

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

DENIS BULYCHEV,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-193-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE TO AMENDED PETITION

On February 2, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”) claiming that his detention violates his rights to due process. ECF No. 1. The Court ordered Respondent to respond to the Petition within 21 days. ECF No. 3. On February 13, 2026, Petitioner amended his Petition. ECF No. 5. For the reasons set forth below, the Amended Petition should be denied.

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 Russia who applied for admission at the Progreso Port of Entry in Progreso, Texas, on December 3, 2023. Declaration of Deportation officer Tartanger Stephens at ¶ 4 & Ex. A, Form I-213 Record of Deportable/Inadmissible Alien dated December 3, 2023. That same day, Petitioner was issued and served a Notice to Appear, charging him with inadmissibility pursuant to section 212(a)(7)(A)(i)(I) of the INA. *Id.* at ¶ 5 & Ex. B, Notice to Appear. Petitioner was paroled for one year pending removal proceedings. *Id.* at ¶ 5 & Ex. A. On January 12, 2024, Petitioner filed an application for relief from removal with the Immigration Court. *Id.* at ¶ 6.

On December 4, 2025, ICE/ERO encountered Petitioner at an ICE/ERO office in Charlotte, North Carolina; Petitioner entered ICE/ERO custody that same day. *Id.* at ¶ 7 & Ex. C, Form I-213 Record of Deportable/Inadmissible Alien dated December 5, 2025. Prior to being taken into custody, Petitioner was issued traffic citations in three different counties in North Carolina for offenses that occurred on March 14, 2024, in Mecklenburg County; April 19, 2025, in Union County; and November 8, 2025, in Rutherford County. *Id.* at ¶ 8 & Ex. D, North Carolina Traffic Case Summaries.

On January 13, 2026, Petitioner appeared with an attorney for his initial master calendar hearing. *Id.* at ¶ 9. The Immigration Judge took pleadings, and Petitioner, through his attorney, admitted the allegations and conceded the charge. *Id.* & Ex. E, Notice of Hearing dated January 13, 2026. Petitioner's attorney requested a continuance to prepare for the case. *Id.* The Immigration Judge granted the request and adjourned the case to January 27, 2026. *Id.* On January 22, 2026, the court reset the hearing to January 29, 2026. *Id.* at ¶ 10 & Ex. F, Notice of Hearing dated January 22, 2026. On January 29, 2026, Petitioner appeared, with his attorney, for a master calendar hearing. *Id.* at ¶ 11. The Immigration Judge set the case for a merits hearing on February 20, 2026. *Id.* & Ex. G, Notice of Hearing dated January 29, 2026. On February 5, 2026, the court advanced the merits hearing to February 17, 2026. *Id.* at ¶ 12 & Ex. H, Notice of Hearing dated February 5, 2026. On February 6, 2026, Petitioner, through counsel, filed a motion to

continue the merits hearing. *Id.* at ¶ 13. The Immigration Judge denied the motion on February 9, 2026. *Id.* & Ex. I, IJ Order Denying Motion to Continue dated February 9, 2026. On February 12, 2026, Petitioner filed a subsequent motion to continue the merits hearing. *Id.* at ¶ 14. On February 13, 2026, the Immigration Judge granted the motion to continue and continued the merits hearing to February 24, 2026. *Id.* & Ex. J, IJ Order Granting Motion to Continue dated February 13, 2026.

Petitioner is an arriving alien who is currently detained at the Stewart Detention Center under the authority of section 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2)(A). *Id.* at ¶ 15. If Petitioner becomes subject to a final order of removal, there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at ¶ 16. Russia is open for international travel, and ICE/ERO is currently removing non-citizens to Russia. *Id.*

ARGUMENT

I. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A).

Respondent respectfully shows the Court that, while Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A), 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 Amended Petition does not pose this issue because Petitioner is not detained pursuant to § 1225(b)(2)(A) on the basis of his unlawful presence.¹ Rather, he is detained under that statute because he is an arriving alien who was paroled into the United States after he applied for admission at a port of entry. Petitioner is mandatorily detained under § 1225(b)(2)(A).

Petitioner is currently detained pre-final order of removal as an arriving alien. 8 U.S.C. §

¹ To be clear, Petitioner does not clearly assert entitlement to a bond hearing pursuant to *J.A.M.*

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

Given that Petitioner is detained pursuant § 1225(b)(2)(A) solely on the basis of his status as an arriving alien, neither *Hurtado* nor *J.A.M.* have any bearing on the question presented by the Amended 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. He is not an applicant for admission under § 1225(a)(1) based on his unlawful presence; he is an applicant for admission because he 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 he 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, he has no due process right to any form of discretionary

release or 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 his 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, he 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—he 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 his immigration status, and he 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 his “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 his status as an arriving alien or his concomitant due process rights.

II. Petitioner’s Eighth Amendment claim fails.

In his Amended Petition, Petitioner also challenges the conditions of his confinement in immigration custody and seeks release from custody as a remedy. *See* Am. Pet. at 18, 20-21. He claims he has asthma that is exacerbated by the conditions at Stewart Detention Center and that he is not receiving proper treatment. *Id.* Petitioner’s claim should be denied for two reasons. First, conditions of confinement claims are not cognizable in a habeas corpus proceeding. Second, allegations concerning conditions of confinement, even if proven, do not entitle Petitioner to release.

First, Petitioner’s claim should be denied because it is not cognizable in habeas. “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence . . . [s]uch claims fall within the ‘core’ of habeas corpus[.]” *Nelson v. Campbell*, 541 U.S.

637, 643 (2004) “By contrast, constitutional claims that merely challenge the conditions of a prisoner’s confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core[.]” *Id.* For these reasons, in the immigration context, the Eleventh Circuit has held that a “§ 2241 petition is not the appropriate vehicle for raising . . . a claim challeng[ing] the conditions of confinement, not the fact or duration of that confinement.” *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015) (per curiam) (affirming dismissal of immigration detainee’s habeas petition alleging the denial of inadequate medical care because the claim was not cognizable in habeas).

In reliance on these principles, courts throughout the Eleventh Circuit have held that immigration detainees’ claims concerning their conditions of confinement are not cognizable in habeas. *Benavides v. Gartland*, No. 5:20 cv 46, 2020 WL 3839938, at *4 (S.D. Ga. July 8, 2020); *Louis v. Martin*, No. 2:20-cv-349-FtM-60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348-49 (M.D. Ga. 2020); *Archilla v. Witte*, No. 4:20-cv-00596-RDP-JHE, 2020 WL 2513648, at *12 (N.D. Ala. May 15, 2020); *Matos v. Lopez Vega*, 614 F. Supp. 3d 1158, 1167-68 (S.D. Fla. 2020). Petitioner similarly attempts to challenge his conditions of confinement in immigration custody through a habeas petition under § 2241. The Court should deny this claim because it is not cognizable in this habeas proceeding.

Second, Petitioner’s claim should be denied because he is not entitled to release from custody to remedy any purportedly unlawful condition of confinement. “[E]ven if a prisoner proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release.” *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979), *cert. denied*, 442 U.S. 932 (1979)). Rather, “[t]he appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment.” *Id.*

The Eleventh Circuit has held that “even if [an immigration detainee] established a constitutional violation [in a habeas proceeding], he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions of confinement claim.” *Vaz*, 634 F. App’x at 781 (citing *Gomez*, 899 F.2d at 1126); *see also A.S.M.*, 467 F. Supp. 3d at 1348 (“Release from detention is not available as a remedy for unconstitutional conditions of confinement claims.” (citations omitted)). Accordingly, even assuming Petitioner could establish an unlawful condition of confinement, his habeas claim should be denied because he is not entitled to release from custody as a remedy.

CONCLUSION

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

Respectfully submitted this 26th day of February, 2026.

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