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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

ROBIN LEIVA LEMUS, Petitioner, v. DIRECTOR OF DETROIT FIELD OFFICE, US IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, Respondents.	Case No. 4:26-CV-00203 Chief District Judge Sara Lioi

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS

The Honorable Court should hold that Petitioner be immediately released from detention or, in the alternative, granted a bond hearing. Petitioner incorporates by reference all arguments made in the Petition for Habeas Corpus and adds the following in reply to Respondents' filings on February 6, 2026, and February 9, 2026.

I. THIS COURT HAS JURISIDCTION OVER THIS PETITION WHICH CHALLENGES THE UNLAWFUL DETENTION OF PETITIONER, NOT THE LIMITED ACTIONS OR DECISIONS UNDER § 1252.

Respondents concede in their filing that Petitioner "seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241." (Doc 6 – Pg 8.) The relevant statutory section, 8 U.S.C. § 1252, does not preclude this Court from issuing a decision on a petition for habeas corpus that challenges merely the unlawful detention of the Petitioner. Respondents contend otherwise, citing to two subsections of this statute.

Under section 1252(g), federal courts lack jurisdiction to consider "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." Respondents press this Court to adopt an unreasonable and impermissibly broad interpretation of section 1252(g) that would strip jurisdiction over immigration-related habeas claims. Under the plain language of 1252(g), however, Petitioner has not made any claim that is statutorily barred. The Petitioner has never asked the Court to review DHS's commencement of removal proceedings, the immigration judge's adjudication of her case in removal proceedings, or any execution of a removal order against her. Instead, Petitioner simply asks this Court to find that her detention is unlawful because Respondents unlawfully denied Petitioner a bond hearing. The list of administrative immigration actions a court may not review under section 1252(g) simply does not include a challenge merely to the detention of the noncitizen. Respondents' arguments on this basis lack any meaningful foundation.

Respondents further attack jurisdiction under subsection (b)(9) of section 1252. But the Supreme Court has already held that 8 U.S.C. § 1252(b)(9) does not bar jurisdiction for detained noncitizens requesting merely a review of their detention. *Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S. Ct. 830, 841 (2018). This Court has jurisdiction to hear and decide a habeas corpus challenge to a noncitizen's detention, and such jurisdiction is not stripped by the narrow and enumerated circumstances of 8 U.S.C. § 1252's limits. The facts and circumstances contemplated by the statute simply are not at play here, and the statute has no effect on this Court's habeas corpus jurisdiction.

II. ADMINISTRATIVE EXHAUSTION WOULD BE FUTILE AND CAUSE HARDSHIP.

This Honorable Court should proceed with issuing a decision in this case without requiring administrative exhaustion. There is no statute that requires Petitioner to administratively exhaust the claims in this action. *See Lopez v. Raycraft*, No. 4:25CV2449, 2025 LX 570889, at *6 (N.D. Ohio Nov. 25, 2025). "Where Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But when it is not mandated—as in the claims in this action—the decision to require exhaustion is within the sound discretion of the court. *Id.*; *see also* Shearson v. Holder, 725 F.3d 588, 593 (6th Cir. 2013).

Exhaustion requirements not written into the text of the statute are prudential. *See Perkovic v. I.N.S.*, 33 F.3d 615, 619 (6th Cir. 1994). Prudential exhaustion is a judge-made doctrine that enables courts to require administrative exhaustion even when the statute or

regulations do not. *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 747 (6th Cir. 2019). "The Sixth Circuit has not formally adopted a standard for determining when prudential exhaustion applies." *Lopez-Campos v. Raycraft*, --- F. Supp.3d ----, No. 2:25-cv-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025).

Some district courts in the Sixth Circuit have adopted the three-factor test set forth by the Ninth Circuit in *United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983), and have thus required prudential exhaustion when, 1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review. *Lopez*, 2025 LX 570889, at *6 (citing *Diego v. Raycraft*, No. 25-13288, 2025 WL 3159106, at *3 (E.D. Mich. Nov. 12, 2025) (citing *Lopez-Campos*, 2025 WL 2496379, at *4 (citing *Shweika v. Dep't of Homeland Sec.*, No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015)))). Here, all three factors weigh against requiring administrative exhaustion, and other district courts in the Sixth Circuit have concurred in cases with identical legal considerations. *See, e.g.*, *Lopez*, 2025 LX 570889, at *6; *Diego*, 2025 WL 3159106, at *4.

First, the issues raised in Petitioner's habeas petition are purely legal in nature and do not require the agency to develop the record. Second, because Petitioner's habeas petition includes a due process claim, the administrative scheme (*i.e.* appeal to the BIA) is almost certainly futile. And third, administrative review is not likely to change

Respondents' position that § 1225(b)(2)(A) applies in this context. As such, requiring Petitioner to go through the administrative process would be fruitless and a waste of time.

Even if these factors weighed in favor of requiring administrative exhaustion, the Court may still waive administrative exhaustion "when the interests of the individual weigh heavily against requiring administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks," or when "delay means hardship." *Lopez*, 2025 LX 570889, at *6; *Lopez-Campos*, 2025 WL 2496379, at *4. Petitioner is unlikely to obtain the relief he seeks through the administrative process, given Respondents' position in the case at bar and the BIA's recent decision in *Yajure Hurtado, supra*, which is binding on the agency and the immigration courts and which conclusively rejects Petitioner's arguments in this case. *See Shawnee Coal Co. v. Andrus*, 661 F.2d 1083, 1093 (6th Cir. 1981) (recognizing that administrative exhaustion may be excused if it would be futile); *Contreras-Lomeli v. Raycraft*, No. 2:25-cv-12826, 2025 WL 2976739, at *4 (E.D. Mich. Oct. 21, 2025) ("Waiver based on futility is appropriate when an administrative agency 'has predetermined the disputed issue' by having a 'clearly stated position' that the petitioner is not eligible for the relief sought.") (quoting *Cooper v. Zych*, No. 09-CV-11620, 2009 WL 2711957, at *2 (E.D. Mich. Aug. 25, 2009)).

Second, requiring administrative exhaustion would create delay subjecting Petitioner to hardship. "Bond appeals before the BIA, on average, take six months or more to complete." *Lopez-Campos*, 2025 WL 2496379, at *5 (citing Rodriguez v. Bostock, 779 F. Supp.3d 1239, 1245 (W.D. Wash. 2025). Requiring Petitioner to remain in custody for that additional period of time "'would result in the very harm that the bond hearing was

designed to prevent,' that is, prolonged detention without due process." *Lopez*, 2025 LX 570889, at *7 (quoting *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (quoting *Hechavarria v. Whitaker*, 358 F. Supp.3d 227, 237 (W.D.N.Y. 2019))).

Third, "the Sixth Circuit has also previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges." *Lopez*, 2025 LX 570889, at *7 (quoting *Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 WL 2952796, at *6 (E.D. Mich. Oct. 17, 2025) (citing *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("Exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.") (citation omitted))). As explained above, it is clear that administrative exhaustion should be waived in this case. And, the Northern District of Ohio has waived exhaustion requirements in legally identical cases. *Lopez*, 2025 LX 570889, at *7.

III. PETITIONER'S DETENTION IS GOVERNED BY 8 U.S.C. § 1226, NOT § 1225, PURSUANT TO THE PLAIN LANGAUGE OF THE STATUTE.

This Honorable Chief U.S. District Judge recently stated, regarding 8 U.S.C. § 1226 and § 1225, as follows:

> Putting these statutes together, it would appear that § 1226(a) provides a general rule, while § 1225(b)(2) provides a carveout to that rule. Section 1226(a) applies broadly to immigrants arrested and detained pending removal determinations. Meanwhile, § 1225(b)(2) carves out from § 1226(a) those immigrants who are (1) either present in the United States without having lawfully entered after inspection and authorization by an immigration

> officer or arriving in the United States and (2) seeking lawful entry via inspection and authorization by an immigration officer.

Chavez v. Dir. of Detroit Field Office, No. 4:25-cv-2061, 2025 LX 552281, at *4 (N.D. Ohio Nov. 14, 2025). Courts across this circuit and the nation have interpreted the plain language of the mandatory detention statute in question, 8 U.S.C. § 1225(b)(2)(A), to require *both* an "applicant for admission" who is *also* "seeking admission." In doing so, these courts have patently rejected the notion that the phrases "application for admission" and "seeking admission" mean the same thing, as such a reading of the wording of the statute would violate the canon of statutory interpretation against rendering any parts of a statute superfluous.

Until recently, the U.S. Department of Homeland Security ("DHS") interpreted § 1226(a) (which permits a bond hearing) "to be an available detention authority for noncitizens [ ] placed directly in full removal proceedings under Section § 1229a." *Lopez*, No. 2025 U.S. Dist. LEXIS 231264, at *10–11 (quoting *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 173694, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025) (brackets in original) (citing, *ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, American Immigration Lawyers Association, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Nov. 24, 2025) ("Effective immediately, it is the position of DHS that [applicants for admission] are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA §

212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge. . . .") (bold removed))).

Even if a noncitizen enters the country illegally and later applies for some sort of relief, courts have found that later application does not mean they are "seeking admission" for the purpose of the statute in question. The District of Colorado held in a similar noncitizen's habeas case,

> Respondents also try to argue that Petitioner is "seeking admission" because he has applied for a U-Visa . . . This argument is a nonstarter. Mr. Gutierrez's U-Visa application may make him an "applicant for admission." But being an "applicant for admission" is not synonymous with "seeking admission" under § 1225(b)(2) because such a reading of the statute "would render the phrase 'seeking admission' in § 1225(b) superfluous." ORTIZ Donis, 2025 U.S. Dist. LEXIS 200565, 2025 WL 2879514, at *8.

Gutierrez v. Baltasar, No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 208448, at *19 (D. Colo. Oct. 17, 2025). The statutory language supports this holding.

Similarly, in the case of a habeas petitioner who entered the country without permission and later applied for lawful status, the Southern District of New York helpfully explained why such a person is not "seeking admission" in the following quote:

> For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years.

Benitez v. Francis, No. 5:25-civ-5937 (DEH), 2025 U.S. Dist. LEXIS 157214, at *21 (S.D.N.Y. Aug. 8, 2025).

Both the clear language of the Immigration and Nationality Act and the weight of authority of courts across the nation support a holding that section 1225(b) is inapplicable to noncitizens like Petitioner who entered the country years ago and did not apply for lawful admission to enter the United States. Respondents have submitted a recent Fifth Circuit decision disagreeing with this position, but that decision is merely persuasive for this Court and against the weight of district court holdings nationwide. Here, section 1226(a) governs, rendering Petitioner eligible for a bond hearing pursuant to that section.

IV. THE FIFTH AMENDMENT REQUIRES A GRANT OF HABEAS CORPUS IN PETITIONER'S SITUATION, AS PROCEDURAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED.

Denial of an individualized bond hearing is violation of Petitioner's procedural due process rights, which are guaranteed under the Fifth Amendment. Courts in this circuit have held that Fifth Amendment due process applies to noncitizens similarly situated to the Petitioner who were also denied the right to a bond hearing. *See, e.g., Lopez*, 2025 U.S. Dist. LEXIS 231264, at *10; *Chavez*, No. 4:25-cv-2061, 2025 LX 552281 at *7, n. 6 (collecting cases). *See also Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) ("Noncitizens who are present in the country for years, like [petitioner] who has been here 20 years, are not actively 'seeking admission.' "); *Lopez-Campos*, 2025 WL 2496379, at *6 ("those like [petitioner], who have been here for

years upon years and never proceeded to obtain any form of citizenship . . . are not 'seeking' admission").

Thus, Petitioner is now being detained in violation of constitutional Due Process as an immigrant arrested and detained while "already in the country[,]" *Jennings*, 583 U.S. at 289. Petitioner falls within § 1226(a)'s default rule. *See Chavez*, No. 4:25-cv-2061, 2025 LX 552281 at *10 (citing *Lopez-Campos*, 2025 WL 2496379, at *8 ("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border."). Respondents' argument regarding mandatory detention without a bond hearing fails, and this Honorable Court should exercise its discretion to forthwith order Petitioner's release from detention or that a bond hearing with procedural safeguards be provided Petitioner.

CONCLUSION

Petitioner respectfully requests that this Honorable Court order Petitioner's immediate release from detention or that Respondents provide Petitioner a bond hearing before the Immigration Court.

Respectfully submitted this 11th day of February, 2026.

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