

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

MAX ANDRES ALONZO GOMEZ,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-357-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

RESPONSE TO ORDER TO SHOW CAUSE

On November 10, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”) asserting that (1) his detention violates his Fifth Amendment due process rights because he is not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and (2) his detention violates the Eighth Amendment. ECF No. 4. On November 12, 2025, the Court issued an Order for Respondent “to show cause within seven (7) days as to why [the Petition] should not be granted.” ECF No. 4. The Order to Show Cause relies on the Court’s prior ruling in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), concerning a challenge to detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.*

Respondent now files this Response to the Order to Show Cause. Petitioner’s circumstances are distinguishable from *J.A.M.*—and § 1225(b)(2)(A) authorizes his detention—because he is seeking admission under the Court’s reasoning in *J.A.M.* Additionally, *J.A.M.* is distinguishable

¹ In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents. “[T]he default rule [28 U.S.C. § 2241 petitions] 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 Stewart Detention Center as the sole appropriately named respondent in this action.

because even if the Court finds that 8 U.S.C. § 1226 governs Petitioner's detention, he is not subject to discretionary detention under 8 U.S.C. § 1226(a). Rather, due to his criminal conviction, Petitioner is still subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). For these reasons, the Court should not grant the Petition or order a bond hearing pursuant to *J.A.M.* Given that the Court has not yet ordered Respondent to respond to the Petition, Respondent respectfully requests twenty-one (21) days to file that response.

BACKGROUND

Petitioner is a native and citizen of Guatemala who unlawfully entered the United States without inspection or admission at an unknown place and on an unknown date. Bush Decl. ¶ 3 & Ex. A. On August 12, 2025, Petitioner was convicted of felony possession of methamphetamine in violation of O.C.G.A. § 16-13-30(a) in the Superior Court of Hall County, Georgia. *Id.* ¶ 4 & Ex. B. He was sentenced to three years probation. *Id.* ¶ 4 & Ex. B.

On August 19, 2025, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") encountered Petitioner at the Gainesville, Georgia Felony Probation Office, and he entered ICE/ERO custody for the first time. *Id.* ¶ 5 & Ex. A. On August 20, 2025, ICE/ERO served Petitioner with a Notice to Appear ("NTA") charging him with inadmissibility pursuant to Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), based on his unlawful presence in the United States without admission. *Id.* ¶ 6 & Ex. C. On September 23, 2025, Petitioner was served with a Form I-261 Additional Charges of Inadmissibility/Deportability further charging him with inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), based on his lack of a valid entry document at the time of his application for admission. *Id.* ¶ 7 & Ex. D.

On September 24, 2025, Petitioner appeared for an initial master hearing before an immigration judge ("IJ") and requested a continuance to find counsel. Bush Decl. ¶ 8. The IJ granted

the request and continued the case to October 15, 2025. *Id.* ¶ 8 & Ex. E. On October 15, 2025, Petitioner appeared for the master hearing with counsel and requested a continuance to prepare. *Id.* ¶ 9. The IJ granted the request and continued the case to November 4, 2025. *Id.* ¶ 9 & Ex. F. On November 4, 2025, Petitioner appeared with counsel before the IJ, conceded the charge of inadmissibility under § 1182(a)(6)(A)(i), and denied the charge under § 1182(a)(7)(A)(i)(I). *Id.* ¶ 10. The IJ sustained the conceded charge and designated Guatemala as the country of removal. *Id.* The IJ reset the case to November 19, 2025, to allow Petitioner to apply for relief from removal. Bush Decl. ¶ 10 & Ex. G. On November 17, 2025, Petitioner filed a Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. *Id.* ¶ 11 & Ex. H.

If Petitioner becomes subject to a final order of removal, there is a significant likelihood of his removal in the reasonably foreseeable future. *Id.* ¶ 13. Guatemala is open for international travel, and ICE/ERO is currently removing non-citizens to Guatemala. *Id.*

LEGAL FRAMEWORK

Congress enacted a multi-layered statutory scheme for the detention of aliens pending a final order of removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The interplay between these statutes is at issue here.

“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute defines “applicant for admission” to encompass *both* an alien “present in the United States who has not been admitted *or* [one] who arrives in the United States[.]” *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 dictates the procedures applicable to all applicants for admission. They “fall into one of two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those “arriving in the United States” and “certain other”² aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings “without further hearing or review.” *See id.* § 1225(b)(1)(A)(i). But where the applicant “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until removal from the United States. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” than (b)(1), “serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287. Subject to inapplicable exceptions, “if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (B.I.A. 2025) (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, . . . 8 U.S.C. § 1225(b)(2)(A), mandates

² These “certain other aliens” are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)’s expedited procedures to an alien who “has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” The statute therefore explicitly confirms application of its inspection procedures to those already in the country, including for a period of years.

detention ‘until removal proceedings have concluded.’” (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole “any alien applying for admission” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

“Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ §1227(a).” *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines “classes of deportable aliens” among those already “in *and admitted* to the United States”) (emphasis added)). “Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.” *Id.* For aliens arrested under §1226(a), the Attorney General and DHS have broad discretionary authority to detain an alien during removal proceedings. See 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested” alien during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. See 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (B.I.A. 1999)). If DHS decides to release, it may set a bond or condition the release. See 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that an alien detained under § 1226(a) should remain detained during removal proceedings, the alien may request a bond hearing before an IJ. See 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The IJ decides whether release is warranted based on a variety of factors, including ties to the United States and risks of flight or danger to the community. See *Matter of*

Guerra, 24 I. & N. Dec. 37, 40 (B.I.A. 2006); 8 C.F.R. § 1003.19(d) (“The determination . . . 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 alien or [DHS].”).

Section 1226(a) does not grant “any *right* to release on bond.” *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release an alien during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

In *In the Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals (“BIA”) recently held that non-citizens unlawfully present in the United States without prior inspection and admission are applicants for admission within the meaning of § 1225(a)(1) and subject to mandatory pre-final order of removal detention pursuant to § 1225(b)(2)(A) under the plain meaning and legislative history of that provision. 29 I. & N. Dec. at 220-28. Accordingly, those non-citizens are not entitled to bond hearings before IJs pursuant to § 1226(a) its implementing regulations. *Id.*

ARGUMENT

According to Petitioner, ICE/ERO claims to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado* 29 I. & N. Dec. 216 (B.I.A. 2025). Pet. ¶¶ 40-54. He argues that § 1225(b)(2)(A) does not apply and that he should be detained pursuant to 8 U.S.C. § 1226(a) which entitles him to a bond hearing.³ *Id.* On November 7,

³ Petitioner also asserts that he “*may* have a colorable Eighth Amendment claim.” Pet. ¶ 58 (emphasis added). Given that the Court’s Order to Show Cause relies only on *J.A.M.*—which did not address any Eighth

2025, the Court ordered Respondent to show cause why the Petition should not be granted pursuant to *J.A.M.* The Court should not grant the Petition on the basis of *J.A.M.* because Petitioner's circumstances are distinguishable in two key respects.

First, Petitioner is subject to mandatory detention pursuant to § 1225(b)(2)(A) because he is “seeking admission” as the Court in *J.A.M.* found was necessary for that subsection to apply. In *J.A.M.*, the Court held that § 1225(b)(2)(A) applies only where (1) a non-citizen is an “applicant for admission” within the meaning of § 1225(a)(1), and (2) the non-citizen is also “seeking admission.” *J.A.M.*, 2025 WL 3050094, at *2-5. As an initial matter, Petitioner is an applicant for admission within the meaning of § 1225(a)(1) because he is present in the United States without admission. Bush Decl. ¶ 6 & Ex. C. Indeed, in his removal proceedings, Petitioner conceded his charge of inadmissibility on this basis. *Id.* ¶ 10.

But unlike in *J.A.M.*, Petitioner is “seeking admission” because he has filed an EOIR-42B application for cancellation of removal pursuant to 8 U.S.C. § 1229b(b). *Id.* ¶ 11 & Ex. H. By filing this application, Petitioner is seeking to “*adjust to the status of an alien lawfully admitted for permanent residence*[.]” 8 U.S.C. § 1229b(b) (emphasis added). If the application is granted, Petitioner will be deemed lawfully admitted for permanent residence as of the time the decision is made. 8 U.S.C. § 1229b(b)(3). Accordingly, by applying for cancellation of removal, Petitioner “is attempting to obtain lawful admission into the United States.” *J.A.M.*, 2025 WL 3050094, at *3. Accordingly, § 1225(b)(2)(A) governs his detention even under the Court's reasoning in *J.A.M.*

Amendment issues—Respondent has not addressed Petitioner's Eighth Amendment claim in this Response to the Order to Show Cause. To the extent the Court does not permit Respondent to file a separate response to the Petition, Petitioner's Eighth Amendment claim should be denied for four reasons: (1) conditions of confinement claims are not cognizable in habeas, *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam); (2) Petitioner is not entitled to release based on a conditions of confinement claim, *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990); (3) to the extent Petitioner attempts to raise a *Bivens* claim, it is not cognizable in this habeas proceeding, *S.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-159-CDL-MSH, 2023 WL 2534098, at *6 (M.D. Ga. Jan. 30, 2023); and (4) immigration detention without a bond hearing does not implicate the Eighth Amendment, *Carlson v. Landers*, 342 U.S. 524, 529 (1952).

Second, even if the Court finds that Petitioner is not subject to mandatory detention under § 1225(b)(2)(A), Petitioner is not entitled to a bond hearing because he is still subject to mandatory detention under § 1226(c) due to his criminal conviction.

Under 8 U.S.C. § 1226(a), ICE/ERO may arrest and detain a non-citizen “pending a decision on whether the [non-citizen] is to be removed from the United States.” Whereas pre-final order of removal detention is generally discretionary, in 8 U.S.C. § 1226(c)(1), Congress mandated the detention of non-citizens who have committed certain criminal or terrorist offenses until removal proceedings are completed. The statute states unambiguously that the “Attorney General *shall* take into custody any alien” who is inadmissible or removable for having committed an offense in one of four listed categories. 8 U.S.C. § 1226(c)(1) (emphasis added). The statute does not provide for bond or parole for non-citizens detained under § 1226(c). The only exception is for narrow witness protection purposes inapplicable here. *See* 8 U.S.C. § 1226(c)(2). The Supreme Court has recognized that § 1226(c) mandates detention apart from this narrow exception. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (“§ 1226(c) makes clear that detention of aliens within its scope must continue pending a decision on whether the alien is to be removed from the United States.” (internal quotations and citation omitted)).

Here, Petitioner is subject to mandatory detention pursuant to § 1226(c) based on his recent felony drug conviction. Section 1226(c)(1)(A) mandates detention where an alien “is inadmissible by reason of having committed an[] offense covered in” 8 U.S.C. § 1182(a)(2). Section 1182(a)(2)(A)(i)(II) provides that

any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . . is inadmissible.

Petitioner is inadmissible under § 1182(a)(2)(A)(i)(I) because he has been convicted of felony possession of methamphetamine—a controlled substance. Bush Decl. ¶ 4 & Ex. B. Neither exception to inadmissibility under this subsection applies. Petitioner was not “under 18 years of age” when the crime was committed. 8 U.S.C. § 1182(a)(2)(A)(ii)(I). And under O.C.G.A. § 16-13-30—Petitioner’s statute of conviction—the maximum penalty for any violation of the statute exceeds one year imprisonment. *See* 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

The fact that Petitioner has not been charged with inadmissibility under § 1182(a)(2)(A)(i)(II) does not alter this conclusion. Section 1226(c) does not provide for mandatory detention based on the charges of removability. Rather, it requires only a finding that an alien “is inadmissible” or “is deportable” on the basis of committing a crime listed in the enumerated grounds. 8 U.S.C. § 1226(c)(1)(A)-(E); *see Matter of Kotilar*, 24 I. & N. Dec. 124, 126 (B.I.A. 2007) (“[W]e now hold that the ‘is deportable’ language in the current mandatory custody statute does not require that the alien be charged with or found deportable on the particular ground on which detention is based.”). Accordingly, unlike in *J.A.M.*, even if the Court finds that Petitioner is generally detained under § 1226, he is still subject to mandatory detention under § 1226(c)—not discretionary detention under § 1226(a)—due to his qualifying criminal conviction. Therefore, even assuming Petitioner ultimately prevails on his statutory interpretation arguments regarding § 1225(b)(2)(A), he is not entitled to a bond hearing under § 1226(c). *Jennings*, 583 U.S. at 303.

CONCLUSION

For these reasons, the Court should not grant the Petition pursuant to the Court’s decision in *J.A.M.* Furthermore, Respondent respectfully requests twenty-one (21) days to file a full response to the Petition.

Respectfully submitted this 19th day of November, 2025.

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