

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

DARWIN GUTIERREZ PORTILLO,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-00655-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On April 15, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. On April 23, 2026, the Court ordered Respondent to provide Petitioner with a bond hearing to determine if Petitioner may be released on bond under 8 U.S.C. § 1226(a)(2) and the applicable regulations based on the Court’s previous decisions regarding *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (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. 5. The Court also provided that if Respondents did not contend that the Court’s prior rulings in *J.A.M.* or *P.R.S.* applied here, then Respondents should file an appropriate motion seeking relief from this order demonstrating why the Court’s prior rulings do not control the results in this case. ECF No. 5. Here, Respondents file such a motion stating that the Petition should be dismissed.

BACKGROUND

Petitioner is a native of Honduras who is mandatorily detained pending his voluntary departure pursuant to Immigration and Nationality Act section 240B(a) under safeguards as imposed by the Immigration Judge as permitted by 8 C.F.R. § 1240.26(c)(3). Waters Decl. ¶¶ 4,

10.

Petitioner entered without inspection on March 8, 2024, as an unaccompanied minor. Waters Decl. ¶ 4. Upon his entry, he was encountered by United States Border Patrol (“USBP”) and processed accordingly. *Id.* On March 28, 2024, he was released to the care and custody of his sister. *Id.* ¶ 5.

On March 10, 2026, Petitioner was arrested by the Caldwell County, North Carolina Sheriff’s Office for resisting a public officer and underage consumption of alcohol. Waters Decl. ¶ 6. On or about March 12, 2026, Petitioner entered Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) custody. *Id.* On March 12, 2026, ICE/ERO issued and served Petitioner a Notice to Appear (“NTA”) charging him with inadmissibility pursuant to INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). *Id.* ¶ 7 & Ex. A.

On April 13, 2026, the Immigration Judge (“IJ”) held a bond redetermination hearing at Petitioner’s request. Waters Decl. ¶ 8. The IJ denied bond, finding that it lacked jurisdiction to issue a bond. *Id.* & Ex. B. On April 21, 2026, Petitioner appeared, pro se, for a master calendar hearing. *Id.* ¶ 9. Petitioner requested voluntary departure. *Id.* The Department of Homeland Security did not object. *Id.* The IJ granted the request but indicated that it would be under safeguards. *Id.* & Ex. C. Petitioner was granted until May 21, 2026, to depart the United States. *Id.* Petitioner is detained pending his voluntary departure pursuant to INA § 240B(a) under safeguards as imposed by the IJ as permitted by 8 C.F.R. § 1240.26(c)(3).

ARGUMENT

Petitioner raised just one claim in his Petition. Petitioner claimed that the Court’s decisions in *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (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) control

and that he is entitled to a bond hearing while his removal proceedings were pending. Pet. at 1. Petitioner is correct that the Court's decisions in *J.A.M.* and *P.R.S.* would have controlled his case. However, Petitioner's status has changed since the filing of his Petition on April 15, 2026. At a master calendar hearing on April 21, 2026, Petitioner requested voluntary departure. Waters Decl. ¶ 9. The Immigration Judge granted Petitioner's request but indicated that it would be under safeguards as permitted by 8 C.F.R. § 1240.26(c)(3). *Id.*

Voluntary departure is permitted pursuant to INA § 240B(a) (8 U.S.C. § 1229c(a)). Pursuant to 8 C.F.R. § 1240.26(c)(3),

The immigration judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States. The immigration judge shall advise the alien of the conditions set forth in this paragraph (c)(3)(i)-(iii). If the immigration judge imposes conditions beyond those specifically enumerated below, the immigration judge shall advise the alien of such conditions before granting voluntary departure. Upon the conditions being set forth, the alien shall be provided the opportunity to accept the grant of voluntary departure or decline voluntary departure if he or she is unwilling to accept the amount of the bond or the other conditions.

8 C.F.R. § 1240.26(c)(3). Here, as part of the conditions for voluntary departure, the immigration judge stated that it would be under safeguards—meaning Petitioner would remain in detention pending his departure. *See* Waters Decl. ¶ 9 & Ex. C. At the end of the hearing, Petitioner's request for voluntary departure was granted giving him until May 21, 2026, to depart from the United States. *Id.* Petitioner has elected to pursue voluntary departure with the conditions of under safeguards. As a result, the Court's decisions in *J.A.M.* and *P.R.S.* no longer control Petitioner and Petitioner's detention is a condition upon his grant of voluntary departure.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 29th day of April, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Darwin Gutierrez Portillo
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 29th day of April, 2026.

BY: s/ Travis D. Lynes
TRAVIS D. LYNES
Assistant United States Attorney