

District Judge Ricardo S. Martinez

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-RSM

FEDERAL RESPONDENT'S
RETURN MEMORANDUM

Noted for Consideration:
January 5, 2026

Petitioner seeks habeas relief based on an unsupported claim that he is unlawfully detained. The petition is deficient and must be denied.

I. Petitioner Has Not Met His Burden in Establishing a Claim for Relief

Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, Petitioner “must show [he] is in custody in violation of the Constitution or laws or treaties of the United States.” *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *5 (W.D. Wash. Mar. 29, 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing 28 U.S.C. § 2241). Because habeas proceedings are civil in nature, the “[p]etitioner

1 ‘bears the burden of proving that he is being held contrary to law, . . . [and] he must satisfy his
 2 burden of proof by a preponderance of the evidence.’” *Makuey v. Scott et al.*, No. 2:25-CV-02135-
 3 DGE-BAT, 2025 WL 3640900, at *3 (W.D. Wash. Dec. 16, 2025) (citing *Aditya W. H. v. Trump*,
 4 No. 25-cv-1976, 2025 WL 1420131, at *7 (D. Minn. May 14, 2025) (quoting *Freeman v. Pullen*,
 5 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (citations omitted)). Petitioner has not met this burden.

6 Petitioner alleges that he is “unlawfully detained in violation of the Due Process Clause
 7 of the Fifth Amendment.” Pet. at 4. However, Petitioner provides no facts and no legal argument
 8 or citation supporting this assertion. He does not describe any factual circumstance that would
 9 render his custody unlawful, nor does he identify any law allegedly violated. “Conclusory
 10 allegations which are not supported by a statement of specific facts do not warrant habeas relief.”
 11 *Boehme v. Maxwell*, 423 F.2d 1056, 1058 (9th Cir.1970) (citing *James v. Borg*, 24 F.3d 20, 26
 12 (9th Cir. 1994)). Petitioner’s bare claim that he is “unlawfully detained,” standing alone, is a legal
 13 conclusion, not a cognizable habeas claim, and this petition must be denied.¹

14 II. Petitioner’s Request for a Bar on District Transfer is Defective

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

19 The government may detain aliens pending their removal pursuant to a removal order.
 20 Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain

21
 22 ¹ Any arguments that Petitioner may raise for the first time in his reply should be deemed
 23 waived. See *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir.1991) (refusing to reach argument
 24 raised for the first time in reply brief that petitioner's claim was not cognizable on federal
 habeas corpus); *Romero-Aguilar v. Holder*, 397 Fed.Appx. 399, 2010 WL 3825644 (9th Cir.
 Sept. 29, 2010) (issues raised for the first time in a reply brief are waived).

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

7 In *Van Dinh*, the noncitizen-plaintiffs were incarcerated at a facility in Colorado, where
8 they were notified of the “distinct possibility” that they would be transferred to another facility.
9 *See* 197 F.3d at 429. Plaintiffs filed a Bivens class action complaint requesting injunctive relief
10 restraining all noncitizen transfers until local counsel had an opportunity to interview their
11 clients and injunctive relief restraining transfer outside the area of those noncitizens with an
12 established attorney-client relationship. *See id.* There, the Tenth Circuit concluded that “the
13 district court had no jurisdiction to review the Attorney General’s discretionary decision to
14 transfer and detain appellants in another INS facility under § 1252(a)(2)(B)(ii)” and thus no
15 Bivens class action was available. *Id.* at 435. In reaching this conclusion, the Court found that
16 “[t]he Attorney General is mandated to ‘arrange for appropriate places of detention for
17 [noncitizens] detained pending removal.’” *Id.* at 433 (citing 8 U.S.C. § 1231(g)(1)). “The
18 Attorney General’s discretionary power to transfer [noncitizens] from one locale to another, as
19 [he or] she deems appropriate, arises from this language.” *Id.* Thus, it is “apparent that a district
20 court has no jurisdiction to restrain the Attorney General’s power to transfer [noncitizens] to
21 appropriate facilities by granting injunctive relief in a Bivens class action suit.” *Id.*

22 Moreover, in *Rios-Berrios*, the petitioner was apprehended in California, charged with
23 entry without inspection, and moved to Florida for a deportation hearing that was scheduled to
24 begin effectively five working days from the time of his apprehension. *See* 776 F.2d at 860-61.

1 The immigration judge twice continued the hearing for a total of two working days, first after
2 the petitioner stated that he needed time to find an attorney and again after being informed that
3 the petitioner had called a friend who had been in contact with an attorney and bail bondsman.
4 *See id.* After the immigration judge granted the continuances, he also advised that the hearing
5 would proceed with or without counsel. *See id.* When the petitioner appeared without counsel,
6 there was no inquiry regarding the petitioner's expressed wish to be represented by counsel and
7 the hearing went forward. *See id.* The Ninth Circuit found a violation of the petitioner's right to
8 be represented by counsel of his own choice at his own expense. *See id.* at 862-63. However,
9 the Ninth Circuit clarified that there was no right to block his transfer to another district:

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

18 *Id.* at 863 (citations omitted). Accordingly, judicial intervention is not proper with respect to the
19 government's decision about where to detain Petitioner while his removal proceedings are
20 pending, and therefore Petitioner's request should be denied.

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1 **III. Conclusion**

2 For the foregoing reasons, Federal Respondents respectfully request that Petitioner's
3 claims for relief be denied.

4
5 DATED this 29th day of December, 2025

6 Respectfully submitted,

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20 *I certify that this memorandum contains 1,043*
21 *words, in compliance with Local Civil Rules*