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

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| **ELENA MUKHANOVA,** | : | |
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| **Petitioner,** | : | |
| | : | **Case No. 4:25-CV-102-CDL-AGH** |
| **v.** | : | **28 U.S.C. § 2241** |
| | : | |
| **WARDEN, STEWART DETENTION CENTER,** | : | |
| | : | |
| | : | |
| **Respondent.**[1] | : | |

**RESPONSE TO PETITION**

On March 21, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. On March 24, 2025, the Court ordered Respondent to file a comprehensive response within twenty-one days. ECF No. 3. For the reasons explained below, the Petition should be denied.

**BACKGROUND**

Petitioner is native and citizen of Russia who is mandatorily detained as an arriving alien pursuant to 8 U.S.C. § 1225(b). Bush Decl. ¶ 3 & Ex. A. On May 9, 2024, Petitioner arrived at the Otay Mesa, California Port of Entry. *Id.* ¶ 4 & Ex. A. At primary inspection, she presented a Russian passport but no other legal document allowing her to enter, pass through, or remain in the United States. Ex. A. On May 14, 2024, Petitioner was taken into Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody at the Otay Mesa Detention Center. Bush Decl. ¶ 5 & Ex. B. On or about May 19, 2024, Petitioner was transferred

[1] Petitioner names the United States Department of Homeland Security, United States Immigration and Customs Enforcement, and officials with both agencies as Respondents in her 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 Steward Detention Center as the sole appropriately named respondent in this action.

to the Stewart Detention Center. *Id.* ¶ 5. On June 3, 2024, Petitioner claimed fear and was found to have a credible fear. Pet. 2. On June 4, 2024, Petitioner was served with a Notice to Appear ("NTA") charging her with inadmissibility pursuant to 8 U.S.C. §§ 1182(a)(7)(A)(i)(I) and (a)(6)(A)(i), based on her application for admission without a valid entry document and as an alien present in the United States without being admitted or paroled. Bush Decl. ¶ 6 & Ex. B.

On August 5, 2024, Petitioner filed a Motion for a Bond Hearing. *Id.* ¶ 7 & Ex. C. She withdrew her request for bond on August 7, 2024. *Id.* ¶ 8 & Ex. D. Petitioner, through counsel, sought and received a continuance of her September 17, 2024 merits hearing. *Id.* ¶ 9-10 & Exs. E & F. On October 15, 2024, the immigration judge ("IJ") heard the merits of Petitioner's claim and continued the case to issue a decision on the merits of her application. *Id.* ¶ 11. On December 18, 2024, the IJ denied Petitioner's applications for relief from removal and ordered her removed to Russia. *Id.* ¶ 12 & Ex. G.

On January 15, 2025, Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"). *Id.* ¶ 13 & Ex. H. On February 13, 2025, the BIA issued a briefing schedule. *Id.* ¶ 14 & Ex. I. On March 4, 2025, Petitioner filed a brief in support of her appeal, and on March 5, 2025, DHS filed a motion for summary affirmance of the removal order. *Id.* ¶ 14 & Ex. J. Petitioner's appeal remains pending with the BIA.

ICE/ERO is in possession of Petitioner's valid Russian passport. *Id.* ¶ 15 & Ex. K. Diplomatic and working relationships with Russia are positive, and Russia is issuing travel documents to facilitate removals. *Id.* ¶ 16. Commercial removals to Russia are viable for Russian nationals with a valid Russian passport. *Id.* Russia is accepting citizens and nationals and ICE/ERO is currently removing aliens to Russia. *Id.* Pending a final order of removal from the Board of

Immigration Appeals, there is a significant likelihood of the petitioner's removal to Russia in the reasonably foreseeable future. *Id.*

**LEGAL FRAMEWORK**

Petitioner is detained pre-final order of removal as an arriving alien. Title 8 United States Code § 1225(a)(1) provides that "[a]n 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." "Arriving alien"—a particular type of applicant for admission—is defined in 8 C.F.R. §§ 1.2 and 1001.1(q) 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.

Arriving aliens "fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

First § 1225(b)(1) applies to an arriving alien whom an immigration officer initially determines is inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7). *See* 8 U.S.C. § 1225(b)(1)(A)(i); *see also Jennings*, 583 U.S. at 287. For these arriving aliens, "the officer shall order the alien[s] removed from the United States without further hearing or review unless the alien[s] indicate[] either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). If the arriving alien applies for asylum, the "officer shall refer the alien for an interview by an asylum officer[.]" 8 U.S.C. § 1225(b)(1)(A)(ii). "[I]f the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). However, "[i]f 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).

Second, § 1225(b)(2) applies to an arriving alien whom "the examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted[.]" 8 U.S.C. § 1225(b)(2)(A). Such arriving aliens are referred "for a [removal] proceeding under [8 U.S.C. §] 1229a[.]" *Id.*; *see also Jennings*, 583 U.S. at 287; *In re M.S.*, 27 I. & N. Dec. 509, 510 (A.G. 2019).

Detention of all arriving aliens is mandatory. 8 U.S.C § 1225(b)(1)(B)(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." (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 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).

**ARGUMENT**[2]

Petitioner appears to primarily assert that her continued detention violates her procedural due process rights because her detention has become prolonged.[3] Pet. 2-5, ECF No. 1. The Petition

[2] Petitioner's claims are unclear and cite multiple statutes, regulations, and standards applicable to different forms of immigration detention. *See* Pet. 2-5. Because Petitioner is detained under 8 U.S.C. § 1225(b), Respondent has liberally construed Petitioner's claims to raise due process challenges to her detention as an arriving alien. To the extent the Court construes the Petition as raising different claims for relief, Respondent respectfully requests the opportunity to submit supplemental briefing.

[3] Petitioner references statutes, regulations, and cases concerning post-final order of removal detention. Pet. 2-4. To the extent Petitioner seeks relief under any of these authorities, the Petition should be denied because Petitioner is mandatorily detained pre-final order of removal under 8 U.S.C. § 1225(b), and therefore none of these authorities apply. Petitioner also cites authorities concerning fear-based claims for

should be denied for two reasons. ***First***, Petitioner's detention complies with due process because as an arriving alien, she is entitled to only the relief provided by the Immigration and Nationality Act ("INA"). Because the INA mandates detention of arriving aliens and does not permit their release on bond, Petitioner cannot establish any violation of due process. ***Second***, the Court lacks subject matter jurisdiction to review ICE/ERO's parole determinations. Petitioner fails to establish a due process violation, and the Petition should be denied.

## I. Petitioner's mandatory detention as an arriving alien complies with due process.

Petitioner claims that because she "passed the credible fear interview," she should have been released from detention, and "[d]espite the fact that the Petitioner provided all necessary information for her release under the care of sponsor, ICE repeatedly denied requests without explanation during 10 months." Pet. 2. Petitioner fails to establish a due process violation, and her claim should be denied. As an arriving alien, Petitioner's due process rights are limited to the procedures and relief provided by statute. Because her immigration proceedings remain ongoing, Petitioner's detention is mandated by statute, and she has no right to release from custody or bond other than discretionary parole. Accordingly, her due process claim should be denied.

### A. As an arriving alien who has never effected entry into the United States, Petitioner's due process rights are limited to those provided by statute.

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.

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relief from removal and appears to assert that she is entitled to relief from removal. *Id.* at 4-5. To the extent Petitioner seeks judicial review of legal or factual determinations made during her removal proceedings, the Court lacks subject matter jurisdiction over these claims. 8 U.S.C. § 1252(a)(5), (b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83 (1999); *Linares v. Dep't of Homeland Sec.*, 529 F. App'x 983, 984-85 (11th Cir. 2013) (per curiam); *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011).

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."). The Eleventh Circuit has reached this same conclusion. *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984) ("Aliens seeking admission to the United States . . . have no constitutional rights with regard to their applications and must be content to accept whatever statutory rights and privileges they are granted by Congress.").

**B. Petitioner fails to establish a due process violation because the INA mandates detention until the completion of applicable proceedings, and Petitioner's proceedings remain ongoing.**

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.

Here, Petitioner's removal proceedings remain ongoing, so she cannot establish that her mandatory detention violates due process. Although an IJ has denied Petitioner's applications for relief and ordered her removed, Bush Decl. ¶ 11-12 & Ex. G, Petitioner has appealed that removal order to the BIA, *id.* ¶ 13 & Ex. H. That appeal remains pending with the BIA. *Id.* ¶ 14. Petitioner will remain detained as an arriving alien until her removal proceedings conclude. *See* 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1241.1. Thus, Petitioner remains mandatorily detained pending "the completion of applicable proceedings." *Jennings*, 583 U.S. at 302. Because Petitioner is detained while awaiting the conclusion of proceedings and because the INA does not permit bond hearings

or release, Petitioner has no independent due process right to a bond hearing or release. *Thuraissigiam*, 591 U.S. at 107, 140.

This Court has addressed the precise issue presented here and, in light of these longstanding principles, held that an arriving alien has no due process right to a bond hearing or release from custody while removal proceedings remain ongoing. 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).

The Court should apply the same reasoning here. The INA mandates the detention of arriving aliens until the completion of proceedings and does not allow for bond hearings or release. *Jennings*, 583 U.S. at 302. Because arriving aliens' due process rights are limited to those provided by the INA, *Thuraissigiam*, 591 U.S. at 139-40, Petitioner is not entitled to a bond hearing or release, *D.A.V.V.*, 2020 WL 13240240, at *4-6. Petitioner's claim should be denied.

## II. The Court lacks jurisdiction over Petitioner's challenges to ICE's denials of her parole requests.

Petitioner also appears to claim that ICE/ERO should release her on parole pursuant to 8 U.S.C. § 1182(d)(5)(A), claiming she has shown circumstances that warrant a favorable exercise of discretion. Pet. 2. To the extent Petitioner requests judicial review of ICE/ERO's discretionary determination to continue her detention rather than release her on parole, the Court should deny this claim for lack of subject matter jurisdiction.

"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, 8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA")—limits federal courts' jurisdiction to review discretionary determinations made by ICE/ERO as follows:

> Notwithstanding 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[.]

"[*M*]*any* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999) (emphasis in original) (citations omitted). In promulgating section 1252(a)(2)(B)(ii) specifically, "Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010).

Here, Petitioner appears to request review of ICE/ERO's decision to continue her detention and decline to explain why Petitioner has not been released on parole. Pet. 2. However, by statute, 8 U.S.C. § 1182(d)(5)(A) explicitly commits parole decisions to ICE/ERO's discretion: "The Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" (emphasis added); *see also Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam) ("The decision whether to parole an alien into the United States rests within [ICE/ERO's] discretion . . . ."). Because parole decisions are committed to agency discretion by statute, the Eleventh Circuit has held that section 1252(a)(2)(B)(ii) bars judicial review of a parole decision. *Pouzo*, 516 F. App'x at 731 ("[T]hat discretionary decision is shielded from judicial review, 8 U.S.C. § 1252(a)(2)(B)."); *Alonso-Escobar v. USCIS Field Off. Dir. Miami, Fla.*, 462 F. App'x 933, 935 (11th Cir. 2012) (per curiam) (affirming dismissal of claim challenging denial of parole for lack of jurisdiction pursuant to section 1252(a)(2)(B)).

This Court has specifically held that section 1252(a)(2)(B)(ii) deprives the Court of subject matter jurisdiction to review ICE/ERO's discretionary decision to continue detention rather than release an arriving alien on parole. *A.M.Y. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-61-CDL-MSH, R. & R. 38-42 (M.D. Ga. Oct. 13, 2020), ECF No. 47, *recommendation adopted*, Order

(M.D. Ga. Nov. 4, 2020), ECF No. 49. Other 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 here and find that it lacks jurisdiction to review ICE/ERO's parole determination pursuant to section 1252(a)(2)(B)(ii). Therefore, the Petition should be denied.

Respectfully submitted, this 14th day of April, 2025.

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**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the Response 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:

Elena Mukhanova
A# [redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 14th day of April, 2025.

BY: *s/ Michael P. Morrill*
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