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

XIANGYING CHEN,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:26-CV-212-CDL-CHW**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On February 5, 2026, Petitioner filed her Petition for Writ of Habeas Corpus ("Petition"). ECF No. 1. On the next day, in light of the Court's rulings 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), the Court ordered Respondents to provide Petitioner a bond hearing within seven days. ECF No. 3. The Court's order further states that if "Respondents in good faith contend that the Court's prior rulings in *J.A.M.* and *P.R.S.* do not apply here, Respondents should file an appropriate motion seeking relief from this order and demonstrating why the Court's prior rulings in *J.A.M.* and *P.R.S.* do not control the result in this case. If such a good faith motion is filed, then this order shall be stayed pending the resolution of that motion." ECF No. 3. Respondent now files this good faith motion to dismiss the Petition, showing that *J.A.M.* and *P.R.S.* do not control the result in this case and that the order for a bond hearing should be stayed and the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of China. Declaration of Deportation Officer Kumar Johnson ("Johnson Decl.") ¶ 4 & Ex. A. On July 21, 2023, Petitioner filed Form I-526E, Immigrant Petition by Regional Center Investor with U.S. Citizenship and Immigration Services (USCIS). *Id.* ¶ 5. On December 1, 2023, Petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status with USCIS, concurrently with Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records. *Id.* ¶ 6 & Ex. B. On April 30, 2024, Petitioner's application for a parole document was approved. *Id.* ¶ 7. Petitioner's parole was set to expire on April 29, 2029. *Id.* ¶ 7.

On August 29, 2024, Petitioner filed a concurrent Form I-526E with USCIS, amending her initial submission. Johnson Decl. ¶ 8. On May 7, 2025, USCIS approved Petitioner's Form I-526E. *Id.* ¶ 9 & Ex. C. On July 28, 2025, Petitioner applied for admission at Hartsfield-Jackson Atlanta International Airport, in Atlanta, Georgia, and was paroled into the United States pursuant to Immigration and Nationality Act (INA) § 212(d)(5) (8 U.S.C. § 1182(d)(5)). *Id.* ¶ 10 & Ex. D.

On January 14, 2026, the Petitioner was encountered by ICE/ERO in Atlanta, Georgia, after being served with an Alcohol Tobacco and Firearms ("ATF") service of refusal of firearm purchase at a local ATF office and taken into ICE/ERO custody. *Id.* ¶ 11 & Ex. A. On January 15, 2026, ICE/ERO issued Form I-862 Notice to Appear (NTA) and charged the Petitioner with removability under INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)). *Id.* ¶ 12 & Ex. E. On the same date, ICE/ERO terminated Petitioner's parole. *Id.* ¶ 12.

On January 19, 2026, Petitioner's attorney filed a Motion to Terminate with the Immigration Court. Johnson Decl. ¶ 13. On January 22, 2026, DHS filed Form I-261, Additional Charges of Inadmissibility/Deportability, designating Petitioner as an arriving alien, and amending

the allegations to reflect her application for admission into the U.S. and the termination of her parole. *Id.* ¶ 14 & Ex. F. On January 23, 2026, Petitioner appeared with her attorney at a bond hearing at the Stewart Immigration Court. *Id.* ¶ 15. The Immigration Judge ("IJ") denied the bond request on the grounds that Petitioner is an arriving alien and the court has no jurisdiction over the custody of arriving aliens. *Id.* ¶ 15 & Ex. G. On February 6, 2026, Petitioner appeared with her attorney at her initial master calendar hearing at the Stewart Immigration Court. *Id.* ¶ 16. The IJ adjourned the matter to a contested master hearing on February 11, 2026, to determine the allegations in the NTA and for a decision on the Motion to Terminate. *Id.* ¶ 16 & Ex. H.

Petitioner is detained at Stewart Detention Center pursuant to 8 U.S.C. § 1225(b)(2) as an arriving alien. Johnson Decl. ¶ 17. Petitioner has been in ICE/ERO custody since January 14, 2026. *Id.* If Petitioner becomes subject to a final order of removal to China, there is a significant likelihood of her removal to China in the reasonably foreseeable future. *Id.* ¶ 18. China is open for international travel, and ICE/ERO is currently removing aliens to China. *Id.* ¶ 18.

LEGAL FRAMEWORK

Petitioner is detained pre-final order of removal as an arriving alien. "An 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 U.S.C. § 1225(a)(1). Regulations 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.

8 C.F.R. §§ 1.2 and 1001.1(q). If an immigration officer determines an arriving alien is inadmissible, the officer "shall order the [non-citizen] removed from the United States without

further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). If the arriving alien "indicates either an intention to apply for asylum . . . or a fear of persecution," 8 U.S.C. § 1225(b)(1)(A)(i), the "officer shall refer the alien for an interview by an asylum officer," 8 U.S.C. § 1225(b)(1)(A)(ii). "If 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). If the officer determines the alien does not have a credible fear of persecution, they shall order the alien removed, but the alien has, by regulation, the option to request review of that determination by an Immigration Judge and in that event, the alien "shall be detained pending a final determination of credible fear of persecution[.]" 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III), and (IV). In some circumstances, an arriving alien will be placed into full removal proceedings without going through the "expedited removal" process provided for in § 1225(b)(1). However, even in this circumstance, an arriving alien, like Petitioner, is an alien "seeking admission" whom an examining immigration officer has determined to be "not clearly and beyond a doubt entitled to be admitted," and such alien, "shall be detained" pending full removal proceedings. 8 U.S.C. § 1225(b)(2). Thus, detention of all arriving aliens is mandatory. 8 U.S.C § 1225(b)(1)(B)(ii) ("the alien *shall be detained* for further consideration of the application for asylum." (emphasis added)); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 U.S.C. § 1225(b)(2)(A) ("[I]f the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under [8 U.S.C. §] 1229a . . . ." (emphasis added)). The only exception to mandatory detention is that ICE/ERO may—in its discretion—release arriving aliens on parole. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c).

ICE/ERO is permitted to parole a non-citizen into the United States, but this decision is committed to ICE/ERO's discretion: "[t]he Attorney General may . . . *in his discretion* parole into

the United States . . . any alien applying for admission[.]" (emphasis added). 8 U.S.C. § 1182(d)(5)(A). Once the parole period expires, or parole is revoked at the discretion of ICE/ERO, an arriving alien is again subject to mandatory detention, and her "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A); *see also Jennings*, 583 U.S. at 288. "Since an alien's legal status is not altered by detention or parole[,] it seems clear that [paroled aliens] can claim no greater rights or privileges under our laws than any other group of aliens who have been stopped at the border. *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984).

ARGUMENT

Petitioner brings this Petition challenging her continued detention without a bond hearing as a violation of 8 U.S.C. § 1226(a), and under the Due Process Clause of the Fifth Amendment. ECF No. 1. Petitioner is mistaken. Despite Petitioner's protestations to the contrary, Petitioner is an arriving alien, and is detained pursuant to the plain language of 8 U.S.C. § 1225(b)(2). As an arriving alien, she has no due process right to a bond hearing.

Petitioner is detained pre-final order of removal as an arriving alien under 8 U.S.C. § 1225(b)(2). Johnson Decl. ¶ 17. And under § 1225(b)(2), Petitioner's detention is mandatory and she is not entitled to a bond hearing. To the extent Petitioner argues that her release on parole altered her immigration status from an arriving alien, this argument is legally unfounded.

8 U.S.C. § 1182(d)(5)(A) provides that "[t]he Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" However, § 1182(d)(5)(A) also makes clear that "such parole of such alien shall not be regarded as an admission of the alien[.]" *See also Jennings*, 583 U.S. at 288.

Based on this language, the Eleventh Circuit has recognized that "[p]arole is not admission." *Sookhoo v. U.S. Attorney Gen.*, 596 F. App'x 771, 772-73 (11th Cir. 2015) (per curiam) (citing 8 U.S.C. § 1101(a)(13)(B); 8 U.S.C. § 1182(d)(5)(A); *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status . . . .")).

Rather, once the parole period expires, an arriving alien is again subject to mandatory detention, and her "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A); *see also Jennings*, 583 U.S. at 288. "Since an alien's legal status is not altered by detention or parole[,] it seems clear that [paroled aliens] can claim no greater rights or privileges under our laws than any other group of aliens who have been stopped at the border. *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984). Therefore, the fact that Petitioner was previously paroled into the United States does not affect her status as an arriving alien or her concomitant due process rights. *See also*, *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) ("[Respondents] did not waive the right to detain [the petitioner] by failing to follow the mandatory detention requirements of the statute [upon petitioner's arrival]."

The Supreme Court has long held that arriving aliens' due process rights are limited to the procedures provided by statute, and the Court's decisions define those due process rights broadly based on fundamental principles which apply in all contexts. This Court has thoroughly analyzed these binding precedents as applied in this exact context and held that arriving aliens mandatorily detained under section 1225(b) have no due process right to a bond hearing. Accordingly, the Court should deny Petitioner's claim based on these binding precedents.

As a starting point, Congress and the Executive have plenary power over the admission of arriving aliens like Petitioner. "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." *Id.* (collecting cases).

"[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). "[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." *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972). In assessing due process protections arising from the application of these procedures, the Supreme Court has recognized that while all non-citizens are entitled to due process protections, this "does not lead . . . to the conclusion that all aliens must be placed in a single homogeneous legal classification." *Mathews v. Diaz*, 426 U.S. at 77-78. Rather, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("[O]ur immigration laws have long made a distinction between those aliens who have come to our shores

seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.").

In recognition of these plenary powers to determine the procedures for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of arriving aliens seeking admission into the United States—like Petitioner here—are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 ("[A]n alien [who is an arriving alien] has only those rights regarding admission that Congress has provided by statute."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This 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." (citations omitted)); *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." (internal quotations and citation omitted)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (same); *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.").

This Court has applied these principles and addressed the precise issue presented here. In *D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020), an arriving alien filed a habeas petition, claiming, *inter alia*, that her mandatory detention under 8 U.S.C. § 1225(b) without a bond hearing violated due process. *D.A.V.V.*, 2020 WL 13240240, at *1-2. The Court denied the arriving alien's claim because "longstanding Supreme Court precedent" makes clear that "arriving aliens' procedural due process rights entitle them only to the relief provided by the INA." *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140;

Landon, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing." *Id.* (citations omitted).

Courts throughout the country have reached the same conclusion as this Court: arriving aliens' due process rights are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. *See Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *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 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019).

Because binding Supreme Court precedent makes clear that the scope of Petitioner's due process rights is limited to the procedures provided by statute, the question is whether section 1225(b) permits bond hearings for arriving aliens. But the Supreme Court has answered this question as well. Specifically, the Court has held that section 1225(b)—which governs Petitioner's detention—"unequivocally mandate[s] that aliens falling within [its] scope shall be detained." *Jennings*, 583 U.S. at 300 (internal quotations omitted). As the Court recognized, "neither [section] 1225(b)(1) nor [section] 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. Rather, "the plain meaning" of the statute "is that detention must continue until . . . removal proceedings have concluded[.]" *Id.* at 299 (citing 8 U.S.C. § 1225(b)(2)(A)). Because "'[d]etained' does not mean 'released on bond,'" the Court concluded that the statute does not permit bond

hearings for arriving aliens. *Id.* at 312. "In sum, [sections] 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.[1]

As this Court has held—along with other courts around the country—because arriving aliens' due process rights are limited to the procedures provided by statute, an arriving alien has no due process right to a bond hearing while mandatorily detained under section 1225(b). *D.A.V.V.*, 2020 WL 13240240, at *6. Petitioner's claim should be denied.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 12th day of February, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: */s/ Michael P. Morrill*
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[1] To be clear, Petitioner's circumstance is distinguishable from that of the petitioners in *J.A.M.* and *P.R.S.* because unlike the Court's finding as to those petitioners, she applied for admission at a designated point of entry and was therefore undoubtedly "seeking admission," she was inspected upon arrival, and the inspecting officer found her not to be "clearly and beyond a doubt entitled to be admitted." Instead, she was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5). Following the revocation of that parole, Petitioner reverts to the status she had as if the parole was never granted, and her circumstances fit squarely within the ambit of § 1225(b)(2)(A) and her detention is mandatory.

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Additional Charges of Inadmissibility/Deportability

In: ☒ **Removal proceedings under section 240 of the Immigration and Nationality Act**

☐ **Deportation proceedings commenced prior to April 1, 1997 under former section 242 of the Immigration and Nationality Act**

In the Matter of:

Alien/Respondent: **Xiangying CHEN**

File No: [redacted] Address: **146 CCA Road PO Box 248 Lumpkin, GA 31815**

☒ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

There is submitted the following factual allegation(s) ☐ in addition to ☒ in lieu of those set forth in the original charging document:

1. You are not a citizen or national of the United States;
2. You are a native of China, People's Republic of China and a citizen of People's Republic of China;
3. You applied for admission to enter the United States on July 28, 2025, in Atlanta, Georgia;
4. You were paroled into the United States on or about July 28, 2025, pursuant to section 212(d)(5) of the Immigration and Nationality Act;
5. The parole was terminated on January 15, 2026;
6. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.

On the basis of the forgoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

January 22, 2026
Date

/S/ Paul Campbell
(Signature of ICE Counsel)

Exhibit G

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
STEWART IMMIGRATION COURT

Respondent Name:
CHEN, XIANGYING

To:
Baxter, Dustin Reed
PO Box 501359
Atlanta, GA 31150

A-Number: [redacted]

Riders:
In Custody Redetermination Proceedings

Date:
01/23/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☑ Denied, because

The court lacks jurisdiction over the respondent's request for a redetermination of his custody status because the Department of Homeland Security designated her as an "arriving alien," (see Bond Exhibit 3). The governing regulations preclude the Immigration Judge from considering both the propriety of that designation and her request for a bond. 8 C.F.R. § 1003.19(h)(2)(i)(B); see also Matter of Oseiwusu, 22 I&N Dec. 19, 20 (BIA 1998) ("Pursuant to the regulations, an Immigration Judge has no authority over the apprehension, custody, and detention of arriving aliens." Id at 20.); ("An alien who arrives in the United States pursuant to a grant of advance parole is an "arriving alien," as that term is defined in the federal regulations." Id at 19.)

According to counsel, Respondent most recently entered the United States on advance parole on or about December 3, 2025, based on a pending adjustment of status application. Respondent is or was approved for an EB-5 Visa, which is for investors to stimulate the economy. However, the court cannot tell whether a Visa is currently available. The priority date is 8/19/24, and her notice date was 5/7/2025.

Respondent applied for and received advanced parole because she would not have a valid entry document upon return. The NTA may have terminated her advance parole (served on her January 16, 2026), making her an alien seeking admission to the U.S. with an approved EB-5 Visa.

Additionally, the Department filed an I-261 in the bond proceeding. This I-261 alleges her advance parole was terminated January 15, 2026, and designates the Respondent as an arriving alien.

The court does not believe it has sufficient evidence to find Respondent met her burden to show jurisdiction in this case.

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☐ Other:

Immigration Judge: FULLER, STEVEN 01/23/2026

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 02/23/2026

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Respondent Name : CHEN, XIANGYING | A-Number : [redacted]
Riders:
Date: 01/23/2026 By: Corbin,T, Court Staff