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

CRUZ I. RODRIGUEZ HERNANDEZ,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:26-CV-101-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONSE TO PETITION

On January 20, 2026, Petitioner filed his Petition for Writ of Habeas Corpus ("Petition"). ECF No. 1. On the same day, the Court issued an Order directing Respondent to file a comprehensive response to the Petition within twenty-one days. ECF No. 3. Respondent now files this response to the Petition and shows that the Petition should be denied because Petitioner is detained as an arriving alien under § 1225(b)(2) and therefore does not fall within the ambit of the Court's rulings in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH (M.D. Ga. Nov. 1, 2025), or *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). In support hereof, Respondent shows the Court as follows.

BACKGROUND

Petitioner is a native and citizen of El Salvador. Declaration of Deportation Officer Michael Gloster ("Gloster Decl.") ¶ 4. Petitioner has entered and been removed from the United States on multiple occasions, so Respondent will outline his immigration history in chronological order. Petitioner illegally entered the United States on or about September 13, 2005, near the Rio Grande River. *Id.* ¶ 4 & Ex. A. Petitioner was processed and issued a Notice to Appear. *Id.* ¶ 5 & Ex. B.

On December 13, 2005, Petitioner failed to appear for court and the Immigration Judge ordered him removed, *in abstentia*. *Id.* ¶ 5 & Ex. C. On March 14, 2018, ICE/ERO encountered Petitioner at the Cobb County Detention Center. Gloster Decl. ¶ 6. On or about March 23, 2018, Petitioner entered ICE/ERO custody. *Id.* ¶ 6. On May 11, 2018, ICE/ERO removed Petitioner to El Salvador, pursuant to the Final Order of Removal. *Id.* ¶ 6 & Ex. D.

On or about May 9, 2019, Petitioner illegally entered the United States at an unknown time and place. *Id.* ¶ 7. Petitioner was apprehended and processed for Reinstatement of Prior Order of Removal pursuant to section 241(a)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1231(a)(5)). *Id.* ¶ 7 & Ex. E. On August 15, 2019, Petitioner was again removed from the United States. *Id.* ¶ 7 & Ex. D.

On March 19, 2023, Petitioner applied for admission into the United States at the San Ysidro Port of Entry. Gloster Decl. ¶ 8 & Ex. F. Petitioner did not possess a valid entry document to enter the United States and was served with a Notice to Appear ("NTA") charging him with inadmissibility pursuant to § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) as an arriving alien (8 U.S.C. § 1182(a)(7)(A)(i)(I)). *Id.* ¶ 9 & Ex. G. On or about March 19, 2023, Petitioner was paroled into the United States. *Id.* Ex. F. On March 19, 2024, Petitioner filed an application for relief from removal. *Id.* ¶ 10.

On December 11, 2025, ICE/ERO encountered Petitioner and took him into custody. Gloster Decl. ¶ 11 & Ex. D. On January 14, 2026, Petitioner appeared, *pro se*, for a master calendar hearing at Stewart Immigration Court in Lumpkin, Georgia. *Id.* ¶ 12. Petitioner admitted and conceded the allegations on the NTA, and conceded removability as charged. *Id.* The Immigration Judge ("IJ") sustained the charge of removability. *Id.* At the hearing, the Department of Homeland Security made an oral motion to pretermit Petitioner's application for relief. *Id.* The IJ adjourned

the matter to January 20, 2026, to allow Petitioner an opportunity to file evidence to contest the motion to pretermit. *Id.* Petitioner did not file any evidence. Gloster Decl. ¶ 13. On January 21, 2026, the IJ granted DHS's motion, pretermitting Petitioner's application, and ordered Petitioner removed to Ecuador, or in the alternative, to Guatemala and Honduras. *Id.* ¶ 13 & Ex. H. Petitioner did not waive appeal, but has not filed an appeal to date, either. *Id.* ¶ 13. Pending finalization of his removal order, Petitioner is currently detained at the Stewart Detention Center as an arriving alien pursuant to INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) and 8 C.F.R. § 235.3(c)(1). *Id.* ¶ 14.

In the event Petitioner's removal order becomes a final order of removal to Ecuador, there is a significant likelihood of his removal in the reasonably foreseeable future. *Id.* ¶ 15. Ecuador is open for international travel, and ICE/ERO is currently removing non-citizens to Ecuador. *Id.* ¶ 15.

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)(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)). 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).

Petitioner also has a non-final removal order which is pending either an appeal from Petitioner or for the expiration of the time to file an appeal, which will occur on or about February 21, 2026. *See* Gloster Decl. ¶ 14 & Ex. H; 8 C.F.R. § 241.1(c). If Petitioner's removal order becomes final during the pendency of this case, his detention authority will shift to 8 U.S.C. § 1231(a), and he will be within the "removal period," which mandates detention for 90 days after the removal order becomes final. 8 U.S.C. § 1231(a)(1)(A) & (b)(2)(A).

ARGUMENT

Petitioner brings this Petition under the Due Process Clause of the Fifth Amendment, arguing that Petitioner's re-detention following parole violates his procedural due process rights. ECF No. 1. Petitioner is mistaken. Parole pursuant to § 1182(d)(5)(A) is an alternative to detention exercised at the sole discretion of ICE/ERO. There is no statutory entitlement to review of that decision, and this Court lacks jurisdiction to consider a challenge to it. Further, as an arriving alien, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) and he has no due process right to a bond hearing.

I. The Court lacks subject matter jurisdiction to review the discretionary decision whether to grant or revoke Petitioner's parole.

To the extent Petitioner challenges ICE/ERO's revocation of his parole, the Court lacks jurisdiction to review this decision.

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). In the immigration context, federal courts' jurisdiction to review discretionary determinations made by ICE/ERO is limited as follows:

> [n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

8 U.S.C. § 1252(a)(2)(B).

Petitioner's request for judicial review of the revocation of his parole is barred by 8 U.S.C. § 1252(a)(2)(B). As discussed above, the INA permits ICE/ERO to parole a non-citizen into the United States, but commits this decision to ICE/ERO's discretion: "[t]he Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" 8 U.S.C. § 1182(d)(5)(A) (emphasis added).

In accordance with the plain text of the statute, the Eleventh Circuit has held that "[t]he decision whether to parole an alien into the United States rests within the discretion of the Secretary [of DHS], . . . and that discretionary decision is shielded from judicial review, 8 U.S.C. § 1252(a)(2)(B)." *Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam); *see also Perez-Perez v. Hanberry*, 781 F.2d 1477, 1479 (11th Cir. 1986) ("Parole decisions are deemed an integral part of the admissions process, and excludable aliens

consequently cannot challenge parole decisions as a matter of constitutional right.") (citations omitted).

District courts in the Eleventh Circuit have recognized the same. *Goddard v. Nielsen*, No. 8:18-cv 1134, 2018 WL 11447437, at *2 3 (M.D. Fla. Dec. 6, 2018); *Jeanty v. Bulger*, 204 F. Supp. 2d 1366, 1382-83 (S.D. Fla. 2002), *aff'd mem.*, 321 F.3d 1336 (11th Cir. 2003). The Court should reach the same conclusion and find that it lacks jurisdiction to review ICE/ERO's parole determination pursuant to 8 U.S.C. § 1252(a)(2)(B).

II. The Petition should be denied because Petitioner's mandatory detention as an arriving alien complies with due process.

Petitioner is detained pre-final order of removal as an arriving alien under 8 U.S.C. § 1225(b)(2). Gloster Decl. ¶ 15. And under § 1225(b)(2), Petitioner's detention is mandatory and he is not entitled to a bond hearing.

The Supreme Court has long held that arriving aliens' due process rights are limited to the procedures provided by statute, and the Court's decisions define those due process rights broadly based on fundamental principles which apply in all contexts. This Court has thoroughly analyzed these binding precedents as applied in this exact context and held that arriving aliens mandatorily detained under section 1225(b) have no due process right to a bond hearing. Accordingly, the Court should deny Petitioner's claim based on these binding precedents.

As a starting point, Congress and the Executive have plenary power over the admission of arriving aliens like Petitioner. "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." *Id.* (collecting cases).

"[A] concomitant of that power [over the admission of aliens] is the power to set the procedures to be followed in determining whether an alien should be admitted." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). "[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government." *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972). In assessing due process protections arising from the application of these procedures, the Supreme Court has recognized that while all non-citizens are entitled to due process protections, this "does not lead . . . to the conclusion that all aliens must be placed in a single homogeneous legal classification." *Mathews v. Diaz*, 426 U.S. at 77-78. Rather, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.").

In recognition of these plenary powers to determine the procedures for admission, over the course of more than a century, the Supreme Court has consistently held in multiple contexts that the due process rights of arriving aliens seeking admission into the United States—like Petitioner here—are limited to only the procedures provided by statute. *Thuraissigiam*, 591 U.S. at 138-40 ("[A]n alien [who is an arriving alien] has only those rights regarding admission that Congress has

provided by statute."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." (citations omitted)); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." (internal quotations and citation omitted)); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (same); *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by congress, are due process of law.").

This Court has applied these principles and addressed the precise issue presented here. In *D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-159-CDL-MSH, 2020 WL 13240240 (M.D. Ga. Dec. 7, 2020), an arriving alien filed a habeas petition, claiming, *inter alia*, that her mandatory detention under 8 U.S.C. § 1225(b) without a bond hearing violated due process. *D.A.V.V.*, 2020 WL 13240240, at *1-2. The Court denied the arriving alien's claim because "longstanding Supreme Court precedent" makes clear that "arriving aliens' procedural due process rights entitle them only to the relief provided by the INA." *Id.* at *6 (citing *Thuraissigiam*, 591 U.S. at 140; *Landon*, 459 U.S. at 32; *Mezei*, 345 U.S. at 212; *Nishimura Ekiu*, 142 U.S. at 660). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing." *Id.* (citations omitted).

Courts throughout the country have reached the same conclusion as this Court: arriving aliens' due process rights are limited to the procedures provided by statute, and they do not have a due process right to a bond hearing. *See Mendoza-Linares v. Garland*, No. 21-cv-1169, 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 676-79

(S.D. Tex. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 332-336 (W.D.N.Y. 2021); *Ford v. Ducote*, No. 20-1170, 2020 WL 8642257, at *2 (W.D. La. Nov. 2, 2020); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020); *Mendez-Ramirez v. Decker*, 612 F. Supp. 3d 200, 220-21 (S.D.N.Y. 2020); *Gonzalez Aguilar v. McAleenan*, 448 F. Supp. 3d 1202, 1208-12 (D.N.M. 2019); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019).

Because binding Supreme Court precedent makes clear that the scope of Petitioner's due process rights is limited to the procedures provided by statute, the question is whether section 1225(b) permits bond hearings for arriving aliens. But the Supreme Court has answered this question as well. Specifically, the Court has held that section 1225(b)—which governs Petitioner's detention—"unequivocally mandate[s] that aliens falling within [its] scope shall be detained." *Jennings*, 583 U.S. at 300 (internal quotations omitted). As the Court recognized, "neither [section] 1225(b)(1) nor [section] 1225(b)(2) says anything whatsoever about bond hearings." *Id.* at 297. Rather, "the plain meaning" of the statute "is that detention must continue until . . . removal proceedings have concluded[.]" *Id.* at 299 (citing 8 U.S.C. § 1225(b)(2)(A)). Because "'[d]etained' does not mean 'released on bond,'" the Court concluded that the statute does not permit bond hearings for arriving aliens. *Id.* at 312. "In sum, [sections] 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.[1]

As this Court has held—along with other courts around the country—because arriving aliens' due process rights are limited to the procedures provided by statute, an arriving alien has

[1] To be clear, Petitioner's circumstance is distinguishable from that of the petitioners in *J.A.M.* and *P.R.S.* because unlike the Court's finding as to those petitioners, he applied for admission at a designated point of entry and was therefore undoubtedly "seeking admission," he was inspected upon arrival, and the inspecting officer found him not to be "clearly and beyond a doubt entitled to be admitted." Petitioner therefore fits squarely within the ambit of § 1225(b)(2)(A) and his detention is mandatory.

no due process right to a bond hearing while mandatorily detained under section 1225(b). *D.A.V.V.*, 2020 WL 13240240, at *6. Petitioner's claim should be denied.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 10th day of February, 2026.

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