

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

DARVIN VIDAL YOC PEREZ,

Petitioner,

v.

JASON STREEVAL, in his official
capacity as Warden of Stewart
Detention Center.

Respondents.

Case No. 4:26-CV-00355- CDL-AGH
28 U.S.C. § 2241

**PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS PETITION**

On March 16, 2026 Respondent filed a motion to dismiss Petitioner's Petition for Writ of Habeas Corpus, arguing that *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), do not control the result of this case and that the order for a bond hearing should be stayed and the Petition should be denied. Respondent's motion to dismiss rests on a fundamental mischaracterization of Petitioner's detention authority. This case is controlled by the undisputed facts that Petitioner: (1) passed a credible fear interview, (2) was placed into removal proceedings under 8 U.S.C. § 1229a after § 1225 expedited

removal proceedings were vacated, (3) was granted bond by an Immigration Judge under § 1226, and (4) lived in the community for over five years without violation of the terms and conditions of that bond before being re-detained. Under these circumstances, Respondents lack authority to detain Petitioner under § 1225, and he is entitled to a bond hearing.

BACKGROUND

Petitioner is a native and citizen of Guatemala who was encountered by U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP) officers. Petitioner was subsequently taken into custody by U.S. Immigration and Customs Enforcement (ICE) and placed into expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) under the Immigration and Nationality Act (INA). However, Petitioner claimed to have a fear of persecution if returned to Guatemala and was provided with a credible fear interview, after which it was determined that he had demonstrated a credible fear of persecution and torture. As such, Petitioner's expedited removal proceedings were vacated pursuant to 8 C.F.R. 208.30 and he was instead placed into full removal proceedings pursuant to 8 U.S.C. § 1229a. Respondent's Ex. B, Form I-862 Notice to Appear. According to the Notice to Appear, Petitioner is charged as subject to removal pursuant to both 8 U.S.C. §§ 1182(a)(7)(A)(i)(I) and 1182(a)(6)(A)(i). Petitioner was granted bond by an Immigration Judge on October 25, 2019, and was released from ICE custody on

October 28, 2019 – this occurred pursuant to 8 U.S.C. § 1226. Petitioner was detained again by DHS in his home by Homeland Security Investigations (HSI) agents on December 6, 2025 despite having been released on bond over six years earlier by an Immigration Judge, without having violated the terms or conditions of that bond, and after having filed an application for relief from removal before the Immigration Court on May 21, 2021. Respondent's Ex. A, Declaration of Deportation Officer David Bush at ¶¶ 13-14 and Respondent's Ex. A, Record of Deportable/Inadmissible Alien, Form I-213 indicating that HSI agents claimed to be conducting welfare checks on Petitioner's grandchildren but then arrested Petitioner and his wife after entering their home. Notably, Petitioner was arrested and issued Form I-200 Warrant for Arrest of Alien which is addressed to any immigration officer authorized pursuant to sections [8 U.S.C. § 1226] and [8 U.S.C. § 2357] of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations. *Id.* To the knowledge of undersigned counsel, Petitioner remains detained with the Stewart Detention Center in Lumpkin, Georgia.

LEGAL FRAMEWORK

Petitioner's expedited removal proceedings under 8 U.S.C. § 1225(b)(1) were vacated upon his positive credible fear determination as indicated on his Notice to Appear and he was placed into removal proceedings pursuant to 8 U.S.C.

§ 1229a. Petitioner was subsequently released on bond by an Immigration Judge pursuant to 8 U.S.C. § 1226; he is still currently in removal proceedings under 8 U.S.C. § 1229a, and his custody is still governed by § 1226.

In 1996, Congress created an expedited removal system and “credible fear” process. 8 U.S.C. § 1225 et seq. As enacted by Congress, the expedited removal system involves a streamlined removal process for individuals apprehended at or near the border. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (permitting certain persons who are seeking admission at the border of the United States to be expeditiously removed without a full hearing). The expedited removal process begins with an inspection by an immigration officer, who determines admissibility to the United States. If the individual indicates either an intention to apply for asylum or any fear of return to their country of origin, the officer must refer the individual for an interview with an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. § 235.3(b)(4). Until the asylum officer makes the credible fear determination, an applicant in expedited removal proceedings is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 C.F.R. § 235.3(b)(4)(ii).

If an asylum officer determines that an applicant satisfies the credible fear standard – meaning there is a “significant possibility” they are eligible for asylum, 8 U.S.C. § 1225(b)(1)(B)(v) – then the applicant is taken out of the expedited removal system altogether and placed into standard removal proceedings under 8

U.S.C. § 1229a. At that time, they may be released on bond, parole, or other mechanism exercised by the Department of Homeland Security.

For several decades until recently, BIA case law recognized that noncitizens who were apprehended after entering without inspection and placed in removal proceedings after passing their credible fear interviews are entitled to bond hearings. Indeed, existing regulations provide for bond hearings except in limited circumstances not applicable here, and those regulations have not been rescinded or modified through a required rulemaking process.

Within the past year, DHS and EOIR have upended decades of statutory interpretation and imposed a policy that not only denies Petitioner and similarly situated individuals the procedural protections they seek but prevents them from obtaining bond hearings at all. Such policy exacerbates the harm those fleeing persecution they have already suffered by needlessly depriving them of their liberty without adequate review. Petitioner seeks this Court's intervention to ensure both that Respondents do not interfere with their right to apply for protection by subjecting them to lengthy detention without prompt bond hearings that comport with the Due Process Clause.

8 U.S.C. § 1225(b)(1)(A) distinguishes individuals who are detained after entering the country, from those who are charged as arriving and seeking

admission at a port of entry. 8 U.S.C. § 1225(b)(1)(A)(iii)(I) provides that the Attorney General “may” place individuals in expedited removal proceedings, but unlike those who are charged as arriving, does not require that they be subject to mandatory detention. Under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), asylum seekers are subject to mandatory detention only while “pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”

Petitioner entered without inspection and was placed in expedited removal proceedings under 8 U.S.C. § 1225(b). Petitioner established a credible fear of persecution or torture, after which such proceedings were vacated meaning Petitioner was then no longer in expedited removal proceedings, and Petitioner’s proceedings were initiated under 8 U.S.C. § 1229a for full proceedings before the immigration court. Under the INA, Petitioner is entitled to seek a custody hearing where the Attorney General may grant bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d); 8 C.F.R. § 1003.19(h)(2).

ARGUMENT

Petitioner was previously in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) when he initially entered the United States in or around June 2019, but those proceedings were vacated pursuant to 8 CFR 208.30 following a positive credible fear determination and issuance of a Notice to Appear in full removal proceedings pursuant to 8 U.S.C. § 1229a. Declaration of Deportation

Officer David Bush at ¶¶ 5-7 & Ex. A, Record of Deportable/Inadmissible Alien, Form I-213 dated December 6, 2025. Evidence of this vacatur and change in proceedings is further established by the fact that Petitioner was then released on grant of a bond by the Immigration Judge. *Id.* at ¶ 10 and Ex. B, Form I-862 Notice to Appear. When ICE officers entered Petitioner's home on December 6, 2025 to take Petitioner into custody after being present in the United States for over five years; while being in active removal proceedings under 8 U.S.C. § 1229a; without having violated the terms and conditions of his previous bond order; and pursuant to issuance of a Form I-200 warrant for arrest issued under 8 U.S.C. § 1226(a), Petitioner was detained under 8 U.S.C. § 1226 and has a due process right to a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

I. The Petition should be granted because Petitioner is Detained Under 8 U.S.C. § 1226, not § 1225

Respondent incorrectly states that Petitioner was detained after entering the United States without inspection on October 2, 2024 and that Petitioner's proceedings were never terminated. According to the Notice to Appear, Petitioner's expedited removal proceedings were vacated following a positive finding of credible fear, after which he was placed into full removal proceedings pursuant to 8 § U.S.C. 1229a.

II. Even if this Court finds that § 1225 initially applied, that authority terminated once expedited removal proceedings were vacated and Petitioner was placed into § 1229a proceedings and granted bond.

Respondent claims that Petitioner is detained pre-final order of removal under 8 U.S.C. § 1225(b)(1)(B)(ii) which states that “[i]f an officer determines at the time of interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum”. Respondent mischaracterizes the language of this section of the INA as requiring detention of a noncitizen throughout the remainder of their proceedings. It does not state that detention shall continue throughout the remainder of proceedings. This subsection does not indicate that the individual shall be detained indefinitely; indeed, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) indicates that detention is mandatory of individuals “pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed”. Thus, subsection (iii)(IV) makes a necessary distinction of mandatory detention for those individuals who are awaiting a final determination as to whether they hold a credible fear of persecution and those who have been found to not have a credible fear of persecution, as opposed to those who have received a positive credible fear determination. In the case at hand, Petitioner was found to have a credible fear, at which point the period of mandatory detention has ended, as evidenced by the vacatur of his expedited removal proceedings, his placement into 1229a removal

proceedings, and his release on bond. If Congress intended for all individuals to be subjected to indefinite mandatory detention, then they would not have needed to include this subsection to such distinctions.

Furthermore, Respondent incorrectly argues that Petitioner's detention authority did not shift from 1225(b)(1)(B)(ii) to 1226. Petitioner's expedited removal proceedings were vacated following a positive credible fear finding. The only authority to release noncitizens from detention upon grant of bond by an immigration judge is contained within 8 U.S.C. § 1226. For Petitioner to have been released on bond, the detention authority must have shifted. The Respondents' own conduct confirms the applicable detention authority. Petitioner was issued a Form I-200 warrant (authorized under § 1226), and prior to that he was previously granted bond by an Immigration Judge (authority that exists only under § 1226). These actions are legally incompatible with the claim that Petitioner was and continues to be detained under § 1225. Respondents cannot simultaneously rely on § 1226 to arrest Petitioner and then § 1225 to deny him a bond hearing.

III. The facts of Petitioner's case are unique such that he is not similarly situated to G.A.G.C. or D.A.A.V.

Respondents contend that the present Petition should be denied because he is similarly situated petitioner "G.A.G.C." in *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL-CHW, 2025 WL 3269947 (M.D. Ga., Nov. 24, 2025). However, the case at

hand is clearly distinguishable from the circumstances surrounding petitioner “G.A.G.C”, whose asylum application was dismissed and who was found to not have a credible fear of persecution, thereby being detained under 8 U.S.C. § 1225(b)(1)(B)(iii). Petitioner here was found to be credible and expedited removal proceedings under 8 U.S.C. § 1225 were vacated pursuant to 8 C.F.R. § 208.30 before being placed into proceedings pursuant to § 1229a, after which an immigration judge granted his release on bond pursuant to § 1226. Petitioner was then living in the United States for five years. There is no allegation that he has violated the terms or conditions of his bond. Respondents lack lawful authority to detain Petitioner under § 1225. Petitioner was not seeking admission at the time of this arrest, and the arrest was executed pursuant to a Form I-200 warrant under § 1226. Therefore his current detention falls under § 1226 and he is entitled to a bond hearing pursuant to § 1226(a)(2)(A). The outcome of this habeas should not be the same as those of petitioner G.A.G.C. The Petition should be granted.

Respondent further argues that Petitioner is not entitled to a bond hearing because “arriving aliens” are not provided with a right to bond hearings under the INA, seemingly equating applicants for admission and arriving aliens. It is important to note that while all arriving aliens are applicants for admission, not all applicants for admission are arriving aliens. *P.R.S. v Streeval* at 2 wherein petitioners are not actively seeking admission at the time of their detention). All

arriving aliens are subject to mandatory detention, but not all applicants for admission are subject to mandatory detention.

Petitioner is not charged as an “arriving alien” on the Notice to Appear. Instead, he is charged under 8 U.S.C. § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I) as a noncitizen present in the United States who has not been admitted or paroled who did not possess valid entry documents. Ex. B, Form I-862 Notice to Appear. This classification is dispositive for custody purposes and places him within the ambit of § 1226. Petitioner’s case is clearly distinguishable from the circumstances surrounding the petitioner 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) who was subject to mandatory detention as she was charged as an arriving alien.

IV. Due Process Requires that Petitioner be afforded a Bond Hearing

Petitioner agrees with Respondent: his due process rights are indeed contained within the procedures provided by statute; but Respondent’s answer to their own question of whether section 1225(b) permits bond hearings for noncitizens in Petitioner’s position heavily relies on *Jennings v. Rodriguez*, 583 U.S. 821 (2018). That reliance is misplaced. *Jennings* addressed whether certain detention statutes require periodic bond hearings as a matter of statutory interpretation. It did not hold that § 1225 mandates indefinite detention in all

circumstances, nor did it address a case where expedited removal proceedings were vacated, the noncitizen was placed in § 1229a proceedings, and an Immigration Judge had already exercised bond authority under § 1226. Accordingly, *Jennings* does not resolve the question presented here.

To the extent Respondents rely on dicta in *Jennings* suggesting mandatory detention, that language does not address the posture presented here. Such language is not tantamount to a holding or decision of the Supreme Court to find that detention under 1225(a) or (b) results in indefinite mandatory detention. As the respondents in *Jennings* argued, and as Petitioner here argues, Congress intentionally only labeled one subsection of 1225 (subsection (b)(1)(B)(iii)(IV)) as “mandatory detention”, which states that “any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed”. A plain reading of this section of the statute indicates that the length of mandatory detention is limited to the credible fear determination; and, if a negative finding is made, throughout issuance of an expedited removal order. If Congress intended for individuals with positive credible fear findings to be held throughout proceedings, they would not have needed to make the distinction found in this subsection or label it “mandatory detention”. Respondents’ reliance on Justice Alito’s interpretation of that section would permit the Government to grant bond, allow

years of compliance, and then unilaterally reclassify detention authority to eliminate bond review.

Section 1225(b)(2) states that an “applicant for admission” not covered by § 1225(b)(1) “shall be detained for *a* proceeding” under section 1229a of the INA (emphasis added). This provision does not establish mandatory or indefinite detention throughout the entirety of Respondent’s removal proceedings under section 1229a (and there is no language indicating that they are subject to mandatory detention). It simply requires initial detention pending removal proceedings but does not preclude review under INA § 236(a). In fact, there is no express language in § 235(b)(2) equal to the “mandatory detention” provisions of § 1225(b)(1)(B)(iv). As such, if it is found that Petitioner is subject to detention pursuant to 8 U.S.C. § 1225(b)(2), Petitioner maintains that such section is complementary with § 1226. They do not conflict with each other nor are they exclusive of each other.

Section 1226 governs apprehension and detention of aliens in the interior, especially those in § 240 proceedings, and permits release on bond unless subject to mandatory detention under 8 U.S.C. § 1226(c) – such is the case for Petitioner who was initially detained pursuant to 1225(b) but whose expedited removal proceedings were vacated and who was then placed into full removal proceedings under 8 U.S.C. § 1229a, provided a bond hearing, and released on bond pursuant to

section 1226. Petitioner lived in the United States for over five years in full compliance with all conditions of release before being detained again within the interior and was arrested following issuance of a warrant using Form I-200 pursuant to § 1226. Petitioner maintains that he is entitled to due process rights as provided by statute and that he should be provided with a bond hearing; or released immediately in the alternative, since his current arrest was made without the appropriate authority due to the fact that he has not been accused of having violated the terms or conditions of his previous bond granted by the Immigration Judge on October 25, 2019. Petitioner was previously found not to pose a danger or flight risk by an Immigration Judge, released on bond, and compliant for over five years. Re-detention without any individualized custody determination deprives Petitioner of liberty without due process of law. Nothing in the INA authorizes the Government to nullify an Immigration Judge's prior custody determination absent changed circumstances. At minimum, due process requires an individualized determination of flight risk and danger to the community where detention is not expressly mandated by statute.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order that: (1) Respondents immediately release Petitioner from custody; (2) provide Petitioner with an

individualized bond hearing before an Immigration Judge within seven days; or (3) release Petitioner within seven days if a bond hearing is not provided.

Respectfully submitted this day, March 28, 2026.

The Kennedy Immigration Firm, LLC

/s/Nikita B. Modi

Nikita B. Modi, Esq.

Attorney for Petitioner

GA Bar #440389

Address: 1899 Powers Ferry Road, Suite 445

Atlanta, GA 30339

Tel: (770) 303-8212

Email: nikita@kennedyimmigrationfirm.com