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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

YOLANY PADILLA, et al.,  
  
Plaintiffs,  
  
v.  
  
U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT, et al.,  
  
Defendants.

CASE NO. C18-928 MJP  
  
ORDER DENYING MOTION FOR  
RECONSIDERATION

The above-entitled Court, having received and reviewed Defendants’ Motion for Reconsideration (Dkt. No. 92), Plaintiffs’ Response to Defendants’ Motion for Reconsideration (Dkt. No. 98), all attached declarations and exhibits, and relevant portions of the record, rules as follows:

IT IS ORDERED that the motion is DENIED.

**Discussion**

Defendants seek reconsideration of the Court’s order granting in part and denying in part their motion to dismiss. (Dkt. No. 91.) Reconsideration is disfavored in this district, absent a

1 demonstration of “manifest error” in the prior ruling or “new facts or legal authority which could  
2 not have been brought to [the Court’s] attention earlier with reasonable diligence.” Local Rule  
3 7(h).

4 Defendants assign “manifest error” on two bases:

5 1. Judicial Review is Barred by 28 U.S.C. § 1252(a)(2)(A)(iv) and (e)(3)

6 Defendants assert that the Court ignored 28 U.S.C. § 1252(a)(2)(A)(iv), which bars  
7 judicial review of “procedures and policies adopted by the [Secretary] to implement the  
8 provisions of section 1225(b)(1).” (Motion at 3.) This argument misses the point of Plaintiffs’  
9 legal theory and the rationale of the Court’s Order. The gravamen of Plaintiffs’ lawsuit is that  
10 Defendants have not adopted any formal procedure or policy regarding when the credible fear  
11 interviews or the bond hearings of which they complain will be held; hence the issue of  
12 impermissible “indefinite detention.” The Court accepted this argument and finds no manifest  
13 error in having done so.

14 Similarly, Defendants assert that the Court ignored § 1252(e)(3), which would restrict  
15 any “permissible” challenge to the constitutionality of section 1225(b)(1) or the “procedures and  
16 policies adopted by the [Secretary] to implement the provisions of section 1225(b)(1)” to  
17 lawsuits filed in the District of Columbia. But again, what is being challenged here is *not* the  
18 constitutionality of § 1225(b)(1), but rather Defendants’ *failure to implement the statute*. Were  
19 the Court to adopt Defendants’ reasoning, the government could insulate itself from review  
20 merely by declining to take any action or commit its policies to writing. In neither instance does  
21 the Court find any manifest error in ruling that (on those causes of action which were permitted  
22 to proceed) Plaintiffs have stated a plausible claim upon which relief may be granted.

1        2. The Court's Reliance on *Jennings* is Erroneous

2            Defendants maintain that the differences between the language of § 1252(b)(9) – the  
3 statute at issue in Jennings – and § 1252(a)(2)(A)(i) – the statute at issue in the instant case –  
4 render the Court's reliance on the jurisdictional ruling in Jennings inappropriate. But the Court's  
5 Order acknowledged the differences in the statutory provisions between Jennings and Plaintiffs'  
6 case and found them irrelevant. The same constitutional issue (and the rationale upon which the  
7 Jennings court found jurisdiction) exists in both cases and, in both cases, supports a finding of  
8 jurisdiction.

9            Regarding Jennings, Defendants assert that the plaintiffs in that case challenged only “the  
10 constitutionality of their mandatory detention, separate and apart from any aspect of their  
11 removal or expedited removal proceedings.” (Motion at 7.) Because the Plaintiffs here have  
12 already been ordered removed and will only be released if their fear of return is found to be  
13 credible, Defendants argue that they *are* impermissibly challenging the process by which their  
14 removability will be determined. The Court is not persuaded. Whether the Plaintiffs here are in  
15 custody or not, they are still subject to removal until their credible fear claims are evaluated.  
16 Granting Plaintiffs their constitutional rights to contest an indeterminate period of detention is  
17 not a challenge to the removal proceedings themselves.

18            Defendants have failed to establish manifest error in the Court's ruling. Their motion for  
19 reconsideration of that ruling is DENIED.

20            The clerk is ordered to provide copies of this order to all counsel.

21            Dated February 12, 2019.

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23            

24            Marsha J. Pechman  
United States Senior District Judge