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

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| **X.C.,** | : | |
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| **Petitioner,** | : | |
| | : | **Case No. 4:26-CV-295-CDL-AGH** |
| **v.** | : | **28 U.S.C. § 2241** |
| | : | |
| **WARDEN, STEWART DETENTION CENTER,**[1] | : | |
| | : | |
| **Respondent.** | : | |

## RESPONSE TO PETITION

On February 19, 2026, Petitioner filed her Petition for Writ of Habeas Corpus ("Petition"). ECF No. 1.[2] On February 23, 2026 the Court ordered Respondents to file a response to the Petition within seven days. ECF No. 4. Respondent now files this Response showing the Court that the Petitioner should be denied.

## BACKGROUND

Petitioner is a native and citizen of China. Declaration of Deportation Officer Kumar Johnson ("Johnson Decl.") ¶ 4 & Ex. A. On July 21, 2023, Petitioner filed Form I-526E, Immigrant Petition by Regional Center Investor with U.S. Citizenship and Immigration Services (USCIS). *Id.* ¶ 5. On December 1, 2023, Petitioner filed Form I-485, Application to Register Permanent

[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.

[2] This is Petitioner's second habeas petition. Her first was filed as case 4:26-cv-212-CDL-CHW. After Respondent filed a motion to dismiss that petition, Petitioner filed a notice of voluntary dismissal. *See X.C. v. Streeval*, No. 4:26-cv-212-CDl (M.D. Ga. Feb. 5, 2026), ECF Nos. 5, 6.

Residence or Adjust Status with USCIS, concurrently with Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records. *Id.* ¶ 6 & Ex. B. On April 30, 2024, Petitioner's application for a parole document was approved. *Id.* ¶ 7. Petitioner's parole was set to expire on April 29, 2029. *Id.* ¶ 7.

On August 29, 2024, Petitioner filed a concurrent Form I-526E with USCIS, amending her initial submission. Johnson Decl. ¶ 8. On May 7, 2025, USCIS approved Petitioner's Form I-526E. *Id.* ¶ 9 & Ex. C. On July 28, 2025, Petitioner applied for admission at Hartsfield-Jackson Atlanta International Airport, in Atlanta, Georgia, and was paroled into the United States pursuant to Immigration and Nationality Act (INA) § 212(d)(5) (8 U.S.C. § 1182(d)(5)). *Id.* ¶ 10 & Ex. D.

On January 14, 2026, the Petitioner was encountered by ICE/ERO in Atlanta, Georgia, after being served with an Alcohol Tobacco and Firearms ("ATF") service of refusal of firearm purchase at a local ATF office and taken into ICE/ERO custody. *Id.* ¶ 11 & Ex. A. On January 15, 2026, ICE/ERO issued Form I-862 Notice to Appear (NTA) and charged the Petitioner with removability under INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)). *Id.* ¶ 12 & Ex. E. On the same date, ICE/ERO terminated Petitioner's parole. *Id.* ¶ 12.[3]

On January 19, 2026, Petitioner's attorney filed a Motion to Terminate with the Immigration Court. Johnson Decl. ¶ 13. On January 22, 2026, DHS filed Form I-261, Additional Charges of Inadmissibility/Deportability, designating Petitioner as an arriving alien, and amending the allegations to reflect her application for admission into the U.S. and the termination of her parole. *Id.* ¶ 14 & Ex. F. On January 23, 2026, Petitioner appeared with her attorney at a bond hearing at the Stewart Immigration Court. *Id.* ¶ 15. The Immigration Judge ("IJ") denied the bond request on the grounds that Petitioner is an arriving alien and the court has no jurisdiction over the

[3] "When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified." 8 C.F.R. § 212.5(e)(2).

custody of arriving aliens. *Id.* ¶ 15 & Ex. G. On February 6, 2026, Petitioner appeared with her attorney at her initial master calendar hearing at the Stewart Immigration Court. *Id.* ¶ 16. The IJ adjourned the matter to a contested master hearing on February 11, 2026, to determine the allegations in the NTA and for a decision on the Motion to Terminate. *Id.* ¶ 16 & Ex. H.

On February 11, 2026, Petitioner appeared with her attorney at an individual hearing at the Stewart Immigration Court. Johnson Decl. ¶ 17. The Immigration Judge heard arguments on the motion to terminate and adjourned the case to review all the documentation and issue a decision. *Id.* ¶ 17. Later that day, the Immigration Judge issued a decision, denying the Petitioner's motion to terminate and adjourned the case so that the Petitioner can address the pleadings. *Id.* ¶ 18 & Ex. I. On February 12, 2026, the Immigration Court issued a hearing notice advising the parties that the next master hearing will take place on March 10, 2026. *Id.* ¶ 19 & Ex. J.

Petitioner is detained at Stewart Detention Center pursuant to 8 U.S.C. § 1225(b)(2) as an arriving alien. Johnson Decl. ¶ 20. Petitioner has been in ICE/ERO custody since January 14, 2026. *Id.* ¶ 20. If Petitioner becomes subject to a final order of removal to China, there is a significant likelihood of her removal to China in the reasonably foreseeable future. *Id.* ¶ 21. China is open for international travel, and ICE/ERO is currently removing aliens to China. *Id.* ¶ 21.

## LEGAL FRAMEWORK

Petitioner is detained pre-final order of removal as an arriving alien. "An 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 U.S.C. § 1225(a)(1). Regulations 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.

8 C.F.R. §§ 1.2 and 1001.1(q). If an immigration officer determines an arriving alien is inadmissible, the officer "shall order the [non-citizen] removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). If the arriving alien "indicates either an intention to apply for asylum . . . or a fear of persecution," 8 U.S.C. § 1225(b)(1)(A)(i), the "officer shall refer the alien for an interview by an asylum officer," 8 U.S.C. § 1225(b)(1)(A)(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." 8 U.S.C. § 1225(b)(1)(B)(ii). If the officer determines the alien does not have a credible fear of persecution, they shall order the alien removed, but the alien has, by regulation, the option to request review of that determination by an Immigration Judge and in that event, the alien "shall be detained pending a final determination of credible fear of persecution[.]" 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III), and (IV). In some circumstances, an arriving alien will be placed into full removal proceedings without going through the "expedited removal" process provided for in § 1225(b)(1). However, even in this circumstance, an arriving alien, like Petitioner, is an alien "seeking admission" whom an examining immigration officer has determined to be "not clearly and beyond a doubt entitled to be admitted," and such alien, "shall be detained" pending full removal proceedings. 8 U.S.C. § 1225(b)(2). Thus, detention of all arriving aliens is mandatory. 8 U.S.C § 1225(b)(1)(B)(ii) ("the alien *shall be detained* for further consideration of the application for asylum." (emphasis added)); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 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 to mandatory detention 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).

ICE/ERO is permitted to parole a non-citizen into the United States, but this decision is committed to ICE/ERO's discretion: "[t]he Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" (emphasis added). 8 U.S.C. § 1182(d)(5)(A). Once the parole period expires, or parole is revoked at the discretion of ICE/ERO, 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).

**ARGUMENT**

Petitioner brings this Petition challenging her continued detention without a bond hearing as a violation of 8 U.S.C. § 1226(a) (Count 3), and under the Due Process Clause of the Fifth Amendment (Count 4). ECF No. 1. In addition to this core habeas request, Petitioner also challenges her arrest as violative of the Fourth Amendment and the INA (Count 1) and challenges the revocation of her parole (Count 2). *Id.* Petitioner's claims should be denied. Despite Petitioner's protestations to the contrary, Petitioner is an arriving alien, and is detained pursuant to the plain language of 8 U.S.C. § 1225(b)(2). As an arriving alien, she has no due process right to a bond hearing. Furthermore, her claims regarding the revocation or termination of her parole and regarding her arrest should likewise be denied.

To clarify the record, Respondent notes that Petitioner misstates her immigration status. [4] *See* Pet. ¶¶ 30-32. Petitioner was not admitted on a visa in August 2023. Instead, she was granted advance parole under 8 U.S.C. § 1182(d)(5) after filing a Form I-526E through which she was seeking a visa. The approval of her Form I-526E does not confer a visa, but merely approves the request for a visa, once a visa becomes available. Petitioner has left and returned to the United States on multiple occasions since she was first paroled. Most recently, Petitioner reentered the United States after traveling abroad and was again paroled under § 1182(d)(5) pursuant to an approved advance parole form I-512L. To be precise, this form does not "authorize[] travel abroad," Pet. ¶ 32, but instead indicates that the non-citizen is approved for parole upon their return to the United States, thus confirming that Petitioner was paroled into the United States upon her most recent return in July 2025.[5] If Petitioner were, as she claims, in possession of a valid visa, this would not be necessary.

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[4] Petitioner also confuses lawful immigration status with being in a "period of stay authorized by the Attorney General." Pet. ¶¶ 30-32. Periods of authorized stay are only relevant when determining an alien's accrual of unlawful presence for inadmissibility purposes. This matters when it comes to applying for adjustment of status, as aliens who have failed to continuously maintain lawful status since entry to the US are not eligible for adjustment. *See* INA § 245(c)(2); 8 C.F.R. § 245.1(b)(6) ("Any alien who files an application for adjustment of status … who has failed … to maintain continuously a lawful status since entry into the United States…" is not eligible for adjustment). Although an alien in a lawful immigration status is also in a period of authorized stay, the opposite is not necessarily true. Those in a period of authorized stay may or may not be in a lawful immigration status. *See* INA §§ 212(a)(9)(B), 212(a)(9)(C).

[5] "Advance parole is 'a mechanism by which a district director can, as a humanitarian measure, advise an alien who is in [the United States], but who knows or fears that he will be inadmissible if he leaves and tries to return, that he can leave with assurance that he will be paroled back into the United States upon return." *Rubi v. U.S. Sec. DHS*, 805 F. App'x 832, 833 n.1 (11th Cir. 2020) (quoting *Assa'ad v. U.S. Att'y Gen.*, 332 F.3d 1321, 1326–27 (11th Cir. 2003)). "When parole expires or is otherwise revoked, the nonimmigrant is subject to exclusion proceedings. 8 U.S.C. § 1182(d)(5)(A) ("parole . . . shall not be regarded as admission of the alien"); 8 C.F.R. § 212.5(e)(2) (upon termination of parole, the parolee "shall be restored to the status that he or she had at the time of parole"). *Id.*

**I. As an arriving alien, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and her previous parole does not affect that status.**

Petitioner is detained pre-final order of removal as an arriving alien under 8 U.S.C. § 1225(b)(2). Johnson Decl. ¶ 20. And under § 1225(b)(2), Petitioner's detention is mandatory and she is not entitled to a bond hearing. To the extent Petitioner argues that her release on parole altered her immigration status from an arriving alien, this argument is legally unfounded.

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. *See also*, *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025) ("[Respondents] did not waive the right to detain [the petitioner] by failing to follow the mandatory detention requirements of the statute [upon petitioner's arrival]."

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. This Court has thoroughly analyzed these binding precedents as applied in this exact context and held that arriving aliens mandatorily detained under section 1225(b) have no due process right to a bond hearing. Accordingly, the Court should deny Petitioner's claim based on these binding precedents.

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.").

This Court has applied these principles and addressed the precise issue presented here. 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); *Moore v. Nielsen*, 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582, at *3 (N.D. Ala. May 3, 2019).

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.[6]

As this Court has held—along with other courts around the country—because arriving aliens' due process rights are limited to the procedures provided by statute, an arriving alien has no due process right to a bond hearing while mandatorily detained under section 1225(b). *D.A.V.V.*, 2020 WL 13240240, at *6. Petitioner's claim should be denied.

## II. Petitioner's claims regarding her arrest are not cognizable in habeas and are otherwise meritless.

At the outset, Petitioner's suggestion that her arrest was in violation of 8 U.S.C. § 1226(a) is belied by the fact that she is not detained under § 1226(a) but under § 1225(b)(2). This claim

[6] To be clear, Petitioner's circumstance is distinguishable from that of the petitioners in *J.A.M.* and *P.R.S.* because unlike the Court's finding as to those petitioners, she applied for admission at a designated point of entry and was therefore undoubtedly "seeking admission," she was inspected upon arrival, and the inspecting officer found her not to be "clearly and beyond a doubt entitled to be admitted." Instead, she was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5). Following the revocation of that parole, Petitioner reverts to the status she had as if the parole was never granted, and her circumstances fit squarely within the ambit of § 1225(b)(2)(A) and her detention is mandatory.

should be denied for that reason alone. Further, Petitioner's claim under the Fourth Amendment is not cognizable in habeas, the Court lacks jurisdiction over the claim, and the Eleventh Circuit has declined to recognize a Fourth Amendment cause of action in this context under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

Petitioner's Fourth Amendment claim is not cognizable in habeas because it attempts to raise a civil claim concerning the nature of her arrest—not a challenge to her ongoing detention. At most, this claim would amount to a *Bivens* claim against the officials who arrested Petitioner. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1205-1213 (11th Cir. 2016). Petitioner, however, may not raise habeas claims and a *Bivens* claim in the same action. *See Corbin v. Dep't of Veteran Affairs*, No. 2:15-cv-1174, 2015 WL 10384134, at *2 (N.D. Ala. Dec. 11, 2015). "Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights." *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510, (1982). "[W]hatever the expanded scope of our jurisdiction may be, the remedy that habeas corpus provides remains tied to some form of relief from the petitioner's custody." *Arnaiz v. Federal Satellite Low*, 594 F.3d 1326, 1329 (11th Cir. 2010) (per curiam). Given that Petitioner's Fourth Amendment claim challenges the nature of her arrest, the claim is not cognizable in habeas and should be denied. To the extent Petitioner tries to shoehorn her Fourth Amendment claim into a habeas claim, the claim fails. Assuming, *arguendo*, that Petitioner is correct about the legality of her arrest (she's not), this would not change the fact that ICE/ERO retains a valid detention authority under § 1225(b)(2).

Second, even if Petitioner's claim is generally cognizable in habeas, the Court lacks subject-matter jurisdiction over the claim. 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

The Eleventh Circuit's opinion in *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), makes clear that the Court lacks jurisdiction over Petitioner's claim concerning the circumstances of her arrest. There, a non-citizen raised Fourth Amendment claims under *Bivens*, alleging, *inter alia*, that ICE/ERO officers "wrongfully procur[ed] a warrant for his arrest" and "arrest[ed] him unlawfully." *Gupta*, 709 F.3d at 1064. The district court dismissed the non-citizen's complaint, finding that 8 U.S.C. § 1252(g) deprived it of subject-matter jurisdiction. *Id.* On appeal, the Eleventh Circuit affirmed, finding that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Id.* at 1065; *see also id.* (holding that the non-citizen's "claims that [the ICE/ERO agents] illegally procured an arrest warrant, that the agents illegally arrested him, and that the agents illegally detained him each arise from an action taken to commence removal proceedings.").

Here, like the non-citizen in *Gupta*, Petitioner challenges ICE/ERO's actions in arresting her, alleging that the arrest was unlawful. Petitioner's arrest "constitutes an action taken to commence proceedings" within the meaning of section 1252(g). *Gupta*, 709 F.3d at 1065. As this Court has previously held, district courts lack jurisdiction over such claims. *See Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))). Petitioner's Fourth Amendment claim should be denied.

Third, even if Petitioner's Fourth Amendment claim is cognizable in habeas and the Court has jurisdiction, the claim lacks merit. Any Fourth Amendment claim against the ICE/ERO and CBP officials who arrested Petitioner may only be raised under *Bivens*. However, the Eleventh Circuit has declined to recognize a *Bivens* cause of action arising from a non-citizen's arrest and detention by immigration officials. *Alvarez*, 818 F.3d at 1205-1213. Accordingly, even ignoring that Petitioner's Fourth Amendment claim is not cognizable in habeas and that the Court lacks jurisdiction over the claim, Petitioner's claim otherwise lacks merit.

**III. Petitioner's claim regarding the termination of her parole also fails.**

Lastly, Petitioner challenges the termination of her parole. Pet. ¶¶ 66-77. Petitioner acknowledges that her most recent arrival into the United States was under discretionary parole pursuant to §1182(d)(5)(A). Pet. ¶ 67. She also accurately recognizes that her parole was terminated upon the issuance of a Notice to Appear which, pursuant to 8 C.F.R. § 212.5(e)(2) serves as the written notice required by that regulation. 8 C.F.R. § 212.5(e)(2) ("When a charging document is served on the alien, the charging document will constitute written notice of

termination of parole, unless otherwise specified."). Petitioner is also correct that upon termination of her parole, she was "restored to the status that [] she had at the time of parole." Pet. ¶ 68 (quoting 8 C.F.R. § 212.5(e)(2)). Despite these acknowledgments, Petitioner maintains that the termination of her parole was unlawful and that she should not be treated as any other arriving alien subject to mandatory detention under § 1225(b)(2). Petitioner is mistaken.

To the extent Petitioner asks the Court to review the decision to terminate her parole, this Court lacks jurisdiction to review that discretionary decision. The INA limits federal courts' jurisdiction to review discretionary determinations made by ICE/ERO as follows:

> [n]otwithstanding 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[.]

8 U.S.C. § 1252(a)(2)(B). Pursuant to § 1182(d)(5)(A) ICE/ERO is permitted to parole a non-citizen into the United States, but this decision is committed to ICE/ERO's discretion: "[t]he Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" 8 U.S.C. § 1182(d)(5) (emphasis added). In accordance with the plain text of the statute, the Eleventh Circuit has held that "[t]he decision whether to parole an alien into the United States rests within the discretion of the Secretary [of DHS], . . . and that discretionary decision is shielded from judicial review, 8 U.S.C. § 1252(a)(2)(B)." *Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam); *see also Perez-Perez v. Hanberry*, 781 F.2d 1477, 1479 (11th Cir. 1986) ("Parole decisions are deemed an integral part of the admissions process, and excludable aliens consequently cannot challenge parole decisions as a matter of constitutional right." (citations omitted)).

District 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 and find that it lacks jurisdiction to review ICE/ERO's parole determination pursuant to 8 U.S.C. § 1252(a)(2)(B).

To the extent Petitioner is challenging the procedures utilized in the termination of her parole, she is wrong on the merits. As Petitioner recognizes, the regulations implementing § 1182(d)(5) require written notice of parole termination, but explicitly note that a new charging document, such as a Notice to Appear, constitutes that notice of termination. *See* 8 C.F.R. § 212.5(e)(2); *see also* Pet. ¶ 68. Petitioner relies instead on a purported liberty interest gained on the basis of her parole status, and claims that this grants her the right to pre-detention notice and a hearing before a neutral decisionmaker. Pet. ¶ 69.

However, parole does not grant the type of protected liberty interest that Petitioner claims. As discussed in Section I, *supra*, "[s]ince 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. Petitioner's out-of-circuit district court rulings finding otherwise are not binding precedent on this Court and contradict binding Eleventh Circuit rulings.

## CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 2nd day of March, 2026.

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