UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI and JOHAN BARRIOS RAMOS, on behalf of himself and all others similarly situated,

Petitioners,

v.

ELAINE DUKE, in her official capacity as Acting Secretary of U.S. Department of Homeland Security; THOMAS BROPHY, in his official capacity as Acting Director of Buffalo Field Office of Immigration and Customs Enforcement; JEFFREY SEARLS, in his official capacity as Acting Administrator of the Buffalo Federal Detention Facility, and JEFFERSON SESSIONS, in his official capacity as Attorney General of the United States,

Respondents.

Case No. 17-cv-721 (EAW)

PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

In this civil rights action challenging the Government's practice of indiscriminately denying parole and bond to arriving asylum-seekers held at the Buffalo Federal Detention Facility in Batavia, the petitioners move for class certification. The proposed class consists of all arriving asylum-seekers who declared themselves at our nation's borders, whose claims of persecution or torture were found credible, but who have nevertheless been detained without parole at Batavia during the lengthy wait for their asylum claims to be processed. The proposed prolonged-detention subclass consists of those arriving asylum-seekers held at Batavia for six months or more without a bond hearing before an immigration judge.

This is a quintessential class action case. The proposed class and subclass consist of a large and transient group of detainees who by virtue of their indigence, incarceration, and unfamiliarity with the American legal system are hampered from bringing individual suits against the federal government. The impacts of the governmental practices at issue—denial of parole to virtually all asylum-seekers held at Batavia in contravention of a 2009 Immigration and Customs Enforcement Directive and the blanket denial of bond hearings to asylum-seekers subject to prolonged detention—are uniformly experienced by class members, and the remedy sought is systemic reform to these institutional practices. Finally, proposed class counsel are qualified and experienced and have already expended significant resources in developing the claims in the case. For all these reasons, class certification is the appropriate mechanism for achieving a just and efficient resolution of this litigation, and the petitioners respectfully request that the Court certify a class pursuant to Rule 23, or in the alternative, certify a representative habeas action.

LEGAL BACKGROUND

As arriving asylum-seekers, all of the proposed class members are subject to the same legal regime. Non-citizens who present themselves at the border or at a port of entry and who cannot establish their admissibility to the country but demonstrate in a credible fear interview ("CFI") that they face a "significant possibility" of persecution in their home country are eligible to pursue their asylum claim in full immigration proceedings before an immigration judge. *See* 8 U.S.C. § 1225(b)(1)(B)(i),(ii),(v). These asylum-seekers are placed in detention pursuant to section 1225(b)(1)(B)(ii) but may be released on parole during the pendency of those proceedings, which can be protracted.

This parole option stems from the Immigration and Nationality Act, its implementing regulations, and a 2009 directive issued by Immigration and Customs Enforcement. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(b); ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009) ("Parole Directive"). The Parole Directive, which interprets the statutory and regulatory provisions allowing for parole when detention is "not in the public interest," reflects ICE's recognition that there is no public interest in detaining *bona fide* asylum-seekers who have credible claims to asylum and present no danger to the community or flight risk that warrants their imprisonment. Thus the Parole Directive provides that, "when an arriving alien found to have a credible fear establishes to the satisfaction of [ICE] his or her identity and that he or she presents neither a flight risk nor danger to the community, [ICE] should . . . parole the alien on the basis that his or her continued detention is not in the public interest," absent "exceptional, overriding factors." *Id.* ¶¶ 6.2, 8.3.

The Parole Directive creates criteria for how ICE agents should determine whether an arriving asylum-seeker has established his or her identity and how they should assess whether the

asylum-seeker is a flight risk or danger to the community. *Id.* ¶ 8.3. It also creates parole procedures that ICE must follow—namely, that ICE "shall provide…[a] Parole Advisal and Scheduling Notification" "[a]s soon as practicable following a finding that an arriving alien has a credible fear"; that "no later than seven days following a finding that an arriving alien has a credible fear, a[n ICE] officer familiar with the requirements of this directive and corresponding legal authorities must conduct an interview with the alien to assess his or her eligibility for parole"; that ICE "shall provide every alien subject to this directive with written notification of the parole decision, including a brief explanation for the reasons for any decision to deny parole" and, if parole is denied, that ICE shall "advise the alien that he or she may request redetermination of this decision based upon changed circumstances or additional evidence." *Id.* ¶¶ 6.5, 8.1, 8.2.

After President Trump was sworn in, his then-Secretary for Homeland Security, John Kelly, stated that the Parole Directive remains in "full force and effect" under the present administration. First Amended Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Amended Pet.") ¶ 82 (Kelly Memorandum, Padmanabhan Decl. Ex. B). Indeed, the Government in ongoing litigation at the Supreme Court has repeatedly referred to the parole policy set forth in the Parole Directive as a robust procedural protection that "automatically consider[s] parole for arriving aliens found to have a credible fear, and [that] release[s] the alien if he establishes his identity, demonstrates that he is not a flight risk or danger, and there are no countervailing considerations." Amended Pet. ¶¶ 83-85 (Gov. Suppl. Reply Br., at 6, *Jennings v. Rodriguez*, 136 S.Ct. 2489 (2016) (No. 15-1204) (brief filed Feb. 21, 2017), Padmanabhan Decl. Ex. C). The Government's brief in *Jennings* goes on to characterize the parole policy as "call[ing] for far more than 'checking a box on a form, with no hearing, no

record and no appeal'. . . . It provides notice to the alien, an interview, the opportunity to respond and present evidence, a custody determination by an officer who did not conduct the credible-fear screening, supervisory review, and further parole consideration based upon changed circumstances or new evidence." *Id.* at 6-7.

STATEMENT OF FACTS

The petitioners challenge the routine practice of ICE denying parole to arriving asylum-seekers being held at the Buffalo Federal Detention Facility in Batavia, a practice that also contributes to those detainees being held for prolonged periods of time without a bond hearing. Batavia is the largest ICE detention facility in New York State, with a capacity of 650 detainees. U.S. Department of Homeland Security, Immigration and Customs Enforcement, *Detention Review Summary Form* (2012), (attached as Ex. A to Decl. of Paige Austin (Aug. 24, 2017)). Between May 2016 and April 2017, the average daily population at Batavia fluctuated between 519 and 620 individuals. U.S. Department of Homeland Security, Immigration and Customs Enforcement, Average Daily Population (ADP) by Facility, May 2016- April 2017 (attached as Ex. B to Austin Decl.).

Significant numbers of those being held at Batavia are arriving asylum-seekers. Immigration attorneys who regularly represent Batavia detainees have identified at least twenty-five represented arriving asylum-seekers who had passed a CFI in the first seven months of 2017. *See* Supp. Decl. of Siana McLean ¶ 3 (Aug. 24, 2017); Supp. Decl. of Desiree Lurf ¶ 3 (Aug. 23, 2017); Decl. of Anne Doebler ¶ 3 (Aug. 21, 2017); Decl. of Matthew Borowski ¶ 3 (Aug. 24, 2017); Decl. of Robert Hodgson ¶ 4 (Aug. 24, 2017). The number of additional unrepresented detainees at Batavia is likely far larger, given that represented detainees typically are a small percentage of all detained immigrants. *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 32 (2015) (in a national study

spanning six years, finding only 14% of detained immigrants were represented) (attached as Ex. C to Austin Decl). Finally, Petitioner Abdi observed a large number—he estimates approximately sixty-five—of new detainees arrive at Batavia in July of 2017 whom he understood to be arriving asylum-seekers transferred to Batavia from facilities along the southern border. Supplemental Declaration of Hanad Abdi ¶¶ 2-3 (Aug. 23, 2017).

According to data available to the petitioners through an earlier FOIA request, during the first nine months of 2015 (the most recent period for which data are available) parole was granted in nearly 90% of requests made by people who passed a credible fear interview at Batavia. Amended Pet. ¶ 88 (Padmanabhan Decl. ¶¶ 7-8). By stark contrast, only 8% of such requests appear to have been granted from the beginning of 2017 until the filing of this lawsuit on July 28, 2017.[1] The new practice that this dramatic decrease reveals is confirmed by statements by federal officers at Batavia. Petitioner Abdi's deportation officer told him that "everything changed" in January and that parole has "all stopped" under the new administration. Amended Pet. ¶ 69 (Abdi Decl. ¶¶ 35-36). Petitioner Johan Barrios Ramos's deportation officer told him, on the day he passed his credible fear interview, that parole was not available, Amended Pet. ¶ 25 (Barrios Ramos Decl. ¶¶ 11-12), and later told him that there was a "one-in-a-million" chance of being granted parole at Batavia, Amended Pet. ¶ 32 (Barrios Ramos Decl. ¶ 15). Both Mr. Abdi's and Mr. Barrios Ramos's immigration lawyers were told by deportation

[1] This analysis was conducted by dividing the number of parole grants by the total number of parole requests made by the seven immigration attorneys (Ms. McLean, Ms. Lurf, Ms. Doebler, Mr. Borowski, Ryan Witmer, Robert Graziano, and Stephen Tills) whom the undersigned counsel interviewed. Although previous conversations with these lawyers identified twenty-six total represented arriving asylum-seekers at Batavia, of whom two were granted parole, *see* Amended Pet. ¶ 90, more recent conversations resulted in a corrected total of twenty-five. *See* Hodgson Decl. ¶¶ 4-7. This updated information does not affect the parole grant rate of 8% cited in the Amended Petition, which remains correct. *Id.* ¶ 8.

officers that parole adjudication policies have changed under the Trump administration. Amended Pet. ¶¶ 92-94 (McLean Decl. ¶¶ 6-7; Lurf Decl. ¶ 9). Finally, other immigration lawyers who routinely represent detainees at Batavia report that, while they were used to their asylum-seeker clients being routinely paroled in the past, that practice has all but stopped in 2017. *See* Doebler Decl. ¶ 4; Borowski Decl. ¶ 4.

The petitioners' experiences exemplify this new practice of indiscriminately denying arriving asylum-seekers parole. Both Mr. Barrios Ramos and Mr. Abdi marshaled substantial evidence establishing their identities, that they had family members who could provide them housing and financial support, and that they were neither flight risks nor dangerous. *See* Amended Pet. ¶¶ 27-28, 30 (detailing evidence submitted by Mr. Barrios Ramos in support of his requests for parole, citing Lurf Decl. Exs. B, C, E); Amended Pet. ¶¶ 60, 66-67 (detailing evidence submitted by Mr. Abdi in support of his requests for parole, citing Abdi Decl. ¶ 26; McLean Decl. Ex. A). Yet ICE denied both their requests for parole without providing any explanation for the denials, in violation of the Parole Directive. Amended Pet. ¶¶ 29, 31 (two two-sentence parole denials for Mr. Barrios Ramos, with no reasons for denial provided) (Lurf Decl. Exs. D, F); ¶ 68 (two-sentence parole denial for Mr. Abdi with no reasons for denial provided) (McLean Decl. Ex. B). Mr. Barrios Ramos was also denied parole without being afforded the procedural protections contained in the Parole Directive, *i.e.*, he was not given a Parole Advisal and Notification Form, and he was not interviewed for parole by an ICE officer. Amended Pet. ¶ 25 (Barrios Ramos Decl. ¶¶ 11-12). Similarly, immigration lawyers report that other parole denials they received in 2017 contained no explanation or justification for the denial. *See* Doebler Decl. ¶ 4; Borowski Decl. ¶ 4; McLean Supp. Decl. ¶ 4; Lurf Supp. Decl. ¶ 4.

The routine denial of parole to arriving asylum-seekers also results in those individuals being held for prolonged periods without a bond hearing. Initial rulings in asylum cases for those held at Batavia usually take more than six months, and appeals to the Board of Immigration Appeals can last several months more. *See* Doebler Decl. ¶¶ 5-6; Borowski Decl. ¶ 7; McLean Supp. Decl. ¶ 5; Lurf Supp. Decl. ¶ 5.[2] Throughout that period, it is the Government's practice, pursuant to 8 C.F.R. § 1003.19(h)(2)(i), to not provide a bond hearing, even when the detention has become prolonged—the practice that the prolonged-detention subclass challenges. As examples of the experiences of the prolonged-detention subclass, Mr. Abdi was held for ten months without a bond hearing, *see* Amended Pet. ¶¶ 54, 75 (Abdi Decl. ¶¶ 16-17), and Mr. Barios Ramos has been held for seven months and counting, *see* Amended Pet. ¶¶ 23, 33 (Barrios Ramos Decl. ¶¶ 10-11, 16). As a result of both the Government's indiscriminate denial of parole and the Batavia Immigration Court's calendar, virtually every arriving asylum-seeker detained at Batavia will be subject to detention exceeding six months.

ARGUMENT

The petitioners have moved for certification of a class concerning the denial of parole and of a subclass concerning prolonged detention. Specifically, the proposed parole class is defined as:

> All arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility and who have not been granted parole.

Motion for Class Certification at 1. The proposed prolonged-detention subclass is defined as:

[2] Data from the Executive Office for Immigration Review for fiscal year 2017 confirms that the average duration of a case in which relief was granted was 194 days. That count excludes time arriving asylum-seekers spent in ICE custody prior to their case being referred to the immigration court and time in custody pending an appeal by either party. TRAC Immigration, *Immigration Court Processing Time by Outcome* (attached as Ex. D to Austin Decl.).

> All arriving asylum-seekers who are detained at the Buffalo Federal Detention Facility, have passed a credible fear interview, and have been or will be detained for more than six months without a bond hearing before an immigration judge.

Id.

The Court should certify the proposed class and subclass because they meet the requirements of Rule 23(a) and 23(b)(2). Specifically, Rule 23(a) requires that: (1) the class is so numerous that joinder of all members is impracticable, (2) questions of law and fact are common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Rule 23(b)(2) is satisfied by a showing that defendants have "acted or refused to act on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole . . . ." Fed. R. Civ. P. 23(b)(2). District courts must give these requirements "liberal rather than restrictive construction," *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) (internal quotation marks and citation omitted), and are afforded broad discretion in certifying a class because of their ability "to alter or modify the class, create subclasses, and decertify the class whenever warranted." *Sumitomo Copper Litigation v. Credit Lyonnais Rouse Ltd.*, 262 F.3d 134, 139 (2d Cir. 2001) (citing Fed. R. Civ. P. 23(c)(4)(B)).[3]

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[3]The proposed class and subclass also qualify for a representative habeas class pursuant to *United States ex rel. Sero v. Preiser*, 506 F.2d 1115 (2d Cir. 1974) (holding that while Rule 23 does not directly apply to a habeas action, district courts have the authority to allow cases to proceed as "a multi-party proceeding similar to the class action authorized by the Rules of Civil Procedure"). In *Preiser*, the Second Circuit articulated a test for habeas class certification that is the functional equivalent of Rule 23, requiring that a moving class show (1) that the claims are "applicable on behalf of the entire class, uncluttered by subsidiary issues," *id.* at 1126; (2) that "it is not improbable that more than a few [class members] would otherwise never receive the relief here sought on their behalf," *id.*; and (3) that class certification will achieve judicial economy by avoiding "[t]he considerable expenditure of judicial time and energy in hearing and deciding

Courts have granted class certification under circumstances similar to this case. Generally, courts in this circuit recognize that class actions are particularly appropriate in litigation involving detained persons because "[p]risoners . . . come and go from institutions for a variety of reasons . . . [and n]evertheless the underlying claims tend to remain." *Clarkson v. Coughlin*, 145 F.R.D. 339, 346 (S.D.N.Y. 1993) (internal quotation marks and citation omitted). More specifically, courts have certified habeas classes in immigration cases involving challenges to both parole practices and to the practice of prolonged detention without bond. *See Bertrand v. Sava*, 535 F. Supp. 1020, 1024-25 (S.D.N.Y. 1982) (certifying class of Haitian detainees challenging parole denials), *rev'd on other grounds*, 684 F.2d 204 (2d Cir. 1982); *Rodriguez v. Hayes,* 591 F.3d 1105, 1126 (9th Cir. 2010) (reversing district court and ordering certification of a class of non-citizens, including asylum-seekers, challenging prolonged detention without a bond hearing).[4]

I. THE PROPOSED CLASS SATISFIES RULE 23(a) REQUIREMENTS.

A. The Proposed Class Is Sufficiently Numerous.

As an initial matter, Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." In the Second Circuit, a class with forty or more members is presumed to meet this requirement, *see Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995), but the inquiry into joinder goes beyond "mere numbers" and requires consideration of "all the circumstances surrounding a case." *Robidoux v. Celani*, 987

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numerous individual petitions presenting the identical issue," *id.* For the same reasons that class certification is warranted under Rule 23, it is also warranted under *Preiser*.

[4] The legal question raised by the prolonged-detention subclass—whether they are entitled to a bond hearing when their detention exceeds six months—is currently pending before the Supreme Court in *Jennings v. Rodriguez*, 84 U.S.L.W 3683 (U.S. June 20, 2016) (No. 15-1204), with oral argument scheduled for the upcoming Supreme Court term.

F.2d 931, 936 (2d Cir. 1993). Other factors that may make a class "superior to joinder" include: "(i) judicial economy, (ii) geographic dispersion, (iii) the financial resources of class members, (iv) their ability to sue separately, and (v) requests for injunctive relief that would involve future class members." *Pennsylvania Pub. Sch. Employees' Ret. Sys. v. Morgan Stanley & Co.,* 772 F.3d 111, 120 (2d Cir. 2014) (citing *Robidoux*, 987 F.2d at 936).

Based on the numbers alone, the proposed class and subclass (which largely overlap) are sufficiently numerous. As discussed in the Statement of Facts, over twenty represented asylum-seekers have been identified via their immigration counsel, a larger number of unrepresented asylum-seekers are likely at Batavia, and a new group of as many as sixty-five additional class members arrived in July. *See supra* at 4-5. The class also includes future arriving asylum-seekers, who are continually transferred to the facility and detained there without parole. Recognizing the transient nature of detained populations—and that "the past is telling of the future"—courts include "future class members to satisfy the numerosity requirement." *Chief Goes Out v. Missoula County*, 12-cv-155, 2013 WL 139938, at *3–4 (D. Mont. Jan. 10, 2013).[5]

Not only are the class and subclass presumptively proper because of their size, joinder of all potential class and subclass members' claims is impracticable for several other reasons. First,

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[5] Establishing a precise number of class members, particularly where such a number is in the exclusive control of the government, is not required. *See Robidoux* 987 F.2d at 935 (holding that plaintiffs need not define the exact size of the class or the identity of its members to obtain class certification, and instead may "show some evidence of or reasonably estimate the number of class members" (internal citations omitted)); *Clarkson*, 145 F.R.D. at 347. The Government, of course, has ready access to the number of arriving asylum-seekers detained at Batavia, and indeed under the terms of the 2009 Parole Directive is *required* to maintain reporting on parole grants and denials. *See* 2009 Parole Directive ¶ 8.11. Therefore, if the Court finds the petitioners have not sufficiently established numerosity, or any other requirement of Rule 23, they respectfully request that the Court allow the petitioners to engage in class discovery. *See In re Initial Pub. Offerings Sec. Litig.*, 471 F.3d 24, 41 (2d Cir. 2006), *decision clarified on denial of reh'g sub nom. In re Initial Pub. Offering Sec. Litig.*, 483 F.3d 70 (2d Cir. 2007).

courts have recognized that joinder is impracticable where, as here, a class involves persons with limited English proficiency who are new arrivals to the U.S., indigent, and unfamiliar with the U.S. judicial system. *See Gortat v. Capala Bros., Inc.*, 07-cv-3629, 2012 WL 1116495, at *3 (E.D.N.Y. Apr. 3, 2012) (joinder impracticable for class of 28 "immigrant laborers who speak little English" and lacked financial resources), *aff'd*, 568 Fed. Appx. 78 (2d Cir. 2014) (unpublished); *Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014) (finding joinder impracticable where many class members "do not speak English . . . and most are unlikely even to know that they are members of the proposed class."), *enforcement granted*, 64 F. Supp. 3d 271 (D. Mass. 2014). Compounding these disadvantages is the fluidity of a class of detainees and the inherent difficulty that detained persons have in accessing counsel and the courts. *See V.W. by & through Williams v. Conway*, 236 F. Supp. 3d 554, 573 (N.D.N.Y. 2017) ("[T]he ability of any one individual member of the class or the subclass to maintain an individual suit will necessarily be limited by the simple reality that they are being detained."); *Dean v. Coughlin*, 107 F.R.D. 331, 332–33 (S.D.N.Y. 1985) (noting that "[t]he fluid composition of a prison population is particularly well-suited for class status, because, although the identity of the individuals involved may change, the nature of the wrong and the basic parameters of the group affected remain constant") (citations omitted). Finally, a diffusion of individual habeas claims, all turning on the same issues, is an inefficient use of court resources. *See Odom v. Hazen Transp., Inc.*, 275 F.R.D. 400, 407 (W.D.N.Y. 2011) (certifying a class of 16 because it would entail a "more efficient use of judicial resources").

B. Questions of Law and Fact Are Common to the Proposed Class.

The questions of law and fact raised here are "common to the class," Fed. R. Civ. P. 23(a)(2), because their "resolution will affect all or a significant number of the putative class members." *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137–38 (2d Cir. 2015). For the

parole class, the common question of fact is whether the Government has a policy or practice of routinely denying parole to arriving asylum-seekers who have passed a credible fear interview, and the common questions of law are whether that policy or practice violates the Parole Directive, the INA and its regulations, and the Due Process Clause. Similarly, the common question of fact for the prolonged-detention subclass is whether class members are held in detention for more than six months without being granted a bond hearing, and the common questions of law are whether that policy or practice of prolonged detention violates the INA and the Due Process Clause. [6]

The key to commonality—that the truth or falsity of a question "will resolve an issue that is central to the validity of each one of the claims in one stroke," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)—is present in this case. Resolution of the legality of ICE's parole policy or practice will resolve the central issue for the class "in one stroke." *Cf. Bertrand*, 535 F. Supp. at 1025 (in a class habeas challenging parole denials, finding "the common thread binding these individuals is their claim that [respondent] abused his discretion . . . by refusing to consider, or considering in an illegitimate manner, their parole requests," since "the problems in the different files are identical—each allegedly reflects a callous and discriminatory practice of parole denial") (internal citations omitted). Similarly, for prolonged-detention subclass members subject to detention without a bond hearing, a resolution regarding either the erroneousness of the Government's interpretation of 8 U.S.C. § 1225(b) (the provision of the INA governing class members' detention) or the constitutionality of the prolonged detentions would also resolve all class members' claims "in one single stroke." *See Rodriguez*, 591 F.3d at 1123 (finding that

[6] Notably absent from the list of common questions is whether any individual class member should in fact be released on either parole or on bond—that is, class members do not seek any individualized fact-finding in their specific cases.

commonality requirement met in case raising, *inter alia*, the same claim as the prolonged-detention subclass in this case).

C. The Claims Presented Are Typical of the Proposed Class.

Rule 23's requirement that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class," Fed. R. Civ. P. 23(a)(3), is satisfied where, as here, "it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented[.]" *Robidoux*, 987 F. 2d at 936-37. Mr. Barrios Ramos shares with the class and subclass claims "based on the common application of certain challenged policies," thus rendering his claims typical for Rule 23 purposes. *V.W.*, 236 F. Supp. 3d. at 576 (finding typicality in certifying class) (internal citations omitted).[7] The challenged policy or practice to which he has been subjected is the same with respect to the parole class members: ICE's routine denial of parole. Similarly, like members of the prolonged-detention subclass, he has been detained for more than six months without a bond hearing before an immigration judge.

D. Mr. Barrios Ramos Will Fairly and Adequately Represent the Proposed Class.

The fourth and final requirement of Rule 23(a), that "the representative parties will fairly and adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4), is twofold: "the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006). "Courts that have denied class certification based on the inadequate qualifications of plaintiffs have done so only in flagrant cases, where the putative class representatives display an alarming unfamiliarity with the suit."

[7] Mr. Abdi is not serving as a class representative in this action.

In re Frontier Ins. Group, Inc., Sec. Litig., 172 F.R.D. 31, 47 (E.D.N.Y. 1997) (internal quotation marks and citation omitted).

Here, Mr. Barrios Ramos has an interest in vigorously pursuing the claims of the class and subclass as those claims overlap entirely with his own claims for relief. He has no interests antagonistic to the interests of other class members, and he has articulated a desire to end the Government's unlawful policies. Barrios Ramos Decl. ¶¶ 18-19.

II. THE PROPOSED CLASS SATISFIES RULE 23(b)(2) REQUIREMENTS.

In addition to satisfying the requirements of Rule 23(a), this action warrants certification because "the party opposing the class [] act[s] . . . on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). According to the Supreme Court, civil rights cases are "prime examples" of Rule 23(b)(2) class actions. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Likewise, the Second Circuit has recognized that "'[c]ivil rights cases seeking broad declaratory or injunctive relief for a large and amorphous class . . . fall squarely into the category of [Rule] 23(b)(2) actions.'" *Marisol A.*, 126 F.3d at 378 (quoting *Jeanine B. by Blondis v. Thompson*, 877 F. Supp. 1268, 1288 (E.D. Wis. 1995)).

Here the respondents are acting on grounds generally applicable to the parole class because they are subjecting class members to the same policy or practice of routinely denying them parole. Furthermore, Rule 23(b)(2) applies here because "a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores*, 564 U.S. at 360. In this case a single injunction ordering the Government to comply with the Parole Directive would provide all the relief sought by members of the parole class.

The respondents are also acting on grounds generally applicable to the prolonged-detention subclass by subjecting subclass members to a policy of detention without a bond

hearing. Here too, a single injunction ordering the Government to provide subclass members a bond hearing before an immigration judge would provide all the relief sought.

III. PROPOSED CLASS COUNSEL IS ADEQUATE UNDER RULE 23(g).

Proposed class counsel, the New York Civil Liberties Union ("NYCLU") and the International Refugee Assistance Project ("IRAP"), are "qualified, experienced and able to conduct the litigation," *Baffa v. Donaldson*, *Lufkin & Jenrette Secs. Corp*, 222 F.3d 52, 60 (2d Cir. 2000), and they satisfy the requirements set forth in Rule 23(g). First, the petitioners' attorneys have done significant work researching the claims in this petition, including interviewing the petitioners, petitioners' immigration attorneys, other immigration attorneys working in Batavia, and other class members; researching and developing legal theories related to parole and bond hearing claims; and drafting and filing Mr. Abdi's original Petition, along with a supporting Memorandum of Law and a fully briefed Motion to Expedite. Decl. of Christopher Dunn ¶¶ 1, 7 (Aug. 24, 2017). Second, counsel have extensive experience in complex federal civil rights litigation seeking systemic reform, Dunn Decl. ¶¶ 3, 5-6 (listing cases), and deep knowledge of constitutional and immigration law, having litigated either directly or as amicus cases challenging the unlawful detention of immigrants, *id.* ¶¶ 4, 6 (listing cases); Austin Decl. ¶ 8 (listing cases). Class counsel has also participated in litigating prominent cases challenging national policies that affect the rights of arriving immigrants and refugees. *See* Dunn Decl. ¶¶ 4, 6. Finally, the NYCLU and IRAP have already devoted significant resources to developing and maintaining this litigation, as evidenced by the staffing of this case with two legal directors and three staff attorneys, and will continue to do so as the case proceeds. *See* Dunn Decl.

CONCLUSION

For the foregoing reasons, the petitioners respectfully request that this Court grant this motion for class certification.

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New York, NY

Respectfully Submitted,

<u>/s/ Aadhithi Padmanabhan</u>
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