

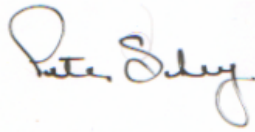
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION; ROSA ARELLANO; DELFINA ARIAS; SONIA MENDOZA; ROSALVA RODRIGUEZ; CANDACE MICHELLE SVENNINGSSEN; MICHAEL RAY GRAVES; ALICIA RODRIGUEZ; SERGIO B. RODRIGUEZ,	§ § § § §	CIVIL No. 2-07CV-188-J
Plaintiffs,	§	PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
v.	§	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY, MICHAEL CHERTOFF, SECRETARY; UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, JULIE L. MYERS, ASSISTANT SECRETARY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN AND JANE DOES 1-100,	§ § § § § § §	
Defendants.	§	

Pursuant to LOCAL CIVIL RULES OF THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS  
Rule 7.1(b) the undersigned certifies that on this date he conferred with  
defendant's counsel Christopher Hollis regarding plaintiffs' motion for  
class certification. Mr. Hollis does not know what position defendants  
will take regarding the motion. The undersigned plaintiffs' counsel on this  
date also telephoned defendants' counsel Victor Lawrence and left a  
message for him regarding the filing of the motion. Plaintiffs' counsel

1 will continue to confer with defendants' counsel regarding the motion and  
2 inform the Court through a supplemental Rule Certificate upon learning of  
3 defendants' position regarding the motion.  
4

5 Dated: December 12, 2007  
6

7   
8

9 Peter Schey  
10

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## MOTION FOR CLASS CERTIFICATION

## I INTRODUCTION

In compliance with Local Rule 23.2, plaintiffs hereby move the Court to certify this case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the following class of similarly situated persons:

All persons subjected to group detention without warrant or a reasonable suspicion based upon articulable facts that they are immigrants unlawfully present in the United States in violation of the Immigration and Nationality Act during work-place enforcement activities conducted by agents of the United States Immigration and Customs Enforcement.

In this action plaintiffs seek declaratory and injunctive relief compelling defendants the Secretary of U.S. Department of Homeland Security (DHS) and the United States Immigration and Customs Enforcement (ICE) to comply with the Immigration and Nationality Act and the First, Fourth and Fifth Amendments to the United States Constitution while implementing work-place enforcement activities aimed at locating and deporting undocumented immigrant workers. The named individual plaintiffs also seek incidental damages for violations of their well-established Fourth Amendment right to be free from unreasonable searches and seizures during USICE work-place enforcement activities.

## II THE PROPOSED CLASS DEFINITION MEETS THE REQUIREMENTS OF RULE 23, FED.R.CIV.PROC.

Rule 23 includes an implicit requirement that the class be adequately defined so that the class membership is clearly ascertainable. In a (b)(2) class, however, notice is not required and the actual membership of the class need not be precisely drawn. *Bratcher v. Nat'l Standard Life Ins. Co.*, 365 F.3d 408, 413 (5th Cir. 2004); *Yaffe v. Powers*, 454 F.2d 1362 (1st Cir. 1972). The requirement that a class be clearly defined is not particularly stringent, and plaintiffs need only establish that "the general outlines of the

membership of the class are determinable at the outset of the litigation.” 7A Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE § 1760 at 118. In other words, the class must be sufficiently definite “that it is administratively feasible for the court to determine whether a particular individual is a member.” *Id.* at 121.

As proposed, the class definition comprises all persons detained without warrant or legal justification during ICE workplace enforcement actions. “Defining a class as consisting of all persons who have been or will be affected by the conduct charged to the defendants is entirely appropriate where only injunctive or declaratory relief is sought. Indeed, the principal beneficiaries of an injunctive decree would seem likely to be those class members whose rights have not yet been violated.” *Fischer v. Dallas Federal Sav. & Loan Assn.*, 106 F.R.D. 465, 470 (N.D. Tx. 1985) (*quoting Rice v. City of Philadelphia*, 66 F.R.D. 17 (E.D. Pa. 1974)). Here members are defined explicitly by whether they have suffered specific injury. The class definition accordingly meets the requirements of Rule 23, Fed.R.Civ.Proc.

### III THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(A).

In order to be certified for class treatment, an action must be shown to satisfy the four requirements of Rule 23(a) of the Federal Rules of Civil Procedure. The instant case meets these criteria.

#### A Numerosity and impracticality of joinder.

Rule 23(a)(1) requires that the class be “so numerous that joinder is impractical.” Courts generally find the numerosity requirement of Rule 23(a)(1) satisfied when relatively few class members are involved. *See, e.g., Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982); *Carey v. Greyhound Bus Co.*, 500 F.2d 1372, 1381 (5th Cir. 1974) (number of class members assumed to be 28); *Arkansas Education Association v. Board of Education*, 446 F.2d 763, 765-66 (8th Cir. 1971) (class membership of 20 persons). *See generally* 3B MOORE'S FEDERAL PRACTICE ¶ 23.05 [1], at 23-154 to 23-155 (1978).

1 It is not necessary to determine the exact size of the class in order to satisfy Rule  
 2 23(a)(1), especially where it would be unreasonable to require the named plaintiffs to  
 3 identify the names of all class members. *Bratcher v. Nat'l Standard Life Ins. Co.*, *supra*, 365  
 4 F.3d at 415 (certifying class "although exact number of class members continuing to pay  
 5 discriminatory premiums was unknown"); 7 Wright and Miller, FEDERAL PRACTICE  
 6 AND PROCEDURE: Civil § 1762. Rather, "the conduct complained of is the benchmark for  
 7 determining whether a subdivision (b)(2) class exists, making it uniquely suited to civil  
 8 rights actions in which the members of the class are often 'incapable of specific  
 9 enumeration.'" *Yaffe v. Powers*, *supra*, 454 F.2d at 1366. "Where the exact size of the class  
 10 is unknown but general knowledge and common sense indicate that it is large, the  
 11 numerosity requirement is satisfied." *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 371  
 12 (C.D. Cal. 1982).

14 The numerosity requirement of Rule 23(a)(1) is satisfied here. Plaintiffs are  
 15 challenging policies and practices that indisputably involve thousands of persons, and  
 16 will continue to impact on thousands of persons yearly until and unless enjoined by this  
 17 Court.

18 As discussed, courts generally find the numerosity requirement of Rule 23(a)(1)  
 19 satisfied when relatively few class members are involved, and it is not necessary to  
 20 determine the exact size of the class in order to satisfy Rule 23(a)(1). Rather, "the  
 21 conduct complained of is the benchmark for determining whether a subdivision (b)(2)  
 22 class exists, making it uniquely suited to civil rights actions in which the members of  
 23 the class are often 'incapable of specific enumeration.'" *Yaffe v. Powers*, *supra*, 454 F.2d at  
 24 1366. There is little doubt that proposed class comprises thousands of individuals and  
 25 accordingly satisfies the numerosity requirement of Rule 23(a)(1).  
 26  
 27  
 28

**B Common questions of law or fact.**

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Common questions of law presented in this proposed class action include whether defendants’ challenged policies and practices violate the Immigration and Nationality Act or the Fourth Amendment bar on unreasonable searches and seizures, or deny the proposed class members due process or equal protection as guaranteed by the Fifth Amendment to the United States Constitution.

Nor do the variations in the facts and circumstances surrounding the alleged detention of any individual proposed class member defeat commonality: plaintiffs challenge uniform policies and practices regardless of their application in any individual case. Even where there are individual variations in the facts or legal issues as they relate to a particular named plaintiff or proposed class member, the commonality requirement is satisfied so long as the class shares some common question of law or fact. *See, e.g., Eisen v. Carlisle and Jacqueline*, 391 F.2d 555, 562 (2nd Cir. 1968) (class certification granted notwithstanding “varying fact patterns underlying each individual ... transaction ...”); *Senter v. General Motors Corp.*, 532 F.2d 511, 524 (6th Cir. 1976), *cert. denied*, 429 U.S. 870 (1976) (class certification granted in employment discrimination action brought on behalf of Black employees even though it was “manifest that every decision to hire, fire or discharge an employee may involve individual considerations”); *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920, 937 (2nd Cir. 1968) (class certified in challenge to relocation practices of urban renewal project despite the different treatment suffered by each tenant during the relocation process); *Cullen v. New York State Civil Service Commission*, 435 F. Supp. 546, 559 (E.D.N.Y. 1977) (class certification granted in lawsuit challenging coercive practices in obtaining political contributions from public employees even though “fact questions specific to each instance of the alleged coercion will remain”).



1 It is clear that the claims plaintiffs present here raise questions of law and fact  
2 common to all proposed class members.

3 **C Typicality of claims.**

4 Rule 23(a)(3) requires that the claims of the named plaintiffs be “typical of the  
5 claims ... of the class.” Meeting this requirement usually follows from the presence of  
6 common questions of law. Thus, courts have construed subdivisions (a)(2) and (a)(3) to  
7 be largely duplicative. *See* 3B MOORE’S FEDERAL PRACTICE ¶ 23.06-2, at 23-325; *see also*  
8 *American Airlines, Inc. v. Transport Workers Union*, 44 F.R.D. 47, 48 (N.D. Okla. 1968)  
9 (holding (a)(3) met by representatives “sharing common with the class any claim or  
10 defense it has”); *Mersay v. First Republic Corp.*, 43 F.R.D. 465, 468-69 (S.D.N.Y. 1968)  
11 (allegation that defendants engage in scheme common to all members of class held to  
12 support finding that claims of representative party typical). As set forth above,  
13 plaintiffs’ claims present common questions of law and fact.  
14

15 Plaintiffs here have no interest that conflicts with those of the proposed class.  
16 The named plaintiffs have identical legal theories and will seek the same injunctive and  
17 declaratory relief for themselves and for the class as a whole. Plaintiffs seek to vindicate  
18 the rights of unnamed class members, rights that are violated through the application of  
19 uniform policies and practices. No conflict exists between plaintiffs and the class they  
20 seek to represent; the issues herein arise out of a common pattern and practice of illegal  
21 activities. The typicality requirement of Rule 23(a)(3) is therefore satisfied.  
22

23 **D Adequacy of representation.**

24 The final requirement for class certification, set out in Rule 23(a)(4), is that the  
25 named plaintiff “will fairly and adequately protect the interest of the class.” The two  
26 principal elements of this requirement are (1) that the class representative’s interests be  
27 co-extensive and not antagonistic to the class members’ interests; and (2) that counsel  
28

1 for the named representatives be qualified. *Johnson v. Georgia Highway Express, Inc.*, 417  
 2 F.2d 1122, 1124-25 (5th Cir. 1969).

3 The interests of the class representative here are not antagonistic to those of the  
 4 proposed class members. Their mutual goal is to declare defendants' challenged  
 5 policies and practices unlawful and to enjoin further violations.

6 Plaintiffs' lead counsel are employed by a non-profit organization specializing in  
 7 federal litigation against the defendants in this case. They have successfully litigated  
 8 numerous class actions and individual cases in the federal courts involving the rights of  
 9 immigrants. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982); *Ramon Sepulveda v. INS*, 863 F.2d  
 10 1458 (9th Cir. 1988); *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. 1982); *Mendez*  
 11 *v. INS*, 563 F.2d 956 (9th Cir. 1977); *Immigrant Assistance Project v. INS*, 709 F. Supp. 998  
 12 (W.D.Wa. 1989); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351 (C.D. Cal. 1982); *League of*  
 13 *United Latin American Citizens v. Wilson*, 131 F.3d 1297 (9th Cir. 1997); *Reno v. Catholic*  
 14 *Social Services*, 509 U.S. 43 (1993); *Reno v. Flores*, 507 U.S. 292 (1993).

15 Counsel will adequately represent both named and unnamed class members.  
 16 The requirements of Rule 23(a)(4) are satisfied in this case.

17  
 18 IV THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(b)(2).

19 In addition to satisfying the four requirements of Rule 23(a), a certifiable class  
 20 action must meet one of the requirements of Rule 23(b). This action meets the  
 21 requirements of Rule 23(b)(2): *i.e.*, that "the party opposing the class has acted or  
 22 refused to act on grounds generally applicable to the class thereby making appropriate  
 23 final injunctive relief or corresponding declaratory relief with respect to the class as a  
 24 whole ..."

25  
 26 Analysis of the requirements of subsection (b)(2) reveals "that the party opposing  
 27 the class does not have to act directly against each member of the class. As long as his  
 28

actions would affect all persons similarly situated, his acts apply generally to the whole class." 7A Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, § 1775, at 19.

In this case defendants have implemented policies and procedures which allegedly, *inter alia*, authorize unconstitutional seizures of persons during ICE workplace raids in violation of the Fourth Amendment to the United States Constitution. The proposed class in this case has been created by defendants' challenged policies and practices.

Courts have repeatedly certified classes consisting of persons subject to challenged regulations, practices or policies. *See, e.g., Catholic Social Services, Inc. v. Reno*, Civ. S-86-1343 LKK (E.D. Cal.); *Newman, et al., v. Immigration & Naturalization Service, et al.*, No. CV 87-4757-WDK (C.D. Cal.); *Immigrant Assistance Project v. INS*, Civil No. C-88-379R (W.D. Wa.); *National Center for Immigrants' Rights, Inc. v. INS*, Civ. No. 83-7927-KN (C.D. Cal.) (order issued July 9, 1985, certifying a nationwide class of all persons subjected to an INS regulation under challenge); *see generally Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, 1072 (7th Cir. 1976), *modified*, 548 F.2d 715 (7th Cir. 1977). The requirements of subsection (b)(2) have accordingly been met.

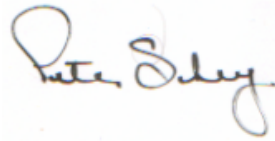
#### V CONCLUSION

For the foregoing reasons, this action should be certified as a class action pursuant to Rule 23(b), Fed.R.Civ.Proc.

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By:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Class Certification was served via the district court's electronic filing system on this 12th day of December, 2007, to the following counsel:

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