

District Judge Tiffany M. Cartwright

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

ANDRES AVENDANO TORIBIO,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:25-cv-02540-TMC

FEDERAL RESPONDENT'S
RETURN MEMORANDUM

Noted for Consideration:
January 5, 2026

Through his Second Amended Petition (Dkt. 12), Petitioner seeks habeas relief from his mandatory immigration detention. U.S. Immigration and Customs Enforcement detains him 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

1 relief to a similarly defined and certified nationwide Bond Eligible Class. *See Maldonado Bautista*
2 *v. Santacruz*, No. 5:25-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. *Rodriguez Vazquez* Bond Denial Class Membership**

16 Through this habeas action, Petitioner seeks relief as a member of the Bond Denial Class
 17 in *Rodriguez Vazquez*.¹ Again, Federal Respondents do not agree with the *Rodriguez Vazquez*
 18 decision. Alternatively, they do not oppose Petitioner being considered a member of the
 19 *Rodriguez Vazquez* Bond Denial Class for purposes of this litigation. If the Court were to grant
 20 the instant habeas petition, the appropriate relief would be for the Immigration Judge’s alternate
 21 order to be put into effect. Accordingly, Petitioner should be released upon payment of the bond
 22

23 ¹ “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 amount (\$7,500), as found in the alternate order by the Immigration Judge. *See* Dkt. 13, IJ Bond
2 Order.

3 **C. Petitioner’s Request for a Bar on District Transfer is Defective**

4 Petitioner also requests that this Court prohibit his transfer outside of the Western
5 District of Washington while his removal proceedings are pending. Pet. at 1, 5. This request is
6 not justified by any citation to relevant law or authority. In any event, this is not a remedy that
7 this available through the instant petition.

8 The government may detain aliens pending their removal pursuant to a removal order.
9 Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain
10 aliens. The INA precludes review of “any . . . decision or action of the Attorney General . . . the
11 authority for which is specified under this subchapter to be in the discretion of the Attorney
12 General . . .” 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would
13 impact where and when to detain Petitioner. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th
14 Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial
15 review of decision to transfer a detainee is inappropriate due to lack of jurisdiction).

16 In *Van Dinh*, the noncitizen-plaintiffs were incarcerated at a facility in Colorado, where
17 they were notified of the “distinct possibility” that they would be transferred to another facility.
18 *See* 197 F.3d at 429. Plaintiffs filed a Bivens class action complaint requesting injunctive relief
19 restraining all noncitizen transfers until local counsel had an opportunity to interview their
20 clients and injunctive relief restraining transfer outside the area of those noncitizens with an
21 established attorney-client relationship. *See id.* There, the Tenth Circuit concluded that “the
22 district court had no jurisdiction to review the Attorney General’s discretionary decision to
23 transfer and detain appellants in another INS facility under § 1252(a)(2)(B)(ii)” and thus no
24 Bivens class action was available. *Id.* at 435. In reaching this conclusion, the Court found that

1 “[t]he Attorney General is mandated to ‘arrange for appropriate places of detention for
2 [noncitizens] detained pending removal.’” *Id.* at 433 (citing 8 U.S.C. § 1231(g)(1)). “The
3 Attorney General’s discretionary power to transfer [noncitizens] from one locale to another, as
4 [he or] she deems appropriate, arises from this language.” *Id.* Thus, it is “apparent that a district
5 court has no jurisdiction to restrain the Attorney General’s power to transfer [noncitizens] to
6 appropriate facilities by granting injunctive relief in a Bivens class action suit.” *Id.*

7 Moreover, in *Rios-Berrios*, the petitioner was apprehended in California, charged with
8 entry without inspection, and moved to Florida for a deportation hearing that was scheduled to
9 begin effectively five working days from the time of his apprehension. *See* 776 F.2d at 860-61.
10 The immigration judge twice continued the hearing for a total of two working days, first after
11 the petitioner stated that he needed time to find an attorney and again after being informed that
12 the petitioner had called a friend who had been in contact with an attorney and bail bondsman.
13 *See id.* After the immigration judge granted the continuances, he also advised that the hearing
14 would proceed with or without counsel. *See id.* When the petitioner appeared without counsel,
15 there was no inquiry regarding the petitioner’s expressed wish to be represented by counsel and
16 the hearing went forward. *See id.* The Ninth Circuit found a violation of the petitioner’s right to
17 be represented by counsel of his own choice at his own expense. *See id.* at 862-63. However,
18 the Ninth Circuit clarified that there was no right to block his transfer to another district:

19 We wish to make ourselves clear. We are not saying that the petitioner should not
20 have been transported to Florida. That is within the province of the Attorney
21 General to decide. We merely say that his transfer there, combined with the
22 unexplained haste in beginning deportation proceedings, combined with the fact
23 of petitioner’s incarceration, his inability to speak English, and his lack of friends
24 in this country, demanded more than lip service to the right of counsel declared in
statute and agency regulations, a right obviously intended for the benefit of aliens
in petitioner’s position.

Id. at 863 (citations omitted). Accordingly, judicial intervention is not proper with respect to the

1 government's decision about where to detain Petitioner while his removal proceedings are
2 pending, and therefore Petitioner's request should be denied.

3 Furthermore, if this Court were to grant Petitioner's habeas petition based on
4 membership in the *Rodriguez Vazquez* Bond Denial Class, Petitioner will receive the relief he
5 seeks of being released from custody upon payment of a bond. See Pet., Prayer for Relief.
6 Therefore, the Court need not reach any undeveloped claim relating to transfer, and such claim
7 can be denied as moot.

8
9 DATED this 29th day of December, 2025

10 Respectfully submitted,

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18 *Attorneys for Federal Respondent*

19 *I certify that this memorandum contains 1,492*
20 *words, in compliance with Local Civil Rules*