

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

HAMILTON JORJITO AGUILAR	:	
ESCOBAR,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-00150-CDL-CHW
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On January 26, 2026, Petitioner filed his Petition for Writ of Habeas Corpus (Petition). ECF No. 1. Petitioner claims, among other things, that he is entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a). ECF No. 1. On January 27, 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. ECF No. 3. 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

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

case. If such a good faith motion is filed, then this order shall be stayed pending the resolution of that motion.” ECF No. 3.

Upon information and belief, Petitioner has a bond hearing scheduled for Monday, February 2, 2026, in Immigration Court. February 2, 2026 is also Respondent’s deadline to file the motion contemplated by the Court’s order at ECF No. 3. 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 Petition should therefore be dismissed. However, because Petitioner’s bond hearing is scheduled to occur before the full seven days has elapsed, Respondent is filing this motion to trigger the stay without a full declaration and exhibits supporting Respondent’s position. Respondent expects to supplement the record with the necessary factual support before the deadline expires on Monday, February 2, 2026.

BACKGROUND

Petitioner is a native and citizen of Honduras. On November 20, 2008, Petitioner was ordered removed from the United States via an Expedited Removal Order under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). Upon information and belief, Petitioner was removed from the United States on or about November 24, 2008. At some point after his removal, Petitioner must have illegally re-entered the United States. Upon information and belief, Petitioner was apprehended and re-entered Immigration and Customs Enforcement (ICE) / Enforcement and Removal Operations (ERO) custody on or about December 27, 2025. Upon information and belief, ICE/ERO reinstated Petitioner’s prior Expedited Removal Order under INA § 235(b)(1) on or about December 27, 2025. To date, Petitioner remains detained at Stewart Detention Center pursuant to 8 U.S.C. § 1231(a).²

² As noted, Respondent anticipates filing the typical declaration and supporting exhibits to substantiate this background information before its deadline expires on February 2, 2026.

ARGUMENT

Petitioner's Petition, and the Court's January 27, 2026 order granting a bond hearing, are premised entirely on Petitioner's false contention that he is being improperly detained under 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals' (BIA) recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Pet. ¶¶ 1-7. Petitioner is not detained under § 1225(b)(2)(A). Rather, Petitioner is subject to a reinstated removal order under 8 U.S.C. § 1231(a)(5) after having re-entered the United States following his removal in 2008.

8 U.S.C. § 1231(a)(5) provides for the reinstatement of a prior order of removal "from its original date" if DHS "finds that an [non-citizen] has reentered the United States illegally after having been removed . . . under an order of removal[.]" *See also* 8 C.F.R. § 1241.8(a). A reinstated removal order "is not subject to being reopened or reviewed[.]" 8 U.S.C. § 1231(a)(5). Further, a non-citizen subject to a reinstated removal order "has no right to a hearing before an immigration judge," 8 C.F.R. § 1241.8(a), and "is not eligible and may not apply for any relief" from removal, 8 U.S.C. § 1231(a)(5). *See Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 (2006) (recognizing that section 1231(a)(5) "applies to all illegal reentrants, explicitly insulates the removal orders from review, and generally forecloses discretionary relief from the terms of the reinstated order").

Once a removal order is reinstated, the non-citizen's detention is governed by 8 U.S.C. § 1231. 8 C.F.R. § 1231(a)(5); 8 C.F.R. § 1241.8(c); *see also Guzman Chavez*, 594 U.S. at 533-47. As such, the only basis for relief from detention would be a challenge under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Congress provided in § 1231(a)(1) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See*

8 U.S.C. §§ 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the “removal period,” detention is mandatory. *See id.* at § 1231(a)(2). This ends the inquiry in this case. Petitioner’s Expedited Removal Order was reinstated on December 27, 2025, which was less than 90 days before the date of this filing. Petitioner thus remains subject to mandatory detention during the statutory removal period. Only if his detention exceeds the removal period does the framework detailed in *Zadvydas* become applicable.

Petitioner is not entitled to the bond hearing ordered in this case. The order should be stayed based on this good faith motion to dismiss the Petition, and the bond hearing shall not go forward as scheduled. Although Petitioner raises three claims for relief, they are all premised on the factually and legally erroneous contention that he is being improperly detained under 8 U.S.C. § 1225(b)(2)(A) and the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Pet. ¶¶ 48-58. Petitioner’s claims should be denied because he is not detained under § 1225(b)(2)(A), and he has no due process right to a bond hearing.

Petitioner claims that Respondent has violated the INA and his due process rights by detaining him pursuant to 8 U.S.C. § 1225(b)(2)(A)—as opposed to 8 U.S.C. § 1226(a)—without an individualized bond determination to determine whether he is a flight risk or a danger to the community. Pet. ¶¶ 48-58. As set forth above, however, neither of these statutory provisions apply to Petitioner’s circumstance because he is detained post-final order of removal with a reinstated removal order pursuant to 8 U.S.C. § 1231(a)(5) and is within the removal period under § 1231(a)(1). As such, Petitioner’s detention is mandatory, and he is not entitled to a bond hearing.

To the extent Petitioner claims that his continued detention violates his procedural due process rights and that he is entitled to either release or a bond hearing, he is wrong. Petitioner’s

mandatory detention under 8 U.S.C. § 1231(a) does not violate his procedural due process rights, and he is not entitled to release or a bond hearing.

“For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.” *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, “over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citations omitted). For this reason, the Supreme Court has “long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.” *Fiallo*, 430 U.S. at 792 (collecting cases)). For over a century, the Supreme Court has definitively and consistently affirmed that detention pending removal is constitutional. *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings” (citations omitted)); *Carlson v. Landers*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.”).

Because Petitioner is not detained under § 1225(b)(2)(A), the Court’s rulings in *J.A.M.* and *P.R.S.* are inapplicable to his circumstance. For this reason, per the terms of the Court’s order, the directive to provide Petitioner with a bond hearing within seven days of the order is stayed. Furthermore, as Petitioner is properly detained pursuant to 8 U.S.C. § 1231(a), his Petition should be dismissed for failure to state a claim and as premature, to the extent it could be construed as

asserting a claim under *Zadvydas v. Davis*. See *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

CONCLUSION

As set forth above, Respondent will supplement the record on February 2, 2026, with additional facts supporting his response. For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 31st day of January, 2026.

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