

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

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

ALEJANDRO RODRIGUEZ, *et al.*,

Petitioners,

v.

ERIC H. HOLDER, *et al.*,

Respondents.

CV 07-03239 TJH (RNBx)

Order

The Court has considered Defendant’s motion for judgment on the pleadings together with the moving and opposing papers.

A motion for judgment on the pleadings challenges the legal sufficiency of the non-moving party’s pleadings. Fed. R. Civ. P. 12(c). For the motion to succeed, the moving party must be entitled to judgment as a matter of law, even if the facts alleged in the complaint are taken as true. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). When considering the motion, the court may only take into account allegations and facts in the complaint and

1 answer. *Amfac Mortg. Corp. v. Arizona Mall of Tempe, Inc.*, 583 F.2d 426, 429
2 (9th Cir. 1978).

3
4 Under the Entry Fiction Doctrine, those aliens who are not yet considered to
5 be on American soil do not possess constitutional rights with regard to their
6 application for admission. *Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th
7 Cir. 2004). However, this doctrine only deals with the *procedure* for admitting
8 aliens, not their substantive rights. *Kwai Fun Wong v. United States*, 373 F.3d 952,
9 974 (9th Cir. 2004). Non-admitted aliens are able to bring substantive Fourteenth
10 Amendment claims, such as equal protection and due process. *Kwai Fun Wong*, 373
11 F.3d at 974. Therefore, the Entry Fiction Doctrine does not preclude Plaintiff from
12 bringing procedural due process claims under 8 U.S.C. § 1225(b), regardless of the
13 sub-class's immigration status.

14
15 Mandatory detainment under 8 U.S.C. § 1226(c) does not require a bond
16 hearing to satisfy due process. *Demore v. Kim*, 538 U.S. 510, 529 123 S. Ct. 1708,
17 1721, 155 L. Ed. 2d 724, 732 (2003). However, when an alien does not concede
18 deportability, this section only applies to expedited removal proceedings. *Tijani v.*
19 *Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005). When the Board of Immigration
20 Appeals affirms the order of removal and administrative proceedings are complete,
21 authority to detain the immigrant under 8 U.S.C. § 1226(c) ends, and the detention
22 falls under the purview of 8 U.S.C. § 1226(a). *Casas-Castrillon v. DHS*, 535 F.3d
23 942, 948 (9th Cir. 2008). At that point, a bond hearing must be held. *Casas-*
24 *Castrillon*, 535 F.3d at 950. Otherwise, this prolonged detention of a legal
25 permanent resident would raise constitutional concerns. *Casas-Castrillon*, 535 F.3d
26 at 950.

1 Though due process does not require a bond hearing under 8 U.S.C. §
2 1226(c), the authority to detain immigrants is limited. *Casas-Castrillon*, 535 F.3d
3 at 950. Consequently, each immigrant detained under 1226(c) must receive a
4 hearing, as, at some point, the authority to detain switches from 1226(c) to 1226(a),
5 when all administrative hearings are complete. *Casas-Castrillon*, 535 F.3d at 948.
6 Thus, the statute can be interpreted to require a bond hearing after a certain amount
7 of time, not only to comply with precedent, but to avoid constitutional concerns as
8 well. As such, Plaintiff's claim would succeed.

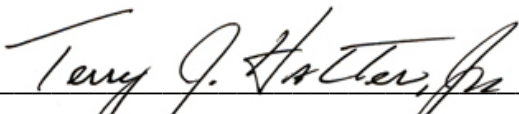
9 Furthermore, the facts, as alleged, indicate that hundreds of immigrants are
10 held for years under the authority of the other sections, without an individualized
11 determination of their flight risk or danger to society. Without a bond hearing, this
12 prolonged detention raises due process issues, considering the aliens do not have an
13 opportunity to contest their detainment. The statute must be interpreted to avoid any
14 potential due process issues. *Clark v. Martinez*, 543 U.S. 371, 381, 125 S. Ct. 716,
15 724, 160 L. Ed. 2d 734, 743 (2005). As such, if the above facts are taken as true,
16 there are due process concerns. To avoid these issues, the court could hold the
17 detention statute mandates bond hearings after a certain, reasonable period of time.

18 Additionally, the Ninth Circuit has indicated this Court should determine in
19 which fact scenarios bond hearings would be appropriate. *Rodriguez v. Hayes*, 591
20 F.3d 1105, 1115 (9th Cir. 2010). The Circuit has, also, held that bond hearings are
21 required when detention becomes prolonged, in order to avoid due process issues.
22 *Casas-Castrillon*, 535 F.3d at 950. Since many immigrants are held without a
23 hearing for years, it is incumbent on this Court to construe the statute to require
24 bond hearings when detention becomes unreasonable. As such, the Court can grant
25 relief to the class as a whole by interpreting the statute to require bond hearings after
26 detainment has lasted an unreasonable length of time, in which case, Plaintiff has a

1 remedy at law.

2
3 **It is Ordered** that Defendant's motion for judgment on the pleadings be,
4 and hereby is, **Denied**.

5
6 Date: January 27, 2011

7 
8 **Terry J. Haller, Jr.**
9 **Senior United States District Judge**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26