

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Mohamed El Moctar Taleb Maazouz,

Petitioner,

v.

**Judith Almodovar, *Acting ICE Field
Office Director; et al.***

Respondents.

Civil Action No.: 25-cv-9388

Petitioner's Reply in Support of Habeas Petition

Rafael Urena
Attorney for the Petitioner

Urena & Associates, PLLC
42 West St, Floor R
Brooklyn, NY 11222
Tel: (703) 989-4424
Email: ru@urenaesq.com

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Petitioner's Reply in Support of Habeas Petition

I. Introduction

Petitioner Mohamed El Moctar Taleb Maazouz submits this reply to the Government's opposition, urging the Court to reject the Government's cramped reading of 8 U.S.C. § 1232(c)(2)(B) and to grant relief. Section 1232(c)(2)(B) – part of the Trafficking Victims Protection Reauthorization Act (TVPRA) – imposes a mandatory duty on ICE to consider “placement in the least restrictive setting available” for former unaccompanied alien children (also referred herein as “UACs”) who “reach[] 18 years of age” and transfer to DHS custody. The Government argues this provision is inapplicable once a person turns 18, but that interpretation would nullify the statute and lead to absurd results. Congress clearly intended to protect vulnerable youth as they “age out” of ORR custody; the Government's reading would render § 1232(c)(2)(B) a dead letter, excusing ICE from ever having to implement the very protections Congress mandated.

The *Accardi* doctrine further compels relief. ICE has acknowledged internally that it maintains policies and procedures to implement § 1232(c)(2)(B)'s mandate, yet in Petitioner's case it failed to follow those self-imposed rules. An agency cannot ignore its own binding rules without consequence. By flouting its age-out custody policies here, ICE violated Petitioner's due process rights under *Accardi's* principle that agencies must adhere to their regulations and established procedures.

Additionally, the Court should follow the persuasive reasoning of *Lopez v. Sessions*, 2018 WL 2932726 (S.D.N.Y. June 12, 2018), which granted habeas relief to a former UAC re-detained after turning 18, rather than the Government's reliance on *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020). *Lopez* recognized that re-detaining a noncitizen who arrived as

a minor – without affording any prior notice, showing of changed circumstances, or opportunity to be heard – violates the Fifth Amendment’s due process guarantee. By contrast, *Mendez Ramirez* denied relief only by effectively reading § 1232(c)(2)(B) out of existence, concluding that because the petitioner was no longer a “UAC” at 18, he somehow had “no [UAC] protections” at all. That reasoning contravenes the statute’s text and purpose.

Finally, as this Court recently held in *Sun v. Almodovar*, 2025 WL 3241268 (S.D.N.Y. May 28, 2025), an individual in Petitioner’s position – re-detained well after entering and being paroled into the U.S. – is properly detained, if at all, under 8 U.S.C. § 1226(a), not the § 1225(b) mandatory detention provision. Here, ICE attempts to justify Petitioner’s detention as mandatory under § 1225(b)(2)(A) as if he were an arriving alien at the border, but that position has been rejected by an emerging consensus of courts. Under § 1226(a), Petitioner is entitled to an individualized bond hearing, which ICE has never provided. The Court should therefore order appropriate relief: either Petitioner’s immediate release or, at minimum, a prompt bond hearing to remedy the unlawful deprivation of his liberty.

For the reasons below, Petitioner’s habeas petition should be granted, and the Court should direct his release or a bond hearing forthwith.¹

II. Argument

A. 8 U.S.C. § 1232(c)(2)(B) Applies to Petitioner and Mandates Consideration of Less Restrictive Alternatives, Contrary to the Government’s Absurd Interpretation

Section 1232(c)(2)(B) was enacted to ensure that unaccompanied immigrant children who are in the custody of the Government are not unnecessarily thrown into adult immigration

¹ Petitioner’s conditions-of-confinement claim (Pet. ¶ 47) is now moot, as the specific facility conditions at issue have been addressed. Petitioner accordingly focuses this reply on the core legality of his detention and need for a bond hearing.

detention after turning 18 years old. By its plain text, Congress directed that when a *former* UAC “reaches 18 years of age and is transferred to [DHS] custody, 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.” 8 U.S.C. § 1232(c)(2)(B). It further specifies that such individuals “shall be eligible to participate in alternative to detention programs”, including placement with an individual or organizational sponsor or in supervised group homes. *Id.* The statute’s language is mandatory, and its purpose is unmistakable: to require ICE to prioritize alternatives to incarceration for *all* former unaccompanied children who became adults while in government custody, rather than defaulting to jail – a congressional recognition and protection of a vulnerable population. See *Garcia Ramirez v. U.S. Immigration & Customs Enforcement*, No. 18-508 (RC), 2018 WL 4054860, at *30-33 (D.D.C. Aug. 30, 2018) (rejecting the government’s attempt to narrow the statutory phrase “such aliens” and clarifying that the term simply refers to *all* former unaccompanied minors transferred to DHS).

The Government’s contention that § 1232(c)(2)(B) “does not apply” to Petitioner because he was detained after the 18th birthday defies the statute’s text and context. By definition, § 1232(c)(2)(B) only comes into play when a child is 18 years old and is a *former* unaccompanied alien child. The duty to consider less restrictive placements is triggered at the moment of age-out – *i.e.*, when the person ceases to be a “child” under ORR custody and is custody is transferred to DHS. To say the provision magically vanishes at 18 and DHS can make any determination a day after the 18th birthday would read it out of existence entirely. Indeed, if ICE were correct, no individual would ever benefit from § 1232(c)(2)(B): ORR has custody while the person is under 18, and ICE’s view is that once 18, the law no longer binds them and the government can immediately make unfettered custody redeterminations and jail former unaccompanied alien

children wholesale. This interpretation nullifies the statute and produces an absurd result that Congress surely did not intend. Courts must “avoid an interpretation of a statute that renders any part of it superfluous or meaningless”, and should reject constructions that defeat a law’s obvious purpose. *See Catanzano v. Wing*, 992 F. Supp. 593, 596 (W.D.N.Y. 1998) (citing *In re Colonial Realty Co.*, 980 F.2d 125, 132 (2d Cir. 1992)).

Here, the Government’s age-based carve-out for § 1232(c)(2)(B) is not a plausible reading at all – it is an attempt to eviscerate a provision Congress deliberately put in place to protect this very vulnerable population. *See Garcia Ramirez*, at *32. Congress’s intent is crystal clear: ICE must treat age-outs with special solicitude and must consider less restrictive settings for former unaccompanied alien children – it cannot simply jail them as a matter of course. The Government’s reading – which would license unfettered jailing of aged-out former unaccompanied, the exact sort of routine jailing that Congress forbade – cannot stand.

Multiple courts have recognized that § 1232(c)(2)(B) imposes an affirmative, enforceable obligation on ICE to former unaccompanied alien children. In *Lopez v. Sessions*, for instance, the court held that DHS’s failure “to take a discrete agency action that it is required to take” under the TVPRA by failing to consider the least restrictive setting for the petitioner was unlawful. *Lopez*, 2018 U.S. Dist. LEXIS 98712, at *18 (S.D.N.Y. June 12, 2018). The court granted habeas relief, finding that ICE’s arrest and detention of the former unaccompanied children without adhering to § 1232(c)(2)(B)’s process violated both the Administrative Procedure Act and the petitioner’s due process rights. *Id.* at *21-40. Similarly, in the District of New Jersey, Judge Susan D. Wigenton has observed that “the government must consider the least restrictive setting available, including alternatives to detention” for a former unaccompanied alien child who turns 18 and is taken into DHS custody. *Sandoval v. Rokosky*, Civil Action No. 25-17229 (SDW), 2025 LX 564444 (D.N.J.

Nov. 17, 2025). Because ICE failed to do so in that case, the court concluded the detention was unlawful and ordered the petitioner's immediate release. *Id.* at *5. These decisions underscore that § 1232(c)(2)(B) is not an empty suggestion – it is a binding constraint on ICE's custody decisions for former unaccompanied children who age out while in ORR custody, and it is fully applicable to individuals like Mr. Maazouz.

The Government's reliance on 8 C.F.R. § 236.3(d), which notes that an alien who is "no longer a UAC" is not entitled to certain protections limited to UACs, is misplaced. A regulation cannot override a statute. Section 1232(c)(2)(B) is a specific statutory protection that by its terms applies at the moment a UAC "ages out" and enters DHS custody. Moreover, the Government's reading of the regulation is simply wrong. The regulation, properly read, simply clarifies that once a person is not a UAC, they can no longer claim rights that *only minors* can have (for example, being housed in juvenile facilities or having ORR as custodian). But § 1232(c)(2)(B) is *not* a protection that only applies while an unaccompanied alien child is under 18 – it is, in fact, a protection that activates upon reaching 18. The Government cannot use a general regulatory statement to erase a specific statutory mandate. As one court succinctly put it, the § 1232(c)(2)(B) requirement is fundamentally "incompatible" with an approach that treats aged-out youth just like any other adult alien. *Sandaval*, at *5. In other words, Congress carved out a special rule for this group, and ICE must honor it.

In this case, there is no dispute that Petitioner *was* an unaccompanied alien child without lawful immigration status who entered the government's custody as a minor without a parent or legal guardian in the US, was in the custody of the ORR upon his 18th birthday, and has fallen into ICE's custody. Section 1232(c)(2)(B) therefore squarely applies. Yet nothing in the record shows that ICE considered any alternatives to detention or the "least restrictive setting" for Petitioner, as

the law requires, when the Petitioner was detained. To the contrary, the ICE officers appear to have treated Mr. Maazouz's appearance at a routine ICE check-in as an automatic trigger for detention, not an occasion for careful, individualized decision-making. The Government's opposition offers no evidence that a bona fide least-restrictive placement analysis was conducted. This failure means ICE violated a federal statute – a violation that renders Petitioner's ongoing detention “not in accordance with law.” Because 28 U.S.C. § 2241(c)(3) permits habeas relief for any person held “in custody in violation of the ... laws ... of the United States,” Petitioner is entitled to relief on this basis alone.

B. ICE's Failure to Follow Its Own Age-Out Custody Policies Violates the *Accardi* Doctrine

Not only did ICE violate the statute, it also failed to adhere to its own policies and procedures implementing § 1232(c)(2)(B). See *Garcia Ramirez*, at *43-55. Under the *Accardi* doctrine – derived from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) – when an agency has promulgated rules or established procedures to safeguard individual rights, the agency must follow those rules. An agency's disregard of its own binding policies is “per se arbitrary” and a denial of due process. Here, ICE's handling of Petitioner runs afoul of *Accardi*.

ICE has admitted that it maintains internal guidance and practices to carry out § 1232(c)(2)(B). This pattern of neglecting its own procedures is exactly what happened to Petitioner. ICE's opposition papers assert that ICE “considered” Petitioner's circumstances, but provide no detail of any genuine analysis, nor any documents (such as an age-out review worksheet or similar assessment) contemporaneously showing that alternatives were weighed. Petitioner, by contrast, has presented evidence that he had family and community support and posed no danger – factors that, under both the statute and ICE's policy, should point toward release or a non-detained setting. Yet ICE summarily detained him without exploring those options. By ignoring

its own mandated process, ICE violated Petitioner's right to due process. *Accardi* and its progeny demand that this Court not allow ICE to skirt its rules. ICE's failure to carry out its age-out custody policy here is an independent ground for habeas relief: the detention resulted from a procedurally improper decision-making process.

The Government's attempt to sidestep *Accardi* by claiming § 1232(c)(2)(B) simply doesn't apply, and thus no process was owed, should be rejected. ICE cannot "contract out" of its duty by a tautological argument that the youth is now over 18. The agency itself recognized the duty by formulating policies – it must be held to them. This Court's intervention is necessary to ensure those duties are finally obeyed in Petitioner's case.

C. Petitioner's Re-Detention After Release Is Governed by INA § 1226(a), Not § 1225(b), and He Is Entitled to a Bond Hearing

The Government further errs in asserting that Petitioner's detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). That provision requires detention of certain arriving aliens "seeking admission" who are stopped at the border and found not clearly admissible. 8 U.S.C. § 1225(b)(2)(A). It is inapplicable to someone like Mr. Maazouz who is not seeking admission to the United State but has been residing in the United States for almost two years awaiting the adjudication of an affirmative asylum application for unaccompanied alien children after the government declined to prosecute his removal.² Instead, the general detention authority of 8 U.S.C. § 1226(a) controls here, as numerous courts – including this Court – have recently held in analogous situations. *See Sun v. Almodovar*, No. 25-cv-9262 (PKC), 2025 LX 504522, at *4 (S.D.N.Y. Nov. 20, 2025) (collecting cases). Section 1226(a) affords the government discretion to

² Upon entry to the United States, Mr. Maazouz was issued a Notice Appear, dated April 4, 2025. ICE failed to prosecute the case, Mr. Maazouz was released from custody, and subsequently applied for asylum affirmatively pursuant to policies. *See J.O.P. v. DHS*, No. 8:19-CV-01944-SAG (D. Md.) (settlement agreement).

arrest and detain an alien pending removal proceedings “pending a decision on whether the alien is to be removed,” but critically it also permits the alien’s release on bond or conditional parole, and the regulations provide for a bond hearing before an Immigration Judge. *See Arevalo-Guasco v. Dubois*, 788 F. App’x 25, 26 (2d Cir. 2019). In other words, under § 1226(a) a detainee is entitled to an individualized determination of whether detention is necessary, at the outset of detention. The Government is attempting to dodge that process by labeling Petitioner as an “arriving alien” subject to § 1225(b) – but that label does not fit the reality or the law.

This Court’s decision in *Sun v. Almodovar* is directly on point. In *Sun*, as here, ICE re-arrested a noncitizen in the interior who had initially entered at the border and been released on recognizance during his pending immigration case. *See Sun v. Almodovar*, No. 25-cv-9262 (PKC), 2025 LX 504522, at *1-2 (S.D.N.Y. Nov. 20, 2025). There, ICE argued that § 1225(b) applied, mandating detention without bond, but this Court rightly rejected that “catchall” theory. *Id.* at *3. The Court noted that § 1225(b)(2)(A)’s reference to an alien “seeking admission” at the border did not extend to someone like Sun who had long since entered the country and been living here. Instead, “the emerging consensus” among courts is that § 1226(a) governs the detention of an alien pending a removal determination,” and § 1225(b)(2)(A) applies only at the time of an alien’s initial arrival seeking admission. *Id.* at *3-4.

Petitioner’s case is no different. Like Mr. Sun, Petitioner entered the U.S. with was released to live in the community with the government’s knowledge and approval, and then was suddenly re-detained by ICE – even though he was not caught at a port of entry but rather was residing in New York. Once released by ORR to a sponsor, Petitioner became, for custody purposes, an “alien present in the United States pending removal proceedings”, which squarely places him under § 1226. The Government cannot transform him back into an “arriving alien” and subject to

mandatory detention by the expedient of waiting until he turns 18 and then picking rearresting him. Indeed, as Judge Wigenton observed in *Garcia Sandoval v. Rokosky*, applying § 1225(b) to an aged-out former UAC would directly conflict with the TVPRA's requirement of special consideration, and thus "§ 1225's mandatory detention provision does not apply" in that scenario. *See Sandoval*, at *4. Here, because ICE incorrectly treated Petitioner as subject to § 1225(b), it did not provide him with any bond hearing under § 1226(a). That was unlawful. This Court should hold that Petitioner's detention is governed by § 1226(a) and order that he be given the bond hearing he was due from the start.

In opposing this outcome, the Government has invoked a recent Board of Immigration Appeals decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which opined that individuals in Petitioner's posture are treated as arriving aliens. But as this Court noted, "it is the province of the courts – not the agency – to 'authoritatively interpret' the statute." *Sun*, at *5 (quoting *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)). The BIA's view is not binding where, as here, the statute's meaning is clear and the BIA's interpretation would undermine the statutory scheme. This Court should therefore decline to follow *Hurtado* and instead align with the growing consensus of Article III courts that have rejected DHS's overbroad application of § 1225(b).

Finally, fundamental due process principles reinforce why a bond hearing is required. A person like Mr. Maazouz, who was previously living at liberty after government release, has a significant liberty interest in remaining free from detention absent good cause. The Fifth Amendment requires, at the very least, an opportunity to be heard on whether confinement is justified. As the court held in *Lopez v. Sessions*, the "re-detention [of a former UAC] without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond" does not

meet basic procedural due process requirements. *Lopez*, at *30 (S.D.N.Y. June 12, 2018) (citation omitted). Here, ICE gave Petitioner no notice or chance to contest his incarceration; he was called into the office under the guise of paperwork and then summarily locked up. This Kafkaesque ambush deprived him of the process he was due. A bond hearing before an immigration judge – where the Government must justify continued detention based on flight risk or danger, and where conditions short of jail can be considered – is the proper and minimal remedy to satisfy due process in this context. Indeed, *Jennings v. Rodriguez*, 583 U.S. 521 (2018), acknowledged that § 1226(a) detainees are entitled to seek bond, and nothing in law or logic permits ICE to strip Petitioner of that procedural right.

In sum, because § 1226(a) applies, Petitioner should have had a bond hearing at the outset of his detention. ICE's decision to circumvent that process was unlawful. This Court has the power on habeas to correct the error by ordering a bond hearing now, or simply ordering Petitioner's release, given the violation of law. Either course would restore the status quo that Congress envisioned: Petitioner would be freed absent an individualized showing that no conditions of release can assure public safety or appearance at proceedings.

III. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Court grant the writ of habeas corpus. The Court should hold that Petitioner's detention violates 8 U.S.C. § 1232(c)(2)(B), the Immigration and Nationality Act, and the Constitution. As relief, Petitioner urges the Court to order his immediate release from ICE custody. At a minimum, Petitioner is entitled to an individualized bond hearing before an immigration judge under the proper legal framework (INA § 1226(a)), to occur within seven days or another prompt timeframe set by the Court[26]. Such relief is both necessary and appropriate to correct the unlawful and procedurally improper

detention that Petitioner has endured. Petitioner entered this country as a 17-year-old child fleeing his parents' abuse and persecution; he turned 18 in the safety of a family setting; and he has complied with the law and posed no danger. Congress recognizes he is vulnerable and provided him a right to be treated with care at age-out, and to be considered for alternatives to incarceration. This Court's intervention is needed to enforce that right. Petitioner therefore respectfully asks the Court to grant the petition and award the requested habeas relief, ensuring that he is not relegated to unwarranted imprisonment but is given a fair opportunity to seek release under the law.

Dated: Brooklyn, New York
November 23, 2025

Respectfully submitted,

/s/ Rafael Urena

Rafael Urena

Attorney for the Petitioner

Urena & Associates, PLLC

42 West St, Floor R

Brooklyn, NY 11222

Tel: (703) 989-4424

Email: ru@urenaesq.com

Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-signed counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 3,271 words.

Certificate of Service

The above-signed counsel certifies that on December 2, 2025, a true and correct copy of the foregoing was served via ECF upon counsel of record.