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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

8 ARTURO MARTINEZ BAÑOS, et al.,

9 Plaintiffs-Petitioners,

10 v.

11 NATHALIE ASHER, et al.,

12 Defendants-Respondents.

Case No. C16-1454-JLR

**ORDER ON CROSS-MOTIONS  
FOR SUMMARY JUDGMENT**

13  
14 Having reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida,  
15 United States Magistrate Judge, and the balance of the record, and Court finds and **ORDERS:**

16 1. The Report and Recommendation is **ADOPTED**.

17 2. Mr. Flores's motion for summary judgment, Dkt. 72, is **GRANTED in part and**  
18 **DENIED in part**, and the Government's cross-motion for summary judgment, Dkt. 75, is  
19 **GRANTED in part and DENIED in part**.

20 3. The Court previously certified a class defined as "all individuals who (1) were  
21 placed in withholding only proceedings under 8 C.F.R. § 1208.31(e) in the Western District of  
22 Washington after having a removal order reinstated, and (2) have been detained for 180 days (a)

1 without a custody hearing or (b) since receiving a custody hearing.” The Court appointed Edwin  
2 Flores Tejada (“Mr. Flores”) as the class representative and his counsel as class counsel.

3 4. Judgement is **GRANTED** in favor of class members and against the Government  
4 with respect to class members’ second cause of action alleging that they are entitled to automatic  
5 custody hearings after six months detention. *See* Dkt. 38 at ¶¶ 96-98.

6 5. Judgement is **GRANTED** in favor of the Government and against class members  
7 with respect to class members’ third cause of action alleging a due process violation. *See* Dkt.  
8 38 at ¶¶ 99-102.

9 6. The Government has violated 8 U.S.C. § 1231(a)(6), as construed by the Ninth  
10 Circuit in *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081 (9th Cir. 2011), by failing to provide  
11 class members with individualized custody hearings before an IJ where the government is  
12 required to justify continued detention by clear and convincing evidence.

13 7. The Government is **ENJOINED** from enforcing their policy and practice of  
14 failing to provide class members with individualized custody hearings before an IJ every six  
15 months.

16 8. The Government shall provide each class member with a custody hearing before  
17 an IJ as soon as the individual’s detention reaches 180 days.

18 9. For class members who have already been detained for more than 180 days as of  
19 the date of this Order, but who have not yet received a custody hearing before an IJ, the  
20 Government shall provide such a hearing **within 21 days** of this Order.

21 10. The Government shall thereafter provide custody hearings to class members at  
22 every 180-day mark of their detention.  
23

1 11. All of the custody hearings conducted pursuant to this Order shall comply with  
2 the Ninth Circuit’s procedural requirements, as established in *Diouf II, Singh v. Holder*, 638 F.3d  
3 1196 (9th Cir. 2011), and *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015).

4 12. **Within 30 days** of this Order, the Government shall file a report describing the  
5 steps taken to timely identify all current and future class members and to ensure that they receive  
6 custody hearings and notice of those hearings. The Government also shall file under seal a list  
7 containing each class member’s name and “A number,” the date of any scheduled or completed  
8 custody hearing, the IJ who conducted or will conduct the hearing, the bond amount set, if any,  
9 and whether any appeal has been taken.

10 13. The Government shall provide simultaneous notice of class members’ custody  
11 hearings to both class members and class counsel.

12 14. If the Government determines that an individual is not a class member even  
13 though that individual (a) was placed in withholding only proceedings after have a removal order  
14 reinstated and (b) has been in the Government’s custody for 180 days in the Western District of  
15 Washington without a custody hearing, or since reciving a custody hearing, the Government  
16 shall notify class counsel of that individual’s circumstances and the reason why they believe that  
17 individual is not a class member.

18 15. This Court retains jurisdiction to entertain disputes over the enforcement of this  
19 Order and to enter further orders as may be necessary or appropriate to implement and enforce  
20 the provisions of this Order and Judgment.

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16. The Clerk shall send a copy of this Order to the parties and to Judge Tsuchida.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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JAMES L. ROBERT  
United States District Judge