the prompt execution of removal orders, as the continued presence of removable aliens "permits and prolongs a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009). Congress enacted § 1226(a) to afford DHS "broad discretion" in detention because the failure to detain aliens during proceedings was a major cause of the failure to execute removals. *Nielsen v. Preap*, 586 U.S. 392, 409 (2019); *Demore*, 538 U.S. at 519. This vital public interest in enforcement—which Congress has repeatedly sought to cabin from judicial review—underscores that the current burden allocation is a permissible policy choice. *Miranda*, 34 F.4th at 364.

Consistent with the Third, Fourth, and Ninth Circuits, this Court should find that the § 1226(a) bond procedures satisfy due process. Because the Government's interest in enforcing immigration laws outweighs the substitute procedural safeguards requested, Petitioner's demand for a bond hearing with a shifted burden of proof should be denied.

III. The Court lacks subject matter jurisdiction to judicially review a bond decision.

To the extent Petitioner seeks release despite DHS's denial of his bond request, the Court lacks jurisdiction to review DHS's custody determination. 8 U.S.C. § 1226(e) provides in full:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

"§ 1226(e) precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release." *Jennings*, 583 U.S. at 295 (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).

Since an IJ has already denied Petitioner release on bond on March 24, 2026, his request for release or re-evaluation in the Petition constitutes a direct 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). While Petitioner may challenge the legal standard applied at his hearing, his third claim—arguing that the IJ improperly relied on speculation regarding his dismissed domestic assault charge and faulted him for failing to submit underlying police or investigation reports—is nothing more than a request to have this Court impermissibly re-weigh discretionary evidentiary findings. Pet. ¶ 11, 30.

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 IJ's determination he was not entitled to be released on bond, this court cannot revisit the denial of bond. . . . In other words, [the detainee] has already received the sole relief this court could provide."); *Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 (S.D. Ga. Jan. 29, 2020) ("The IJ's decision to deny [the § 1226(a) detainee] bond was based on his finding... 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).").

The Court should reach the same conclusion here. Because the IJ evaluated the evidence and concluded that Petitioner failed to meet his burden of showing he was not a danger to persons or property after his arrest for assault on a female, this Court lacks subject matter jurisdiction to revisit that discretionary decision. Pet. ¶ 11; Murphy Decl. ¶ 9. The Court should deny Petitioner's claim seeking review of his bond decision.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus. Petitioner's detention under 8 U.S.C. § 1226(a) is lawful, as his pending administrative applications do not bar enforcement proceedings. Furthermore, while Respondent acknowledges this Court's recent precedent regarding the allocation of the burden of proof, the IJ's bond procedure otherwise complied fully with constitutional due process mandates under the

Mathews framework. Finally, because the evaluation of Petitioner's dismissed domestic assault charge constitutes a discretionary determination, this Court lacks subject matter jurisdiction under 8 U.S.C. § 1226(e) to re-weigh the underlying evidence.

Respectfully submitted this 12th day of May, 2026.

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