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

JOSE MANUEL LOBELLE JUSTO,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:26 cv 1092 CDL-CHW**
v.	:	
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On August 11, 2026, Petitioner filed his Petition for Writ of Habeas Corpus ("Petition"). Dkt. No. 1. On August 11, 2026, in light of the Court's rulings in *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), the Court ordered Respondents to provide Petitioner a bond hearing within seven days. Dkt. No. 6. The Court's order further states that if "Respondents in good faith contend that the Court's prior rulings in *J.A.M.* and *P.R.S.* do not apply here, Respondents should file an appropriate motion seeking relief from this order and demonstrating why the Court's prior rulings in *J.A.M.* and *P.R.S.* do not control the result in this case. If such a good faith motion is filed, then this order shall be stayed pending the resolution of that motion." Dkt. No. 6. Respondent now files this good faith motion to dismiss the Petition, showing that *J.A.M.* and *P.R.S.* do not control the result in this case and that the Court should therefore dismiss the Petition.

BACKGROUND

Petitioner is a native and citizen of Cuba. Declaration of Deportation Officer Jason Godwin ("Godwin Decl.") ¶ 4. On February 21, 2024, Petitioner applied for admission into the United States at an airport in Miami, Florida. *Id.* ¶ 5. United States Customs and Border Protection paroled Petitioner into the United States under the Cuban Humanitarian Program for a period of two years. *Id.* Petitioner's parole terminated on February 19, 2026. *Id.*

On July 20, 2026, ICE/ERO arrested Petitioner after he was encountered during a targeted operation. *Id.* ¶ 6. ICE/ERO issued Petitioner a Notice to Appear ("NTA") charging him as inadmissible pursuant to INA sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i). *Id.*, Ex. A.

On August 12, 2026, DHS filed a Form I-261 amending the allegations in the NTA. *Id.*, Ex. B. Petitioner filed a motion to terminated his removal proceedings. *Id.* On August 13, 2026, Petitioner appeared for an initial master calendar hearing with counsel. *Id.* ¶ 8. DHS made an oral motion to withdraw the 212(a)(6)(A)(i) charge of inadmissibility. *Id.* The Immigration Judge ("IJ") stated she would allow DHS ten days to respond to Petitioner's motion to terminate. *Id.* The IJ adjourned the hearing to August 27, 2026, for Petitioner to enter pleadings on the NTA and identify forms of relief he intends to seek. *Id.*, Ex. C.

Petitioner is currently detained by ICE/ERO at the Stewart Detention Center pursuant to INA sections 235(b)(2) and 8 C.F.R. § 235.2(c)(1). *Id.* ¶ 9.

LEGAL FRAMEWORK

Petitioner is detained pre-final order of removal as an arriving alien. 8 U.S.C. § 1225(a)(1) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed . . . an applicant for admission." Eight C.F.R. §§ 1.2 and 1001.1(q) define an "arriving alien"—a particular type of applicant for admission—as an applicant

for admission coming or attempting to come into the United States at a port-of-entry. This definition strictly encompasses individuals whose temporary period of immigration parole has expired.

Detention of all arriving aliens is mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that an alien has a credible fear of persecution[,] . . . the alien shall be detained for further consideration of the application for asylum."), 8 U.S.C. § 1225(b)(2)(A) ("[I]f the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a . . ."). Pursuant to 8 C.F.R. § 235.3(c)(1), an immigration judge has no authority to redetermine custody for an arriving alien. The only exception is that ICE/ERO may—in its discretion—release arriving aliens on parole. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c).

ARGUMENT

Petitioner asserts that his mandatory detention violates due process. Dkt. No. 1. The Court should deny Petitioner's claim because his detention is lawfully authorized by statute, actively advances toward resolution, and fully satisfies constitutional requirements.

The Supreme Court has long recognized that Congress and the Executive have wide deference in crafting immigration policy, and detention during removal proceedings is an integral part of that process. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Mandatory statutory detention poses no constitutional problem on its face so long as removal proceedings remain active and ongoing. *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Petitioner's operational history places him squarely within the scope of mandatory detention under 8 U.S.C. § 1225(b). Petitioner was last paroled into the United States on or about

February 21, 2024. *See* Godwin Decl. ¶ 5. Because he was never formally admitted, he remains present in the United States without admission. *Id.* ¶¶ 4–8. Because Petitioner is an arriving alien applicant for admission who is not clearly and beyond a doubt entitled to be admitted, his pre-final order detention is statutorily mandatory under 8 U.S.C. § 1225(b) throughout the entire completion of his proceedings. *See id.* ¶ 9, *see generally Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

The Supreme Court has firmly established that the power to admit, exclude, or expel aliens is a fundamental sovereign attribute vested exclusively in the political departments of the federal government, making it largely immune from judicial control. *See Fiallo v. Bell*, 430 U.S. 787, 792 (1977). Pursuant to 8 C.F.R. § 235.3(c)(1), the immigration judge possesses no legal authority to conduct a custody redetermination for an arriving alien. The mandatory detention framework established by Congress in 8 U.S.C. § 1225(b) directly serves the core governmental purpose of regulating national borders, preventing unauthorized entry, and managing applicants for admission while their claims are verified. Because Petitioner is legally classified as an arriving alien with an active, ongoing removal case, his primary detention under section 1225(b) is proper, lawfully authorized by Congress, and fully comports with the Fifth Amendment.

CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court deny Petitioner's Petition for Habeas Corpus.

Respectfully submitted, this 17th day of August, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

By: */s/ Richard M. Rettig, II*
Richard M Rettig, II
ASSISTANT UNITED STATES ATTORNEY
Delaware Bar No. 7102
P. O. Box 2568
Columbus, GA 31902
Telephone: 706-649-7700
Facsimile. 706-649-7767
richard.rettig@usdoj.gov

CERTIFICATE OF SERVICE

I certify that I have this date, August 17, 2026, mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Jose Manuel Lobelle Justo
A# [redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

WILLIAM R. KEYES
UNITED STATES ATTORNEY

By. */s/ Richard M. Rettig, II*
Richard M. Rettig, II
ASSISTANT UNITED STATES ATTORNEY
Delaware Bar No. 7102
P. O. Box 2568
Columbus, GA 31902
Telephone: 706-649-7700
Facsimile: 706-649-7767
richard.rettig@usdoj.gov