

presumptively reasonable period of 180 days in which he may be detained pursuant to the *Franco* class order. *Franco-Gonzalez v. Holder*, No. 2:10-cv-02211-DMG-DTB, 2013 WL 8115423, at 2 (C.D. Cal. Apr. 23, 2013). Petitioner does not otherwise meaningfully challenge his detention. As such, the Petition for a writ of habeas corpus should be denied and summary judgment entered in favor of the government.

APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”). As the Supreme Court has stated in no unmistakable terms, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

ARGUMENT

A. PETITIONER FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

As a threshold matter, the Court should dismiss the habeas Petition because Petitioner has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal

habeas petition under § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012). The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they “apply only in extraordinary circumstances,” including when exhaustion would be “patently futile.” *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted).

In this case, Petitioner has not demonstrated that he has requested a custody redetermination before an Immigration Judge, so he has not been denied bond before filing this habeas Petition. The Parties can only speculate as to whether an Immigration Judge would grant Petitioner bond because Petitioner did not seek a bond hearing prior to filing this Petition. Therefore, Petitioner has not exhausted his administrative remedies.

B. PETITIONER IS LAWFULLY DETAINED AS A *FRANCO* CLASS MEMBER.

The Government concedes that Petitioner is a *Franco* class member. At this point, however, Petitioner, is lawfully detained despite being a *Franco* class member. In *Franco-Gonzalez v. Holder*, the United States District Court for the Central District of California held that *Franco* class members are entitled to certain protections. Among other things, *Franco* class members must be provided with a bond hearing “after a presumptively reasonable period of 180 days in detention at which the Government bears the burden of justifying continued detention by clear and convincing evidence.” *Franco Gonzalez v. Holder*, No. 2:10-cv-02211-DMG-DTB at 2. As of the date of this Response, Petitioner has been detained for 146 consecutive days. *See Gov’t Ex. 1*. Because Petitioner is still within the presumptively reasonable period of detention under the *Franco* class order, and he is not otherwise challenging his detention, Petitioner’s claim should be dismissed for failure to state a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court dismiss the Petitioner pursuant to Rule 12(b)(6) of the FRCP.

Dated: January 12, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney
Southern District of Texas

By: *s/ Alexander McDonough*
Alexander McDonough
Special Assistant United States Attorney
SDTX ID. No. 3948544
Ohio Bar No. 103934
United States Attorney's Office
Southern District of Texas
600 E. Harrison, Ste. 201
Brownsville, TX 78520-5106
Telephone: (956) 983-6090
Facsimile: (956) 618-8016
Email: Alexander.McDonough2@usdoj.gov
Attorney for Federal Respondents

CERTIFICATE OF SERVICE

I certify that on January 12, 2026, the foregoing was filed and served through the Court's CM/ECF system.

s/ Alexander McDonough
Alexander McDonough
Special Assistant United States Attorney