UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FELIPE HERNANDEZ-LAZO, Petitioner-Plaintiff, v. KRISTI NOEM, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, PAMELA BONDI, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, JOSEPH B. EDLOW, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, and CARMEN NUNEZ, SUPERVISOR, USCIS LONG ISLAND, NEW YORK FIELD OFFICE, Defendants-Respondents.	Civil Action No. 2:25-cv-06639-NJC PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

REPLY TO GOVERNMENT'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE AND OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

TABLE OF CONTENTS

PRELIMINARY STATEMENT 5

ARGUMENT 7

I. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE, 8 U.S.C. § 1225(b)(2)(A) 7

II. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS 12

III. RESPONDENTS' RELIANCE ON MALDONADO BAUTISTA V. SANTACRUZ IS MISPLACED AND DOES NOT CONTROL THIS CASE 15

IV. DHS WAIVED THE ABILITY TO DETAIN UNDER § 1225(B)(2) AND DETENTION IS ULTRA VIRES 16

A. ***DHS's invocation of § 1226(a) forecloses reliance on § 1225(b)(2)*** 16

B. ***The 1997 regulation confirms that DHS waived § 1225(b)(2) for interior arrests*** 17

C. DHS's failure to issue a Form I-220A or I-286 further proves that § 1225(b)(2) never applied 17

D. ***Because DHS selected the wrong statutory authority, detention is unlawful and must end*** 18

V. NATIONAL TPS ALLIANCE DOES NOT TRANSFORM PETITIONER INTO AN ARRIVING ALIEN NOR SUPPLY DHS WITH § 1225(B)(2) AUTHORITY 18

VI. THE APPROPRIATE REMEDY IS RELEASE, NOT A BOND HEARING 19

CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

Cases

Artiga v. Genalo,
No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) 10, 19
Bridges v. Wixon,
326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945) 14
Credible Fear Interviews.,
27 I&N Dec. 509 (A.G. 2019) 9, 10
Dep't of Homeland Sec. v. Thuraissigiam,
591 U.S. 103, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020) 14
Heredia v. Shanahan,
245 F. Supp. 3d 521 (E.D.N.Y. 2017) 11, 15
Hyppolite v. Noem,
No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) 10
J.); *Guerrero v. Noem*,
No. 25-cv-5881, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025) 10, 13, 18, 19
J.U. v. Maldonado,
No. 25-cv-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) 10
Leng May Ma v. Barber,
357 U.S. 185, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958) 14
Matter of Garcia,
17 I. & N. Dec. 319 (BIA 1980) 18
Matter of Q. Li,
29 I&N Dec 66 (BIA 2025) 7
Matter of Yajure-Hurtado,
29 I&N 216 (BIA 2025) 7
National TPS Alliance v. Noem,
No. 25-cv-5687, 2025 WL 2233985 (N.D. Cal. July 31, 2025) 21
Perez v. Decker,
2019 WL 1429554 (E.D.N.Y. Mar. 29, 2019) 11, 15
Rodriguez-Acurio v. Almodovar,
No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) ..... Passim
Yamataya v. Fisher,
189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903) 14
Ye v. Maldonado,
No. 25-CV-6417 (AMD), 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) ..... Passim
Zumba v. Bondi,
No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025) 6, 8, 12

Statutes

8 U.S.C. § 1225 ..... Passim
8 U.S.C. § 1225(b)(1) 7, 9
8 U.S.C. § 1226 ..... 7, 8, 9
8 U.S.C. § 1229a ..... Passim
8 U.S.C. § 1229a(a)(3) 6, 9
28 U.S.C. § 2241 1
§1226(a) 9, 12, 13
§ 1225(b) 13, 20

Rules

Rule 5(e) of the Federal Rules 5

Regulations

8 C.F.R. § 1003.19(a) (2025) 7
8 C.F.R. §§ 236.1(b), 287.3(a) 18
Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,
62 Fed. Reg. 10312 (Feb. 28, 1997) 17

PRELIMINARY STATEMENT

Petitioner, FELIPE HERNANDEZ-LAZO ("Mr. Lazo"), 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.

Petitioner has lived in the United States for nearly twenty-four years under TPS and deferred action. DHS did not place him in expedited removal. Instead, it elected to initiate full removal proceedings under § 240 by issuing a Notice to Appear. Under this Court's reasoning in *Rodriguez-Acurio*, DHS's election of § 240 proceedings places Petitioner within the § 236(a) custody framework.

PROCEDURAL HISTORY

Petitioner entered the United States on or about 1997, when he was 31 years old. He fled his native country of Honduras due to widespread violence, rampant criminal activity, and fear for his life. He was arrested on December 1, 2025, and transferred to Delaney Hall Immigration Detention Facility in Newark, New Jersey. In their response, the government argues that DHS issued a Notice to Appear on or about December 1, 2025 pursuant to 8 U.S.C. § 1229a (*See* Resp'ts. Opp. at p. 11). The authority cited by the government to detain the Petitioner was under § 212(a)(6)(A)(i) and (a)(7)(A)(i)(I). DHS charged Petitioner 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.

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. The Government has not submitted any evidence other than contentions that an NTA was served on the Respondent under §1229a. Moreover, Respondents have not produced the warrant of arrest by which they detained Petitioner.

Indeed, the Declaration of Tony Petito, an ICE Supervisory Deportation Officer indicates that Petitioner is slated to appear before an immigration judge on December 13, 2025. However, as of counsel's last review of the EOIR automated system, no such hearing date appeared (*See* **Exhibit "A"**). Even if Petitioner were scheduled to appear before an Immigration Judge, bond hearings are unavailable because DHS asserts that § 1225(b)(2) applies, and Immigration Judges lack jurisdiction to redetermine custody where DHS designates an individual as subject to § 1225(b)(2). *See Matter of Yajure-Hurtado*, 29 I&N 216 (BIA 2025).

The holding in *Yajure Hurtado* 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 Petitioner, 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).

This Court has previously 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 Rodriguez-Acurio v. Almodovar*, 25-cv-6065, 2025 E.D.N.Y. Nov. 25, 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 1997. Petitioner applied for and was granted TPS status since 1999. Now, in 2025, after twenty-four years in which Petitioner has been lawfully present in the United States under TPS and deferred action, and after Respondents' recent policy shift in how they invoke § 1225(b)(2), the Government now argues that Petitioner is, for the first time, an applicant for admission. 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. Respondents have not produced the NTA discussed in the Petito Declaration, so there is no evidence in the record that an asylum officer initiated or completed any credible-fear process. Moreover, Respondents' opposition does not contend that any such process occurred. On this record, there is no indication that DHS initiated the statutory procedures that trigger § 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) (abrogated in part on other grounds). 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 Government's response here confirms that DHS processed Petitioner under § 1226(a) and recognized Immigration Judge custody jurisdiction, before reversing course based on subsequent BIA decisions. Even the Attorney General recognized in *M-S-* that § 1225 applies to individuals in expedited removal who undergo credible-fear review. That is not Petitioner's posture.

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 at a port of entry; he was living in the United States and was apprehended twenty-four years after residing in the United States and appearing for a bona fide adjustment-of-status interview based on his approved family petition.

Courts in this District have now repeatedly reaffirmed that § 1225(b)(2) cannot be used to mandate detention of long-term interior residents placed into § 240 proceedings. *See Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.); *O.F.B. v. Maldonado*, ___ F. Supp. 3d ___, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.); *Guerrero v. Noem*, No. 25-cv-5881, 2025 WL 3214787, at *3–6 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765, at *7–8 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434, at *7–8 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.). These decisions form a consistent and uniform body of law within this District that: § 1225(b)(2) does not authorize mandatory detention for individuals, like Petitioner, who were arrested in the interior and placed directly into § 240 proceedings.

The Eastern District of New York has held that § 1225(b)(2) does not apply to long-term interior residents placed into full removal proceedings long after their entry. *See Heredia v. Shanahan*, 245 F. Supp. 3d 521, 526–28 (E.D.N.Y. 2017) (rejecting government's attempt to rely on § 1225 where petitioner "lived for years in the United States before DHS commenced § 240

proceedings"). Once DHS serves an NTA, detention is governed by § 236(a), which provides for a bond hearing. *See also Perez v. Decker*, 2019 WL 1429554, at *6 (E.D.N.Y. Mar. 29, 2019).

This Court has already rejected the Government's statutory theory. In *Rodriguez-Acurio v. Almodovar*, No. 25-cv-6065 (E.D.N.Y. Nov. 28, 2025), Judge Choudhury held that § 1225(b)(2) does not apply to long-term residents who are apprehended in the interior and placed into § 240 proceedings years after their entry. The Court explained that § 1225(b)(2) is a detention framework designed for individuals encountered at or near the moment of arrival, unlike the Petitioner, who has lived in the United States for decades, maintained continuous presence with DHS's knowledge, and was placed directly into full removal proceedings. Judge Choudhury further made clear that DHS cannot retroactively reclassify such individuals as "arriving aliens" simply by invoking inadmissibility charges or citing *Yajure-Hurtado*. Here, just as in *Rodriguez-Acurio*, Petitioner's arrest in the interior and DHS's election to proceed under § 240 foreclose reliance on § 1225(b)(2) as a matter of law.

Respondents' reliance on *Matter of Yajure-Hurtado* is misplaced. That case involved an individual processed as an arriving alien at or near the border, not a noncitizen whom DHS arrested nearly three decades after entry and placed directly into § 240 proceedings. Nothing in *Yajure-Hurtado* addresses interior arrests, DHS's statutory election under § 236(a), or the constitutional limits this Court identified in *Rodriguez-Acurio*. To extend *Yajure-Hurtado* to Petitioner's posture would contradict both the INA's structure and this Court's own precedent. Courts in other Districts 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.

Q-Li concerned a true recent entrant processed as an arriving alien. Here, DHS arrested Petitioner inside the United States decades after his entry and initiated § 240 proceedings, which forecloses reliance on the arriving-alien detention framework. *Q-Li* does not authorize DHS to rewrite the statutory posture after the fact, nor does it apply to long-term interior residents such as Petitioner.

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 at a bona fide adjustment of status interview, with the knowledge and approval of DHS, for more than twenty-four years. He was placed directly into § 240 proceedings, and

DHS's own actions reflect an initial determination that § 1226(a), not § 1225(b), governs 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. See *Ye v. Maldonado*, 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *5–6 (E.D.N.Y. Nov. 28, 2025); *O.F.B. v. Maldonado*, 2025 WL 3277677, at *8–10 (E.D.N.Y. Nov. 25, 2025); *Guerrero v. Noem*, 2025 WL 3214787, at *3–6 (E.D.N.Y. Nov. 18, 2025). 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's suggestion that the lapse of Petitioner's TPS converts him into an "applicant for admission" subject to § 1225(b)(2) is unsupported by the record and the law. Nor does the end of a temporary protective status strip a decades-long interior resident of constitutional protections.[1] TPS termination does not alter whether an individual has effected an entry, and it has no bearing on admission classification under the INA. Respondents' reliance on *Kaplan v. Tod* and similar exclusion-era "entry fiction" cases—which held that individuals detained at the border or paroled directly from the port of entry lacked additional rights—is misplaced. Similarly, Respondents' reliance on *Thuraissigiam*, *Mezei*, *Mendez Ramirez*, *Salim*, and *Poonjani* does not advance their position. Each of those cases involved individuals apprehended at or near the border and treated as seeking admission.

Courts in this District have repeatedly held that DHS may not invoke border-processing doctrines to limit the due-process rights of long-term interior residents placed into § 240 proceedings. See *Heredia v. Shanahan*, 245 F. Supp. 3d 521, 526–28 (E.D.N.Y. 2017); *Perez v. Decker*, 2019 WL 1429554, at *6 (E.D.N.Y. Mar. 29, 2019). As this Court recently explained in *Rodriguez-Acurio v. Almodovar*, DHS cannot treat a long-settled interior resident as if he were stopped at the border for purposes of applying § 1225(b)(2) or restricting constitutional protections. Because Petitioner long ago effected an entry, he is entitled to the full due-process safeguards that attach to detention under § 236(a), including an individualized custody determination.

---

[1] Respondents also cite a purported "Declaration of Kubicz," but no such declaration exists in the record of this case. The only declaration submitted by Respondents is the Petito Declaration (ECF No. 13-1). Any argument premised on statements attributed to a non-existent declarant is unsupported and should be disregarded.

These same EDNY decisions foreclose DHS's renewed effort to rely on *Matter of Q-Li* and *Matter of Yajure-Hurtado*. Those cases concerned individuals processed as arriving aliens or paroled at or near the border. They do not apply to a person whom DHS arrested inside the United States decades after entry and placed directly into § 240 proceedings. 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 has never been processed under § 235(b). He is—and always has been—in the statutory posture of § 236(a) and § 240.

Multiple courts in this District have reaffirmed that once DHS initiates § 240 proceedings against long-term residents, the Government may not retroactively impose the more restrictive procedural regime reserved for individuals encountered at or near the border. See *Ye v. Maldonado*, 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio*, 2025 WL 3314420, at *7–9; *O.F.B. v. Maldonado*, 2025 WL 3277677, at *8–10 (E.D.N.Y. Nov. 25, 2025).

The Government further suggests that Petitioner's current lack of TPS renders him an "applicant for admission." That is incorrect. The absence of deferred action does not retroactively transform a long-term interior resident into an arriving alien. This Court rejected the same theory in *Rodriguez-Acurio*, holding that DHS cannot stretch the entry fiction to deny due-process protections to individuals who have lived in the United States for years and who are indisputably entitled to the safeguards afforded under § 236(a). Petitioner's facts fall squarely within that reasoning: he has lived here for nearly three decades, was apprehended at a scheduled USCIS interview—not at a port of entry—and was immediately placed into § 240 proceedings.

Cases addressing detention during expedited removal have no application here because DHS never placed Petitioner in expedited removal, never referred him for a credible-fear

interview, and instead exercised its statutory discretion to initiate § 240 proceedings. Accordingly, Petitioner is entitled to the due-process protections that attach to individuals in § 240 proceedings, and DHS's attempt to deny him those protections by mischaracterizing his statutory posture has no basis in law or fact.

III. RESPONDENTS' RELIANCE ON MALDONADO BAUTISTA V. SANTACRUZ IS MISPLACED AND DOES NOT CONTROL THIS CASE

Respondents' reliance on *Maldonado Bautista v. Santacruz* is misplaced. That case addressed a very different statutory posture: individuals who had been treated by DHS as arriving aliens and processed under § 235(b)(2) at or near the border. Nothing in *Maldonado Bautista* authorizes DHS to retroactively impose § 1225(b)(2) mandatory detention on long-settled interior residents whom DHS arrested inside the United States and placed directly into § 240 proceedings.

Petitioner's circumstances are the opposite of those in *Maldonado Bautista*. Petitioner's posture is the opposite. He is a long-time interior resident placed directly into § 240 proceedings. Under the consistent jurisprudence of this District—including *Rodriguez-Acurio*, *Ye*, *O.F.B.*, *Guerrero*, and *Artiga*—that statutory election forecloses DHS's belated attempt to invoke § 1225(b)(2).

Moreover, *Maldonado Bautista* did not hold that long-term interior residents lose due-process protections or may be reclassified as applicants for admission years after their entry. To the contrary, EDNY courts have made clear that *Maldonado Bautista*—a border-processing case—has no application to interior arrests of long-settled residents. See *Rodriguez-Acurio*, 2025 WL 3314420, at *6–9* (rejecting DHS's reliance on *Maldonado Bautista* in precisely this context).

Respondents' argument would require this Court to extend *Maldonado Bautista* far beyond its facts and contrary to its reasoning. Nothing in that decision authorizes DHS to rewrite decades of lawful presence or to override § 236(a) after DHS has already invoked it. Petitioner's statutory posture is governed entirely by § 236(a), and *Maldonado Bautista* does not alter that conclusion.

IV. 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.

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

Critically, the Petito Declaration does not assert that DHS invoked § 1225(b)(2) at the time of arrest or that Petitioner was ever classified as an arriving alien. Its silence on any expedited-removal processing confirms that DHS itself did not view Petitioner as subject to the § 1225(b)(2) detention framework. This Court has consistently rejected DHS's recent attempt to retroactively transform § 1226(a) cases into § 1225(b)(2) "applicant-for-admission" cases. In *Ye, Rodriguez-Acurio, O.F.B., Guerrero, J.U.*, and *Artiga*, judges across the Eastern District of New

York held that DHS's decision to place a noncitizen into § 240 proceedings constitutes a binding statutory election that forecloses later reliance on § 1225(b)(2).

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

The 1997 regulations governing Detention and Removal expressly state that noncitizens who entered without inspection are eligible for bond and Immigration Judge custody review. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Feb. 28, 1997). Under *Accardi*, DHS must follow its own binding regulations. Because Petitioner is an interior EWI arrest, DHS was required to treat him under § 236(a).

The Petito Declaration further confirms this point. It describes only § 240 processing and Immigration Judge review. These procedures are available exclusively under § 236(a). DHS's own documentation thus reflects an understanding that Petitioner fell within the § 236(a) custody framework, not the expedited-removal regime of § 1225(b)(2).

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 or Form I-286 identifying § 1225(b)(2) as the statutory basis for custody. The regulations mandate issuance of such documentation when DHS asserts custodial authority. 8 C.F.R. §§ 236.1(b), 287.3(a). Failure to comply with these mandatory procedural requirements renders detention ultra vires. See, e.g., *Matter of Garcia*, 17 I. & N. Dec. 319 (BIA 1980) (recognizing that DHS must adhere to its own custody regulations). Courts have treated this omission as further evidence that DHS is retroactively attempting to invoke § 1225(b)(2) where it never applied.

Taken together, DHS's failure to issue a Form I-220A or I-286 and the Petito Declaration's complete absence of any reference to § 1225(b)(2) confirm that DHS never invoked that statute at the time of arrest and therefore waived reliance on it. DHS's post-hoc attempt to reclassify Petitioner cannot cure this fundamental statutory defect.

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

This Court has repeatedly recognized that where DHS detains a noncitizen under the wrong statutory provision, continued custody is *ultra vires* and cannot stand. In *Rodriguez-Acurio v. Almodovar*, *Ye v. Maldonado*, *O.F.B. v. Maldonado*, *Guerrero v. Noem*, and *Artiga v. Genalo*, courts in this District held that once DHS elects to initiate § 240 proceedings and process an individual under § 236(a), the agency may not later invoke § 1225(b)(2) to justify continued detention. Detention imposed under an inapplicable statute is unlawful regardless of duration.

Here, DHS initiated full § 240 proceedings, processed Petitioner under § 236(a), and never invoked § 1225(b)(2) at the time of arrest. DHS cannot now retroactively reclassify Petitioner as an arriving alien to manufacture mandatory detention. Because DHS selected the wrong statutory authority, Petitioner's continued detention lacks any lawful basis and must end.

V. NATIONAL TPS ALLIANCE DOES NOT TRANSFORM PETITIONER INTO AN ARRIVING ALIEN NOR SUPPLY DHS WITH § 1225(B)(2) AUTHORITY

The Court has requested briefing regarding the relevance of *National TPS Alliance v. Noem*, No. 25-cv-5687, 2025 WL 2233985 (N.D. Cal. July 31, 2025), which postponed the termination of TPS for Honduras. That decision has no bearing on the dispositive statutory question before this Court. TPS designations affect work authorization and removal protection;

they do not alter whether a person has effected an entry, change an interior arrest into a border encounter, or modify the statutory custody framework.

Nothing in *National TPS Alliance* suggests that the continuation or lapse of TPS alters an individual's statutory custody posture, changes the definition of "arriving alien," or revives border-processing authority for long-settled interior residents. As this Court recognized in *Rodriguez-Acurio*, DHS cannot treat a decades-long resident arrested at a USCIS office as if he were stopped at the border, regardless of interim changes to TPS designations.

To the extent Respondents imply that Petitioner's TPS status affects statutory custody authority, that argument fails. The INA does not condition § 236(a) eligibility on TPS, and nothing in § 1225(b)(2) authorizes DHS to reclassify long-term interior residents based on the presence or absence of TPS. Accordingly, *National TPS Alliance* has no relevance to whether DHS may lawfully detain Petitioner under § 1225(b)(2) — it may not.

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

Because Petitioner challenges the legal authority under which he is detained—not a discretionary custody judgment—habeas jurisdiction is proper under 28 U.S.C. § 2241. See *Jennings v. Rodriguez*, 583 U.S. 830, 838–39 (2018) (courts retain jurisdiction to review statutory challenges to immigration detention).

Although the Government does not meaningfully address the appropriate remedy, its reasoning implies that even if § 1225(b)(2) were misapplied, the only relief available would be a bond hearing. That is incorrect. Courts distinguish between detention that is *authorized* but prolonged—where a bond hearing may be appropriate—and detention that is *unauthorized from*

the outset because DHS invoked the wrong statute. In the latter scenario, the remedy is immediate release, not a bond hearing. This District has repeatedly recognized that detention under the wrong statutory authority is *ultra vires*. See *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Ye v. Maldonado*, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025); *O.F.B. v. Maldonado*, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025); *Guerrero v. Noem*, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

For the same reasons already discussed, Petitioner was never within the § 1225(b)(2) framework. Because DHS never invoked that statute, there is no lawful basis for continued detention, and a bond hearing would serve no function. DHS initiated full removal proceedings under § 240, thereby invoking the custody framework of § 236(a). DHS never placed him in expedited removal, never issued any custody advisal identifying § 1225(b)(2), and processed him as a § 236(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. If § 1225(b)(2) never applied—and it did not—then DHS lacks any statutory authority to detain Petitioner. A bond hearing would serve no function because there is no lawful statute authorizing his custody at all.

To the extent the Government suggests that Petitioner is an "applicant for admission" simply because he no longer holds TPS, that argument fails as a matter of law. The absence of deferred action does not convert a long-term interior resident into an arriving alien. This conclusion is fully consistent with this Court's due-process analysis in *Rodriguez-Acurio*. There, the Court rejected DHS's effort to extend the entry fiction to individuals who had lived in the

United States for years and were apprehended well inside the interior. The Court held that such individuals cannot be treated as arriving aliens for purposes of § 1225(b), and that custody must proceed under § 236(a). Petitioner's circumstances mirror those in *Rodriguez-Acurio*: he was apprehended in Long Island after nearly twenty-five years of residence, was never placed in expedited removal, and was immediately placed into § 240 proceedings. Under this Court's reasoning, DHS cannot deny Petitioner the procedural protections that accompany custody under § 236(a).

Courts in this District have expressly rejected DHS's recent attempts to treat long-settled interior residents as if they were seeking initial admission at the border. See *Rodriguez-Acurio*; *Ye*; *O.F.B.*; *Guerrero*; *Artiga*. Whether Petitioner currently possesses TPS or any other form of deferred action is irrelevant to the dispositive statutory question: DHS elected to place him in § 240 proceedings, binding itself to the § 236(a) custody framework.

Accordingly, as in *Rodriguez-Acurio*, *O.F.B.*, *Guerrero*, and *Artiga*, the proper remedy here is immediate release. A bond hearing is a remedy for prolonged but statutorily authorized custody—not for detention 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 because no statute authorizes his continued detention.

Dated: White Plains, New York

December 11, 2025

Respectfully Submitted,

By: /s/ Andrea C. Soto

SOTO LAW, PLLC
Attorney for the Petitioner
445 Hamilton Avenue, Suite 407
White Plains, New York 10601
Tel.: 914-290-4900 / E.: asoto@andreasotolaw.com