UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DEYBIN JOSE RIVAS RODRIGUEZ; A[redacted] Petitioner, 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.	Case No. 1:25-cv-17419 Honorable Christine P. O'Hearn, 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
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PRELIMINARY STATEMENT

Petitioner (hereinafter referred to as "Petitioner") is a 28-year-old man from Nicaragua who entered the United States without inspection on about September 13, 2021, seeking protection from political persecution from his homeland of Nicaragua. S*ee* ECF No. 1-2, Notice to Appear dated Oct. 17, 2025.

Upon entry, Customs and Border Patrol ("CBP") claims to have issued a Notice and Order of Expedited Removal, but it appears it was never served on Petitioner. *See* ECF No. 1-3, Order of Expedited Removal dated Sept.17, 2021.[1]

Deybin was paroled from custody on September 28, 2021, 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* ECF No. 1-2, DHS Form I-213, Record of Deportable/Inadmissible Alien; No. 1-4, Notice of Custody Determination dated Sept. 28, 2021.

After his release, Deybin moved in with his grandmother at [redacted] Far Rockaway, NY 11691, where he resided until his current detention. On September 27, 2022, Deybin filed an I-589, Application for Asylum,

[1] 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.

Withholding and Protection Pursuant to the Convention Against Torture. *See* ECF 1-5, I-589 Receipt Notice dated Sept. 28, 2025.

On October 17, 2025, USCIS dismissed his I-589 due to their claim that he had been issued an Expedited Order of Removal. *See* ECF 1-3, Order of Expedited Removal dated Sept.17, 2021;[2] ECF 1-5. 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* ECF 1-7, Credible Fear Interview dated Oct. 17, 2025.

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 and protection from the persecution he suffered at the hands of the totalitarian regime in Nicaragua. *See* ECF No. 1-1. Long Island Fugitive Operations, along with HSI and DEA, arrested Deybin pursuant to an I-200 Warrant of Arrest. *See* ECF No. 1-2 at 2. ICE took him into custody and transported him to the Elizabeth Contract Detention Facility in Elizabeth, New Jersey. *See* ECF No. 1-8, Form I-830.

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[2] 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.

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* ECF No. 1-9, Order of the Immigration Judge dated Nov. 4, 2025.

Petitioner filed for habeas corpus relief pursuant to 28 § USC 2241.

ARGUMENTS

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

The text, structure, and purpose of the INA all support Petitioner'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. 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: Petitioner was encountered immediately upon crossing the U.S.-Mexico Border, as were the petitioners in *Castro*. Petitioner 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 Petitioner into the United States to await his Credible Fear Interview, rather than detain him as they did in *Castro.* Further, unlike the petitioners in *Castro*, Petitioner passed his Credible Fear Interview and was placed into Removal Proceedings. Petitioner's factual pattern in this matter is not the same as the petitioners in *Castro* and thus should not be treated the same.

Respondents also point to *Matter of Q. Li,* 29 I&N. Dec. CITE ruling, "[W]e hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). First, Petitioner is not an applicant

for admission, nor was he arriving in the United States when detained. Second, he was arrested with a warrant. SEE EXHIBIT…. Lastly, "The BIA has no authority to bind this Court, which must undertake its own review of the statutory issues presented here." *See* Kashrano v. Jamison, et al., Case No. 2:25-cv-05555-JDW referencing Loper Bright Enters. v. Raimondo , 603 U.S. 369, 412 (2024).

Respondents cite *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025), which does find that immigrants detained pursuant to § 1225(b)(1)(B)(ii), those who initially received an expedited order of removal, passed a credible fear interview, and then were paroled, were subject to mandatory detention. We ask this court to give this decision little weight as it is conclusionary and completely fails to engage the interplay of 1226(a) and 1225(b).

We would point this Honorable Court to *Rico-Tapia vs. Smith, et al.*, Case 1:25-cv-00379-SASP-KJM (October 10, 2025) out of the District of Hawaii. In *Rico-Tapia* the court dealt with an immigrant who entered the United States unlawfully on August 14, 2022, and was paroled into the country with a parole valid until October 14, 2022. He was placed into removal proceedings on December 27, 2022, under Section 240 of the INA. He then applied for asylum before the immigration court. On July 23, 2025, ICE moved to dismiss his proceedings, which was granted, and he was subjected to expedited removal. Rico-Tapia was then forcibly arrested and detained. While in detention, he passed his Credible Fear Interview and

was returned to Removal Proceedings. ICE claimed he was subject to mandatory detention pursuant to § 1225(b)(1)(B)(ii).

After engaging both statutes Judge Park concluded, "As Section 1225(b) does not apply to aliens who are *already present in the country*, it does not apply to Rico-Tapia. At the time of his detainment in July 2025, Rico-Tapia was not seeking to "enter the country," but rather, had already been present within the United States for nearly three (3) years."

Respondents' claim that Petitioner is detained lawfully under 8 USC § 1225(b)(1) is not supported by the facts and the law in this matter. As Petitioner'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 Petitioner 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 September 13, 2021, when Petitioner 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 Petitioner in 2021, 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 September 13, 2021, Petitioner had not been admitted or paroled into the United States, so this provision applied to him; since then, however, Petitioner has been paroled into the United States. *See* ECF No. 1-2, Form I-213. Petitioner is no longer arriving in the United States—he has been here for over four years.

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 sub-paragraph (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 2021, we are no longer in 2021. Petitioner 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 2021, but, when arrested pursuant to a warrant in 2025, Petitioner had been paroled into the United States and had resided here for more than four years. Petitioner is facing removal pursuant to a determination of inadmissibility issued by an immigration officer in 2025, not the one issued in 2021. 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. 6. 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* ECF No. 1-2.

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. Petitioner, 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 Petitioner, who was arrested "on a warrant" years after he entered the U.S. and is now detained "pending a decision on" his removal. Thus, § 1226(a), and not § 1225(b)(1), is clearly the proper detention authority for Petitioner.

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

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 Petitioner, who were apprehended years after entering the country, it would have placed these amendments within § 1225, not § 1226.

Justice Diamond, from the Eastern District of Pennsylvania, states it well, "Further, if all aliens here illegally are already subject to mandatory detention under § 1225(b), then the Laken Riley Act's recent expansion of mandatory detention under § 1226(c)(1)(E) would also be beside the point. See Pub. L. No. 119-1, 139 Stat. 3 (2025). Once again, I am not prepared to render an Act of Congress superfluous." *See* Demirel v. Federal Detention Center, et al., Case 2:25-cv-05488-PD (November 18, 2025) *referencing* Stone v. I.N.S., 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

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 the 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 Ac-

tion 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. J, *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 Petitioner to a Bond Hearing.

Respondents claim that Petitioner 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 Petitioner 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 Petitioner is governed by the classic balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976). Petitioner 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 Petitioner 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 Petitioner a proper bond hearing, "there is nothing in the record demonstrating that [Petitioner] is a flight risk or a danger to the community." *Lopez Benitez,* 2025 WL 2371588 at *12. Therefore, the risk of erroneously depriving Petitioner of his physical freedom continues to be unbearably high. *See id.* Without

the bond hearing that he is entitled to under § 1226(a), Petitioner will never be able to present the compelling reasons that he is neither a flight risk nor a danger. Due process thus requires Petitioner 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 Petitioner'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 Petitioner is not lawfully detained under § 1225(b); if he were, we would not be here. Petitioner 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 Petitioner'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. Respondents were given an opportunity to provide Petitioner with a bond hearing, but chose not to do so.

Dated: November 20, 2025

/s/Matthew J. Archambeault
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EXHIBIT LIST

EXHIBIT	DOCUMENT DESCRIPTION
J	Mendez Rojas Class Settlement Agreement

Certificate of Service

I hereby certify that on November 20, 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