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

TALLYTA RIBEIRO BARBOSA,	:	
Petitioner,	:	
v.	:	**Case No. 4:26-cv-1012-CDL-ALS** **28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,[1]	:	
Respondents.	:	

RESPONDENT'S RESPONSE

On July 17, 2026, Petitioner filed an application for habeas corpus relief ("Petition"). ECF No. 1. Petitioner challenges her civil immigration detention under 8 U.S.C. § 1226(a), asserting that continued custody violates the Due Process Clause and that the Immigration Judge erred in finding her a flight risk and denying bond. ECF No. 1. For the reasons stated below, the Petition should be denied.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Justin Jones ("Jones Decl."), submitted with this filing. The declaration accurately summarizes the circumstances underlying Petitioner's custodial status and immigration history, and Respondent refers the Court to it for the factual record.

[1] Petitioner names the United States Department of Homeland Security 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 of Steward Detention Center as the sole appropriately named respondent in this action.

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 immigration judge" 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 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 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].").

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 raises four challenges to her custody under 8 U.S.C. § 1226(a): (1) that her continued civil detention violates the Fifth Amendment, (2) that the Immigration Judge ("IJ") erred in finding she is a flight risk, (3) that continued detention is not the least restrictive means to ensure her appearance, and (4) that continued detention is arbitrary and no longer serves a legitimate governmental purpose. ECF No. 1. These claims fail for two independent reasons. First, Petitioner's detention is expressly authorized by statute and fully consistent with the framework governing custody determinations under § 1226(a). Petitioner has already received the exact process Congress and the regulations provide, including multiple bond hearings before an IJ and a pending administrative appeal to the Board of Immigration Appeals ("BIA"). Second, to the extent Petitioner disagrees with the IJ's weighing of the discretionary bond factors, this Court lacks

subject-matter jurisdiction to review those discretionary determinations. 8 U.S.C. § 1226(e). For these reasons, the Petition should be denied.

I. Petitioner's Detention Is Authorized by 8 U.S.C. § 1226(a) and Comports with Due Process.

Petitioner is detained pursuant to 8 U.S.C. § 1226(a), which authorizes ICE/ERO to detain a noncitizen pending the completion of removal proceedings. ICE/ERO encountered Petitioner on February 9, 2026, after determining she had overstayed her authorized admission as a B-2 visitor admitted in December 2014 for a period not to exceed June 19, 2015. Jones Decl. ¶ 4; Ex. A. ICE/ERO issued a Notice to Appear that same day, charging removability under INA § 237(a)(1)(B). Jones Decl. ¶ 7; Ex. B.

Petitioner received an individualized custody redetermination hearing before an IJ on April 22, 2026. Jones Decl. ¶ 12; Ex. C. At that hearing, the IJ determined that Petitioner had not met her burden to demonstrate she was not a flight risk under the standard set forth in *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006). Jones Decl. ¶ 12. Among the relevant considerations were Petitioner's lengthy overstay of nearly eleven years, her recent arrest, and her lack of lawful immigration status—all considerations expressly permitted under *Guerra*. *See Guerra*, 24 I. & N. Dec. at 40 (listing discretionary factors including fixed address, length of residence, record of appearance, criminal history, immigration violations, and manner of entry).

Petitioner requested an additional bond redetermination hearing on June 11, 2026. Jones Decl. ¶ 18; Ex. D. The IJ denied that request because Petitioner failed to show a material change in circumstances, as required by 8 C.F.R. § 1003.19(e), and because the Immigration Court lacked jurisdiction to revisit custody while her appeal of the April 22 order was pending before the BIA. Jones Decl. ¶¶ 17–18; Exs. C, D.

Petitioner exercised her right to administrative review by appealing the April 22 bond denial to the BIA on June 11, 2026. Jones Decl. ¶ 17. That appeal remains pending.

Petitioner now asserts that her continued civil detention violates the Due Process Clause because it has become "prolonged," "excessive," and "arbitrary" and that the Government has failed to demonstrate that continued detention remains necessary. ECF No. 1. But the detention scheme in § 1226(a) requires only that a noncitizen be afforded individualized custody review, not that detention terminate at any particular time or be re-evaluated on a periodic schedule. *See Jennings v. Rodriguez*, 583 U.S. 281, 304–07 (2018). Petitioner received multiple individualized hearings, as well as an ongoing administrative appeal. Jones Decl. ¶¶ 12, 17–18; Exs. C, D.

Because Petitioner's detention is expressly authorized by § 1226(a) and because she has received all process due under both the Constitution and federal regulations, her due process challenge cannot succeed.

II. The Court Lacks Subject Matter Jurisdiction to Judicially Review a Bond Decision.

Petitioner also asserts that the IJ's flight-risk determination was speculative and unsupported by the record, that continued detention is not the least restrictive means to ensure her appearance, and that her detention no longer serves a legitimate governmental purpose. ECF No. 1. Each of these assertions challenges the IJ's discretionary weighing of bond-related factors under § 1226(a).

Congress has expressly precluded judicial review of such discretionary determinations. 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.

The Supreme Court has confirmed 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." Jennings v. Rodriguez, 583 U.S. 281, 295 (2018) (quoting Demore v. Kim, 538 U.S. 510, 516 (2003)). Although courts may review constitutional or legal questions about the statutory framework, they may not reweigh evidence or reconsider how an IJ applied *Guerra*. *See Jennings*, 583 U.S. at 295.

Here, Petitioner disputes the IJ's assessment of her overstayed visa, her recent arrest, and her immigration history—precisely the kinds of factors an IJ is permitted to weigh under *Guerra*. Jones Decl. ¶¶ 4–7, 12; Ex. C; Ex. D. She argues that her lawful entry, lack of criminal convictions, family ties, and willingness to comply with monitoring options should have resulted in a different custody outcome. ECF No. 1. These arguments do not present legal or constitutional questions; they reflect disagreement with the IJ's discretionary evaluation of flight-risk factors.

District courts routinely dismiss such challenges for lack of jurisdiction. *See Aham v. Gartland*, No. 5:19-cv-46, 2020 WL 806929, at *3 (S.D. Ga. Jan. 29, 2020). The IJ conducted two custody hearings, applied the controlling burden of proof, and determined that Petitioner had not shown she was not a flight risk. Jones Decl. ¶¶ 12, 18; Exs. C, D. Section 1226(e) bars this Court from reconsidering those determinations.

CONCLUSION

Petitioner's detention is authorized by 8 U.S.C. § 1226(a), and she has received all process required by law, including two individualized custody hearings and ongoing review before the BIA. Jones Decl. ¶¶ 12, 17–18; Exs. C, D. Her remaining arguments challenge only the IJ's discretionary assessment of flight risk and alternative conditions of release, matters Congress has expressly barred courts from reviewing under 8 U.S.C. § 1226(e). *See Jennings v. Rodriguez*, 583

U.S. 281, 295 (2018). Because Petitioner received the process the statute provides and because this Court cannot revisit the IJ's discretionary findings, the Petition should be denied.

Respectfully submitted this 24th day of July, 2026.

WILLIAM R. KEYES
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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:

Tallyta Ribeiro Barbosa
A[redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 24th day of July, 2026.

BY: *s/ Andressa Bryant*
ANDRESSA BRYANT
Special Assistant United States Attorney*