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

ALAN EDUARDO CORTEZ LEON,	:	
	:	
PETITIONER,	:	
	:	**CASE NO. 4:26-CV-997-CDL-ALS**
V.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On July 8, 2026, Petitioner filed his Petition for Writ of Habeas Corpus ("Petition"). ECF No. 1. On July 9, 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. 5. Petitioner is an arriving alien, and is not in the same circumstance as the petitioners discussed in *J.A.M.* or *P.R.S.* For the reasons stated below, her petition should be dismissed.

[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.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Kumar Johnson ("Johnson Decl."), submitted with this filing. The declaration accurately summarizes the circumstances underlying Petitioner's custodial status and immigration history, and Respondent refers the Court to it for the factual record.

LEGAL FRAMEWORK

Petitioner is detained pre-final order of removal as an arriving alien. "An 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." 8 U.S.C. § 1225(a)(1). Regulations 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, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

8 C.F.R. §§ 1.2 and 1001.1(q). If an immigration officer determines an arriving alien is inadmissible, the officer "shall order the [non-citizen] removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). If the arriving alien "indicates either an intention to apply for asylum . . . or a fear of persecution," 8 U.S.C. § 1225(b)(1)(A)(i), the "officer shall refer the alien for an interview by an asylum officer," 8 U.S.C. § 1225(b)(1)(A)(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)(1)(B)(ii). If the officer determines the alien does not have a credible fear of persecution, they shall order the alien removed, but the alien has, by regulation, the option to request review of that determination by an Immigration Judge and in that event, the alien "shall be detained pending

a final determination of credible fear of persecution[.]" 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III), and (IV). In some circumstances, an arriving alien will be placed into full removal proceedings without going through the "expedited removal" process provided for in § 1225(b)(1). However, even in this circumstance, an arriving alien, like Petitioner, is an alien "seeking admission" whom an examining immigration officer has determined to be "not clearly and beyond a doubt entitled to be admitted," and such alien, "shall be detained" pending full removal proceedings. 8 U.S.C. § 1225(b)(2). Thus, detention of all arriving aliens is mandatory. 8 U.S.C § 1225(b)(1)(B)(ii) ("the alien *shall be detained* for further consideration of the application for asylum." (emphasis added)); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 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 . . . ." (emphasis added)); *see also* 8 C.F.R. § 235.3(c)(1). The only exception to mandatory detention 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).

ICE/ERO is permitted to parole a non-citizen into the United States, but this decision is committed to ICE/ERO's discretion: "[t]he Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" (emphasis added). 8 U.S.C. § 1182(d)(5)(A). Once the parole period expires, or parole is revoked at the discretion of ICE/ERO, an arriving alien is again subject to mandatory detention, and her "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A); *see also Jennings*, 583 U.S. at 288. "Since an alien's legal status is not altered by detention or parole[,] it seems clear that [paroled aliens] can claim no greater rights or privileges

under our laws than any other group of aliens who have been stopped at the border." *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984).

ARGUMENT

Respondent respectfully shows the Court that Petitioner is not in the same factual or legal situation as the petitioners in *J.A.M.* or *P.R.S.* The issue in those cases centered on whether noncitizens who entered without inspection, and who were later apprehended in the interior, could be detained under 8 U.S.C. § 1225(b)(2) rather than under § 1226(a). *J.A.M.*, 2025 WL 3050094, at *2–5*. Petitioner's case does not present that question because, unlike the petitioners in *J.A.M.* and *P.R.S.*, he is an arriving alien—a specific statutory category applying to individuals "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), any noncitizen who "arrives in the United States" is deemed an applicant for admission. Petitioner triggered this status when he physically applied for admission at the San Ysidro Port of Entry on July 4, 2018, where he lacked valid entry documents and was processed as inadmissible. Johnson Decl. ¶ 4; ¶ 5; Ex. A (NTA). Because he was "not clearly and beyond a doubt entitled to be admitted," DHS served him with a Notice to Appear charging inadmissibility under § 1182(a)(7)(A)(i)(I) and released him on parole pending proceedings. Johnson Decl. ¶ 5; Ex. A.

The reasoning of *J.A.M.* and *P.R.S.* does not control the outcome here because those cases dealt exclusively with noncitizens whose alleged status as "applicants for admission" derived solely from their unlawful presence after entering without inspection. *J.A.M.*, 2025 WL 3050094, at *3–4*; *P.R.S.*, 2025 WL 3269947, at *1–2*. In sharp contrast, Petitioner was immediately inspected by an examining immigration officer at a port of entry. Johnson Decl. ¶ 4. Accordingly, he fits

squarely within § 1225(b)(2)(A), the statutory scheme governing applicants for admission who seek entry at the border and are not clearly entitled to admission.

For this class of noncitizens, the Supreme Court has held that § 1225(b) "mandates detention" throughout the pendency of removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). And *J.A.M.* underscores the same point: an applicant for admission is "seeking admission" when he requests entry at a port of entry—precisely what Petitioner did. Johnson Decl. ¶ 4.

This statutory framework is consistent with Eleventh Circuit precedent. In *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026), the court reaffirmed the longstanding distinction that § 1225 applies to arriving aliens who seek entry at the border, while § 1226 applies to noncitizens who entered without inspection and were later apprehended inside the United States. *Id.* at 18. Because Petitioner presented at a port of entry and was processed as an inadmissible applicant for admission, he falls under § 1225(b)(2)(A), not § 1226(a).

Petitioner's temporary release on parole does not alter his legal status. Congress has expressly provided that parole "shall not be regarded as an admission." 8 U.S.C. § 1182(d)(5)(A). 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 United States. *Garcia Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985). When Petitioner reentered DHS custody on May 6, 2026, his status remained unchanged: he continued to be an applicant for admission. Johnson Decl. ¶¶ 11–12. 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—and not an uninspected interior entrant—his due process rights are limited to the procedures Congress has provided. The Supreme Court has

repeatedly held that "whatever procedure is authorized by Congress 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). *See also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (Congress may constitutionally restrict procedures available to applicants for admission).

Under current regulations, an Immigration Judge is expressly prohibited from redetermining custody for "arriving aliens in removal proceedings." 8 C.F.R. § 1003.19(h)(2)(i)(B). Consistent with this prohibition, Petitioner received a custody hearing on June 26, 2026, and the Immigration Judge correctly concluded she lacked jurisdiction because Petitioner was an arriving alien. Johnson Decl. ¶ 14; Ex. B (Bond Order).

Since the INA mandates detention for arriving aliens under § 1225(b)(2)(A) and does not authorize a bond hearing before an IJ, Petitioner cannot establish that his detention violates due process.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. Petitioner is an arriving alien properly detained under 8 U.S.C. § 1225(b)(2) and he is not entitled to a bond hearing.

Respectfully submitted this 12th day of July, 2026.

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28 U.S.C. § 543

CERTIFICATE OF SERVICE

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

ALAN EDUARDO CORTEZ LEON
A[redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 12th day of July, 2026.

BY: *s/ Andressa Bryant*
ANDRESSA BRYANT
Special Assistant United States Attorney*