IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

ROBSON XAVIER GOMES, **DARWIN ALIESKY CUESTA-ROJAS** and **JOSÉ NOLBERTO TACURI-TACURI**, on behalf of themselves and all those similarly situated,

Petitioners-Plaintiffs,

v.

CHAD WOLF, Acting Secretary of Department of Homeland Security,

MARCOS CHARLES, Immigration and Customs Enforcement, Enforcement and Removal Operations, Acting Field Office Director,

CHRISTOPHER BRACKETT, Superintendent of the Strafford County Department of Corrections,

Respondents-Defendants.

Civil Action No. 1:20-cv-453-LM

PETITIONERS-PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Petitioner-Plaintiffs ("Plaintiffs") move, on behalf of themselves and all those similarly situated, and for the reasons detailed in their Petition, the memorandum of law and affidavits accompanying this motion, Plaintiff's contemporaneously-filed motion for preliminary injunctive relief, and Plaintiff's emergent motion for expedited bail hearings for Plaintiffs and all putative class members, to certify a class under Rule 23 of the Federal Rules of Civil Procedure. In support of this Motion, Plaintiffs state:

1. This motion seeks certification of a class of approximately 62 civil immigration detainees now held by Defendants at the Strafford County Department of Corrections ("SDOC") in Dover, New Hampshire.

2. Plaintiffs are representative of these detainees who are all living under conditions of confinement that are constitutionally deficient. The COVID-19 pandemic poses special problems for congregate environments such as a jailhouse. Given the inherent and elevated risk of contracting the virus that causes COVID-19 in these environments, due process requires that Respondent-Defendants implement the only effective means of combating the disease—social distancing. They have failed to do so, despite the fact that their failure to implement social distancing is not reasonably related to a legitimate, non punitive government interest and Defendants are deliberately indifferent to the dangers the current conditions at SCDOC pose to Plaintiffs' and the putative class members' health. Joinder of all class members to this suit is impracticable and, therefore, class relief is the only meaningful way for this Court to reduce the size of the civil immigration detainee population at SCDOC and satisfy Plaintiffs' and the putative class members rights under the Due Process Clause of the Fifth Amendment.

3. W. Scott O'Connell and Nixon Peabody LLP have considerable experience managing class actions and have the requisite skill and experience to represent the class in this case. Declaration of W. Scott O'Connell, Esq., Ex. J, ¶¶ 5-16.

4. Gilles Bissonnette and the American Civil Liberties Union of New Hampshire have considerable experience litigating civil rights and civil liberties class action cases across the State of New Hampshire and have the requisite skill and expertise to represent the class in this case. Declaration of Gilles Bissonnette, Esq., Ex. L, ¶¶ 3-10.

5. Plaintiffs rely on and incorporate fully the memorandum of law in support of the motion, and exhibits thereto, attached to this motion.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Grant their motion for class certification;

B. Appoint W. Scott O'Connell and Nixon Peabody LLP as Co-Class Counsel;

C. Appoint Gilles R. Bissonnette and the ACLU as Co-Class Counsel, and

D. Grant such other relief as may be reasonable and just.

Respectfully Submitted,

PETITIONERS/PLAINTIFFS

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Date: April 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2020, I electronically filed the foregoing document with the United States District Court for the District of New Hampshire by using the CM/ECF system. I certify that the parties or their counsel of record registered as ECF Filers will be served by the CM/ECF system, and paper copies will be sent to those indicated as non-registered participants, if any.

/s/ Nathan P. Warecki

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MEMORANDUM IN SUPPORT OF PETITIONER-PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

(Counsel for Petitioners-Plaintiffs listed on signature page)

April 20, 2020

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INTRODUCTION

This action is filed on behalf of a highly vulnerable putative class: more than 60 civil immigration detainees presently housed at Strafford County Department of Corrections ("SCDOC"), all of whom are at grave risk of contracting COVID-19 because of the life-threatening, congregate conditions under which they are confined. Common questions of law and fact pervade this matter. And Defendants have acted and refused to act on grounds that are generally applicable to the class as a whole. Class certification is appropriate.

Indeed, the requirements of Federal Rules of Civil Procedure 23(a) and (b) are amply met by this proposed class. *First*, the class is numerous: comprised of more than 60 individuals who are currently in civil immigration detention at SCDOC. *Second*, the class is bound together by common questions of law and fact—most prominently, whether because of a novel Coronavirus that is rapidly spreading in densely populated locations and sickening and killing those it infects, the conditions of confinement at SCDOC places these detainees' safety and health at grave risk such that it amounts to unconstitutional punishment. *Third*, the class is represented by named Plaintiffs whose claims are typical of all class members. *Fourth*, the class representatives and their counsel will adequately and vigorously represent the class. And finally, these Defendants have "acted or refused to act on grounds that apply generally to the class" because they have created and are now maintaining precisely the conditions—confined sleeping quarters, communal bathroom, sinks, and showers, and food, among others—that put this class at imminent risk of contracting COVID-19, the deadly virus that is currently sweeping the globe.

The Centers for Disease Control and Prevention ("CDC") advises that COVID-19 spreads primarily from person to person, between people who are in close contact with one another (within about six feet), and through respiratory droplets produced when someone speaks, coughs, or

sneezes, including the touch of shared surfaces.[1] *See* Declaration of Dr. Marc Stern ("Stern Decl."), Ex. A, ¶ 8.[2] The CDC has made clear that the "best way to reduce the spread of the virus" is to practice social distancing.[3] The calls for individuals and organizations throughout the world to adopt social distancing measures have been uniform, and have led to entire nations, states, and cities being quarantined, in an extraordinary and unprecedented battle to stop the spread of this deadly virus. Stern Decl. ¶ 7. New Hampshire is among them. Governor Sununu declared a state of emergency on March 13, 2020, and issued subsequent orders closing non-essential businesses and ordered residents to stay at home except for limited circumstances.[4] *Id*. Even still, 1,392 individuals in New Hampshire have confirmed cases of COVID-19, 198 of whom (14%) have required hospitalization, and 41 have died.[5] These numbers will increase significantly in the coming weeks and months as testing becomes more widely available. Stern Decl. ¶ 2.

Medical experts and former ICE officials alike have recognized the obvious risk that is presented in congregate environments such as SCDOC. According to a former acting director of ICE, "There is no question that ICE detention centers are vulnerable to outbreaks of contagious diseases . . . There are a large number of people contained in a very small environment. Any outbreak (a single case) will spread like wildfire." Declaration of John Sandweg ("Sandweg Decl."), Ex. G, ¶ 6; *see also* Declaration of Dr. Dora Schriro ("Schriro Decl."), Ex. H, ¶ 17 ("Jails,

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[1] Ctrs. for Disease Control and Prevention, *Frequently Asked Questions*, (Apr. 13, 2020), https://www.cdc.gov/coronavirus/ 2019-ncov/faq.html#How-COVID-19-Spreads.

[2] References herein to "Ex." refer either to the exhibits appended the Declaration to the Declaration of Nathan P. Warecki ("Warecki Decl.") in Support of the Petition (Exhibits A through G), the exhibits appended to the Motion for Preliminary Injunction (H through J), or the exhibits appended to this instant motion (K through L).

[3] Ctrs. for Disease Control and Prevention, *Social Distancing, Quarantine, and Isolation*, (Apr. 15, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html.

[4] Governor of New Hampshire, *Emergency Orders – 2020*, *available at* https://www.governor.nh.gov/news-media/emergency-orders/.

[5] State of New Hampshire, *Novel Coronavirus 2019 (COVID-19)* (case counts as of Apr. 19, 2020), https://www.nh.gov/covid19/

prisons, and immigration detention facilities are known notorious amplifiers of infectious disease."). Detention facilities are "congregate environments, i.e., places where people live and sleep in close proximity," similar to others like cruise ships and nursing homes that were early sites of large COVID-19 outbreaks. Stern Decl. ¶ 8. In fact, in the context of a virus outbreak, detention facilities are comparable to "land locked cruise ships" and actually present a greater risk to the population once the disease is introduced. *Id.* ¶ 10-11. Unlike cruise ships, detention facilities are not closed systems. *Id.* ¶ 11. Staff, new detainees, attorneys, and inanimate objects—all potential vectors for virus—are introduced into the system every day. *Id.* ¶ 11. Thus, despite SCDOC's best efforts to follow preventative guidelines, the introduction and rapid spread of the virus into the detention center is inevitable. *Id.*

Even in the face of grave dangers of COVID-19 and clear preventative measures articulated by the CDC, Defendants have continued to confine detainees in close proximity, without the ability to practice social distancing. Affidavit of José Nolberto Tacuri-Tacuri ("Tacuri-Tacuri Aff."), Ex. E, ¶¶ 4-6, 10; *see also* Affidavit of Darwin Aliesky Cuesta-Rojas ("Cuesta-Rojas Aff."), Ex. D, ¶¶ 4-8; Affidavit of Robson Xavier Gomes ("Gomes Aff."), Ex. F, ¶¶ 3-9.

On March 19, 2020, two medical subject matter experts for the Department of Homeland Security's Office of Civil Rights and Civil Liberties blew the whistle to Congress, writing "regarding the need to implement immediate social distancing to reduce the likelihood of exposure to detainees, facility personnel, and the general public, ***it is essential to consider releasing all detainees who do not pose an immediate risk to public safety***."[6] On multiple occasions since at least February 25, 2020, these experts have sounded the alarm within the agency on the imminent

[6] Letter from Scott A. Allen, MD and Josiah Rich, MD, MPH to Congressional Committee Chairpersons (Mar. 19, 2020), *available at* https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf (emphasis in original).

risks to the health of immigrant detainees and the public at large presented by COVID-19 absent swift mitigation measures, including decreasing the number of immigrant detainees. Courts throughout the country are beginning to heed these dire warnings.

Federal courts across the country have also recognized the serious threat that COVID-19 poses to incarcerated individuals.[7] Of note, on April 8, 2020, the Honorable William G. Young of the U.S. District Court for the District of Massachusetts granted class certification to a class of civil immigration detainees who have been detained in conditions substantially similar to those faced by the putative class at SCDOC. *See Savino v. Souza*, No. 20-cv-10617, 2020 WL 1703844, at *3, 9 (D. Mass. Apr. 8, 2020) (noting that the court had provisionally certified a number of subclasses on April 3 but then elected to certify the entire class of civil immigration detainees held at Bristol County House of Corrections ("BCHOC") in North Dartmouth, Massachusetts). In certifying the class, which included "all detainees" held at BCHOC, Judge Young noted that the court was following "the light of reason and the expert advice of the CDC in aiming to reduce the population in the detention facilities so that all those who remain (including staff) may be better protected." *Id.* at *9.

Despite the movement within the criminal justice system to change existing practices in response to the current national health crisis, Defendants are either unwilling or unable to implement social distancing among civil immigration detainees held at SCDOC and, therefore, have not taken necessary, critical, and urgent steps to safeguard the class members' health and to prevent the spread of COVID-19.

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[7] *See* First Amended Petition for Writ of Habeas Corpus ("Petition"), dated Apr. 17, 2020, ECF No. 5, ¶ 5 (collecting cases).

II. PROPOSED CLASS DEFINITION

All individuals who are now held in civil immigration detention at SCDOC.

III. PROPOSED CLASS REPRESENTATIVES

The proposed class representatives are Mr. Robson Xavier Gomes, Mr. José Nolberto Tacuri-Tacuri, and Mr. Darwin Aliesky Cuesta-Rojas, all of whom are amongst the approximately 62 civil immigration detainees believed to be held at SCDOC presently.

Mr. Tacuri-Tacuri and Mr. Cuesta-Rojas are both civil immigration detainees currently being held in Unit J of the SCDOC. Tacuri-Tacuri Aff. ¶ 2; Cuesta-Rojas Aff. ¶ 3-4. Approximately 30 detainees are currently housed in Unit J. Tacuri-Tacuri Aff. ¶ 3. Unit J has two floors, one floor for immigration detainees and one floor for federal criminal pre-trial detainees. *Id*. All of the immigration detainees in Unit J sleep in bunk beds in one large cell. *Id*. ¶¶ 3-4. That cell presently houses about 16 immigration detainees. Cuesta-Rojas Aff. ¶¶ 3-4. Social distancing is not possible in Unit J, particularly during essential life activities, such as sleeping and eating. Bunk beds are positioned about three feet apart. Tacuri-Tacuri Aff. ¶ 4; Cuesta-Rojas Aff. ¶ 4. During lunch and dinner, all the detainees in Unit J eat together. *Id*. Due to the number of tables and number of detainees, there are typically three to four detainees eating at the same table in close proximity to each other. Tacuri-Tacuri Aff. ¶¶ 4, 6; Cuesta-Rojas Aff. ¶ 6. In addition, new detainees are still being added to Unit J. Tacuri-Tacuri Aff. ¶ 7. One recent new arrival to Unit J is a detainee transferred from New York, which is the epicenter of the COVID-19 infection. Cuesta-Rojas Aff. ¶ 8. SCDOC has not provided detainees with masks or gloves to protect against infection from COVID-19 nor have any been tested for COVID-19. Tacuri-Tacuri Aff. ¶ 10; Cuesta-Rojas Aff. ¶ 6. During lockdown, detainees cannot move outside of the cells and are closely confined to one another. Tacuri-Tacuri Aff. ¶ 4. Both Mr. Tacuri-Tacuri and Mr. Cuesta-Rojas are terrified they will be infected with COVD-19. Tacuri-Tacuri Aff. ¶ 9; Cuesta-Rojas Aff. ¶ 8.

Robson Xavier Gomes is currently detained at SCDOC in Unit G. Gomes Aff. ¶ 2. While Unit G is set up differently from Unit J, Mr. Gomes has a similarly well-grounded fear that he is vulnerable to COVID-19 infection due to the inability to effectively social distance. Unit G contains approximately 72 other people. *Id.* ¶ 3. There are 36 small cells in Unit G that hold two people in each cell. *Id.* Each cell contains a bunk bed where detainees sleep in close proximity to each other. *Id.* There is no way to re-arrange the bunk beds to maintain a distance of six feet between the detainees. *Id.* All 72 detainees in Unit G share the same common area. *Id.* Twelve of the detainees in Unit G work in the SCDOC kitchen. *Id.* ¶ 6. These 12 detainees regularly come and go from Unit G, and thereby come into contact with people outside their Unit. *Id.* Mr. Gomes' cellmate is one of the kitchen workers. *Id.* The entire Unit shares showers, microwave ovens, and digital tablets. *Id.* ¶ 7. Food is delivered to people in Unit G by other detainees who do not wear protective gear. *Id.* ¶ 8. As in Unit J, new detainees continue to be added to the population and none of the detainees are provided with protective gear. Id. ¶¶ 9-10. In addition, correctional officers and staff rotate in and out of the unit regularly, further increasing the risk of a person introducing COVID-19 into the Unit. *Id.* ¶¶ 9-11. Mr. Gomes is afraid to become infected with COVID-19. *Id.* ¶ 12.

ARGUMENT

These civil detainees seek relief on a class-wide basis, and thus ask this Court to certify their class under Federal Rule of Civil Procedure 23. "By its terms, [Rule 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). Class certification is thus appropriate where the proposed class satisfies the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and at least one of

the categories of Rule 23(b). These criteria are met here, where the numerous civil immigration detainees who form the proposed class are all being held by one institution and uniformly placed at risk of contracting the COVID-19 virus due to their conditions of confinement.

Civil rights actions such as the instant one are particularly amenable to class treatment. Rule 23 was enacted to "facilitate the bringing of class actions in the civil-rights area." 7A Wright & Miller, Federal Practice & Procedure § 1775 (3d ed. 2018). The arguments in favor of class certification are especially strong in this context, where individual class members are unlikely to be able to pursue their claims individually. Even under typical circumstances, civil immigration detainees are hard-pressed to bring their own claims, since they are all detained, largely lack counsel, and many do not speak English. *See Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014), *reversed on other grounds*, 819 F.3d 486 (1st Cir. 2016) (certifying class of immigration detainees because, among other things, "many do not speak English, a majority do not have counsel, and most are unlikely even to know that they are members of the proposed class"); *Gordon v. Johnson*, 300 F.R.D. 28, 29 (D. Mass. 2014). These difficulties are compounded even further in the current moment, when New Hampshire (like much of the rest of the world) is essentially at a complete standstill. Class certification is thus particularly appropriate here, and all the requisite elements of Rule 23 have been met.

I. The Proposed Class Meets the Requirements of Rule 23(a).

A. The proposed class is so numerous that joinder would be impractical.

This putative class easily satisfies the requirement that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The First Circuit has recognized that numerosity has a "low threshold." *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir.

2009). Thus, "a class size of forty or more will generally suffice in the First Circuit." *Reid*, 297 F.R.D. at 189.

Here, more than 60 civil immigration detainees are currently housed at SCDOC. Many of these detainees are unrepresented, *see Reid*, 297 F.R.D. at 189, and lack the financial resources or wherewithal to bring individual claims. *Torrezani v. VIP Auto Detailing, Inc.*, 318 F.R.D. 548, 554 (D. Mass. 2017) (class certification is favored where the Court "can reasonably infer that substantially all of the class members have limited financial resources....").

Moreover, new detainees continue to be admitted to SCDOC, rendering the current number of detainees "merely the floor for this numerosity inquiry...." *Reid*, 297 F.R.D. at 189. The fact that future detainees form a part of the proposed class makes joinder, already an infeasible option, that much more impracticable. *Id.*

B. The proposed class representatives present issues of fact and law in common with the class.

Rule 23(a)(2) requires that "questions of law or fact" be "common to the class." Fed. R. Civ. P. 23(a)(2). Commonality requires the identification of an issue that by its nature "is capable of class wide 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." *Dukes v. Wal-Mart Stores, Inc.*, 564 U.S. 338, 350 (2011). A single common issue is sufficient to establish commonality. *Id*. at 359 ("We quite agree that for purposes of Rule 23(a)(2) even a single common question will do....") (internal quotation marks, brackets, and citations omitted). For this reason, the First Circuit has recognized that, like numerosity, the commonality requirement is "a low bar…." *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6, 19 (1st Cir. 2008).

This case satisfies the requirement of at least "a single common question" of law and fact that is shared by all members of the proposed class. Among others: Whether the conditions of

confinement at SCDOC, in light of the COVID-19 pandemic, render class members' confinement a punishment that violates constitutional standards. *See Savino*, 2020 WL 1703844, at *6. All of the class members either have been, or will be, subjected to these common conditions, and a determination that Defendants' conduct is unconstitutional will therefore "resolve an issue that is central to the validity" of each and every class member's detention. *Dukes*, 564 U.S. at 350 (2011).

The fact that certain details relating to their conditions of confinement will vary between class members does not defeat commonality. *Reid*, 297 F.R.D. at 191 (class certification granted despite individual differences among class members, where common issues pervade). Fundamentally, the conditions of and experienced in SCDOC by the proposed class representatives are shared with members of the proposed class in all important aspects. Since the COVID-19 epidemic began, Defendants have continued to confine all members of the putative class in close proximity with each other, while at the same time failing to meaningfully implement social distancing measures, failing to prevent contact from outsiders who could bring the virus into the population, and failing to provide basic protective equipment to give detainees a better chance at avoiding exposure to the virus. Tacuri-Tacuri Aff. ¶¶ 4-7, 10; Cuesta-Rojas Aff. ¶¶ 4-7; Gomes Aff. ¶¶ 3-9; Affidavit of SangYeob Kim ("Kim Aff."), Ex. C ¶¶ 9, 12, 15.

Indeed, "social distancing" is impossible for all of the class members, just as it is for the proposed class representatives. Kim Aff. ¶¶ 9, 12, 15; Stern Decl. ¶ 9; Schriro Decl., ¶ 24, Declaration of Dr. Jonathan Louis Golob ("Golob Decl."), Ex. B, ¶ 13. Beds are in close proximity to each other and meals are eaten in close quarters. Tacuri-Tacuri Aff. ¶¶ 4-7; Cuesta-Rojas Aff. ¶¶ 4-7; Gomes Aff. ¶¶ 3-9; Kim Aff. ¶ 12. And while the rest of the world has adopted social distancing best practices and dramatically reduced unnecessary contact with people, Defendants remain undeterred and continuously introduce new detainees into these conditions without any

mandatory quarantine period. *See, e.g.*, Tacuri-Tacuri Aff. ¶¶ 7-9; Cuesta-Rojas Aff. ¶ 7; Gomes Aff. ¶ 10; Kim Aff. ¶ 14; *see also* Declaration of Ira Alkalay, attached hereto as Exhibit K, ¶¶ 23, 25 ("[o]n March 27,2020 my client . . . was moved from the Bristol County House of Correction to the Strafford County House of Correction. . .. [He] told me that there were no social distancing protocols in place at Strafford").

Even under the more stringent standards applicable to class actions that seek damages under Rule 23(b)(3), class action treatment is appropriate despite the existence of individual differences. *Tyson Foods, Inc. v. Bouaphakeo*, --- U.S. ---, 136 S.Ct. 1036, 1045 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.") (internal quotation marks and citations omitted); *see also Savino*, 2020 WL 1703844, at *8 ("…case law supports a finding of commonality for class claims against dangerous detention conditions, even when some detainees are more at risk than others."). Where, as here, the commonalities are readily apparent, Rule 23 is amply satisfied.

C. The class representatives' claims are typical of those of the class.

Where commonality looks to the relationship among class members generally, typicality under Rule 23(a)(3) focuses on the relationship between the proposed class representative and the rest of the class. *See George v. Nat'l Water Main Cleaning Co.*, 286 F.R.D. 168, 176 (D. Mass. 2012) (citing 1 William B. Rubenstein, *Newberg on Class Actions* § 3:26 (5th ed. 2012)). In practice, however, the analysis of typicality and commonality "tend to merge." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). To satisfy Rule 23(a)(3), "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 156.

Typicality is established as long as the claims of the named plaintiffs and the class involve the same conduct by the defendant, "regardless of factual differences." *Hawkins ex rel. Hawkins v. Comm'r of New Hampshire Dep't of Health & Human Servs.*, No. CIV. 99-143-JD, 2004 WL 166722, at *3 (D.N.H. Jan. 23, 2004). "For purposes of demonstrating typicality, '[a] sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 69 (D. Mass. 2005) (*quoting In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla. 2004)).

Here, the interests of the proposed class representatives and the proposed class members are aligned. *Cf. Faherty v. CVS Pharmacy, Inc.*, No. 09-CV-12102, 2011 WL 810178, at *2 (D. Mass. Mar. 9, 2011) (noting that the alignment need not be perfect). The proposed class representatives are members of the class, have suffered the same injury as the proposed class members, and have been injured by Defendants' actions and inactions that have led to conditions of confinement that threaten the health and safety of all class members. In such circumstances, the representative's claims are "obviously typical of the claims ... of the class," and satisfy Rule 23(a)(3). *See Baggett v. Ashe*, No. 2013 WL 2302102, 2013 WL 2302102, at *1 (D. Mass. May 23, 2013); *see also Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001) (typicality requirement is satisfied when "the cause of the injury is the same").

There is, moreover, no risk that issues involving the named Plaintiffs' individual claims will impede their litigation on behalf of the class. Because the named Plaintiffs are challenging the same practices and seeking the same relief without regard to the outcome of their own efforts to obtain release from unconstitutional conditions of confinement, they "can fairly and adequately

pursue the interests of the absent class members without being sidetracked by [their] own particular concerns." *In re Credit Suisse-AOL Sec. Litig.*, 253 F.R.D. 17, 23 (D. Mass. 2008).

D. The proposed class representatives and class counsel can adequately represent the class.

Finally, the named plaintiffs and their counsel will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Two factors must be satisfied to fulfill this prerequisite: "(1) the absence of potential conflict between the named plaintiff and the class members and (2) that counsel chosen by the representative parties is qualified, experienced and able to vigorously conduct the proposed litigation." *Adair v. Sorenson*, 134 F.R.D. 13, 18 (D. Mass. 1991) (*quoting Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985)) (internal quotations omitted).

Here, "the interests of the representative party will not conflict with the interests of any of the class members," *Andrews*, 780 F.3d at 130, because those interests are aligned. The named Plaintiffs have alleged the same injuries, arising from the same conduct, and they seek the same injunctive and declaratory relief, which will apply equally to the benefit of all class members.

In addition, "counsel chosen by the representative party is qualified, experienced, and able to vigorously conduct the proposed litigation." *Id.* The proposed class would be represented by pro bono counsel from the American Civil Liberties Union of New Hampshire and Nixon Peabody LLP. Proposed class co-counsel has extensive experience litigating class action lawsuits and other complex cases in federal court, including civil rights lawsuits and petitions for habeas corpus on behalf of detained immigrants.[8]

[8] Declaration of Gilles Bissonnette, Esq., Ex. K ¶¶ 2-6; Declaration of W. Scott O'Connell, Esq., Ex. L ¶¶ 2-19.

For the same reasons, counsel also satisfy the requirements of Rule 23(g) and should be appointed as class counsel.

II. The Proposed Class Meets the Requirements of Rule 23(b)(2)

"In addition to meeting the four requirements of Rule 23(a)," the Plaintiffs "must show that the proposed class falls into one of the three defined categories of Rule 23(b)." *Reid*, 297 F.R.D. at 192. Here, the most applicable category is described in Rule 23(b)(2), which applies when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole." *Id*.

The "prime examples" of Rule 23(b)(2) cases, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997), are civil rights cases like this one, where the claim asserts that the Defendants have "engaged in unlawful behavior towards a defined group...." *Reid*, 297 F.R.D. at 193. The rule applies, moreover, where "a single injunction or declaratory judgment would provide relief to each member of the class" (as opposed, for example, to cases in which each class member would need an individual injunction or declaration, or in which each class member would be entitled to an individualized award of money damages). *Dukes*, 564 U.S. at 360-61.

The claims asserted here satisfy these requirements. Defendants have engaged in unconstitutional behavior towards the entire class. Every member of the class is at imminent risk of being infected by COVID-19, due to their conditions of confinement—conditions which Defendants are responsible for creating and maintaining. And, because every member of the class is entitled to relief from these unconstitutional conditions, an appropriate injunction or declaration will provide relief on a class-wide basis. "The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted – the notion that the conduct is such that it can be

enjoined or declared unlawful only as to all of the class members or as to none of them. *Dukes*, 564 U.S. at 360.

CONCLUSION

This putative class of civil immigration detainees are all confined in an environment where conditions threaten to ignite an uncontrollable spread of COVID-19. A Rule 23(b)(2) class action provides the timeliest, most efficient and just vehicle for the vindication of their common constitutional claim against Defendants. Moreover, because of the unique threat presented by COVID-19, class-wide relief presents the most effective remedial method. By certifying a class, the court can act swiftly to ensure that an entire vulnerable population is appropriately safeguarded from a life-or-death threat. For these reasons, and those analyzed more fully above, Plaintiffs respectfully request that the Court grant their motion and certify a class of all individuals who are now held in civil immigration detention at SCDOC.

Respectfully Submitted,

PETITIONERS/PLAINTIFFS

By and through their attorneys affiliated with the American Civil Liberties Union of New Hampshire Foundation and Nixon Peabody LLP,

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Date: April 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2020, I electronically filed the foregoing document with the United States District Court for the District of New Hampshire by using the CM/ECF system. I certify that the parties or their counsel of record registered as ECF Filers will be served by the CM/ECF system, and paper copies will be sent to those indicated as non-registered participants, if any.

/s/ Nathan P. Warecki

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

ROBSON XAVIER GOMES, DARWIN ALIESKY CUESTA-ROJAS and **JOSÉ NOLBERTO TACURI-TACURI**, on behalf of themselves and all those similarly situated,

Petitioners-Plaintiffs,

v.

CHAD WOLF, Acting Secretary of Department of Homeland Security,

MARCOS CHARLES, Immigration and Customs Enforcement, Enforcement and Removal Operations, Acting Field Office Director,

CHRISTOPHER BRACKETT, Superintendent of the Strafford County Department of Corrections,

Respondents-Defendants.

Civil Action No. 1:20-cv-00453-LM

DECLARATION OF GILLES BISSONNETTE, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Gilles Bissonnette, Esq., declare as follows:

1. I am the Legal Director for the American Civil Liberties Union of New Hampshire and counsel for Plaintiffs Darwin Aliesky Cuesta-Rojas and Jose Tacuri-Tacuri in the above-captioned matter. I am an active member of the New Hampshire bar. I am admitted to the bar of the United States District Court for the District of New Hampshire. I make this declaration in support of Plaintiffs' Motion for Class Certification. The following facts are based

on my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. I am an active member of the New Hampshire bar. I have been practicing law for nearly thirteen (13) years (since 2007). I became a member of the New Hampshire bar in 2013. Prior to 2013, I was a member of the Massachusetts bar beginning in 2007.

3. I joined the ACLU of New Hampshire in late August 2013 as Staff Attorney. I was promoted to Legal Director in March 2015. In my capacity as Legal Director (and earlier as Staff Attorney), I litigate civil rights and civil liberties cases across the State of New Hampshire, oversee the operation of the ACLU of New Hampshire's legal program, and provide counsel to the ACLU of New Hampshire on matters of constitutional law and civil rights. I also supervise and manage two other attorneys who are on the ACLU of New Hampshire staff.

4. I regularly litigate civil rights cases on behalf of plaintiffs in federal and state courts in New Hampshire. These have included the following cases as class counsel or prospective class counsel:

- *Doe, et al. v. N.H. Dep't of Health and Human Services*, No. 1:18-cv-01039 (filed Nov. 10, 2018) (putative class action lawsuit challenging New Hampshire's systemic practice of involuntarily detaining people who may be experiencing mental health crises in hospital emergency rooms without providing them any due process, appointed counsel, or opportunity to contest their detention; motion for class certification pending); and

- *Brito v. Barr*, 415 F. Supp. 3d 258 (D. Mass. 2019) (holding that, under the Constitution's Due Process Clause and the Administrative Procedures Act, immigrants in New England are entitled to bond hearings at which the government bears the burden of justifying an immigrant's detention, and at which the immigration court must also consider someone's ability to pay when setting a bond amount; ACLU of Massachusetts lead counsel; case is on appeal); *Brito v. Barr*, 395 F. Supp. 3d 135, 149 (D. Mass. 2019) (certifying class, with ACLU of New Hampshire as co-class counsel).

5. In addition, I have litigated the following cases:

- *Rivera-Medrano v. U.S. Dep't of Homeland Security*, No. 20-cv-194-JD, 2020 U.S. Dist. LEXIS 59609 (D.N.H. Apr. 4, 2020) (holding that due process required that an immigrant held by ICE for over 8 months must be provided a bond hearing);

- *Hernandez-Lara v. U.S. Immigration and Customs Enforcement*, No. 19-cv-394-LM, 2019 U.S. Dist. LEXIS 124144 (D.N.H. July 25, 2019) (holding that ICE violated client's due process rights when it conducted a bond hearing where she had the burden of showing that she was not a danger and not a flight risk; further ruling that due process requires that the burden of showing dangerousness and flight risk has to be on the government by clear and convincing evidence);

- *Compere v. Nielsen*, 358 F. Supp. 3d 170 (D.N.H. 2019) (ruling that the government's plan to deport Mr. Compere to Haiti while his motion to reopen was pending violated his rights under federal law; further ruling that, because habeas corpus is the only means available to Mr. Compere to protect his right to continue litigating his motion to reopen, the Suspension Clause of the U.S. Constitution prevents the jurisdiction-stripping provisions in federal law from being used to deny the Court's jurisdiction);

- *Ahmed-Cali v. U.S. Attorney General*, No. 19-cv-426-JL (D.N.H.) (secured release of Somalian immigrant who had been in continuous detention since 2016 – totaling two years and seven months – after he fled Somalia and sought asylum in the U.S. due to threats against his family);

- *State of New Hampshire v. McCarthy, et al.*, No. 469-2017-cr-01888, et al., (N.H. 2nd Cir. Ct., Dist. Div., Plymouth May 1, 2018), *reconsideration denied on* Aug. 21, 2018 (holding that border patrol checkpoints conducted by Customs and Border Patrol, in conjunction with the local police, in Woodstock, NH 90 driving miles from the border violated Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment);

- *Saucedo v. State of New Hampshire*, 335 F. Supp. 3d 202 (D.N.H. 2018) (striking down, on procedural due process grounds, a New Hampshire law that invalidated the absentee ballots of hundreds of voters, many of whom are disabled, based on signature comparisons without notice or an opportunity to cure);

- *Rideout, et al. v. New Hampshire*, 123 F. Supp. 3d 218 (D.N.H. 2015), *aff'd*, 838 F.3d 65 (1st Cir. 2016), *cert. denied* (2017) (striking down New Hampshire law banning "ballot selfies" on grounds that it violates the First Amendment);

- *Guare, et al. v. New Hampshire*, 167 N.H. 658 (2015) (striking down voter registration form language that would impose a chilling effect on the right to vote of those domiciled in New Hampshire);

- *Petrello v. City of Manchester*, No. 16-cv-008-LM, 2017 U.S. Dist. LEXIS 144793 (D.N.H. Sep. 7, 2017) (striking down, on First Amendment grounds, Manchester's anti-panhandling ordinance, as well as permanently enjoining Manchester's anti-panhandling police practices);

- *Doe v. New Hampshire*, 167 N.H. 382 (2015) (holding that New Hampshire's retroactive, lifetime registration requirements for certain offenders are "punitive in effect" and therefore unconstitutional as applied to ACLU-NH client under New Hampshire Constitution's bar on retrospective laws);

- *New Hampshire v. Bonacorsi*, No. 218-2014-cr-01357 (Rockingham Cty. Super. Ct. May 18, 2016) (narrowing and striking down portions of online identifier statute on First Amendment grounds);

- *Awawdeh v. Town of Exeter, et al.*, No. 18-cv-852-LM (D.N.H.) (successfully settled Fourth Amendment lawsuit with policy change where the Exeter Police Department unlawfully arrested for ICE a man on the suspicion that he was in the United States unlawfully after the man assisted the Department with a criminal investigation by providing translation services);

- *Velasco Perea v. Town of Northwood, et al.*, No. 18-cv-1066-LM (D.N.H.) (successfully settled Fourth Amendment lawsuit with policy change where the Northwood Police Department unlawfully arrested for ICE a documented man on the suspicion that he was in the United States unlawfully);

- *Godoy-Ramirez v. Town of Merrimack*, No. 1:19-cv-01236-JD (D.N.H.) (successfully settled Fourth Amendment lawsuit where the Merrimack Police Department unlawfully held for ICE for more than an hour a passenger in a car that had broken down on the side of the road);

- *Pendleton v. Town of Hudson, et al.*, No. 1:14-cv-00365-PB (D.N.H., filed Aug. 20, 2014) (resolved civil rights action challenging on First, Fourth, and Fourteenth Amendment grounds the Town of Hudson's practices of unlawfully detaining, harassing, threatening, trespassing, dispersing, and charging individuals who peacefully panhandle in public places; obtained stipulated injunctive relief);

- *New Hampshire v. Clay*, No. 450-2015-cr-00414 (4th Cir., Dist. Div., Laconia June 9, 2015) (securing dismissal of disorderly conduct charge on First Amendment grounds where client was arrested during a public meeting simply for engaging in political, non-disruptive speech on matters of public concern);

- *Clay v. Town of Alton, et al.*, No. 1:15-cv-00279-JL (D.N.H., filed July 14, 2015) (resolved civil rights action where client was, in violation of the First Amendment,

arrested during a public meeting simply for engaging in political, non-disruptive speech on matters of public concern);

- *Valentin v. City of Manchester, et al.*, No. 1:15-cv-00235-PB (D.N.H.) (successfully resolved lawsuit addressing the First Amendment right to record the police where ACLU-NH client was arrested for audio recording a conversation with two Manchester police department officers while in a public place and while the officers were performing their official duties);

- *Y.F. v. State of New Hampshire*, No. 15-cv-00510-PB (D.N.H.) (successful challenge to state prison mail policy banning inmates from receiving all original handwritten drawings and pictures in the mail; under settlement, State agreed to allow certain original handwritten drawings and pictures that are done in pen or pencil);

- *State of New Hampshire v. Andersen*, No. 218-2018-cr-00241 (N.H. Super. Ct., Rockingham Cty. Aug. 31, 2018) (vacating "gag order" that barred disclosure of police reports because the order was "sweeping" and "violate[d] the First Amendment to the United States Constitution and Part I, Article 22 of the New Hampshire Constitution");

- *New Hampshire Center for Public Interest Journalism, et al./ACLU-NH v. N.H. Department of Justice*, No. 2018-cv-00537 (Hillsborough Cty. Super. Ct., S. Div., Apr. 23, 2019) (ordering public disclosure of a list of over 260 New Hampshire police officers who have engaged in misconduct that reflects negatively on their credibility or trustworthiness; this case is on appeal);

- *Union Leader Corp. and ACLU-NH v. Town of Salem*, No. 218-2018-cv-1406 (Rockingham Cty. Super Ct. Apr. 5, 2019) (agreeing that certain portions of an internal police department audit are public records; this case is on appeal); and

- *Korat v. U.S. Dep't of Homeland Security*, No. 19-cv-111 (D.N.H.) (secured citizenship for an Army Specialist from India who enlisted through a specialized military program that aims to recruit skilled immigrants in exchange for expediting the citizenship process, but had his naturalization delayed for approximately two years).

6. Additional victories on behalf of the ACLU-NH as *amicus curiae* include the following:

- *State v. Jones*, No. 2019-0057, 2020 N.H. LEXIS 4 (N.H. Sup. Ct. Jan. 10, 2020) (agreeing with amicus ACLU-NH that "race is an appropriate circumstance to consider in conducting the totality of the circumstances seizure analysis" in determining whether a person feels free to leave and therefore is seized under the Constitution);

- *State of New Hampshire v. Brawley*, 171 N.H. 333 (2018) (agreeing with amicus ACLU-NH that legislature's 2017 law aimed at curbing debtors' prisons practices applies to the State's efforts to recoup public defender fees from indigent defendants);

- *City of Keene v. James Cleaveland*, 167 N.H. 731 (2015) (affirming, in part, dismissal of civil causes of action against speakers on the ground that "the First Amendment shields the respondents from tort liability for the challenged conduct");

- *New Hampshire v. Brouillette*, 166 N.H. 487 (2014) (holding that indigent defendants who have secured private counsel—including on a pro bono basis—have the right to obtain state funds for experts and other ancillary defense services necessary for an adequate defense);

- *Petition of State of New Hampshire*, 166 N.H. 659 (2014) (applying retroactively U.S. Supreme Court decision holding that mandatory life without parole sentences for juveniles violates the Eighth Amendment's prohibition on cruel and unusual punishment);

- *Appeal of Farmington School District*, 168 N.H. 726 (2016) (holding that the Farmington School Board improperly declined to renew a guidance counselor's employment contract after the counselor sought independent legal counsel and successfully obtained a temporary restraining order before the Strafford County Superior Court to protect her student's right to privacy that was going to be imminently violated by the Farmington High School Principal);

- *In the Matter of Munson and Beal*, 169 N.H. 274 (2016) (in a case concerning the fair distribution of property in a divorce between two women who were in a 20+ year committed relationship, and joined in a civil union/married for four of those years, holding that premarital cohabitation can be considered when formulating an equitable distribution of the marital property); and

- *New Hampshire v. Mazzaglia*, No. 2014-0592 (N.H. Sept. 29, 2016) (N.H. Supreme Court order agreeing with the position of the victim, victims' rights advocates, and the ACLU-NH that documents concerning a victim's prior consensual sexual activity should be sealed pending appeal).

7. I also have routinely successfully represented elected officials, low income and marginalized individuals, and others who have had their constitutional rights infringed upon in

cases that were adequately resolved without the need for litigation. Some of these cases include the following:

- *Frese v. Town of Exeter* (secured $17,500 settlement from Town of Exeter after the Exeter Police Department arrested our client in May 2018, after he posted comments to an article on Facebook alleging that the local police chief "covered up for [a] dirty cop");

- *Pendleton v. City of Nashua* (secured $15,000 settlement in a case where homeless client was arrested and spent 33 days in jail simply for walking along a public foot path in the park adjacent to the Nashua public library in violation of his First Amendment and Fourteenth Amendment rights);

- *Kearns v. Town of Littleton* (secured $17,500 settlement and further police training in case where client was arrested simply for allegedly swearing at a parking enforcement official in violation of the First Amendment); and

- *Albert v. City of Manchester* (secured $17,500 settlement in a case where client was wrongly arrested for recording in public).

8. Prior to my work at the ACLU of New Hampshire, I worked as a civil litigator for approximately five (5) years where I represented commercial and individual clients in all aspects of litigation and in a variety of areas of law. I worked at the national law firm of Cooley LLP (formerly Cooley Godward Kronish LLP) out of its Boston office as an associate from January 2012 to August 2013. Prior to my work at Cooley LLP, I worked for the Boston-based law firm Todd & Weld, LLP as an associate from September 2009 to January 2012. I also worked for the Boston-based law firm of Choate, Hall & Stewart LLP from September 2007 to August 2008. In these positions, I also defended clients against class action litigation, thus gaining considerable experience in this area of law. *See Strickland et al v. Visible Measures Corporation,* No. 4:13-cv-04030-SOH (W.D. Ark., filed Mar. 22, 2013) (class action case concerning defendant's use of online "flash cookies"); *Silverstrand Invs. v. AMAG Pharms., Inc.*, 707 F.3d 95 (1st Cir. Mass.

2013) (securities class action case concerning pharmaceutical company's disclosure of serious adverse events).

9. I graduated from UCLA School of Law in 2007. I clerked for Judge Thomas M. Golden of the United States District Court for the Eastern District of Pennsylvania from August 2008 to August 2009. I received a Bachelor of Arts and Master of Arts degree from Washington University in St. Louis in December 2003.

10. The ACLU of New Hampshire is a public interest organization dedicated to defending the civil rights and liberties in the state and federal constitutions. It is committed to expending the resources necessary to fully represent the class in this important case involving the constitutional rights of immigrant detainees at the Strafford County Department of Corrections.

I hereby declare under penalties of perjury that the foregoing is true and accurate.

/s/ Gilles R. Bissonnette
Gilles Bissonnette

Dated: April 16, 2020

EXHIBIT L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

ROBSON XAVIER GOMES, DARWIN ALIESKY CUESTA-ROJAS and **JOSÉ NOLBERTO TACURI-TACURI**, on behalf of themselves and all those similarly situated, Petitioners-Plaintiffs, v. **CHAD WOLF**, Acting Secretary of Department of Homeland Security, **MARCOS CHARLES**, Immigration and Customs Enforcement, Enforcement and Removal Operations, Acting Field Office Director, **CHRISTOPHER BRACKETT**, Superintendent of the Strafford County Department of Corrections, Respondents-Defendants.	Civil Action No. 1:20-cv-00453-LM

DECLARATION OF W. SCOTT O'CONNELL, ESQ. IN SUPPORT OF THE MOTION FOR CLASS CERTIFICATION

I, W. Scott O'Connell, Esq., declare as follows:

1. I am a partner with the law firm of Nixon Peabody LLP ("Nixon Peabody") with a business address of 900 Elm Street, Manchester, New Hampshire, 03101-2031. Nixon Peabody is an international law firm with approximately 600 lawyers and offices in 16 cities in the United States, Europe, and Asia.

2. All of the information in this declaration based on personal knowledge.

3. I respectfully request that Nixon Peabody and I be appointment as class counsel in this matter.

4. I am a member in good standing and admitted to practice law in New Hampshire, Massachusetts, Vermont, Maine, New York, New Jersey, and the District of Columbia. I am also a member in good standing and admitted to practice before the Supreme Court of the United States; the United States Court of Appeals for the First, Second, Ninth, and Tenth Circuits; and the United States District Court for the Districts of New Hampshire, Massachusetts, Vermont, New Jersey, and Maine. I have handled putative class actions in the United States District Court for the Central District of California, Northern District of California, District of Colorado, Middle District of Florida, Southern District of Florida, Northern District of Indiana, District of Massachusetts, District of New Jersey, Northern District of Ohio, District of South Carolina, District of Utah, and the Eastern District of Virginia. I argued successfully before the United States Court of Appeals for the Ninth Circuit *en banc* for the affirmance of a class action dismissed by the Northern District of California. *See Kilgore v. KeyBank, Nat'l Ass'n*, 718 F.3d 1052 (9th Cir. 2013).

5. In addition to being a practicing lawyer, I am the Chair of Nixon Peabody's 325-person national litigation department and a member of the firm's Management Committee. The department constitutes roughly half the firm. In this role, I have administrative responsibility for the financial performance of, and personnel within, the department. I also supervise the leadership team that manages the five practice groups in the Litigation Department: Complex Commercial Disputes, Government Investigations and White Collar, Labor and Employment, Intellectual Property, and Bankruptcy. Many of the attorneys in the litigation department also have considerable experience managing class actions.

6. Personally, my practice is largely comprised of different kinds of class actions, mass torts, unfair and deceptive trade practice claims, and governance litigation. During the past 29 years, my practice has included the defense of consumer class actions, securities class actions, wage and hour class actions, and mass tort litigation. For the past 17 years, I estimate that the majority of my annual work for clients encompasses class actions or aggregate litigations. Detailed below are representative examples of my experience with this subject matter.

7. I am currently serving as class counsel in the matter of *Georgia Tuttle, MD, et al. v. New Hampshire Medical Malpractice Joint Underwriting Association*, Docket No. 217-2010-CV-00414. In that matter, my colleagues and I secured the return of $196 million in excess surplus funds to class members who had medical malpractice policies issued by the New Hampshire Medical Malpractice Joint Underwriting Association.

8. I currently represent Cummins Corporation in the District of New Jersey in a putative class action, which initially pled five state-specific subclasses alleging breach of warranty of unfair and deceptive trade practices concerning a line of diesel truck engines. This action remains on-going.

9. I represented Exeter Health Resources in New Hampshire Superior Court in securing the dismissal of a putative class action brought by patients exposed to Hepatitis C through the criminal actions of a former employee.

10. For a ten-year period, I served as national coordinating counsel for Cleveland-based KeyBank, National Association, in the defense of class actions and other matters arising from its student loan portfolio. In that role, I defended 13 class actions in ten different jurisdictions.

11. I represented Key Equipment Finance in the defense of a putative national class action concerning "forced placed insurance" in lease agreements for certain equipment. This action was originally filed in the Central District of California and, after dismissal on venue grounds, subsequently was re-filed in the District of Utah. The United States Court of Appeals for the Tenth Circuit affirmed the dismissal of that putative class action.

12. I represented JPMorgan Chase in the defense of a class action and several related aggregate actions in the Superior Court of California, San Francisco and Los Angeles Counties. Previously, I successfully defended JPMorgan Chase in the defense of class actions brought in Utah.

13. I was part of a joint defense group that defeated a putative class action of school children in East Chicago, Indiana, who attempted to sue certain steel manufacturers and related businesses for medical monitoring for alleged long-term health risks resulting from exposure to pollution.

14. I served as co-counsel in the defense of Merrimack-based GT Solar International, Inc. in consolidated securities class actions in the District of New Hampshire. A related action was also filed in New Hampshire State Court.

15. I was counsel to three defendants in the State of New Hampshire's aggregate litigation against the gasoline industry for alleged damage resulting from contamination of groundwater with MtBE.

16. During the past 17 years, I have spoken and written on various class action topics. For example, in January 2011, I chaired a panel for DRI's Corporate Counsel Roundtable in New York City on how to protect brand through class action litigation. I have also chaired presentations on class actions for the Network of Trial Law Firms.

17. As a result of the above, I have considerable experience and relevant knowledge concerning the procedural and substantive requirements of class actions. Among other things, I understand the duties that class counsel owe to all members of the class.

18. I will supervise all Nixon Peabody attorneys working on this putative class action.

19. If appointed as Class Counsel, Nixon Peabody and I will devote the legal and financial resources necessary to help secure the relief for each class member.

20. For the reasons detailed above, I believe I am qualified and capable of representing the class in this matter.

I hereby declare under penalties of perjury that the foregoing is true and accurate.

Date: April 20, 2020

/s/ W. Scott O'Connell
W. Scott O'Connell, Esq.