

District Judge Tiffany M. Cartwright

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

NARCISO CRUZ-RODAS, *et al.*,

Petitioners,

v.

BRUCE SCOTT,¹ *et al.*,

Respondents.

Case No. 2:26-cv-00012-TMC

FEDERAL RESPONDENT'S
RETURN MEMORANDUM

Noted for Consideration:
January 26, 2026

Petitioners seek habeas relief from mandatory immigration detention claiming that their detention is unlawful because they are part of the Bond Denial Class as certified in *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). They are not. Petitioners Narciso Cruz-Rodas and Mercedes Espinoza-Balcaceres were inspected and admitted into the United States and are lawfully detained pursuant 8 U.S.C. § 1226(a). Petitioner Miguel Antonio-Lopez is being processed for reinstatement of a prior order of removal

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office. Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondent's substitute Secretary for the Department of Homeland Security Kristi Noem for Alejandro Mayorkas.

1 and is lawfully detained under 8 U.S.C. § 1231. Petitioners have not demonstrated that their
 2 custody in is in violation of law and their claims for relief must be denied.

3 I. LEGAL AUTHORITY

4 “Writs of habeas corpus may be granted by ... the district courts ... within their respective
 5 jurisdictions.” 28 U.S.C. § 2241(a). Habeas petitioners must prove by the preponderance of the
 6 evidence that they are “in custody in violation of the Constitution or laws or treaties of the United
 7 States.” *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004); 28 U.S.C. § 2241(c).

8 II. FACTUAL BACKGROUND

9 a. *Rodriguez Vazquez* Bond Denial Class

10 Petitioners seek habeas relief as members of the *Rodriguez Vazquez* Bond Denial Class.
 11 Dkt. 1. In *Rodriguez Vazquez*, the court granted summary judgment to members of a certified
 12 Bond Denial Class, holding that their detention under § 1225(b)(2) was unlawful under the INA.
 13 — F.Supp.3d —, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *27 (W.D. Wash. Sept.
 14 30, 2025). The Court defined the Bond Denial Class to include the following individuals:

15 All noncitizens without lawful status detained at [NWIPC] who (1) have entered or will
 16 enter the United States without inspection, (2) are not apprehended upon arrival, (3) are
 17 not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231
 18 at the time the noncitizen is scheduled for or requests a bond hearing.

17 *Id.* at *6.

18 b. Petitioner Narciso Cruz-Rodas

19 Petitioner Narciso Cruz-Rodas is a native and citizen of Guatemala who last entered the
 20 United States on May 13, 2013, using a temporary nonimmigrant visa. Declaration of Katherine
 21 G. Collins (“Collins Decl.”), Exh. A, Cruz-Rodas NTA; Exh. B, Cruz-Rodas I-213. He was
 22 inspected and admitted. *See id.* His authorized period of stay expired on November 30, 2013. *Id.*
 23 He has no current document to allow him to be in or remain in the United States. *Id.*
 24

1 **c. Petitioner Mercedes Espinoza-Balcaceres**

2 Petitioner Mercedes Espinoza-Balcaceres is a native and citizen of El Salvador who last
3 entered the United States on July 5, 2019, using a valid B2 visitor visa. Collins Decl., Exh. C,
4 Espinoza-Balcaceres NTA; Exh. D, Espinoza-Balcaceres I-213. He was inspected and admitted.
5 *See id.* His visa expired on January 4, 2020, and he has no current document to allow him to be
6 in or remain in the United States. *Id.*

7 **d. Petitioner Miguel Antonio-Lopez**

8 Petitioner Miguel Antonio-Lopez is a native and citizen of Guatemala. Declaration Of
9 Deportation Officer Delano Dumo ("Dumo Decl."), ¶ 3, Collins Decl., Exh. K, 2025 I-213. On
10 May 14, 2015, Petitioner was removed from the United States to Guatemala pursuant to an Order
11 of Expedited Order of Removal. Dumo Decl., ¶¶ 4, 5; Collins Decl., Exh. E, 2015 ER Order. On
12 July 5, 2016, Petitioner unlawfully reentered the United States with his minor son and was
13 apprehended by Border Patrol. Dumo Decl., ¶ 6; Collins Decl., Exh. G, 2016 I-213. Petitioner's
14 prior order of removal was reinstated, but due to lack of bed space for adult males with children,
15 Petitioner was released on an Order of Supervision (OSUP). Collins Decl., Exh. F, Reinstatement
16 Order; Exh. H, OSUP; Dumo Decl., ¶ 6.

17 While released from custody, Petitioner filed an asylum application with United States
18 Citizenship and Immigration Service (USCIS) on July 12, 2017. Dumo Decl., ¶ 7. On November
19 6, 2017, USCIS found Petitioner statutorily ineligible to apply for asylum because his removal
20 order was reinstated. *Id.*, ¶ 8; Collins Decl., Exh. I, Asylum Dismissal Letter. Petitioner was then
21 scheduled for a reasonable fear interview with USCIS. However, that interview needed to be
22 rescheduled and was not rescheduled at that time. *Id.*, ¶ 9.

23 On April 28, 2021, Petitioner was convicted of Driving Under the Influence. *Id.*, ¶ 10. On
24 December 18, 2025, Petitioner's OSUP was revoked due to his criminal activity and because the

purpose of the OSUP had been served because there was no bed space available. *Id.*, ¶ 11. ICE arrested Petitioner and took him into custody that same day. Collins Decl., Exh. J, 2025 I-205; Exh. K, 2025 I-213. Petitioner is currently detained at the Northwest ICE Processing Center in Tacoma, Washington. USCIS provided Petitioner with a reasonable fear interview on January 8, 2025. Dumo Decl., ¶¶ 12, 13. USCIS has not yet adjudicated Petitioner's reasonable fear claim. *Id.*

III. ARGUMENT

a. Petitioners Narciso Cruz-Rodas and Mercedes Espinoza-Balcaceres are lawfully detained pursuant to 8 U.S.C. § 1226(a), are eligible for a custody redetermination hearing, and have failed to exhaust their administrative remedy.

Petitioners Narciso Cruz-Rodas and Mercedes Espinoza-Balcaceres were not apprehended upon arrival but rather were lawfully inspected and admitted to the United States on temporary nonimmigrant visas. Collins Decl., Exh. A, Cruz-Rodas NTA; Exh. B, Cruz-Rodas I-213; Exh. C, Espinoza-Balcaceres NTA; Exh. D, Espinoza-Balcaceres I-213. Accordingly, both Petitioners are not considered members of the Bond Denial Class certified in *Rodriguez Vazquez*.

Furthermore, because Petitioners were inspected and admitted, but then subsequently overstayed, they are both lawfully detained pursuant to 8 U.S.C. § 1226(a). Section 1226(a) provides for the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under Section 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody

1 redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of
2 removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

3 Petitioners Narciso Cruz-Rodas and Mercedes Espinoza-Balcaceres have failed to exhaust
4 their administrative remedy of a § 1226(a) bond hearing prior to seeking habeas relief. Despite
5 being potentially eligible for custody redetermination, there is no indication that Petitioners have
6 requested a bond hearing before the Immigration Judge. There is also no indication that the
7 Immigration Judge would deny such a request. Accordingly, Petitioners' habeas petitions must
8 be dismissed. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) ("When a petitioner
9 does not exhaust administrative remedies, a district court ordinarily should either dismiss the
10 [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted
11 remedies, unless exhaustion is excused."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1213 (9th
12 Cir. 2022) (finding § 1226(a)'s procedures facially constitutional); *Okoth v. Kaiser*, No. 1:25-
13 CV-01936-KES-SAB, 2026 WL 45199, at *4 (E.D. Cal. Jan. 7, 2026) (dismissing a habeas
14 petition when the petitioner did not exhaust his administrative remedy of a § 1226(a) bond
15 hearing).

16 **b. Petitioner Miguel Antonio-Lopez is lawfully detained pursuant to 8 U.S.C.**
17 **§ 1231.**

18 Petitioner Miguel Antonio-Lopez has been in ICE custody since December 18, 2025,
19 under a reinstated order of removal. Collins Decl., Exh. F, Reinstatement Order; Exh. J, 2025 I-
20 205. The Ninth Circuit has held that a reinstated removal order is administratively final and 8
21 U.S.C. § 1231 governs the detention of aliens subject to reinstated removal orders. *Padilla-*
22 *Ramirez v. Bible*, 882 F.3d 826, 834 (9th Cir. 2017). Section 1231(a) provides for mandatory
23 detention during a ninety-day post-order "removal period," 8 U.S.C. § 1231(a)(2), and
24 discretionary detention "beyond the removal period" in certain circumstances, *id.* § 1231(a)(6).

1 Accordingly, Petitioner is lawfully detained under 8 U.S.C. § 1231 and is therefore not considered
2 a member of the Bond Denial Class certified in *Rodriguez Vazquez*. 2025 WL 2782499, at *6.

3 Because Petitioner has not demonstrated by a preponderance of the evidence that “the fact
4 or duration of his confinement” violates any law, habeas relief must be denied. *Preiser v.*
5 *Rodriguez*, 411 U.S. 475, 489 (1973).

6 **c. Petitioners’ requests for injunctive relief cannot be considered.**

7 In addition to requesting release from custody, Petitioners seek an order prohibiting
8 Federal Respondents from transferring Petitioners outside of the district without a 48-hour
9 advance notice during the pendency of his removal proceedings. Dkt. 1 at p. 5. Petitioners also
10 requests an order that they may not be re-detained in the future “based on the same statutory
11 interpretation declared unlawful in *Rodriguez Vazquez v. Bostock*[.]” These are requests for
12 injunctive relief and must be denied.

13 “In seeking a permanent injunction, the moving party must convince the court that relief
14 is needed: ‘The necessary determination is that there exists some cognizable danger of recurrent
15 violation, something more than the mere possibility which serves to keep the case alive.’”
16 *Cummings v. Connell*, 316 F.3d 886, 897 (9th Cir. 2003) (quoting *United States v. W.T. Grant*
17 *Co.*, 345 U.S. 629, 633 (1953)). Nowhere do Petitioners argue that any alleged violation is likely
18 to recur. *See generally*, Dkt. 1. Accordingly, Petitioners’ requests for injunctive relief must be
19 denied. *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“Our
20 adversarial system relies on the advocates to inform the discussion and raise the issues to the
21 court.”); *see also Suong v. Bondi*, No. 2:25-CV-02309-LK, 2025 WL 3718644, at *6 (W.D. Wash.
22 Dec. 23, 2025) (denying petitioner’s request for injunctive relief relating to restricting conditions
23 of re-detention pursuant to the party presentation doctrine, because petitioner failed to raise the
24 argument in habeas petition).

d. Petitioner's request to prohibit on out-of-district transfer during the pendency of his removal proceedings is otherwise defective and should be denied.

Petitioners claims, without any supporting evidence or facts, that they are "in immediate danger of being transferred out of NWIPC." *Id.* at p. 4. Petitioners request that this Court prohibit transfer outside of the Western District of Washington while their removal proceedings are pending without a 48-hour advance notice to Petitioners and their counsel. Dkt. 1 at pp. 2, 5. This request is not justified in the petition by any citation to relevant law or authority and is not an available remedy.

The government may detain aliens pending their removal pursuant to a removal order. Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain aliens. The INA precludes review of "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General" 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain Petitioner. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction); *see also Rios-Berrios v. INS*, 776 F.2d at 863 (holding there is no right to block transfer to another district during removal proceedings: "We wish to make ourselves clear. We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide.").

Accordingly, judicial intervention is not proper with respect to the government's decision about where to detain Petitioners while their removal proceedings are pending, and Petitioners' request to enjoin transfer during their removal proceedings should be denied.

1 IV. CONCLUSION

2 For the foregoing reasons, Federal Respondents respectfully request that Petitioners'
3 claims for relief be dismissed and denied.

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

6 Respectfully submitted,

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15 *I certify that this memorandum contains 1,964*
16 *words, in compliance with the Local Civil Rules*