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**United States District Court
Central District of California
Western Division**

ALEJANDRO RODRIGUEZ, *et al.*,
Petitioners,
v.
DAVID MARIN, *et al.*,
Respondents.

CV 07-03239 TJH (SPx)

Order

The Court has considered Respondents’ motion to vacate the preliminary injunction and decertify the class [dkt # 533] and Respondents’ motion for reconsideration of the Court’s March 9, 2020, order granting Petitioners’ motion for reconsideration and to vacate the permanent injunction [dkt # 550], together with the moving and opposing papers.

This case has been pending for 13 years and, at this point, has a very complex substantive and procedural history. The complexity is due, at least in part, to the fact that this case has ricocheted among this Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court.

In response to the instant motions, the Court has reviewed the entire record and,

1 in particular, the orders issued by this Court, the Ninth Circuit, and the Supreme Court.
2 Based on those orders, this case has been placed in a complicated, and unusual,
3 procedural posture.

4 The Court will, now, attempt to reconcile those orders so that this case can move
5 forward toward a final resolution. In reconciling those orders, the Court cannot
6 overrule the orders issued by the Ninth Circuit or the Supreme Court. Indeed, this
7 Court is duty bound to respect, give meaning, reconcile and apply the orders of those
8 higher courts.

9 Initially, the Court denied Petitioners' motion for class certification as to their
10 statutory claims. The Ninth Circuit reversed, noting that certification would be proper
11 if the class were divided into subclasses. *See Rodriguez v. Hayes*, 591 F.3d 1105 (9th
12 Cir. 2010) [*Rodriguez I*]. On March 8, 2011, in light of *Rodriguez I*, this Court
13 certified the class action and defined the class as "all non-citizens within the Central
14 District of California who: (1) Are or will be detained for longer than six months
15 pursuant to the general immigration detention statutes pending completion of removal
16 proceedings, including judicial review; (2) Are not detained pursuant to a national
17 security detention statute...; and (3) Have not been afforded a hearing to determine
18 whether their prolonged detention is justified." The Court certified four subclasses;
19 class members were divided into subclasses based on which immigration statute they
20 were detained under – 18 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a).

21 Petitioners, then, sought a preliminary injunction, which this Court granted, and
22 the Ninth Circuit affirmed. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013)
23 [*Rodriguez II*]. Petitioners, then, moved for summary judgment and sought a
24 permanent injunction, which this Court granted, and the Ninth Circuit affirmed in part
25 and reversed in part. *See Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)
26 [*Rodriguez III*]. The Ninth Circuit held that summary judgment and the permanent
27 injunction were warranted as to three of Petitioner's statutory claims and the
28 corresponding subclasses, but reversed as to Petitioners' 8 U.S.C. § 1231(a) claim and

1 the corresponding subclass. *See Rodriguez III*, 804 F.3d at 1090. The Government,
2 then, sought a writ of *certiorari* from the Supreme Court, which was granted. The
3 Supreme Court reversed *Rodriguez III* and remanded this case to the Ninth Circuit to
4 consider whether the class action may continue based on Petitioners’ constitutional
5 claims, which had not yet been considered by this Court. *See Jennings v. Rodriguez*,
6 138 S. Ct. 830 (2018) [*“Jennings”*]. The Supreme Court was silent as to the status of
7 the permanent injunction. On remand, the Ninth Circuit, in turn, remanded this case
8 to this Court for it to consider Petitioner’s constitutional claims; the Ninth Circuit left
9 this Court’s permanent injunction in place “pending the consideration of vital
10 constitutional issues.” *See Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018)
11 [*“Marin”*].

12 On July 10, 2019, the Court granted Petitioners’ motion for leave to file a Fourth
13 Amended Complaint. After Petitioners filed their Fourth Amended Complaint,
14 Respondents moved to dismiss.

15 On November 7, 2019, the Court granted in part and denied in part Respondents’
16 motion to dismiss Petitioners’ Fourth Amended Complaint. That order included
17 language indicating that the Supreme Court had implicitly vacated the permanent
18 injunction in *Jennings*. On November 18, 2019, Petitioners moved for reconsideration
19 of the November 7, 2019, order, arguing that the Ninth Circuit expressly left in place
20 the “permanent injunction pending the consideration of... vital constitutional issues.”
21 *See Marin*, 909 F.3d at 256.

22 On November 27, 2019, before the Court had an opportunity to rule on
23 Petitioners’ motion for reconsideration, Respondents moved to vacate the preliminary
24 injunction.

25 On March 9, 2020, the Court granted Petitioners’ motion for reconsideration and
26 issued an amended order that, *inter alia*, omitted the language regarding the permanent
27 injunction, pursuant to *Marin*.

28 On April 7, 2020, Respondents filed a motion for reconsideration of the Court’s

1 March 9, 2020, order and for an order vacating the permanent injunction, arguing that
2 the Court's March 9, 2020, order, *inter alia*, deprived Respondents of the opportunity
3 to brief whether a permanent injunction should remain in place for the duration of the
4 proceedings in this matter. Respondents chose to file their motion to vacate the
5 preliminary injunction before the Court could rule on Petitioners' motion for
6 reconsideration, despite knowing that the status of the permanent injunction was in
7 dispute.

8 Normally, a preliminary injunction remains in force until a case is finally
9 resolved. Here, after the Court granted summary judgment in favor of Petitioners, it
10 issued a permanent injunction, which superceded the preliminary injunction. Then, the
11 Supreme Court reversed and vacated the summary judgment. Consequently, this Court
12 initially held that the Supreme Court had implicitly vacated the permanent injunction
13 when it vacated this Court's summary judgment. However, because the Ninth Circuit,
14 on remand from the Supreme Court, left the permanent injunction in place pending the
15 consideration of the constitutional issues, *Marin*, 909 F.3d at 256, this Court is
16 obligated to follow those instructions. Accordingly, Respondents' motions for
17 reconsideration and to vacate the permanent injunction must be denied.

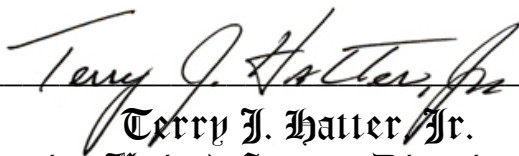
18 Because of the orders from the Ninth Circuit and the Supreme Court, there, now,
19 exists a procedural quagmire in that there is a permanent injunction in place without a
20 corresponding final judgment on the merits supporting that permanent injunction. Thus,
21 this Court has been entrusted with the task of fitting the proverbial round peg into the
22 square hole, while being duty bound to respect, give meaning, reconcile and apply the
23 orders of the Ninth Circuit and the Supreme Court. The most sensical resolution to this
24 procedural quagmire, while maintaining due respect for the orders of the Ninth Circuit
25 and the Supreme Court, is for this Court to deem its previously issued permanent
26 injunction to be, in effect, a preliminary injunction, which shall supercede the
27 previously issued preliminary injunction, and which shall, now, remain in place pending
28 a final resolution of Petitioners' constitutional claims. Accordingly, Respondents'

1 motion to vacate the preliminary injunction shall be denied as moot.

2 Finally, while considering the procedural quagmire caused by the continuation
3 of the permanent injunction, the Court simultaneously considered Respondents' motion
4 to de-certify the class. When the Court certified this case into sub-classes, it did so
5 pursuant to *Rodriguez I*. Thereafter, the certification of the class permeated all aspects
6 of this case. Indeed, the Court's original preliminary and permanent injunctions
7 ordered remedies based on class members' membership in particular sub-classes. *See*
8 *Rodriguez II and III*. Because the Ninth Circuit ordered the permanent injunction to
9 remain in effect, the decertification of the class, at this juncture, would move this case
10 backward rather than forward. As previously stated, that is not the direction the Court
11 is attempting to move this case. Consequently, the motion to decertify the class must
12 be denied.

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14 IT IS SO ORDERED.

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16 Date: May 28, 2020

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19 Terry J. Hatter Jr.
20 Senior United States District Judge
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