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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Joao Alexandre Dos Reis Franco,

Petitioner,

vs.

CRAIG MEYER, ET AL

Respondents.

Case No.: 1:25-cv-01620-DAD-CKD

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND RETURN TO PETITION FOR HABEAS CORPUS

Judge: Hon. Dale A. Drozd
Date Action Filed: 11/03/2025

INTRODUCTION

Petitioner by and through undersigned counsel, respectfully submits this Reply to Respondents' response to motion for temporary restraining order and return to petition for habeas corpus.

Right from the beginning of Respondents' response they misstate Petitioner's assertions regarding lawful status while an I-485 is pending. Petitioner does not argue that he was in a lawful status but rather in a "period of authorized stay". Such authorization to remain in the United States was granted by the DHS Secretary under 8 U.S.C. 1255.

Applicants with pending I-485 applications are authorized by Respondent DHS to remain in the United States during the adjudication of their applications. *Motaghedi v. Pompeo*, 436 F. Supp. 3d 1345 (E.D. Cal. 2020). This is supported by the statutory framework under 8 U.S.C. 1255, which allows individuals lawfully admitted or paroled into the United States to apply for adjustment of status. The Ninth Circuit has recognized that such applicants are not unlawfully present during the pendency of their applications, as they are in a period of authorized stay *United States v. Bravo-Muzquiz*, 412 F.3d 1052 (9th Cir. 2005), *United States v. Hernandez*, 913 F.2d 1506 (10th Cir. 1990).

In addition to protection from removal, individuals in a period of authorized stay may be eligible for work authorization. This eligibility allows them to obtain an Employment Authorization Document (EAD), enabling them to work lawfully in the United States while their I-485 application is pending. They can even obtain a travel authorization commonly known as "advance parole" which allows them to travel abroad and return to the United States to resume their applications.

It is inconceivable that, a person who is in a period of authorized stay by the DHS, with authorization to work legally in the United States, with eligibility to obtain travel authorization, and even stay their removals could be simply arrested by the very agency that confers such benefits.

Not Being Statutorily Prohibited Is Not The Same As Being Expressly Authorized

Differently than Respondent's contentions regarding this issue, the practice of ICE detaining applicants for adjustment of status during their immigration interview is not expressly authorized by U.S. federal statute or 9th Circuit precedent, neither it is explicitly prohibited. Federal statutes, such as 8 USCS § 1255, outline the adjustment of status process but do not address the specific issue of detaining applicants during their interviews. Similarly, 8 USCS § 1225. provides for mandatory detention in certain circumstances but does not explicitly authorize or prohibit detention during adjustment of status interviews.

The statutory language of 8 U.S.C. 1226(a) governs the detention of non-citizens "pending a decision on whether the alien is to be removed from the United States." This language suggests that the provision applies to individuals who are actively undergoing removal proceedings or whose removal is under consideration. *Flores v. Barr*, 934 F.3d 910 (9th Cir. 2019). The Ninth Circuit has recognized that 1226(a) is the default detention statute for non-citizens in removal proceedings, except for those subject to mandatory detention under 1226(c) *Hernandez Avilez v. Garland*, 48 F.4th 915 (9th Cir. 2022), *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018).Importantly, the statute does not explicitly extend its scope to individuals who are in a period of authorized stay or attending their green card interviews. Such individuals are not necessarily "pending a decision on whether [they are] to be removed from the United States," as their immigration status may not yet be in question. The discretionary authority granted under 1226(a) is tied to the context of removal proceedings, and there is no indication in the statutory language that it encompasses individuals who are lawfully present or actively pursuing lawful permanent resident status through green card interviews. Furthermore, the distinction between 1226(a) and 1226(c) reinforces the limited scope of the former. While 1226(c) mandates detention for certain categories of non-citizens, such as those involved in criminal offenses or terrorist activities, 1226(a) applies more broadly but still within the framework of removal proceedings. The absence of any reference to individuals in authorized stay or attending green card interviews in either provision suggests that Congress did not intend for such individuals to fall within the ambit of 1226(a) *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018).

ICE's authority under 8 U.S.C. 1226(a) does not expressly include the arrest of individuals who are in a period of authorized stay or attending their green card interviews. The statutory language and its interpretation by the Ninth Circuit indicate that 1226(a) applies to non-citizens in removal proceedings, and there is no basis to extend its scope to individuals whose immigration status is not under question. Therefore, ICE's actions in such cases would exceed the authority granted under 1226(a).

Here, the Petitioner was still in a period of authorized stay and not subject to removal proceedings at the time of his arrest. He was placed in removal proceedings in order for ICE to justify his arrest.

Case law, including decisions like *You v. Nielsen*, 321 F. Supp. 3d 451. and , *Sanchez v. McAleenan*, 2024 U.S. Dist. LEXIS 52056. has criticized ICE's practice of detaining individuals during adjustment of status interviews as inconsistent with the statutory framework and intent of the Immigration and Nationality Act (INA). Courts have noted that such practices can undermine the adjustment of status process, which is intended to provide a pathway to lawful permanent residency, and have raised concerns about due process violations. For example, in , *You v. Nielsen*, 321 F. Supp. 3d 451. the court found that detaining an applicant at a green card interview likely violated the INA by using the adjustment process as a "gotcha" mechanism rather than as a protective measure.

In the 9th Circuit, there is no binding precedent explicitly authorizing or prohibiting this practice. However, courts have generally emphasized the need for ICE to adhere to the INA's statutory scheme and avoid actions that could render the adjustment process ineffective or unjust. *You v. Nielsen*, 321 F. Supp. 3d 451, *Patel v. Barr*, 2020 U.S. Dist. LEXIS 253496.

Thus, while the practice is not expressly authorized or prohibited by statute or 9th Circuit precedent, it has been subject to significant judicial scrutiny and criticism for potentially violating the INA and due process protections.

U.S. Immigration and Customs Enforcement (ICE) has recently begun a practice of arresting individuals who are attending USCIS interviews for adjustment of status based on marriage to U.S. citizens and who are eligible to adjust under INA Section 245(a).

This practice represents a departure from longstanding agency practice, as ICE previously did not arrest individuals attending USCIS interviews for adjustment of status based on marriage to U.S. citizens who are eligible to adjust under INA Section 245(a) as under applicable immigration regulations, individuals with properly filed applications for adjustment of status are considered to be in a period of authorized stay by Respondent DHS.

Respondents' practice of arresting individuals like the Petitioner during mandatory USCIS interviews contradicts the statutory and regulatory framework that allows eligible individuals to adjust status while remaining in the United States.

In summary, the fact that such arrests are not prohibited does not make them lawful, especially when the INA itself provides a carved-out exemption to the rule regarding ineligibility for adjustment of status for applicants who overstayed their visas or worked without authorization. The regulations in the Code of Federal Regulations (CFR) that correspond to INA section 245(c)(2) regarding bars to adjustment of status are found in 8 CFR § 245.1(b)(4) and (b)(6), as well as 8 CFR § 1245.1(b)(4) and (b)(6).

According to USCIS' Chapter 3 of the Policy Manual, based on the INA:

> *An applicant is barred from adjustment of status if the applicant is in an unlawful immigration status on the date of filing the adjustment application. This bar to adjustment does not apply to:*
> - ***Immediate relatives;***
> - *Violence Against Women Act (VAWA)-based applicants;*
> - *Certain alien doctors and their accompanying spouse and children;*
> - *Certain G-4 international organization employees, NATO-6 employees, and their family members;*
> - *Special immigrant juveniles;*
> - *Certain members of the U.S. armed forces and their spouses and children; or*
> - *Employment-based applicants who meet the INA 245(k) exemption.*

As such, arrests at green card interviews, though not expressly prohibited by the INA, violate the same INA by making Section 245(c)(2) basically invalid, if the applicant can be arrested when he or she is complying with that rule and following the law.

Violation Of The Administrative Procedure Act - Agency Action Contrary To Law

The Immigration and Nationality Act (INA) specifically provides for adjustment of status while remaining in the United States under Section 245(a), 8 USCS § 1255. Under applicable immigration regulations, individuals with properly filed applications for adjustment of status are in a period of authorized stay and are not even accruing unlawful presence, are eligible for employment and travel authorizations, which means, they are not considered to be in the United States illegally.

However, INA § 245(c) generally bars adjustment of status for individuals who have engaged in unauthorized employment or failed to maintain lawful immigration status.

Immediate relatives of U.S. citizens are exempt from certain adjustment bars under INA § 245(c). Specifically, immediate relatives may adjust status even if they are currently employed without authorization, have failed to maintain lawful status, or have violated the terms of their nonimmigrant visa. This exemption reflects the INA's policy of prioritizing family unification.

In summary, INA § 245(a) provides the general framework for adjustment of status, while the exemptions under INA § 245(c) address specific conditions and exceptions for individuals who have overstayed their visas or worked without authorization. These provisions collectively allow immediate relatives of U.S. citizens to adjust their status despite these potential disqualifications, provided they meet the relevant criteria . *Chung Hou Hsiao v. Hazuda*, 869 F.3d 1034,

Prior to the enactment of INA Section 245(a), aliens already inside the United States could acquire immigrant status only by temporarily leaving the United States to secure an appropriate visa at a U.S. consular office abroad.

The legislative history of INA Section 245(a) highlights Congress's clear and purposeful intent to create a fair and reliable pathway to lawful permanent residence for eligible individuals already present in the United States. This provision was enacted to promote family unity and provide a practical alternative to the burdensome and disruptive requirement of departing the United States to apply for residency abroad. By allowing individuals to remain in the country while they adjust their status, Congress sought to foster stability, ensure continuity for families, and reduce unnecessary barriers in achieving legal status.

Respondents' practice of arresting individuals at mandatory USCIS interviews completely undermines this intent, transforming the adjustment process into a dangerous and unpredictable ordeal. It effectively discourages eligible individuals from pursuing the process by instilling fear and uncertainty. Instead of serving as a mechanism to facilitate lawful permanent residence, the adjustment process becomes a mechanism of entrapment, leading to detention and potential deportation.

This result directly contradicts Congress's goals, turning what was intended as a humane policy into an instrument of hardship. This practice further creates an absurd and self-defeating outcome where individuals who comply with statutory and regulatory requirements find themselves penalized for doing so. Courts have long condemned agency actions that produce such nonsensical results, particularly when they contradict legislative goals. The practice does not merely impose an additional burden on applicants; it fundamentally nullifies their right to adjust status by making compliance with the adjustment process effectively untenable. Eligible individuals who enter the adjustment process in good faith with the expectation of completing the pathway to lawful status are instead met with punitive measures that violate the very purpose of the statutory scheme.

Defendants' actions also have a broader chilling effect. The fear induced by such enforcement practices discourages not only the individual applicants directly impacted but also countless others who might otherwise pursue lawful pathways. Such practices erode trust in the immigration system, alienating individuals from engaging with a process meant to encourage compliance with immigration laws. This chilling effect is inconsistent with principles of fairness and good governance.

Moreover, the importance of adhering to legislative intent cannot be overstated. Congress enacted INA Section 245(a) to address an issue of national importance: the need to provide a balanced, humane, and administratively efficient means of resolving status for those present in the United States. Defendants' newly adopted practice effectively dismantles this framework, undermining the statutory scheme as envisioned by Congress and causing widespread harm to vulnerable individuals and families. Using mandatory interviews as an enforcement tool reflects an overreach of authority and a departure from the principle that agency action should further, not frustrate, legislative purposes. Such weaponization of mandatory procedural steps undermines the statutory right of eligible individuals and destabilizes the integrity of the adjustment process.

The judiciary has consistently intervened to prevent such actions, emphasizing that agency practices must align with legislative purposes and broader principles of fairness, consistency, and justice. Defendants' actions reflect a complete disregard for these principles, and corrective measures must ensure the adjustment process remains a path to security and stability, not fear and disruption. This practice creates an absurd result where the very process designed by Congress to allow eligible individuals to regularize their status becomes a trap leading to their detention and possible removal.

This court should declare Petitioner's arrest unlawful, as it is contrary to congressional intent and longstanding policy.

Courts Have Consistently Rejected Agency Interpretations That Lead To Absurd Results Or That Frustrate The Policy That Congress Sought To Implement.

Courts have blocked government actions, despite apparent statutory authorization, when such actions constitute an abuse of discretion, weaponization of enforcement authority, or are contrary to public policy. Such decisions stem from the principle that government actions, when unfettered and arbitrary, can undermine the trust in agencies tasked with implementing and enforcing laws. When agencies act contrary to their statutory purpose or engage in conduct that creates insurmountable barriers for individuals attempting to comply with the law, such actions are not only unreasonable but also fundamentally unjust. These enforcement mechanisms can create a chilling effect, where eligible individuals reasonably fear engaging with the adjustment process designed to regularize their status due to concerns over detention or removal. The failure to adequately consider the implicit effects of such enforcement practices further evidences an abuse of discretion, as it disregards the coherent and purposeful legislative intent behind the adjustment of status framework established by Congress. The judiciary has consistently emphasized the importance of administrative action in furthering, rather than frustrating, the constitutional and statutory rights of affected individuals. In light of this, government actions that subvert these rights through indirectly punitive practices or weaponization of apparently authorized procedural steps must be corrected to maintain the integrity of the legal process and safeguard the rights of vulnerable individuals.

Respondents' practice of using the mandatory adjustment interview process as an enforcement trap represents a severe and improper misuse of the agency's authority that directly undermines the legislative intent of the adjustment of status process. By targeting individuals who are attending mandatory USCIS interviews—an essential step in the lawful path to gain permanent residency—Respondents effectively create a barrier that deters eligible individuals from pursuing their statutory right. This practice forces applicants into an untenable position, where compliance with immigration procedures inherently subjects them to the risk of detention or removal, despite their eligibility to regularize their status under existing law. Such enforcement tactics disrupt the delicate balance Congress intended to strike through the adjustment of status framework, which was specifically designed to provide a streamlined and fair pathway for individuals already within the United States to establish lawful permanent residency. Instead of allowing the adjustment process to serve its intended purpose as a mechanism for remedying immigration status, Defendants have perverted it into an opportunity for punitive enforcement that could have far-reaching consequences. In addition to contradicting legislative intent, this practice erodes public trust in immigration agencies. Eligible applicants, many of whom are pursuing family reunification or other humanitarian avenues, are left with no meaningful avenue to comply with the law without jeopardizing their liberty or prospects of remaining in the United States.

This chilling effect undermines the long-established principle that immigration regulations should facilitate compliance rather than discourage it through fear or coercion. Moreover, Respondents' actions fail to account for the significant reliance interests of applicants and their families, disrupting lives and separating families unjustly. Such misuse of enforcement authority introduces chaos and uncertainty into a system that Congress designed to bring order and fairness. The practice, if continued, risks transforming a lawful process into an arbitrary and punitive trap, contrary to both statutory principles and public policy considerations. Such tactics are fundamentally at odds with the fair administration of the law and the protections that Congress sought to establish through the adjustment of status process.

Violation of the Administrative Procedure Act - Arbitrary and Capricious Agency Action

Respondents' practice of arresting individuals at USCIS interviews who are attending mandatory interviews for adjustment of status based on marriage to U.S. citizens and who are eligible to adjust under INA Section 245(a) constitutes final agency action.

Defendants' practice is arbitrary, capricious, and an abuse of discretion.

The practice of arresting adjustment applicants at USCIS interviews represents a departure from longstanding agency practice without reasoned explanation. This practice forces applicants like plaintiff into an impossible situation: they must attend the interview to comply with adjustment requirements but face arrest for the very status they are trying to remedy.

This self-defeating policy lacks rational basis and undermines the statutory scheme for adjustment of status.

Therefore, this court should deem such arrests unlawful as they are inconsistent with congressional intent, U.S. immigration laws and regulations, and are capricious and an abuse of discretion.

Under the Administrative Procedure Act (APA), courts are authorized to "hold unlawful and set aside agency action, findings, and conclusions" if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (5 U.S.C. 706(2)(A)) *Rabadi v. United States DEA*, 122 F.4th 371 (9th Cir. 2024), *Bahr v. Regan*, 6 F.4th 1059 (9th Cir. 2021). The Ninth Circuit has consistently applied this standard to review agency actions, emphasizing that while the review is "searching and careful," it is also narrow and deferential, meaning courts cannot substitute their judgment for that of the agency. *In Def. of Animals v. United States DOI*, 751 F.3d 1054 (9th Cir. 2014). However, an agency's decision may be deemed arbitrary and capricious if it fails to consider important aspects of the issue, relies on factors Congress did not intend, offers explanations contrary to the evidence, or is inherently implausible. *In Def. of Animals v. United States DOI*, 751 F.3d 1054 (9th Cir. 2014), *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172 (9th Cir. 2008).

Additionally, if an agency announces and follows a general policy to govern its discretion, an irrational departure from that policy, as opposed to an avowed alteration, may also constitute arbitrary and capricious action under the APA. *Ins v. Yueh-Shaio Yang*, 519 U.S. 26, 117 S. Ct. 350 (1996).

Here, ICE's conduct is contrary to longstanding policy (since this is a novel practice by the agency) and contrary to the very concept of "period of authorized stay by the DHS".

Courts in the Ninth Circuit have the authority to intervene when an agency's discretionary actions fail to meet the standards set forth under the APA. For example, in *Fry v. DEA*, the Ninth Circuit held that an agency decision is not arbitrary or capricious if it is based on relevant factors and free from clear error in judgment *Rabadi v. United States DEA*, 122 F.4th 371 (9th Cir. 2024). However, when an agency fails to consider critical aspects of an issue, relies on improper factors, or provides explanations that contradict the evidence, its actions may be deemed unlawful. *In Def. of Animals v. United States DOI*, 751 F.3d 1054 (9th Cir. 2014), *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172 (9th Cir. 2008).

Furthermore, if an agency deviates irrationally from a previously established policy without proper justification, such actions may also be overturned as arbitrary and capricious *Ins v. Yueh-Shaio Yang*, 519 U.S. 26, 117 S. Ct. 350 (1996). The Ninth Circuit has emphasized that courts must ensure that agency decisions are fully informed, well-considered, and supported by a rational connection between the facts and the agency's conclusions *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172 (9th Cir. 2008). This ensures that agencies remain accountable and that their actions align with statutory and policy requirements.

Under the APA and Ninth Circuit precedent, courts can and should intervene when an agency's discretionary actions are arbitrary, capricious, abusive, or contrary to policy. Such intervention ensures that agency actions are lawful, rational, and consistent with established policies and statutory mandates.

Violation of the Accardi Doctrine Through Arrests at I-485 Interviews

The arrests of I-485 applicants at United States Citizenship and Immigration Services (USCIS) interviews constitute a clear violation of the Accardi doctrine, as these actions directly contravene the Department of Homeland Security's (DHS) own regulations that were specifically designed to benefit applicants. An agency has a duty to follow its own federal regulations, even when those regulations provide greater protection than is constitutionally required. *Nelson v. INS*, 232 F.3d 258. The failure to adhere to applicable regulations can lead to reversal of an agency order and a new hearing *Nelson v. INS*, 232 F.3d 258.

The regulations governing the I-485 adjustment of status process, which provide that upon approval of adjustment of status, the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval, establish a procedural framework intended to confer important benefits upon individual applicants 8 USCS § 1255. These regulations fall squarely within the category of agency rules that are intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion, making them exempt from the general principle that administrative agencies may modify procedural rules when the ends of justice require it *Lopez v. FAA*, 318 F.3d 242.

The Supreme Court has distinguished between types of internal agency regulations, holding that when agency rules are intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion, or when the agency fails to exercise independent discretion required by its rule, such cases are exempt from the general principle allowing agencies to relax procedural rules. *Lopez v. FAA*, 318 F.3d 242. The Accardi doctrine, rooted in the long-settled principle that rules promulgated by a federal agency which regulate the rights and interests of others are controlling upon the agency, requires strict adherence to established procedures. *Montilla v. INS*, 926 F.2d 162. By conducting arrests during I-485 interviews, DHS violates its own regulatory framework and undermines the procedural protections specifically created to benefit adjustment of status applicants, warranting reversal under the established Accardi precedent.

Respondent's Authority to Arrest Individuals on a Period of Authorized Stay Corresponds to Agency Interpretation of the Statute.

Previously, under *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 461 U.S. 956, 103 S. Ct. 2427 (1983), courts deferred to agency interpretations of ambiguous statutory provisions if the interpretation was reasonable. *Matter of Nat. Res. Def. Council, Inc. v. N.Y. State Dep't of Envtl. Conservation*, 2015 NY Slip Op 03766, 25 N.Y.3d 373, 13 N.Y.S.3d 272, 34 N.E.3d 782. However, Loper Bright eliminated this deference, requiring courts to interpret statutes independently, without deferring to agency interpretations *Lopez v. Garland*, 116 F.4th 1032 (9th Cir. 2024), 8 USCS § 1255.

Congressional Intent and the INA

The INA provides the statutory framework for immigration enforcement and adjustment of status. *Adams v. Holder*, 692 F.3d 91 (2d Cir. 2012). While the INA authorizes ICE to arrest and detain individuals pending removal decisions "on a warrant issued by the Attorney General" (8 U.S.C. 1226), it does not explicitly authorize arrests of individuals attending green card interviews pursuant to their I-485 applications *Riverkeeper v. Nat'l Marine Fisheries Serv.*, 763 F. Supp. 3d 1203 (D. Or. 2025), *Castrejon v. Jerome Cty.*, No. 1:20-cv-00462 WBS, 2022 U.S. Dist. LEXIS 130748 (D. Idaho July 21, 2022). Furthermore, the INA recognizes a "period of authorized stay" for individuals who have properly filed adjustment of status applications, which includes the entire processing period of the application.

ICE's Practice as an Unauthorized Agency Interpretation

ICE's practice of arresting individuals at green card interviews constitutes an agency interpretation of the INA. This interpretation is not explicitly supported by the statutory text, which does not address the specific context of green card interviews. Under *Loper Bright*, such agency interpretations are no longer entitled to deference. Courts must now independently assess whether Congress intended to authorize this practice *Lopez v. Garland*, 116 F.4th 1032 (9th Cir. 2024), *Williams v. O'Malley*, No. 23-35358, 2024 U.S. App. LEXIS 18220 (9th Cir. July 24, 2024).

Congressional Intent and the "Period of Authorized Stay"

The INA's recognition of a period of authorized stay for I-485 applicants indicates congressional intent to protect individuals who are actively complying with immigration laws by pursuing lawful permanent resident status. *Assa'ad v. United States AG*, 332 F.3d 1321 (11th Cir. 2003). Arresting individuals at green card interviews undermines this intent, as it penalizes individuals for adhering to the INA's requirements. This practice is inconsistent with the statutory framework, which aims to facilitate lawful adjustment of status for eligible applicants[1].

Historical Context and Legislative Purpose

The historical legislative recognition of administrative arrests for deportable aliens, as noted in *Abel v. United States*, 362 U.S. 217, 80 S. Ct. 683 (1960), does not extend to individuals who are actively complying with the INA by attending green card interviews. The purpose of administrative arrests is to ensure the removal of individuals who are unlawfully present or pose a threat to public safety. This rationale does not apply to I-485 applicants, who are in a "period of authorized stay" and are actively seeking to regularize their immigration status *Castrejon v. Jerome Cty.*, No. 1:20-cv-00462 WBS, 2022 U.S. Dist. LEXIS 130748 (D. Idaho July 21, 2022), *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053 (D. Ariz. 2018).

[1] 9 FAM 302.11 (U) INELIGIBILITY BASED ON PREVIOUS REMOVAL AND UNLAWFUL PRESENCE IN THE UNITED STATES—INA 212(A)(9)

ICE's practice of arresting individuals at green card interviews is not expressly authorized by the INA and represents an agency interpretation that is no longer entitled to Chevron deference. Courts must independently interpret congressional intent, which clearly supports protecting individuals complying with the INA by attending their green card interviews. This practice undermines the statutory framework and legislative purpose of the INA, and it should therefore be deemed impermissible.

Petitioner's Arrest and Commencement of Removal Proceedings

Respondents provide a narrative of the facts that occurred on November 3, 2025 as if such were normal agency practice. They were not.

Petitioner is not arguing that the commencement of removal proceedings was unlawful. However, the commencement of removal proceedings is not the same as detention of the applicant who, at the time of the interview, was in a period of authorized stay granted by Respondent DHS and relying on such protections, following the law, and not even suspecting he could be arrested. It was a trap, plain and simple.

Respondents can commence removal proceedings by issuing a Notice to Appear and serving it on the Petitioner. Then the Petitioner would appear before the immigration judge and move to terminate the removal proceedings or refile his I-485 with the immigration court and have the immigration judge adjudicate his application for adjustment of status.

If applicants for adjustment of status know that they could receive an NTA during their immigration interviews, that would be intimidating but most would reasonably comply with the process. However, now that ICE has started to arrest applicants for adjustment of status who are authorized (by Respondent DHS) to remain in the United States, those applicants will have to decide between following the INA and showing up for their mandatory interviews only to be arrested by ICE, or not pursuing legal status despite statutory eligibility created by Congress, so they would not be arrested, handcuffed, and taken to a detention facility away from their family.

Respondents mention Petitioner's DUI conviction 4 years ago, a misdemeanor, and an arrest for misdemeanor battery which cannot be used against him in immigration context unless he had been convicted of such crime, which, according to Respondents' response, he has not.

Adjustment of Status Under 8 U.S.C. § 1255.

Respondents explained the adjustment of status process when it is based on an approved petition for alien relative (I-130). Respondents argue that the adjustment of status process under 8 U.S.C. § 1255 is discretionary and cite *Patel v. Garland*, 596 U.S. 328, 348 (2022).

However, this interpretation should not be used to insulate agency actions that are arbitrary or capricious, as such actions fall outside the scope of lawful discretion. The APA's presumption of judicial review ensures that agencies remain accountable for their decisions, particularly when those decisions lack evidentiary support or violate statutory requirements *Perez v. Wolf*, 943 F.3d 853 (9th Cir. 2019), *Chung Hou Hsiao v. Hazuda*, 869 F.3d 1034 (9th Cir. 2017).

In this case, the I-485 application for adjustment of status had not even been denied yet but ICE nevertheless arrested the Petitioner when he was still in a period of authorized stay by Respondent DHS.

Petitioner and his U.S. citizen spouse were handled a "Notice of Interview Results" (see exhibit 1) with the following reason for continuance box checked:

> *"Your case is being held for review. At this time, USCIS does not require any further information or documents from you. Should further information or documents be required, you will receive a notice in the mail. We may also schedule you for another interview, you will receive a notice in the mail. Otherwise, a final decision will be mailed once your case is complete."*

In addition to this notice being given to the Petitioner at the conclusion of his green card interview, the USCIS case status online system was still showing the I-485 case status as "pending" on November 11, 2025, eight days after Petitioner's arrest and detention (see exhibit 2).

Still to this date, the Petitioner has not received any formal notice of the denial of his I-485, despite the DHS counsel, at his removal hearing on November 17, 2025 filing with the court an arrest report misrepresenting to the immigration judge, in writing, that the Petitioner was informed of the denial of his I-485 at the conclusion of the interview (see exhibit 3).

Here, the Respondents' actions clearly demonstrate that Petitioner's I-485 was denied after the fact, with the purpose of initiating removal proceedings and to justify the arrest and detention of the Petitioner, violating his due process rights.

The illegality of the subsequent denial of the I-485 will be object of a separate APA complaint to be handled by the US District Court of Northern California, where such denial occurred.

However, Petitioner, here, asks this court to deem his arrest and detention unlawful, which would result in a grant of the habeas petition and an order for Petitioner's immediate release. Such release would not interfere with removal proceedings in immigration court which would proceed to final adjudication regardless of the Petitioner not being detained.

The unlawfulness of Petitioner's arrest should also invalidate his detention.

Temporary Restraining Order and preliminary injunction.

Likelihood of Success on the Merits - Unlawfulness of Arrest and Detention

The Petitioners' arrest and ongoing detention are unlawful, which significantly strengthens their likelihood of success on the merits. The Ninth Circuit has consistently held that immigration proceedings, while not subject to the full range of constitutional protections, must conform to the Fifth Amendments requirement of due process. A due process violation can be established by showing that the Petitioner was denied a full and fair hearing or a reasonable opportunity to present evidence on their behalf *Mendoza-Linares v. Garland*, 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158. The Petitioner's claim that his detention is unlawful directly implicates these due process protections, as the lack of procedural safeguards undermines the fairness of their detention and transfer.

Fifth Amendment Due Process Violations

Substantive Due Process

The Fifth Amendments Due Process Clause protects detainees from arbitrary government actions that infringe on fundamental rights, including the right to family unity. The Ninth Circuit has recognized that substantive due process requires the government to justify actions that interfere with constitutionally protected interests by demonstrating a legitimate government purpose *Mendoza-Linares v. Garland*, 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158. ICEs transfer practices, which separate detainees from their families and disrupt their ability to prepare for removal proceedings, fail to meet this standard. The government has not provided a compelling justification for these transfers, nor has it shown that they are narrowly tailored to achieve a legitimate objective.

Procedural Due Process

Procedural due process requires that detainees be afforded adequate notice and an opportunity to contest transfers that significantly impact their rights. Under 8 U.S.C. 1226(a), detainees are entitled to procedural protections, including bond hearings before a neutral adjudicator. However, ICEs transfer practices undermine these protections by impeding access to legal counsel and disrupting communication with family members, which are critical to preparing for bond hearings and removal proceedings *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158. The Ninth Circuit has emphasized the importance of procedural safeguards to prevent erroneous deprivations of liberty *Mendoza-Linares v. Garland,* 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

Preservation of the Status Quo

The status quo must be preserved to prevent further harm to the Petitioner and other detainees. ICE's practice of transferring detainees to remote facilities disrupts family unity, impedes access to legal representation, and hinders the preparation of removal defenses. These practices exacerbate the risk of constitutional violations and irreparable harm, making it essential to maintain the current conditions until the court can fully adjudicate the Petitioners' claims.

Application of the Winter Factors

Likelihood of Success on the Merits

As discussed above, the Petitioner has demonstrated a strong likelihood of success on the merits based on the unlawfulness of his arrest and detention, as well as the constitutional violations caused by ICEs transfer practices *Mendoza-Linares v. Garland*, 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

Irreparable Harm

The Petitioner has shown that ICEs transfer practices cause irreparable harm by: Severing family ties, which are essential to emotional and psychological well-being. Impeding access to legal counsel, as remote detention facilities often lack adequate resources for confidential communication and in-person meetings with attorneys. Hindering the ability to gather evidence and prepare for removal proceedings, which increases the risk of erroneous deportations

Salgado-Diaz v. Ashcroft, 395 F.3d 1158. These harms are not speculative but are well-documented consequences of ICEs transfer practices *Mendoza-Linares v. Garland*, 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

Balance of Equities

The balance of equities tips in favor of the Petitioner. While the government has an interest in managing detention facilities, this interest does not outweigh the fundamental rights of detainees to family unity and access to legal counsel. The harm to detainees from arbitrary transfers far exceeds any administrative inconvenience to ICE *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

Public Interest

The public interest strongly supports granting the TRO. Ensuring that detainees are treated fairly and that their constitutional rights are protected promotes confidence in the justice system and upholds the rule of law. The Supreme Court has emphasized the importance of safeguarding individual rights in the context of immigration detention, recognizing that detention must serve a legitimate purpose and be accompanied by adequate procedural protections *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

Rebuttal to Oppositions Arguments

ICEs Discretionary Authority Under 8 U.S.C. 1231(g)(1)

The opposition argues that ICEs transfer decisions are unreviewable under 8 U.S.C. 1231(g)(1). However, this provision does not grant ICE unfettered discretion to violate constitutional rights. Courts have consistently held that agency actions are subject to judicial review when they infringe on fundamental rights or exceed statutory authority *Mendoza-Linares v. Garland*, 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

Jurisdictional Challenges Under 8 U.S.C. 1252(g) and 1252(b)(9)

The opposition contends that jurisdiction is barred under 8 U.S.C. 1252(g) and 1252(b)(9). However, these provisions do not preclude judicial review of constitutional claims. The Supreme Court has clarified that 1252(b)(9) is a judicial channeling provision rather than a claim-barring one, allowing constitutional challenges to proceed in federal court when they arise independently of removal orders *Mendoza-Linares v. Garland*, 51 F.4th 1146, *Salgado-Diaz v. Ashcroft*, 395 F.3d 1158.

The Petitioner has met the Winter factors for a TRO. ICE's transfer practices violate the Fifth Amendments Due Process Clause, cause irreparable harm, and undermine the public interest in fair and humane treatment of detainees. The court should grant the TRO to prevent further transfers and ensure that detainees' constitutional rights are protected.

Respondents' Arguments Regarding I-485 Not Conferring Lawful Status

Respondents keep arguing that Petitioner's Form I-485 does not confer him lawful status, despite Petitioner having never argued that he was in a lawful status when he was arrested by ICE.

Respondents are confusing two different concepts: 1) lawful status and 2) period of authorized stay by the DHS. Even if these two concepts are different, they both provide foreign nationals with some relied upon protections against deportation, accrual of unlawful presence, and eligibility to adjust status to lawful permanent resident upon approval of such I-485.

These two concepts also have another effect in common: no one should expect to be arrested and detained by ICE if they are present in the U.S. under either. Thus, an applicant for adjustment of status, being in a period of authorized stay by the DHS or Attorney General, does not and should not have any expectation of being arrested and detained by ICE, which is a subagency of the DHS.

The paradox here is clear: DHS authorizes a person to stay in the United States but ICE, which operates under the DHS still arrests that person, which does not make any legal, moral, or logical sense.

Clearly, Congress did not intend for such person to be subject to ICE arrest for being in the United States when ICE's mother agency, the DHS, authorized that person to be in the United States, otherwise, such authorization would not have been created by Congress.

Respondents' Argument That Petitioner Cannot Challenge The Government's Decision To Commence Removal Proceedings

Respondents' argument that Petitioner cannot challenge the government's decision to commence removal proceedings (page 14 of Respondents' response) does not need to be discussed because Petitioner is not arguing such. Hence, Petitioner will refile his I-485 with the immigration court and have the immigration judge either terminate the proceedings or adjudicate such I-485. Either way, Petitioner is eligible to become a permanent resident and that should be the outcome of his I-485, absent gross abuse of discretion by the government which also controls the immigration courts.

But, here, Petitioner is arguing the unlawfulness of his arrest and detention by ICE when he was surprised at a legal proceeding designed to cure his lack of status, as explained above.

The remaining topics and arguments made by the Respondents do not address any of the main issues on this case: the unlawfulness of Petitioner's arrest and detention.

Order Of Release For Unlawfulness Of The Arrest Instead Of Bond Hearing In Immigration Court - Futility of Administrative Remedies

The Ninth Circuit has recognized that exhaustion of administrative remedies is not required when pursuing such remedies would be futile. Futility is established when an adverse decision is a certainty or when the administrative body lacks the authority to provide the requested relief *Vasquez-Rodriguez v. Garland*, 7 F.4th 888 (9th Cir. 2021). In this case, the Petitioner contends that administrative remedies, such as requesting a bond hearing, are inadequate to address the harm caused by the alleged unlawful detention. This argument is supported by Ninth Circuit precedent, which exempts due process claims from the exhaustion requirement because the Executive Office of Immigration Review (EOIR), and part of Co-Respondent DOJ, cannot provide relief for such claims *Saravia-Paguada v. Gonzales*, 488 F.3d 1122 (9th Cir. 2007).

Exemption from Exhaustion Requirement

The Ninth Circuit has held that detainees under 1226(a) are entitled to bond hearings before an immigration judge to contest their detention. If dissatisfied with the immigration judge's determination, detainees may appeal to the BIA and, subsequently, to federal courts *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011). However, when the detention is void ab initio due to procedural or substantive violations, the exhaustion requirement does not apply. This principle is consistent with the Ninth Circuit's recognition that due process claims are exempt from the exhaustion requirement because administrative remedies cannot address such claims *Saravia-Paguada v. Gonzales*, 488 F.3d 1122 (9th Cir. 2007), *Vasquez-Rodriguez v. Garland*, 7 F.4th 888 (9th Cir. 2021).

The Fruit of The Poisonous Tree – Unlawful Arrest Taints Subsequent Detention

Under 8 U.S.C. 1226, the Attorney General is authorized to arrest and detain aliens pending removal proceedings. However, if the initial arrest is deemed unlawful, the subsequent detention proceedings may be tainted by the illegality of the arrest. The Ninth Circuit has consistently held that evidence or actions directly resulting from an unlawful act may be suppressed under the fruit of the poisonous tree doctrine. *United States v. Joshua*, 564 F. Supp. 3d 860 (D. Alaska 2021). For instance, in *United States v. Villa-Gonzalez*, 623 F.3d 526 (8th Cir. 2010), the court suppressed evidence obtained through a chain of events initiated by an illegal seizure, demonstrating the doctrine's applicability to situations where the primary illegality directly leads to subsequent actions or evidence USCS Const. Amend. 4.

Applying this principle to immigration detention, if an arrest under 8 U.S.C. 1226 is unlawful, the period of detention that follow may be considered a direct result of the unlawful arrest. The Ninth Circuit has emphasized that due process protections apply to immigration detention, particularly when constitutional violations are implicated. For example, in *Khotesouvan v. Morones*, 386 F.3d 1298 (9th Cir. 2004), the court highlighted the importance of due process in detention cases, noting that detention must comply with constitutional standards and cannot result in indefinite or arbitrary confinement. USCS Const. Amend. 5. This underscores the principle that actions stemming from an unlawful arrest, including detention proceedings, may be invalidated to preserve constitutional protections.

In the Ninth Circuit, the "fruit of the poisonous tree" doctrine supports the argument that if an arrest under 8 U.S.C. 1226 is deemed unlawful, the subsequent detention period should also be deemed unlawful. This is consistent with the principle that actions or evidence directly resulting from an unlawful act are tainted by the initial illegality. The Ninth Circuit's emphasis on due process in immigration detention further reinforces the need to invalidate detention proceedings that arise from an unlawful arrest.

For the many reasons stated above, the Petitioner's arrest by ICE was unlawful. Under the hereby borrowed "fruit of the poisonous tree" doctrine, the ongoing detention is also unlawful and the Petitioner must be released without having to exhaust administrative remedies (*i.e.* request custody redetermination from the immigration judge, posting bond).

Financial and Procedural Burdens of Bond Hearings

Requiring the Petitioner to request a bond hearing and post bond imposes undue financial and procedural burdens, particularly given his loss of income due to ongoing unlawful detention. The Petitioner's detention has already caused significant financial and emotional hardship on the Petitioner and his U.S. citizen spouse, and the additional requirement to post bond and wait several more days for his release would exacerbate this harm. Moreover, the procedural delays inherent in the bond hearing process would prolong the Petitioner's unlawful detention, compounding the irreparable harm caused by the deprivation of liberty.

Arbitrary and Capricious Agency Action

ICE's actions constitute arbitrary and capricious agency action under the Administrative Procedure Act (APA). By detaining the Petitioner despite his authorized (by Respondent DHS) stay and pending adjustment application, ICE acted in excess of its statutory authority and contrary to established regulations. Such arbitrary detention undermines the fairness and predictability of the immigration system and discourages noncitizens from engaging with lawful adjustment processes.

Remedies

Given the unlawfulness of the Petitioner's arrest and detention, the appropriate remedy is immediate release without the need for a bond hearing. The Petitioner's detention is void ab initio, and requiring a bond hearing would impose unnecessary financial and procedural burdens while failing to address the underlying unlawfulness of the detention. The court should order the Petitioners' immediate release to prevent further irreparable harm and uphold the rule of law. The Petitioners arrest and detention under 8 U.S.C. 1226(a) were unlawful due to procedural and substantive violations, due process violations, and ICEs failure to adhere to DHS regulations and the INA. Requiring the Petitioner to request a bond hearing and post bond would impose undue financial and procedural burdens and is unnecessary given the unlawfulness of the detention. The court should order the Petitioners immediate release without the need for bond hearing to prevent further harm and uphold the Petitioners constitutional and statutory rights.

Balance Of The Hardships

Under Ninth Circuit precedent, the balance of hardships analysis in immigration detention cases considers whether the harm to the Petitioner from continued detention outweighs any potential harm to the government or public interest from the Petitioner's release. The Ninth Circuit has consistently held that the deprivation of constitutional rights, including physical liberty, constitutes irreparable harm, and that such harm tips the balance of hardships in favor of the Petitioner when administrative remedies are inadequate or futile *Arevalo v. Hennessy*, 882 F.3d 763. Furthermore, the government has no legitimate interest in detaining individuals who do not pose a flight risk or danger to the community, and whose appearance at future proceedings can be ensured through less restrictive means *Hernandez v. Sessions*, 872 F.3d 976.

Harm to the Petitioner from Continued Detention

The Petitioner's detention under 8 U.S.C. 1226(a) is unlawful due to the procedural and substantive due process violations, as explained above. The Ninth Circuit has recognized that prolonged detention without adequate procedural protections causes irreparable harm, as it deprives individuals of their physical liberty and violates their constitutional rights *Arevalo v.*

Hennessy, 882 F.3d 763. In this case, the Petitioners continued detention exacerbates this harm, as administrative remedies, such as bond hearings, are inadequate to address the underlying unlawfulness of the detention. The Petitioner's inability to secure immediate relief from unlawful detention imposes significant emotional, psychological, and physical burdens, further tipping the balance of hardships in his favor.

Lack of Harm to the Respondents from Immediate Release

The government's interest in detaining the Petitioner is limited to ensuring his appearance at future proceedings and protecting public safety. In this case, there is no evidence to suggest that the Petitioner poses a flight risk or danger to the community. Therefore, the government's interest in continued detention is minimal, and immediate release would not harm the Respondents. The balance of hardships clearly favors the Petitioner. The harm caused by continued unlawful detention, including the deprivation of physical liberty and the violation of constitutional rights, far outweighs any speculative harm to the government or public interest from the Petitioner's release. The Ninth Circuit has emphasized that the deprivation of constitutional rights constitutes irreparable harm, and that such harm justifies immediate judicial intervention to prevent further injury *Arevalo v. Hennessy*, 882 F.3d 763. In this case, the Petitioners' immediate release is necessary to remedy the ongoing harm caused by his unlawful detention. The irreparable harm caused by continued detention, including the deprivation of physical liberty and the violation of constitutional rights, outweighs any potential harm to the government or public interest. Immediate release is the appropriate remedy to address the Petitioner's unlawful detention and to prevent further harm.

CONCLUSION

For all the foregoing reasons, it is clear that Congress carved out specific exceptions to the bars on adjustment of status in INA § 245(c), created protections against arrest, accrual of unlawful presence, and inadmissibility through the "period of authorized stay," and that Respondents' decision to arrest and detain Petitioner despite his presence in the United States pursuant to DHS-authorized stay, contravenes both congressional intent and longstanding agency policy. Because such arrests were virtually unheard of until recently, and because an unlawful arrest necessarily renders the resulting detention unlawful, the Court should conclude that Petitioner's continued confinement lacks legal basis. Accordingly, should the Court accept these facts as true, it should order Petitioner's immediate release and grant the requested relief, including assuming jurisdiction and venue, issuing a writ of habeas corpus under 28 U.S.C. § 2241, enjoining any transfer outside this Court's jurisdiction, declaring Petitioner's arrest and detention unlawful under the INA, the Constitution, and the APA, prohibiting further detention

Date: November 22, 2025

Respectfully submitted,

/s/ Marcelo Gondim

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2025, I electronically filed the foregoing PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND RETURN TO PETITION FOR HABEAS CORPUS by using the CM/ECF system, in accordance with U.S. District Court for the Central District of California's CM/ECF Administrative Procedures and Local Rules. Notice of this filing will be sent out to all parties by operation of the Court's electronic filing system.

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