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

JESUS ANTONIO MORENO GONZALEZ,	:	
Petitioner,	:	
v.	:	**Case No. 4:26-CV-316-CDL-AGH**
	:	**28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,	:	
Respondent.	:	

MOTION TO DISMISS

On February 24, 2026, Petitioner filed his Petition for Writ of Habeas Corpus ("Petition"). ECF No. 1. Petitioner claims, among other things, that he is entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a). ECF No. 1. On February 24, 2026, 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), the Court ordered Respondents to provide Petitioner a bond hearing within seven days. ECF No. 3. The Court's order further states that if "Respondents in good faith contend that the Court's prior rulings in *J.A.M.* and *P.R.S.* do not apply here, Respondents should file an appropriate motion seeking relief from this order and demonstrating why the Court's prior rulings in *J.A.M.* and *P.R.S.* do not control the result in this case. If such a good faith motion is filed, then this order shall be stayed pending the resolution of that motion." ECF No. 3. Respondent now files this good faith motion to dismiss the Petition, showing that *J.A.M.* and *P.R.S.* do not control the result in this case and that the Petition should therefore be dismissed.

BACKGROUND

Petitioner is a native and citizen of Mexico who has been mandatorily detained pre-final order of removal as an arriving alien pursuant to 8 U.S.C. § 1225(b)(2). Declaration of Deportation Officer Hal Waters ("Waters Decl.") ¶¶ 4, 11.

Petitioner applied for admission at the Hidalgo, Texas Port of Entry on December 1, 2022. *Id.* ¶ 4. That same day, Petitioner was issued and served with a Notice to Appear, charging him with inadmissibility pursuant to section 212(a)(7)(A)(i)(I) of the INA (8 U.S.C. § 1182(a)(7)(A)(i)(I)). *Id.* ¶ 5. He was subsequently released on parole. *Id.*

Petitioner filed an application for relief from removal with the immigration court on July 20, 2023. *Id.* at ¶ 6. Petitioner "had his application for asylum denied in July 2025, and it is currently on appeal with the BIA." Pet. ¶ 17. On December 6, 2023, Petitioner was convicted of driving without a valid license in Duluth, Georgia. Waters Decl. ¶ 7.

On October 26, 2023, an Immigration Judge denied Petitioner's application for relief from removal and issued Petitioner a removal order to Mexico. *Id.* ¶ 8. Petitioner filed a timely appeal on October 30, 2023, with the Board of Immigration Appeals (BIA). *Id.*

On December 3, 2025, Petitioner was encountered and entered ICE/ERO custody. *Id.* ¶ 9. Petitioner's appeal to the BIA remains pending. *Id.* ¶ 10. Petitioner is currently detained at Stewart Detention Center under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2). *Id.* at ¶ 11. If Petitioner's order of removal to Mexico becomes final, there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at ¶ 12. Mexico is open for international travel, and ICE/ERO routinely removes non-citizens to Mexico. *Id.*

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 his continued detention without a bond hearing as a violation of 8 U.S.C. § 1226(a), and under the Due Process Clause of the Fifth Amendment. ECF No. 1. Petitioner is mistaken. Despite Petitioner's protestations to the contrary, he is an

arriving alien, and is detained pursuant to the plain language of 8 U.S.C. § 1225(b)(2). As an arriving alien, he has no due process right to a bond hearing.

Petitioner is detained pre-final order of removal as an arriving alien under 8 U.S.C. § 1225(b)(2). Waters Decl. ¶ 11. And under § 1225(b)(2), Petitioner's detention is mandatory and he is not entitled to a bond hearing. To the extent Petitioner argues that his release on parole altered his 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 released into the United States does not affect his status as an arriving alien or his 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.[1]

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.

[1] 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, he applied for admission at a designated point of entry and was therefore undoubtedly "seeking admission," he was inspected upon arrival, and the inspecting officer found him not to be "clearly and beyond a doubt entitled to be admitted." Instead, he 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 he had as if the parole was never granted, and his circumstances fit squarely within the ambit of § 1225(b)(2)(A) and his detention is mandatory.

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 25th day of February, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

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This 25th day of February, 2026.

BY: */s/ Michael P. Morrill*
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