

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

RUFAT TUKHVATULLIN,	)	
	)	
Petitioner,	)	Case No. 4:26-cv-796-CDL-ALS
	)	
v.	)	28 U.S.C. § 2241
	)	
WARDEN, STEWART	)	
DETENTION CENTER,	)	
	)	
Respondent.	)	

**PETITIONER'S RESPONSE IN OPPOSITION
TO RESPONDENT'S MOTION TO DISMISS**

Respondent's Motion to Dismiss (ECF No. 4) asks this Court to deny Petitioner a bond hearing on the theory that 8 U.S.C. § 1225(b)(2)(A) mandates the detention of every paroled noncitizen, anywhere in the United States, for the entire duration of removal proceedings. Two judges of this district rejected that theory nine days ago. *I.A.A.M. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:26-cv-00068-WLS-CHW (M.D. Ga. May 13, 2026) (ECF No. 9); *B.A.M.A. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:26-cv-00095-WLS-ALS (M.D. Ga. May 13, 2026) (ECF No. 9). In each case the petitioner had been inspected and paroled at a port of entry, just as Petitioner was. In each, the court ordered a bond hearing under § 1226(a).

The Eleventh Circuit's decision two weeks before those orders compels the same result. *Hernandez Alvarez v. Warden*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). The court held that § 1225(b)(2)(A) reaches only an applicant for admission who is actively “seeking admission,” meaning one pursuing “lawful entry . . . after inspection and authorization by an immigration officer.” *Id.* at *7 (quoting 8 U.S.C. § 1101(a)(13)(A)). Petitioner entered nearly four years ago. He was inspected. He was paroled. He has lived on parole ever since. He is not at the

border, and he is not pursuing entry. His detention is governed by § 1226(a) and is subject to the bond procedures that section requires.

This Court should deny the motion and order a bond hearing within seven days.

I.

**THE STANDING ORDER AND THIS COURT'S OWN PRECEDENT
REQUIRE A BOND HEARING**

This Court has issued at least six rulings ordering bond hearings for noncitizens at Stewart Detention Center whose detention the government attributes to § 1225(b)(2). *See J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025); *Canas Forero v. Sterling*, No. 4:25-cv-00359-CDL-AGH, ECF No. 6 (M.D. Ga. Nov. 26, 2025); *see also* Standing Order No. 2026-01 (M.D. Ga. Jan. 29, 2026) (collecting cases). After repeated litigation produced the same result, this Court characterized the government's continued refusal to provide bond hearings as an “administrative judicial emergency” and authorized magistrate judges to direct bond hearings on preliminary review. Standing Order No. 2026-01, at 2. The order on this docket (ECF No. 2) issued under that authority.

The holding in *J.A.M.* and *P.R.S.* is straightforward. For noncitizens whose detention the government attributes to inadmissibility, “an immigration officer or immigration judge has the discretion” under § 1226(a) to grant release on bond unless a statutory exception applies under § 1226(c). *J.A.M.*, 2025 WL 3050094, at *3. Mandatory detention under § 1225(b)(2) “is not authorized.” *P.R.S.*, 2025 WL 3269947, at *2.

Respondent concedes that the Court's prior rulings would control if Petitioner had entered without inspection. (Mot. 2-3.) Respondent argues that inspection at a port of entry years ago

carves out an exception. That argument finds no support in the statute, in *Hernandez Alvarez*, or in the two decisions of this district that addressed it nine days ago.

II.

I.A.A.M. AND B.A.M.A. RESOLVE THE PRECISE QUESTION PRESENTED

On May 13, 2026, the Honorable W. Louis Sands of this district entered orders in two § 2241 petitions raising the question now before this Court. In each, the petitioner had been inspected and paroled at the border, then arrested years later in the interior. In each, the government argued, as it does here, that paroled arriving aliens are subject to mandatory detention under § 1225(b)(2)(A). In each, the court rejected that argument and ordered a bond hearing under § 1226(a).

The *I.A.A.M.* order frames the issue plainly:

In neither *J.A.M.* nor *P.R.S.* did the court order a bond hearing for a Petitioner who was inspected by an examining immigration officer upon entry. . . . Here, Petitioner was inspected and paroled upon entry to the United States. Therefore, the Court must decide whether Petitioner's initial inspection changes the outcome. It does not.

I.A.A.M., No. 7:26-cv-00068, ECF No. 9, at 2 (citation omitted).

Judge Sands explained that initial inspection does not establish “seeking admission.” A noncitizen seeks admission only when “actively pursuing the rights and privileges of lawful entry.” *Id.* at 2-3 (citing *Hernandez Alvarez*, 2026 WL 1243395, at *7-8). A noncitizen arrested years later in the interior is doing no such thing. *Id.* The court therefore ordered a bond hearing under § 1226(a)(2), placing the burden on the government to prove by clear and convincing evidence that the petitioner is a danger to the community or a flight risk. *Id.* at 3 (citing *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020)).

B.A.M.A. reached the same conclusion on the same reasoning the same day. *B.A.M.A.*, No. 7:26-cv-00095, ECF No. 9, at 2-3.

The facts of those cases match Petitioner's at every step that matters:

Inspection at a port of entry. *I.A.A.M.* was inspected. *B.A.M.A.* was inspected. Petitioner was inspected at Otay Mesa.

Parole. *I.A.A.M.* was paroled. *B.A.M.A.* was paroled. Petitioner was paroled.

Years of residence on parole.

Arrest in the interior. *I.A.A.M.* was arrested on a North Carolina freeway. *B.A.M.A.* was arrested in a Charlotte parking lot. Petitioner was arrested at the Cobb County jail in Marietta, Georgia, after a property-damage traffic stop.

Respondent identifies no factual or legal feature that distinguishes Petitioner from the petitioners whose cases this district resolved last week.

III.

***HERNANDEZ ALVAREZ* FORECLOSES RESPONDENT'S**

READING OF § 1225(b)(2)(A)

Respondent invokes *Hernandez Alvarez* (Mot. 3) but mis-states the holding. The Eleventh Circuit held that § 1225(b)(2)(A) reaches only an applicant for admission who is “seeking admission.” *Hernandez Alvarez*, 2026 WL 1243395, at *6-7. The court anchored that phrase in the INA's definition of “admission,” which means “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A); *Hernandez Alvarez*, 2026 WL 1243395, at *7.

“Seeking” is a present participle. It denotes active, ongoing pursuit. *Hernandez Alvarez*, 2026 WL 1243395, at *7-8. The Eleventh Circuit held that the *Hernandez Alvarez* and Cerro Perez petitioners, both arrested at traffic stops in Florida, “were not applying for entry in any literal sense when they were detained following a traffic stop, nor were they taking any cognizable step to obtain the rights and privileges of lawful entry.” *Id.* at *8. Section 1226, not § 1225, governed their detention. *Id.* at *14.

That reasoning controls here. Petitioner presented himself for inspection at Otay Mesa on June 2, 2022. (Stephens Decl. ¶ 4.) DHS paroled him. (*Id.* ¶ 5.) He has lived on parole ever since, holding a federal motor carrier authorization, working as a long-haul truck driver, paying taxes, attending hearings, and pursuing a timely asylum application. (Pet. ¶¶ 14-16, 24-25, Exs. D, E.) When ICE officers picked him up at the Cobb County jail on April 15, 2026, he was not pursuing entry. He was waiting to post a state-court bond already set at \$5,000. (Pet. Ex. B.)

Respondent quotes “applicant for admission” from § 1225(a)(1) and treats the label as if it answered the statutory question. (Mot. 2-3.) The Eleventh Circuit closed that door. The label “applicant for admission” is a defined term that reaches every noncitizen present without admission. The mandatory-detention rule of § 1225(b)(2)(A) is narrower. It applies only when an applicant for admission is also “seeking admission.” *Hernandez Alvarez*, 2026 WL 1243395, at *6-7. Respondent collapses the two phrases. The Eleventh Circuit refused to.

IV.

PAROLE TERMINATION DOES NOT TRIGGER

§ 1225 MANDATORY DETENTION

Respondent suggests that because Petitioner's parole has ended, he reverts to the status of an arriving alien subject to mandatory detention under § 1225. (Mot. 3-4.) The text of the

implementing regulation says the opposite. When parole terminates, the noncitizen is “restored to the status that [he] had at the time of parole.” 8 C.F.R. § 212.5(e)(2)(i). Petitioner's status at the time of parole was paroled, not detained at the border. Restoration to that status places him within § 1226, not § 1225.

District courts have rejected the argument Respondent advances here. *See Lopez Florentino v. Decker*, No. 26-cv-01108, ECF No. 9, at 4 (D.N.J. Mar. 4, 2026) (“[I]t does not necessarily follow that all those paroled under [8 U.S.C. § 1182(d)(5)(A)] were detained under § 1225 in the first instance.” (quoting *Chanaguano Caiza v. Scott*, No. 1:25-cv-00500, 2025 WL 3013081, at *6 (D. Me. Oct. 28, 2025))); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 483-84 (S.D.N.Y. 2025) (rejecting the government's attempt to recharacterize a § 1226 detention as a § 1225 detention through “post hoc justifications”).

The record confirms that the government itself treated Petitioner's 2022 release as a § 1226 matter when it dismissed the original NTA for failure to prosecute and allowed him to file an asylum application with USCIS. (Stephens Decl. ¶¶ 5-6.) Respondent cannot now relabel that history to evade Hernandez Alvarez.

V.

RESPONDENT'S REMAINING AUTHORITIES DO NOT CONTROL

Respondent relies on *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), *Garcia-Mir v. Smith*, 766 F.2d 1478 (11th Cir. 1985), and *Jean v. Nelson*, 727 F.2d 957 (11th Cir. 1984) (en banc). None controls.

Jennings interpreted § 1225 in the context of arriving aliens stopped at the border and held that the statute does not by its text require periodic bond hearings during prolonged detention. 583

U.S. at 297. It expressly declined to reach the constitutional question. *Id.* at 313-14. *Jennings* did not address whether a paroled noncitizen arrested in the interior years after entry is “seeking admission.” That question *Hernandez Alvarez* answered. The Eleventh Circuit's interpretation of a statute that governs this case, decided sixteen days ago, governs here.

Mezei addressed a noncitizen physically excluded at the border with no plausible claim to interior status. 345 U.S. at 208-10, 213-14. The “threshold of initial entry” fiction the *Mezei* Court invoked rested on the petitioner's continuous detention at Ellis Island. *Id.* *Mezei* did not authorize indefinite detention without a hearing for a paroled noncitizen four years deep in the United States. Respondent's brief mis-cites *Mezei* as an Eleventh Circuit decision. (Mot. 4.) *Mezei* is a Supreme Court case.

Thuraissigiam involved expedited removal under § 1225(b)(1) of a noncitizen apprehended twenty-five yards from the border. 591 U.S. at 108-11. The Court addressed a Suspension Clause challenge to a credible-fear determination, not the detention of a paroled asylum seeker arrested in the interior years later.

Garcia-Mir and *Jean* addressed the Mariel Cubans, a class of arriving noncitizens detained at the border pending exclusion proceedings. *Garcia-Mir*, 766 F.2d at 1483-84; *Jean*, 727 F.2d at 962-63. Read in light of *Hernandez Alvarez*, those cases address the procedural rights of noncitizens still seeking lawful entry. They do not extend mandatory detention to noncitizens long since paroled into the country.

The regulation that strips immigration judges of jurisdiction over custody redetermination for arriving aliens (Mot. 4 (citing 8 C.F.R. § 1003.19(h)(2)(i)(B))) does not answer the statutory question. If § 1226(a) governs Petitioner's detention, the immigration judge has jurisdiction under § 1226(a)(2) and 8 C.F.R. § 1236.1(d) to hold a bond hearing.

VI.

THE INDIVIDUAL EQUITIES WARRANT PROMPT RELIEF

Petitioner is fifty years old. An asylum officer found that he had demonstrated a credible fear of persecution in Russia. (Pet. ¶¶ 13, 15, Ex. F.) He has lived in the United States on parole for nearly four years. He has appeared at every immigration appointment. He timely filed his Form I-589 application for asylum and withholding of removal. (Pet. ¶ 15, Ex. E.)

The traffic incident that triggered re-detention involved minor property damage to two vehicle mirrors and a bumper. (Pet. ¶ 18, Ex. A.) No occupant reported any injury, and no medical services were dispatched. (Pet. ¶¶ 19-20.) The Magistrate Court of Cobb County set bond at \$5,000 with no conditions associated with dangerousness. (Pet. ¶ 22, Ex. B.) Petitioner's criminal defense counsel has concluded that the hit-and-run charge was improperly applied and that, properly charged, he would have received two traffic citations and would not have been arrested. (Pet. ¶ 23, Ex. C.) The offense triggers neither mandatory detention under 8 U.S.C. § 1226(c) nor removability under 8 U.S.C. § 1227(a)(2)(A)(i)(I).

Petitioner's employer, a federally regulated motor carrier headquartered in Pennsylvania, attests in writing that Petitioner poses no risk to public safety, that he has consistently demonstrated professionalism and reliability, and that he is essential to ongoing operations. (Pet. Ex. D.) A neutral decisionmaker considering this record will have no difficulty addressing the questions a bond hearing exists to answer.

CONCLUSION

The Court should deny Respondent's Motion to Dismiss and order Respondent to provide Petitioner a bond hearing within seven days, at which the government bears the burden of proving by clear and convincing evidence that continued detention is necessary to prevent flight or danger

to the community. This Court's prior orders, Standing Order No. 2026-01, the two decisions of this district issued on May 13, 2026, and the Eleventh Circuit's decision in *Hernandez Alvarez* all compel that result.

Respectfully submitted this 22nd day of May, 2026.

/s/ Brian Kholodovsky
Brian Kholodovsky
Illinois Bar No. 6300193
Application for Admission Pro Hac
Vice Forthcoming
BIRG LAW
1 Northfield Plaza, Suite 502
Northfield, IL 60093
(847) 579-9989
brian@birg.law

/s/ Rachel Effron Sharma
Rachel Effron Sharma
Georgia Bar No. 100180
Local Counsel for Petitioner
DreamPath Law, LLC
5425 Peachtree Parkway
Norcross, GA 30092
(470) 273-3444
rachel@dreampathlaw.com

CERTIFICATE OF SERVICE

I certify that on May 22, 2026, I electronically filed the foregoing using the Court's CM/ECF system, which will provide notice of electronic filing to all counsel of record, including:

Michael P. Morrill
Assistant United States Attorney
Middle District of Georgia
P.O. Box 2568
Columbus, Georgia 31902
michael.morrill@usdoj.gov

/s/ Rachel Sharma
Rachel Sharma