Cardenas Immigration Law
Veronica Cardenas, Esq.
2 Arnot St.,
Ste 6, Unit 122
Lodi, NJ 07644

January 14, 2026

Via ECF
The Honorable Madeline Cox Arleo, U.S.D.J.
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, NJ 07102

Re: *Murillo-Castillo v. Florentino et al.*, No. 25-cv-16728 (MCA)
Letter Requesting Decision

Dear Judge Arleo:

I represent Petitioner Washington Murillo-Castillo in this habeas action brought pursuant to 28 U.S.C. § 2241, which was filed on October 18, 2025. The Petition challenges Mr. Murillo-Castillo's continued detention under 8 U.S.C. § 1225(b)(1). Respondents filed their response on November 25, 2025, and Petitioner submitted a reply on December 1, 2025. Petitioner also filed a motion for a Temporary Restraining Order ("TRO") on December 21, 2025. The matter is therefore fully briefed and ripe for resolution.

Mr. Murillo-Castillo respectfully requests a decision on his pending Petition. He remains detained without a lawful statutory basis, and the deprivation of his liberty continues. Mr. Murillo-Castillo has now been unlawfully detained since August 2025—nearly five months—without lawful justification. During this period of detention, his wife has become the sole caretaker of his children. In light of Petitioner's prolonged and unlawful deprivation of liberty, and the severe and ongoing harm to his partner of 22 years and their two minor children, Petitioner respectfully submits the additional statutory detention arguments set forth below and requests that the Court grant the writ of habeas corpus and order his immediate release from custody.

This case is materially similar to this District's decision in *Rivas Rodriguez v. Rokosky*, in which the Court held that detention under 8 U.S.C. § 1225(b)(1) was foreclosed where DHS had previously issued parole pursuant to 8 U.S.C. § 1182(d)(5)(A). *Rivas Rodriguez v. Rokosky*, No. 25-cv-17419 (CPO), Dkt. 8 (D.N.J. Dec. 3, 2025). There, the Court emphasized the statute's plain language limiting expedited-removal detention to individuals "who have not been admitted or paroled into the United States," and concluded that once parole is granted, § 1225(b)(1) cannot serve as the detention authority.

Petitioner here was paroled into the United States under section 212(d)(5)(A) of the Immigration and Nationality Act ("INA") and falls within the statute's plain language restricting

expedited-removal detention to individuals "who have not been admitted or paroled into the United States." *See* ECF No. 6-7 (Interim Notice Authorizing Parole). Accordingly, once parole is granted, § 1225(b)(1) cannot serve as the basis for detention.

.

Further, as in *Rivas Rodriguez*, the record here contains no completed, operative expedited-removal order, yet DHS seeks—years after Petitioner's entry—to invoke § 1225(b)(1) as the basis for mandatory detention. Under the reasoning of *Rivas Rodriguez,* § 1226(a), not § 1225(b)(1), governs Petitioner's custody, requiring an individualized custody determination and supporting immediate release on these facts.

Lastly, as the court held in *Rivas Rodriguez*, where detention is unlawful, immediate release is the commensurate and appropriate remedy.

I. Mr. Murillo-Castillo falls within the limited scope of habeas review articulated in *Castro v. U.S. Department of Homeland Security*, which permits this Court to determine whether Petitioner was in fact issued an order under § 1225(b)(1).

This case falls within the limited scope of habeas review preserved by the Third Circuit in *Castro v. U.S. Department of Homeland Security*, 835 F.3d 422 (3d Cir. 2016). *Castro* restricts judicial review of the substance or procedures underlying expedited removal, and to be clear, Petitioner is not asking this Court to review the procedure or substance of any expedited removal order. Nor is he requesting review of DHS's discretionary decision to apply 8 U.S.C. § 1225(b)(1) to him. Rather, the issue presented here falls squarely within the narrow scope of habeas review expressly preserved under *Castro*—namely, "whether the petitioner was in fact ordered removed under § 1225(b)(1)." *Id.* at 430–31; see also 8 U.S.C. §§ 1252(e)(2)(B), 1252(e)(5).

Castro does not foreclose review; rather, it limits it. The Third Circuit in *Castro* expressly preserved limited habeas review to determine whether an expedited removal order was "in fact issued." *See* 8 U.S.C. § 1252(e)(2)(B) (authorizing habeas review of "whether the petitioner was ordered removed under section 1225(b)(1)"), and § 1252(e)(5) (providing that, in determining whether the petitioner "has been ordered removed," the court's inquiry "shall be limited to whether such an order in fact was issued and whether it relates to the petitioner"); see also *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422 (3d Cir. 2016) (discussing § 1252(e)'s limited habeas review framework).

Petitioner contends that because no completed, operative expedited removal order exists in his case, DHS cannot lawfully justify detention pursuant to § 1225(b)(1). Here, the Form I-860 is signed by Border Patrol Agent Amando Mendez Jr. and reflects that "[p]ursuant to section 235(b)(1)," DHS "determined that [Petitioner] is inadmissible" to the United States pursuant to § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, on the basis that he did not have a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid document. See ECF No. 6-2 (Form I-860). While the determination section is signed, the bottom portion of the form, which relates to a "finding of inadmissibility" and "ORDER OF REMOVAL," is not filled out. Id. The certificate of service is also left blank. Id. There is no signature in the acknowledgment section either. Id. Because the "ORDER" portion of the form is blank, there is no dispute that Mr. Murillo-Castillo was not ordered removed, and the document is accurately described as a "Notice of Expedited Removal," instead of an "ORDER OF REMOVAL." *Rodriguez-Acurio v. Almodovar*, No. 25-CV-6065 (NJC), 2025 WL 3314420, at *2 (E.D.N.Y. Nov. 28, 2025).

In addition to the absence of an "ORDER OF REMOVAL," the Notice to Appear further supports that DHS did not treat Petitioner as subject to mandatory detention under § 1225(b)(1). ECF No. 1-9. The NTA reflects that it was issued after an Asylum Officer found credible fear (the relevant box is checked), confirming that DHS moved the case into § 240 proceedings following the credible fear process. By contrast, the NTA does not check the box indicating that a § 235(b)(1) expedited removal order was vacated pursuant to 8 C.F.R. § 208.30 (credible fear procedures) and 8 C.F.R. § 235.3(b)(5) (expedited-removal credible-fear referral and custody rule). Because DHS documented the credible-fear-to-NTA pathway but did not reflect the existence or vacatur of any § 235(b)(1) order, the record underscores the lack of an operative expedited removal order to vacate. When combined with DHS's incomplete Form I-860, the administrative record is legally insufficient to establish that an expedited removal order "in fact was issued," as Respondents now claim. *See Boutta v. Ra*, No. 1:25-cv-01559-JMB-SJB, ECF No. 7 (W.D. Mich. Dec. 15, 2025) (describing that when an individual in expedited removal indicates fear, DHS refers the person for a credible fear interview under 8 C.F.R. § 208.30, and a positive credible fear determination results in initiation of § 240 proceedings before an Immigration Judge via issuance of an NTA, consistent with 8 C.F.R. § 208.30(f) and related provisions).

Accordingly, because Respondents cannot establish that Mr. Murillo-Castillo was ordered removed under § 235(b)(1), the government cannot lawfully detain him pursuant to § 1225(b)(1).

II. Release is the Proper Remedy

Respondents cannot establish a lawful statutory basis for Petitioner's current detention under § 1225(b)(1), and because detention is unlawful, immediate release is the commensurate and appropriate remedy. *See Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379, at *7 & n.4 (E.D. Mich. Aug. 29, 2025) (declining to credit a new custody theory adopted post hoc and ordering release); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486 (S.D.N.Y. 2025) (releasing petitioner and holding the court "cannot credit Respondents' new position as to the basis for detention, which was adopted post hoc and raised for the first time in this litigation").

Alternatively, if the Court orders a § 1226(a) bond hearing as the appropriate remedy, DHS—not Mr. Murillo-Castillo—must bear the burden of justifying continued detention. Because physical liberty lies at the core of the Due Process Clause, and the risk of erroneous deprivation is acute where detention is automatic and unreviewed, due process requires a meaningful hearing at which the Government must prove, by clear and convincing evidence, that continued confinement is necessary based on flight risk or danger. See *Lopez-Arevalo*, 25 WL 2691828, at *12 (noting that "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk"); *Velasco Lopez v. Decker*, 978 F.3d 842, 855 n.14 (2d Cir. 2020) (citations omitted). Allocating the burden in this manner reflects the concern that "[b]ecause the [noncitizen's] potential loss of liberty is so severe … he should not have to share the risk of error equally." *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020).

Accordingly, because Respondents cannot establish that Mr. Murillo-Castillo was properly detained under § 1225(b)(1), and he has already been unlawfully detained for nearly five months, immediate release is warranted.

We thank you for the Court's attention to this matter.

Respectfully submitted,

/s/ Veronica Cardenas
VERONICA CARDENAS, ESQ.
Bar No. 02205-2010
Attorney for Petitioner

cc: All Counsel of Record (via ECF)