

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Central District of California
Western Division

ALEJANDRO RODRIGUEZ, *et al.*,
Petitioners,
v.
ERIC HOLDER, *et al.*,
Respondents.

CV 07-3239 TJH (RNBx)

Order,
Judgment
and
Permanent Injunction

The Court has considered Petitioners’ motion to clarify the class definition and the cross motions for summary judgment together, with moving and opposing papers.

The Court certified the class in this case after the Ninth Circuit held that the class must be certified. *Rodriguez v. Hayes (Rodriguez I)*, 591 F.3d 1105 (9th Cir. 2010).

The class is defined as:

All non-citizens within the Central District of California who: (1) Are or were detained for longer than six months pursuant to one of the general immigration detention statutes pending completion of removal proceedings, including judicial review; (2) Are not and have not been detained pursuant to a national security detention statute; and (3) Have not been afforded a

1 hearing to determine whether their detention is justified.

2 “General immigration statutes” in the class definition refers to 8 U.S.C. §§ 1225(b),
3 1226 and 1231(a). *See Rodriguez I*, 591 F.3d at 1113. “Removal proceedings” does
4 not narrowly refer to its use in 8 U.S.C. § 1229a, but to any proceedings to determine
5 whether persons detained pursuant to the general immigration statutes, as defined in
6 *Rodriguez I*, will be removed from the United States.

7 For organizational purposes, the class is divided into four subclasses, as follows:

- 8 1. Class members detained under 8 U.S.C. § 1225(b);
- 9 2. Class members detained under 8 U.S.C. § 1226(a);
- 10 3. Class members detained under 8 U.S.C. § 1226(c); and
- 11 4. Class members detained under 8 U.S.C. § 1231(a).

12 The Court provided for no exceptions to the definitions of class membership, yet
13 Respondents have unilaterally excluded certain detainees. Consequently,

14 It is Ordered that there are no exceptions, express or implied, to the class
15 membership definitions.

16 It is further Ordered that class membership includes, *inter alia*, detainees
17 incarcerated for restatement under 8 U.S.C. § 1231(a)(5), detainees held for
18 proceedings initiated by an administrative removal order under 8 U.S.C. § 1228(b); and
19 detainees held under the general immigration statutes after entering the United States
20 through the Visa Waiver Program.

21 There are no genuine issues of material fact, and neither party contests that those
22 detained under § 1231 or § 1226(a) have a right to a bond hearing after six months of
23 detention. Most of Respondents’s arguments were previously addressed by this Court
24 and affirmed by the Circuit in *Rodriguez v. Robbins (Rodriguez II)*, 715 F.3d 1127 (9th
25 Cir. 2013). However, Respondents raises one new argument. Respondents argue that
26 constitutional concerns are not implicated because the *Rodriguez II* panel did not
27 consider evidence that “a large number of aliens” extend the term of their own
28 detention through their own actions, such as requests for continuances. For this

1 argument, Respondents rely on *Demore v. Kim*, 538 U.S. 510, 526, 123 S. Ct. 1708,
2 1719, 155 L. Ed. 724, 739 (2003), which the Ninth Circuit explicitly construed to only
3 support brief periods of detention. *Rodriguez II*, 715 F.3d at 1135.

4 The procedural requirements for bond hearings are well settled in the Ninth
5 Circuit. *See Casas-Castrillon v. Department of Homeland Security*, 535 F.3d 942 (9th
6 Cir. 2008). In *Rodriguez II*, the Ninth Circuit reaffirmed that the procedural
7 requirements for a *Casas* bond hearing are those articulated in *Singh v. Holder*, 638
8 F.3d 1196, 1203-10 (9th Cir. 2011). *Rodriguez II*, 715 F.3d at 1135-36. The
9 government must prove by clear and convincing evidence that a detainee is a flight risk
10 or a danger to the community to justify the denial of bond at a *Casas* hearing.
11 *Rodriguez II*, 715 F.3d at 1136. Additionally, due process requires a contemporaneous
12 record of *Casas* hearings, so that a transcript or audio recording is available upon
13 request. *Rodriguez II*, 715 F.3d at 1136.

14 Petitioners, now, request four additional procedural safeguards. First, Petitioners
15 request that an Immigration Judge be required to consider whether the detainee will ever
16 be removed. Second, Petitioners request that an Immigration Judge be required to
17 consider conditions short of incarceration. Third, Petitioners request that the bond
18 hearings be automatically provided, rather than placing the burden on the detainee to
19 request the hearing. Finally, Petitioners request that notice of the hearing be provided
20 to each detainee in plain language, reasonably calculated to inform a person unfamiliar
21 with English and the United States legal system of the pendency of the hearing.

22 The first and second proposed procedural additions – consideration of the
23 likelihood of removal during a bond hearing, and consideration of alternatives to
24 incarceration – fall outside the ambit of *Casas*, *Singh*, and *Rodriguez II*. *Rodriguez II*
25 affirmed that the purpose of a *Casas* bond hearing is to determine a detainee’s flight risk
26 and dangerousness. *Rodriguez II*, 715 F.3d at 1135-36. Accordingly, Petitioners’
27 request that Immigration Judges consider the likelihood of detainees’ ultimate removal
28 as a factor at bond hearings would drastically expand the scope and purpose of bond

1 hearings. Such a requirement would require legal and political analyses beyond what
2 would otherwise be considered at a bond hearing, and would place an unreasonable
3 burden on overly burdened Immigration Judges. As to the second request, Immigration
4 Judges should already be considering restrictions short of incarceration, including
5 house arrest with electronic monitoring, in determining a detainee's flight risk and
6 dangerousness. *Rodriguez II*, 715 F.3d at 1131.

7 On the other hand, Petitioners' request that the bond hearings be provided
8 automatically and that the notice to detainees of the bond hearings be provided in plain
9 language are consistent with the due process concerns of *Casas*, *Singh*, and *Rodriguez*
10 *II*. The bond hearing process would be fraught with peril if the Court were to place the
11 burden on detainees to request a bond hearing when the government is constitutionally
12 obligated to provide those hearings. Accordingly, comprehensible notice must be
13 provided to detainees for that notice to pass constitutional review.

14 Petitioners are entitled to judgment as a matter of law. Members of all four
15 subclasses – Sections 1231, 1226(a), 1226(c), and 1225(b) – should be afforded bond
16 hearings after six months of detention, consistent with *Rodriguez II*. The procedural
17 requirements of the bond hearings should be consistent with the findings of the Ninth
18 Circuit in *Singh*, and *Rodriguez II*. Additionally, bond hearings should be provided
19 automatically, and plain language notice, in writing, of the bond hearings should be
20 provided to detainees prior to the hearing.

21 It is further Ordered that Petitioners' motion for summary judgment be, and
22 hereby is, Granted.

23 It is further Ordered that Respondents' motion for summary judgment be, and
24 hereby is, Denied.

25 It is further Ordered, Adjudged and Decreed that Judgment be, and hereby is,
26 Entered in favor of Petitioners and against Respondents.

27 It is further Ordered that Respondents and their agents, employees, assigns, and
28 all those acting in concert with them be, and hereby are, Permanently Enjoined as follows:

1 1. Respondents shall provide each class member, by the class member's 181st
2 day of detention, with a a bond hearing before an Immigration Judge consistent with the
3 substantive and procedural requirements set forth in this Order and *Casas, Singh, and*
4 *Rodriguez II*.

5 2. The bond hearings shall be recorded or transcribed so that a written record
6 can be made available if an appeal is taken.

7 3. At least seven days prior to providing any bond hearing conducted pursuant
8 to this Order, Respondents shall provide written notice, in plain language, to the
9 detainee of his or her upcoming bond hearing. For notice to be sufficient, Respondents
10 must take reasonable steps to ensure receipt of the notice by the class member and class
11 counsel.

12 4. For class members who have already been detained for more than six
13 months as of the date of this order, but who have not yet received a bond hearing
14 pursuant to this Court's preliminary injunction, Respondents shall provide a bond
15 hearing before an Immigration Judge consistent with the requirements of this Order and
16 *Casas, Singh, and Rodriguez II*, within 30 days of the date of this Order.

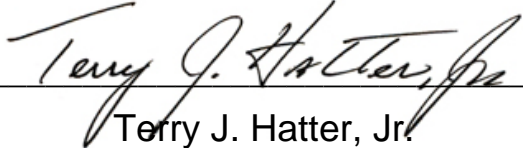
17 5. Within 60 days of the date of this Order, Respondents shall file a status
18 report describing the steps taken to timely identify all current and future class members
19 and to ensure that they receive bond hearings and notice of those hearings. Along with
20 the status report, Respondents shall file under seal (with a copy served on class counsel)
21 a list containing each class member's name and alien number, the date of any scheduled
22 or completed bond hearing, whether the class member is or was represented, the
23 Immigration Judge who conducted or will conduct the hearing, the bond amount set, if
24 any, and whether any appeal has been taken. Respondents shall file and serve an
25 updated status report and class member list every 90 days thereafter until August 1,
26 2015. The updated reports and lists shall include the information for all class members
27 in detention as of the date of the prior report.

28 6. If Respondents determine that an individual is not a class member even

1 though that individual (a) is detained in Respondents' custody within the Central
2 District, (b) has been detained by Respondents for six months or longer, (c) is not
3 detained under 8 U.S.C. § 1226a or 8 U.S.C. § 1531-37, and (d) remains detained even
4 though the government does not have present authority to deport that individual,
5 Respondents shall notify class counsel of that individual's circumstances and the reason
6 Respondents believe that individual is not a class member.

7 7. For class members in detention as of the date of this Order, Respondents
8 shall provide class counsel with notice of class member bond hearings at the same time
9 that they provide notice to class members directly.

10
11 Date: August 6, 2013

12
13 
14 Terry J. Hatter, Jr.
15 Senior United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28