UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Elder David Fuentes Velasquez, Petitioner, v. Kristi Noemi, *et al.*, Respondents.	Civil Action No. 25-16797 (JXN) PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

REPLY TO GOVERNMENT'S ANSWER TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

Petitioner, ELER DAVID FUENTES VELASQUEZ ("Mr. Fuentes Velasquez"), respectfully submits the instant Reply to Respondent's Opposition to the Petitioner's Writ for Habeas Corpus ("Petition"). Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing §2254 cases.

The Petitioner has resided in the United States almost nineteen years before the Department of Homeland Security ("DHS") placed Petitioner in full removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a, which is mutually exclusive with expedited removal proceedings under 8 U.S.C. § 1225. Indeed, given the fact that Mr. Fuentes Velasquez was present in the United States for 18 years before he was taken into custody in 2025, it makes little sense to treat him now as someone who is "arriving," especially considering that he had been present with the knowledge and approval of the Department of Homeland Security since 2007.

Further, 8 U.S.C. § 1§ 1225(b)(2)(a) does not apply to the Petitioner, who was detained in the interior of the United States after 18 years of residence. Therefore, Petitioner's detention violates both the Immigration Nationality Act ("INA") and Petitioner's Fifth Amendment rights and due process of law.

Courts in this District recently confirmed that the Government's reading of § 1225(b)(2) is unlawful when applied to long-term residents arrested in the interior of the country. In Zumba v. Bondi, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), the court held that DHS may not reclassify long-term interior residents as "applicants for admission" simply by charging inadmissibility grounds. These cases foreclose DHS's position here.

PROCEDURAL HISTORY

Petitioner entered the United States on or about February 2007, when he was only fourteen years old, as an unaccompanied minor. He fled his native country of Guatemala to [redacted] He was subjected to human trafficking and forced labor on his journey to the United States. He was arrested on July 22, 2025, and transferred to Delaney Hall Immigration Detention Facility in Newark, New Jersey. DHS issued a Notice to Appear on or about July 23, 2025, pursuant to 8 U.S.C. § 1229a . The NTA alleges that Petitioner is "a [noncitizen] present in the United States who has not been admitted or paroled." See ECF 5-1, Notice to Appear. DHS further charged Petitioner under two grounds of inadmissibility, as being "present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, §§212(a)(6)(A)(i) and 212(a)(7)(a)(i)(I), for having entered the United States without a suitable travel document. *See Id.*

DHS's filing of the NTA against Petitioner in this case initiated "full" removal proceedings in Immigration Court pursuant to 8 U.S.C. § 1229a-which vested jurisdiction with the Immigration Judge-and constituted "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3) (emphasis added). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), or full removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a." *Matter of Q. Li*, 29 I&N Dec 66, 68 (BIA 2025) (emphasis added).

Full removal proceedings and expedited removal proceedings are mutually exclusive. Moreover, the Government must concede that Petitioner is not in expedited removal proceedings, or ever was. While the Government submitted evidence, they failed to provide the warrant of arrest by which they detained Petitioner.

Nonetheless, Petitioner has proceeded with full removal proceedings, appeared at hearings with the Elizabeth Immigration Court before an Immigration Judge. Petitioner subsequently filed with the Elizabeth Immigration Court a request for custody redetermination, also known as a "bond request", pursuant to 8 C.F.R. § 1003.19(a) (2025) ("Custody and bond determinations made by [DHS]. .. may be reviewed by an Immigration Judge."). The Immigration Court summarily denied the Petitioner's request citing the recent holding in *Matter of Yajure-Hurtado,* 29 I&N 216 (BIA 2025). Relying on that decision, the Court determined that Mr. Fuentes-Velasquez was subject to mandatory detention under section 235(b)(2)(A) of the Immigration Nationality Act ("INA"), 8 U.S.C. § 1226.

This determination represents a significant departure from the long-standing interpretation recognized for more than two decades, that individuals charged under § 212(a)(6)(A)(i) are not subject to mandatory detention, but rather fall within the discretionary custody provisions of INA § 236(a). By adopting the reasoning in *Yajure-Hurtado*, the Immigration Court effectively eliminated access to custody redetermination hearings for a broad category of noncitizens who have never been deemed subject to mandatory detention under any prior authority. The Immigration Court further improperly conflated the detention framework applicable to "arriving aliens" seeking admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), with the post-entry custody provisions of INA § 236, 8 U.S.C. § 1226, thereby erroneously treating Mr. Fuentes-Velasquez, who was apprehended well inside the United States,

as if he were an arriving alien subject to mandatory detention rather than discretionary release under § 236(a).

Courts in this District have made clear that when DHS files an NTA and places a noncitizen into full § 240 removal proceedings, it is bound by the § 236(a) custody framework and cannot later rely on § 235(b)(2) to justify mandatory detention. See Zumba v. Bondi, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Valeriano v. Bondi*, No. 25-16100 (D.N.J. Oct. 1, 2025).

ARGUMENT

I. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE, 8 U.S.C. § 1225(b)(2)(A)

The Government argues that Petitioner is subject to mandatory detention under the expedited removal statute, 8 U.S.C. § 1225(b)(2)(A). That argument has no application here. 8 U.S.C. § 1225(b)(2)(A) governs noncitizens who are "applicants for admission, if the examining officer determines" the noncitizen seeking admission "is not clearly and beyond a doubt entitled to be admitted." Petitioner entered the United States in 2007, at the age of 14. Petitioner requested and was granted DACA status for years, and even after it lapsed, was never arrested or detained. Now, in 2025, after Respondent's policy change rendering significant portions of 8 U.S.C. 1226 meaningless, the Government wants to argue that Petitioner is now, 18 years later, seeking admission. When DHS encountered him, he had already lived in the United States for over 18 years. DHS chose to initiate full removal proceedings by issuing a Notice to Appear under 8 U.S.C. § 1229a, because they could not impose an expedited process. The checkbox on the NTA confirming that an asylum officer found credible fear is blank. This confirms that DHS did not initiate the statutory process that triggers § 1225(b)(1)'s mandatory-detention clause.

Full removal proceedings under § 1229a are mutually exclusive from expedited removal under § 1225. Congress expressly provided that proceedings under § 1229a "shall be the sole and exclusive procedure" for determining removability once DHS elects that pathway. 8 U.S.C. § 1229a(a)(3). Once DHS elected that statutory framework, § 236(a) governed custody.

Administrative guidance confirms this reading. In *Matter of M-S-*, the Attorney General explained that 8 U.S.C. § 1225 requires detention only for individuals originally placed in expedited removal and undergoing Credible Fear Interviews. 27 I&N Dec. 509, 512 (A.G. 2019). Individuals apprehended in the interior and issued NTAs are governed instead by §1226(a), under which DHS may detain or release the person on bond or parole. This distinction is reflected in DHS's own arrest practices. The record here shows that DHS processed Petitioner under § 1226(a) and recognized Immigration Judge custody jurisdiction, before reversing course based on subsequent BIA decisions.

The Government also argues that § 1225(b)(2)(A) applies because Petitioner is an "applicant for admission." § 1225(b)(2)(A) applies to individuals who are seeking admission at the time they encounter immigration officers, before DHS files an NTA. The statute itself makes this clear: it applies where an officer determines that "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." *Matter of M-S-*, 27 I. & N. Dec. 509 (emphasis added). That statutory language does not describe Petitioner. He was not seeking admission; he was living in the United States and was apprehended years after entry.

In *Bethancourt Soto*, the court explained that § 1225(b)(2) governs individuals encountered at or near the border, not long-term interior residents placed into full removal proceedings years after entry. *Bethancourt Soto v. Soto* (D.N.J. Oct. 22, 2025). These same courts have also rejected DHS's reliance on *Q. Li* and *Yajure-Hurtado* as a basis for mandatory

detention of interior arrests. *See Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), 2025 WL — (D.N.J. 2025) (rejecting DHS's reliance on § 1225(b)(2) for a noncitizen arrested in the interior); *Valeriano v. Bondi, No*. — (D.N.J. Oct. 1, 2025) (same).

In *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), the court held that when DHS initiates § 240 removal proceedings and processes a noncitizen under § 1226(a), it may not later rely on § 1225(b)(2) to justify mandatory detention. Id. at 8. The court explained that DHS's election to begin § 240 proceedings necessarily forecloses subsequent reliance on the expedited-removal detention framework. Similarly, in *Valeriano v. Bondi*, No. 25-16100 (D.N.J. Oct. 1, 2025), Judge Shipp held that DHS's initial decision to detain a noncitizen under § 1226(a) governs custody and that DHS may not later invoke § 1225(b)(2) after placing the individual into full removal proceedings. The court explained that DHS's statutory election carries legal consequences and forecloses later reliance on the expedited-removal detention framework.

Nothing about Petitioner's posture aligns with the statutory scheme of § 1225(b). He was not seeking admission at the port of entry. He was not placed in expedited removal. He was not referred for a Credible Fear Interview. He was arrested while he was already present in the United States, with the knowledge and approval of DHS, for more than 18 years. He was placed directly into § 240 proceedings, and DHS's own actions reflect an initial determination that § 1226(a), not § 1225(b), governed custody.

To the extent the Government relies on *Matter of Q. Li* to argue that § 1225(b)(2)(A) mandates detention even in full removal proceedings, the Court should decline to follow that interpretation. *Q. Li* expands the definition of "applicant for admission" beyond the statutory text and conflicts with the INA's structure, which limits § 1225 to initial encounters at the border.

Courts in this District have uniformly declined to defer to that interpretation, finding it inconsistent with the statute. S*ee Rivera Zumba, Valeriano*. This Court should do the same.

Accordingly, the mandatory-detention provision in § 1225(b) does not apply to Petitioner, and DHS's reliance on that statute provides no lawful authority for his continued detention.

II. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS

Noncitizens who have entered the United States are entitled to basic procedural protections, including notice and an opportunity to be heard. The Supreme Court has long held that noncitizens within the United States are entitled to procedural due process. *Yamataya v. Fisher*, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903); *Bridges v. Wixon*, 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). Our immigration laws distinguish between individuals seeking initial admission and those who have already entered the country. *Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). Noncitizens who are physically present in the United States "undeniably have due process rights." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 191, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

The Government argues that Petitioner lacks due process protections because he is an "applicant for admission." That assertion is inconsistent with the record. Petitioner is not an arriving alien. He was not encountered at the border, was not paroled, and had no parole revoked. Rather, DHS arrested him in New Jersey almost nineteen years after his initial entry, and immediately placed him in full removal proceedings under 8 U.S.C. § 1229a. Those proceedings are governed by 8 C.F.R. § 1003.12-1003.41 and § 1240.26. Individuals in § 240 proceedings are detained, if at all, under 8 U.S.C. § 1226(a). DHS treated Petitioner accordingly, and he remains in those proceedings today.

Although civil removal proceedings do not confer the "same bundle" of constitutional protections applicable in criminal trials, they do guarantee a full and fair hearing and meaningful procedural safeguards. *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). In *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), the First Circuit held that when a noncitizen is detained under § 1226(a) and a bond hearing is provided, due process requires the Government to bear the burden of justifying continued detention—clear and convincing evidence for dangerousness and a preponderance for flight risk.

Here, the Government attempts to categorize Petitioner as an "applicant for admission" by relying on *Matter of Q-Li* and *Matter of Yajure-Hurtado*. Those cases involved individuals processed as arriving aliens who had been conditionally paroled at or near the border. They do not apply to a person whom DHS arrested inside the United States and placed directly into § 240 proceedings long after entry. DHS cannot rewrite the factual posture of this case to retroactively impose the expedited-removal framework.

Petitioner is not in expedited removal, has never undergone a Credible Fear Interview, and is not subject to § 235(b). He is a long-term resident placed squarely in the statutory framework of § 236(a) and § 240. Thus, he is entitled to the due-process protections available in those proceedings, including meaningful consideration of release under § 236(a).

The Government further suggests that Petitioner's current lack of DACA protection renders him an applicant for admission. That is incorrect. The absence of deferred action does not convert a long-term interior resident into an arriving alien. District of New Jersey courts have rejected DHS's attempts to treat noncitizens without current protective status as if they were seeking admission at the border. See *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), No. — (D.N.J. 2025); *Bethancourt Soto v. Soto*, No. —

(D.N.J. 2025). Petitioner's lack of DACA protection has no bearing on whether § 1225(b) applies and cannot erase the nearly two decades that Petitioner lived in the United States before his arrest.

Accordingly, Petitioner, who remains in full § 240 removal proceedings, is entitled to the due-process protections afforded to individuals in those proceedings. DHS's effort to deny him those protections by mischaracterizing his statutory posture has no basis in fact or law.

To the extent the Government suggests that district court decisions in this Circuit rejecting the application of § 1225(b)(2) to long-term interior residents should yield to the BIA's recent precedential decisions in *Matter of Q-Li* and *Matter of Yajure-Hurtado*, that argument misstates both the law and the current judicial landscape. After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), courts—not agencies—exercise independent judgment in interpreting statutory meaning. Chevron deference no longer applies, and agencies are owed no special weight on pure questions of statutory construction.

Consistent with this framework, federal courts evaluating the same issue have declined to follow *Q-Li* and *Yajure-Hurtado* and have held that § 1225(b)(2) does not govern the detention of noncitizens arrested in the interior. See *Hyppolite v. Noem*, Slip Op. (E.D.N.Y. 2025); *Placido Romero Perez v. Francis*, Slip Op. (S.D.N.Y. 2025); *Rueda Torres v. Francis*, Slip Op. (S.D.N.Y. 2025); *J.U. v. Maldonado*, Slip Op. (E.D.N.Y. 2025); *Artiga v. Genalo*, Slip Op. (E.D.N.Y. 2025). Although these decisions arise outside the Third Circuit, they apply the same statutory text and post-*Loper Bright* interpretive principles and reinforce the growing national consensus that *Q-Li* and *Yajure-Hurtado* cannot be read to impose mandatory detention on long-term residents who were never processed as applicants for admission. Courts across jurisdictions have recognized that DHS's treatment of an individual under § 236(a) and § 240 forecloses later

reliance on § 235(b)(2). These decisions mirror the conclusions reached by courts in this District, including *Rivera Zumba* and *Bethancourt Soto*, and confirm that § 1225(b)(2) does not apply to Petitioner's interior arrest and ongoing § 240 proceedings.

III. DHS WAIVED THE ABILITY TO DETAIN UNDER § 1225(B)(2) AND DETENTION IS ULTRA VIRES

The Government's position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) fails for an additional, independent reason: DHS waived any ability to rely on § 1225(b)(2) when it chose to process Petitioner under § 1226(a) and place him in full removal proceedings pursuant to 8 U.S.C. § 1229a. The record demonstrates that DHS (1) issued and filed a Notice to Appear initiating § 240 removal proceedings, and (2) processed him through the custody framework of § 1226(a) by acknowledging Immigration Judge jurisdiction over custody. *See* Notice to Appear. Notably, DHS did not issue the required record of arrest identifying § 1225(b)(2) as the authority for detention, further undermining its belated reliance on that provision.

A. *DHS's invocation of § 1226(a) forecloses reliance on § 1225(b)(2)*

This Court has consistently rejected DHS's recent attempt to retroactively transform § 1226(a) cases into § 1225(b)(2) "applicant-for-admission" cases. In *Rivera Zumba v. Bondi,* No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), the court held that DHS may not reclassify long-term interior residents as "applicants for admission" simply by choosing inadmissibility charges. Similarly, in *Bethancourt Soto v. Soto* (D.N.J. Oct. 22, 2025), Judge Shipp rejected DHS's reliance on § 1225(b)(2) and ordered the petitioner's immediate release. These cases foreclose DHS's position here.

Similarly, in *Valeriano v. Bondi*, No. 25-16100 (D.N.J. Oct. 1, 2025), Judge Shipp held that DHS "is bound by its initial custody designation under § 1226(a)" and cannot invoke § 1225(b)(2) after placing a respondent into full removal proceedings. The court explained that DHS's statutory election "has legal consequences" and forecloses mandatory-detention arguments premised on § 1225.

B. *The 1997 regulation confirms that DHS waived § 1225(b)(2) for interior arrests*

The regulations held in the Detention and Removal of Aliens explicitly provide that individuals who entered without inspection are eligible for bond and IJ redetermination. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. DHS cannot ignore this regulation. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954). Because Petitioner is an interior EWI arrest, DHS is legally required to treat him under § 236(a).

C. DHS's failure to issue a Form I-220A or I-286 further proves that § 1225(b)(2) never applied

DHS has not produced a Form I-220A Record of Custody or any contemporaneous custody advisal identifying § 1225(b)(2) as the statutory basis for detention. The regulations mandate issuance of such documentation. 8 C.F.R. § 236.1(b), 287.3(a). Failure to comply with these mandatory procedural requirements renders custody unlawful and ultra vires. See Matter of Garcia, 17 I. & N. Dec. 319 (BIA 1980). The New Jersey District Courts have treated this

omission as further evidence that DHS is retroactively attempting to impose § 1225(b)(2) detention where it never applied. See *Bethancourt Soto v. Soto* (D.N.J. Oct. 22, 2025).

D. *Because DHS selected the wrong statutory authority, detention is unlawful and must end*

In both *Rivera Zumba* and *Soto*, the courts distinguished between prolonged detention and detention that is unauthorized by statute, finding that a bond hearing is the proper remedy for prolonged detention, whereas detention based on the wrong statutory authority requires immediate release. See *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *12 (D.N.J. Sept. 26, 2025).

Because DHS initiated § 240 proceedings, processed Petitioner under § 236(a), waived reliance on § 1225(b)(2), and violated mandatory regulatory procedures, Petitioner's continued detention is statutorily unauthorized and must end.

IV. THE APPROPRIATE REMEDY IS RELEASE, NOT A BOND HEARING

Here, the Petitioner is not challenging prolonged mandatory detention; he is alleging that he is detained in violation of due process rights and the unlawful use of statutory authority to detain him. *See* e.g., *M.S.L. v. Bostock,* No. 6:25-cv- 01204, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025). To the extent the Government references Petitioner's pending criminal charges of obstructing the administration of law, hindering oneself, and operating a motor vehicle during license suspension, do not change the statutory authority under which Respondents are detaining him. Respondents cannot have it both ways. It affirmatively chose to detain Petitioner under § 225(b) as a "mandatory" detainee, a framework that deliberately

excludes consideration of his positive equities, family ties, community support, and rehabilitation. Having invoked § 1225(b) to avoid any individualized custody assessment, the Government cannot now selectively invoke alleged negative equities to justify his continued detention. Those allegations do not change the statutory authority under which he is detained—he remains held under § 1225(b)—and if the Government wishes to rely on discretionary factors, it must acknowledge that the proper statutory scheme is INA § 1226(a), where all equities, both positive and negative, must be weighed. Now that Petitioner is seeking to claim his detention unlawful, Respondents desire an opportunity to have a bond hearing. To this, Petitioner would request that if the Court is inclined to have a bond hearing, that the government bear the burden of showing danger and flight risk.

Moreover, the pending charges remain unresolved ultimately because Petitioner has been detained by ICE, which has prevented him from appearing at the local court to address or dispose of them. Moreover, none of the alleged offenses fall within the Laken Riley Act or any statute that imposes mandatory immigration detention. These are not violent or enumerated offenses, and they do not trigger any mandatory-custody provision. Accordingly, Petitioner's criminal history provides no basis for DHS's reliance on §1225(b)(2), nor does it cure DHS's lack of statutory authority to detain him in the first place.

The Government argues that even if Petitioner prevails, the sole remedy would be a bond hearing. This is incorrect. Third Circuit precedent distinguishes between two categories of detention challenges. Indeed, where DHS relies on the wrong statute to detain, the proper remedy is immediate release, not a bond hearing. *Rivera Zumba*; *Bethancourt Soto*; *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025). By contrast, where detention

is authorized but prolonged, courts order bond hearings. See *Diop*; *Chavez-Alvarez*; *German Santos*. Here, the Petitioner is not challenging prolonged mandatory detention, he is challenging, instead, the unlawful use of statutory authority to detain him.

Petitioner was arrested inside the United States, not at the border. DHS initiated full removal proceedings under § 240, thereby invoking the custody framework of § 1226(a); DHS never issued the required I-220A or I-286 advising him of custody authority under § 225(b); and DHS itself processed him as a § 1226(a) detainee until retroactively altering its position only after *Yajure-Hurtado*. Under the consistent jurisprudence of this District, DHS cannot rewrite these facts to manufacture mandatory detention. Because § 1225(b)(2) simply never applied to Petitioner, DHS lacks any lawful statutory authority to detain him, and a bond hearing would serve no legal purpose. There is no statute authorizing his custody at all.

To the extent the Government suggests that Petitioner is an 'applicant for admission' because he does not presently hold DACA protection, this argument fails as a matter of law. The absence of deferred action does not convert a long-term interior resident into an arriving alien. Courts in this District have expressly rejected DHS's recent attempts to treat individuals without lawful status as if they were seeking initial admission at the border. See *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *5–7 (D.N.J. Sept. 26, 2025); *Bethancourt Soto* (D.N.J. Oct. 22, 2025). Whether Petitioner currently possesses deferred action is irrelevant to the dispositive statutory question: DHS elected to place him in § 240 proceedings, thereby binding itself to the § 1226(a) custody framework.

Accordingly, just as in *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), *Bethancourt Soto*, and *Valeriano*, this Court must order immediate

release, not a bond hearing. A bond hearing is a remedy for prolonged but authorized custody, not for custody that is unlawful from the outset. Because Petitioner's detention is ultra vires, it must end.

CONCLUSION

For the reasons described above, Petitioner's Petition should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to his statutory eligibility for release.

Respectfully Submitted,

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