UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Roberto Mandique Mejias, Petitioner, 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. 2:25-CV-01998-WED **AMENDED 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 was told he had been ordered removed by several sources, but at his entry into the country in October 2021, he was released on an order of recognizance, and he was not paroled into the country, nor was he granted an order of supervision. The petitioner has not received sufficient notice of any order for expedited removal as required by statute, and he did not receive notice of charges of removability as an arriving alien. After Christmas of 2025, the petitioner was first charged with removability with a Notice to Appear, which was the first time he ever 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.

4. Prior to July 8, 2025, individuals like Petitioner who are charged with entering the United States without inspection, as opposed to individuals charged with being arriving aliens, 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, Respondents are violating the plain language of the Immigration and Nationality Act. The respondents have charged 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, and he is a noncitizen eligible for bond, and the statute § 1226(a).

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.

JURISDICTION

11. The 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. See 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 the noncitizen's initial detention, a new Notice to Appear should issue, [Form I-862] which is served on the petitioner by the appropriate Immigration Official. See 8 U.S.C. § 1229(a). Without a valid charging document, there is no jurisdiction at all to hold a noncitizen in detention.

26. 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).

27. 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 of return to the noncitizen's country of nationality and to establish the alien's inadmissibility. See 8 CFR § 235.3(b)(4)(i).

28. 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).

29. 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. This parole may create a presumption that a noncitizen is still an 'arriving alien' if they are in the interior of the country, but there are specific notices that need to be completed and provided to the alien, and these notices were not provided in this case.

30. 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)].

31. 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).

32. 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, or to reconnect their case to categorize them as an arriving alien. The solution for the government, if there are missing dates on such documents or missing signatures, has been to issue new charging documents under the general category of aliens who have not been inspected so that the charges comply with the INA. An order for expedited removal, or any charge alleging that the alien is an arriving alien, has very definite procedural constraints, including that the noncitizen be present in the country for less than two years. These requirements need to be completed correctly for the charging document to be valid.

33. 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.

34. 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 where the noncitizen may defend their request for asylum benefits, if the affirmative filing is pretermitted, or if the noncitizen is not approved at an interview held by CIS.

35. 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. This is certainly true 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).

36. If the noncitizen has no status, such as Section § 1182(d)(5)(A) parole at the time they are released, and they are not charged with removability under Section §

1229(a)(1), the noncitizen is not an arriving alien. If two years have passed from the noncitizen's entry, the government loses the ability to recapture the 'arriving alien' category when they charge a noncitizen. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II). If a name must be attached to this status, it is 'no lawful status,' or if a noncitizen complied with their obligation to file before one year passes, they are an 'applicant for asylum', who 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,"[1] 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 May 15, 2025, the Board of Immigration Appeals (BIA) issued a published decision restricting the ability to petition for release for arriving aliens. *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) The board held that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b) (2018), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a). However, the respondent Q. Li., in that case, was released on parole at the border under Section § 212(d)(5)(A), and so there was a status to revert to once the noncitizen's parole was revoked.

43. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision adopting this same position for all noncitizens who entered the country without inspection. *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.

44. ICE and the Immigration Court have adopted this position even though

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for applications-for-admission.

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 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).

45. 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).

46. 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.

47. 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]."

48. 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)).

49. 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.

50. 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).

51. 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 that were not filed for more than four years since their entry, and were residing in the United States at the time they were apprehended.

FACTS

52. Petitioner has resided in the United States since 2021. He lives in Madison, Wisconsin, close to his family, who are citizens of Venezuela, [redacted][2] The respondent has started a graphics design business, and he is well known in the community for this business.

53. 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 Updated 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.

54. 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

2 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.

original petition for asylum was denied based on a lack of jurisdiction, citing an outstanding order for expedited removal. See Updated 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 showed he had been released under the de facto 8 U.S.C. § 1226 framework described in paragraph 34. See Updated 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 Updated Boyle Decl., Exhibit 6.

55. On November 03, 2025, Petitioner was arrested at a check-in with Enforcement and Removal Operations in Milwaukee, Wisconsin. This check-in appointment was an obligation of his release on recognizance, and the petitioner had attended a similar appointment several times previously. The Petitioner was informed he was subject to expedited removal at this appointment and he was detained, but he did not receive any documentation confirming this fact at this appointment. The petitioner only received a warrant for arrest, under INA § 236, that was given to the petitioner. See Updated 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 a new Notice to Appear that claims the petitioner is not an 'arriving alien', and we object to the continued detention of the petitioner.

56. 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 an 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 Updated Boyle Decl., Exhibit 9.

57. 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 Updated 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.

58. The petitioner has received a credible fear hearing, being interviewed while in detention on December 12, 2025. The petitioner'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 neither the petitioner nor the petitioner's attorney were able to see the copy of the form I-860. There has been no agency decision provided to the petitioner regarding the credible fear interview at the time of this filing.

59. On December 27, 2025, the petitioner was served with a Notice to

Appear under Section 1229. See Updated Boyle Decl., Exhibit 17. The charging document does not make any mention of an Order for Expedited Removal, it does not reference the original process that the respondent went through at the border, and it only indicates that the respondent entered without proper inspection and without proper documentation. The most interesting aspect of this document: he is categorized as an immigrant seeking admission, which is the general category for any noncitizen who entered without inspection, the category that historically was granted bond determination under Section § 1226, and the box in front of arriving alien is blank.

60. 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 Updated 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 Updated Boyle Decl., Exhibit 7. The Notice to Appear checks the box that references Section § 1226, when the government had a chance to categorize him as an arriving alien. No government document to this point has justified the detention of the petitioner under Section § 1225.

61. The respondents have not produced any document that satisfies the legal requirements to assume the petitioner is subject to an order for expedited removal, and they have missed their chance to claim he is an arriving alien. 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 Updated Boyle Decl., Exhibit 9.

62. 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.

63. 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.

64. Petitioner has a strong form of relief in his request for asylum protections. In his affirmative asylum petition, Mr. Mandique described how [redacted]

people like the petitioner, as someone who has sought refuge in the United States for years. Petitioner intends to seek relief in removal proceedings 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).

65. 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).

66. 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

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

68. 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 II

Violation of Due Process

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

70. 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).

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

72. The government's extended detention of Petitioner without notice of his charges, then after the issuance of charges the government's continued 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. 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;

c. 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

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

Signed this 05th day of January, 2026.

Atty Kevin P Boyle
SBN 1077569

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CERTIFICATE OF SERVICE

I hereby certify that on January 05, 2026, I electronically filed the foregoing Updated Petition for Habeas Corpus, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties shall be served in accordance with the Federal Rules of Civil Procedure.

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