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7 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

8 Eliseo Aguilar Alvarado

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10 Petitioner,

11 v.

12 Samuel J. Olson, Field Office Director
13 of Enforcement and Removal
14 Operations, St. Paul Field Office,
15 Immigration and Customs
16 Enforcement; Kristi NOEM, in her
17 official capacity as Secretary of the
U.S. Department of Homeland
Security; U.S. Dept. of Homeland
Security; Eric Tollefson, Kandiyohi
County Jail Sheriff.

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19 Respondents.
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Case No. 0:25-cv-03381

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

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2 1. Petitioner, Eliseo Aguilar Alvarado, is in the physical custody of
3 Respondents at the Kandiyohi County Jail. He now faces unlawful detention
4 because the Department of Homeland Security (DHS) and the Executive
5 Office of Immigration Review (EOIR) have concluded Petitioner is subject to
6 mandatory detention.
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8 2. Petitioner is charged with, inter alia, having entered the United
9 States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

10 3. Based on this allegation in Petitioner's removal proceeding, DHS
11 denied Petitioner release from immigration custody, consistent with a new
12 DHS policy issued on July 8, 2025, instructing all Immigration and Customs
13 Enforcement (ICE) employees to consider anyone inadmissible under §
14 1182(a)(6)(A)(i)—i.e., those who entered the United States without
15 inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A)
16 and therefore subject to mandatory detention.
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18 4. Petitioner sought a bond redetermination hearing before an
19 immigration judge (IJ), but on August 21, 2025, the IJ granted bond, set at
20 \$5,000. However, the DHS filed an EOIR-43 form subjecting the IJ's bond
21 order to an automatic stay and remanded the Petitioner to detention. DHS
22 application of the EOIR-43 auto-stay presumes the Petitioner is detainable
23 under section 1225(b)(2)(A) of the Immigration and Nationality Act.
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1 5. Petitioner's detention on this basis violates the plain language of
2 the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to
3 individuals like Petitioner who previously entered and are now residing in
4 the United States. Instead, such individuals are subject to a different statute,
5 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That
6 statute expressly applies to people who, like Petitioner, are charged as
7 inadmissible for having entered the United States without inspection.
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9 6. Respondents' new legal interpretation is plainly contrary to the
10 statutory framework and contrary to decades of agency practice applying §
11 1226(a) to people like Petitioner.

12 7. Accordingly, Petitioner seeks a writ of habeas corpus requiring
13 that he be released unless Respondents provide a bond hearing under §
14 1226(a) within fourteen days.
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16 17 **JURISDICTION**

18 8. Petitioner is in the physical custody of Respondents. Petitioner is
19 detained at the Kandiyohi County Jail in Wilmar, Minnesota.

20 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas
21 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2
22 of the United States Constitution (the Suspension Clause).
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10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the District of Minnesota, the judicial district in which Petitioner currently is detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Minnesota.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

14. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400

1 (1963) (emphasis added). “The application for the writ usurps the attention
2 and displaces the calendar of the judge or justice who entertains it and
3 receives prompt action from him within the four corners of the application.”
4 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

5 **PARTIES**

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7 15. Petitioner Eliseo Aguilar Alvarado is a citizen of Mexico who has
8 been in immigration detention since August 07, 2025. After arresting
9 Petitioner in Saint Paul, MN, ICE did not set bond and Petitioner requested
10 review of his custody by an IJ. On August 21, 2025, Petitioner was granted
11 bond by an IJ at the Fort Snelling Immigration Court. DHS then filed an
12 EOIR-43 automatic stay form under the theory he was an “applicant for
13 admission.” Petitioner was then remanded to DHS custody. Petitioner has
14 resided in the United States since 2003.

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16 16. Respondent Samuel Olson is the Director of the MSP Field Office
17 of ICE’s Enforcement and Removal Operations division. As such, Samuel
18 Olson is Petitioner’s immediate custodian and is responsible for Petitioner’s
19 detention and removal. He is named in his official capacity.

20 17. Respondent Kristi Noem is the Secretary of the Department of
21 Homeland Security. She is responsible for the implementation and
22 enforcement of the Immigration and Nationality Act (INA), and oversees ICE,
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1 which is responsible for Petitioner's detention. Ms. Noem has ultimate
2 custodial authority over Petitioner and is sued in her official capacity.

3 18. Respondent Department of Homeland Security (DHS) is the
4 federal agency responsible for implementing and enforcing the INA, including
5 the detention and removal of noncitizens.

6 19. Respondent Eric Tollefson is employed by Kandiyohi County as
7 Sheriff of Kandiyohi County Jail, where Petitioner is detained. Kandiyohi
8 County Jail is operated by the sheriff's department of Kandiyohi County. He
9 has immediate physical custody of Petitioner. He is sued in his official
10 capacity.
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12 LEGAL FRAMEWORK

13 20. The INA prescribes three basic forms of detention for the vast
14 majority of noncitizens in removal proceedings.
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16 21. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
17 standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals
18 in § 1226(a) detention are generally entitled to a bond hearing at the outset of
19 their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who
20 have been arrested, charged with, or convicted of certain crimes are subject to
21 mandatory detention, *see* 8 U.S.C. § 1226(c).
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1 22. Second, the INA provides for mandatory detention of noncitizens
2 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
3 arrivals seeking admission referred to under § 1225(b)(2).

4 23. Last, the INA also provides for detention of noncitizens who have
5 been ordered removed, including individuals in withholding-only proceedings,
6 *see* 8 U.S.C. § 1231(a)–(b).

7 24. This case concerns the detention provisions at §§ 1226(a) and
8 1225(b)(2).

9 25. The detention provisions at § 1226(a) and § 1225(b)(2) were
10 enacted as part of the Illegal Immigration Reform and Immigrant
11 Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03,
12 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
13 most recently amended earlier this year by the Laken Riley Act, Pub. L.
14 No.119-1, 139 Stat. 3 (2025).

15 26. Following the enactment of the IIRIRA, EOIR drafted new
16 regulations explaining that, in general, people who entered the country
17 without inspection were not considered detained under § 1225 and that they
18 were instead detained under § 1226(a). *See* Inspection and Expedited
19 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
20 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
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1 27. Thus, in the decades that followed, most people who entered
2 without inspection and were placed in standard removal proceedings received
3 bond hearings, unless their criminal history rendered them ineligible. That
4 practice was consistent with many more decades of prior practice, in which
5 noncitizens who were not deemed “arriving” were entitled to a custody
6 hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
7 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
8 simply “restates” the detention authority previously found at § 1252(a)).
9

10 28. On July 8, 2025, ICE, “in coordination with” DOJ, announced a
11 new policy that rejected well-established understanding of the statutory
12 framework and reversed decades of practice.

13 29. The new policy, entitled “Interim Guidance Regarding Detention
14 Authority for Applicants for Admission,”¹ claims that all persons who entered
15 the United States without inspection shall now be deemed “applicants for
16 admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory
17 detention provision under § 1225(b)(2)(A). The policy applies regardless of
18 when a person is apprehended and affects those who have resided in the
19 United States for months, years, and even decades.
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24 ¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 30. In a May 22, 2025, unpublished decision from the Board of
2 Immigration Appeals (BIA), EOIR adopts this same position.² That decision
3 holds that all noncitizens who entered the United States without admission
4 or parole are considered applicants for admission and are ineligible for
5 immigration judge bond hearings.
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7 31. ICE and EOIR have adopted this position even though federal
8 courts have rejected this exact conclusion. For example, after IJs in the
9 Tacoma, Washington, immigration court stopped providing bond hearings for
10 persons who entered the United States without inspection and who have
11 since resided here, the U.S. District Court in the Western District of
12 Washington found that such a reading of the INA is likely unlawful and that
13 § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon
14 arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---
15 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No.
16 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025)
17 (granting habeas petition based on same conclusion).
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19 32. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez*
20 *Vazquez* court explained, the plain text of the statutory provisions
21 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
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24 ² Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

1 33. Section 1226(a) applies by default to all persons “pending a
2 decision on whether the [noncitizen] is to be removed from the United
3 States.” These removal hearings are held under § 1229a, to “decid[e] the
4 inadmissibility or deportability of a[] [noncitizen].”

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6 34. The text of § 1226 also explicitly applies to people charged as
7 being inadmissible, including those who entered without inspection. *See* 8
8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes
9 clear that, by default, such people are afforded a bond hearing under
10 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress
11 creates “specific exceptions” to a statute’s applicability, it “proves” that
12 absent those exceptions, the statute generally applies. *Rodriguez Vazquez*,
13 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v.*
14 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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16 35. Section 1226 therefore leaves no doubt that it applies to people
17 who face charges of being inadmissible to the United States, including those
18 who are present without admission or parole.

19 36. By contrast, § 1225(b) applies to people arriving at U.S. ports of
20 entry or who recently entered the United States. The statute’s entire
21 framework is premised on inspections at the border of people who are
22 “seeking admission” to the United States. 8 U.S.C.
23 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this
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mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

37. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

FACTS

38. Petitioner has resided in the United States since 2003, and lives in Saint Paul, Minnesota.

39. On August 07, 2025, Petitioner was arrested for being “an alien present in the United States without being admitted or paroled.” The U.S. Department of Homeland Security’s Form I-831 from the day of the arrest recorded that Petitioner had “no criminal history in the United States.” Petitioner’s only convictions are for traffic offenses. The petitioner is now detained at the Kandiyohi County Jail.

40. Petitioner is currently in removal proceedings before the Fort Snelling Immigration Court pursuant to 8 U.S.C. § 1229a.

41. Petitioner has raised multiple U.S. citizen children. Petitioner has type-2 diabetes. *See* Exh. B. Petitioner is neither a flight risk nor a danger to the community.

1 42. Following Petitioner's arrest and transfer to Kandiyohi County
2 Jail, ICE issued a custody determination to continue Petitioner's detention
3 without an opportunity to post bond or be released on other conditions.

4 43. Petitioner subsequently requested a bond redetermination
5 hearing before an IJ.
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7 44. On August 21, 2025, an IJ granted bond and set it at \$5,000
8 finding the Petitioner was not a threat to public safety and a bond was
9 necessary to mitigate a present, but not significant flight risk.

10 45. As a result, Petitioner remains in detention. Without relief from
11 this court, he faces the prospect of months, or even years, in immigration
12 custody, separated from his family and community.

13 46. Any appeal to the BIA, while available, is futile for his release.
14 DHS's new policy was issued "in coordination with DOJ," which oversees the
15 immigration courts. Further, as noted, the most recent unpublished BIA
16 decision on this issue held that persons like Petitioner are subject to
17 mandatory detention as applicants for admission. Finally, in the *Rodriguez*
18 *Vazquez* litigation, where EOIR and the Attorney General are defendants,
19 DOJ has affirmed its position that individuals like Petitioner are applicants
20 for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to
21 Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash.
22 June 6, 2025), Dkt. 49 at 27–31.
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CLAIMS FOR RELIEF

COUNT I

Violation of the INA

47. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

48. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

49. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of Due Process

50. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

51. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from

1 imprisonment—from government custody, detention, or other forms of
2 physical restraint—lies at the heart of the liberty that the Clause protects.”
3 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
4 (2001).

5 52. Petitioner has a fundamental interest in liberty and being free
6 from official restraint.

7 53. The government’s detention of Petitioner without a bond
8 redetermination hearing to determine whether he is a flight risk or danger to
9 others violates his right to due process.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 13 a. Assume jurisdiction over this matter;
- 14 b. Issue a writ of habeas corpus requiring that Respondents release
15 Petitioner or provide Petitioner with a bond hearing pursuant to
16 8 U.S.C. § 1226(a) within 14 days;
- 17 c. Award Petitioner attorney’s fees and costs under the Equal
18 Access to Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412,
19 and on any other basis justified under law; and
20
- 21 d. Grant any other and further relief that this Court deems just and
22 proper.

23 DATED this 26th day of August 2025.
24

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