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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 ALEJANDRO RODRIGUEZ, *et al.*,

13 Petitioners,

14 v.

15 DAVID MARIN, *et al.*,

16 Respondents.
17

CV 07-03239 TJH (RNBx)

Amended
Order
[528]

18 The Court has considered Respondents' motion to dismiss, together with the
19 moving and opposing papers.

20 Over the past twelve years, this immigration class action has ricocheted between
21 this Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court.
22 At the initiation of this action, Petitioners set forth two theories of their case – statutory
23 and constitutional – and moved forward with their statutory claims, first.

24 Initially, the Court denied Petitioners' motion for class certification as to their
25 statutory claims. The Ninth Circuit reversed, noting that certification would be proper
26 if the class were divided into subclasses. *See Rodriguez v. Hayes*, 591 F.3d 1105 (9th
27 Cir. 2010) [*"Rodriguez I"*]. On April 5, 2010, in light of *Rodriguez I*, this Court
28 certified the class as "all non-citizens within the Central District of California who: (1)

1 Are or were detained for longer than six months pursuant to one of the general
2 immigration detention statutes pending completion of removal proceedings, including
3 judicial review; (2) Are not and have not been detained pursuant to a national security
4 detention statute; and (3) Have not been afforded a hearing to determine whether their
5 detention is justified.”

6 Petitioners, then, sought a preliminary injunction, which this Court granted, and
7 the Ninth Circuit affirmed. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)
8 [“*Rodriguez II*”]. Petitioners, then, moved for summary judgment and sought a
9 permanent injunction, which this Court granted, and the Ninth Circuit affirmed in part
10 and reversed in part. *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)
11 [“*Rodriguez III*”]. The Ninth Circuit held that summary judgment and a permanent
12 injunction were warranted as to three of Petitioner’s statutory claims and subclasses,
13 but reversed as to Petitioners’ 8 U.S.C. § 1231(a) claim and subclass. *See Rodriguez*
14 *III*, 804 F.3d at 1090. The Ninth Circuit reasoned that the class was certified only as
15 to those individuals who were detained while waiting for a determination as to their
16 potential removability, whereas § 1231(a) dealt with those whom the Government had
17 already deemed removable and were merely waiting to be removed. *Rodriguez III*, 804
18 F.3d at 1085-1086. The Government sought a writ of *certiorari*, which was granted.

19 The Supreme Court reversed *Rodriguez III* and remanded this case to the Ninth
20 Circuit to consider whether the class may continue based on Petitioners’ constitutional
21 claims. *See Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Notably, the issue of
22 whether Petitioners’ § 1231(a) claim and subclass were properly rejected by the Ninth
23 Circuit was not appealed by Rodriguez and, therefore, never before the Supreme Court.
24 The Ninth Circuit remanded the action to this Court for further proceedings, and left
25 this Court’s permanent injunction in place “[e]nding the consideration of vital
26 constitutional issues.”

27 On July 11, 2019, Petitioners filed a Fourth Amended Complaint [“FAC”]
28 which, *inter alia*: (1) Added a new petitioner, Alex Cacho Castillo, who was detained

1 at the beginning of 2019, and released by May, 2019; (2) Reasserted a claim under §
2 1231(a); and (3) Added an Eighth Amendment claim.

3 Respondents, now, move to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6).

4 The party seeking federal jurisdiction bears the burden of establishing that
5 jurisdiction exists. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). A complaint
6 will be dismissed under Fed. R. Civ. P. 12(b)(1) if, *inter alia*, there is no case or
7 controversy. *See Baker v. Carr*, 369 U.S. 186, 198 (1962).

8 While a complaint need not include detailed factual allegations for each element
9 of each claim, it must contain enough facts to state a claim for relief that is plausible
10 on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). The Court
11 must accept all allegations in a complaint as true and draw all reasonable inferences
12 from those allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff
13 cannot simply restate the elements of her claim, but, rather, must allege enough facts
14 to allow the Court to draw a reasonable inference that a defendant is liable for the
15 misconduct alleged. *See Iqbal*, 556 U.S. at 678.

16 Respondents argued that because Cacho Castillo was detained for less than 6
17 months, he cannot serve as a named petitioner or be a member of this class.
18 Respondents are correct. Given the class definition, Cacho Castillo was, indeed,
19 misjoined. *See Fed. R. Civ. P. 20(a)(1)*. Petitioners argued that because the Board of
20 Immigration Appeals opinion that allowed for Cacho Castillo's release may have been
21 recently overturned, the Government may, at any time, cause him to be detained,
22 again. According to Petitioners, Cacho Castillo "likely would become" a class member
23 in the near future. The possibility of future injury is too speculative, here, to make
24 Cacho Castillo's claims ripe for adjudication. *See Wolfson v. Brammer*, 616 F.3d
25 1045, 1057 (9th Cir. 2010). Because Cacho Castillo failed to allege a case or
26 controversy ripe for adjudication, he must be dismissed. *See Baker*, 369 U.S. at 198.

27 Respondents, further, argued that Petitioners' are barred from reasserting a
28 claim, here, under § 1231(a) in light of *Rodriguez III* and the Supreme Court's holding

1 in *Jennings*. Indeed, the Ninth Circuit reversed this Court's grant of summary
 2 judgment on Petitioners' § 1231(a) claim and held that the § 1231(a) claim and subclass
 3 "does not exist" within this action. *See Rodriguez III*, 804 F.3d at 1090. Nevertheless,
 4 Petitioners argued that the § 1231(a) claim can move forward because the Ninth
 5 Circuit's decision in *Rodriguez III* was incorrectly decided because it is inconsistent
 6 with a prior Ninth Circuit case, *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir.
 7 2011). Petitioners' argument is misplaced. If Petitioners thought that the Ninth Circuit
 8 erred in deciding *Rodriguez III*, they should have petitioned the Ninth Circuit for
 9 reconsideration or a hearing *en banc*, or sought review from the Supreme Court.
 10 *Rodriguez III* is the law of the case to the extent that it resolved Petitioners' § 1231(a)
 11 claim and subclass, and Petitioners cannot reassert their § 1231(a) claim, here, where
 12 *Rodriguez III* so clearly resolved that claim. *See Rodriguez III*, 804 F.2d at 1080.

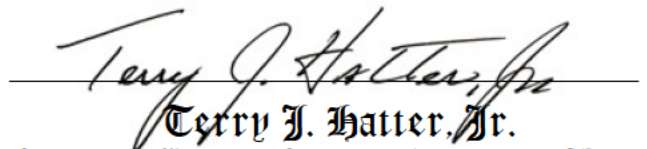
13 Respondents, finally, argued that this Court lacks subject matter jurisdiction over
 14 Petitioners' newly alleged Eighth Amendment claim because the new claim exceeded
 15 the scope of the Supreme Court's remand in *Jennings*. The Supreme Court's remand
 16 and its corresponding instructions were addressed to the Ninth Circuit, not to this
 17 Court. Indeed, this Court is not limited to the scope set forth by the Supreme Court
 18 to the Ninth Circuit, especially when the Ninth Circuit's subsequent remand to this
 19 Court expressly instructed this Court to consider, *inter alia*, "any other relevant issue."

20 Accordingly,

21 **It is Ordered** that the motion to dismiss be, and hereby is, **Granted** as to
 22 Petitioner Alex Cacho Castillo and Petitioners' § 1231 claim.

23 **It is further Ordered** that the motion to dismiss be, and hereby is, **Denied**
 24 as to Petitioners' Eighth Amendment claim.

25 Date: March 9, 2020

26 
 27 Terry J. Hatter, Jr.
 28 Senior United States District Judge