

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

A.M.H.G.,	:	
	:	
PETITIONER,	:	
	:	CASE NO. 4:26-CV-828-CDL-AGH
V.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On May 15, 2026, Petitioner filed her Petition for Writ of Habeas Corpus (“Petition”). ECF No. 1. On May 18, 2026, the Court issued an Order directing Respondent to provide Petitioner with a bond hearing within seven days or show cause why the Court’s rulings 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) do not control the result in this case. ECF No. 3. Because the seventh day from the Court’s order falls on Monday May 25, 2026, which is Memorial Day, Respondent endeavored to comply with the strict terms of the order and provide the required bond hearing no later than Friday, May 22, 2026. Unbeknownst to undersigned counsel, a bond hearing was scheduled for Petitioner before an Immigration Judge on

¹ In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. “[T]he default rule [for claims under 28 U.S.C. § 2241] 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.

May 21, 2026. Undersigned counsel did not have the documentation necessary for this motion prior to the bond hearing, and was unable to file prior to that hearing taking place.²

Petitioner is an arriving alien, and is not in the same circumstance as the petitioners discussed in *J.A.M.* or *P.R.S.* Further, notwithstanding the Eleventh Circuit's recent ruling in *Hernandez Alvarez v. Warden*, --F. 4th--, 2026 WL 1243395 (11th Cir. May 6, 2026), Respondent continues to assert that arriving aliens are properly detained pursuant to 8 U.S.C. § 1225(b)(2) and 8 C.F.R. § 235.3(c)(1), and are therefore not entitled to the bond hearings ordered in *J.A.M.* and *P.R.S.* Because Petitioner is an arriving alien, she is not covered by those rulings or the Eleventh Circuit's *Hernandez Alvarez* decision and her petition should be dismissed.³

² Based on the immigration court's understanding of the limitations of its jurisdiction, the IJ denied Petitioner's bond request at the May 21, 2026 hearing. *See* Ex. E. Pursuant to the Court's May 18, 2026, Order, this motion stays the directive for the immigration court to hold a bond hearing pursuant to § 1226(a) and the applicable regulations. ECF No. 3. In the event the Court disagrees with Respondent's position that Petitioner's status as an arriving alien removes her from the ambit of *J.A.M.*, *P.R.S.*, and *Hernandez Alvarez*, a new bond hearing will be scheduled and held in accordance with that order, and no jurisdictional impediments will be raised by the Department of Homeland Security regarding the issues raised herein.

³ In addition to a statutory and due process challenge to the application of § 1225(b)(2) Petitioner also raises a claim alleging a due process violation based on the revocation of her parole. Pet. 24-29. Because the Court directed Respondent to address the application of *J.A.M.* and *P.R.S.* in this good faith motion, Respondent does not address the parole claim in detail here. But in brief, this claim is not properly brought in this habeas action. *See Arnaiz v. Warden, Fed. Satellite Low*, 594 F.3d 1326, 1329 (11th Cir. 2010) (finding the writ of habeas corpus is reserved exclusively for relief from unlawful custody, and not for litigating the underlying mechanics of an arrest or the administrative decisions behind a release termination). Further, the Court is without jurisdiction based on 8 U.S.C. § 1252(g), which strips jurisdiction from federal courts over decisions or actions taken by the Government to commence proceedings, adjudicate cases, or execute removal orders. *See Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) (holding that securing a noncitizen while awaiting a removal determination constitutes an action taken to commence proceedings within the clear meaning of § 1252(g)). Finally, the Eleventh Circuit has specifically declined to extend remedies to these enforcement circumstances, reinforcing that the Executive Branch's authority to enforce immigration law is not subject to judicial second-guessing. *See Alvarez v. U.S. Immigration & Customs Enforcement*, 818 F.3d 1194, 1205–13 (11th Cir. 2016). Respondent requests an opportunity to more fully brief these issues, if the Court desires.

BACKGROUND

Petitioner is a native and citizen of Honduras. Declaration of Deportation Officer Osvaldo Ayende (“Ayende Decl.”) ¶ 4 & Ex. A. On October 14, 2022, U.S. Customs and Border Protection (“CBP”) encountered Petitioner at the Del Rio, Texas Port of Entry after she applied for admission. *Id.* ¶ 4 & Ex. A. CBP issued Petitioner a Notice to Appear (“NTA”) that charged her with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 4 & Ex. B. Petitioner was released on parole. *Id.* ¶ 4 & Ex. C.

On October 16, 2024, Petitioner appeared for a master hearing in which she admitted allegations on the NTA and conceded removability as charged. *Id.* ¶ 5.

On March 10, 2026, Petitioner was arrested for a misdemeanor crime of domestic violence and simple assault by the Kernersville Police Department in North Carolina. Ayende Decl. ¶ 6 & Ex. A. On March 13, 2026, ICE/ERO encountered Petitioner at the Forsyth County Jail in North Carolina. *Id.* ¶ 7. She was taken into ICE custody and was subsequently transported to SDC in Lumpkin, Georgia. *Id.* ¶ 7. On March 25, 2026, a Form 1-130, Petition for Alien Relative, was filed with U.S. Citizenship and Immigration Services (“USCIS”) on Petitioner’s behalf. *Id.* ¶ 8.

On April 3, 2026, Petitioner appeared for a custody redetermination hearing. *Id.* ¶ 9. The Immigration Judge (IJ) denied Petitioner’s request finding the court lacked jurisdiction to redetermine custody. *Id.* ¶ 9 & Ex. D. On April 14, 2026, Petitioner appeared for a master hearing. Ayende Decl. ¶ 10. At Petitioner’s request the hearing was rescheduled for May 5, 2026. *Id.* ¶ 10. On May 5, 2026, Petitioner appeared for a master hearing. *Id.* ¶ 11. Petitioner’s individual merits hearing was scheduled for June 2, 2026. *Id.* ¶ 11.

On May 21, 2026, Petitioner appeared for a custody redetermination hearing. *Id.* ¶ 12. The IJ denied Petitioner’s request finding the court lacked jurisdiction to redetermine custody. *Id.* ¶ 12 & Ex. E.

Petitioner is an arriving alien detained pursuant to 8 U.S.C. § 1225(b)(2) and 8 C.F.R. § 235.3(c)(1). Ayende Decl. ¶ 13.

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)); *see also* 8 C.F.R. § 235.3(c)(1). 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’s claims should be denied and the Order for Bond Hearing vacated. 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. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). Furthermore, although the Eleventh Circuit brought some clarity to the § 1225/§ 1226 detention authority dispute in *Hernandez Alvarez*, that case did not address the circumstance here, where an arriving alien, paroled into the United States, is arrested and her parole revoked, thereby reverting her status to that of an arriving alien. The petitioners in *Hernandez Alvarez* were not arriving aliens, but had entered the United States without inspection and were detained in the interior. 2026 WL 1243395 at *3. The reasoning behind the court’s finding that these petitioners were not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), but instead subject to discretionary detention under 8 U.S.C. § 1226(a), does not apply to Petitioner or other arriving aliens. Further, because *Hernandez Alvarez* did not directly address arriving aliens, any broad statements regarding the general applicability of § 1225 or § 1226 should not be read to overrule decades of Supreme Court, Eleventh Circuit, and this District’s case law regarding the proper detention authority for arriving aliens.

I. Supreme Court and District precedent confirm that Petitioner remains an arriving alien and remains subject to mandatory detention, notwithstanding her parole.

As a starting point, before considering the impact of *Hernandez Alvarez*, this Court’s precedent indicates that an arriving alien such as Petitioner is properly subject to mandatory detention under 8 U.S.C. § 1225(b)(2) even if they have been physically present in the United

States for some period of time following their initial arrival. In *D.A.V.V. v. Warden*, this Court reviewed relevant Supreme Court precedent regarding detention of arriving aliens and stated:

The mere fact that an arriving alien remains present—or even released—in the United States for even a lengthy period does not change the alien’s immigration status or rights under the INA. As the Supreme Court recently recognized in *Thuraissigiam v. Department of Homeland Security*, — U.S. —, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020), an arriving alien’s mere presence in the United States does not confer additional status or rights because “aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Thuraissigiam*, 140 S. Ct. at 1982 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215, 73 S. Ct. 625, 97 L. Ed. 956 (1953)).

The Supreme Court has long rejected the proposition that an alien ceases to be an arriving alien and attains rights otherwise unavailable to arriving aliens solely based on the alien’s length of detention, release, or presence in the United States. *Id.*; *Jennings v. Rodriguez*, — U.S. —, 138 S. Ct. 830, 842-45, 200 L. Ed. 2d 122 (2020) (rejecting Ninth Circuit’s holding that after six months, detention of alien under section 1225(b) shifts to section 1226(a)); *Landon v. Plasencia*, 459 U.S. 21, 32, 103 S. Ct. 321, 74 L.Ed.2d 21 (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.”); *Leng May Ma v. Barber*, 357 U.S. 185, 188, 78 S. Ct. 1072, 2 L.Ed.2d 1246 (1958) (“For over a half century this Court has held that the detention of an alien in custody pending determination of his admissibility does not legally constitute an entry though the alien is physically within the United States.”); *see also Bouchikhi v. Holder*, 676 F.3d 173, 177 (5th Cir. 2012) (“‘Arriving alien’ is a legal term of art explicitly defined in 8 C.F.R. § 1.2” and “the definition takes in various categories of aliens who are physically present in the United States but for one reason or another are not yet admitted.”); *A.M.Y. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:20-cv-61-CDL-MSH, Order & R. 30-33 (M.D. Ga. Oct. 13, 2020), ECF No. 47, *recommendation adopted by Order 1* (M.D. Ga. Nov. 4, 2020), ECF No. 49.

D.A.V.V. v. Warden, Irwin Cnty. Det. Ctr., No. 7:20-CV-159-WLS-MSH, 2020 WL 13240240, at *3 (M.D. Ga. Dec. 7, 2020).

This concept—that release into the United States following arrival at a port of entry and application for admission does not alter the non-citizen’s “arriving alien” status—has been reaffirmed by this Court since *D.A.V.V.* For example, in *C.J.S.C. v. Warden*, the Magistrate Judge

recently issued an Order and Recommendation addressing a petitioner's claims similar to those presented here. No. 4:26-cv-45-CDL-CHW, ECF No. 7 (M.D. Ga. May 20, 2026). There, the petitioner presented herself at a port of entry and applied for admission into the United States. *Id.* at 1. Following inspection, the petitioner was determined to be inadmissible and issued a Notice to Appear, instituting removal proceedings, but was released into the United States under humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5). *Id.* The petitioner was later encountered and arrested in the interior of the United States and detained as an arriving alien without access to a bond hearing. *Id.* at 2. The Magistrate Judge found that “[p]etitioner’s argument that her situation is similar to that of aliens who entered without inspection and that ‘Respondent[] allowed [p]etitioner to proceed freely to the interior’ is misguided.” *Id.* at 4-5. Because the statute under which the petitioner was released explicitly states that, “any such parole is not an admission and that parole [] may be revoked in the discretion of the Secretary of the DHS. 8 U.S.C. § 1182(d)(5)(A)[,]” the Magistrate Judge held that “[p]etitioner was encountered at a port of entry and is actively seeking admission. Petitioner’s status is not that of an alien who entered the United States without inspection and qualifies only as an applicant for admission, who would be eligible for bond under 8 U.S.C. § 1226(a).” *C.J.S.C.*, ECF No. 7 at 5.⁴

This Court has recently reaffirmed this reasoning in cases where the detainee was not an arriving alien, but still falls under a mandatory detention scheme in § 1225(b), and held that “release[] while [an asylum] claim was considered does not eliminate Respondents’ authority to detain [a non-citizen] without a bond hearing. [Respondents] did not waive the right to detain him by failing to follow the mandatory detention requirements of the statute.” *P.R.S.*, 2025 WL

⁴ Respondent recognizes that *C.J.S.C.* is only a Recommendation and has not yet been adopted by the District Judge. Respondent, however, believes the reasoning is sound and directly on point with this case and the Court should find it persuasive.

3269947 at *2 (addressing petitioner G.A.G.C.); *see also M.A.P.G. v. Warden*, No. 4:26-cv-103-CDL, 2026 WL 493469 at *2 (M.D. Ga. Feb. 23, 2026). The same reasoning applies to an arriving alien released on parole pending removal proceedings. The Court should similarly find that Respondents “did not waive the right to detain” Petitioner under § 1225(b) by releasing her on parole.

II. *Hernandez Alvarez* did not address arriving aliens and does not overrule binding precedent supporting mandatory detention for arriving aliens.

Petitioner asks the Court to find that all the above-discussed relevant precedent is no longer good law following the Eleventh Circuit’s opinion in *Hernandez Alvarez*. Not so. The Eleventh Circuit did not directly address the application of § 1225(b) to arriving aliens in *Hernandez Alvarez*, and did not discuss, let alone distinguish or overrule, the relevant legal landscape around detention of arriving aliens. Rather, the reasoning in *Hernandez Alvarez* reaffirms that precedent and confirms that § 1225(b) applies to arriving aliens such as Petitioner.

To start, *Hernandez Alvarez* addressed two petitioners, neither of whom are arriving aliens. 2026 WL 1243395 at *3. Thus, to the extent the Court addresses the interplay of § 1225 and § 1226 in the context of arriving aliens, such discussion is not directly relevant to the holding and is therefore dicta. As such, any broad generalizations that could be read to apply to arriving aliens is not necessarily binding precedent, and should not be read to overrule, especially indirectly, the on-point case law discussed above. Further, much of the language in *Hernandez Alvarez* supports Respondent’s position here:

The text and statutory structure of the INA, bolstered by the long history of detention across our immigration laws and the congressional purpose in passing IIRIRA, yield the conclusion that no-bond detention generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here.

2026 WL 1243395 at *2. Additionally, the Court mentions that even where mandatory detention applies, “[a]pplicants for admission detained pursuant to § 1225(b)(1) or § 1225(b)(2) may be released from DHS custody on a grant of ‘humanitarian parole,’ which allows an applicant to be released for ‘urgent humanitarian reasons’ or ‘significant public benefit,’ provided he ‘present[s] neither a security risk nor a risk of absconding.’” *Id.* (citing § 1182(d)(5)(A); 8 C.F.R. § 212.5(b)). The Court did not take the next step to address whether such parole altered the status of an “arriving alien” to whom it had explicitly stated “no-bond detention generally applies.” *Id.* at *2. Because the parole statute clearly states that a non-citizen’s status is not affected by a grant of humanitarian parole, it can be inferred that the Court recognized that such parole would not change the status of an “arriving alien” to some other status to which § 1225(b) would not apply. Certainly, it should not be inferred that the Court would silently overrule its own precedent or contravene explicit statutory language without an explanation. But Petitioner’s position requires a finding that the Eleventh Circuit did exactly that, and for that reason the position should be rejected.

The Court’s ultimate reading of §1225(b)(2) confirms that the Court did not exclude “arriving aliens” from mandatory detention:

When read this way, the function of the provision is clear -- arriving or present aliens who are seeking to be inspected and granted lawful entry must demonstrate that they are “clearly and beyond a doubt entitled” to get it, else they will be detained and referred by the inspecting officer for a proceeding before an immigration judge to determine whether or not they are *in fact* entitled to lawful entry. This understanding gives every word and clause found in § 1225(b)(2)(A) full meaning and effect, and uses the definitions supplied by Congress.

Hernandez Alvarez, 2026 WL 1243395 at *8. An arriving alien is, by definition, seeking to be inspected and granted lawful entry when they present themselves at a port of entry and apply for admission. 8 C.F.R. §1.2. Further, “[a]n arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”

Id. Thus, the most natural reading of *Hernandez Alvarez* is that § 1225(b)(2) does not apply to a non-citizen who entered the United States without inspection (and had never, therefore, affirmatively sought admission) and was detained in the interior of the country without, at the time of their detention, affirmatively seeking admission. 2026 WL 1243395 at *8. It does not follow, however, that § 1225(b)(2) cannot be applied to an arriving alien, who by definition came to a port of entry “seeking admission” to the United States, and remains an arriving alien (and therefore continues to “seek admission”) pursuant to the very statute that authorized their temporary parole into the country. The Eleventh Circuit did not expressly address arriving aliens, and to expand the reasoning by inference stretches it beyond the breaking point and runs contrary to the terms of the parole statute, Supreme Court precedent, and this Court’s previous rulings on arriving aliens.

III. This Court should not follow the Valdosta Division in extending *Hernandez Alvarez* to arriving aliens.

Although Petitioner does not cite to them in this Petition, it is likely that she will suggest that this Court should follow a pair of recent decisions from Senior United States District Judge W. Louis Sands from the Valdosta Division of this District and find that *Hernandez Alvarez* should be read to cover arriving aliens arrested in the interior while released on parole. *See* ECF No. 11 at 8-9.⁵ Respondent respectfully asserts that those cases were wrongly decided.

In *I.A.A.M.* and *B.A.M.A.*, the court expanded *Hernandez Alvarez* beyond its facts and beyond its reasoning. The court acknowledged that each petitioner had applied for admission at the border, been inspected by an examining immigration officer, and paroled under § 1182(d)(5). *See I.A.A.M.*, No. 7:26-cv-68, ECF No. 9 at 2. Yet, the court ignored the limitations in the statutory language of § 1182(d)(5) and the Supreme Court’s admonition in *Thuraissigiam* that “an arriving

⁵ *See B.A.M.A. v. Warden, Irwin County Detention Center*, No. 7:26-cv-95-WLS-ALS (M.D. Ga. May 13, 2026); *I.A.A.M. v. Warden, Irwin County Detention Center*, No. 7:26-cv-68-WLS-ALS (M.D. Ga. May 13, 2026).

alien's mere presence in the United States does not confer additional status or rights because 'aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are “treated” for due process purposes “as if stopped at the border.”’ ” 140 S. Ct. at 1982 (quoting *Mezei*, 345 U.S. 206, 215). But “additional status or rights” are exactly what the court granted the petitioners in *I.A.A.M.* and *B.A.M.A.* by finding that they were no longer subject to § 1225(b)(2), solely by virtue of their “mere presence” in the United States. If an arriving alien remains “treated . . . as if stopped at the border,” as the Supreme Court has declared, then they continue to meet all the criteria of mandatory detention under § 1225(b)(2) as detailed in *Hernandez Alvarez* and *J.A.M.* They remain an “applicant for admission” who is actively “seeking admission” by applying for admission at the port of entry (as opposed to attempting to bypass the legal admissions process like the petitioners did in *Hernandez Alvarez*) and who was inspected by an examining immigration officer and found not beyond a doubt eligible for admission. They are therefore subject to the terms of § 1225(b)(2).

The court in *I.A.A.M.* and *B.A.M.A.*, however, does not address this contrary binding precedent or the statutory and regulatory language regarding arriving aliens and parole in § 1182(d)(5) and 8 C.F.R. § 1.2. Instead, the court focused only on the physical presence of the petitioners in the interior of the country and the fact that they were arrested “while driving to work on a freeway” and therefore not, at that moment, actively “seeking admission” into the United States. *I.A.A.M.*, No. 7:26-cv-68, ECF No. 9 at 2. But this ignores the fact that those petitioners continued to be arriving aliens notwithstanding their parole, and their parole did not change their status as continuing to seek admission through their original applications for admission when they first came to the border. Those applications remain pending and they are still “seeking admission” despite the fact that they were not standing in front of an immigration officer submitting an

application at the time of their detention. To find otherwise overreads broad general language in *Hernandez Alvarez*, disregards more specific language therein regarding arriving aliens (as discussed *infra*), and disregards the legal status of parolees and the Supreme Court's prior pronouncements regarding parole's non-impact on arriving aliens' rights. This Court should find that *Hernandez Alvarez* did not limit the application of § 1225(b)(2) as to arriving aliens, and reaffirm *P.R.S.* and *D.A.V.V.* Arriving aliens remain arriving aliens notwithstanding parole, and upon their re-detention return to the custody from which they were paroled, i.e. mandatory detention under § 1225(b)(2).

Neither the *I.A.A.M. / B.A.M.A.* court, nor Petitioner, provides a convincing reason to justify the finding that arriving aliens can no longer be subjected to mandatory detention following their release on parole. The court does not attempt to grapple with the concept known as the “entry fiction,” which legally considers arriving aliens paroled into the country as remaining at the threshold, nor with the language in the parole statute and implementing regulations. Instead the court considered only the literal state of affairs at the time of the petitioners' arrests. Petitioner addresses the issue but cites only out-of-circuit and district court precedent regarding the application of expedited removal to previously paroled arriving aliens. *See* Pet. ¶ 50. Of course, the Government is not trying to apply expedited removal to Petitioner, so those cases are inapt in addition to being non-binding authority. Further, none of these arguments can avoid that the Supreme Court has affirmed the “entry fiction” in *Thuraissigiam*, saying that “aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’ ” 140 S. Ct. at 1982 (quoting *Mezei*, 345 U.S. 206, 215). Relying only on physical presence in the interior to suggest an arriving alien

is no longer “arriving” when they have been paroled directly contravenes the Supreme Court’s finding, and cannot stand.

Petitioner remains an “arriving alien” notwithstanding her parole and her arrest in the interior. Petitioner applied for admission at a port of entry. Ayende Decl. ¶ 4 & Ex. A. She was served with an NTA charging her as inadmissible. *Id.* ¶ 4 & Ex. B. She was then paroled under § 1182(d)(5). Petitioner was detained following an arrest for domestic violence and simple assault and her parole was terminated. *Id.* ¶ 7. By statute, regulation, and case law, Petitioner reverted to the status she had immediately prior to her parole: that of an “arriving alien.” *See* 8 U.S.C. § 1182(d)(5) and 8 C.F.R. § 1.2. As such, she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and the Eleventh Circuit’s decision in *Hernandez Alvarez* does not require otherwise.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. Petitioner is an arriving alien properly detained under 8 U.S.C. § 1225(b)(2) and she is not entitled to a bond hearing.

Respectfully submitted this 22nd day of May, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: /s/ Michael P. Morrill
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney’s Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
michael.morrill@usdoj.gov