

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ARTURO MARTINEZ BAÑOS, et al.,

9 Plaintiffs-Petitioners,

10 v.

11 NATHALIE ASHER, et al.,

12 Defendants-Respondents.

CASE NO. C16-1454JLR-BAT

**ORDER ON MOTION FOR
PRELIMINARY INJUNCTION**

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

22 While the motion has been pending, at least two relevant events occurred. First, Mr.
23

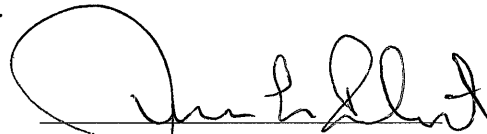
1 Martinez and his claims were dismissed.¹ (7/11/2017 Order (Dkt. # 53).) Second, the Ninth
2 Circuit issued *Padilla-Ramirez v. Bible*, 862 F.3d 881 (9th Cir. 2017), which forecloses
3 plaintiffs' and putative class members' claim that they are entitled to individualized custody
4 hearings pursuant 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 th 13 day of September, 2017.

20
21 
22 JAMES L. ROBERT
United States District Judge

23 ¹ 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.