

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

GABRIEL FERNANDEZ ERANA,

Petitioner,

Case No. 3:26-cv-1038-WWB-SJH

v.

MARKWAYNE MULLIN, et al.,

Respondents.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Gabriel Fernandez Erana challenges his detention by U.S. Immigration and Customs Enforcement, arguing he is entitled to immediate release. Federal Respondents contend that Romero Rojas is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as an arriving alien whose parole previously terminated.

BACKGROUND

Gabriel Fernandez Erana is a native and citizen of Bolivia who applied for admission and was paroled into the United States on or about August 7, 2023. (Ex. 1 at 2, I-213, Record of Deportable/Inadmissible Alien, Dated March 28, 2026). On the same day, a Notice to Appear was served on Fernandez Erana placing him into removal proceedings. (Ex. 2, Notice to Appear, Dated August 7, 2023). Gabriel Fernandez Erana was charged as an arriving alien who applied for admission to the United States without a valid unexpired immigrant Visa, reentry permit, border crossing card, or other

valid entry document required by the Immigration and Nationality Act pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*

On March 27, 2026, Fernandez Erana was again encountered by ICE when he was arrested by the Hillsborough County Sherriff's Office for Driving Under the Influence. (Ex. 1 at 1 and 2) On March 28, 2026, Fernandez Erana was returned to immigration custody. (Doc. 1 at ¶ 3).

He is currently detained at Florida Baker Correctional Institute.

CERTIFIED HABEAS RETURN

ICE is detaining Fernandez Erana under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). See 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Fernandez Erana bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021),

ARGUMENT

I. Fernandez Erana's detention comports with the INA and the Due Process Clause of the Fifth Amendment.

Title 8 U.S.C. § 1225—applicable to "applicants for admission," that is, aliens present in the United States who have not been admitted—is the specific detention authority applicable to Fernandez Erana. Under § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted *or who arrives in the United States.*" (Emphasis added). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(2)—the provision

relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2) mandates detention. *Id.* at 297; see also 8 U.S.C. § 1225(b)(2).

The present case is factually and legally distinct from recent cases finding § 1225(b)(2)(A) an inapplicable basis for detention. The Code of Federal Regulations define an “[a]rriving alien” 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. Importantly, “[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.*

Here, Fernandez Erana was paroled into the United States on or about August 7, 2023, as an arriving alien. (Ex. 1 at 2) His parole at a port of entry allowed his otherwise mandatory § 1225(b)(2)(A) detention to be suspended, subject, however, the government’s right to treat him “as if stopped at the border.” See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020). Pursuant to 8 C.F.R. § 212.5(e)(2)(i), service of a charging document serves as notice of termination of parole. Furthermore, 8 C.F.R. § 1003.13 identifies a Notice to Appear as one of the items defined as a charging document. Thus, Fernandez Erana’s parole terminated when he was served with a notice to appear on August 7, 2023, restoring him to an applicant for

admission subject to mandatory detention. *Cf. Cooper Pedro v. Warden, Glades County Detention Center*, 2:26-cv-KCD-DNF (M.D. Fla. Apr. 2, 2026) (holding a previously paroled petitioner is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)); *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081, at *6 (D. Me. Oct. 28, 2025) (holding the petitioner's parole automatically terminated upon expiration subjecting him to mandatory detention).¹ Federal Respondent's acknowledge that some Courts have rejected this argument in light of the Eleventh Circuits recent precedential decision, finding no distinction between an arriving alien who is then paroled into the country and an alien encountered in the interior. See *Mendes v. Garrett J. Ripa, et al.*, No. 3:26-cv-118-JEP-PDB at 3 (M.D. Fla. May 19, 2026).

Respondents further acknowledge *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) in which the Eleventh Circuit held that "[t]he text of [8 U.S.C.] § 1225(b)(2)(A) is clear that mandatory detention applies only to a narrower category of applicants for admission: those seeking lawful entry into the United States . . . [not] to other present aliens not seeking admission." *Id.* at *13. In short, "§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior." *Id.* at *14. Federal Respondent's believe that applicants for admission paroled into the country retain their status as those seeking lawful entry at the border once parole expires or is terminated

¹ Immigration Judges generally lack jurisdiction to redetermine conditions of custody for "[a]rriving aliens" in removal proceedings, including previously paroled aliens. See 8 C.F.R. § 1003.19(h)(2)(i)(B).

as opposed to the latter category of aliens that are merely present not seeking admission contemplated in *Hernandez Alvarez*. Federal Respondents are evaluating whether to seek further appellate review of *Hernandez Alvarez*. While reserving all rights, including the right to appeal on the issue of the proper detention authority for aliens like Petitioner who are present in the United States unlawfully, Federal Respondents acknowledge *Hernandez Alvarez* is binding on this Court.

In the event the Court orders a bond hearing to be conducted by an immigration judge under 8 U.S.C. § 1226(a), Federal Respondents request a reasonable period of seven working days to arrange an individualized bond hearing.

II. Fernandez Erana's Administrative Procedure Act claim is not properly before the Court.

Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *Burnam v. Marberry*, 313 F. App'x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedure Act in a single case); accord *Malcom v. Starr*, No. 20-cv-2503 (MJD/LIB), 2021 U.S. Dist. LEXIS 45387, 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021) ("As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.").

For example, Fernandez Erana did not pay the required filing fee for any non-habeas claims. The statute governing filing fees in district court states, "The clerk of each

district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.” 28 U.S.C. § 1914(a). “The payment of the \$5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief.” *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107, at *2 (W.D. Tex. June 18, 2020); *King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at *4 (S.D. Fla. Apr. 30, 2021) (Bloom, J.) (finding that petitioner could not circumvent filing fee requirements by filing a “joint or hybrid” habeas action).

Finally, the Administrative Procedure Act provides, “Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy* in a court are subject to judicial review.” (Emphasis added). As Judge Dudek recently noted, a petitioner such as Romero Rojas has an adequate remedy—“the very habeas petition he filed to get through the courthouse doors.” See *Gomez- Alcina v. Noem, Garret*, No. 2:25-CV-1164-KCD-DNF, 2026 WL 607614, at *5 (M.D. Fla. Mar. 4, 2026) (citing *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring)). Because habeas corpus review provides Fernandez Erana an adequate judicial remedy for his allegations of unlawful detention, he cannot state a claim for relief under the Administrative Procedure Act.

III. Fernandez Erana’s Acardi Doctrine claim fails.

Fernandez Erana has not shown that any deviation from the procedures set forth in 8 C.F.R. § 287.8(c)(2)(i) and (ii) amounts to a due process violation. Fernandez Erana

relies on *United States ex rel. Accardi v. Shaughnessy*, where the Supreme Court established a doctrine—now known as the “*Accardi* doctrine”—that generally requires an agency to follow its regulations. See 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party’s rights. As the Supreme Court has clarified, *Accardi* “enunciates[s] principles of federal administrative law rather than of constitutional law.” *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). “*Accardi* is based on administrative law principles, not constitutional due process requirements.” *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (explaining limits on the *Accardi* doctrine). Here, ICE obtained a warrant for Fernandez Erana’s arrest on March 27, 2026. (Ex. 3, Warrant for Arrest of Alien, Dated March 27, 2026). Fernandez Erana has not shown that any arguable violations of the regulatory provisions at issue amount to a due process violation especially given the fact that ICE was in possession of a warrant and 8 U.S.C. 1225 does not have a warrant requirement unlike 8 U.S.C. 1226.

CONCLUSION

Fernandez Erana's Petition for Writ of Habeas Corpus should be denied.

DATED this 4th day of June, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 4, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to the following CM/ECF participant listed below:

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Exhibit List

1. Exhibit 1 – I-213, Record of Deportable/Inadmissible Alien, Dated March 28, 2026
2. Exhibit 2 – Notice to Appear, Dated August 7, 2023
3. Exhibit 3 – Warrant for Arrest of Alien, Dated March 27, 2026