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

J.U.A.M.,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-519-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE TO PETITION

On December 26, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") claiming that (1) she is not subject to mandatory pre-final order of removal detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and (2) even if she is, that statute is unconstitutional on its face because it violates due process. ECF No. 1. On December 30, 2025, the Court issued an Order to Show Cause directing Respondent to show cause within seven days why the Petition should not be granted in light of the Court's rulings in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH (M.D. Ga. Nov. 1, 2025) and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). ECF No. 5.

[1] In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security ("DHS"), and Immigration and Customs Enforcement ("ICE"), as well as DHS and ICE as Respondents. "[T]he default rule [28 U.S.C. § 2241 petitions] 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 Stewart Detention Center as the sole appropriately named respondent in this action.

BACKGROUND

Petitioner is a native and citizen of Guatemala. Declaration of Deportation Officer Hal Waters at ¶ 4 & Ex. A, I-213 dated July 23, 2021. On or about July 23, 2021, Petitioner applied for admission into the United States at the Ysleta Port of Entry in El Paso, Texas. *Id.* That same day, ICE/ERO served Petitioner with a Notice to Appear (NTA) charging her with removability pursuant to Immigration and Nationality Act (INA) § 212(a)(7)(A)(i)(I), and she was subsequently paroled from ICE custody. *Id.* at ¶ 5 & Ex. B, Notice to Appear dated July 23, 2021. On September 16, 2022, Petitioner filed an application for relief from removal with the Immigration Court. *Id.* at ¶ 6. On May 16, 2023, an Immigration Judge (IJ) granted DHS's unopposed motion to dismiss proceedings under 8 CFR 1239.2(c). *Id.* at ¶ 7 & Ex. C, Order on Motion to Dismiss.

On November 23, 2025, Petitioner entered ICE/ERO custody after she was encountered at the Hall County Jail in Gainesville, Georgia. *Id.* at ¶ 8 & Ex. D, I-213 dated November 23, 2025. That same day, ICE/ERO issued Petitioner an NTA charging inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I). *Id.* at ¶ 9 & Ex. E, Notice to Appear dated November 23, 2025. On December 11, 2025, Petitioner appeared for her initial master calendar hearing before an IJ and requested a continuance to find an attorney. *Id.* at ¶ 10. The IJ granted Petitioner's request, and the case was reset to a master calendar hearing on January 6, 2026. *Id.* at ¶ 10 & Ex. F, Notice of Hearing dated December 11, 2025.

Petitioner is currently detained at Stewart Detention Center in Lumpkin, Georgia, under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). *Id.* at ¶ 11. If Petitioner is ordered removed to Guatemala and the order of removal is final, ICE/ERO will be able to effectuate Petitioner's removal to Guatemala. *Id.* at ¶ 12. Guatemala is open for international travel and is issuing travel documents to facilitate removals of Guatemalan nationals. *Id.* ICE/ERO is currently removing non-citizens to Guatemala. *Id.*

ARGUMENT

Respondent respectfully shows the Court that Petitioner is not in the same factual situation as the petitioners in *J.A.M.* and *P.R.S.* The issue in those cases centered on a question of statutory interpretation regarding 8 U.S.C. §§ 1225(b)(2) and 1226(a) and whether noncitizens who have been present in the United States without admission—but who are not classified under 8 U.S.C. § 1225(b)(1)—can be subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225(b)(2)(A). *J.A.M.*, 2025 WL 3050094, at *2-5. Here, the Petition does not pose this issue because Petitioner is not detained pursuant to § 1225(b)(2)(A) on the basis of her unlawful presence. Rather, she is detained under that statute because she is an arriving alien who was paroled into the United States after she applied for admission at a port of entry. Neither *Hurtado* nor *J.A.M.* addressed this issue. In fact, well before *Hurtado*, a non-citizen in Petitioner's position would be mandatorily detained under § 1225(b)(2)(A).

Petitioner is currently detained pre-final order of removal as an arriving alien. 8 U.S.C. § 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." 8 C.F.R. §§ 1.2 and 1001.1(q) 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.

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 288; *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)); *Jennings*, 583 U.S. at 302 ("§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings . . . ."). 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); *see also Jennings*, 583 U.S. at 300-01.

In this case, Petitioner is an applicant for admission because she arrived in the United States, 8 U.S.C. § 1225(a)(1), and she is an arriving alien because she applied for admission at a port of entry, 8 C.F.R. § 1001.1(q). *See* Waters Decl. at ¶ 4 & Ex. A. Unlike most arriving aliens, however, Petitioner was not processed for expedited removal under § 1225(b)(1). She was instead issued an NTA and later paroled from ICE custody. *Id.* at ¶ 5 & Ex. B.

Given that Petitioner is detained pursuant § 1225(b)(2)(A) solely on the basis of her status as an arriving alien, neither *Hurtado* nor *J.A.M.* have any bearing on the question presented by the Petition. Both decisions dealt solely with whether non-citizens who are applicants for admission based on their unlawful presence in the United States may be subject to mandatory detention under § 1225(b)(2)(A). But Petitioner is not subject to detention under § 1225(b)(2)(A) on this basis. She is not an applicant for admission under § 1225(a)(1) based on her unlawful presence; she is an applicant for admission because she arrived in the United States and was detained upon requesting admission. Further, unlike the petitioner in *J.A.M.*, Petitioner here was immediately inspected by an immigration officer before she even entered the country. Given that Petitioner is detained pursuant to § 1225(b)(2)(A) on an entirely different basis than the non-citizen in *J.A.M.*, that case is distinguishable and does not dictate the outcome here.

Because Petitioner is an arriving alien, she has no due process right to a bond hearing. "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." *Fiallo*, 430 U.S. at 792 (collecting cases)); *see also Jennings*, 583 U.S. at 286 ("To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.").

"[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); *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972) ("[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."). "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews*, 426 U.S. at 79-80.

Based on the political branches' dual powers to admit non-citizens and determine the procedures for admission, the Supreme 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." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citations omitted). In recognition of the political branches' power to set such procedures, the Court has consistently held that arriving aliens' due process rights are limited to only the relief and procedures provided by statute. *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."); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) ("Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien."); *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.").

Similarly, the Eleventh Circuit has long recognized that "[e]xcludable aliens have fewer rights than do deportable aliens, and those seeking initial admission to this country have the fewest of all." *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985) (citing *Landon*, 459 U.S. at 32). Arriving aliens are a class of excludable aliens who "seek admission but have not been granted entry into the United States. Even if physically present in this country, they are legally considered detained at the border." *Id.* at 1483-84. "[N]either parole nor detention has . . . any effect on their status." *Id.* (citing *Leng May Ma v. Barber*, 357 U.S. 185, 188 (1958)). Rather, "[a]liens 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." *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984).

In reaching this conclusion, the Eleventh Circuit relied on the Supreme Court's reasoning in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953). *See Jean*, 727 F.2d at 969-70. In *Mezei*, the Supreme Court explained that "an alien on the threshold of initial entry stands on a different footing" than an alien who has "passed through our gates, even illegally[.]" *Mezei*, 345 U.S. at 212. The Court concluded that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Id.*

In *Thuraissigiam v. Department of Homeland Security*, 591 U.S. 103 (2020), the Supreme Court recently reaffirmed this "century-old rule regarding the due process rights of an alien seeking initial entry[]"—that for aliens not admitted to the United States, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 131 (internal quotations and citations omitted). Accordingly, arriving aliens are "on the threshold" and have "only those rights regarding admission that

Congress has provided by statute." *Id.* at 140.

Here, Petitioner is an arriving alien who has not been admitted into the United States, and her detention is mandatory. 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(2)(A). Further, under the INA, Petitioner has no right to be released on bond. 8 C.F.R. § 1003.19(h)(2)(i)(B) ("[A]n immigration judge may not redetermine conditions of custody imposed by [ICE/ERO] with respect to . . . [a]rriving aliens in removal proceedings[.]"); *Jennings*, 583 U.S. at 298-303. Rather, she may only seek discretionary parole. 8 U.S.C. § 1182(d)(5)(A); *Jennings*, 583 U.S. at 299-301; *see also* 8 C.F.R. §§ 212.5(b), 235.3(c).

Because Petitioner has no statutory right to release or bond—aside from discretionary parole—she similarly has no procedural due process right to release or bond. District courts in the Eleventh Circuit—including this Court—have reached the same conclusion. *See D.A.V.V. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-CV-159-CDL-MSH, 2020 WL 13240240, at *3-4 (M.D. Ga. Dec. 7, 2020); *Dini v. Warden, Etowah Det. Ctr.*, No. 4:19-cv-01065, 2019 WL 4888018, at *2 (N.D. Ala. Oct. 3, 2019). District courts in other jurisdictions have done the same. *See 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 (S.D.N.Y. 2021); *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020).

Petitioner's temporary release on parole and subsequent re-detention did not alter her immigration status, and she remains an arriving alien. 8 U.S.C. § 1182(d)(5)(A) provides that "[t]he Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" However, § 1182(d)(5)(A) also makes clear that "such parole of such alien shall not be regarded as an admission of the alien[.]" *See also Jennings*, 583 U.S. at 288. Based on this language, the Eleventh

Circuit has recognized that "[p]arole is not admission." *Sookhoo v. U.S. Attorney Gen.*, 596 F. App'x 771, 772-73 (11th Cir. 2015) (per curiam) (citing 8 U.S.C. § 1101(a)(13)(B); 8 U.S.C. § 1182(d)(5)(A); *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status . . . .")).

Rather, once the parole period expires, 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). Therefore, the fact that Petitioner was previously paroled into the United States does not affect her status as an arriving alien or her concomitant due process rights.

CONCLUSION

For the reasons set forth above, to the extent Petitioner seeks release from custody or a bond hearing, the Petition should be denied because Petitioner is mandatorily detained as an arriving alien.

Respectfully submitted this 6th day of January, 2025.

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