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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

PETITIONER'S REPLY TO RESPONDENTS' SUPPLEMENTAL BRIEFING

Petitioner, Michael Herrera Nunez, through undersigned counsel, respectfully submits this Reply to Respondents' Supplemental Brief. Petitioner did not receive timely notice of Respondents' supplemental filing. Upon becoming aware of the filing, Petitioner promptly prepared and now submits this Reply so that the Court may have the benefit of full briefing on the issues identified in its Order. Counsel for Respondents has indicated that Respondents do not oppose the filing of this Reply.

I. BACKGROUND.

Petitioner is a lawful permanent resident of the United States who has held that status for decades and most recently renewed his permanent resident card in 2025. After a brief trip abroad, Petitioner returned to the United States through Miami International Airport in March 2026, at which point Respondents detained him and classified him as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225.

Petitioner filed this habeas action challenging the lawfulness of that detention, arguing that as a returning lawful permanent resident he cannot be treated as an applicant for admission unless Respondents establish that one of the narrow exceptions set forth in 8 U.S.C. § 1101(a)(13)(C) applies. The Court subsequently directed Respondents to provide supplemental briefing addressing how Petitioner's prior convictions strip him of the protections generally afforded lawful permanent residents.

Respondents' supplemental submission does not cure the deficiencies identified by the Court and fails to meaningfully address the central inquiry the Court directed Respondents to resolve. While Respondents invoke the categorical and modified categorical approaches, they do not meaningfully apply those frameworks in a manner sufficient to establish that Petitioner's prior convictions render him inadmissible or subject to treatment as an applicant for admission. As a result, Respondents have not carried their burden of establishing that Petitioner is properly treated as an applicant for admission subject to mandatory detention.

II. RESPONDENTS HAVE NOT MET THEIR BURDEN OF ESTABLISHING THAT PETITIONER IS AN ARRIVING ALIEN

The Court specifically directed Respondents to explain how Petitioner's prior convictions "strip him of the protections generally afforded a lawful permanent resident." (Doc. 10 at 4.) That inquiry turns on whether Respondents have affirmatively and precisely established that 8 U.S.C. § 1101(a)(13)(C)(v) applies: whether Petitioner has been convicted of an offense identified in 8 U.S.C. § 1182(a)(2).

Respondents continue to fall short of that burden. While they invoke the categorical and modified categorical approaches, they do not meaningfully apply those frameworks in a manner sufficient to establish inadmissibility. Because Respondents seek to subject Petitioner to mandatory detention under § 1225, they bear the burden of establishing that § 1101(a)(13)(C)(v) applies with precision, not assumption.

III. RESPONDENTS FAIL TO ESTABLISH THAT THE CONTROLLED SUBSTANCE CONVICTION RENDERS PETITIONER INADMISSIBLE

Respondents rely on Petitioner's 2009 conviction under Fla. Stat. § 893.13(6)(a) and cite Guillen v. U.S. Att'y Gen. to argue that this conviction renders him inadmissible.

However, Respondents' analysis is incomplete. While they assert that the statute is divisible and that the modified categorical approach applies, they do not identify any Shepard-approved documents demonstrating that Petitioner's conviction necessarily involved a substance encompassed within the federal controlled substance schedules.

It is not sufficient to rely on general characterizations of the offense or on summary records. Under the modified categorical approach, the Court must be able to determine, based on a limited class of documents, that the conviction rested on elements that categorically match the federal definition.

Respondents do not identify or submit any Shepard-approved documents demonstrating that Petitioner's conviction necessarily involved a federally controlled substance. Absent such proof, the Court cannot conclude that Petitioner's conviction renders him inadmissible under 8 U.S.C. § 1182(a)(2)(A)(i)(II).

IV. RESPONDENTS FAIL TO ESTABLISH THAT PETITIONER'S RETAIL THEFT CONVICTIONS ARE CRIMES INVOLVING MORAL TURPITUDE

Respondents similarly assert that Petitioner's Illinois retail theft convictions categorically qualify as crimes involving moral turpitude ("CIMTs"). The absence of this analysis is particularly significant where, as here, the statute of conviction may encompass conduct that does not categorically involve moral turpitude.

Again, their analysis is conclusory. Respondents do not undertake a careful, element-by-element categorical analysis of the statute of conviction. Instead, they rely on generalized statements that theft offenses involve dishonesty and therefore constitute CIMTs.

That approach is insufficient. The categorical inquiry requires the Court to determine whether the least culpable conduct criminalized by the statute necessarily involves both reprehensible conduct and a culpable mental state sufficient to constitute moral turpitude.

Respondents do not address whether the Illinois statute sweeps more broadly than generic theft offenses that have been deemed CIMTs, nor do they address potential ambiguities in the statutory language. Without such analysis, Respondents have not established that the convictions categorically qualify as CIMTs.

Moreover, Respondents' reliance on the existence of multiple convictions presupposes that each conviction independently qualifies as a CIMT, an issue they have not adequately demonstrated. Respondents fail to address whether the Illinois statute encompasses conduct that falls outside the generic definition of theft offenses deemed to involve moral turpitude, or whether the statute is broader than the category of offenses they invoke.

V. RESPONDENTS MISCHARACTERIZE PETITIONER'S ARGUMENT REGARDING LPR STATUS

Respondents devote substantial argument to rejecting estoppel and laches. Petitioner does not rely on those doctrines to bar enforcement of the immigration laws.

Rather, Petitioner's point is narrower: the Government's longstanding recognition of his lawful permanent resident status, **including the recent renewal of his permanent resident card**, underscores the need for careful and legally sufficient analysis before subjecting him to the extraordinary consequences of mandatory detention as an arriving alien.

This case turns not on equitable doctrines, but on whether Respondents have satisfied their burden under the statutory framework identified by the Court. They have not. Respondents' focus on estoppel and laches does not address the dispositive issue identified by the Court.

VI. AT A MINIMUM, MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b) HAS NOT BEEN ESTABLISHED

Because Respondents have not demonstrated, through the required legal analysis, that Petitioner falls within 8 U.S.C. § 1101(a)(13)(C)(v), they have not established that he is properly classified as an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b).

At a minimum, the record reflects substantial legal uncertainty regarding the applicability of the inadmissibility grounds at issue. Under these circumstances, continued mandatory detention without an individualized bond hearing is not justified. Where Respondents have not established that Petitioner is subject to mandatory detention under the INA, continued detention without an individualized hearing raises serious constitutional concerns. Accordingly, habeas relief is warranted.

VII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus, or, in the alternative, order that Petitioner receive an individualized bond hearing before an immigration judge. Respondents' failure to carry their burden under the governing statutory framework requires, at minimum, that Petitioner receive an individualized bond hearing.

Respectfully submitted this 30th day of April 2026,

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