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

E.M.,	:	
Petitioner,	:	
v.	:	**Case No. 4:25-cv-245-CDL-CHW** **28 U.S.C. § 2241**
Warden, STEWART DETENTION CENTER,	:	
Respondent.	:	

ORDER AND RECOMMENDATION

Before the Court is Petitioner E.M.'s application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). For the following reasons, it is **RECOMMENDED** that the motion (Doc. 1) be **DENIED**.

BACKGROUND

Petitioner, a native and citizen of Haiti, applied for entry at the Calexico, California Port of Entry on July 27, 2023. (Doc. 8-2). That day, Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE/ERO") charged Petitioner with removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I). (Doc. 8-3, p. 4). Petitioner was then paroled into the United States pending a hearing that was initially scheduled for November 17, 2026. (Doc. 8-2, p. 2; Doc. 8-3, p. 1).

Petitioner again entered into ICE/ERO custody on August 24, 2024, when ICE/ERO encountered Petitioner at the Cobb County Sheriff's Office. (Doc. 8-1, ¶ 6). Petitioner

appeared for his initial master hearing on September 12, 2024, and the case was re-set to October 1, 2024. (*Id.*, ¶ 7). Petitioner twice requested a continuance. At a hearing on January 7, 2025, Petitioner contested the factual allegations and charge of removability. (*Id.*, ¶ 7–10). The Immigration Judge ("IJ") re-set the case to February 4, 2025, to afford Petitioner an opportunity to provide evidence and file an application for relief. (*Id.*, ¶ 10). Petitioner filed an application for relief from removal on February 4, 2025, and the IJ re-set the case to May 28, 2025, for a merits hearing. (*Id.*, ¶ 11).

On March 18, 2025, Petitioner appeared before the IJ to resolve the § 1182(a)(7)(A)(i)(I) charge, and the case was re-set to May 6, 2025. (*Id.*, ¶ 12). Petitioner appeared again before the IJ on April 3, 2025, at which time the IJ held a bond redetermination hearing and denied Petitioner's request for bond after a finding that the IJ did not have jurisdiction based on Petitioner's status as an "arriving alien." (Doc. 8-10). At the May 28, 2025, merits hearing, the IJ granted the Department of Homeland Security's ("DHS") Motion to Pretermit Petitioner's application for relief, and the IJ ordered Petitioner removed to Haiti. (Doc. 8-11). Petitioner filed a Notice of Appeal to the Board of Immigration Appeals on June 20, 2025, but did not file a brief. (Doc. 8-1, ¶ 16). (Doc. 8-12). As of November 17, 2025, Petitioner's appeal remained pending. (Doc. 8-1, ¶ 16).

DISCUSSION

Petitioner asserts three grounds for relief in his petition: (1) Immigration laws state that he should not be detained longer than six months; (2) He is not a danger to the community or a flight risk; and (3) He pleaded not guilty to his aggravated felony, and, as

such, should be able to qualify for a bond. (Doc. 1, p. 6). Respondent argues that Petitioner is detained under 8 U.S.C. § 1225(b)(1) and contends that Petitioner's application for relief should be denied because Petitioner's detention does not violate the Due Process Clause of the Fifth Amendment. *See* (Doc. 8, pp. 5–10); (Doc. 8-1, ¶ 17),

8 U.S.C. § 1225(a)(1) provides that "[a]n alien present in the Unite States who has not been admitted or who arrives in the United States . . . shall be deemed . . . an applicant for admission." *Id.* "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Respondent contends that Petitioner is being detained under § 1225(b)(1). That statute provides that

> If an immigration officer determines that an alien . . . who is arriving in the United States . . . is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

8 U.S.C. § 1225(b)(1)(A)(i).

Further, "[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." U.S.C § 1225(b)(1)(B)(ii). Detention in such cases is mandatory. *Jennings*, 583 U.S. at 297 ("§ 1225(b)(1) . . . mandate[s] detention of applicants for admission until certain proceedings have concluded."). The sole exception is that the Attorney General may, in his discretion, release an alien on parole. 8 U.S.C.

§ 1182(d)(5)(A). Mandatory detention under § 1225(b) continues until removal proceedings terminate. *Jennings*, 583 U.S. at 297. Until that point "*nothing* in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Id.* (emphasis added). By providing a sole exception, permitting the Attorney General to parole an alien, the statutory language "implies that there are no other circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300.

In this case, Petitioner falls under § 1225(b)(1), as that provision applies to aliens initially determined to be inadmissible because they lack valid documentation. (Docs. 8-1, ¶¶ 4, 5, 17; 8-2). That Petitioner was paroled by the Attorney General into the United States pending removal proceedings does not change the fact that his detention is governed by § 1225(b)(1). *See, e.g.*, *P.R.S., et al., v. WARDEN JASON STREEVAL, et al.*, No. 4:25-CV-330 (P.R.S.) (consolidated), 2025 WL 3269947, at *2 (M.D. Ga. Nov. 24, 2025) ("The fact that [the petitioner] was released while the claim was considered does not eliminate Respondent['s] authority to detain him without a bond hearing.").

Critically, the removal proceedings initiated against Petitioner were never terminated, and his appeal remains pending. *See id.*; (Doc. (Doc. 8-1, ¶ 16). As such, Petitioner must remain detained pending the completion of those proceedings. The only due process Petitioner is due are "those rights regarding admission that Congress has provided by statute." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). "[B]ecause the INA does not provide arriving aliens the right to bond, Petitioner has no

independent procedural due process rights to a bond hearing." *D.A.V.V. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-CV-159-WLS-MSH, 2020 WL 13240240, at *6 (M.D. Ga. Dec. 7, 2020). Therefore, Petitioner's claim that his due process rights are being violated should be denied.

To any extent that Petitioner's argument that he should be granted parole because he is neither a danger to the community nor a flight risk and has pleaded not guilty to his aggravated felony can be read to suggest that the Court review ICE/ERO's determination to continue his detention, the Court does not have subject matter jurisdiction to review the discretionary decisions of ICE/ERO "when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010). "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) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 173–80 (1803)). As the Court of Appeals for the Eleventh Circuit has explained, "[t]he decision whether to parole an alien into the United States rests within the discretion of the Secretary [of the Department of Homeland Security], and that discretionary decision is shielded from judicial review." *Pouzo v. USCIS Miami*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam) (internal citations omitted). § 1252(a)(2)(B) plainly bars the Court from exercising jurisdiction over ICE/ERO's parole determination.

CONCLUSION

For the reasons discussed herein, it is **RECOMMENDED** that Petitioner's application for habeas corpus relief (Doc. 1) be **DENIED.**

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. Any objection is limited in length to TWENTY (20) PAGES. See M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 9th day of December, 2025.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge