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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAVV,

Petitioner,

v.

SAMUEL OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration & Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; TODD LYONS, Acting Director of Immigration & Customs Enforcement, US DEPARTMENT OF HOMELAND SECURITY, US EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; US IMMIGRATION & CUSTOMS ENFORCEMENT, US DEPARTMENT OF DEPARTMENT OF JUSTICE, DALE J. SCHMIDT, Dodge County Sheriff, Dodge County Detention Facility.

Respondents.

Case No. 1:25-CV-2004

PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR DECLARATORY RELIEF

INTRODUCTION

1. Petitioner LAVV is currently in the physical custody of Respondents at the DODGE COUNTY DETENTION FACILITY in Juneau, WI. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) during contested removal proceedings, have concluded Petitioner is subject to mandatory detention.
2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i), (7)(A)(i)(I).
3. Based on these charges in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, 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 admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
4. Furthermore, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.
5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who

previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Indeed, the Government itself has made an abrupt about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process and imposes an unfair detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents should be estopped from asserting this inconsistent position.

8. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that

squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR.

9. On November 21, 2025, the 9th Circuit issued a nationwide class certification order in *Maldonado Baustista v. Garland*, extending previously granted declaratory relief to all members of the newly certified Bond Eligible Class. The ruling effectively rejects *Matter of Yahure Hurtado* and the related ICE policy that maintained that noncitizens who entered without inspection were subject to mandatory detention under INA § 235(b)(2)(A) without the possibility of bond.

10. In response to the *Maldonado Bautista v. Garland* decision, the Department of Justice issued an internal memo to Immigration Judges directing them to ignore the holding the *Maldonado Bautista v. Garland,* arguing that the declaratory relief granted was not considered a final decision on the case. As a result, Immigration Judges continue find that noncitizens that entered without inspection are subject to mandatory detention.

11. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the DODGE COUNTY DETENTION FACILITY in JUNEAU, WISCONSIN.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and (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).

14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Administrative Procedure Act at 5 U.S.C.A. § 704.

VENUE

15. 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.

16. 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

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

18. 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

19. Respondent SAMUEL OLSON is the Director of the Chicago Field Office of ICE's Enforcement and Removal Operations division, which overseas Wisconsin. As such, SAMUEL OLSON is the Petitioner's immediate custodian and is responsible for Petitioner's detention and removal.

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 (through its agent Secretary Noem) 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 (through its director Attorney General Bondi) Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

24. Respondent TODD LYONS is the Acting Director of Immigration & Customs Enforcement (ICE). He is responsible for ICE operations throughout the United States, and he is sued in his official capacity.

25. Respondent, Sheriff DALE J. SCHMIDT, is employed as a County Sheriff and is in charge of the facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

26. The Immigration and Nationality Act (INA) authorizes immigration officers to arrest noncitizens without a warrant only under limited circumstances. Pursuant to 8 U.S.C. § 1357(a)(2), such an arrest is lawful only if the officer has probable cause to believe that the individual is (a) in violation of immigration laws and (b) likely to escape before a warrant can be obtained.

27. The implementing regulations at 8 C.F.R. §§ 287.5(c)(1) and 287.8(c)(2)(i)–(iii) impose additional procedural requirements. These include: (a) The officer must identify themselves "as soon as it is practical and safe to do so." 8 C.F.R. § 287.5(c)(2)(iii)(A–B); (b) The officer must state that the person is under arrest and the reason for the arrest; (c) The officer must document specific, articulable facts supporting both the immigration violation and the likelihood of escape.

28. The Nava Settlement Agreement [Exhibit 5] reinforces these statutory and regulatory requirements. It mandates that ICE officers: (a) Cannot rely solely on unlawful presence to justify a warrantless arrest; (b) Must document specific, articulable facts supporting both prongs of the statutory standard—immigration violation and risk of flight.

29. The government freely entered into the Settlement Agreement that precipitated their broadcast, and are bound by their agreement.

30. An arrest executed without a warrant or without a documented flight risk assessment violates the INA, its regulations, and binding agency policy. Such conduct constitutes: (a) Unlawful agency action under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A–D); (b) Ultra vires action, exceeding statutory authority and subject to judicial review.

31. Courts have consistently invalidated immigration enforcement actions that disregard statutory and regulatory limits. See: *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d 1, 41–43 (D.D.C. 2018).

32. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar collateral APA challenges to unlawful arrest and detention. Such claims are reviewable under: (a) 28 U.S.C. § 1331 (federal question jurisdiction); (b) 28 U.S.C. § 2241 (habeas corpus). See also: *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).

33. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A-D), provides that courts shall set aside agency action that is arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or taken without observance of procedure required by law. An arrest executed without a warrant or flight risk assessment, in violation of the statutory and regulatory framework, as well as the agency's own published policy enacting those laws, constitutes unlawful agency action under the APA.

34. Agency action that exceeds statutory authority is also ultra vires. Where immigration officers act outside the bounds of their delegated powers—such as by failing to satisfy the mandatory predicates for warrantless arrest—the resulting detention is unauthorized. The Supreme Court has recognized that ultra vires agency action is subject to judicial review and may be enjoined. See *Leedom v. Kyne*, 358 U.S. 184, 188 (1958).

35. The APA provides a cause of action to challenge such agency misconduct, and courts have consistently invalidated immigration enforcement actions that disregard statutory limits or binding agency rules. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d 1, 41–43 (D.D.C. 2018).

36. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply to this APA claim. The claim does not challenge a final order of removal, does not arise from removal proceedings, and does not implicate a discretionary decision. It is a collateral legal challenge to the legality of Petitioner's arrest and detention, reviewable under 28 U.S.C. §§ 1331 and 2241. See *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).

37. The availability of declaratory relief in this context is well established. In *Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019), the Supreme Court affirmed that district courts retain jurisdiction to entertain requests for declaratory relief even where injunctive relief may be limited under 8 U.S.C. § 1252(f)(1).

38. In *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044–47 (1984), the Court declined to apply the exclusionary rule in civil immigration proceedings, in part, because it reasoned that

declaratory relief remains available as an alternative for individuals in custody. The Court noted that the INS had developed rules and procedures to protect Fourth Amendment rights and that suppression might still be appropriate in cases involving "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness" or "widespread violations" of constitutional protections. See id. at 1050–51.

39. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

40. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *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).

41. 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 § 1225(b)(2).

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

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

44. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

45. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 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).

46. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice 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 IJ 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)).

47. Judicial estoppel is an equitable doctrine designed to protect the integrity of the judicial process by prohibiting parties from assuming inconsistent positions in litigation to gain unfair advantage. It is "especially" applicable "if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895).

48. The Supreme Court reaffirmed this principle in *New Hampshire v. Maine*, holding that judicial estoppel applies when: (1) a party's later position is "clearly inconsistent" with its earlier position; (2) the party succeeded in persuading a court to accept the earlier

position, such that acceptance of the later position would create the perception that the court was misled; and (especially) when (3) the party would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. 532 U.S. 742, 749–51 (2001). The Court emphasized that these factors are not "inflexible prerequisites or an exhaustive formula," and that "additional considerations may inform the doctrine's application in specific factual contexts." Id. at 751.

49. In *New Hampshire*, the Court barred the state from asserting a boundary interpretation that contradicted its prior position, which had been accepted by the Court and had yielded a favorable outcome. The Court found that the reversal would "undermine the integrity of the judicial process" and create a "risk of inconsistent court determinations." Id. at 751, 755.

50. In *Jennings v. Rodriguez*, a case in which the government prevailed, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not apprehended within 100 miles of the border or within 14 days of entry are subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b).

51. 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.

52. 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 subject to mandatory detention provision under §

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

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.

53. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

54. Since Respondents adopted their new policies, several federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

55. Even before ICE or the BIA introduced these nationwide policies, IJs 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. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

56. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation of the Immigration and Nationality Act's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority applicable in these cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25

CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

57. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

58. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

59. 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]."

60. 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*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

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

62. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. 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).

63. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who is an uninspected entrant. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

64. On November 21, 2025, the 9th Circuit issued a nationwide class certification order in *Maldonado Baustista v. Garland*, extending previously granted declaratory relief to all

members of the newly certified Bond Eligible Class. The ruling effectively rejects *Matter of Yahure Hurtado* and the related ICE policy that maintained that noncitizens who entered without inspection were subject to mandatory detention under INA § 235(b)(2)(A) without the possibility of bond.

65. In response to the *Maldonado Bautista v. Garland* decision, the Department of Justice issued an internal memo to Immigration Judges directing them to ignore the holding the *Maldonado Bautista v. Garland*, arguing that the declaratory relief granted was not considered a final decision on the case. As a result, Immigration Judges continue find that noncitizens that entered without inspection are subject to mandatory detention.

FACTS: ARREST

66. Petitioner LAVV is currently detained by U.S. Immigration and Customs Enforcement (ICE) at Dodge County Detention Facility in Juneau, WI.

67. On November 14, 2025, Petitioner LAVV was driving a vehicle and was stopped by local law enforcement for speeding. The Petitioner was later charged with Operating without a License, as a criminal offense, as well as Operating while Intoxicated – 1st Offense, as a non-criminal offense. The criminal Operating without a License offense was resolved at the initial appearance while the Petitioner was still at the Brown County jail. The Operating while Intoxicated – 1st offense charge was filed in the Green Bay Municipal Court, with a future court appearance of January 8, 2026.

JENNINGS V. RODRIGUEZ ORAL ARGUMENTS

68. During oral argument before the Supreme Court, the government clarified that individuals who have already effected an entry into the United States are to be placed in INA § 236 proceedings under 8 U.S.C. § 1226(a), rather than INA § 235 proceedings

under 8 U.S.C. § 1225(b), unless they are apprehended within 100 miles of the border and within 14 days of entry. Justice Sotomayor specifically asked whether unadmitted aliens who are found in the U.S. illegally fall under mandatory detention under 1225(b) or discretionary detention under 1226(a). Solicitor General Gershengorn stated: "So they are held under -- if they are not -- if they are not detained within 100 miles of the border or within 14 days, so they've been there longer than those two things, then they are under 1226(a) and not 1226(c)." (Transcript of Oral Argument at 8, Jennings v. Rodriguez, No. 15-1204 (U.S. argued Nov. 30, 2016)).

69. On page 8, lines 21–25, Solicitor General Gershengorn further clarified that an alien who entered illegally and resides 50 miles from the border for 20 years "is held under 1226(a) and that they get a bond hearing under -- and this is at page 156a of the appendix." (Id. at 8).

CLAIMS FOR RELIEF

COUNT I

Violation of the Bond Regulations

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

94. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond

redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

95. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individual like Petitioner.

96. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT II

Violation of Due Process

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

98. 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 (2001).

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

100. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT III

Judicial Estoppel

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

102. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government prevailed, and in doing so argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016).

103. Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

COUNT IV

Violation of the INA

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

94. 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 are accused by DHS of having "entered" the United States. Those actions by DHS, followed by the Petitioner's

concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

COUNT V

Relief under the Administrative Procedure Act

96. Petitioner incorporates by reference the allegations of fact and legal standards set forth in the preceding paragraphs.

97. Respondents' arrest and continued detention of Petitioner were unlawful under the APA. The arrest was executed without a warrant and without a contemporaneous or documented assessment of flight risk, in violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2), and the *Nava Settlement Agreement*. These requirements are mandatory and binding.

98. The arrest and continued detention of Petitioner, executed without a warrant and without any documented flight risk assessment, were unlawful ab initio and remain unlawful. The detention constitutes a continuing seizure of Petitioner's person and is a direct and uninterrupted extension of the original unlawful arrest.

99. Respondents' actions constitute final agency action under 5 U.S.C. § 704, as they reflect the consummation of the agency's decision-making process and determine Petitioner's legal rights and obligations.

100. Under 5 U.S.C. § 706(2)(A), (C), and (D), the APA requires courts to set aside agency action that is arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, or taken without observance of procedure required by law. Respondents' arrest and detention violate all of these provisions.

101. Petitioner's APA claim is not barred by 8 U.S.C. § 1252. The jurisdiction-stripping provisions of § 1252 do not apply because this claim does not challenge a final order of removal, does not arise from removal proceedings, and does not implicate a discretionary decision. It is a collateral legal challenge to the legality of the arrest and detention, reviewable under 28 U.S.C. §§ 1331 and 2241.

102. Respondents' conduct also exceeds the scope of their statutory authority and is ultra vires. DHS officers are only authorized to arrest without a warrant when both statutory predicates—immigration violation and likelihood of escape—are satisfied. Where they are not, the agency acts beyond its delegated powers.

103. Petitioner therefore seeks declaratory relief under the APA declaring the arrest and detention unlawful, and injunctive relief enjoining Respondents from continuing or repeating detention based on the same unlawful arrest.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the EASTERN DISTRICT OF WISCONSIN while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Respondents' arrest of Petitioner was unlawful under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C), and (D), as it was executed without a warrant or flight risk assessment, in violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2), and the Nava Settlement Agreement;

f. Declare that Respondents acted ultra vires in arresting and detaining Petitioner without statutory authority, and that the ongoing detention is a continuation of that unlawful seizure and remains unauthorized;

g. Enjoin Respondents from continuing Petitioner's detention or initiating future detention based on the same unlawful arrest or, in the alternative, order that Petitioner be granted a bond hearing;

h. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

i. Any further relief the Court deems proper.

DATED this 17th day of December, 2025.

/s/ Luca L Fagundes
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