



they have granted habeas petitions for similarly situated petitioners. *See, e.g., Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at \*9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 5:25cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, \*13 (C.D. Cal. July 28, 2025); *Sampiao v. Hyde*, No. 1:25-cv-119812025, WL 2607924 (D. Mass. Sept. 9, 2025); *Chogllo Chafila v. Scott*, 2025 WL 2688541 (D. Me. Sept. 2, 2025); *Jimenez v. FCI Berlin, Warden*, No. 1:25-cv-00326 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Beltran Barrera v. Tindall*, No. 3:25-cv-00541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-cv-000962025, WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01174, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Giron Reyes v. Lyons*, No. 3:25-cv-000942025, WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094 (S.D. Iowa Sept. 10, 2025); *Anicasio v. Kramer*,

4:25-cv-03158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Guerrero Lepe v. Andrews*, 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025). In contrast to the overwhelming rejection of Respondents' arguments by courts across the country, Respondents do not point to a single case in support of their argument other than the Board's recent decision in *Matter of Yajure Hurtado*, an interpretation that this Court need not give any deference. *See Loper Bright v. Raimondo*, 603 U.S. 369 (2024).

Petitioner does not assert that he is entitled to "release on bond" nor does he contest the legality of his removal proceedings, as Respondents contend. ECF No. 5 at 2. Rather, Petitioner challenges the legality of his mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Because Respondents violated Petitioner's right to due process, the Immigration Nationality Act ("INA"), and federal regulations, Petitioner requests this Court grant his petition and either order his release from custody or that he be given a bond hearing pursuant to 8 U.S.C. § 1226(a).

**I. Petitioner is not required to exhaust administrative remedies as doing so would be futile.**

Petitioner is not required to exhaust administrative remedies, as no statute mandates exhaustion and exhaustion would be futile given the Board's decision in *Matter of Yajure Hurtado*. Exhaustion is not required when, as here, it would be futile because the adjudicating body has already decided the issue. *See Carter v. Estelle*, 677 F.2d 427, 446 (5th Cir. 1982) ("it has been held that exhaustion is not necessary where resort to state remedies would be futile, because the necessary delay before entrance to a federal forum which would be required is not justified where the state court's attitude towards a petitioner's claims is a foregone conclusion."); *Fisher v. State of Texas*, 169 F.3d 295, 303 (5th Cir. 1999) (the "futility exception applies when, as here, the highest state court has recently decided the same legal question adversely to the petitioner."). The Board's treatment of Petitioner's pending appeal is a "foregone conclusion" given the recent

precedential decision by that agency in *Matter of Yajure Hurtado*, and exhaustion is therefore not necessary as it would be futile.

Respondents incorrectly cite *Lee v. Gonzalez*, 410 F.3d 778 (5th Cir. 2005) for their contention that Petitioner needs to exhaust all other avenues of relief, yet that case involved a very different situation. ECF No. 5 at 8. There, the habeas petitioner was challenging his underlying removal order, and the Fifth Circuit held he should have filed a petition for review before filing a habeas petition. *Id.* at 786 (“Because Lee failed to file a petition for review, the district court lacked jurisdiction to hear his habeas petition.”). Here, in contrast, Petitioner is challenging the legality of his detention, and, given the Board’s recent precedential decision in *Matter of Yajure Hurtado*, the decision in his appeal is a “foregone conclusion.” He therefore lacks any other legal avenue besides this habeas petition to challenge his detention, and exhausting administrative remedies is not necessary as it would be futile.

**II. This Court has jurisdiction to review Petitioner’s claims.**

8 U.S.C. §§ 1252(g) and (b)(9) do not preclude review of Petitioner’s claims. Contrary to Respondents’ assertions, Petitioner does not contest the legality of his removal proceedings or whether Respondents can lawfully adjudicate his case and remove him from the U.S. Rather, he contests his detention during removal proceedings under 8 U.S.C. § 1225(b)(2)(A) and argues he should be detained pursuant to 8 U.S.C. § 1226(a). Neither statute precludes this Court from reviewing Petitioner’s claims.

**a. Section 1252(g)**

The Illegal Immigration Reform and Immigration Responsibility Act of 1996 (“IIRIRA”) provides:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas

corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). The Supreme Court has explained that § 1252(g) relates to “three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In that case, the Supreme Court explained that § 1252(g) does not preclude review of “the universe of deportation claims” and explained “[t]here are of course many other decisions or actions that may be a part of the deportation process” that may be reviewed. *Id.*

Here, Petitioner does not challenge the commencement of his removal proceedings or whether Respondents can adjudicate his case. Rather, he challenges whether he can be detained pursuant to 8 U.S.C. § 1225(b)(2)(A) while his removal proceedings are pending. The Fifth Circuit has found § 1252(g) does not bar courts from reviewing detention orders. *See Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (the statute “does not bar courts from reviewing an alien detention order, because such an order, ‘while intimately related to efforts to deport, is not itself a decision to ‘execute removal orders’ and thus does not implicate section 1252(g).” (quoting *Zadvydas v. Underdown*, 185 F.3d 279, 285 (5th Cir. 1999)). Therefore, § 1252(g) does not preclude review of Petitioner’s claim.

**b. Section 1252(b)(9)**

8 U.S.C. § 1252(b)(9) also does not deprive this Court of jurisdiction. The statute provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in juridical review of a final order under this section. Except as otherwise provided in this section, no court shall have

jurisdiction, by habeas corpus under section 2242 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Again, this statute does not apply to Petitioner, who does not contest the removal process, a removal order, or Respondents' initial decision to detain him. Rather, he challenges whether it is constitutional and lawful for Respondents to subject him to mandatory detention without bond pursuant to 8 U.S.C. § 1225(b)(2)(A), a claim that is not precluded by § 1252(b)(9). *See Jennings v. Rodriguez*, 583 U.S. 281, 291–96 (2018) (analyzing habeas jurisdiction to challenge detention without an individualized bond hearing).

### **III. Section 1225(b)(2)(A) does not apply to Petitioner.**

The only cases Respondents rely on for their contention that Petitioner is lawfully detained pursuant § 1225(b)(2)(A) are the Board's decision in *Matter of Yajure Hurtado* and a single district court case, *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). ECF No. 5 at 11 (discussing *Pena v. Hyde*). Far from "confirm[ing]" Respondents' interpretation of the statutes, as Respondents claim, the district court in *Pena* did not analyze or interpret sections 1225(b)(2)(A) or 1226(a). Rather, the issue in *Pena v. Hyde* was whether the petitioner could remain detained after approval of an I-130 petition. No. 25-11983 at \*3–4.

Respondents advance no other legal authority in support of their interpretation, and, indeed, undersigned counsel is aware of none. In contrast, in the months since the Department of Homeland Security ("the Department") began routinely appealing bond grants with these arguments and the Board subsequently issued *Matter of Yajure Hurtado*, district courts around the country have overwhelmingly rejected this interpretation and granted habeas petitions to similarly situated petitioners. *See, e.g., Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at \*9

(D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Benitez v. Noem*, No. 5:25cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, \*13 (C.D. Cal. July 28, 2025); *Sampiao v. Hyde*, No. 1:25-cv-11981-2025, WL 2607924 (D. Mass. Sept. 9, 2025); *Chogullo Chafila v. Scott*, 2025 WL 2688541 (D. Me. Sept. 2, 2025); *Jimenez v. FCI Berlin, Warden*, No. 1:25-cv-00326 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Beltran Barrera v. Tindall*, No. 3:25-cv-00541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-cv-00096-2025, WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 2:25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01174, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Giron Reyes v. Lyons*, No. 3:25-cv-00094-2025, WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094 (S.D. Iowa Sept. 10, 2025); *Anicasio v. Kramer*, 4:25-cv-03158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Guerrero Lepe v. Andrews*, 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025).

Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, 603 U.S. 369

(2024), this Court should independently interpret the statute and give the Board's interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent.

First, the plain text of Section 1225(b)(2)(A) authorizes mandatory detention only if three conditions are satisfied: 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*, No. 25-11613-BEM, 2025 WL 2084238, at \*2 (D. Mass. July 24, 2025)); *see also* 8 U.S.C. § 1225(b)(2)(A). Respondents do not point to any findings by an examining immigration officer, and the Notice to Appear likewise does not make these findings.

Moreover, Respondents' argument ignores the plain meaning of "seeking admission," which necessarily requires present-tense conduct. *See, e.g., Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at \*9 (D. Mass. Aug. 19, 2025). The Eastern District of California explained:

"Seeking" means "asking for" or "trying to acquire or gain." Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/seeking>. And the use of a present participle, "seeking," "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238, at \*6. The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And "entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 (9th Cir. 2010) (quoting *Matter of Pierre*, 14 I & N Dec. 467, 468 (1973)). To piece this together, the phrase "seeking admission" means that one must be actively "seeking" "lawful entry." *See Lopez Benitez*, 2025 WL 2371588, at \*7.

*Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, at \*8 (E.D. Cal. Sept. 23, 2025).

Petitioner, on the other hand, is not presently seeking admission, but has resided in the U.S. for fifteen years, and DHS placed him in standard § 240 proceedings after apprehending him in Maryland, not as an "applicant for admission" at the border.

Respondents' argument also disregards the relationship between 8 U.S.C. §§ 1225 and

1226. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), made clear that §§ 1225 and 1226 govern distinct categories of noncitizens. Section 1225 applies “primarily to aliens seeking entry into the United States,” *id.* at 297, while § 1226 governs individuals already present in the United States. *Id.* at 303. Section 1226(a) establishes the default rule for detention of such individuals: the Attorney General may, but is not required to, detain them pending removal proceedings, and has discretion to release them on bond except as provided in subsection (c). Federal regulations confirm that noncitizens detained under § 1226(a) are entitled to an initial bond hearing. *Id.* at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Petitioner falls within § 1226, not § 1225. Respondents served him with an NTA after he had been in the U.S. for over fifteen years. Respondents’ argument that § 1225 applies to all noncitizens who are “present in the United States without admission” ignores the distinction between “arriving aliens” in § 1225 and other noncitizens in § 1226, and this interpretation would invalidate § 1226.

This interpretation does not, as Respondents allege, “put aliens like him who crossed the border unlawfully in a better position than those who present themselves for inspection at a port of entry.” ECF No. 5 at 13. Rather, the interpretation conforms with “more than a century of precedent holding that those who have entered the United States have a liberty interest in remaining—no matter how they entered.” *Make the Road New York v. Noem*, No. 25-cv-190, at \*23 (D.D.C. Aug. 29, 2025); *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903) (noncitizen who entered country in violation of law cannot be “deprived of [her] liberty” without receiving “due process of law”); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection.”); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[O]nce passed through our gates, even illegally,” noncitizens “may be expelled only after proceedings conforming to

traditional standards of fairness encompassed in due process of law.”).

### CONCLUSION

Accordingly, habeas relief is warranted. This Court should hold that Petitioner is not subject to mandatory detention under § 1225, order that his custody be governed by § 1226(a), and direct Respondents to release him or provide him with a bond hearing.

Date: October 1, 2025

Respectfully Submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ Katherine Soltis  
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