UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

JOSE ISAAC AREINAMO-COLMENARES,

Petitioner,

v.

Dale J. SCHMIDT, Sheriff, Dodge County; Sam OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, Secretary of the U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Todd BLANCHE, Acting Attorney General of the United States; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, in their official capacities,

Respondents.

Case No. 2:26-cv-861

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Jose Isaac Areinamo-Colmenares, is a Venezuelan national who has lived in the United States, most recently in Wisconsin, since March of 2021. In Venezuela he [redacted]. He is the father of three children, two of whom are United States citizens. Petitioner is disabled and uses a cane.

2. Petitioner entered the United States without inspection over five years ago in March of 2021. After having contact with immigration officials near the border, he was released after several hours on his own recognizance. He filed an asylum application over four years ago, which remains pending in immigration court.

3. Petitioner has never been convicted of any crime in the U.S. or any other country. He has several traffic matters pending in Wisconsin, and in the past has paid fines for traffic violations, including operation without a license and speeding.

4. Petitioner was detained by ICE in Wisconsin following an arrest for driving without a license.

5. Petitioner is now incarcerated in Respondents' physical custody at the Dodge County Jail in Juneau, Wisconsin, within the area of responsibility of Immigration and Customs Enforcement (ICE)'s Chicago Field Office.

6. Prior to DHS's abrupt issuance of a new policy on July 8, 2025, individuals like Petitioner, charged with entering without inspection, received a bond hearing at which an Immigration Judge would determine whether they could be released on bond pending their removal proceedings. The new policy, by contrast, instructs ICE employees to consider anyone

inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the U.S. without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

7. Said policy 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 in Petitioner's shoes as applicants for admission and statutorily ineligible for bond under § 1225(b)(2)(A).

8. *Matter of Yahure Hurtado* was poorly decided, and Petitioner asks this Court to join the vast majority of federal courts that have examined this issue, recognizing that the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. *See, e.g., Barbosa Da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2nd Cir. April 28, 2026); *Hernandez Alvarez v. Morris*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, No. 25-1965, 2026 WL 1283891 (6th Cir. May 11, 2026); *but see Avila v. Bondi*, 170 F. 4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). The Seventh Circuit has yet to issue a majority opinion on this matter. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 2026 WL 1223250, No. 25-3050, (7th Cir. May 5, 2026).

9. Petitioner therefore seeks a writ of habeas corpus directing that Respondents release him or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 5 days.

JURISDICTION

10. Petitioner is in the physical custody of the Respondents. Petitioner is detained at the Dodge County Jail in Juneau, Wisconsin.

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

12. The Court's subject matter jurisdiction further arises under Article III, Section 2 of the Constitution because Petitioner is raising constitutional issues. Petitioner seeks immediate judicial intervention to remedy ongoing violations of his constitutional rights by Respondents.

13. Jurisdiction is proper under the Immigration & Nationality Act of 1952, as amended (INA), 8 USC § 1101 *et seq.*, and the Administrative Procedure Act (APA). This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

14. The Seventh Circuit has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. *See, e.g., Al-Siddiqi v. Achim*, 531 F.3d 490, 494 (7th Cir. 2008) (finding its jurisdiction "remains intact" to review the petitioner's claim in a habeas action that DHS's refusal to honor an immigration judge's bond order was without legal justification and violated his due process rights); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1013–21 (7th Cir. 2004) (assessing a petitioner's due process challenge to his mandatory detention). Moreover, 8 U.S.C. § 1252(a)(2)(D) expressly preserves judicial review for "constitutional claims or questions of law" raised in removal proceedings, ensuring that federal courts may address bona fide due process violations even where other jurisdictional bars might apply. The Seventh Circuit has held that this provision "restores

jurisdiction to review constitutional claims and questions of law, including colorable legal and constitutional claims." *Boadi v. Holder*, 706 F.3d 854, 857 (7th Cir. 2013).

15. In this case, Petitioner asserts substantial statutory and constitutional violations. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent.

16. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner's rights.

17. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain habeas corpus jurisdiction under 28 U.S.C. § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, Section 2241 habeas review remains available to Petitioner.

VENUE

18. 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.

19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Petitioner is currently detained at the Dodge County Jail in Juneau, Wisconsin, within the Eastern District Division of Wisconsin, in DHS's custody. Respondent Dale J. Schmidt, Dodge County Sheriff, is his immediate custodian, and Respondents exercise authority over his custody in this jurisdiction. See 28 U.S.C. §§ 2241(d), 1391(e). 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 Western District of Wisconsin.

REQUIREMENTS OF 28 U.S.C. § 2243

20. 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.*

21. 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) (citation omitted), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72 (1977), and *abrogated by Coleman v. Thompson*, 501 U.S. 722 (1991). "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." *See Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

22. Petitioner Jose Isaac Areinamo-Colmenares is a citizen of Venezuela who is currently in immigration detention. After arresting Petitioner in Wisconsin, DHS did not set a bond. Petitioner has resided in the United States since March of 2021.

23. Respondent Dale J. Schmidt is employed by Dodge County, Wisconsin. Respondent Schmidt is the Sheriff of Dodge County and thus has the exclusive charge and custody of the County Jail, where Petitioner is detained. Schmidt has immediate physical custody of Petitioner and is sued in his official capacity.

24. 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.

25. Respondent Markwayne Mullin is the Secretary of DHS. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

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

27. Respondent Todd Blanche is the Acting Attorney General of the United States. He 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. He is sued in his official capacity.

28. Respondent Executive Office for Immigration Review (EOIR) (the "Immigration Court") is the federal agency responsible for implementing and enforcing the Immigration and Naturalization Act (INA) in removal proceedings, including for custody redeterminations in bond hearings.

LEGAL FRAMEWORK

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

30. 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).

31. 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).

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

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

34. 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).

35. 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 § 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).

36. 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. 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 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)).

37. On July 8, 2025, ICE, "in coordination with" the Department of Justice (DOJ), announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

38. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] (hereinafter "Interim Detention Policy") claims that all persons who entered the U.S. without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The Interim Detention 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.

39. On September 5, 2025, the 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 bond hearings. *Id.* at 229.

40. ICE and 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

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

the U.S. 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 § 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, 1261 (W.D. Wash. 2025); *see also Oliveira Gomes v. Hyde*, 25-cv-11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

41. 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 people like Petitioner.

42. 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(a)(1), to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

43. 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, "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies. 779 F. Supp. 3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

44. 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.

45. 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).

46. Further, DHS's novel reinterpretation of the statute would render portions of § 1226 superfluous. The recently enacted Laken Riley Act added language to § 1226 mandating detention when an individual (1) is inadmissible under § 1182(a)(6)(A) (a non-citizen present in the United States without having been admitted or paroled) and (2) has been arrested, charged, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025). "But under the government's reading of § 1225(b)(2)(A), *all* non-citizens who have not been admitted or paroled would be subject to mandatory detention, so there would be no need for § 1226 to mandate detention for a subset of those individuals." *Paredes Padilla v. Galovich*, 25-cv-863-JDP, 2025 WL 3251446, at *4 (W.D. Wis. Nov. 21, 2025). The Supreme Court has made clear that where possible, "a statute should be construed so that effect is given to all its provisions." *Id.* (citing *Corley v. United States*, 556 U.S. 303, 314 (2009)). Petitioner's interpretation gives effect to all the provisions of both § 1225 and § 1226, while DHS's interpretation does not. *Id.*

FACTS

47. Petitioner, Jose Isaac Areinamo-Colmenares, is a Venezuelan national who has lived in the United States, most recently in Wisconsin, since March of 2021. In Venezuela he

[redacted] He is the father of three children, two of whom are United States citizens. Petitioner is disabled and uses a cane.

48. Petitioner entered the United States without inspection over five years ago in March of 2021. After having contact with immigration officials near the border, he was released after several hours on his own recognizance. He filed an asylum application over four years ago, which remains pending in immigration court.

49. Petitioner has never been convicted of any crime in the U.S. or any other country. He has several traffic matters pending in Wisconsin, and in the past has paid fines for traffic violations, including operation without a license and speeding.

50. Petitioner was detained by ICE in Wisconsin following an arrest for driving without a license. DHS also issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

51. As a result, Petitioner remains in mandatory DHS detention. Absent relief from this Court, he faces the prospect of prolonged civil immigration detention as a disabled individual incarcerated with individuals accused or convicted of serious crimes, while separated from his U.S. citizen children and other family members.

CLAIMS FOR RELIEF

Count 1:
Violation of the INA

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

53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As

relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

Count 2:
Violation of Procedural Due Process

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

56. 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).

57. Petitioner has, and at all relevant times has had, a fundamental interest in liberty and being free from official restraint.

58. 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.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

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

c. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within five days;

d. Shift the burden at the bond hearing to the government to show by clear and convincing evidence that Petitioner's continued detention is necessary to prevent a risk of flight or a threat to public safety;

e. Order that Petitioner shall not be transferred outside the Eastern District of Wisconsin while this habeas petition is pending;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other relief that the Court deems just and proper.

Signed May 15, 2026.

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Attorney for Petitioner.

Petition Verification

I, the undersigned, hereby declare under penalty of perjury that the foregoing information is true and correct.

Signed, this 15th day of May, 2026.

Electronically signed by Laura Graham

Laura Graham