

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

DMITRII TURKIN,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-cv-776-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On May 5, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. On May 6, 2026, the Court issued an Order directing Respondent to file a comprehensive response to the Petition within twenty-one (21) days. ECF No. 3. Because Petitioner is an arriving alien detained pre-final-order of removal, his claims under *Zadvydas* should be dismissed. Further, he is not entitled to a bond hearing under *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025) or *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), and the Eleventh Circuit’s ruling in *Hernandez Alvarez v. Warden*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) does not change that outcome.

BACKGROUND

Petitioner is a native and citizen of Russia. Declaration of Deportation Officer Carlos

¹ In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents. “[T]he default rule [28 U.S.C. § 2241 petitions] 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.

Santiago (“Santiago Decl.”) ¶ 4. On December 28, 2023, United States Customs and Border Patrol (“CBP”) encountered Petitioner at the Brownsville, Texas Port of Entry after he applied for admission. *Id.* ¶ 4 & Ex. A. CBP issued Petitioner a Notice to Appear (“NTA”) charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 4 & Ex. B. CBP subsequently released Petitioner on parole. *Id.* ¶ 4. On January 16, 2024, Petitioner filed a motion to change venue from the Sacramento Immigration Court to the Charlotte Immigration Court, which was granted on January 19, 2024. *Id.* ¶ 5 & Ex. C.

On December 27, 2024, Petitioner filed an application for relief from removal with the Immigration Court. *Id.* ¶ 6. On April 3, 2025, ICE/ERO encountered Petitioner at the Wake County Detention Center in Raleigh, North Carolina, after local law enforcement arrested him and charged him with assault on a female and misdemeanor domestic violence. *Id.* ¶ 7 & Ex. D. On April 4, 2025, ICE/ERO took Petitioner into custody and detained him at the Alamance County Detention Facility. *Id.* ¶ 8. On April 7, 2025, Petitioner was transferred from the Alamance County Detention Facility to the Stewart Detention Center (“SDC”) in Lumpkin, Georgia. *Id.* ¶ 9.

On April 22, 2025, DHS filed a motion to change venue to the Stewart Immigration Court, which was granted on May 5, 2025. *Id.* ¶ 10 & Ex. E. On May 19, 2025, Petitioner appeared, with counsel, for a master calendar hearing. Petitioner admitted the allegations in the NTA and conceded removability. The Immigration Judge (“IJ”) sustained the charge of removability and designated Russia as the country of removal. The IJ adjourned the hearing to July 16, 2025, to allow Petitioner to file any and all applications for relief. *Id.* ¶ 11 & Ex. F.

Petitioner submitted updated applications for relief on June 1, 2025, and September 4, 2025. *Id.* ¶ 12. On June 11, 2025, Petitioner appeared for a bond redetermination hearing, which

the IJ denied upon concluding that the Court lacked jurisdiction because Petitioner was an arriving alien. *Id.* ¶ 13 & Ex. G. On July 16, 2025, Petitioner appeared, with counsel, for a master calendar hearing, and the IJ set the matter for a merits hearing on September 19, 2025. *Id.* ¶ 14 & Ex. H.

On September 19, 2025, Petitioner appeared for the scheduled merits hearing with counsel. Due to time constraints, the IJ continued the hearing, which concluded on October 21, 2025. Following the hearing, the IJ denied Petitioner's applications for relief and ordered him removed to Russia. *Id.* ¶ 15. Petitioner appealed the IJ's decision to the Board of Immigration Appeals ("Board") on November 19, 2025. *Id.* ¶ 16 & Ex. I.

On April 1, 2026, the Board issued a briefing schedule setting April 22, 2026 as the filing deadline for Petitioner's brief. Petitioner sought and received an extension to May 13, 2026. *Id.* ¶ 17 & Exs. J, K. Petitioner submitted his brief on May 25, 2026—after the extended deadline—along with a Motion to Accept an Untimely Brief. *Id.* ¶ 18. As of May 27, 2026, Petitioner's appeal remains pending. *Id.* ¶ 19.

Petitioner is currently an arriving alien detained by ICE/ERO at the Stewart Detention Center pursuant to 8 U.S.C. § 1225(b)(2); to wit, 8 C.F.R. § 235.3(c)(1). *Id.* ¶ 20.

ARGUMENT

Petitioner raises three claims for relief: (1) that his detention violates due process because he has not received a bond hearing; (2) that he has been detained longer than a reasonable period in violation of 8 U.S.C. § 1231(a)(6); and (3) that his continued detention has worsened his physical and mental health. Pet. 6–7, ECF No. 1. As to his second claim, Petitioner appears to rely on *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), asserting that he has been detained longer than six months. But *Zadvydas* applies only to individuals detained after a final order of removal and does not apply to Petitioner, whose appeal before the Board remains pending. His remaining

claims fail for two reasons: first, his detention is mandatory under 8 U.S.C. § 1225(b)(2)(A), and he is not entitled to release or to a bond hearing; and second, immigration detainees cannot use habeas to challenge conditions of confinement or seek release as a remedy for alleged medical care deficiencies.²

Respondent respectfully shows the Court that Petitioner is an arriving alien detained pursuant to 8 U.S.C. § 1225(b)(2)(A), and is not in the same factual or legal situation as the petitioners in *J.A.M.* and *P.R.S.* The issue in those cases centered on statutory interpretation regarding 8 U.S.C. §§ 1225(b)(2) and 1226(a), and whether noncitizens present in the United States without admission—but who were not arrested at the border—may be subject to mandatory detention without a bond hearing. *J.A.M.*, 2025 WL 3050094, at 2–5. Petitioner’s case does not pose this issue because he is an “arriving alien,” a specific category of applicant for admission defined as one “coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1.2; 8 C.F.R. § 1001.1(q). Under 8 U.S.C. § 1225(a)(1), anyone who “arrives in the United States” is deemed an applicant for admission, and Petitioner triggered that status when CBP encountered him at the Brownsville Port of Entry. Santiago Decl. ¶ 4.

Unlike the petitioners in *J.A.M.* and *P.R.S.*, who were apprehended in the interior, Petitioner presented himself for inspection at a port of entry. *Id.* ¶ 4. Because he was not “clearly and beyond a doubt entitled to be admitted,” he was issued an NTA charging inadmissibility under

² Petitioner’s medical-care allegations challenge the conditions of his confinement and are not cognizable in habeas under 28 U.S.C. § 2241. Habeas addresses only the legality or duration of custody, not conditions. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). The Eleventh Circuit applies this rule to immigration detainees, holding that conditions-of-confinement claims—including inadequate medical care—cannot proceed under § 2241. *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015); see also *Benavides v. Gartland*, 2020 WL 3839938, at 4 (S.D. Ga. July 8, 2020); *Louis v. Martin*, 2020 WL 3490179, at 7 (M.D. Fla. June 26, 2020); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348–49 (M.D. Ga. 2020); *Archilla v. Witte*, 2020 WL 2513648, at 12 (N.D. Ala. May 15, 2020); *Matos v. Lopez Vega*, 614 F. Supp. 3d 1158, 1167–68 (S.D. Fla. 2020). Moreover, release is not an available remedy for such claims. *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990); *Vaz*, 634 F. App’x at 781. Accordingly, this claim must be dismissed.

8 U.S.C. § 1182(a)(7)(A)(i)(I) and paroled pending proceedings. *Id.* ¶ 4 & Ex. B. He is therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which the Supreme Court has held “mandates detention” during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018).

This statutory framework is reinforced by Eleventh Circuit precedent. In *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir. May 6, 2026), the court reaffirmed that 8 U.S.C. § 1225 governs arriving aliens at the border, while 8 U.S.C. § 1226 governs interior arrests. Because Petitioner is an arriving alien, the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A) apply fully.

Parole did not change Petitioner’s immigration status. Under 8 U.S.C. § 1182(d)(5)(A), parole “shall not be regarded as an admission.” As the Eleventh Circuit held, arriving aliens remain “at the threshold” and “legally considered detained at the border.” *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985). Petitioner’s subsequent ICE detention following his North Carolina arrest did not alter this status. Santiago Decl. ¶¶ 7–8. Under § 1182(d)(5)(A), his case must “continue to be dealt with in the same manner as that of any other applicant for admission.” *Jean v. Nelson*, 727 F.2d 957, 970 (11th Cir. 1984).

Because Petitioner is an arriving alien, his due process rights are limited to those procedures authorized by Congress. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). As the Supreme Court has stated, “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Congress expressly prohibits IJs from redetermining the custody of arriving aliens. 8 C.F.R. § 1003.19(h)(2)(i)(B). Thus, Petitioner cannot establish a due process violation based on the absence of a bond hearing.

CONCLUSION

For the reasons stated herein, Petitioner is an arriving alien detained pursuant to 8 U.S.C. § 1225(b)(2)(A), and because his detention complies fully with statutory authority and binding precedent, the Petition should be dismissed.

Respectfully submitted this 27th day of May, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Response 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:

DMITRII TURKIN
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 27th day of May, 2026.

BY: /s/ Michael P. Morrill
MICHAEL P. MORRILL
Assistant United States Attorney