UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GOKHAN POLAT, Petitioner, v. LUIS SOTO, et al., Respondents.	Case No. 25-16893 Honorable Jamel K. Semper, U.S.D.J.

PETITIONER'S REPLY BRIEF
IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS

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ISSUES PRESENTED

1. Is Petitioner entitled to a bond hearing conducted by an Immigration Judge under 8 U.S.C. § 1226(a), which all courts to consider the question have found applies to noncitizens like Petitioner who were residing in the United States when they were apprehended and charged with inadmissibility, and which Respondents themselves have historically applied to such noncitizens?
2. Have Respondents violated the Due Process Clause by detaining Petitioner, who is a resident of the United States with no criminal history, without any individualized determination that his civil detention is necessary to facilitate removal because he is a flight risk or danger?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

8 U.S.C. § 1225
8 U.S.C. § 1226

Other Cases Raising Same Merits and Issues

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PRELIMINARY STATEMENT

Petitioner (hereinafter referred to as "Gokhan") is a 22-year-old man from Turkey, who entered the United States without inspection on about May 28, 2022. Upon entry, on May 30, 2022, Customs and Border Patrol ("CBP") issued a Notice and Order of Expedited Removal, but it appears it was never served on Petitioner. *See* Pet'r's Ex. F, Notice and Order of Expedited Removal, ECF No. 1. The certificate of service on the order of expedited removal was neither filled out nor signed. *Id.* CBP initially detained Gokhan pursuant to 8 USC § 1225(b). Still, on June 2, 2022, CBP decided to parole him into the United States under INA § 212(d)(5)(A), valid for one year, pending a Credible Fear Interview, instead of mandatorily detaining him during that process. *See* Pet'r's Ex. E, Interim Notice Authorizing Parole, ECF No. 1; *see also* Resp'ts' Ex. A, ECF No. 7.

Gokhan moved to Brooklyn, New York, where he resided peacefully until he was detained. While living in Brooklyn, Gokhan met and married his now wife, Leman Polat, a United States citizen. Mrs. Polat filed a Form I-130 visa petition on behalf of Gokhan, and he concurrently filed a Form I-485, Application for Adjustment of Status to Lawful Permanent Residency, on September 29, 2025. *See* Pet'r's Ex. C, ECF No. 1; s*ee also* Resp'ts' Ex. C, ECF No. 7.

During this time, Gokhan had also filed an I-589, Application for Asylum, with USCIS on June 12, 2023. USCIS dismissed this application on October 20, 2025, claiming Gokhan had an Expedited Order of Removal. *See* Pet'r's Ex. F,

Notice of Dismissal of Form I-589, ECF No. 1. That same day, USCIS conducted a Credible Fear Interview at their Asylum Office in Bethpage, New York. *See* Pet'r's Ex. B, Credible Fear Interview, ECF No. 1. USCIS found that Gokhan had a credible fear of persecution from Turkey, rescinded his Expedited Order of Removal, and issued a Notice to Appear for a hearing at the New York Immigration Court on May 27, 2026, at 8:30 am. *See* Exs. B, D, ECF No. 1. Immediately after voluntarily appearing, CBP officers and the Long Island Fugitive Operations arrested Gokhan pursuant to an I-200, Warrant of Arrest. *See* Resp'ts' Ex. C, ECF No. 7. Gokhan was then transported to 535 Federal Plaza, Central Islip, New York, for processing. *Id.* CBP then transported Gokhan to 26 Federal Plaza, New York, and later to the Delaney Hall Detention Facility in Newark, New Jersey.

Petitioner filed for habeas corpus relief pursuant to 28 § USC 2241, including a request for preliminary relief enjoining Respondents from transferring him outside the state of New Jersey. ECF No. 1. This Court determined that expedited briefing in this matter was necessary "to ensure a prompt and fair disposition of Petitioner's request." *See* Order to Show Cause, Oct. 24, 2025, ECF No. 4. On or about October 31, 2025, Respondents transferred Gokhan to the Pine Prairie Correctional Facility in Pine Prairie, Louisiana. *See* Pet'r's Ex. H, ICE Online Detainee Locator; s*ee also* Pet'r's Mot. For TRO, Oct. 31, 2025, ECF No. 6.

ARGUMENTS

I. Because § 1225(b)(1) is Not Applicable in this Matter, § 1226 Governs the Detention of Residents like Gokhan.

The text, structure, and purpose of the INA all support Gokhan's argument that § 1226(a) governs his detention, and not § 1225(b)(1)(A). Respondents' reliance on *Castro v. U.S. Dep't of Homeland Sec*., 835 F.3d 422, 425 (3d Cir. 2016) is misplaced.

Respondents argue that, since Petitioner was encountered by CBP at the U.S.-Mexico border shortly after unlawfully entering the United States and then issued an expedited order of removal, he is currently detained correctly pursuant to 8 USC § 1225(b)(1). This is the correct answer, but to a different question.

Respondents cite and engage *Castro v. U.S. Dep't of Homeland Sec*., 835 F.3d 422, 425 (3d Cir. 2016), but did not engage it thoroughly enough. *Castro* dealt with petitioners who were encountered, upon entry, by CBP, placed into Expedited Removal Proceedings, and detained until they were afforded a Credible Fear Interview. The petitioners failed their Credible Fear Interviews, and Immigration Judges upheld those findings. The petitioners were then referred to DHS for removal. The Third Circuit found that neither it nor the District Courts had jurisdiction to hear the petitioners' Habeas challenges under 8 USC § 1252. They concluded that they lacked jurisdiction, as the petitioners were correctly detained

in accordance with 8 USC § 1225(b)(1). *See Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 430 (3d Cir. 2016).

Respondents' arguments are close here: Gokhan was encountered immediately upon crossing the U.S.-Mexico Border as were the petitioners in *Castro*. Gokhan was issued an Expedited Order of Removal, like the petitioners in *Castro. However*, that is where the similarities end. Unlike the petitioners in *Castro*, CBP decided to parole Gokhan into the United States to await his Credible Fear Interview, rather than detain him like they did to the petitioners in *Castro.* Further, unlike the petitioners in *Castro*, Gokhan passed his Credible Fear Interview and was placed into Removal Proceedings. Gokhan's factual pattern in this matter is not the same as the petitioners in *Castro* and thus should not be treated the same.

Respondents' claim that Gokhan is detained lawfully under 8 USC § 1225(b)(1) is not supported by the facts and the law in this matter. As Gokhan's detention under § 1225(b)(1)(A) is unlawful under the INA and violates his procedural due process rights, and Respondents have not argued in the alternative that Gokhan should be detained under § 1226(a), the Court should not construe the record to authorize his continued detention on that basis. *See Bethancourt v. Soto,* No. 25-cv-16200 at 17 (D.N.J., Oct. 22, 2025).

Respondents seek to set us back in time to May 28, 2022, when Gokhan was first encountered at the border. At that time, CBP detained him pursuant to

8 USC § 1225(b)(1), which was the proper course, as he was an arriving alien who had not been admitted or paroled. Petitioner is not challenging his detention from 2022. While § 1225(b)(1) applied to the Gokhan in 2022, it no longer applies to him today.

First, 8 USC § 1225(b)(1) refers to the "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." On May 28, 2022, Gokhan had not been admitted or paroled into the United States, so this provision applied to him; since then, however, Gokhan has been paroled into the United States. *See* Pet'r's Ex. E, Interim Notice Authorizing Parole, ECF No. 1. Gokhan is no longer arriving in the United States—he has been here for over three years, establishing himself and beginning a family. *See* Resp'ts' Ex. C, R. of Deportable/Inadmissible Alien, Oct. 20, 2025 at 3, ECF 7, indicating Gokhan's United States citizen wife is pregnant.

In 8 USC § 1225(b)(1)(iii)(II), the Aliens described in the clause are set out clearly:

> *An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.*

While this description may have been accurate in 2022, we are no longer in 2022, Gokhan has been paroled into the United States, and has been physically

present in the United States continuously for more than two years. We concede that Petitioner fit into this category when first encountered in 2022, but, when arrested pursuant to a warrant in 2025, Gokhan had been paroled into the United States and had resided here for more than two years. Gokhan is facing removal pursuant to a determination of inadmissibility issued by an immigration officer in 2025, not the one issued in 2022. For these reasons, 8 USC § 1225(b)(1) does not apply to him.

A. The rules of statutory interpretation show that § 1226 applies here.

Respondents correctly state, "Section 1226 provides for arrest and detention on a warrant 'pending a decision on whether the alien is to be removed from the United States." *See* Resp'ts' Resp. Br. 5, ECF No. 7. In this matter, Petitioner was arrested by ICE's Long Island Fugitive Operations and CBP officers and detained on a warrant after living in the United States for more than three years. *See* Resp'ts' Ex. C.

Sections 1226(a) and 1225(b) work in tandem to cover different categories of noncitizens: § 1226 provides a discretionary detention scheme for individuals who are "already in the country" and are detained "pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), while § 1225 (including its subsection (b)(2)(A)) is a processing and inspection scheme that applies to those "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country

is admissible," i*d*. at 287. Conversely, § 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Id.* at 289. Indeed, there is a "line historically drawn between these two sections" and the categories of noncitizens they respectively cover. *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

This understanding situates each detention provision "in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted). *See also Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (looking to statutory structure to inform interpretation of INA provision). Placing a provision in its larger context is especially important where the provision "may seem ambiguous in isolation" but can be "clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). And the one meaning which permits a logical and compatible effect here is that § 1225 and § 1226 each cover different categories of noncitizens.

Section 1225's plain text shows that it is focused on inspecting people who are arriving or have just entered the United States. *See generally* 8 U.S.C. § 1225(a)-(b), (d). That section repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4); sets out procedures for "inspection[s]" of people "arriving in the United States," *id*. § 1225(a)(3), (b)(1),

(b)(2), (d); and discusses "stowaways, "crewm[e]n," and noncitizens "arriving from contiguous territory." *Id*. § 1225(a)(2), (b)(2)(B), (b)(2)(C). Even the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens (emphasis added). *Cf. Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (relying on section title to help construe statute). Thus, by its own text, § 1225, read as a whole, makes clear that it is intended to apply to recent arrivals at or near the U.S. border. Gokhan, of course, arrived at the border over three years ago and has been residing in the United States since.

On the other hand, § 1226(a) is a separate detention authority that applies broadly to any noncitizen arrested "on a warrant . . . pending a decision on whether [they are] to be removed from the United States." *See also Jennings,* 583 U.S. at 289 (§ 1226(a) applies to those "already in the country" who are detained "pending the outcome of removal proceedings"). On its face, the provision plainly applies to Gokhan, who was arrested "on a warrant" years after he entered the U.S. and is now detained "pending a decision on" his removal. *See* Resp'ts' Exs. B, C, ECF No. 7. Thus, § 1226(a), and not § 1225(b)(1), is clearly the proper detention authority for Gokhan.

B. Congressional intent shows that § 1226(a) applies to Gokhan.

Congress intended for § 1226 to govern the detention of noncitizens who entered the U.S. without inspection. Congress most recently expressed this

understanding earlier this year in the Laken Riley Act. This act added a subsection to § 1226 that specifically mandated detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E); Pub. L. No. 119-1, 139 Stat. 3 (2025).

Respondents' interpretation of the statutes renders this recently amended section superfluous. *Lopez-Campos*, *supra*. If Congress intended or understood § 1225 to govern the detention of noncitizens like Gokhan, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There is no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b). *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).

C. Long-standing agency practice shows that § 1226(a) applies here.

Petitioner's position is not a novel interpretation of the INA. It has been Respondents' own understanding of these provisions since they were first enacted thirty years ago—a view they held until suddenly reversing course two months ago in a policy ICE issued "in coordination with the Department of Justice."

Following IIRIRA, the agency drafted new regulations that provided: "[a]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The relevant regulations restrict only "arriving aliens" from an immigration court bond hearing. 8 C.F.R. § 1003.19(h)(2)(i)(B). An "arriving alien" is, as relevant here, "an applicant for admission coming or attempting to come into the United States at a port-of-entry.
8 C.F.R. § 1001.1(q).

It has long been Respondents' practice not to detain those who either passed a Credible Fear Interview, or were awaiting one. This is best evidenced by the Department of Justice's Settlement Agreement in the Mendez Rojas Class Action out of the Western District of Washington. *See Mendez Rojas, et al., v. Wolf, et al.*, Case No. 2:16-cv-01024-RSM (W.D. Wash.). This action was brought on behalf of asylum seekers challenging the federal government's failure to give them notice of

the one-year asylum application deadline. This Settlement Agreement addressed the issue of individuals released by CBP at the border who were not advised of their obligation to file their asylum applications within one year. Many asylum seekers would not know about this obligation until years later, when they were finally placed into removal proceedings.

One of the classes in this settlement was composed of individuals who DHS encountered upon arrival or within fourteen days of unlawful entry, were released by DHS after they have been found to have a credible fear of persecution or torture pursuant to 8 USC § 1225(b)(1)(B)(ii), and did not receive an individualized notice of the one-year deadline to file an asylum application. *See* Pet'r's Ex. I, *Mendez Rojas* Class Settlement Agreement.

This class dealt with individuals who were released after their positive Credible Fear Interviews, as had been the practice for decades. If Respondents' practice had been to detain these individuals, their asylum claims would have been adjudicated within a year.

II. Due Process Entitles Gokhan to a Bond Hearing.

Respondents claim that Gokhan is only due the removal procedures provided by Congress. While that may be true for some people apprehended while crossing the border, *see Thuraissigiam*, 591 U.S. at 139, that is not true for people like Gokhan who have resided in the United States and "develop[ed] the ties that go with" that longtime residence, *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

Indeed, there has long been a legal "distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added).

The process due Gokhan is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Gokhan invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Meanwhile, the government's interest in detaining Gokhan is limited to ensuring his appearance at future immigration proceedings and preventing danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). But because Respondents denied Gokhan a proper bond hearing, "there is nothing in the record demonstrating that [Gokhan] is a flight risk or a danger to the community." *Lopez Benitez,* 2025 WL 2371588 at *12. Therefore, the risk of erroneously depriving Gokhan of his physical freedom continues to be unbearably high. *See id.* Without the bond hearing that he is entitled to under § 1226(a), Gokhan will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Due process thus requires Gokhan be afforded a bond hearing under § 1226(a). *See Lopez-Campos, supra*.

Importantly, Respondents contend that Petitioner's detention is not unreasonably prolonged, citing that other courts in this District have held that

detentions under § 1225(b) considerably longer than Gokhan's detention were not unreasonable. In the same breath, Respondents concede that whether a detention is unreasonably prolonged is a "highly fact-specific inquiry" without a bright line. The problem with this argument is that Gokhan is not lawfully detained under § 1225(b); if he were, we would not be here. Gokhan is unlawfully detained under § 1225(b). We contend that any period of unlawful detention is too long.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant Gokhan's petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests that this court order his immediate release from custody and that DHS return him to New Jersey.[1]

Dated: November 3, 2025

/s/Matthew J. Archambeault
Matthew J. Archambeault
Attorney for Petitioner
216 Haddon Avenue, Suite 402
Haddon Township, NJ 08108-2812
215-599-2189
mja@archambeaultlaw.com

[1] It is common practice for ICE to release detainees without providing those they are releasing with their identification, which in this case would make it impossible for Petitioner to board an airplane to fly home.

EXHIBIT LIST

EXHIBIT	DOCUMENT DESCRIPTION
H	ICE Detainee Locator as of November 3, 2025
I	Mendez Rojas Class Settlement Agreement

Certificate of Service

I hereby certify that on November 3, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/Matthew J. Archambeault
Matthew J. Archambeault, Esq.
Attorney for Petitioner