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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSE ANTONIO)	Case No. CV 10-02211 DMG (DTBx)
FRANCO-GONZALEZ, ET AL.,)	
)	ORDER RE PLAINTIFFS’ MOTION
Plaintiffs,)	FOR PARTIAL SUMMARY
v.)	JUDGMENT AND PLAINTIFFS’
)	MOTION FOR PRELIMINARY
ERIC H. HOLDER, JR., ATTORNEY)	INJUNCTION ON BEHALF OF
GENERAL, ET AL.,)	SEVEN CLASS MEMBERS [DOC. ##
)	398, 527]
Defendants.)	
)	
)	

This matter is before the Court on Plaintiffs’ motion for partial summary judgment [Doc. # 398] and Plaintiffs’ motion for a preliminary injunction on behalf of seven class members [Doc. # 527]. Plaintiffs seek partial summary judgment on the third through fifth and eighth through tenth causes of action in the third amended complaint. In accordance with that motion, Plaintiffs ask the Court to make permanent its preliminary injunction rulings [Doc. ## 107, 215, 285] and apply the rulings to the Named Representatives and all members of Sub-Classes One and Two.

I.

PROCEDURAL BACKGROUND

On March 26, 2010, Petitioner Jose Antonio Franco-Gonzalez filed a Petition for Writ of *Habeas Corpus* (the “Petition”) in this Court alleging various violations of the Immigration and Nationality Act (“INA”), the Due Process Clause of the Fifth Amendment to the United States Constitution, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. On March 31, 2010, Respondents released Franco-Gonzalez from custody on his own recognizance, under conditions of supervision pursuant to section 236 of the INA, 8 U.S.C. § 1226.

On August 2, 2010, Franco-Gonzalez attempted to file a first amended class action complaint (the “Amended Complaint”), which sought to add new plaintiffs and new causes of action and to certify a class of plaintiffs similarly situated to Franco-Gonzalez, *i.e.*, mentally disabled immigrant detainees who are held in custody without counsel. (Am. Compl. ¶¶ 39-82, 96-137.) On August 6, 2010, the Honorable David T. Bristow, United States Magistrate Judge, rejected the Amended Complaint as untimely under Fed. R. Civ. P. 15(a). On August 23, 2010, Franco-Gonzalez filed an *Ex Parte* Application to file the Amended Complaint, which Magistrate Judge Bristow denied on September 3, 2010.

On September 14, 2010, Franco-Gonzalez filed a Motion for Review of Magistrate Judge’s Decision Denying *Ex Parte* Application to Amend Complaint. On October 18, 2010, this Court granted Franco-Gonzalez’s Motion and provided Franco-Gonzalez 15 days to file an amended complaint. [Doc. # 54.] On November 2, 2010, Franco-Gonzalez filed a first amended class action complaint, which added Plaintiffs Aleksandr Petrovich Khukhryanskiy and Ever Francisco Martinez as well as three other named plaintiffs. [Doc. # 64.]

On November 15, 2010, Plaintiffs Khukhryanskiy and Martinez-Rivas filed (1) an application for a temporary restraining order (“TRO”) [Doc. # 57], (2) a motion for a preliminary injunction [Doc. # 57], and (3) an expedited discovery application [Doc.

1 # 60]. On November 24, 2010, the Court issued an order granting Plaintiffs' TRO
2 application and denying Plaintiffs' expedited discovery application. [Doc. # 78.] The
3 Court issued an order granting Plaintiffs Khukhryanskiy's and Martinez-Rivas' motion
4 for a preliminary injunction on December 22, 2010 [Doc. # 106] and an amended order
5 on December 27, 2010 [Doc. # 107].

6 On January 14, 2011, Plaintiff Maksim Zhalezny filed a motion for a preliminary
7 injunction [Doc. # 111]. On May 4, 2011, the Court issued an order granting Plaintiff
8 Zhalezny's motion for a preliminary injunction [Doc. # 215].

9 On February 14, 2011, Plaintiffs filed a motion for class certification. The Court
10 held a hearing on that motion on April 15, 2011 [Doc. # 182], granted the parties leave to
11 conduct class discovery [Doc. # 206], and conducted a further hearing on October 24,
12 2011 [Doc. # 342]. On November 21, 2011, the Court issued an order granting Plaintiffs'
13 motion for class certification ("Class Cert. Order") [Doc. # 348]. The Court certified the
14 following Class and Sub-Classes:

15 All individuals who are or will be in DHS custody for removal proceedings
16 in California, Arizona, and Washington who have been identified by or to
17 medical personnel, DHS, or an Immigration Judge, as having a serious
18 mental disorder or defect that may render them incompetent to represent
19 themselves in detention or removal proceedings, and who presently lack
20 counsel in their detention or removal proceedings.

21
22 Sub-Class 1: Individuals in the above-named Plaintiff Class who have a
23 serious mental disorder or defect that renders them incompetent to represent
24 themselves in detention or removal proceedings.

25
26 Sub-Class 2: Individuals in the above-named Plaintiff Class who have been
27 detained for more than six months.
28

1 (*Id.*) On June 22, 2012, Defendants filed a motion for reconsideration of the Class Cert.
2 Order [Doc. # 389], which the Court denied on August 27, 2012 [Doc. # 460].

3 On April 18, 2011, Plaintiffs filed a motion for leave to file a second amended
4 complaint, by which Plaintiffs sought to add new Named Plaintiffs and to request
5 psychological evaluations conducted by an independent expert and appointment of
6 counsel pursuant to the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A. On July 18,
7 2011, the Court issued an order granting in part and denying in part Plaintiffs’ motion for
8 leave to file a second amended complaint [Doc. # 242]. Plaintiffs filed a second amended
9 class action complaint on July 25, 2011 [Doc. # 250].

10 On June 13, 2011, Putative Plaintiff Jose Antonio Moreno and Plaintiff Yonas
11 Woldemariam each filed a motion for a preliminary injunction [Doc. # 217]. On August
12 2, 2011, the Court issued an order granting Plaintiff Woldemariam’s motion for a
13 preliminary injunction [Doc. # 285]. On September 12, 2011, the Court denied Plaintiff
14 Moreno’s motion for a preliminary injunction without prejudice [Doc. # 300].

15 On October 25, 2011, with leave of the Court, Plaintiffs filed a third amended class
16 action complaint—the operative complaint in this action. [Doc. # 344.] The third
17 amended complaint alleges the following causes of action: (1) right to a competency
18 evaluation under the INA; (2) right to a competency evaluation under the Due Process
19 Clause; (3) right to appointed counsel under the INA; (4) right to appointed counsel under
20 Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (“Section 504”); (5) right to
21 appointed counsel under the Due Process Clause; (6) right to release under the INA; (7)
22 right to release under the Due Process Clause; (8) right to a detention hearing under the
23 INA; (9) right to a detention hearing under Section 504; (10) right to a detention hearing
24 under the Due Process Clause; and (11) violation of the Administrative Procedures Act.¹

27 ¹ Plaintiffs Franco-Gonzalez and Woldemariam do not join in Claims One through Five.
28 Plaintiff Franco-Gonzalez alone asserts Claims Six and Seven.

1 On July 9, 2012, Plaintiffs Martinez, Khukhryanskiy, Zhalezny, and Chavez filed a
2 motion for partial summary judgment on behalf of Sub-Class One members as to Counts
3 3-5 (right to appointed counsel) of their third amended class action complaint [Doc.
4 # 398]. Plaintiffs Martinez, Khukhryanskiy, Zhalezny, and Sepulveda also seek partial
5 summary judgment on behalf of Sub-Class Two members as to Counts 8-10 (right to
6 detention hearing). Defendants filed an opposition on August 17, 2012 [Doc. # 441].
7 Plaintiffs filed a reply on August 24, 2012 [Doc. # 453]. The Court conducted a hearing
8 on the motion on September 7, 2012. The parties filed supplemental briefs on October
9 26, 2012 [Doc. ## 503, 504].

10 While the motion for partial summary judgment remained pending, Plaintiffs filed
11 another motion for a preliminary injunction on behalf of purported class members Elijah
12 Ibanga, Vasily Zotov, Veasana Meas, Jesus Tapia, Nicolas Guerrero-Ramirez, Ismael
13 Mendez, and Maria Valdivia [Doc. # 527]. The Court held a hearing on the pending
14 motions on March 22, 2013. Both the motion for partial summary judgment and the
15 motion for preliminary injunction are addressed herein.

16 II.

17 FACTUAL BACKGROUND

18 The detailed factual background of this case is set forth in a series of orders
19 previously issued by this Court and will not be repeated here [see Doc. ## 106, 107, 215,
20 348, 285, 300].

21 Plaintiffs have distilled that background into three key facts: (1) that the
22 Government detains and places into removal proceedings Sub-Class One members, *i.e.*,
23 individuals who are not competent to represent themselves by reason of a serious mental
24 disorder or defect; (2) the Government imposes on itself no legal obligation to provide
25 representation for such individuals in their immigration proceedings; and (3) the
26 Government detains Sub-Class Two members for more than six months without
27 providing bond hearings in which it must show by clear and convincing evidence that
28 further detention is justified. Defendants do not dispute these basic facts.

1 III.

2 DISCUSSION

3 **A. Plaintiffs Are Entitled to Appointment of a Qualified Representative in Their**
4 **Immigration Proceedings**

5 **1. Plaintiffs Are Entitled to a Reasonable Accommodation under**
6 **Section 504 of the Rehabilitation Act**

7 Plaintiffs first assert that the Rehabilitation Act requires legal representation as a
8 reasonable accommodation for individuals who are not competent to represent
9 themselves by virtue of their mental disabilities. For the reasons discussed below, the
10 Court finds that Section 504 of the Rehabilitation Act does require the appointment of a
11 Qualified Representative as a reasonable accommodation, and accordingly grants
12 Plaintiffs' motion as to Count Four.

13 **a. Defendants Fail to Raise a Triable Issue Whether Plaintiffs**
14 **Establish a *Prima Facie* Case Under the Rehabilitation Act**

15 Defendants argue that Plaintiffs fail to establish a *prima facie* case under the
16 Rehabilitation Act because they have not demonstrated that all Sub-Class One members,
17 or even a substantial portion of them, were denied meaningful access to the immigration
18 courts solely by reason of their disability.

19 In order to establish a *prima facie* case under Section 504 of the Rehabilitation Act,
20 Plaintiffs must establish that: (1) Sub-Class One members are persons with disabilities
21 within the meaning of the Rehabilitation Act; (2) they were "otherwise qualified for the
22 benefit or services sought"; (3) they were "denied the benefit or services solely by
23 reason" of their disability; and (4) the entity to provide the benefit receives federal
24 funding. *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002). Defendants do not
25 contest that Plaintiffs satisfy the first, second, and fourth requirements.² (Defs.' Opp'n to
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27 ² The record shows that the first, second, and fourth requirements are, in fact, met. First, the
28 Rehabilitation Act defines "disability" as "(A) a physical or mental impairment that substantially limits
one or more major life activities of [the] individual; (B) a record of such an impairment; or (C) being
regarded as having such an impairment." 42 U.S.C. § 12102(1). Sub-class One members "have a

1 Pls.’ Mot. for Partial Summary Judgment (“Opp’n”) at 4 [Doc. # 441].) They do dispute
2 whether Plaintiffs satisfy the third requirement. (*Id.*) The Court therefore focuses only
3 on the third factor.

4 First, Defendants present evidence that , of the 21 identified Sub-Class One
5 members, 17 are no longer part of the class because three are represented by counsel and
6 14 have been released from Department of Homeland Security (“DHS”) custody. (Decl.
7 of Samuel P. Go (“Go Decl.”) ¶¶ 25-26 [Doc. # 442].) Among the 14 released, one has
8 been granted relief and seven of them have had their removal proceedings terminated.³
9 (*Id.*) Defendants argue that, at a minimum, this raises a genuine issue of material fact
10 whether all Sub-Class One members have been denied meaningful access to the courts.

11 Plaintiffs emphasize that the injury of which they complain is procedural in nature
12 and therefore these developments in certain class members’ cases need not affect the
13 Court’s analysis. Indeed, Plaintiffs have never argued that Class or Sub-Class members
14 are entitled to relief from removal. Rather, Plaintiffs point out that 8 U.S.C.
15 § 1229a(b)(4)(B) provides that an alien in removal proceedings “shall have a reasonable
16 opportunity to examine the evidence against the alien, to present evidence on the alien’s
17 own behalf, and to cross-examine witnesses presented by the Government.” *Id.*

18
19 serious mental disorder or defect that renders them incompetent to represent themselves in detention or
20 removal proceedings,” and therefore are “disabled” under this definition. (*See* Class Cert. Order.)
21 Second, the exercise of rights to present evidence, cross-examine witnesses, and make legal arguments
22 against the Government’s charges constitute a “benefit or services” to which all individuals in
23 immigration proceedings, including Sub-class One members, are entitled. *See* 29 C.F.R. § 39.102
(Section 504 applies to “all programs or activities” conducted by executive agencies). Finally, it is
24 undisputed that Defendants, all federal agencies, receive federal funding.

25 ³ Plaintiffs submit evidence that, although Immigration Judges terminated proceedings as a
26 safeguard for Sub-class One members, the DHS has appealed such terminations in at least some cases.
27 (*See* Decl. of Talia Inlender (“Inlender Decl.”) at ¶ 2 [Doc. # 399].) Plaintiffs’ evidence also shows that
28 one Sub-class One member who was previously released is now back in custody, another Sub-class One
member continues to appear in immigration proceedings without a representative, and another Sub-class
One member was removed after an Immigration Judge reversed his previous incompetency
determination at a proceeding in which the member was not represented. (Pls.’ Notice to Court [Doc.
495].)

1 Defendants present no evidence that Sub-Class One members are able to meaningfully
2 exercise such rights absent court intervention.

3 Moreover, as the Court has reiterated time and again in this case, “the mere
4 [voluntary] cessation of illegal activity in response to pending litigation does not moot a
5 case.” *Rosemere Neighborhood Ass’n v. U.S. EPA*, 581 F.3d 1169, 1173 (9th Cir. 2009).
6 Thus, Defendants’ swift actions to ensure that identified Sub-Class One members have
7 been released, appointed counsel, or had proceedings terminated during the course of
8 these proceedings or pursuant to this Court’s preliminary injunction rulings do not vitiate
9 Plaintiffs’ claims that, absent court intervention, they have been unable to meaningfully
10 participate in the system solely by reason of their mental disabilities.

11 Second, Defendants argue that Plaintiffs are not denied access “solely by reason”
12 of their disability because the Government does not intend to prevent them from full
13 participation in their removal proceedings. A suit for damages under Section 504
14 requires a showing that the defendant acted with “deliberate indifference” in denying a
15 reasonable accommodation. *See Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir.
16 2008). In an action solely for injunctive relief, however, it is sufficient that Plaintiffs are
17 unable to meaningfully access the benefit offered—in this case, full participation in their
18 removal and detention proceedings—because of their disability. *See Alexander v.*
19 *Choate*, 469 U.S. 287, 299, 105 S. Ct. 712, 719, 83 L. Ed. 2d 661 (1985) (finding that
20 Section 504 is not limited to intentional discrimination alone, but “requires that an
21 otherwise qualified handicapped individual must be provided with meaningful access to
22 the benefit); *Hunsaker v. Contra Costa Cnty*, 149 F.3d 1041, 1043 (9th Cir. 1998) (citing
23 *Alexander*).

24 On the record presented, the Court finds that Defendants fail to raise a triable issue
25 whether Plaintiffs have established a *prima facie* case under the Rehabilitation Act.
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1 **b. Appointment of a Qualified Representative is a Reasonable**
2 **Accommodation and Does Not Constitute a “Fundamental**
3 **Alteration” of the Immigration Court System⁴**

4 Defendants next argue that, even if Plaintiffs are able to establish a *prima facie*
5 case, legal representation for all mentally incompetent aliens detained for removal
6 proceedings is far beyond a “reasonable accommodation” and amounts to a “fundamental
7 alteration” of the immigration court system, primarily because the Executive Office of
8 Immigration Review (“EOIR”) does not have the capacity or funding to implement such
9 a program. (Decl. of Steven Lang (“Lang Decl.”) at ¶¶ 6-8, 12-15; Ex. C [Doc. # 441-
10 2].)

11 Whether an accommodation is reasonable depends on the individual circumstances
12 of each case and requires a fact-specific, individualized analysis of the individual’s
13 circumstances and the accommodations that enable meaningful access to the federal
14 program. *See Mark H v. Hamamoto*, 620 F.3d 1090, 1098 (9th Cir. 2010); *see also*
15 *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008) (noting
16 that, where plaintiffs seek to expand the scope of a program or benefit, they seek a
17 fundamental alteration to an existing program rather than a reasonable accommodation).
18 As discussed *supra*, however, Plaintiffs do not seek relief from removal or automatic
19 termination of their proceedings. They seek only the ability to meaningfully participate
20 in the immigration court process, including the rights to “examine the evidence against
21 the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses
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23 ⁴ In their third amended complaint and motion, Plaintiffs seek relief in the form of “legal
24 representation” under the Rehabilitation Act. In their prior efforts to seek preliminary injunctive relief
25 for various of the Named Plaintiffs, however, Plaintiffs advocated for, and the Court granted, relief in
26 the form of appointment of a “Qualified Representative,” a broader term that includes (1) an attorney,
27 (2) a law student or law graduate directly supervised by a retained attorney, or (3) an accredited
28 representative, all as defined in 8 C.F.R. § 1292.1. *See Franco-Gonzalez, et al. v. Holder*, 828 F. Supp.
2d 1133, 1147 (C.D. Cal. 2011). When the Court asked Plaintiffs at the September 7, 2012 hearing to
clarify that they seek appointment of a Qualified Representative as previously defined by this Court,
Plaintiffs responded affirmatively.

1 presented by the Government.” 8 U.S.C. § 1229a (b)(4)(B). Plaintiffs’ ability to exercise
2 these rights is hindered by their mental incompetency, and the provision of competent
3 representation able to navigate the proceedings is the only means by which they may
4 invoke those rights.

5 **i. The Requested Accommodation Does Not Impose an Undue**
6 **Financial Burden**

7 That EOIR does not currently have a budget, or that Defendants currently do not
8 have any established structure, to protect the rights of Sub-Class One members far from
9 establishes that the requested accommodation would be a fundamental alteration of the
10 immigration court system. On May 4, 2011, the Court defined a Qualified Representative
11 as (1) an attorney, (2) a law student or law graduate directly supervised by a retained
12 attorney, or (3) an accredited representative, all as defined in 8 C.F.R. § 1292.1. *Franco-*
13 *Gonzalez*, 828 F. Supp. 2d at 1147.

14 As the Court has previously noted, a Qualified Representative would be a
15 reasonable accommodation, whether he or she is performing services *pro bono* or at
16 Defendants’ expense.⁵ [Doc. # 107 at 37.] Moreover, while a reasonable
17 accommodation should not impose “undue financial . . . burdens,” the rule does not
18 preclude “some financial burden resulting from accommodation.” *U.S. v. Cal. Mobile*
19 *Home Park Mgmt., Co.*, 29 F.3d 1413, 1417 (9th Cir. 1994) (citing *Southeastern*
20 *Community College v. Davis*, 442 U.S. 397, 412, 99 S. Ct. 2361, 2370, 60 L. Ed. 2d 980
21 (1979)) (interpreting “reasonable accommodation” under the Fair Housing Act, which
22 incorporates the Rehabilitation Act’s standard).

23 The Court is wary of issuing an unfunded mandate requiring Government-paid
24 counsel for all mentally incompetent class members. Indeed, neither this Order nor the
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26 ⁵ As Plaintiffs point out, Department of Justice (“DOJ”) and DHS regulations recognize that
27 Defendants “may comply with the requirements of . . . [Section 504] through such means as . . .
28 assignment of aides to beneficiaries.” 28 C.F.R. 39.150 (DOJ); 6 C.F.R. 15.50 (DHS). A “Qualified
Representative” would seem to be such an “aide.”

1 Court’s previous preliminary injunction rulings requires Defendants to provide Sub-Class
2 One members with *paid* legal counsel. Defenda nts have in the past been able to obtain
3 *pro bono* counsel for certain class members from various non-profit organizations and
4 *pro bono* panels.⁶ (*Id.*)

5 Nevertheless, EOIR claims that it has found “relatively scarce capacity among pro
6 bono providers to fill very limited roles.” (Lang Decl. ¶ 15.) Defendants are not
7 required, however, to provide bar-certified attorneys, as long as the representatives they
8 provide meet the requirements for a Qualified Representative. For example, the
9 regulations allow for representation by law students and law graduates not admitted to the
10 bar and “accr edited representatives” who represent qualified non-profit religious,
11 charitable, social service, or similar organizations. 8 C.F.R. §§ 1292.1, 1292.2.⁷
12 Defendants fail to address why the provision of these types of Qualified Representatives
13 would not be feasible. Thus, given that the Government has already contemplated the
14 possibility of certain non-attorneys providing assistance to immigrants in removal
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18 ⁶ The Court need not prescribe the exact source from which Defendants should provide Qualified
19 Representatives nor how they must do so. EOIR represents that “[t]here is currently no mechanism in
20 place to locate and retain appointed counsel for all mentally incompetent detained aliens throughout the
21 class action states, and no ‘public defender’-like body currently in existence from which appointed
22 counsel for removal proceedings can be drawn.” (Lang Decl. ¶ 11 [Doc. # 441-2].) Plaintiffs, however,
23 present a declaration from Sean K. Kennedy, the Federal Public Defender for the Central District of
24 California, wherein Kennedy states that “[a]fter consulting with officials from the Administrative Office
25 of the United States Courts and independently researching the issues, the FPDO has determined that the
26 CJA would authorize their appointment in this case and is prepared to accept such an appointment to
27 represent detained mentally disabled persons facing removal proceedings in the Central District of
28 California.” (Decl. of Sean K. Kennedy ¶ 2 [Doc. # 217-2].) Without deciding the issue, the Court has
expressed reservations about its authority to appoint counsel under the CJA in light of the nature and
purpose of the CJA. [Doc. # 107 at 38-39 n.20.] Nonetheless, Kennedy’s statement provides one
among many potential options that Defendants may explore in implementing the Court’s order.

⁷ Although the regulations provide for representation by law-student representatives, Defendants
fail to explain why they could not partner with law school immigration clinics and other programs that
are already engaged in these types of activities. That the practice is already in place on some level
suggests another option that may augment the ranks of *pro bono* or paid attorneys.

1 proceedings, it is reasonable that they do so to provide Sub-Class One members
2 meaningful access to a fair and participatory process.⁸

3 **ii. The Requested Accommodation Does Not Contravene the**
4 **Statutory Framework Governing the Privilege of Counsel**

5 Defendants also argue that the requirement of representation runs counter to the
6 INA, which provides in several provisions that individuals have a “privilege” to obtain
7 representation at no expense to the Government. 8 U.S.C. §§ 1229a (b)(4)(A), 1362.
8 EOIR asserts its belief that these provisions bar the use of federal funding to provide for
9 direct representation. (Lang Decl. ¶¶ 3-5, 8 [Doc. # 441-2]) (indicating that, because
10 “there is no statute or regulation that specifically confers Immigration Judges with the
11 power to appoint counsel for any unrepresented alien,” Immigration Judges do not
12 appoint Government-paid counsel for unrepresented mentally incompetent aliens and
13 that, “[a]s a result of Section 292 [8 U.S.C. § 1362], the legal orientation services funded
14 by the [Legal Orientation Program] do not include funds for direct representation as
15 defined in 8 C.F.R. § 1001.1(m)”).

16 Yet, writing on behalf of the Office of the General Counsel for the DHS, David P.
17 Martin, Principal Deputy General Counsel, confirmed that the plain language of Section
18 1362 does not lend itself to the interpretation that it “*prohibits* the provision of counsel at
19 government expense.” (Supp. Decl. of Mari sol Orihuela ¶ 25, Ex. 310 [Doc. # 454] .)
20 “[N]othing in [8 U.S.C. §§ 1229a(b)(4), 1362] or 5 U.S.C. § 3106 prohibits the use of
21 discretionary federal funding for representation of aliens in immigration proceedings”
22 and “[w]hether any particular expenditure would be permissible . . . depends on a fiscal
23 law analysis of the specific proposed funding source.” (*Id.*) The Court agrees that these
24 statutes cannot reasonably be interpreted to forbid the appointment of a Qualified
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27 ⁸ On April 8, 2013, in response to the Court’s inquiry, Defendants filed a supplemental brief
28 indicating that there are currently 17 Sub-class One members for whom Qualified Representatives must
be provided. [Doc. # 577.]

1 Representative to individuals who otherwise lack meaningful access to their rights in
2 immigration proceedings as a result of mental incompetency.

3 Thus, the proposed accommodation would not contravene any existing statutory
4 prohibition.

5 **iii. The Requested Accommodation Does Not Expand the Scope**
6 **of Benefits Available to Class Members**

7 Defendants also reiterate their position that Plaintiffs' requested relief would place
8 Sub-Class One members in a significantly better position than nondisabled, detained
9 aliens because providing legal representation "would do much more than remove a
10 barrier to access; it would expand the scope of benefits provided to aliens in immigration
11 court."⁹ (Opp'n at 8.) This is not the first time Defendants have raised this argument.
12 *See Franco-Gonzalez, et al. v. Holder*, 767 F. Supp. 2d 1034, 1056 (C.D. Cal. 2010). In a
13 new twist to the argument, however, Defendants now assert that, because Plaintiffs are
14 not requesting an exception to existing rules, but instead attempting to create an entirely
15 new system of benefits in immigration court, the decisions on which the Court previously
16 relied are not applicable to the present case. (Opp'n at 8 (citing *US Airways, Inc. v.*
17 *Barnett*, 535 U.S. 391, 122 S. Ct. 1516, 152 L. Ed. 2d 589 (2002) and *Giebeler v. M & B*
18 *Associates*, 343 F.3d 1143 (9th Cir. 2003)).)

19 Defendants urge the Court to rely instead on a Second Circuit decision, *Rodriguez*
20 *v. City of New York*, 197 F.3d 611 (2d Cir. 1999). In *Rodriguez*, the Second Circuit
21 addressed whether the district court erred when it found that New York's failure to
22 include safety monitoring as an independent task among personal-care services violated,
23 *inter alia*, Section 504 of the Rehabilitation Act. *Id.* at 614. The plaintiffs in that case
24 argued that safety monitoring was "comparable" to the personal-care services already
25 provided by New York. *Id.* Finding that safety monitoring was not "comparable" to
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27 ⁹ Defendants present evidence that 51% of all aliens in immigration court were represented in
28 FY2011. (Defs.' Opp'n at 6 n.5 (citing U.S. Department of Justice, EOIR, FY 2011 Statistical
Yearbook, at G1, available at <http://www.justice.gov/eoir/statspub/fy11syb.pdf>).

1 personal-care services, the Second Circuit de termined that “New York cannot have
2 unlawfully discriminated against appellees by denying a benefit that it provides to no
3 one.” *Rodriguez*, 197 F.3d at 618.

4 Defendants mischaracterize the nature of the benefit Plaintiffs seek. In *Rodriguez*,
5 the plaintiffs sought a unique, independent benefit that was not available to any other
6 individuals under the State program. *Rodriguez*, 197 F.3d at 618. In contrast, Plaintiffs
7 here seek only to meaningfully participate in their removal proceedings. The opportunity
8 to “examine the evidence against the alien, to present evidence on the alien’s own behalf,
9 and to cross-examine witnesses presented by the Government” is available to all
10 individuals in immigration proceedings, but is beyond Plaintiffs’ reach as a result of their
11 mental incompetency. 8 U.S.C. § 1229a(b)(4)(B). Thus, the provision of a Qualified
12 Representative is merely the *means* by which Plaintiffs may exercise the same benefits as
13 other non-disabled individuals, and not the benefit itself.

14 In this sense, and contrary to Defendants’ assertions, this case is more similar to
15 *Paulson*, 525 F.3d 1256. In *Paulson*, the D.C. Circuit explained, “[w]here the plaintiffs
16 identify an obstacle that impedes their access to a government program or benefit, they
17 likely have established that they lack meaningful access to the program or benefit.” *Id.* at
18 1267. In that case, by failing to provide a means by which the visually impaired could
19 easily utilize United States currency, the Government effectively deprived Plaintiffs of
20 “meaningful access” to a benefit available to the general public, namely, the ability to
21 engage in economic activity. *Id.* at 1269. In this case, those who are in full possession of
22 their faculties already have the ability to participate in immigration proceedings or, at
23 least, have the wherewithal to obtain access.

24 Aspiring to a system that allows the mentally incompetent to similarly participate
25 in the removal proceedings against them is not tantamount to “creating an entirely new
26 system of benefits in immigration.” Defendants can hardly argue that it is audacious to
27 require a Qualified Representative for mentally incompetent individuals in immigration
28 proceedings when the INA itself has pronounced that some form of procedural safeguards

1 are required for those who are mentally incompetent. *See* 8 U.S.C. § 1229a(b)(3) (“If it is
2 impracticable by reason of an alien’s mental incompetency for the alien to be present at
3 the proceeding, the Attorney General shall prescribe safeguards to protect the rights and
4 privileges of the alien.”). By the same token, the appointment of a Qualified
5 Representative for Sub-Class One members serves only to level the playing field by
6 allowing them to meaningfully access the hearing process. Indeed, the accommodation is
7 just as reasonable as and no more burdensome than EOIR’s requirement that interpreters
8 be provided to those who cannot understand English.¹⁰ *See El Rescate Legal Servs., Inc.*
9 *v. Exec. Office for Immigration Review*, 959 F.2d 742, 752 (9th Cir. 1991) (upholding
10 BIA’s policy, articulated in *Matter of Exilus*, 18 I&N Dec. 276 (BIA 1982), of requiring
11 interpretation of statements made and questions asked of the alien and the alien’s
12 responses, and giving Immigration Judges discretion to require more interpretation where
13 “essential to his ability to assist in the presentation of his case”).

14 For the reasons discussed herein and in the Court’s previous orders in this case, the
15 Court finds that providing Sub-Class One members with a Qualified Representative is a
16 reasonable accommodation. Defendants have failed to raise any triable issue of fact in
17 support of their contention that the accommodation poses a fundamental alteration of the
18 immigration court system. *See Paulson*, 525 F.3d at 1267.

19 **c. *Matter of M-A-M- Fails to Provide Sufficient Safeguards***

20 Defendants contend that, while the Rehabilitation Act requires Defendants to
21 provide a reasonable accommodation, it does not require that they provide the
22 accommodation of Plaintiffs’ choice. Defendants argue that *Matter of M-A-M-*, 25 I. &
23 N. Dec. 474 (BIA 2011), changes the legal landscape for aliens with mental competency
24

25 _____
26 ¹⁰ Of particular note is the treatment of the interpreter issue by EOIR’s Immigration Court
27 Practice Manual, which states, in pertinent part: “Interpreters are provided at government expense to
28 individuals whose command of the English language is inadequate to fully understand and participate in
removal proceedings.” U.S. Dep’t of Justice, EOIR, Immigration Court Practice Manual, Ch. 4.11
(2008) (http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm).

1 issues and that DHS has also im plemented a num ber of initiative s to ensure that
2 Immigration Judges are provided with relevant information within DHS’s possession that
3 may be indicative of a detained alien’s mental impairment.

4 As Defendants themselves acknowledge, “*M-A-M-* does not suggest ‘any authority
5 to appoint *counsel* for individuals not compet ent to represent themselves.’” (*Id.*) (citing
6 Pls.’ Motion at 14) (emphasis in original). Nor does *M-A-M-* address Plaintiffs’ claim for
7 appointment of Qualified Represent atives for Sub-Class One mem bers.¹¹ Rather, *M-A-*
8 *M-* allows Immigration Judges to adopt certain “safeguards” where an alien ha s been
9 determined incompetent to proceed with the hearing. 25 I&N Dec. at 482. For exam ple,
10 an Immigration Judge may refuse to ac cept an ad mission of removability from an
11 incompetent, unrepresented al ien; allow the alien’s custod ian to appear on his behalf;
12 continue proceedings to allow the alien to obtain representation; aid in the development
13 of the record, including cros s-examination of witnesses; and allow representation by a
14 family member or close friend. *Id.* at 483. The majority of these “safeguards,” however,
15 are left to the Imm igration Judge’s discretion, and none gua rantee that the incom petent
16 alien may participate in his proceedings as fully as an individual who is not disabled. *Id.*
17 at 482 (noting that Immigration Judges “hav e discretion to determ ine which safeguards
18 are appropriate”).

19 Moreover, while both the regulations and *M-A-M-* allow for “representation” by a
20 family member or close friend to “assi st the respondent and provide the court with
21 information,” Defendants offer no safeguard that such individuals are qualified to provide
22 this type of assistance for a mentally incomp etent person.¹² *See also* 8 C.F.R. § 1240.4
23

24 ¹¹ The initia tives Defendants describe include: (1) setting f orth medical criteria to identify
25 detained aliens with serious m ental health co nditions who m ay have a functional im pairment; (2)
26 completing new standardized m ental health forms, known as “mental health review reports”; and (3)
27 providing training and guidance to DHS trial attorneys to ens ure that they comply with *M-A-M-* in their
28 practice before the immigration courts and BIA. (Opp’n at 11.)

¹² Defendants still fail to addres s the Gordian K not Plaintiffs w ould face if forced to accept
representation by persons listed in 8 C.F.R. § 1240.4, many of whom m ay lack legal expertise or
accountability to ensure Plaintiffs’ full participation in their proceedings. As the Court has previously

1 (allowing for representation by a “legal guardian, near relative, or friend who was served
2 with a copy of the notice to appear,” or the respondent’s “custodian”). The Court has
3 discussed at length the reasons why the “safeguards” set forth in *M-A-M-* are insufficient
4 in its prior orders.¹³ Suffice it to say that Defendants have yet to present any evidence
5 from which a reasonable jury could find that, as a result of *M-A-M-*, Sub-Class One
6 members are not entitled to a Qualified Representative as a reasonable accommodation.

7 Accordingly, the Court finds that Plaintiffs are entitled to the reasonable
8 accommodation of appointment of a Qualified Representative to assist them in their
9 removal and detention proceedings under Section 504 of the Rehabilitation Act. The
10 Court grants Plaintiffs’ motion for partial summary judgment as to Count Four of the
11 third amended complaint.

12 **2. Plaintiffs Are Not Entitled to Partial Summary Judgment on Their**
13 **Representation Claim Under the INA or Due Process Clause**

14 Plaintiffs also argue that the INA’s guarantee of a “full and fair hearing” requires
15 the appointment of legal representation for Plaintiffs. Plaintiffs cite generally to 8 U.S.C.
16 § 1229a(b)(4)(B), which enumerates an alien’s rights in proceedings, including a
17 reasonable opportunity to examine the evidence against him, to present evidence on his
18 own behalf, and to cross-examine witnesses. Plaintiffs also cite *Matter of Exilus*, 18 I&N
19 Dec. at 278, which states “[t]he constitutional requirements of due process are satisfied in
20 an administrative hearing if the proceeding is found to be fair.” But Section
21 1229a(b)(4)(A) also states that aliens have “the privilege of being represented, at no
22

23 explained, such representation would depend in part on whether the detainee can validly consent to
24 representation by a non-attorney, “a dubious proposition for someone who is mentally incompetent.”
25 *Franco-Gonzalez*, 828 F. Supp. 2d at 1145-46.

26 ¹³ Indeed, the crux of Plaintiffs’ claim is that they were all denied the ability to participate in
27 their immigration court proceedings, despite Immigration Judges’ existing obligations to aid them in
28 developing the record and that, instead of *M-A-M-*’s instruction that mentally incompetent detainees may
be represented by a family member or close friend, Plaintiffs are entitled to an appointed Qualified
Representative.

1 expense to the Government.” Although, by DHS General Counsel’s own admission, the
2 INA cannot reasonably be read to *prohibit* the appointment of counsel in all
3 circumstances, Plaintiffs have not shown in their motion that the statute expressly
4 *requires* as much. (See Supp. Orihuela Decl. ¶ 25, Ex. 310.)

5 Although Plaintiffs attempt to frame the requirement of fundamental fairness as
6 “statutory” in nature, they point to no specific statutory provisions that require the
7 particular relief they seek. Rather, the concept of a “fundamentally fair” hearing is rooted
8 in due process. *See id.* (“Due process in an administrative proceeding is not defined by
9 inflexible rules which are universally applied, but rather varies according to the nature of
10 the case and the relative importance of the governmental and private interests
11 involved.”); *see also Shaughnessey v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73
12 S. Ct. 625, 629, 97 L. Ed. 956 (1953) (noting that immigration proceedings must
13 “conform[] to traditional standards of fairness encompassed in due process of law”).
14 Without more, Plaintiffs fail to establish the absence of any material dispute that the INA
15 imposes the requirement they seek on some basis independent of constitutional due
16 process. Having decided in favor of Plaintiffs on their Rehabilitation Act claim,
17 however, it is not necessary for the Court to reach the constitutional dimensions of their
18 request for relief under Counts Three and Five. The Court must “avoid reaching
19 constitutional questions in advance of the necessity of deciding them.” *In re Joye*, 578
20 F.3d 1070, 1074 (9th Cir. 2009).

21 Accordingly, Plaintiffs’ motion for partial summary judgment is denied as to
22 Counts Three and Five.

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1 **B. Plaintiffs Are Entitled to a Bond Hearing After 180 Days in Detention**¹⁴

2 Plaintiffs next argue that class members who are detained for more than 180 days
3 (Sub-Class Two) are entitled to a custody redetermination hearing, at which the
4 Government bears the burden of establishing by clear and convincing evidence that their
5 continued detention is necessary. Again, the Court has already addressed this issue in its
6 previous orders. The Court now concludes that Plaintiffs subjected to prolonged
7 detention are entitled to such a hearing under the INA and existing Ninth Circuit
8 precedent.

9 **1. The INA Requires a Bond Hearing for Detainees Held for a**
10 **Prolonged Period of Time**

11 In analyzing Plaintiffs' bond hearing claim, the Court is guided by the canon of
12 constitutional avoidance, which requires that statutes be construed so as to avoid serious
13 doubts as to the constitutionality of an alternate construction. *Nadarajah v. Gonzales*,
14 443 F.3d 1069, 1076 (9th Cir. 2006) (citing *INS v. St. Cyr*, 533 U.S. 289, 299–300, 121 S.
15 Ct. 2271, 150 L. Ed. 2d 347 (2001)).

16 **a. INA Provisions Governing Detention**

17 As the parties themselves note, class members may be detained pursuant to several
18 statutory provisions governing detention of aliens in various stages of removal
19 proceedings. Although the Court's previous orders have addressed only the legality of
20 prolonged detention under Section 1226(c), the certified class, which extends to
21 individuals "in DHS custody for removal proceedings," may encompass individuals
22 detained under other sections as well. A brief summary of the INA's authorization of
23 detention follows.

24
25
26 ¹⁴ Although Sub-Class Two is defined as Class Members who have been detained for
27 more than "six months," the Court finds that "180 days" is more precise and therefore modifies
28 the definition of Sub-Class Two accordingly.

1 First, Section 1225(b) authorizes detention of “arriving aliens,” including lawful
2 permanent residents (“LPRs”), under certain circumstances. *See Rodriguez v. Robbins*,
3 ___ F.3d ___, 2013 WL 1607706 at *1 (9th Cir. 2013) (“*Robbins*”). The statute provides
4 that “if the examining immigration officer determines that an alien seeking admission is
5 not clearly and beyond a doubt entitled to be admitted, the alien shall be detained” for
6 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *see also* 8 U.S.C.
7 § 1225(b)(1)(B)(iii)(IV) (providing for mandatory detention of individuals who have
8 expressed a “credible fear” of returning to their home country until resolution of their
9 request for asylum or a determination that they do not possess a credible fear).

10 Next, 8 U.S.C. § 1226 authorizes the Government to, upon issuance of a warrant,
11 arrest and detain an alien “pending a decision on whether the alien is to be removed from
12 the United States.” Under subsection (a), the Government may either release the alien on
13 bond or conditional parole, or it may continue to detain the arrested alien if he is a danger
14 to the community or a flight risk. Under subsection (c), certain aliens who are
15 inadmissible or deportable due to having committed certain criminal offenses are subject
16 to mandatory detention without a bond hearing.

17 Finally, Section 1231(a)(1)(A) governs detention during the “removal period,” or
18 the time after issuance of a final order of removal but prior to actual removal. During this
19 period, subject to certain exceptions, the Government “shall” detain aliens ordered
20 removed as a result of certain criminal bases for removal. 8 U.S.C. § 1231(a)(2).

21 **b. Neither Section 1225(b), 1226, nor 1231 Sanctions Prolonged**
22 **Detention Without a Bond Hearing**

23 The Ninth Circuit’s recent ruling in *Robbins* makes clear that individuals in
24 immigration custody may not be subjected to prolonged detention without the provision
25 of a bond hearing at which the Government must justify continued detention. *See* 2013
26 WL 1607706 at *8, 12. Nevertheless, the Court briefly addresses the recent legal
27 developments that require Defendants to provide the requested bond hearings to Sub-
28 Class Two members.

1 In its previous orders, this Court has acknowledged and relied upon Supreme Court
2 precedents holding that six months is a presumptively reasonable benchmark for pre-
3 removal detentions under Section 1231. *Zadvydas v. Davis*, 533 U.S. 678, 701, 121 S.
4 Ct. 2491, 150 L. Ed. 2d 653 (2001); *see also Clark v. Martinez*, 543 U.S. 371, 125 S. Ct.
5 716, 160 L. Ed. 2d 734 (2005). The Ninth Circuit has also consistently applied the six-
6 month benchmark not only to detentions under Section 1231, but under Sections 1225(b)
7 and 1226(a) as well. *See, e.g., Robbins*, 2013 WL 1607706 at *12 (to the extent
8 detention under Section 1225 (b) is mandatory, it is implicitly time-limited under *Casas-*
9 *Castrillon v. Dep’t of Homeland Security*, 535 F.3d 942 (9th Cir. 2008)); *Rodriguez v.*
10 *Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2009) (extending *Zadvydas* framework to
11 detentions under Sections 1225(b) and 1226(a)); *Nadarajah*, 443 F.3d at 1078-80 (noting
12 that Section 1225(b) does not authorize indefinite detention after *Zadvydas* and *Clark*).

13 Furthermore, the Ninth Circuit has held that Section 1226(c) cannot reasonably be
14 applied to authorize the prolonged detention of aliens seeking judicial review of their
15 removal orders. *Casas-Castrillon*, 535 F.3d at 947-48; *see also Robbins*, 2013 WL
16 1607706 at *8 (discussing *Casas-Castrillon* and holding that “detention always becomes
17 prolonged at six months”); *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005) (noting
18 that the detention under Section 1226(c) of a LPR subject to removal for 32 months was
19 “constitutionally doubtful”). In *Casas-Castrillon*, the court relied heavily on the
20 Supreme Court’s analysis in *Demore v. Kim*, 538 U.S. 510, 530, 123 S. Ct. 1708, 155 L.
21 Ed. 2d 724 (2003), which recognized that detention under Section 1226(c) generally lasts
22 “roughly a month and a half in the vast majority of cases in which it is invoked, and
23 about five months in the minority of cases in which the alien chooses to appeal.” *See*
24 *also Casas-Castrillon*, 535 F.3d at 950 (“References to the brevity of mandatory
25 detention under § 1226(c) run throughout *Demore*.”). The court concluded that “a
26 prolonged detention must be accompanied by appropriate procedural safeguards,
27 including a hearing to establish whether continued detention is required. *Id.* at 944.
28 Thus, the Government’s authority to detain the petitioner shifted to Section 1226(a) when

1 the BIA dismissed his appeal, and at that point the Government was required to conduct a
2 hearing to determine the reasonableness of his continued detention. *Id.* at 948.

3 In *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (“*Diouf II*”), the Ninth
4 Circuit reached the same conclusion with respect to an alien detained under Section
5 1231(a)(6) who attempted to reopen his proceedings after issuance of a final order of
6 removal. Again, the court stated, “[a]s a general matter, detention is prolonged when it
7 has lasted six months and is expected to continue more than minimally beyond six
8 months.” *Id.* at 1092 n.13. At that point, or where removal is no longer imminent, the
9 “private interests at stake are profound.” *Id.* at 1084. Accordingly, detention under
10 Section 1231(a)(6) following entry of a final order of removal is authorized only for a
11 reasonable period, after which aliens “are entitled to the same procedural safeguards
12 against prolonged detention as individuals detained under Section 1226(a).” *Id.* at 1084.
13 In *Robbins*, the Ninth Circuit stated that “*Diouf II* strongly suggested that immigration
14 detention becomes prolonged at the six-month mark *regardless of the authorizing*
15 *statute.*” 2013 WL 1607706 at *8 (emphasis added) (citing *Diouf II*, 634 F.3d at 1091-
16 92). *Robbins* held that, like detention under Section 1226(c), detention pursuant to
17 Section 1225(b) only authorizes six months of mandatory detention, after which the
18 authority to detain further shifts to Section 1226(a) and a bond hearing is required. 2013
19 WL 1607706 at *12.

20 Defendants ask the Court to distinguish *Casas-Castrillon* and *Diouf II* because,
21 like the petitioner in *Zadvydas* and unlike many of the class members in this case, the
22 petitioners in those cases had already been ordered removed. (Opp’n at 23-24.)
23 Defendants argue that, in the pre-removal-order context, the Government’s interest in
24 detaining individuals “pending a decision on whether the alien is to be removed” is not
25 extinguished and therefore the six-month benchmark does not apply. 8 U.S.C. § 1226(a).
26 Defendants’ argument fails in light of the Ninth Circuit’s recent pronouncement that, “if
27 anything, . . . [lawful permanent residents] detained prior to the entry of an
28 administratively final removal order . . . would seem to have a *greater* liberty interest

1 than individuals detained pending judicial review or the pendency of a motion to reopen.”
2 *Robbins*, 2012 WL 1607706 at *8. That some, even if not all, detainees held pursuant to
3 a statute are entitled to heightened due process protections requires construing the statute
4 “with these aliens in mind.” *Id.* at 10. Thus, given the Ninth Circuit’s rulings in *Robbins*,
5 *Diouf II*, *Casas-Castrillon*, and *Tijani*, the pre-removal-order distinction does not require
6 the result Defendants urge. *See also Demore v. Kim*, 538 U.S. 510, 552, 123 S. Ct. 1708,
7 155 L. Ed. 2d 724 (2003) (Souter, J., concurring in part and dissenting in part) (arguing
8 that aliens detained under Section 1226(c) should be afforded greater procedural
9 protections than those detained under Section 1231(a)(6) because the latter, having
10 already been ordered removed, “enjoy [] no lawful immigration status”).¹⁵

11 The Government’s interest in “ensuring that aliens are available for removal if
12 their legal challenges do not succeed” is the same irrespective of the statutory basis for
13 the detention or the stage of proceedings. *Diouf II*, 634 F.3d at 1087-88. Significantly,
14 Plaintiffs do not seek outright release from detention after six months. Rather, they seek
15 only a custody redetermination hearing at which the Government bears the burden of
16 justifying their continued detention. In all cases, this procedure protects public safety and
17 the Government’s interest in facilitating removal proceedings while preventing
18 infringement of individual liberty interests. *See id.* at 1088 (noting that the Government’s
19 interest . . . is served by the bond hearing process itself” because “[i]f the alien poses a
20 flight risk, detention is permitted”) (emphasis added).¹⁶

21
22 ¹⁵ At oral argument, Defendants contended that any injunction should not extend to individuals
23 detained pursuant to Section 1225(b), in part because Plaintiffs have not established that any current
24 class members are actually detained under that statute. First, the certified class does not distinguish
25 between individuals detained pursuant to different provisions of the INA, and thus Defendants’
26 argument would have been more appropriate at the class certification stage. Second, because all
27 detainees have a substantial interest in freedom from prolonged detention regardless of the statute under
28 which they are held, the named Sub-class Two Plaintiffs adequately represent the interests of other Sub-
class Two members. *Diouf II*, 634 F.3d at 1087.

¹⁶ The Government also argues that the doctrine of constitutional avoidance cannot be applied to
detention pursuant to Section 1226(c) or 1225(b) because both provisions contain express language
forbidding the provision of a bond hearing. (*See Opp’n* at 27.) The Ninth Circuit expressly rejected that

1 **c. The Government Bears the Burden of Justifying Continued**
2 **Detention at Bond Hearings**

3 Finally, Defendants argue that, at any custody redetermination hearing to be held
4 after six months of detention, the burden of proof should rest with the detainee and not
5 with the Government. (Opp’n at 28.) Defendants do not address how this position
6 squares with *Casas-Castrillon*, 535 F.3d at 951, or *Singh v. Holder*, 638 F.3d 1196, 1203
7 (9th Cir. 2011), both of which place the burden on the Government to establish that an
8 alien subject to prolonged detention should not be released because he is either a flight
9 risk or a danger to the community.

10 Moreover, the Ninth Circuit recently reaffirmed *Singh* in *Robbins*, requiring that
11 individuals held in ICE custody for more than six months are entitled to a bond hearing at
12 which the Government bears the burden of proof, whether the individual is being held
13 pursuant to Section 1226 or 1225. 2013 WL 1607706 at *12. The “clear and
14 convincing” standard of proof is necessary because “it is improper to ask the individual to
15 ‘share equally with society the risk of error when the possible injury to the individual’ . . .
16 is so significant.” *Singh*, 638 F.3d at 1203-04; *see also Tijani v. Willis*, 430 F.3d 1241,
17 1244 (9th Cir. 2005) (Tashima, J., concurring) (explaining that due process places a
18 “heightened burden of proof on the State” where the individual interests at stake are
19 particularly important) (citing *Cooper v. Oklahoma*, 517 U.S. 348, 363, 116 S. Ct. 1373,
20 134 L. Ed. 2d 498 (1996)). As the Ninth Circuit has recognized, the individual liberty at
21 stake is equally urgent for a detainee who languishes in detention either before or after
22 entry of a removal order. Therefore, the Court sees no reason to distinguish between the
23 two for purposes of assigning the burden of proof.

24
25
26 argument in *Robbins*, stating that “while the government may be correct that reading § 1226(c) as
27 anything other than a mandatory detention statute is not a plausible interpretation[] of [the] statutory
28 text, it does not argue that reading an implicit *temporal limitation* on mandatory detention into the
statute is implausible. Indeed, it could not do so, because such an argument is foreclosed by our
decisions.” 2013 WL 1607706 at *7 (internal citations omitted).

1 For the foregoing reasons and as discussed in the Court's previous orders, the
2 Court finds that the INA requires that class members who are detained beyond a
3 reasonable period are entitled to a custody re determination hearing, at which the
4 Government bears the burden of justifying their continued detention by clear and
5 convincing evidence.

6 **2. Plaintiffs Are Not Entitled to Partial Summary Judgment on the Bond**
7 **Hearing Issue Under the Rehabilitation Act or Due Process Clause**

8 Plaintiffs also briefly argue that they are entitled to a bond hearing as a reasonable
9 accommodation under Section 504 of the Rehabilitation Act. As discussed above, to
10 succeed under the Rehabilitation Act, Plaintiffs must establish, among other things, that
11 they were "denied the benefit or services solely by reason" of their disability. *Lovell*, 303
12 F.3d at 1052 (9th Cir. 2002). Plaintiffs assert that the lack of adequate safeguards or
13 guidelines for mentally incompetent immigrant detainees places them at a heightened risk
14 of prolonged detention, and thus a bond hearing is necessary to give them meaningful
15 access to some unarticulated benefit, presumably the opportunity to attempt to secure
16 one's release. (Mot. at 31.)

17 On the present record, Plaintiffs' theory fails for at least two reasons. First, as
18 several courts have already held, the INA requires a bond hearing after six months for *all*
19 immigrant detainees—not only those suffering from a mental health disability—in order
20 to avoid the "serious constitutional concerns" that would result from allowing prolonged
21 detention without such a hearing. *Casas-Castrillon*, 535 F.3d at 950. In this regard, the
22 "accommodation" Plaintiffs seek is not unique to the class, but it is the necessary result of
23 interpreting the INA to avoid constitutional problems. Relatedly, although Plaintiffs
24 present some evidence that class members' proceedings are delayed at least in part due to
25 their mental incompetency, they fail to establish that other individuals do not experience
26 similar delays that similarly threaten their liberty.

27
28

1 Plaintiffs have not carried their burden of demonstrating that there are no triable
2 issues of material fact as to their claim for a bond hearing under the Rehabilitation Act.
3 Plaintiffs' motion for partial summary judgment is denied as to Count Nine.

4 In light of the Court's conclusion that the INA requires the relief Plaintiffs seek, it
5 need not reach whether the Constitution also mandates that relief. *See Joye*, 578 F.3d at
6 1074.

7 **C. Whether Plaintiffs Are Entitled to Permanent Injunctive Relief**

8 Defendants argue that Plaintiffs are not entitled to permanent injunctive relief
9 because they fail to show that irreparable harm would be generally applicable to the class.
10 Specifically, Defendants point to Plaintiffs' response to certain interrogatories, including
11 those asking Plaintiffs to identify (1) class and sub-class members who have suffered
12 prejudice as a result of not having had appointed counsel in their immigration
13 proceedings and the prejudice such individuals suffered and (2) Sub-Class Two members
14 who would have been released on bond if they had a bond hearing after being detained
15 for at least six months and whether they had adequate means to afford the minimum
16 \$1,500 bond.

17 Plaintiffs respond by indicating that "*all* Main Class [and Sub-class One] members
18 have suffered prejudice as a result of not having had counsel." Plaintiffs quote from this
19 Court's Class Cert. Order:

20 The unnamed class members are *all* subject to a system that lacks sufficient
21 safeguards to protect their rights. Without a systemic mechanism to identify
22 those who are, in fact, mentally incompetent, they are *all* subject to the same
23 risk of injury that the named Plaintiffs already have encountered.¹⁷

24
25 ¹⁷ In their response, Plaintiffs also objected to the interrogatories on the grounds that information
26 about the members in the Class, Sub-class One, and Sub-class Two is in the Government's exclusive
27 possession, custody, and control and the Government has thus far not produced documents such as A-
28 Files, medical records, and records of immigration proceedings responsive to Plaintiffs' discovery
requests after November 21, 2011. (Pls.' Resp. to Defs.' 1st Interrogs. at 12-14.)

1 (Pls.’ Resp. to Defs.’ 1st Interrogs. at 12-14 [Doc. # 484-1].)

2 The parties agree that the Ninth Circuit has left open the question whether
3 discrimination in violation of the Americans with Disabilities Act or the Rehabilitation
4 Act constitutes irreparable harm *per se*, or whether irreparable harm can be presumed
5 based on such a statutory violation. *Enyart v. Nat’l Conf. of Bar Examiners, Inc.*, 630
6 F.3d 1153, 1165 (9th Cir. 2011).

7 Nevertheless, as this Court has repeatedly recognized in this case, it is the
8 procedural harm that Plaintiffs seek to remedy. Similar to the situation in *Enyart*, where
9 the plaintiff suffered from a disease that impaired her vision and sought a computer
10 software accommodation that would allow her to take the California State Bar entrance
11 examinations, Plaintiffs here seek the implementation of procedures and accommodations
12 that will enable them to meaningfully participate in the immigration court process. The
13 plaintiff in *Enyart* did not seek reprieve from taking the requisite examinations any more
14 than Plaintiffs here seek guaranteed relief from removal or immediate release from
15 custody. The *Enyart* court found that the plaintiff demonstrated irreparable harm in the
16 form of the loss of opportunity to pursue her chosen profession. Likewise, Plaintiffs here
17 have demonstrated harm by not being able to meaningfully participate in their removal
18 hearings and by their having languished in prolonged detention as a result of the
19 immigration court system’s failure to accommodate their mental disabilities or provide
20 the opportunity for a bond hearing.

21 Defendants also argue that Plaintiffs cannot rely on facts regarding the Named
22 Plaintiffs alone to satisfy the irreparable harm requirement. They contend that, in order
23 to establish their claim for a permanent injunction, Plaintiffs must show a “persistent
24 pattern” of individuals being irreparably harmed as a result of Defendants’ policies.
25 (Def.’s Supp. Opp’n at 5 [Doc. # 503] .) The cases on which Defendants rely, however,
26 are not analogous to this case. In *Allee v. Medrano*, 416 U.S. 802, 94 S. Ct. 2191, 40 L.
27 Ed. 2d 566 (1974), the Supreme Court held that a persistent pattern of police misconduct
28 justified the granting of injunctive relief, while isolated incidents of police misconduct

1 under valid statutes would not. *Id.* at 815. Similarly, *Elkins v. Dreyfus*, 2010 WL
2 3947499 (W.D. Wash. 2010), relied on *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001),
3 where, in the context of a standing analysis, the Ninth Circuit set forth two ways a named
4 plaintiff could establish that a threatened injury is likely to recur, *i.e.*, by showing that, at
5 the time of injury, the defendants had a written policy and the harm is traceable to the
6 policy, and by showing that there is a pattern of officially sanctioned conduct. *Elkins*,
7 2010 WL 3947499 at * 9 (citing *Armstrong*, 275 F.3d at 861).

8 In this case, however, the very basis of Plaintiffs' claim is the *absence* of
9 meaningful procedures to safeguard mentally incompetent detainees, *i.e.*, that Defendants
10 have no explicit policy to reasonably accommodate any Sub-Class One members with a
11 Qualified Representative or to provide Sub-Class Two members with an individualized
12 custody hearing after the presumptively reasonable period of six months. The Court's
13 three prior preliminary injunction orders amply illustrate the harms that can ensue from
14 the absence of procedures. Every class member who is mentally incompetent suffers the
15 same harm from this absence of adequate procedures and need not show, like Plaintiffs
16 Khukhryanskiy and Martinez did, that they have been *actually* ordered removed or been
17 detained for prolonged periods of time before they can obtain permanent injunctive relief.
18 *See Robbins*, 2013 WL 1607706 at *13 (preliminary injunction appropriate as to an entire
19 class where all class members faced a likelihood of deprivation of constitutional rights,
20 even though only some class members were likely to be granted release or relief from
21 removal); *Rodriguez v. Hayes*, 591 F.3d at 1125 (class certification appropriate because
22 class members sought "uniform relief from a practice applicable to all of them" based on
23 INA's mandatory detention provisions).

24 The Court finds that Plaintiffs have established that the absence of adequate
25 procedures to safeguard the rights of mentally incompetent detainees constitutes
26 irreparable harm as to Sub-Class One and Sub-Class Two members. Finally, as the Court
27 has found in its previous orders, the balance of hardships and public interest also weigh in
28

1 favor of granting injunctive relief. [Doc. # 107 at 41-42; Doc. # 215 at 24-25; Doc. # 285
2 at 11-12.]

3 V.

4 **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

5 As noted above, Plaintiffs have filed a fifth motion for a preliminary injunction on
6 behalf of seven class members, seeking both appointment of a Qualified Representative
7 and a bond hearing.¹⁸ In light of the Court's order granting in part Plaintiffs' motion for
8 partial summary judgment and granting permanent injunctive relief, the motion for a
9 preliminary injunction is **DENIED** as moot. The Court notes, however, that Defendants
10 assert that two purported class members, Elijah Ibanga and Nicolas Guerrero-Ramirez,
11 are not class members and therefore lack standing. In order to clarify the scope of
12 Defendants' obligations following entry of partial summary judgment, the Court
13 addresses the standing of these two purported class members and those similarly situated.

14 **A. Factual Background of Plaintiffs Ibanga and Guerrero**

15 **1. Elijah Ibanga**

16 According to the DHS, Ibanga was admitted to the United States as a LPR in 1980,
17 and he has remained here since that time. (First Decl. of Carmen Iguina ("First Iguina
18 Decl.") ¶ 17, Ex. 335 at 2 [Doc. # 527-3].) He is allegedly a native and citizen of
19 Nigeria, although this fact has not been proven in his removal proceedings. (*Id.* at 1, 3.)
20 On December 4, 1992, Plaintiff Ibanga was convicted of a felony under Cal. Penal Code
21 § 288.5(a) and sentenced to 24 years in prison. (Decl. of Neelam Ihsannulah
22 ("Ihsannulah Decl.") ¶ 9, Ex. 8 at 579-581 [Doc. # 554-1].)

23 On December 7, 2011, an Immigration Judge found that Ibanga was not competent
24 to represent himself in his removal proceedings based, in part, on medical reports stating
25 that he suffers from a serious mental illness. (First Iguina Decl. ¶ 17, Ex. 335 at 17.)
26

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¹⁸ On March 21, 2013, Plaintiffs notified the Court that class member Vasily Zotov was released from custody and withdrew the motion with respect to his claims. [Doc. # 568.]

1 According to the transcript of Ibanga’s proceedings on Decem ber 7, 2011, the
2 Immigration Judge asked the DHS to “provide some type of legal assistance to” Ibanga in
3 light of his mental illness, but the DHS fa iled to do so, arguing t hat the Immigration
4 Judge lacked authority to issue such an order. (*Id.* at 29.) Due to Ibanga’s incompetency,
5 the Immigration Judge found that she could no t take pleadings as to his rem ovability and
6 terminated proceedings. (*Id.*)

7 The DHS appealed the ter mination order to the Board of Imm igration Appeals
8 (“BIA”). (First Iguina Decl. ¶ 14, Ex. 320 at 2.) On February 24, 2013, Attorney Walter
9 H. Ruehle filed a Form EOIR-27, Notice of Entry of Appearance as Attorney or
10 Representative Before the Board of Immigr ation Appeals, on behalf of Ibanga.
11 (Ihsannulah Decl. ¶ 10, Ex. 9.) Ibanga rema ins represented before the BIA. As of
12 January 18, 2013, Ibanga had been in Immi gration and Customs Enforcement (“ICE”)
13 custody for 1466 days, since January 2009. (First Iguina Decl. ¶ 14; Second Decl. of
14 Carmen Iguina (“Second Iguina Decl.”) ¶ 3, Ex. 382 [Doc. # 555-1] ; Ihsannulah Decl.
15 ¶ 10, Ex. 9 at 80.)

16 2. Nicolas Guerrero-Ramirez

17 According to the DHS, Guerrero is a nativ e and citizen of Mexico and has been a
18 LPR of the United States since 1991. (Firs t Iguina Decl. ¶ 40, Ex. 379.) In 2006,
19 Guerrero was convicted under Cal. Penal Code § 261(a)(2) and sentenced to eight years
20 in prison. (Ihsannulah Decl. ¶ 4, Ex. 3.) He was placed in rem oval proceedings on
21 November 10, 2011. (First Igui na Decl. ¶ 20, Ex. 338 at 1.) Since being incarcer ated in
22 2006, Guerrero has undergone several mental health assessments and has at various times
23 been diagnosed with different mental illnesses of varying degrees of severity. (*See id.* ¶¶
24 26-31, Exs. 344-49.) An Imm igration Judge has twice found t hat Guerrero is not
25 competent to represent hims elf in his proceedings. (*Id.* ¶¶ 20-21, Exs. 338-39.) On
26 March 15, 2012, while Guerrero was *pro se*, an Immigration Judge determ ined that he
27 was not competent to represent hims elf and terminated proceedings. (*Id.* ¶ 20, Ex. 338.)
28 The DHS appealed, and the BIA vacated the decision and remanded for further

1 proceedings on July 18, 2012. (*Id.* ¶ 41, Ex. 380.) On September 17, 2012, the
2 Immigration Judge again found Guerrero to be incompetent and terminated his removal
3 proceedings, and the DHS again appealed. (*Id.* ¶ 21, Ex. 339.) On January 2, 2013,
4 Attorney Ryan C. Morris filed a Form EOIR-27 and entered his appearance on behalf of
5 Guerrero before the BIA. (Ihsannulah Decl. ¶ 6, Ex. 5.)

6 On September 19, 2012, while Guerrero remained *pro se* and after termination of
7 his removal proceedings, an Immigration Judge ordered that he be released from custody
8 subject to the posting of a bond of \$1,500. (Ihsannulah Decl. ¶ 7, Ex. 6.) Guerrero did
9 not post bond and remains in detention. The DHS appealed this order, and on December
10 21, 2012 the BIA sustained the appeal and ordered that Guerrero remain detained without
11 bond notwithstanding termination of his proceedings because “he is a danger to the
12 community.” (*Id.* ¶ 8, Ex. 7.) As of January 18, 2013, Guerrero had been in ICE custody
13 for 444 days, apparently since his release from state custody on November 1, 2011. (First
14 Iguina Decl. ¶ 40, Ex. 379.)

15 **B. Discussion**

16 Defendants argue that Ibanga and Guerrero are not presently class members
17 because they are now represented by counsel before the BIA. It is undisputed that Ibanga
18 and Guerrero suffer from a serious mental disorder or defect that renders them
19 incompetent to represent themselves in detention or removal proceedings. (*See* First
20 Iguina Decl. ¶ 17, Ex. 335 at 17 (Immigration Judge’s finding as to Ibanga); ¶¶ 21, 26-31,
21 Exs. 339, 344-49 (Mental Health reports and Immigration Judge’s finding as to
22 Guerrero).) Indeed, Immigration Judges have terminated both Ibanga’s and Guerrero’s
23 proceedings based on incompetency findings. (*See* First Iguina Decl. ¶ 17, Ex. 335
24 (termination order re Ibanga); ¶ 20, Ex. 338 (first termination order re Guerrero).)
25 Moreover, both Ibanga and Guerrero have been detained in ICE custody for more than
26 six months. (First Iguina Decl. ¶ 14.)

27 The immigration regulations require that all representatives file a Notice of Entry
28 of Appearance before appearing on behalf of any alien before the Immigration Court,

1 BIA, U.S. Customs and Immigration Services (“USCIS”), ICE, or U.S. Customs and
2 Border Patrol (“CBP”). 8 C.F.R. § 1003.17(a) (requiring filing of Form EOIR-28 prior to
3 entry of appearance before Immigration Court); 8 C.F.R. § 1003.38(b) (requiring filing of
4 Form EOIR-27 before entry of appearance before BIA); 8 C.F.R. § 103.2(a)(3) (requiring
5 filing of Form G-28 prior to entry of appearance in adjudication of benefit requests before
6 the DHS). According to the Immigration Court Practice Manual, “[a]ll representatives
7 must file a Notice of Entry of Appearance . . . (Form EOIR-28).” U.S. Dep’t of Justice,
8 EOIR, Office of the Chief Immigration Judge Practice Manual, Ch. 2.1 at 15. The
9 Practice Manual also states that “[t]he Immigration Court will not recognize a
10 representative using a Form EOIR-27 or a Form G-28.” *Id.* at 16. Similarly, the BIA
11 Practice Manual expressly requires the filing of a Form EOIR-27 and states that “the
12 Board will not recognize a representative using Form EOIR-28.” U.S. Dep’t of Justice,
13 EOIR, BIA Practice Manual, Ch. 2.1 at 17. In fact, the Forms themselves warn parties
14 that the filing of a form with one body is not sufficient to satisfy the requirement as to the
15 other. (*See* Second Iguina Decl. ¶ 19, Ex. 398.) Thus, entry of appearance of a Qualified
16 Representative before the BIA does not establish representation for all purposes,
17 specifically, for ensuring that an incompetent alien is adequately represented in his
18 detention proceedings.

19 The immigration regulations also treat bond determination hearings “separate and
20 apart from” any “deportation or removal proceeding or hearing.” 8 C.F.R. § 1003.19(d);
21 *Matter of Adeniji*, 22 I&N Dec. 1102, 1115 (BIA 1999) (declining to consider
22 information presented during the respondent’s removal hearing in connection with his
23 appeal of a bond determination because “[c]ustody proceedings must be kept separate and
24 apart from, and must form no part of, removal proceedings.”). Thus, the regulations
25 themselves suggest that an alien who is represented in an appeal of an order in removal
26 proceedings is not necessarily represented for detention purposes.

27 Defendants’ position is further undermined by the factual circumstances
28 surrounding Guerrero’s detention. Guerrero has been found incompetent by an

1 Immigration Judge twice, and yet the DHS has pursued two appeals of the Immigration
2 Judge's termination orders. (First Iguina Decl. ¶¶ 20-21, Exs. 338-39.) After an
3 Immigration Judge terminated his proceedings, Guerrero appeared before the same
4 Immigration Judge at a bond hearing, and the Immigration Judge granted his release upon
5 posting of a bond. (Ihsannul ah Decl. ¶ 7, Ex. 6.) The DHS's two appeals—of the
6 termination order and of the bond redetermination order—proceeded separately, which
7 the BIA explicitly noted in its order vacating the bond redetermination. (*Id.* ¶ 8, Ex. 7 n.1
8 (“A separate decision addressing the respondent's removal proceedings will be issued at a
9 later date.”).)

10 Notwithstanding his subsequent release from detention, Vasily Zotov's case is
11 nonetheless illustrative of the Court's point. Zotov's removal proceedings are on appeal
12 before the BIA for the third time since his case began. (*See* First Iguina Decl. ¶ 5, Ex.
13 320; Second Iguina Decl. ¶ 14, Ex. 393.) Although Zotov was represented during his
14 initial proceedings at the Los Angeles Immigration Court, he filed his first appeal *pro se*.
15 (Second Iguina Decl. ¶ 14, Ex. 393 at 3.) He remained *pro se* through remand and
16 renewed court proceedings, until he was appointed counsel after filing his second appeal
17 in early 2012. (*Id.* at 4.) *Pro bono* counsel stated in his brief that the representation
18 would “end with the Board's decision in this appeal and [would] not extend to any
19 subsequent proceedings.” (*Id.* at 4 n.1.) Zotov's case was again remanded, and he
20 remains unrepresented, including at his most recent removal and custody redetermination
21 hearings on February 11 and 14, 2013, respectively. (*See* Notice of Admin. Dec. re
22 Vasily Zotov [Doc. # 559] , Exs. A-B.) Despite the fact that Zotov had been in ICE
23 custody since September 2010, it does not appear from the record that Zotov's *pro bono*
24 appellate counsel attempted to obtain his release. (*See* Second Iguina Decl. ¶ 3, Ex. 382.)
25 Zotov's case, like those of several other class members named in the instant Motion,
26 illustrates that detained aliens are often equipped with only piecemeal representation
27 during the course of their proceedings and that representation existing at one stage of the
28 proceedings does not necessarily carry over to other stages.

1 The Court therefore finds that Guerrero and Ibanga are not excluded from the class
2 merely because they have obtained counsel for appeals of removal determinations if they
3 remain detained without representation in their detention proceedings. Individuals like
4 Guerrero and Ibanga share an injury with the class at large, *see Wal-Mart Stores, Inc. v.*
5 *Dukes*, ___ U.S. ___, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011), because their
6 detention is prolonged due to delays caused by their mental disability, and alone they are
7 unable to ensure that their detention proceedings are conducted fairly. Indeed, the
8 definition of the class itself is clear: the class extends to individuals “who presently lack
9 counsel in their detention *or* removal proceedings.” Accordingly, Ibanga, Guerrero, and
10 individuals similarly situated to them are within the class certified by this Court.
11 Moreover, because both Ibanga and Guerrero have been found incompetent to represent
12 themselves in their proceedings and have been detained for more than six months, they
13 are members of both Sub-Classes One and Two.

14 VI.

15 CONCLUSION

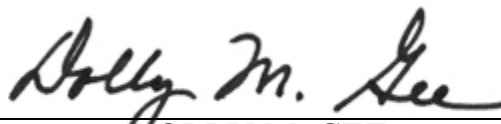
16 The Court **GRANTS** Plaintiffs’ motion for partial summary judgment on the
17 grounds that (1) Section 504 of the Rehabilitation Act requires Defendants to provide
18 Qualified Representatives to represent Sub-Class One members in all aspects of their
19 removal and detention proceedings (“Count Four”), and (2) the INA requires the
20 provision of a custody redetermination hearing for individuals in Sub-Class Two who
21 have been detained for a prolonged period of time greater than 180 days (“Count Eight”).
22 Plaintiffs’ motion for partial summary Judgment is **DENIED** in all other respects.
23 Plaintiffs’ motion for preliminary injunction is **DENIED** as moot. In addition, Plaintiffs’
24 Request to Unseal the Court’s Tentative Order [Doc. # 586] is **DENIED** because the
25 “tentative” ruling, by its very nature, was never filed, either under seal or otherwise.

26 Under Fed. R. Civ. P 54(b), the Court may direct entry of final judgment as to
27 fewer than all claims if it determines that “there is no just reason for delay.” The record
28 in this case demonstrates that delaying relief for class members results in an inability to

1 fairly participate in removal proceedings and may result in prolonged detention without
2 adequate representation or a bond hearing for an ever-increasing number of class
3 members. The Court finds that there is no just reason for delay and therefore enters
4 judgment for Plaintiffs as to Counts Four and Eight. Accordingly, the Court orders that
5 judgment be entered and a permanent injunction shall issue in accordance with this
6 Order. A Judgment and Permanent Injunction is filed concurrently herewith.

7
8 **IT IS SO ORDERED.**

9
10 DATED: April 23, 2013



DOLLY M. GEE
United States District Judge