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

Andray Codane GREEN, Petitioner, v. J.L. JAMISON, in his official capacity as Warden of the Federal Detention Center, Philadelphia; BRIAN MCSHANE, in his official capacity as Acting Philadelphia Field Office Director, United States Immigrations and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; Respondents.	Case Action: 2:26-CV-0773 Before: HON. KAI N. SCOTT

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE
IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner, Andray Codane Green (hereinafter, "Petitioner"), by and through undersigned counsel, respectfully submits this Traverse in Reply to Respondents' Response in Opposition to the Petition for Writ of Habeas Corpus. Respondents attempt to justify mandatory detention under 8 U.S.C. § 1225(b)(1) by invoking expedited removal, yet the record—and Respondents' own exhibits—demonstrate that expedited removal was never lawfully executed. Furthermore, as an noncitizen who is not an arriving alien, who has been present in the United States interior for more than 2 years and substantially after his parole ended, while voluntarily reporting to the government, he is no longer subject to the strictures of 8 U.S.C. § 1225 at all, but rather 8 U.S.C. § 1226. Lastly, his re-detention after being in the United States more than 2 years, forming significant ties, including marriage to a U.S. Citizen, underscore that re-detention now, violates Constitutional Due Process and his unlawful detention violates the Suspension Clause.

A. FACTUAL HISTORICAL TIMELINE

The events at issue are as follows: Petitioner effected an entry into the United States on March 21, 2023 and was apprehended thereafter on March 22, 2023 (compare, Pet. Ex. A, pg. 1,

record of "Date Apprehended", with Pet. Ex. B, pg. 2, Notice to Appear ("NTA") dated "4/18/2023"). He was given an interview, recorded on a Form I-867A, titled "Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act" on March 25, 2023 (Resp. Ex. D). As noted, Petitioner was issued an NTA, charging him removable under Section 212(a)(7)(A)(i)(I) and Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") (corresponding 8 U.S.C. § 1182), on April 18, 2023 (Pet. Ex. B; Resp. Ex. A). The NTA did not indicate a future hearing date he personally signed for service. He was paroled out of detention under 8 U.S.C. § 1182(d)(5) on April 26, 2023 (Pet. Ex. C, pg. 5) for a period of one year.

After he was out of detention, on June 2, 2023, another NTA was issued. The NTA indicates service by mail, but on information and belief service was not effected (Resp. Ex. B); obviously he was not there to sign it. This NTA only charged him as removable under 212(a)(7)(A)(i) and indicated an initial immigration court hearing date to be held March 27, 2025. He applied for an was issued a work authorization of one year, valid from 12/21/2023 to 4/25/2024, under category C11, which was incident to his parole, terminating one year after he was paroled (Pet. Ex. F). He applied for asylum before the court on October 23, 2023 (Pet. Ex. G) and had his immigration court venue changed on March 27, 2025 from Dallas, TX to Philadelphia, PA (Pet. Exs. D, E) with his first hearing for November 17, 2026. He applied for a new work permit, which was approved under category C08, incident to his pending asylum application, valid from 4/26/2024 to 04/25/2029 (Pet. Ex. I, pgs. 28-30). He checked in with ICE during his parole on May 24, 2023 and *after* the one year of his parole had passed, on May 29, 2024 and July 7, 2025, while participating in ICE's CART program, and on January 6, 2026—at which time he reported and was re-detained (Pet. Ex. J, pgs. 31-33).

B. DHS AFFIRMATIVELY PAROLED PETITIONER INTO THE INTERIOR AND AUTHORIZED EMPLOYMENT

DHS paroled Petitioner into the United States pursuant to INA § 212(d)(5) on April 26, 2023 until April 25, 2024, releasing him from custody under conditions of supervision to report to Immigration and Customs Enforcement (ICE). Petitioner applied for asylum, was issued Employment Authorization incident to his parole, and then another Employment Authorization incident to his pending asylum application, valid for five years until 2029. Petitioner complied with all reporting requirements, including reporting to ICE well after his initial one-year parole expired on April 25, 2024—yet he was not detained, and no new parole was given. His asylum was pending before the Philadelphia Immigration Court. He lived openly in the community, had a relationship with Ms. Habibbah Young, a U.S. Citizen, and eventually he and Ms. Young married on February 20, 2025. Then, a year later, on February 3, in 2026, while reporting to ICE, he was detained without reason or notice. ICE is trying to claim that he is still under the 'expedited removal' suitable for border entrants. ICE's decision to re-detain him a year after his marriage, nearly *three* years after he entered the United States, and more than a year after his parole expired yet reporting continued, while he was pursing his asylum application in regular removal proceedings under Section 1229a, has placed him outside of the 'expedited removal' statute and it is wrongly applied to Petitioner. Such an expedited proceeding can not apply to a noncitizen like petitioner who has spent nearly 3 years living in the interior of the United States under ICE's supervision *even after the expiration of parole*. His re-detention nearly 3 years after entry must be under 8 USC § 1226, making his re-detention without a warrant unlawful. That he was living his life all while reporting to ICE during that time, underscores that he cannot now be considered to be detained at the border, still seeking admission, constructively or otherwise.

C. RESPONDENTS CANNOT INVOKE § 1225(b)(1) WITHOUT PROPOER PROCEDURES FOLLOWED

Expedited removal is governed by 8 C.F.R. § 235.3(b), which requires certain processes: DHS must issue, sign, and serve a Form I-860, Notice and Order of Expedited Removal informing a non-citizen of the charges against him; DHS must issue Form I-867A, and to have the noncitizen adopt his statements by signing a Form I-867B. There is no Form I-860 included in Respondents' Exhibits, despite request for same at the conference on February 17 and no signed I-867B. The only form provided is a Form I-867A (Resp. Ex. 4), which contains no signatures. Specifically, the regulations require sworn statement be conducted and recorded on I-867A, which the noncitizen shall read or have read back to them, and then the following:

> Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien's response to the questions contained on Form I-867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction.
>
> 8 CFR 235.3(b)(1)(ii).

There is no evidence that such a process was followed completely, as there is no signature of the Petitioner at all, arguably the only safeguard under expedited removal. An unsigned or incomplete I-860, a missing I-867B and lack of signatures can not constitute a valid expedited removal process. The failure to provide these signed documents confirms that expedited removal was never lawfully executed and Petitioner can not be subjected to 'expedited removal'.

Furthermore, in the expedited removal process, "the Service may **not charge** an alien with any additional grounds of inadmissibility **other than** section 212(a)(6)(C) or 212(a)(7)". 8 CFR §235.3(b)(3) (emphasis added). However, the NTA issued on 4/18/2023 charged Mr. Green as inadmissible under **INA §§ 212(a)(6)(A)(i)** and 212(a)(7)(A)(i)(I), and it was this NTA that was served on him, which he signed (Pet. Ex. A). Because the service charged with a charge

"other than" those enumerated—namely, §212(a)(6)(A)(i)—Petitioner could not then properly be subject to expedited removal. He was thereafter paroled on 4/26/023. That the Service filed a new NTA on June 3, 2023, superseding the previous NTA and deleting the deficient charge, is of no consequence, because by then Petitioner was no longer present at the border, in DHS custody, and was not served with the new NTA. The Supreme Court has repeatedly cautioned that administrative actions, like 'expedited removal' under §1225(b)(1), require the government to "turn square corners". Niz-Chavez v. Garland, 593 U.S. 155, 172 (2021); Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1909 (2020). The government's various failures in this regard means that Petitioner can not be subject to §1225(b)(1).

D. DETENTION IN 2026 AFTER 3 YEARS CAN NOT BE UNDER §1225(b)(2)

Nor would Petitioner be subject today to §1225(b)(2) now, although this is not argued by Respondents. Petitioner has been in the U.S for almost three years, had a job with the Philadelphia School District, applied for asylum, was twice granted work authorization, married a U.S. citizen and repeatedly reported to ICE. He was detained by ICE during a check-in, after various check-ins which had continued long after his initial parole expired, and so it strains credulity to consider him to be "seeking admission" as required under INA §1225(b)(2)[1].

E. LONG-TERM PAROLE REMOVES THIS CASE FROM § 1225(b)(1)

The cases relied upon by Respondents involve noncitizens who never experienced a meaningful break from border or custodial status. Specifically, the Respondents place great emphasis on Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103 (2020), which involved an

[1] See, e.g., Mirdjalilov v. Warden, No. 2:25-cv-7068 at n.6 (E.D.Pa, Jan 23, 2026)(J. Leeson) - collecting cases and noting that over 50 cases in E.D. Pa. alone and the vast majority of cases within the Third Circuit have rejected Respondents' arguments that §1225(b)(2) applies to a decision to detain noncitizens inside the United States, finding rather that §1226 governs such detention; *see also*, Cibian Matute v Jamison, No. 2:25-cv-07093, n.1 (E.D.Pa Feb. 18, 2026)(J. Weilheimer) - also collecting recent cases and stating "The Eastern District of Pennsylvania has universally disagreed with the Government's position."

alien detained within 25 yards of the border who was **never released from custody**. By contrast, Petitioner was paroled into the US, lived at liberty for years with DHS authorization and permission to work until 2029.

Upon re-detention, DHS was required to proceed under 8 U.S.C. § 1229a Removal Proceedings and 8 U.S.C. § 1226(a) to provide him with an individualized custody determination. In fact, the Court in Thuraissigiam explicitly stated "aliens who have established connections in this country have due process rights in deportation proceedings," Id. at 107, (Respondents' Answer at 17).

F. DUE PROCESS INHERES AND THE SUSPENSION CLAUSE APPLY

Independent of Petitioner's arguments that he can not be subject to expedited removal under §1225(b)(1) nor now be subject to §1225(b)(2), Petitioner's continued detention since February 2026, even if *arguendo,* under §1225(b)(1) or (b)(2), would still violate the Due Process Clause of the Fifth Amendment, as well as violate the Suspension Clause.

Once released into the United States, and not held at the border (distinguishing him from the Petitioner in Thuraissigiam), due process requires that a Petitioner receive a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Fifth Amendment Due Process] Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001); *accord*, Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004). To determine whether a claimant's detention violates his due process rights, federal courts apply the balancing test articulated in Mathews v. Eldridge, 424 U.S. 319, 335 (1976). The Mathews test requires courts to weigh the following factors: (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." 424 U.S. at 335.

Numerous courts have found that "individuals paroled from civil immigration custody have a protectable liberty interest in remaining so." Azalyar v. Raycraft, No. 1:25-CV-916, 2026 WL 30741, at *4 (S.D. Ohio Jan. 2, 2026) (collecting cases); *accord,* Arias Gudino v. Lowe, 785 F. Supp. 3d 27, 44 (M.D. Pa. 2025) ("To access the constitutionality of non-criminal detention, including in the immigration context, the Court assesses and weighs each of these factors to determine if an individual was afforded the appropriate level of procedural due process." (internal citations omitted)). "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Mathews, 424 U.S. at 334.

Petitioner, Mr. Green, married his U.S. Citizen spouse, Ms. Habibbah Young, and they were happily living in marital union for a year before he was detained. Consistent with his employment authorization valid through April 2029, Petitioner started a job with the School District of Philadelphia, and he and his wife were saving to file her Family Petition on his behalf, which has since been filed and is pending with USCIS. (attached Exhibits N, O, P). For all these reasons the first Matthews factor weighs heavily in Petitioner's favor.

On the second factor, Petitioner continued reporting to ICE and had no arrests (Ex Q). He had timely applied for asylum and was awaiting his first hearing at the Immigration Court. Given his marriage to a U.S. Citizen and parole under § 1182(d)(5), he was facially eligible to adjust status to a lawful permanent resident once his family visa petition was approved.

Several Judges in this District have suggested on more than one occasion that, where the government fails to afford a petitioner "any individualized determination regarding whether he posed a danger or flight risk," it "poses a high risk of erroneous deprivation of his rights, while a bond hearing imposes a minimal administrative burden." Kanaut v. Rose, No. 25-cv-6869, 2026 WL 36690, at *3 (E.D. Pa. Jan. 6, 2026); Salinas Jaigua v. Jamison, No. 25-cv-7115, 2025 WL 3757076, at *3 (E.D. Pa. Dec. 29, 2025); Montes Restrepo v Jamison, No. 2:25-cv-06518 (E.D. Pa. Jan. 20, 2026) at *16-17[2]. Where, as here, the Government has not alleged circumstances that would indicate that Petitioner Mr. Green poses a danger to the community or is a flight risk, the risk of an erroneous deprivation is high.

As to the third factor, the Government can not demonstrate that its interest in preventing criminal activity or abscondence is served by detaining Mr. Green, who has no record of criminal activity and has so far demonstrated that he is not a flight risk or danger to the community. That adjudication of his I-130 petition could take months to beyond a year to be adjudicated (based on counsel's prior experience of I-130s filed for people in active removal proceedings) would place a heavy administrative burden on the government for no countervailing demonstrated benefit.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be granted and an order of release should be entered or, at minimum, the Court should order an immediate bond hearing at which DHS bears the burden of justifying continued detention.

Dated: February 20, 2026

Respectfully submitted,

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[2] Available at: https://www.govinfo.gov/content/pkg/USCOURTS-paed-2_25-cv-06518/pdf/USCOURTS-paed-2_25-cv-06518-0.pdf

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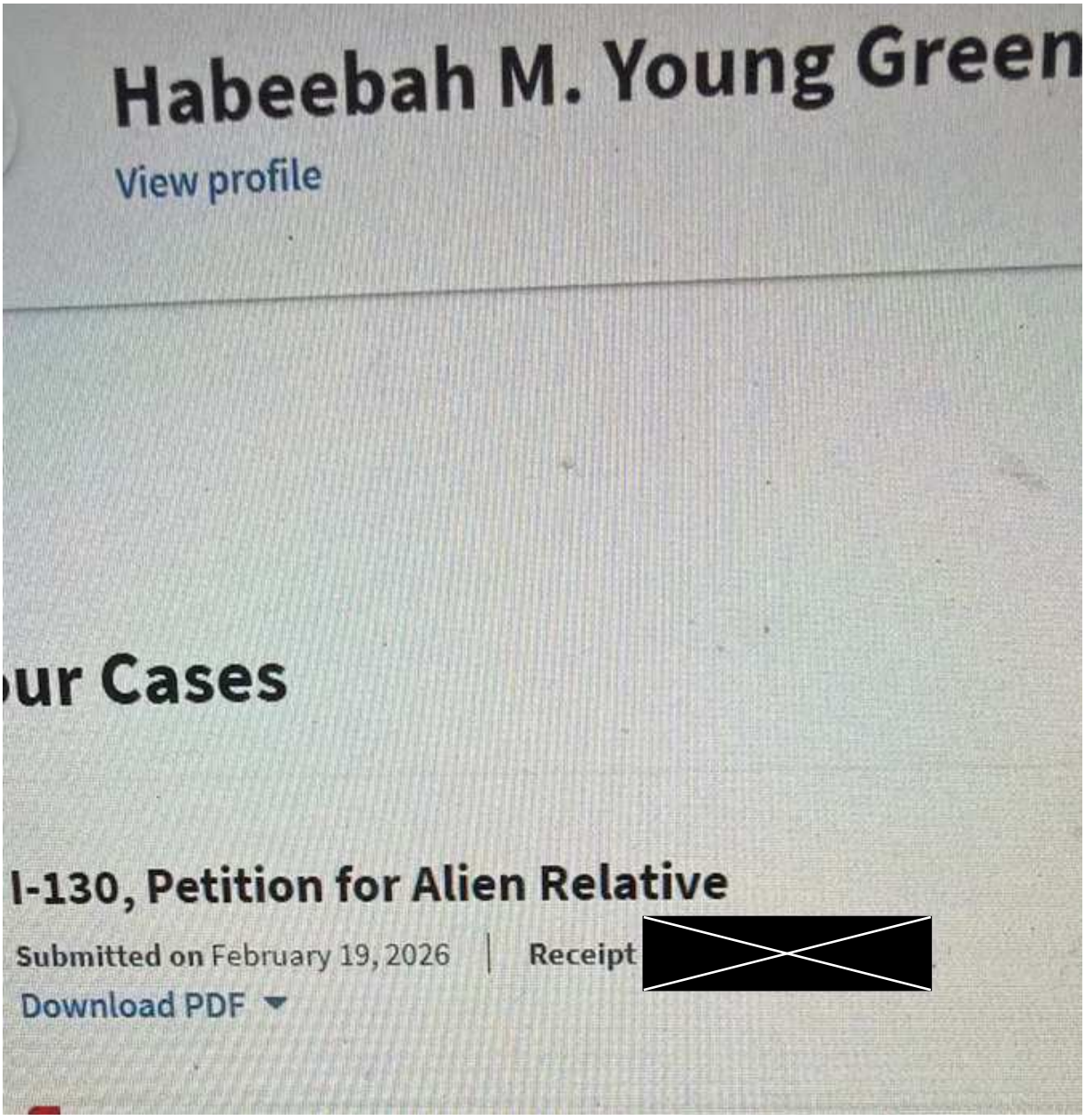
Exhibit N

O

Exhibit O

P

Exhibit P



Screenshot of Electronically-filed I-130 filed by Petitioner Habibbah Young for her husband, USCIS receipt number:

Q

Exhibit Q

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 20, 2026, I caused the foregoing PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS, and any pages attached thereto, to be electronically filed with the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania by using CM/ECF system. Respondents' counsels are registered CM/ECF users and will be served by the CM/ECF system.

Dated: February 20, 2026

Respectfully submitted,

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