UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

R.A.R.R.,

Petitioner,

v.

ALMODOVAR, et al.,

Respondents.

Case No. 1:25-cv-06597 (PKC)

PETITIONER'S REPLY MEMORANDUM OF LAW IN RESPONSE TO RESPONDENTS' OPPOSITION

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INTRODUCTION

The undisputed facts are that upon entry to the U.S. the Respondents treated R.A.R.R. as an unaccompanied minor (UAC), released him and they do not contend that any circumstances have changed. They also do not dispute that R.A.R.R. has been living at liberty without incident. They do not contend that he is a flight risk or a danger to the community nor that they failed to provide him notice and an opportunity to be heard prior to re-detaining him, such that immediate release is the appropriate remedy here. Numerous courts around the country faced with similar circumstances have ordered immediate release of young people who were designated as unaccompanied minors years earlier and re-detained without materially changed circumstances.

There is no dispute that U.S. Immigration and Customs Enforcement ("ICE") has re-detained R.A.R.R., a nineteen (19) year-old young person, without providing him notice or opportunity to be heard. Until his sudden and arbitrary detention by ICE on August 26, 2025, RA.R.R. was residing on Long Island, taking class for his high school equivalency degree and working. Here, Respondents do not dispute that the Office of Refugee Resettlement released R.A.R.R., reflecting a determination that he was not a danger nor flight risk. R.A.R.R.'s re-arrest by ICE and his ongoing detention have been detrimental to this young person – who has never been arrested or held in a criminal jail – and has exacerbated his mental health condition.

In their opposition, Respondents argue that R.A.R.R. is being detained pursuant to 8 U.S.C. § 1225(b)(2)(A) despite having designated R.A.R.R. as unaccompanied minor and releasing him to a sponsor. They also make this argument having issued two I-200 warrants for arrest pursuant to 8 U.S.C. § 1226(a). This assertion, that R.A.R.R. is subject to § 1225(b)(2)(A), detention is incompatible with the Trafficking Victims Protection Reauthorization Act ("TVPRA"), and the plain text and legislative history of the Immigration and Nationality Act

("INA"), Respondents' treatment of R.A.R.R., and Respondents' practice for the past thirty years. The vast majority of federal courts, and now an appeals court, have rejected the interpretation put forth by the Respondents in this case. Finally, there is no evidence in the record that supports the conclusion that R.A.R.R.'s detention is pursuant to 8 U.S.C. § 1225(b)(2)(A).

R.A.R.R. respectfully asks this Court to hold that his re-detention by ICE was unlawful, to hold that his continued detention is unlawful, and to order his release from custody without restraints on his liberty beyond those that existed prior to his unlawful re-detention.

ARGUMENT

I. R.A.R.R. Is Not Subject to No-Bond Detention Under 8 U.S.C. § 1225(b)(2)(A).

Respondents' arguments made here with respect to 8 U.S.C. § 1225(b) are incompatible with the TVPRA and are contrary to the plain text of the INA, due process and Supreme Court case law, as affirmed by the vast majority of courts that have considered these issues.

A. Respondent's Argument that R.A.R.R. is Subject to § 1225(b)(2)(A) Detention is Incompatible with the TVPRA.

Respondents do not meaningfully contest that R.A.R.R.'s prior unaccompanied minor designation and processing pursuant to the TVPRA is an important reason why § 1225(b) cannot now justify arbitrary, detention without due process 19 months after he came into the United States as an unaccompanied minor.

Because Respondents previously designated R.A.R.R. an unaccompanied minor, Respondents could not lawfully subject him to § 1225(b) detention when he was first apprehended in 2024. *See R.D.T.M.*, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL 2686866, at *4 (E.D. Cal. Sept. 18, 2025). The detention of unaccompanied minors is governed by the

TVPRA, which "does not mandate detention" and instead requires placement "in the least restrictive setting that is in the best interest of the child." *Id.* (quoting 8 U.S.C. § 1232(d)(2)(A)–(B)). Respondent's argument that R.A.R.R. would be subject to mandatory detention the day after he turns 18 is irreconcilable with TVPRA's clear mandate for release of unaccompanied minors to the least restrictive setting available. *Lopez v. Sessions*, 2018 WL 2932726, at *13 (S.D.N.Y. June 12, 2018) ("If [unaccompanied minors] become 'arriving aliens' on the day they turn eighteen, subjecting them to rearrest and near-indefinite detention [under § 1225(b)], then Section § 1232(c)(2)(B) of the TVPRA would lose the force of law."); *accord Contreras Maldonado v. Cabezas*, No. CV 25-13004, 2025 WL 2985256, at *4 (D.N.J. Oct. 23, 2025) (finding § 1225 inapplicable in part because Respondents previously relied on a different statutory detention authority).

Additionally, "[unaccompanied minors] cannot be subject to expedited removal and instead must be placed in full removal proceedings… That is, if anything, consistent with an expectation that UACs will receive due-process protections." *Portillo Martinez v. Hyde*, No. CV 25-11909-BEM, 2025 WL 3152847, at *8 n. 32 (D. Mass. Nov. 12, 2025) (citing 8 U.S.C. § 1232(a)(5)(D)(i); *see also F.S.S.M. v Wofford*, No. 1:25-CV-01518 (TLN-AC), 2025 WL 3526671, at *5 (E.D. Cal. Dec. 9, 2025) (ordering immediate release and enjoining the government from re-detaining absent a pre-deprivation hearing considering the TVPRA); *Sandoval v. Rokosky*, No. CV 25-17229 (SDW), 2025 WL 3204746, at *2 (D.N.J. Nov. 17, 2025) (ordering release of petitioner who was initially designated as an unaccompanied minor and re-detained by ICE after release to sponsor and turning 18 and requiring any future proceeding to comply with the TVPRA); *R.D.T.M.*, 2025 WL 2686866, at *4 (government could not re-detain former unaccompanied minor under § 1225(b)(2)); *Torres v. Wamsley*, 2025 WL

2855379, at *4 (W.D. Wash. Oct. 8, 2025) (rejecting application of § 1225(b)(2) over noncitizen who had been designated an unaccompanied minor).

Respondents rely on *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020) to support their position that unaccompanied minors can be subject to § 1225(b), Resp't Mem. of Law in Response the Pet'r's Verified Pet. for Writ of Habeas Corpus and Complaint ("Resp't MOL") at 36, ECF No. 11, but there "the court cited four cases dealing specifically with parole into the United States under section 1182(d)(5)(A), without any explanation for why that statute (and thus, those cases) were at all relevant... They are not." *Portillo Martinez*, 2025 WL 3152847, at *7 (D. Mass. Nov. 12, 2025). Therefore, the *Mendez Ramirez* is not persuasive with respect to the application of § 1225(b) to unaccompanied minors.[1]

B. A Plain Reading of 8 U.S.C. § 1225(b) Contradicts Respondents' Position.

Respondents err in asserting that R.A.R.R. is suddenly now subject to "mandatory" detention under 8 U.S.C. § 1225(b)(2)(A) in accordance with agency precedent in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).[2] Resp't MOL at 25–26. The vast majority of federal courts to review *Matter of Yajure Hurtado* and Respondents' reasoning that petitioners like R.A.R.R. are subject to § 1225(b)(2)(A) have found against the government. As of November 26, 2025, "in 350 of [362] cases decided by over 160 different judges sitting in about fifty different courts spread across the United States" have ruled in favor of petitioners. *Barco*

[1] *The Mendez Ramirez* court based its decision, in part, on the definition of an unaccompanied minor from a now enjoined regulation. *Compare* 612 F. Supp. 3d 200, 207 (S.D.N.Y. 2020), *with Flores v. Rosen*, 984 F.3d 720 (9th Cir. 2020) (enjoining 8 C.F.R. § 236.3).

[2] Referring to detention under 8 U.S.C. § 1225(b) as "mandatory" detention is a misnomer because DHS may still release noncitizens through parole under 8 U.S.C. § 1182(d)(5), *see Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018), though the process consists merely of a custody review by DHS and does not include a hearing before a neutral decision maker, a formal record, or possibility for appeal.

Mercado v. Francis, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025).

As a threshold matter, because *Chevron* is overruled under *Loper Bright Enter. v. Raimondo*, the Court must "exercise independent judgement" and apply traditional tools of statutory construction to determine "'the reading the court would have reached' if no agency were involved," i.e., the "best" interpretation of the statute. 603 U.S. 369, 394, 400 (2024) (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 836, 843 n. 11 (1984)).

Here, the best interpretation after applying the traditional tools of statutory interpretation is that R.A.R.R. is subject to detention under the 8 U.S.C. § 1226(a) but subject to the protections of 8 U.S.C. § 1232(c)(2)(B)) and thus eligible for release and the least restrictive setting available must be considered, rather than no-bond detention under 8 U.S.C. § 1225(b)(2)(A). Namely, the plain text of the 8 U.S.C. § 1232(c)(2)(B), as well as the plain text of the INA statutory structure, legislative history, and the record in this case favor a finding that § 1225(b)(2)(A)'s application of mandatory detention for noncitizens "seeking admission" is inapplicable to R.A.R.R. Instead, 8 U.S.C. § 1232(c)(2)(B) and § 1226(a), which are mutually exclusive to § 1225, clearly apply. *See Lopez Benitez*, 2025 WL 2371588, at *4; *Artiga*, 2025 WL 2829434, at *4; *see also*, discussion of the TVPRA's incompatibility with § 1225, *supra* Section I.A.

Contrary to Respondents' position, a plain text reading of 8 U.S.C. § 1225(b)(2)(A) does not apply to R.A.R.R. As relevant here, § 1225(b)(2)(A) states: "[I]n the case of a[a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title." Section

1225(b)(2)(A) requires several conditions, including that the individual is 1) an applicant for admission, 2) seeking admission, *and* 3) not clearly and beyond a doubt entitled to be admitted. *See Lopez Benitez*, 2025 WL 2371588, at *5 (citing *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)); *Castanon-Nava v. DHS*, No. 25-3050, 2025 WL 3552514, at *9 (7th Cir. Dec. 11, 2025). Here, R.A.R.R. resided in the United States for more than a year and a half at the time of his most recent immigration arrest and detention in 2025. *See* Pet. Exh. A, Declaration of R.A.R.R. ¶¶ 2–5, ECF No. 1-2. He was not "seeking admission" at that time and is therefore not subject to § 1225(b)(2)(A). *See J.G.O*, 2025 WL 3040142, at *3 ("'[S]eeking admission' requires [a noncitizen] *to continue* to want to *go into* the country. The problem, as J.G.O. points out, is that he's already here; you can't go into a place where you already are." (emphasis in original)). Respondents' interpretation of § 1225(b)(2)(A) ignores the present progressive-tense language of "seeking admission." *See Lopez Benitez*, 2025 WL 2371588, at *6–7. Here, it cannot be said that R.A.R.R. is actively seek admission at this time. *See Torres*, 2025 WL 2855379, at *3-5; *R.D.T.M*, 2025 WL 2686866, at *4; *accord Contreras Maldonado v. Cabezas*, No. 25–13004, 2025 WL 2985256 (D.N.J. Oct. 23, 2025) (finding the "invocation of 1225(b) as applied to Petitioner," a former unaccompanied minor who had resided in the United States for years, to be "inconsistent with the statutory framework distinguishing between entry-based and interior detention authority").

Respondents' argument that the terms "seeking admission" and "applicant for admission" are synonymous also fails. *See* Resp't MOL at 27–28. Respondents' position that every person who has never been lawfully "admitted" to the United States continues to be a noncitizen "seeking admission" would render the phrase "seeking admission" in § 1225(b)(2)(A) mere surplusage. *See Lopez Benitez*, 2025 WL 2371588, at *6 ("By reading a phrase out of the statute,

Respondents' interpretation of § 1225 clearly 'violates the rule against surplusage.'"); *J.G.O.*, 2025 WL 3040142, at *3 ("That Congress chose to include this additional phrase—'seeking admission'—not once but … multiple times suggests that it must mean something distinct."); *see also Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (holding that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant"); *U.S. Olympic Comm. v. Intelicense Corp.*, 737 F.2d 263, 266 (2d Cir. 1984) (noting this circuit's established rules of statutory construction that require construing a statute to give force and effect to each of its provisions rather than render some of them meaningless).

Moreover, contrary to Respondents' arguments, [w]e need not accept *Chen*'s invitation to hypothesize that the two terms are synonymous because as explained in *Lopez Benitez*, the statutory definition of 'applicant for admission' differs from the ordinary meaning of 'seeking admission.'" *Goorakani v. Lyons*, No. 25 CIV. 9456 (DEH), 2025 WL 3632896, at *8 (S.D.N.Y. Dec. 15, 2025) (citing *Chen v. Almodovar*, No. 25 Civ. 8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025)); Resp't MOL at 27. Additionally, "[t]he statutory text, title, and contemporaneously-adopted implementing regulations all point to the same conclusion: that 'applicants for admission' is not a synonym for noncitizens 'seeking admission.'" *Id.* at 9.

Respondents' likewise cannot support their claim that *Lopez Benitez's* holding, that mandatory detention does not apply to all those who entered unlawfully, is inconsistent with the statutory text. Respondents attempt to support their argument with the *Chen* decision, but there the court ignores the word "entry" from the full text of 8 U.S.C. § 1101(a)(13)(A): "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Goorakani*, 2025 WL 3632896, at * 9. "Entry has long been understood to mean a crossing into the territorial

limits of the United States." *Id.* (citing *Pie v. Noem*, 25 Civ. 1564, 2025 WL 3496156, at *5–6 (W.D. Mich. Dec. 5, 2025). Therefore, "the government's *current* treatment of essentially everyone who has entered the country illegally as subject to mandatory detention … is inconsistent with how immigration law in this country long has worked." *Id.* at 10 (emphasis in original).[3]

The other cases cited by Respondents were also wrongly decided, and should not guide the Court's analysis in this case, because they incorrectly find that "applicant for admission" is synonymous with "seeking admission," *see* Resp't MOL at 19–20; *Candido v. Bondi*, No. 25-cv-867 (JLS), 2025 WL 3484932 at *2 (W.D.N.Y. Dec. 4, 2025), *Cabanas v. Bondi*, No. 25-cv-04830, 2025 WL 3171331, at *4 (S.D. Tex. Nov. 13, 2025), *Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025), or fail to engage with the "seeking admission" language in § 1225(b)(2), *see Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025), *Andrade v. Patterson*, No. 25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025), or fail to engage in a due process analysis under *Mathews*. *See Duenas Garcia v. ICE*, No. 2:25-cv-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025); *Pena*, 2025 WL 2108913, at *2; *Valencia v. Chestnut*, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025)

[3] Furthermore, the implementing regulations, 8 C.F.R. § 1.2, that were promulgated only a few months after the passage of the statute define "arriving alien" as "an applicant for admission coming or attempting to come into the United States, " "once again underscoring that Section 1225(b)'s provision regarding mandatory detention does not apply to all "applicants for admission," but only to those who are crossing the border or attempting to do so." *Goorakani*, 2025 WL 3632896, at * 9 (citing *Martinez v. Hyde*, 792 F. Supp. 3d 211, 219 (D. Mass. 2025)).

("Petitioner dedicates just four sentences of his motion to arguing that his detention violates the Due Process Clause because it was instituted without a hearing."). [4]

C. Respondents' Argument Regarding the Application of the Entry Fiction to R.A.R.R. Is Misplaced.

Respondents' argument that R.A.R.R. should be treated as if detained at the border pursuant to the "entry fiction," *see* Resp't MOL at 8–9, fails because "the entry fiction is irrelevant twice-over" here. *J.G.O,* 2025 WL 3040142, at *4. The entry fiction applies to "noncitizens stopped at or near the border" and/or paroled into the United States. *Id.* (finding the entry fiction inapplicable to the petitioner because he was arrested and detained in New York, nowhere near the border, and because he was previously released on his recognizance, not on parole). R.A.R.R. was taken into ICE custody in New York a year and a half after his entry to the United States, not near the border, and he was never paroled into the United States. *See* Supplemental Declaration of Steven Muñoz in Support of Pet. ("Muñoz Supp. Decl.") ¶ 11. Also, "[n]othing in the record indicates [R.A.R.R.] was subject to discretionary parole authorized under § 1225." *Artiga*, 2025 WL 2829434, at *7. In fact, it is clear that R.A.R.R. was released pursuant to the ORR released R.A.R.R. pursuant to 8 U.S.C. § 1232(c)(2)(A). *See* Petition in Support of Writ of Habeas Corpus ("Pet.") ¶ 29, ECF No. 1. Since R.A.R.R. was not previously

[4] One additional case cited by the government, *Vargas Lopez v. Trump*, is further distinguishable because the court found the petition to be "hampered by [] mistakes" and "inconsistencies" such that the court was without the benefit of thorough briefing by both parties. *See Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025) ("The Court's consideration of this Petition has been hampered by the mistakes made in it . . . It also contains errors about how long Vargas Lopez has been in the United States; where he was living; where, when, and how he was detained by immigration officials; and where he is now detained. . . The Court concludes that the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief.").

released on discretionary parole and not now stopped at the border, the entry fiction is inapplicable. *J.G.O*, 2025 WL 3040142, at *4.

Additionally, Respondents' reliance on *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), for the proposition that Congress intended that all noncitizens present in the US who entered the United States without inspection must be treated as if stopped at the border, is unpersuasive because *Mezei* is not applicable to R.A.R.R.'s case. *See* Resp't MOL at 16–17. In *Mezei*, the petitioner was found "permanently excluded" from the United States on national security grounds and in accordance with the statutory provisions of The Passport Act—rather than the Immigration and Nationality Act ("INA")—that applied "during periods of international tension and strife." 345 U.S. at 207, 210–211. Here, as noted above, R.A.R.R. was detained by immigration officials more than a year and a half after he had already entered the United States. R.A.R.R. Decl. ¶¶ 2–5. Furthermore, R.A.R.R.'s removal proceedings are still pending before the IJ, and neither the IJ nor the BIA have found him to pose a national security threat. *See* Muñoz Suppl. Decl." ¶ 10.

Similarly, Respondents' reliance on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), is misplaced. *See* Resp't MOL at 18. The Supreme Court's holding in *Thuraissigiam* concerned the right to due process in admission determinations not at issue here. 591 U.S. at 140. Furthermore, *Thuraissigiam* involved a petitioner who was detained under the expedited removal statute, received a credible fear interview and challenged the procedures applied to the review of his fear-based claim. *Id.* at 114. Here, R.A.R.R. entered the United States without inspection, was designated an unaccompanied minor and excluded from expedited removal, lived in the United States for a year and a half, and later was picked up by ICE and detained upon the issuance of an

I-200 warrant pursuant to § 1226(a). *See* R.A.R.R. Decl. ¶¶ 2–5; Declaration of Katherine D. Rey Decl. ("Rey Decl.") ¶¶ 5, 14, ECF No. 11-1.

Respondents' reference to individuals paroled under 8 U.S.C. § 1182(d)(5), *see* Resp't MOL at 17, also does not apply to R.A.R.R., who was never paroled under 8 U.S.C. § 1182(d)(5). Finally, unaccompanied minors like R.A.R.R. cannot be considered "arriving" because DHS and HHS facilitate unaccompanied minor's entrance into the US. *Portillo Martinez v. Hyde*, 2025 WL 3152847, at *5–9 (D. Mass. Nov. 12, 2025) (former unaccompanied minor could not be considered "arriving," and therefore subject to § 1225(b)(1) no-bond detention). And "[n]othing in *Mendez Ramirez* or any of the cases [Respondents'] cite[] explains why a UAC's entry into the United States—facilitated by DHS and HHS, no less—would not necessarily mean that the UAC has finished 'arriving in the United States' for purposes of section 1225(b)(1)." *Id.* As such, Respondents' arguments with respect to the entry fiction are inapplicable to R.A.R.R.

D. Contrary to Respondents' Arguments, the Plain Text of 8 U.S.C. § 1232(c)(2)(B) and 8 U.S.C. § 1226(a) Applies to R.A.R.R.

Conversely, the plain text of 8 U.S.C. § 1232(c)(2)(B) and § 1226(a) clearly apply to R.A.R.R. 8 U.S.C. § 1232(c)(2)(B) requires that ICE consider the least restrictive settings for noncitizens who were designated unaccompanied minors and reach the age of 18. "[T]he statute does not place any time limits on ICE's duties under the statute, either on the front end or the back end." *Garcia Ramirez v. ICE*, No. CV 18-508 (RC), 2025 WL 3563183, at *29 (D.D.C. Dec. 12, 2025) (internal citations omitted). "Section 1232(c)(2)(B) provides that '[i]f a [UAC] reaches 18 years of age,' the Secretary's obligations are triggered." *Id.* at 29-30 (internal citations omitted). And "[o]n the back end . . . the statute does not require 'periodic re-

assessment' of a decision once it has been made." *Id.* at 30 (internal citations omitted). "But ICE is not relieved of its obligation to follow [Section 1232(c)(2)(B)] at the end of the day on the age-out's eighteenth birthday." *Id.* There are no temporal limitations and an "agency 'may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion." *Id.* at 33 (citing *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 485 (2001)). "Moreover, construing Section 1232(c)(2)(B) to permit [Respondents] to unilaterally limit Congress's protections for age-outs to mere days is precisely the kind of 'absurd result' that must be avoided when interpreting a statute." *Id.* at 31 (citing *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998)).

Respondents cite cases in which other federal courts have held that former unaccompanied children were not entitled to be considered for placement in the least restrictive setting under Section 1232(c)(2)(B) after being re-arrested and detained. Resp't MOL at 17, 34 (*citing Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020); *Jose L.P. v. Whitaker*, 431 F. Supp. 3d 540 (D.N.J. 2019)). "But these cases are inapposite." *Garcia Ramirez*, 2025 WL 3563183, at *16. Those case involve circumstances where the court determined that the unaccompanied minor had lost their status prior to turning 18 and that there were materially changed circumstances. *See id.* (*citing Mendez Ramirez*, 612 F. Supp. 3d at 207-08, 210–11; *Jose L.P.*, 431 F. Supp. 3d at 542, 547–48). But here, R.A.R.R. retained his unaccompanied minor status even after his release to a non-parental via an ORR Sponsorship Care Agreement and the government never de-designated him prior to turning 18. *See* Exh A. ORR Sponsorship Care Agreement; Munoz Decl. ¶ 5. "The transfer of custody from the ORR (HHS), under whose supervision [R.A.R.R.] was living while on release during the Sponsorship Agreement, to the DHS, is a particularized agency action that marks consummation of the agency's decisionmaking

process." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *7 (S.D.N.Y. June 12, 2018) (internal citations omitted).

Furthermore, § 1226(a) authorizes the Attorney General to arrest a noncitizen "on a warrant" and to detain a noncitizen "pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible.[5] Specifically, while § 1226(a) provides the general right to seek release on bond, a recent amendment to § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of *inadmissible* noncitizens—and subjects them instead to mandatory detention. *See, e.g.*, 8 U.S.C. §§ 1226(c)(1)(A), (C); *infra* Section I.F. That portion of § 1226(c) would have "no legal effect under the government's reading of [§ 1225] because the mandatory detention of those very same people would have been required under § 1225" already, regardless of any additional crime. *J.G.O.*, 2025 WL 3040142, at *4. Accordingly, to avoid rendering the amendment to § 1226(c) "redundant," *see id.*, the statute necessarily implies that the default discretionary bond procedures set forth in § 1226(a) apply to noncitizens who are "present … without being admitted or paroled" under 8 U.S.C. § 1182(a)(6)(A) but who are not affected by the criminal bars in § 1226(c). Thus, a plain reading of the text supports the conclusion that "inadmissible" noncitizens who are "present … without being admitted or paroled," are included within § 1226(a). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (noting that, when creating specific statutory

[5] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

exceptions, Congress establishes that the statute generally applies absent those exceptions); *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *4 (E.D.N.Y. Dec. 8, 2025) (Finding that "the government's interpretation of "Section 1225 would also all but read Section 1226 off the books."). As such, R.A.R.R. case fits the plain text of § 1226(a).

Contrary to Respondents' position, their treatment of R.A.R.R. as subject to § 1226(a) and § 1232(c)(2)(A) is relevant because an "'agency must defend its actions based on the reasons it gave when it acted,' not on 'impermissible post hoc rationalizations.'" *See Lopez Benitez*, 2025 WL 2371588, at *5 (citing *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 22, 24 (2020)). Therefore, this Court should not "credit Respondents' new position as to the basis for [R.A.R.R.'s] detention." *Id.* Respondents suggest that Petitioner is arguing that the Respondents are estopped from applying § 1226(b), but that's not Petitioner's argument. Resp't MOL at 31. Petitioner never argued that the government was estopped, only that its prior practice and treatment of Petitioner is informative of the relevant detention authority.

E. The Statutory Structure Demonstrates that 8 U.S.C. § 1232(c)(2)(B) and § 1226(a), Not § 1225(b), Apply to R.A.R.R.

The statutory structure also supports R.A.R.R.'s argument that 8 U.S.C. § 1232(c)(2)(B) and 8 U.S.C. § 1226(a) apply to him. As the Supreme Court has explained, an act's "broader structure" can be a useful tool "to determine [a statute's] meaning." *King v. Burwell*, 576 U.S. 473, 492 (2015); *see also Biden v. Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision). This is particularly true where "a provision … may seem ambiguous in isolation." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). In such situations, the statute's meaning "is often clarified by the remainder of the statutory scheme … because only one of the permissible

meanings produces a substantive effect that is compatible with the rest of the law." *Id.* To the extent there is any ambiguity here, these principles apply with particular force.

As the Supreme Court explained in *Jennings v. Rodriguez*, § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings," like R.A.R.R. 583 U.S. 281, 289 (2018). Respondents' reliance on *Jennings* to support its argument that R.A.R.R. is subject to § 1225(b)(2)(A), *see* Resp't MOL at 21, fails because the Supreme Court clearly defined the detention authority relevant to those detained within the United States—§ 1226—as distinct from those detained at the border. *Jennings*, 583 U.S. 281 at 289. By contrast, § 1225(b)(2)(A)'s no-bond detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Id.* at 287. Indeed, in contrast to § 1226, which governs the "[a]pprehension and detention of [noncitizens]," the whole purpose of § 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See id.* at 297 ("§ 1225(b) applies primarily to [noncitizens] seeking entry into the United States."); *J.G.O.*, 2025 WL 3040142, at *4 (explaining how the two statutes together "cover [noncitizens] presenting at arrival (under § 1225) and then everybody else (under § 1226)"); *Ye*, 2025 WL 3521298, at *5 ("[T]he government's interpretation [of *Jennings*] is not persuasive, because it takes the above language out of context.").

Respondents' argument that the Supreme Court was not precise when it delineated the difference between § 1225 and § 1226 detention authority is unavailing as the Supreme Court has been consistent in its interpretation that 1226(a) applies to noncitizens present in the U.S. without authorization. *See Nielsen v. Preap*, 586 U.S. 392 at 396-97 (holding that §1226(a) applies to noncitizens "present in this country" who are deportable 8 U.S.C. § 1227(a), which

includes noncitizens who were deemed inadmissible); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) ("In the ordinary course, if the Department of Homeland Security (DHS) discovers that an alien is living in the United States without authorization, it may ... may arrest and detain the alien pending a decision on whether the alien is to be removed from the United States. § 1226(a).").

The text of § 1225 reinforces this understanding of the two sections' structure and application. To begin, § 1225 concerns "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. Its paragraph (b)(1) encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. Paragraph (b)(2) is similarly limited to people seeking admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but whom (b)(1) does not address. 8 U.S.C. §§ 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like R.A.R.R., who have already entered and are now residing in the United States.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e., "the case of [a noncitizen] … who is *arriving* on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's temporal requirements in § 1225 and focuses on those who are in the process of arriving into the United States. *See J.G.O.*, 2025 WL 3040142, at *4. Moreover, the entire statute is premised on the idea that a formal inspection occurs at the border and just shortly after arrival, as the statute

repeatedly refers to "examining immigration officer[s]," 8 U.S.C. §§ 1225(b)(2)(A), (b)(4), and sets out specific procedures for "inspection[s]" of people who arrive in the United States, 8 U.S.C. §§ 1225(a)(3), (b)(1), (b)(2), (d).

Finally, as discussed *infra* Section I.F., 8 U.S.C. § 1232(c)(2)(B) applies to noncitizens designated as unaccompanied minors for the duration of removal proceedings. *Garcia Ramirez*, 2025 WL 3563183, at *16. In sum, the statutory scheme points to the authorizing statute of detention as § 1232(c)(2)(B) and § 1226(a) rather than § 1225 in R.A.R.R.'s case.

F. The Legislative History Supports R.A.R.R.'s Position that § 1232(c)(2)(B) And § 1226(a), Not § 1225(b), Apply.

Through the Violence Against Women Reauthorization Act of 2013, Congress added § 1232(c)(2)(B) to address the custody of noncitizens who had been previously designated unaccompanied minors and are transferred to ICE upon their eighteenth birthday. 8 U.S.C. § 1232(c)(2)(B); Pub. L. No. 113-4, § 1261, 127 Stat. 54, 156 (Mar. 7, 2013). As the *Garcia Ramirez* court noted, "an agency 'may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion." *Garcia Ramirez*, 2025 WL 3563183, at *16 (citing *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 485 (2001).) "[T]he act of detaining or releasing an age-out serves to place the age-out in a suitable setting pending the outcome of their immigration proceedings." *Id.* Similar to the Plaintiffs in *Garcia Ramirez*, R.A.R.R. is not "claiming an entitlement to the protections afforded by Section 1232(c)(2)(B) 'indefinitely'... The relief [R.A.R.R.] seek[s] is narrow." He seeks only to prohibit "[Respondents] from re-arresting and detaining [him] after [his] initial release, absent a material change in [his] circumstances indicating [he] [is] now a flight risk or danger to the community." *Garcia Ramirez*, 2025 WL 3563183 at 32 (internal citations omitted). "[T]he protections Section

1232(c)(2)(B) affords age-outs remain in effect until [R.A.R.R.'s] immigration proceedings conclude." *Id.* at 33.

Furthermore, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") also supports concluding that 8 U.S.C. § 1226(a) applies to R.A.R.R. In passing IIRIRA, Congress was focused on the perceived problem of recent arrivals to the United States who do not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to no-bond detention if arrested. This is important, as prior to IIRIRA, individuals like R.A.R.R. were not subject to no-bond detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to no-bond detention), it would have explained so or spoken more clearly. *See Whitman*, 531 U.S. at 468–69. But in fact, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond [a noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210 (same). Therefore, because noncitizens like R.A.R.R. were entitled to discretionary detention under §1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports his position that he too is subject to §

1226(a) detention and thus eligible for bond. *See Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *23 (W.D. Wash. Sept. 30, 2025).[6]

Moreover, Respondents' position cannot be reconciled with recent amendments to the INA that expanded the categories of persons subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). In January of 2025, Congress amended § 1226(c) to add additional categories of noncitizens already living within the United States who are subject to mandatory detention: those who meet certain inadmissibility criteria and certain additional criminal criteria—including those who have been charged, arrested for, or convicted of theft, burglary, larceny, and shoplifting. *See* 8 U.S.C. § 1226(c). Those recent amendments are known as the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). But if § 1225(b)(2)(A) applied to *all* "applicants for admission," including but not limited to those who had previously entered the United States and were later accused or convicted of committing certain crimes, there would have been no need for Congress to amend the INA as recently as January of 2025 to add additional categories of persons subject to § 1226(c)'s mandatory detention provision. *See J.G.O.*, 2025 WL 3040142, at *4; *Hyppolite v. Noem*, 2025 WL 2829511, at *10 (E.D.N.Y. Oct. 6, 2025); *Ye*, 2025 WL 3521298, at *4; *see also Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

In sum, the legislative history underscores that § 1232(c)(2)(B) and § 1226(a) applies to individuals like R.A.R.R. and therefore, R.A.R.R.'s detention violates the TVPRA and the INA.

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[6] Respondents cite *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *see* Resp't MOL at 5, for the proposition that IRIRA sought to place noncitizens who had not been lawfully admitted on equal footing in removal proceedings, but "this reading misses the parenthetical in *Torres*, which explores the legislative intent" that dealt with burdens of proof in immigration proceedings and not detention. *Cervantes Morales v. Raycraft*, No. 25-CV-13434, 2025 WL 3543611, at *7 (E.D. Mich. Dec. 10, 2025).

II. R.A.R.R.'s Detention Violates Without Pre-Deprivation Process Violates Procedural Due Process.

Respondents do not contest that R.A.R.R. received no notice or opportunity to be heard before he was re-detained by ICE, following his prior release and despite no materially changed circumstances. Respondents only argue that no statute or regulation affords a process for protecting R.A.R.R. from arbitrary re-detention, thereby disregarding the very protections that the due process clause affords. Resp't MOL at 16. But "the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation omitted); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020).

Additionally, R.A.R.R. is not subject to § 1225(b) detention as it is incompatible with the TVPRA, the plain statutory text and legislative history of the INA, Respondents' prior treatment of R.A.R.R, and Respondents' decades of interpretation of § 1225(b), *see supra* Section IA.-F. Moreover, "even accepting for present purposes Respondents' assertion that Petitioner is detained pursuant to Section 1225 and that Section 1225 has always applied to Petitioner, the Petition must be granted because Petitioner is 'in custody in violation of the Constitution' – specifically, in violation of the Fifth Amendment" because he was never given the statutorily required notice of parole revocation pursuant to Section 1182(d)(5)(A). *See Diallo v. Maldonado*, No. 25-CV-05740 (DG), 2025 WL 3158295, at *3 (E.D.N.Y. Nov. 12, 2025); *Ye*, 2025 WL 3521298, at *8 ("Even if the mandatory detention provision in Section 1225 applied —

and the weight of authority says that it does not — the government violated the petitioner's due process rights because it gave him no process before agents arrested him and detained him.")[7]

Second, Respondents cite *Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) to argue for a different interpretation of procedural due process, but that case does not deal with immigration detention. Resp't MOL at 15. The Second Circuit's most recent decisions on procedural due process relevant to noncitizens in detention more clearly elucidate the standards for evaluating procedural due process within the context of immigration detention. *See Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) ("an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing."); *Velasco Lopez*, 978 F.3d at 851; *Black*, 103 F.4th 133 at 147. Furthermore, Respondents also nowhere grapple with the Supreme Court precedent *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) that squarely discusses due process guarantees of deprivation of liberty after release nor the more recent district court decisions that recognize the a liberty interest in a pre-derivation process prior to detention in the immigration detention context. *See* Petition ¶¶ 36–39, ECF No. 1.

As explained in R.A.R.R.'s petition, Pet. ¶¶ 40–43, the *Mathews* three-part test favors R.A.R.R. The *Mathews* factors include: (1) the private interest affected by the government's action; (2) the risk of erroneous deprivation under the procedures used, and the probable value of

[7] Neither *Thuraissigiam* nor *Mezei* undermine this conclusion. *Thuraissigiam* addressed a noncitizen's due process right to challenge admission, not detention as in R.A.R.R.'s case. *See Thuraissigiam*, 591 U.S. at 139-40; *see also Al-Thuraya*, 2025 WL 2858422, at *5; *Hyppolite*, 2025 WL 2829511, at *10.. And *Mezei* involved an individual conclusively denied entry, whereas R.A.R.R. has not been definitively denied entry to the country, has a pending immigration court case which stays his removal, and is not seeking review of any decision to exclude him. See *Mezei*, 345 U.S. at 212; see also *Al-Thuraya*, 2025 WL 2858422, at *5 (distinguishing petitioner subject to § 1225(b)(1)(B)(ii) from petitioner in *Mezei*).

additional safeguards; and (3) the government's interest and any burdens additional safeguards would impose. *Mathews*, 424 U.S. at 335.

The first *Mathews* factor clearly weighs in R.A.R.R.'s favor as he has a fundamental liberty interest in remaining free from physical restraint—an interest long recognized as deserving of the highest constitutional protection. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Velasco Lopez*, 978 F.3d at 851; *Black*, 103 F.4th at 151. This is particularly true where the government previously released him to a sponsor, having found that such release was in his best interest and that he was neither a danger nor a flight risk. *See Garcia Domingo v. Castro*, 2025 WL 2941217, at *3 (D.N.M. Oct. 15, 2025) (finding petitioner "has a significant private interest in remaining free from detention after being released from ORR custody"); *R.D.T.M.*, 2025 WL 2686866, at *5 (same); 2018 WL 2932726, at *11 (same).The penal-like conditions of R.A.R.R.'s detention add further weight to his private interest. *Velasco Lopez*, 978 F.3d at 852.

R.A.R.R.'s interest is heightened by a host of vulnerabilities: he is a teenager, he entered the United States as an unaccompanied child, he was abandoned by his father, and he is pursuing an asylum claim. *See Garcia Ramirez v. ICE*, 471 F. Supp. 3d 88, 101-02, 173 (D.D.C. 2020) (finding unique harms to 18-year-olds held in adult immigration detention, as established by pediatric expert at trial). His psychological evaluations confirms these harms. (citation). *See* Petition Exh. F, Psychological Evaluation of R.A.R.R., ECF No. 1-7 at 7-8. Respondents' don't challenge the psychologist's report that noted that R.A.R.R.'s history of paternal abandonment, economic deprivation, and exposure to community violence likely fostered a chronic state of vigilance, emotional guardedness, and self-reliance, contributing to anxiety and physiological arousal. *Id.* The report further noted that R.A.R.R.'s 2025 recent detention experience seems to have reactivated these early vulnerabilities causing R.A.R.R. to experience intrusive memories,

nightmares, and physiological reactivity to auditory cues of detention consistent with trauma-related stress sensitivity. *Id.*

The second *Mathews* factor also weighs in R.A.R.R.'s favor because the procedures followed in his case have created a substantial risk of erroneous deprivation of R.A.R.R.'s interests in being free from arbitrary confinement. *See* Pet. ¶¶ 40–43. Even if § 1225(b) were to apply to R.A.R.R., Respondents waited until he had been detained and requested a bond hearing to assert this argument, which contradicted their own prior release pursuant to the TVPRA (add statute) and usage of I-200 warrants pursuant to § 1226(a). Risk of erroneous deprivation is high because no individualized determination was made contemporaneously before detaining. This is especially true because the government had previously found that he was not a flight risk or a danger. *See Lopez*, 2018 WL 2932726, at *11 (risk of wrongful deprivation high where petitioner's release from ORR to mother "required a determination that he was neither a danger to himself or others and that it was appropriate for him to reside with his mother under a sponsorship agreement"); *Arzate,* 2025 WL 2230521, at *5 (noting that risk of erroneous deprivation was "particularly high" when petitioner was previously found eligible for release); *Valdez v. Joyce*, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) ("Petitioner's re-detention without any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest."); *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *5 (S.D.N.Y. Nov. 14, 2025) ("There is no valid exercise of DHS's discretion consistent with due process where 'there is nothing to suggest that DHS exercised any discretion at all in detaining [Cuy Comes] .... in contravention of the basic procedural requirements of § 1226(a).'" (citing *Lopez Benitez*, 2025 WL 2371588, at *11).

The government's determination that R.A.R.R. should be released was well-founded—R.A.R.R. has proved himself to be a peaceful member of his community who was attending school, working, and is pursuing two avenues to obtain permanent lawful status. *See Hyppolite*, 2025 WL 2829511, at *14 (finding a great risk of erroneous deprivation where petitioner had established community ties, obtained a GED, and was pursuing multiple forms of immigration relief). As discussed, Respondents have not offered any justification for his detention, beyond the fact that he had recently turned 18 and that he was supposedly subject to mandatory detention.

Finally, the third *Mathews* factor weighs in R.A.R.R.'s favor. The only permissible purpose for the civil immigration detention of individuals, whether under either § 1226(a), § 1226(c), or § 1225(b), is to prevent danger to the community or flight. *See*, *Al-Thuraya*, No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025); Pet. ¶35 (*citing Demore v. Kim*, 538 U.S. 510 (2003). Here, Respondents have not argued that there were materially changed circumstances such that R.A.R.R. posed a flight risk or danger to warrant detention. Finally, a pre-deprivation process poses little burden to the government under the third *Mathews* factor, where the government has already found that R.A.R.R. is deserving of release. Custody hearings are a routine part of immigration proceedings and pose little burden on Respondents. *See Hyppolite*, 2025 WL 2829511, at *15; *Cordero Pelico v. Kaiser*, 2025 WL 2822876, at *15 (N.D. Cal. Oct. 3, 2025). "Indeed, it is likely that the cost to the government of detaining [R.A.R.R.] pending any [post-deprivation] bond hearing would significantly exceed the cost of providing [him] with a pre-detention hearing." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025); *see also Velasco Lopez*, 978 F.3d at 855. Here, Respondents have not offered any explanation for why R.A.R.R.'s detention is necessary for any permissible purpose, nor

could they given his lack of flight risk or danger, so the government's interest in depriving him of a pre-deprivation hearing is practically nonexistent.

Under these circumstances, an order requiring immediate release and enjoining future detention absent a pre-deprivation hearing at which the government bears the burden of establishing a material change in circumstances to justify R.A.R.R.'s detention is necessary to avoid wrongful detention. "[A] post-deprivation bond hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025); *Domingo v. Kaiser*, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025). "Such a hearing is an inadequate substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Cuy Comes*, 2025 WL 3206491, at *6 (citing *Lopez*, 2018 WL 2932726, at *15; *Zadvydas*, 533 U.S. at 690). Here, the lack of pre-deprivation process itself plainly violates due process, and therefore a post-arrest "bond hearing [can]not rectify the lack of individualized determination at the time of arrest." *Maldonado*, 2025 WL 2985256, at *5; *see also, Ye,* 2025 WL 3521298, at *9 ("Here, the constitutional violation the petitioner suffered — the government's failure to conduct any kind of individualized assessment before detaining him, failure to make any showing of changed circumstances, and failure to provide him with an opportunity to respond — renders any post-deprivation review by an immigration judge inadequate.").

"In light of the deprivation of [his] liberty ... the absence of any deliberative process prior to, or contemporaneous with, the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only vehicle for relief. It is, in essence, the most

appropriate remedy." *Cuy Comes*, 2025 WL 3206491, at *5 (S.D.N.Y. Nov. 14, 2025) (citing *Lopez v. Sessions*, No. 18 Civ. 4189, 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018)); *see also Ye,* 2025 WL 3521298, at *9 (grating the habeas petition and ordering petitioner's immediate release)

III. R.A.R.R.'s Detention Violates Substantive Due Process.

Respondent's only justification for detaining R.A.R.R. is that he turned 18. Respondents do not argue now that R.A.R.R. is a flight risk or danger. Respondents don't dispute that ICE detained R.A.R.R. despite reviewing his R.A.R.R.'s release paperwork establishing that he had already been found not to be a danger nor flight risk despite any intervening change in circumstances. U.S.C. § 1232(c)(2)(A) (custody determinations for unaccompanied children take into account "danger to self, danger to the community, and risk of flight"); 6 U.S.C. § 279(b)(2) (same); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1177 (N.D. Cal. 2017) ("[A] minor's placement with [a] sponsor reflects a determination by the federal government that the minor is neither dangerous nor a flight risk (and that such a placement is in the child's best interest)."). Respondents argue that *Saravia* is inapposite here because R.A.R.R. is now an adult, *see* Resp't MOL at 35 n. 12, but *Saravia* stands for the proposition that the government cannot detain noncitizens designated as unaccompanied minors absent materially changed circumstances. *Saravia*, 280 F. Supp. 3d at 1196 ("If DHS could, the day after a minor was released to a parent or other sponsor, arrest the minor on the same basis and restart the process, the TVPRA's instruction to place the minor in the least restrictive appropriate setting would mean little.").

Respondents do not argue R.A.R.R.'s detention is needed to achieve either of the permissible goals of civil immigration detention—to protect the community or mitigate the risk of flight. *See Zadvydas*, 533 U.S. at 690. The Supreme Court has stated that government

detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* Respondents' citation to *Velez v. Levy*, 401 F.3d 75, 93 (2d Cir. 2005), Resp't MOL at 36, is inapposite as that case did not involve immigration detention and the Supreme Court has already clearly spoken in *Zadvydas* as to when government detention violates substantive due process. *Id.*

Because R.A.R.R.'s detention violates substantive due process, this Court should order his immediate release. See *F.S.S.M. v. Wofford*, No. 25-01518-(TLN-AC), 2025 WL 3526671 (E.D. Cal. Dec. 9, 2025) (ordering immediate release of noncitizen detained years after release to a sponsor as an unaccompanied minor); *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-SKO (HC), 2025 WL 2686866, at *8 (E.D. Cal. Sept. 18, 2025) (ordering immediate release and requiring a bond hearing at which the government bears the burden before any re-arrest); *Garcia Domingo*, 2025 WL 2941217, at *5 (same); *Sandoval*, 2025 WL 3204746, at *2 (D.N.J. Nov. 17, 2025) (ordering immediate release and requiring consideration of TVPRA upon re-detention).

IV. Administrative Procedure Act Claims Are Available in Habeas Proceedings

Lastly, Respondents are incorrect in their claim that the Court is precluded from considering the Administrative Procedure Act ("APA") claims raised by Petitioner. Pet. ¶¶ 44-47. Contrary to Respondents assertion, the Supreme Court's decision in *J.G.G. v. Trump* in fact supports Petitioner's ability to raise his APA claims within this habeas petition. The Supreme Court finds that "immediate physical release [is not] the only remedy under the federal writ of habeas corpus" and holds that any challenges that relate to a person's detention "fall within the

'core' of the writ of habeas corpus" and must be brought in habeas. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (*quoting Peyton v. Rowe*, 391 U.S. 54, 67 (1968)). "Regardless of whether the detainees formally request release from confinement, because their claims for relief 'necessarily imply the invalidity' of their confinement . . . their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Id.* The Respondents cite to Justice Kavanaugh's dissent in *J.G.G.* to support its argument; however, nothing in the majority opinion in *J.G.G.* prohibits R.A.R.R. from raising APA claims pertaining to his detention within this habeas proceeding The Supreme Court instructs that habeas corpus remains an appropriate vehicle to challenge unlawful agency action, as long as the petitioner satisfies the "in custody" requirement of 28 U.S.C. § 2241(c). Indeed, the seminal case of *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), was itself a habeas petition challenging the immigration agency's failure to comply with its own regulations around removal.

Ultimately, in this case, Petitioner challenges the arbitrary and capricious government actions that have led to his detention by ICE without the opportunity for bond. ECF 1, at (¶¶ 68-75). His claims "necessarily imply the invalidity" of his confinement, and R.A.R.R. requests release, such that his claims are properly brought in habeas.[8]

CONCLUSION

[8] Petitioner does not take the position that a habeas petition is the sole vehicle for raising an APA claim relating to the government's interpretation of detention statutes and regulations. *See*, e.g., *Caceres v. Joyce*, No. 25-CV-1844 (LAK), 2025 WL 2223032, at *3 (S.D.N.Y. Aug. 5, 2025) (denying government's motion to dismiss and permitting civil complaint to proceed on Fifth Amendment challenge to denial of a constitutionally adequate bond hearing). However, Petitioner maintains that under the Supreme Court caselaw and the APA and habeas statutes, he is permitted to raise APA claims in his habeas petition before this Court because he is seeking relief in the form of release from detention.

For the foregoing reasons, the Court should grant R.A.R.R.'s petition for habeas corpus and order Respondents to immediately release R.A.R.R. This Court should further order that R.A.R.R. shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the adjudicator considers the least restrictive setting available and the government will have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a) and where the least restrictive setting available is considered. *See*, e.g., *Ye*, 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025); *Velasco Lopez*, 978 F.3d at 855-57 (discussing requirements of a constitutionally sufficient bond hearing).

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Respectfully submitted,

/s/ Amy Pont

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