

United States District Court
Central District of California
Western Division

KELVIN HERNANDEZ ROMAN, *et al.*,

Petitioners-Plaintiffs,

v.

CHAD WOLF, *et al.*,

Respondents-Defendants.

ED CV 20-00768 TJH

Order

[975]

The Court has considered Petitioners' motion for clarification of the Adelanto Population Reduction Order, together with the moving and opposing papers.

On October 15, 2020, in its Adelanto Population Reduction Order, the Court ordered the Government to reduce the detainee population at the Adelanto Immigration Processing Center to a maximum capacity of 475 detainees. The Court ordered the Government, *inter alia*, to give first priority for release to "all *Frailhat* subclass members who are not subject to a mandatory detention order."

According to Petitioners, the Government reduced Adelanto's detainee population to below 475 detainees by October 23, 2020. Thereafter, Petitioners identified 34 Adelanto detainees that the Government did not release even though, according to Petitioners, they were in the first priority group. The parties, then, agreed to work

1 together to reach a resolution regarding those 34 detainees. In the end, the parties were
2 able to reach a resolution as to 32 of those detainees. The two remaining detainees that
3 Petitioners assert should have been released as part of the first priority group are Juan
4 Carlos Santiago-Flores and Jose Gutierrez-Penaloza.

5 The parties agree that both Santiago-Flores and Gutierrez-Penaloza are *Fraihat*
6 subclass members; however, there is a dispute as to whether they were subject to
7 mandatory detention.

8 During their removal proceedings, both Santiago-Flores and Gutierrez-Penaloza
9 were subject to mandatory detention, pursuant to 8 U.S.C. § 1226(c). They both
10 received final orders of removal, but they have petitioned the Ninth Circuit Court of
11 Appeals for review of those final orders of removal. At the time of the Adelanto
12 Population Reduction Order, Santiago-Flores's and Gutierrez-Penaloza's petitions for
13 review were pending before the Ninth Circuit. Petitioners argued that because the
14 Ninth Circuit's review of a final removal order is not part of the removal proceedings,
15 Santiago-Flores and Gutierrez-Penaloza were no longer subject to mandatory detention.
16 The Government disagreed.

17 Petitioners, now, move for clarification.

18 As an initial matter, Petitioners are not seeking clarification of the Population
19 Reduction Order. Rather, they seek a determination as to whether Santiago-Flores and
20 Gutierrez-Penaloza were mandatorily detained, which would, then, determine whether
21 they should have been released as part of the first priority group specified in the
22 Population Reduction Order.

23 Immigration detainees with petitions for review pending before the Ninth Circuit
24 are subject to detention pursuant to 8 U.S.C. § 1226(a). *Casas-Castrillon v. Dept. of*
25 *Homeland Sec.*, 535 F.3d 942, 947 (9th Cir. 2008). Section 1226(a) grants the
26 Attorney General discretionary authority to detain certain immigration detainees.
27 *Casas-Castrillon*, 535 F.3d at 947. Because Santiago-Flores and Gutierrez-Penaloza
28 are being detained pending the outcome of their petitions for review before the Ninth

1 Circuit, they are being discretionarily detained, not mandatorily detained. *See Casas-*
2 *Castrillon*, 535 F.3d at 947.

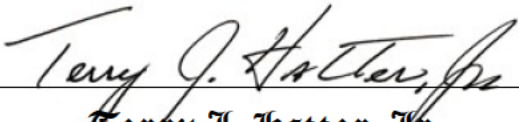
3 The Government argued that *Casas-Castrillon* was overruled by *Jennings v.*
4 *Rodriguez*, 138 S. Ct. 830 (2018). The Government is incorrect. While there is
5 tension between *Casas-Castrillon* and *Jennings*, the Ninth Circuit, subsequently,
6 concluded that the tension exists only as to some aspects of how *Casas-Castrillon*
7 construed § 1226(a) and whether individuals detained under § 1226(a) are entitled to
8 a bond hearing. *See Aleman Gonzalez v. Barr*, 955 F.3d 762, 785 (9th Cir. 2020).
9 The portions of *Casas-Castrillon* that *may* be at odds with *Jennings* are not relevant to
10 the determination that Santiago-Flores and Gutierrez-Penaloza are being detained
11 pursuant to the Attorney General's discretion.

12
13 Accordingly,

14
15 **It is Ordered** that the motion for clarification be, and hereby is, **Granted**.

16
17 **It is further Ordered** that, since the time the Government began
18 implementing the Adelanto Population Reduction Order to now, Juan Carlos Santiago-
19 Flores and Jose Gutierrez-Penaloza were not subject to mandatory detention orders.

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21 Date: March 10, 2021

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23 
24 **Terry J. Hatter, Jr.**
25 **Senior United States District Judge**
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