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

CARLOS ROBERTO FLORES RIVERA,	:	
Petitioner,	:	
v.	:	**Case No. 4:25-CV-384-CDL-AGH** **28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,	:	
Respondent,	:	
and DIRECTOR OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES,[1]	:	
Defendant.	:	

ABBREVIATED RESPONSE TO PETITION
AND RESPONSE TO ORDER TO SHOW CAUSE

On November 16, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") claiming that (1) he is not subject to mandatory pre-final order of removal detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and (2) even if he is, that statute is unconstitutional on its face because it violates due process. ECF No. 1. Additionally, Petitioner raises various claims under the Administrative Procedures Act, the Declaratory Judgment Act, and for a writ of mandamus

[1] In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security ("DHS"), and Immigration and Customs Enforcement ("ICE"), as well as DHS and ICE 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, Respondents have substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action as relates to the request for habeas relief. Petitioner has also filed a request for a writ of mandamus against U.S. Citizenship and Immigration Services, and therefore the Government also recognizes that the Director of USCIS remains an appropriately named Defendant.

regarding the adjudication of a pending petition before U.S. Citizenship and Immigration Services ("USCIS"). *Id.* On November 20, 2025, the Court issued an Order to Show Cause directing Respondent to show cause within seven (7) days why the Petition should not be granted in light of the Court's ruling in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH (M.D. Ga. Nov. 1, 2025). ECF No. 4.

As explained below, Respondent acknowledges this Court's prior ruling in *J.A.M.*, concerning a similar challenge to the detention authority at issue in this case, which would control the result as to Petitioner's request for habeas relief should the Court adhere to its legal reasoning in that prior decision. While reserving all rights, including the right to appeal, Respondent submits this abbreviated response in lieu of an exhaustive responsive brief to preserve the legal issues and to conserve the resources of the Court and the parties. Should the Court prefer to receive a more exhaustive response brief as to the habeas petition, Respondent respectfully requests leave to file such a brief and will do so upon the Court's request.

In addition, Petitioner brings a claim for writ of mandamus against USCIS with regard to the adjudication of a pending I-130 petition filed by his wife. *See* ECF No. 1 ¶¶ 127-142 & Ex. 3 (ECF No. 1-3). Petitioner's mandamus claim should be dismissed or denied for multiple reasons. First, the Court is without jurisdiction over Petitioner's mandamus claim. Second, Petitioner cannot bootstrap a mandamus petition on his habeas petition. Third, even if the Court retained jurisdiction, the claim should be denied because Petitioner would not be entitled to mandamus relief for multiple reasons.

BACKGROUND

Petitioner is a native and citizen of Honduras who has been mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b)(2)(A) at Stewart Detention Center in Lumpkin, Georgia since October 23, 2025. Declaration of Walkiria Gloster ("Gloster Decl.") ¶¶ 4-7. Petitioner

entered the United States without inspection or admission at an unknown location and unknown time. *Id.* ¶ 4. On October 24, 2025, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") served Petitioner with a Notice to Appear ("NTA") charging him with inadmissibility pursuant to (1) 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, and (2) 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. *Id.* ¶ 5. Petitioner is scheduled for a custody hearing before the Immigration Court on December 2, 2025, and a master calendar hearing scheduled for December 11, 2025. *Id.* ¶ 6.

LEGAL FRAMEWORK

I. Authority for Detention During Removal Proceedings

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 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

[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.

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.*

II. Mandamus

The Mandamus Act affords the district court jurisdiction "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. "Mandamus is an extraordinary remedy which should be utilized only in the clearest and most compelling of cases." *Cash v. Barnhart*, 327 F.3d 1252, 1257 (11th Cir. 2003) (internal quotations, alterations, and citation omitted). "Mandamus relief is only appropriate when: (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) no other adequate remedy is available." *Id.* at 1258 (internal quotations, alterations, and citation omitted). Put

differently, mandamus relief is available "only if [the plaintiff] has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty." *Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (citations omitted).

ARGUMENT

I. Habeas Claims

Petitioner frames his argument as challenging the application of mandatory detention pursuant to § 1225(b)(2) to him on statutory and due process grounds. Pet. ¶¶ 69-126. As remedies, Petitioner requests immediate release, or in the alternative, a bond hearing before an IJ as soon as practicable. *Id.* at 53-55 (Remedies). Additionally, Petitioner demands that if the Court orders a bond hearing, that the burden must be on the Government to prove Petitioner is not a flight risk or a danger. *Id.* at 55.

The request for habeas relief should be denied for three reasons. ***First***, to the extent Petitioner intends to challenge the designation that she is detained pursuant to § 1225(b)(2), the Court lacks subject matter jurisdiction because 8 U.S.C. § 1252(e)(3) vests jurisdiction over claims challenging the implementation of § 1225(b)(2) only in the U.S. District Court for the District of Columbia. ***Second***, in the alternative, a proper interpretation of the relevant statutes establishes that § 1225(b)(2)(A) governs Petitioner's detention because she is an applicant for admission who is present in the United States without admission. As a result, she is subject to mandatory pre-final order of removal detention, and neither § 1226(a) nor its concomitant bond procedures apply. ***Third***, Petitioner's due process claim should be denied because mandatory detention pursuant to § 1225(b)(2)(A) is facially constitutional and complies with due process.

Respondent previously raised these same arguments in *J.A.M. See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, Resp. (M.D. Ga. Oct. 31, 2025), ECF No. 11. In *J.A.M.*, however, the Court held that (1) it retains subject matter jurisdiction, and (2) non-citizens who are present in the

United States without admission are not subject to detention under § 1225(b)(2)(A) because they are not "seeking admission" within the meaning of that provision. *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, Order 3-15 (M.D. Ga. Oct. 31, 2025), ECF No. 12. The Court determined that § 1226(a) governs those non-citizens' pre-final order of removal detention and ordered that they be provided bond hearings pursuant to § 1226(a) and 8 C.F.R. §§ 236.1 and 1236.1. *Id.* at 15.

Respondent acknowledges that questions of law in this case substantially overlap with those at issue in *J.A.M.* Accordingly, while preserving all rights, Respondent incorporates by reference the legal arguments it presented in that case. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, Resp. (M.D. Ga. Oct. 31, 2025), ECF No. 11.[3] If the Court prefers to receive a formal and exhaustive responsive brief in this matter, Respondent will provide such a brief upon the Court's request. Further, to the extent the Court reconsiders its prior ruling or intends to address the due process issue based on a finding that § 1225(b)(2)(A) applies, Respondent respectfully requests the opportunity to address those matters. Finally, consistent with *J.A.M.*, Respondent contends that should the Court determine that § 1226(a) governs Petitioner's detention, the only appropriate remedy is a bond hearing before an IJ, during which an immigration judge can properly determine in the first instance whether Petitioner is a flight risk or danger to the community. *See J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, Order 15 (M.D. Ga. Oct. 31, 2025), ECF No. 12.

II. Mandamus Claim

Petitioner also raises a claim for writ of mandamus based upon the fact that the I-130 petition filed on his behalf has not yet been adjudicated by USCIS. ECF No. 1 at ¶¶ 127-142. This claim should be dismissed for multiple reasons. First, the Court is without jurisdiction over the claim

[3] In addition, the habeas Respondent opposes Petitioner's request to deviate from the bond procedures set forth in 8 U.S.C. § 1226(a) and its implementing regulations. If the Court is inclined to grant Petitioner's habeas Petition and orders a bond hearing, Respondent's position is that the bond hearing should proceed under the normal procedures in § 1226(a) and its implementing regulations. The cases Petitioner cites are not binding on this Court, and the Court's previous rulings, including *J.A.M.* have not sided with petitioners making similar arguments.

because the Mandamus Act does not apply to discretionary decisions and because 8 U.S.C. § 1252(a)(2)(B)(ii) bars review of decisions committed to the discretion of USCIS. Second, the mandamus claim should be dismissed because Petitioner cannot bootstrap a mandamus action onto a habeas petition without paying the appropriate filing fee. Third, Petitioner's mandamus claim lacks merit for multiple reasons.

A. Subject Matter Jurisdiction

The Court lacks jurisdiction over the mandamus action for two reasons. First, the Mandamus Act, 28 U.S.C. § 1361, by its own terms, only applies to the performance of "a duty owed to the plaintiff." Where the alleged duty is discretionary, rather than mandatory, it is not a "duty owed" to the plaintiff and mandamus jurisdiction does not lie. *See, e.g., Sands v. U.S. Dep't of Homeland Sec.*, 308 F. App'x 418, 419 (11th Cir. 2009) (affirming district court dismissal for lack of jurisdiction based on the mandamus statute's inapplicability to discretionary actions).

Second, under 8 U.S.C. § 1252(a)(2)(B)(ii), the Court lacks jurisdiction over Plaintiff's claims regarding adjudication of his wife's I-130 petition on his behalf because such adjudication is committed to agency discretion by statute. Federal courts' jurisdiction to review discretionary determinations in the immigration context is limited by 8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"):

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to review . . . any . . . 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[.]

"[*M*]*any* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. *AADC*, 525 U.S. at 486 (emphasis in original) (citations omitted). In promulgating § 1252(a)(2)(B)(ii) specifically, "Congress barred

court review of discretionary decisions only when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010).

The pace at which USCIS adjudicates I-130 petitions is within the discretion of USCIS and Petitioner has not established that USCIS has a clear duty to act with regard to the pacing of the I-130 petition in question. *See Alfassi v. Garland*, 614 F. Supp. 3d 1252, 1255 (S.D. Fla. 2022). This conclusion is evident from the text of § 1252(a)(2)(B) itself, as it specifically bars judicial review of claims under the Mandamus Act, 28 U.S.C. § 1361, challenging administrative determinations listed in clauses (i) and (ii). And as courts have reasoned in applying § 1252(a)(2)(B)(ii) to other forms of immigration relief, because those determinations are discretionary, "the plaintiffs have no jurisdictional basis to institute in this Court a mandamus action to speed up the pace at which the USCIS approves" applications. *Chaganti v. Chertoff*, No. 08 C 5768, 2008 WL 4663153, at *2 (N.D. Ill. Oct. 16, 2008). "Otherwise, the grant of discretion would be illusory, given that courts could drastically alter the regulations prescribed by dictating what pace of adjudication the regulations must permit." *Beshir v. Holder*, 10 F. Supp. 3d 165, 174 (D.D.C. 2014).

Additionally, Petitioner has not exhausted his administrative remedies prior to bringing this claim.[4] For these reasons, Petitioner has not shown the Court possesses subject matter jurisdiction over the mandamus claim.

B. Claim Not Cognizable in Habeas

Next, Petitioner cannot bring a mandamus claim—even if the Court did have jurisdiction over such a claim, which it does not—within the auspices of a habeas action. Petitioner has filed a

[4] Pursuant to USCIS policy: [i]mmigration benefit requestors may request that USCIS expedite the adjudication of their applications or petitions. USCIS considers all expedite requests on a case-by-case basis and generally requires documentation to support such requests. The decision to grant or deny an expedite request is within the sole discretion of USCIS. USCIS Policy Manual Vol. 1 Ch. 5, dated June 9, 2021, available at https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-5. Petitioner acknowledges this possible avenue for relief and repeatedly states that this situation "may even be eligible for an expedite," but does not allege that he has availed himself of this avenue.

habeas petition—not a civil complaint—and his mandamus claim is not cognizable in habeas. This Court addressed a similar issue in *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). There a non-citizen filed a habeas petition challenging his continued detention. *Villafuerte*, 2018 WL 6626640, at *1. However, the non-citizen also raised an APA claim concerning the denial of his application for immigration status. *Id.* at *1-2. The Court held that Petitioner's APA claim was "not cognizable" for two reasons. First, the non-citizen sought a form of "collateral administrative relief" which is not properly within the purview of habeas corpus. *Id.* at *2 (quotations and citations omitted). Second, it was "inappropriate" to permit the non-citizen to raise a civil claim because the non-citizen filed a habeas petition with a far lower filing fee. *Id.*

The Court should reach the same conclusion here and decline to allow Petitioner to bootstrap a mandamus claim onto the Petition. Similar to the APA claim in *Villafuerte*, the mandamus claim seeks "collateral administrative relief" in the form of expedited adjudication of the I-130 petition filed by Petitioner's wife. Also, similar to *Villafuerte*, a mandamus action is a civil claim with a higher filing fee than the $5 habeas fee. For the same reasons that the Court found the APA claim not cognizable in *Villafuerte*, the Court should find Petitioner's mandamus claim not cognizable here.

C. Mandamus Claim Lacks Merit

In the alternative, to the extent the Court finds it has jurisdiction over Plaintiff's claims—which it should not—those claims should still be dismissed because Plaintiff fails to adequately allege unreasonable delay of the adjudication of his wife's I-130 petition on his behalf. Petitioner's allegations are internally inconsistent and fail to show a delay at all, let alone one that could be described as "unreasonable." The petition in question was filed on July 18, 2025. *See* ECF No. 1-3. The petition has therefore been pending for approximately 4 months. According to the USCIS

website, the current processing time for I-130 petitions at USCIS service centers (where Petitioner's I-130 will be processed) is that 80% of cases are completed within **17 months**. *See* egov.uscis.gov/processing-times/. Regardless of the alleged exigent circumstances surrounding Petitioner's pending removal proceedings, there is no credible argument to be made that a "delay" of 4 months is "unreasonable" when the average processing time is 17 months.

Further, Petitioner's claims of imminent harm are inaccurate. The adjudication of the pending I-130 petition will have no impact on the Government's ability to proceed with his pending removal proceedings. The I-130 petition merely determines the legitimacy of a claimed relationship and is a prerequisite to the filing of another form of application for relief from removal. Additionally, the removal proceedings will not impact the determination of the I-130 petition because the beneficiary's inadmissibility, including having been removed, is not a factor that USCIS can consider in adjudicating an I-130 petition.

For all the reasons stated herein, Petitioner's mandamus claim should be dismissed, or alternatively, denied.

CONCLUSION

For the reasons set forth in this Abbreviated Response and those previously set forth in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH, Resp. (M.D. Ga. Oct. 31, 2025), ECF No. 11, Respondent respectfully requests that the Court deny the Petition as it pertains to Petitioner's request for a writ of habeas corpus. Further, for the reasons stated herein, Respondent respectfully requests the Court dismiss, or alternatively, deny the Petition as it pertains to Petitioner's request for a writ of mandamus.

Respectfully submitted this 1st day of December, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: */s/ Michael P. Morrill*
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
michael.morrill@usdoj.gov