UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

EDDY ROBERTO ESPINAL ENCARNACIÓN, Petitioner, v. FIELD OFFICE OF DIRECTOR OF MIAMI ICE FIELD OFFICE ET AL, Respondents.	)	Case No. 0:25-cv-61898-MD **PETITION FOR WRIT OF HABEAS CORPUS**

REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Petitioner Eddy Roberto Espinal Encarnación ("Petitioner"), by and through counsel, hereby replies to Respondents' response to this Court's Order to Show Cause [D.E. 14] ("Response").

I. INTRODUCTION

Respondents rely on a recent, distorted, and impermissibly broad construction of "seeking admission" in 8 U.S.C. § 1225(b)(2)(A) to detain Petitioner — a law-abiding community member for more than twenty-five years — without any finding of dangerousness or flight risk, thereby violating due process. This construction has been widely rejected by courts across the country. Respondents fail to provide any meaningful reason for this Court to find otherwise and conclude that Petitioner's entry into the United States without inspection or admission renders him an "applicant for admission" who is "seeking admission" under 8 U.S.C. § 1225(b)(2)(A), and thus subject to mandatory detention and ineligible for a bond hearing.

Wherefore, this Court should find that Petitioner is unlawfully detained, grant his Petition for Writ of Habeas ("Petition") [D.E. 1], and order his immediate release or, in the alternative, that he be afforded an individualized bond hearing.

II. PETITIONER'S POSITION IS CONSISTENT WITH THAT ADOPTED BY COURTS IN THIS DISTRICT

Of the growing number of decisions rejecting Respondents' position regarding the statutory basis for detention of noncitizens who enter without inspection or admission, a recent decision issued by Chief Judge Altonaga of this district, *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025), is particularly instructive. The circumstances of the petitioner in *Puga* are, in relevant part, analogous to those of Petitioner here. Puga entered the United States without inspection or admission and, at the time of his detention by ICE under an arrest warrant, had been continuously residing in the country for over two years[1] and had a pending application for relief.[2] *Id.* at *1. Also, like Petitioner, he was in removal proceedings when he filed his petition for a writ of habeas corpus. *Id.* In opposition to Puga's petition, the government — like Respondents here — averred that "[his] entry into the United States without inspection or admission render[ed] him an 'applicant for admission' under 8 U.S.C. [§] 1225(b)(2)(A), making him subject to mandatory detention and ineligible for a bond hearing." *Id.* at *3. In support of this contention, the government averred that "[Puga] qualifie[d] as 'an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A)' — despite having been physically present in the United States for years before his arrest and detention — because [§] 1225(b)(2)(A) applies broadly to all applicants for admission." *Id.* Puga, for his part, maintained that § 1225's mandatory detention provision applies only to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. *Id.* The court found that the question of whether

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[1] *See* 8 U.S.C. § 1225(b)(1)(A)(iii) (establishing a two-year period after a noncitizen's entry where the Attorney General is authorized to place them in expedited removal proceedings).

[2] At the time of his arrest and detention by ICE, Puga had a pending asylum application, whereas Petitioner had a pending application for a provisional unlawful presence waiver under 8 C.F.R. § 212.7(e). If this waiver application were granted by with U.S. Citizenship and Immigration Services (USCIS), Petitioner would be able to travel to the Dominican Republic for his final immigrant visa interview without being subjected to 8 U.S.C. § 1182(a)(9)(B)(i)(II)'s ten-year inadmissibility bar. As mentioned in his prior filing, Petitioner is the beneficiary of an approved immigrant visa petition filed by his lawful permanent resident wife.

Puga was detained under § 1225(b)(2), and subject to mandatory detention, or under § 1226(a), and eligible for bond, was "an issue of statutory interpretation that hinge[d] on the meaning of 'seeking admission.'" *Id.* at *4.

Analyzing its plain meaning within its statutory context, the court approvingly cited decisions noting that this phrase "implies action — something that is currently occurring, and . . . would most logically occur at the border upon inspection." *Id.* (quoting *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) (alteration added) and citing *Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2337099, at *11 (D. Ariz. Aug. 11, 2025). Additionally, the court recognized that the title of § 1225, which references "arriving" aliens, and the section's function, specifically, establishing an inspection scheme for when to allow noncitizens into the United States, rendered it susceptible to the implication-of-action interpretation of the "seeking admission" language that Petitioner advances in the instant case [*see* D.E. 7 at 3].

The court also found that the structure of § 1225 and § 1226 aligned with Puga's contention regarding the basis of his detention. In reaching this conclusion, the court highlighted that, "[w]hereas [§] 1225 governs removal proceedings for 'arriving aliens,' [§] 1226(a) serves as a catchall." *Id.* (citation omitted). It also noted that, "[§] 1226 creates a default rule that applies to aliens already present in the United States." *Id.* (quoting *Jennings*, 583 U.S. at 303) (internal quotation marks omitted). Accordingly, it determined that "[t]he inclusion of a 'catchall' provision in section 1226, particularly following the more specific provision in section 1225, is 'likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories.'" *Id.* (quoting *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025), and citing *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL

2690565, at *4 (W.D. Ky. Sept. 19, 2025)). Thus, the court concluded that "the circumstances surrounding [Puga's] arrest by warrant align[ed] with section 1226(a), not section 1225(b)(2)(A)." *Id.*

Finally, the court found that legislative history, specifically Congress's enactment of the Laken Riley Act ("LRA"), Pub. L. No. 119, also favored Puga's position. The LRA added § 1226(c)(1)(E), which mandates detention for noncitizens who (i) are inadmissible under 8 U.S.C. § 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Petitioner), 8 U.S.C. § 1182(a)(6)(C) (obtaining a visa, documents, or admission through misrepresentation or fraud), or 8 U.S.C. § 1182(a)(7) (lacking valid documentation) and (ii) have been arrested for, charged with, or convicted of certain crimes. Applying the anti-surplusage canon, the court determined that, if § 1225(b)(2)(A) already required mandatory detention for all noncitizens who were not admitted, Congress would have had no reason to enact the LRA to add § 1226(c)(1)(E).

With regard to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025), a Board of Immigration Appeals ("BIA") decision on which Respondents rely significantly (*see* D.E. 14 at 8-9, 15, 20), the court noted that the decision warranted no deference regardless of the ambiguity of the "seeking admission" phrase; that "statutory text, context, and scheme of [§] 1225 do not support a finding that a noncitizen is 'seeking admission' when he never sought to do so"; and that numerous courts have rejected the BIA's interpretation of § 1225. *Id.* at *5 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024); *Jhon Peter Hyppolite v. Noem*, No. 25-cv-4303, 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (collecting cases); *Pizarro Reyes*, 2025 WL 2609425, at *7 (same); *Lepe v. Andrews,* No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 at *4 (E.D. Cal. Sept. 23, 2025) (same); *Barrera*, 2025 WL 2690565, at *5 (same)).

III. GRANTING PETITIONER A BOND HEARING DOES NOT CONTRAVENE IIRIRA'S GOALS AND IS CONSTITUTIONALLY REQUIRED

Respondents contend that it is anomalous and contrary to the goals of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996), to deny bond hearings to noncitizens detained at a port of entry but afford them to noncitizens who have been present in the United States for a lengthy period of time but were nonetheless not admitted into the country. In support of this contention, Respondents cite decisions where courts spoke out against granting more equities and privileges to noncitizens who entered without inspection than to those who presented themselves at a port of entry. The cases cited by Respondents are, however, inapposite.

Respondents first cite *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024), an unlawful reentry case [D.E. 14 at 14-15]. *In Gambino-Ruiz*, the Ninth Circuit rejected the defendant's argument that his underlying expedited removal violated due process because he could not be inadmissible, as required for expedited removal, because he never applied for admission at a port of entry, but rather entered without inspection. *Id.* at 988. The Ninth Circuit reasoned that shielding the defendant, who was detained six miles from the border and less than fourteen days after his entry, from expedited removal proceedings, while subjecting noncitizens detained at a port of entry to such proceedings, created an improper incentive for unlawful entry. *See id.* at 984, 987, 989-90. Based on the circumstances of his entry and detention, the Ninth Circuit found that the defendant was in "a fictive legal status . . . equivalent of an arriving alien applying for admission at a port of entry." *Id.* at 989 (citation and internal quotation marks omitted). Of note, the Ninth Circuit highlighted that the defendant was "not in danger of the Attorney General treating him as a perpetual applicant for admission [for expedited removal purposes] because the INA limits the Attorney General's [expedited removal] authority to a two-year period after the

[noncitizen] enters the United States." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(iii)). This is particularly relevant because in the instant case Respondents ask this Court to find that Petitioner is a "perpetual applicant for applicant for admission" who is "seeking admission" for purposes of mandatory detention under 8 U.S.C. § 1225 despite his continuous presence in the United States for a period exceeding twenty-five years. Moreover, in *Gambino-Ruiz*, the Ninth Circuit discusses *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), precedent from that circuit that favors the temporally focused reading of "applicant for admission" who is "seeking admission" in § 1225 advanced by Petitioner (*see* D.E. 7 at 3). In particular, the *Gambino-Ruiz* court noted that *Torres*, which analyzed the scope of 8 U.S.C. § 1182(a)(7),[3] "stands for the propositions that 'an immigrant submits an "application for admission" *at a distinct point in time'* and 'stretching the phrase "at the time of application for admission" to refer to a period of years *would push the statutory text beyond its breaking point.*'" *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Torres*, 976 F.3d at 926) (emphasis added).

Respondents' citation to *Gambino-Ruiz* quotes *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), but this Supreme Court decision does no better to advance their position. In fact, it goes against it. In *Thuraissigiam*, the noncitizen, who was detained after crossing the border and making it a mere twenty-five yards into the U.S. territory, averred that — unlike noncitizens

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[3] Section 1182(a)(7() renders inadmissible:

> any immigrant at the time of application for admission —
> (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or
> (II) whose visa has been issued without compliance with the provisions of section 1153 of this title
> . . . .

8 U.S.C. § 1182(a)(7).

"taken into custody the instant [they] attempt[] to enter the country," such as those who arrive at a port of entry the case — he had a due process right to judicial review of his credible-fear proceeding. The Supreme Court rejected this argument, finding that, just like a noncitizen after arriving at a port of entry, Thuraissigiam was "on the threshold" and thus not entitled to be treated more favorably. *Id.* The Supreme Court did, however, recognize the distinction between noncitizens detained shortly after entry without inspection from noncitizens, like Petitioner, who likewise entered without inspection but have remained here for an extended period of time and built ties to the country, thereby acquiring due process rights to which the former are not entitled. In particular, the Supreme Court expounded that:

> While *aliens who have established connections in this country have due process rights in deportation proceedings*, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.

Id. at 107 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)) (emphasis added). Accordingly, providing Petitioner, a longtime resident, a bond hearing, while not affording such a hearing to noncitizens detained after arriving at a port of entry, is not only consistent with the INA, *see* Section II, *supra*, but also constitutionally required under his Fifth Amendment right to due process.

Respondents also quote *Ortega-Lopez v. Barr*, 978 F.3d 680 (9th Cir. 2020). In *Ortega-Lopez*, the Ninth Circuit rejected the noncitizen's claim that 8 U.S.C. § 1229b(b)(1)(C) did not bar his eligibility for cancellation of removal. Section 1229b(b)(1)(C) renders a noncitizen ineligible when he has been convicted of a crime involving moral turpitude (CIMT) for which a sentence of one year or more may be imposed; it does so by cross-referencing 8 U.S.C. § 1227(a)(2)(A)(i), which contains a "within five years . . . after the date of admission" immigration-related element. Ortega-Lopez argued the bar could not apply because he had never been admitted. The Ninth

Circuit disagreed, holding that § 1229b(b)(1)(C)'s cross-reference to § 1227(a)(2)(A)(i) incorporates only the offense-related elements and thus he was still ineligible for cancellation. In short, *Ortega-Lopez* declined to put unadmitted noncitizens in a more advantageous position than those who were admitted for purposes of relief eligibility — a point distinct from the entry-without-inspection versus arrival-at-a-port-of-entry theory on which Respondents' mandatory detention argument relies.[4]

Finally, the INA, as amended by IIRIRA, *does* present circumstances where inadmissible noncitizens who enter without inspection and are able to avoid detection for an extended period of time are in a more advantageous position than inadmissible noncitizens who arrive at a port of entry. Specifically, 8 U.S.C. § 1229b(b)(1) provides that, among other requirements, a noncitizen who has been continuously physically present in the United States for ten years may be eligible for cancellation of removal. Under the stop-time rule, however, the period of continuous physical presence is "deemed to end … when the [noncitizen] is served a notice to appear under section 1229(a)." 8 U.S.C. § 1229b(d)(1)(A); *see generally Pereira v. Sessions*, 585 U.S. 198, 201 (2018). Accordingly, the INA places noncitizens who enter the United States and remain undetected for at least ten years in a more advantageous position than those who present at a port of entry, are deemed inadmissible, and are promptly served with a notice to appear. The former may be eligible for cancellation of removal and, ultimately, lawful permanent residence[5]; the latter, even if not immediately placed in proceedings, cannot accrue the requisite ten years once served with the notice to appear.

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[4] As a matter of law, a noncitizen's admission may occur outside of a port of entry. *See* 8 U.S.C. § 1255; *Matter of Rodarte*, 23 I&N Dec. 905, 908 (BIA 2006) (holding that "the term 'admission' generally refers to adjustment of status within the United States as well as lawful entry at the border").

[5] Once granted cancellation of removal by an immigration judge, a noncitizen must wait until a visa becomes available to become a lawful permanent resident. Since the visas for cancellation of removal recipients are subject to a yearly cap, the must typically wait two to three years before becoming lawful permanent residents.

IV. ICE'S OWN PAPERWORK UNDERMINES RESPONDENTS' ARGUMENT THAT PETITIONER IS DETAINED UNDER 8 U.S.C. § 1225

In accordance with this Court's instruction to file all documents necessary for the resolution of the above-captioned case, Respondents submitted documents from ICE related to Petitioner's arrest and detention, Executive Office for Immigration Review ("EOIR") documents related to his ongoing removal proceedings, and a declaration from ICE Deportation Officer John Mansey ("Mansey"). The ICE documents submitted by Respondents undermine their position and favor concluding that that Petitioner is detained under § 1226, rather than § 1225.

First, Respondents submitted the Form I-200, Warrant for Arrest of Alien issued by ICE against the Petitioner, which shows that ICE arrested and detained Petitioner under an arrest warrant. Furthermore, the warrant itself states that it is directed to "[a]ny immigration officer authorized pursuant to *sections 236* and 287 of the Immigration and Nationality Act [8 U.S.C. §§ 1226-1227] and part 287 of title 8, Code of Federal Regulations,[6] to serve warrants of arrest for immigration violations" [D.E. 14-3 (emphasis added)]. Nowhere does the warrant suggest that ICE arrested and detained Petitioner pursuant to the § 1225. In fact, the warrant does not cite or otherwise reference § 1225 at all.

Similarly, the Form I-286, Notice of Custody Determination submitted by Respondents states that Petitioner is being detained by the Department of Homeland Security ("DHS") "[p]ursuant to the authority contained in *section 236* of the Immigration and Nationality Act [8 U.S.C. § 1226] and part 236 of title 8, Code of Federal Regulations" [D.E. 14-5 (emphasis added)]. Again, nowhere does the document even suggest that Petitioner is detained under § 1225. Although Respondents submitted a second copy indicating that the Notice of Custody Determination was "CANCELLED" as "[i]mprovidently issued," neither their Response nor Mansey's declaration

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[6] *See* 8 C.F.R. § 287.5(e)(3) (listing officers authorized to serve warrant of arrests for immigration violations).

explains why. The Response does not address the issue at all, while Mansey's declaration is limited to stating in a conclusory fashion that ICE's Enforcement and Removal Operations ("ERO") "cancelled Petitioner's Notice of Custody Determination as it was improvidently issued" [D.E. 14-11]. Curiously, ERO "cancelled" the Notice of Custody Determination on September 29, 2025, forty-eight (48) days after it was originally issued and, even more tellingly, two days after Petitioner filed his Petition in this case.

If that were not enough, Respondents also submitted a Form I-826, Notice of Rights and Request for Disposition served on Petitioner and the section of this document titled "Notice of Rights and Advisals" states that, "[i]f [he] request[s] a hearing before a judge in Immigration Court, . . . [he] may be eligible to be released from detention, either with or without payment of bond" [D.E. 14-4]. Such advisal regarding the possibility for release on bond would not make sense if Petitioner was subject to mandatory detention under § 1225(b)(2)(A).

Although not dispositive, these documents point to detention under 8 U.S.C. § 1226 — where Petitioner would be entitled to a bond hearing — rather than under § 1225(b)'s mandatory detention provision.

V. CONCLUSION

Respondents aim to rewrite the law to further the current administration's policy goals of mass detention of noncitizens in our country, regardless of their time here or pendency of processes to obtain lawful status. Their reading would permit detention without the required dangerousness or flight-risk findings, abridging noncitizens' liberty and due process rights. In essence, Respondents' position amounts to no more than a plea of administrative convenience that this Court must reject. *See Niz-Chavez v. Garland*, 593 U.S. 155, 169 (2021).

Accordingly, this Court should grant the Petition [D.E. 1] and order Petitioner's immediate release or, in the alternative, an individualized bond hearing.

Respectfully submitted,
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Dated: November 17, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 17, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Javier Micheo Marcial
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