

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMED EL MOCTAR TALEB MAAZOUZ,

Petitioner,

v.

JUDITH ALMODOVAR, Acting ICE Field Office
Director, *et al.*,

Respondents.

No. 25 Civ. 9388 (PKC)

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION
TO PETITION FOR WRIT OF HABEAS CORPUS**

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Respondents (the “Government”) respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the “Petition” or “Pet.”), filed on behalf of petitioner Mohamed El Moctar Taleb Maazouz (“Petitioner”).

PRELIMINARY STATEMENT

Petitioner is a citizen of Mauritania who was apprehended by United States Customs and Border Protection (“CBP”) near Otay Mesa, California on April 4, 2024, and taken into custody. Because he was seventeen years old, and thus an “Unaccompanied Alien Child,” Petitioner was transferred to the custody of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (“ORR”). Petitioner turned eighteen on April 26, 2024, and was released a few days later. Petitioner was later arrested on criminal charges in New York in July 2025, and then on November 10, 2025, ICE re-detained him pending removal proceedings.

Petitioner is properly detained pending his removal proceedings because he is an alien who illegally entered the United States without inspection or admission and is deemed an inadmissible applicant for admission by statute. Because he is an applicant for admission, Petitioner is subject to detention during the pendency of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2)(A).

Petitioner argues that 8 U.S.C. § 1232(c)(2)(B), a provision relating to unaccompanied alien children, required ICE to consider placing him in the “least restrictive setting available” when he was administratively arrested on November 10, 2025. But that statute is inapplicable here. It applies only to an alien who reaches the age of eighteen while in custody and to the placement determination at that time. Here, Petitioner was released when he turned eighteen in April 2024. When Petitioner was detained by ICE this month, he was no longer an Unaccompanied Alien Child (“UAC”) and thus was not subject to 8 U.S.C. § 1232(c)(2)(B).

Because Petitioner is an applicant for admission in removal proceedings, under binding precedent from the Board of Immigration Appeals, Petitioner is detained under section

1225(b)(2)(A) and thus subject to mandatory detention and potential release only on discretionary parole. To the extent Petitioner might argue that he is instead detained pursuant section 1226(a), that argument should be rejected. In any event, if the Court were to determine that Petitioner is detained pursuant section 1226(a), as this Court did in a recent decision, the proper remedy would be for Petitioner to receive a bond hearing, rather than to release him.

Petitioner also appears to challenge the conditions of his confinement at 26 Federal Plaza, though he does not assert a claim corresponding to those allegations. However, Petitioner was only detained at 26 Federal Plaza for approximately one day. Petitioner's challenge to the conditions at 26 Federal Plaza, where he is no longer being held, is therefore moot. In any event, while Petitioner contends that he lacked access to legal counsel at 26 Federal Plaza, he succeeded in filing his Petition on the day he was detained here. There is no indication that Petitioner lacks sufficient access to legal counsel now, or that the conditions of his confinement are otherwise lacking.

Accordingly, the Court should deny the Petition.

LEGAL BACKGROUND

A. Provisions Applicable to Applicants for Admission

Exercising its plenary power over the admission of aliens into the United States, Congress has established a system for admission and removal of aliens that arrive at the border without authorization to enter. *See* 8 U.S.C. § 1225. This system differs from that applicable to aliens who have lawfully entered the country. *See id.* § 1226. Section 1225 provides that aliens who arrive at the nation's borders are deemed "applicants for admission," and must be inspected by an immigration official before being granted admission. *Id.* § 1225(a)(1), (3). Under Section 1225(b), "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding

under section 1229a of this title [*i.e.*, a removal proceeding].” *Id.* § 1225(b)(2)(A) (emphasis added).

Under this statutory scheme, an immigration judge “may not” conduct a bond hearing to determine whether such an applicant for admission should be released into the United States during removal proceedings. 8 C.F.R. § 1003.19(h)(2)(i)(B). However, aliens seeking admission who are detained under 8 U.S.C. § 1225(b)(2)(A) may be released from custody pursuant to DHS’s discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A). Parole may be granted for “urgent humanitarian reasons” or “significant public benefit,” *id.*, provided the alien poses neither a security risk nor a threat of absconding. *See* 8 C.F.R. §§ 212.5(b)-(c). Such parole is entirely at the agency’s discretion and may be revoked at its discretion. *See* 8 U.S.C. § 1182(d)(5)(A) (“The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.”). Further, parole does not constitute an admission to the United States. *Id.* (“such parole of such alien shall not be regarded as an admission of the alien”).

B. The Homeland Security Act of 2002

Before 2002, the care and placement of unaccompanied alien children in the United States was the responsibility of the Office of Juvenile Affairs in the former Immigration and Naturalization Service (“INS”). *See F.L. v. Thompson*, 293 F. Supp. 2d 86, 96 (D.D.C. 2003). In 2002, Congress enacted the Homeland Security Act (“HSA”). Pub. L. No. 107-296, 116 Stat. 2153. The HSA created DHS, and transferred most immigration functions formerly performed by INS to the newly formed DHS and its components, including the eventually-named U.S. Citizenship and Immigration Services (“USCIS”), CBP, and ICE. *See* Department of Homeland

Security Reorganization Plan Modification of January 30, 2003, H.R. Doc. No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542).

Notably, however, Congress transferred to ORR, an office within HHS, the responsibility for the care of UACs “who are in Federal custody by reason of their immigration status.”

6 U.S.C. § 279(a), (b)(1)(A). The HSA defined an “unaccompanied alien child” as a child who:

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Id. § 279(g)(2). The HSA also transferred to ORR the responsibility for making all placement decisions for UACs and required ORR to coordinate those placement decisions with DHS and ensure that UACs are not released upon their own recognizance. *See id.* § 279(b)(1)(C), (D), (b)(2). Regulations make clear that:

When an alien previously determined to have been a UAC has reached the age of 18, when a parent or legal guardian in the United States is available to provide care and physical custody for such an alien, or when such alien has obtained lawful immigration status, the alien is no longer a UAC. An alien who is no longer a UAC is not eligible to receive legal protections limited to UACs under the relevant sections of the Act.

8 C.F.R. § 236.3(d)(2).

C. Trafficking Victims Protection Reauthorization Act of 2008

The Trafficking Victims Protection Reauthorization Act (“TVPRA”), which was signed into law on December 23, 2008, built on the HSA, and required that “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate,

shall be the responsibility of the Secretary of Health and Human Services.” 8 U.S.C.

§ 1232(b)(1) (emphasis added). It also required that:

Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.

Id. § 1232(b)(3). The TVPRA made clear that HHS is responsible for all placement decisions for UACs in its custody, and for conducting suitability assessments pertaining to those placements.

Id. § 1232(c). It requires that UACs in HHS custody be “promptly placed in the least restrictive setting that is in the best interest of the child,” subject to considerations of danger to self, danger to community, or risk of flight, and limits placement in a secure facility to children who have been determined to pose a danger to self or others or have been charged with crimes. *Id.*

D. The Flores Settlement Agreement

In 1997, the United States entered into a settlement, known as the Flores Settlement Agreement, that established a “nationwide policy for the detention, release, and treatment of minors in the custody of the INS.” *Flores v. Sessions*, 862 F3d 863, 866 (9th Cir. 2017). The Flores Settlement Agreement set minimum standards for the detention, housing, and release of non-citizen juveniles who were detained by the government and obliged the government to pursue a “general policy favoring release” of such juveniles. *Id.* The settlement also provided that minors in deportation proceedings would be afforded a bond redetermination hearing before an immigration judge. *Id.* Finally, the settlement defined a “minor” as “any person under the age of eighteen (18) years who is detained in the legal custody of the INS.” *Id.* at 869.

FACTUAL BACKGROUND

I. Petitioner's Immigration and Detention History

Petitioner unlawfully entered the United States near Otay Mesa, California on or about April 4, 2024, when he was seventeen years old. Declaration of Deportation Officer Kristopher Dawson ("Dawson Decl.") ¶ 3. CBP encountered him on or around the same date and determined that he had unlawfully entered the United States and took him into custody. *Id.* Because Petitioner was seventeen years old, he was provided the opportunity to contact a family member in the United States. *Id.* He was then transferred to the custody of ORR. *Id.* ¶ 4. Petitioner turned eighteen on April 26, 2024, and was released from custody on April 30, 2024. *Id.*

On July 10, 2025, the New York City Police Department arrested Petitioner and charged him with Assault Third Degree: With Intent to Cause Physical Injury, in violation of New York Penal Law 120.00(1). *Id.* ¶ 6. This charge was later expunged from Petitioner's record. *Id.*

On October 22, 2025, ICE mailed a notice to Petitioner to appear for a scheduled appointment on November 10, 2025. *Id.* ¶ 7. Petitioner appeared for this scheduled appointment on November 10, 2025, and he was taken into custody. *Id.* ICE served Petitioner with a Warrant for Arrest of Alien, Form I-200, and a Notice to Appear ("NTA"), the charging document used to commence removable proceedings, charging him as inadmissible under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.*; see Return Ex. B; Ex. C. On November 10, 2025, at 7:21 pm, Petitioner was transferred to the facility located at 26 Federal Plaza, New York, New York. *Id.* On November 10, 2025, this Court issued a Temporary Restraining Order restraining Respondents from transferring the Petitioner outside the Southern District of New York. ECF No. 5. On November 11, 2025, ICE transferred the Petitioner to Orange County Jail ICE Detention Facility,

located on 110 Wells Farm Road, in Goshen, New York, which is within the Southern District of New York, where he remains detained. *Id.* ¶ 8. On November 17, 2025, Petitioner appeared along with counsel for an initial master calendar hearing before an immigration judge at the Varick Immigration Court. *Id.* ¶ 10. Petitioner's case was adjourned to November 24, 2025, for pleadings to be taken. *Id.*

II. The Habeas Petition and Procedural Background

On November 10, 2025, Petitioner filed a habeas petition to challenge his current detention by ICE. ECF No. 1. In the Petition, Petitioner asserts that he is unlawfully detained because ICE failed to follow the “clear statutory mandate to consider the ‘least restricting setting’ when an unaccompanied child turns 18,” and that ICE has “denied Petitioner due process through arbitrary, procedurally deficient detention and inhumane conditions of confinement.” Pet. ¶ 1. Petitioner asserts a claim for violation of 8 U.S.C. § 1232(c)(2)(B) for failing to consider the least restrictive setting and a claim under *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), for failure to comply with “binding rules and policies governing the custody of aging-out UACs.” *Id.* ¶ 47. As ultimate relief, Petitioner requests that the Court order ICE to either: (i) immediately release him from custody; (ii) provide him with an individualized custody redetermination under the TVPRA; or (iii) provide him with a bond hearing before an immigration judge. *Id.*, Prayer for Relief.

ARGUMENT

I. 8 U.S.C. § 1232(c)(2)(B), and Any Accompanying Agency Rules, Are Inapplicable Because Petitioner Was Over Eighteen at the Time He Was Detained

Petitioner appears to argue that, because he was under eighteen at the point he entered the United States, his classification as a UAC, and its attendant protections, continues indefinitely. This interpretation is at odds with the INA and is without merit.

8 U.S.C. § 1225(b)(2)(A) provides that, “[i]n the case of an alien who is an applicant for

admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings].” However, the statute also provides specific procedures applicable to aliens designated as UACs. *See* 8 U.S.C. § 1232(b); 6 U.S.C. § 279. Unlike other applicants for admission, UACs are not subject to mandatory detention and are instead placed in HHS custody to be placed in the least restrictive setting available. 8 U.S.C. § 1232(b)(3), (c). While an alien’s designation as a UAC affects the child’s placement, however, that designation does not alter the fact that the child is an applicant for admission. *See* 6 U.S.C. § 279(b)(1)(C), (D), (b)(2).

In this case, Petitioner was apprehended after he unlawfully crossed the California-Mexico border because he lacked documentation permitting his admission into the United States. Because Petitioner was under eighteen years old at that time, CBP transferred him to the custodial care of ORR. Once Petitioner turned eighteen, he was released. At that point, ORR ceased to have responsibility for Petitioner’s care. *See Flores v. Sessions*, 862 F.3d 863, 876 (9th Cir. 2017) (“The HSA and TVPRA contain no indication that they are intended to encompass the entire immigration framework for unaccompanied minors, or to shift all related responsibilities to ORR The statutes do not grant ORR exclusive authority over unaccompanied minors for all purposes and in all contexts.”).

When Petitioner was arrested by ICE on November 10, 2025, he was no longer under eighteen years old, and thus did not satisfy the definition of a UAC, and the TVPRA was no longer applicable to him. Petitioner has cited no support for the proposition that, because he was a UAC at the point he was apprehended after unlawfully crossing the border, he retained that classification indefinitely, or was somehow permanently stripped of his status as an applicant for admission. Indeed, the interpretation he urges would lead to the absurd result that the provisions

of the TVPRA, which are plainly designed to apply to children, in fact apply to aliens of all ages based on the circumstances under which they first entered the United States. *See, e.g.*, 8 U.S.C. § 1232(c) (providing that “[p]lacement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program . . . if a suitable family member is not available to provide care” and that “an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being”). Congress clearly did not intend this result. *See generally Troll Co. v. Uneda Doll Co.*, 483 F.3d 150, 160 (2d Cir. 2007) (“[I]t is an elemental principle of statutory construction that an ambiguous statute must be construed to avoid absurd results.”).

Because Petitioner was neither a UAC nor in ORR custody when he was taken into custody on November 10, 2025, the TVPRA did not apply to him, and he was not entitled to a least restrictive setting determination with respect to his placement. The court addressed this scenario in *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020), in which the petitioner had likewise been less than eighteen years old when he crossed the border and was arrested by federal immigration authorities and detained pending his deportation after he had turned eighteen. *Id.* at 204. The court rejected the petitioner’s argument that he was entitled to a least restrictive setting determination pursuant to 8 U.S.C. § 1232(c)(2)(B), holding that the petitioner ceased to be a UAC both when he was released to the care of his mother and when he turned eighteen, and thus he was no longer eligible to receive legal protections limited to UACs. *Id.* at 211-12. The court also considered an earlier ruling from another judge in this district on the same issue that had found that a similarly situated petitioner was entitled to a least restrictive setting determination and found its reasoning unpersuasive. *Id.* at 212 (citing *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018

WL 2932726 (S.D.N.Y. June 12, 2018)). The court explained that “*Lopez* did not consider whether the petitioner ceased to qualify as a UAC pursuant to the statutory definition when ORR determined that his mother was available to provide care and physical custody or after his eighteenth birthday,” and the *Lopez* decision was therefore of “limited persuasive value.” *Id.* at 213. Additionally, “*Lopez* also could not consider Section 236.3(d)(2)—which specifically states that UACs who no longer meet the statutory definition are not entitled to legal protections applicable to UACs—because that regulatory provision went into effect after the *Lopez* court rendered its decision.” *Id.* Accordingly, the court disagreed with *Lopez*’s ruling. The Government submits that *Mendez Ramirez* was correct.

8 U.S.C. § 1232(c)(2)(A) provides: “Subject to section 279(b)(2) of Title 6 [providing for coordination with other entities and prohibiting release on own recognizance], an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(B) provides: “If a minor described in subparagraph (A) reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight.” The clear import of these provisions is that, if a minor reaches the ages of eighteen while in HHS custody, the Secretary shall consider placement in the least restrictive setting available at that time. Petitioner was in fact released at the point he turned eighteen. And while he was later taken into custody (when he was nineteen), the provision was at that point inapplicable.

Petitioner’s claim alleging violation of the INA because he was not provided with a least restrictive setting determination therefore fails. Further, Petitioner’s argument that his detention

violates the *Accardi* doctrine, derived from *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), fails for the same reasons. “*Accardi* and its progeny teach generally that federal agencies are required to follow their own regulations and some other formally adopted procedures, including those that govern exercises of an agency’s discretion.” *Diaz v. Rosen*, 986 F.3d 687, 690 (7th Cir. 2021). The *Accardi* doctrine does not apply to an agency’s rules unless they have the force of law. *See, e.g., id.* (“The *Accardi* doctrine generally does not apply to an agency’s internal memoranda, at least those that are neither designed to protect individual rights nor intended to have the force of law.”); *Still v. Dep’t of Labor*, No. 17-cv-1420, 2021 WL 4502053, at *4 (D.D.C. Sept. 30, 2021) (agency’s policy is “subject to *Accardi* if it limits the agency’s discretion and imposes ‘rights or obligations on the respective parties’” (quoting *Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987))).

Here, Petitioner argues that, in addition to section 1232(c)(2)(B), “ICE policy requires that officers evaluate each 18-year-old former UAC’s case, consider alternatives to detention, and document the decision with reasons.” Pet. ¶ 51. However, this “policy,” which Petitioner also describes as “internal rules,” does not independently have the force of law. *See, e.g., Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (declining to give legal effect to agency’s internal manual that had not been promulgated under the APA); *Sunny v. Biden*, No. 21-CV-4662 (BMC), 2023 WL 5613433, at *3-4 (E.D.N.Y. Aug. 30, 2023) (holding that State Department cable concerning consular services did not create binding obligations). In any event, the applicability of the policies and procedures Petitioner points to is premised on the applicability of the statute itself. Because Petitioner was not a UAC at the point he was taken into custody on November 10, 2025, ICE’s policies and procedures concerning least restrictive setting determinations did not apply.

II. Petitioner Is Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A) and Thus Not Entitled to a Bond Hearing

While the Petition does not challenge the statutory authority for Petitioner's detention, the Government nonetheless addresses it for the sake of completeness. Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A), which mandates that he remain in detention during the pendency of his removal proceedings, subject to DHS's discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a."

Petitioner falls within the ambit of section 1225(b)(2)(A)'s mandatory detention requirement. First, by statute, Petitioner is an "applicant for admission" to the United States because he is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Second, because Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Petitioner cannot demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as charged in his removal proceedings, he is present in the United States without being admitted or paroled, or arrived in the United States at a time and place other than as designated by the Attorney General, *see* Ex. C, and he is inadmissible under 8 U.S.C. § 1182(a)(6). Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained pending removal proceedings.

This reasoning comports with Supreme Court precedent. As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), applicants for admission fall into one of two categories: those covered by section 1225(b)(1) and those covered by section 1225(b)(2). *Id.* at 287. Section

1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2)—the provision relevant here—is “broader” and “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S. at 287. And section 1225(b) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2). Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See id.* at 302 (“[Section] 1225(b)(2) . . . mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

Petitioner might argue that his detention is actually governed by 8 U.S.C. § 1226(a), rather than section 1225(b)(2)(A).¹ However, “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1), and an alien who is detained shortly after unlawful

¹ Courts throughout the country, including in this district, have endorsed this argument under similar circumstances. *See, e.g., Huamani v. Francis*, No. 25 Civ. 8110 (LJL) (Nov. 4, 2025) (granting habeas petition based on conclusion that petitioner’s detention was pursuant to Section 1226(a) rather than Section 1225(b)(1)); *J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), ECF No. 30 (Oct. 28, 2025) (same); *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), ECF No. 20 (S.D.N.Y. Oct. 19, 2025) (same); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (same); *Ortiz-Lopez v. Francis*, 25 Civ. 7985 (KPF), ECF No. 14 (S.D.N.Y. Nov. 6, 2025) (same); *Comes v. DeLeon*, 25 Civ. 9283 (AT) (S.D.N.Y. Nov. 14, 2025) (same); *Rueda Torres v. Francis*, 25 Civ. 8408 (DEH), ECF No. 24 (S.D.N.Y. Nov. 13, 2025) (same); *Ortiz-Lopez v. Francis*, 25 Civ. 7985 (KPF), ECF No. 14 (S.D.N.Y. Nov. 6, 2025) (same). ICE respectfully disagrees with those decisions, and notes that other courts have rejected the argument that section 1226(a) applies in this context. *See See Mejia Olalde v. Noem*, No. 25-cv-168 (JMD), 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (determining that section 1225(b)(2)(A) governed); *Vargas Lopez v. Trump*, No. 25 Civ. 526 (BCB), 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (rejecting petitioner’s assertion that he was detained pursuant to 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(2)); *Chavez v. Noem*, No. 25 Civ. 02325 (CAB) (SBC), 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (discussing interplay between sections 1225(b) and 1226(a) and denying application for temporary restraining order brought by aliens contending that they were entitled to a bond hearing pursuant to section 1226(a)).

entry cannot be said to have ‘effected an entry.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Applicants for admission like Petitioner are “treated, for constitutional purposes, as if stopped at the border,” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal quotation marks omitted), even if they are paroled into the United States for a limited purpose, *see United States ex rel. Kordic v. Esperdy*, 386 F.2d 232, 235 (2d Cir. 1967) (“A ‘parolee,’ even though physically in the country, is not regarded as having ‘entered’ and thus has not acquired the full protection of the Constitution.”).

Petitioner was detained shortly after his unlawful entry in April 2024. Thus, he “cannot be said to have ‘effected an entry,’” *Thuraissigiam*, 591 U.S. at 140, and by statute he is deemed an applicant for admission, 8 U.S.C. § 1225(a)(1), treated for constitutional purposes as if stopped at the border. Though Petitioner was released after he turned eighteen, Dawson Decl. ¶ 4, his status as an applicant for admission has remained unchanged. Petitioner’s release was revoked on November 10, 2025, when ICE arrested him. Because under BIA precedent that is binding on ICE, Petitioner is an applicant for admission, he was arrested and his detention is mandatory pursuant to section 1225(b)(2)(A). *See Matter of Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (aliens who entered without admission or inspection are applicants for admission subject to mandatory detention under § 1225(b)(2)(A) even if they “have been residing in the United States for years without lawful status”).²

Petitioner is lawfully detained pursuant to section 1225(b)(2)(A), and he is not entitled to bond hearing. Because applicants for admission have not been admitted to the United States, their

² BIA decisions are binding on ICE. *See* 8 C.F.R. § 1003.1(g) (“Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.”).

constitutional rights are truncated: “[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)). Here, the procedure authorized by Congress in § 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings*, 583 U.S. at 297 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). Instead, for an applicant for admission, “if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a.” 8 U.S.C. § 1225(b)(2)(A). That is, Congress has provided that Petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections. *See* 8 U.S.C. § 1229a. The exclusive means of release for an applicant for admission such as Petitioner is DHS’s discretionary parole authority under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for “urgent humanitarian reasons or significant public benefit”); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate). Accordingly, Petitioner is not entitled to a bond hearing.

The Government notes that this Court recently issued a decision on this issue, deciding that where an alien who was apprehended shortly after unlawfully crossing the border had been released on an order of release on recognizance under section 1226(a), upon re-detention, that alien’s detention was properly governed by section 1226(a), not section 1225(b)(2)(A). *See Sun v. Almodovar*, No. 25 Civ. 9262 (PKC), 2025 WL 3241268 (S.D.N.Y. Nov. 20, 2025). The Government acknowledges that this decision would appear to control the result here if the Court adheres to that decision, as the Petitioner had been released in April 2024. And if the Court

determines that Petitioner's detention is appropriately governed by section 1226(a), the Government submits that the proper remedy would be the same as the Court ordered in *Sun*: a bond hearing under section 1226(a). *Id.* at *3 ("Because petitioner Enbin Sun is being detained pursuant to section 1226(a) and not section 1225(b)(2)(A), he is entitled to an individualized bond hearing under section 1226(a).").

III. Any Challenge to the Conditions of Petitioner's Confinement is Moot

While Petitioner does not assert a due process claim based on his conditions of confinement, *see* Petitioner, Claims, the Petition contains a section concerning the conditions of confinement at 26 Federal Plaza. Pet. ¶¶ 23-37. However, Petitioner was transferred from the temporary hold room at 26 Federal Plaza the day after he was first sent there and filed the Petition. Any potential claims related to the circumstances of Petitioner's brief detention at 26 Federal Plaza are moot now that he has been transferred to Orange County Jail ICE Detention Facility. *See, e.g., Phillips v. Ienuso*, No. 93 Civ. 6027 (Sotomayor, J.), 1995 WL 239062, at *1 (S.D.N.Y. Apr. 24, 1995) ("This Circuit has long and consistently held that a plaintiff's request for declaratory or injunctive relief relating to a correctional facility is moot once plaintiff is transferred or released from the facility." (citing cases, including *Young v. Coughlin*, 866 F.2d 567, 568 n.1 (2d Cir. 1989); *Tawwab v. Metz*, 554 F.2d 22, 23-24 (2d Cir. 1977)); *Mawhinney v. Henderson*, 542 F.2d 1, 2 (2d Cir. 1976)); *accord Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) ("It is settled in this Circuit that a transfer from a prison facility moots an action for injunctive relief against the transferring facility.").

Further, while Petitioner asserts that while at 26 Federal Plaza access to legal counsel was "severely restricted," Pet. ¶ 35, he succeeded in filing the Petition during the single day that he was there. Petitioner has given no indication that he lacks sufficient access to counsel at Orange County Jail ICE Detention Facility.

IV. Petitioner's Detention Does Not Violate the Administrative Procedure Act

In his Prayer for Relief, Petitioner seeks declaratory relief that his detention violates the Administrative Procedure Act (“APA”), Pet. Request for Relief, but the Petition does not assert an APA claim or explain how Petitioner’s detention purportedly violates the APA. In any event, the APA permits judicial review of agency action only when, *inter alia*, “there is no other adequate remedy in a court.” 5 U.S.C. § 704. Where an alien’s claims for relief “‘necessarily imply the invalidity’ of their confinement,” those claims “must be brought in habeas” and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *see also id.* at 674 (Kavanaugh, J., concurring) (“[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ . . . habeas corpus, not the APA, is the proper vehicle here.”). In any event, particularly given the lack of any allegations concerning the APA, Petitioner has not sufficiently alleged any APA violation.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of habeas corpus.

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Respectfully submitted,

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