UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSE ANTONIO FRANCO-GONZALES, ET AL., Petitioner, v. ERIC H. HOLDER, JR. ATTORNEY GENERAL, ET AL., Respondents.	Case No. CV 10-02211 DMG (DTBx) **ORDER RE PLAINTIFF YONAS WOLDEMARIAM'S MOTION FOR A PRELIMINARY INJUNCTION**

This matter is before the Court on the Motion for a Preliminary Injunction filed by Plaintiff Yonas Woldemariam ("Plaintiff"). The Court held a hearing on July 29, 2011.[1]

[1] Plaintiffs originally brought their Motion as to Plaintiff Woldemariam and putative plaintiff Jose Antonio Moreno-Vasquez. In the Order dated July 18, 2011, however, the Court determined that because Moreno had been provided with both representation and a custody hearing, Moreno did not have standing and therefore denied Plaintiffs' motion to add him as a new Named Plaintiff. [Doc. # 242.] Accordingly, the Court addresses Plaintiffs' Motion only as to Plaintiff Woldemariam. On July 28, 2011, Plaintiffs filed a Notice of Lodging Alternative Second Amended Class Action Complaint [Doc. # 248] stating that Moreno did not have representation, and is not represented, in his removal proceedings. At the July 29, 2011 hearing, Defendants asserted that Moreno may have counsel on his appeal before the Board of Immigration Appeals ("BIA"). In light of the lack of clarity regarding the status of Moreno's representation, the Court will defer ruling on whether the Court's July 18, 2011 Order regarding Plaintiffs' Motion for Leave to File Second Amended Complaint [Doc. #242] should be

Having duly considered the respective positions of the parties, as presented in their briefs and at oral argument, the Court now renders its decision. For the reasons set forth below, Plaintiff's Motion is GRANTED.

I.

PROCEDURAL BACKGROUND

On June 13, 2011, Plaintiff Yonas Woldemariam filed a Motion for a Preliminary Injunction. Defendants filed an Opposition on June 29, 2011 and Plaintiff filed a Reply on July 13, 2011.

II.

FACTUAL BACKGROUND

Plaintiff Woldemariam is a 48-year-old lawful permanent resident. He is ethnically Eritrean, although he was born in Ethiopia. (Decl. of Yohannes Woldemariam [Doc. # 217-3] ("Woldemariam Decl.") ¶ 2.) Woldemariam arrived in the United States on a non-immigrant visa in 1979, when he was approximately 16 years old. (Woldemariam Decl. ¶ 4.) Woldemariam became a lawful permanent resident on September 11, 1983. (Decl. of Ahilan Arulanantham [Doc. # 217-2] ("Arulanantham Decl.") ¶ 25, Ex. 171.)

On September 2, 2010, United States Immigration and Customs Enforcement ("ICE") took custody of Woldemariam. (Decl. of Neelam Ihsanullah [Doc. # 232-1] ("Ihsanullah Decl.") ¶ 4, Ex. 3.) The Notice to Appear ("NTA") charged Woldemariam with being removable under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, as amended ("INA"), for having been "convicted of an aggravated felony as defined in section 101(a)(43)(G) of the act, a law relating to a theft offense (including receipt of

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amended, pending the Court's review of the parties' supplemental briefs on this matter. The Motion for Preliminary Injunction as to Moreno is hereby taken under submission.

stolen property) or burglary offense for which the term of imprisonment at least 1 year was imposed."[2] (Arulanantham Decl. ¶ 25, Ex. 171.)

Woldemariam is currently detained at the Sacramento County Jail. (Woldemariam Decl. ¶ 13.)

A. Woldemariam's Psychiatric Evaluation

Woldemariam has been diagnosed with schizoaffective disorder, bipolar type. (Ihsanullah Decl. ¶ 7, Ex. 6.) According to Roz Wright, Psy.D., a staff psychologist at Bay Area Psychological Testing Associates in San Francisco, who conducted a psychiatric evaluation of Plaintiff at the Yuba County Jail on January 8, 2011, Plaintiff "suffers from a severe, chronic mental illness," which "renders him exceptionally vulnerable." (*Id.* at 6-7.)

Dr. Wright states that although Plaintiff is receiving mental health care and taking anti-depressant and anti-psychotic medications, Plaintiff:

> continues to suffer from significant affective distress, delusional beliefs, and auditory hallucinations . . . [and] continues to hear angry voices in his head, many of which he believes are the product of an evil, all-knowing and all-powerful being intent on harming him.

(*Id.* at 5.) Dr. Wright noted that Plaintiff arrived to the interview with tissue in his ears, which Plaintiff explained "was there to help lower the volume of 'the voices' and to block out environmental sounds exacerbate [sic] his anxiety." (*Id.*) Plaintiff explained to Dr. Wright that "the 'voices in (his) head' are symptoms of his mental illness . . . he is constantly 'fighting against them' . . . [and that] the voices belong to 'evil spirits' and 'demons' whose intention it is to harm him." (*Id.* at 6.)

[2] The NTA indicates that on March 17, 2009, Plaintiff was convicted of second degree robbery in violation of Cal. Penal Code § 211 and was sentenced to serve two years at the California Department of Corrections." (Arulanantham Decl. ¶ 25, Ex. 171.)

Plaintiff believes that "his psychosis is controlled by a 'switch' that doctors implanted in his head when he was hospitalized years ago following a car accident." (*Id.*)

B. Immigration Court Proceedings

Plaintiff appeared *pro se* before Hon. Michael J. Yamaguchi, Judge of the San Francisco Immigration Court, on September 27, 2010 and on October 18, 2010. At each of those hearings, Judge Yamaguchi continued Plaintiff's removal proceedings in order to permit Plaintiff to retain counsel. On November 8, 2010, attorney Kira Murray entered her appearance on Plaintiff's behalf. (Ihsanullah Decl. ¶ 5, Ex. 4.)

Ms. Murray has twice sought and received continuances in Plaintiff's case in order to secure an expert report and to obtain a psychiatric evaluation that would assess Plaintiff's competency for purposes of removal proceedings. On March 24, 2011, Ms. Murray filed a motion to continue Plaintiff's individual merits hearing, then set for April 12, 2011 or, in the alternative, to change the merits hearing to a competency hearing. (Ihsanullah Decl. ¶ 7, Ex. 6.) Ms. Murray attached Dr. Wright's psychological evaluation and requested additional time for Dr. Wright to evaluate Plaintiff's "level of competence and ability to testify meaningfully in his own removal proceedings." (*Id.*) Judge Yamaguchi granted Plaintiff's motion on March 25, 2011. (*Id.*)

On June 8, 2011, Ms. Murray filed a request for a bond hearing for Plaintiff. (Ihsanullah Decl. ¶ 8, Ex. 7.) In their opposition, Defendants argued that Plaintiff was not eligible for a custody hearing because he was detained pursuant to section 236(c) of the Immigration and Nationality Act ("INA") and because "the extensive continuances" were attributable, "in significant part, to the respondent's own requests." (*Id.*) On June 20, 2011, the Immigration Judge denied Plaintiff's request because he "agree[d] with the reasons stated in the opposition to the motion" and because Plaintiff was in "mandatory custody per 236(c)." (Ihsanullah Decl. ¶ 9, Ex. 8.)

According to Plaintiff, a competency hearing was set for Plaintiff on July 19, 2011. (Mot. at 9.) Neither party presents the Court with evidence establishing whether the hearing was, in fact, held and/or the results of such hearing.

III.

DISCUSSION

"Toutes choses sont dites déjà; mais comme personne n'écoute, il faut toujours recommencer."[3]

André Gide, *Le Traité du Narcisse (1892)*

Plaintiff seeks a custody hearing at which the Government must justify his continued detention on the basis that he is either a flight risk or that he will be a danger to the community.

A. Plaintiff Is Likely To Succeed On The Merits Of His Claims

Defendants contend that Plaintiff is ineligible for the injunctive relief he seeks because Plaintiff is subject to mandatory detention under 8 U.S.C. § 1226(c) and not eligible for a bond hearing so long as the detention is reasonable or expeditious and because Plaintiff is required to first exhaust all administrative remedies. Defendants also assert jurisdictional arguments which the Court will address first.

1. The Court's Jurisdiction Over this Action

As a preliminary matter, Defendants argue that the Court is without jurisdiction to provide Mr. Woldemariam the relief he seeks because none of the named Defendants are proper respondents and because he is not confined within this district.[4] In support of

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[3] As André Gide, the French author, once observed, "Everything has been said already; but as no one listens, we must always begin again."

[4] Defendants also argue that, under *Zepeda v. U.S. Immigration and Naturalization Service,* 753 F.2d 719 (9th Cir. 1983), the Court may issue an injunction only if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim and may not attempt to determine the rights of persons not before the Court. (Defs.' Opp'n at 7 n.1.) It is unclear why Defendants think that *Zepeda* is relevant here. The Court's orders granting preliminary injunctions to date have been narrowly tailored to the circumstances of the individual plaintiffs who have sought injunctive relief. Here, the parties have not challenged the Court's personal jurisdiction over them. Indeed, personal jurisdiction can be, and has been, waived. *See* Fed. R. Civ. P. 12(h)(1). Insofar as Defendants assert that Woldemariam's Motion should be denied for improper venue, the Court finds that Defendants have waived such a defense as well. *Id.* Plaintiffs point out that Defendants' assertions regarding venue would also have applied to Plaintiffs Khukhryanskiy (Tacoma), Martinez (San Diego), and Zhalezny (Sacramento), but that Defendants have not, until now, ever raised a challenge to venue. *See Wachovia Bank v. Schmidt*, 546

their position, Defendants cite to *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S.Ct. 2711 (2004), where the Supreme Court held that whenever a 28 U.S.C. § 2241 *habeas* petitioner seeks to challenge his present physical custody, he should name his warden as respondent and file the petition in the district of confinement. *Id.* at 447. *Padilla* is inapposite here simply because Plaintiff does not bring a *habeas corpus* petition.[5] The question currently before the Court is not "[Plaintiff's] physical confinement," as Defendants frame it (Defs.' Opp'n at 7 n.1), or whether Plaintiff should now be released, but rather, whether Plaintiff is entitled to a bond hearing at which the Government will bear the burden of establishing that his confinement is necessary. Unlike in *Padilla,* where the petitioner filed a *habeas* petition alleging that his military detention was unconstitutional, Plaintiff in this case contends that, due to his prolonged detention, Defendants' failure to provide him with a bond hearing is unconstitutional.

Thus, while Plaintiff's ultimate goal may be his release from detention, Plaintiff would not be entitled to such relief from this Court notwithstanding that he prevails on this Motion. The only relief he will obtain here is a custody hearing.

2. Extension of the Six-Month Rule to Section 1226(c) Detentions

Defendants themselves acknowledge that mandatory detention under 8 U.S.C. § 1226(c) is authorized only for the "'limited period' necessary to complete removal proceedings" and the Ninth Circuit has held that mandatory detention is authorized only insofar as removal proceedings are "expeditious." (Opp'n at 8-9, referring to *Casas-Castrillon v. Dep't of Homeland Security,* 535 F.3d 942, 951 (9th Cir. 2008).) When a

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U.S. 303, 316, 126 S.Ct. 941, 163 L.Ed.2d 797 (2006) (affirming that venue is "largely a matter of litigational convenience" and waived if not timely raised).

[5] While Plaintiffs assert subject matter jurisdiction in this case under 28 U.S.C. § 2241 "to consider the claims of Plaintiff-Petitioners whose immigration cases are supervised within this judicial district," Plaintiffs also invoke this Court's jurisdiction based on the existence of a federal question under 28 U.S.C. § 1331. (2d Am. Compl. ¶ 7.)

detention has become prolonged under section 1226(c) and there is no determinate end to detention in sight, the authority to detain shifts to 8 U.S.C § 1226(a). *Id.* at 948.

While *Casas-Castrillon* did not define what constitutes a "prolonged" period, the Ninth Circuit later extended the Supreme Court's definition of what is presumptively reasonable in the 8 U.S.C. § 1231(a)(6) removal context—i.e., a six-month detention period—to pre-removal discretionary detentions under 8 U.S.C. § 1226(a). *See Rodriguez v. Hayes,* 591 F.3d 1105, 1115 (9th Cir. 2010); *accord Diouf v. Napolitano,* 634 F.3d 1081, 1092 (9th Cir. 2011) (holding that detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months). Defendants, in effect, seek reconsideration of the Court's prior rulings requiring a bond hearing where plaintiffs detained under section 1226(c) have suffered "prolonged" detention as that concept has been defined by Ninth Circuit precedents. The Court will not revisit those arguments now.

Defendants also urge the Court to find that even if a detention longer than six months is presumptively unreasonable under *Casas-Castrillon*, such a presumption is rebuttable based on a consideration of various factors, such as the length of the detention, the conduct of the alien during removal proceedings, whether the Government acted promptly to advance its interests, the probable extent of future removal proceedings, and the likelihood that removal proceedings actually will result in removal. As explained below, the Court is not persuaded by Defendants' contentions, especially given the factual context of this case.

Defendants rely on *Alli v. Decker,* 644 F. Supp. 2d 535 (M.D. Penn. 2009), to support its call for a "flexible" approach. In *Alli,* however, the court noted the "divergent approaches" taken by the Ninth Circuit in *Casas-Castrillon* and the Sixth Circuit in *Ly v. Hansen,* 351 F. 3d 263 (6th Cir. 2003). The *Alli* court adopted the Sixth Circuit's approach and construed section 1226(c) as authorizing mandatory detention for "a period of time reasonably necessary to promptly initiate and conclude removal proceedings" and that an alien must first make a showing through a *habeas* petition that detention is no

longer reasonable. 644 F. Supp. 2d at 541. In contrast, the Ninth Circuit held in *Casas-Castrillon* that the Government may not detain a lawful permanent resident for a "prolonged period" without providing him a neutral forum in which to contest the necessity of his continued detention. *Casas-Castrillon,* 535 F.3d at 949. Whereas the Sixth Circuit places the burden on the detainee to demonstrate that detention is no longer reasonable, the Ninth Circuit places the burden on the Government to establish whether continued detention is justified. *Id.* at 951; *see also Singh v. Holder,* 638 F.3d 1196, 1203 (9th Cir. 2011) (affirming that burden of establishing whether detention is justified falls on the Government and that Government must do so with clear and convincing evidence). Obviously, this Court is bound by Ninth Circuit precedent.

Defendants argue that a bright-line "six-month rule" creates "perverse incentives for gamesmanship" because petitioners could, with the aid of the courts, prolong their removal proceedings and their detention regardless of agency diligence. Defendants' position is disingenuous in the context of mentally incompetent detainees. Defendants attribute four continuances and a 211-day delay to Plaintiff, even though the Immigration Judge granted the first two continuances in order to provide Plaintiff, then *pro se,* with an opportunity to find counsel, and the fourth continuance to allow for a competency hearing to determine Plaintiff's ability to testify meaningfully in his own removal proceedings. While such continuances were undoubtedly granted in order to protect Plaintiff's rights, Defendants cannot, in good faith, contend that the lack of safeguards, which jeopardized Plaintiff's rights in the first place, were attributable to Plaintiff. It is Defendants' characterization of Plaintiff's efforts to safeguard his rights as "gamesmanship" that the Court finds perverse.[6] Presumably, if Defendants had an orderly system in place to

[6] Even accepting Defendants' position that only 86 days in detention (as of June 29, 2011) were not attributable to continuances granted by the Immigration Judge for the purpose of ensuring Plaintiff's constitutional rights were protected, Defendants fail to explain why Mr. Woldemariam continues to be mandatorily detained under section 1226(c) *now*, with no end in sight. (Defs.' Opp'n at 16.) The Supreme Court emphasized in *Demore* that detention under section 1226(c) "lasts roughly a month and a half in the vast majority of cases in which it is invoked." *Demore,* 538 U.S. at 530. Six months represents the *outer limit* of reasonableness, not the threshold. *See Diouf,* 645 F.3d at 1092 n. 13.

safeguard Plaintiff's rights without undue delay, there would have been no need for the Immigration Judge to grant the lengthy continuances.

As the Court noted in its May 4, 2011 Order, an individual, like Plaintiff Woldemariam, who is a lawful permanent resident and who has yet to receive a final order of removal, has a *stronger* liberty interest in being free from governmental detention than someone like Mr. Diouf, who was collaterally attacking a removal order. *See Diouf,* 634 F.3d at 1086-87. In *Diouf,* the Government took the position that it has a stronger interest in detaining the latter type of alien, *i.e.,* one who is "at least as a theoretical matter, closer to actual removal from the United States." *Id.* at 1087.

Defendants posit that the Court need not feel constrained to follow the Ninth Circuit's decision in *Diouf,* because *Diouf* does not address prolonged detention under section 1226(c).[7] This argument is a bit of a *non-sequitur*. In its May 4, 2011 Order, the Court clarified that with respect to Plaintiffs Khukhryanskiy, Martinez, and Zhalezny, the statutory authority for their prolonged detention had shifted from section 1226(c) to section 1226(a). In doing so, the Court explained that it was relying by analogy on the reasoning in the Supreme Court's decision in *Demore v. Kim,* 538 U.S. 510, 517-18, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) and the Ninth Circuit's decision in *Casas-Castrillon,* 535 F.3d at 948. The Court's analysis in that regard still stands and need not be repeated here.

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[7] Citing *Carver v. Lehman,* 558 F.3d 869 (9th Cir. 2009), Defendants also argue that *Diouf* is not binding precedent because no mandate has issued yet. *See id.* at 878 (noting that opinions do not become final until mandate issues and reliance on the opinion is a "gamble"). The Court does not agree that this matters. This Court noted *Diouf*'s holding that "[a]s a general matter, detention is prolonged when it last[s] six months and is expected to continue more than minimally beyond six months," because it "bolster[ed]" the Court's prior ruling regarding Plaintiffs Martinez and Khukhryanskiy. [Doc. # 215 at 12.] The Court did not rely on *Diouf* for its prior rulings. Nevertheless, the Court is not constrained from applying *Diouf*'s reasoning to this case now because the Ninth Circuit has held that even where a mandate has not yet issued, the judgment filed is nevertheless final for such purposes as *stare decisis*, unless it is withdrawn by the court. *Wedbush, Noble, Cooke, Inc. v. S.E.C.*, 714 F.2d 923, 924 (9th Cir. 1983).

3. Exhaustion of Administrative Remedies

Defendants also assert that Plaintiff is not entitled to an injunction because he has not exhausted his administrative remedies. They point out that Plaintiff's immigration counsel never sought to challenge his mandatory detention pursuant to a *Joseph* hearing and instead sought a bond hearing 97 days after the six-month period elapsed. 8 C.F.R. § 1003.19(h)(2)(ii). A *Joseph* hearing allows a detainee to argue that he or she is not "properly included" in a mandatory detention category. *Tijani v. Willis,* 430 F.3d 1241, 1243-44 (9th Cir. 2005) (citing *In re Joseph,* 22 I. & N. Dec. 799 (BIA 1999)). The glaring problem with Defendant's argument is that Plaintiff does not contest that his underlying robbery conviction subjects him to mandatory detention under section 1226(c).

Undaunted, Defendants next assert that the Court lacks jurisdiction to order a bond hearing here because Plaintiff must comply with the process outlined in *Leonardo v. Crawford,* __ F.3d __, 2011 WL 1814706 (9th Cir. 2011). Specifically, Defendants contend that Plaintiff must first appeal to the BIA and, only after exhausting that remedy, may he file a *habeas* petition in the district court. *Leonardo* is inapposite. In *Leonardo*, the Government afforded Leonardo a bond hearing before an immigration judge, who denied bond because he found that Leonardo posed a danger to the community. On those facts, the Ninth Circuit determined that Leonardo was required to first exhaust administrative remedies by appealing to the BIA before asking the federal district court to review the immigration judge's decision. Here, the Immigration Judge denied Plaintiff's request for a bond hearing because Plaintiff was in "mandatory custody per 236(c)." (Ihsanullah Decl. ¶ 9, Ex. 8.) Plaintiff has not yet received any bond determination; he was denied any bond hearing at all.

Moreover, Plaintiff presents the Court with a prior BIA precedent that a mentally ill detainee held for nearly five years was not entitled to a bond hearing because he was

subject to mandatory detention.[8] (Arulanantham Decl. ¶ 28, Ex. 174.) Insofar as the Immigration Judge denied Mr. Woldemariam's request for a bond hearing, and the BIA has adopted that same position in a prior case for an individual who had been in detention for an even longer period of time than Plaintiff, requiring Plaintiff to appeal the denial of a bond hearing in this case would be an exercise in futility.

B. Plaintiff Demonstrates A Likelihood Of Irreparable Harm And The Balance Of Hardships Tips Sharply In His Favor

Defendants argue that Plaintiff will not suffer irreparable harm because he is represented by counsel and "engaged in the bond re-determination process" and that he has waited four months since his detention passed the six-month mark, "rebutting any suggestion of urgency and irreparable harm." (Defs.' Opp'n at 22-23.)

First, it is undisputed by the parties that on June 8, 2011, Plaintiff's immigration counsel requested a custody hearing on Plaintiff's behalf, which request was denied. Thus, Plaintiff has not sat on his hands or refrained from taking any action to secure a custody hearing.

Moreover, Plaintiff explains that "in the interests of judicial economy, [he] waited for the Court to decide the second preliminary injunction motion [on behalf of Plaintiff Zhalezny] in the . . . hope that Defendants would then abide by the Court's ruling with respect to [Mr. Woldemariam]." (Pl.'s Reply at 27.) Certainly, Defendants' voluntary compliance with the Court's prior orders would have promoted judicial economy and efficiency in this case. The fact that Defendants failed to apply the Court's prior rulings and sought another bite at the apple to interpose additional legal objections to those rulings should not now prejudice Plaintiff's claim for injunctive relief.

[8] At the July 29, 2011 hearing, Defendants pointed out that the BIA precedent referred to by Plaintiff is an unpublished decision. Defendants do not present any evidence, however, that the BIA has taken, or would be likely to take, a contrary position, *i.e.,* that a detainee in mandatory custody under 8 U.S.C. § 1226(c) is entitled to a bond hearing if he has been detained for a prolonged period.

Because Woldemariam is now represented by counsel, Defendants claim that he is in a materially different position than that of Plaintiffs Khukhryansiky, Martinez, and Zhalezny.[9] The fact that Woldemariam is now represented by counsel, however, does not change the fact that he has been detained for more than ten months and will be detained for the foreseeable future, without having been provided a custody hearing. As discussed *supra,* the fact that Woldemariam is a lawful permanent resident who has not yet been ordered removed suggests his liberty interests justifying a custody hearing are that much more compelling.

On the evidence presented, the Court finds that the likelihood of irreparable harm and the balance of hardships tip sharply in favor of Plaintiff.

C. An Injunction Is In The Public Interest And A Mandatory Injunction Is Appropriate In This Case

For the reasons articulated herein and in its prior orders granting preliminary injunctions, the Court finds that granting Plaintiff's Motion for a custody hearing is in the public interest. Plaintiff has met his burden of demonstrating the need for a mandatory injunction because the law and facts are clearly in his favor and the potential for irreparable harm cannot be undone by a later award of damages given the liberty interests at stake.

IV.
CONCLUSION

In light of the foregoing:

(1) The Court GRANTS Plaintiff Woldemariam's Motion for a Preliminary Injunction as follows: Pending a trial on the merits, Defendants, and their officers, agents, employees, and attorneys are hereby enjoined from detaining Plaintiff Woldemariam under 8 U.S.C. § 1226(a) or (c) unless, within 45 days of this Order, they

[9] Plaintiffs clarify that Woldemariam was not represented by counsel at the time that he became a Plaintiff in this action.

provide Plaintiff with a bond hearing before an Immigration Judge with the authority to order his release on conditions of supervision, unless the Government shows that Plaintiff's ongoing detention is justified.

(2) The Court waives the bond requirement. *See, e.g.*, *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (nominal security not an abuse of discretion where "vast majority of aliens [affected by class action] were very poor"); *Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) ("[t]he district court has discretion to dispense with the security requirement, or to request mere nominal security, where requiring security would effectively deny access to judicial review").

(3) Due to privacy considerations, this Order shall be filed under seal. Within 14 days from the date of this Order, the parties will meet and confer regarding which portions of the Order they propose to be redacted such that a redacted version of the Order may be filed, or notify the Court that Plaintiff waives his privacy rights as to the confidential information relied upon herein and that the Order may be unsealed. The parties shall file a joint report with the Court by no later than August 16, 2011 regarding the sealed status of this Order.

IT IS SO ORDERED.

DATED: August 2, 2011

Dolly M. Gee

DOLLY M. GEE
United States District Judge