

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

FATIMA ISSELA VELASQUEZ	:	
ANTONIO,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-434-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENTS’ RESPONSE TO PETITION

On December 4, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”) claiming that (1) she 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 she is, that statute is unconstitutional on its face because it violates due process. ECF No. 1. On December 8, 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) and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). ECF No. 3. Respondent sought and received a short extension to file a response to the Petition (ECF Nos. 7, 8) and now files this timely response.

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, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

BACKGROUND

Petitioner is a native and citizen of Honduras. *See* Declaration of Deportation Officer David M. Bush (“Bush Decl.”) ¶ 3. Importantly, the petitioner is an arriving alien who presented herself to United States Customs and Border Protection (CBP) on January 25, 2017, when she arrived at the Eagle Pass International Bridge in Eagle Pass, Texas. Bush Decl. ¶ 3. On that same date, she was detained by CBP and subsequently turned over to the Office of Refugee Resettlement due to her status as a juvenile at the time of her apprehension. *See* Bush Decl. ¶ 3; *see also* Exhibit A, Form I-213: Record of Deportable/Inadmissible Alien. Petitioner was issued a Notice to Appear on January 25, 2017, and on March 10, 2017, ICE/ERO released her on an Order of Recognizance. *See* Bush Decl. ¶ 4; *see also* Exhibit B, Office of Refugee Resettlement, Verification of Release.

On September 11, 2018, Petitioner failed to appear at her first master calendar hearing before an Immigration Judge at the Charlotte Immigration Court. Bush Decl. ¶ 5. As a result, the Immigration Judge ordered her removed *in absentia*. *See* Bush Decl. ¶ 5; *see also* Exhibit C, Removal Order dated September 11, 2018.

On September 3, 2019, Petitioner filed an application for relief with United States Citizenship and Immigration Services (USCIS). Bush Decl. ¶ 6. That petition remains pending. *Id.* On or about September 6, 2019, Petitioner’s counsel filed a motion to reopen and rescind the *in absentia* removal order. Bush Decl. ¶ 7. On October 10, 2019, the Immigration Judge at the Charlotte Immigration Court granted Petitioner’s motion to reopen and rescinded the *in absentia* removal order from November 11, 2018. *See* Bush Decl. ¶ 7; *see also* Exhibit D, Immigration Judge’s Order granting petitioner’s motion to reopen.

On November 16, 2023, Petitioner's case was dismissed without prejudice by the Immigration Judge, following a joint motion for prosecutorial discretion. *See* Bush Decl. ¶ 8; *see also* Exhibit E, Immigration Judge's Order Dismissing Removal Proceedings Without Prejudice.

On November 18, 2025, Petitioner was encountered by CBP in Charlotte, North Carolina and transferred to ICE/ERO custody. Bush Decl. ¶ 9. On November 19, 2025, ICE/ERO served the petitioner a Form I-862 Notice to Appear (NTA) charging her with removability pursuant to INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *See* Bush Decl. ¶ 10; *see also* Exhibit F, Notice to Appear dated November 19, 2025.

On November 25, 2025, Petitioner appeared with an attorney before an Immigration Judge for a bond hearing at the Stewart Immigration Court. Bush Decl. ¶ 10. On that same date, the Immigration Judge issued an order denying Petitioner's request for bond because the court lacked jurisdiction and the Immigration Judge lacked the authority to issue a bond under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Bush Decl. ¶ 11; *see also* Exhibit G, Immigration Judge's Order dated November 25, 2025, denying petitioner's bond request.

On December 2, 2025, Petitioner appeared with an attorney before an Immigration Judge for a bond redetermination hearing at the Stewart Immigration Court. Bush Decl. ¶ 12. On that same date, the Immigration Judge issued an order denying Petitioner's request for a bond because there was no material change in circumstances and therefore *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), was still binding law and the Immigration Judge did not have the authority to grant a bond. *See* Bush Decl. ¶ 12; *see also* Exhibit H, Immigration Judge's Order dated December 2, 2025, denying the bond redetermination.

On December 3, 2025, DHS filed form I-261 Additional Charges of Inadmissibility/Deportability, erroneously designating Petitioner as an alien who entered the

United States without being admitted or paroled. *See* Bush Decl. ¶ 13; *see also* Exhibit I, Form I-261 Additional Charges of Inadmissibility/Deportability dated December 3, 2025. On December 15, 2025, DHS filed another Form I-261 Additional Charges of Inadmissibility/Deportability withdrawing the incorrect designation and properly designating her as an arriving alien. *See* Bush Decl. ¶ 13; *see also* Exhibit J, Form I-261 Additional Charges of Inadmissibility/Deportability dated December 15, 2025.

On December 5, 2025, Petitioner appeared with an attorney before an Immigration Judge for her first master calendar hearing at the Stewart Immigration Court. Bush Decl. ¶ 14. On that same date Petitioner's attorney filed a motion to terminate removal proceedings. Bush Decl. ¶ 14. The case was continued to December 19, 2025, to allow DHS time to respond to the motion. *See* Bush Decl. ¶ 14; *see also* Exhibit K, Notice of Hearing dated December 5, 2025.

ARGUMENT

Respondent respectfully shows the Court that Petitioner is not in the same factual situation as the petitioner in *J.A.M.* The issue in *J.A.M.* centered on a question of statutory interpretation regarding 8 U.S.C. §§ 1225(b)(2) and 1226(a) and whether noncitizens who have been present in the United States without admission—but who are not classified under 8 U.S.C. § 1225(b)(1)—can be subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225(b)(2)(A). *J.A.M.*, 2025 WL 3050094, at *2-5. Here, the Petition does not pose this issue because Petitioner is not detained pursuant to § 1225(b)(2)(A) on the basis of her unlawful presence. Rather, she is detained under that statute because she is an arriving alien who was an unaccompanied alien child at the time she sought admission. Neither *Hurtado* nor *J.A.M.* addressed this issue. In fact, well before *Hurtado*, a non-citizen in Petitioner's position would be mandatorily detained under § 1225(b)(2)(A).

Petitioner is currently detained pre-final order of removal as an arriving alien. 8 U.S.C. § 1225(a)(1) provides that “[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed . . . an applicant for admission.” 8 C.F.R. §§ 1.2 and 1001.1(q) define an “arriving alien”—a particular type of applicant for admission—as

an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

Arriving aliens “fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

First, § 1225(b)(1) applies to an arriving alien whom an immigration officer initially determines is inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7). *See* 8 U.S.C. § 1225(b)(1)(A)(i); *see also Jennings*, 583 U.S. at 287. For these arriving aliens, “the officer shall order the alien[s] removed from the United States without further hearing or review unless the alien[s] indicate[] either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i). If the arriving alien applies for asylum, the “officer shall refer the alien for an interview by an asylum officer[.]” 8 U.S.C. § 1225(b)(1)(A)(ii). “[I]f the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii)(I). However, “[i]f the officer determines at the time of the interview that an alien has a credible fear of persecution[.] . . . the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

Second, § 1225(b)(2) applies to an arriving alien whom “the examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C.

§ 1225(b)(2)(A). Such arriving aliens are referred “for a [removal] proceeding under [8 U.S.C. §] 1229a[.]” *Id.*; *see also Jennings*, 583 U.S. at 288; *In re M.S.*, 27 I. & N. Dec. 509, 510 (A.G. 2019).

In this case, Petitioner is an applicant for admission because she arrived in the United States, 8 U.S.C. § 1225(a)(1), and she is an arriving alien because she applied for admission at a port of entry, 8 C.F.R. § 1001.1(q). Unlike most arriving aliens, however, Petitioner was not processed for expedited removal under § 1225(b)(1) because she was an unaccompanied alien child. Section 279(g)(2) of Title 6 defines “unaccompanied alien child” as one under the age of 18 who lacks immigration status and has no parent or legal guardian in the United States. The INA creates special rules for unaccompanied alien children. As relevant here, 8 U.S.C. § 1232(a)(5)(D) provides that unaccompanied alien children “shall be . . . placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).” Accordingly, if an arriving alien is also an unaccompanied alien child, ICE/ERO cannot process them for expedited removal under § 1225(b)(1). Rather, ICE/ERO must place them in removal proceedings pursuant to § 1225(b)(2)(A). Nevertheless, they remain mandatorily detained during those proceedings with the exception of humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

Given that Petitioner is detained pursuant § 1225(b)(2)(A) solely on the basis of her status as an unaccompanied alien child, neither *Hurtado* nor *J.A.M.* have any bearing on the question presented by the Petition. Both decisions dealt solely with whether non-citizens who are applicants for admission based on their unlawful present in the United States may be subject to mandatory detention under § 1225(b)(2)(A). But Petitioner is not subject to detention under § 1225(b)(2)(A) on this basis. She is not an applicant for admission under § 1225(a)(1) based on her unlawful presence; she is an applicant for admission because she arrived in the United States and was detained upon requesting admission. Further, unlike the petitioner in *J.A.M.*, Petitioner here was

immediately inspected by an immigration officer before she even entered the country. Given that Petitioner is detained pursuant to § 1225(b)(2)(A) on an entirely different basis than the non-citizens in *J.A.M.*, that case is distinguishable and does not dictate the outcome here.

Because Petitioner is an arriving alien, she has no due process right to a bond hearing. “For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.” *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, “over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has “long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.” *Fiallo*, 430 U.S. at 792 (collecting cases); *see also Jennings*, 583 U.S. at 286 (“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.”).

“[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020); *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972) (“[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government.”). “In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews*, 426 U.S. at 79-80.

Based on the political branches' dual powers to admit non-citizens and determine the procedures for admission, the Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citations omitted). In recognition of the political branches' power to set such procedures, the Court has consistently held that arriving aliens' due process rights are limited to only the relief and procedures provided by statute. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) ("Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien."); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.").

Similarly, the Eleventh Circuit has long recognized that "[e]xcludable aliens have fewer rights than do deportable aliens, and those seeking initial admission to this country have the fewest of all." *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985) (citing *Landon*, 459 U.S. at 32). Arriving aliens are a class of excludable aliens who "seek admission but have not been granted entry into the United States. Even if physically present in this country, they are legally considered detained at the border." *Id.* at 1483-84. "[N]either parole nor detention has . . . any effect on their status." *Id.* (citing *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958)). Rather, "[a]liens seeking admission to the United States . . . have no constitutional rights with regard to their applications

and must be content to accept whatever statutory rights and privileges they are granted by Congress.” *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984).

In reaching this conclusion, the Eleventh Circuit relied on the Supreme Court’s reasoning in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). *See Jean*, 727 F.2d at 969-70. In *Mezei*, the Supreme Court explained that “an alien on the threshold of initial entry stands on a different footing” than an alien who has “passed through our gates, even illegally[.]” *Mezei*, 345 U.S. at 212. The Court concluded that “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Id.*

In *Thuraissigiam v. Department of Homeland Security*, 591 U.S. 103 (2020), the Supreme Court recently reaffirmed this “century-old rule regarding the due process rights of an alien seeking initial entry[.]”—that for aliens not admitted to the United States, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Thuraissigiam*, 591 U.S. at 131 (internal quotations and citations omitted). Accordingly, arriving aliens are “on the threshold” and have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 140.

Here, Petitioner is an arriving alien who has not been admitted into the United States, and his detention is mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(2)(A). Further, under the INA, Petitioner has no right to be released on bond. 8 C.F.R. § 1003.19(h)(2)(i)(B) (“[A]n immigration judge may not redetermine conditions of custody imposed by [ICE/ERO] with respect to . . . [a]rriving aliens in removal proceedings[.]”); *Jennings*, 583 U.S. at 298-303. Rather, he may only seek discretionary parole. 8 U.S.C. § 1182(d)(5)(A); *Jennings*, 583 U.S. at 299-301; *see also* 8 C.F.R. §§ 212.5(b), 235.3(c).

Because Petitioner has no statutory right to release or bond—aside from discretionary parole—she similarly has no procedural due process right to release or bond. District courts in the Eleventh Circuit—including this Court—have reached the same conclusion. *See D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-CV-159-CDL-MSH, 2020 WL 13240240, at *3-4 (M.D. Ga. Dec. 7, 2020); *Dini v. Warden, Etowah Det. Ctr.*, No. 4:19-cv-01065, 2019 WL 4888018, at *2 (N.D. Ala. Oct. 3, 2019). District courts in other jurisdictions have done the same. *See Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79 (S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (S.D.N.Y. 2021); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020).

CONCLUSION

For the reasons set forth above, to the extent Petitioner seeks release from custody or a bond hearing, the Petition should be denied because Petitioner is mandatorily detained as an arriving alien.

Respectfully submitted this 17th day of December, 2025.

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