

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

LEANDRO BOADA PUERTA,

CASE NO. 2:26-cv-724-KCD-DNF

Petitioner,

v.

GARRETT J. RIPA, Field Office
Director, United States
Immigration and Customs
Enforcement Miami Field Office,
Enforcement and Removal
Operations et. al.

Respondents.

MOTION TO RECONSIDER

COMES NOW the Petitioner (“Petitioner”), **LEANDRO BOADA PUERTA**, by and through his undersigned counsel, and pursuant to Federal Rule of Civil Procedure 59(e), respectfully moves this Honorable Court to vacate and reconsider its prior Order (ECF No. 6) based on a clear error of fact and law, and in support thereof states as follows:

STANDARD FOR RECONSIDERATION

Although “motions to reconsider” are not listed in the Federal Rules of Civil Procedure, motions to reconsider final judgments are permitted under Federal Rule 59(e), which allows motions to alter or amend a judgment to be

filed with 28 days of judgment. A motion under Rule 59(e) is appropriate where the Court has committed a clear error of law or fact, or where reconsideration is necessary to prevent manifest injustice. Rule 59(e) permits the Court to correct its own errors and to reconsider matters properly encompassed in the original decision. *See* Fed. R. Civ. P. 59(e).

There are four basic grounds for granting a Rule 59(e) motion: (1) manifest errors of law or fact upon which the judgment was based; (2) newly discovered or previously unavailable evidence; (3) manifest injustice in the judgment; and (4) an intervening change in the controlling law. *See Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D.Fla.1994).

“Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law,” but “is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.” *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000))

THE COURT’S ORDER RESTS ON A CLEAR ERROR OF FACT

The Court’s Order rests, in material part, on the assumption that Petitioner was apprehended at the border and was “seeking admission” into the United States in 2021. That factual premise is incorrect. Petitioner’s 2021 release was not parole under the Immigration and Nationality Act. Rather,

Petitioner entered the country without inspection by an immigration officer and was released on an Order of Recognizance. *See* Petition for Writ of Habeas Corpus, ECF No. 1, ¶¶19-21, Exhibits 2-3. This distinction is not semantic—it is legally dispositive.

An Order of Recognizance is a custodial release determination, not an admission or parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5). It does not constitute parole, does not trigger the statutory consequences associated with parole, and does not alter an individual's admission status. Treating a recognizance release as parole conflates two fundamentally different legal concepts and results in an erroneous legal analysis.

THE ERROR LED TO THE MISAPPLICATION OF 8 U.S.C. § 1225

Because the Court treated the 2021 recognizance release as parole, it incorrectly applied INA § 235, 8 U.S.C. § 1225 to Petitioner. Section 1225 governs applicants for admission and certain parole determinations—it does not apply to individuals merely released from custody on recognizance.

This Honorable Court cited its decision in *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. 2025 Oct. 29, 2025) for the proposition that a noncitizen who entered the United States unlawfully and shortly thereafter presented himself to immigration authorities is “arriving at a border or port” and “seeking admission to the United States.” However, while

the petitioner did present himself to U.S. Border Patrol agents after entering the United States, he did not do so at a port of entry and is therefore not an “arriving alien” as defined at 8 C.F.R. § 1.2, *to wit*:

Arriving Alien means 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.

In its order, the Court cited *Moore v. Nielsen*, No. 4:18-cv-01722-LSC-HNJ, 2019 WL 2152582 (N.D. Ala. May 3, 2019). However, the facts of *Moore* are distinguishable because the alien was an arriving alien who applied for admission at a port of entry. He was thus clearly “seeking admission” and subject to 8 U.S.C. § 1225. Additionally, the Court cited *Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005 (D.N.M. Jan. 20, 2026). However, Petitioner avers that *Singh* was incorrectly decided because it focuses on whether an alien is at the “threshold of entry” confusing an alien who is applying for admission at a port of entry and thus seeking admission with an alien who entered the United States by evading inspection (there is a “longstanding distinction between aliens at or near the threshold of entry, and those who have effected entry, and establish presence within the United States for purposes of due process analysis.”). *Id.* at *28.

This matter is more akin to *Liu v. Bondi*, No. 26-143 JB/GJF, 2026 WL 878280 (D.N.M. Mar. 31, 2026). Like in *Liu*, Petitioner enter the United States more than 4 years ago and was briefly detained by DHS. After finding that he did not pose a danger to the community DHS released him under an INA § 236, 8 U.S.C. § 1226, Order of Recognizance. He then lived in the country for more than 4 years before ICE detained him. “At the time of his detention he was not “seeking admission” as he had already entered the United States years prior with process. He is therefore detained under § 1226 and entitled to a bond hearing.” *Id* at *14. See also *Khaburzania v. Breckon*, No. 1:25-cv-1927, 2026 WL 105720 (W.D. Mich. Jan. 14, 2026) (noncitizen who entered without inspection encountered by DHS and released on own recognizance detained under 8 U.S.C. § 1226); *Gvedashvili v. Mooneyham*, No. 6:25-CV-00552-ADA-DTG (W.D. Tex. Dec. 12, 1995) (same); *Baez-Santos v. Jones*, No. CIV-26-70-SLP, 2026 WL 780735 (W.D. Oak. Mar. 19, 2026) (same).

This Honorable Court distinguishes between a noncitizen who has recently arrived when taken into custody and released shortly thereafter versus one who is initially taken into custody after residing in the United States for an extended period of time. However, within *Lopez v. Hardin*, *supra*, the Court states “the use of ‘arriving’ indicates that the statute governs incoming noncitizens, not those present already.” (internal quotations omitted). Mr. Boada Puerta was not paroled and is therefore not subject to

8 U.S.C. § 1225(b)(2). As the Court noted in *Francisco Javier Cruz Javier Torres v. Warden, South Florida Detention Facility*, No. 2:26-cv-729-KCD-NPM (M.D. Fla. Apr. 3, 2006) at *2, “[y]ou cannot actively “seek” physical entry into the country if you are already living and working in it.” (internal quotations omitted).

Mr. Boada Puerta was not at the threshold of entry as noted in *Singh, supra*. He had already entered the United States at the time of his initial detention and was not “seeking admission.” An “entry” occurs when a noncitizen 1) crosses into the territorial limits of the United States, i.e., physical presence; and after 2) inspection and admission by an immigration officer or 3) actual and intentional evasion of inspection at the nearest inspection point coupled with 4) freedom from restraint. *Matter of Pierre et. al.*, 14 I&N Dec. 467 (BIA 1973).

As cited by this Honorable Court, in *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) Justice Alito stated “[W]hen the purpose of the parole has been served, “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.”” (quoting 8 U.S.C. § 1182(d)(5)(A)). “[A]lthough aliens seeking admission into the United States may physically be allowed within its borders pending a determination of admissibility, such aliens are legally considered to

be detained at the border and hence as never having effected entry into this country.” While this is true for noncitizens who are arriving aliens seeking admission who were paroled, it does not apply to Mr. Boada Puerta as he was never paroled, and had already entered the United States.

In this case, Mr. Boada Puerta effected an entry into the United States when he crossed its territorial limits and evaded inspection while being free from restraint until he presented himself to U.S. Border Patrol agents. *See Matter of Pierre et. al., supra.* Thus, he is entitled, at a minimum, to a bond hearing under 8 U.S.C. § 1226(a) as he never sought admission to the United States but intentionally evaded it.

Absent parole, the statutory predicate for applying § 1225 collapses. The Court’s reliance on that provision therefore rests entirely on a mistaken factual assumption and must be revisited.

VACATUR AND RECONSIDERATION
ARE NECESSARY TO PREVENT MANIFEST INJUSTICE

Where a court’s decision is premised on a demonstrably incorrect factual assumption that drives the legal outcome, vacatur and reconsideration are required to prevent manifest injustice. Leaving the Order intact would perpetuate an error that materially affects Petitioner’s liberty interests and statutory rights.

The Eleventh Circuit has made clear that reconsideration is required where an order rests on a demonstrably incorrect factual premise that drives the legal outcome. *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) (Rule 59(e) relief is appropriate for “manifest errors of law or fact”); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). Where such an error implicates a petitioner’s liberty interests, leaving the order intact perpetuates manifest injustice.

LOCAL RULE 3.01(G) CERTIFICATE

Pursuant to Local Rule 3.01(g), undersigned counsel conferred with Amanda Saylor, Esq., counsel for the Respondents via email on April 3, 2026, and Ms. Saylor advised that Respondents opposed this motion.

WHEREFORE, Petitioner, LEANDRO BOADA PUERTA, prays that this Honorable Court grant him the following relief:

1. Vacate its prior Order;
2. Reconsider the matter under the correct factual premise that Petitioner's 2021 release was on an Order of Recognizance, not parole, and that Petitioner was not, and presently is not, seeking admission;
3. Reevaluate the applicability of 8 U.S.C. § 1225 in light of that correction; and
4. Grant such further relief as Petitioner may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court and that to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served electronically through the Court's ECF system to all counsel of record this 6th day of April, 2026.

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