

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

I.C.C., )  
)  
Petitioner, )  
) CASE NO 4:26-cv-249-CDL-ALS  
vs. )  
)  
KRISTI NOEM, Secretary, U.S. Department of )  
Homeland Security (DHS); TODD M. LYONS, )  
Acting Director, U.S. Immigration and Customs )  
Enforcement (ICE); DEREK GORDON, Acting )  
Executive Associate Director, Homeland Security )  
Investigations (HSI), U.S. Immigration and Customs )  
Enforcement (ICE); MARCOS CHARLES, Acting )  
Executive Associate Director, Enforcement and )  
Removal Operations (ERO), U.S. Immigration and )  
Customs Enforcement (ICE); DAREN MARGOLIN, )  
Acting Director, Executive Office For Immigration )  
Review; JASON STREEVAL, Warden, Stewart )  
Detention Center, )  
)  
Respondents. )  
\_\_\_\_\_ )

**AMENDED REPLY TO GOVERNMENT'S RESPONSE**

Petitioner, I.C.C., hereby submits this Amended Reply to the Government's Response, further elaborating on the legal and factual bases for the requested relief. This Reply addresses Respondents' arguments against the Petitioner's habeas corpus petition, which challenges his ongoing unlawful detention and the categorical denial of a meaningful bond hearing. Respondents have moved to dismiss the petition, asserting a lack of jurisdiction and that the Petitioner is subject to mandatory detention. However, as this Reply demonstrates, the Petitioner's claims are proper challenges to the lawfulness of his custody, falling squarely within this Court's habeas jurisdiction, and his detention violates both statutory authority and Fifth Amendment due process protections. As explained below, the Court possesses jurisdiction over the Petitioner's habeas claims and Petitioner is not an "arriving alien" subject to mandatory detention, his detention is governed by 8 U.S.C. § 1226(a), and his Fifth Amendment due process rights have been violated by the unlawful revocation of his parole and subsequent detention.

## **I. RELEVANT FACTS**

Iovany Carmona Cervantes,  a native and citizen of Mexico, was born on  and is 30 years old. He is married and identified as a member of a family unit.

On July 8, 2023, Petitioner applied for admission at the Paso Del Norte Port of Entry in El Paso, Texas, using a CBP One appointment. On that date, he was paroled into the United States under Section 212(d)(5) of the Immigration Act for two years, pending removal proceedings, having entered with 'No Documents.' A Notice to Appear (I-862) was served on July 8, 2023, charging him as inadmissible under INA § 212(a)(7)(A)(i)(I) for not possessing valid entry documents. He was ordered to appear before an immigration judge on November 6, 2024. On June 18, 2024, Petitioner filed an application for relief from removal, and on July 1, 2024, through

counsel, he admitted the allegations and conceded the charge of inadmissibility. There are no aggravated felony convictions against him, and he is not subject to a final order of removal.

On January 15, 2026, Petitioner was taken into ICE/ERO custody after being encountered during the arrest of another individual in Crisp County, Georgia. He has been in custody for 34 days and is currently detained at the Stewart Detention Center. On February 11, 2026, Petitioner appeared with counsel for a master calendar hearing, which was adjourned to February 25, 2026, for a merits hearing on his application for relief from removal.

Petitioner, represented by attorney Joy Rich, filed a petition for a writ of habeas corpus on February 11, 2026. The Court issued an Order to Show Cause on February 12, 2026, and on the same day, granted the Habeas Petition, directing Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within seven days. The Court's order specified that a stay would only occur if Respondents filed an appropriate motion seeking relief from the order. On February 16, 2026, Respondents filed a response to the District Court. On February 19, 2026, an Immigration Judge conducted a bond hearing at the Stewart Detention Center. The Immigration Judge took no action, stating that the process was stayed because DHS had filed a response to the habeas grant. Counsel for Petitioner argued that the response did not automatically stay the order. Petitioner seeks enforcement of the Court's February 12, 2026, order.

## **II. THE PETITION IS NOT MOOT**

Respondents contend that Petitioner's claims are moot because he is now in new 240 proceedings rather than expedited removal proceedings. This argument fundamentally misunderstands the nature of the relief sought and the ongoing injury Petitioner suffers. Petitioner challenges his ongoing unlawful detention by U.S. Immigration and Customs Enforcement (ICE) at the Stewart Detention Center, as well as the categorical denial of any meaningful bond hearing.

These are live controversies that persist regardless of the specific procedural posture of his removal proceedings.

The core of Petitioner's habeas petition is to challenge the lawfulness of his current custody and to seek immediate release or, alternatively, a discretionary bond hearing. The fact that the underlying removal proceedings may have shifted from one form to another does not extinguish the controversy surrounding his detention. The relief sought directly addresses the present deprivation of liberty, which remains an active and ongoing injury. A case becomes moot only when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. Here, Petitioner remains detained, and the question of whether that detention is lawful and whether he is entitled to a bond hearing is very much alive. The government's argument for mootness is therefore unavailing and does not warrant dismissal.

### **III. PETITIONER'S HABEAS CLAIMS ARE PROPER CHALLENGES TO THE LAWFULNESS OF CUSTODY**

Respondents contend that Petitioner is not challenging the lawfulness of his custody, but rather the decision to dismiss his prior 240 proceedings, his placement into expedited removal, and the type of review over his asylum claims. This assertion mischaracterizes the explicit grounds of Petitioner's habeas petition.

Petitioner unequivocally challenges the legality of his prolonged detention and the categorical denial of any meaningful bond hearing. These claims directly implicate the lawfulness of his current physical custody, which is the quintessential subject matter of a habeas corpus petition. The petition seeks a declaratory judgment affirming that his detention should be under 8 U.S.C. § 1226(a) and an order for his immediate release or a discretionary bond hearing.

Such challenges to the basis and duration of detention are precisely what habeas corpus is designed to address. The government's attempt to reframe Petitioner's claims as mere procedural

grievances unrelated to the lawfulness of his custody is inaccurate and does not provide a basis for dismissal.

#### IV. PETITIONER IS NOT AN “ARRIVING ALIEN” SUBJECT TO MANDATORY DETENTION UNDER 8 § U.S.C. 1225(b)

Respondents assert that Petitioner is lawfully subject to mandatory detention under 8 U.S.C. § 1225(b) as an “arriving” noncitizen, and that this statutory authority precludes any right to a bond hearing. They contend that Petitioner's parole into the United States did not alter his status as an "arriving alien," and that upon revocation, mandatory detention resumes. This classification is legally erroneous and misinterprets the INA's detention framework.

The plain language and historical context of the INA demonstrate that "arriving" in § 1225(b)(1)(A)(i) refers to individuals **physically in the process of coming into the United States at a port of entry**. The ordinary meaning of "arriving" includes "to reach a destination," "to make an appearance," and "to come upon the scene" (ARRIVING Definition & Meaning - Merriam-Webster, arriving). This present-progressive tense connotes continuation, referring to people actively in the process of reaching the United States, which necessarily ends once the destination is reached. Petitioner was apprehended in the interior of the United States, for 18 months after he had already entered and been paroled, not while "arriving in" the United States.

While 8 C.F.R. § 1.2 defines an "arriving alien" to include an applicant for admission "coming or attempting to come into the United States at a port-of-entry" and states that an arriving alien "remains an arriving alien even if paroled," this regulatory language must be read in harmony with the statute. Parole, while not an admission, allows a noncitizen to be physically present in the United States. Once paroled and present in the interior, a noncitizen is no longer "arriving in" the United States for the purposes of § 1225(b). The "entry fiction" doctrine, which treated paroled

noncitizens as if they were still standing at the border, is not supported by the current statutory scheme for applying expedited removal to parolees.

Instead, Petitioner's custody is governed by 8 U.S.C. § 1226(a), which expressly contemplates discretionary detention and individualized bond determinations for noncitizens arrested "in the United States" on a warrant. This critical distinction has been recognized by federal courts, including those in this district. For example, in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL, 2025 WL 3050094 (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), the Middle District of Georgia held that noncitizens found in the United States without inspection are entitled to discretionary bond hearings under Section 1226(a). Petitioner, apprehended in the interior after a period of parole, is similarly situated to those subject to § 1226(a) detention, not the mandatory detention provisions of § 1225(b) reserved for those actively "arriving." Therefore, the government's classification of Petitioner as an "arriving alien" subject to mandatory detention under § 1225(b) is legally unsound and does not warrant dismissal.

**V. PETITIONER'S DETENTION IS GOVERNED BY 8 U.S.C. § 1226(a), AND RESPONDENTS' ACTIONS VIOLATE THE ACCARDI DOCTRINE**

Respondents argue that Petitioner is not detained under 8 U.S.C. § 1226(a) and that discretionary decisions under Section 1226 are not subject to judicial review. This position is incorrect both factually and legally. Petitioner's custody is, in fact, governed by 8 U.S.C. § 1226(a), which provides for discretionary detention and individualized bond determinations for noncitizens arrested "in the United States" on a warrant. The government's attempt to avoid this framework by misclassifying Petitioner as an "arriving alien" under § 1225(b) is contrary to the plain text of the INA.

Furthermore, Respondents' actions violate the *Accardi* doctrine, a fundamental principle of administrative law requiring federal agencies to adhere to their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, United States *Accardi v. Shaughnessy*, 347 U.S. 260, 266-267 (U.S. 1954). The Supreme Court has long held that regulations properly promulgated by the Attorney General have the effect of law, and agencies cannot sidestep their own rules.

For over two decades, agency regulations have implemented the statutory distinction between "arriving aliens" and those apprehended in the interior, explicitly providing for bond eligibility for interior apprehensions. After Congress amended the INA in 1996, the agency issued an interim rule clarifying that noncitizens "present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under 8 U.S.C. § 1226. This policy is enshrined in regulations such as 8 C.F.R. §§ 236.1 and 1236.1.

Respondents' current practice, which denies bond eligibility to Petitioner by misclassifying him and subjecting him to mandatory detention, represents an unlawful departure from these established rules. The *Accardi* doctrine applies not only to formal regulations but also to internal policies and guidance that confer "important procedural benefits upon individuals," such as the right to a bond hearing. By disregarding their own binding procedures, Respondents have acted unlawfully, rendering Petitioner's detention unlawful and requiring this Court to set it aside. This ground, therefore, does not warrant dismissal.

## **VI. PETITIONER'S DETENTION VIOLATES HIS FIFTH AMENDMENT DUE PROCESS RIGHTS**

Respondents argue that Petitioner, as an "arriving" noncitizen, is only entitled to the due process rights provided by statute, asserting that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application". This

argument fundamentally misapprehends the scope of Fifth Amendment due process protections and the nature of Petitioner's status.

The Due Process Clause applies to all persons within the United States, regardless of immigration status, and "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 690. Petitioner, having been paroled into the United States under 8 U.S.C. § 1182(d)(5)(A) and residing in the interior for a substantial period, is not an alien "seeking initial admission" at the border in the sense contemplated by cases like *Shaughnessy v. United States Mezei*, 345 U.S. 206 (1953). Instead, Petitioner has established a protected liberty interest in remaining free from detention.

Petitioner's July 2025 parole into the United States conferred a grant of conditional liberty. Where DHS has affirmatively conferred such conditional liberty and permitted an individual to live and work in the community, a protected liberty interest arises under the Fifth Amendment's Due Process Clause. Courts have recognized that once the government exercises its discretion to release a noncitizen into the community, the resulting conditional freedom gives rise to a protected liberty interest in remaining free from immigration detention. This is analogous to the liberty interest recognized for parolees and probationers in the criminal context, as established in *Morrissey v. Brewer*, where the Supreme Court held that a parolee's liberty involves significant values protected by the Due Process Clause, requiring an informal hearing before termination. *Morrissey v. Brewer*, 408 U.S. 471, 480-482 (U.S. 1972).

Respondents' actions violate both substantive and procedural due process. Substantively, Petitioner's detention is unconstitutional because it is arbitrary and serves no legitimate, non-punitive purpose. Civil immigration detention is permissible only to prevent flight or danger to the

community. *Jennings v. Rodriguez*, 138 S. Ct. 830, 846 (2018). Petitioner is neither a flight risk nor a danger to the community. His mandatory detention, without any individualized assessment, bears no reasonable relation to any legitimate government purpose and is therefore an arbitrary deprivation of liberty.

Procedurally, the current scheme entirely lacks the fundamental safeguards required by due process. Due process demands a "meaningful opportunity to be heard at a meaningful time and in a meaningful manner" before a neutral decision-maker. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Respondents unilaterally subjected Petitioner to mandatory detention without advance written notice, a statement of reasons, or a pre-deprivation hearing before a neutral decisionmaker. Applying the *Mathews* balancing test (*Mathews v. Eldridge*, 332-335), Petitioner's private interest in remaining free from physical detention is paramount, especially given his lawful parole, residence with family, and employment. The risk of erroneous deprivation is extremely high, as ICE acts as both prosecutor and judge, creating a structural defect that leads to a constitutionally intolerable risk of wrongful deprivation (*Marcello v. Bonds*, 349 U.S. 302, 305-306 (1955)). Conversely, the government's interest in enforcing an unlawful interpretation of the INA and its own regulations, which conflicts with established policy providing for bond hearings, is minimal. All three *Mathews* factors weigh decisively in Petitioner's favor, demonstrating that the current scheme is fundamentally unfair and unconstitutional. This ground, therefore, does not warrant dismissal.

#### **VII. THE REVOCATION OF PETITIONER'S PAROLE AND SUBSEQUENT DETENTION VIOLATED PROCEDURAL DUE PROCESS**

Respondents maintain that their actions in revoking parole and detaining Petitioner were lawful and in accordance with statutory authority, asserting that parole does not constitute admission and does not alter Petitioner's status as an "arriving alien"; thus, mandatory detention

resumes upon expiration or revocation. See, e.g., *Noori v. Larose*, No.: 25-cv-1824-GPC-MSB 2025 WL 2800149, \*8-9 (Oct. 1, 2025), *Arias v. Larose*, No.: 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, \*3 (S.D. Cal. Nov. 25, 2025). This argument fails to acknowledge the significant liberty interest created by parole and the procedural protections required before its termination.

Petitioner's July 2023 entry under advance parole was a grant of conditional liberty under 8 U.S.C. § 1182(d)(5)(A), allowing him to live and work in the community. This conditional liberty interest is protected by the Fifth Amendment's Due Process Clause. As established in *Morrissey v. Brewer*, individuals living at liberty on parole enjoy a significant "conditional" liberty interest and may not be re-incarcerated without basic procedural safeguards, including written notice of claimed violations, an opportunity to be heard in person, the right to present evidence, and a neutral decisionmaker. *Morrissey v. Brewer*, 487–490.

Respondents effectively terminated Petitioner's parole and restored him to "applicant for admission" status by serving a Notice to Appear and taking him into immigration custody, without: (a) advance written notice that his parole would be terminated; (b) any statement of reasons for termination; or (c) any pre-deprivation custody redetermination hearing before a neutral decisionmaker. This practice creates a high risk of erroneous deprivation of liberty. DHS's prior decision to grant parole reflected a determination that Petitioner was not a danger or flight risk. Respondents have identified no materially changed circumstances—no new criminal conduct, no violation of parole conditions, no failure to appear—that would justify re-detention. A brief pre-deprivation custody hearing, where the government bears the burden to show that termination of parole and re-detention are necessary, would substantially reduce this risk.

The government's interest in re-detaining Petitioner without such a hearing is minimal. Providing advance written notice and a prompt individualized custody hearing would not diminish

DHS's ability to effect removal or protect the public; it would simply require the agency to articulate and substantiate the basis for revoking parole and returning Petitioner to custody before the deprivation occurs. Civil immigration detention must be nonpunitive and bear a reasonable relation to statutory purposes, such as preventing flight or danger to the community. *Zadvydas*. At 690. Given Petitioner's demonstrated lack of flight risk or danger and the absence of any changed circumstances justifying re-detention, the government's actions appear arbitrary and lack a legitimate non-punitive purpose. Balancing the Mathews factors, Respondents' revocation of Petitioner's parole and his detention without advance notice and a pre-deprivation hearing before a neutral decisionmaker violate the procedural component of the Fifth Amendment's Due Process Clause. This ground, therefore, does not warrant dismissal.

### VIII. CONCLUSION

Petitioner's ongoing detention at the Stewart Detention Center since **January 15, 2026**, presents a live controversy concerning the fundamental right to liberty and the proper application of immigration law. The government's classification of Petitioner as an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b) is legally erroneous, as his custody should be governed by 8 U.S.C. § 1226(a), which allows for discretionary detention and individualized bond determinations. This misapplication of statutory authority, coupled with the re-detention of Petitioner without advance notice or a hearing, constitutes a clear violation of the Fifth Amendment's Due Process Clause and a disregard for established agency regulations under the *Accardi* doctrine. The irreparable harm of Petitioner's continued loss of liberty demands immediate judicial intervention.

Petitioner, a citizen and national of Mexico, was paroled into the United States on **July 8, 2023**, under advance parole, pending § 240 proceedings, subsequently living and working in the community and complying with all immigration requirements. ICE terminated Petitioner's parole

and took him into custody without advance written notice, a statement of reasons, or a pre-deprivation hearing. Petitioner is not a flight risk or a danger to the community. His continued detention, therefore, constitutes an irreparable deprivation of his liberty, disrupting his life, work, and family ties, without a legitimate basis.

The balance of hardships weighs decisively in Petitioner's favor. Petitioner faces severe and prolonged deprivation of liberty, inability to support himself or his family, and the psychological toll of incarceration. In contrast, the government's interest in maintaining this detention is minimal, as Petitioner poses no flight risk or danger. The government's actions are based on an erroneous interpretation of law and a policy that conflicts with its own regulations and due process principles. Providing a bond hearing or releasing Petitioner would impose a negligible administrative burden on the government compared to the profound deprivation of liberty suffered by Petitioner. The government has no legitimate interest in enforcing an unlawful policy or detaining individuals who pose no risk.

Prior to his re-detention, Petitioner was living and working freely in the community under advance parole, complying with all immigration requirements. The government's unilateral termination of parole and re-detention without due process fundamentally altered this status quo. Granting the requested relief—immediate release or a discretionary bond hearing—would restore Petitioner to a state of conditional liberty, or at least provide the due process he is owed, thereby preserving the essence of his pre-detention status. This would prevent further irreparable harm while the legal questions are resolved.

Should the Court find that it cannot grant the requested relief on the papers, Petitioner respectfully requests an immediate hearing. Petitioner has limited financial means, and requiring him to travel for a hearing would impose an undue burden.

**IX. PRAYER FOR RELIEF**

WHEREFORE, for the reasons stated herein, Petitioner respectfully requests that this Court grant the following relief:

1. Issue a declaratory judgment affirming that his detention should be under 8 U.S.C. § 1226(a);
2. Order his immediate release without restrictions or conditions due to his unlawful arrest;
3. Alternatively, order a discretionary bond hearing under § 1226(a) before an Article III judge, where the government must prove by clear and convincing evidence that he is a danger to the community or a flight risk;
4. Prohibit Respondents from re-detaining him or putting any restraints on his liberty unless they can meet the same evidentiary standard;

Respectfully submitted this 23<sup>rd</sup> Day of February, 2026.

/s/ Karen Weinstock  
Karen Weinstock  
Attorney for Petitioner  
Weinstock Immigration Lawyers, P.C.  
1827 Independence Square  
Atlanta, GA 30338  
Phone: (770) 913-0800  
Fax: (770) 913-0888  
kweinstock@visa-pros.com

**CERTIFICATE OF SERVICE**

I certify that on February 23, 2026, I electronically filed the foregoing Motion with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

Karen Weinstock

Attorney for Petitioner

Weinstock Immigration Lawyers, P.C.

1827 Independence Square

Atlanta, GA 30338

Phone: (770) 913-0800

Fax: (770) 913-0888

kweinstock@visa-pros.com