

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

MARIA ALEJANDRA CELIMEN SAVINO,
JULIO CESAR MEDEIROS NEVES, and all
those similarly situated,

Petitioners-Plaintiffs,

v.

THOMAS HODGSON, et al.,

Respondents-Defendants.

Case No. 1:20-cv-10617 WGY

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

TABLE OF CONTENTS

INTRODUCTION	5
II. PROPOSED CLASS DEFINITION	9
III. PROPOSED CLASS REPRESENTATIVES	9
ARGUMENT	10
I. The Proposed Class Meets the Requirements of Rule 23(a).....	11
A. The proposed class is so numerous that joinder would be impractical	11
B. The proposed class representatives present issues of fact and law in common with the class.	12
C. The class representatives’ claims are typical of those of the class.	14
D. The proposed class representatives and class counsel can adequately represent the class.	15
II. The Proposed Class Meets the Requirements of Rule 23(b)	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	10
<i>Andrews v. Bechtel Power Corp.</i> , 780 F.3d 124 (1st Cir. 1985).....	9
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001)	8
<i>Baggett v. Ashe</i> , 2013 U.S.Dist. LEXIS 73202 (D. Mass. May 23, 2013)	8
<i>Dukes v. Wal-Mart Stores, Inc.</i> , 564 U.S. 338 (2011).....	<i>passim</i>
<i>Faherty v. CVS Pharmacy, Inc.</i> , 2011 U.S.Dist.LEXIS 23547 (D.Mass., March 9, 2011)	8
<i>Garcia-Rubiera v. Calderon</i> , 570 F.3d 443 (1st Cir. 2009).....	4
<i>Gen. Tel. Co. of Sw. v. Falcon</i> , 457 U.S. 147 (1982).....	8
<i>George v. Nat’l Water Main Cleaning Co.</i> , 286 F.R.D. 168 (D.Mass. 2012).....	8
<i>Gordon v. Johnson</i> , 300 F.R.D. 28 (D.Mass. 2014).....	4
<i>In re Credit Suisse-AOL Sec. Litig.</i> , 253 F.R.D. 17 (D.Mass. 2008).....	9
<i>In re New Motor Vehicles Canadian Exp. Antitrust Litig.</i> , 522 F.3d 6 (1st Cir. 2008).....	7
<i>Reid v. Donelan</i> , 297 F.R.D. 185 (D.Mass. 2014).....	<i>passim</i>
<i>Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.</i> , 559 U.S. 393 (2010).....	3
<i>Torrezani v. VIP Auto Detailing, Inc.</i> , 318 F.R.D. 548 (D. Mass. 2017).....	5

Statutes

8 U.S.C. § 1226(a) *passim*

Rules

Fed. R. Civ. P. 23 *passim*

INTRODUCTION

This action is filed on behalf of a highly vulnerable putative class: numerous individuals in civil immigration detention currently housed at Bristol County Immigration Detention Facilities, all of whom are at grave risk of contracting COVID-19 because of the life-threatening, congregate conditions under which they are confined. Common questions of both fact and law pervade this matter, and Defendants¹ have acted and refused to act on grounds that are generally applicable to the class as a whole, making class certification appropriate.

The requirements of Federal Rules of Civil Procedure 23(a) and (b) are amply met by the proposed class. The class is sufficiently numerous: more than 57 individuals are currently in civil immigration detention at Bristol County Immigration Detention Facilities.² All members of the class are bound together by common questions of law and fact – most prominently, whether in the face of the lethal COVID-19 pandemic, the conditions of confinement at the Detention Facilities place the detainees’ safety and health at grave risk in a manner that amounts to unconstitutional punishment. The named Plaintiffs are proper class representatives because their claims are typical of the absent class members and because they and their counsel will adequately and vigorously represent the class. Finally, Rule 23(b)(2) is satisfied here because the Defendants have “acted or refused to act on grounds that apply generally to the class” through creating and maintaining conditions that put the class at imminent risk of contracting COVID-19, the deadly virus that is currently sweeping the globe.

¹ Defendants are Thomas Hodgson, Bristol County Sheriff; Steven J. Souza, Superintendent Bristol County House of Corrections; Todd Lyons, Boston Field Office, Acting Director, Immigrations and Customs Enforcement (ICE); Chad F. Wolf, Acting Secretary, Department of Homeland Security; and Matthew T. Albence, Deputy Director and Senior Official Performing the Duties of the Director for ICE. All are sued in their official capacities.

² The Detention Facilities consist of the Bristol County House of Corrections (BCHOC) and the C. Carlos Carreiro Immigration Detention Center (Carreiro) (collectively “Bristol County Immigration Detention Facilities” or “Detention Facilities”). At least 57 immigration detainees are being held in just one unit (Unit B) of the BCHOC.

The Centers for Disease Control and Prevention (CDC) advises that COVID-19 is thought to spread primarily from person-to-person, between people who are in close contact with one another (within about 6 feet), and through respiratory droplets produced when someone speaks, coughs, or sneezes, including the touch of shared surfaces.³ *See* Declaration of Gregg Gonsalves (“Gonsalves Decl.”), ¶ 15.⁴ The CDC has made clear that the only known effective measures to reduce the risk of contracting COVID-19 are social distancing and hygiene. *See* CDC, *Coronavirus Disease (COVID-19): How to Protect Yourself*, (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>. (“The best way to prevent illness is to avoid being exposed to this virus.”). The calls for individuals and organizations throughout the world to adopt these measures has been uniform, *see* Gonsalves Decl. ¶ 13, and has led to entire nations, states, and cities being locked down, in an extraordinary and unprecedented battle to stop the spread of this deadly virus.

Medical experts and former ICE officials alike have recognized the obvious risk that is presented in congregate environments such as Bristol County Immigration Health Facilities. “‘It’s a vulnerable situation,’ John Sandweg, an acting head of ICE during the Obama administration, told CBS News. ‘You have the exact situation everyone is cautioning against. You have a bunch of people contained in a very small environment.’... ‘[c]an you imagine if you get an outbreak in these detention facilities? It’s going to spread like wildfire,’ Sandweg added.”⁵ Dr. Gregg Gonsalves notes that detention facilities are “enclosed environments,” similar to

³ World Health Organization, Rolling updates on coronavirus disease (COVID-19) (Updated Mar. 20, 2020) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>. ⁴ As of March 21, 2020 at 7:06 p.m. EST. *See* COVID-19 CORONAVIRUS PANDEMIC, WORLDOMETER (Mar. 21, 2020), <https://www.worldometers.info/coronavirus/>. ⁵ *Id.* ⁶ As of March 21, 2020 at 3:10p.m. EST.

⁴ Except as otherwise noted, all Declarations refer to Declarations filed in support of Plaintiffs’ Motion for Temporary Restraining Order, filed concurrently with this Class Certification Motion.

⁵ Camilo Montoya-Galvez, “Powder Kegs”: Calls Grow for ICE to Release Immigrants to Avoid Coronavirus Outbreak, CBS News (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak>.

others like cruise ships that were early sites of large COVID-19 outbreaks, but have ‘even greater risk of infectious spread than other enclosed environments because of conditions of crowding, the proportion of vulnerable people detained, and often scant medical care resources.’” Gonsalves Decl. ¶ 16. Furthermore, according to Dr. Allen Keller, “the risk of COVID-19 infection and spread in immigration detention facilities, including Bristol County, is extremely high.” Declaration of Allen Keller, ¶ 10. The risk is exacerbated by immigration detention staff, contractors, and vendors who “are at great risk of unknowingly spreading COVID-19 infection that was acquired in the community, given the[ir] daily back and forth routines . . . and lack of available tests.” *Id.* ¶ 14.

In the Bristol County Immigration Detention Facilities, however, it is business as usual. Members of the proposed class – who are being held civilly, not pursuant to any criminal conviction – have pled with Defendants, in increasing frantic ways, to protect them from this deadly virus, but those pleas have fallen on deaf ears. Defendants have continued to confine detainees in close proximity, without adequate soap, disinfectant, sanitizer, toilet paper, and other daily anti-viral necessities. Declaration of Ira Alkalay (“Alkalay Dec.”), ¶ 8; *see also* Declaration of Julio Cesar Medeiros Neves (“Medeiros Neves Dec.”) ¶ 15; Declaration of Maria Alejandra Celimen Savino (“Celimen Savino Dec.”) ¶ 8.

Defendants’ response to the threats this lethal pandemic poses to immigrants has been unconstitutional, abysmal and haphazard. Following public outcry, on March 17, 2020, ICE issued a statement that it would modify its enforcement efforts in apparent recognition of the need for alternatives to detention to protect public health. The next day, however, in response to a lawsuit for the release of vulnerable ICE detainees in Washington state, the agency again demonstrated its failure to appreciate the threats the COVID-19 pandemic presents, stating that

“Plaintiffs’ assertion that detention *per se* poses an increased risk of health complications or death from COVID-19 is purely speculative.”⁶

On March 19, 2020, two medical subject matter experts for the Department of Homeland Security’s Office of Civil Rights and Civil Liberties blew the whistle to Congress, writing “regarding the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public, ***it is essential to consider releasing all detainees who do not pose an immediate risk to public safety.***”⁷ On multiple occasions since at least February 25, 2020, these experts had sounded the alarm within the agency on the imminent risks to the health of immigrant detainees and the public at large presented by COVID-19 unless swift mitigation measures, including decreasing the number of immigrant detainees, are taken.

Defendant Hodgson, the Sheriff of Bristol County, issued a statement on March 19, 2020 noting that although 80% of the individuals detained at BCHOC are immunocompromised, and thus particularly vulnerable to exposure to COVID-19, he refused to take *any* measures to release anyone from custody.

Several recent court rulings have explained the health risks—to inmates, guards, and the outside community at large—created by large prison populations. *See, e.g., Jimenez v. Wolf*, No. 18-10225-MLW (D. Mass. Mar. 26, 2020) (ordering release of immigrant detainee in the midst of the COVID-19 pandemic and noting that “being in a jail enhances risk” and that in jail “social distancing is difficult or impossible”); *United States v. Stephens*, No. 15-cr-95-AJN, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (ordering the release of inmate in Federal Bureau of

⁶ Respondents—Defendants’ Opposition at 8, Dawson v. Asher, ECF No. 28, Case No. 20-0409 (W.D. Wash. Mar. 18, 2020).

⁷ Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional Committee Chairpersons, dated Mar. 19, 2020, available at <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf> (emphasis in original).

Prisons custody due, in part, to risk posed by COVID-19 in the facility); *In the Matter of the Extradition of Alejandro Toledo Manrique*, Case No. 19-mj-71055, 2020 WL 1307109, at *1 (N. D. Cal. March 19, 2020) (ordering change to conditions of bail for an individual to postpone incarceration, in part in light of risk of vulnerability to the coronavirus) *United States v. Barkman*, No. 3:19-cr-0052-RCJ-WGC, 2020 U.S. Dist. LEXIS 45628 (D. Nev. Mar. 17, 2020). On March 22 the New Jersey Supreme Court issued a consent order for the presumptive release of approximately 1,000 persons by March 26.

II. PROPOSED CLASS DEFINITION

All civil immigration detainees who are now or will be held by Respondents-Defendants at the Bristol County House of Corrections (BCHOC) and the C. Carlos Carreiro Immigration Detention Center (“Carreiro”) in North Dartmouth, Massachusetts.

III. PROPOSED CLASS REPRESENTATIVES

The proposed class representatives are Maria Alejandra Celimen Savino and Julio Cesar Medeiros Neves, both of whom are currently detained at Bristol County Immigration Detention Facilities. Savino Decl. ¶ 1-3; Neves Decl. ¶ 1-2.

Mr. Neves is currently detained at BCHOC in Unit B. Neves Dec. ¶ 2. He is being held in the same cell as forty-nine other people, whose beds are close to one another and as a result cannot engage in “social distancing.” *Id.* ¶¶ 4-6. Bristol County House of Corrections has not given him any guidance or materials to help protect himself from COVID-19 such as hand sanitizer or disinfectant. *Id.* ¶¶ 7, 15. He has observed guards at BCHC with coronavirus-like symptoms, and saw one detainee who arrived to BCHC after COVID-19 pandemic was underway who was very sick and had to be taken out of the unit. *Id.* ¶¶ 12, 14. Mr. Neves Junio suffers from depression and anxiety, which has been exacerbated by his fear of being infected by COVID-19 in this life-threatening environment. *Id.* ¶¶ 2, 9, 12.

Maria Alejandra Celimen Savino is currently detained in Bristol County Immigration Detention Facilities, in a unit called C. Carlos Carreiro Immigration Detention Center, Alley EB. Savino Decl., ¶¶ 1-3. Her unit has eight cells of ICE detainees with 2 detainees typically in each cell. *Id.* ¶ 4. There are non-immigration inmates directly above her unit, with whom she shared common areas such as the bathroom and a common room where they eat, sitting side-by-side. *Id.* ¶¶ 7, 9. For this reason, she has not been able to engage in social distancing. *Id.* ¶ 11. She has not had toilet paper for one week, as the facility ran out of it and has not restocked. *Id.* ¶ 8. The unit is only cleaned by detainees, with no professional cleaning staff or supplies, and detainees are forced to clean surfaces and objects using only hot water. *Id.* ¶ 10. She has continued to see a constant stream of new detainees and people coming into the unit from the outside and is has no knowledge that any of them have been tested for COVID-19 before entering. *Id.* ¶ 12. She suffers from asthma since she was a child and her health will be very compromised if she is infected with COVID-19. *Id.* ¶ 13. She worries that she will get sick and die in detention. *Id.* ¶ 15. Moreover, she and her fellow detainees have not been given tools to follow proper hygiene and sanitation and have not been given any materials to help protect themselves during this epidemic. *Id.* ¶ 17.

ARGUMENT

Petitioners seek certification of the class described above under Federal Rule of Civil Procedure 23. “By its terms, [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Class certification is thus appropriate where the proposed class satisfies the four requirements of Rule 23(a) – numerosity, commonality, typicality, and adequacy of representation – and at least one of the categories of Rule 23(b). These criteria are met here, where the numerous civil immigration detainees who

form the proposed class are all being held by one institution and uniformly placed at risk of contracting the COVID-19 virus due to their conditions of confinement.

Civil rights actions such as the instant one are particularly amenable to class treatment. Rule 23 was enacted to “facilitate the bringing of class actions in the civil-rights area.” 7A Wright & Miller, *Federal Practice & Procedure* §1775 (3d ed. 2018). The arguments in favor of class certification are especially strong in this context, where individual class members are unlikely to be able to pursue their claims individually. Even under typical circumstances, civil immigration detainees are hard-pressed to bring their own claims, since they are all detained, largely lack counsel, and many do not speak English. *See Reid v. Donelan*, 297 F.R.D. 185, 189 (D.Mass. 2014), *reversed on other grounds*, 819 F.3d 486 (1st Cir. 2016) (certifying class of immigration detainees because, among other things, “many do not speak English, a majority do not have counsel, and most are unlikely even to know that they are members of the proposed class”); *Gordon v. Johnson*, 300 F.R.D. 28, 29 (D.Mass. 2014). These difficulties are compounded even further in the current moment, when Massachusetts (like much of the rest of the world) is essentially on lock-down. Class certification is particularly appropriate here, and all the requisite elements of Rule 23 have been met.

I. The Proposed Class Meets the Requirements of Rule 23(a).

A. The proposed class is so numerous that joinder would be impractical.

The proposed class satisfies the requirement that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The First Circuit has recognized that this is only a “low threshold,” *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009). “[A] class size of forty or more will generally suffice in the First Circuit.” *Reid*, 297 F.R.D. at 189.

Here, there are currently more than 57 civil immigration detainees who are housed at Bristol County Immigration Detention Facilities. Many of these detainees are unrepresented, *see*

Reid, 297 F.R.D. at 189, and lack the financial resources to bring individual claims. *Torrezani v. VIP Auto Detailing, Inc.*, 318 F.R.D. 548, 554 (D. Mass. 2017) (class certification is favored where the Court “can reasonably infer that substantially all of the class members have limited financial resources....”).

Moreover, new detainees continue to be admitted to Bristol County Immigration Detention Facilities, rendering the current number of detainees “merely the floor for this numerosity inquiry....” *Reid*, 297 F.R.D. at 189. The fact that future detainees form a part of the proposed class makes joinder, already an infeasible option, that much more impracticable. *Reid*, 297 F.R.D. at 189.

B. The proposed class representatives present issues of fact and law in common with the class.

Rule 23(a)(2) requires that “questions of law or fact” be “common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality requires the identification of an issue that by its nature “is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes v. Wal-Mart Stores, Inc.*, 564 U.S. 338, 350 (2011). A single common issue is sufficient to establish commonality. *Id.* at 359 (“We quite agree that for purposes of Rule 23(a)(2) even a single common question will do....”) (internal quotation marks, brackets, and citations omitted). For this reason, the First Circuit has recognized that, like numerosity, the commonality requirement is “a low bar....” *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6, 19 (1st Cir. 2008).

This case satisfies the requirement of at least “a single common question” that is shared by all members of the proposed class. Among others: Whether the conditions of confinement at Bristol County Immigration Detention Facilities, under the current conditions and in light of the

COVID-19 pandemic, render class members' confinement a punishment that violates constitutional standards. All of the class members either have been, or will be, subjected to these common conditions, and a determination that Defendants' conduct is unconstitutional will therefore "resolve an issue that is central to the validity" of each and every class member's detention. *Dukes*, 564 U.S. at 350 (2011).

The fact that certain details relating to their conditions of confinement will vary between class members does not defeat commonality. *Reid*, 297 F.R.D. at 191 (class certification granted despite individual differences among class members, where common issues pervade). And in fact conditions experienced in the Bristol County Immigration Detention Facilities by the proposed class representatives are shared with other members of the proposed class. Since the COVID-19 epidemic began, Defendants have continued to confine detainees in close proximity, without adequate soap, toilet paper, and other daily necessities. Declaration of Ira Alkalay ("Alkalay Decl."), ¶ 8; see also Declaration of Julio Cesar Medeiros Neves ("Medeiros Neves Decl.") ¶ 15; Declaration of Maria Alejandra Celimen Savino ("Celimen Savino Decl.") ¶ 8.

Defendants eat off plastic trays which have passed through the hands of three or four individuals before they eat off of them. Alkalay Dec. ¶ 5. Defendants continue to deny access to testing and medical care for Plaintiffs and other detainees: it takes days or weeks for them to get an appointment, and even longer to receive medication. Declaration of Cesar Francisco Vargas Vasquez ("Vargas Vasquez Decl.") ¶¶ 11

Indeed, "social distancing" is impossible for all of the class members, just as it is for the proposed class representative. Gonsalves Dec. ¶ 17, Keller Decl. ¶ 8. Beds are in close proximity to each other and meals are eaten in close quarters. Keller Decl. ¶ 17; Alkalay Decl. ¶ 4. Basic hygiene protections are unavailable. Alkalay Decl. ¶ 8. While the rest of the country

scours grocery store shelves for Purell, class members lack even the basics of adequate soap and toilet paper. And Defendants are introducing daily new detainees into these conditions without any mandatory quarantine period. See, e.g., Alkalay Decl. ¶ 9.

As courts have repeatedly recognized, even under the more stringent standards applicable to class actions that seek damages under Rule 23(b)(3), class action treatment is appropriate despite the existence of individual differences. *Tyson Foods, Inc. v. Bouaphakeo*, --- U.S. ---, 136 S.Ct. 1036, 1045 (2016) (“When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.”) (internal quotation marks and citations omitted). Where as here, the commonalities are readily apparent, Rule 23 is amply satisfied.

C. The class representatives’ claims are typical of those of the class.

Where commonality looks to the relationship among class members generally, typicality under Rule 23(a)(3) focuses on the relationship between the proposed class representative and the rest of the class. See *George v. Nat’l Water Main Cleaning Co.*, 286 F.R.D. 168, 176 (D.Mass. 2012) (citing 1 William B. Rubenstein, *Newberg on Class Actions* § 3:26 (5th ed. 2012)). In practice, however, the analysis of typicality and commonality “tend to merge.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). To satisfy Rule 23(a)(3), “a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Id.* at 156.

Typicality is “‘not highly demanding’ because ‘the claims only need to share the same essential characteristics, and need not be identical.’” *Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D. 21, 24-25 (D.Mass. 2003), quoting 5 *Moore’s General Practice* § 23.24[4]. “For purposes

of demonstrating typicality, “[a] sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 69 (D.Mass. 2005), quoting *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla. 2004).

Here, the interests of the proposed class representatives and the proposed class members are aligned. *Cf. Faherty v. CVS Pharmacy, Inc.*, 2011 U.S.Dist.LEXIS 23547, at *6 (D.Mass., March 9, 2011) (noting that the alignment need not be perfect). The proposed class representatives are members of the class, have suffered the same injury as the proposed class members, and have been injured by Defendants’ actions and inactions that have led to conditions of confinement that threaten the health and safety of all class members.^{5/} In such circumstances, the representative’s claims are “obviously typical of the claims ... of the class,” and satisfy Rule 23(a)(3). *See Baggett v. Ashe*, 2013 U.S.Dist.LEXIS 73202, at *2 (D. Mass. May 23, 2013); *see also Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001) (typicality requirement is satisfied when “the cause of the injury is the same—here, the Board’s discriminatory policy and practice”).

There is, moreover, no risk that issues involving the named Plaintiffs’ individual claims will impede their litigation on behalf of the class. Because the named Plaintiffs are challenging the same practice and seeking the same relief without regard to the outcome of their own efforts to obtain release from unconstitutional conditions of confinement, they “can fairly and adequately pursue the interests of the absent class members without being sidetracked by [their] own particular concerns.” *In re Credit Suisse-AOL Sec. Litig.*, 253 F.R.D. 17, 23 (D.Mass. 2008).

D. The proposed class representatives and class counsel can adequately represent the class.

^{5/} See Declarations cited *supra*.

Finally, the named plaintiffs and their counsel will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Two factors must be satisfied to fulfill this prerequisite: “(1) the absence of potential conflict between the named plaintiff and the class members and (2) that counsel chosen by the representative parties is qualified, experienced and able to vigorously conduct the proposed litigation.” *Adair v. Sorenson*, 134 F.R.D. 13, 18 (D. Mass. 1991), *quoting Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985) (internal quotations omitted).

Here, “the interests of the representative party will not conflict with the interests of any of the class members,” *Andrews v. Bechtel Power Corp.*, 780 F.3d 124, 130 (1st Cir. 1985), because – as already explained – those interests are aligned. The named Plaintiffs have alleged the same injuries, arising from the same conduct, and they seek the same injunctive and declaratory relief, which will apply equally to the benefit of all class members.

In addition, “counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation.” *Id.* The named Plaintiffs are represented by Lawyers for Civil Rights and Yale Law School’s Worker and Immigrant Rights Advocacy Clinic. Collectively, counsel have significant experience in the areas of immigration law, constitutional law, class action litigation, and habeas corpus actions. *See* Declaration of Oren Sellstrom In Support of Class Certification; Declaration of Michael Wishnie In Support of Class Certification. For the same reasons, counsel also satisfy the requirements of Rule 23(g) and should be appointed as class counsel.

II. The Proposed Class Meets the Requirements of Rule 23(b)

“In addition to meeting the four requirements of Rule 23(a),” the Plaintiffs “must show that the proposed class falls into one of the three defined categories of Rule 23(b).” *Reid*, 297 F.R.D. at 192. Here, the most applicable category is described in Rule 23(b)(2), which applies

when “the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.”

The “prime examples” of Rule 23(b)(2) cases, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997), are civil rights cases like this one, where the claim asserts that the Defendants have “engaged in unlawful behavior towards a defined group....” *Reid*, 297 F.R.D. at 193. The rule applies, moreover, where “a single injunction or declaratory judgment would provide relief to each member of the class” (as opposed, for example, to cases in which each class member would need an individual injunction or declaration, or in which each class member would be entitled to an individualized award of money damages). *Dukes*, 564 U.S. at 360-61.

The claims asserted in the Petition and Complaint satisfy these requirements. Defendants have engaged in unconstitutional behavior towards the entire class. Every member of the class is at imminent risk of being infected by COVID-19, due to their conditions of confinement. And, because every member of the class is entitled to relief from these unconstitutional conditions, an appropriate injunction or declaration will provide relief on a class-wide basis. “The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted – the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them. *Dukes*, 564 U.S. at 360.

CONCLUSION

Plaintiffs respectfully ask the Court to:

- (1) Certify a class consisting of all civil immigration detainees who are now or will be held by Respondents-Defendants at Bristol County Immigration Detention Facilities;
- (2) Appoint named Plaintiffs Maria Alejandra Celiman Savino and Julio Cesar Medeiros Neves as class representatives; and

(3) Appoint the undersigned counsel as class counsel.

Dated: March 27, 2020

Respectfully submitted,

MARIA ALEJANDRA CELIMEN SAVINO,
JULIO CESAR MEDEIROS NEVES
AND ALL THOSE SIMILARLY SITUATED

By their attorneys,

/s/ Oren Sellstrom
Oren Nimni (BBO #691821)
Oren Sellstrom (BBO #569045)
Lauren Sampson (BBO #704319)
Ivan Espinoza-Madrigal[†]
Lawyers for Civil Rights
61 Batterymarch Street, 5th Floor
Boston, MA 02110
(617) 988-0608
osellstrom@lawyersforcivilrights.org

Grace Choi, Law Student Intern^{*}
Kayla Crowell, Law Student Intern^{*}
Laura Kokotailo, Law Student Intern^{*}
Aseem Mehta, Law Student Intern^{*}
Alden Pinkham, Law Student Intern^{*}
B. Rey, Law Student Intern^{*}
Megan Yan, Law Student Intern^{*}
Reena Parikh[†]
Michael Wishnie (BBO# 568654)
Jerome N. Frank Legal Services Organization
P.O. Box 209090
New Haven, CT 06520
Phone: (203) 432-4800
michael.wishnie@ylsclinics.org

Attorneys for Plaintiffs

[†] Motion for admission *pro hac vice* forthcoming.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2020, the above-captioned document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Oren Sellstrom