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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-1207

Short Caption: ANUSHKA DUBEY, et al., v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Anushka Dubey, Deep Doshi, Gaurav Pramod Ghase, Dhaval Shashikant Jangale, and Kunal Dahiya.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Wasden Law

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Jonathan D. Wasden Date: 03/24/2025

Attorney's Printed Name: Jonathan D. Wasden

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: 9427 Goldfield Lane, Burke, VA 22015

Phone Number: (843)872-4978 Fax Number:

E-Mail Address: jon@wasden.law

rev. 12/19 AK

No. 25-1207

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ANUSHKA DUBEY, et al.,
Plaintiffs – Appellants

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY,
Defendant – Appellee

Appeal From The United States District Court
for the Northern District of Illinois – Eastern Division
Case No: 1:24-cv-05286
The Honorable Judge Matthew F. Kennelly

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS, ANUSHKA DUBEY, et al.,

Jonathan D. Wasden
WASDEN LAW
9427 Goldfield Lane
Burke, VA 22015
Phone: (843)872-4978
Email: jon@wasden.law

Attorney for the Plaintiffs-Appellants,
ANUSHKA DUBEY, et al.,

March 24, 2025,

TABLE OF AUTHORITIES

CASE LAW

FEDERAL LAW

FEDERAL RULES OF CIVIL PROCEDURE

JURISDICTIONAL STATEMENT

Plaintiffs filed a timely notice of appeal which was served on the parties via the Electronic Court Filing ("ECF") system. There are no other related appellate proceedings in this or a related case. The district court granted the government's motion to dismiss in part, holding that the case challenged a decision made independently by CBP in the course of an expedited removal. The district court in part denied the government's motion to dismiss based upon joinder, standing, and doctrine of consular non reviewability, finding each of these without merit. The government has not appealed the denied portions of its motion.

This Court has jurisdiction to hear, and decide de novo, appeals of a district court's dismissal of claims for lack of subject-matter jurisdiction. *Estrada v. Holder*, 604 F.3d 402, 408 (7th Cir. 2010).

The issues in this case arise out of the Constitution's due process requirements and the Immigration and Nationality Act. Thus, both this Court and the court below have jurisdiction to hear this case based on Article II, Section 2, Clause 1, of the U.S Constitution, and 28 U.S.C. § 1331.

Appellants' complaint challenged the USCIS's adjudication of a finding of inadmissibility based upon fraud or misrepresentation in violation of 8 U.S.C. § 1182(a)(6)(C)(i). As pled, the complaint alleges that the district court had federal question jurisdiction because USCIS violated the APA requirements of: notice; an opportunity to respond to allegations; and, production of a written decision explaining the government's action. The Court also had jurisdiction to determine if USCIS violated the *Accardi* doctrine when it failed to comply with its own

capricious review); and *Nat'l Envtl. Dev. Ass'n's Clean Air Project v. EPA*, 752 F.3d 999, 1009, 410 U.S. App. D.C. 50 (D.C. Cir. 2014) ("an agency is bound by its own regulations.").

STATEMENT OF THE CASE

Appellants are all former F-1 student visa holders who were victims of scam companies that preyed upon foreign students. Upon graduation Appellants were each contacted via social media by companies offering to employ them on post completion Optional Practical Training (OPT). Appellants each vetted the companies by ensuring DHS had certified them in its EVerify database.

DHS had begun identifying companies that targeted F-1 students with fraudulent job offers. However, it did not alert the public, nor did it decertify these companies in EVerify. DHS intentionally let these companies operate and scam foreign students for several years.

Instead of pursuing the perpetrators of the fraud scheme, USCIS, a subagency of DHS, sought out and penalized every F-1 student who had been fooled into accepting an offer of employment with a scam company. USCIS determined the defrauded students to all be guilty of immigration fraud. USCIS made a calculated decision to adjudicate these fraud findings in secret, withhold the decision on the adjudication from the nonimmigrant while they remained in the United States; and rely on the Department of State's consular officers or CBP's immigration officers to execute the previously determined inadmissibility. In crafting this process USCIS attempted to hide its intentional noncompliance with the APA behind the skirts of consular nonreviewability and expedited removal.

Appellants challenged their inadmissibility determinations on the grounds that USCIS was required to comply with due process and the APA when adjudicating their admissibility and issuing a sanction. DHS defended the case on jurisdictional grounds, first alleging consular nonreviewability precluded judicial review. This despite the fact that the consulates had approved each of Appellants' visas. The district court found this defense to lack any merit.

The agency then argued the district court lacked jurisdiction over the case under 8 U.S.C. § 1252(a)(5) because Appellant's were challenging their removal orders, not the predetermined fraud findings.

The district court, relying on *Odei v. USDHS,* 937 F.3d 1092 (7th Cir. 2019), determined that USCIS's fraud finding was precluded from review because a CBP officer relied upon it in an expedited removal proceeding. **ECF 21**, pg. 10-12. However, the facts of *Odei* are so far removed from Appellants' cases that the district court's reliance on it was in error.

SUMMARY OF ARGUMENT

Adjudications conducted by USCIS are not protected from judicial review by any jurisdiction stripping statute, and therefore must comply with due process, the APA, and the agency's own regulations. USCIS determined each Appellant was inadmissible for fraud based solely on their acceptance of job offers with certain blacklisted companies. This determination was not made in compliance with the above requirements.

CBP officers did not make independent determinations or otherwise exercise their own discretion on Appellants' admissibility. Rather, CBP rubber stamped

USCIS's previous decisions. As such, the Court has jurisdiction to hear challenges because the foundational provision of 8 U.S.C. § 1225(b)(1)(A)(i) has not been triggered. *See id.* (requiring the CBP officer at the Port of Entry to make the determination on admissibility).

ARGUMENT

I. Standard of Review

Appeals of a district court's granting a FRCP 12(b)(6) motion to dismiss are reviewed de novo. *Estrada v. Holder*, 604 F.3d 402, 408 (7th Cir. 2010).

II. The Jurisdiction Stripping Provision at 8 U.S.C. § 1252(a)(1) is Inapplicable to USCIS Decisions.

Appellants have been clear from the outset that they do not challenge or seek to overturn CBP officers' decisions to remove them from the US at the Port of Entry. Instead, Appellants assert that the fraud findings used to justify the orders of removal were not the product of CBP "determinations" at the Port of Entry. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (making CBP determinations of fraud or misrepresentation immune from review). If successful in this litigation, Appellants would be required to apply for visas at a U.S. consulate and apply for admission at a Port of Entry. No court has jurisdiction or authority to overturn the expedited removal.

The district court below relied upon *Odei* when holding that USCIS's fraud findings were immune from review solely because a CBP officer relied on them when deciding to expeditedly remove them.

However, *Odei* does not support the government's position. First, Odei was a direct challenge to CBP's decision denying admission to the U.S. *Id.* 937 F.3d at

1093. A cursory reading of that case makes clear that all statements and interactions relevant to that plaintiff's order of removal stemmed from his first encounter at the port of entry with CBP. *Id.* Thus, all actions associated with the order of removal were the product of CBP's "determination." *See* 8 U.S.C. § 1225(b)(1)(A)(i).

Unlike *Odei,* here Appellants do not challenge any CBP determinations. Rather, they challenge a USCIS action that was taken based upon facts occurring within the U.S., after each appellant had been admitted. Appellants challenge USCIS's intentional attempt to hide their inadmissibility adjudications and circumvent judicial review.

CONCLUSION

Congress granted CBP officers a broad grant of discretion to make their own determinations on admissibility. Congress intended to strip jurisdiction over CBP's determinations made at the Port of Entry pursuant to that grant of discretion. Congress did not intend for other agencies to evade judicial review by using CBP as messenger boys who deliver the results of previously secret inadmissibility adjudications. For the above reasons this Court should find that the district court had jurisdiction to hear Appellants case.

Dated: March 24, 2025,

Respectfully submitted,

/s/ Jonathan D. Wasden

Jonathan D. Wasden
WASDEN LAW
9427 Goldfield Lane
Burke, VA 22015
Phone: (843)872-4978
Email: jon@wasden.law

Attorney for the Plaintiffs-Appellants,
ANUSHKA DUBEY, et al.,