

District Judge Tiffany M. Cartwright

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

FERNANDO ABURTO LOPEZ,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:25-cv-02541-TMC

FEDERAL RESPONDENT'S  
SUPPLEMENTAL BRIEFING

In Petitioner's reply, Petitioner for the first time articulates facts and legal argument in support of a claim for relief. Dkt. 11. Pursuant to the Court's Minute Order (Dkt. 13), Federal Respondents now submit the following supplemental briefing.

U.S. Immigration and Customs Enforcement detains Petitioner pursuant to 8 U.S.C. § 1225(b). Federal Respondents acknowledge that in *Rodriguez Vazquez v. Bostock*, this Court granted summary judgment and found that detention pursuant to 8 U.S.C. § 1225(b)(2) of the Bond Denial Class is unlawful. *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). That decision is presently on appeal. *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, Dkt. 71. Additionally, in *Maldonado Bautista v. Santacruz*, the district court found the same and extended declaratory relief to a similarly defined

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1 and certified nationwide Bond Eligible Class. *See Maldonado Bautista v. Santacruz*, No. 5:25-  
2 CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

3 **A. 8 U.S.C. § 1225(b)**

4 While acknowledging the decisions in *Rodriguez Vazquez* and *Maldonado*, Federal  
5 Respondents continue to believe Petitioner is subject to mandatory detention pursuant to 8 U.S.C.  
6 § 1225(b). *See Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351 (D. Neb. Sept. 30,  
7 2025) (holding petitioner detained under 8 U.S.C. § 1225(b)(2)); *Sixtos Chavez v. Noem*, --- F.  
8 Supp. 3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (same). Noncitizens who are  
9 apprehended shortly after illegally crossing the border and who are determined to be inadmissible  
10 due to lacking a visa or valid entry documentation, 8 U.S.C. § 1182(a)(7)(A), may be removed  
11 pursuant to an expedited removal order unless they express an intention to apply for asylum or a  
12 fear of persecution in their home country. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). “The purpose of  
13 these provisions is to expedite the removal from the United States of aliens who indisputably have  
14 no authorization to be admitted to the United States, while providing an opportunity for such an  
15 alien who claims asylum to have the merits of his or her claim promptly assessed by officers with  
16 full professional training in adjudicating asylum claims.” H.R. Conf. Rep. No. 828, 104th Cong.,  
17 2d Sess. 209 (1996).

18 Applicants for admission fall into one of two categories. Section 1225(b)(1) covers  
19 noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of  
20 valid documentation, and certain other noncitizens designated by the Attorney General in her  
21 discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all  
22 applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant  
23 here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

1 Congress has determined that all noncitizens subject to Section 1225(b) are subject to  
2 mandatory detention. Regardless of whether a noncitizen falls under Section 1225(b)(1) or (b)(2),  
3 the sole means of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian  
4 reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283.

5 Further, several provisions at 8 U.S.C. § 1252 preclude review. First, 8 U.S.C. § 1252(g)  
6 bars review of Petitioner’s claims because they arise from the government’s decision to  
7 commence removal proceedings. Second, 8 U.S.C. § 1252(b)(9) bars the Court from hearing  
8 Petitioner’s claims because his claims challenge the decision and action to detain him, which  
9 arises from the government’s decision to commence removal proceedings, thus an “action taken  
10 . . . to remove an alien from the United States.” Third and lastly, 8 U.S.C. § 1252(e)(3) applies  
11 and limits “[j]udicial review of determinations under section 1225(b) of this title and its  
12 implementation.” The plain language of the statute precludes judicial review for noncitizens  
13 determined to be detained pursuant to Section 1225(b)(2) and applies to a “determination under  
14 section 1225(b)” and to its implementation.

15 **B. Petitioner is lawfully detained**

16 Petitioner now seeks relief as a member of the Bond Denial Class in *Rodriguez Vazquez*<sup>1</sup>,  
17 and continues to argue that he is unlawfully detained in violation of the Immigration and  
18 Nationality Act, and the Due Process clause. Pet. at p. 3. Again, Federal Respondents do not agree  
19 with the *Rodriguez Vazquez* decision. Alternatively, they do not oppose Petitioner being  
20 considered a member of the *Rodriguez Vazquez* Bond Denial Class for purposes of this litigation.

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23 <sup>1</sup> “**Bond Denial Class:** All noncitizens without lawful status detained at the Northwest ICE Processing Center who  
24 (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not  
or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is  
scheduled for or requests a bond hearing.” *Rodriguez*, 2025 WL 2782499, at \*6.

1 However, even if Petitioner is considered a *Rodriguez Vazquez* Bond Denial Class  
 2 member, his detention is lawful, and he is not entitled to the relief he seeks through this petition.  
 3 One January 7, 2026, Petitioner appeared at a bond hearing at the Tacoma Immigration Court,  
 4 where the Immigration Judge denied Petitioner's request bond, finding lack of jurisdiction under  
 5 8 U.S.C. § 1225(b). Declaration of Katherine G. Collins, Exh. A, Bond Order. In the alternative,  
 6 the Immigration Judge held a bond hearing and found Petitioner ineligible for bond based on a  
 7 finding that Petitioner is a flight risk. *See id.*

8 “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of  
 9 that custody, and . . . the traditional function of the writ is to secure release from illegal custody.”  
 10 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Although Petitioner challenges the Immigration  
 11 Judge's denial of a bond hearing and finding of mandatory detention under § 1225(b), the  
 12 Immigration Judge alternatively held a bond hearing for Petitioner and determined that Petitioner  
 13 presents a flight risk. Collins Decl., Exh. A, Bond Order. This remains is a separate basis for the  
 14 “legality of [his] custody.” *See id.* Accordingly, even if Petitioner were treated as subject to the  
 15 discretionary detention regime of § 1226(a) as directed in *Rodriguez Vazquez*, Petitioner would  
 16 remain in detention under that the Immigration Judge's separate finding.

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1 Because Petitioner has not demonstrated by a preponderance of the evidence that “the fact  
2 or duration of his confinement” violates any law, *see Preiser*, 411 U.S. at 489, habeas relief must  
3 be denied.<sup>2</sup>

4  
5 DATED this 20th day of January, 2026.

6 Respectfully submitted,

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9 s/ Katherine G. Collins

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20 *I certify that this memorandum contains 970*  
21 *words, in compliance with Local Civil Rules.*

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24 <sup>2</sup> Federal Respondents maintain that Petitioner’s request for an order prohibiting transfer during his removal proceedings is defective and must be denied. *See* Dkt, 9 at pp. 2-4.