

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 20-21553-Civ-COOKE/GOODMAN

PATRICK GAYLE, *et al.*,

Petitioners-Plaintiffs, on behalf of
themselves and those similarly situated,

v.

MICHAEL W. MEADE, *et al.*,

Respondents-Defendants.

**PETITIONERS-PLAINTIFFS' EXPEDITED MOTION FOR CLASS
CERTIFICATION, REQUEST FOR EXPEDITED
CONSIDERATION, AND MEMORANDUM OF LAW IN SUPPORT**

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I. INTRODUCTION

This action is filed on behalf of a highly vulnerable putative class: approximately 1400 individuals in civil immigration detention at three Florida detention centers, Krome Service Processing Center, Broward Transitional Center, and Glades County Detention Center. Every individual is at imminent risk of contracting COVID-19 because of the atrocious conditions of their confinement—conditions that, as this Court recognized in its April 30 Order Adopting in Part Magistrate Judge’s Report and Recommendation [ECF 76], violate the Centers for Disease Control & Prevention’s (“CDC’s”) Guidelines, as well as State and County orders pertaining to COVID-19. Common questions of both fact and law pervade this matter. Petitioners-Plaintiffs are subject to the **same confinement** under the **same conditions** which imposes the **same risk** of developing COVID-19. Class certification is appropriate.

Petitioners-Plaintiffs seek class certification pursuant to Federal Rules of Civil

and vigorously represent the class. Finally, Rule 23(b)(2) is satisfied here because the Respondents have “acted or refused to act on grounds that apply generally to the class” through creating and maintaining conditions that put the class at imminent risk of contracting COVID-19, the deadly virus that is currently sweeping the globe.

II. STATEMENT OF FACTS

A. Proposed Class Members

ICE is uniformly failing to follow the CDC Guidelines in each of the detention facilities at issue in this case. This Court has repeatedly ordered the Respondents to provide information about the conditions in these facilities via declarations. None of the declarations claimed that ICE was protecting the class members by properly implementing CDC Guidelines. Instead, the declarations illustrate a consistent pattern of unhygienically cramped conditions, inadequate personal protective equipment, and grossly inadequate practices by ICE, such as late screening and use of massive cohort quarantining. The class members are uniformly not provided basic necessities to fight against COVID-19, such as space, face masks, soap, and hand sanitizer. Each class member is therefore not only subject to similar conditions, but similarly subject to the same devastating risk of contracting COVID-19.

Krome detains an average of 600 people in ICE custody at any time, with a population fluctuating between 550 and 875 people since 2006. *See* Southern Poverty Law Center, *Prison by any Other Name: A Report on South Florida Detention Centers* (Appx I, Exh. K, at 131-234, 152). “[T]here is little doubt that social distancing is currently impossible at Krome because the sleeping arrangements and some of the toilet and shower arrangements are too tight to permit it.” ECF 76 at 6. Social distancing at six feet (72 inches) or greater is not possible at Krome given its current population:

Sleeping—Dormitories have a paltry ~4 feet between beds. *Id.* at 31-32.

Eating—Meals are now served in day rooms, meaning that many areas have only ~3 feet between detained people. *Id.* at 32.

Screening—Medical screenings are conducted on all newly detained individuals within 12 hours. Castano Declaration [ECF 33-1] at 3.

Medical—Staff provides daily access to sick calls. Report & Recommendation (“R&R”) [ECF 63] at 28.

ICE reports on its website that as of May 3, 2020, there are 10 detained people at Krome who have tested positive for COVID-19.¹ The following Named Petitioners-Plaintiffs are held or were held during the pendency of this action under the same unsanitary and unconstitutional conditions at Krome: Patrick Gayle, Aparicio P. Jeronimo, Tolentino Martinez-Rios, Wilder Perez Limones, Javier Antonio Arias-Martinez, Juan Carlos Alfaro Garcia, Fermin Tepetate-Martinez, Abdul Jalloh, Darwyn Yovanny Navarrete Sanchez, Muhammad Alam Khan, Jose Chavez, Lazaro Ocana Guzman, Naim Arrak, Agane Warsame, Hassan Mohamed Farah, Ruben Orlando Flores Ramos, Mohamed Hasan, Eliseo Antonio Zamora Mendoza, Cesar Ariel Mendez Escobar, Julio Edwards, Eitan Yefet, Fernando Goncalves, Manuel Lopez Perez, Ricardo Perez Alonzo, Thomas Lenor, Alejandro Vincenzo Mugaburu Tapia, Ariel Lucien, Mohamed Hassan Ali, Carlos Hedman Perdomo, Evarado Orantes Acevedo, and Jose Galdino Montalvo Rodriguez.²

Glades detains an average of 407 people in ICE custody at a time. (Appx I, Exh. K, at 165.) As with Krome, social distancing at six feet or greater is not possible and CDC Guidelines are not followed at Glades.

Sleeping—As this Court recognized, “the bunk beds are a paltry 12 inches apart, the distance between the upper bunk and the lower bunk is 34 inches apart. *Id.* at 6.

Eating— “[T]he chairs and benches where detainees eat are only three feet apart, contrary to CDC guidelines.” *Id.* at 6.

Screening—Medical screenings are conducted on all newly detained individuals within 12 hours. Castano Declaration [ECF 33-1] at 3.

Medical—Staff provides daily access to sick calls. R&R at 28.

¹ See <https://www.ice.gov/coronavirus> (visited May 4, 2020).

² Petitioners-Plaintiffs have listed the locations where the Named Petitioners-Plaintiffs were located at the time this action was filed or at the time they joined this action as party Petitioners-Plaintiffs. However, since the filing of this action, ICE has transferred some detained individuals at these facilities. To prevent these transfers from frustrating the Court’s jurisdiction and its ability to fashion meaningful relief, the Class Petitioners-Plaintiffs propose

As of May 4, ICE's website does not currently report that any individuals detained at Glades have tested positive for COVID-19. The following Named Petitioners-Plaintiffs are held or were held during the pendency of this action under the same unsanitary and unconstitutional conditions at Glades: Roseline Ostine, Tahimi Perez, Franklin Ramon Gonzalez, Francisco Rivero Valeron, Irvin Mendoza Silis, Gerardo Vargas, Dairon Barredo Sanchez, Rolando Aguabella Martinez, Yaniel Machado Aguila, Omar Lopez-Jaramillo, Farhan Nawabit, and Maxual a de Souza.

BTC detains on average 700 people in ICE custody at a time, with a mandatory minimum of 500 beds for people in immigrant detention. (Appx ITolEbverag

action litigation, including regarding conditions in detention facilities, and will fairly and adequately protect the interests of the Class.

King & Spalding LLP, an international law firm which routinely represents clients around the world in complex litigation, will serve as lead class counsel. King & Spalding regularly litigates civil rights pro bono matters in federal court across the country, including cases representing individuals in prison and civil detention raising issues regarding the conditions of their detainment. Additional facts establishing the adequacy of Proposed Class Counsel are set forth fully in the concurrently filed declaration of Kathryn S. Lehman. (Ex. A). The Immigration Clinic of the University of Miami School of Law is a nonprofit organization with expertise in both immigration law and complex litigation. The Clinic has litigated numerous immigration cases in the Southern District of Florida, the Eleventh Circuit, and other federal courts across the country. The Clinic has served as lead counsel in class action involving immigration matters. Additional facts establishing the adequacy of Proposed Class Counsel are set forth in the concurrently filed declaration of Rebecca Sharpless, Director of the Immigration Clinic. (Ex. B).

Rapid Defense Network is a New York State nonprofit legal services organization specializing in federal habeas corpus litigation for non-citizens detained by immigration authorities facing removal from the United States. RDN has extensive experience litigating detention issues in impact litigation and habeas corpus litigation across the country. Additional facts estadedetionTw[(RDN has c

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at 189; *see also R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 368 (S.D.N.Y. 2019) (finding joinder impracticable for certain immigrants applying for legal status certain in part because “[n]ew members regularly and continuously join the proposed class as their SIJ status petitions are adjudicated.”).

Other courts presented with similar proposed classes of current and future people in custody have agreed that the numerosity requirement is readily met on circumstances such as those here. *See, e.g., Rosas v. Baca*, No. CV 12-00428 DDP (SHx), 2012 WL 2061694, at *2 (C.D. Cal. June 7, 2012) (“The Jails currently house thousands of inmates, and are certain to house many more in the future. The court

to drive the resolution of the litigation.” *Id.* (citation omitted).

The Class satisfies the commonality requirement because they share at least one question of law and fact—several, in fact. A critical question of law for the Class is whether Respondents have been deliberately indifferent to the risk that people detained at Krome, BTC, and Glades will contract COVID-19 due to the unhygienic conditions and an inability to protect themselves through social distancing. *See Helling v. McKinney*, 509 U.S. 25, 32 (1993) (the Constitution confers upon the Government a duty to assume responsibility for safety and general well-being of people detained). As this Court has recognized, “to the extent that ICE fails to commit to addressing the conditions complained of, ICE has demonstrated deliberate indifference.” [ECF 76 at 6.] And given how viruses spread, that deliberate indifference applies uniformly to all people in ICE custody at the three facilities at issue here.

Common questions also circle on the (in)adequacy of Respondents’ policies and practices governing the conditions of confinement, including ICE’s failure to follow CDC Guidelines. These issues, which are at the core of the claims asserted by Petitioners-Plaintiffs and the Class constitute the type of common questions that courts have found sufficient to meet the commonality requirement. For example, in *Hernandez v. City of Monterey*, the court certified “a class of inmates challenging jail safety and health care policies and practices, and a subclass of inmates challenging jail disability policies and practices.” 305 F.R.D. 132, 139 (N.D. Cal. 2015). The *Hernandez* court found that the commonality requirement was met for both the proposed class and subclass because “all members of the putative class and subclass have in common their alleged exposure to a substantial risk of serious future harm to which Defendants are allegedly deliberately indifferent, as a result of policies and practices that govern the overall conditions of health care services and confinement.” *Id.* at 157. The court further concluded that “[w]hile results of exposure may vary, ranging from no harm to death, each inmate suffers the same constitutional or statutory injury when exposed to a policy or practice that **creates a substantial risk** of serious harm.” *Id.* (emphasis added); *see also Rosas*, 2012 WL 2061694, at *5 (certifying prisoner class where the issue of whether officials were deliberately indifferent to a pattern or practice of violence was a common question likely to yield a common answer); *Butler v. Suffolk Cty.*, 289 F.R.D. 80, 98 (E.D.N.Y. 2013) (“Whether the County was aware of and deliberately indifferent to the conditions at the [prison] is a common question subject to class-wide resolution.”).

This action falls squarely within the category of cases contemplated by Rule 23(b)(2). Sadly, the constitutional violations and deliberate indifference this Court outlined in its April 30 order fall uniformly on all members of the Class. [*See* ECF 76 at 6–9.] Each Class member is endangered by the same noncompliance by the same Respondents with the same CDC Guidelines, which is exposing them to the same virus. They are being denied the same opportunity to socially distance, the same soap and cleaning items, and the same personal protective equipment.

Indeed, although class treatment is appropriate under Rule 23(b)(2), it is notable that the concerns that animated Rule 23(b)(1) are present here. If the approximately 1400 Class members brought separate actions for declaratory and injunctive relief, those actions could very well lead to overlapping and contradictory injunctions that required ICE to take inconsistent steps in response to the COVID-19 crisis. Class treatment here allows this Court to address these issues together in one stroke, and (as it has already done on a preliminary basis, [*see* ECF 76 at 10–11]) to develop a comprehensive plan that addresses all people being detained by Respondents at the three facilities at issue here. Respondents' common deliberate indifference can only be remedied with a common solution, and the practical way to accomplish that is with a common action.

IV. GIVEN THE EXIGENCIES, THE COURT SHOULD ACCELERATE THE BRIEFING AND ITS CONSIDERATION.

As the Court is well aware, time is of the essence given the exigencies of the COVID-19 crisis. In order to reflect this reality, Petitioners-Plaintiffs ask the Court to expedite the consideration of this motion, including the briefing schedule.

CONCLUSION

Petitioners-Plaintiffs are subject to the same confinement under the same conditions which impose the same risk of developing COVID-19. Petitioners-Plaintiffs respectfully ask the Court to:

- (1) Expedite the briefing and consideration of this motion;
- (2) Certify a class consisting of all civil immigration detained individuals who are held as of the time of the filing of this action, who have been held since the filing of this action, or who will be held, by Respondents at the Krome Service Processing Center, the Broward Transitional Center, or at Glades County Detention Facility;
- (3) Appoint named the Named Petitioners-Plaintiffs as Class representatives; and
- (4) Appoint the undersigned as class counsel.

Date: May 5, 2020

Respectfully Submitted,

/s/ Scott M. Edson

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May,