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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ELEVENTH DIVISION**

MICHAEL HERRERA NUNEZ

Petitioner,

V.

Kristi Noem, Secretary, U.S. Department
of Homeland Security;

Todd M. Lyons,
Acting Director,
Immigration and Customs Enforcement
(ICE)

Warden,
Florida South Side Detention Center,

Respondents.

Case No. 2:26-cv-651-JES-DNF

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S REPLY

Respondents’ opposition rests on a single flawed premise: that Petitioner is properly treated as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225. Petitioner is a lawful permanent resident of nearly four decades returning from a brief trip abroad and Respondents fail to engage with the statutory framework governing returning lawful permanent residents under 8 U.S.C. § 1101(a)(13)(C). Under that provision, a lawful permanent resident “shall not be regarded as seeking an admission” unless one of six narrowly defined exceptions

applies. Respondents identify no such exception and make no attempt to establish that Petitioner falls within one.

Because Petitioner is not an applicant for admission, his detention under § 1225 is unlawful. Instead, his detention is governed by 8 U.S.C. § 1226, under which he is entitled to an individualized bond hearing.

**I. RESPONDENTS FAIL TO ESTABLISH THAT PETITIONER IS AN
“APPLICANT FOR ADMISSION**

Respondents’ argument skips the critical threshold inquiry: whether Petitioner, as a returning lawful permanent resident, can lawfully be treated as seeking admission.

Under 8 U.S.C. § 1101(a)(13)(C), a lawful permanent resident “*shall not be regarded as seeking an admission*” unless the government establishes that one of six narrowly defined exceptions applies. These exceptions, including abandonment, prolonged absence, post-departure illegal activity, departure during removal proceedings, certain criminal offenses, or improper entry—are limited in scope and must be affirmatively established by the government.

Here, none apply. Petitioner has maintained lawful permanent resident status since 1989, most recently renewing his permanent resident card in 2025. He took only a brief trip abroad lasting less than 180 days, has never abandoned his status, was not in removal proceedings at the time of departure, did not engage in any illegal activity after departing the United States, and did not attempt entry without inspection.

Respondents rely solely on two remote criminal convictions to assert that Petitioner is inadmissible and therefore an applicant for admission. This reasoning improperly conflates inadmissibility with the distinct statutory inquiry governing whether a returning lawful permanent resident may be treated as seeking admission in the first instance.

The Supreme Court has squarely rejected such an approach, emphasizing that returning lawful permanent residents are not to be treated as seeking admission to the contrary. *See Vartelas v. Holder*, 566 U.S. 257, 261 (2012). Respondents identify no such statutory ground here.

Because Respondents fail to establish that any exception under § 1101(a)(13)(C) applies, Petitioner cannot be treated as an applicant for admission, and § 1225 does not govern his detention.

II. RESPONDENTS' RELIANCE ON CRIMINAL HISTORY IS LEGALLY INSUFFICIENT

Even if Respondents intend to invoke § 1101(a)(13)(C)(v), which applies to certain criminal offenses, they fail to carry their burden.

Respondents offer only conclusory assertions that Petitioner's prior convictions render him inadmissible under 8 U.S.C. § 1182(a)(2). They provide no categorical analysis, no identification of the specific statutory subsection allegedly triggered, and no explanation as to how those convictions satisfy the elements required to establish inadmissibility. This omission is dispositive.

Not every conviction referenced in § 1182(a)(2) automatically transforms a returning lawful permanent resident into an applicant for admission. Whether a conviction triggers inadmissibility, and thus § 1101(a)(13)(C)(v), requires a careful legal analysis, including application of the categorical or modified categorical approach. Respondents undertake no such analysis here.

Moreover, the convictions on which Respondents rely are remote in time, occurring over a decade ago. Since then, Petitioner has continuously maintained lawful permanent resident status, and the government has repeatedly recognized that status, including by permitting renewal of his permanent resident card as recently as 2025. Having long acquiesced in Petitioner's continued

status, Respondents cannot now invoke these stale convictions to justify treating him as an applicant for admission and subjecting him to mandatory detention.

III. BECAUSE PETITIONER IS NOT SUBJECT TO § 1225, HE IS DETAINED UNDER § 1226 AND ENTITLED TO A BOND HEARING

If Petitioner is not an applicant for admission, his detention cannot be governed by 8 U.S.C. § 1225. Instead, as a matter of law, his detention falls under 8 U.S.C. § 1226(a).

Section 1226(a) authorizes only discretionary detention and guarantees noncitizens the right to an individualized bond hearing before an immigration judge. Respondents' attempt to classify Petitioner under § 1225 improperly strips him of that statutory protection.

The government may not evade the procedural safeguards Congress expressly provided in § 1226(a) by misclassifying a returning lawful permanent resident as an applicant for admission. Because Petitioner does not fall within § 1225, he is entitled to a bond hearing under § 1226(a).

IV. DETENTION WITHOUT ANY INDIVIDUALIZED HEARING VIOLATES DUE PROCESS

Even if § 1225 were applicable, Petitioner's detention raises serious constitutional concerns. Respondents rely on *Jennings v. Rodriguez* to argue that § 1225 mandates detention without bond. But *Jennings* expressly declined to resolve the constitutional limits of such detention, leaving due process challenges fully intact. Here, Petitioner has been detained without any opportunity to contest his detention before a neutral decisionmaker, has received no individualized assessment of flight risk or danger, and remains subject to detention that is effectively indefinite pending the resolution of removal proceedings.

The Fifth Amendment requires more. At minimum, due process demands a meaningful opportunity to be heard and an individualized determination of whether continued detention is

justified. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing constitutional limits on immigration detention). Absent such safeguards, Petitioner's continued detention is unconstitutional.

V. RESPONDENTS FAIL TO JUSTIFY DETENTION IN THIS HABEAS PROCEEDING

In a habeas action, Respondents bear the burden of demonstrating the legal authority for Petitioner's detention. Respondents fail to meet that burden here.

Their opposition relies on conclusory assertions while ignoring the governing statutory framework. They do not establish that Petitioner is properly treated as an applicant for admission under 8 U.S.C. § 1101(a)(13)(C), nor do they identify any statutory basis for subjecting him to mandatory detention under § 1225. They likewise fail to explain why Petitioner is not entitled to a bond hearing under § 1226(a). Where the government cannot justify detention under the applicable statutory and constitutional framework, continued detention is unlawful.

Accordingly, habeas relief is warranted.

VI. CONCLUSION

Respondents have failed to establish that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. Because Petitioner is a returning lawful permanent resident who does not fall within any exception under 8 U.S.C. § 1101(a)(13)(C), his detention is governed by 8 U.S.C. § 1226 and must include an individualized bond determination.

Accordingly, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus; and
2. Order Respondents to provide a prompt individualized bond hearing before an immigration judge, or, in the alternative, order Petitioner's immediate release.

Respectfully submitted this 31th day of March 2026,



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