Joshua R. Stickell, Esq. (NY SBN # 6254437)
Rivera Julka Law Group, PC
17 W. Main Street,
Bay Shore, New York 11706
(631) 647-9040
joshua@riverajulka.com
Counsel for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ULLOA MONTOYA, Angel Maternidad, Petitioner, v. PAMELA BONDI, in her official capacity as Attorney General; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; RAUL MALDONADO, in his official capacity as Warden of the Brooklyn Metropolitan Detention Center; TODD LYONS, in his official capacity as Acting ICE Field Office Director; JUDITH ALMODOVAR, in her official capacity as Acting Field Office of the New York Office of U.S. Immigration and Customs Enforcement, Respondents.

Civil Action No.
25-cv-6363 (JMA)

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE REGARDING A TRO AND PRELIMINARY JUNCTION AND IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

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ARGUMENTS

I. Text, Structure, and *Jennings* Confirm the Detention Scheme: § 1226 Applies to Non-Arriving Respondents Already in the Country; Respondents' "Perpetual Applicant" Theory Would Make § 1226 Superfluous.

a. Respondents' premise that § 1225 controls any never-admitted noncitizen ignores the basic Jennings framework: § 1226 is the default for non-arriving respondents in § 1229 proceedings

Respondents' main argument is that because Petitioner has never been "admitted," he must be considered an "applicant for admission" detained under § 1225(b)(2), and that this status applies "for purposes of this chapter" regardless of where, when, or how he was arrested. According to this view, § 1226(a) simply does not apply to any noncitizen charged under § 1182.

That premise cannot be reconciled with the statute or *Jennings*. Congress created two distinct pre-final-order detention schemes. § 1225 governs inspection-stage processing and detention for "applicants for admission," while § 1226 serves as the default detention authority for individuals already in the United States who are detained "pending a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a). The Supreme Court expressly confirmed this basic division: "U.S. immigration law authorized the Government to *detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)* … [and] to *detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)*." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). *Jennings* further described § 1226 as the "default rule" for "aliens already present in the country." *Id.* at 303.

Respondents' reading, which treats any never-admitted person as always being a § 1225(b)(2) detainee, cannot be squared with that structure and would strip § 1226 of the role *Jennings* assigns to it. Statutes must be interpreted to "give effect, if possible, to every clause and

word of a statute," not in a way that nullifies one scheme in favor of another. *United States v. Menasche*, 348 U.S. 528, 538–39 (1955).

The Second Circuit has likewise treated § 1226—not § 1225—as the operative authority for noncitizens already in the United States in § 1229 proceedings. It has described § 1226 as the discretionary detention framework "pending removal proceedings," and has held that prolonged detention under this section triggers heightened due process protections and a hearing at which the Government must justify continued confinement. *Velasco Lopez v. Decker*, 978 F.3d 842, 848, 851–57 (2d Cir. 2020). *See also Hechavarria v. Sessions*, 891 F.3d 49, 57 (2d Cir. 2018) ("Broadly speaking, section 1226 governs the detention of immigrants who are not immediately deportable"). Respondents' attempt to recast Petitioner's detention as purely § 1225(b)(2) detention overlooks this established framework.

b. Respondents' reliance on § 1225(a)(1)'s deeming clause to encompass all interior arrests misinterprets the provision and creates a structural conflict with § 1226.

Respondents rely heavily on § 1225(a)(1), which states that "an alien present in the United States who has not been admitted… shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). They contend that this "for purposes of this chapter" language means any noncitizen who has not been admitted must be treated as an "applicant for admission" for detention purposes and thus falls under § 1225(b)(2), even when they are arrested in the interior long after entry and placed into standard § 1229 removal proceedings.

That reading strips the deeming clause of its context. In the same chapter, Congress established a separate detention scheme for individuals in § 1229 proceedings, providing bond and IJ custody review under § 1226(a) "pending a decision on whether the alien is to be removed." *Jennings*, 583 U.S. at 288. *Jennings* then drew a clear distinction: § 1226 applies to "aliens already

present in the country" during removal proceedings; § 1225 pertains to "certain aliens seeking admission" at or near the border at the initial stage. *Id.* at 289, 303.

Under Respondents' interpretation, § 1225(a)(1) silently supersedes that structure. Any individual who has not been admitted, regardless of how long they have resided in the interior or how clearly they meet the description in § 1226, would be automatically and permanently detained under § 1225(b)(2). This interpretation would render § 1226(a)'s bond framework meaningless for the very population *Jennings* and the Second Circuit identify as detained under § 1226: respondents who have already entered the country and are in § 1229 proceedings. *See Jennings*, 583 U.S. at 288–89, 303; *Velasco Lopez*, 978 F.3d at 845, 851–57.

That is precisely the kind of superfluous reading that courts are supposed to avoid. Statutes must be interpreted "as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into a harmonious whole," not in a way that allows one clause to swallow an entire adjacent framework. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). Interpreting § 1225(a)(1) to override § 1226 in all interior cases violates the "cardinal principle of statutory construction to save and not to destroy," and ignores the duty "to give effect, if possible, to every clause and word of the statute, rather than to emasculate an entire section," as Respondents' reading effectively does. *Menasche*, 348 U.S. at 538–39.

c. *Respondents' attempt to dismiss their own regulations and the Federal Register and ignore their own decades-long implementation, which assumes § 1226 for non-arriving respondents.*

Respondents also try to minimize the Federal Register and the bond-jurisdiction regulations, arguing that because § 1225(a)(1) "deems" never-admitted persons as applicants for admission "for purposes of this chapter," the historical implementation is either irrelevant or entirely aligns with their perpetual-applicant theory. It is not.

When the government implemented IIRIRA, it expressly drew the line that the Petitioner invokes: "*Inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.* This procedure maintains the status quo regarding release decisions for aliens in proceedings." *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) (citation modified) (emphasis added). DHS's current bond-jurisdiction regulations mirror that choice, removing IJ bond authority only for "arriving aliens." *See* 8 C.F.R. § 1003.19(a), (h)(2)(i)(B).

Respondents' view that virtually all never-admitted noncitizens are detained under § 1225(b)(2) cannot be reconciled with a regulatory scheme that withholds IJ bond jurisdiction only from "arriving aliens" and explicitly "maintains the status quo" for other inadmissible respondents in proceedings. The government's own decades-long implementation confirms the division Petitioner relies on: arriving aliens at or near the border fall under § 1225, while non-arriving respondents already in the country in § 1229 proceedings fall under § 1226.

d. Respondents' out-of-circuit string-cites adopting a "perpetual applicant" theory are neither binding nor persuasive and conflict with Jennings, Second Circuit law, and due process.

Respondents lean heavily on a handful of out-of-circuit decisions to claim that any noncitizen "present" who was never formally "admitted" is forever an "applicant for admission" detained under § 1225(b)(2). *See* Gov't Opp. (citing, inter alia, *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Andrade v. Patterson*, No. 2:25-cv-00634, 2025 WL 3252707 (W.D. La. Aug. 29, 2025); *Cabanas v. Bondi*, No. 4:25-cv-01163, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Alonzo v. Noem*, No. 1:25-cv-01154, 2025 WL 3208284 (E.D. Cal. Nov. 6, 2025)). Those decisions neither bind this Court nor reflect the dominant view. More recent and more thorough cases directly addressing the same "perpetual applicant" theory have

rejected it and have characterized the Government's approach as a novel reinterpretation of § 1225 that cannot be squared with *Jennings*, the statutory text, or longstanding practice.

First, courts confronting the Government's reliance on *Chavez v. Noem* and similar authority have explicitly refused to consider those decisions as persuasive. In *Chavez v. Bostock*, a magistrate judge in the Northern District of Ohio examined whether a long-time resident who entered without admission but had lived in the United States for more than two years was properly detained under § 1225(b)(2)(A). The court determined that, when read together with the two-year carve-out in § 1225(b)(1)(A)(iii)(II), § 1225 did not apply to such a person, and that § 1226(a)'s "default" rule for "aliens already present in the United States" was applicable instead, consistent with *Jennings*. *See Chavez v. Bostock*, No. 4:25-cv-02061, 2025 WL 6273041 (N.D. Ohio Oct. 20, 2025) (relying on the statutory text, the Notice to Appear, and *Jennings* to conclude that § 1226(a) governs). The court then examined the very cases cited by the Government here. It found that *Chavez v. Noem*, originating from the Southern District of California, lacked persuasive weight compared to the growing line of district-court decisions rejecting the Government's interpretation, and that *Lopez v. Trump* was distinguishable based on both the record and procedural posture. *Id.* at 15. Most importantly, the court declined to "override the growing caselaw" rejecting the Government's reading of *Matter of Yajure Hurtado* as applicable to long-term residents, citing *Barrera v. Tindall*'s observation that, as of September 19, 2025, "*every court* who has examined this novel interpretation of Section 1225 by the United States has rejected their theory and adopted Petitioner's." *Id.* (quoting *Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025)) (emphasis in original).

Second, within this Circuit, the Government's authorities are directly at odds with the detailed analysis in *Barco Mercado v. Francis*. There, the Southern District of New York rejected the

Government's effort to detain a noncitizen who had resided in the United States for years under § 1225(b)(2), holding instead that § 1226(a) governs interior arrests and long-term residents in § 1229 proceedings. *See Barco Mercado v. Francis*, No. 25-cv-7039, 2025 WL 7182289 (S.D.N.Y. Nov. 13, 2025). *Barco Mercado* examined the statutory text, the interaction between §§ 1225 and 1226, the Laken Riley Act, and the Federal Register history, concluding that the Government's interpretation of § 1225 would create surplusage and interfere with the established division between inspection-stage and interior detention. *Id.* at 14-24. The court then documented dozens of decisions nationwide that had already rejected the Government's theory and described that reinterpretation of § 1225 as having been rejected "with near unanimity in the overwhelming majority of cases across the country," addressing similarly situated petitioners. *Id.* Far from supporting the Respondents' position, *Barco Mercado* considers cases like *Andrade*, *Cabanas*, and *Alonzo* as outliers that deviate from the statutory framework and decades of practice where non-arriving respondents detained at the interior were released under § 1226.

Finally, Respondents' string-cited decisions share the same defects: they elevate § 1225(a)(1)'s deeming clause over the rest of the statute, pay little or no attention to *Jennings*'s explicit description of § 1226 as the default rule for "aliens already present in the country" pending removal, and fail to address the canons against surplusage. *See Chavez*, 2025 WL 6273041, at 14; *Barco Mercado*, 2025 WL 7182289, at 14-24. They also overlook the reliance interests and contemporaneous implementation reflected in the 1997 custody rule, which assumed IJ bond jurisdiction for non-arriving inadmissible respondents. *See* 62 Fed. Reg. 10,312, 10,323. In contrast, a growing line of decisions within this Circuit and elsewhere (already cited by Petitioner and the Court) apply standard interpretive tools, read §§ 1225 and 1226 together, and conclude that non-arriving respondents arrested in the interior fall under § 1226(a), not § 1225(b)(2). *See*,

e.g., *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588 (S.D.N.Y. Aug. 15, 2025); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025).

e. As applied: Interior arrest and § 1229 posture place Petitioner under § 1226, not § 1225.

Respondents also insist that, as applied to Petitioner, § 1225 must govern because he was never formally admitted and is charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). They claim that this charge, combined with the § 1225(a)(1) deeming clause, resolves the matter. It does not.

As applied here, Petitioner is not an "arriving alien." He entered as a minor, was processed into HHS/ORR custody, then released to a vetted family sponsor, and was arrested after living in the interior for a year and a half, subsequently being placed in § 1229 proceedings. *See* NTA charging inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). As such, Petitioner clearly falls under the *Jennings* interpretation that § 1226(a)'s "default rule" applies to "aliens already in the country pending the outcome of removal proceedings," rather than § 1225's threshold processing for applicants "seeking admission." *See Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *6–8 (S.D.N.Y. Aug. 15, 2025) ("the plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General, while residing in the United States").

Courts in this Circuit have interpreted "seeking admission" in the active, present-tense sense that Congress used and have refused to extend § 1225 to non-arriving respondents who are arrested in the interior. *See*, *e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *6–8 (S.D.N.Y. Aug. 15, 2025) (rejecting the idea of perpetual § 1225 theory and reading "seeking admission" as present-tense

conduct; "the active construction of the phrase seeking admission … necessarily implies some sort of present-tense action … While respondents are correct that [petitioner] was never "admitted" to the United States in that he never lawfully entered it, it does not follow that he continues to be actively "seeking" such lawful entry at this time"); *J.U. v. Decker*, 2025 WL 2772765, at *4–7 (E.D.N.Y. July 2, 2025) (holding § 1226 governs interior arrests and restating the *Jennings* "default rule"; government's paperwork and course of conduct align with § 1226); *Artiga v. Genalo*, 2025 WL 2829434, at *5–8 (E.D.N.Y. Oct. 10, 2025) (same); *Hyppolite v. Decker*, 2025 WL 2829511, at *6–9 (E.D.N.Y. Oct. 10, 2025) (same). These decisions uphold *Jennings* and the statutory structure rather than allowing § 1225 to "eat" § 1226.

The government's attack on *Lopez Benitez*'s use of everyday language as an illustration is a straw man that distorts the statutory definitions and is unconvincing. The point is not to replace statutory definitions with metaphors; it is to recognize what *Jennings* and the INA's structure already reflect, which is that "seeking admission" refers to the initial processing of entrants and returnees, not the detention of non-arriving respondents months or years into interior residence and § 1229 litigation. Moreover, the slew of courts the Court and Petitioner cite to that reject the government's broad § 1225 theory are neither outliers nor "wrongly decided." The decisions Respondents attack are consistent with Supreme Court precedent, Second Circuit authority, and the government's own regulatory line between arriving and non-arriving respondents. And after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385–86, 401 (2024), this Court owes no *Chevron* deference to BIA innovations like *Matter of Yajure Hurtado*, which diverge from decades of practice without persuasive reconciliation of *Jennings*, the Federal Register, and the bond-jurisdiction regulations. At most, such agency views are given *Skidmore* weight proportional to their persuasive strength, which is absent here.

Pushing Petitioner into perpetual § 1225(b)(2) mandatory detention because he once entered without admission would not only contradict *Jennings* and Second Circuit precedent, but it would also nullify § 1232(c)(2)(B)'s youth-protective least-restrictive-setting mandate by relegating age-outs to unreviewable parole standards, which courts have already rejected. *See Arevalo Lopez v. Sessions*, No. 18-cv-4189, 2018 WL 2932726, at *8–12, *22–25 (S.D.N.Y. June 12, 2018) (holding TVPRA applies to age-outs released to sponsors and rejects default adult detention without individualized least-restrictive analysis; recognizing "custody" extends beyond the typical idea of a physical jail cell); *Garcia Ramirez v. ICE*, No. 18-cv-508 (D.D.C. Sept. 21, 2021) (permanent-injunction orders requiring TVPRA-compliant, written LRS/ATD decisions for age-outs).

In short, the government's reading distorts the text, overlooks *Jennings*'s explicit division, conflicts with Second Circuit authority, and contradicts the governing bond-jurisdiction regulations. It would also render § 1226 superfluous for non-arriving respondents already in the country. The Court should apply § 1226 in this case. Supreme Court and Second Circuit authority, the statutory framework, and current rulemaking all demonstrate that § 1226 governs the detention of noncitizens already in the country during § 240 proceedings, not § 1225.

II. Post-*Loper Bright*, Respondents' Reliance on *Yajure Hurtado* Is Misplaced: No *Chevron* Deference Attaches, and the Decision Lacks *Skidmore* Persuasive Weight.

Respondents also urge the Court to treat *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) as controlling authority that "resolves" the statutory question. They further suggest that even after *Loper Bright*, *Yajure Hurtado*'s interpretation of §§ 1225 and 1226 merits substantial deference. That position is untenable after *Loper Bright* and unpersuasive on its own terms.

First, *Loper Bright* held that courts must "exercise their independent judgment" when interpreting statutes and may not defer to an agency's view just because a statute is ambiguous; *Chevron* is overruled. 603 U.S. at 385–86, 401. Agency interpretations now receive, at most,

respect proportional to their "power to persuade" under *Skidmore*, which depends on "the thoroughness evident in [the agency's] consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements." 323 U.S. 134, 140 (1944). Under this framework, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) does not warrant controlling weight and does not earn persuasive weight for at least three reasons.

Second, *Yajure Hurtado* does not earn *Skidmore* weight because it does not grapple with the fundamental structural problem identified above. *Jennings* drew a clear distinction: § 1225 applies to "certain aliens seeking admission," whereas § 1226 governs noncitizens who are "already in the country" during removal proceedings. 583 U.S. at 289. Yajure extends § 1225's "applicant for admission" language to nearly all non-admitted noncitizens, including those arrested in the interior and placed in § 1229 proceedings, thereby rendering § 1226 largely superfluous for the very context *Jennings* says it controls. Respondents' opposition does not point to any "thorough" analysis in *Yajure Hurtado* that reconciles its broad § 1225 theory with *Jennings*'s structure, the text of § 1226, or the Federal Register history. Under *Skidmore*, that omission is fatal to persuasive weight.

Third, as Petitioner explained and Respondents largely ignore, *Yajure Hurtado* is inconsistent with longstanding, contemporaneous implementation. When DOJ promulgated the current custody rules, it explicitly "maintain[ed] the status quo" by withholding IJ bond authority only for "arriving aliens" and preserving IJ bond for other respondents, which assumes § 1226 governance for non-arriving respondents already in the country. 62 Fed. Reg. at 10,323; *see also* 8 C.F.R. § 1003.19(h)(2)(i)(B). Respondents' opposition does not explain how an interpretation that treats almost all never-admitted noncitizens as § 1225 detainees can be squared with regulations that reserve the "arriving alien" category for a narrower set of cases. Inconsistency with earlier,

contemporaneous pronouncements undermines Skidmore deference, not supports it.Third, *Yajure Hurtado* is unpersuasive given the Supreme Court's guiding precedent. It does not align its broad § 1225 theory with *Jennings*'s allocation of detention authority or with the INA's overall framework that separates threshold admission processing from interior § 1229 proceedings. When an agency position fails to address controlling statutory structure and Supreme Court boundaries, it lacks the "power to persuade" required by *Skidmore*.

Because *Loper Bright* requires independent judicial judgment and *Yajure Hurtado*'s analysis does not align with the text, structure, or the government's decades-long contemporaneous implementation reflected in the Federal Register and bond-jurisdiction rule, the decision deserves no deference beyond whatever minimal *Skidmore* weight its reasoning can earn. Here, it earns none as it fails to address the INA's text and structure, distinguishing §§ 1225 and 1226, ignores decades of contrary implementation, and overlooks reliance interests, and cannot defeat Petitioner's merits showing.

III. TVPRA Age-Out Mandate Applies: DHS Must Make and Document an Individualized Least-Restrictive-Setting/ATD Determination for Former UACs; ORR Release Regulations Do Not Nullify § 1232(c)(2)(B).

Congress imposed a nondiscretionary, youth-protective duty when a previously-designated UAC reaches 18 and is transferred to DHS: "the Secretary *shall consider placement in the least restrictive setting available*" after assessing "danger to self, danger to the community, and risk of flight," and such age-outs "*shall be eligible* to participate in alternative to detention programs." 8 U.S.C. § 1232(c)(2)(B) (emphases added). Courts have repeatedly treated that mandate as enforceable under the APA and habeas, rejecting agency practices that default to adult detention without an individualized, documented analysis. *See Garcia Ramirez v. ICE*, No. 18-cv-508 (D.D.C. 2018) (permanent injunction and subsequent enforcement orders requiring TVPRA-

compliant, written age-out determinations and forbidding blanket detention practices for age-outs); *Arevalo Lopez v. Sessions*, 2018 WL 2932726, at *8–12 (S.D.N.Y. June 12, 2018) (granting relief where DHS re-detained a previously designated UAC without making the § 1232(c)(2)(B) least-restrictive/ATD determination and without evidence of changed circumstances).

DHS's reliance on ORR's release regulation, 45 C.F.R. § 410.1200, is incorrect. That regulation explains ORR's internal process for releasing a child from ORR custody "without unnecessary delay" to a vetted sponsor; it does not cancel or limit DHS's separate, subsequent duty under § 1232(c)(2)(B) when DHS takes custody of an age-out. Nothing in § 410.1200 indicates that Congress's protections for age-outs end when ORR releases a UAC to a sponsor. Interpreting § 410.1200 as invalidating § 1232(c)(2)(B) would conflict with the law's text and purpose, which extend protections until transfer to DHS and require DHS to consider the least restrictive setting and ATDs rather than default to adult jail. *See Arevalo Lopez*, 2018 WL 2932726, at *9–12 (recognizing that TVPRA protections remain important for youth released to sponsors and later re-detained, and that DHS must conduct the individualized § 1232(c)(2)(B) analysis).

Nor can DHS reframe the statute as only applying to individuals physically in ORR's custody at the moment of their 18th birthday. Congress used mandatory language that applies when the individual is "transferred to the custody of [DHS]," 8 U.S.C. § 1232(c)(2)(B), and courts have rejected agency positions that treat prior ORR sponsorship as a license to ignore the age-out mandate once DHS reasserts custody. *See Garcia Ramirez*, No. 18-cv-508 (permanent injunction and TRO enforcement order reaffirming that age-outs are entitled to the least-restrictive/ATD consideration and written decisions); *Arevalo Lopez*, 2018 WL 2932726, at *8–12. DHS's contrary interpretation would "entirely fail to consider an important aspect of the problem," *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983), specifically Congress's determination that

extended adult detention of newly-18 previously-designated UACs should be the exception, not the default, and *only after individualized analysis documented on the record.* As the *Arevalo* court writes, "A birthday *shall not result in detention.*" 2018 WL 2932726 at *15 (emphasis added).

Because Petitioner entered as a UAC, was released to a vetted sponsor, and was later taken into DHS custody as an age-out, DHS was required to make and document a § 1232(c)(2)(B) least-restrictive/ATD determination grounded in the statutory factors. Its failure to do so constitutes unlawful withholding under 5 U.S.C. § 706(1) and is arbitrary, capricious, and "not in accordance with law" under § 706(2)(A). *See Arevalo Lopez*, 2018 WL 2932726, at 8–12; *Garcia Ramirez*, No. 18-cv-508 (D.D.C. 2018)

IV. Even if § 1225 Applied, DHS Still Had to Provide a Reasoned, On-the-Record LRS/ATD or Parole Analysis; The Omission Is Arbitrary and Capricious and Violates Due Process.

Respondents argue that labeling Petitioner as an "applicant for admission" under 8 U.S.C. § 1225(b) erases all procedures beyond the INA's minimum requirements. That is not correct. The TVPRA requires DHS to provide a contemporaneous, individualized custody rationale on the record even under § 1225.

§ 1232(c)(2)(B) applies regardless of detention category. The D.D.C. court enforcing the *Garcia Ramirez* permanent injunction clarified that the age-out duty to "consider placement in the least restrictive setting available" and the eligibility of age-outs for ATDs apply to all age-outs; DHS cannot evade this by citing another detention authority. DHS's failure to analyze any considerations under § 1232(c)(2)(B) is therefore arbitrary under *State Farm*, 463 U.S. at 42–44 (agency must "examine the relevant data and articulate a satisfactory explanation"), and unlawful under 5 U.S.C. § 706(1), (2)(A).

Independent constitutional principles lead to the same conclusion. The Fifth Amendment protects the core liberty interest in freedom from physical confinement and requires procedures designed to minimize the risk of erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For previously designated UACs, due process demands a meaningful, individualized custody decision that considers flight risk and danger with evidence and considers less-restrictive alternatives, especially given prior government findings supporting Petitioner's release to a sponsor. *See Arevalo Lopez*, 2018 WL 2932726, at 11–12 (due process was violated when DHS re-detained a previously designated UAC without notice, hearing, or a reasoned explanation reconciling prior release). By failing to provide an on-the-record, individualized LRS/ATD analysis, DHS prioritized categorical detention over careful decision-making, creating the very "risk of erroneous deprivation" that *Mathews* forbids. 424 U.S. at 335. Accordingly, even assuming § 1225 applies, DHS's failure to produce a contemporaneous, individualized, TVPRA-compliant LRS/ATD decision is unlawful under the APA and violates due process.

Furthermore, Petitioner's APA arguments are not "cursory." They target a specific, non-discretionary procedural duty Congress imposed for age-outs. The failure to conduct and document that analysis is (i) "agency action unlawfully withheld" under 5 U.S.C. § 706(1) because it involves a clear, mandatory duty that it has not fulfilled or documented for, *see Norton v. S. Utah Wilderness Alliance* (SUWA), 542 U.S. 55, 63–65 (2004), and (ii) "arbitrary [and] capricious" under § 706(2)(A) because DHS provided no contemporaneous, reasoned explanation showing consideration of the statutory factors or any changed circumstances to justify its decision to re-detain the Petitioner when ORR had already deemed him to be neither a flight risk or danger to himself or the community when it released him to his vetted sponsor, *see Motor Vehicle Mfrs.*

Ass'n v. State Farm, 463 U.S. 29, 42–44 (1983); *FCC v. Fox Television Stations*, 556 U.S. 502, 513–16 (2009) (An agency must "examine the relevant data and articulate a satisfactory explanation for its action").

This APA claim also satisfies the finality and reviewability requirements. DHS's decision to re-detain the Petitioner is "final agency action" because it marks the "consummation" of the decision-making process and determines rights or obligations (continued confinement versus release or alternatives to detention). *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). The claim does not seek to review a discretionary outcome barred by 8 U.S.C. § 1252(a)(2)(B); it challenges the agency's failure to perform the mandatory, predicate analysis Congress required. Courts routinely distinguish unreviewable discretion from reviewable violations of mandatory procedure. *See DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18–20 (2020) ("We have previously rejected as 'implausible' the Government's suggestion that § 1252 covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation'") (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471(1999)).

Habeas remains the proper vehicle for immediate custody relief. The APA claim is pled in the alternative to secure prospective, process-based relief, not to act as the vehicle for custody. *See* 5 U.S.C. §§ 702, 704, 706. If the Court deems habeas adequate for release, it may still retain or grant APA relief to prevent the recurrence of the same legal error. Either way, the Respondents' assertion that the Petitioner identified "no statute or regulation" is incorrect, as § 1232(c)(2)(B) provides the mandatory duty, and the absence of a contemporaneous, reasoned analysis is an APA violation.

V. The Court Should Convert Its Temporary Restraining Order into a Preliminary Injunction Because Irreparable Harm Remains Ongoing and the Court Has Already Found the Injunctive Factors Satisfied.

Conversion of the existing TRO to a preliminary injunction is warranted. In granting the TRO, the Court has already made the core findings required for preliminary relief: it held that Petitioner "has established a likelihood of success on the merits" and further found that he is suffering and will continue to suffer irreparable harm absent injunctive relief, and that the balance of equities and the public interest favor injunctive relief. *See* TRO Order at 1–2 (citing *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Guerrero v. Noem*, No. 25-cv-5881, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025)). Those are the same factors governing a preliminary injunction. Having already concluded that Petitioner meets this standard, the Court should convert the TRO into a preliminary injunction to ensure continued protection of his statutory and constitutional rights while this case is adjudicated on the merits.

First, the Court recognizes that the irreparable harm is ongoing. Petitioner, an 18-year-old previously designated UAC, has been confined in an adult jail where he has already experienced sexual harassment and continues to suffer physical pain. The Court has already determined that this confinement, given the circumstances, causes irreparable harm. TRO Order at 2. This conclusion aligns with Second Circuit precedent, which holds that prolonged civil immigration detention without adequate procedures causes a continuous constitutional injury that cannot be remedied afterward. *See Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). As *Mathews v. Eldridge* makes clear, denying necessary procedures when liberty is at stake is itself a current harm: due process guarantees a "meaningful

opportunity to be heard" at a meaningful time. 424 U.S. 319, 335 (1976). Until Respondents fulfill the statutory and constitutional requirements already recognized by this Court, that harm persists.

Second, the specific nature of the constitutional and statutory violations here emphasizes the need for preliminary, not just temporary, relief. Petitioner was released to an ORR-approved family sponsor after the government itself determined that he was not a flight risk or a danger to himself or the community. He was later re-detained at age-out without the individualized, least-restrictive-setting/ATD analysis mandated by Congress for previously designated UACs, and without any documented change in circumstances. *See* 8 U.S.C. § 1232(c)(2)(B). This is a challenge to this detention of this young person, under a misapplied statutory scheme, and in the absence of the TVPRA-mandated process that the Court has already recognized he is likely to be entitled to under § 1226, consistent with *Hyppolite*, *Artiga*, *J.U.*, and *Guerrero*. The ongoing deprivation of those statutory and constitutional protections is an irreparable injury. *See Velasco Lopez*, 978 F.3d at 855–57; *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Third, the future risk that led Petitioner to file the TRO motion still exists. DHS still seeks pretermission of Petitioner's asylum application under the Asylum Cooperative Agreement and continues to argue that § 1225 applies. As a result, Respondents will continue targeting the Petitioner, with the real possibility of re-detention without bond or failing to consider the least restrictive setting or alternatives to detention mandated by the TVPRA. If this approach is carried out, it would cut short his protection claims and lead to his transfer or removal to a third country before his § 1229 proceedings and ongoing SIJS status are finalized. The Court has already determined that Petitioner "will continue to suffer irreparable harm absent injunctive relief." TRO Order at 2. The potential pretermission and third-country transfer are precisely the kinds of decisive outcomes that cannot be reversed later. Once Petitioner is removed or transferred under

an unlawful classification and without the procedures required by Congress and the Constitution, the harm to his liberty and protection claims becomes final.

Fourth, the government's arguments about timing and purportedly "constitutionally permissible" detention do not undermine conversion to a preliminary injunction. Under Second Circuit law, the issue is not whether detention is ever allowed in theory, but whether this detention, given the specific facts, and without the required process, causes ongoing constitutional harm. Petitioner has been litigating across multiple fora on compressed timelines, including immigration court deadlines, family court SIJS proceedings, and emergency federal filings. He sought emergency relief promptly once the ACA pretermission threat became clear and as his detention extended into "unreasonably prolonged" territory without the TVPRA-mandated LRS/ATD determination. TRO practice has already provided Respondents with notice and an opportunity to be heard; no further factual development is necessary for the Court to continue the protections it has already recognized as needed.

Finally, converting to a preliminary injunction aligns this case with *Guerrero*, where the same Court issued a preliminary injunction for a similarly situated petitioner who had been re-detained in the United States and was entitled to a bond hearing under § 1226. *See Guerrero*, 2025 WL 3214787. Here, as in *Guerrero*, the equitable and public-interest considerations already identified by the Court favor continued injunctive relief. Maintaining Petitioner's protection from unlawful detention and misclassification while this habeas petition is resolved promotes compliance with the TVPRA, the INA, and the Constitution, and prevents the need for repeated emergency motions as Respondents continue to pursue ACA pretermission and removal.

Because the Court has already determined there is a likelihood of success, irreparable harm, and that the balance of equities and public interests favor injunctive relief, and because the harms

identified in the TRO Order remain ongoing, Petitioner respectfully requests that the Court convert the existing TRO into a preliminary injunction.

CONCLUSION AND PRAYER FOR RELIEF

For all the reasons set forth above, the text and structure of the INA, *Jennings, Loper Bright*, the TVPRA, and governing Second Circuit precedent confirm that Petitioner's detention is governed by 8 U.S.C. § 1226, not § 1225; that Respondents have unlawfully failed to perform their nondiscretionary duties regarding age-out under 8 U.S.C. § 1232(c)(2)(B); and that Petitioner's ongoing exposure to unlawful re-detention, ACA pretermission, and third-country transfer causes ongoing irreparable harm. The Court has already found a likelihood of success on the merits, irreparable harm, and that the balance of equities and public interest favor granting injunctive relief through the TRO. Based on those findings and the arguments above, further relief is appropriate.

WHEREFORE, Petitioner respectfully requests that the Court enter judgment in his favor and:

1. Grant the Petition for a Writ of Habeas Corpus, and declare that Petitioner's civil immigration custody is governed, if at all, by 8 U.S.C. § 1226, not § 1225(b)(2);
2. Declare unlawful and set aside Respondents' reliance on 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) as applied to Petitioner, as contrary to the text and structure of the INA, the TVPRA, and due process;
3. Declare that 8 U.S.C. § 1232(c)(2)(B) applies to Petitioner as a previously designated UAC age-out, and that Respondents' failure to make and document an individualized least-restrictive-setting/ATD determination constitutes agency action unlawfully withheld and arbitrary and capricious action under 5 U.S.C. § 706(1), (2)(A);
4. Convert the Court's Temporary Restraining Order into a Preliminary Injunction that:

a. maintains Petitioner's release to his ORR-approved family sponsor during the pendency of this action; and

b. enjoins Respondents from re-detaining Petitioner in civil immigration custody unless: (i) there is a contemporaneous, individualized, written custody determination that complies with 8 U.S.C. § 1232(c)(2)(B), including consideration of danger to self, danger to the community, risk of flight, and placement in the least restrictive setting available and alternatives to detention; or (ii) a prompt bond hearing under 8 U.S.C. § 1226 before a neutral adjudicator, where the Government bears the burden, by clear and convincing evidence, to prove danger or flight risk, and the adjudicator considers Petitioner's ability to pay and less restrictive alternatives to detention.

5. In the alternative, to the extent Petitioner is in custody when the Court rules, order his immediate release to his existing ORR-approved family sponsor, subject to any reasonably tailored conditions of supervision consistent with the TVPRA and § 1226;

6. Retain jurisdiction as necessary to enforce the Court's orders and to ensure Respondents' ongoing compliance with 8 U.S.C. §§ 1226 and 1232(c)(2)(B), and with the Due Process Clause; and

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

Respectfully submitted,

Joshua R. Stickell

Joshua R. Stickell, Esq. (NY SBN # 6254437)
Rivera Julka Law Group, PC.
17 W. Main Street,
Bay Shore, New York 11706
Telephone: (631) 647-9040