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

KELVIN HERNANDEZ ROMAN, *et al.*,

ED CV 20-00768 TJH

Petitioners-Plaintiffs,

v.

Order

CHAD T. WOLF, *et al.*,

Respondents-Defendants.

The Court has considered the motions by the Petitioners-Plaintiffs to enforce the preliminary injunction [dkt # 315] and the Government’s motion to dismiss [dkt # 320], together with the moving and opposing papers.

On April 13, 2020, Petitioners-Plaintiffs Kelvin Hernandez Roman, Beatriz Andrea Forero Chavez, and Miguel Aguilar Estrada, on behalf of themselves and all others similarly situated, initiated this action by filing their combined Petition for a Writ of *Habeas Corpus*, pursuant to 28 U.S.C. § 2241, and Complaint for Injunctive and Declaratory Relief. This action is based on alleged Fifth Amendment substantive due process violations at the Adelanto Immigration and Customs Enforcement Processing Center [“Adelanto”] during the COVID-19 pandemic. Also, on April 13, 2020, the Petitioners-Plaintiffs moved for provisional class certification so that they could obtain

1 class-wide preliminary injunctive relief.

2 After provisionally certifying the class, the Court issued a preliminary injunction,
3 order the Government to, *inter alia*, immediately put into effect the recommendations
4 and guidelines issued by the United States Centers for Disease Control and Prevention
5 [“CDC Provision”]. The Government, then, appealed the provisional class certification
6 order and the preliminary injunction to the Ninth Circuit Court of Appeals. The Ninth
7 Circuit stayed the preliminary injunction, with the exception of the CDC Provision,
8 pending appeal. On September 22, 2020, the Court granted Petitioners’-Plaintiffs’
9 motion to fully certify the class.

10 On September 23, 2020, the Ninth Circuit issued a Memorandum Opinion with
11 regard to the provisional class certification order and the preliminary injunction,
12 holding that, *inter alia*: (1) Petitioners-Plaintiffs “due process claims [in the Complaint
13 arose] under the Constitution and [Petitioners’-Plaintiffs’] invoked 28 U.S.C. § 1331,
14 which provides subject matter jurisdiction;” and (2) This Court did not abuse its
15 discretion by issuing a preliminary injunction. However, given that five months had
16 passed since this Court issued its preliminary injunction and that the facts and science
17 have evolved, the Ninth Circuit vacated many of the provisions in the preliminary
18 injunction, including the CDC Provision, and remanded the matter with instructions to
19 issue an updated preliminary injunction.

20 Before the Ninth Circuit issued its Memorandum Opinion, the Petitioners-
21 Plaintiffs moved to enforce the CDC Provision, and the Government moved to dismiss
22 the Complaint.

23 Given the Ninth Circuit’s September 23, 2020, Memorandum Opinion,
24 Petitioners’-Plaintiffs’ motion to enforce the CDC Provision is, now, moot.

25 The Government moved to dismiss based on Fed. R. Civ. P. 12(b)(1), for lack
26 of subject matter jurisdiction, and Fed. R. Civ. P. 12(b)(6), for failure to state a claim.
27 The Government argued that Petitioners-Plaintiffs failed to state a claim in their
28 Complaint because: (1) A class had not yet been fully certified; (2) Injunctive relief is

1 not an appropriate remedy for conditions of confinement claims; and (3) The allegations
2 in the Complaint failed, as a matter of law, to allege constitutional violations.
3 Additionally, the Government argued that Petitioners-Plaintiffs failed to properly and
4 timely serve the Complaint and that it filed “this dispositive motion without waiving
5 [its] right to seek dismissal of the Complaint for failure to properly serve the summons
6 and complaint.”

7 With regard to subject matter jurisdiction, the Ninth Circuit specifically held in
8 its Memorandum Opinion that this Court does, indeed, have subject matter jurisdiction.

9 Based on this Court’s full certification of the class and the Ninth Circuit’s
10 September 23, 2020, Memorandum Opinion, the Government’s remaining arguments
11 as to its motion to dismiss are foreclosed.

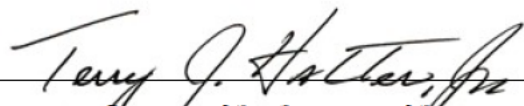
12 Finally, the Government provided no authority to support its reservation of rights
13 to file in the future a Fed. R. 12(b)(4) motion to dismiss for insufficient process. *See*
14 Fed. R. Civ. P. 12(h).

15
16 Accordingly,

17
18 **It is ordered** that Petitioner’-Plaintiffs’ motion to enforce the preliminary
19 injunction be, and hereby is, **Denied** as moot.

20
21 **It is further Ordered** that the Government’s motion to dismiss be, and hereby
22 is, **Denied**.

23
24 Date: September 25, 2020

25
26 
27 **Terry J. Hatter, Jr.**
28 **Senior United States District Judge**