IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MOSAWAR AZALYAR, Petitioner, v. KEVIN RAYCRAFT, Field Office Acting Director of Enforcement and Removal Operations Detroit, United States Immigration and Customs Enforcement, Department of Homeland Security, *et al.*, Respondents.	Case No. 1:25-cv-00916 District Judge Michael R. Barrett Magistrate Judge Stephanie K. Bowman

RESPONDENTS' BRIEF REGARDING *PADILLA V. ICE*, 704 F.Supp.3d 1163 (W.D. Wash. December 4, 2023) ("Padilla II")

Respondents hereby submit their brief in response to Petitioner's claim that he states a valid due process claim like the district court for the Western District of Washington held in *Padilla v. ICE*, 704 F.Supp.3d 1163 (W.D. Wash. December 4, 2023) ("*Padilla* II").[1] The Sixth Circuit has already declined to require a bond hearing where it is not required, as in the first *Padilla* decision. *Martinez v. Larose*, 968 F.3d 555, 565-66 (6th Cir. 2020) (citing *Padilla v. Immigration & Customs Enf't ("ICE")*,

[1] The Court ordered Respondents to give Petitioner a bond hearing by an Immigration Judge by January 7, 2026. (Opinion and Order, ECF 8, PageID 225.) This order was entered prior to the expiration of time remaining for Respondents to file this brief which is December 31, 2025. (December 29, 2025 Minute Entry.) The Court's incorrect determination that the burden is on the Respondents to demonstrate by clear and convincing evidence that Petitioner is a flight risk or dangerous was not necessary. *Matter of E-Y-F-G*, 29 I&N Dec. 103 (BIA 2025). As the Court observed, "if it were determined that the Immigration Court has the authority to redetermine bond, the IJ would set a bond for $30,000 for Azalyar." (Opinion and Order, ECF 8, PageID 217) (cleaned up).

953 F.3d 1134, 1143 (9th Cir. 2020) ("*Padilla I*")).

Petitioner first claimed that he was a member of the bond eligible class in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), detained and entitled to a bond hearing under 8 C.F.R. § 1226(a). (Petition, ECF 1, PageID 2, ¶¶1-3, 5, 35-37). In particular, he claimed that he was not detained under § 1225(b)(1) or (2). (*Id.*)

After reviewing Respondent's Return of Writ, Petitioner now claims he is detained pursuant to § 1225(b)(1), not 1226(a) or § 1225(b)(2). (Reply, ECF 7,

On December 29, 2025, a custody redetermination was held by an Immigration Judge, who correctly determined that he was without authority to redetermine bond in the case. (Dec. 29, 2025 IJ Order, Ex. A.)

First, the decision in *Padilla II* is not binding on this court and merely persuasive, if anything at all. It is also stayed pending appeal to determine whether there is subject matter jurisdiction and whether the district court can consider the constitutional claims. *Padilla v. ICE*, No. C18-928 2024 WL 1049898 (W.D. Wash. March 21, 2024).

A lengthy procedural history that includes an appeal to the Ninth Circuit and the Supreme Court, a remand back to the Ninth Circuit and onto to the district court can be found summarized in the district court's decision. *Padilla II*, 704 F.Supp.3d at 1167. In ruling on a motion to dismiss, after finding it had subject matter jurisdiction, the district court concluded that the Supreme Court's decision in *Dep't. of Homeland Sec. v. Thurassigiam*, 591 U.S. 103 (2020), did not prevent the petitioner's due process claim. *Padilla II*, 704 F.Supp.3d at 1163, 1170-72.

The district court then considered whether the petitioner sufficiently alleged

procedural and substantive due process claims. *Id.* at 1172. In so doing, the district court considered *Demore v. Kim*, 538 U.S. 510 (2003), which held that "Detention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531. The district court considered that the *Demore* challenge involved mandatory detention during removal proceedings for those falling under § 1226(c), which was a "narrow" detention policy for "a limited period necessary to arrange removal . . ." and protect the public. *Padilla II*, 704 F.Supp.3d at 1172-73. The district court found that *Demore* did not apply here because the length of detention for the plaintiffs and the Class faced a median time of six months to a year or longer. *Id.* at 1173. Thus, the plaintiffs stated a viable substantive due process claim. *Id.* Also, the district court found procedural due process protections were inadequate. *Id.* at 1174.

In the *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218, 2025 WL 2674169 (BIA 2025), the BIA explained that there are three different categories of "applicants for admission" as set forth in 8 U.S.C. § 1225. All are subject to mandatory detention for the duration of their immigration proceedings. *Id.* at 218-19. Specifically, they include the following:

> (1) Arriving Aliens—"arriving aliens" inadmissible under section 1182(a)(6)(C) or 1182(a)(7). § 1225(b)(1)(A)(i);
>
> (2) Certain Other Aliens—aliens not admitted or paroled into the United States who are inadmissible under section 1182(a)(6)(C) or 1182(a)(7) and who have not affirmatively established to the satisfaction of an immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. § 1225(b)(1)(A)(iii)(II); and
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> (3) Other Aliens—aliens who are seeking admission and who an immigration officer has determined are not clearly and beyond a doubt entitled to be admitted. § 1225(b)(2)(A).

Yajure Hurtado, 29 I&N Dec. at 218. The third category of Other Aliens is a "catchall

provision that applies to an applicant for admission not covered" by the first two categories above. *See Jennings v. Rodriguez,* 583 U.S. 281, 287 (2018).

The first two categories of applicants for admission are "subject to mandatory detention for the duration of their immigration proceedings," pursuant to § 1225(b)(1)(B)(ii) and (iii)(IV). *Yajure Hurtado,* 29 I&N Dec. at 218; 8 C.F.R. § 235.3(b)(2)(iii). The BIA also explained in *Yajure Hurtado* that Immigration Judges have no authority to hear requests for bond for applicants for admission in the first two categories. *Id.* (citing *Matter of M-S-,* 27 I&N Dec. 509, 515-19 (A.G. 2019)).

Applicants for admission in the third category are also subject to mandatory detention for the duration of their removal proceedings pursuant to § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(1)(ii).

All three categories of applicants for admission are subject to mandatory detention. § 1225(b)(1)(A)(i), (iii)(II), and § 1225(b)(2)(A).

Here, Petitioner *Azalyar*, like the Plaintiffs in *Padilla II*, is an applicant for admission under category (2), and subject to mandatory detention for the duration of his removal proceedings under § 1225(b)(1)(A)(iii)(II). All were apprehended shortly after entry into the United States near the border, after surreptitiously crossing the border without inspection, and could not establish continuous physical presence for more than 2 years at the time of their encounter/determination of inadmissibility by an immigration officer. (*See* NTA, Ex. C; I-213, Ex. D.) And they were all subject to the expedited removal/credible fear screening process. (*Id.*)

Petitioner is not entitled to a bond hearing pending his removal proceedings. He will either prevail on his asylum claims or be removed. As explained in *Jennings*, once "an immigration officer determines . . . that the alien has a credible fear of

persecution, "the alien *shall* be detained for further consideration of the application for asylum." *Jennings*, 583 U.S. at 287 (quoting § 1225(b)(1)(B)(ii)). As a result, Petitioner is to be detained for the duration of his immigration proceedings. *Id.*

This Court should not create a bond hearing requirement where none is authorized. Significantly, the Sixth Circuit has already considered Petitioner's argument that this Court should provide him with a bond hearing pursuant to the reasoning in *Padilla II*. *See Martinez v. Larose*, 968 F.3d 555, 565-66 (6th Cir. 2020). In its *Martinez v. Larose* decision, the Sixth Circuit recognized that the Ninth Circuit adopted a requirement that bond hearings were required after a specific lapse of time in the first *Padilla* decision. *Martinez v. Larose*, 968 F.3d at 565-66 (citing *Padilla v. ICE*, 953 F.3d 1134, 1143 (9th Cir. 2020) ("*Padilla I*") (reversed and remanded) (citations omitted).

In declining to follow suit, the Sixth Circuit recognized that, "a bond requirement would be out of place in a post-*Jennings* world." *Id.* at 566. This is because our Court of Appeals is "reluctant to graft a bond-hearing requirement onto a statute absent language supporting such a requirement." *Id.* (citing *Jennings*, 583 U.S. at 298 (2018) ("Spotting a constitutional issue does not give a court the authority to rewrite a statute as it pleases."); *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018) (criticizing the district court for "creat[ing] out of thin air a requirement for bond hearings that does not exist in the statute").

The primary issue in *Jennings* was the "proper interpretation of §§ 1225(b), 1226(a), and 1226(c)." *Jennings*, 583 U.S. at 289. The Ninth Circuit was reversed for erroneously finding periodic bond hearings under §§ 1225(b), 1226(c), and 1226(a) were required. *Id.* at 312. In reversing, the Supreme Court observed that, "§§

1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S at 302. As a result, bond hearings are not required. Petitioner's detention is of limited duration and will end at the conclusion of his immigration proceedings. As such, the due process clause is not violated.

The Ninth Circuit has already been reversed by the Supreme Court for creating a bond hearing requirement where none was required. The Sixth Circuit found a bond requirement is out of place after *Jennings* which this Court is bound to follow.

Respectfully submitted,

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