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## INTRODUCTION

Petitioner respectfully submits this Reply to Respondents' ("Government") Opposition to the Petition for Writ of Habeas Corpus. The Court should grant habeas relief for the following reasons. First, there are no jurisdictional or exhaustion concerns that prevent this Court from hearing this matter. Second, Petitioner is clearly not subject to mandatory detention under section 1225(b)(2). Instead, Petitioner's detention is governed by discretionary detention under section 1226(a). This Court should join the chorus of courts around the country finding that habeas relief is warranted. With respect to the form of relief, the Court should order Petitioner released from detention, as other courts in this district have found to be appropriate. Alternatively, if the Court is not inclined to release Petitioner, it should direct that an IJ promptly hold a bond hearing at which time the burden of proof for continued detention would be on the Government by clear and convincing evidence.

## ARGUMENTS

### **I. THIS COURT POSSESSES SUBJECT MATTER JURISDICTION**

The Government contends that 8 U.S.C. § 1252(g), 1252(b)(9) and 1252(a) deprive this Court of jurisdiction to entertain Petitioner's claims. However, almost every court that has addressed this issue has rejected the Government's jurisdictional arguments. "Courts are guided by two presumptions when analyzing whether a statute bars judicial review of an agency's action. First, 'the usual 'strong presumption [is] in favor of judicial review of administrative action.'" *Ndiaye v. Jamison*, No. 25-6007, 2025 LX 503509, at \*6 (E.D. Pa. Nov. 19, 2025) (quoting *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020)). "Second, 'the general rule [states] the narrower construction of a jurisdiction-stripping provision is favored.'"

*Id.* Section 1252(g) "does not sweep broadly. It reaches only these three specific actions, not everything that arises out of them." *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 296 (3d Cir. 2020). Those three specific actions are causes or claims arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against noncitizens. None of those apply to this case. Petitioner "is explicitly not challenging the Government's commencement of his removal proceedings" and "is instead challenging the legality of his *detention*, only seeking relief which declares his detention illegal and secures his immediate release." *Ndiaye*, 2025 LX 503509, at \*7 (emphasis original). Because Petitioner is not "challenging his detention and not the Government's decision or discretion to commence removal proceedings, § 1252(g) does not bar [Petitioner's] claims." *Id.*

The Government's section 1252(b)(9) arguments also fail. *See E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020). Moreover, § 1252(b)(9) "does not strip jurisdiction when aliens seek relief that courts cannot meaningfully provide alongside review of a final order of removal." *Id.* at 186 ("If 'later' is not an option, review is available now."). As another court in this district found, "[l]ater is not an option here, because the Court of Appeals could not 'meaningfully' redress [Petitioner's] purportedly unlawful denial of release on bond should his final removal be ordered." *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 LX 582832, at \*6 (E.D. Pa. Nov. 18, 2025).

Lastly, 1252(a)(2)(B)(ii) does not bar jurisdiction because Petitioner "does not challenge a discretionary bond denial or decision, but rather the 'extent of the [Government's] authority under the . . . detention statute[s],' which "is not a matter of discretion." *Ndiaye*, 2025 LX 503509, at \*8-9.

## **II. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS FUTILE AND NOT REQUIRED**

The Government contends that Petitioner should be required to exhaust administrative remedies. However, the Government does not dispute that the BIA's published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is binding on all immigration judges and forecloses bond at the administrative level. Therefore, filing a bond request before an IJ would be completely futile. Exhaustion "is a matter of sound judicial discretion" when not required by statute. *Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 970 (3d Cir. 1980). A "petitioner does not need to 'exhaust administrative remedies where the issue presented involves only statutory construction.'" *Ndiaye*, 2025 LX 503509, at \*9 (quoting *Vasquez v. Strada*, 684 F.3d 431, 433-34 (3d Cir. 2012)). Here, "[b]ecause there are no applicable statutory exhaustion requirements and the issue in this case hinges entirely on the statutory construction of 8 U.S.C. §§ 1225 and 1226, this exception applies." *Id.*

Furthermore, "where exhaustion is not clearly mandated by statute, a futility exception exists." *Duvall v. Elwood*, 336 F.3d 228, 234 (3d Cir. 2003). Notably, "[t]he exception is appropriate when the decisionmakers in the administrative process will almost certainly reject petitioner's requested relief." *Ndiaye*, 2025 LX 503509, at \*9.

## **III. THE COURT SHOULD GRANT HABEAS RELIEF BECAUSE PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a), NOT 8 U.S.C. § 1225(b)(2)**

The Government agrees that the crux of this matter comes down to whether Petitioner is detained under section 1226(a) or 1225(b)(2). For nearly 30 years, DHS and the BIA considered noncitizens like Petitioner subject to detention under 1226(a), and therefore eligible for bond. But starting on July 8, 2025, DHS radically changed its position regarding the statutory interpretation of these two statutes and now considers all noncitizens—except those who were

admitted to the United States—to be ineligible for bond. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention. The Government’s contention that DHS’ newfound interpretation of section 1225(b)(2) governs is incorrect for the following reasons.

*A. 8 U.S.C. § 1225(b)(2) Does Not Concern Noncitizens like Petitioner*

The Government’s position is essentially that every noncitizen is an “applicant for admission” subject to mandatory detention, except for those who were admitted. However, “for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at \*6 (D. Mass. July 24, 2025). However, the Government makes no distinction between an applicant for admission and “seeking admission.” *See id.* at \*11 (noting that the Government is “apparently treating it as mere surplusage of the ‘applicant’ requirement.”). The phrase “seeking admission” is undefined but “necessarily implies some sort of present-tense action.” *Id.* Here, there is no present action. “To be sure, the line between when a person is ‘seeking admission’ as opposed to being ‘already in the country’ is not necessarily obvious. For instance, someone who has just crossed the border may technically be ‘in’ the country but is still treated as ‘an alien seeking initial entry.’” *Benitez v. Francis*, 2025 LX 337407, at \*10 (S.D.N.Y. Aug. 8, 2025). So therefore, it is important to look to how Petitioner was treated upon entry in the United States. As set forth in the Petition, Petitioner entered the United States on or about September 15, 2023 and was briefly detained for one day, and then released after being served with a Notice to Appear (“NTA”). The NTA itself

designated Petitioner as “an alien present in the United States who has not been admitted or paroled” and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) 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.” Therefore, “it is indisputable that Respondents have consistently treated [Petitioner] as subject to § 1226.” *Benitez*, 2025 LX 337407, at \*13. “These facts, taken together, can support only one conclusion—that [Petitioner] was not mandatorily detained as a noncitizen ‘seeking admission’ under § 1225(b), but rather as someone ‘already in the country,’ *Jennings*, 583 U.S. at 288-89, pursuant to Respondents’ discretionary authority under § 1226(a) . . . .” *Id.* Therefore, “[i]t is inconsistent with the plain, ordinary meaning of the phrase ‘seeking admission’ to apply this section to all noncitizens already present and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute ‘seeking admission.’” *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at \*37 (D. Nev. Sep. 17, 2025).

There was also no examination by an immigration officer, as required by the statute. The Government’s opposition makes no meaningful attempt to address this requirement and concedes that Petitioner entered the United States without inspection or parole.

The Court should consider “whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But crucially, a statute “cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (quoting *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989)). Here,

the context is clear that “detention authority in § 1225 is exercised at or near the port of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the United States.” *Zumba*, 2025 LX 482036, at \*19. Indeed, “[t]he line historically drawn between these two sections, making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’” *Martinez*, 2025 LX 284582, at \*18. In other words, the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to enter, or who have recently entered the U.S. It does not include noncitizens “who entered long ago, are not taking affirmative steps that could be characterized as ‘seeking admission,’ and have been residing in the U.S. for years.” *Vazquez*, 2025 LX 460110, at \*39. This is also further supported by the very title of section 1225. “The titles and headings of § 1225 repeatedly cabin its application to ‘Inspections,’ which, as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border.” *Zumba*, 2025 LX 482036, at \*23. While not binding, “[titles and headings of a statute] are instructive and provide the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at \*15 (E.D. Mich. Aug. 29, 2025). Therefore, “1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country.” *Id.* at \*18.

*B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner and the Government’s Contentions Otherwise Are Unpersuasive*

Section 1226(a), on the other hand, concerns all noncitizens without final orders of removal who are not subject to section 1225. *See Benitez*, 2025 LX 337407, \*3 (holding that § 1225 did not apply because the “plain text, overall structure, and uniform case law interpreting”

the statutory provision compels the conclusion). “As almost every district court to consider this issue has concluded, ‘the statutory text, the statute's history, Congress’ intent, and § 1226(a)'s application for the past three decades’ support finding that § 1226 applies to these circumstances.” *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at \*6 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at \*14 (W.D. Tex. Sep. 21, 2025).

*C. If the Court finds that Section 1226(a) Applies to Petitioner, It Should Order His Release From Detention, or at the Very Least Direct That An IJ to Conduct a Bond Hearing At Which the Government Bears the Burden of Proof By Clear and Convincing Evidence*

The Government’s contends that Petitioner is not entitled to any due process rights, but their arguments are entirely based on the mistaken assumption that Petitioner is subject to detention under 1225(b)(2). The Fifth Amendment's Due Process Clause prevents the Government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test here, the Court should conclude that Petitioner’s detention violates due process. Petitioner invokes the most significant liberty interest, that being his interested in freedom from unconstitutional detention. Moreover, Petitioner satisfies the second prong of the *Mathews* test because the risk of erroneous deprivation is very high. Meanwhile, the Government’s interest in detaining Petitioner is low, and the Government has not presented any arguments to suggest that Petitioner’s detention is necessary.

A habeas court has "the power to order the conditional release of an individual unlawfully detained." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Here, the Government’s

violation of Petitioner's constitutional rights originated with his detention in the first instance. "[T]he traditional function of the writ is to secure release from illegal custody"; it is the "usual remedy by which a man is restored again to his liberty, if he ha[s] been against law deprived of it." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). This Court should join the number of courts in this district that have granted immediate release as the appropriate relief. *See Ndiaye*, 2025 LX 503509, at \*24; *Patel v. McShane*, No. 25-5975, 2025 LX 577218, at \*6 (E.D. Pa. Nov. 20, 2025); *Kashranov v. Jamison*, No. 2:25-cv-05555-JDW, 2025 LX 569712, at \*22 (E.D. Pa. Nov. 14, 2025).

### **CONCLUSION**

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted this 26th day of November 2025,

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