

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

Gloria Carolina Manzo-Hernandez,
Victor Zepeta-Jasso,
Moises Amadeo Mancia-Mendoza,
Mercy Rocio Duchi-Vargas,
Jatzeel Antonio Cuevas-Cortes,
Victor Manuel Nuñez-Hernandez,

Petitioners,

v.

Warden Omar Juarez, *in his official capacity*,
Respondent.

Civil Action No. 5:20-cv-00095

**PETITIONERS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

INTRODUCTION

The Petitioners—Gloria Carolina Manzo-Hernandez, Victor Zepeta-Jasso, Moises Amadeo Mancia-Mendoza, Mercy Rocio Duchi-Vargas, Jatzeel Antonio Cuevas-Cortes, and Victor Manuel Nuñez-Hernandez (collectively, “Petitioners”)—are detained at La Salle County Regional Detention Center in Encinal, Texas, under color of the federal Material Witness Statute, 18 U.S.C. § 3144. Like the class of similarly situated people they seek to represent, Petitioners are detained to assist the United States government in federal criminal prosecutions.

In violation of the Statute and the Constitution, Petitioners and proposed class members are detained without any findings as to the necessity of their detention to secure their appearance, their ability to pay an automatic \$25,000 bond, or the adequacy of a deposition in lieu of conditional release or detention to secure their testimony. Further, Petitioners and class members have never received a hearing of any kind, let alone the counseled, evidentiary hearing the Statute and Constitution require. *See* 18 U.S.C. §§ 3142, 3144. Petitioners’ and class members’ automatic and indefinite detention violates the core tenets of the Material Witness Statute, and Respondent lacks the lawful authority to detain them.

In asserting their own rights, Petitioners wish to stand for those same rights of others as well. At least 139 people are currently detained as material witnesses by the United States Marshals Service at La Salle. These witnesses have suffered uniform deprivations of their statutory and constitutional rights: they have all been detained without findings or hearings to evaluate whether detention is necessary in light of their individual circumstances.

Petitioners therefore move this Court for an order certifying a Plaintiff Class of all persons detained under the Material Witness Statute, 18 U.S.C. § 3144, by the Laredo Division of the Southern District of Texas. The proposed class meets the requirements of Federal Rules of

Civil Procedure Rule 23(a)(1) and 23(b)(2), as set forth below, and class certification is urgently needed in order to halt the continued unlawful detention of hundreds of people.

FACTUAL BACKGROUND

As set forth in the Petition for Writ of Habeas Corpus and Complaint for Declaratory Relief as well as Petitioners' Motion for Temporary Restraining Order and Preliminary Injunction, the Petitioners who seek to represent the class are six individuals who are detained at La Salle County Regional Detention Center.

1. Petitioners have been treated in the same manner as hundreds of others. Each Petitioner has been designated as a material witness in a criminal proceeding alleging violations of human smuggling under 8 U.S.C. § 1324 against the alleged smugglers. *See* Manzo-Hernandez Decl. ¶ 3; Zepeta-Jasso Decl. ¶ 3; Mancia-Mendoza Decl. ¶ 3; Duchi-Vargas Decl. ¶ 3; Cuevas-Cortes Decl. ¶ 3; Nuñez-Hernandez Decl. ¶ 3. Apart from just two witnesses involved in a single case, every one of the hundreds of witnesses designated in 2020 and detained in La Salle has been designated to testify in proceedings under the same statute. Declaration of Caitlin Halpern ("Halpern Decl."), at ¶ 11.

2. The identical affidavits submitted for each Petitioner and class member contain identical proposed orders. Manzo-Hernandez Decl. at Ex. A; Zepeta-Jasso Decl. at Ex. A; Mancia-Mendoza Decl. at Ex. A; Duchi-Vargas Decl. at Ex. A; Cuevas-Cortes Decl. at Ex. A; Nunez-Hernandez Ex. A. The same affidavits and proposed orders have been submitted for every member of the proposed class. Halpern Decl. ¶ 6.

3. For each Petitioner, magistrates adopted the proposed orders without a hearing and without revision. Manzo-Hernandez Decl. at Ex. B; Zepeta-Jasso Decl. at Ex. B; Mancia-Mendoza Decl. at Ex. B; Duchi-Vargas Decl. at Ex. B; Cuevas-Cortes Decl. at Ex. B; Nunez-

Hernandez Ex. B. The same is true for every member of the proposed class. Halpern Decl. at ¶ 7. The orders uniformly authorize detention “pending disposition” of criminal proceedings and uniformly impose a \$25,000 secured bond. *Id.*

4. No document in the record reflects individual findings as to whether detention is the least restrictive conditions necessary to reasonably assure the witness’s appearance, the witness’s ability to pay the \$25,000 bond, whether the witness’s testimony can be adequately secured by deposition, and whether detention is necessary to prevent a failure of justice.

5. And past practice demonstrates that the overwhelming majority of witnesses will never provide testimony in any form: of the 75 witnesses released on June 8, 2020—who went through the same process and would be members of this proposed class but for their recent release—not one testified against an alleged smuggler. Instead, they were released after those defendants pled guilty. Halpern Decl. ¶ 5.

6. This process, by which material witnesses are ordered detained and subject to secured bonds without a hearing, and then held in custody subject to criminal proceedings over which they have no control, is consistent for 139 material witnesses currently detained pursuant to orders of the Laredo Division. *Id.* ¶ 4.

PROPOSED CLASS DEFINITION

The proposed class representatives—Gloria Carolina Manzo-Hernandez, Victor Zepeta-Jasso, Moises Amadeo Mancía-Mendoza, Mercy Rocio Duchi-Vargas, Jatzeel Antonio Cuevas-Cortes, and Victor Manuel Nuñez-Hernandez—seek certification of a Plaintiff Class defined as: “All individuals who currently are or in the future will be detained under 18 U.S.C. § 3144 by the Laredo Division of the Southern District of Texas.”

Petitioners move for class certification under Federal Rule of Civil Procedure 23(a) and (b)(2) and seek declaratory relief, injunctive relief, and a writ of habeas corpus on behalf of the proposed class.

ARGUMENT

Petitioners meet the standards for class certification under both Federal Rule of Civil Procedure 23(a) and 23(b)(2).

Under Rule 23(a), class plaintiffs 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 the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). As set forth below, the proposed class meets all four of the Rule 23(a) requirements.

Class Plaintiffs also demonstrate below that Respondents “ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). “[A] single injunction or declaratory judgment would provide relief to each member of the class,” and therefore certification is appropriate under Rule 23(b)(2). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011); *see also Yates v. Collier*, 868 F.3d 354, 367 (5th Cir. 2017).

A. The Proposed Class Satisfies All Requirements of Rule 23(a).

1. The Class Is So Numerous that Joinder Is Impracticable.

The class is so numerous that the joinder of all members is impracticable. There are roughly 139 members of the proposed class, too many to efficiently bring into this litigation. *See, e.g., Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (“[T]he size of the class in this case—100 to 150 members—is within the range that generally satisfies the

numerosity requirement.”); *Sagers v. Yellow Freight Sys., Inc.*, 529 F.2d 721, 734 (5th Cir. 1976) (“[T]here appear to be approximately 110 members of the class, clearly a sufficient number to meet the numerosity requirements of Rule 23(a)(1).”); 1 Newberg on Class Actions § 3.05, at 3–25 (3d ed.1992) (suggesting that any class consisting of more than 40 members “should raise a presumption that joinder is impracticable”).

Moreover, joinder is impractical because of the inherently transitory nature of the proposed class. New material witnesses are regularly ordered detained for undefined periods, and witnesses are released after a period of weeks or months that cannot be determined in advance. The length of detention is contingent on disposition of the underlying criminal case, most often when the defendant pleads guilty—a circumstance no witness can predict or control. Halpern Decl. ¶ 5. Further, where a class includes “future” and therefore “necessarily unidentifiable” members, the Fifth Circuit has recognized that “joinder of unknown individuals is certainly impracticable” and supports class certification. *Phillips v. Joint Legislative Comm. on Performance & Expenditure Review of State of Miss.*, 637 F.2d 1014, 1022 (5th Cir. 1981).

2. Members of the Class Have Questions of Law and Fact in Common.

Because Petitioners and proposed class members have suffered similar or identical deprivations of their statutory and constitutional rights, all dispositive questions of law and fact are common to the class. To grant relief to any Petitioner or class member, the Court must determine the substance and form of findings required as a prerequisite to detention as well as the procedural protections required by the Material Witness Statute and the Constitution.

More specifically, Petitioners allege that they and all class members are detained in violation of the Statute and Constitution because they were detained:

- a. without findings that detention is the least restrictive condition necessary to reasonably assure the witness’s appearance as required;

- b. subject to a secured \$25,000 bond, without a judicial finding that this financial condition does not prevent release;
- c. without findings as to the adequacy of testimony secured by deposition;
- d. without findings as to the necessity of detention to prevent a failure of justice;
- e. without defined limits on the period of time reasonably necessary to take the witness's testimony by deposition;
- f. without an immediate, counseled, evidentiary hearing to evaluate these critical incarceration-related questions.

Because all Petitioners and proposed class members “have suffered the same injury” and assert claims based on a “common contention” that is “capable of classwide resolution,” class certification is appropriate here. *Wal-Mart*, 564 U.S. at 349-50 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)).

3. The Claims of the Proposed Class Representatives Are Typical of the Class.

“The test for typicality, like the test for commonality, is not demanding.” *Lightbourn v. County of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997) (citation omitted). “Typicality does not require a complete identity of claims. Rather, the critical inquiry is whether the class representative’s claims have the same essential characteristics of those of the putative class.” *James v. City of Dallas, Tex.*, 254 F.3d 551, 571 (5th Cir. 2001) (citing 5 James Wm. Moore Et Al., Moore’s Federal Practice ¶ 23.24[4] (3d ed. 2000)); *see also, e.g., Ibe v. Jones*, 836 F.3d 516, 528–29 (5th Cir. 2016) (“The typicality inquiry rests . . . on the similarity of legal and remedial theories behind their claims.”) (citation omitted).

Petitioners’ claims are typical of the claims of the class as a whole. As described above, all Petitioners and proposed class members have experienced similar or identical treatment by Respondents, namely, uniform violations of rights guaranteed by the Material Witness Statute and Due Process Clause that warrant the same remedies for each witness. “In the event the class

members in this case were to proceed in a parallel action, they would advance legal and remedial theories similar, if not identical, to those advanced by the named plaintiffs. Thus, the plaintiffs also satisfy the typicality requirement for class certification.” *Lightbourn*, 118 F.3d at 426 (citation omitted).

4. The Proposed Class Representatives Will Fairly and Adequately Protect the Interests of the Class.

The adequacy requirement in Rule 23(a)(4) involves inquiry into “the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees,” any “conflicts of interest between the named plaintiffs and the class they seek to represent,” and “the zeal and competence of the representative’s counsel.” *Jones v. Singing River Health Services Found.*, 865 F.3d 285, 294 (5th Cir. 2017) (quoting *Berger v. Compaq Comput. Corp.*, 257 F.3d 475, 479–80 (5th Cir. 2001)).

Petitioners will fairly and adequately protect the interests of the class. There can be no question that Petitioners are “part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997) (quoting *East Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)). They seek the same relief for themselves and other class members, and, in advocating for their rights and defending against incursions to their liberty, they will forcefully, fairly, and adequately defend the interests of all class members. Petitioners know of no conflict between their interests and those of the proposed class.

Further, Petitioners are represented by counsel with extensive knowledge of criminal and constitutional law, and who have substantial experience in class and other complex litigation. *See* Declaration of David A. Donatti In Support of Mot. for Class Cert. (“Donatti Decl.”) (describing counsel’s experience). Counsel have thoroughly investigated Petitioners’ and proposed class

members' detention, and they have the requisite level of expertise to adequately prosecute this case. *Id.* ¶ 4.

B. Plaintiffs Meet the Requirements of Rule 23(b)(2).

The proposed class satisfies Rule 23(b)(2) because Respondents have acted on grounds that apply generally to the class, and final declaratory and injunctive relief is appropriate respecting the class as a whole. Because Petitioners and class members “have been harmed in essentially the same way,” *Yates*, 868 F.3d at 367, and “a single injunction or declaratory judgment would provide relief to each member of the class,” *Wal-Mart*, 564 U.S. at 360, certification is appropriate under Rule 23(b)(2).¹

C. Counsel Meet the Criteria of Rule 23(g).

The undersigned counsel, who have investigated and presented these claims, include experienced civil rights and class action lawyers. *See generally* Donatti Decl. Counsel will fairly and adequately represent the Class in this litigation.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' motion, certify a class as defined herein, and appoint the attorneys listed below as Class Counsel.

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¹ Moreover, as demonstrated by the proposed order attached to Petitioners' Motion for Temporary Restraining Order and Preliminary Injunction, Petitioners “give content to the injunctive relief they seek” and readily satisfy the Fifth Circuit's “specificity” requirement. *Yates*, 868 F.3d at 367 (citation omitted).