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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUDLEY BARRINGTON LYON, JR., EDGAR CORNELIO, JOSÉ ELIZANDRO ASTORGA-CERVANTES, LOURDES HERNANDEZ-TRUJILLO, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND

Case No.: 13-cv-05878

[CORRECTED] MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

CUSTOMS ENFORCEMENT, JOHN SANDWEG, Acting Director of U.S. Immigration and Customs Enforcement, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, JEH JOHNSON, Secretary of Homeland Security, TIMOTHY AITKEN, Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement,

Defendants.

CLASS ACTION

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I. INTRODUCTION

Plaintiffs' Motion for Class Certification (the "Motion") demonstrated the many reasons why this is a paradigm case for class action treatment under Rule 23, and why a class action is the only vehicle in which the claims at issue can be adjudicated. Nothing in Defendants Opposition (the "Opposition") undermines that demonstration.

There is no dispute Plaintiffs and members of the proposed class are, were, or will be in custody of Immigration and Customs Enforcement ("ICE"), or that they are held pursuant to detention standards that are promulgated by ICE and incorporated by ICE into the contracts that it negotiates with the jails, or that the detention standards are enforceable by ICE. Plaintiffs and other members of the proposed class are held in ICE custody because ICE initiated proceedings seeking to remove them from the United States. They have constitutional and statutory rights in connection with the defense of their immigration cases, which the Complaint alleges are systematically denied as a result of a common course of conduct by ICE and the other Defendants.

While in ICE custody facing removal charges, Plaintiffs and other members of the class are held in isolated locations where telephone access provides the principal means of communication with the outside world. As the Complaint alleges, and the Motion demonstrated in detail, class members are subjected to the same basic restriction and denial of telephone access, which severely undermines their ability to retain and consult with counsel, gather and present evidence, obtain a fair hearing, and petition government agencies for documents, information and evidence to contest ICE's charges or obtain relief from removal. These deprivations frequently occur in violation of ICE's own detention standards.

Defendants offer no substantial evidence to contest these pivotal facts, which are established in the Motion and six detailed declarations. That failure is decisive and, in addition, Defendants admit in their Answer that key practices and conditions denying and restricting telephone access are identical in each of the jails.

Rather than confronting Plaintiffs' detailed evidentiary showing and the facts admitted in

the Answer, the Opposition relies on a series of peripheral assertions that (1) are bereft of evidentiary support, and (2) would not justify denial of class certification in any event. Equally important, Defendants fail to come to grips with the fact that the Complaint seeks declaratory and injunctive relief pursuant to subsection (b)(2) of Rule 23 and the legal rules governing class certification under that provision. The Opposition further ignores the voluminous case law endorsing class action adjudication of the type of detention-related claims at issue here.

Defendants are responsible for the violations alleged in the Complaint – which arise under the United States Constitution and federal immigration law. Because they control the conditions under which Plaintiffs and other class members are held in ICE custody through ICE's detention standards and contracts with the jails, Defendants are uniquely situated to redress those violations efficiently and on a class-wide basis. Accordingly, the relief sought in the Complaint is against ICE and related Defendants – not individual jails or random prison officials.

As discussed in detail below, Plaintiffs have amply demonstrated the prerequisites of Rule 23(a) and that this case falls squarely within Rule 23(b)(2). It is equally clear that a class action is far superior to any other method (there is none) for fairly and efficiently adjudicating the controversy.

II. ARGUMENT

A. The Proposed Class Is An Easily Ascertainable Group In ICE Custody.

Plaintiffs propose a class of "[a]ll current and future adult immigration detainees who are or will be held by ICE in Contra Costa County, Sacramento County, or Yuba County." Complaint ¶ 83, ECF No. 1 ("Compl."). Defendants contend that this class definition precludes certification because the proposed class is not ascertainable. Opposition ("Opp.") at 6, ECF No. 25. That contention fails under well-settled law and undisputed facts.

A class is adequately defined if its members are "ascertainable by reference to objective criteria." *In re SRAM Antitrust Litigation*, 264 F.R.D. 603, 608 (N.D. Cal. 2009) (quoting 5 James W. Moore, *Moore's Federal Practice*, § 21.21[1] (2001)). To certify a class, it must be "administratively feasible for the court to ascertain whether an individual is a member."

O'Connor v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998). That standard is easily satisfied here.

As the Opposition and accompanying declarations themselves demonstrate, the identity of all individuals included in the proposed class can be readily ascertained from Defendants' records, which reflect (among other things) the names of all detainees held by ICE in Contra Costa, Sacramento and Yuba Counties, the status of their removal proceedings, and a wealth of other detailed information. *See, e.g.*, Declaration of Michael Vaughn ("Vaughn Decl.") ¶ 1, ECF No. 25-2 (deportation officers "maintain and update the administrative file pertaining to each alien"). Defendants' Answer reinforces the point. *See, e.g.*, Answer ¶ 86, ECF No. 24 ("Answer") (admitting that the three facilities typically can hold 500-600 immigration detainees).

Indeed, it is difficult to imagine a better objective criterion for ascertaining the identity of a class than detention by a specific government agency in a specified geographic area. *Compare Lukovsky v. San Francisco*, 2006 WL 140574, *2 (N.D. Cal. Jan. 17, 2006) (class of individuals who would have applied for positions had the vacancies been announced was not sufficiently ascertainable because membership was "contingent on a state of mind"), *with Moyle v. County of Contra Costa*, 2007 WL 4287315, *18 (N.D. Cal. Dec. 5, 2007) (certifying class of juveniles subjected to strip searches in detention facility, where defendants maintained "computerized records of juveniles admitted to Juvenile Hall and the charges on which they were booked").

Defendants' claim that the proposed class is overly broad is equally untenable. According to the Opposition, "the proposed class consists of all individuals detained by ICE regardless of whether any removal proceedings are or have been pending" (Opp. at 6), but should be limited to detainees with "pending deportation proceedings." Opp. at 5-6. Addition of the words "pending deportation proceedings" adds nothing of substance; Plaintiffs and other class members are in ICE custody because they are awaiting deportation proceedings.

Defendants provide no explanation of why there might be individuals in ICE custody who are not facing removal proceedings, other than an oblique reference to individuals "detained under 8 U.S.C. § 1225(b) or § 1231." Opp. at 7. Section 1225(b) provides for the detention of

noncitizens who seek asylum upon arriving in the United States and are entitled to a full hearing in immigration court if they establish a "credible fear of persecution" at an interview with an asylum officer. *See* 8 C.F.R. § 208.30 (outlining procedures for credible fear interviews and referrals to immigration judges).[1] Noncitizens detained under Section 1231(a) have lost their removal cases before the immigration courts but may be seeking judicial review of the removal order, *see* 8 U.S.C. § 1252(b), or pursuing a collateral challenge to the removal order through a motion to reopen, *see* 8 U.S.C. § 1229a(c)(7).

While some individuals detained under Sections 1225(b) and 1231(a) are in a different procedural phase of their immigration cases than those currently awaiting hearings, all members of the proposed class are detained while the government attempts to remove them from the United States. All share similar needs to communicate with attorneys and obtain relevant documents and testimony from the outside world -- to defeat or obtain relief from removal or seek release from detention.[2] The Opposition does not attempt to explain how or why distinctions in the procedural posture of detainees' immigration cases have any significance for purposes of class certification, and they have no such significance. All proposed class members need to be able to communicate with the outside world to exercise their constitutional and statutory rights, and all are subjected to Defendants' detention standards and severe restriction of necessary telephone access.

B. Defendants' Attempts to Resist Certification by Challenging the Adequacy of Named Representatives Are Unfounded and Misconceived.

The Opposition suggests that the class representatives are not adequate because certain of them have been released from ICE detention, or are (or could be) detained under different statutory regimes, because "none of them can evidence any causation," and because there are conflicts between them and the proposed class. Opp. at 7-10. Defendants' assertions regarding

[1] In the credible fear process, a noncitizen may consult with a person of his her choosing, including an attorney; may present evidence; and is entitled to the assistance of an interpreter if unable to communicate effectively in English. 8 C.F.R. § 208.30(d).

[2] Proposed class members may be detained under different statutes, but all have avenues for seeking release from custody, including bond hearings before immigration judges, parole or other discretionary release by ICE, and habeas litigation in federal court.

adequacy are unfounded, and misconceive the requirements for showing a conflict between a representative and absent class members. To the extent Defendants rely on the release of one or more Plaintiffs from custody as a basis for denying certification of the class, they also misconstrue the requirements of Rule 23(b)(2).

1. The Proposed Class Is Inherently Transitory and Could be Certified under Subsection (b)(2) Irrespective of Whether the Named Plaintiffs Remain in ICE Custody.

Defendants' claim that Plaintiff Edgar Cornelio is inadequate because he is longer in ICE custody is both unsubstantiated and incorrect. The Opposition offers no evidence to support the assertion that Plaintiff Cornelio is inadequate. Opp. at 8. The proper inquiry is not whether a plaintiff remains in a class, but whether a named plaintiff will "prosecute the action vigorously through qualified counsel." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Plaintiff Cornelio's signed declaration makes clear his willingness to prosecute the action vigorously, regardless of the outcome of his removal proceedings. Declaration of Edgar Cornelio ¶ 12 ("Cornelio Decl."), ECF No. 14-4

Nor would it matter if none of the named Plaintiffs continued to be held in custody. "[E]ven after mootness of a named plaintiff's own claim, a plaintiff may continue to have a 'personal stake' in obtaining class certification." *Wade v. Kirkland*, 118 F.3d 667, 669 (9th Cir. 1997) (citing *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 (1980)). As the Supreme Court has repeatedly recognized,

> in a case involving a practice to which any particular person is subjected for only a short period of time, if that person can maintain the action on behalf of others similarly situated, the case may remain "live" as to the class and the class thus retains an interest in the outcome, even if the named plaintiff does not.

Lewis v. Tully, 99 F.R.D. 632, 638 (N.D. Ill. 1983) (emphasis added) (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975)). Without question, new detainees with "live" claims for injunctive relief are constantly entering the category of those currently subject to Defendants' alleged practice.

Defendants' contentions further fail because they ignore the fact that the proposed class is inherently transitory, and the law governing certification of transitory classes. "That membership

in the class is constantly shifting does not make the case inappropriate for class action status. The allegedly static nature of [D]efendants' practice anchors the facts on solid ground and makes the case appropriate for judicial resolution." *Tully*, 99 F.R.D. at 637. This is a textbook case where "class membership may be 'so inherently transitory that [the] trial court [may] not even have enough time to rule on a motion for class certification before the proposed representative's individual interest expires," and thus "their claim would fall within the exception recognized in *Gerstein* . . . for cases 'capable of repetition, yet evading review." *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1236 n.9 (9th Cir. 2001).[3]

Under these well-settled rules the proposed class would be appropriate for certification even if all of the named Plaintiffs were released from ICE custody. Moreover, pursuant to the "relation back" doctrine set forth in *Sosna v. Iowa*, 419 U.S. 393, 399 (1975), and subsequent Supreme Court cases, a class may be certified when the named plaintiffs have been mooted out if: (1) the claim is "so inherently transitory that the trial court will not even have time to rule on a motion for class certification before the proposed representative's individual interest expires," and (2) "the constant existence of a class of persons suffering the deprivation is certain." *Geraghty*, 445 U.S. at 399; *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1530 (2013) ("[W]here a named plaintiff's individual claim becomes moot before the district court has an opportunity to rule on the certification motion, and the issue would otherwise evade review, the certification might 'relate back' to the filing of the complaint.").

The relation back doctrine is particularly appropriate in cases that, like this one, challenge detention conditions. *See, e.g.*, *Genesis Healthcare*, 133 S. Ct. at 1531 ("A plaintiff might seek, for instance, to bring a class action challenging the constitutionality of temporary pretrial detentions. In doing so, the named plaintiff would face the considerable challenge of preserving

[3] *See, e.g., Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011) (collecting cases and holding that a class may be properly certified for an "inherently transitory claim" where "it is certain that other persons similarly situated" will have the same complaint); *Wade*, 118 F.3d at 670 (where claims are "inherently transitory," then the action qualifies for an exception to mootness even if there is no indication that [the named plaintiff] or other current class members may again be subject to the acts that gave rise to the claims).

his individual claim from mootness, since pretrial custody likely would end prior to the resolution of his claim.").

It is undisputed that each of the named Plaintiffs was in ICE custody at the time the case was filed, that all proposed class members are will be in ICE custody and subject to the same detention standards and procedures at issue in the Complaint, and that Plaintiffs can substitute class representatives if necessary and as appropriate. In such circumstances courts have consistently certified classes like the one proposed here. *See, e.g., De Abadia-Peixoto v. U.S. Dept. of Homeland Security*, 277 F.R.D. 572 (N.D. Cal. 2011); *Santillan*, 2004 U.S. Dist. LEXIS 20824.

Arguments that a class should not be certified based on the release of one or more Plaintiffs from custody also fail because two of the named Plaintiffs indisputably remain in ICE custody, which provides an ample basis for certifying the proposed class under Rule 23(b)(2). When a suit seeks declaratory and injunctive relief based on a common course of conduct or omissions, it can be certified under Rule 23(b)(2) based on a single class member. As the Advisory Note to subsection (b)(2) makes plain, a class may be certified pursuant to Rule 23(b)(2) "even if" Defendants' wrongful action "has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have a general application to the class." (Emphasis added); *see, e.g.*, *Santillan v. Ashcroft*, 2004 U.S. Dist. LEXIS 20824, at *40 (N.D. Cal. Oct. 12, 2004).

2. There Are No Conflicts Between Named Plaintiffs and Other Class Members.

Defendants appear to argue that the proposed class representatives are inadequate under Rule 23(a)(4) because minor factual variations in their circumstances purportedly create the "inference of a conflict" – specifically because only one of them "sought assistance in placing a call," and none of the named Plaintiffs can adequately "represent any ICE detainees who are subject to a detention statute other than 8 U.S. C. § 1226." Opp. at 9-10. The Opposition offers no basis, legal or otherwise, on which to conclude that these purported differences militate against

certification of a class, much less preclude class certification in this case, and its unsupported speculation regarding possible conflicts of interest is entitled to no weight in the class certification analysis. *See, e.g.*, *Cummings v. Connell*, 316 F.3d 886, 896 (9th Cir. 2003) ("[T]his circuit does not favor denial of class certification on the basis of speculative conflicts."); *Soc. Servs. Union, Local 535, Serv. Employees Int'l Union, AFL-CIO v. Santa Clara Cnty.*, 609 F.2d 944, 948 (9th Cir. 1979) ("Mere speculation as to conflicts that may develop at the remedy stage is insufficient to support denial of initial class certification.").

A plaintiff is inadequate only if there is a "fundamental conflict" that goes to specific issues in the controversy or where some plaintiffs claim to have been harmed by the same conduct that benefitted other members of the class. *Allied Orthopedic Appliances, Inc. v. Tyco Healthcare, L.P.*, 247 F.R.D. 157, 177 (C.D. Cal. 2007). Here, the named Plaintiffs' interests in challenging the systematic denial of telephone access to the outside world, and the class-wide deprivation of constitutional and statutory rights in connection with efforts to deport all class members, are entirely aligned with the interests of the class as a whole. All of the named Plaintiffs, and all other members of the class, have been or will be severely restricted and precluded from contacting counsel and gathering evidence to fight their removal from the United States, or seek release from custody, because of Defendants' policies, procedures, practices and omissions.

The named Plaintiffs request the same declaratory and injunctive relief that all proposed class members would request – telephone access consistent with their constitutional and statutory rights. *See, e.g.*, *McReynolds v. Sodexho Marriott Servs.*, 208 F.R.D. 428, 447 (D.D.C. 2002) (certifying a class where the "relief sought by the particular plaintiffs who brought the suit can be thought to be what would be desired by other members of the class"). While some variation in individual circumstances is, of course, inevitable, adequate representation "does not require complete identity of claims or interests between the proposed representative and the class." 1 William B. Rubenstein, *Newberg on Class Actions* § 3:58 (5th ed. 2012). It only requires "sufficient similarity of interest such that there is no affirmative antagonism between the

representative and the class." *Id.*

Defendants' argument that certain representatives' inability to obtain release on bond renders them unable to bring claims that class members' detention is prolonged as a result of the denial and restriction of telephone access to the outside world (Opp. at 8-9) misses the point. The Complaint alleges, and the declarations filed in support of the Motion show, that Plaintiffs and other class members remain in ICE custody for extended periods because they are forced to seek multiple continuances while they struggle to locate and communicate with attorneys, and gather evidence to be presented in defending their deportation proceedings. *See* Compl. ¶¶ 59-60, 81; Mot. at 16; Declaration of Lourdes Hernandez-Trujillo ¶ 12 ("Hernandez-Trujillo Decl."), ECF No. 14-5; Cornelio Decl. ¶ 8. That process prolongs their detention, especially when they are unable to obtain release on bond.

Moreover, differences among class members with respect to eligibility for release on bond or prolonged detention have no bearing on the ability of named Plaintiffs to represent the class. The asserted claims all arise out of the systematic denial of statutory and constitutional rights that are alleged in the Complaint and documented in the Motion. Those rights all relate to the defense of removal proceedings and the ability to obtain information and relief from government agencies. Prolonged detention is merely one consequence of Defendants' denial of telephone access.

C. The Opposition Does Not Undercut Plaintiffs' Demonstration of Commonality.

1. There Is No Meaningful Difference in the Telephone Access Practices at Issue.

In opposing class certification on commonality grounds, Defendants attempt to paint a picture of widely divergent practices that vary significantly from facility to facility. Opp. at 12 ("any analysis of Plaintiffs' claims . . . will necessarily require an independent analysis with respect to each separate facility and the alternative options available for placing telephone calls at each facility"). That effort fails because Plaintiffs have demonstrated substantially similar obstacles to necessary telephone access at each of the facilities where the members of the class

are detained, and the Opposition fails to provide evidentiary support for the notion that the underlying practices in the Facilities vary in any material way.

In addition to failing to provide evidentiary support for their assertions, Defendants' own ignore their own Answer, which admits that in all of the jails detainees cannot complete calls unless a live person answers the telephone and agrees to accept the call, precluding calls to all offices with voicemail trees and making it impossible to leave a message if the call reaches an outgoing voicemail message. Answer ¶ 48. That admission -- standing alone -- satisfies Rule 23(a)(2)'s commonality requirement, since "even a single common question will do." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011) (alterations and quotation marks omitted); *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) ("[A]ll that Rule 23(a)(2) requires is 'a single significant question of law or fact.'").

Determination of whether the admitted practice violates class members' statutory and constitutional rights presents (1) a common legal question (2) that will produce a common answer that will meaningfully advance the litigation. One such common legal question establishes commonality as a matter of law. *See, e.g.*, *Wal-Mart*, 131 S. Ct. at 2551; *Ellis v. Costco Wholesale Corp*., 657 F.3d 670, 981 (9th Cir. 2011). Put differently, "the legality of [this] policy is a 'significant question of law,' . . . that is 'apt to drive the resolution of the litigation' in this case . . . [and thus] Rule 23(a)(2) [is] satisfied." *Abdullah*, 731 F.3d at 963.

Although further analysis is unnecessary, the Opposition does nothing to refute Plaintiffs' detailed demonstration -- supported by unrebutted declarations -- of numerous other common issues, both factual and legal. As set forth at page 12 of the Motion, all detained immigrants in all three Facilities (and thus all proposed class members) are confronted with numerous other obstacles to communicating with the outside world in order to seek or consult with counsel, or represent themselves in their immigration proceedings, including: (1) telephone rates are unreasonably expensive; (2) calls are automatically disconnected after 15 minutes (in at least two of the three jails); (3) calls may only be placed from public settings, making confidential attorney-client conversations impossible; and (4) detainees cannot receive calls from counsel or anyone

else. Defendants have not even attempted to show otherwise.

As demonstrated at pages 13-15 of the Motion, these common facts raise legal questions that are also common to the proposed class, including whether these pervasive practices and Defendants' common course of conduct violate constitutional and statutory rights, and the ICE Detention Standards that are in effect at all of the jails.

2. Plaintiffs Need Not Demonstrate Injury for Purposes of Class Certification.

While Plaintiffs have demonstrated that they have been injured by the Defendants' policies, that showing goes beyond what is required at this stage of the case. The merits of a plaintiff's claims are not relevant to class certification under Rule 23. *Otsuka v. Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 444 (N.D. Cal. 2008) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974)).

To the extent that the Opposition suggests that Plaintiffs are required to demonstrate causation, injury or prejudice by virtue of an adverse impact on their deportation proceedings, the suggestion is wrong. There plainly is no such requirement in this case -- at any stage of the proceedings -- much less when seeking certification of a class.

As courts in this District and elsewhere have emphasized, "plaintiffs need not have suffered the prejudice of an immigration decision flowing directly from the [instant] policy to seek prospective injunctive relief against what they contend is an unconstitutional deprivation of their rights." *De Abadia-Peixoto*, 277 F.R.D. at 577 ("[t]he premise that a due process violation is not grounds for reversal absent a showing of that degree of prejudice, has no bearing on a plaintiff's right to seek to enjoin due process violations from occurring in the first instance"); *see also Wilbur v. City of Mt. Vernon*, 2012 WL 600727, at *3 (W.D. Wash. Feb. 23, 2012); *Nicholson v. Williams*, 203 F. Supp. 2d 153, 240 (E.D.N.Y. 2002).

The Opposition cites to *Lewis v. Casey* for the proposition that Plaintiffs are required to demonstrate widespread actual injury. Opp. at 11 ("Plaintiffs' attempt to raise a 'systematic challenge' to their conditions of confinement will require a showing of 'widespread actual

injury'"). *Lewis* provides no support for the notion that Plaintiffs bear such a burden on this Motion. It addresses legal requirements following a full trial, not a motion for class certification. 518 U.S. 343, 346 (1996). Indeed, the Court went out of its way to explain that there are different requirements at different stages of the case, that factual allegations of injury are sufficient at the pleading stage, and that competent statements set forth in declarations must be taken as true after the pleading stage, including on summary judgment. *Id.* at 358. Moreover, because this case involves immigration detainees whose rights regarding telephone access arise from pending deportation proceedings, rather than sentenced prisoners who only have a general right of access to the courts, the narrow definition of actual injury in *Lewis v. Casey* is inapposite.

The absence of a requirement to demonstrate injury or prejudice is evident in numerous other Supreme Court decisions. For example, the Court has repeatedly affirmed the propriety of class certification for pre-trial detainees' claims to probable cause determinations when it could not possibly be the case that all class members would be released as a result of the required procedural protections. *See, e.g., Gerstein v. Pugh*, 420 U.S. 103 (1975) (warrantless detention must be justified by probable cause determination by a neutral magistrate); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (sustaining class action challenge to county's failure to provide prompt probable cause hearing to warrantless arrestees).

D. Lead Plaintiffs' Injuries and Requested Remedies Are Typical of the Proposed Class.

The Opposition similarly fails to refute -- or seriously challenge -- Plaintiffs' detailed evidentiary demonstration regarding typicality. As shown in the Motion and supporting declarations, all of the named Plaintiffs have been stymied in their ability to consult with or retain counsel and obtain evidence necessary to defend their removal proceedings, as a result of Defendants' conduct in denying and restricting the telephone access necessary to communicate with the outside world. Mot. at 15-16. Plaintiffs and other members of the proposed class suffer these deprivations as a direct result of a common course of conduct that is governed by ICE's contracts and Detention Standards, because they are held in ICE custody in connection with ICE

removal actions. *Id*.

The typicality requirement of Rule 23(a) is a permissive standard, and "representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Defendants do not, and cannot, demonstrate that the statutory and constitutional violations alleged in the Complaint and documented in the Motion are "unique to the named Plaintiffs." *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 539 (N.D. Cal. 2012) (quoting *Hanlon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992)). Nor does the Opposition point to any named Plaintiff or class member who would have a "markedly different" legal or factual position.

Conversely, Plaintiffs have shown that they and the proposed class members suffer the same obstacles to essential telephone access, due to the same basic conduct, and allege statutory and constitutional violations that flow from that conduct. Mot. at 15-16. As the Complaint's prayer for relief makes clear, Plaintiffs seek remedies that would redress Defendants' constitutional and statutory violations efficiently and on a class-wide basis. While the specific circumstances of their immigration cases may differ, the core facts and requested remedies are coextensive and aligned as required by Rule 23(a).

E. The Proposed Class Also Satisfies the Requirements for Certification Under Rule 23(b)(3).

As demonstrated in detail in the Motion and supporting declarations, and above, while the non-monetary claims for injunctive and declaratory relief present a paradigm example of a case that is certifiable under Rule 23(b)(2), that showing also satisfies the requirements of Rule 23(b)(3). The demonstrations of commonality and typicality show clearly that questions of law and fact common to class members predominate over questions affecting only individual members.

More important, a class action is superior to other available methods for fairly and efficiently adjudicating the controversy for two fundamental reasons. First, Defendants are uniquely situated to redress the alleged wrongs fairly and efficiently, and to provide class-wide

relief. Second, because individual members of the class do not remain in ICE custody long enough to prosecute claims to a conclusion, it is effectively impossible to adjudicate them via individual actions. Class adjudication is thus a necessary method of adjudicating the controversy -- not merely a superior one. *See, e.g.*, *Augustin v. Jablonsky*, 461 F.3d 219, 229 (2d Cir. 2006) (certifying class under Rule 23(b)(3) because "without use of the class action mechanism, individuals harmed by defendants' policy and practice may lack an effective remedy altogether.").

III. CONCLUSION

For the foregoing reasons, and those set forth in the Motion, Plaintiffs respectfully request that the Court certify the proposed class, approve the named Plaintiffs as class representatives, and appoint Plaintiffs' counsel to represent the class.

Dated: March 10, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th Day of March 2014, a true and correct copy of Plaintiffs' [CORRECTED] MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL was filed with the Clerk of Court using the CM/ECF system, and served to all parties via CM/ECF system.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: */s/ Robert P. Varian*
ROBERT P. VARIAN