

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS**

|                    |   |                                       |
|--------------------|---|---------------------------------------|
| JOSE MADRID LEIVA  | ) |                                       |
| Petitioner,        | ) |                                       |
|                    | ) | Case No: 25-cv-03075-TC               |
| v.                 | ) |                                       |
|                    | ) | <b>PETITIONER'S RESPONSE TO</b>       |
| JACOB WELSH, et al | ) | <b>RESPONDENTS' MOTION TO DISMISS</b> |
| Respondents,       | ) |                                       |
| _____              | ) |                                       |

Comes Now, Petitioner, Mr. Jose Madrid Leiva, and respectfully submits his Response to the Federal Government Respondents' Motion to Dismiss (Doc. 19).

**Introduction**

The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const. Art. I, § 9, cl. 2). This includes immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The petitioner seeking habeas relief must demonstrate he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). The Court has jurisdiction to grant a writ of habeas corpus. 28 U.S.C. § 2241; 28 U.S.C. § 1651 because Petitioner alleges that he is being detained contrary to law, which is the essence of habeas corpus:

We do consider it uncontroversial, however, that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to "the erroneous application or interpretation" of relevant law. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (*quoting, INS v. St. Cyr*, 533 U.S. 289, 301 (2001)). As the Court is well aware, the writ of habeas corpus protects against arbitrary detention and is a cornerstone of American freedom. *See generally, Boumediene*, 553 U.S. at 739-746.

In his amended habeas petition, Petitioner alleges that he is being held pursuant to an erroneous interpretation of the legal posture Petitioner is placed in as a result of the Notice of Bona Fide Determination. Amended Petition, at 4-8. He raises no issue with the validity of the removal order itself. Instead, he argues that the government is misinterpreting the legal meaning and benefits of a BFD Notice. Under a correct interpretation, he cannot be detained until that grant either ends or is revoked pursuant to proper procedures. Amended Petition, at 42.

The government argues that this Court lacks jurisdiction over habeas because Petitioner has a removal order. Motion to Dismiss, at 3. If that were true, 8 U.S.C. § 1252(g) would strip the Court not only of jurisdiction to review a removal order but also to review an illegal detention. In order to strip jurisdiction to this extent, without violating the Suspension Clause, U.S. Const., art I., sec. 9, Petitioner must have an “adequate and effective substitute for habeas corpus.” *Boumediene*, 553 U.S. at 733. Petitioner does not.

In separate litigation, Petitioner has timely filed his Petition for Review, challenging the validity of the removal order against him, before the Court of Appeals; that matter is currently pending<sup>1</sup>. In that litigation, Petitioner has questioned whether he is properly subject to reinstatement at all since his last entry was not unlawful, but instead as a parolee<sup>2</sup>. Such a

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<sup>1</sup> Case No. 25-2023 (8<sup>th</sup>. Cir.)

<sup>2</sup> The plain language of 8 U.S.C. §1231(a)(5) limits its application to those individuals who *unlawfully reenter* the country after being removed from (or having departed voluntarily from) the United States under an order of removal and who encounter federal immigration law enforcement upon reentry. *See also Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Under the facts of this case, Petitioner’s last entry into the U.S. was in 2019 when he was encountered by CBP officers in Arizona. He was then allowed into the U.S. along with his son. Under the BIA’s holding in *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025), the only way CBP could have released Petitioner from custody with his son was under a grant of parole. In this way, his last re-entry was not unlawful, and he is not subject to reinstatement as a matter of law. That question directly attacks the order of removal and is therefore properly before the Court of Appeals, consistent with the Real ID Act.

question is a direct challenge to his removal order and thus properly preserved before the Court of Appeals. It is not in any way part of the litigation before this Court.

Instead, there are two distinct matters before the Court- neither of which directly nor indirectly challenge the removal order issued against Petitioner. They do, however, challenge whether Respondents have unlawfully detained him in violation of the law. In this way, Respondents incorrectly state Petitioner's claims before this court as, "Petitioner essentially asks the Court to determine that his final order of removal should not have been reinstated and to prohibit ICE from proceeding with his removal". Motion to Dismiss p. 3. This is a misstatement of the Petitioner's claims, the question before the Court, and the relief sought.

The questions before the Court involve two specific matters, neither of which properly belongs before the Court of Appeals because they involve issues of detention. First, under the Administrative Procedure Act ("APA"), Petitioner challenges the Respondent's interpretation of the document known as a Bona Fide Determination ("BFD"). Put plainly, the Respondents claim that the BFD document they have issued has no legal value. Petitioner disagrees with this claim and asks the court to review this final agency action and determine that such a position under the APA, the INA, and the regulations is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". If Petitioner is correct in his interpretation of the law and Respondents are not, then there is no basis for Petitioner's detention.

In addition, and again under the APA, Petitioner challenges Respondents' failure to follow their own regulations in direct violation of the *Accardi* doctrine. *Accardi*, 347 U.S. 260 (1954). "An agency's unexplained refusal to follow its own regulations effecting individuals' accordance with the APA." *Ratsantiboon v. Noem*, No. 25-CV-01315 (JMB/JFD), 2025 U.S. Dist. LEXIS 71734, at \*6 (D. Minn. Apr. 15, 2025) (citing *Accardi*, 347 U.S. at 265).

Neither the Agency's unlawful interpretation of the law in the BFD context nor its *Accardi* violation directly challenges the removal order in this case. While Respondents wish the Court to find that the mere existence of a removal order is sufficient to strip the Court of jurisdiction, the Court should decline this invitation. Instead, the Court should, as instructed by the Supreme Court, narrowly construe the jurisdiction stripping provisions of § 1252(g) to those three discrete actions that are within the ambit of §1252(g) and not in every permutation of a case that just happens to have a removal order as part of it. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (stating, "It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings. . . . We are aware of no other instance in the United States Code in which language such as this has been used to impose a general jurisdictional limitation. . . ."). To the extent Respondents suggest such a position, the Court should find such an expansion of § 1252 impermissible.

I. **8 U.S.C. § 1252(g) does not prevent the Court from reviewing challenges to unlawful Agency interpretation and the unlawful detention that results from such interpretation.**

Defendants seek to dismiss Plaintiffs' claims pursuant to Fed. R. Civ. P. 12(b)(1). Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction generally take the form of facial attacks on the complaint or factual attacks on the accuracy of its allegations. *City of Albuquerque v. U.S. Dept. of Interior*, 379 F.3d 901, 906 (10th Cir. 2004). In addition, "A facial attack on the complaint's allegations as to subject matter jurisdiction questions the sufficiency of the complaint," and "[i]n reviewing a facial attack on the complaint, a district court must accept the allegations in the complaint as true." *Holt v. United States*, 46 F.3d 1000 (10th Cir. 1995).

Petitioner's APA claim asks the Court to resolve a question of law as applied to a set of uncontroverted facts. In particular, while the facts are not in dispute, the parties disagree about the legal implications of the BFD notice. Respondents argue that the document means nothing; Petitioner argues that the document must mean something because of the way it interacts with the employment authorization regulations. 8 C.F.R. § 274.1.12(c)(14). This, in its most basic terms, is the question of law based on final agency action to be resolved consistently under the APA. In this way, the question to be resolved is "too remote" or collateral to the removal process and the Court has proper jurisdiction to resolve the question of law. *Jennings v. Rodriguez*, 138 S.Ct. 830, 840-41, 200 L. Ed. 2d 122 (2018).

In support of their position that the Court lacks jurisdiction, Respondents offer a number of cases. Each one is distinguishable. To begin, Respondents rely on *McCloskey v. Keisler*, 248 F. App'x 915, 917-18 (10th Cir. 2007) (unpublished). Unlike the issue before this Court, in that case, the court was asked to review "ICE's refusal to continue deferring her removal". *McCloskey v. Keisler*, 248 F. App'x 915, 917 (10th Cir. 2007). The question there was whether ICE could exercise discretion to execute the removal order-which would be a direct attack on the order itself and their discretion to execute it. Neither of these things is present in the instant matter before this court.

In much the same way, Respondents cite *Veloz-Luvevano v. Lynch*, 799 F.3d 1308 (10th Cir.) ("challenging the government for refusing to exercise its prosecutorial discretion to forego removal proceedings against him"); *Jaquez-Estrada v. Barr*, 825 F. App'x 538, 542 (10th Cir. 2020) (unpublished) (seeking review of "the decision to extend or deny DACA"); and *Raudacastillo v. Lynch*, 616 F. App'x 385, 388 (10th Cir. 2015) (seeking an order "direct[ing] the DHS to engage in mediation with them, which is in essence a request to order the DHS to

exercise prosecutorial discretion”). These cases, however, are legally and factually dissimilar from the case at bar. This is because, at issue here is not *if* the Respondents should exercise discretion in Petitioner’s case, but rather, *what legal position* results from the issuance of the BFD Notice when the EAD regulation plainly requires that someone who applies under the (c)(14) category has already been granted “deferred action”. Respondent’s failure to give legal weight to this distinction is a misinterpretation of law.

The current case involves a two-step process. “8 U.S.C. § 1184(p)(6) and the Bona Fide Determination process require USCIS to decide whether a U-visa application is ‘bona fide’ *before the agency can exercise its discretion* and decide whether principal petitioners and their qualifying family members may receive Bona Fide Determination Employment Authorization Documents [EAD].” *See Barrios Garcia v. U.S. Department of Homeland Security*, 25 F.4th 430, 436 (6th Cir. 2022) (emphasis added). *See also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), P. L. 110-457, 122 Stat. 5044. Under the statute, the discretionary aspect of the Agency only triggers in deciding whether or not to issue the EAD: in essence, divorcing the forbearance aspect from the EAD benefit. Respondents’ interpretation to the contrary fails to consider the overall legal scheme of the program and the way the BFD statute and EAD regulations interact. Thus, if there is a legal benefit that flows from the issuance of the BFD and Respondents are interpreting it in a way contrary to the plain language of the law, then that is impermissible agency action, and detention that stems from it must likewise be unlawful.

This is fundamentally a different matter altogether than the question addressed in all the cases relied on by Respondents. Respondents next cite to *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1275 (10th Cir. 2018) and *Rodriguez-Sosa v. Whitaker*, No. CV 18-3261, 2018 WL

6727068, in an effort to draw a parallel with the current case. But even that analogy is improper. This is because even the Tenth Circuit has recognized that in those cases, the challenge was not to the fundamental merits of the unlawful detention but rather the underlying order. See *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1275 (10th Cir. 2018)(citing *Essuman v. Gonzales*, 203 F. App'x 204, 211-12 (10th Cir. 2006 (unpublished) "the challenge to [petitioner's] detention is grounded in the removal order *rather than based on some inherent problem with the detention* itself." (emphasis added)). In the context of the U visa program, the existence of a removal order has no impact on the administration of the program and eligibility for relief. See 8 U.S.C. §1101(a)(15)(U) and INA 212(d)(14). The question for the Court to answer here involves only the Respondent's arbitrary and capricious interpretation of law, and the inherent problem the misinterpretation causes with the Petitioner's detention.

To this extent, Respondents' reliance on *Velasco Gomez v. Scott*, No. 25-cv-0522-JLR-BAT, 2025 WL 1726465 (W.D. Wash. June 20, 2025) is misplaced. In *Velasco Gomez*, the petitioner had a removal order and deferred action awaiting a U visa. Finding no cases that addressed deferred action through the bona fide determination (BFD) process, the court relied on two other cases. The first was an unpublished decision, *Velarde-Flores v. Whitaker*, 750 Fed. Appx. 606, 607 (9<sup>th</sup> Cir. 2019), where a U visa was pending but the petitioner did not have a BFD nor was on the U visa waitlist. The court "expressed no opinion" about whether a subsequent placement on the waitlist, with its deferred action, would change the outcome. *Velarde-Flores*, at 607. Because the case did not involve the interpretation of a BFD and what legal posture it creates, *Velarde-Flores* is factually distinct both from *Velasco Gomez* and from this case. *Velasco Gomez* also relied on *Balogun v. Sessions*, 330 F. Supp. 3d 1211 (C.D. Cal. August 31, 2018), where the petitioner had a pending U visa and sought a stay of removal. He, unlike Petitioner here, did not



contest the legality of detention. *Balogun*, 330 F. Supp. at 1212. Because he did not, *Balogun* is also distinct from both *Velasco Gomez* and this case. Because *Velasco Gomez* relied on cases that were inapposite, it came to an incorrect conclusion about jurisdiction. Perhaps recognizing these distinctions, a little over a month later, *Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF (W.D. Wash. July 24, 2025) was decided that not only found that § 1252(g) did not strip habeas jurisdiction where a misinterpretation of law triggered a challenge to unlawful detention, but also found that the existence of a removal order did not change that conclusion.

Several cases support Petitioner's position. In *Mahdawi v. Trump*, 2:25-cv-389, 2025 U.S. Dist. LEXIS 84287, at 18 (D. Vt. Apr. 30, 2025), the court ruled that § 1252(g) does not apply in cases, like this one, that "do not seek to challenge the removal proceedings but are directed instead at administrative detention." In *Mohammed H. v. Trump*, 25-cv-1576, 2025 U.S. Dist. LEXIS 88471 (D. Minn. May 5, 2025) and *Aditya W.H. v. Trump*, 25-cv-1976, 2025 U.S. Dist. LEXIS 94430 (D. Minn. May 14, 2025), the petitioners were detained and placed in removal proceedings after their student visas were revoked. Both courts rejected the argument that § 1252(g) barred jurisdiction. The court in *Aditya W.H.* said, "Mr. H has filed a habeas petition seeking his release from custody, and the Court, at a minimum, has jurisdiction over that." *Aditya W.H.*, at 23. In *E.D.Q.C. v. Warden, Stewart Det. Ctr*, 4:25-cv-50, 2025 U.S. Dist. LEXIS 104781 (M.D. Ga. June 3, 2025), a Venezuelan citizen with a removal order filed a habeas petition before he was transported to a prison in El Salvador. The court found that § 1252(g) did not apply because the petitioner was challenging detention, not removal. Finally, in *Karki v. Jones*, 1:25-cv-281, 2025 U.S. Dist. LEXIS 109168 (S.D. Ohio June 9, 2025), the petitioners were stateless members of an ethnic group in Bhutan. They argued in habeas both for what the court called "removal-based claims," seeking notice of the country of



removal, and for “detention-based claims,” alleging the detention was prolonged because removal was not reasonably foreseeable. The court found that § 1252(g) denied it jurisdiction over the removal-based claims but left it with jurisdiction over the detention-based claims.

In this case, the detention arises not from the removal order but from the government’s misinterpretation of the legal posture created by the BFD grant. To borrow the language of torts, the removal order is a “but-for” cause of detention, because Petitioner would not be detained without it. But the government’s new, and incorrect, interpretation of the legal standing of someone with a BFD grant and the protection that it offers is an intervening cause of the detention. If the government interpreted the statutory and regulatory scheme correctly, Petitioner would not be in custody. The habeas petition raises questions of agency action that is contrary to law, and the resulting unlawful detention. This is the only means to make such a challenge. There exist certain exceptions to § 1252(g) and “[an] APA claim for unreasonable agency delay in benefit adjudications..[has] long [been] held [to fall] beyond the reach of § 1252(g). *See Ayala v. Noem*, No. 3:25-cv-5185-JNW, 2025 U.S. Dist. LEXIS 107303, at \*4 (W.D. Wash. June 5, 2025). The matters at the heart of this litigation are similar to those considered by the *Ayala* Court.

That § 1252(g) has boundaries is well established in law, and this District has recognized such limitations. *See Mochama v. Zwetow*, No. 14-2121-KHV, 2017 U.S. Dist. LEXIS 1459, at \*1 (D. Kan. Jan. 3, 2017)(“Despite its potential broad reach, 8 U.S.C.S. § 1252(g) is to be read narrowly and precisely to prevent review only of the three narrow discretionary decisions or actions referred to in the statute.”). The *Mochama* Court explained further that “Section 1252(g) does not bar judicial review of many decisions made during the deportation process, including

decisions to open an investigation, surveil a suspected violator, and reschedule a deportation hearing". *Id.* at \*17 (D. Kan. Jan. 3, 2017).

In agreeing to adjudicate the claim, the district court pointed out that excessive force and solitary confinement were not necessary components of a removal. *Id.* at 8. As such, the court reasoned, § 1252(g) did not apply because these incidents did not arise from the decision to execute a removal order. *Id.* The court also pointed out that the establishment of a "but-for" causation relationship is not sufficient to satisfy the "arising from" requirement. *Id.* The Court, under the facts of that case, found that while excessive force and solitary confinement would not have happened had the agents not decided to execute the removal order, this is not enough to trigger the application of section 1252(g).

Similarly, in *El Bradawl v. Dep't of Homeland Sec.*, 579 F. Supp. 2d 249, 265–66 (D. Conn. 2008), the District Court of Connecticut offered a similar reasoning. In that case, the court agreed to adjudicate a prolonged detention claim. The court reasoned that if jurisdiction was excluded under section 1252(g), the government would be able to detain aliens indefinitely, and applying § 1252(g) would raise serious constitutional concerns. *Id.* at 269. The legal issues presented in this matter equally fall outside the scope of § 1252(g).

The actual direct attack on the reinstated order of removal is very much at the center of the issues before the Court of Appeals for the Eighth Circuit<sup>3</sup> in this case. Those challenges, in part, include whether immigration officials can reinstate an order of removal against someone,

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<sup>3</sup> A petition for review ("PFR") is a request, filed with a U.S. Court of Appeals, seeking judicial review of a final removal order. *See generally* 8 U.S.C. § 1252(a). A Final removal order includes reinstatement orders issued by the U.S. Department of Homeland Security (DHS) pursuant to 8 U.S.C. § 1231(a)(5). The INA provides that a PFR "shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed proceedings." 8 U.S.C. § 1252(b)(2). Where DHS issues the order under 8 U.S.C. § 1231(a)(5) (reinstatement) or 8 U.S.C. § 1228(b) (administrative removal), circuit courts regularly exercise jurisdiction if the issuing DHS office is located within their judicial circuit. Since the flawed reinstatement process in this case occurred in Kansas City, Missouri, the PFR is properly before the Eighth Circuit Court of Appeals.

like Petitioner, who never unlawfully reentered the U.S. *See* 8 U.S.C. §1231(a)(5). This question is exactly the type of matter that this Court lacks the jurisdiction to answer, under § 1252(g), and this court is not asked to address the merits of that issue at all. In the same way, issues relating to flaws with the reinstatement order and whether an unsigned, unserved order is legally sufficient under § 1231 are proper questions for only the Court of Appeals to resolve, and those too are not matters before this Court.

Conversely, the matter here asks the Court to determine if the Respondent's position that the BFD Notice provides no legal benefit independent of the EAD is a valid and proper interpretation of the law, or if it is, as suggested by Petitioner, a position that is contrary to the plain language and overall scheme of the regulations. Respondents themselves recognize that the Petitioner is asking this Court to address the legal issues surrounding the BFD document itself and how it relates to the EAD regulations. They, however, try to convince the Court that the USCIS Policy, and not the EAD regulations, is the proper measure of lawful agency action. Motion to Dismiss p. 6. They take this position without addressing the findings by the Fifth Circuit, specifically recognizing that forbearance issues that stem from a grant of deferred action are separate from work authorization grants. *See State of Texas, et al. v. U.S.A, et al.*, 23-40653 (5th Cir. 2025). Respondents' actions in combining extrinsically the two concepts are contrary to the law. This issue is one that the Court has the authority to address, and nothing in § 1252(g) strips the Court of jurisdiction to resolve that issue.

II. **8 U.S.C. §1252(a)(5) does not prevent the Court from reviewing an *Accardi* violation**

The *Accardi* doctrine requires agencies to follow their own procedures. *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954). An agency is bound to the standards by which it professes its actions to be judged. *SEC v. Chenery Corp.*, 318

U.S. 80, 87-88, 63 S. Ct. 454, 87 L. Ed. 626 (1943). The Courts have recognized their important role in ensuring that agencies comply with their own regulations. "[A] court's duty to enforce an agency regulation, while most evident when compliance with the regulation is mandated by the Constitution or federal law,' embraces as well agency regulations that are not so required." *Doe v. Noem*, 778 F. Supp. 3d 1151 (W.D. Wash. 2025)(quoting *United States v. Caceres*, 440 U.S. 741, 749, 99 S. Ct. 1465, 59 L. Ed. 2d 733 (1979)). "An agency's unexplained refusal to follow its own regulations effecting individuals' procedural benefits poses a high probability that the agency is not acting in accordance with the APA." *Ratsantiboon v. Noem*, No. 25-CV-01315 (JMB/JFD), 2025 U.S. Dist. LEXIS 71734, at \*6 (D. Minn. Apr. 15, 2025) (citing *Accardi*, 347 U.S. at 265).

In much the same way that Respondents try to intrinsically tie the BFD question to the removal order, they also try to bond the Agency's failure to follow their own regulations to an attack on the underlying order. Relying on 8 U.S.C. § 1252(a)(5), Respondents suggest that this issue should properly be before the Court of Appeals. Respondents are incorrect.

The issue before this Court is one of detention and not an attack on the underlying order of removal. In this instance, the Petitioner was detained without due process of law because the Agency failed to follow its own regulations. Respondents suggest that Petitioner's proper course of action required him to file a Petition for Review and challenge the Agency's unlawful conduct at the Court of Appeals. The flaw with this position is that by detaining Petitioner without providing him with the procedural protection under 8 C.F.R. §241.8(b), they directly interfered with his ability to present mitigating evidence, which would have prevented his detention in the first instance.

The procedural safeguards in the regulations are designed to ensure that only those individuals who are properly subjected to the summary removal procedure pursuant to § 241(a)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(5), 8 C.F.R. § 241.8. With limited statutory and judicial exceptions, the reinstatement statute applies only to noncitizens who return to the United States without authorization after having been removed under a prior order of deportation, exclusion, or removal. The petitioner does not fall within this class of individuals.

The regulations specifically “require the immigration officer to obtain the prior order of removal relating to the noncitizen, provide written notice to the noncitizen, provide the noncitizen an opportunity to give a statement, and consider all relevant evidence, including any statements made by the noncitizen. *See 8 C.F.R. §§ 241.8(a)-(c)*. Respondents have never indicated that they complied with these regulations, and the only evidence that exists establishes that they didn’t. This failure has directly led to an underdeveloped, inadequate record for the Court of Appeals<sup>4</sup> and the Respondent’s unlawful detention.

As the case cited by the Respondents clearly points out, “To establish a claim that the procedure for the reinstatement of removal orders established by 8 C.F.R. § 241.8 violates [a] right to due process, [the individual] must demonstrate that he suffered prejudice as a result of DHS’s reinstatement procedure. *Cadenas-Campuzano v. Garland*, No. 21-9524, 2021 U.S. App. LEXIS 35142, at \*8-9 (10th Cir. Nov. 29, 2021). Here, the prejudice is unequivocally tied to unlawful detention, and that issue is not one that could effectively be reviewed at the Court of Appeals. The co-existence of a due process challenge to detention based on an *Accardi* violation, as Petitioner outlines here, and a petition for review challenging the merits of the removal

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<sup>4</sup> *Madrid-Leiva v. Bondi*, No. 25-2023 (8<sup>th</sup> Cir. May 22, 2025).

order has precedential support since they challenge two separate matters altogether. *See Godfrey v. Ball*, No. 23-7104, 2024 U.S. App. LEXIS 25647, at \*3 (2d Cir. Oct. 11, 2024) (“A due process challenge to detention under § 1226 is rendered moot by judicial denial of a petition for review of a removal order because that decision shifts detention authority to § 1231.”) citing *Hechavarria v. Sessions*, 891 F.3d 49, 54-57 (2d Cir. 2018); *Wang v. Ashcroft*, 320 F.3d 130, 147 (2d Cir. 2003). *See also Espinoza v. Wofford*, No. 1:24-cv-01118-SAB-HC, 2025 U.S. Dist. LEXIS 104422, at \*6 (E.D. Cal. May 30, 2025), *Kapila v. Murray*, No. 1:24-cv-00914-SAB-HC, 2024 U.S. Dist. LEXIS 225551, at \*7 (E.D. Cal. Dec. 12, 2024), *Kumar v. U.S. Dep't of Homeland Sec.*, No. 19-2404, 2020 U.S. App. LEXIS 17334 (6th Cir. June 1, 2020)(all recognizing the same).

Finally, each of the other cases cited by the Petitioner has the same inherent inapplicability. In none of those cases was the underlying core issue that the individual was improperly within that class of individuals who are subject to summary reinstatement procedures, and thus their detention was unlawful. None of the cases offered by the Respondents involved the individual's unlawful detention as a direct result of the Agency's failure to follow its own regulations. This is an issue separate and apart from a challenge to the removal order, and this Court is the proper venue for such a challenge to be raised.

### **CONCLUSION**

The issues before this Court are not barred by either § 1252(g) or (a)(5). Rather, they are matters that fall squarely within the proper jurisdictional authority given to this court by the Supreme Court and the Constitution. For all reasons contained herein, the Court should deny Respondent's Motion to Dismiss.

August 20, 2025,

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on August 20, 2025, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notice of such filing to counsel of record.

August 20, 2025,

Respectfully Submitted,

Sharma-Crawford Attorneys at Law

s/Rekha Sharma-Crawford  
Rekha Sharma-Crawford