UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ángel Alejandro Heredia Mons, *et al.*, on behalf of himself and others similarly situated, *Plaintiffs,* *v.* KEVIN McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, *et al.*, *Defendants.*	Civil Action No. 1:19-cv-01593

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs respectfully move this court to certify a class pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure and Local Rule 23.1. In support of their motion, Plaintiffs rely on the accompanying Memorandum, declarations, and exhibits.

A proposed order is attached.

Statement Pursuant to Local Rule 7(m)

Pursuant to Local Rule 7(m), on June 17 and 18, 2019, Plaintiffs' counsel, Luz Virginia López, repeatedly attempted to confer with Defendants' counsel, the Office of Immigration Litigation, U.S. Department of Justice ("OIL"), to determine whether Defendants would consent to the relief requested herein. Ms. Lopez left several telephone messages for Sarah B. Fabian, Lead Attorney at OIL, which have yet to be returned. On June 18, 2019, Ms. Lopez again contacted OIL and spoke with attorney Kathleen A. Connolly. Ms. Connolly stated that she did not have the authority to confer on this matter, and informed Ms. Lopez that someone would soon

contact her to discuss. As of the date of this filing, Defendants' counsel has not contacted Ms. Lopez to confer about the relief requested herein, despite Plaintiffs' repeated attempts to confer.

Dated: June 28, 2019

Respectfully submitted:

//s// Melissa Crow

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CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2019, I electronically filed the attached PLAINTIFFS' MOTION FOR CLASS CERTIFICATION and the related memorandum, proposed order, and exhibits with the Clerk of Court via the CM/ECF system, which will send a Notice of Electronic Filing to all CM/ECF registrants for this case. I further certify that I emailed a copy of the attached motion and the related memorandum, proposed order, and exhibits to Defendants as follows:

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UNITED STATES DISTRICT COURT
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ÁNGEL ALEJANDRO HEREDIA-MONS, *et al.*, on behalf of himself and others similarly situated, *Plaintiffs,* *v.* KEVIN McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, *et al.*, *Defendants.*	)	Civil Action No. 1:19-cv-01593(JEB)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Plaintiffs file this class action to challenge the policy of the New Orleans Field Office of U.S. Immigration and Customs Enforcement ("ICE") to categorically deny release from custody to asylum seekers who have shown a credible fear of persecution while their cases are pending.

The categorical denial of release on parole contravenes a policy directive requiring ICE officers to release on parole asylum seekers who present neither a flight risk nor a danger to the community. New Orleans ICE Field Office's no-parole policy also violates the Immigration and Nationality Act ("INA") and its implementing regulations and the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Plaintiffs seek a declaration that the policy is unlawful and an injunction requiring an individualized parole determination for each class member to determine whether he or she poses a flight risk or a danger to the community that justifies his or her detention.

Pursuant to Federal Rule of Civil Procedure 23, the named Plaintiffs seek certification of the class set forth below on behalf of all others who are similarly situated.

All arriving asylum seekers who:

a. are found to have a credible fear of persecution or torture;
b. who are or will be detained by U.S. Immigration and Customs Enforcement;
c. after having been denied parole under the authority of the New Orleans ICE Field Office.

Plaintiffs' proposed class satisfies all the requirements of Rule 23(a) and 23(b)(2). With hundreds of class members, the class is sufficiently numerous. The New Orleans ICE Field Office subjects all class members to a common no-parole policy, regardless of where they are detained. Class representatives are subject to the same policy as all class members, and are therefore typical of the class. Class representatives and their experienced counsel will fairly and adequately represent the class. The class is adequately defined for certification. And the New Orleans ICE Field Office has acted on grounds generally applicable to the class through its no-parole policy,

such that an injunction and declaration with respect to the whole class is appropriate. This and other courts have recently certified or provisionally certified similar classes of asylum seekers with credible fear to whom ICE has denied parole. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 322 (D.D.C. 2018) (provisionally certifying class); *Abdi v. Duke*, No. 1:17-cv-0721 EAW, 2017 WL 6507248 (W.D.N.Y. Dec. 19, 2017). This Court similarly should certify the proposed class and appoint Plaintiffs' counsel as class counsel.

FACTUAL BACKGROUND

Plaintiffs are eleven[1] asylum seekers who requested asylum upon arriving at a port of entry to the United States and who are now detained by ICE, under the authority of the New Orleans ICE Field Office). *See* Declaration of Ángel Alejandro Heredia Mons ("Heredia Mons Decl.." attached hereto as Exh. 1) ¶¶ 4, 13; Declaration of Dayana Mena López ("Mena López Decl.," attached hereto as Exh. 2) ¶¶ 4, 12; Declaration of Y.A.L. ("Y.A.L. Decl.," attached hereto as Exh. 3) ¶¶ 4, 11; Declaration of J.M.R. ("J.M.R. Decl.," attached hereto as Exh. 4) ¶¶ 4, 18; Declaration of P.S.P. ("P.S.P. Decl.," attached hereto as Exh. 5) ¶¶ 4, 17; Declaration of R.O.P. ("R.O.P. Decl.," attached hereto as Exh. 6) ¶¶ 4, 12; Declaration of Adrián Toledo Flores ("Toledo Flores Decl.," attached hereto as Exh. 7) ¶¶ 4, 10; Declaration of Douglas Enrique Puche Moreno ("Puche Moreno Decl.," attached hereto as Exh. 8) ¶¶ 4, 11; Declaration of M.R.M.H. ("M.R.M.H. Decl.," attached hereto as Exh. 9) ¶¶ 4, 10, 11; Declaration of F.J.B.H. ("F.J.B.H. Decl.," attached hereto as Exh. 10) ¶¶ 4, 12; and Declaration of Miguel Angel Girón Martínez ("Girón Martínez Decl.," attached hereto as Exh. 11) ¶¶ 4, 14.

Each Plaintiff was interviewed by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(B), and ultimately determined to have a credible fear of persecution or torture. *See* Heredia Mons Decl.

[1] Plaintiff Roland Nchango Tumenta was granted asylum; he is no longer a Plaintiff in this case.

¶¶ 14-17; Mena López Decl. ¶ 15; Y.A.L. Decl. ¶ 12; J.M.R. Decl. ¶ 19; P.S.P. Decl. ¶ 18; R.O.P. Decl. ¶¶ 14-15; Toledo Flores Decl. ¶ 12; Puche Moreno Decl. ¶¶ 13-14; M.R.M.H. Decl. ¶ 12; F.J.B.H. Decl. ¶ 15; Girón Martínez Decl. ¶¶ 14-15. That means "there is a significant possibility, taking into account the credibility of the statements made by [the Plaintiff] in support of the [Plaintiff]'s claim[s] and such other facts as are known to the officer, that [the Plaintiff] could establish eligibility for asylum." 8 U.S.C. § 1225(b)(1)(B)(v); *see also* 8 C.F.R. § 208.30 (describing credible fear interview and determination process). Each Plaintiff was thus entitled to pursue an asylum claim in removal proceedings before an immigration judge. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.2(b).

Although none of the Plaintiff asylum seekers is a flight risk or dangerous, and there is no question as to their identity, all have been detained and denied parole by the New Orleans ICE Field Office. *See* Heredia Mons Decl. ¶ 20; Mena López Decl. ¶ 21; Y.A.L. Decl. ¶ 17; J.M.R. Decl. ¶¶ 21-24; P.S.P. Decl. ¶¶ 21-22; R.O.P. Decl. ¶ 21; Toledo Flores Decl. ¶¶ 15, 20; Puche Moreno Decl. ¶ 17, 21; M.R.M.H. Decl. ¶¶ 14, 15, 19, 23, 27, 31; F.J.B.H. Decl. ¶¶ 20, 23; Girón Martínez Decl. ¶¶ 17, 20.

Until recently, ICE, bound by a December 2009 Directive, generally released asylum seekers found to have a credible fear of persecution or torture on parole after ICE agents made case-by-case determinations as to whether asylum seekers posed a flight risk or a danger to the community. *See* ICE Directive No. 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009) ("Parole Directive"). The Parole Directive provides that "when an arriving alien found to have a credible fear establishes . . . his or her identity" and shows "based on the facts of the individual alien's case... that he or she presents neither a flight risk nor danger to the community, [ICE] should . . . parole the alien on the basis that his or her

continued detention is not in the public interest." Parole Directive ¶ 6.2. In recognizing that detention of asylum seekers who do not pose a flight risk or danger is not in the public interest, the Directive implements the parole statute, which provides that the Secretary of DHS "may . . . in his discretion parole into the United States" "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5.

The Parole Directive has not been expressly superseded or repealed by any subsequent policy directive or rule. To the contrary, government officials have made numerous statements that the Parole Directive remains in effect. A February 2017 memorandum from former DHS Secretary John Kelly states that the Parole Directive "remain[s] in full force and effect" pending the Secretary's "further review and evaluation."[2] Counsel for the government also has represented to the Supreme Court and this Court that the Parole Directive "remains in full force and effect." Supp. Reply Br. for Pets., at 6 n.2, *Jennings v. Rodriguez*, No. 15-1204 (filed Feb. 21, 2017); *Damus*, 313 F. Supp. 3d at 340. In spite of that, in November 2018, the New Orleans ICE Field Office issued a written statement to regional immigration practitioners taking the contradictory position that the Parole Directive was dead letter. *See* Email from New Orleans ICE Field Office to American Immigration Lawyers Association Midsouth Region (attached hereto as Exh. 12).

Like other ICE jurisdictions across the country, the New Orleans ICE Field Office has effectively rescinded the Parole Directive and adopted a de facto policy of detaining all or nearly all arriving asylum seekers with credible fear. In 2016, the New Orleans ICE Field office granted

[2] Memorandum from John Kelly, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies*, at 9-10 (Feb. 20, 2017) ("Kelly Memo"), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

75.86 percent of parole requests.[3] In 2017, the parole grant rate dropped by 54 points to 21.88 percent.[4] In 2018, the parole grant rate plummeted to just two percent, with the New Orleans ICE Field Office granting only two of 130 parole requests.

Beyond the data are the experiences of legal services providers who confirm that the New Orleans ICE Field Office has effectively stopped giving due consideration to parole requests. *See* Declaration of Allyson Page ("Page Decl.") ¶ 10; Declaration of Joseph S. Giardina ("Giardina Decl.") ¶¶ 9, 14; Declaration of Olga Badilla ("Badilla Decl.") ¶¶ 5, 6; Declaration of Helen Boyer ("Boyer Decl.") ¶ 17. These attorneys attest to the wholesale turnabout in the New Orleans ICE Field Office's manner of adjudicating parole requests. *See* Page Decl. ¶¶ 9-10 (noting that previously, "if an arriving asylum seeker had generally met the requirements outlined for release by the 2009 Parole Memorandum, they would be granted parole by the New Orleans ICE ERO Field Office," whereas now, "ICE [] no longer grant[s] detainees parole"); Giardina Decl. ¶ 16; Badilla Decl. ¶¶ 10, 12 (attesting to conversation with ICE agent that left her with impression that "it didn't matter" whether or not she submitted documents in support of parole application); Boyer Decl. ¶¶ 10, 17. The practitioners also have heard directly from ICE officers in the New Orleans ICE Field Office that "there [is] a directive to blanket deny paroles in Louisiana. *See* Giardina Decl. ¶ 16 (attesting to conversation with ICE agent who explained denial of parole by saying "it was not his call there was a directive to blanket deny paroles in Louisiana"); *id.* at ¶ 17 (attesting to separate conversation where ICE agent explained "it would be 99% impossible to demonstrate to him that a detainee was not a flight risk or a danger in order for him to grant parole").

[3] Plaintiffs expect to supplement the record with the relevant data in short order.
[4] *Id.*

In light of this, Plaintiffs move to certify a class consisting of: (1) all arriving asylum seekers[5]; (2) who are found to have a credible fear of persecution or torture[6]; and (3) who are or will be detained by ICE; (4) after having been denied parole under the authority of the New Orleans ICE Field Office.

LEGAL STANDARD

Federal Rule of Civil Procedure 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). The requirements are two-fold. Under Rule 23(a), Plaintiffs must establish numerosity, commonality, typicality, and adequacy of representation. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). This "ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011). Under Rule 23(b), Plaintiffs must establish one of its three subsections. *Richards v. Delta Air Lines, Inc.*, 453 F.3d 525, 529 (D.C. Cir. 2006). In this case, Plaintiffs argue that "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. 23(b)(2).

ARGUMENT

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

A. The Proposed Class Satisfies the Numerosity Requirement.

The proposed class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "There is no specific threshold that must be surpassed in order to satisfy the

[5] *See* 8 C.F.R. § 1.2.
[6] *See* 8 U.S.C. §§ 1225(b)(1)(B)(v), 1158; 8 C.F.R. § 208.31.

numerosity requirement; rather, each decision turns on the particularized circumstances of the case." *Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 25 (D.D.C. 2006). In this Court, proposed classes of at least 40 members have met the numerosity requirement absent exceptional circumstances. *See, e.g.*, *Johnson v. Dist. of Columbia*, 248 F.R.D. 46, 52 (D.D.C. 2008); *Bynum v. Dist. of Columbia*, 214 F.R.D. 27, 32 (D.D.C. 2003); *Disability Rights Council of Greater Wash.*, 239 F.R.D. at 25.

Rule 23(a)(1) does not require a showing as to the exact number of class members. *See Johnson*, 248 F.R.D. at 53, *Bynum*, 214 F.R.D. at 32. An estimate will suffice so long as it has a reasonable evidentiary basis. *Feinman v. F.B.I.*, 269 F.R.D. 44, 49 (D.D.C. 2010). Courts may "draw reasonable inferences from the facts presented to find the requisite numerosity." *Coleman v. Dist. of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015).

"Demonstrating impracticability of joinder" for purposes of numerosity "does not mandate that joinder of all parties be impossible—only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate." *DL v. Dist. Of Columbia*, 302 F.R.D. 1, 11 (D.D.C. 2013) (internal quotation marks and citation omitted), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017). Relevant factors include the "financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members." *Id.* (quoting *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993)).

Here, joinder is impractical firstly because of the number of people suffering from the alleged harms. In 2018 alone, the New Orleans ICE Field Office denied 128 requests for parole by asylum seekers who passed their credible fear interviews. Declaration of Sophie Beiers ("Beiers Decl.") ¶ 7. This figure, coupled with evidence of the dramatic expansion of detention bed space under the jurisdiction of the New Orleans ICE Field Office over the last two years, means that at

present, many more asylum seekers with a credible fear have been detained and denied parole pursuant to the blanket no parole policy. As detailed in Plaintiffs' Complaint and supported by news reports, ICE has tripled its capacity to confine people in its custody in Louisiana over the past several months.

A May 2019 report tallied about 2,800 beds across several local Louisiana jails shifted to a new use since 2017—to warehouse migrants for ICE: 1,000 in Richwood, 250 in Bossier, 1,000 in Jackson, and 500 at River.[7] In Mississippi, under the jurisdiction of the New Orleans ICE Field Office, up to 1,300 asylum-seekers may be confined in Tallahatchie, a so-called "asylum processing center."[8] And just this month, local officials announced that the Winn Correctional Center in Winnfield, Louisiana will confine up to 1,500 migrants for ICE.[9] Given this alarming expansion, many more individuals will become class members in the future. These facts alone satisfy numerosity. *See, e.g.*, *Disability Rights Council of Greater Wash.*, 239 F.R.D. at 25; *Bynum*,

[7] *See* Bryn Stole, "As fewer inmates fill Louisiana jails, wardens turn to immigration officials to fill bunks, budgets," The Advocate (May 9, 2019), *available at:* https://www.theadvocate.com/new_orleans/news/article_5bda8872-7271-11e9-836a-b76530b7c21c.html. *See also*, KNOE News, "More than a thousand migrant detainees from the border to be housed at the Richwood Correctional Facility," (April 4, 2019), *available at*: https://www.knoe.com/content/news/More-than-a-thousand-migrant-detainees-from-the-border-to-be-housed-at-the-Richwood-Correctional-Facility--508150181.html; Noah Lanard, "Louisiana Decided to Curb Mass Incarceration. Then ICE Showed Up." Mother Jones (May 1, 2019), *available at*: https://www.motherjones.com/politics/2019/05/louisiana-decided-to-curb-mass-incarceration-then-ice-showed-up/.

[8] *See, e.g.*, Noah Lanard, "ICE is Sending Hundreds of Asylum-Seekers to a Private Prison in Mississippi," Mother Jones (Feb. 15, 2019) *available at:* https://www.motherjones.com/politics/2019/02/ice-is-sending-hundreds-of-asylum-seekers-to-a-private-prison-in-mississippi/.

[9] *See* Juanice Gray, "Immigrant detainees arrive," Natchitoches Times (June 14, 2019), *available at:* https://www.natchitochestimes.com/2019/06/14/immigrant-detainees-arrive/; Noah Lanard, "ICE Is Sending Asylum-Seekers to the Private Prison Where Mother Jones Exposed Abuse," (June 11, 2019), *available at*: https://www.motherjones.com/politics/2019/06/ice-is-sending-asylum-seekers-to-the-private-prison-where-mother-jones-exposed-abuse/.

214 F.R.D. at 32; *Johnson*, 248 F.R.D. at 52; *Taylor v. D.C. Water & Sewer Auth.*, 241 F.R.D. 33, 37 (D.D.C. 2007).

Many other reasons make joinder impracticable in this case. Joinder is inherently impracticable where, as here, "the class seeks prospective relief for future class members, whose identities are currently unknown and who are therefore impossible to join." *DL*, 302 F.R.D. at 11. Most putative class members have limited financial resources, speak little to no English, and know little to nothing about U.S. immigration law. *See* Page Decl. ¶¶ 14-15 ("In my experience, parole denial notices are written in English even when the recipients do not speak or read English."); Badilla Decl. ¶ 4 ("It was also difficult for us to confirm whether the immigrants' parole requests had in fact been denied because none of the immigrants in the group of 17 we were assisting could read or write English"); *id.* at ¶ 12 (noting parole clients' need for *pro bono* asylum lawyers, and difficulty in navigating legal system); Giardina Decl. ¶ 13. Taken together, these factors create insurmountable obstacles for detained asylum seekers to institute individual suits in defense of the rights asserted in this case.

The proposed class thus satisfies the numerosity requirement of Rule 23(a)(1).

B. The Proposed Class Satisfies the Commonality Requirement.

Rule 23(a)(2), which requires "questions of law or fact common to the class," is likewise satisfied. The key to commonality is that class members' claims must depend on "a common contention [] 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." *Wal–Mart Stores*, 564 U.S. at 350.

Commonality is satisfied where there is a single or "uniform policy or practice that affects all class members." *DL v. Dist. of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013). "[S]o long as a

single aspect or feature of the claim is common to all proposed class members," such as a generally applicable policy or practice, "factual variations among the class members will not defeat the commonality requirement." *Bynum*, 214 F.R.D. at 33. "Even a single common question will" support a commonality finding. *Wal-Mart Stores*, 564 U.S. at 359 (internal alternations and citations omitted). For example, a proposed class consisting of illegally detained persons satisfies the commonality requirement even if the class members were detained for different reasons or amounts of time. *See Bynum*, 214 F.R.D. at 34.

The proposed class here satisfies these requirements. All class members are or will be detained after having been found to have a credible fear of persecution in their home countries. All have been detained pursuant to a "uniform policy or practice" of denying them parole without individualized reviews of flight risk or dangerousness. *See DL*, 713 F.3d at 128. The class members all challenge the legality of the government's categorical denial of parole on the same grounds. They all allege that categorical denial of parole violates the INA and its implementing regulations as well as the U.S. Constitution, and that it is an arbitrary and capricious and unlawful departure from ICE's own Parole Directive. A determination of whether the blanket no parole policy is unlawful on one or more of these grounds will resolve the issues the class is facing "in one stroke." *Wal–Mart Stores*, 564 U.S. at 350; *see also Abdi*, 2017 WL 6507248, at *6 (proposed class satisfies commonality because "this Court's conclusion that the Buffalo Federal Detention Facility is violating the [Parole] Directive would resolve the . . . claims of all members of the proposed class").

Plaintiffs have statistical evidence that the Policy has been applied to all class members, each of whom has been (or will be) denied parole pursuant to the Policy. In the New Orleans ICE Field Office, parole grant rates have dropped precipitously. While in past years, the New Orleans

ICE Field Office paroled nearly all asylum seekers who were found to have a credible fear pursuant to the Parole Directive,[10] in 2018, the New Orleans ICE Field Office *denied* 98.5 percent of the same group's parole requests pursuant to the Policy. Beiers Decl. ¶ 7. Commonality is satisfied under these circumstances. *See Damus*, 313 F. Supp. 3d at 335; *R.I.L-R.*, 80 F. Supp. 3d at 182 (commonality satisfied where plaintiffs "have provided ample evidence that nearly every [class member]" has been detained pursuant to policy). The proposed class therefore satisfies the commonality requirement of Rule 23(a)(2).

C. The Proposed Class Satisfies the Typicality Requirement.

Plaintiffs' claims also are "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Typicality means that the representative plaintiffs must "possess the same interest and suffer the same injury" as the other class members. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (internal quotation marks and citations omitted). The typicality and requirements often overlap because both "serve as guideposts" to determine whether a class action is practical and whether the representatives' claims are sufficiently interrelated with class claims to "fairly and adequately protect[]" absent class members. *Id.* at 157 n.13.

Courts liberally construe the typicality requirement, such that factual variations between the representative plaintiffs and the absent class members "do not negate typicality." *Bynum*, 214 F.R.D. at 34. "Rather, if the named plaintiffs' claims are based on the same legal theory as the claims of the other class members, it will suffice to show that the named plaintiffs' injuries arise from the same course of conduct that gives rise to the other class members' claims." *Id.* at 35. *See also Johnson*, 248 F.R.D. at 53 (internal quotation marks and citation omitted).

[10] *See* note 3, *supra.*

Here, Plaintiffs, the proposed class representatives, have "suffered injuries in the same general fashion as absent class members." *Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 196 (D.D.C. 2013) (internal quotation marks and citation omitted). Like the other putative class members, Plaintiffs, the proposed class representatives, are asylum seekers detained under the authority of the New Orleans ICE Field Office. *See* Heredia Mons Decl. ¶¶ 4-13; Mena López Decl. ¶¶ 4, 12; Y.A.L. Decl. ¶¶ 4, 11; J.M.R. Decl. ¶¶ 4, 18; P.S.P. Decl. ¶¶ 4, 17; R.O.P. Decl. ¶¶ 4, 12; Toledo Flores Decl. ¶¶ 4, 10; Puche Moreno Decl. ¶¶ 4, 11; M.R.M.H. Decl. ¶¶ 4, 10, 11; F.J.B.H. Decl. ¶¶ 4, 12; Girón Martínez Decl. ¶¶ 4-14. Like the putative class, Plaintiffs have been interviewed by asylum officers and found to have a credible fear of persecution. *See* Heredia Mons Decl. ¶¶ 14-17; Mena López Decl. ¶ 15; Y.A.L. Decl. ¶ 12; J.M.R. Decl. ¶ 19; P.S.P. Decl. ¶ 18; R.O.P. Decl. ¶¶ 14-15; Toledo Flores Decl. ¶ 12; Puche Moreno Decl. ¶¶ 13-14; M.R.M.H. Decl. ¶ 12; F.J.B.H. Decl. ¶ 15; Girón Martínez Decl. ¶¶ 14-15.

Similarly, the New Orleans ICE Field Office has denied them parole pursuant to its blanket no-parole policy. *See* Heredia Mons Decl. ¶ 20; Mena López Decl. ¶ 21; Y.A.L. Decl. ¶ 17; J.M.R. Decl. ¶¶ 21-24; P.S.P. Decl. ¶¶ 21-22; R.O.P. Decl. ¶ 21; Toledo Flores Decl. ¶¶ 15, 20; Puche Moreno Decl. ¶ 17, 21; M.R.M.H. Decl. ¶¶ 14, 15, 19, 23, 27, 31; F.J.B.H. Decl. ¶¶ 20, 23; Girón Martínez Decl. ¶¶ 17, 20. The manner in which ICE applied the no-parole policy to Plaintiffs is typical of the way ICE has done so to other putative class members: by failing to grant them parole interviews, imposing deadlines that were unreasonable if not impossible to meet, and issuing them rote denial forms with check boxes marked and no meaningful explanation of the reasons for the denial. *See* Heredia Mons Decl. ¶¶ 18-22; Mena López Decl. ¶¶ 16, 18-20; Y.A.L. Decl. ¶¶ 14, 16-17; J.M.R. Decl. ¶¶ 19-23; P.S.P. Decl. ¶¶ 21-22; R.O.P. Decl. ¶¶ 18-23; Toledo Flores Decl. ¶¶

15-19, 20-21; Puche Moreno Decl. ¶¶ 16-19, 21; M.R.M.H. Decl. ¶¶ 15-17, 19-20; F.J.B.H. Decl. ¶¶ 19-24; Girón Martínez Decl. ¶¶ 16-20.

Plaintiffs' claims therefore "arise from the same course of conduct that gives rise to the other class members' claims," *Bynum*, 214 F.R.D. at 35, and are based on the same legal theory as all class members. Accordingly, the proposed class representatives' claims are "typical" under Rule 23(a)(3).

D. The Proposed Class Satisfies the Adequacy Requirement.

The proposed class also satisfies Rule 23(a)(4)'s requirement that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy this requirement, Plaintiffs must show (1) that there is no conflict of interest between the named members and the rest of the class, and (2) that counsel for the class is competent to represent the class. *See Twelve John Does v. Dist. of Columbia*, 117 F.3d 571, 575-76 (D.C. Cir. 1997); *Johnson*, 248 F.R.D. at 53-54.

No conflict exists between the proposed class representatives and the other class members. The class representatives and the remaining class members have suffered the same injury: they have been denied individualized custody determinations due to the blanket no-parole policy. The class representatives and the remaining class members assert the same legal claims. And they all would benefit from the same declaratory and injunctive relief. Because their interests in this litigation are aligned, there is no conflict of interest between the named and unnamed class members.

In addition, proposed class counsel are competent to represent the class. Plaintiffs' counsel has devoted, and will continue to devote, substantial time and resources to the prosecution of this action. *See* Declaration of Mary Bauer ("Bauer Decl.") ¶¶ 5, 6; Declaration of Katie Schwartzmann

("Schwartzmann Decl.") ¶¶ 4-6. They have extensive experience with civil rights and class action litigation. *See* Bauer Decl. ¶ 5; Schwartzmann Decl. ¶¶ 3, 5. Plaintiffs' counsel are therefore well qualified to prosecute this action.

II. THE PROPOSED CLASS IS ADEQUATELY DEFINED FOR CERTIFICATION.

"It is axiomatic that for a class action to be certified a 'class' must exist." *Johnson*, 248 F.R.D. at 52 (internal quotation marks and citations omitted). This "common-sense requirement" is not "a particularly stringent test, but plaintiffs must at least be able to establish that the general outlines of the membership of the class are determinable at the outset of the litigation." *Pigford v. Glickman*, 182 F.R.D. 341, 346 (D.D.C. 1998) (internal quotation marks and citation omitted). The requirement "is designed primarily to help the trial court manage the class" such that it is not "impossible to determine who is or is not a member of the class." *Id.* at 346. But beyond the "general demarcations of the class of individuals who are being harmed," *Thorpe v. District of Columbia*, 303 F.R.D. 120, 139 (D.D.C. 2014) (internal quotation marks and citations omitted), "precise ascertainability . . . is not required in cases such as this where only injunctive relief is sought." *DL*, 302 F.R.D. at 17.

Here, four objective criteria easily define the outlines of class membership at the outset of the litigation. Class members (1) are arriving asylum seekers; (2) who receive a positive credible fear determination; and (3) are or will be detained by ICE; (4) after having been denied parole by the New Orleans ICE Field Office. These four criteria allow for objective identification of both current class members and future class members. *See, e.g.*, *DL*, 302 F.R.D. at 10-11 (certifying class of present and "future class members" who will enter preschool with disabilities, but "whose identities are currently unknown"); *Barnes v. District of Columbia*, 242 F.R.D. 113, 120 (D.D.C. 2007) (certifying class of current and future prisoners detained beyond their date of release). ICE's

monthly reports of its parole decisions regarding class members will further facilitate straightforward identification of all current and future class members and effective management of the class. *Cf. Brewer v. Lynch*, 2015 WL 13604257, at *7 (D.D.C. Sept. 30, 2015) (class adequately defined when "identifying the class members . . . would take little more than a perusal of the [government's] records"). Accordingly, the proposed class is adequately defined.

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

The proposed class also satisfies Rule 23(b)(2), which requires that "[t]he 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. 23(b)(2). Courts in this District have interpreted Rule 23(b)(2) to impose two requirements: "(1) that defendant's actions or refusal to act are 'generally applicable to the class' and (2) that plaintiffs seek final injunctive relief or corresponding declaratory relief on behalf of the class." *Bynum*, 214 F.R.D. at 37; *R.I.L-R.*, 80 F. Supp. 3d at 182.

To satisfy Rule 23(b)(2), "it is enough to show that a defendant has acted in a consistent manner toward members of the class so that his actions may be viewed as part of a pattern of activity." *Bynum*, 214 F.R.D. at 37 (internal quotation marks and citation omitted); *see also R.I.L-R.*, 80 F. Supp. 3d at 182 (requirements of Rule 23(b)(2) met where class "challenges a policy generally applicable to all class members") (internal quotation marks omitted); *Thorpe v. D.C.*, 303 F.R.D. 120, 151 (D.D.C. 2014) (proposed class alleging "systemic deficiencies in the District's system of transition assistance and that those deficiencies appear to be affecting the class" satisfied Rule 23(b)(2)); *Taylor v. D.C. Water & Sewer Auth.*, 241 F.R.D. at 47 (proposed class alleging pattern or practice of discrimination satisfied Rule 23(b)(2)).

Here, all class members are being detained without individualized parole determinations pursuant to the New Orleans ICE Field Office's blanket no-parole policy. Class members have suffered a consistent harm, namely the application of this unlawful policy. All class members seek the same declaratory and injunctive relief requiring that parole determinations be made in compliance with the law. In other words, Plaintiffs and other putative class members challenge a Policy generally applicable to the class, and seek declaratory and injunctive relief that will benefit the class as a whole. This is just the sort of claim that satisfies Rule 23(b)(2). *See, e.g.*, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335 (D.D.C. 2018) (granting provisional class certification in challenge to Parole Directive); *R.I.L-R.*, 80 F. Supp. 3d at 182 (lawsuit "seek[ing] declaratory and injunctive relief invalidating consideration of [deterrence] factor and enjoining ICE from applying the policy to deny release" "challenges a policy 'generally applicable' to all class members" and thus satisfies Rule 23(b)(2)); *Abdi*, 2017 WL 6507248, at *10 (Rule 23(b)(2) satisfied because "injunctive relief requiring Respondents to conform to the strictures of the [Parole] Directive will be applicable to all proposed class members"). Section 23(b)(2) is likewise satisfied here.

IV. THE COURT SHOULD DESIGNATE PLAINTIFFS' COUNSEL AS CLASS COUNSEL.

Rule 23(g)(1) requires a court that certifies a class to appoint class counsel. Fed. R. Civ. P. 23(g)(1). In appointing class counsel, a court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." *Id.* The court also may consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B); *Johnson*, 248 F.R.D. at 58.

For the same reasons that Plaintiffs' counsel satisfies the adequacy requirement, this Court should designate Plaintiffs' counsel as class counsel. *See* Bauer Decl. ¶¶ 2-6; Schwartzmann Decl. ¶¶ 3-6. For all these reasons, the Court should designate Plaintiffs' counsel as class counsel.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion should be granted. Plaintiffs respectfully request that the Court certify the proposed class, consisting of (1) all arriving asylum seekers, (2) who are found to have a credible fear of persecution or torture, and (3) who are or will be detained by ICE, (4) after having been denied parole under the authority of the New Orleans ICE Field Office; and appoint Plaintiffs' counsel as class counsel.

Dated: June 28, 2019

Respectfully submitted,

//s// Melissa Crow

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ÁNGEL ALEJANDRO HEREDIA-MONS, *et al.*, on behalf of himself and others similarly situated, *Plaintiffs,* *v.* KEVIN McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, *et al.*, *Defendants.*	)	Civil Action No. 1:19-cv-01593(JEB)

[PROPOSED] ORDER GRANTING CLASS CERTIFICATION

Upon consideration of Plaintiffs' Motion for Class Certification dated June 28, 2019, the memoranda of law and exhibits submitted in support and any in opposition thereto, and the entire record herein, it is hereby

ORDERED that Plaintiffs' Motion for Class Certification, dated June 28, 2019, is **GRANTED**; it is further

ORDERED that Plaintiffs are certified as representatives of a class pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is defined as: (1) all arriving asylum seekers (2) who are found to have a credible fear of persecution or torture and (3) who are or will be detained by U.S. Immigration and Customs Enforcement ("ICE"); (4) after having been denied parole under the authority of the New Orleans ICE Field Office.

Date: _____

_____
The Honorable James E. Boasberg
United States District Court Judge

EXHIBIT

12

Laura Rivera

From: Rose Murray <murray.rose@gmail.com>
Sent: Thursday, November 29, 2018 3:22 PM
To: SIFI Alexandria; Daniel Werner; Laura Rivera
Subject: Fwd: [midsouth] *** IMPORTANT *** UPDATE FROM ICE ERO
Attachments: 2018 11 29 ICE-AILA Liaison Meeting agenda and questions kam.pdf; New Orleans AOR Docket_AILA_October 2018.pdf

---------- Forwarded message ---------
From: **Ana Sardi** <ana@mayeauxsardi.com>
Date: Thu, 29 Nov 2018 at 13:18
Subject: [midsouth] *** IMPORTANT *** UPDATE FROM ICE ERO
To: AILA Mid South Chapter Mailing List <midsouth@lists.aila.org>
Cc: Ken Mayeaux <ken@mayeauxsardi.com>

Dear All: I just received this important update from ERO. Enclosed you will find a FULL DOCKET LIST and answers to the questions that were posed at the AILA Liaison meeting in New Orleans. PLEASE READ OF. ACUNAS EMAIL BELOW.

Let me know if you have any additional questions.

Ana Maria Sardi, Esq.

Attorney at Law

321 St. Joseph Street

Baton Rouge, LA 70802

Main: 225-754-4477

Cell: 225-270-0010

Fax: 225-341-8755

MAYEAUX SARDI LC

CONFIDENTIALITY NOTICE: This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: Acuna, Brian S <Brian.S.Acuna@ice.dhs.gov>
Sent: Thursday, November 29, 2018 1:14 PM
To: Ana Sardi <ana@mayeauxsardi.com>
Cc: Bowman, Tyrone A <Tyrone.A.Bowman@ice.dhs.gov>; Warren, Scott W <Scott.W.Warren@ice.dhs.gov>
Subject: RE: Trey Lund's role

Hello Ana, this is the update. The answers and docket list are attached. Please note on answer #3 we placed the websites for Bossier and Tallahatchie facility information at ICE.gov in highlighted text. Those links can be clicked or simply go to ICE.gov and search the facility.

George Lund is our Acting Field Office Director. Typically attorneys interact with the FOD or his representative if our groups have these meetings like on Nov. 2nd. Individual casework such as detention and removal inquiries are dealt with through the normal process of Deportation Officer, supervisor, and as needed Assistant Field Office Director or NewOrleans.Outreach@ice.dhs.gov.

Thanks and have a great day.

Brian S. Acuna

U.S. Immigration and Customs Enforcement

Enforcement and Removal Operations

New Orleans Field Office

(504) 599-7868

(504) 520-0396 [cell]

(504) 589-2661 [fax]

Brian.S.Acuna@ice.dhs.gov

You are currently subscribed to midsouth as: [murray.rose@gmail.com]

To change your email address go to https://www.aila.org/myaila/account/edit

You can also unsubscribe or make changes at https://www.aila.org/MyAila/Account/Listservs

If you are on a list you have an account with AILA.
If you have never logged into aila.org the forgot password link is https://www.aila.org/MyAila/ForgotPassword
Enter the email address that the list is using for you and it will send you a password link.

Have problems? Email listservs@aila.org

ICE ERO – AILA Liaison Meeting – November 2, 2018
AILA Midsouth Meeting – New Orleans

GENERAL QUESTIONS

1) Please give us an organizational update on the ICE staff (ERO) including the names, emails and phone numbers, in particular the deportation officers and supervisors for Memphis, Nashville, Gadsden, Birmingham, Montgomery, New Orleans, Jena and Oakdale and how the dockets are divided. **George Lund is the Acting Field Office Director for Alabama, Arkansas, Louisiana, Mississippi and Tennessee. The docket lists are attached.**

2) Please give us an organizational update on the ICE OCC attorneys including the names and contact information for New Orleans, Oakdale and Memphis. **OCC will cover this.**

DETENTION FACILITIES

3) Please identify the detention centers in the New Orleans district at which ICE/ERO **is presently detaining** noncitizens on a greater than 72-hour basis. For each facility please provide the names and contact information for the warden. **Etowah County Detention Center (Gadsden, AL); LaSalle ICE Processing Center (Jena, LA); Pine Prairie ICE Processing Center (Pine Prairie, LA); Allen Parish Public Safety Correctional Complex (Oberlin, LA); Bossier Parish Medium Security Facility (Plain Dealing, LA) Bossier Facility Info; Tallahatchie County Correctional Facility - TASC (Tutwiler, MS) Tallahatchie Facility Info.**

   a) Please also identify the person at the facility to whom our members should direct inquiries regarding problems with access to counsel or other detention issues?
   b) Please also identify the ICE/ERO deportation officer(s) assigned to each facility, and the ICE/ERO officer with supervisory authority over detention operations at each facility. **Our ERO staffing assignments are listed on the AILA docket issued to your members**

   c) Please provide number of ICE beds at Bossier and Tutwiler and explain if ICE is con term facilities and with how many ICE detainees in each long term? **Bossier Parish is a local facility. The Tallahatchie Asylum Screening Center is a national facility. ICE is exploring with the appropriate parties on setting up a Legal Orientation Program at the TASC.**

   d) If in these "secondary" detention locations once CFI is passed are they transferred elsewhere? Where? **We advise AILA members to work on each case individually with the assigned ERO Officers, or new field offices in the event of a transfer.**

4) How does an attorney schedule an attorney call at Alexandria Staging Facility? **Attorneys should request and coordinate calls directly with the assigned Deportation Officer and/or the respective ERO office exercising docket control over those cases.**

DETENTION FACILITIES – CONT'D

5) Please tell us about any new detention facilities being developed or contemplated within the NOLA field office. Is Pine Prairie expanding or Basile reopening? **No**

6) Can attorneys now schedule attorney calls and in person visits with the facility staff at La Salle? **The facility follows the PBNDS 2011 standard for legal visits.**

ICE DETAINERS AND HOLDS

7) Please inform members of ICE's policies and a list of contacts regarding the best practices for gathering information about detained criminal respondents with "Immigration Holds/Detainers." When the Defendant/Respondent is detained/arrested by local authorities and an Immigration HOLD is placed (sometimes immediately), is there an immigration/deportation officer in charge of that Respondent at that initial moment that will take a G-28, and what is the preferred procedure for accomplishing this? Can contact be made while the State or Federal criminal proceeding is still ongoing? We are experiencing police and Sheriff's departments that refuse to release or bond out inmates because of an ICE detainer – who do we talk to? **Yes. Please contact the local office supervisor to discuss the case.**

8) Please inform members of ICE's policies regarding ICE's timetable for acquiring jurisdiction over criminal defendants/respondents subject to an Immigration Hold/Detainer once the respondent has been sentenced for a deportable crime that has NO BOND relief. What is ICE's policy regarding how much time would be allowed for the Defendant/Respondent to serve their sentence before ICE takes jurisdiction over the Defendant/Respondent? What is ICE's policy regarding criminal defendants/respondents subject to an Immigration Hold/Detainer that have pleaded guilty to a deportable crime with no Bond relief, and who do not wish to fight the case in Immigration court and instead would prefer to just be "Deported"? **There is no timing policy for local or state jurisdictions when ICE screens individuals under CAP. ICE staff monitoring federal and Louisiana Department of Corrections under CAP may also process individuals through the Institutional Removal Program.**

PROSECUTORIAL DISCRETION AND JOINT TERMINATION

OCC spoke on Saturday, November 3, 2018, and answered these

9) Overall, what is the preferred procedure to request that OCC agree to re-calendar and/or jointly terminate where the respondent has relief (i.e. AOS and/or I-601A/CP, etc.)?

10) More specifically, when will ICE exercise PD to jointly terminate proceedings to allow individuals to apply for a 601A waiver? Can they implement guidelines to assist us?

11) For respondents seeking PD, where an NTA has not been filed with the Immigration Court, will ICE/OCC what is the procedure to request that the NTA be cancelled?

12) What is the preferred procedure for escalating PD denials? Can you please provide a chart or list of people with whom to follow-up with in such circumstances?

ISAP AND SUPERVISION POLICIES AND ISSUES

13) What criteria are used to determine whether to arrest someone at a check-in? We have been told by Deportation Officers one factor in an arrest was that the field office now had detention space for our client – is this appropriate? **ICE Officers have the discretion to arrest an individual on recognizance or supervision.**

14) What are ICE's responsibilities to the children whose parents they arrest if the children are present at a check-in? **If an AILA member has a specific problem with a case, they should speak to the local office supervisor.**

15) Who makes the decision to arrest? **ICE Officers have the discretion to arrest an individual on recognizance or supervision.**

16) What criteria are used to determine who goes to ISAP? **ICE Officers use the Alternatives to Detention program based on national policy.**

17) What is the policy on release of pregnant women? The December 2017 ICE Directive 11032.3: Identification and Monitoring of Pregnant Detainees does not mention any provisions for release. **ICE Officers have the discretion to release an individual on recognizance or supervision when medically necessary. The ICE policy on care of pregnant detainees is located here:** https://www.ice.gov/directive-identification-and-monitoring-pregnant-detainees

STAYS OF REMOVAL AND ENFORCEMENT OF FINAL ORDERS

18) How do pending applications for benefits factor into decisions whether or not to approve a stay? I'm confident that it's "case-by-case", but I imagine that there are also specific guidelines. **There is no set policy for adjudicating stays.**

19) More generally, what factors go into deciding whether to deny or approve a stay? **ICE does take all equities into account.**

20) If someone receives an order of removal from immigration court, at what point will ICE begin enforcement? Will they wait until the 90-day deadline to file a motion to reopen the case? Or is it when the removal order becomes final? **ICE works on the arrangements when the order of removal is administratively final.**

21) What is the procedure for requesting a GPS bracelet be removed? **The Deportation Officer or the local office supervisor can review on a case-by-case basis, if requested.**

22) What factors are used in determining whether to place someone on an ankle bracelet as well as when to remove the ankle bracelet? **We would refer AILA members to November 2017's response on this topic.**

23) What is the procedure for changing reporting locations for persons on OSUP? **Please advise clients to review instructions on Form I-220B.**

24) What is the procedure for requesting a credible or reasonable fear interview? **Speak to the Deportation Officer.**

25) Why isn't ICE issuing bonds and all cases are being sent to the Immigration Judges? **ICE Officers have the discretion to set a bond or release an individual on recognizance or supervision after processing, in appropriate cases.**

26) Is the 2009 Parole Memo still in effect? If so, what percentages of parole requests are granted by the NOLA Field Office? We have problems contacting the Deportation Officer for these – what can we do? **Technically no, by Executive Order. However, there is an injunction in certain field offices outside the New Orleans AOR. We do not have statistics to give out. If you cannot contact the Deportation Officer, please speak with the supervisor or NewOrleans.Outreach@ice.dhs.gov to pass on your parole request.**

27) Is the 2011 Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs memo still in effect? **No, by Executive Order.**

28) Could you please provide us a list of intransigent countries that are not issuing your Field Office travel documents? **We do not have information to give out because the field does not work on that aspect of ICE operations.**

*******Other questions from the audience or matters ICE officials wish to bring to AILA members' attention*******

29) If an attorney is planning on filing a stay of removal is it enough to call, fax or email a copy of the stay that will be filed to stop a pending removal? **If this references a stay of removal at the EOIR or the BIA, no. Only a properly filed motion to reopen with an automatic stay under the law, or a stay motion granted by the court or BIA would be appropriate to halt a removal.**

30) On behalf of Catholic Charities would ICE consider reinstating the pilot program for Cuban Nationals in the Baton Rouge area? Can you please clarify ICE's removal policies on Cuban Nationals? **We understand that the Referrals for Community Supported Release Program was a one (1) year pilot program. This was a national program, we would encourage your main Catholic Charities headquarters to speak to ICE headquarters. We would advise AILA members to research current federal regulations and international agreements with respect to the reestablishment of diplomatic relations with Cuba.**

31) We are experiencing problems with clients who are reporting to ICE for a number of years and despite that receive an in-absentia removal order – what can we do about that? **We request address change information from individuals who report to our offices at each appointment. When a Notice to Appear is filed with the court, and when ICE becomes aware of a change, ICE serves Form I-830 on the court. Respondents who are already in proceedings are responsible for likewise filing Form EOIR-33 with the court. If AILA members begin representation of a client and they are not sure where the court would address the hearing notices, we encourage contact with the Deportation Officer and if needed the Office of the Chief Counsel.**

EXHIBIT

13

DECLARATION OF ALLYSON PAGE, ESQ.

I, Allyson Page, Esq., declare as follows:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. I am a staff attorney within the non-profit Immigration Services and Legal Advocacy (ISLA). I provide direct representation to detained immigrants at Pine Prairie ICE Processing Center.

2. In the Spring of 2018, I co-founded ISLA and took a position there as a staff attorney. In that role I divided my time between providing representation to detained immigrants in deportation proceedings and working to establish the non-profit and seek private and public funding for a program providing counsel to detained immigrants in the gulf south area.

3. I graduated from Tulane Law School in May 2014. In 2015 I began service as an AmeriCorps Equal Justice Works Justice Corps Fellow at Catholic Charities Archdiocese of New Orleans (CCANO), working in the Immigration Program. At the end of my term, I was hired and continued to work at CCANO for three years. I was admitted to the Louisiana State Bar on December 18, 2014. I am a 2007 graduate of McGill University, where I studied Political Philosophy, History, and Italian.

4. ISLA provides direct representation to detained immigrants at a detention center run by Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) at Pine Prairie ICE Processing Center in Pine Prairie, Louisiana.

5. ISLA attorneys, including myself, regularly provide *pro se* detainees with legal information and assistance on their cases, including requests for release from detention on parole for "arriving" asylum seekers.

6. Due to my work in immigration detention, I am familiar with ICE policies, including the ICE Directive No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture ("Parole Directive").

7. ISLA attorneys, including myself, have provided dozens of arriving asylum seekers with legal assistance on their requests for release from detention under the Parole Directive.

8. In the majority of cases in which I provided guidance to detainees, I would explain to them what types of documents they need to submit in support of their parole request and would help facilitate communication and access between the detainee and their sponsor. In several cases, prepared and submitted the parole request on behalf of the detainee to their ICE Deportation Officer at the ICE New Orleans Field Office.

9. Based on my experience and observations, until early 2017, if an arriving asylum seeker had generally met the requirements outlined for release by the 2009 Parole Memorandum, they would be granted parole by the New Orleans ICE ERO Field Office.

10. In early 2017, shortly after the beginning of the Trump Administration, we noticed that ICE was no longer granting detainees parole, despite the vast majority of them appearing to meet the 2009 Parole Memorandum criteria.

11. In my experience, ICE provides a Parole Advisal and Scheduling Notification in

advance of speaking to the detainee about their request for parole. However, my experience is that this document is generally provided only in English. I have only seen this document written in Spanish one time, despite detainees requesting it be provided in their own language when they do not understand English.

12. In my experience throughout my time working in immigration detention, ICE routinely interviews all arriving asylum seekers after they have received a positive credible fear determination. However, it has been my experience that ICE does not routinely conduct this interview within 7 days of their positive credible fear determination.

13. It has also been my experience that ICE does not routinely provide detainees with a decision on their parole request within 7 days of this interview.

14. In my experience, parole denial notices are written in English even when the recipients do not speak or read English. As a result, when arriving asylum seekers have notified me and my colleagues that their parole request was denied, we often have to explain the denial notice to them and that they have a right to request a redetermination of that decision.

15. I do not think that *pro se* detainees are equipped to file their own individual lawsuits or *habeas* actions to challenge their prolonged detention. I tried to explain this process to many *pro se* detainees who wanted to challenge their prolonged detention and it proved very difficult. Most arriving asylum seekers do not write or speak English as their first language, so they are not able to make the high-level technical arguments required in such legal contexts. I have never seen someone succeed in *pro se* habeas action.

16. I reserve the right to amend or supplement this report as appropriate upon receipt of additional information or documents.

I declare under penalty of perjury under the laws of the United States and the District of Columbia that the foregoing is true and correct.

Executed this 10 day of June, 2019 at New Orleans, LA

Allyson Page, Esq.

EXHIBIT

14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ángel Alejandro Heredia Mons, *et al.*, on behalf of themselves and others similarly situated, *Plaintiffs,* *v.* KEVIN McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, *et al.*, *Defendants.*	Civil Action No. 1:19-cv-01593

DECLARATION OF JOSEPH GIARDINA, ESQ.

I, Joseph Giardina, Esq., declare as follows:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. I am an associate with the Rozas & Rozas Law Firm based out of Baton Rouge, Louisiana. I provide direct representation to detained immigrants in the State of Louisiana.

2. I have worked at this firm since September 2018 until the present. In this role I mainly focused my time on detained litigation for Immigration clients

3. I graduated from LSU Law School in May 2017. I was admitted to the Louisiana State Bar in July 2018. I am a 2012 graduate of LSU College, where I studied History.

4. Our Firm provides direct representation to immigrants detained in the various detention facilities throughout the State of Louisiana.

5. During the course of my employment at the Firm, I have handled dozens of parole requests to ICE on behalf of Arriving Aliens.

6. Due to my work in immigration detention, I am familiar with ICE policies, including the ICE Directive No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture ("Parole Directive").

7. I, have provided dozens of arriving asylum seekers with legal assistance on their requests for release from detention under the Parole Directive.

8. In the majority of cases in which I provided guidance to detainees, I would explain to them what types of documents they need to submit in support of their parole request and would help facilitate communication and access between the detainee and their sponsor. In my cases, I would prepare and submit the parole request on behalf of the detainee to their ICE Deportation Officer usually at the ICE Oakdale (LA) Field Office.

9. Based on my experience and observations, ICE has not granted a parole request, in the entire State of Louisiana, to any of my clients, despite the vast majority of them appearing to meet the 2009 Parole Memorandum criteria.

10. In my experience, ICE provides a Parole Advisal and Scheduling Notification in advance of speaking to the detainee about their request for parole. However, my experience is that this document is generally provided only in English. I have never seen this document in Spanish, despite detainees requesting it be provided in their own language, when they do not understand English.

11. In my experience throughout my time working in immigration detention, ICE routinely interviews all arriving asylum seekers after they have received a positive credible fear determination. However, it has been my experience that ICE does not routinely conduct this interview within 7 days of their positive credible fear determination.

12. It has also been my experience that ICE does not routinely provide detainees with a

decision on their parole request within 7 days of this interview.

13. In my experience, parole denial notices are written in English even when the recipients do not speak or read English. As a result, when arriving asylum seekers have notified me and my colleagues that their parole request was denied, we often have to explain the denial notice to them and that they have a right to request a redetermination of that decision.

14. There have been a number of my clients who clearly meet the ICE protocols, and ICE clearly states in their denials that their policy is usually to release a detainee as long as they show they are not a significant flight risk or danger to the community.

15. While there have been dozens of my clients who warranted a grant of parole, The most jarring example of ICE's blatant disregard of their own policies, occurred with Cuban client of mine. This individual had a grandfather that was granted Asylum in the United States, because he had been a political prisoner. The client's mother had also been granted Asylum along with his younger sister, My client was present for all the interviews and was approved as well, but since the process took 7 years he had turned 21 prior to the approval and had to be left behind. It came as no surprise that the persecution he and his family faced at the hands of the Cuban government only intensified once the rest of his family left for the United States, so even though the client had a pending I-130, he could not wait any longer and asked for Asylum at the border. The client then filed a parole request on his own, it was denied for lack of information provided. Then he hired my Firm, we filed numerous documentation showing his LPR mother, sisters, and U.S. citizen grandfather he would be staying with. ICE took multiple weeks to respond, and when they finally gave a response the box checked was the same answer as the first time.

16. When I tried to contact the officer to inquire as to how this could possibly be the determination seeing as we had provided voluminous documentation, and none of my emails or

phone calls were returned. I was finally able to go to his field office and pull him out of his office, where he proceeded to tell me that the denial shouldn't have said that it should have been denied for another reason instead, he wouldn't say which one. I discussed with him the evidence we had provided, and asked further what else could ICE possibly want to show someone isn't not a flight risk or danger, if the policy is usually to release people than surely this client fits the criteria? He responded that it was not his call that it was a directive to blanket deny paroles in Louisiana from the New Orleans Field Office Director Trey Lund. When I asked how can I contact him, he responded that it would be impossible, he could not give an email address and there was no line to call.

17. Another instance that should be mentioned, was when I was speaking with an ICE officer I am friendly with about what potentially would he need to grant parole in one of his cases? He said that it would be 99% impossible to demonstrate to him that a detainee was not a flight risk or a danger in order for him to grant parole. Additionally, some officers I have spoken with did not even realize that a judge could not also grant a bond on Arriving Alien cases, and were surprised to learn they had the only say as to if they were granted a parole or not.

18. I will be happy to testify to my experiences if called upon.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of June, 2019, at 8:00am

Joseph Giardina, Esq.

EXHIBIT

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DECLARATION OF OLGA C. BADILLA

I, Olga C. Badilla, Esq. declare as follows:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. I am an immigration attorney in good standing with the State Bar of California since November 2004. I have been practicing immigration law exclusively for fourteen years. I am a named partner of a private practice and also work on behalf of the Los Angeles LGBT Center. I provide direct representation for immigrants in the Los Angeles area before the Los Angeles Immigration Court.

2. From December 2018 until the present, I assisted 17 LGBTQ immigrants on a pro bono basis with their credible fear interviews and parole requests on behalf of the Los Angeles LGBT Center, along with attorney Cristian Sanchez from RAICES.

3. The 17 immigrants were initially detained at the Tallahatchie County Correctional Facility in Tutwiler, Mississippi. While at the Tallahatchie County Correctional Facility they all received credible fear interviews. All of them were found credible and issued Notices to Appear. After they were found credible, all were given one day to provide documents for parole and then automatically denied one day after they were supposed to provide documents. In one case, the immigrant was able to notify me of his favorable credible fear finding the same day he received the decision, we then emailed the parole documents that night to ICE. The next morning the immigrant informed me he received a letter from the officer stating his parole had been denied.

4. Initially I believed this was a mistake. In my experience, it is customary for ICE to provide the immigrant with more than one day to submit the parole documents. Neither Cristian nor I were provided a copy of the Notice to Appear, Credible Fear Decision or Parole Advisal and Scheduling Notification, even though we had submitted a G-28 to the corresponding ICE office for the Credible Fear Interview. As a result, many were denied parole in Tallahatchie without us having a chance to submit the required documents. It was also difficult for us to confirm whether the immigrants' parole requests had in fact been denied because none of the immigrants in the group of 17 we were assisting could read or write English; therefore, we had to rely on other immigrants in the facility who could read English to read the document to the immigrants to then in turn communicate the decision to us.

5. The denial of parole was also hard to understand, since in my experience if an immigrant had a favorable credible fear determination and they complied with the requirements as set forth in the Parole Advisal and Scheduling Notification, they would be granted parole, but I soon discovered this was not the case in Louisiana.

6. Prior to this incident, I had called the ICE office under the jurisdiction of the New Orleans Field Office to ask where I would file my clients parole requests. I asked if I could email it to the email at TASC@ice.dhs.gov and the officer stated, sure you can send whatever you want there. Given the tone, I understood this to mean it didn't matter.

7. Also at this time, I was advised by a reporter that the New Orleans ICE Field Office had stated that because the Tallahatchie County Correctional Facility was a transitional place, they could not grant parole.

8. When members of our group were transferred from Tallahatchie County Correctional Facility to other facilities in Louisiana, I submitted a Request for Redetermination of Parole for the 9 immigrants who had sponsors. Two of the initial 17 were sent to a different state, one of which was granted parole, soon after the request was filed.

9. For all of the parole requests I provided the following: the immigrant's identity documents, with translations, letters from their sponsors, an ID for their sponsors, evidence of either residency or citizenship for their sponsors, a utility bill and financial records. I also provided a letter of support from the Los Angeles LGBT Center and RAICES. We also explained the vulnerability to harm for these LGBTQ immigrants, due to prolonged detention, especially for one of our clients who is a transgender woman. The sponsors for our group included family members as well as friends, including members of the LGBTQ community. I also noted that none of the members of our group had any criminal history and in fact all of them had presented themselves at a U.S. Port of Entry and requested asylum, therefore showing that they intended to comply with the rules as set forth by CBP and ICE.

10. In spite of the New Orleans ICE Field Office acknowledging that these LGBTQ individuals were part of a vulnerable group, all 9 Requests for Redetermination of Parole I submitted were denied. Of the 9, 8 were denied based on the following reason: "You have not established to ICE's satisfaction that you are not a flight risk". Underneath this category, the box was marked for "Imposition of a bond or other conditions of parole would not ensure, to ICE's satisfaction, your appearance at required immigration hearings pending the outcome of your case." No other box was checked. For one individual, the same boxes were checked plus the one for "You did not establish to ICE's satisfaction, substantial ties to the community." This individual's sponsor was his cousin.

11. In one case I sent in my request for Redetermination for Parole, and one month later I had not received a decision. When I made an inquiry, I was asked to resubmit my request and the next day I received the decision denying my request.

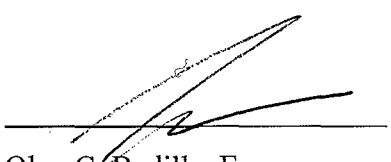
12. Throughout their detention the group has suffered from daily verbal abuse, being called faggots and being treated differently. After my clients began informing me of incidents of harassment, assaults and threats, I again asked that my requests for parole for the group be reconsidered, and I was told within a day that my request had been reviewed and denied. Some members of the group have opted to be in segregation for safety reasons,

while others have chosen to endure the abuse knowing that parole is not an option. This has taken a toll on all of them, they feel helpless and are constantly in fear of being harmed or ridiculed it has also made finding pro bono representation for their asylum cases virtually impossible.

13. I reserve the right to amend or supplement this report as appropriate upon receipt of additional information or documents.

I declare under penalty of perjury under the laws of the United States and the District of Colombia that the foregoing is true and correct.

Executed this 29th day of May, 2019 in Burbank, CA.



Olga C. Badilla, Esq.

DECLARATION OF HELEN H. BOYER, ESQ.

I, Helen H. Boyer, Esq., make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

1. I am a staff attorney with Al Otro Lado, Inc. in Los Angeles, California. I provide direct representation to detained and non-detained immigrants in the southern California area. Additionally, I currently have two clients who are detained in Louisiana. I have served in this role since November of 2018.
2. I graduated from University of California, Irvine School of Law in May 2018. I was admitted to the Pennsylvania State Bar on October 16, 2018. I am a 2012 graduate of American University, where I studied political science and gender studies.
3. Al Otro Lado is a bi-national, direct legal services non-profit organization serving indigent deportees, migrants, and refugees in Mexico and the United States. Al Otro Lado attorneys, including myself, provide representation to detained immigrants at several detention centers run by the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE), primarily in California. However, due to the increase in ICE detention centers in Louisiana, Al Otro Lado has begun representing a limited number of immigrants in their parole applications with the New Orleans ICE Field Office.
4. Due to my work in immigration detention, I am familiar with ICE policies, including ICE Policy Directive No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture ("Parole Directive"). For example, I am aware that the Parole Directive states that ICE "should, absent additional factors[], parole the alien on the basis that his or her continued detention is not in the public interest."

5. I have represented two arriving asylum seekers in their requests for release from detention in Louisiana under the Parole Directive. Additionally, I have provided legal assistance to several arriving asylum seekers seeking release from detention under the Parole Directive in detention centers under the jurisdictions of the San Diego and San Antonio ICE Field Offices.
6. I currently represent M.R.M.H., an arriving asylum seeker who has been detained at LaSalle ICE Processing Center in Jena, Louisiana since May 6, 2019. He was previously detained at River Correctional Center in Ferriday, Louisiana (February 20, 2019 to May 6, 2019) and Tallahatchie County Correctional Facility in Tutwiler, Mississippi (early January 2019 to February 20, 2019). I began representing M.R.M.H. in early March 2019 for the limited purpose of his parole requests.
7. M.R.M.H. is an arriving asylum seeker with no criminal history in the U.S. or in any country in the world. He presented himself at the San Ysidro Port of Entry to seek asylum because he suffered persecution in his home country. He testified to this persecution in his Credible Fear Interview and was found by USCIS to have a credible fear of persecution and torture in his country of origin.
8. Since March 4, 2019, I have submitted three parole requests to the New Orleans ICE Field Office on M.R.M.H.'s behalf.
9. On March 4, 2019, I submitted a parole request on M.R.M.H.'s behalf, which included M.R.M.H.'s birth certificate, a letter from his Milwaukee-based sponsor, a copy of his sponsor's U.S. passport and financial documents, and a letter of support from M.R.M.H.'s U.S. Citizen friend. On March 20, 2019, I received a "Notification Declining to Grant Parole" from Acting Field Office Director George H. Lund, III, denying M.R.M.H.'s parole because "[i]mposition of a bond or other conditions of parole would

not ensure, to ICE's satisfaction, [M.R.M.H.'s] appearance at required immigration hearings pending the outcome of [his] case."

10. On or around April 7, 2019, M.R.M.H. began experiencing life-threatening health problems, including anaphylaxis. Due to the severe and delicate nature of M.R.M.H.'s health, on April 8, 2019 I submitted a request for reconsideration of parole on M.R.M.H.'s behalf, which included the original supporting documents as well as additional information about his medical situation, a copy of the asylum officer's determination of M.R.M.H.'s credible fear of persecution and credibility of identity, a letter from M.R.M.H.'s attorney for Immigration Court, and letters of support from a Catholic priest in his sponsor's community, a Milwaukee-based immigrant rights organization, his sponsor's two U.S.-citizen step-daughters, and M.R.M.H.'s Nevada-based family member. Despite this additional evidence and M.R.M.H.'s troubling health situation, ICE denied M.R.M.H.'s request for reconsideration on April 12, 2019. Its response was in the form of a brief email, which lacked any reasoning in line with the Parole Directive. The email denial simply stated, "Your previous parole request was denied. You have spoken to the case officer. ERO New Orleans sees you are trying to request a 2nd time. Your clients next hearing with DOJ EOIR will be on May 28, 2019. At this point, ERO will not consider release on parole. Your client will remain in custody pending the determination from the IJ."
11. On April 17, 2019, I submitted a Request for Release Under Order of Supervision Due to Urgent Humanitarian Concerns to the New Orleans ICE Field Office. In this Request, I included additional information about M.R.M.H.'s medical situation, and again reiterated the urgent nature of M.R.M.H.'s situation and his lack of flight risk and criminal history. On May 1, 2019, I filed additional documentation in support of my April 17th request,

including a medical report from a doctor who conducted an evaluation of M.R.M.H. on April 30th, and a letter from another doctor who had reviewed M.R.M.H.'s medical records. Both letters urged that M.R.M.H. be released from detention due to his medical needs. On May 2, 2019, I received an email from a Supervisory Detention and Deportation Officer denying M.R.M.H.'s release, stating, "[a]t this point however, I must point out that M.R.M.H. is not eligible for release on an Order of Supervision as he is not a final order of removal."

12. In addition to the multiple denials of M.R.M.H.'s parole requests, ICE has failed to provide M.R.M.H. with adequate medical care, despite two independent doctors expressing concern about his wellbeing. M.R.M.H. has been hospitalized on multiple occasions after experiencing anaphylaxis due to food allergies. Despite his allergies, M.R.M.H. reports that detention officials continue to serve him plates of food containing his allergens. As a result, M.R.M.H. often skips meals to avoid potential medical emergencies.

13. Furthermore, M.R.M.H. is being kept in solitary confinement under "medical observation," which concerns me due to his experiences with trauma. He has told me that he is suffering from anxiety, depression, nightmares, and flashbacks. This is exacerbated by his isolation in solitary confinement, where he has been held since he was transferred to LaSalle ICE Processing Center on May 6, 2019. It is my understanding that he remains in solitary as of the present date.

14. I also currently represent an arriving asylum seeker who has been detained in DHS custody since early March 2019. He was previously detained under the jurisdiction of the San Antonio ICE Field Office, along with three of his family members. While his three family members were quickly paroled out of custody, my client was transferred to

Tallahatchie County Correctional Facility before he was able to apply for parole. He was later transferred to Richwood.

15. Like M.R.M.H., this client is an arriving asylum seeker with no criminal history in the U.S. or in any country in the world. He presented himself at the San Ysidro Port of Entry to seek asylum because he suffered persecution in his home country. He testified to this persecution in his Credible Fear Interview and was found by USCIS to have a credible fear of persecution and torture in his country of origin.
16. I submitted a parole request for this client on May 8, 2019, and included a copy of the client's birth certificate, a letter from his U.S. Citizen sponsor and his sponsor's U.S. Citizen roommate, and a copy of his sponsor's proof of income, proof of residence, and proof of U.S. citizenship. On May 28, 2019, I followed up on the request because I had not heard the results of the request. It is my understanding that this request remains pending as of the present date.
17. In my experience with this case, the New Orleans ICE Field Office has created insurmountable barriers for arriving asylum seekers to gain release from detention under the Parole Directive. It is unclear to me how any arriving asylum seeker without a criminal record would be able to prove, to New Orleans ICE officials' satisfaction, that they are not a flight risk and thereby should be released under the Parole Directive. In fact, based on my observations, it appears that the New Orleans ICE officials are not giving due consideration to parole applications.
18. I reserve the right to amend or supplement this report as appropriate upon receipt of additional information or documents.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 27 day of June, 2019 in Long Beach, CA.

Helen H. Boyer, Esq.

EXHIBIT

17

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ángel Alejandro Heredia Mons, *et al.*, on behalf of themselves and others similarly situated, *Plaintiffs,* *v.* KEVIN McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, *et al.*, *Defendants.*	Civil Action No. 1:19-cv-01593

DECLARATION OF MARY BAUER IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I, Mary Bauer, declare:

1. I am the senior Southern Poverty Law Center counsel for Plaintiffs in this proposed class action.

2. I am the Deputy Legal Director of the Southern Poverty Law Center (SPLC), a non-profit civil rights organization and law firm founded in 1971. I work for the SPLC's Immigrant Justice Project, which was founded in 2004, to represent low-income immigrants living in the Southeast in civil rights litigation. I was the founder and first leader of this group, which represents immigrants in high-impact civil rights and other litigation.

3. I earned my Juris Doctor Degree from the University of Virginia in 1990. I became licensed to practice law in the Commonwealth of Virginia in October of 1990. I have practiced law continuously since then in several states. In addition to serving in my current capacity, I have served as Legal Director of the Southern Poverty Law Center, the Litigation Director and the Executive Director of the Legal Aid Justice Center, and the Legal Director of the American Civil Liberties Union of Virginia. As Deputy Legal Director at SPLC, I supervise a team of 55 individuals in civil rights litigation and other advocacy work.

4. In addition to being licensed in Virginia, I am admitted to practice before the U.S.

District Courts in the Eastern District of Virginia and the Western District of Virginia. I am admitted to practice before the U.S. Courts of Appeal for the Fourth, Fifth, and Eleventh Circuits and before the United States Supreme Court. During my tenure with the SPLC, I have represented thousands of individuals involved in class action litigation.

5. I have personally served as part of the class counsel teams appointed by the court in over a dozen certified Rule 23 class actions. *See J.E.C.M. et al. v. Lloyd et al,* No. 1:18CV00903, Dkt. No. 138, Class Certification Order (E.D. Va. April 26, 2019); *Nunag-Tanedo v. E. Baton Rouge Parish Sch. Bd.*, No. LA CV 10-011720-JAK (MLGx), 2011 WL 7095434 (C.D. Cal. Dec. 12, 2011); *J.W. v. Birmingham Bd. of Educ.*, No. 2:10-CV-033140-AKK, 2012 WL 3849032 (Aug. 31, 2012); *Rosiles-Perez v. Superior Forestry Service, Inc.*, 250 F.R.D. 332, 344 (M.D. Tenn. 2008); *Recinos-Recinos v. Express Forestry*, 233 F.R.D. 472 (E.D. La. 2006); *De Leon Granados v. Eller and Sons Trees, Inc.*, No. 1:05-CV-1473-CC, 2006 U.S. Dist. LEXIS 73781(N.D. Ga. Sept. 28, 2006).

6. My firm, the SPLC, is experienced in class action litigation and has been deemed to be adequate class counsel in a number of cases in addition to those referenced above in paragraph 5, including: *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Paradise v. Allen*, 480 U.S. 149 (1987); *Dothard v. Rawlinson*, 433 U.S. 321 (1977), *Pugh v. Locke*, 559 F.2d 283 (11th Cir. 1977); *Smith v. YMCA*, 462 F.2d 634 (5th Cir. 1972); *Braggs v. Dunn*, 317 F.R.D. 634, 670 (M.D. Ala. 2016); *Wilson v. Gordon*, No. 3-14-1492, 2014 WL 4347585 (M.D. Tenn. Sept. 2, 2014); *Hughes v. Judd*, No. 8:12-CV-568, 2013 WL 1810806 (M.D. Fla. Apr. 30, 2013); *Gaddis v. Campbell*, No. 03-T-390-N (M.D. Ala. 2003); *Baker v. Campbell*, No. CV-03-1114-M (N.D. Ala. 2003); *S.S. v. Wood*, No. 01-M-224-N (M.D. Ala. 2001); *Brown v. James*, No. 98-T-663-N (M.D. Ala. 1998); *Austin v. James*, 15 F. Supp. 2d 1220 (M.D. Ala. 1998); *Harris v. James*, No. 94-1422-N (M.D. Ala. 1994); *Southern Christian Leadership Conference v. Evans*, 785 F. Supp. 1469 (M.D. Ala. 1992); *Bradley v. Haley*, No. 92-A-70-N (M.D. Ala. 1992); *R.C. v. Fuller*, No. 88-D-1170-N (M.D. Ala. 1988); *Nowak v. Foster*, No. 84-0057-P (W.D. Ky. 1984); *Wyatt v. Sawyer*, No. CV-70-3195 (M.D. Ala. 1970), and *Nixon v. Brewer*, No. CV-3017-N (M.D. Ala. 1970). *See also Berry et al. v. Pastorek*, Case No. 2:10-cv-04049 (E.D. La. Feb. 9, 2015) (certifying for settlement Individuals with Disabilities Education Act case with SPLC serving as class counsel).

7. I am fluent in Spanish and regularly communicate with Spanish-speaking clients and witnesses in developing and litigating cases, including through my work on this case.

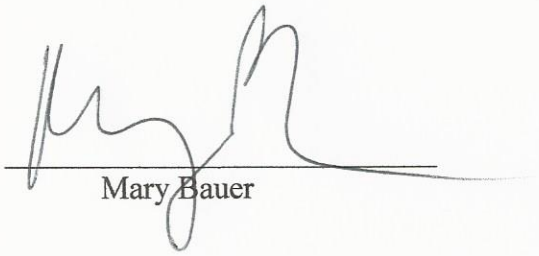
8. In this litigation, I am supervising Luz V. Lopez, a Senior Supervising Attorney, and Laura Rivera, a Staff Attorney at SPLC's Immigrant Justice Project. They are highly qualified attorneys with substantial litigation experience.

9. The Immigrant Justice Project currently has over 20 attorneys dedicated entirely or predominantly to immigrants' rights litigation, as well as 8 full-time outreach worker/paralegals, and two full-time administrative support staff.

10. The SPLC does not charge its clients for its services, including the clients in this case who are being represented on a *pro bono* basis. The SPLC has the resources and organizational commitment necessary to vigorously and effectively litigate the claims of Plaintiffs and class members in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 19, 2019



Mary Bauer

EXHIBIT

18

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Ángel Alejandro Heredia Mons, *et al.*, on behalf of themselves and others similarly situated, *Plaintiffs,* *v.* KEVIN McALEENAN, Acting Secretary of the Dep't of Homeland Security, in his official capacity, *et al.*, *Defendants.*	Civil Action No. 1:19-cv-01593

DECLARATION OF KATIE SCHWARTZMANN IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I, Katie Schwartzmann, declare:

1. I am an attorney and Legal Director for the American Civil Liberties Union of Louisiana ("ACLU of LA") in New Orleans, Louisiana. I submit this declaration in support of Plaintiffs' Motion for Class Certification.

2. I graduated from Tulane University School of Law in May 2003 and have been a practicing attorney for over 15 years. I am admitted to practice in the state of Louisiana, including the United States District Courts for the Eastern, Western and Middle Districts of Louisiana. I am also admitted to practice in the U.S. Court of Appeals for the Fifth Circuit.

3. During the past decade, I have practiced solely in the area of civil rights and civil liberties, almost exclusively in Louisiana federal courts. For six years I served as the Legal Director for the ACLU of LA. In that capacity, I served as lead counsel in numerous federal cases, including briefing and argument before the Fifth Circuit Court of Appeals. Subsequent to my work at the American Civil Liberties Union I was the Director of the Southern Poverty Law Center's Louisiana office, and I also served as founding co-director of the Roderick and Solange MacArthur Justice Center in New Orleans before assuming my role as ACLU of LA Legal Director in December 2018.

4. I am experienced in handling complex prisoners' rights matters. I served as counsel in many prison-related lawsuits, including *Morgan v. Gusman*, No. 2:06-cv-05700 (E.D.

La. 2006); *Terry v. City of New Orleans*, 2:07-cv-00469 (E.D. La. 2007); *Brown v. Normand*, 2:09-cv-03805 (E.D. La. 2009); *Advocacy Center v. Louisiana DHH*, 2:10-cv-01088 (E.D. La. 2010); *Mason v. Tangipahoa Parish Council*, 2:11-cv-00157 (E.D. La. 2011); *Leonard v. Louisiana*, 5:07-cv-00813 (W.D. La. 2007); *Leger v. State of Louisiana DOC*, 3:08-cv-00820 (M.D. La. 2008); *Anderson v. State of Louisiana*, 3:09-cv-00075 (M.D. La. 2009); and *Billizone v. LeBlanc*, 3:09-cv-00794 (M.D. La. 2009).

5. In addition to prison-related litigation, I have been lead counsel in many other civil rights cases in federal courts, on matters involving freedom of speech, freedom of religion, due process of law, and police misconduct, including *Social Aid and Pleasure Club Task Force v. City of New Orleans*, 2:06-cv-10057 (E.D. La. 2006); *Henry v. City of New Orleans*, 2:07-cv-01425 (E.D. La. 2007); *Social Aid and Pleasure Club Task Force v. City of New Orleans*, 2:08-cv-09738 (E.D. La. 2008); *Elloie v. City of New Orleans*, 2:07-cv-03231 (E.D. La. 2007); *Houston v. City of New Orleans*, 2:09-cv-4245 (E.D. La. 2009); *Griffith et al. v. Hughes et al.*, 2:07-cv-09738 (E.D. La. 2007); *Cooper v. Gee*, 14-cv-507 (M.D. La. 2014); and *Fontana v. New Orleans et al.*, 2:19-cv-09120 (E.D. La. 2019).

6. I served as class counsel in a challenge to the conditions of confinement in Orleans Parish Prison, *Jones v. Gusman*, 12-cv-0859 (E.D. La. 2012), securing a consent judgment for 2,000 class members. Other class-action experience includes *Berry v. Pastorek*, 2:10-cv-04049 (E.D. La. 2010) (suit on behalf of New Orleans public school students with disabilities, consent judgment reached); *Dear v. Shea*, 2:07-cv-01186 (E.D. La. 2007) (suit on behalf of indigent defendants ordered to pay fines or face jail time, settled prior to class briefing); *Snow v. Lambert*, No. 3:15-cv-00567 (M.D. La. 2015) (challenging pretrial detention practices in Ascension Parish). I am presently counsel in a putative class-action challenging prisoners' access to mental-health services and treatment at David Wade Correctional Center, *Tellis v. LeBlanc et al.*, No. 5:18-cv-00541 (W.D. La. filed Feb. 20, 2018), and I am currently counsel in a class action challenging bail practices in Orleans Parish criminal courts. *Caliste et al. v. Cantrell*, 2:17-cv-06197 (E.D. La. 2018).

7. In this litigation, I am supervising ACLU of LA Staff Attorney Bruce Hamilton, who is highly qualified and has substantial litigation experience.

8. The ACLU of LA does not charge its clients for its services, including the clients in this case who are being represented on a *pro bono* basis.

I swear under penalty of perjury that the information in this affidavit is true to the best of my memory, knowledge and belief.

Date: June 11, 2019

Katie Schwartzmann