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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

DEYBIN JOSE RIVAS  
RODRIGUEZ, A   
Petitioner,

Case No.

v.

ERIC ROKOSKY, in his official capacity as Warden of the Elizabeth Contract Detention Facility; JOHN TSOUKARIS, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark Field Office; TODD LYONS, in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, and PAMELA BONDI, in her official capacity as United States Attorney General,

Respondents.

**VERIFIED PETITION  
FOR WRIT OF  
HABEAS  
CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

Petitioner respectfully petitions this Honorable Court for writ of habeas corpus to remedy Petitioner’s unlawful detention by Respondents, as follows:

**INTRODUCTION**

1. Petitioner, DEYBIN JOSE RIVAS RODRIGUEZ (AKA “Deby,” hereinafter “Deybin”) is a 28-year-old noncitizen from Nicaragua who is in the custody of the United States Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), and is currently detained at the Elizabeth Contract Detention Facility (“ECDF” or “the Facility”).
2. Deybin entered the United States, seeking protection from political persecution from his homeland of Nicaragua, on or about September 13, 2021. *See* Ex. A, Notice to Appear dated Oct. 17, 2025.<sup>1</sup>
3. Deybin was paroled from custody on September 28, 2021, pursuant to a review conducted to comply with the requirements in *Frailhat v. ICE*, —F. Supp. 3d —, 2020, WL 1932570 (C.C. Cal. April 20, 2020) after having been assessed to have one or more of the Risk Factors identified by the District Court placing him at a “heightened risk of severe illness and death upon contracting the COVID-19 virus.” *See* Ex. B, DHS Form I-213, Record of Deportable/

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<sup>1</sup> All exhibits cited herein refer to the exhibits listed in the Declaration of Matthew Archambeault, filed in support of this petition.

Inadmissible Alien; Ex. D, Notice of Custody Determination dated Sept. 28, 2021.

4. After his release, Deybin moved in with his grandmother at [REDACTED] [REDACTED] Far Rockaway, NY 11691, where he resided until his current detention.
5. On September 27, 2022, Deybin filed an I-589, Application for Asylum, Withholding and Protection Pursuant to the Convention Against Torture. *See* Ex. E, I-589 Receipt Notice dated Sept. 28, 2025.
6. On October 17, 2025, USCIS dismissed his I-589 due to their claim that he had been issued an Expedited Order of Removal. *See* Ex. C, Order of Expedited Removal dated Sept. 17, 2021;<sup>2</sup> Ex. E.
7. Deybin was scheduled for a Credible Fear Interview at the USCIS Asylum Office in Bethpage, New York, on October 17, 2025. Deybin passed his interview after an asylum officer concluded that he had a credible fear of persecution if returned to Nicaragua. *See* Ex. G, Credible Fear Interview dated Oct. 17, 2025.
8. The asylum officer then issued a Notice to Appear directing Deybin to appear at the Immigration Court at 26 Federal Plaza, 12th Floor, Room 1237, New York, New York 10278 on May 21, 2026, to continue his process for seeking asylum

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<sup>2</sup> The putative Order of Expedited Removal under section 235(b)(1) of the INA is blank. A determination of inadmissibility is completed above, but the actual order of removal is entirely blank.

and protection from the persecution he suffered at the hands of the totalitarian regime in Nicaragua. *See* Ex. A.

9. On October 17, 2025, Long Island Fugitive Operations, along with HSI and DEA, arrested Deybin pursuant to an I-200 Warrant of Arrest. *See* Ex. B at 2.
10. ICE took him into custody and transported him to the Elizabeth Contract Detention Facility in Elizabeth, New Jersey. *See* Ex. H, Form I-830.
11. Deybin applied for a bond before the Immigration Court and was denied, as the Immigration Judge found that she lacked jurisdiction under *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Ex. I, Order of the Immigration Judge dated Nov. 4, 2025.
12. The decision in *Matter of Yajure Hurtado* violates the statute. *Matter of Yajure Hurtado* holds that 8 U.S.C. § 1225(b)(2) makes noncitizens like Petitioner, who are apprehended in the United States but have never been admitted, subject to mandatory detention without a bond hearing. Instead, 8 U.S.C. § 1226(a) applies and authorizes release on bond after a hearing before an immigration judge. The BIA's interpretation conflicts with the plain language and structure of the statute, as well as decades of uncontroverted agency practice. Therefore, the application of § 1225(b)(2) to Petitioner is contrary to law and violates the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA).
13. Additionally, the decision in *Matter of M-S-*, which holds that noncitizens, like the Petitioner, who are originally placed in expedited proceedings and then

transferred to full proceedings after establishing a credible fear, are ineligible for bond upon transfer, is distinguishable from this matter and not dispositive. *Matter of M-S-* dealt with a noncitizen who was encountered at the border, issued an Expedited Order of Removal, and then passed his Credible Fear Interview and was transferred to regular removal proceedings. The respondent in *M-S-* was not paroled out of custody and sought release directly from his continuous custody after detention at the border. Petitioner was paroled out of custody and lived in the interior of the United States for over four years before being re-detained.

14. In the alternative, if the statutes do authorize Petitioner's detention without a bond hearing, it violates his rights to substantive and procedural due process. Detention of all noncitizens who are subject to inadmissibility grounds, like Petitioner, without any individualized hearing does not "bear a reasonable relation to the purpose for which the individual was committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Moreover, the application of *Mathews v. Eldridge* balancing test shows that a bond hearing is necessary to protect Petitioner from an unnecessary deprivation of liberty. *See* 424 U.S. 319, 335 (1976).

15. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order Deybin's release from custody, with appropriate conditions of supervision if necessary. In the alternative, Deybin requests that this Court

conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and/or dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213-214 (3d Cir. 2020).

### **PARTIES**

16. Petitioner Deybin Jose Rivas Rodriguez is a 28-year-old Nicaraguan asylum seeker currently detained by Respondents pending removal proceedings.
17. Respondent Eric Rokosky is the Warden of the Elizabeth Contract Detention Facility and an employee of CoreCivic, the private company that contracts with ICE to run ECDF. In his capacity as Facility Administrator/Warden, he oversees the administration and management of the ECDF. Accordingly, Mr. Rokosky is the immediate custodian of Petitioner. He is sued in his official capacity.
18. Respondent John Tsoukaris is named in his official capacity as the Newark Field Office Director for ICE. In this capacity, Respondent Tsoukaris is responsible for the administration and management of ICE Enforcement Removal Operations in New Jersey and exercises control over Petitioner's custody at ECDF. Respondent Tsoukaris's office is located at 970 Broad Street, 11<sup>th</sup> Floor, Newark, New Jersey, 07102.

19. Respondent Todd Lyons is named in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations, and, as such, he is a legal custodian of Petitioner. Respondent Lyons's office is located at 500 12<sup>th</sup> Street, S.W., Washington, D.C., 20536.
20. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for administering and enforcing immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem's office is located at U.S. Department of Homeland Security, Washington, D.C., 20528.
21. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely transacts business in the District of New Jersey, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

### **JURISDICTION AND VENUE**

22. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution.
23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
24. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.
25. Venue is proper in this District because the Petitioner is detained in this district. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26. There is no statutory requirement for exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at \*2 (M.D. Pa. Aug. 2020) (“[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by

immigration detainees is a prudential benchmark which is not compelled by statute.”).

27. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).
28. Moreover, the exhaustion “doctrine is not without exception.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). “Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question.” *Id.* at 666-67.
29. The Board of Immigration Appeals has issued a published decision holding that people like Deybin who entered the United States without inspection and therefore have not been admitted are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). Immigration judges and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1). Exhaustion before the BIA would therefore be futile.
30. Further, the BIA does not have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att’y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also*

*Ashley*, 288 F. Supp. 2d at 667 (citation omitted). Therefore, any administrative proceedings would be futile because Petitioner raises a constitutional due process claim. *Qatanani*, 144 F.4th at 500.

### **STATEMENT OF FACTS**

31. Petitioner Deybin Jose Rivas Rodriguez is a 28-year-old asylum seeker from Nicaragua, who entered the United States on or about September 13, 2022, through the southern border. *See* Ex. A.
32. Deybin was initially taken into custody by Customs and Border Protection and subsequently released on September 28, 2022, pursuant to a review conducted to comply with the requirements in *Fraihat v. ICE*, —F. Supp. 3d —, 2020, WL 1932570 (C.C. Cal. April 20, 2020) after having been assessed to have one or more of the Risk Factors identified by the District Court placing him at a “heightened risk of severe illness and death upon contracting the COVID-19 virus.” *See* Ex. B.
33. The Department of Homeland Security, via the United States Citizenship and Immigration Service, in an October 17, 2025, letter to Petitioner, claimed he had been issued a Form I-860, Notice and Order of Expedited Removal. *See* Exs. C, F. A Form I-860, Notice and Order of Expedited Removal, was served on Deybin, but not until he was detained and placed into Removal Proceedings after October 17, 2025. The putative Notice and Order of Expedited Removal,

dated September 17, 2022, is not completely filled out, lacking a signature and a completed Certificate of Service. *See* Ex. C.

34. Upon his release, Deybin moved to Far Rockaway, Long Island, to live with his grandmother. He then filed an asylum application on September 27, 2023. *See* Ex. E.

35. Deybin lived peacefully with his grandmother until October 17, 2025, when he attended an interview at the USCIS Asylum Office in Bethpage, New York, where he was informed that he had an Expedited Order of Removal. A Credible Fear Interview was conducted by an Asylum Officer that same day. *See* Ex. G.

36. After the USCIS Asylum Officer found that Deybin had a credible fear of persecution if returned to Nicaragua, he issued a Notice to Appear at the Immigration Court in New York, New York. *See* Exs. A, G.

37. As Deybin was leaving to return home to his grandmother, ICE officials arrested him. They brought him to the Elizabeth Contract Detention Facility for detention during his removal proceedings. *See* Exs. B, H.

38. On November 4, 2025, the Immigration Judge at the Elizabeth Immigration Court ruled that she did not have jurisdiction over Deybin's bond pursuant to the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and denied his request. *See* Ex. I, Order of the Immigration Judge.

## LEGAL FRAMEWORK

### **I. Section 1226(a) Governs the Detention of People Like Deybin Who are Detained in the United States and Have Not Previously Been Admitted**

39. The Immigration and Nationality Act contains several provisions authorizing the detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Section 1226(c) creates an exception to section 1226(a) and provides that noncitizens who are removable by virtue of certain criminal convictions must be detained without a bond hearing. Section 1225(b) 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” under (b)(2). Finally, section 1231 governs the detention of noncitizens with a final order of removal.

40. The detention provisions at § 1226(a) and § 1225(b) 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 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “Upon passing IIRIRA, Congress declared that the new Section 1226(a) ‘restates the current provisions in the predecessor statute,’” which allowed noncitizens who entered

without inspection to be released on bond. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

41. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens 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.”).

42. Thus, in the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an immigration judge, unless their criminal history rendered them ineligible. *Diaz Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238, -- F. Supp. 3d --, at \*4 (D. Mass. July 24, 2025). That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

43. In recent months, Respondents have abruptly changed course. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, “in coordination with the Department of Justice (DOJ),” DHS had “revisited” its legal position and believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 2025 WL 2084238, at \*4.

44. On September 5, 2025, the BIA followed suit and issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that noncitizens “who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” 29 I&N Dec. at 220.

45. The BIA adopted this position despite numerous recent federal court decisions rejecting DHS’s position and holding that people who are present without admission are eligible for bond under § 1226(a). *See, e.g., Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, – F. Supp. 3d --, at \*13 (D. Minn. Aug. 15, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, -- F. Supp. 3d --, at \*9 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-2157, 2025 WL 2337099, at \*7 (D. Ariz. Aug. 11, 2025); *Diaz*

*Martinez*, 2025 WL 2084238, at \*8; *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at \*7 (D. Mass. July 7, 2025); *Rodriguez*, 779 F. Supp. 3d at 1257.

46. As these decisions explain, the BIA’s position in *Matter of Yajure Hurtado* defies the INA. The plain text of the statute shows that § 1226(a), not § 1225(b), applies to people like Deybin.

47. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 1226(a) as the “default rule” for people detained pending removal). These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

48. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)’s default bond provision. Subparagraph (E)’s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL

1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

49. Under the BIA's interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I&N Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(14) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in § 1226(c) applying to inadmissible noncitizens, including the recently-passed Laken Riley Act, superfluous. *Gomes*, 2025 WL 1869299, at \*7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”). This statutory structure demonstrates that Congress did not intend to make § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for people arrested within the United States.

50. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very 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); *see also Diaz Martinez*, 2025 WL 2084238, at \*8 (“[O]ur immigration laws have long made a distinction between

those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). 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*, 583 U.S. at 287.

51. The BIA’s interpretation “would render the phrase ‘seeking admission’ in 8 U.S.C. § 1225(b)(2)(A) mere surplusage.” *Lopez Benitez*, 2025 WL 2371588, at \*6. That section applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 2025 WL 2371588, at \*6; *Diaz Martinez*, 2025 WL 2084238, at \*2. The BIA’s interpretation makes all applicants for admission subject to mandatory detention, leaving the “seeking admission” criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 2025 WL 2371588, at \*6; *Diaz Martinez*, 2025 WL 2084238, at \*6.

52. Instead, the phrase “seeking admission” indicates that § 1225(b)(2)(A) applies to people who are taking “some sort of present-tense action,” in other words, coming or attempting to come into the United States. *Diaz Martinez*, 2025 WL 2084238, at \*6; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020)

(stating that “the use of the present progressive tense . . . denotes an ongoing process”). Therefore, § 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute.

53. This analysis also applies to those who entered without inspection, were briefly detained, and were released after expressing a fear of removal, as in this matter. In this instance, Deybin has been in the United States for over four years and is not “seeking admission” as contemplated by § 1225(b)(1). This section addresses the inspection of noncitizens arriving in the United States and of certain other aliens who have not been admitted or paroled. Section 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 September 13, 2021, the Petitioner had not been admitted or paroled into the United States, so this provision applied to him; since then, however, the Petitioner has been paroled into the United States. *See* Ex. B. The Petitioner is no longer arriving in the United States; he has been here for over four years, living peacefully with his grandmother in Long Island.

54. In 8 U.S.C. § 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 worked for Petitioner in 2021, we are no longer in 2021, and Deybin has been paroled into the United States and has been physically present there continuously for more than four years.

55. Applying § 1226(a), rather than § 1225(b), to people detained in the interior who had previously entered without inspection is consistent with the government’s longstanding practice, which “can inform a court’s determination of what the law is.” *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA’s abrupt change in policy. *Maldonado*, 2025 WL 2374411, at \*11.

56. Finally, as discussed below, the BIA’s interpretation of § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress “did not intend the alternative which raises serious constitutional doubts” and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Therefore § 1226(a), which permits bond hearings, not § 1225(b)(2)(A), which does not, governs the detention of people like Deybin.

## II. The BIA's Application of Mandatory Detention to Noncitizens Like Deybin Violates Substantive and Procedural Due Process

57. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens within the United States, including both removable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

58. Absent adequate procedural protections, substantive due process requires a “special justification” that “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690; *accord, e.g., Torralba v. Knight*, No. 2:25-cv-1366, 2025 WL 2581792, at \*12 (D. Nev. Sept. 5, 2025) (describing the standard for a substantive due process violation); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539, at \*4 (D. Neb. Sept. 3, 2025) (same). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to

the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. Thus, to withstand constitutional scrutiny, the nature and duration of mandatory immigration detention must be reasonably related to these purposes.

59. In *Demore*, the Supreme Court upheld the constitutionality of § 1226(c) against a facial challenge, specifically citing evidence that had been before Congress about noncitizens with criminal convictions. 538 U.S. at 518-520. This justification does not apply, however, to noncitizens with no criminal record whatsoever who have lived in the community for years. The broad policy set forth in *Matter of Yajure Hurtado* is not reasonably related to the purposes of prevent danger to the community or flight risk and violates substantive due process.

60. Additionally, procedural due process protects noncitizens against deprivation of liberty without adequate procedural protections, including notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute

procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth C’ty Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara*, 10 F.4th at 28; *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335). Here, the BIA’s interpretation of the statute to require detention of all people in the United States without having been admitted deprives them of their liberty without any individualized process to determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

61. First, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 (“[F]reedom from confinement is a liberty interest of the highest constitutional import.”). For people “who can face years of detention before resolution of their immigration proceedings, ‘the individual interest at stake is without doubt particularly important.’” *Linares Martinez v. Decker*, No. 18-cv-6527 (JMF), 2018 WL 5023946 at \*3 (S.D.N.Y. Oct. 17, 2018).

62. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be “on any calculus, substantial,” observing that the petitioner, “could not maintain employment or see his family or friends or others outside normal

visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone.” 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated “alongside criminal inmates” at a jail where “she was separated from her fiancé and unable to maintain her employment.” 10 F.4th at 28.

63. Second, absent any individualized bond hearing, people will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. *See, e.g., Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at \*8 (D. Minn. May 21, 2025) (noting that lack of consideration of “individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals’ private rights”); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because “the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention”). A bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

64. Finally, the burden on the government of returning to the longstanding practice of holding bond hearings for people like Deybin does not outweigh the liberty interest at stake. To the contrary, the government has an interest in “minimizing

the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854; *see also Hernandez-Lara*, 10 F.4th at 33 (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs. . . . The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). The cost to the government and society of detaining people unnecessarily for long periods of time is greater than the cost of providing individualized hearings, and weighs in favor of additional procedural protections.

65. At these bond hearings, due process requires that the Government bear the burden of proof by clear and convincing evidence. *See Gayle*, 12 F.4th at 332 (“[W]hen such a severe deprivation is at issue, the Government must bear the burden of proof.”). “A standard of proof serves to allocate the risk of error between the litigants and reflects the relative importance attached to the ultimate decision.” *German Santos v. Warden Pike C’ty Corr. Facility*, 965 F.3d 203, 213 (citing *Addington v. Texas*, 441 U.S. 418, 423 (1979)). Therefore, when the

Third Circuit has ordered a constitutionally-required bond hearing, it has placed the burden on the government by clear and convincing evidence. *German Santos*, 965 F.3d at 214; *Guerrero-Sanchez v. Warden York C'ty Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 572 (2022). Other circuit courts have similarly held that due process requires this allocation of the burden in bond hearings for noncitizens like Petitioner, who were then detained under § 1226(a). *Hernandez-Lara*, 10 F.4th at 39-40; *Velasco Lopez*, 978 F.3d at 855-56. Thus, even if the statute requires detention without a bond hearing, due process requires a hearing at which the government bears the burden by clear and convincing evidence.

**FIRST CLAIM FOR RELIEF**  
**Violation of 8 U.S.C. § 1226(a)**  
**Unlawful Denial of Release on Bond**

66. Petitioner re-alleges and incorporates by reference the above paragraphs.

67. 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 grounds of inadmissibility. Specifically, it does not apply to Deybin, who has been living in the United States since September 2021, prior to being apprehended and placed into removal proceedings by Respondents. Deybin should properly be detained under § 1226(a) and should be eligible for release on bond. Respondents' unlawful application of § 1225(b) to Petitioner violates the INA.

**SECOND CLAIM FOR RELIEF**  
**Violation of Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19**  
**Unlawful Denial of Release on Bond**

68. Petitioner re-alleges and incorporates by reference the above paragraphs.

69. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before immigration judges under 8 U.S.C. § 1226 and its implementing regulations.

70. The regulation at 8 C.F.R. § 1003.19 lays out bond procedures, and § 1003.19(h)(2) delineates categories of noncitizens who are subject to mandatory detention and not entitled to a bond hearing. The fact that noncitizens within the United States who are subject to inadmissibility grounds are not included on this list shows that the agencies did not intend them to be subject to

mandatory detention. The BIA's interpretation thus violates the regulations and unlawfully denies Petitioner a bond hearing.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Administrative Procedure Act**  
**Contrary to Law and Arbitrary and Capricious Agency Policy**

71. Petitioner re-alleges and incorporates by reference the above paragraphs.

72. The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

73. The mandatory detention provisions at 8 U.S.C. § 1225(b) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. Specifically, it does not apply to Deybin, who has been living in the United States since September of 2021, prior to being apprehended and placed into removal proceedings by Respondents. Deybin should be detained under § 1226(a) and eligible for release on bond.

74. In taking a contrary position, the BIA has reversed decades of prior practice, and “would expand § 1225(b) face beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention, while simultaneously narrowing § 1226(a) such that it would have extremely limited (if any) application.” *Lopez Benitez*, 2025 2371588, at \*8.

Respondents have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

75. The application of § 1225(b) to Deybin is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

**FOURTH CLAIM FOR RELIEF**  
**Violation of the Fifth Amendment Due Process Clause**  
**Substantive Due Process**

76. Petitioner re-alleges and incorporates by reference the above paragraphs.

77. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Substantive due process requires that immigration detention without a bond hearing be reasonably related to the goals of ensuring the appearance of noncitizens at future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

78. The BIA's application of mandatory detention under § 1225(b) is not reasonably related to those goals and thus violates substantive due process. Since his entry in September of 2021, Deybin has been living with his

grandmother in Long Island, New York. Deybin has not been arrested and has been living peacefully since entering the United States.

**FIFTH CLAIM FOR RELIEF**  
**Violation of the Fifth Amendment Due Process Clause**  
**Procedural Due Process**

79. Petitioner re-alleges and incorporates by reference the above paragraphs.

80. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

81. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Deybin’s liberty is a particularly weighty interest. Deybin is being held despite being bond eligible and despite having no criminal convictions. To date, Deybin has been detained for about four weeks.

82. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* Here, there is a great risk of unnecessary detention because the BIA’s interpretation of the statute does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. At a hearing, Deybin could show that his detention is not necessary because he is neither a danger to society nor a flight risk. Deybin has

never been arrested and thus is not a danger to society. Deybin has been diligent in attending to his asylum case, even voluntarily appearing for the appointment that ultimately led to his detention. All of this supports a grant of reasonable bond. A hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *German Santos*, 965 F.3d at 213-14.

83. The final factor is the Government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Deybin when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes. *Hernandez-Lara*, 10 F.4th at 32-33; *see Ousman D. v. Decker*, No. 20-9646, 2020 WL 5587441, at \*4 (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241-42 (W.D.N.Y. 2019) (same). Therefore, the government does not have an interest in detaining Deybin without a bond hearing that outweighs his substantial liberty interest in such an individualized determination.

84. Respondents' detention of Deybin without a bona fide bond hearing to determine whether that detention is necessary violates procedural due process.

**PRAYER FOR RELIEF**

85. WHEREFORE, Petitioner respectfully requests that this Court:

86. Assume jurisdiction over this matter;

87. Order Respondents to maintain Petitioner's detention in the State of New Jersey for the pendency of these proceedings;

88. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

89. Issue a Writ of Habeas Corpus and order Petitioner's immediate release from custody;

90. In the alternative, order Respondents to provide the Petitioner with an immediate bond hearing with the Department of Homeland Security bearing the burden to demonstrate Petitioner is either a flight risk or danger to the community;

91. Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

Grant such further relief as the Court deems just and proper.

Dated: November 13, 2025

Respectfully submitted,

*/s/Matthew J. Archambeault*

Matthew J. Archambeault

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER’S BEHALF  
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner’s attorneys, and I have discussed the claims with Petitioner’s legal team.

Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

<b>EXHIBIT</b>	<b>DOCUMENT DESCRIPTION</b>
A	Notice to Appear dated October 17, 2025
B	Form I-213, Record of Deportable/Inadmissible Alien dated October 17, 2025
C	Order of Expedited Removal dated September 17, 2021
D	Notice of Custody Determination dated September 28, 2021
E	I-589 Receipt Notice dated September 28, 2022
F	Notice of Dismissal of Form I-589 dated October 17, 2025
G	Credible Fear Interview dated October 17, 2025
H	ICE Form I-830 dated October 20, 2025
I	Order of the Immigration Judge dated November 4, 2025

Dated: November 13, 2025

Respectfully submitted,  
/s/ Matthew J. Archambeault  
Matthew J. Archambeault  
*Counsel for Petitioner*