

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

MICAELA DE CORRAL

PETITIONER

v.

CIVIL ACTION NO. 4:25-cv-00145-BJB (*e-filed*)

JASON WOOSLEY, Grayson County Jailer
KRISTI NOEM, Secretary of the
United States Department of Homeland Security,
and SAMUEL OLSON, Field Office Director,
Chicago Field Office, Immigration and
Customs Enforcement, PAMELA BONDI, U.S.
Attorney General

RESPONDENTS

**RESPONSE TO COURT'S ORDER FOR
SUPPLEMENTAL BRIEFING REGARDING BAUTISTA**

Federal Respondents file this Response to address the Court's Order regarding the effect of the class action certification and orders in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).

- I. Regardless of whether *Bautista* precludes reliance on the July 2025 DHS policy memo, it is not preclusive regarding independent interpretation of 8 U.S.C. § 1225 or the BIA's decision in *Yajure Hurtado*.**

In *Lopez v. Lyons*, 2025 WL 3683918, 2025 U.S. Dist. LEXIS 265505 (N.D. Tex. December 19, 2025), the court grappled with the same big-picture issue present here, and in particular the breadth of the *Bautista* court's vacatur.¹ This Court explained that

¹ Other cases that have considered and rejected rejected the application of *Bautista* include: *Rodriguez v. Jeffreys*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Ramirez v. Holt*, 2026 WL 226964 (E.D. Ky. Jan. 28, 2026); *Falcon v. Wofford*, 2026 WL 171927 (E.D. Cal. Jan. 22, 2026); *R.C.M. v. Warden, Stewart Detention Cntr.*, 2026 WL 147698 (M.D. Ga. Jan. 20, 2026) (rejecting *Bautista* as binding while granting habeas relief); *Godos v. Bondi*, 2026 WL 243923 (S.D. Ind. Jan.

Bautista's vacatur of the Department of Homeland Security (DHS) guidance document "doesn't decide the statutory question whether the Government may rely on § 1225 to detain these and other Petitioners without a bond hearing." *Ramirez v. Smith*, 2026 WL 232263, 2026 U.S. Dist. LEXIS 17588, at *8 n.6 (W.D. Ky. Jan. 28, 2026). That is because the relevant statute speaks for itself. It is authoritative in its own right. And regardless of what a policy interpreting the statute says or whether it has been vacated, courts routinely interpret the meanings of statutes.

The *Lopez* court held that the *Bautista* court opinion is non-binding and merely advisory. That is because *Bautista* vacated a policy statement, but it did not override the independent authority of the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025): "Its December 18 order, though it claims to set aside the DHS policy, is equally ineffective because it does not vacate *Yajure Hurtado's* broader, equally binding policy prohibiting immigration judges from granting bond hearings to the Bond Eligible Class." *Lopez*, 2025 U.S. Dist. LEXIS 265505, at *15-16. The *Bautista* court "casted doubt on *Yajure Hurtado*" and "suggested it was 'no longer controlling' and 'no longer tenable,' but expressly declined to vacate that decision." *Id.* at *9 (quoting *Bautista*, 2025 WL 3288403, at *9 (Dec. 18, 2025)). The complaint in *Bautista*, in fact, did not request that relief. *Id.* at *20 (citing *Bautista*, No. 5:25-cv-1873,

29, 2026) (same); *Rachid v. Lyons*, 2026 WL 228115 (S.D. Ind. Jan. 28, 2026) (same); *Restrepo v. Jamison*, 2026 WL 141803 (E.D. Penn. Jan. 20, 2026) (same) ("This Court is unaware of how a federal district court could operate to 'overturn' an agency decision that was not brought before it for review. The doctrine of separation of powers tells as much. Nevertheless, these arguments do not carry weight because the Court is not obligated to defer to the reasoning in *Hurtado*").

DN 92 at 6 (Dec. 18, 2025) (attached as **Exhibit 1**)). The *Bautista* court explained Fed. R. Civ. P. 15 would be violated if it provided relief and vacated *Yajure Hurtado*, and if relief from that BIA decision was desired, the petitioners should amend their complaint. *Bautista*, No. 5:25-cv-1873, DN 92 at 6. Consequently, the court denied the petitioners request to reconsider and acknowledged that “the MSJ order does not grant vacatur of *Yajure Hurtado*.” *Id.* That being true, the court, nevertheless, suggested that because of its order vacating a DHS policy memo, *Yajure Hurtado*—an opinion issued by an administrative body under the Department of Justice charged with interpreting and applying immigration laws—was not controlling. *Id.*² On that point, *Lopez* explained that *Bautista* violated the prohibition on providing advisory opinions: the “oldest and most consistent thread in the federal law of justiciability.” 2025 U.S. Dist. LEXIS 265505, at *16 (quoting *Flast v. Cohen*, 392 U.S. 83, 96, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968)).

The *Lopez* court elaborated regarding the prohibition on advisory opinions:

Thus, Article III sets forth parallel requirements to prevent advisory opinions. First, the plaintiff must have a claim that is likely to be redressed through judicial relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021). Redress depends on “a federal court’s judgment, not its opinion.” *Haaland*, 599 U.S. at 294, 143 S.Ct. 1609. The plaintiff who does not ask for preclusive relief, but only declaratory relief, thus lacks standing. *Id.*; see *Chicago & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 113–14, 68 S.Ct. 431, 92 L.Ed. 568 (1948) (“It has ... been the firm

² It should be noted that the immigration judge’s decision *Yajure Hurtado*, which ruled that the alien was an applicant for admission subject to detention under 8 U.S.C. § 1225(b)(2) and ineligible for a bond hearing, was issued on April 18, 2025, and memorialized in a memorandum dated April 30, 2025. *Yajure Hurtado*, 29 I. & N. at 216. The BIA asked for supplemental briefing after DHS issued its policy memo in July 2025, but the IJ interpreted and applied § 1225(b)(2) to applicants for admission based on the plain language of the statute, not any DHS policy.

and unvarying practice of Constitutional Courts to render no judgments not binding and conclusive on the parties.”).

Second, and as a corollary, Article III deprives federal courts of the “power to decide questions that cannot affect the rights of litigants in the case before them.” *DeFunis v. Odegaard*, 416 U.S. 312, 316, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 30 L.Ed.2d 413 (1971)). A mere opinion does nothing: “the court [must] be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion explaining the exercise of its power.” *Haaland*, 599 U.S. at 294, 143 S.Ct. 1609 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 825, 112 S.Ct. 2767, 120 L.Ed.2d 636 (1992) (Scalia, J., concurring in part and concurring in judgment) (emphasis in original)). Likewise, the potential that the “decision might persuade actors who are not before the court” is plain hopefulness, not authority, and is thus “contrary to Article III’s strict prohibition on issuing advisory opinions.” *Id.* (quotation omitted); see *United States v. Juvenile Male*, 564 U.S. 932, 937, 131 S.Ct. 2860, 180 L.Ed.2d 811 (2011) (holding that a “possible, indirect benefit in a future lawsuit” does not preserve standing); *United States v. Texas*, 599 U.S. 670, 691, 143 S.Ct. 1964, 216 L.Ed.2d 624 (2023) (Barrett, J., concurring in judgment) (explaining that “sham[ing]” litigants is not a form of relief). In other words, a court’s opinion is within the realm of Article III only if it offers some kind of preclusive relief. *Haaland*, 599 U.S. at 293, 143 S.Ct. 1609.

The court that exceeds its Article III authority issues an advisory opinion. An advisory opinion is a “legal declaration,” much like a treatise or a litigant’s brief, but it “[can]not affect anyone’s rights.” *Fendon v. Bank of Am., N.A.*, 877 F.3d 714, 716 (7th Cir. 2017) (Easterbrook, J.); see *McGrath v. Kristensen*, 340 U.S. 162, 168, 71 S.Ct. 224, 95 L.Ed. 173 (1950) (noting a question would be justiciable if “[t]he judgment sought in [the] proceeding would be binding and conclusive on the parties if entered”). This conclusion is a matter of necessity: the power of judicial review must give meaning to the Constitution and laws of the United States. When judicial review is applied contrary to the text of Article III, “it thus reduces to nothing what we have deemed the greatest improvement on political institutions—a written constitution.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178, 2 L.Ed. 60 (1803). Where no party is bound, it follows that no fellow court can be bound, either.

Lopez, 2025 U.S. Dist. LEXIS 265505, at *16-19.

The *Lopez* court then applied the advisory opinion principles to the case before it.

The court explained:

... the Central District concedes that “the MSJ Order does not apply to vacatur of *Yajure Hurtado*.” No. 5:25-CV-1873, Dkt. No. 92 at 5, --- F.Supp.3d at ---. This gives the game away. The Nation’s immigration judges—bound by the BIA—must follow *Yajure Hurtado* as binding precedent. 8 C.F.R. § 1003.1(g)(1). That same requirement also extends to “all officers and employees of DHS.” *Id.* Thus, it is *Yajure Hurtado*, not the DHS policy, that strips the immigration courts of the ability to afford bond hearings to aliens who illegally entered the United States without apprehension. And although the Central District criticizes *Yajure Hurtado* as “no longer controlling” and “no longer tenable,” that plainly cannot be the case, because the independent BIA decision was not vacated by the December 18 order. *See* No. 5:25-CV-1873, Dkt. No. 92 at 6, --- F.Supp.3d at ---. That remark is nothing more than mere opinion. And it can only be the Central District’s opinion because, as it conceded, it could not grant vacatur of a policy that was not challenged in the petitioners’ complaint. *See* No. 5:25-CV-1873, Dkt. No. 92 at 6, --- F.Supp.3d at ----.

The Central District also claims that “including vacatur as a form of relief in the judgment would satisfy Article III redressability.” No. 5:25-CV-1873, Dkt. No. 93 at 30. But this elides the problem: redress without substance is no redress at all. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 290, 141 S.Ct. 792, 209 L.Ed.2d 94 (2021) (contrasting nominal damages from “damages [that] are purely symbolic” and “provide[] no actual benefit to the plaintiff”). Vacatur is only a means of redress if it provides preclusive relief to the plaintiff. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224, 132 S.Ct. 2199, 183 L.Ed.2d 211 (2012) (noting that an APA claimant must still satisfy Article III). The Central District suggests “vacatur would . . . facilitate the operation of [Section] 1226(a),” but that cannot be the case so long as *Yajure Hurtado* prevents immigration judges and all other DHS employees from giving Section 1226(a) the effect the Central District desires. *See* No. 5:25-CV-1873, Dkt. No. 93 at 29; 8 C.F.R. § 1003.1(g)(1) (binding DHS employees to BIA decisions). Finally, the Central District cites *Haaland* for the proposition “that the judgment, not the opinion, of the court remedies an injury and thus demonstrates redressability.” No. 5:25-CV-1873, Dkt. No. 93 at 30. But *Haaland* makes clear that any judgment that lacks preclusive relief is advisory and non-binding. *See* 599 U.S. at 293–94, 143 S.Ct. 1609.

Ask, then: “What rights are affected here?” All of the individual petitioners had received bond hearings and were subsequently released. The Central District set aside one rule, but declined to set aside the other independent and broader rule. All DHS employees who were bound by the DHS policy remain bound to deny bond hearings on the basis of *Yajure Hurtado*. Thus, nothing in these orders restrain immigration judges from denying bond to the other class members, nor do these orders require immigration judges to do likewise. ICE’s conduct is now declared unlawful and one policy is set aside, but it is equally capable of detaining aliens without bond today to the same extent it could on the day before the November 20, November 25, and December 18 orders.

The only change in course is that the Central District has indicated to the parties its belief that ICE’s conduct is unlawful and that one of the two independent policies mandating the denial of individualized bond hearings is vacated. “What saves proper declaratory judgments from a redressability problem . . . is that they have preclusive effect on a traditional lawsuit that is imminent.” *Haaland*, 599 U.S. at 293, 143 S.Ct. 1609 (quoting *Brackeen v. Haaland*, 994 F.3d 249, 448 (5th Cir. 2021) (Costa, J., concurring in part and dissenting in part)). At best, the Central District’s orders might give government actors pause. Certainly, the Central District’s substantively empty vacatur of the DHS policy and its criticism of *Yajure Hurtado* do just that. But the power to “persuade” does not confer preclusive effect. *Id.* at 294, 143 S.Ct. 1609. “Without preclusive effect, a declaratory judgment is little more than an advisory opinion.” *Id.* at 293, 143 S.Ct. 1609 (quotation omitted). Because the orders do not affect the legal relations of the parties in that case, the orders are advisory. Because they are advisory, they do not bind this Court.

Lopez, 2025 U.S. Dist. LEXIS 265505, at *19-23. Because the *Bautista* orders did not vacate “*Yajure Hurtado*’s broader, equally binding policy prohibiting immigration judges from granting bond hearings to the Bond Eligible Class” (as well as the statute itself), the orders are not preclusive on this point and are advisory opinions that should be disregarded. The *Bautista* court admits as much, acknowledging that “the MSJ Order does not grant vacatur of *Yajure Hurtado* under the APA.” Ex. 1, *Bautista*, No. 5:25-cv-

1873, DN 92 at 6. That is to say, even if this Court is bound by *Bautista's* vacatur of the DHS policy memo, that "vacatur ruling doesn't decide the statutory question." *Ramirez*, 2026 U.S. Dist. LEXIS 17588, at *8 n.6.

8 U.S.C. § 1225(b)(2) and *Yajure Hurtado* stand as independent authorities. The Court should resolve the statutory question notwithstanding the *Bautista* court's judgment and deny Petitioner's request for the writ of habeas corpus because he is properly detained under § 1225(b)(2).

II. Release should not be ordered in this case. 8 U.S.C. § 1226 provides for detention until a bond hearing is adjudicated.

Should this Court decide that *Bautista* precludes it from independently interpreting 8 U.S.C. § 1225, the Court should still not release Petitioner. Petitioner's remedy is detention until a bond proceeding is adjudicated, which Petitioner has already sought twice. In both instances, the immigration judge held that he lacked jurisdiction. [See Exhibit 1, Dec. 9, 2025 Order Denying Bond and Dec. 30, 2025 Order Denying Bond.]

While it remains the Government's position that Petitioner incorrectly asserts a right to detention pursuant to 8 U.S.C. § 1226, even though he is an "applicant for admission," § 1226 does not provide for immediate release. It provides for detention until a bond proceeding is adjudicated. Petitioner's request for immediate release would circumvent the very process mandated by 8 U.S.C. § 1226.

8 U.S.C. § 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section

1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release an alien, it may set a bond and/or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen’s ties to the United States and an evaluation of whether the noncitizen poses a flight risk or danger to the community. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);³ *see also* 8 C.F.R. § 1003.19(d).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a)

³ The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

When a court concludes that § 1226 is the appropriate detention statute for a habeas petitioner, it is not concluding that release is appropriate, but rather that the detention is under § 1226. Release after a finding that 8 U.S.C. § 1226 is applicable to a detained alien must only occur after the detained noncitizen moves for a bond hearing, an immigration judge grants bond, an appeal is not timely filed, and bond is paid. Section 1226 does not permit release prior to the issuance and posting of bond.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 6, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Timothy D. Thompson
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