

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

DARVIN VIDAL YOC PEREZ,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-00355-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
Warden, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS PETITION

On March 6, 2026, Petitioner filed his Petition for Writ of Habeas Corpus (Petition). ECF No. 1. Petitioner claims, among other things, that he is entitled to immediate release or a bond hearing pursuant to 8 U.S.C. § 1226(a). ECF No. 1. On February 20, 2026, 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

¹ In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] 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.

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 Guatemala. Declaration of Deportation Officer David Bush at ¶ 4 & Ex. A, Record of Deportable/Inadmissible Alien, Form I-213 dated December 6, 2025. On June 14, 2019, U.S. Customs and Border Protection (CBP) encountered Petitioner when he entered the United States without inspection at Tecate, California. *Id.* at ¶ 5 & Ex. A. The same day, Petitioner was taken into ICE/ERO custody and placed into expedited removal proceedings pursuant to Immigration and Nationality Act (INA) § 235(b)(1). *Id.* at ¶ 6 & Ex. A.

Petitioner claimed relief from removal. *Id.* at ¶ 7. United States Citizenship and Immigration Services (USCIS) made a positive initial determination as to his claim. *Id.* On October 11, 2019, USCIS served Petitioner a Form I-862 Notice to Appear (NTA), referring Petitioner for removal proceedings for further review of his application for relief and alleging inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I) and § 212(a)(6)(A)(i). *Id.* & Ex. B, Form I-862 Notice to Appear. On October 16, 2019, the Immigration Court sent a hearing notice notifying both parties that the first master hearing would be held on October 24, 2019, at the Aurora, Colorado Immigration Court. *Id.* at ¶ 8 & Ex. C, Hearing Notice dated October 16, 2019. On October 24, 2019, Petitioner appeared pro se at his first

master calendar hearing at the Aurora, Colorado Immigration Court. *Id.* at ¶ 9. The Immigration Judge continued the case to November 15, 2019, to allow Petitioner time to retain an attorney. *Id.* at ¶ 9 & Ex. D, Hearing Notice dated October 24, 2019. On October 25, 2019, an Immigration Judge granted Petitioner bond in the amount of \$3,000. *Id.* at ¶ 10. On October 28, 2019, ICE/ERO released Petitioner from custody after he posted a \$3,000 bond pursuant to the Immigration Judge's order. *Id.* On October 28, 2019, Petitioner filed a motion to change venue to the Georgia Immigration Court. *Id.* at ¶ 11. On November 5, 2019, DHS filed Form I-830 Notice to EOIR: Alien Address to notify the Immigration Court that Petitioner had been released on bond. *Id.* at ¶ 11 & Ex. E, Form I-830 Notice to EOIR: Alien Address. On November 6, 2019, the Immigration Judge granted Petitioner's motion for change of venue to the Atlanta, Georgia Immigration Court. *Id.* at ¶ 12 & Ex. F, Order Granting Change of Venue dated November 6, 2019. On May 21, 2021, Petitioner filed applications for relief from removal with the Immigration Court. *Id.* at ¶ 13.

On December 6, 2025, Petitioner was encountered by U.S. Homeland Security Investigations (HSI) and taken into custody. *Id.* at ¶ 14. He was processed and transferred to ICE/ERO custody and detained at the Stewart Detention Center. *Id.* at ¶ 14 & Ex. A. On January 13, 2026, DHS filed a motion to change venue to the Stewart Immigration Court in Lumpkin, Georgia. *Id.* at ¶ 15. On February 4, 2026, the Immigration Judge granted DHS's motion to change venue to the Stewart Immigration Court in Lumpkin, Georgia. *Id.* at ¶ 15 & Ex. G, Order Granting Change of Venue dated February 4, 2026. On March 10, 2026, the Immigration Court sent a hearing notice notifying both parties that

the next master hearing would be held on March 30, 2026, at the Stewart Immigration Court in Lumpkin, Georgia. *Id.* at ¶ 16 & Ex. H, Hearing Notice dated March 10, 2026. On March 13, 2026, Petitioner was present with his counsel at a bond re-determination hearing at the Stewart Immigration Court. *Id.* at ¶ 17. This bond re-determination hearing was scheduled pursuant to this Court's order. *Id.* At the hearing, Petitioner's counsel withdrew the bond request so that she could prepare more evidence in support of a bond request that she wishes to file on a later date. *Id.* Therefore, the Immigration Judge granted no action and both parties waived appeal on the matter. *Id.*

Petitioner is currently detained by ICE/ERO at Folkston D Ray ICE Processing Center under INA § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b)(1)(B)(ii). *Id.* at ¶ 18. He has been in ICE/ERO custody since December 6, 2025. *Id.* If Petitioner becomes subject to a final order of removal, there is a significant likelihood of Petitioner's removal to Guatemala in the reasonably foreseeable future. *Id.* at ¶ 19. Guatemala is open for international travel, and ICE/ERO is currently removing aliens to Guatemala. *Id.*

LEGAL FRAMEWORK

Petitioner's Petition is premised on the mistaken contention that he is being improperly detained under 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals' (BIA) recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Pet. ¶¶ 4-5, 30. Petitioner is not detained under § 1225(b)(2)(A). Rather, Petitioner was processed for expedited removal proceedings under INA § 235(b)(1) and is detained pre-final order of removal under 8 U.S.C. § 1225(b)(1)(B)(ii). Bush Decl. at ¶¶ 6, 18. Even though he was later issued a Notice to Appear and granted a bond, Petitioner is subject

to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), as discussed more fully below.

Expedited removal orders permit ICE/ERO to remove specific classes of inadmissible non-citizens without conducting removal proceedings under INA section 240, 8 U.S.C. § 1229a: (1) arriving aliens, and (2) certain inadmissible non-citizens who have not otherwise been admitted or paroled. 8 C.F.R. § 253.3(b)(1), (b)(2)(ii). First, 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.” These non-citizens—known as “arriving aliens”—are subject to expedited removal orders in two ways. 8 C.F.R. § 253.3(b)(1)(i). “If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible under [8 U.S.C. §§] 1182(a)(6)(C) or 1182(a)(7)[,] the officer shall order the alien removed from the United States without further hearing or review unless the alien” intends to apply for asylum or claims a fear of persecution. 8 U.S.C. § 1225(b)(1)(A)(i). For arriving aliens who claim a fear of persecution, “if 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).

Second, 8 U.S.C. § 1225(b)(1)(A)(iii)(I) provides that DHS/ERO may apply expedited removal proceedings to an additional class of non-citizens. *See also* 8 C.F.R. § 253.3(b)(1)(ii). Specifically, this includes non-citizens who (1) have “not been admitted or paroled into the United States,” and (2) have “not affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the

United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility[.]” 8 U.S.C. § 1225(b)(1)(A)(iii)(II). This subsection covers Petitioner.

If an immigration officer determines that a non-citizen is inadmissible and subject to expedited removal in one of these two manners, the “immigration officer shall advise the alien of the charges against him or her on Form I-860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges[.]” 8 C.F.R. § 253.3(b)(2)(i). If the charges are sustained, the “immigration official shall serve the alien with Form I-860[.]” *Id.* Thereafter, the non-citizen will be processed for removal. 8 C.F.R. § 253.3(b)(8).

If a non-citizen subject to an expedited removal order “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).

Detention of all aliens subject to expedited removal is mandatory. Specifically, an alien who has made the type of claim described in 8 U.S.C. § 1225(b)(1)(A)(ii), and who is determined to have a credible fear of persecution, “*shall be detained* for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). The only exception is that ICE/ERO may—in its discretion—release such aliens on parole. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c).

ARGUMENT

Petitioner raises four claims for relief, but they are all premised on the factually and legally erroneous contentions that (a) he is being improperly detained under 8 U.S.C. § 1225(b)(2)(A) and the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Pet. ¶¶ 49-60. Petitioner's claims should be denied because he is not detained under § 1225(b)(2)(A) and he has no due process right to a bond hearing.

I. The Petition should be denied because Petitioner's mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) complies with due process.

Petitioner claims that Respondent has violated the INA and his due process rights by detaining him pursuant to 8 U.S.C. § 1225(b)(2)(A) — as opposed to 8 U.S.C. § 1226(a) — without an individualized bond determination to determine whether he is a flight risk or a danger to the community. Pet. ¶¶ 49-60. Petitioner is mistaken. As set forth above, Petitioner is not detained under § 1225(b)(2)(A). Rather, he is detained pre-final order of removal under 8 U.S.C. § 1225(b)(1)(B)(ii). Bush Decl. at ¶¶ 18. And under § 1225(b)(1)(B)(ii), Petitioner's detention is mandatory and he is not entitled to release or a bond hearing.

On October 2, 2024, Petitioner was detained after he entered the United States without inspection. Bush Decl. at ¶ 5. He was processed for expedited removal pursuant to § 1225(b)(1), but then referred to USCIS for consideration of his application for relief. *Id.* at ¶¶ 6-7. Petitioner's removal proceedings were never terminated, only transferred to the immigration court for further consideration of his application for relief. 8 U.S.C. §

1225(b)(1)(B)(ii); *Id.* Under that same subsection, the non-citizen “shall be detained” during those proceedings. *Id.*

This procedure is exactly how the statute was intended to operate, and at no point did Petitioner’s detention authority shift from § 1225(b)(1)(B)(ii). Petitioner is in a similar circumstance to a petitioner (“G.A.G.C.”), discussed in the Court’s decision in *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL-CHW, 2025 WL 3269947 at *2 (M.D. Ga., Nov. 24, 2025). There, the Court denied the petition of G.A.G.C., who had been (1) initially detained shortly after an illegal entry, (2) “sought to lawfully remain based on allegations that he was entitled to asylum,” (3) was “released from detention pending a decision on his asylum application,” and (4) “his removal proceedings were never dismissed.” *Id.* So too Petitioner here. The only distinction is that the initial determination of Petitioner’s and G.A.G.C.’s claims were different, but this only means that G.A.G.C. was mandatorily detained pursuant to § 1225(b)(1)(B)(iii)(IV) and Petitioner is mandatorily detained pursuant to § 1225(b)(1)(B)(ii). The outcome of their habeas petitions should be the same.

As the Court held with regard to G.A.G.C., Petitioner was inspected by an examining immigration officer upon his initial entry and was subject to mandatory detention while his claim for relief was considered. The fact that he was released on bond while that claim was considered does not eliminate Respondent’s authority to detain him. Respondent did not waive the right to detain Petitioner by failing to follow the mandatory detention authority of the statute. *P.R.S.*, 2025 WL 3269947 at *2. Petitioner is not detained under § 1225(b)(2)(A), and he should be treated exactly like petitioner G.A.G.C. This claim should be denied.

As to Petitioner's claim of a due process violation by virtue of his mandatory detention, the Supreme Court has long held that the due process rights of aliens who have not "effected an entry" into the United States 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 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.

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 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 was detained shortly after an illegal entry] 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 applicant for admission 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 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). The Supreme Court in *Thurassigiam* made clear that this applies equally to an applicant for admission who, like Petitioner, was detained shortly after unlawful entry and never "effected an entry" into the United States. 591 U.S. at 138 (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

Courts throughout the country have reached the same conclusion as this Court: such 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 aliens in her position. 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 v. Rodriguez*, 583 U.S. 281, 300 (2018) (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 such 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.

As this Court has held – along with other courts around the country – because due process rights of aliens such as Petitioner are limited to the procedures provided by statute, such aliens have 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 claims should be denied

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 16th day of March, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: s/W. Taylor McNeill
WILLIAM T. MCNEILL
Assistant United States Attorney
Georgia Bar No. 239540
United States Attorney's Office
Middle District of Georgia
300 Mulberry Street
Macon, GA 31201
Phone: (478) 752-3511
taylor.mcneill@usdoj.gov