District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Santiago ORTIZ MARTINEZ, et al.,

Plaintiffs,

v.

Cammilla WAMSLEY, et al.,

Defendants.

Case No. 2:25-cv-1822-TMC

RESPONSE TO RESPONDENTS' RETURN TO PETITON FOR WRIT OF HABEAS CORPUS

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

INTRODUCTION

Respondents' return to the petition for writ of habeas corpus ignores direct guidance from the Supreme Court that in cases exactly like this one, the release of a petitioner does not moot a case. Not only does binding precedent reject Respondents' arguments, but Respondents also released Petitioners with ankle monitors. For one of those Petitioners—Mr. Barajas—that is a violation of the IJ's release order, and thus inconsistent with what this Court ordered when ordering release consistent with the alternative bond order. As to the other two released petitioners, they can only ask the immigration judge to ameliorate those conditions of release if they are considered detained under § 1226(a), which Respondents will not do absent a final judgment here. Respondents also ask the Court to endorse their ongoing, flagrant defiance of the declaratory judgment in in *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash.) by requiring members of the Bond Denial Class in that case to first request bond from the immigration court, be (unlawfully) denied a bond hearing, and then come to this Court for relief. The Court should reject these arguments, which defy precedent and common sense.

ARGUMENT

I. The requests for relief for Petitioners Ortiz Martinez, Romero Leal, and Barajas Cano are not moot.

Respondents first assert that because the Court issued temporary relief to three petitioners that resulted in their release, their requests for a writ of habeas corpus are moot. This argument runs directly afoul of Supreme Court and Ninth Circuit precedent.

While Petitioners Ortiz Martinez, Romero Leal, and Barajas Cano have been released pursuant to this Court's temporary restraining order (TRO), their claims are not moot because Respondents have not disavowed their unlawful interpretation of the detention statutes. Indeed, every day, they continue to employ that unlawful interpretation, blatantly disregarding the

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Rodriguez Vazquez summary judgment order. *See, e.g.*, Dkts. 11-3, 11-8, 11-10, 11-11. Here, the TRO provides only *temporary* relief: by rule, it lasts for only fourteen days. *See* Fed. R. Civ. P. 65(b)(2). Granting a writ of habeas corpus, however, provides a final, binding judgment that ensures Respondents may not, upon the expiration of the TRO, suddenly re-detain Petitioners and subject them again to their unlawful policy. The temporary nature of a TRO is precisely why a final judgment is required, demonstrating why this case is not moot as to these three petitioners.

Critically, the Supreme Court has explained that cases involving *this very scenario* do not become moot simply because a person is released from immigration detention pursuant to bond based on a court order providing temporary relief. As the Court noted in *Nielsen v. Preap*, in that case, the claims of the plaintiffs released on bond did not become moot "[u]nless th[e] preliminary [relief] was made permanent" because the plaintiffs still "faced the threat of re-arrest and mandatory detention." 586 U.S. 392, 403 (2019) (plurality opinion). The exact same rational applies here.

Respondents' actions at the Tacoma Immigration Court only underscore that a live controversy remains. Last week, this Court entered a classwide declaratory judgment holding that people like Petitioners are subject to the detention authority of § 1226(a), rather than § 1225(b)(2). *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ----, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). But as noted, rather than abide by the Court's judgment, Respondents are flagrantly ignoring it. *See, e.g.*, Dkts. 11-3, 11-8, 11-10, 11-11. This is true for both the Tacoma Immigration Court, which just yesterday asserted that Petitioner Lopez is subject to § 1225(b)(2) detention, *see* Dkt. 19-1, and the Department of Homeland Security, which earlier this week refused to accept bond payments from Petitioners Ortiz

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

Martinez and Romero Leal, *see* Dkt. 11-10, 11-11, defying this Court's declaratory judgment in *Rodriguez Vazquez*. This state of affairs simply underscores that a live controversy remains—and that Respondents may otherwise attempt to re-detain the three Petitioners whose cases they claim are moot, once again asserting they are subject to Respondents' unlawful mandatory detention policy.

In addition to *Preap*, other Supreme Court decisions and Ninth Circuit caselaw have repeatedly held that where—as here—the government complies with a district court order that results in release, that does not render a case moot. Instead, the government is free to appeal that order, and a party who received only temporary relief may continue to seek final relief. The Supreme Court has spoken directly to this point. *See, e.g.*, *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (explaining that, under the federal habeas statute, "once . . . federal jurisdiction has attached in the District Court, it is not defeated by the release of the petitioner prior to completion of proceedings on such application"). Similarly, in *Rodriguez Diaz v. Garland*, the Ninth Circuit affirmed that the case was not moot where the government held a bond hearing ordered by the district court. 53 F.4th 1189, 1195 n.2 (9th Cir. 2022) ("The government's compliance with the district court's order does not moot its appeal." (citing *United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1112–13 (9th Cir. 2012))). Thus, "[t]he law is clear that release does not necessarily moot a petition, and because the Petitioners could foreseeably be redetained and later face the same [detention] practices that they contest today, they continue to have a legally cognizable interest in the outcome of th[e] suit." *Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *7 (C.D. Cal. Aug. 21,

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

2020).[1]

The single case that Defendants cite to support their position is unavailing. In fact, in *Abdala v. I.N.S.*, the Ninth Circuit expressly reaffirmed that a "habeas petition challenging the underlying conviction is never moot simply because, subsequent to its filing, the petitioner has been released from custody." 488 F.3d 1061, 1064 (9th Cir. 2007) (citation omitted). The decision then goes on to explain that a petition is not moot if a person may face a "collateral consequence" that "may be redressed by success on the petition." *Id*. But notably, *Abdala* arose in the context of a challenge to a deportation order where a noncitizen had already been removed. The petition in that case "challenged only the length of his detention at the INS facility," and so once the petitioner was removed, his challenge to detention evaporated. *Id.* at 1065. By contrast, here, a live controversy remains over whether petitioners can be subject to mandatory detention, and the very real specter of re-detention shows that much more than a "collateral consequence" is at stake. The very authority of Respondents to detain Petitioners remains at issue. If the Court does not issue a writ of habeas corpus and final judgment, nothing will stop Respondents from re-arresting Petitioners tomorrow, revoking their bond, and declaring

[1] Such re-detention is not speculative. Indeed, re-detention after previously posting bond is exactly what happened to Mr. Ortiz Martinez and Mr. Romero Leal. *See* Dkt. 1 ¶¶ 51, 63; Dkt. 4-2; Dkt. 4-7. For Respondents to nevertheless claim that they now have no interest in this matter (when the threat of re-detention plainly exists) simply contradicts the record. Moreover, recent habeas petitions filed around the country reflect that Defendants are re-detaining—and subjecting to their new mandatory detention policy—people previously released. *See, e.g.*, *Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *1 (N.D. Cal. Sept. 9, 2025) (three petitioners originally released on their own recognizance before being subject to Defendants' mandatory detention policy); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *1 (N.D. Cal. Sept. 3, 2025) (same for one petitioner); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *2 (N.D. Cal. Aug. 21, 2025) (same); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *2 (E.D. Cal. Sept. 9, 2025) (bond revoked for petitioner who was later subjected to Defendants' mandatory detention policy).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

them subject to mandatory detention. And that is why, in *Preap*, the Supreme Court made clear that such claims are not moot upon a person's release.

Finally, Petitioners have been released with ankle monitors. *See* Korthuis Decl. Ex. A–C (emails from counsel of released Petitioners). But as to Mr. Barajas, this was not a condition for release set by the IJ. *See* Dkt. 4-11. This Court ordered release upon payment of the bond order set by the IJ, and did not authorize Respondents to impose additional conditions of release. *See* Dkt. 20 at 9–10. Thus, for Mr. Barajas, the Court should order that he be taken off an ankle monitor. This is undoubtedly a (unlawful) restriction on his liberty that he can continue to challenge through this habeas petition.

In addition, persons released under an IJ's bond authority pursuant to 8 U.S.C. § 1226(a)—as have the three petitioners were here—can petition the immigration court for "amelioration of the terms of release." 8 C.F.R. 1236.1(d)(1). If no final ruling is issued here, then Respondents will again consider Petitioners Ortiz and Romero subject to the detention of 8 U.S.C. § 1225(b)(2), and they will lose the ability to challenge those conditions of release before the immigration court.[2] Thus, even if the threat of re-detention alone was not enough (which it is), Petitioners plainly face collateral consequences that granting the writ will address.[3]

[2] The IJ bond orders for Petitioners Ortiz and Romero allowed DHS to set additional terms of release. *See* Dkt. 4-4; Dkt. 4-9.

[3] Respondents have also refused to return Mr. Ortiz Martinez's employment authorization document (EAD) and his Alaska ID. There is no rational reason for DHS to maintain custody of the state ID and EAD, other than to punish him. As an asylum applicant, Mr. Ortiz Martinez is lawfully entitled to work pursuant to his grant of employment authorization. *See generally* 8 C.F.R. 208.7. The Court should therefore also instruct Respondents to turn over these two personal documents. Mr. Ortiz Martinez does not request return of his passport, as DHS does have a basis to hold that document during proceedings.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

II. Petitioner Rojas is a Bond Denial Class member.

Respondents also assert that Ms. Rojas is not a class member because, according to them, she has not yet requested bond.[4] To support this claim, they point to the Bond Denial Class definition's statement that class members include those who "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 Vazquez v. Bostock*, 349 F.R.D. 333, 365 (W.D. Wash. 2025); *see also* Dkt. 20 at 9. Contrary to Respondents' claim, that language does not require someone to request bond to be a class member; instead, it simply clarifies that they cannot be subject to another detention authority when they in fact do so. Respondents may not amend the class definition that has already been certified by the Court. If they seek to modify the class definition, they must return to the Court in *Rodriguez Vazquez* to make that request.

Moreover, Respondents are effectively asking the Court to force class members to suffer through additional unlawful detention by requiring them to first attend bond hearings where—due to their defiance—they will be denied relief, subjecting them to additional days and even weeks of detention as the immigration court processes their requests for bond. The Court should reject that invitation and make clear that whether a person has already received a bond hearing and been denied, or whether they are requesting one now in a habeas petition, they are entitled to the protection of the *Rodrigez Vazquez* declaratory judgment.

[4] Petitioners concede Mr. Lopez is a Bond Denial Class member and have no defense to granting the petition as to him *whatsoever*. Their position as to Mr. Lopez underscores their flagrant disregard for this Court's authority, because even while they acknowledge he must be considered subject to § 1226(a), they have denied him bond and kept him detained under § 1225(b)(2).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957-8611

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court immediately grant their petition for a writ of habeas corpus.

Respectfully submitted this 10th day of October, 2025.

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
glenda@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

Counsel for Petitioners

WORD COUNT CERTIFICATION

I certify that this memorandum contains 1,994 words.

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 816-3872
aaron@nwirp.org