

District Judge Lauren King
Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE ARMANDO MARTIR-MARTINEZ,

Petitioner,

v.

BRUCE SCOTT, Warden, Northwest
Immigration and Customs Enforcement
Processing Center,

Respondent.

Case No. 2:25-cv-02194-LK-BAT

INTERESTED NON-PARTIES'¹
RETURN MEMORANDUM

Noted for Consideration:
January 2, 2026.

I. INTRODUCTION

This Court should deny pro se Petitioner Martir-Martinez's Petition for Writ of Habeas Corpus. Dkt. No. 6 ("Pet."). Martir-Martinez is a citizen of El Salvador who has twice unlawfully entered the United States. After his first unlawful entry, he was removed pursuant to a final order of removal. This final order was reinstated after the Department of Homeland Security ("DHS") discovered that Martir-Martinez had again unlawfully reentered the United States.

¹ For the purposes of this habeas brief, "Interested Non-Parties" refers to the United States of America on behalf of U.S. Immigration and Customs Enforcement ("ICE") Seattle Field Office Director Laura Hermosillo, U.S. Department of Homeland Security ("DHS") Secretary Kristi Noem, DHS, and U.S. Attorney General Pamela Bondi. Respondent Bruce Scott is not represented by undersigned counsel.

1 Martir-Martinez currently has a Petition for Review (“PFR”) pending in the Fourth
2 Circuit. Although he seeks release from detention because he has been detained since December
3 5, 2023, it was Martir-Martinez who requested a stay of removal while his PFR is pending. And
4 because DHS is prohibited from effectuating his removal due to the stay, Martir-Martinez is
5 lawfully detained pursuant to 8 U.S.C. § 1231(a). Due to his length of detention, however, he
6 recently received a bond hearing on November 28, 2025, but was denied bond. Accordingly, his
7 detention does not violate his Fifth Amendment Due Process rights, and the United States
8 respectfully requests that this Court deny the petition.

9 II. BACKGROUND

10 A. Legal Background

11 The Immigration and Nationality Act (“INA”) governs the detention and release of
12 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
13 U.S. 523, 527 (2021). This includes an expedited process for noncitizens who reenter the United
14 States without authorization after having already been removed. *See* 8 U.S.C. § 1231(a)(5)
15 (reinstatement of removal orders).

16 If the Attorney General finds that an alien has reentered the United States
17 illegally after having been removed or having departed voluntarily, under an
18 order of removal, the prior order of removal is reinstated from its original date
19 and is not subject to being reopened or reviewed, the alien is not eligible and
may not apply for any relief under this Act, and the alien shall be removed under
the prior order at any time after the reentry.

20 *Id.*; *see also* 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order). While a
21 noncitizen may not seek most discretionary relief from the terms of the reinstated order, a
22 noncitizen may pursue withholding-only relief and protection under the Convention Against
23 Torture to prevent his removal to the country listed in the reinstated removal order. *Johnson*, 594
24 U.S. at 530-31. The Immigration Judge’s (“IJ”) decision on the application for withholding of

1 removal or protection under the Convention Against Torture may be appealed to the Board of
2 Immigration Appeal (“BIA”). 8 C.F.R. § 1208.31(g)(2)(ii). The BIA’s decision may be judicially
3 reviewed by the Court of Appeals. *Ortiz-Alfaro v. Holder*, 694 F.3d 955, 958-60 (9th Cir. 2012).
4 While withholding only proceedings are pending before the IJ or the BIA, ICE cannot execute a
5 reinstated order of removal. *See id.*, at 957. Detention during this process is pursuant to 8 U.S.C.
6 § 1231(a). *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017).

7 **B. Factual Background**

8 Martir-Martinez is a native and citizen of El Salvador who entered the United States on
9 an unknown date at an unknown location. *See* Declaration of Rita Soraghan (“Soraghan Decl.”),
10 ¶ 4. He attempted to enter the United States on March 5, 2022, at which time DHS served him a
11 Form I-860, Notice and Order of Expedited Removal thereby ordering him removed from the
12 United States pursuant to INA § 238(b). *Id.*; *see also* Declaration of Kristen R. Vogel (“Vogel
13 Decl.”), Exh. A. On March 18, 2022, Martir-Martinez was physically removed from the United
14 States to El Salvador. Soraghan Decl., ¶ 4.

15 On December 5, 2023, the ICE Office of Enforcement and Removal Operations (“ERO”)
16 detained Martir-Martinez after identifying him as being an alien who was unlawfully in the United
17 States. *Id.*, ¶ 5.; *see also* Vogel Decl., Exh. B. Upon encounter, Martir-Martinez admitted to being
18 a member of the . ERO intended to reinstate his prior order of removal from 2022,
19 at which time Martir-Martinez informed ERO that he feared for his life if returned to El Salvador.
20 Soraghan Decl., ¶ 5. Based on this claim of fear, ERO referred Martir-Martinez to U.S.
21 Citizenship and Immigration Services (“USCIS”) for a reasonable fear interview. *Id.*

22 On January 17, 2024, USCIS found that Martir-Martinez had a reasonable fear of return
23 to El Salvador. *Id.*, ¶ 6. Based on this finding, USCIS issued a Form I-863, Notice of Referral to
24 IJ, thereby placing him in withholding-only proceedings before the immigration court. *Id.* Martir-

1 Martinez filed applications for withholding of removal under the INA and protection from
 2 removal under the Convention Against Torture. *Id.* Martir-Martinez testified in support of his
 3 applications on October 16, 2024, after which time the IJ denied each application. *Id.*; *see also*
 4 Vogel Decl., Exh. C. Martir-Martinez appealed the IJ's decision to the BIA. Soraghan Decl., ¶ 7.
 5 On February 21, 2025, the BIA dismissed his appeal. *Id.*, *see also* Pet., pgs. 14-16. Martir-
 6 Martinez then filed a motion to reconsider, which the BIA denied on October 3, 2025. Soraghan
 7 Decl., ¶ 7; *see also* Pet., pgs. 9-11.

8 On March 31, 2025, Martir-Martinez filed a PFR with the Fourth Circuit Court of Appeals.
 9 Soraghan Decl., ¶ 7; *see also* Case No. 25-1328, Fourth Circuit Court of Appeals. On November
 10 13, he was granted a stay of removal by the Fourth Circuit Court of Appeals. Soraghan Decl., ¶ 9.

11 On October 23, 2025, ERO obtained Martir-Martinez's passport and cleared him for
 12 removal to El Salvador. *Id.*, ¶ 8. On November 25, DHS requested a *Martinez-Baños*² hearing.
 13 *Id.*, ¶ 10. On November 28, an IJ in Tacoma denied bond, finding that DHS met its burden to
 14 show by clear and convincing evidence that Martir-Martinez is both a danger to the community
 15 and a flight risk. *Id.*, ¶ 10; *see also* Vogel Decl., Exh. D.

16 III. LEGAL STANDARD

17 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
 18 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
 19 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he
 20 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
 21 day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28

22
 23
 24 ² *Martinez-Baños, et al. v. Asher*, 2:16-cv-01454-JLR, 2018 WL 1617706 (W.D. Wash. April 4, 2018), *aff'd in part*,
vacated in part, rev'd in part sub nom. Flores Tejada v. Godfrey, 954 F.3d 1245 (9th Cir. 2020), *rev'd and remanded*
sub nom. Garland v. Aleman Gonzalez, 596 U.S. 543 (2022).

1 U.S.C. § 2241 provides district courts the authority to grant habeas relief “within their respective
2 jurisdictions.”

3 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
4 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
5 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

6 IV. ARGUMENT

7 A. Martir-Martinez’s continuing detention does not violate due process.

8 Martir-Martinez’s detention is constitutionally and statutorily lawful. He is detained
9 pursuant to 8 U.S.C. § 1231(a). Because the only issue under judicial review is whether he is
10 eligible for relief from removal, Martir-Martinez is subject to an administratively final removal
11 order. *See Padilla-Ramirez*, 882 F.3d at 830-33 (finding that detention during withholding only
12 proceedings is pursuant to Section 1231). Although there is no statutory time limit on detention
13 pursuant to Section 1231(a), the Supreme Court has held that a noncitizen may be detained only
14 “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United
15 States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified
16 six months as a presumptively reasonable time necessary to bring about a noncitizen’s removal.
17 *Id.*, at 701.

18 Although Martir-Martinez has been detained longer than six months, the six-month
19 presumption “does not mean that every alien not removed must be released after six months. To
20 the contrary, [a noncitizen] may be held in confinement until it has been determined that there is
21 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* Here, Martir-
22 Martinez’s continued detention is due only to his request for a stay of his removal while seeking
23 judicial relief. Once Martir-Martinez’s pending PFR concludes, if ICE is permitted to do so, there
24 should be no obstacles to effectuating his removal to El Salvador because ERO already obtained

1 his passport and cleared him for removal. Soraghan Decl., ¶ 8.

2 Furthermore, on November 28, Martir-Martinez received a *Martinez-Baños* bond hearing.
3 *Id.*, ¶¶ 10-11. *Martinez-Baños* bond hearings must comply with the procedural safeguards
4 established in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). This means that the government
5 has the burden to justify continued detention by clear and convincing evidence that the alien is
6 either a danger to the community or a flight risk. *Martinez-Baños*, 2018 WL 1617706, at *5. Here,
7 the IJ determined that Martir-Martinez is both a danger to the community and a flight risk thereby
8 denying him bond. Soraghan Decl., ¶ 11; Exh. D to Vogel Decl.

9 Accordingly, Martir-Martinez has not provided any valid legal or factual basis for his Fifth
10 Amendment due process claim.

11 **V. CONCLUSION**

12 For the foregoing reasons, the United States respectfully requests that the Court dismiss
13 Martir-Martinez's petition.

14 DATED this 5th day of December, 2025.

15 Respectfully submitted,

16 CHARLES NEIL FLOYD
17 United States Attorney

18 s/ Kristen R. Vogel
KRISTEN R. VOGEL, NY No. 5195664
19 Assistant United States Attorney
United States Attorney's Office
20 Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101
21 Phone: 206-553-7970
Fax: 206-553-4067
22 Email: kristen.vogel@usdoj.gov

23 *Attorneys for United States of America*

24 I certify that this memorandum contains 1,543
words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on today's date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Jose Armando Martir-Martinez, Pro Se Petitioner


NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 5th day of December, 2025.

s/ Hung Nguyen
HUNG NGUYEN, Paralegal Specialist
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101
Phone: 206-553-7970
Fax: 206-553-4067
Email: hung.nguyen@usdoj.gov