UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VADIM KAZAROV AND VOUETH LONG, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	
Petitioners,	)	**No. 02 C 5097**
v.	)	**JUDGE ZAGEL**
THOMAS RIDGE, Secretary of the Department of Homeland Security, THE DEPARTMENT OF HOMELAND SECURITY, JOHN ASHCROFT, Attorney General of the United States, CYNTHIA O'CONNELL, as Interim Chicago District Director of the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security, and the UNITED STATES DEPARTMENT OF JUSTICE,[1]	)	
Respondents.	)	

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONERS' MOTION FOR CLASS CERTIFICATION

Now, as this lawsuit progresses into its second year, the most recent set of named petitioners, Vadim Kazarov and Voeuth Long, have moved for class certification, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure ("FRCP"). See Petitioners' Motion for Class Certification (filed Sept. 16, 2003) ("Pet. Mot."). In the alternative, they have

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[1] As noted in Respondents' Return to Counts One Through Five Of the Third Amended Petition For a Writ Of Habeas Corpus Relating To The Individual Petitioners And Motion To Dismiss Counts One and Two ("Resp. Mot. to Dismiss Third Pet."), filed this same day, the only proper respondent to this habeas petition is Deborah Achim, the Interim Field Operations Director for the Chicago District of DHS's Bureau of Immigration and Customs Enforcement ("ICE"). See Resp. Mot. To Dismiss Pet., at 1 n.1. Accordingly, Ms. Achim, acting in her official capacity as Interim Field Operations Director, should be substituted as the sole respondent to this petition.

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asked the Court to allow this habeas action to proceed as a representative action. Pet. Mot. at 1. Kazarov and Long say that they seek to represent a class of aliens "who have or will have been detained by and under the authority of the Chicago District of the INS for more than six months after the entry of an administratively final order of removal." See Petitioners' Third Amended Petition for Writ of Habeas Corpus, Both Individually And On Behalf Of A Class, And Amended Class Action Complaint ¶ 47 (filed August 25, 2003) ("Third Amended Petition"). The motion should be denied because, whether styled a "class action" or a "representative action," Petitioners – *neither* of whom are currently detained by the Government (see infra)[2] – have not satisfied, and indeed, cannot satisfy, any of the requirements for class certification, or representative status. The detention decisions which Petitioners purport to challenge rest on highly individualized assessments of such factors as the alien's cooperation with ICE's removal efforts, the prospects for the alien's repatriation, and the length of his detention, and thus, are not amenable to review on a class-wide basis. Moreover, putative class members face no significant obstacles to bringing individual habeas actions, as is evident from Vadim Kazarov's own petition for writ of habeas corpus, which this Court dismissed on March 6, 2003. Kazarov v. Ashcroft, No. 02-CV-3357 (N.D. Ill.) (Zagel, J.). Accordingly, the Court should deny Petitioners' motion and dismiss the class allegations of Petitioners' Third Amended Petition.

[2] Concurrently with this Opposition, Respondents have filed a motion to dismiss the Third Amended Petition because the named petitioners are no longer in immigration custody, and thus, their claims are moot.

BACKGROUND

I. PETITIONERS' EFFORTS TO IDENTIFY CLASS REPRESENTATIVES AND PUTATIVE CLASS MEMBERS

A. Petitioners' First, Second, and Third Amended Petitions

While we will not recount the complete history of this case, we note that it has been pending since July 18, 2002, when the Midwest Immigration and Human Rights Center (the "Center") filed its original "Class Action for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief." The Center soon filed an amended petition, in which it named the following four aliens as class representatives: Jalal Hmaidan, a native of Kuwait and citizen of Jordan; Mohammed Aidouni, a native and citizen of Algeria; Maitham Alzehrani, a native and citizen of Iraq; Keovongsack Pongphrachanxay, a native and citizen of Laos; and Den Son, a native and citizen of Vietnam. The Amended Petition alleged that these individuals were representative of a class of aliens who were being detained without statutory authority, in contravention of the Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001), because more than six months had elapsed since their final removal orders, and there was no significant likelihood of their repatriation within the reasonably foreseeable future. Amended Petition ¶¶ 1-7. Notwithstanding these allegations, Hmaidan was removed from the United States and repatriated to Jordan on October 31, 2002.[3] Similarly, Aidouni was removed to his native Algeria on April 4, 2003.[4] The remaining petitioners were released from immigration

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[3] See Respondents' Return To, And Motion To Dismiss, Counts Six Through Ten Of the Amended Petition (filed Nov. 18, 2002).

[4] See Respondents' Notice of Intent To Remove Petitioner Aidouni From the United States (filed March 31, 2003); Respondents' Motion To Clarify The Record For A Rule 16 Scheduling Order at 2 (filed April 30, 2003).

custody, after the former Immigration and Naturalization Service ("INS")[5] concluded that there was no significant likelihood of their repatriation in the reasonably foreseeable future, based upon custody reviews conducted pursuant to the so-called "Zadvydas" regulations at 8 C.F.R. § 241.13. On April 16, 2003, on Respondents' motion, the Court dismissed the individual habeas counts of the First Amended Petition, but let stand the class action counts. See Order (April 16, 2003).

The Center made a second attempt to identify aliens who could serve as representatives for the putative class on March 8, 2003, when they filed a Second Amended Petition naming five new representative petitioners: Tayseer Yousef, a native of Israel and citizen of Jordan; Sothea Bun, a native and citizen of Cambodia; Khahn Nguyen, a native and citizen of Vietnam; Touy Prasoeuthsy, a native and citizen of Cambodia; and Alla Aburwaished, a native of Iraq of Palestinian ethnicity, who entered the United States using a Jordanian passport. On June 21, 2003, Respondents moved to dismiss the individual counts of the Second Amended Petition, because of all of the named petitioners had been released from ICE custody. At a status hearing held on August 19, 2003, petitioners' counsel agreed that the individual counts were no longer viable. The Court, however, gave the Center an opportunity to file a third amended petition and to move for class certification.

On August 25, 2003, the Center filed a Third Amended Petition in which it named the current petitioners, Vadim Kazarov and Voeuth Long, as named representatives. In the instant

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[5] On March 1, 2003, the INS ceased to exist as an independent agency within the Department of Justice, and its enforcement functions were transferred to DHS, ICE, pursuant to section 441 of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

motion for class certification, petitioners assert that they "do not intend to rely upon Voeuth Long as a class representative" because they were informed that his release from immigration custody was imminent. Pet. Mot. at 11 n.5. This information was correct: Long was released from ICE custody on September 30, 2003, following a repatriation likelihood review conducted pursuant to 8 C.F.R. § 241.13. See Exhibit ("Exh.") A. As of the Center's September 16, 2003, filing, Kazarov was still detained because ICE was making substantial progress in obtaining travel documents for him from the Georgian government. ICE's optimism was justified, as the travel documents were issued, and, on October 21, 2003, Kazarov was removed from the United States to Georgia. See Exh. B.

Thus, since July 2002, the Center has named no less than twelve aliens as potential representatives of the class it seeks to have this Court certify. Of these twelve aliens, three – Jalal Hmaiden, Mohammad Aidouni, and Vadim Kazarov – have been removed from the United States. The remaining nine aliens have all been released from ICE custody, following repatriation reviews conducted in accordance with agency regulations.

B. Petitioners' Efforts To Identify Putative Class Members

On May 27, 2003, the Center served Respondents with written discovery requests on class certification issues. At a status conference two days later, this Court declined to order discovery but requested that Respondents disclose the number of aliens currently being detained by ICE's Chicago District who had been subject to final removal orders for more than 180 days. At a status conference on June 9, 2003, Respondents, through their counsel, disclosed that, by the most recent count, there were seventeen aliens within the jurisdiction of ICE's Chicago District who had final removal orders and had been in ICE custody for longer than 180 days.

Respondents expressly denied that any of these seventeen aliens were being detained unlawfully, under either the regulations or the Supreme Court's Zadvydas rule. The Court then asked Respondents' counsel to provide Petitioners' counsel with a declaration from the ICE deportation officer who compiled the data underlying the number, and to make that officer available for an interview by Petitioners' counsel if they had questions concerning his methodology, or what the number purported to represent.

On June 16, 2003, Respondents provided the requested declaration by the deportation officer, Officer Jose Louis Zamora (Exh. C), and on June 20, 2003, Petitioners' counsel interviewed him. Respondents also allowed Petitioners' counsel an opportunity to test the veracity of the information compiled by Officer Zamora by conducting a survey of aliens detained at a detention center, the Tri-County Jail in Ullin, Illinois. After Respondents' counsel proposed parameters for the visit (see Exh. D), which were necessary to meet the facility's security requirements, Petitioners' counsel orally informed Respondents' counsel that they no longer wished to visit the Tri-County Jail. Petitioners' counsel have made no other requests of Respondents or their counsel in their efforts to identify putative members of the class they seek to have certified.

II. PETITIONERS' CLASS ALLEGATIONS

Petitioners challenge the published regulatory procedures for immigration custody reviews, following entry of a final removal order, contending that such procedures routinely lead to detention beyond the period authorized by section 241(a)(6) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a)(6), as construed in Zadvydas v. Davis, 533 U.S. 678 (2001). In addition, Petitioner contend that the regulations violate the procedural and substantive

due process rights of detained aliens, as well as the Administrative Procedure Act ("APA"). See Third Amended Petition, ¶¶ 87-147. Petitioners seek injunctive and declaratory relief on behalf of themselves and members of the following class:

> Individuals who have "entered" the United States, other than those detained pursuant to 8 C.F.R. § 241.14 (2002), or any other regulations or law relating to terrorism or national security, who have been or will have been detained by and under the authority of the ICE Chicago District for more than six months after the entry of an administratively final order of removal.

See Third Amended Petition at ¶ 47.

ARGUMENT

Petitioners' motion must be denied because the claims they raise are not amenable to adjudication in a class action or representative action. As a threshold matter, Petitioners are wrong in assuming (without citation) that class certification is available in a habeas action. See Pet. Mot. 4-12. The Seventh Circuit has recognized that Rule 23 of the Federal Rules of Civil Procedure does not technically apply to habeas corpus proceedings. Bijeol v. Benson, 513 F.2d 965, 968 (7th Cir. 1975), citing United States ex rel. Sero v. Preiser, 506 F.2d 1115, 1125 (2d Cir. 1974), cert. denied, 421 U.S. 921 (1975). While the Seventh Circuit has authorized "representative habeas actions" in "unusual circumstances," Bijeol, 513 F.2d at 967, and has looked to the provisions of Rule 23 "for guidance in determining whether a representative action is appropriate,"[6] it has not expressly approved class certification in the habeas context. See also Sero, 506 F.2d at 1125 (cautioning that "the class action device should not be imported into collateral actions, at least in its full vigor as contemplated by Rule 23"). Accordingly, this Court

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[6] United States ex rel. Morgan v. Sielaff, 546 F.2d 218, 221 (7th Cir. 1976)

should limit its inquiry to whether a representative action is "appropriate" on the facts before it, using the Rule 23 factors only as guideposts for its analysis.

Considering the Rule 23(a) criteria, it is clear that this case does not present the "unusual circumstances" that might justify adjudication of Petitioners' claims in a representative action. First, and perhaps most importantly, Petitioners cannot point to common questions of fact or law which predominate among unnamed petitioners. Second, and closely linked to the commonality question, the Court cannot order the injunctive relief Petitioners seek on a class-wide basis, without considering the specific circumstances of each unnamed petitioner. Third, Petitioners have not shown, and indeed, cannot show, that the unnamed petitioners face significant impediments to bringing their own habeas actions; indeed, any such claim is belied by the fact that named petitioner Kazarov pursued his own habeas action before he was identified as a representative of the proposed class. Fourth, petitioner Kazarov cannot qualify as a representative petitioner because he is not a member of the proposed "class," as he has been removed from the United States. Likewise, petitioner Long's release from detention precludes him from serving as a named representative – a point Petitioners have already conceded. See Pet. Mot. 11 n.5. Finally, Petitioners have not shown that the class of unnamed petitioners is so numerous that joinder of individual suits would be impracticable.

I. PETITIONERS CANNOT MEET THE REQUIREMENTS OF RULE 23(a)

A party seeking class certification (or, as here, leave to proceed on a representative basis), bears the burden of proving that the Rule 23 factors are met and that a representative action is appropriate. See General Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 161 (1982); Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 596 (7th Cir. 1993) cert. denied, 519 U.S.

932. The Court has broad discretion in determining whether or not to allow a representative action. See General Tel. Co., 457 U.S. at 161; Chavez v. Illinois State Police, 251 F.3d 612, 629 (7th 2001). Most importantly, the motion for class certification, or to adjudicate claims on a representative basis, must be judged on its own facts because such motions "involve[] intensely practical considerations." See Reed v. Bowen, 849 F.2d 1307, 1309 (10th Cir. 1988).

Under Rule 23(a), a party seeking class certification must show that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of those of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Failure to satisfy any one of the requirements of Rule 23(a) requires denial of class certification. See Retired Chicago Police Ass'n, 7 F.3d at 596. If the requirements for Rule 23(a) are met, the Court must go further and determine whether the facts before it satisfy Rule 23(b). See Ellis v. Elgin Riverboat Resort, 217 F.R.D. 415, 419 (N.D. Ill. 2003). In short, a motion for class certification must be denied, unless the Court, "after a rigorous analysis," is satisfied that the party seeking such certification has met the prerequisites of Rule 23. See General Tel. Co., 457 U.S. at 161. Furthermore, the Court has a continuing duty to ensure compliance with Rule 23 and may decertify or modify the class, as appropriate. See Fed. R. Civ. P. 23(c) (1) and (4); General Tel. Co., 457 U.S. at 160; Eggleston v. Chicago Journeymen Plumbers, Etc., 657 F.2d 890, 896 (7th Cir. 1981).

In this case, the named Petitioners cannot satisfy the Rule 23(a) factors for class certification, and thus cannot demonstrate that adjudication of their habeas petitions on a representative basis is appropriate.

A. A Representative Action Is Inappropriate Because Material Factual Differences Are Pervasive Throughout The Proposed "Class"

The Supreme Court's decision in Zadvydas largely resolved the legal question of when post-order detention of admitted aliens is authorized by the Immigration and Nationality Act.[7] Zadvydas held that, with certain exceptions not pertinent here, section 241(a) of the INA, as amended, does not authorize the indefinite detention of an admitted alien subject to a final removal order beyond that period "reasonably necessary" to secure the alien's removal from the United States. Zadvydas, 533 U.S. at 500, construing 8 U.S.C. § 1231(a) (2001). For these purposes, the Supreme Court found that post-order detention for a period of six months is "presumptively reasonably," after which time the alien may be subject to release "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and the Government has been afforded an opportunity to rebut that showing. Id. at 701. The Supreme Court was clear, however, that release after expiration of the presumptively reasonable six month period is not automatic: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no

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[7] There continues to be extensive litigation over whether the Zadvydas rule extends to aliens who have not been admitted to the United States. Compare Rosales-Garcia v. Holland, 322 F.3d 386 (6th Cir. 2003) (en banc) (holding that, under Zadvydas, inadmissible aliens who cannot be repatriated in the reasonably foreseeable future may not be detained indefinitely, based on considerations such as their proclivity for criminal recidivism), cert. denied sub nom, Snyder v. Rosales-Garcia, 123 S. Ct. 2607 (2003) and Xi v. INS, 298 F.3d 832 (9th Cir. 2002) (same), with Borrero v. Aljets, 325 F.3d 1003 (8th Cir. 2003) (holding that Zadvydas does not reach unadmitted aliens, who have no due process rights in the United States), Jimenez-Rios v. INS, 324 F.3d 296 (5th Cir. 2003) (same), and Benitez v. Wallace, 337 F.3d 1289 (11th Cir. 2003) (same). Petitioners, however, have limited their proposed class to detained aliens who have been "admitted" to the United States (Third Amended Petition ¶ 47), and thus, that unsettled question has no bearing on this lawsuit.

significant likelihood of removal in the reasonably foreseeable future." Id.

Petitioners' proposed class definition – which would include all admitted aliens detained by ICE for more than six months after entry of a final removal order (Third Amended Petition ¶ 47) – is obviously overbroad under the Zadvydas rule. The proposed class, as defined in the Third Amended Petition, includes all those who are under final removal orders, have "entered" the United States, and are currently detained by ICE at particular locations and for particular lengths of time, regardless of whether repatriation is likely or not, whether the alien has or has not hindered his or her own removal, and whether ICE has or has not conducted a repatriation likelihood review for the purpose of determining custody pursuant to 8 C.F.R. § 241.13. Were this case to proceed as a representative action, the Court would have to order modification of the class definition, to limit it to cases where the alien's detention, in fact, is not authorized by the statute, as construed in Zadvydas. But therein lies the problem with Petitioners' proposed class: To identify such cases – and thus far, Petitioners have pointed to none – the Court would have to engage in a highly fact-intensive examination of the circumstances of each unnamed petitioner's case.

While the individualized nature of habeas relief is inherent in all habeas cases,[8] the need for an individualized examination of each case is even more pronounced in Zadvydas-related claims, which require ICE to consider the particular facts of each case. The relevant considerations include, *inter alia*, the amount of time a petitioner has been in detention, the respective efforts by ICE and the petitioner to accomplish the repatriation, the responses of the

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[8] See generally, Bijeol, 513 F.2d at 968 (holding that a representative habeas action is appropriate only where there is a common legal question, and no genuine factual issues as to individual prisoners: "Given the nature of the case, there can be no genuine issues of fact").

particular foreign government in each case, and the status of diplomatic relations with the foreign government in question. These factors vary substantially from case to case, and cannot be addressed on a class-wide basis. See generally, 8 C.F.R. § 241.13(f) (2003)[9]; Lema v. INS, 341 F.3d 853, 856-57 (9th Cir. 2003) (holding that an alien who refused to cooperate with the INS's efforts to obtain travel documents could not meet his burden under Zadvydas of demonstrating that there was no significant likelihood of removal in the reasonably foreseeable future); Pelich v. INS, 329 F.3d 1057, 1060 (9th Cir. 2003) (finding that the risk of indefinite detention that motivated the Supreme Court's statutory interpretation in Zadvydas does not exist when the alien "has 'the keys [to freedom] in his pocket' and could effectuate his removal by providing the information requested by the INS"), quoting Parra v. Perryman, 172 F.3d 954, 958 (7th Cir.1999).

It is no answer to say, as Petitioners do in their motion, that "[i]ndividual differences in national origin, level of cooperation, or time spent in detainment are subsidiary to the larger due

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[9] Section 241.13 provides that in evaluating whether to continue post-order detention, the Headquarters Post-Order Detention Unit ("HQPDU")

> shall consider all facts of the case, including, but not limited to, the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service's efforts to remove this alien and the alien's assistance with those efforts, the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question, and the receiving country's willingness to accept the alien into its territory. Where the Service is continuing its efforts to remove the alien, there is no presumptive period of time within which the alien's removal must be accomplished, but the prospects for the timeliness of removal must be reasonable under the circumstances.

8 C.F.R. § 241.13(f) (2003).

process question and should be ignored for the purpose of class certification." Pet. Mot. 8. Under Zadvydas, the legality of post-order detention hinges entirely on whether the detention continues to serve the statutory objective of facilitating the alien's removal from the United States. This, in turn, depends on whether there exists a significant likelihood of the alien's removal in the reasonably foreseeable future. The likelihood of repatriation cannot be evaluated without consideration of individual differences in national origin, level of cooperation, and time spent in detention.[10] These are not minor factual discrepancies, with no bearing on the substance of Petitioners' class allegations.[11] Instead, the alien's prospects for repatriation bear directly on the core issue of whether an alien's post-order detention is lawful. Because, as Petitioners implicitly concede, repatriation likelihood is a fact-intensive inquiry, it precludes any finding of a "common nucleus of operative fact," as required for commonality under Rule 23. Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992).

Petitioners argue that factual commonality exists because Respondents "have engaged in

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[10] In the Third Amended Petition, Petitioners allege that Respondents have required "clearly futile efforts by individuals to secure their removal from the U.S., even where the [Respondents] know that the detainee's country of origin will not accept their removal." Third Amended Petition ¶ 144(d). DHS removal statistics, however, show that it has consistently removed at least some aliens to countries, such as Cambodia, Vietnam, Laos, and Cuba, which have a history of intransigence in repatriating their nationals. See DHS's 2002 Yearbook of Immigration Statistics (Oct. 2003) (Table 46) (reporting that in fiscal year 2002, DHS removed 18 aliens to Cambodia, 15 to Vietnam, 5 to Laos, and 64 to Cuba) (Exh. E). Commonsense dictates that if the alien himself asks his foreign consulate for travel documents, he stands a far better chance of removal than if he relies upon ICE's requests to the consulate, or actively obstructs his removal.

[11] Compare with Rosario v. Livaditis, 963 F.2d 1013, 1017-18 (7th Cir. 1992) (finding that Rule 23(a)'s commonality requirement was satisfied as to class of former students of beauty college, who alleged that college misrepresented the education it provided, notwithstanding that some former students were satisfied with the college, and at least two class members passed the state licensing exam).

standardized conduct toward members of the proposed class." Pet. Mot. 8, citing McKenzie v. City of Chicago, 175 F.R.D. 280, 286 (N.D. Ill. 1997). More specifically, they assert that Respondents have engaged in a "systematic [] practice of keeping aliens in custody longer than 6 months after a final order of deportation. . . . The common issues of fact stemming from the government process are whether Respondents have a practice of delaying adjudication of release decisions, a practice of failing to give an opportunity to be heard, and/or a practice of justifying continued detention on non-existing failures to cooperate or possibilities of return to home countries." Pet. Mot. 8-9. These conclusory allegations do not demonstrate the commonality required for a representative action.

First, Petitioners have not pointed to a single class member, much less a named petitioner, who is currently being detained because Respondents have delayed in completing his repatriation likelihood review. Second, while Petitioners might prefer additional or different procedures than those in place,[12] they have not identified a single instance where a detained alien was denied a meaningful opportunity to be heard on the repatriation likelihood issue. Finally, Petitioners' allegation that Respondents have justified continued detention based on "non-existing failures to cooperate or possibilities of return to home countries" is belied by the experiences of their named representatives. Petitioner Kazarov supposedly is the exemplar of an alien unreasonably denied release, notwithstanding his cooperation with ICE's removal efforts and ICE's allegedly dim prospects for effectuating his removal order. Yet Petitioners were utterly wrong about Kazarov's

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[12] But see Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 543 (1978) (administrative agencies should be "free to fashion their own rules of procedure and pursue methods of inquiry capable of permitting them to pursue their multitudinous duties").

removal likelihood, as, on October 21, 2003, he became the third named Petitioner to be deported during the pendency of this action. Petitioners cannot establish commonality based on conclusory allegations which are inconsistent with the experiences of their named representatives.

While "[f]actual differences between plaintiffs are to be expected," see Jenson v. Eveleth Taconite Co., 139 F.R.D. 657, 664 (E.D. Minn.1991), the factual patterns implicated in this action are inherently distinct, and apart from the allegedly unifying abstract allegation that the Respondents have violated Petitioners' due process rights and the APA in administering the governing regulation, little else about the Petitioners' and putative class members' claims are common.[13] In short, the proposed representative action is unworkable because an analysis of the release considerations with respect to each unnamed petitioner would raise a multitude of factual issues that are not amenable to generalized proof. Accordingly, the Court should deny the motion, as Petitioners have failed to satisfy the commonality requirement for a representative

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[13] This case is easily distinguished from those cited by Petitioners, in arguing that representative actions are available in the habeas context. See Pet. Mot. 3-4. Unlike the situation here, in Petitioners' cases, any factual discrepancies among the putative class members were minor, and could have no bearing on the legality of the government conduct at issue. For example, in Bijoel, the Seventh Circuit approved a representative habeas action brought by prisoners at a particular penitentiary, who alleged that the United States Parole Board was not conducting meaningful parole hearings after expiration of one third of the prisoners' sentences, as required by circuit precedent. 513 F.2d at 968. In doing so, the Court emphasized that there were "no genuine issues of fact" as to each prisoner, and that a "single issue of law" was presented, which was "identical as to all prisoners identified" and which had "already been definitively adjudicated for the circuit" in a prior case. Id. See also Sero, 506 F.2d at 1125-26 (approving a representative habeas action brought on behalf of juveniles who received longer sentences than adults who had committed the same offense); Williams v. Richardson, 481 F.2d 358, 360-61 (8th Cir. 1973) (finding that a representative habeas action might be permissible where petitioners were inmates challenging conditions of confinement at the same institution); Mead v. Parker, 464 F.2d 1108, 1110-12 (9th Cir. 1972) (fining that a habeas "class action" might be appropriate where inmates challenged the adequacy of prison law library materials).

action.

B. A Representative Action Is Inappropriate Because The Court Cannot Grant The Injunctive Relief Petitioners Seek On A Class-Wide Basis

A representative action is also inappropriate because of the type of relief sought by the named Petitioners. In Counts Three and Four of the Third Amended Petition, Petitioners seek an order requiring the "immediate[]" release of all class members from immigration custody. Third Amended Petition ¶¶ 117, 128. Similarly, in Counts Five and Six, they seek to have the Court order Respondents to "cease and desist from detaining members of the Plaintiff class after the end of the presumptively reasonable six month period after a final order of removal, pursuant to the rules and regulations currently enacted by [Respondents]." Id. ¶¶ 135(C), 142(C). By asking for this relief, Petitioners are essentially asking the Court to ignore the holding of Zadvydas, which, as noted, explicitly recognized that release of an alien after the presumptively reasonable six month period is *not* automatic. Zadvydas, 533 U.S. at 701. Thus, class certification should be denied because the Court cannot grant the injunctive relief requested by Petitioners on a class-wide basis. See Wang v. Reno, 862 F. Supp. 801, 811 (E.D.N.Y. 2001) (holding that, to the extent a proposed class of detained aliens was seeking more than declaratory relief, "the habeas relief sought must be considered on an individual basis").

C. A Representative Action Is Inappropriate Because The Unnamed Petitioners Face No Significant Impediment To Bringing Individual Habeas Actions

Petitioners also fail to demonstrate that aliens in the putative class would not pursue individual habeas actions on their own. Petitioner's contention that members of the purported class lack the resources to file litigation on their own is without merit. The fact that members of the purported class are detained, and that some do not speak English, hardly means that the aliens

lack adequate access to the courts.[14] As previously noted, named petitioner Kazarov, with the assistance of counsel, filed a habeas petition before this lawsuit was filed. According to the Third Amended Petition, that lawsuit ultimately was denied on March 6, 2003, "because his removal proceeding had concluded and there had been no claim that 'Georgia is unwilling to take back deportees.'" Third Amended Petition at ¶ 61 (quoting Order issued in Case No. 02-C-3357). Even without resort to this Court's extensive docket of habeas actions brought by detained aliens, Kazarov's petition demonstrates that detained aliens do have access to the courts to litigate individual habeas actions.

D. Kazarov and Long Are Not Adequate Representative Petitioners Because They Are Not Members Of The Proposed Class

The representative plaintiff, (or petitioner, as is the case here), must be able to represent the interests of the class adequately. See Gaspar v. Linvatec, 167 F.R.D. 51, 58 (N.D. Ill. 1996). Class representatives must share interest and injury with class members in order to adequately protect their interests. See Uhl v. Thoroughbred Tech. & Tel., Inc., 309 F.3d 978, 985 (7th Cir. 2002).

Named petitioner Kazarov – the sole representative upon which the motion relies – cannot satisfy this requirement because he is not a member of the putative class, and thus does not share its interests. The same holds true for petitioner Long, in light of his release from ICE

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[14] Perhaps recognizing that it refutes their claim of unsurmountable hurdles to individual habeas suits, Petitioners now withdraw the allegation made repeatedly in their Third Amended Petition that "more than 80" habeas petitions challenging post-order detention are currently pending in the Northern District of Illinois, Eastern Division. See Pet. Mot. 5; Third Amended Petition ¶¶ 38 (alleging a "flood"of habeas petitions "brought by *pro se* detainees and through *pro bono* counsel), 48. We have not determined how many post-order detention suits are pending in this Court, but are confident that the number far exceeds the approximately seventeen aliens who Petitioners say belong to their proposed class.

custody. This precludes the named Petitioners from have the same interests as detained putative class members, and thus prevents them from representing their interests.[15]

E. Petitioners Have Failed To Establish That Joinder Of Unnamed Petitioners Is Impracticable

Petitioners must show that the putative class is so numerous that joinder of all of the class members is impracticable. See Young v. Magnequench Int'l Inc., 188 F.R.D. 504, 506 (S.D. Ind. 1999) . "While no magic number satisfies this element, the plaintiff must show that it is extremely difficult or inconvenient to join all of the class members in the suit." See id. While there is no fixed numerosity rule, generally less than twenty-one individuals is insufficient to demonstrate numerosity. See Evans v. Evans, 818 F.Supp. 1215, 1219 (N.D. Ind. 1993) quoting Cox v. American Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986); Danis v. USN Communications, 189 F.R.D. 391, 399 (N.D. Ill. 1999) (finding that fifteen members was not so numerous so as to render joinder difficult and inconvenient); CL Alexanders Lanig & Cruickshank v. Goldfield, 127 F.R.D. 454, 455-57 (S.D.N.Y. 1989) (finding that twenty-five prospective class members is an insufficiently low number); State Security Ins. Co. v. Frank B. Hall & Co., 95 F.R.D. 496, 498 (N.D. Ill. 1982) (eighteen members is an insufficiently low number to demonstrate numerosity). Certification of classes generally containing less than twenty-five members is generally not permitted absent special circumstances. See Danis, 189 F.R.D. at 399; CL Alexanders Lanig & Cruickshank, 127 F.R.D. at 455-57; State Security Ins. Co., 95 F.R.D. at 498.

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[15] Respondents do not dispute that the named Petitioners' factual allegations, as set forth in Counts Two and Three of the Third Amended Petition, are typical of the proposed class. The problem is that the named Petitioners do not belong to the class, because they have been released from ICE custody.

In this case, Petitioners allege that there are approximately thirteen members in the putative class, and that this number may be between ten and seventeen. See Pet. Mot. 5. This number corresponds to Respondents' disclosure of the number of aliens who currently are being detained more than six months after entry of their final removal order. For the reasons discussed above, this number is not reflective of the number of admitted aliens *unlawfully* detained beyond the six month period, as it includes cases where there exists a significant likelihood of repatriation within the reasonably foreseeable future, or where the alien refuses to cooperate with ICE's removal efforts. In fact, Respondents do not concede that *any* aliens are currently being detained by ICE's Chicago District in violation of the Zadvydas rule.[16] Yet, assuming that the class consists of ten to seventeen individuals, as alleged, Petitioners have failed to demonstrate special circumstances which would justify the certification of such a small class.

Petitioners simply cannot demonstrate that joinder of these few cases is impracticable. Therefore, because Petitioners have failed to demonstrate that there are enough class members to make joinder impracticable, they cannot meet the numerosity requirement under FRCP 23 (a)(1).

II. PETITIONERS CANNOT MEET THE REQUIREMENTS OF RULE 23(b)(2).

To proceed under Rule 23(b)(2), Petitioners must establish that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making

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[16] Petitioners assert that "the nature of the suit is such that individuals come in and out of the class all the time." Pet. Mot. 2. We agree. However, the fact that the composition of the class is constantly in flux shows that the pervasive illegalities that Petitioners allege simply do not exist. If ICE were routinely denying release to detained aliens, one would expect that the proposed class would remain static, but for the addition of new, unlawfully detained members. Instead, the composition of the class is constantly changing as aliens are removed from the United States – as in the cases of Kazarov, Hmaidan, and Aidouni – or released from ICE custody – as in the case of every other named petitioner in this lawsuit.

appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." FRCP 23(b)(2). This rule does not require that all members of the class be aggrieved by the challenged conduct, but proponents of a Rule 23(b)(2) class must be able to demonstrate that the "'conduct or lack of it which is subject to challenge be premised on a ground that is applicable to the entire class,'" and that the entry of declaratory or injunctive relief would remove a barrier or impediment common to the class. See Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975). In the instant case, Petitioners' due process and APA challenges to the regulations do not involve a question which, if resolved, would remove a common barrier to the putative class members' quest for release from ICE custody, because each class member's detention status still would have to be determined on a case-by-case basis. Accordingly, Petitioners cannot meet the requirements of Rule 23(b)(2).

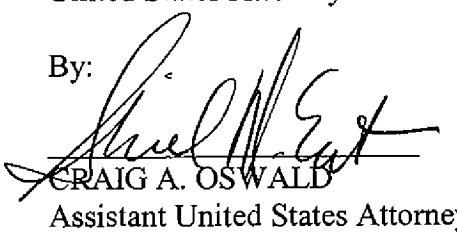
CONCLUSION

As is evident from the named Petitioners' own experiences, the proposed representative habeas action would be unworkable, given the vast array of material factual issues that would have to be resolved, before the legality of each putative class member's post-order detention could be assessed. Moreover, Petitioners do not belong to the class they seek to represent, and have not shown any significant impediments to individual habeas suits, which undoubtedly will continue to be filed in this Court, regardless of the result of this motion. Accordingly, we

respectfully request that the Court deny Petitioners' motion for class certification, or representative status.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: 
CRAIG A. OSWALD
Assistant United States Attorney
SHEILA M. ENTENMAN
Special Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-8788

PETER D. KEISLER
Assistant Attorney General

TERRI J. SCADRON
Assistant Director

EFTHIMIA S. PILITSIS
Trial Attorney
Office of Immigration Litigation
U.S. Department of Justice, Civil Division
Ben Franklin Station, P.O. Box 878
Washington, D.C. 20044

Dated: October 30, 2003

Attorneys for Respondents

U.S. Department of Homeland Security
Bureau of Immigration and Customs Enforcement

425 I Street NW
Washington, DC 20536

A25 194 244

Voeuth Long
C/O Tri-County Detention Center
10 West Jackson Boulevard
Chicago, IL 60604

Release Notification

Upon review of your case, the Bureau of Immigration and Customs Enforcement (ICE) has concluded that you may be released from ICE custody pending your removal from the United States. This release does not affect your removal order and does not constitute an admission to the United States.

Your release will be subject to certain written conditions that will be provided to you shortly, and by which you must abide. A violation of one of more of these conditions, or of any local, state or federal law may result in your being taken back into custody and any bond that you may have posted being forfeited. Your release from custody is also conditioned upon your maintaining proper behavior while sponsorship and placement efforts for you are being undertaken.

Prior to your release from custody, an immigration officer will verify the sponsorship or employment offers presented during your review. Please forward any additional information regarding potential sponsoring family members or non-governmental organizations that may be willing to assist you upon release.

It is particularly important that you keep the ICE advised of your address at all times. We will continue to make efforts to obtain your travel document that will allow the United States government to carry out your removal pursuant to your order of deportation, exclusion, or removal. In addition, you are required by law to continue to make good faith efforts to secure a travel document on your own. Once a travel document is obtained, you will be required to surrender to the ICE for removal. You will, at that time, be given an opportunity to prepare for an orderly departure.

Signature of HQPDU Director/Designated Representative

9/11/2003
Date

GOVERNMENT EXHIBIT
A

U.S. Department of Justice
Immigration and Naturalization Service

..arrant of Removal/Deportation

File No: A71 359 627

Date: January 21, 2003

To any officer of the United States Immigration and Naturalization Service:

Vadim Robertovich KAZAROV
(Full name of alien)

who entered the United States at Chicago, IL (Place of entry) on 12-07-1996 (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☒ an immigration judge in exclusion, deportation or removal proceedings
- ☐ a district director or a district director's designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 237 (a)(2)(A)(iii) of the Immigration and Nationality Act.....
Section 237 (a)(2)(A)(ii) of the Immigration and Nationality Act.....

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

The appropriations, "salaries and expenses of the U.S. Immigration and Naturalization service, 2003."

GOVERNMENT EXHIBIT
B

Brian R. Perryman
(Signature of INS official)

District Director
(Title of INS official)

January 21, 2003 Chicago, Illinois
(Date and office location)

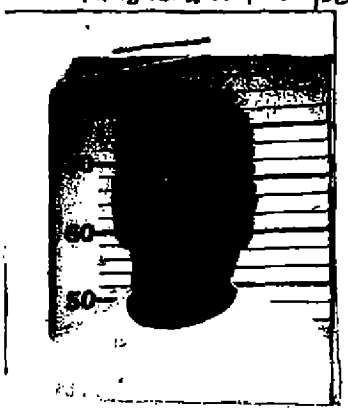
N

To be completed by Service officer executing the warrant:

Name of alien being removed:

Vadim Robertovich KAZAROV

Port, date, and manner of removal: ORD 10/21/03 KLM 8662 to Amsterdam
Amsterdam 10/22/03 Georgian Airline 652 to TBILISI, Georgia



Photograph of alien removed

Right index fingerprint of alien removed

X _____
(Signature of alien being fingerprinted)

Joseph A. Halloran IEA
(Signature and title of INS official taking print)

Departure witnessed by: Joseph A. Halloran IEA
(Signature and title of INS official)

If actual departure is not witnessed, fully identify source or means of verification of departure:

_____

_____

_____

_____

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Departure Verified by: _____
(Signature and title of INS official)

U.S. Department of Justice
Immigration and Naturalization Service

Warning to Alien Ordered Removed or Deported

File No: A71 359 627

Date: January 21, 2003

Alien's full name: Vadim Robertovich KAZAROV

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

☐ For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

☐ For a period of 10 years from the date of your departure from the United States because you have been found:
- ☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having been present in the United States without admission or parole.
- ☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
- ☐ deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act by a judge of a United States district court, or a magistrate of a United States magistrate court.

☐ For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:
- ☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.
- ☐ deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.
- ☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.
- ☐ to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.

☒ At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected you must request and obtain permission from the Attorney General to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or office of the Immigration and Naturalization Service. Refer to the above file number when requesting forms or information.

WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Attorney General's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 [illegible] and/or a fine of up to $250,000.

Joseph A Halaze — (Signature of officer serving warning)

IEA — (Title of Officer)

Chicago, Illinois — (Location of INS office)

Form I-294 (Rev. 6-1-97)N

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Tayseer YOUSEF, Sothea BUN, Touy PRASOUETHSY, Khanh NGUYEN, Alla ABURWAISHED,	)	
Petitioners,	)	No. 02 C 5097
v.	)	Judge Zagel
Thomas RIDGE, Secretary Department of Homeland Security, et al.	)	
Respondents.	)	

DECLARATION OF JOSE LUIS ZAMORA

Pursuant to 28 U.S.C. § 1746, I, Jose Luis Zamora, hereby state:

1. I am employed as a Supervisory Deportation Officer by the United States Department of Homeland Security, Bureau of Immigration and Customs Enforcement ("ICE"), Office of Detention and Removal in Chicago, Illinois.

2. As a Supervisory Deportation Officer, my responsibilities include supervising the execution of administratively final orders of removal entered against aliens within the jurisdiction of ICE's Chicago District Office. In addition, I track the cases of detained aliens who may be eligible for custody reviews to determine whether they should be released from detention pending execution of their removal order ("post-order custody reviews").

3. In the course of my duties, I maintain a searchable database on Microsoft ACCESS of aliens in immigration custody within the jurisdiction of ICE's Chicago District who appear to be eligible for post-order custody reviews. I obtain the information entered in this database from ICE Deportation Officers who are assigned to execute the removal orders in the individual aliens' cases. The ICE Deportation Officers forward the alien registration files ("A-files") of

these aliens to me and I input the following information into the database: the alien's name, the alien registration number ("A number"), date of the alien's administratively final removal order, the date the alien came into ICE custody, the date a post-order custody review was made, whether the alien has filed a suit challenging his removal order or detention in either a United States District Court or a Court of Appeals, and whether the alien has obtained a judicial stay preventing his removal.

4. On May 30, 2003, at the request of government counsel in the above-captioned case, I performed a search of the ACCESS database and produced a report showing the number of aliens within the jurisdiction of the ICE Chicago District who have administratively final removal orders and have been in ICE custody for longer than 180 days. The number of aliens listed in the report was twenty-four (24). Of these twenty-four aliens, six had obtained judicial stays, thereby preventing ICE from removing them from the United States. Since I produced the report on May 30, 2003, one alien was ordered released by ICE, thus leaving seventeen aliens who potentially could be removed from the United States, or released from immigration custody as of June 9, 2003. I provided this information to government counsel in this case.

5. The number of aliens in ICE custody fluctuates from day to day, as aliens are taken into custody, released from custody, or removed from the United States.

6. On June 9, 2003, the jurisdiction of the Office of Detention and Removal for the ICE Chicago District was expanded to include control over ICE detention and removal operations in Missouri, Kansas, and Kentucky. The ACCESS database does not include information about detained aliens who came within the ICE Chicago District's jurisdiction as a result of this recent expansion. To date, I have not been assigned responsibility for any cases originating from ICE detention and removal offices in Missouri, Kansas, or Kentucky, which continue to handle those cases pending further instruction.

7. The number of cases reported to counsel pursuant to the ACCESS database search I performed on May 30, 2003, does not include any cases originating from ICE detention and

removal offices in Missouri, Kansas, or Kentucky, which were not part of the ICE Chicago District when I produced the report.

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

Executed on this 13th day of June, 2003 in Chicago, Illinois.

JOSE LUIS ZAMORA

U. S. Department of Justice

United States Attorney
Northern District of Illinois

Sheila M. Entenman
Special Assistant United States Attorney

Dirksen Federal Building
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604

Direct Line: (312) 353-8788
Fax: (312) 886-4073

July 10, 2003

Christopher J. Werner, Esq.
Michael Smith, Esq.
FOLEY & LARDNER
321 North Clark Street
Suite 2800
Chicago, IL 60610-4764

Charles Roth, Esq.
Midwest Immigrant & Human Rights Center
208 S. LaSalle Street, Ste. 1818
Chicago, IL 60604

Re: *Yousef v. Ridge*, U.S.D.Ct. Case No. 02 C 5097

Dear Sirs,

This is in regard to your request at June 9, 2003, status conference that defendants provide you with opportunity to confirm the number of individuals in the custody of the Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (ICE), who potentially could be class members in this lawsuit, that is, aliens within the jurisdiction of ICE's Chicago District Office with final removal orders who have been in immigration custody for six months or longer since entry of the order, and who are not subject to a judicial stay of removal. Defendants agree to the following parameters for an on-site visit to the Tri-County Jail in Ullin, Illinois.

Specifically, ICE agrees to allow a maximum of six (6) plaintiffs' representatives to visit the facility on Monday July 21, 2003, to conduct the verification survey. There will be at least one representative from DHS, ICE present during the verification survey. The facility will be available for the survey beginning at 8:00 am, and the survey should be completed by 11:00 am. These time restrictions are necessitated by the facility's daily schedule for detainees and staff; the facility is modifying the schedule to accommodate plaintiffs' request for a site visit to the extent possible. The total number of detainees at the Tri-County Jail on any given day fluctuates, given travel and transfers. However, DHS, ICE will make available to you the total number of detainees registered in the facility as of July 21, 2003, subject to any absences necessitated by court appearances, medical problems, or other matters specific to the detainee. DHS, ICE will bring one pod (i.e., housing unit) of detainees at a time into a meeting room, and when one pod has completed the survey, they will be escorted from the room and the next pod will be brought

in. The purpose of this arrangement is to provide your representatives with maximum access to the detainees, while maintaining the security necessary to ensure the safety of facility personnel, plaintiffs' representatives, and the detainees themselves.

With respect to the format of the verification survey, the detainees must be initially informed that their presence is voluntary and that they are under no obligation to participate in the verification survey. DHS, ICE will agree to the following preliminary questions which should be sufficient to identify individuals who might be within plaintiffs' proposed class.

1. Have you received a final order of removal in your immigration case, either from the Board of Immigration Appeals or, if you did not file an appeal, from an immigration judge?

2. If you have received a final order, have you been detained by the INS (now ICE) for six months since receiving your order? You should not count any period of detention while you were still litigating your case before the immigration judge or the Board, or while you were serving a criminal sentence.

3. If you have received a final order, have you received a stay of removal from any federal court?

4. If you received a final order, and you have been detained by ICE for six months or more, and you do not have a judicial stay of removal, have you received a Post Order Custody Review, or correspondence from ICE relating to a Post Order Custody Review?

5. If not, are you represented by counsel?

At this point, those detainees who have volunteered to participate could be separated into two groups, those who have received correspondence relating to a post-order custody review and those who have not.

Because the court has not authorized any general discovery in this case, the information you collect from the individuals who elect to participate should be limited to:

-Name
-Alien Registration Number
-Date of Final Order (administrative or by Immigration Judge), if known by detainee
-Length of time in custody since final order, if known by detainee
-Response to Post Order Custody Review correspondence from ICE

Furthermore, defendants understand that the sole purpose of this visit is to verify the accuracy of the numbers provided previously by the defendants. No private consultations with the detainees will be permitted in the pod area during the verification survey.

In light of our recent telephone conversations, defendants believe that it is essential that the parties reach agreement as to the parameters for the site visit before it takes place. Please let me know at your earliest convenience whether plaintiffs agree to these parameters.

Sincerely,

SHEILA M. ENTENMAN
Special Assistant U. S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604

2002 Yearbook of Immigration Statistics

October 2003

Homeland Security

Office of Immigration Statistics

TABLE 46. ALIENS REMOVED BY CRIMINAL STATUS AND REGION AND COUNTRY OF NATIONALITY
FISCAL YEARS 1997-2002—Continued

Region and country of nationality [1]	2000			2001			2002		
	Total	Criminal [2]	Non-criminal	Total	Criminal [2]	Non-criminal	Total	Criminal [2]	Non-criminal
All countries	**185,731**	**71,801**	**113,930**	**177,452**	**71,994**	**105,458**	**148,619**	**70,759**	**77,860**
Europe	**2,417**	**929**	**1,488**	**2,496**	**877**	**1,619**	**3,090**	**924**	**2,166**
Albania	93	7	86	105	14	91	94	10	84
Armenia	13	9	4	28	10	18	29	4	25
Austria	8	4	4	16	4	12	22	4	18
Azerbaijan	-	-	-	1	-	1	3	1	2
Belarus	1	1	-	4	-	4	5	1	4
Belgium	19	13	6	12	5	7	22	6	16
Bosnia-Herzegovina	3	3	-	8	5	3	8	6	2
Bulgaria	43	11	32	42	14	28	48	15	33
Croatia	9	4	5	9	1	8	10	3	7
Czech Republic	5	1	4	16	2	14	23	4	19
Czechoslovakia [3]	135	26	109	128	25	103	221	25	196
Denmark	12	4	8	10	3	7	16	1	15
Estonia	14	2	12	16	2	14	25	2	23
Finland	5	2	3	6	2	4	8	4	4
France	103	32	71	95	35	60	167	50	117
Georgia	24	8	16	27	8	19	29	7	22
Germany	180	87	93	139	57	82	152	67	85
Greece	44	31	13	35	19	16	42	16	26
Hungary	42	12	30	85	17	68	121	13	108
Iceland	1	-	1	-	-	-	2	1	1
Ireland	39	16	23	56	17	39	68	15	53
Italy	132	82	50	127	70	57	125	58	67
Kazakhstan	7	-	7	1	1	-	14	3	11
Kyrgyzstan	4	1	3	1	1	-	2	-	2
Latvia	11	-	11	16	3	13	13	2	11
Lithuania	33	4	29	36	5	31	62	10	52
Luxembourg	1	-	1	2	1	1	-	-	-
Macedonia	14	3	11	22	-	22	22	6	16
Malta	1	-	1	2	2	-	1	-	1
Moldova	3	3	-	4	-	4	5	1	4
Monaco	-	-	-	-	-	-	-	-	-
Netherlands	71	42	29	74	39	35	89	44	45
Norway	15	6	9	11	5	6	6	-	6
Poland	332	70	262	355	81	274	346	84	262
Portugal	128	107	21	107	82	25	118	68	50
Romania	69	13	56	86	24	62	96	34	62
Russia	117	21	96	95	49	46	142	37	105
Slovak Republic	20	10	10	20	3	17	38	9	29
Slovenia	5	-	5	8	1	7	2	1	1
Soviet Union [3]	15	9	6	6	3	3	12	9	3
Spain	58	19	39	61	24	37	76	31	45
Sweden	28	6	22	27	6	21	33	2	31
Switzerland	16	5	11	12	3	9	22	6	16
Tajikistan	-	-	-	-	-	-	1	-	1
Ukraine	73	10	63	123	15	108	166	14	152
United Kingdom	414	228	186	360	185	175	484	232	252
Uzbekistan	16	-	16	31	4	27	46	4	42
Yugoslavia [3]	41	17	24	71	30	41	54	14	40
Asia	**3,333**	**1,006**	**2,327**	**3,202**	**1,010**	**2,192**	**4,317**	**1,189**	**3,128**
Afghanistan	5	3	2	10	3	7	10	4	6
Bahrain	-	-	-	1	-	1	3	-	3
Bangladesh	77	8	69	68	15	53	91	9	82

See footnotes at end of table.

TABLE 46. ALIENS REMOVED BY CRIMINAL STATUS AND REGION AND COUNTRY OF NATIONALITY FISCAL YEARS 1997-2002—Continued

Region and country of nationality [1]	2000			2001			2002		
	Total	Criminal [2]	Non-criminal	Total	Criminal [2]	Non-criminal	Total	Criminal [2]	Non-criminal
Caribbean	**6,599**	**4,543**	**2,056**	**7,218**	**4,317**	**2,901**	**6,933**	**4,365**	**2,568**
Anguilla	1	1	-	1	1	-	3	2	1
Antigua-Barbuda	33	27	6	34	26	8	40	35	5
Aruba	5	2	3	3	3	-	4	3	1
Bahamas, The	123	107	16	108	92	16	129	100	29
Barbados	59	49	10	48	34	14	53	47	6
Bermuda	5	4	1	12	10	2	11	9	2
British Virgin Islands	3	3	-	8	6	2	4	3	1
Cayman Islands	2	-	2	4	1	3	-	-	-
Cuba	86	71	15	84	77	7	64	56	8
Dominica	18	11	7	18	11	7	29	24	5
Dominican Republic	3,411	2,257	1,154	3,955	2,149	1,806	3,473	1,990	1,483
Grenada	30	21	9	22	12	10	26	20	6
Guadeloupe	1	-	1	1	-	1	2	1	1
Haiti	463	374	89	454	354	100	467	290	177
Jamaica	1,927	1,347	580	2,017	1,298	719	2,122	1,517	605
Martinique	1	1	-	7	1	6	4	1	3
Montserrat	3	3	-	2	2	-	4	4	-
Netherlands Antilles	5	4	1	4	4	-	3	3	-
St. Kitts-Nevis	19	18	1	20	20	-	27	24	3
St. Lucia	30	20	10	23	13	10	30	19	11
St. Vincent and the Grenadines	21	13	8	35	18	17	39	26	13
Trinidad and Tobago	350	207	143	354	181	173	397	190	207
Turks and Caicos Islands	3	3	-	4	4	-	2	1	1
Central America	**14,413**	**5,171**	**9,242**	**13,607**	**4,790**	**8,817**	**14,414**	**4,794**	**9,620**
Belize	169	125	44	180	108	72	177	115	62
Costa Rica	313	56	257	385	64	321	360	56	304
El Salvador	4,556	2,070	2,486	3,752	1,826	1,926	3,817	1,712	2,105
Guatemala	4,162	1,158	3,004	4,270	1,107	3,163	4,790	1,164	3,626
Honduras	4,611	1,395	3,216	4,373	1,325	3,048	4,680	1,396	3,284
Nicaragua	450	257	193	492	251	241	434	244	190
Panama	152	110	42	155	109	46	156	107	49
South America	**5,647**	**2,233**	**3,414**	**6,718**	**2,195**	**4,523**	**7,815**	**2,479**	**5,336**
Argentina	138	40	98	248	54	194	489	67	422
Bolivia	88	24	64	238	16	222	236	24	212
Brazil	1,079	71	1,008	1,654	79	1,575	2,510	127	2,383
Chile	154	49	105	198	59	139	161	42	119
Colombia	2,056	1,410	646	2,190	1,457	733	2,186	1,470	716
Ecuador	862	188	674	916	166	750	686	154	532
Falkland Islands	-	-	-	1	1	-	-	-	-
French Guiana	-	-	-	-	-	-	-	-	-
Guyana	239	88	151	130	41	89	316	242	74
Paraguay	14	1	13	12	1	11	19	-	19
Peru	721	218	503	787	174	613	856	201	655
Suriname	5	5	-	4	1	3	6	4	2
Uruguay	47	14	33	48	11	37	82	15	67
Venezuela	244	125	119	292	135	157	268	133	135
Stateless	8	-	8	4	-	4	4	1	3
Unknown or not reported	33	6	27	16	4	12	32	4	28

[1] Country is defined as nationality for sovereign states and country of birth for dependencies. [2] Criminal status includes those cases in which INS has evidence of a conviction. [3] Data are for unknown republic; exclude independent republics. See Notice of Special Geographic Definitions. [4] In May 1997 Zaire was formally recognized as the Democratic Republic of the Congo; the Congo is referred to by its conventional name, the Republic of the Congo. [5] In August 1997 Western Samoa was formally recognized as Samoa (Independent State).

- Represents zero.