

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

Roberto Mandique Mejias, )  
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Petitioner, )  
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)  
v. )  
)  
Sam Olson, Field Office Director of )  
Enforcement and Removal Operations, )  
Chicago Field Office, Immigration and )  
Customs Enforcement; Kristi NOEM, )  
Secretary, U.S. Department of )  
Homeland Security; U.S. )  
DEPARTMENT OF HOMELAND )  
SECURITY; Pamela BONDI, U.S. )  
Attorney General; EXECUTIVE )  
OFFICE FOR IMMIGRATION )  
REVIEW; Scott Smith, Jail )  
Administrator of Dodge County Jail, )  
)  
Respondents. )  
\_\_\_\_\_ )

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1. Petitioner Roberto Mandique Mejias is in the physical custody of Respondents at the Dodge County Jail in Juneau, Wisconsin. He faces years of unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review ("Immigration Court") of the Department of Justice (DOJ) have erroneously concluded Petitioner is subject to mandatory detention.

2. Petitioner has no clear indication of what the basis of his detention is, and he has not been served with charging documents. The respondent has been told he is subject to expedited removal by several sources, and there are several sources that contradict the assertion that he is the subject of an order for removal, but he has not received sufficient notice of this charge as required by statute. In the alternative, the respondent has not been charged with removability with a Notice to Appear, and he has not received sufficient notice of what would grant the Attorney General jurisdiction to hear his case in Immigration Court.

3. The respondent has already filed for affirmative asylum protections, which is sufficient to give the Department of Homeland Security notice that he fears persecution in his country of nationality, however the Department of Homeland Security has determined that the petitioner must wait for a credible fear interview, where his intention to apply for asylum is reviewed for sufficiency.

4. Prior to July 8, 2025, individuals like Petitioner who are in the stage before charges are set or who are charged with entering the United States without inspection would have had been given a chance to request an order for release on bond issued by an immigration judge, and if one had been issued then the Department would have

released the petitioner on bond or personal recognisance.

5. This petitioner has gone through a preliminary bond hearing in which an immigration judge determined that a \$7,500 bond was appropriate, primarily based on successful petitions for Habeas Corpus that had been returned to the docket of the Immigration Judge the same day that this petitioner had his bond hearing. These proceedings were held at the instigation of the petitioner before a charging document was filed, and the order for bond was entered under objection from DHS counsel. The order for bond has been appealed by the Department to the Board of Immigration Appeals within the US Department of Justice. The respondent's objection relies on an interpretation of the law that is contrary to the previous understanding of the rights the government had to detain a noncitizen.

6. On July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. Because of this new policy, DHS is objecting to Petitioner's release from immigration custody—meaning he will be detained until a legitimate order for expedited removal is found, or until the petitioner's final immigration hearing, something that could take years to occur.

7. Any request by Petitioner for another bond redetermination hearing before the Immigration Court would be futile. DHS's policy states that it was developed “in coordination with the Department of Justice,” and in a recent published decision by the Board of Immigration Appeals (BIA), *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Respondent Immigration Court adopted the same position as DHS,

classifying noncitizens like Petitioner as applicants for admission and statutorily ineligible for bond under § 1225(b)(2)(A).

8. By detaining Petitioner without a clear notice of the department's jurisdiction to do so, Respondents are violating the plain language of the Immigration and Nationality Act. If the Respondents wish to revive an order for expedited removal under Section § 1225(b)(1)(A)(i), they must give notice of this document to the respondent so that he may review it for legal sufficiency. If the respondents wish to charge the petitioner with removal as a noncitizen with no lawful status who was encountered in 2025, which is more than two years after his entry into this country, he would be a noncitizen eligible for bond, and the statute § 1226(a) would apply to the petitioner.

9. Respondents' new legal interpretation of the Department's capacity to release a person similarly situated to the respondent is plainly contrary to the statutory framework, contrary to many of the representations that Respondents have made throughout the Petitioner's case, and contrary to decades of agency practice applying § 1226(a).

10. Accordingly, Petitioner seeks a writ of Habeas Corpus requiring that he be released pursuant to the bond of \$7500.00, which was ordered by the Immigration Judge, unless Respondents provide a valid and properly consummated Order for Expedited Removal (Form I-860) as soon as the entry of the order of this court.

### **JURISDICTION**

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Dodge County Jail, 216 W. Center St., Juneau, Wisconsin 53039.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. 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

14. 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 Eastern District of Wisconsin, the judicial district in which Petitioner currently is detained.

15. 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 Eastern District of Wisconsin.

### REQUIREMENTS OF 28 U.S.C. § 2243

16. 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.*

17. 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 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar

of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

### **PARTIES**

18. Petitioner Roberto Mandique Mejias is a citizen of Venezuela who has been in immigration detention since November 3, 2025. The petitioner was arrested at his normal check-in appointment, which he voluntarily attended with ICE - Enforcement and Removal Operations. The respondent has consistently attended these appointments during his presence in the country and during the pendency of his request for asylum status under INA Sec. § 208. The petitioner has resided in the United States since October 2021, when he was released from custody at the border, upon his first encounter with immigration authorities.

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

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

21. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of Noncitizens.

22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

23. Respondent Executive Office of Immigration Review - Immigration Court is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

24. Upon information and belief, Respondent Scott Smith is employed by Dodge County, Wisconsin. Respondent Smith is the Jail Administrator of the Dodge County Jail, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

### **Legal Framework**

#### **a. Charging Decision**

25. A charging document forms the basis for the detention of a person by a government body. In the immigration law context, and in the context of a noncitizen who is only an applicant for asylum and who entered without a valid status, there are basic and uncomplicated legal pathways that the government can take to remove that person. If a noncitizen is encountered at the border and he has no claim to a right to remain in the country, an expedited removal should be issued. 8 U.S.C. Section § 1225(b)(2). If that noncitizen is released from custody for more than two years and no charging document exists from his initial detention, a new Notice to Appear should issue, [Form I-862] which is served on the petitioner by the appropriate Immigration Official. 8 U.S.C. § 1229(a). Without a valid charging document, there is no jurisdiction at all to hold a petitioner in detention.

26. The matter of whether this court may go further and consider the petitioner's release on bond, concerns the correctly applied procedures of this charging decision, whether an order of expedited removal has been correctly served under Section § 1225(b)(2), or if it is required that the department issue a Notice to Appear at §§ 1227(a)(1)(A), 1229(a)(1).

27. A noncitizen who is encountered at the border and does not have a valid reason to enter the United States will normally be subject to expedited removal under section § 1225(b)(1)(A)(i), unless he expresses a fear of harm upon return to his country of nationality. There are simple documentary requirements that are necessary to enact an Order for Expedited Removal, and these requirements are delineated by federal regulation, found in 8 C.F.R. § 235.3(b)(2)-(7). If the department fails to apply these federal regulations, that failure will subject an Order for Expedited Removal to being invalid.

28. The procedures that the respondent must follow once it is suspected that a noncitizen has recently entered the country and they are inadmissible are:

- A. First, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accomplished by means of a sworn statement using Form I-867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. [Sic - refers to 8 USC § 1225(b)(1)] See 8 C.F.R. § 235.3(b)(2).
- B. Second, the examining immigration officer shall advise the alien of the charges against him or her on Form I-860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges in the sworn statement. 8 C.F.R. § 235.3(b)(2).

C. Third, a supervisory officer must review and approve any removal order entered by an examining immigration officer pursuant to Section § 235(b)(1) of the Act [8 USC § 1225(b)(1)] before the order is considered final. Such supervisory review shall not be delegated below the level of the second line supervisor, or a person acting in that capacity. The supervisory review shall include a review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return. See 8 C.F.R. § 235.3(b)(7).

D. Finally, after obtaining supervisory concurrence in accordance with paragraph [8 C.F.R. § 235.3(b)(7)] of this section, the examining immigration official shall serve the alien with Form I-860, and the alien shall sign the reverse of the form acknowledging receipt. See 8 C.F.R. § 235.3(b)(2).

29. If a noncitizen has been subject to these procedures, he is not necessarily removed in an expedited manner. If an alien claimed fear of persecution or torture upon return to his or her country, the inspecting officer shall not proceed further with physical removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with 8 CFR § 208.30. See 8 C.F.R. § 235.3(b)(4). The examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern, and to establish the alien's inadmissibility. See 8 CFR § 235.3(b)(4)(i).

30. An alien who is found to be subject to these procedures shall be detained, even while waiting for a credible fear interview. Section § 1225(b)(1)(B)(iii)(IV), 8 CFR § 235.3(b)(4)(ii). The INA also provides for the detention of noncitizens who

have been ordered removed and have been found to have a credible fear of persecution in their home country, including individuals in withholding-only proceedings. See 8 U.S.C. § 1231(a)–(b).

31. There is no procedure in the INA or regulations to return to the case file of a noncitizen who has arrived, and who has been released to pursue asylum benefits, and to complete a half-finished procedure to remove them summarily. The solution for the government if there are missing dates on such documents or missing signatures has been to issue new charging documents that comply with the INA. An order for expedited removal has very definite procedural constraints, including that the noncitizen be present in the country for less than two years, and it has a requirement that a copy be provided to the noncitizen. These requirements need to be completed for the Order of Expedited Removal to be valid.

32. The INA also envisions an 'order of supervision' procedure for individuals who are subject to a legally executed Order for Expedited Removal. See 8 U.S.C. § 1231(a)(3). See Also 8 C.F.R. § 241.5. These individuals who are granted an order of supervision are granted release from custody after the calculation of many factors by DHS, who is the only agency who has control of the noncitizen's release, because it has been previously interpreted that the attorney general does not have jurisdiction to order an alien released who has been ordered removed. An order of supervision may function similarly to release a noncitizen under 8 U.S.C. § 1226, but if the noncitizen is to be granted an immigration court hearing, it would be withholding-only [Withholding of Removal under 8 U.S.C. § 1231(b)(3)(B)].

33. Noncitizens who are not removable immediately through Section § 1225 are by law issued a Notice to Appear and would be assumed to be in 8 U.S.C. §

1226(a) detention and would generally be entitled to a bond hearing at the outset of their detention. See 8 C.F.R. §§1003.19(a), 1236.1(d). Noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

34. During the years 2016 through 2024, when there was a substantial increase in the amount of individuals coming to the US-Mexico border, it was increasingly common to perform rudimentary checks on an arriving alien's identity, to review the noncitizen's desire to seek asylum in the country, and to release the alien on their own recognizance, as if they were going to be placed in proceedings. These noncitizens may not have been issued a Notice to Appear under Section § 1229(a)(1). They were also not considered to be under a completed Order for Expedited Removal, even if the process had begun, because the noncitizen had expressed a fear of return to their country, and a Notice to Appear was assumed to follow in the future. This system worked as if 8 U.S.C. Section § 1226 applied, which authorizes the detention and the release of noncitizens on their own recognizance in standard removal proceedings before an immigration judge. Authorities also used release under parole under Section. § 1182(d)(5)(A), as a manner of allowing release of a noncitizen arriving at the border without entering an order of removal, and without disturbing the alien's status as an arriving alien, but that does not apply to this case.

35. If a noncitizen was released without an Order of Supervision and without a Notice to Appear, it is the obligation of the noncitizen to file for asylum protections directly with the DHS, Citizenship & Immigration Services [CIS]. See 8 U.S.C. § 1158(a)(2)(B). A noncitizen who has filed for asylum benefits affirmatively with the CIS agency inside of DHS has made a claim for refugee status, and they have fulfilled

their obligation to announce their intention to apply for asylum under Section 1225(b)(1)(A)(ii) of the title. This affirmative filing with Citizenship & Immigration Services before the passage of one year may carry through to a subsequent court hearing, if the affirmative filing is pretermitted, or if the noncitizen is not approved at an interview held by CIS.

36. Once a noncitizen has been released upon the initial determination at the border, and he has filed an affirmative asylum application, he is not subject to a redetermination of the procedures of an expedited removal, certainly if the encounter is two years after the noncitizen's entry into the country, where he is specifically excluded from the expedited removal procedures under statute. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II). If a name must be attached to his status, he is an applicant for asylum and otherwise has no lawful status. This status does not protect a noncitizen in this specific situation from a charge of inadmissibility through a Notice to Appear under 8 U.S.C. Section § 1229, and it does not protect the noncitizen from a redetermination of his custody status under 8 U.S.C. Section § 1226. However, we believe this status grants a noncitizen some due process, including a determination of release on bond.

**b. Continued Detention**

37. Once a charging decision is reached, and it survives initial scrutiny, the INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

A. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. See 8 U.S.C. § 1229a.

Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, See 8 U.S.C. § 1226(c).

- B. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under Section § 1225(b)(2).
- C. Last, the INA also provides for the detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. See 8 U.S.C. § 1231(a)–(b). These individuals may be eligible for an order of supervision and release, but their custody status is not subject to review by an Immigration Judge under the Department of Justice. See 8 U.S.C. § 1231(a)(3).

38. Following the enactment of the IIRIRA, the Immigration Court drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under Section § 1225 and that they were instead detained under Section § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

39. The practice of granting bond hearings and allowing release on bail if a noncitizen was subject to a Notice to Appear, and an Order for Expedited Removal was not completed, was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody

hearing before an immigration judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

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

41. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”<sup>1</sup> claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under Section § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

42. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision holds that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bond hearings.

43. ICE and the Immigration Court have adopted this position even though numerous federal courts have rejected this exact conclusion. For example, after immigration judges in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

found that such a reading of the INA is likely unlawful and that Section § 1226(a), not Section § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also* *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

44. No federal court that has considered the Respondents' new interpretation of the INA, since ICE implemented its July 8, 2025 memo, has accepted this new interpretation. *See* *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025). Courts have rejected the BIA's interpretation of the INA in *Matter of Yajure Hurtado* for the same reasons. *See, e.g., Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at \*6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at \*8 n.11 (D. Mass. Sept. 9, 2025) (same).

45. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a),

not § 1225(b), applies to noncitizens like Petitioner.

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

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

48. Section § 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States and are charged under § 1229, including those who are present without admission or parole.

49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this 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).

50. Accordingly, the mandatory detention provision of § 1225(b)(2) does not

apply to noncitizens like Petitioner, who have already entered, who have been released pending § 1229a proceedings, and were residing in the United States at the time they were apprehended.

### FACTS

51. Petitioner has resided in the United States since 2021. He lives in Madison, Wisconsin, close to his family, [REDACTED]  
[REDACTED]<sup>2</sup> The respondent has started a graphics design business, and he is well known in the community for this business.

52. The Petitioner has already been released from the custody of the Respondent in 2021, with an order of release that specifically referenced Section 236 of the INA [Section § 1226], which also contains an indication that he will be placed in removal proceedings. See Declaration of Kevin Boyle (“Boyle Decl.”), Exhibit 2. The petitioner was not given a copy of an Order for Expedited Removal, he was not told he had an Order for Expedited Removal in his case, and he had no indication that anything like this was present in his case file until the year 2025.

53. The Petitioner has applied for asylum within one year of residing in the country, and he received a valid work permit through this process. In June of 2025, the original petition for asylum was denied based on a lack of jurisdiction, citing an outstanding order for expedited removal. See Boyle Decl., Exhibit 5. The Petitioner refiled his request for asylum, arguing that he was not given notice of this expedited removal, and in fact, the evidence he had from his release from custody at the border

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<sup>2</sup> The respondent has the merits of his case for asylum available for inspection for the court, if considered relevant to the arguments at hand. The respondent would like to keep the details confidential or he would be happy to enter such evidence under an order to seal the documents from access by the public.

showed he had been released under the de facto 8 U.S.C. § 1226 framework described in paragraph 34. See Boyle Decl., Exhibits 1-4. This second request for asylum was also denied on October 31, 2025, though the respondent did not receive notice of the denial until after he was in custody. See Boyle Decl., Exhibit 6.

54. On November 03, 2025, Petitioner was arrested at a check-in with Enforcement and Removal Operations in Milwaukee, Wisconsin, which was an appointment he had attended several times previously. This check-in appointment was an obligation of his release on recognizance. The Petitioner was informed he was subject to expedited removal at this appointment and subsequent detention, but he did not receive any documentation confirming this fact at this appointment, only a warrant for arrest under INA 236 was given to the respondent. See Boyle Decl., Exhibit 7. The petitioner does not contest the government's legal authority to take the respondent into custody at this moment; the contest lies at the government's reliance on an order for expedited removal that has not been served on the Petitioner and we object to the continued detention of the petitioner. The Petitioners also object to the decision to forego the issuance of a new Notice to Appear [Form I-862] where the petitioner could expect a hearing to review his request for asylum protections under 8 U.S.C. § 1158.

55. The respondent requested a bond hearing, in the expectation that the confusion regarding the charging documentation would be cleared up or a Notice to Appear [Form I-862] would issue. The bond hearing was scheduled quickly after the request, and the representative of the Department relied on the contention that the Petitioner was subject to expedited removal. The representative of the Department fulfilled their ethical obligation to the Immigration Court and informed the

Immigration Judge that the actual order for expedited removal was not present in their system. Upon inquiring with OPLA counsel after the bond hearing, this attorney has not been provided with an order of expedited removal, but rather a summary sheet for the respondent's case that says expedited removal at the top. See Boyle Decl., Exhibit 9.

56. In the impromptu bond hearing, the Immigration Judge decided that a bond of \$7500.00 was appropriate based on the balance of factors, after being informed of the Petitioner's arrest history and his medical history. See Boyle Decl., Exhibit 10. OPLA has entered an appeal of this bond determination. As of this writing, there have not been charges or documentary evidence of an expedited removal entered with the Immigration Court.

57. The petitioner has received a credible fear hearing, being interviewed while in detention on December 12, 2025. The respondent's attorney inquired with the agency employee conducting the credible fear interview, who stated that a form I-860 existed in the respondent's file, but that it was missing signatures, specifically mentioning the missing signature for service upon the petitioner. The interview was by phone and the petitioner nor the petitioner's attorney were able to see the copy of the form I-860. There has been no agency decision regarding the credible fear interview at the time of this filing.

58. The petitioner was subject to some inspection upon his arrival, and he received documentation to indicate he was processed soon after his entry. See Boyle Decl., Exhibits 1-4. The argument that the respondent is an arriving alien who was not inspected at all does not comport with the fact that he was encountered by this same branch of the government as the Respondents already, and he was already

released under INA 236 to pursue asylum protections.


59. The government seems to be consistent about what statute justifies the petitioner's detention, in October 2021, the documents he received indicated he was released under INA 236. See Boyle Decl., Exhibits 1-4. In November 2025 the same government issued a warrant relying on INA 236 to classify the petitioner as someone they could take into their custody. See Boyle Decl., Exhibit 7. No government document to this point has justified the detention of the petitioner under INA 235. [8 U.S.C. § 1225].

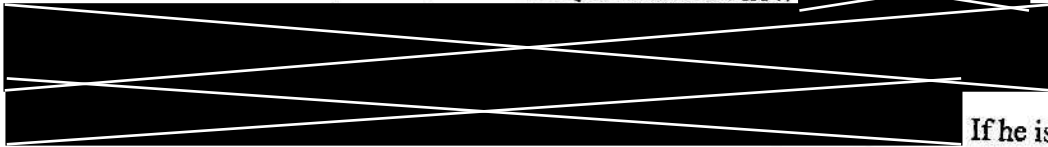
60. The respondents have not produced any document that satisfies the legal requirements to assume the petitioner is subject to an order for expedited removal. As such, the Petitioner is eligible to request a bond in immigration court at this time. He has requested a bond, and after a review of the equities and negative points in the petitioner's case, a bond of \$7,500 has been issued, but the respondents refuse to honor such an order. See Boyle Decl., Exhibit II.

61. The Petitioner has a conviction for a DUI originating in Wisconsin, though it was not aggravated and was not considered criminal. Before being arrested, the Petitioner paid everything necessary and received treatment for alcohol abuse to receive his driver's license again. See Petitioner's Statement of Criminality.

62. The petitioner was receiving treatment for a medical condition that caused him to have a heart attack before he was detained. The Petitioner has suffered a medical emergency in DHS custody, and the medical care he receives is limited. Prolonged detention could easily become extremely detrimental to the Petitioner's health.

63. Petitioner has a strong form of relief in his request for asylum protections.

In his affirmative asylum petition, Mr. Mandique described how 



If he is charged and placed in removal proceedings, Petitioner intends to seek relief in the form of Asylum under 8 U.S.C. § 1158 and, in the alternative, Withholding of Removal under 8 U.S.C. § 1231(b)(3) or Relief under the Convention Against Torture (CAT) under 8 CFR § 1208.16(c).

64. Any request for bond redetermination before Immigration Court is futile, as the BIA recently held in a published decision that persons like Petitioner are subject to mandatory detention as applicants for admission under § 1225(b)(2)(A). *See Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders prudential exhaustion futile).

65. As a result, Petitioner remains in detention, which is undefined in jurisdiction and scope. Absent relief from this Court, he faces the prospect of being held unjustly and without charges for an undetermined amount of time, for the second time in his life. If removal proceedings do begin, he faces the prospect of months, or even years, in immigration custody, separated from his family living in the U.S., separated from medical care, and separated from his gainful employment.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Violation of the INA**

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

67. The Petitioner has a statutory right to be informed of the jurisdiction that the Department has to detain him, and this must either be a legally created order for expedited removal, subject to the respondent's request for asylum protections under 8 U.S.C. § 1225(b)(2), or the Petitioner must have a newly created Notice to Appear created and served upon him under 8 U.S.C. § 1229. The refusal to demonstrate to the respondent what is keeping him in custody violates the INA.

### **COUNT II**

#### **Violation of the INA**

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

69. 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 the Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

### **COUNT III**

#### **Violation of Due Process**

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

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

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

72. Petitioner has a fundamental interest in liberty and being free from official restraint.

73. The government’s detention of Petitioner without notice of his charges, and the refusal to respect the Immigration Judge’s order for release on bond violates his right to due process.

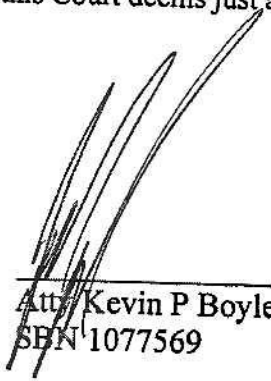
#### PRAYER FOR RELIEF

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

- a. Assume jurisdiction over this matter;
- b. Order that the Respondents provide the Petitioner with the basis for his continued detention within 3 days;
- c. Upon receipt of any Order for Expedited Removal, [Form I-860] order any such document void and without effect if such document is not issued with strict compliance to the regulations set forth in 8 CFR § 235.3(b)(2) - (7).
- c. Issue a writ of habeas corpus requiring that Respondents release Petitioner pursuant to 8 U.S.C. § 1226(a) and pursuant to the Immigration Judge’s order for \$7,500 bond;
- d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

Signed this 19<sup>th</sup> day of December, 2025.



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Att/ Kevin P Boyle  
SBN 1077569

Prepared by: Kevin P Boyle Law Offices LLC  
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Madison, WI 53713  
Phone: 608-628-3591  
Fax: 608-836-1427  
kevin@boylelawoffices.com

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box (required):  Green Bay Division  Milwaukee Division

### I. PLAINTIFFS

Roberto Jose Mandique Mejias  
Dodge County Jail, 216 West Center Street, Juneau, WI 53039

(b) County of Residence of First Listed Plaintiff Dodge  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Kevin P Boyle, Kevin P Boyle Law Offices LLC  
2005 W Beltline Hwy Ste 201 Madison WI 53713

### DEFENDANTS

Sam Olsen, Kristi Noem, U.S. Department of Homeland Security,  
Pamela Bondi, US Attorney General, Scott Smith

County of Residence of First Listed Defendant Cook County, IL  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 CSC 2243

Brief description of cause:  
Habeas Corpus Petition

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

### DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See updated instructions):

JUDGE

DOCKET NUMBER

DATE  
12-19-2025

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation -- Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation -- Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending and previously filed cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases and file a Notice of Related Action pursuant to Civil L.R. 3(b).

**Date and Attorney Signature.** Date and sign the civil cover sheet.