

1
2
3
4
5
6
7
8 **United States District Court**
9 **Central District of California**
10 **Western Division**
11

12 KELVIN HERNANDEZ ROMAN, *et al.*,

ED CV 20-00768 TJH

13 Petitioners-Plaintiffs,

14 v.

Order

15 CHAD T. WOLF, *et al.*,

16 Respondents-Defendants.
17

18 The Court has considered the motion by the Petitioners-Plaintiffs for class
19 certification [dkt # 319], together with the moving and opposing papers.

20 On April 13, 2020, Petitioners-Plaintiffs Kelvin Hernandez Roman, Beatriz
21 Andrea Forero Chavez, and Miguel Aguilar Estrada, on behalf of themselves and all
22 others similarly situated, initiated this action by filing their combined Petition for a Writ
23 of *Habeas Corpus*, pursuant to 28 U.S.C. § 2241, and Complaint for Injunctive and
24 Declaratory Relief. This action is based on alleged Fifth Amendment substantive due
25 process violations at the Adelanto Immigration and Customs Enforcement Processing
26 Center [“Adelanto”] during the COVID-19 pandemic. Also, on April 13, 2020, the
27 Petitioners-Plaintiffs moved for provisional class certification so that they could obtain
28 class-wide preliminary injunctive relief.

1 To succeed on their motion to provisionally certify the class, the Petitioners-
2 Plaintiffs had the burden to establish all four threshold requirements of Fed. R. Civ. P.
3 23(a): (1) Numerosity of proposed class members; (2) Commonality of issue of fact or
4 law; (3) Typicality of the named representatives; and (4) Adequacy of the named
5 representatives and class counsel to fairly and adequately pursue this action. *See*
6 *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010). Petitioners-Plaintiffs, also,
7 had the burden to establish at least one of the requirements of Fed. R. Civ. P. 23(b).
8 *See Parsons v. Ryan*, 754 F.3d 657, 674 (9th Cir. 2014).

9 On April 23, 2020, the Court issued an order provisionally certifying the class,
10 finding that the Petitioners-Plaintiffs had met their burden under Fed. R. Civ. P. 23(a)
11 and (b)(2). The Court defined the class to include all people who:

- 12 (1) Are currently detained in civil immigration detention at the Adelanto
13 Immigration and Customs Enforcement Processing Center;
- 14 (2) Were detained in civil immigration detention at the Adelanto Immigration
15 and Customs Enforcement Processing Center at any time between March
16 23, 2020, and the final disposition of this case but have been transferred
17 by the Bureau of Immigration and Customs Enforcement to another
18 immigration detention facility, regardless of whether the other detention
19 facility is within the Central District of California; or
- 20 (3) Were detained in civil immigration detention at the Adelanto Immigration
21 and Customs Enforcement Processing Center at any time between March
22 23, 2020, and the final disposition of this case but have been released
23 pursuant to a temporary restraining order, a preliminary injunction, or
24 other temporary release order issued by this Court.

25 After provisionally certifying the class, the Court issued a preliminary injunction.
26 The Government, then, appealed the provisional class certification order and the
27 preliminary injunction to the Ninth Circuit Court of Appeals. The Ninth Circuit stayed
28 the preliminary injunction pending appeal. The appeal has been argued and is awaiting

1 a decision.

2 The Petitioners-Plaintiffs, now, move to certify the class as defined by the Court
3 in the April 23, 2020, order.

4 The Petitioners-Plaintiffs argued that the class should be certified because the
5 standard for class certification is the same as used by the Court to grant provisional
6 class certification, and there have been no material changes since the Court granted
7 provisional certification. In its opposition, the Government argued that the Petitioners-
8 Plaintiffs improperly incorporated by reference their motion for provisional class
9 certification and failed to raise any meaningful arguments in the instant motion. The
10 Government's argument is form over substance – while the instant motion is, indeed,
11 bare bones, the Petitioners-Plaintiffs properly relied on the Court's issuance of the
12 provisional class certification order to support the instant motion. Moreover, the
13 Petitioners-Plaintiffs' motion for provisional class certification provided a sufficient
14 factual and legal basis to support class certification on a non-provisional basis.

15 The Government, further, argued the “Court should wait until the Ninth Circuit
16 rules on [its] interlocutory appeal that challenges the exact same class that petitioners’
17 seek to certify” before ruling on this motion. However, the Government recently
18 argued, twice, that the Court could not issue a temporary restraining order, *inter alia*,
19 because the Court had provisionally certified the class for the sole purpose of the
20 preliminary injunction. The Government cannot have it both ways. This case must
21 move forward.

22 Substantively, the Government argued that the class should not be certified
23 because the Petitioners-Plaintiffs failed to establish commonality, typicality, and
24 adequacy. Notably, the Government did not challenge the establishment of numerosity,
25 adequacy of lead counsel, or Fed. R. Civ. P. 23(b)(2) met. The Court finds that
26 numerosity, adequacy of lead counsel, and Fed. R. Civ. P. 23(b)(2) have, indeed, been
27 established.

28 The substantive arguments raised by the Government, here, are, in essence, the

1 same arguments it raised in its opposition to the motion for provisional class
2 certification – because the putative class members are detained under various, and
3 varying, statutory authorities, and because each putative class member suffers from
4 various risk factors, the commonality, typicality, and adequacy of the class
5 representatives have not been established. The Court rejected those arguments in its
6 April 23, 2020, order, and does so, again, here.

7 As to commonality, the specific reason *why* each class representative or putative
8 class member is being detained is immaterial, here. The issue before the Court is
9 whether *the manner* of their detention – the conditions of their confinement – violates
10 their Fifth Amendment substantive due process rights. Indeed, “although a presently
11 existing risk may ultimately result in different future harm for different [detainees] –
12 ranging from no harm at all to death – every [detainee, here, allegedly] suffers exactly
13 the same constitutional injury.” *See Parsons*, 754 F.3d at 678. Moreover, Fed. R.
14 Civ. P. 23 does not mandate that every putative class member must share every fact in
15 common. *See Rodriguez*, 591 F.3d at 1122. Rather, “the existence of shared legal
16 issues with divergent factual predicates is sufficient, as is a common core of salient facts
17 coupled with disparate legal remedies within the class.” *Rodriguez*, 591 F.3d at 1122.

18 Consequently, commonality is established because the common question that will
19 generate common answers apt to drive the resolution of this litigation is whether the
20 putative class members’ Fifth Amendment substantive due process rights are being
21 violated. *See Wright v. Renzenberger, Inc.*, 656 F. App’x. 835, 837 (9th Cir. 2016).

22 As to typicality, the class representatives’ claim and the claim of the putative
23 class members are the same – a Fifth Amendment substantive due process claim.
24 Typicality is established where the class representatives’ claim is “reasonably co-
25 extensive with those of absent class members; [it] need not be substantially identical.”
26 *Rodriguez*, 591 F.3d at 1124. That detainees have various risk factors does not bar a
27 finding of typicality. *See Rodriguez*, 591 F.3d at 1124. Consequently, typicality is
28 established as the class representatives’ claim is typical of the class because it is

1 reasonably coextensive with the claim of the absent class members. *See Hanlon v.*
2 *Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

3 As to adequacy, the class representatives and the putative class members were
4 detained under different statutory authorities, but that does not bar a finding of
5 adequacy. The Court finds, *inter alia*, that: (1) Shared interests exist between the class
6 representatives and the putative class members; and (2) No conflicts of interest or
7 adverse interests exist between the class representatives and the putative class members.
8 *See Hanlon*, 150 F.3d at 1020.

9 That the class representatives have been released pursuant to a temporary
10 restraining order does not prevent class certification or prevent them from being the
11 class representatives. *See Rodriguez*, 591 F.3d at 1124. Indeed, the class
12 representatives' temporary relief provided by a temporary restraining order is, merely,
13 temporary. *See Fed. R. Civ. P. 65(b)(2)*. Thus, the class representatives' temporary
14 release neither mooted their claim nor affected whether the class should be certified.
15 Moreover, the Court will define the class to include those who have been temporarily
16 or provisionally released pursuant to an order of this Court.

17 Thus, the class should be certified.

18
19 Accordingly,

20
21 **It is ordered** that motion for class certification be, and hereby is, **Granted**.

22
23 **It is further Ordered** that the class shall be defined to include all people who:

- 24 (1) Are currently detained in civil immigration detention at the Adelanto
25 Immigration and Customs Enforcement Processing Center;
26 (2) Were detained in civil immigration detention at the Adelanto Immigration
27 and Customs Enforcement Processing Center at any time between March
28 23, 2020, and the final disposition of this case but have been transferred

1 by Bureau of Immigration and Customs Enforcement to another
2 immigration detention facility, regardless of whether the other detention
3 facility is within the Central District of California; or

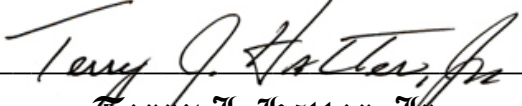
- 4 (3) Were detained in civil immigration detention at the Adelanto Immigration
5 and Customs Enforcement Processing Center at any time between March
6 23, 2020, and the final disposition of this case but have been released
7 pursuant to a temporary restraining order, a preliminary injunction, or
8 other temporary release order issued by this Court.

9
10 **It is further Ordered** that Kelvin Hernandez Roman, Beatriz Andrea Forero
11 Chavez, and Miguel Aguilar Estrada be, and hereby are, **Appointed** to be the named
12 representatives of the class.

13
14 **It is further Ordered** that Ahilan Arulanantham, Jessica Karp Bansal, and
15 Michael Kaufmann be, and hereby are, **Appointed** as lead class counsel.

16
17 **It is further Ordered** that Michelle (Minju) Cho, Samir Deger-Sen, Kyle
18 Virgien, William Friedman, Charles Berdahl, Amanda Barnett, and Jessie Cammack
19 be, and hereby are, **Appointed** as class co-counsel.

20
21 Date: September 22, 2020

22 
23 **Terry J. Hatter, Jr.**
24 **Senior United States District Judge**