

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

KHAMISI TESFA GOLDING ,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:26-cv-921-CDL-AGH
	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONSE TO PETITION

On June 5, 2026, the Court received Petitioner's *pro se* application for a writ of habeas corpus under 28 U.S.C. § 2241. ECF No. 1. Petitioner asserts that his detention violates the *ICWC v. Noem* preliminary injunction, the Administrative Procedure Act, the Due Process Clause, and the Fourth Amendment. *Id.* On June 9, 2026, the Court ordered Respondents to file a comprehensive response. ECF No. 4. As explained below, none of Petitioner's claims are cognizable in habeas, several are jurisdictionally barred, and all fail on the merits. The Petition should be denied in its entirety.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Kirk Scott ("Scott Decl."), submitted with this filing. The declaration accurately summarizes the

¹ In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden as the sole appropriately named respondent in this action.

circumstances underlying Petitioner's custodial status and immigration history, and Respondent refers the Court to it for the factual record.

LEGAL FRAMEWORK

ICE/ERO has the discretion to detain certain non-citizens "pending a decision on whether the [non-citizen] is to be removed from the United States." 8 U.S.C. § 1226(a); *see* 8 U.S.C. § 1226(c). Provided the non-citizen does not fall under § 1226(c)'s mandatory detention provisions, ICE/ERO may either continue to detain the non-citizen or release the non-citizen on bond or conditional parole. 8 U.S.C. § 1226(a)(1)–(2). When a non-citizen is taken into ICE/ERO custody pursuant to 8 U.S.C. § 1226(a), ICE/ERO makes an initial custody determination, including consideration of bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). ICE/ERO may "in [its] discretion, release an alien... provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

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

The INA provides that the Secretary’s discretionary judgment regarding the “detention or release of any [non-citizen] or the grant, revocation, or denial of bond or parole[]” is not subject to judicial review. 8 U.S.C. § 1226(e). *Jennings v. Rodriguez*, 583 U.S. 281, 304–07 (2018), confirms that the statute does not require repeated custody reviews based solely on length of detention.

ARGUMENT

Petitioner raises four claims in his habeas petition: (1) that his detention violates the preliminary injunction in *Immigration Center for Women and Children v. Noem*, 2026 WL 1455004 (C.D. Cal. May 20, 2026); (2) that ICE/ERO’s custody determination is arbitrary and capricious under the Administrative Procedure Act; (3) that his continued detention violates the Due Process Clause; and (4) that ICE/ERO’s transfer of custody violated the Fourth Amendment. ECF No. 1. Each claim fails. The record—consisting of Petitioner’s allegations and the declaration of Officer Scott—demonstrates that Petitioner was lawfully admitted to the United States on a B-2 visa in 1988 (Scott Decl. ¶ 4), was arrested for Battery–Family Violence on May 28, 2026 (Pet. ¶ 16; Scott Decl. ¶ 6), and was subsequently detained under ICE/ERO’s discretionary custody authority in 8 U.S.C. § 1226(a) (Scott Decl. ¶ 12). On June 22, 2026, ICE/ERO conducted a custody review under the reinstated 2011 and 2021 victim-centered policies and determined that Petitioner “warranted continued civil immigration enforcement action.” Scott Decl. ¶ 10. Because Petitioner is properly detained under 8 U.S.C. § 1226(a) and has never requested a bond hearing—the statutory remedy Congress provides—he is not entitled to habeas relief.

I. Petitioner’s Detention Does Not Violate the *ICWC v. Noem* Preliminary Injunction

Petitioner alleges that he is a member of the Pending Petition Class protected by *ICWC v. Noem* and therefore cannot be detained. Pet. ¶¶ 13–17. Even assuming arguendo that Petitioner qualifies as a class member, the injunction does not mandate his release.

The *ICWC v. Noem* injunction stayed only the 2025 Guidance and related enforcement practices. It did not restrict ICE/ERO’s statutory authority under 8 U.S.C. § 1226(a) to detain noncitizens during removal proceedings. The injunction reinstated the 2011 and 2021 survivor-protective policies, which “generally” favor forbearance but expressly allow detention where “exceptional circumstances” exist—particularly where the noncitizen “poses an articulable risk of death, violence, or physical harm to any person.”

ICE/ERO complied fully with the injunction. On June 22, 2026, ICE/ERO conducted a custody review under the reinstated policies and determined that Petitioner “warranted continued civil immigration enforcement action.” Scott Decl. ¶ 10. This individualized evaluation satisfies the requirements of *ICWC v. Noem* and confirms that ICE/ERO properly invoked the public-safety exception. To the extent Petitioner seeks review of ICE/ERO’s discretionary public-safety determination under these reinstated policies, such review is barred by 8 U.S.C. § 1226(e), as explained below. His ICWC claim therefore fails.

II. Petitioner’s Alleged Challenge to ICE’s “Exceptional Circumstances” Finding Is Barred by 8 U.S.C. § 1226(e), and in Any Event the Domestic-Violence Arrest Satisfies the Standard

The Petition concedes that Petitioner was arrested on May 28, 2026, during a domestic-violence incident. Pet. ¶ 16. Officer Scott’s declaration corroborates this arrest and ICE/ERO’s encounter with Petitioner at the Fulton County Jail. Scott Decl. ¶¶ 6–7. To the extent Petitioner challenges ICE/ERO’s determination that he falls within the “exceptional

circumstances” safety exception under the reinstated 2011/2021 guidance, that challenge is barred by 8 U.S.C. § 1226(e).

8 U.S.C. 1226(e) precludes judicial review of “the Attorney General’s discretionary judgment regarding the application of this section” and prohibits courts from setting 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.” 8 U.S.C. § 1226(e). The Supreme Court has emphasized that “§ 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,” permitting only “challenges to the statutory framework.” *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516–17 (2003)).

Because ICE/ERO’s “exceptional circumstances” determination—i.e., whether Petitioner poses an articulable risk of violence—is a discretionary judgment under 8 U.S.C. § 1226(a), this Court lacks jurisdiction to review it.

Even if the Court could review that decision—which § 1226(e) bars—the record demonstrates that Petitioner’s arrest for Battery–Family Violence constitutes a serious adverse factor under the reinstated guidance. Petitioner’s arrest, the nature of the offense, and the police reporting referenced in the declaration all reflect an articulable risk of harm independent of final adjudication. ICE/ERO’s June 22, 2026, custody review (Scott Decl. ¶ 10) satisfies the public-safety exception contemplated by *ICWC v. Noem*.

III. Petitioner Is Detained Under 8 U.S.C. § 1226(a), Has Not Requested a Bond Hearing, and Any Challenge to His Custody Determination Is Barred by 8 U.S.C. § 1226(e)

Petitioner is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2). Scott Decl. ¶ 12. Under 8 U.S.C. § 1226(a), the statutory mechanism for a detainee seeking release is a bond hearing before an Immigration Judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19. Petitioner has not alleged that he

requested such a hearing, was denied one, or attempted to invoke statutory custody review. ICE/ERO's June 22, 2026, custody review (Scott Decl. ¶ 10) does not replace or eliminate the IJ bond-hearing process.

A noncitizen detained under 8 U.S.C. § 1226(a) may attempt to challenge an IJ's bond decision, but 8 U.S.C. § 1226(e) strips district courts of jurisdiction over such challenges. Section 1226(e) states:

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.

As the Supreme Court has reiterated, 8 U.S.C. § 1226(e) forbids judicial review of discretionary detention decisions, permitting only challenges to the statutory framework itself. *Jennings*, 583 U.S. at 295. Courts in this Circuit have consistently held that they lack jurisdiction to review custody determinations made under 8 U.S.C. § 1226(a). *See, e.g., Hernandez v. Warden, Etowah Cty. Det. Ctr.*, 2020 WL 5172423, at *3 (N.D. Ala. July 24, 2020), report and recommendation adopted, 2020 WL 5110761 (N.D. Ala. Aug. 31, 2020); *Aham v. Gartland*, 2020 WL 806929, at *3 (S.D. Ga. Jan. 29, 2020), report and recommendation adopted, 2020 WL 821005 (S.D. Ga. Feb. 18, 2020).

Because Petitioner has a statutory remedy he has not pursued, and because 8 U.S.C. § 1226(e) bars review of discretionary custody determinations, habeas relief is inappropriate. Even if Petitioner were seeking release (which he is not), the proper forum is the immigration court—not this Court.

IV. Petitioner's Continued Detention Does Not Violate the Due Process Clause

Petitioner claims his detention violates due process because he has pending humanitarian applications. Pet. ¶¶ 18–19. This claim fails. Procedurally, a detainee may request a bond hearing

under 8 U.S.C. § 1226(a), and that process satisfies due-process requirements. Petitioner has not attempted to invoke this remedy. A detainee who fails to pursue available administrative procedures cannot establish a procedural-due-process violation.

Substantively, ICE/ERO conducted an individualized custody review on June 22, 2026, using the reinstated 2011/2021 guidance and determined that Petitioner warrants continued detention due to public-safety considerations. Scott Decl. ¶ 10. This assessment satisfies substantive-due-process requirements. His claim fails.

V. Petitioner's Fourth Amendment Claim Is Not Cognizable, Is Jurisdictionally Barred, and Fails on the Merits

Petitioner claims that ICE/ERO's assumption of custody violated the Fourth Amendment. Pet. ¶ 20. This claim is not cognizable in habeas because it challenges only the circumstances of the arrest, not the legality of his present detention. *See Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510 (1982). Such claims must be brought under *Bivens*, which cannot be joined with habeas. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1205–13 (11th Cir. 2016).

Even if cognizable, 8 U.S.C. § 1252(g) strips jurisdiction over claims arising from ICE's decision to commence removal proceedings. *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *Cho v. United States*, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016). Furthermore, the Eleventh Circuit has rejected extending *Bivens* to immigration arrests. *Alvarez*, 818 F.3d at 1205–13.

VI. Petitioner's Complaint About an Allegedly "Defective" NTA Is Not Cognizable in Habeas

To the extent Petitioner asserts the NTA is defective (Pet. ¶ 22), such challenges relate to the jurisdiction of the immigration court and are not cognizable in habeas. They must be raised before the Immigration Judge during removal proceedings, not before this Court.

CONCLUSION

For the foregoing reasons, Petitioner has not established any basis for habeas relief. ICE/ERO is lawfully detaining him under 8 U.S.C. § 1226(a), has complied with the *ICWC v. Noem* injunction, and conducted the required custody review under the reinstated 2011 and 2021 guidance. Petitioner's domestic-violence arrest constitutes a serious adverse factor authorizing continued detention, and he has not invoked the statutory bond-hearing process available to him. His remaining APA, due-process, and Fourth Amendment claims are not cognizable, are jurisdictionally barred, or fail on the merits. The Petition should be denied in its entirety.

Respectfully submitted this 30th day of June, 2026.

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28 U.S.C. § 543

CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Response 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:

KHAMISI TESFA GOLDING

A# 

Stewart Detention Center

P.O. Box 248

Lumpkin, GA 31815

This 30th day of June, 2026.

BY: s/ Andressa Bryant
ANDRESSA BRYANT

