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

V.O., Petitioner, v. WARDEN, STEWART DETENTION CENTER, et al., Respondents.	Case No. 4:26-cv-1168-CDL-AGH 28 U.S.C. § 2241 **PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR RELIEF FROM ORDER AND TO DISMISS THE HABEAS PETITION**

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR RELIEF FROM ORDER AND TO DISMISS THE HABEAS PETITION

INTRODUCTION

Respondents ask the Court to dismiss the Petition on the strength of *C.R.H. v. Warden, Stewart Detention Center*, No. 4:26-CV-101 (CDL) (M.D. Ga. Sept. 9, 2026). *C.R.H.* does not support that request. After holding that the petitioner there had not established entitlement to a bond hearing, this Court did not dismiss. It held that "[t]he remaining issue presented by Petitioner's habeas petition is whether Petitioner's parole was unlawfully revoked," found "the record is incomplete on this issue," and remanded to the Magistrate Judge for further consideration. *Id.* at 1, 7.

That is the procedural posture this case likewise warrants. Even if the Court adheres to *C.R.H.* on statutory classification, classification does not dispose of Petitioner's separate challenge to the process used to re-detain him, and Respondents' own submission leaves the operative August 26, 2026 custody decision undocumented. Count One does not turn on whether section

1225(b)(2) or section 1226(a) supplies the detention authority. Count Four separately seeks identification of the decisionmaker and the record necessary to test the custody pathway Respondent invokes, particularly because Respondent itself says an August 26 "custody determination review" occurred. C.R.H. treated the lawfulness of the end of parole as a separate question surviving the statutory ruling, and the record here is incomplete in the same way: Respondent describes a "custody determination review" and a determination that Petitioner "would enter ICE/ERO custody," ECF 6-1, Scott Decl. ¶ 15, and produces no decisionmaker, no criteria, no written result, no Form I-286, no warrant, and no statement of reasons.

The motion also contains a contradiction the Court should not overlook. Respondent asserts that it "provided all statutorily required process at the moment Petitioner was served with the Notice to Appear and related documentation on August 26, 2026," citing Scott Declaration ¶ 15. ECF No. 6 at 7. Respondent's own exhibit shows the Notice to Appear was served in person on January 13, 2023, ECF No. 6-2 at 2, and paragraph 15 says nothing about serving a Notice to Appear on August 26, 2026.

Petitioner also preserves his disagreement with the statutory holding of C.R.H. This record sharpens that disagreement: Petitioner conceded removability under section 212(a)(7)(A)(i)(I) on October 2, 2023 and now seeks relief from removal rather than admission. Scott Decl. ¶ 6. *Hernandez Alvarez* expressly distinguishes seeking relief from removal from seeking admission. *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026), slip op. at 55 (No. 25-14065, May 6, 2026); see *Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021).

The motion should be denied. At a minimum, dismissal should be denied as to Counts One and Four and Respondent directed to address the August 26, 2026 custody determination it has invoked but not produced.

THE RECORD RESPONDENT'S OWN SUBMISSION ESTABLISHES

1. Petitioner applied for admission at the San Ysidro Port of Entry on January 13, 2023, was inspected, and was served in person the same day with a Notice to Appear charging him under section 212(a)(7)(A)(i)(I) of the Act. ECF No. 6-2 at 1, 2, 4.

2. The Notice to Appear placed Petitioner directly into proceedings under 8 U.S.C. § 1229a. The box reciting issuance after a credible fear finding is unmarked, and the box reciting vacatur of an order under section 235(b)(1) is unmarked. ECF No. 6-2 at 1. Respondent's record shows direct placement into section 1229a proceedings and identifies no proceeding under 8 U.S.C. § 1225(b)(1).

3. Petitioner was paroled into the United States. His parole was authorized until January 12, 2024. ECF No. 6-3; Scott Decl. ¶ 4.

4. On October 2, 2023, Petitioner admitted the allegations of the Notice to Appear and conceded removability as charged. Scott Decl. ¶ 6. He thereafter filed applications for relief from removal. Scott Decl. ¶¶ 5, 8.

5. Respondents left Petitioner at liberty in the interior of the United States for three years, seven months, and thirteen days after the inspection, and for two years, seven months, and fourteen days after the recorded parole expiration. Scott Decl. ¶¶ 4, 15. Respondent states that Petitioner was "released at liberty under reporting obligations" during that period. ECF No. 6 at 5. Respondent identifies no discretionary act revoking parole; it relies on the January 12, 2024 expiration date, and it identifies no adverse event during the ensuing two years, seven months, and fourteen days.

6. Petitioner appeared for the master calendar hearings on October 4, 2023 and February 20, 2025, and later moved to change venue to the immigration court nearest his home. Scott Decl. ¶¶ 7, 11-12.

7. On August 26, 2026, Petitioner reported voluntarily to the ERO office in Charlotte. That appearance "prompted a custody determination review," ERO "determined that Petitioner would enter ICE/ERO custody," and Petitioner was arrested and transported to Stewart. Scott Decl. ¶ 15.

8. Respondent has produced no record of that review or determination, no Form I-286, no warrant, and no written statement of reasons. Respondent identifies no criminal arrest, charge, or conviction, and no predicate under 8 U.S.C. § 1226(c).

9. Petitioner's individual merits hearing was scheduled for May 1, 2028. Scott Decl. ¶ 11. The Charlotte master calendar hearing was cancelled on October 2, 2025 with no new date. Scott Decl. ¶ 14.

ARGUMENT

I. C.R.H. Does Not Support Dismissal. It Supports Retaining the Process Claim and Developing the Record.

Respondent treats C.R.H. as though it disposed of the entire petition. It did not. This Court denied habeas relief in C.R.H. "to the extent that Petitioner has not established that he is entitled to a bond hearing," and then held: "The remaining issue presented by Petitioner's habeas petition is whether Petitioner's parole was unlawfully revoked. The Court remands this action to the Magistrate for further consideration of that issue." C.R.H. at 7. The Court expressly noted that "the record is incomplete on this issue." Id. at 1.

Petitioner notes the full sentence. This Court said it was "skeptical that it has jurisdiction over this claim," and nevertheless declined to dismiss it because the record was incomplete. C.R.H. at 1. Count One here does not ask the Court to review the merits of a discretionary parole determination under 8 U.S.C. § 1182(d)(5)(A). It challenges the process used to re-detain Petitioner after years of supervised conditional liberty, which is a question of constitutional procedure rather than of discretionary immigration judgment. Demore v. Kim, 538 U.S. 510, 516-17 (2003).

The posture is not identical. In C.R.H. the Government revoked an extant parole at the reporting appointment. C.R.H. at 2. Here Respondent's position is that parole expired automatically in January 2024, after which Respondents supervised Petitioner in the community for another thirty-one months before the August 2026 custody review. The procedural lesson applies here as well: where the Government's account of how it ended a community liberty is incomplete, the record is developed rather than the petition dismissed.

Count One challenges the manner in which Respondents ended Petitioner's conditional liberty: without written notice of the reasons, without a hearing before a neutral decisionmaker, and without any disclosed individualized assessment. It does not turn on whether section 1225(b)(2) or section 1226(a) supplies the detention authority. Count Four is different in kind. It seeks identification of the decisionmaker and the record necessary to test the custody pathway Respondent invokes, and it is pressed here as a record-development claim, particularly because Respondent itself says an August 26 "custody determination review" occurred.

Respondent does not engage Count One as pleaded. Its due process discussion, ECF No. 6 at 6-7, addresses a different question: whether an arriving alien is entitled to a custody hearing before an immigration judge. It cites Thuraissigiam, Jennings, and 8 C.F.R. § 1003.19(h)(2)(i)(B)

for that proposition. Count One is not about entitlement to an immigration judge bond hearing. It is about the process owed before the Government ends a community liberty it initially granted and thereafter affirmatively supervised for years, including more than two and a half years after the recorded parole expiration, and Respondent's brief does not reach it.

As to Count Four, Respondent does identify the statutory and regulatory pathway it invokes: 8 U.S.C. § 1225(b)(2) and 8 C.F.R. § 235.3(c)(1). ECF No. 6 at 3, 7; Scott Decl. ¶ 16. What Respondent does not address is the decisionmaker-and-record component: who conducted the "custody determination review" described in Scott Declaration ¶ 15, under what delegated authority, against what criteria, and with what written result. An agency must follow its own regulations. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 266-68 (1954).

Respondent invokes that review as the event that placed Petitioner in custody and supplies nothing documenting it. Petitioner does not contend that C.R.H. recognized a record-identification claim of the kind pleaded in Count Four; C.R.H. preserved one issue, the lawfulness of the end of parole. The point is narrower and applies to both counts: where the Government relies on a custody review it has not produced, the answer is to develop the record rather than to dismiss.

II. Respondent's Account of the August 26, 2026 Process Is Contradicted by Its Own Exhibit

Respondent's only factual assertion identifying process actually provided on August 26, 2026 is one sentence: "Respondent provided all statutorily required process at the moment Petitioner was served with the Notice to Appear and related documentation on August 26, 2026. Scott Decl. ¶ 15. The Constitution demands nothing further." ECF No. 6 at 7.

Paragraph 15 of the Scott Declaration does not say that. It states that Petitioner reported to the ERO office, that his appearance prompted a custody determination review, that ERO

determined he would enter custody, and that he was arrested and transported to Stewart. It says nothing about service of a Notice to Appear on August 26, 2026.

Respondent's own Exhibit A establishes that the Notice to Appear was served on Petitioner in person on January 13, 2023, three years, seven months, and thirteen days earlier, with oral notice given in the Russian language. ECF No. 6-2 at 2. Petitioner conceded proper service of that document on that date in his written pleadings. Scott Decl. ¶ 6.

The only sentence in the motion that addresses what process Petitioner received on the day his liberty ended is therefore unsupported by the paragraph it cites and inconsistent with the exhibit it accompanies. The process claims cannot be dismissed on this incomplete and internally inconsistent record.

III. Count One States a Claim Under Mathews

Morrissey v. Brewer, 408 U.S. 471, 482, 485-89 (1972), recognizes that conditional community liberty can constitute a protected liberty interest and that its termination calls for review by a neutral decisionmaker. Accord *Goldberg v. Kelly*, 397 U.S. 254, 267-71 (1970). What supplies the pre-deprivation timing on this record is the Mathews balance. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The private interest is an established community liberty lasting more than three years. Respondent's own declaration confirms Petitioner's appearances at the October 2023 and February 2025 hearings and his voluntary appearance at the ERO office on August 26, 2026. ECF 6-1, Scott Decl. ¶¶ 7, 11, 15. The risk of erroneous deprivation is substantial where no individualized assessment of danger or flight risk has been disclosed or produced and the record identifies no post-release adverse fact. The Government's interest in dispensing with pre-deprivation process is

slight, because Respondents chose the date and place: a reporting appointment they scheduled and Petitioner attended voluntarily.

A court of this Circuit applied Mathews to a materially comparable re-detention and found a Fifth Amendment violation where the Government revoked a longstanding community release without reasonable notice and a meaningful opportunity to be heard. Mejias Tellez v. Warden, Glades County Detention Center, No. 2:26-cv-2269-SPC-KRH (M.D. Fla. Aug. 13, 2026). The enforcement maneuver there differed from this one, and Petitioner does not equate the two records. The court's Mathews analysis of a long community release is what is useful here.

Petitioner does not contend that Morrissey by itself supplies the rule for every noncitizen in every posture. He contends that where the Government confers a conditional liberty, affirmatively supervises it for years, including long after the date it now says the formal grant lapsed, and then ends it at an appointment of the Government's own choosing, the Mathews factors require some notice and some opportunity to be heard, and that on this record Respondent has disclosed neither.

IV. If the Court Reaches Classification, Petitioner Preserves His Hernandez Alvarez Objection to C.R.H.

Petitioner respectfully preserves his disagreement with the statutory holding of C.R.H., and notes at the outset that the disagreement may not need to be reached, because Count One survives either way and the Court can require development of the August 26, 2026 custody record without resolving the statutory disagreement.

C.R.H. rests on a specific finding. This Court held that "[b]ecause Petitioner affirmatively applied for admission and is still actively pursuing admission in his removal proceedings," he is an alien seeking admission under section 1225(b)(2), and added that the petitioner "has not

abandoned his pursuit of admission." C.R.H. at 5-6. The premise is active, present pursuit of admission.

Petitioner does not contend that he falls outside C.R.H. as a matter of this Court's own reasoning. He contends that this record presents the underlying statutory problem in its cleanest form. On October 2, 2023, Petitioner admitted the allegations of the Notice to Appear and conceded removability under section 212(a)(7)(A)(i)(I). Scott Decl. ¶ 6. He has never contested inadmissibility and does not claim entitlement to be admitted. He seeks protection and other relief from removal, not admission. Scott Decl. ¶¶ 5, 8.

The Eleventh Circuit has drawn that distinction. It held that "seeking relief from removal is not the same thing as seeking admission," slip op. at 55, citing Sanchez v. Mayorkas, 593 U.S. 409, 415 (2021), and that the complete phrase "an alien seeking admission" refers to one "pursuing lawful entry into the United States after inspection and authorization by an immigration officer," 175 F.4th at 1268. The court also held that "seeking" denotes "some active and temporally ongoing step or process," slip op. at 17, and that the operative event is the examining officer's determination, which "occurs before a § 1229a proceeding even commences," id. at 54-55.

A judge of this District has reached that conclusion on facts like these, holding that a noncitizen who applied for admission at the border and was paroled pending removal proceedings was not seeking admission at the time of his arrest. B.A.M.A. v. Warden, Irwin County Detention Center, No. 7:26-CV-95-WLS, 2026 WL 1362520, at *2 (M.D. Ga. May 13, 2026). C.R.H. acknowledged B.A.M.A. and expressly disagreed with it. C.R.H. at 6 n.1. This Court has also granted relief to a petitioner it found was "apprehended on arrival in the United States." C.L.M.H. v. Warden, Stewart Detention Center, No. 4:25-cv-476-CDL-AGH, ECF No. 6 (M.D. Ga. Dec. 22, 2025).

Petitioner is candid that B.A.M.A., C.L.M.H., and the decisions cited below are persuasive authority rather than controlling authority, and asks that C.R.H. be weighed the same way rather than given the controlling effect Respondent claims for it. Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011).

V. Respondent's Parole-Restoration Theory Has Been Rejected in This Circuit on This Posture

Respondent argues that when parole expired on January 12, 2024, Petitioner "lawfully returned to mandatory detention status under § 1225(b)(2)." ECF No. 6 at 5.

A court of this Circuit rejected that theory on August 31, 2026, for a petitioner in the same relevant statutory posture. The Sylvaince petitioner sought admission and was paroled at the San Ysidro Port of Entry, was charged under section 212(a)(7)(A)(i)(I), remained after his parole expired by its own terms, and was taken into ICE custody in the interior years later. The government argued, as Respondent argues here, that expiration of parole, relying on 8 U.S.C. § 1182(d)(5)(A) and the restoration language of 8 C.F.R. § 212.5(e)(2)(i), returned him to section 1225 treatment. Applying *Hernandez Alvarez*, the court held that the end of parole does not require treating a noncitizen as though the parole had never occurred, and that a person re-detained in the interior after years of residence is detained under section 1226(a). *Sylvaince v. Warden of the Miami Federal Detention Center*, No. 1:26-cv-23991 (S.D. Fla. Aug. 31, 2026). That record is not identical to this one; it involved a second charging document and an intervening criminal arrest. The statutory posture is the same.

Accord *Martinez Jimenez v. Warden, Florida Baker Correctional Institution*, No. 3:26-cv-1521-JEP-LLL (M.D. Fla. July 27, 2026); *Ortiz Arreiche v. Warden, Baker Correctional Institution*, No. 3:26-cv-1724-WWB-SJH (M.D. Fla. July 15, 2026) (government conceded that an

interior parolee is detained under section 1226); *Arnay Gonzales Martinez v. Warden*, No. 3:26-cv-1453-WWB-LLL (M.D. Fla. July 2, 2026); *Zaga Tawil v. Cardinal*, No. 26-22521, 2026 WL 2198539, at *5 n.2 (S.D. Fla. July 30, 2026).

The posture also differs from C.R.H. in a way that matters to the process claims. C.R.H. involved a parole that was revoked at a reporting appointment. C.R.H. at 2. Here Respondent relies on automatic expiration, which is an anchor of a kind, but it supplies no explanation for the separate custody review it conducted on August 26, 2026, after thirty-one additional months of supervised liberty.

VI. Respondent's Remaining Authorities Do Not Bear the Weight Placed on Them

Thuraissigiam. Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), concerns a noncitizen placed in expedited removal under 8 U.S.C. § 1225(b)(1) and apprehended shortly after crossing. Respondent's own exhibit reflects direct placement into section 1229a proceedings, with the credible-fear and section 235(b)(1) vacatur boxes unmarked, and identifies no expedited removal proceeding. ECF No. 6-2 at 1. Thuraissigiam did not address what process is due when the Government has itself released and supervised a person in the community for years and later chooses to re-detain him at a scheduled reporting appointment.

Leng May Ma. *Leng May Ma v. Barber*, 357 U.S. 185 (1958), holds that a parolee has not effected an entry for purposes of a withholding provision of the 1952 Act. It construes the entry doctrine. It does not address the allocation of detention authority between sections 1225 and 1226, a division Congress created in 1996.

Jean v. Nelson. Respondent quotes *Jean v. Nelson*, 727 F.2d 957, 969 (11th Cir. 1984) (en banc), for the proposition 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." ECF No. 6 at 3. The

Supreme Court held that the en banc court "should not have reached and decided the parole question on constitutional grounds," and affirmed only the judgment remanding for consideration of the statutory and regulatory claims. Jean v. Nelson, 472 U.S. 846, 849 (1985).

Jennings. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), describes section 1226 as the provision that generally governs the arrest and detention of noncitizens present in the country, id. at 288-89, the passage on which Hernandez Alvarez relied, 175 F.4th at 1279. Jennings held that sections 1225(b) and 1226(c) contain no implicit six-month limits. It did not decide which provision governs a parolee re-detained in the interior.

VII. Requested Disposition

Petitioner respectfully requests that the Court deny the motion, dissolve the stay, and give effect to its September 8, 2026 order requiring a bond hearing within seven days. Petitioner's request for release on reasonable conditions of supervision is made under the Petition and does not appear in that order.

In the alternative, if the Court adheres to C.R.H. on the statutory classification, Petitioner requests that the Court (a) deny dismissal as to Counts One and Four; (b) direct Respondent to produce or otherwise address the August 26, 2026 custody determination described in Scott Declaration ¶ 15, including the identity and delegated authority of the official who made it, the criteria applied, and any written result, together with the arrival and release records for the January 13, 2023 entry, including Form I-94 No. 197514451A3 and any parole authorization; and (c) adjudicate Counts One and Four on the completed record, or, alternatively, remand those counts to Magistrate Judge Helmick for record development. That disposition is consistent with C.R.H., which remanded the surviving process issue for further consideration because the record was incomplete. C.R.H. at 7.

Petitioner notes that Respondent has unilaterally "substituted" the Warden as the sole respondent. ECF No. 6 at 1 n.1. Petitioner does not dispute that the immediate custodian is the proper respondent for the core relief. Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004). The remaining respondents were named because Petitioner's alternative relief asks that 8 C.F.R. § 1003.19(h)(2)(i)(B) not be applied to withhold jurisdiction, relief directed at the Executive Office for Immigration Review. Petitioner raises the point only to preserve it.

CONCLUSION

The motion should be denied and the stay dissolved. If the Court adheres to C.R.H. on the statutory question, dismissal should still be denied as to Counts One and Four, and Respondent should be directed to complete the record on the August 26, 2026 custody determination it has invoked.

Respectfully submitted,

Dated: September 16, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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