IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AMARILLO DIVISION

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, et al.,	§	
Plaintiffs,	§	2:07-CV-188-J
v.	§	
	§	ECF
UNITED STATES DEPARTMENT OF HOMELAND SECURITY, MICHAEL CHERTOFF, SECRETARY, et al.,	§	
Defendants.	§	

ORDER DENYING MOTION FOR CLASS CERTIFICATION

This class action lawsuit is brought to challenge the methods, practices and procedures by which government agencies enforce the nation's immigration and criminal identity theft laws in the meat packing, commercial foods and other industries. Plaintiffs are an international commercial food workers' union and eight of its members who allege that civil rights of citizen and alien workers are being violated in simultaneous plant-wide and company-wide law enforcement actions such as occurred at six Swift & Co. meat packing plants. The relief sought in this case is not limited to Swift plants or the meat packing and commercial foods industries. Plaintiffs seek nationwide relief that would encompass all workers, whether U.S. citizens, legal aliens or aliens illegally within the United States, who are employed in all industries and businesses subject to Swift-like enforcement actions. How the government conducted the immigration enforcement actions at the six Swift plants are at the center of the contested issues in this case.

The eight Plaintiff union members work at three of the six Swift plants. They seek permission to be authorized class representatives of all 250,000 United States members of the International Food and Commercial Workers Union, which has 1.3 million members in the United States, Canada and Puerto Rico, and the "thousands of persons" within the expansive class definition who "will continue to" be impacted by the allegedly unconstitutional governmental workplace enforcement actions. The international union has locals with collective bargaining agreements (CBA) at many, but not all, Swift & Co. meat packing plants and facilities in multiple states./[1]

The Defendants are statutorily charged with enforcement of the immigration and criminal laws of the United States. Defendants are Department of Homeland Security (DHS) Secretary Michael Chertoff, DHS Immigration and Customs Enforcement (ICE) Asst. Secretary Julie L. Myers, ICE itself, and up to 100 "John and Jane Doe" DHS and/or ICE agents. Defendants oppose class certification.

Plaintiffs' proposed class definition is "all persons subjected to group detention without warrant or a reasonable suspicion based upon articulable facts that they are immigrants unlawfully present in the United States in violation of the Immigration and Nationality Act [Act] during work-place enforcement activities conducted by [ICE] agents." Plaintiffs seek a nationwide class that encompasses all workers, whether U.S. citizens, legal aliens or aliens illegally within the United States, who are employed in all industries and businesses, who have been subjected to such group detention. This proposed class definition fails because it is vague, too speculative, and unsupportable.

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[1] No locals are parties to this suit. One local, number 540, brought an earlier class action lawsuit in this Court challenging some of the government's actions which are at issue in this case. In October, 2007, that earlier case, civil number 2:06-CV-350-J, was dismissed with prejudice as to the local union and without prejudice to the workers who were proposed class representatives.

Rule 23 is designed to protect against vague and overbroad class definitions. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997); *Chiang v. Veneman*, 385 F.3d 256, 271 (3rd Cir. 2004)(a class cannot be defined by subjective criterion in what should be an objective evaluation); *NOW v. Scheidler*, 172 F.R.D. 351, 357 (N.D. Ill. 1997)(an identifiable class exists only if its members can be ascertained by reference to objective criteria). Limiting the class to those whose due process rights were violated would seem to prejudge the merits of the case, contrary to the teaching of *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974); *see also* 5 James Wm. Moore et al., Moore's Federal Practice ¶ 23.21[3][c] (3d ed. 1999) ("A class definition is inadequate if a court must make a determination of the merits of the individual claims to determine whether a particular person is a member of the class.").

The proposed class definition is too vague. The meaning of " group detention without warrant" is undefined. Given the fact that there were warrants issued at all six Swift plants, Plaintiffs are obviously arguing for some type of individualized warrants. But what kind of warrant? Would any warrant suffice? Plaintiffs seem to be proposing a limit such as an arrest warrant issued for each individual suspected by ICE to be illegally present, such that only those so detained would be ascertained one by one./[2] But they are not clear. There is no guidance suggested by Plaintiffs by which this phrase can be properly interpreted by either class members receiving a class notice, or the Defendants, or the Court. After all, ICE has statutory authority under 8 U.S.C. § 1357, without a warrant, to interrogate any person believed to be an alien as to his right to be or to remain in the United States.

Also lacking definition is "a reasonable suspicion based upon articulable facts that they are immigrants unlawfully present in the United States in violation of" the immigration laws. There is no

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[2] Or a search warrant naming each individual person suspected to be at the workplace illegally, or administrative warrants naming each individual person to be interviewed upon a showing of reasonable suspicion, or some combination thereof, or something else entirely?

guidance suggested by which this phrase can be properly interpreted. "Reasonable" is too subjective. What if proposed class members in fact know that they are unlawfully present in the United States in felony violation of the immigration and other laws; are they included within the class because they were rounded up in a mass raid and had to wait to be sorted out? This definition raises the prospect of a class of persons who truly believed that they were discriminated against because of their nation origin, a subjective belief, a class definition based upon subjective beliefs which courts have rightfully refused to certify. *Cf. Chiang v. Veneman*, 385 F.3d at 272.

Plaintiffs provide no guidance and suggest no limits on these questions. For these reasons the motion for class certification is denied.

It is SO ORDERED.

Signed this the 4th day of March, 2009.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE