

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

ABHISHEK KUMAR,	)	CASE NO.: 3:26-cv-00569
	)	
Petitioner,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	
	)	
WARDEN OF CORRECTIONS CENTER	)	<u>RESPONSE TO PETITION FOR WRIT</u>
OF NORTHWEST OHIO, et al.,	)	<u>HABEAS CORPUS</u>
	)	
Respondents.	)	

Pursuant to this Court's Order dated March 10, 2026, Federal Respondents hereby submit this Response to the Petition for Writ of Habeas Corpus. Specifically, this Court required Respondents to notify the Court if this case has materially different facts from the cases of *Enrique Leon Macias v. Kevin Raycraft*, Case No. 4:25-cv-02642 and *Reyes-Rodriguez v. ICE*, Case No. 4:26-cv-00333. (Non-doc Order, Mar. 10, 2026.) Federal Respondents state that there are some factual differences between this case and the two cases cited by the Court. The posture of the underlying immigration case is different than the posture of the immigration cases cited in the Court's order; and since this Court's ruling in *Reyes-Rodriguez*, the Ninth Circuit Court of Appeals has issued a Stay in the matter of *Bautista v. United States Dep't of Homeland Security*, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025), *appeal docketed*, Case No 26-1044 (9th Cir. Mar. 6, 2026), Dk. # 5.1, Admin. Stay Order.

The government has carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for ICE's detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. (*See Pet.*, Dkt. # 1, PageID # 1-3, ¶¶ 2-7.) While reserving all rights, including the right to appeal, the government respectfully submits

this abbreviated response in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter.

I. Factual Differences

On February 4, 2026, Petitioner came into the custody of Border Patrol. (Ex. A: EARM, the electronic version of I-213 that is maintained in ERO's database.) Unlike the petitioners in *Macias* and *Reyes-Rodriguez*, this was not Petitioner's first encounter with ICE. Petitioner was first arrested on May 5, 2018, by Border Patrol approximately three miles east of the Otay Mesa, California Port of Entry, approximately 300 yards north of the United States – Mexico International Boundary. (*Id.*) Petitioner was still a minor on the date of his arrest. (*Id.*) Upon reaching the age of majority on May 22, 2018, Petitioner was transferred to ICE's custody and placed in removal proceedings. (*Id.*) Petitioner's asylum request was denied, and he was ordered removed on June 13, 2023. (Ex. B: Removal Order.) Petitioner filed an appeal with the BIA and the appeal is pending.

There is little incentive for Petitioner to voluntarily cooperate with his removal should the BIA affirm the removal order. *See Ponce v. Dir. Of Cincinnati Field Office, U.S. Immigr. And Customs Enf't*, No. 1:25-cv-844 (S.D. Ohio Mar. 9, 2026), Dkt. # 12, PageID # 179 (recognizing the possibility that a person not lawfully present in the country, especially if facing a substantial likelihood of removal, may not appear for future removal proceedings). On February 4, 2026, Petitioner was processed as a Custody Redetermination and was not offered a bond because he has no ties to the community and could be a flight risk. (Ex. A.) Petitioner has not requested a custody redetermination hearing, asserting futility due to the holding in the *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). (Dkt. # 1, Pet., ¶ 54, PageID # 13.) The California Central District

Court vacated *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).¹

The second difference is the current posture of *Bautista*. In *Reyes-Rodriguez* this Court analyzed the applicability of *Bautista* in detail. *Reyes-Rodriguez*, No. 4:26-cv-00333, Dkt. # 9, Op. & Order, PageID # 122-130. This Court noted that “Well over 90% of district courts in this country have ruled against the Government in the interpretation of sections 1225(b) versus 1226(a) – the statutory interpretation question at the heart of the *Bautista II* declaratory judgment.” *Id.*, PageID # 129. Despite finding the respondents’ arguments regarding the preclusive effect of *Bautista* persuasive, ultimately the Court held that *Bautista* judgment had a preclusive effect. *Id.*, PageID # 130.

Subsequent to the issuance of the *Reyes-Rodriguez* opinion, the Ninth Circuit Court of Appeals has issued an administrative stay, temporarily staying the district court’s December 18, 2025 declaratory judgment, “insofar as the district court’s judgment extends beyond the Central District of California,” and staying “[T]he district court’s February 18, 2026 order granting petitioners’ motion to enforce the judgment and vacating the *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).” *Bautista*, Case Ninth Cir. App. No. 26-1044, Dkt. # 5.1. Thus, Respondents respectfully request that this Court reconsider its holding in *Reyes-Rodriguez* that the judgment in *Bautista II* has a preclusive effect. Respondents renew the arguments made in *Reyes-Rodriguez* that *Bautista* is not applicable to habeas cases filed outside of the Central District of California.

¹ On March 6, 2026, the Ninth Circuit Court of Appeals granted a stay of the district court’s order granting petitioners’ motion to enforce judgment and vacating *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). See *Maldonado-Bautista, et al., v. United States Dept. of Homeland Security, et al.*, Case No. 26-1044 (9th Cir. Mar. 6, 2026). Also pending appeal in the Ninth Circuit is the issue of DHS’ interpretation of § 1225(b)(2)(A), in *Rodriguez Vazquez v. Bostock*, Case No. 25-6842.

II. BAUTISTA IS INAPPLICABLE HERE

This Court should decline to provide preclusive effect to *Bautista*. *Bautista v. Santacruz*, No. 5:25-CV-1873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). At least one other court in the Sixth Circuit has declined to apply *Bautista*. *Amaya-Velis v. Raycraft, et al.*, ___ F. Supp. 3d ___, 2026 WL 100596, at *5 (N.D. Ohio Jan. 14, 2026) (finding that it is “doubtful” that a class action can provide habeas relief, that the Central District of California did not have jurisdiction over a warden in Ohio, and the Central District of California does not bind the Northern District of Ohio).

A. UNDER BLACK-LETTER PRINCIPLES OF HABEAS JURISDICTION, THE BAUTISTA DECLARATORY JUDGMENT HAS NO PRECLUSIVE EFFECT OUTSIDE THE CENTRAL DISTRICT OF CALIFORNIA AND OVER CUSTODIANS WHO ARE LOCATED OUTSIDE THAT DISTRICT.

The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. As the Supreme Court made clear just this year, “[r]egardless of whether the detainees formally request release from confinement,” if “their claims for relief necessarily imply the invalidity of their confinement ..., their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas.” *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (internal quotations omitted).

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. *First*, “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. *Second*, a habeas petitioner must name the petitioner’s *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the “corpus.” *Padilla*, 542 U.S. at 435. “Failure to name the petitioner’s custodian as a respondent deprives federal courts of personal jurisdiction” needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*,

542 U.S. at 444. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And a “judgment entered without personal jurisdiction over a defendant is void as to that defendant.” *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987).

Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address “validity of a defense the State may, or may not, raise in a habeas proceeding” in part because “the underlying claim must be adjudicated in a federal habeas proceeding”); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the “availability of a habeas remedy in another district ousted us of jurisdiction over an alien’s effort to pose a constitutional attack . . . by means of a suit for declaratory judgment”); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) (“In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is ‘in custody in violation of the Constitution . . . of the United States,’ This specific determination must override the general terms of the declaratory judgment . . . statute.”).

Here, the *Bautista* class members include individuals, such as Petitioner, who are confined *outside* of the Central District of California by immediate custodians, such as Respondent Raycraft, who are also *outside* the Central District of California and have not been named in the lawsuit. Indeed, at least two federal district courts have already held that the *Bautista* declaratory judgment does not have preclusive effect. *Amaya-Velis*, 2026 WL 100596, at *5; *Calderon Lopez v. Lyons*, ___ F. Supp. 3d ___, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025).

In sum, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that District. At the time of filing this habeas petition, Petitioner was detained Corrections Center of Northwest Ohio in Stryker, Ohio, which is within the Northern District of Ohio judicial district, not the Central District of California. That ends the matter. But if more were needed, Petitioner's immediate custodian is Kevin Raycraft, Director of the Detroit Field Office for U.S. Immigration and Customs Enforcement, and that individual was not a party in the Central District of California; subjecting the immediate custodian to the judgment of the Central District of California would be inconsistent with the immediate custodian rule. *Padilla*, 542 U.S. at 439-40; *see also Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition).

B. THE COURT SHOULD NOT GIVE PRECLUSIVE EFFECT TO A DECLARATORY JUDGMENT THAT IS CURRENTLY STAYED ON APPEAL.

Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been temporarily stayed by the Ninth Circuit and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in deciding whether to grant habeas relief in this case. *Bautista*, No. 26-1044 (9th Cir. Mar. 6, 2026), Dkt. 5.1 Administrative Stay Order.

Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. Reflexively granting preclusive effect to such judgments could lead to subsequent judgment “from which it may be impossible to obtain relief” even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this “evil result[.]” *Id.* (“both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences”).

This problem can be “avoided . . . by delaying further proceedings in the second action pending conclusion of the appeal in the first action.” *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433). In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (the “only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered”).

C. ACCORDING PRECLUSIVE EFFECT TO THE *BAUTISTA* DECLARATORY JUDGMENT CONTRAVENES OTHER PRINCIPLES OF PRECLUSION.

Beyond the two most serious problems with giving effect to the *Bautista* declaratory judgment in this case, three more reasons counsel strongly against doing so.

First, under 28 U.S.C. § 2202, “[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.” To the extent this Court considers whether to award “further” relief than what the *Bautista* court purported to grant to class members outside the Central District of California, such further relief is neither “necessary [n]or proper.” Indeed, the Ninth Circuit—which of course has appellate jurisdiction over the Central District of

California—has rejected waiving the district of confinement rule on prudential considerations given the clear congressional mandate limiting habeas jurisdiction to the district of confinement as provided by statute. *Doe*, 109 F.4th at 1199.

Second, the circumstances of this case also counsel against applying issue preclusion against the government. The Supreme Court has “long recognized that ‘the Government is not in a position identical to that of a private litigant,’ *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates.” *United States v. Mendoza*, 464 U.S. 154, 159 (1984). “Government litigation frequently involves legal questions of substantial public importance.” *Id.* at 160. Thus, although the Supreme Court has held the federal government “may be estopped . . . from relitigating a question when the parties to the lawsuits are the same,” *id.* at 163, 164 (citations omitted), it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, *see id.* at 162. This is because allowing “nonmutual collateral estoppel against the government . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.” *Id.* at 160.

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where the Petitioner was not a named party to the prior *Bautista* litigation, but instead merely a member of a fundamentally flawed nationwide class. In such a circumstance, applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Bautista* court’s decision to freeze the law for all district courts nationwide, and stymies development of the law. This is particularly so because the *Bautista* court could never grant complete habeas relief to all class members as a result of § 1252(f)(1)—instead,

the *Bautista* class action was merely a vehicle for seeking to use the judgment in individual habeas matters such as this one. At minimum, the court should exercise its discretion to decline to employ offensive issue preclusion, as it does in cases where a non-party seeks to invoke preclusion against a private party. *See Syverson v. Int'l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)).

The court should also decline to give the *Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in *Bautista* would be unfair. *See Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); *see, e.g., Altamirano Ramos v. Lyons*, ___ F. Supp. 3d ___, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

Third, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior “class action has no preclusive affect in habeas proceedings.” *Griffin v. Gomez*, 139 F.3d 905, TABLE, 1998 WL 81336 at *2 (9th Cir. Feb. 24, 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. *See Clifton v. Attorney General*, 997 F.2d 660, 663 n.3 (9th Cir. 1993) (recognizing that because “conventional notions of finality of litigation have no place” in habeas

and the inapplicability of res judicate to habeas is “inherent in the very role and function of the writ.”) (quoting *Sanders v. United States*, 373 U.S. 1, 8 (1963)); *see also Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) (“[T]he doctrines of res judicate and collateral estoppel are not applicable in habeas proceedings.”); *Hierens v. Mizell*, 729 F.2d 449, 456 (7th Cir. 1984) (“a decision in another case is not res judicata as to a habeas proceeding.”) (quoting *Warren v. McCall*, 709 F.2d 1183, 1184 n.4 (7th Cir. 1983)).

III. STATUTORY AUTHORITY FOR DETENTION

It is the government’s position that Petitioner is subject to mandatory detention under § 1225(b), because he is present in the United States without being admitted or paroled. *Buenrostro-Mendez v. Bondi, et al.*, ___ F.4th ___, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *see also Higareda-Cano v. Noem*, No. 1:25-CV0225-H, 2026 WL 274495, *1 (N.D. Tex. Jan. 30, 2026); *Lopez v. Dir. of Enf’t and Removal Operations*, ___ F. Supp. 3d ___, 2026 WL 261938, at *1 (M.D. Fla. Jan. 26, 2026); *Phurtskhvanidze v. Field Off. Dir. of Enf’t and Removal Operations*, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026); *Yinxiao Chen v. Almodovar*, 25-CV09670, 2026 WL 100761, at *6–13 (S.D.N.Y. Jan. 14, 2026); *Lucero v. Field Office Dir. Of Enf’t and Removal Op.*, Case No. 1:25-cv-823, 2025 WL 3718730, at *4 (S.D. Ohio Dec. 23, 2025); *Coronado v. Sec’y, Dep’t of Homeland Sec.*, Case No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855, at *3–8 (S.D.N.Y. Dec. 4, 2025).

Applicants for admission, such as Petitioner, whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens “seeking

admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing.

No additional step is necessary for an applicant for admission to be seeking admission. *Buenrostro-Mendez*, 2026 WL 323330, at *4 (“[A]n applicant for admission to the United States is ‘seeking admission’ to the same, regardless of whether the person actively engages in further affirmative acts to gain admission.”). As a Court in the Southern District of Ohio recently explained, “the phrase ‘alien seeking admission’ in § 1225(b)(2)(A) is merely another way to refer to ‘applicant[s] for admission,’ and thus the same ‘deeming’ that makes someone an applicant for admission also makes them an ‘alien seeking admission,’ whether that is so as a matter of fact or not.” *Lucero*, 2025 WL 3718730, at *1.

Furthermore, Section 1225(a) defines “applicant for admission” to encompass an alien who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Section 1225(a) provides that “[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Buenrostro-Mendez*, 2026 WL 323330, at *5 (the use of “otherwise” means that “an ‘applicant for admission’ is necessarily someone who is ‘seeking admission.’”).

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether

the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings,” *Jennings v. Rodriguez*, 583 U.S. 281, 301–03 (2018), IJs do not have authority to redetermine the custody status of an alien present without admission.

However, the government acknowledges this Court has reached the opposite conclusion in *Macias*, 4:25-cv-2642, Dkt. # 5, Op. & Order, PageID # 48, and in *Reyes-Rodriguez*, No. 4:26-cv-00333, Dkt. # 9, Op. & Order, PageID # 134, holding that the petitioner is subject to detention under 8 U.S.C. § 1226(a) – not 8 U.S.C. § 1225(b)(2). This Court held that the petitioners were entitled to a bond hearing and granted habeas relief.

On the legal issue of which statute governs Petitioner’s detention here – whether it is 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b) – the government acknowledges that this Court’s decision in *Macias* and *Reyes-Rodriguez* would control the result here if the Court adheres to those decisions regarding the legal issue of which statutory provision authorizes Petitioner’s detention.

IV. Petitioner’s Detention Does Not Violate the Fifth Amendment Due Process Clause.

Detention of Petitioner does not violate the Due Process Clause of the Fifth Amendment. (Dkt. # 1, Pet., ¶¶ 67-74, PageID # 15-16.) The Due Process Clause provides no relief to Petitioner because mandatory detention under § 1225(b) is constitutionally permissible, particularly when Petitioner has been detained for a reasonable period of time and resolution one way or another is forthcoming. The Supreme Court has held that detention pursuant to the INA during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, the Supreme Court upheld the constitutionality of § 1226(c), which mandates detention during removal proceedings without access to bond hearings. *Demore v. Kim*, 538 U.S. 510, 522 (2003).

Demore “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” and reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 523, 526. The Court further explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. With respect to due process concerns, the Court recognized that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

Likewise, although Petitioner has a fundamental liberty interest, “[i]n immigration cases ... federal courts apply a much more deferential standard of review to substantive due process challenges even where the immigration law interferes with a plaintiff’s fundamental rights.” *Bangura v. Hansen*, 434 F.3d 487, 494-95 (6th Cir. 2006) (citing *Fiallo v. Bell*, 430 U.S. 787, 798-99 (1977)). Thus, the Sixth Circuit “upholds immigration statutes so long as they are ‘conceivably related to the achievement of a federal interest.’” *Bangura*, 434 F.3d at 495, (internal citation omitted.) Since the Supreme Court has “long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control ...” detention during removal proceedings, as provided for under the INA, is related to achieving that federal interest and will not violate substantive due process. *Id.* The Supreme Court and Sixth Circuit have also rejected a set time frame limiting mandatory detention under the INA. For example, the Court in *Jennings* rejected the Ninth Circuit’s six-month limit on detention, concluding that during removal proceedings a person subject to deportation may be detained and such detention does not violate the Due Process Clause. *Jennings*, 583 U.S. at 301-05. As further example, the Sixth Circuit previously held that detentions under § 1226(c)

could violate due process if removal was not “reasonably foreseeable.” *Ly v. Hansen*, 351 F.3d 263, 273 (6th Cir. 2003). However, recently in *Hamama v. Adducci*, the Sixth Circuit recognized that “*Ly* did not survive *Jennings*.” *Hamama v. Adducci*, 946 F.3d 875, 879 (6th Cir. 2020). The *Adducci* court analyzed the question of what time limits, if any, should apply to detention under §§ 1225(b) and 1226(a), and (c). *Adducci*, 946 F.3d at 877. Through this analysis, the *Adducci* court considered the six-month limit *Zadvydas v. Davis* applied to detention under § 1231, post-removal order, and held that *Jennings* created a distinction on pre-removal and post-removal detention time limits. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Adducci*, 846 F.3d at 879-80.

Relying on *Jennings*, *Adducci* found that § 1225(b) allows for pre-removal detention and relates to a specific period of time, therefore, detention during removal proceedings does not violate due process. *Adducci*, 846 F.3d at 880, *quoting Jennings*, 583 U.S. at 299. Even post-removal, the Sixth Circuit has found no due process requirement for a bond hearing if removal is reasonably foreseeable. *Martinez v. Larose*, 968 F.3d 555, 564-66, n. 7 (6th Cir. 2020) (finding no due process violation for detention exceeding the 90-day removal period under § 1231 and no requirement for a bond hearing.) Here, Petitioner is detained for the limited purpose of determining his removability. Accordingly, his due process claims fail because Congress has not created any procedural rights to a bond hearing for applicants for admission and he is being legally detained during his removal proceedings. *See Jennings*, 583 U.S. at 297. “Read most naturally,” section 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded,” and the statute says nothing “whatsoever about bond hearings.” *Id.* Thus, Petitioner fails to state both procedural and substantive due process claims and the Petition should be denied.

However, the government acknowledges this Court has reached the opposite conclusion in *Macias*, 4:25-cv-2642, Dkt. # 5, Op. & Order, PageID # 49, and in *Reyes-Rodriguez*, No. 4:26-cv-00333, Dkt. # 9, Op. & Order, PageID # 137, holding that Due Process entitles petitioner to an individualized bond hearing. This Court held that the petitioners were entitled to a bond hearing and granted habeas relief.

On the legal issue of whether Petitioner's detention violates the Fifth Amendment Due Process Clause, the government acknowledges that this Court's decision in *Macias* and *Reyes-Rodriguez* would control the result here if the Court adheres to those decisions.

V. CONCLUSION

While the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government submits this abbreviated response setting forth its position that the Petitioner is lawfully detained. Finally, the government believes that this matter can be decided without a hearing. If, however, the Court determines that a hearing would be helpful, the government will attend and present Respondents' position.

Respectfully submitted,

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