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.	:	

RESPONDENT'S OBJECTIONS TO REPORT AND RECOMMENDATION

Petitioner filed his Petition for Writ of Habeas Corpus on January 20, 2026, asserting that his detention should fall under 8 U.S.C. § 1226(a) rather than the mandatory detention framework of § 1225(b)(2). ECF No. 1. On July 30, 2026, the Magistrate Judge issued a Report and Recommendation ("R&R") concluding that, under *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026), Petitioner is not subject to detention as an arriving alien and is entitled to a bond hearing under § 1226(a).

Respondent respectfully objects. The record shows that Petitioner was processed at the San Ysidro Port of Entry on March 19, 2023, charged as an arriving alien under INA § 212(a)(7)(A)(i)(I), and remains an arriving alien throughout his ongoing removal proceedings. ECF No. 6-1; Exs. F–G. His later discretionary parole did not alter that status, and § 1225(b)(2) continues to govern his mandatory detention. Parole determinations are committed to agency discretion and are not subject to judicial review under § 1252(a)(2)(B). Accordingly, Respondent urges the Court to reject the R&R and deny the Petition.

BACKGROUND

For purposes of background, Respondent relies on the declarations of Deportation Officer Michael Gloster ("M. Gloster Decl."), submitted with Respondent's Response (ECF No. 6-1), and Deportation Officer Walkiria Gloster ("W. Gloster Decl."), submitted with the parties' Joint Status Report (ECF No. 12-1). These declarations accurately summarize the circumstances underlying Petitioner's custodial status and immigration history, and Respondent refers the Court to them for the factual record. Respondent further relies on all exhibits attached to the Response (ECF Nos. 6-2 through 6-8), which document Petitioner's immigration history, parole, custody actions, and removal proceedings. Respondent respectfully directs the Court to these materials, together with the Joint Status Report (ECF No. 12), for the complete factual background.

OBJECTIONS

Respondent respectfully objects to the R&R because it misapplies controlling statutory text, Supreme Court and Eleventh Circuit precedent, and this Court's own decisions governing the detention of arriving aliens. Petitioner was processed as an arriving alien at the San Ysidro Port of Entry, charged as inadmissible, and paroled without admission. His removal proceedings have continued uninterrupted, and parole revocation restored the mandatory detention Congress requires under 8 U.S.C. § 1225(b)(2)(A). The R&R incorrectly reclassified Petitioner under § 1226(a) and improperly adopted due-process theories that do not apply to arriving aliens. For these reasons, the R&R should be rejected and the Petition should be denied.

I. The Magistrate Judge Erred in Concluding That § 1226(a), Rather Than § 1225(b)(2)(A), Governs Petitioner's Detention

The Magistrate Judge's conclusion that § 1226(a) governs Petitioner's custody—based primarily on *Hernandez Alvarez*—is incorrect. The statutory text, regulatory definitions,

controlling precedent, and the record demonstrate that Petitioner is an arriving alien mandatorily detained under § 1225(b)(2)(A).

Petitioner's circumstances differ sharply from those in *Hernandez Alvarez*. The Eleventh Circuit expressly stated that the petitioners in that case "were not arriving aliens" but individuals who unlawfully entered and were later detained in the interior. 175 F.4th at 1269–76. Petitioner, by contrast, presented himself at the San Ysidro Port of Entry on March 19, 2023, was inspected, found inadmissible, charged under INA § 212(a)(7)(A)(i)(I), and paroled without admission. M. Gloster Decl. ¶¶ 8–9; Exs. F–G, ECF Nos. 6-1, 6-7, 6-8. These facts fall squarely within § 1225(a)(1)'s definition of an "applicant for admission" and the regulatory definition of "arriving alien." *See* 8 C.F.R. §§ 1.2, 1001.1(q).

Unlike the petitioner in *P.R.S.*—whose initial removal proceedings were terminated for over a year—Petitioner's proceedings have been continuous. *See* Resp't's Resp. 2–4, ECF No. 6; W. Gloster Decl. ¶¶ 4–7, ECF No. 12-1. His Notice to Appear remained in effect, DHS continued pursuing removal, and ICE/ERO re-detained him at his scheduled reporting appointment upon confirming he lacked lawful status. M. Gloster Decl. ¶ 11, ECF No. 6-1. There was no procedural break that could shift detention authority away from § 1225(b).

Congress further mandated that when parole is revoked, the individual "shall be dealt with in the same manner as any other applicant for admission." 8 U.S.C. § 1182(d)(5)(A). This codifies the longstanding "entry fiction" doctrine: parole "does not alter [an alien's] status." *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984). Petitioner therefore remained an arriving alien at all relevant times.

Detention under § 1225(b)(2)(A) is mandatory. *Jennings v. Rodriguez*, 138 S. Ct. 830, 842–45 (2018). Neither DHS nor the Court has authority to provide a bond hearing for arriving aliens.

8 C.F.R. § 1003.19(h)(2)(i)(B). Further, judicial review of parole revocation—a discretionary act—is barred. 8 U.S.C. § 1252(a)(2)(B). The R&R's reliance on district-court extensions of *Hernandez Alvarez* (e.g., *I.A.A.M.*, *B.A.M.A.*) conflicts with controlling Supreme Court precedent, statutory text, and this Court's consistent rulings. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 574, 140 S. Ct. 1959, 1965–66 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958).

This Court's decisions—including *D.A.V.V.*, *P.R.S.*, *M.A.P.G.*, and *C.J.S.C.*—correctly apply these principles. They confirm that parole does not suspend or convert mandatory detention under § 1225(b). Respondent respectfully submits that these precedents should guide the outcome here.

A. The Magistrate Judge Misconstrued "Seeking Admission" by Treating It as a Physical Act Rather Than a Legal Status

The R&R incorrectly concludes that Petitioner was not "actively seeking admission" because he was arrested at an ICE office in the interior. R&R at 7. This misreads the INA. Under 8 U.S.C. § 1225(a)(1), any noncitizen present in the United States who has not been admitted "shall be deemed … an applicant for admission." This legal status persists throughout removal proceedings, regardless of physical location. *See Thuraissigiam*, 591 U.S. at 580. Petitioner was never admitted, so he remains an applicant for admission governed by § 1225(b)(2)(A).

The Magistrate Judge quoted from *Hernandez Alvarez* to suggest that the question is one of current action, arguing that unless the petitioner at issue is currently (as in at the time of the arrest that led to their current detention) "arriving in the United States," and "seeking lawful entry after inspection and authorization by an immigration officer," §1225(b)(2)(A) cannot justify their detention without a bond hearing. *See* Order and Recommendation, ECF No. 13 at 5. But this both

overreads what the Eleventh Circuit was reviewing and underappreciates the legal impact of parole and the "entry fiction" principle. The Eleventh Circuit explicitly acknowledged that the case before it did not concern arriving aliens. *Hernandez Alvarez*, 175 F.4th at 1269–76. While some language in the opinion could suggest any unadmitted alien located in the interior of the country is subject to § 1226(a), that conclusion can only be reached as to arriving aliens if one fails to consider the statutes, regulations, and case law surrounding the peculiar legal position in which paroled arriving aliens stand. Of course, the Eleventh Circuit did not need to engage in that consideration in *Hernandez Alvarez* because the petitioners there were not arriving aliens.

Expanding that holding to cover arriving aliens can only occur if one ignores the particular corpus of law regarding arriving aliens. The reasoning that justifies applying *Hernandez Alvarez* to arriving aliens only follows if one narrows the focus solely to the moment in time at which the petitioner was arrested most recently. All arriving aliens were "arriving in the United States," "seeking lawful entry after inspection and authorization by an immigration officer," at the time they first came to the border at a port of entry. 8 U.S.C. § 1225(b)(2)(A). That status does not cease when an arriving alien is paroled into the United States because such parole was explicitly conditioned on the fact that upon expiration or revocation of that parole, the parolee "shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission." 8 U.S.C. § 1182(d)(5)(A).

Thus, when the Eleventh Circuit said that "§ 1225(b)(2) does not apply to . . . other present aliens not seeking admission," this statement did not cover arriving aliens, because by fact and by statute they have always been "seeking admission" since they first arrived at the port of entry. *Hernandez Alvarez*, 175 F.4th at 1269. That status did not change for Petitioner merely because

he was paroled, both as a matter of fact (the proceedings to determine if he could be lawfully admitted to the United States began at that point and continued through and beyond the date on which he was arrested) and law (§ 1182(d)(5) and binding precedent explicitly require that he be considered to remain at the border unadmitted, continuing to seek admission notwithstanding his physical parole into the interior). This is materially different from one who evaded authorities and was later found in the interior having never sought admission. Although the Eleventh Circuit found that "seeking relief from removal is not the same thing as seeking admission," this statement does not apply to arriving aliens, who by fact and law were at the time of their arrival "seeking admission" and continued to do so until (and beyond) the date on which they were arrested. *Hernandez Alvarez*, 175 F.4th at 1285.

Finally, it is difficult to square the Magistrate Judge's application of *Hernandez Alvarez* to arriving aliens in the face of the opinion's statement that "§ 1225 applies to arriving aliens seeking entry at the border." *Id.* at 1276. Coupling this statement with the entry fiction and the language of § 1182(d)(5) requires a finding that Petitioner and other arriving aliens remain "seeking admission" notwithstanding their parole, and remain subject to § 1225(b)(2). To find that this statutory mandate is voidable because the Eleventh Circuit found a different class of persons in different circumstances could not also be subjected to the mandatory detention scheme explicitly contemplated for arriving aliens, and repeatedly upheld by this Court over the past year, misreads *Hernandez Alvarez* and disregards the statute. The R&R should be rejected because the statute must govern, especially where the case law does not grapple with the factual scenario at bar.

B. The Recommendation Failed to Apply the Jurisdictional Bar in 8 U.S.C. § 1252(a)(2)(B)(ii)

Although noting Respondent's jurisdictional arguments in its introduction, the Recommendation completely fails to address or apply the statutory bar to judicial review in its

analysis. R&R at 3. Congress has explicitly stripped federal courts of 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." 8 U.S.C. § 1252(a)(2)(B)(ii). The decision to grant or revoke parole is a pure exercise of executive discretion governed by 8 U.S.C. § 1182(d)(5)(A). By ordering a bond hearing that effectively overrides the operational reality of that parole revocation, the Recommendation impermissibly exercises jurisdiction where Congress has strictly forbidden it.

Because Petitioner is an arriving alien mandatorily detained under § 1225(b)(2)(A), the Magistrate Judge erred in concluding otherwise.

CONCLUSION

For the foregoing reasons, the Magistrate Judge's Recommendation should not be adopted. The record establishes that Petitioner is an arriving alien who was inspected at a port of entry, found inadmissible, paroled without admission, and continuously subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). His later parole revocation did not alter that status, and § 1226(a) does not provide a basis for a bond hearing or release. Because the Recommendation rests on legal error regarding the applicable detention statute and the legal status of arriving aliens, Respondent respectfully requests that the Court reject the Recommendation and deny the Petition in its entirety.

Respectfully submitted this 4th day of August, 2026.

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