

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

RUFAT TUKHVATULLIN,

Petitioner,

v.

**WARDEN, STEWART
DETENTION CENTER,**

Respondent.

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**Case No. 4:26-cv-796-CDL-ALS
28 U.S.C. § 2241**

MOTION TO DISMISS

On May 7, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. On May 8, 2026, the Court issued an Order directing Respondent to provide Petitioner with a bond hearing within seven days or show cause why the Court’s rulings 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) do not control the result in this case. ECF No. 2.

BACKGROUND

Petitioner is a native and citizen of Russia. Declaration of Supervisory Detention and Deportation Officer Tartanger L. Stephens (“Stephens Decl.”) ¶ 4. On June 2, 2022, United States Customs and Border Patrol (“CBP”) encountered Petitioner at the Otay Mesa Port of Entry after he applied for admission. *Id.* ¶ 4. CBP issued Petitioner a Notice to Appear (“NTA”) that charged him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 5; Ex. A. CBP subsequently released Petitioner on parole. Stephens Decl. ¶ 5; Ex. B. The Immigration Court dismissed the NTA for failure to prosecute. Stephens Decl. ¶ 5. On December 16, 2022, Petitioner

filed an application for relief from removal with the United States Citizenship and Immigration Services (“USCIS”). *Id.* ¶ 6.

On April 13, 2026, the Cobb County Sheriff’s Office arrested Petitioner for Hit and Run in Georgia. *Id.* ¶ 7; Ex. A. On April 15, 2026, ICE/ERO encountered Petitioner at the Cobb County Adult Detention Center in Marietta, Georgia. Stephens Decl. ¶ 8. ICE/ERO issued Petitioner an NTA charging him with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 8; Ex. C. On April 16, 2026, Petitioner was transferred to the Stewart Detention Center (“SDC”) in Lumpkin, Georgia. Stephens Decl. ¶ 9. On May 1, 2026, Petitioner appeared for his initial master hearing. *Id.* ¶ 10. At Petitioner’s request, the hearing was rescheduled for May 19, 2026. *Id.* ¶ 10. Petitioner is scheduled for a custody redetermination on May 13, 2026. *Id.* ¶ 11.

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). Stephens Decl. ¶ 12.

ARGUMENT

Respondent respectfully shows the Court that Petitioner 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 a question of 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—can 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 particular type 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 this

status by physically applying for admission when CBP encountered him at the Otay Mesa Port of Entry on June 2, 2022. Stephens Decl. ¶ 4.

The rationale of *J.A.M.* and *P.R.S.* does not control the outcome here because those decisions dealt solely with noncitizens whose status as “applicants for admission” was based on their unlawful presence in the interior after being arrested without inspection. In contrast, Petitioner was immediately inspected by an examining immigration officer at a port of entry. *Id.* ¶ 4. Because he was not “clearly and beyond a doubt entitled to be admitted,” he was paroled pending removal proceedings and subsequently became subject to the mandatory detention framework of 8 U.S.C. § 1225(b)(2)(A). For this specific class of noncitizen, the Supreme Court has held that the statute “mandates detention” throughout the completion of proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). Furthermore, in the language of the *J.A.M.* decision, Petitioner is an “applicant for admission” who is “seeking admission” based upon his arrival at the border and application for admission to the United States at that time, and is therefore properly subject to the mandatory detention framework of 8 U.S.C. § 1225(b)(2)(A).

This statutory framework remains completely undisturbed by Eleventh Circuit precedent, which consistently holds that paroled arriving aliens are legally detained at the threshold of the border. Indeed, the Eleventh Circuit’s recent decision in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, No. 25-14065 (11th Cir. May 6, 2026), explicitly solidified this distinction, clarifying that 8 U.S.C. § 1225 governs arriving aliens who seek entry at the border while 8 U.S.C. § 1226 governs noncitizens who are unlawfully present in the interior. Because Petitioner is an arriving alien who presented himself at a port of entry rather than an unadmitted resident apprehended in the interior, the mandatory detention mandate of 8 U.S.C. § 1225(b)(2)(A) applies to him with full force.

While Petitioner was temporarily released on parole, this did not alter his immigration status. 8 U.S.C. § 1182(d)(5)(A) provides that parole “shall not be regarded as an admission of the alien.” The Eleventh Circuit has long recognized that arriving aliens remain “at the threshold” and are “legally considered detained at the border,” even if physically present in the country. *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985). Once Petitioner was taken into ICE custody following his April 13, 2026, arrest for Hit and Run, his status remained that of any other applicant for admission stopped at the border while “seeking admission,” and his case must “continue to be dealt with in the same manner as that of any other applicant for admission.” 8 U.S.C. § 1182(d)(5)(A); see also *Jean v. Nelson*, 727 F.2d 957, 970 (11th Cir. 1984).

Because Petitioner is an arriving alien, his due process rights are limited to the procedures authorized by Congress. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). As the Supreme Court and Eleventh Circuit have consistently held, “[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 (11th Cir. 1953). Under current regulations, an Immigration Judge is expressly prohibited from redetermining custody conditions for arriving aliens in removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). Since the INA statutes mandate detention for arriving aliens and do not permit their release on bond, Petitioner cannot establish that the lack of a bond hearing violates due process.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. Pursuant to the Court’s Order (ECF No. 2), the determination that Petitioner is entitled to a bond hearing should be stayed until resolution of this Motion.

Respectfully submitted this 12th day of May, 2026.

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