



39-82-9621.03

U.S. Department of Justice
Civil Division
Office of Immigration Litigation

Washington, D.C. 20530

May 17, 2025

VIA ACMS

Molly C. Dwyer, Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *Padilla v. U.S. Immigration and Customs Enforcement*, No. 24-2801
Response to Plaintiffs-Appellees' Rule 28(j) Letter Filed on May 14, 2025

Dear Ms. Dwyer:

In their May 14 Rule 28(j) letter, Plaintiffs reference a DHS notice designating certain aliens encountered anywhere in the United States within two years of illegally crossing the border as subject to expedited removal. *See Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). That notice was issued in keeping with 8 U.S.C. § 1225(b)(1)(A)(iii), which expressly recognizes the Executive's "sole and unreviewable discretion" to make such designations. 8 U.S.C. § 1225(b)(1)(A)(iii) (referring to "any or all aliens . . . designated by the Attorney General" who have not been admitted or paroled and have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"). In *Thuraissigiam*, the Supreme Court even cited § 1225(b)(1)(A)(iii) to note that aliens "who have lived in the United States for up to two years may be placed in expedited-removal proceedings." *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 150 (2020) (Breyer, J., concurring in judgment).

Plaintiffs nevertheless contend that the notice "undermines" the Government's reliance on *Thuraissigiam*. Dkt. No. 40.1 at 1. They read *Thuraissigiam* as being limited to "the rights of a noncitizen apprehended 25 yards into U.S. territory" after an illegal entry. *Id.* at 2 (internal quotation marks omitted). Not so. While *Thuraissigiam* was in fact "stopped just 25 yards" from the border, the Supreme Court reasoned that he had "no entitlement to procedural rights other than those afforded by statute" because of his status as an inadmissible alien still "at the threshold of initial entry." *Thuraissigiam*, 591 U.S. at 103, 107. It even noted that aliens paroled "in the country for years pending removal" "are treated for due process purposes as if stopped at the border." *Id.* at 139 (internal quotation marks omitted). The mere fact that *Thuraissigiam* was apprehended 25 yards—as opposed to, say, miles from the border—was not a dispositive factor in the Supreme Court's analysis of § 1225(b)(1), and *Thuraissigiam* remains relevant for its broad pronouncements regarding the limited procedural rights of aliens subject to an expedited removal order.

- 2 -

Respectfully,

/s/ David Kim

DAVID KIM

Senior Litigation Counsel

Office of Immigration Litigation

Civil Division, U.S. Department of Justice

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

(202) 532-4094

David.Kim4@usdoj.gov

Counsel for Defendants-Appellants

cc: via ACMS

Counsel for Plaintiffs-Appellees