

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ISLAM MAHMOUD ABDELRAHMAN
MAHMOUD ALY,

PETITIONER,

v.

MARKWAYNE MULLIN, ET AL.,
RESPONDENTS.

3:26-CV-831-AJS

(ELECTRONICALLY FILED)

SUR-REPLY TO REPLY TO RESPONSE TO HABEAS PETITION

The Petitioner filed a petition (Doc. 1) seeking habeas relief in the form of immediate release from immigration detention or a discretionary bond hearing under 8 U.S.C. § 1226(a). The Respondents filed their response (Doc. 10) opposing the requested relief because the Petitioner, as an arriving alien applying for admission, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The Petitioner filed a reply (Doc. 12) arguing that he should not be classified as an arriving alien, according to certain agency regulations, even though he actually was an arriving alien when he was detained in this case.

The Petitioner was detained on December 23, 2025, as an arriving alien, at the Philadelphia International Airport port of entry, who was applying for admission into the United States. He has remained detained since that time. An arriving alien at a port of entry, who is applying for admission into the United States, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, --- F.4th ---, 2026 WL 1243395, at *1 (11th Cir. May 6, 2026).

The Petitioner was previously in the interior of the United States. He thereafter left the United States after obtaining an advance parole document – Exhibit 1. The detention he is

challenging with his pending petition occurred after he left the United States and thereafter returned and sought admission on December 23, 2025, at the Philadelphia International Airport port of entry.

In his reply, the Petitioner argues that he was not an arriving alien on December 23, 2025, because Exhibit 1 gave him advance parole status. He places much more significance on his advance parole status than that status is due under the applicable law. He was an arriving alien despite his advance parole status, not because of it.

A “despite/not because of” method of analysis is helpful in evaluating the federal regulations the Petitioner relies on in attempting to inflate the significance of his advance parole status. He relies on 8 C.F.R. § 1.2 that states, in pertinent part, that an “[a]rriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry. . . . An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act. . . . However, an arriving alien . . . who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, *solely by reason of that grant of parole*, as an arriving alien under section 235(b)(1)(A)(i) of the Act.” (emphasis added).

The Petitioner also relies on 8 C.F.R. § 1001.1(q) that similarly states, in pertinent part, that “[t]he term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry. . . . An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act. . . . However, an arriving alien . . . who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, *solely by reason of that grant of parole*, as an arriving alien under section 235(b)(1)(A)(i) of the Act.” (emphasis added).

The regulations clarify that an alien can be classified as an arriving alien, *despite* advance parole status, but cannot be so classified *because of* advance parole status. The Petitioner was not classified as an arriving alien, and detained, because of his advance parole status. Despite that status, he was classified as an arriving alien, and detained, because, as detailed in Exhibit 1 to the Respondents' response, upon inspection credible information was developed that his pending immigration applications were based on a sham marriage and a bogus claim of sexual abuse.

The very advance parole document upon which the Petitioner relies – i.e., Exhibit 1 – provided him with advance notice that his parole status did not guarantee that he would be allowed re-entry into the United States and that he would still have to be inspected upon arrival. This is the pertinent excerpt from Exhibit 1:

Before You Leave the United States

Please note the following information. If you have been granted an Advance Parole Document:

- Parole into the United States is not guaranteed. In all cases, a CBP officer must still inspect you at a port of entry to determine whether you are eligible to come into the United States according to the terms of your advance parole. Even though USCIS approved your advance parole, CBP may still refuse to parole you into the United States.
- Parole into the United States is not an "admission" into the U.S. If you have a pending Form I-485 and we deny it, you may be subject to removal proceedings for being inadmissible to the U.S.
- If you leave the United States after being unlawfully present in the United States, you may be barred from admission even if you obtained advance parole. If you were unlawfully present in the United States for more than 180 days but less than one year and you leave the U.S. voluntarily before the start of removal proceedings, you are inadmissible for three years; if you were unlawfully present for one year or more, you are inadmissible for ten years.

The admission status of an immigration parolee is dependent on the merit *vel non* of any underlying basis for admission into the United States. Parole "shall not be regarded as an admission of the alien." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5)(A). The Petitioner was a paroled arriving alien on December 23, 2025, and his admission eligibility was based on his status at that time, regardless of how many prior entries he may have made in the past and what admission status he previously, but no longer, had. His pending applications for admission were just that – pending, not successful, applications – that did not change his arriving alien status.

Federal law establishes that a paroled arriving alien can still be classified as an arriving alien. In *Zheng v. Gonzales*, the Third Circuit addressed the status of an alien who received “advance parole” authorization to leave the United States and travel to China and who then returned to the United States. 422 F.3d 98, 103 (3d Cir. 2005). The Third Circuit concluded that, when he arrived back in the United States, he was clearly an “arriving alien.” *Id.* 110-11. “[H]e re-entered with no legal status greater than that of a parolee, he is simply a paroled arriving alien.” *Id.* at 111; *see also Iredia v. Att’y Gen. of United States*, 25 F.4th 193, 196 (3d Cir. 2022) (“[T]he term ‘arriving alien’ encompasses not only aliens who are actually at the border, but also aliens who were paroled after their arrival.”) (cleaned up); *Duarte v. Mayorkas*, 27 F.4th 1044, 1059 (5th Cir. 2022) (“[A] paroled alien is legally equivalent to an alien that is held in custody at the border while their application for admission is processed. This is why a parolee normally fits the regulatory definition of an ‘arriving alien.’”) (cleaned up).

The Petitioner, despite his advance parole status, was an arriving alien, applying for admission, when he was detained. He is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The petition should be denied. The Petitioner should remain detained pending immigration litigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date I filed the foregoing SUR-REPLY TO REPLY TO RESPONSE TO HABEAS PETITION via the Court's CM/ECF System, thereby making it available for viewing and downloading by all parties.

Dated: May 21, 2026

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