

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROBERTO ARLEY RUIZ RIVERO,

Petitioner,

Case No. 2:26-CV-01710-KCD-NPM

v.

WARDEN COLLIER COUNTY
SHERIFF, GARRETT RIPA,
TODD LYONS, SECRETARY
MARKWAYNE MULLIN, ACTING
U.S. A.G. TODD BLANCHE,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Roberto Arley Ruiz Rivero (“Petitioner”) challenges his detention by U.S. Immigration and Customs Enforcement, arguing he is entitled to immediate release. Federal Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as an arriving alien whose parole has been terminated. Federal Respondents acknowledge, however, adverse authority holding that arriving aliens are not subject to mandatory detention if they are apprehended in the interior of the United States. *See Flores-Centeno v. Warden Glades County Detention Center*, et al, Case No. 2:26-cv-1601-KCD-NPM (M.D. Fla. June 3, 2026). Federal

Respondents therefore respond to preserve their contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

FACTS

Roberto Arley Ruiz Rivero is a national and citizen of Cuba who arrived in the United States on or about October 16, 2023 at San Ysidro, Texas and was paroled into the United States. (*See* Composite Ex. A at 2, 4.) He was served a Notice to Appear (“NTA”) initiating removal proceedings, indicating that he is an arriving alien not in possession of a valid entry document. *Id.* at 4-7.

Petitioner filed a motion to dismiss with Executive Office for Immigration Review (“EOIR”) on February 28, 2024, based on his eligibility to adjust his status before United States Citizenship and Immigration Services (“USCIS”), which was granted without prejudice by an Immigration Judge on March 1, 2024.

Petitioner’s parole expired on October 16, 2026. *Id.* at 13. On April 20, 2026, Petitioner was arrested for domestic violence. *Id.* at 2. The charge was later dropped. On June 9, 2026, Petitioner was served another NTA, indicating he is an arriving alien with possession of valid entry documents. *Id.* at 9-12. An initial appearance is scheduled for June 22, 2026. *Id.*

On May 14, 2026, Petitioner was served a warrant for arrest. *Id.* at 8. On May 19, 2026, Roberto Arley Ruiz Rivero filed a petition for writ of habeas corpus. (Doc. 1.)

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner 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.”). Petitioner 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. Petitioner’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 Petitioner. 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, Petitioner was paroled into the United States on or about October 16, 2023, as an arriving alien. (Composite Exhibit, Ex. A at 4.) His parole at a port of entry allowed his otherwise mandatory § 1225(b)(2)(A) detention to be suspended, subject, however, to 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). Petitioner’s parole terminated, however, on October 16, 2025 (Ex. A at 13) restoring him to an applicant for admission subject to mandatory detention. *Cf. Pedro v. Warden, Glades Cnty. Det. Ctr.*, No. 2:26-CV-524-KCD-DNF, 2026 WL 900129, at *5 (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

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 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.

DATED this 9th day of June, 2026.

Respectfully submitted,

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).

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will provide electronic service to all counsel of record.

/s/ Sean P. Keefe
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