

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ARTURO MARTINEZ BAÑOS, et al.,

**Plaintiffs-Petitioners,**

V.

CASE NO. C16-1454JLR-BAT

## **ORDER ON MOTION FOR PRELIMINARY INJUNCTION**

NATHALIE ASHER, et al.,

## Defendants-Respondents.

At the outset of this 28 U.S.C. § 2241 immigration habeas action and putative class  
action, the named plaintiff, Arturo Martinez Baños (“Mr. Martinez”), filed a motion for  
preliminary injunction, seeking an order enjoining the Government from (1) enforcing an order  
issued by the Board of Immigration Appeals (“BIA”) regarding Mr. Martinez, (2) enforcing the  
policy and practice of failing to provide automatic custody hearings for all proposed class  
members upon being detained by immigration authorities for six months, and (3) enforcing the  
policy and practice of denying class members individualized custody hearings pursuant to 8  
C.F.R. § 1236.1(d)(1) when they are placed in withholding only proceedings. (Mot. (Dkt. # 23);  
*see also* Proposed Order (Dkt. # 23-1).)

While the motion has been pending, at least two relevant events occurred. First, Mr.

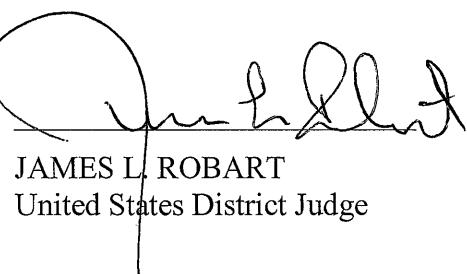
1 Martinez and his claims were dismissed.<sup>1</sup> (7/11/2017 Order (Dkt. # 53).) Second, the Ninth  
2 Circuit issued *Padilla-Ramirez v. Bible*, 862 F.3d 881 (9th Cir. 2017), which forecloses  
3 plaintiffs' and putative class members' claim that they are entitled to individualized custody  
4 hearings pursuant to 8 C.F.R. § 1236.1(d)(1) when they are placed in withholding only  
5 proceedings. *Id.* at 886. In light of these changes, and having considered the parties'  
6 submissions, the balance of the record, and the governing law, the court finds and ORDERS:

7 (1) Plaintiffs' motion for preliminary injunction (Dkt. # 23) is DENIED, in part with  
8 prejudice and in part without prejudice. Because Mr. Martinez and his claims have been  
9 dismissed, his request for an order enjoining enforcement of the BIA's order is moot.  
10 Additionally, given the Ninth Circuit's decision in *Padilla-Ramirez*, plaintiffs and putative class  
11 members are not entitled to immediate custody hearings when they are placed in withholding  
12 only proceedings. Preliminary injunctive relief is denied with prejudice as to these two claims.

13 The motion is denied without prejudice as to the remaining issue—whether plaintiffs and  
14 putative class members are entitled to individualized custody hearings after their detention  
15 becomes prolonged. After the court rules on the pending motions to dismiss and for class  
16 certification, plaintiffs may file a new motion addressing this issue on the fully integrated record.

17 (2) The Clerk is DIRECTED to send copies of this Order to the parties and to the  
18 Honorable Brian A. Tsuchida.

19 DATED this 13 day of September, 2017.



JAMES L. ROBART  
United States District Judge

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23 <sup>1</sup> Prior to his dismissal, Mr. Martinez filed an amended petition that added two additional plaintiffs. (*See generally* Am. Pet. (Dkt. # 38).) The Government has moved to dismiss the individual claims of those plaintiffs (*see Am. MTD* (Dkt. # 57)), and that motion will be decided at a later time.