

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOSE GUADALUPE ARIZMENDI MORA,

A# 

Petitioner,

vs.

JASON STREEVAL, in his official capacity as
Warden of Stewart Detention center; and
LADEON FRANCIS, Field Office Director for ICE
Atlanta Field Office, and
TODD LYONS, in his official capacity as Acting
Director of Immigration and Customs Enforcement; and
KRISTI NOEM, Secretary of Homeland Security; and
PAMELA BONDI, U.S. Attorney General.

Respondents.

CASE NO :
4:26-cv-80-CDL-ALS

PETITIONER'S REPLY TO RESPONSE TO ORDER TO SHOW CAUSE AND MOTION
TO DISMISS (ECF DKT. 6)

Petitioner, by and through undersigned counsel, respectfully submits this Reply to Respondents' Response and Motion to Dismiss (ECF No. 6). Because Petitioner was unlawfully arrested without a warrant, immediate and unconditional release—not a bond hearing—is the appropriate remedy. Respondents do not even attempt to justify the warrantless arrest in ECF 6; they identify no arrest warrant under 8 U.S.C. § 1226(a) and no exigent circumstances under 8 U.S.C. § 1357(a)(2), and their silence is itself a failure to carry their burden in this § 2241 proceeding once an Order to Show Cause was entered by the Court. ECF 3.¹

I. Petitioner's Detention is Unlawful Under § 1225.

Respondents' detention of Petitioner is unlawful. First, Respondents concede that this Court's recent decisions 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), rejecting their detention theory under 8 U.S.C. § 1225(b)(2), are controlling here. Their brief simply repeats the same arguments this Court rejected in *J.A.M.* and *P.R.S.*—that people apprehended in the interior are “arriving aliens” and “applicants for admission” who may be detained without a warrant and without bond.

Despite this admission, the government erroneously continues to assert that Petitioner is an “applicant for admission” because he entered the United States illegally and has not demonstrated entitlement to admission. Consequently, the government argues he is subject to

¹ Respondents contend that this Court lacks subject matter jurisdiction because 8 U.S.C. § 1252(e)(3) purportedly vests exclusive jurisdiction in the District of Columbia over challenges to DHS's “implementation” of 8 U.S.C. § 1225(b)(2). ECF No. 6 at 8. That premise mischaracterizes both the nature of this case and the narrow scope of § 1252(e)(3), which channels only facial or system-wide attacks on the validity of the expedited-removal “system,” its implementing regulations, and written policies—not individualized habeas challenges to the statutory and constitutional basis for a particular noncitizen's civil detention. As this Court has already held 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), § 1252(e)(3) does not strip this Court of jurisdiction to hear as-applied detention-authority challenges brought by detainees under 28 U.S.C. § 2241. Petitioner's claims fall squarely in that category: he challenges only the government's authority to detain him without a bond hearing, not any removal order or expedited-removal procedure, and thus this Court retains full subject matter jurisdiction under § 2241 & § 1331

mandatory detention under 8 U.S.C. § 1225(b)(2)(A) throughout his removal proceedings, subject only to discretionary parole by DHS. This legal theory has also been rejected by hundreds of recent district court decisions nationwide. *See* ECF 1 and 1-2. These courts consistently find that applying the “arriving alien” framework of § 1225 to interior apprehensions defies the statute’s plain language.

Respondents rely heavily on 8 U.S.C. § 1225(a)(1), which provides that “an alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission.” That definitional deeming clause, however, does not itself trigger mandatory detention. Detention authority comes from § 1225(b)(2)(A), which applies “in the case of an alien who is an applicant for admission” only “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted,” in which event “the alien shall be detained for a proceeding under section 1229a.” Read in context, § 1225(a)(1) identifies who is treated as an “applicant for admission” for purposes of the chapter, while § 1225(b) governs the inspection and detention process at the border and other points of entry when an “examining immigration officer” is inspecting an alien “seeking admission.” Nothing in that structure supports extending § 1225(b)(2)(A) to someone like Petitioner—arrested in the interior decades after entry—who is plainly no longer in the act of “seeking admission” before an examining officer (who is only available at a port of entry or border crossing). Construing § 1225(b)(2)(A) to cover all present-without-admission noncitizens in the interior would largely read § 1226(a) out of the statute for that entire class and is irreconcilable with the regulatory regime and with this Court’s own analysis in *J.A.M.* and *P.R.S.*

Then Respondents continue to fundamentally misrepresent the holdings from *Jennings v. Rodriguez*, 583 U.S. 281 (2018) which held that there are two separate detention statutes, one that

applies to noncitizens apprehended at or near the border upon entry, and the other one for people like Petitioner, who are apprehended within the U.S. years after they entered, who are governed by 8 U.S.C. § 1226(a). “In sum, U.S. immigration law authorizes the Government to detain certain aliens *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” (emphasis added). *Id.* at 289.

It is beyond illogical for Respondents to continue to allege that an individual like Petitioner is someone “seeking admission” under § 1225 because the plain meaning of the phrase “seeking admission” “implies action—something that is currently occurring, and ... would most logically occur at the border upon inspection.” *Villa v. Normand*, 2025 WL 3188406, at *6. As seeking admission requires an active attempt to enter—not mere presence—a noncitizen like Petitioner apprehended in the interior of the United States, many years after entry, cannot be seeking admission.² Thus, Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225. Respondents’ reliance on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) does not change this conclusion: this decision cannot override the text and structure of §§ 1225 and 1226 as interpreted by this Court in *J.A.M.* and *P.R.S.* To the extent they purport to extend § 1225(b)(2) to long-term interior residents like Petitioner, they are inconsistent with both the statute’s plain meaning and the nationwide declaratory judgment in *Maldonado Bautista v. Santacruz* and are not entitled to deference in this Article III court.

² *Giron Lopez v. Corecivic Cimmaron Correctional Facility, et al.*, No. CIV-25-1175-SLP, 2026 WL 165490, at *5-6 (W.D. Okla. Jan. 21, 2026) (“seeking admission” requires something more than merely residing in the country.”); *Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643, at *5 (D. Colo. Oct. 24, 2025) (“For a noncitizen to be deemed ‘seeking admission’ they must currently be taking active steps or some kind of present-tense action to seek lawful entry into the U.S.”); *Issahaku v. Olson*, No. CV 25-180-DLB, 2025 WL 3539290, at *4 (E.D. Ky. Dec. 10, 2025) (“The use of the present progressive term ‘seeking’ ‘implies action.’”) (gathering cases); *Echevarria v. Bondi*, No. CV-25-3252, 2025 WL 2821282, at *6 (D. Ariz. Oct. 3, 2025) (“The word ‘seeking’ is the present participle of the verb ‘seek.’ It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.”) (cleaned up and citations omitted).

Additionally, a nationwide class in *Maldonado Bautista v. Santacruz* now has been certified, become final, and granted declaratory relief to all class members—including Petitioner—, holding that they are being detained without a bond hearing unlawfully and providing an independent, additional basis for treating Petitioner’s detention as governed by 8 U.S.C. § 1226(a) rather than § 1225(b)(2). Furthermore, the judgement, which is final and binding on Respondents until it is reversed or stayed by a court of appeals, **VACATED** the July 2025 ICE memo as unlawful under the Administrative Procedures Act (APA). Thus, the government cannot detain Petitioner based on a policy that has been declared a legal nullity. This is a stand-alone reason for immediate release.

Moreover, as a member of the *Maldonado Bautista* class, Petitioner is entitled to the same relief.³ Contrary to Respondents’ claim, the government’s appeal (which did not include a stay) does not affect the applicability or availability of this declaratory relief. Thus, regardless of how the Court resolves the statutory question under § 1225, *Maldonado Bautista* confirms that Petitioner must be treated as a § 1226(a) detainee and that his continued custody is not cured by the belated bond hearing Respondents propose in ECF 6.

Finally, to the extent Respondents invoke *Demore v. Kim*, 538 U.S. 510 (2003), and *Jennings v. Rodriguez*, 583 U.S. 281 (2018), to claim that mandatory pre-order detention under § 1225(b)(2) is facially constitutional and forecloses further due process review, Petitioner incorporates by reference the Mathews-based substantive and procedural due process arguments

³ See *Mohammadi v. Larose*, No. 3:25-CV-3450-JES-BJW, 2025 WL 3731737, at *2 (S.D. Cal. Dec. 26, 2025) (“To the extent that Petitioner’s detention was due to application of this [new DHS policy] notice, this case gives independent support for why Petitioner cannot be subject to mandatory detention in these circumstances.”); *Perez-Regalado v. Feeley, et al.*, No. 2:25-CV-02409-RFB-EJY, 2026 WL 36112, at *1 (D. Nev. Jan. 6, 2026) (“Outside of the Court’s own analysis, the Court also recognizes that Petitioner is a member of the class certified in *Bautista v. Santacruz*, [], and that the District Court’s Order in *Bautista* has recently become final, extending declaratory relief to the class.”); *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *3 (D.R.I. Dec. 5, 2025) (The *Bautista* “relief is a declaratory judgment holding that class members are detained under Section 1226(a) rather than Section 1225(b)(2).”)

set out in the Habeas Petition and notes that *Jennings* was a statutory-interpretation decision that expressly left open as-applied constitutional challenges to prolonged detention.

II. Petitioner's Detention is Unlawful Under § 1226(c).

Respondents' fallback assertion that Petitioner is "also mandatorily detained pursuant to 8 U.S.C. § 1226(c)" is incorrect as a matter of law and contradicted by the record. This mandatory detention provision is inapplicable for three distinct reasons. First, Respondents cannot satisfy the statute's temporal requirement that custody be taken "when the alien is released" from criminal confinement. Second, they have failed to establish that Petitioner's Florida conviction is categorically a crime involving moral turpitude (CIMT) sufficient to trigger § 1226(c). Finally, the government's own charging posture and custody timeline confirm that § 1226(c) is an unsupported, after-the-fact justification for a detention that, if lawful at all, falls under the discretionary framework of § 1226(a).

A. Statutory Scope and Temporal Trigger of § 1226(c)

While 8 U.S.C. § 1226(a) grants the government general discretionary authority to detain noncitizens pending removal proceedings, Congress carved out a **narrow exception** in 8 U.S.C. § 1226(c) that mandates detention for a specific subset of noncitizens with certain criminal histories. That provision states in relevant part:

"The Attorney General shall take into custody any alien who—(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title; ... **when the alien is released**, without regard to whether the alien is released on parole, supervised release, or probation...." (emphasis added).

By its plain text, § 1226(c) applies only if two distinct, class-defining criteria are met. First, the noncitizen must be removable based on a qualifying criminal offense. Second, DHS must take the noncitizen into immigration custody at a **specific temporal moment**—"when the alien is released" from the criminal custody associated with that predicate offense.

The “when ... released” clause is not surplusage; it is a jurisdictional prerequisite that links the extraordinary measure of mandatory detention directly to the noncitizen’s release from criminal confinement. If the government cannot demonstrate that it satisfied both the substantive criminal-ground requirement and the temporal “when released” trigger, § 1226(c) is inapplicable. In such cases, the detention authority, if any, defaults back to the discretionary provisions of § 1226(a), which afford the noncitizen the right to a bond hearing. If the government cannot show (1) that the conviction actually qualifies under § 1182(a)(2), and (2) that DHS took Petitioner into immigration custody “when ... released” from that criminal custody, § 1226(c) is inapplicable and § 1226(a) governs. In this habeas posture, the Court should require Respondents to carry the burden of demonstrating that both predicates are satisfied and should treat the “when ... released” clause as class-defining rather than a discretionary gloss. On that understanding, Respondents cannot salvage an otherwise defective record by retroactively re-labeling Petitioner’s custody as § 1226(c) when they have not shown either a qualifying § 1182(a)(2) conviction or a contemporaneous “when released” transfer into ICE custody.

B. § 1182(a)(2)’s CIMT Analysis: Categorical Approach and Application to Fla. Stat. § 847.011(c) for Purposes of § 1226(c)

Respondents have also failed to meet their burden of showing that Petitioner’s conviction qualifies as a crime involving moral turpitude (CIMT) under § 1182(a)(2). Their motion merely asserts that conduct under Fla. Stat. § 847.011(c) is “likely sufficiently reprehensible to qualify as a crime of moral turpitude” and offers generic citations to cases involving abuse of vulnerable victims. This conclusory statement is legally insufficient to justify mandatory detention, which requires a rigorous categorical analysis.

The Eleventh Circuit applies the categorical approach to determine whether a state conviction is a CIMT. *Cano v. U.S. Att’y Gen.*, 709 F.3d 1052, 1053 (11th Cir. 2013). This inquiry

focuses on “the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant’s particular conduct”. A CIMT is an offense involving an “act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man”. If the statute criminalizes a broad range of conduct, the analysis looks to the “minimum conduct” necessary to sustain a conviction. If that minimum conduct does not necessarily involve moral turpitude, the statute is not categorically a CIMT.

Here, Petitioner pleaded no contest to violating Fla. Stat. § 847.011, with the offense elevated to a third-degree felony under subsection (c) because the materials were found to be “harmful to minors”. The underlying statute is exceptionally broad, criminalizing the knowing sale, distribution, or possession with intent to distribute a wide array of “obscene” materials. Many obscenity-related offenses are not considered CIMTs because they do not necessarily involve the kind of fraud, theft, violence, or inherently depraved mental state required, and § 847.011 sweeps more broadly than classic child-exploitation offenses, covering materials deemed “harmful to minors” that may not rise to that level.

The statute is not categorically a CIMT for at least two reasons. First, it lacks a sufficiently culpable mens rea regarding the age of the person depicted. The statute does not require proof that the defendant knew the person depicted was a minor, nor does it require a specific intent to corrupt or exploit a particular child. A crime that can be committed without knowledge of the victim’s protected status—and thus without a fully culpable mental state—is not categorically a CIMT. Second, the statute sweeps more broadly than classic child exploitation offenses, covering a wide range of materials deemed “harmful to minors,” which may not rise to the level of inherent baseness or depravity. The plea record itself notes that this was “NOT a sexual offender designation

offense” and that Petitioner was not placed on sex offender probation, and adjudication of guilt was withheld. This suggests that even under state law, the offense was not viewed as the type of grave, exploitative crime that would be inherently turpitudinous.

Because Fla. Stat. § 847.011 is facially overbroad, Respondents could only succeed by applying the modified categorical approach. This requires showing first that the statute is “divisible”—meaning it lists elements in the alternative, thereby defining multiple distinct crimes. Respondents have not argued, much less proven, that the statute is divisible. Even if it were, the modified approach permits a court to look only to a narrow set of conviction documents (known as Shepard documents) to identify which crime formed the basis of the conviction. Respondents have produced no such documents that would narrow Petitioner’s offense to only turpitudinous conduct. Likewise, Respondents offer no analysis whatsoever regarding Petitioner’s second conviction for unlawful use of a two-way communications device under Fla. Stat. § 934.215. This statute is a generic provision that can be violated in countless non-turpitudinous ways and is plainly not a categorical CIMT. In a habeas proceeding, the **government bears the burden** of proving that detention is lawful. A conclusory assertion that a conviction “may be” a CIMT is insufficient. Because Fla. Stat. § 847.011(c) is not categorically a CIMT and Respondents have failed to establish its divisibility or provide Shepard documents, Petitioner’s conviction does not trigger mandatory detention under 8 U.S.C. § 1226(c).

C. Record Timeline and the Statutory “When ... Released” Requirements Not Met

Even if Respondents could establish a qualifying conviction, the statutory timeline irrefutably shows that Petitioner was not taken into immigration custody “when ... released” from criminal confinement. The government’s own evidence establishes the following chronology: *

July 23, 2023: Petitioner is arrested by the Panama City Beach Police Department. * **October 25, 2024:** Petitioner enters his plea in Florida state court and is sentenced to five years of probation,

with adjudication withheld. * **July 11, 2025:** Nine months after the plea, DHS files a motion to recalendar Petitioner’s long-dormant removal case. * **October 1, 2025:** Petitioner is taken into ICE custody, more than eleven months after his conviction and while living in the community in compliance with his probation.

This timeline demonstrates a nearly year long gap between the resolution of his state criminal case and his eventual detention by ICE. The record is devoid of any evidence that ICE lodged a detainer to take custody of Petitioner upon his release from the state proceedings or that his transfer was in any way contemporaneous with those proceedings. To the contrary, DHS took no action for months, only detaining him after separately deciding to reopen his 2011 immigration case. For the reasons explained above, this prolonged delay and the absence of any detainer or contemporaneous transfer place Petitioner outside the class of noncitizens whom Congress directed DHS to detain “when ... released” under § 1226(c).

D. The Government’s Alternative/After-the-Fact Theory Is Procedurally and Legally Defective

The procedural posture of this case confirms that § 1226(c) is not the operative basis for Petitioner’s detention, but rather an unsupported, litigation-driven alternative. The government’s own declaration states that Petitioner “is *currently* detained at the Stewart Detention Center under authority of INA § 235(b)(2)(A)”. Only then does it add, “*Alternatively*, he *may* be subject to mandatory detention pursuant to INA § 236(c)(1)(A)” (emphasis added).

This framing reveals that DHS itself did not invoke § 1226(c) when it took Petitioner into custody. Had it done so, it would have classified him as a § 236(c) detainee from the outset and grounded its decision in the criminal framework. Instead, Respondents classified him as an “arriving alien” under § 1225(b) and have only raised § 1226(c) as a hypothetical fallback in response to this habeas petition. The INA does not permit an agency to retroactively bootstrap a noncitizen into a different mandatory detention statute to cure the unlawfulness of the one it

actually used, particularly where, as shown above, the predicates for the alternative statute have not been met. In habeas, the government bears the burden of justifying custody under a valid statutory basis; a speculative, after-the-fact theory is insufficient to meet that burden.

E. Absent a Valid § 1226(c) Basis, § 1226(a) Governs and Petitioner Is Entitled to Immediate Release, or Alternatively, a Bond Hearing

Because Respondents have failed to demonstrate that Petitioner's detention is authorized by either 8 U.S.C. § 1225(b) or § 1226(c), his custody lacks a lawful basis, and the default framework governing pre-final-order interior arrests—8 U.S.C. § 1226(a)—applies. Under that provision and its implementing regulations, Petitioner is entitled to an individualized assessment of whether his continued detention is necessary.

Accordingly, the Court should reject Respondents' mandatory detention theories and hold that § 1226(a) governs. Given that Petitioner's detention was premised from its inception on a legally and factually inapplicable statute, the proper remedy is an order directing his immediate release. In the alternative, the Court should order Respondents to provide Petitioner a prompt bond hearing before an immigration judge pursuant to 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, where the government must establish by clear and convincing evidence that Petitioner is a danger to the community or a risk of flight.

At the very minimum, the following Court's standing order should apply to Petitioner's case: <https://www.gamd.uscourts.gov/sites/gamd/files/general-ordes/2241StandingOrder.pdf>.

This 2nd day of February, 2026

Respectfully Submitted,

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on the 2nd of February 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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