UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADRIANA AGUILAR, et al.,	:	
	:	ECF Case
Plaintiffs,	:	Civil Action No.
	:	07 CIV 8224 (JGK) (FM)
-against-	:	
	:	
IMMIGRATION AND CUSTOMS ENFORCEMENT DIVISION OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al.,	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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I. PRELIMINARY STATEMENT

Plaintiffs, on behalf of themselves and all similarly situated individuals, submit this Memorandum of Law in support of their Motion for Class Certification. The 21 putative class representatives are Latino men, women, and children, each of whom was subjected to unconstitutional searches and seizures by Immigration and Customs Enforcement (ICE) agents in home-raid operations carried out under the direction of the New York Field Office of the ICE Detention and Removal Office and/or the New York Regional Office of ICE Office of Investigation (collectively "ICE New York").[1] Two Immigration Judges found that the actions of ICE New York constituted "egregious violations" of the Fourth Amendment in raids of named plaintiffs' homes; in fact, several immigration judges found violations during similar home-raid operations. The actions of ICE New York at issue in this case have broad impact on putative class members, and were recognized even by other law enforcement authorities as raising serious constitutional problems. For example, after accompanying ICE New York agents at home operations, the Nassau County Police Department pulled out of the operation, noting that the operations "lacked current intel," were "structured poorly," and that "most of those picked up were not the targets of warrants."[2] Similarly, members of the United States Congress questioned ICE tactics, expressing concern that ICE practices "invariably swept a number of law-abiding citizens and non-citizens into its net," and that "ICE officers are routinely using excessive force and intimidation tactics in their raids."[3]

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[1] As of June 2010, the Detention and Removal Office (DRO) is called Enforcement and Removal Operations (ERO); the Office of Investigation (OI) is now Homeland Security Investigations.

[2] 9/27/2007 Mulvey Letter (Decl. of Aldo A. Badini in Supp. of Pls.' Mot. for Class Certification ("AB Decl."), Ex. 1). *Cited exhibits are attached to the AB Decl. unless otherwise indicated.*

[3] 2/11/2008 Serrano Letter (Ex. 2); *see also* 4th Am. Compl., Exs. 5-6, 13-14.

Plaintiffs' constitutional rights, and those of unnamed class members, were violated during the course of home-entry operations when ICE agents surrounded, entered, and searched their homes without judicial warrants, voluntary consent, or exigent circumstances. The practices of ICE and its employees in preparing for and implementing Operation Return to Sender, Operation Cross Check, Operation Community Shield (OCS), and other daily enforcement operations are strikingly consistent. Moreover, these operations are ongoing, as are the policies and their equivalents, which incentivize, and in some cases explicitly authorize, conduct which is unconstitutional. Because these operations affect millions of New York's Latino residents, the Court should certify a class for the purpose of securing class-wide injunctive relief.[4]

Plaintiffs move for certification of a class of persons affected by defendants' policies and practices defined as:

> Persons who, because they (1) are Latino; and (2) reside within the jurisdiction of ICE New York, have been subjected to and/or are at imminent risk of home raids by ICE New York.

This proposed class satisfies all four of the requirements of Federal Rule 23(a). First, because millions of Latinos reside within the jurisdiction of ICE New York, joinder of all class members is impracticable and class certification will promote judicial economy. Second, ICE's unconstitutional policy and practice of entering homes without voluntary consent and seizing residents because they are, or appear to be, Latino harms both named plaintiffs and the proposed class, raising questions of law and fact common to the entire proposed class. Third, the claims of

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[4] The named plaintiffs seek damages under the Federal Tort Claims Act and *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), but do not seek class certification for damages claims.

the named plaintiffs are typical of the claims of members of the proposed class because they arise from the same unconstitutional conduct of defendants, and all members of the class will benefit from this action. Finally, the interests of the named plaintiffs and the class are identical — the prevention of defendants' unconstitutional conduct — and the adequacy of class counsel is established.

Certification of the proposed class is appropriate under Federal Rule 23(b)(2) because the injunctive and declaratory relief sought by plaintiffs is designed to prevent a common course of unconstitutional conduct, making it appropriate to redress the injuries of the class as a whole.

II. STATEMENT OF FACTS

Twenty-one named plaintiffs, all Latino, from six different homes[5] within the jurisdiction of ICE New York,[6] seek certification as class representatives.

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[5] A table of proposed class representatives is attached as AB. Decl., Appendix A. They are: Adriana & Carson Aguilar; Erika Garcia-Leon; Andres & Elena Leon; Nelly Amaya; David Lazaro Perez; William Lazaro-Melchor; Tarcis Sapon-Diaz; Mario Patzan DeLeon; Gonzalo Escalante; Yoni Revolorio; Juan Jose Mijangos; Victor Pineda Morales; Sonia Bonilla; Beatriz & Dalia Velasquez; Pelagia De La Rosa-Delgado; and Anthony, Christopher, & Bryan Jimenez.

[6] The jurisdiction of the ERO New York Field office covers the Five Boroughs and Dutchess, Nassau, Putnam, Suffolk, Sullivan, Orange, Rockland, Ulster, and Westchester counties. *See* Office of ERO Offices: Contact, *available at* http://www.ice.gov/contact/ero/index.htm. The jurisdiction of OI's New York Regional Office is co-extensive with Southern and Eastern Districts of New York, which encompass the counties of New York, Bronx, Westchester, Rockland, Putnam, Orange, Dutchess, Sullivan, Kings, Nassau, Queens, Richmond, and Suffolk. *See* P. Smith Tr. 30:11-19 (Ex. 3); 28 U.S.C. § 112. All putative class representatives resided within the jurisdiction of ICE New York when their homes were raided, and currently

As this Court observed, documents produced by ICE "indicate that, pursuant to guidance created or approved by [then-Director of DRO John] Torres and [then-director of OI Mona] Forman, agents conducted raids at residences in teams of a dozen agents, with body armor and tactical equipment, in the early morning hours." 8/1/2011 Opinion (ECF No. 286) at 33. Defendants concede that they did not possess judicial warrants or probable cause to enter and search homes.[7] Visibly armed ICE agents and local law enforcement personnel surrounded homes and entered the property's curtilage and backyards.[8] They forcefully pounded on doors and windows, at times denting doors and breaking locks.[9] They shouted "police" and commanded the residents to "open the door."[10] After doors were opened, ICE agents barged inside; in some cases, they entered after encountering a minor at the door.[11] Likewise, at some homes, they used unlawful ruses to gain entry, such as falsely claiming to have valid warrants or

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reside within ICE New York's jurisdiction.

[7] 4/20/10 Hr'g Tr. 48:1-2 (Ex. 4) ("We conceded very early on that these operations were not based on probable cause.").

[8] *E.g.*, ICE 2 Tr. 157:4-18, 214:24-215:8, 216:7-14 (Ex. 5); ICE 12 Tr. 175:10-176:9 (Ex. 6); S. Bunting Tr. 39:7-40:9 (Ex. 7); J. Berry Tr. 12:19-14:21, 16:9-24 (Ex. 8); B. Velasquez Tr. 89:23-90:11 (Ex. 9); M. Patzan DeLeon Tr. 45:11-23, 47:21-24, 50:24-52:3 (Ex. 10); A. Jimenez Tr. 251:21- 252:17, 261:11-22, 263:2-15, 302:9-303:2 (Ex. 11); B. Jimenez Tr. 141:4-142:3, 139:9-15 (Ex. 12).

[9] *E.g.*, N. Amaya Tr. 82:13-84:2 (Ex. 13); Y. Revolorio Tr. 86:21-88:18 (Ex. 14).

[10] *E.g.*, 10/24/08 D. Williams Decl. (Ex. 15); A. Leon Tr. 35:5-9, 83:14-21 (Ex. 16); M. Patzan DeLeon Tr. 42:19-20, 63:3-5 (Ex. 10); A. Jimenez Tr. 132:15-135:22, 138:19-139:2 (Ex. 11).

[11] *E.g.*, P. De La Rosa-Delgado Tr. 114:16-115:4, 123:17-22 (Ex. 17); D. Velasquez Tr. 137:18-138:21 (Ex. 18).

telling a minor that "someone was dying" inside the house.[12] At many homes, agents forced doors open.[13] Thus, the testimony — of plaintiffs, third-parties and ICE agents alike — demonstrates that ICE entered and searched putative class representatives' homes without obtaining voluntary consent.

ICE agents searched each residence even without any particularized suspicion of danger.[14] They barged into private bedrooms of residents, jarring many residents out of sleep.[15] ICE agents shoved, pushed, and pulled residents.[16] Throughout the operations, agents drew or clutched their holstered weapons, including submachine guns and assorted long arms.[17] They

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[12] *E.g.*, B. Velasquez Tr. 82:6-88:7 (Ex. 9); D. Drohan Tr. 112:12-113:2 (Ex. 19).

[13] *E.g.*, ICE 20 Tr. 242:6-17, 336:25-337:17 (Ex. 20); ICE 21 Tr. 340:12-23 (Ex. 21); D. Velasquez Tr. 187:9-22 (Ex. 18); C. Bedi Tr. 86:19-87:11 (Ex. 22); V. Bedi Tr. 104:10-105:18 (Ex. 23); R. del C. Licona Tr. 33:16-34:9 (Ex. 24).

[14] ICE 42 Tr. 234:21-235:6 (Ex. 25); ICE 41 Tr. 209:12-210:3, 211:17-19, 248:5-8 (Ex. 26); ICE 52 Tr. 179:21-180:3 (Ex. 27); ICE 9 Tr. 179:24-180:20 (Ex. 28); ICE 6 Tr. 367:23-368:11 (Ex. 29); ICE 2 Tr. 130:3-10, 206:11-207:18 (Ex. 5); ICE 13 Tr. 199:4-18 (Ex. 30).

[15] ICE 4 Tr. 241:21-244:19 (Ex. 31); ICE 6 Tr. 222:12-223:20 (Ex. 29); A. Leon Tr. 85:13-21 (Ex. 16); A. Aguilar Tr. 43:16-44:16 (Ex. 32); ICE 41 Tr. 176:23-177:10, 183:8-15 (Ex. 26); C. Delgado Tr. 61:22-62:23, 108:8-109:12, 113:15-22 (Ex. 33); A. Amaya Tr. 56:25-57:10 (Ex. 34).

[16] *E.g.*, B. Jimenez Tr. 126:4-11, 135:23-137:14, 231:24-233:14 (Ex. 12); C. Jimenez Tr. 180:6-13, 233:24-234:23, 263:21-25 (Ex. 35); B. Velasquez Tr. 194:7-18 (Ex. 9); J. Mijangos Tr. 149:6-151:24 (Ex. 36).

[17] *E.g.*, G. Hoeler Tr. 94:5-97:3 (Ex. 37); L. Mulvey Tr. 90:22-91:25 (Ex. 38); ICE 34 Tr. 85:8-17 (Ex. 39); Y. Revolorio Tr. 106:17-107:14 (Ex. 14); O. Medina Tr. 125:25-126:15 (Ex. 40); D. Videla Tr. 61:18-62:2, 63:11-21 (Ex. 41); C. Delgado Tr. 135:21-137:24 (Ex. 33).

corralled residents — many of whom were in a state of undress due to the early hour — and prevented them from moving freely in their own homes, from using their phones, and from using the bathroom in private.[18] They interrogated residents in a forceful and coercive manner, often failing to communicate effectively in the native language of the home occupants. ICE agents handcuffed residents as a matter of course, even before they were questioned, and without even attempting to explain ICE's justification for being present.[19]

III. CLASS CERTIFICATION SHOULD BE GRANTED BECAUSE THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF FED. R. CIV. P. 23

Because class certification is essential to the fair and efficient adjudication of this case, and enforcement of any resulting judicial decree, Plaintiffs move for class certification pursuant to Rule 23(b)(2). Class certification is particularly important in a civil rights case such as this, where "[p]rocedural devices permitting disadvantaged persons and groups of persons to seek equalization of status and rights are favored by the courts." *D.S. ex rel. S.S. v. N.Y.C. Dep't of Educ.*, 255 F.R.D. 59, 65 (E.D.N.Y. 2008).

A. The Proposed Class Satisfies the Requirements of Rule 23(a)

The proposed class meets the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure because: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the named plaintiffs are typical of those of the class; and (4) the named plaintiffs and

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[18] *E.g.*, A. Aguilar Tr. 48:13-50:4, 52:15-53:10 (Ex. 32); ICE 6 Tr. 229:10-230:8 (Ex. 29); A. Leon Tr. 50:9-16, 67:24-68:19 (Ex. 16); O. Medina Tr. 112:17-113:20 (Ex. 40); P. De La Rosa-Delgado Tr. 347:7-13 (Ex. 17); V. Pineda Morales Tr. 88:8-89:20 (Ex. 42); N. Amaya Tr. 107:6-109:7 (Ex. 13).

[19] *E.g.*, N. Amaya Tr. 107:16-109:13 (Ex. 13); J. Mijangos Tr. 131:20-132:14 (Ex. 36); W.

their counsel will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997).

1. The Class is So Numerous That Joinder of All Class Members is Impracticable

Rule 23(a)(1) of the Federal Rules of Civil Procedure requires that the class be "so numerous that joinder of all members is impracticable." Plaintiffs need not establish the exact size of the class nor the identity of its members in order to meet the requirements for class certification. *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993) ("Courts have not required evidence of exact class size or identity of class members to satisfy the numerosity requirement."). Instead, plaintiffs may "rely on reasonable inferences drawn from the available facts." *McNeill v. N.Y.C. Hous. Auth.*, 719 F. Supp. 233, 252 (S.D.N.Y. 1989); *see also German v. Fed. Home Loan Mort. Corp.*, 885 F. Supp. 537, 552 (S.D.N.Y. 1995) ("Precise quantification of the class members is not necessary because the court may make 'common sense assumptions' to support a finding of numerosity."). The court may consider materials outside the pleadings in deciding whether the class is numerous. *See Sirota v. Solitron Devices, Inc.*, 673 F.2d 566, 571 (2d Cir.), *cert. denied*, 459 U.S. 908 (1982). Although there is no bright-line rule, the Second Circuit held that "numerosity is presumed at a level of 40 members." *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *see also Nat'l Law Ctr. on Homelessness & Poverty v. New York*, 224 F.R.D. 314, 324 (E.D.N.Y. 2004) (2,300 homeless residents in Suffolk County satisfies numerosity requirement).

Apart from sheer numbers, courts may consider whether additional factors make joinder impractical. For example, potential class members' lack of financial resources weighs in favor

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Lazaro Melchor Tr. 62:24-65:13 (Ex. 43).

of class certification; in this case, plaintiffs' counsel appears on a pro bono basis. *See, e.g.*, *Reynolds v. Giuliani*, 118 F. Supp. 2d 352, 388 (S.D.N.Y. 2000) ("Class members' lack of financial resources also makes joinder difficult."). Likewise, class certification promotes judicial economy where the composition of the class may be in flux. *Robidoux*, 987 F. 2d at 936. Here, the proposed class consists of approximately two million Latinos who, like the putative class representatives, reside within the jurisdiction of ICE New York[20] — demonstrating that joinder of all class members is impracticable and that the numerosity requirement is satisfied.

2. Questions of Law and Fact are Common to the Class

The commonality requirement examines whether the claims depend on some common contention that is capable of class-wide resolution such that its determination "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*, 131 S. Ct. 2541, 2551 (2011). Commonality is not defeated by the presence of individual circumstances, so long as the class-wide proceeding is capable of generating "common *answers* apt to drive the resolution of the litigation." *Id.* n.6 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U.L. Rev. 97, 132 (2009)) (emphasis in original). A single common question is sufficient under Rule 23(a)(2). *Id.* at 2556. The *Dukes* court emphasized: "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples of what (b)(2) is meant to capture." *Id.* at 2557 (quoting *Amchem*, 521 U.S. at 614). This is just such a case.

The commonality requirement is met when "the injuries complained of by the named plaintiffs allegedly resulted from the same unconstitutional or illegal practice or policy that allegedly injured or will injure the proposed class members . . . ." *D.S.*, at 255 F.R.D. 71

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[20] U.S. Census, 2006-08 Am. Cmty. Survey 3-Year Estimates, tbl. S0201 (Ex. 44).

(quoting *Daniels v. City of New York*, 198 F.R.D. 409, 417-18 (S.D.N.Y. 2001)); *see also Marisol A. ex rel. Forbes v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) ("The commonality requirement is met if plaintiffs' grievances share a common question of law or of fact."). Where the proposed class alleges a pattern and practice of unlawful conduct, courts find that the commonality requirement is satisfied, even "where the individual circumstances of class members differ." *Jermyn v. Best Buy Stores, L.P.*, 256 F.R.D. 418, 429 (S.D.N.Y. 2009); *see also Daniels v. City of New York*, 198 F.R.D. 409, 418 (S.D.N.Y. 2001) (finding commonality where named plaintiffs complained of a practice or policy of suspicionless stops); *Ventura v. N.Y.C. Health & Hosps. Corp.*, 125 F.R.D. 595, 600 (S.D.N.Y. 1989) ("[T]he existence of individualized factors or variations does not preclude finding of existence of common questions where pattern, practice or policy exists.").

Here, defendants' pattern and practice of nonconsensual home entries and searches, as well as seizures of the occupants within because they are, or appear to be Latino, represents a "unitary course of conduct by a single system" that demonstrates commonality. *Jermyn*, 256 F.R.D. at 429 (citing *Marisol A.*, 126 F.3d at 377). Moreover, "[t]here is an assumption of commonality where," as here, "plaintiffs seek certification of an injunctive class under Rule 23(b)(2) to right alleged constitutional wrongs." *Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001) (citing *Marisol A. ex rel. Forbes v. Giuliani*, 929 F. Supp. 662, 690 (S.D.N.Y. 1996)); *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) ("(b)(2) classes have been certified in a legion of civil rights cases where commonality findings were based primarily on the fact that defendant's conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct."). Plaintiffs' allegations

of widespread violations of the Fourth and Fifth Amendments arise from a common "course of conduct" by ICE New York toward a class of Latinos living within its jurisdiction.

Latinos throughout ICE New York's jurisdiction are at risk of being subjected to a home raid. The evidence demonstrates that ICE routinely raids Latino homes in which targets do not live, instead arresting "collaterals" or non-targets at homes where targets are not found.[21] Further, ICE New York does not limit its operations to specific addresses or verified target locations. For example, during Operation Community Shield in September 2007, when agents failed to find their purported target at 15 West 18th Street in Huntington, New York, they proceeded to 15 East 18th Street in the same town, looking for the same target; at another location they searched homes adjacent to their initial target address which did not exist at all.[22] This type of conduct was not uncommon.[23] Over and over, agents and officers failed to properly vet their intelligence or target addresses — a serious deficiency noted by fellow law enforcement personnel.[24]

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[21] During the week of September 24, 2007, while 39 targets were arrested, the vast majority of the OI arrests — 148 people — were non-targets. *See* Expert Report of Andrew A. Beveridge ¶¶ 9, 14 (Ex. 45) ("Beveridge Report"); Expert Report of Peter L. Markowitz ¶¶ 39-40, 46-58 (Ex. 46) ("Markowitz Report"); *see also* L. Mulvey Tr. 36:10-22 (Ex. 38); 10/25/07 Bartley Memo (Ex. 47).

[22] R. Coffman (SCPD 30(b)(6)) Tr. 91:24-92:9, 160:23-161:13 (Ex. 48); 9/27/2007 Coffman (SCPD) Notes (Ex. 49); ICE 39 Tr. 224:2-18, 248:9-249:5 (Ex. 50); ICE 40 Tr. 110:16-112:17 (Ex. 51).

[23] *E.g.*, ICE 32 Tr. 168:13-173:17 (Ex. 52); ICE 13 Tr. 66:3-25 (Ex. 30).

[24] *E.g.*, L. Mulvey Tr. 54:19-55:22 (Ex. 38) (Nassau County Police Commissioner testified that ICE agents failed to properly vet addresses); A. Mulrain Tr. 118:4-120:22 (Ex. 53); 11/1/07

Disturbingly, as the experiences of putative class representatives demonstrate, ICE agents surround and raid homes of Latinos even when they possess specific and clear evidence that a purported target will *not* be found at a home they intend to raid. In some cases, faced with information that a target does not reside at a particular home — or was previously deported — ICE agents ignore such evidence and proceed with raids anyway. For example, agents raided the home of Sonia Bonilla and her two daughters even though ICE had deported the purported target at 710 Jefferson Street in November 2005, almost two years prior to the September 2007 raid, and had no evidence that he had re-entered the country, much less lived with the Bonilla-Velasquez family.[25] In fact, in the OI raids alone, 11.1% of the targets identified on ICE's list had "notations in their Work Folders to the effect that they had already been deported, had departed the country, were already in jail, or were not otherwise amenable for deportation."[26] And only 15% percent of the OI targets were actually located and arrested.[27]

This conduct was not limited to OI. DRO officers raided the home of Adriana Aguilar and her family, searching for her ex-husband, even though DHS possessed evidence in its own files that Ms. Aguilar was divorced from the target and in fact remarried to another man with

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Bartley Aff. (Ex. 54).

[25] *See, e.g.*, Exs. 55 & 56 (database printout from the A-file of the target showing that he was deported on 10/21/2005); W. Smith Tr. 161:16-24, 165:22-166:19 (Ex. 57) (testifying that "there doesn't appear to be anything in the file indicating that [the target had] returned"); *see also* 10/25/07 Bartley Memo at 4 (Ex. 47).

[26] Beveridge Report ¶ 38 (Ex. 45); W. Smith Tr. 159:24-166:19, 285:5-287:5 (Ex. 57).

[27] During the OI operation, only 39 of the 255 targets were arrested; an additional 148 non-targets accounted for the majority of OI's arrests. Beveridge Report ¶ 14 (Ex. 45).

whom she had a child.[28] As with OI, the vast majority of DRO arrests — nearly two-thirds — were collaterals.[29] Thus it is not merely named plaintiffs, nor identified targets, nor Latinos who are living with identified targets, who are potential victims of ICE's home raid operations; *all* Latinos in affected counties face the threat of unconstitutional conduct.

Under ICE New York policies and their equivalent, even if a proposed class member already experienced a home raid, there is a significant likelihood of reoccurrence.[30] Indeed, "the fact that a home has been the target of an operation in the past makes it more likely that it will be the target of an operation in the future, because the inaccurate information that leads agents to a home in the first place is likely to remain in the agency's database." 8/1/2011 Opinion (ECF No. 286) at 56. ICE's 30(b)(6) designee admitted: "[W]e have no policies that would discourage [a repeat operation at the same address] or instruct agents not to go back a second time."[31] Moreover, ICE does not require its agents to record home entries, searches, or seizures where no arrest was made, or where no target is found,[32] thus increasing the likelihood that ICE agents will return to these same homes to conduct additional unconstitutional warrantless home operations.[33] The record in this case demonstrates that ICE New York *does* in fact return to

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[28] *See, e.g.*, A. Aguilar Tr. 7:20-10:9 (Ex. 32); US21275(A) at US21302-07 (Ex. 58).

[29] Markowitz Report ¶¶ 32, 39-40 (Ex. 46); *see also* 10/25/07 Bartley Memo at 2 (If a target wasn't located during the home raid, agents were told to arrest at least one other individual "to show we had done something.") (Ex. 47).

[30] *See* P. De La Rosa-Delgado Tr. 33:25-34:12 (Ex. 17); C. Jimenez Tr. 184:17-22 (Ex. 35).

[31] OI 30(b)(6) Tr. 197:23-198:9 (Ex. 59).

[32] ICE TECS & DACS 30(b)(6) Tr. 181:11-182:24 (Ex. 60).

[33] *See* 6/16/2010 ICE's Resps. to Pls.' Req. for Admis. (hereinafter "RFA") Nos. 26-27 (Ex. 61); OI 30(b)(6) Tr. 268:2-269:20 (Ex. 59); DRO 30(b)(6) Tr. 260:19-261:10 (Ex. 62); ICE TECS

homes more than once, looking for the same target,[34] and ICE agents have perpetrated repeat operations at an unknown number of homes.[35]

Given ICE's unsystematic method of confirming the location of purported targets, *any* Latino home is the potential target of an unconstitutional entry and search. Thus, although ICE operations purport to focus on specified targets, they instead injure the general class of Latinos living within the jurisdiction of ICE New York.[36]

Class certification is appropriate because named plaintiffs and members of the proposed class share multiple common questions of law and fact and thus meet the commonality requirement of Rule 23(a)(2). Legal questions common to the class include, among others, whether, having admitted the absence of a judicial warrant or probable cause, defendants have implemented, enforced, encouraged, or sanctioned a policy, pattern, practice or custom of:

> (a) surrounding, entering and searching homes without voluntary consent and in the absence of exigent circumstances in violation of the Fourth Amendment to the United States Constitution;
>
> (b) stopping, detaining, investigating, searching, and effecting seizures in the absence of reasonable, articulable suspicion of unlawful activity or probable cause in violation of the Fourth Amendment to the United States Constitution, and
>
> (c) surrounding, entering and searching homes of Latinos, and stopping, detaining, investigating, searching, and effecting seizures of Latinos in violation of the Equal Protection clause of the Fifth Amendment of the United States Constitution.

& DACS 30(b)(6) Tr. 206:20-207:2 (Ex. 60).

[34] *See, e.g.*, ICE 4 Tr. 138:18-139:9 (Ex. 31).

[35] 6/16/10 ICE Objections & Resps. to Pls.' RFA Nos. 43-44 (Ex. 61) (admitting that ICE "has conducted more than one operation at certain locations, including residences" and has no policy prohibiting repeat home operations).

[36] *See* Beveridge Report ¶¶ 10, 14, 27 (Ex. 45) (showing that targets were a small subset of those arrested by ICE during home raid operations).

During warrantless operations whose purported goal was to arrest specified targets via home entries, ICE surrounded named plaintiffs' homes in the early morning hours and entered and searched without probable cause, consent, or exigent circumstances, seizing occupants, including children, regardless of whether they were the target or whether the target even lived at the home, in violation of the Fourth Amendment. As defendants concede, not one of the 21 putative class representatives was a target of any ICE operation.[37] Further, defendants admit that they were without judicial warrants or probable cause authorizing entry of plaintiffs' homes.[38] Incredibly, defendants argue that agents obtained informed consent to enter and search each and every home at issue throughout their warrantless operations. But plaintiffs' testimony makes clear that ICE did not obtain consent to enter or search — testimony corroborated by numerous reports and studies, by defendants' own admissions, and documentary evidence of ICE New York's policies and practices.[39] On the other hand, when placed under oath at deposition,

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[37] 11/15/10 ICE's Revised Objections & Resps. to Pls.' RFA No. 14 (Ex. 63).

[38] *See, e.g.*, 4/20/10 Hr'g Tr. 48:1-2 (Ex. 4) ("We conceded very early on that these operations were not based on probable cause."); ICE & Official Capacity Defs. Answer ¶¶ 204, 205, 233, 262-63, 321, 339, 350, 360, 394, 399, 400.

[39] *E.g.*, 11/1/07 Bartley Aff. at US6353 (Ex. 54); 10/17/07 Bartley Email (Ex. 64); 4/6/10 Report of Investigation at US48663-69 (Ex. 65); 9/27/07 Report of Investigation at US6393-95 (Ex. 66); 10/25/07 Bartley Memo (Ex. 47); L. Mulvey Tr. 14:18-16:21, 32:22-33:25 (Ex. 38); ICE 6 Tr. 150:21-152:2 (Ex. 29); Expert Report of Dan Montgomery ¶¶ 22-33 ("Montgomery Report") (Ex. 67); Immigration Judge Decisions (Exs. 68 & 69); 4th Am. Complaint Exs. 1-2.

defendants professed a lack of recollection concerning the specifics of receiving any consent, and consent was not noted on a single one of the 180 OI Form I-213 Reports produced in this case.[40]

Such conduct was hardly surprising, given that ICE policies or their equivalent instruct agents to: establish a perimeter around a home prior to a warrantless entry, thus effecting seizure of the occupants within before even attempting to solicit entry; approach homes with teams of agents totaling 6 to 12 agents; wear tactical gear, including raid jackets and firearms; and utilize ruses to effectuate entry.[41] Once inside, ICE policies and their equivalent instruct agents to: effect "investigative stops" of residents inside homes that amount to detentions prior to questioning; tell home occupants, "Let me see your hands"; establish "control points" in order to

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[40] *E.g.*, ICE 1 Tr. 279:23-280:2, 120:12-121:13 (Ex. 70); ICE 2 Tr. 213:25-214:6 (Ex. 5); ICE 3 Tr. 163:5-14, 177:15-178:18, 180:10-25, 242:14-243:7 (Ex. 71); ICE 4 Tr. 200:16-201:17, 284:11-19 (Ex. 31); ICE 5 Tr. 144:8-146:10; 115:13-24 (Ex. 72); ICE 6 Tr. 140:8-18, 144:9-11 (Ex. 29); ICE 7 Tr. 70:3-5, 115:11-116:13, 123:15-17 (Ex. 73); ICE 8 Tr. 162:6-10, 161:14-17, 346:3-7 (Ex. 74); ICE 9 Tr. 107:12-14, 212:8-14, 258:18-21 (Ex. 28); ICE 10 Tr. 190:9-191:1, 193:24-194:4, 205:22-206:4 (Ex. 75); ICE 11 Tr. 192:8-10 (Ex. 76); ICE 13 Tr. 168:3-6, 202:11-203:11 (Ex. 30); ICE 18 Tr. 196:8-25 (Ex. 77); ICE 21 Tr. 299:5-300:5; 337:25-338:12 (Ex. 21); ICE 22 Tr. 95:16-96:7; 97:18-20 (Ex. 78); ICE 23 Tr. 160:11-13; 179:12-17 (Ex. 79); ICE 25 Tr. 108:16-20; 141:25-142:9 (Ex. 80); ICE 26 Tr. 105:6-10 (Ex. 81); ICE 42 Tr. 131:19-22 (Ex. 25); ICE 39 Tr. 263:23-264:16, 268:20-23 (Ex. 50); ICE 41 Tr. 141:14-20 (Ex. 26); ICE 46 Tr. 196:19-197:8 (Ex. 82); ICE 48 Tr. 216:2-4; 222:25-223:6 (Ex. 83); ICE 49 Tr. 174:24-175:2 (Ex. 84); ICE 51 172:9-12, 218:6-11 (Ex. 85); Beveridge Report ¶¶ 32-33 (Ex. 45).

[41] *E.g.*, Operational Plans (Exs. 86 & 87); Ruse Memos (Exs. 88, 89, & 90); 10/25/07 Bartley Memo (Ex. 47).

"centralize subjects" inside homes; and prevent residents from using the phone.[42] ICE policies that substantially increased agent arrest quotas and endorsed large-scale collateral arrests of non-targets, encouraged and promoted New York ICE agents to disproportionately target neighborhoods and homes of Latinos.[43] Named plaintiffs' experiences are thus markedly similar to those of countless others whose homes are invaded by ICE, and ICE subjects the occupants of such homes to a strikingly consistent and common course of conduct.

ICE New York agents noted internally that raids have been characterized by racial profiling and by nonconsensual entries and searches. These internal allegations of racial profiling are corroborated by testimony, including from local law enforcement personnel, indicating that during jointly conducted raids, ICE agents on multiple occasions used derogatory and racist terms such as "wetback" to refer to the Latinos whose homes were being raided and who were being detained for questioning or arrested.[44] ICE agents exhibited no real interest in apprehending the purported targets but instead seized and questioned all Latinos they encountered.[45]

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[42] *E.g.*, ICE Detention and Removal Operations Division Glynco GA at US22064-174 (Ex. 91); 10/24/08 D. Williams Decl. (Ex. 15).

[43] *E.g.*, Markowitz Report ¶¶ 61-63 (Ex. 46); Montgomery Report ¶¶ 107-110 (Ex. 67); A Tangeman Memos. (Exs. 92 & 93); J. Torres Memos. (Exs. 94 & 95); OCS Bulletpoint Memo at USE02006-07 (Ex. 96); DRO 30(b)(6) Tr. at 318:2-322:10 (Ex. 62); G. Bartley Tr. 125:24-129:7 (Ex. 97); US47141-52 (Ex. 98).

[44] *See, e.g.*, W. Smith Tr. 353:3-355:7 (Ex. 57); L. Mulvey Tr. 69:22-70:16, 72:6-18 (Ex. 38); A. Mulrain Tr. 94:14-99:20 (Ex. 53); *see also* ICE 4 Tr. 331:13-15 (Ex. 31).

[45] Markowitz Report ¶ 12 (Ex. 46); Beveridge Report ¶¶ 23, 28 (Ex. 45).

It is clear that ICE's determination of whether to enter and search a home and seize individuals inside depends on whether agents encounter a Latino at the front door, and that ICE agents treat Latinos differently than non-Latinos. When ICE agents encounter a Latino person at the front door of a home, they routinely enter and search the entire home without obtaining voluntary consent regardless of whether they have any reason to believe their purported target resides within.[46] Once inside homes, ICE agents improperly seize residents based on their Latino appearance, immediately handcuffing some without bothering to question them first. For example, at 165 Main Street, where an Immigration Judge found an "egregious violation" of the Fourth Amendment, agents seized putative class representative William Lazaro Melchor from his bed and frisked him before confirming his identity or inquiring into his status.[47] In the same building, officers handcuffed two Latino lawful permanent residents and placed one of them inside an ICE vehicle before any agent questioned him about his right to be in the United States.[48] Similarly, at 417 East Avenue, where another Immigration Judge found an "egregious violation" of the Fourth Amendment, agents ordered putative class representative Juan Jose Mijangos out of his bedroom and handcuffed him prior to questioning.[49] During the OCS

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[46] *See supra* notes 11-19.

[47] W. Lazaro Melchor Tr. 62:24-64:23 (Ex. 43).

[48] R. Gonzales Tr. 89:21-91:5, 110:5-24, 137:5-13 (Ex. 101); D. Lazaro Perez Tr. 72:6-24 (Ex. 102) (describing interrogation of Gilberto Soto); 10/16/08 Complaint, *Soto v. United States*, No. 09 Civ. 8884 (S.D.N.Y. ECF No. 1) ¶¶ I.1, II.4-9 (describing 79-year-old lawful permanent resident being handcuffed) (Ex. 103).

[49] J. Mijangos Tr. 132:2-14 (Ex. 36).

operations, ICE agents handcuffed plaintiffs Elder Bonilla and Diana Rodriguez, both of whom had valid immigration documents, prior to any questioning.[50]

In contrast, when encountering non-Latinos at the door of a target residence, ICE agents decline to even interrogate them. ICE agents, for example, did not even attempt to search the dwelling space of the white landlady who initially answered the door at the 20 Boatsteerers Court location, instead entering and searching the apartment of her Latino tenants without seeking their consent.[51] At other homes where non-Latinos opened the front door, agents walked away without entering or making any further inquiries. This disparity is graphically illustrated by the conduct of ICE agents during a September 27, 2007 OCS operation at 318 Second Street in Greenport. When James Berry, a white male, opened the door, the ICE agent at the door immediately apologized, stating "I think we have the wrong address," and departed without questioning Mr. Berry or attempting to seek entry into his home.[52] Similarly, a different OCS ICE team at 34 Elk Street in Hempstead encountered an African-American man at the door and declined to seek entry or to search the home.[53] At yet another home targeted during OCS, ICE agents who encountered a white woman at entry declined to conduct a search.[54]

In addition, statistical evidence demonstrates that ICE New York disproportionately targeted and arrested Latinos relative to the non-citizen and undocumented immigrant populations in areas where home operations were conducted. For example, an analysis of OI raids in Nassau and Suffolk counties demonstrated that 97.1% of ICE targets were Latino, but

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[50] E. Bonilla Tr. 102:17-24 (Ex. 99); D. Rodriguez Tr. 94:17-98:4 (Ex. 100).

[51] D. Drohan Tr. 104:10-16, 112:12-113:2, 114:19-115:13 (Ex. 19).

[52] J. Berry Tr. 13:23-14:21 (Ex. 8).

[53] E. Egan Tr. 327:11-328:10 (Ex. 104).

accounted for a mere 53.1% of non-citizens according to census data (an 82.8% overrepresentation of Latinos).[55] But ICE arrested non-target Latinos on an even more disproportionate basis: 99.3% of non-target arrestees in Nassau and Suffolk counties were Latino (147 of 148 arrests) — a 115.1% overrepresentation considering that Latinos accounted for only 53.1% of non-citizens in that area according to census data.[56] Statistical data demonstrates that ICE New York policies and practices disproportionately targeted Latinos at each stage in the home operation procedure — from the selection of work folders, to the generation of target lists, to the neighborhoods and homes selected for raids, to the selection of non-target arrestees.[57]

The ICE New York agents' conduct demonstrates a common course of conduct, pursuant to policies and their equivalent, of racially profiling and otherwise discriminating against Latinos. The proposed class thus satisfies the commonality requirement for class certification.

3. The Claims of the Named Plaintiffs are Typical of the Claims of the Members of the Proposed Class

The claims of the putative class representatives are typical of the claims of the class because they arise from the same unreasonable and unlawful conduct, and because all class members will benefit from this action. Putative class representatives are Latinos who reside in the jurisdiction of ICE New York, and all claim violations of the Fourth and Fifth Amendments.

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[54] ICE 50 Tr. 185:17-186:23 (Ex. 105).

[55] Beveridge Report Corrected Ex. 3 (Ex. 106).

[56] Beveridge Report Corrected Ex. 6 (Ex. 107).

[57] *See generally* Beveridge Report (Ex. 45); Rebuttal Report of Andrew Beveridge ¶¶ 7, 9, 28-33, 37, 51-52 (Ex. 108).

Rule 23(a)(3) requires that "the claims of the class representatives be typical of those of the class, and is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Robinson v. Metro-North Commuter R.R. Co*., 267 F.3d 147, 155 (2d Cir. 2001), *cert. denied*, 535 U.S. 951 (2002) (quoting *Marisol A.*, 126 F.3d at 376). "The commonality and typicality requirements tend to merge into one another, so that similar considerations animate analysis of Rules 23(a)(2) and (3)." *Marisol A.*, 126 F.3d at 376 (citing, inter alia, *Gen. Tel. Co. of the S.W v. Falcon*, 457 U.S. 147, 157 n.13 (1982)). Similar to commonality, "[t]ypicality does not require that the situations of the named representatives and the class members be identical." *In re Oxford Health Plans, Inc. Sec. Litig.*, 191 F.R.D. 369, 375 (S.D.N.Y. 2000). Typicality "is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol A.*, 126 F.3d at 376 (quotation omitted)). Further, "the [typicality] rule is satisfied . . . if the claims of the named plaintiffs arise from the same practice or course of conduct that gives rise to the claims of the proposed class members." *Daniels*, 198 F.R.D. at 418 (quoting *Marisol A.*, 929 F. Supp. at 691); *see also Robidoux*, 987 F.2d at 936-37 (when named plaintiffs allege the same unlawful conduct was directed at the proposed class, "the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.").

In addition, "named plaintiffs satisfy the typicality requirement when all members of the class would benefit from the named plaintiffs' action." *Gulino v. Bd. of Educ. of City Sch. Dist. of N.Y.*, 201 F.R.D. 326, 332 (S.D.N.Y. 2001); *see also Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194, 206 (E.D.N.Y. 2005); *Cutler v. Perales*, 128 F.R.D. 39, 45 (S.D.N.Y. 1989). Typicality may be presumed where plaintiffs seek injunctive relief on behalf of the class.

See Nicholson, 205 F.R.D. at 100 ("[T]he very nature of the relief sought, namely, an injunction and a declaration, is ample basis for finding that the claims of the named plaintiffs are typical of those of the proposed class in satisfaction of Rule 23 (a)(3).")

The putative class representatives and all the members of the proposed class have claims arising from the same illegal policy, pattern, practice or custom by defendants of targeting Latino homes, entering and searching homes of Latino residents without warrants, consent, exigent circumstances or probable cause, and detaining Latino residents within, in violation of the Fourth and Fifth Amendments of the Constitution. The legal and remedial theories applicable to the named plaintiffs — equitable and injunctive relief — are equally applicable to members of the proposed class. The legal theories advanced by the named plaintiffs are representative of and consistent with the legal theories applicable to the claims of putative class members in light of ICE New York's widespread pattern and practice of nonconsensual conduct during warrantless operations at the homes of Latinos.

Due to the current policies, patterns, practices or customs of ICE New York, all proposed class members are in danger of being subjected to ICE raids.[58] Therefore, all proposed class members will benefit from the success of the named plaintiffs in obtaining injunctive relief to ensure that ICE's enforcement operations do not violate the constitutional rights of Latinos

[58] ICE confirms that the operations at issue in this case are ongoing. 6/16/10 ICE Objections & Resps. to Pls.' RFA Nos. 37-39 (Ex. 61); J. Knopf Tr. 329:11-15 (Ex. 109); Collected ICE press releases (Ex. 110); 4th Am. Compl. Ex. 24 at 2 (ICE spokespersons have confirmed that these home raids will continue in the future and will be "unrelenting.").

within the jurisdiction of ICE New York — and class certification will ensure that an Order of this Court is enforceable by class members.[59]

Accordingly, plaintiffs satisfy Rule 23(a)(3)'s typicality requirement.

4. The Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Members of the Proposed Class

Plaintiffs and their counsel "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In order to satisfy the adequacy requirement, plaintiffs must show that (1) the interests of the named plaintiffs coincide with the interests of the class, and (2) class counsel is qualified, experienced, and generally able to conduct the litigation. *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60-61 (2d Cir. 2000); *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992). Both elements are satisfied.

Where, as here, plaintiffs "seek broad based relief. . . . [and] the interests of the class members are identical despite the individualized problems of each plaintiff" courts have found the adequacy requirement satisfied. *Nat'l Law Ctr.*, 224 F.R.D. at 325; *see also Marisol A.*, 126 F.3d at 378; *Dajour B. ex rel. L.S. v. City of New York*, No. 00 Civ. 2044 (JGK), 2001 U.S. Dist. LEXIS 15661, at *28-31 (S.D.N.Y. Oct. 3, 2001) (Koeltl, J.). The interests of the named plaintiffs and the members of the proposed class are identical, and seek to end the defendants' unconstitutional conduct.[60]

Second, the adequacy of class counsel is not subject to reasonable dispute. Plaintiffs are represented by LatinoJustice PRLDEF, a non-profit civil rights organization that has represented

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[59] *See Zepeda v. U.S. Immigration & Naturalization Serv.*, 753 F.2d 719, 727-28 (9th Cir. 1983) (government argued for limited scope of injunction absent prior class certification); *In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 229 (2d Cir. 2006).

[60] *See, e.g.*, B. Jimenez Tr. 324:6-326:6 (Ex. 12); B. Velasquez Tr. 11:23-12:4 (Ex. 9).

Latinos in civil rights and class action litigation since l972, and Dewey & LeBoeuf LLP, a leading global private law firm that has handled countless class actions. Both LatinoJustice PRLDEF and Dewey & LeBoeuf LLP have extensive experience in constitutional law and class-action litigation and have the resources and commitment necessary to protect and advance the interests of all members of the proposed class throughout this litigation, and proceed on a *pro bono* basis.

B. The Proposed Class Satisfies the Requirements of Rule 23(b)(2)

Requests for class-wide injunctive relief are well-suited for certification under Rule 23(b)(2), which authorizes a class action when: "the party opposing the class has 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. 32(b)(2); *see also Amchem Prods. Inc.*, 521 U.S. at 614. "When a class seeks an indivisible injunction benefitting all its members at once, there is no reason to undertake a case-specific inquiry into whether class issues predominate or whether class action is a superior method of adjudicating the dispute. Predominance and superiority are self-evident." *Dukes*, 131 S. Ct. at 2558. Certification is warranted here.

The proposed class should be certified pursuant to Rule 23(b)(2) because plaintiffs seek an indivisible injunction benefiting all members of the proposed class at once — injunctive and declaratory relief from defendants' policy, pattern, practice, or custom of conducting ICE enforcement operations in violation of the Fourth and Fifth Amendments. Specifically, plaintiffs request that the Court issue a declaratory judgment on behalf of plaintiffs declaring that the actions of defendants violated the Fourth and Fifth Amendments to the United States Constitution. Plaintiffs also seek an order permanently barring defendants from: surrounding, entering, and searching homes of Latinos without first obtaining informed consent; taking

actions to manufacture consent at such homes; and unlawfully identifying and targeting raid locations based upon the belief that Latino individuals inhabit such areas with the intent to detain and interrogate Latinos based on their race, national origin, or ethnicity. Further, plaintiffs seek a mandatory injunction compelling defendants to implement policies and training that will prevent ICE agents and officers from taking actions in violation of the United States Constitution, and to ensure that ICE agents and officers accurately record all home raid events, including but not limited to: demonstrating the necessity of a home operation; recording how and from whom informed consent to enter a home was obtained; and keeping accurate records of all home raids in an ICE database in order to avoid raiding a location unnecessarily or repeatedly, and to enable oversight and intervention if necessary.

Plaintiffs' civil rights challenge to ICE New York's policy and practice of warrantless seizures, home entries and searches is precisely the kind of injury that Rule 23(b)(2) was created to remedy. "Class certification under Rule 23(b)(2) is appropriate where 'broad, class-wide injunctive or declaratory relief is necessary to redress a group-wide injury.'" *Jermyn*, 256 F.R.D. at 433 (quoting *Robinson*, 267 F.3d at 162); *D.S.*, 255 F.R.D. at 66 ("There has been no erosion of the class action as an appropriate means of vindicating constitutional rights. The law continues to recognize the Section 23(b)(2) class action as effective in such matters."); *see also Marisol A.*, 126 F.3d at 378 (finding "civil rights cases seeking broad declaratory or injunctive relief for a large and amorphous class . . . fall squarely into the category of 23(b)(2) actions") (internal quotation marks and citation omitted); *Alexander A. ex rel. Barr v. Novello*, 210 F.R.D. 27, 34 (E.D.N.Y. 2002) (noting tradition of 23(b)(2) actions used to enjoin government conduct); *see also* Fed. R. Civ. P. 23(b)(2), Advisory Committee Notes to 1966 Amendment (civil-rights actions are "illustrative" of those well-suited for (b)(2) certification).

In fact, courts have found that Rule 23(b)(2) "is almost automatically satisfied in actions primarily seeking injunctive relief." *Nat'l Law Ctr.*, 224 F.R.D. at 325 (quoting *Baby Neal*, 43 F.3d at 58)). The fact that named plaintiffs seek damages individually does not impact the Rule 23(b)(2) analysis. *See, e.g.*, *Biediger v. Quinnipiac Univ.*, No. 3:09cv621, 2010 U.S. Dist. LEXIS 50044, at *26-27 (D. Conn. May 20, 2010) (applying Rule 23(b)(2) to certify a class seeking injunctive relief where named plaintiffs sought damages but the proposed class did not); *Ingles v. City of New York*, No. 01 Civ. 8279, 2003 U.S. Dist. LEXIS 2453, at *24-27 (S.D.N.Y. Feb. 18, 2003) (certifying a class seeking injunctive relief pursuant to Rule 23(b)(2) where only the named plaintiffs sought damages).

Accordingly, class certification is appropriate under Rule 23(b)(2).

IV. CONCLUSION

For all of the foregoing reasons, plaintiffs respectfully request that the Court grant their Motion for Class Certification.

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