The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YOLANY PADILLA, *et al.*, Plaintiffs-Petitioners v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, Defendants-Respondents.	Case No. 2:18-cv-00928-MJP **PLAINTIFFS' REPLY IN SUPPORT OF AMENDED MOTION FOR CLASS CERTIFICATION** NOTE ON MOTION CALENDAR: September 28, 2018 ORAL ARGUMENT REQUESTED

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615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

I. INTRODUCTION

Defendants do not challenge numerosity or adequacy of Class Counsel. They challenge the commonality of the claims and the adequacy of Plaintiffs as class representatives of the proposed Credible Fear Interview (CFI) and Bond Hearing (BH) Classes by attempting to distract the Court from the fact that the policies being challenged apply equally to Plaintiffs and proposed class members. Defendants also point to subsequent developments in Plaintiffs' individual cases, ignoring that the inherently transitory nature of their claims requires this Court to look to Plaintiffs' standing at the time the claims were filed. Plaintiffs have satisfied the requirements under Federal Rules of Civil Procedure 23(a) and 23(b)(2).

II. ARGUMENT

A. This Court Has Jurisdiction to Certify the Proposed Classes.

Defendants' effort to challenge certification based on jurisdictional claims is duplicative of the arguments set forth in their motion to dismiss, Dkt. 36 at 6-8, 23-24. For the reasons set forth in Plaintiffs' opposition to that motion, Dkt. 69 at 2-7, 23-24, which Plaintiffs incorporate herein by reference, none of Defendants' arguments have merit.

B. The Proposed Classes Have Common Claims Capable of Uniform Resolution.

1. Plaintiffs' APA Delay Claims

Defendants suggest that class certification is not available for unreasonable delay claims assessed under the factors set forth in *Telecommunications Research Action Center v. F.C.C.*, 750 F.2d 70, 80 (D.C. Cir. 1984) (*TRAC*). However, courts, including in this district, have applied the *TRAC* factors to class-wide delay claims in the immigration context. *See Rosario v. USCIS*, No. C15-0813JLR, *9-12 (W.D. Wash. Jul. 26, 2018) (finding delay unreasonable and granting class-wide injunctive relief even though the court accepted that the fourth *TRAC* factor, regarding competing priorities favored the government); *Santillan v. Gonzales*, 388 F. Supp. 2d 1065, 1083-84 (N.D. Cal. 2005) (finding APA violation after class-wide application of *TRAC* factors to individuals challenging application delays); *cf. Roshandel v. Chertoff*, No. C07-

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1739MJP, 2008 U.S. Dist. LEXIS 90899, *20 n.6 (W.D. Wash. May 5, 2008) ("[C]ourts have analyzed whether agency delay is reasonable under the APA even in the absence of a statutory timetable for agency action."). In fact, courts have found that unreasonable delay claims meet the commonality requirement even while acknowledging that factual variations among class members' claims may later become relevant. *See, e.g.*, *Garcia v. Johnson*, No. 14-cv-01775-YGR, 2014 U.S. Dist. LEXIS 164454, *41-42, *46 (N.D. Cal. Nov. 21, 2014) (certifying class with unreasonable delay claim and suggesting that evaluation of *TRAC* factors is generally appropriate on summary judgment); *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194, 1203-04 (W.D. Wash. 2008); *Santillan v. Ashcroft*, No. C 04-2686 MHP, 2004 U.S. Dist. LEXIS 20824, *35-36 (N.D. Cal. Oct. 12, 2004).

Here, Plaintiffs present common questions: whether Defendants' practices of conducting credible fear interviews (CFIs) more than 10 days after a request for asylum, absent the noncitizen's request for a delayed interview, and of conducting bond hearings more than 7 days after a request necessarily amount to unreasonably delayed action under the APA. These questions affect *all* proposed class members, because a uniform time limit is necessary to ensure that detention is not needlessly protracted, regardless of the variables for delay that Defendants allege in certain courts.[1] Indeed, Defendants set forth reasons for delays that are wholly irrelevant to this case, since Plaintiffs' credible fear delay claims challenge delays of more than 10 days absent a request for more time from a detained asylum seeker. *See, e.g.*, Dkt. 64 ¶8 (describing, inter alia, delays based on requests by asylum seekers or their attorneys, due to asylum seekers' need for medical attention, and in non-detained cases). That Defendants' staffing and detention decisions placed more asylum seekers in facilities unfit to meet their needs

[1] Defendants also suggest reasons for delays in bond hearings are "unique to the immigration court" where the hearing takes place but provide two declarations identifying nearly identical considerations at the Tacoma and Adelanto courts. *Compare* Dkt. 66 ¶¶13-14 *with* Dkt. 67 ¶13-14 (providing the same information, aside from hours per week devoted to bond hearings).

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does not relieve Defendants of their obligation to act expeditiously. *See, e.g.*, *Yong Tang v. Chertoff*, 493 F. Supp. 2d 148, 158 (D. Mass. 2007) (declining to find delay reasonable where "delays in adjudication are due to a high volume of applications and scarce resources"); *cf. Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

2. Constitutional Claims

Defendants claim that each proposed class member requires an individualized due process and harmless error analysis. *See* Dkt. 68 at 14-15. However, courts regularly resolve procedural due process claims on a class-wide basis when addressing the constitutionality of immigration agencies' policies and practices. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 993-94 (9th Cir. 2017); *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998); *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176, 1183-87 (W.D. Wash. 2018); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1194-1200 (N.D. Cal. 2017). Defendants allege an array of reasons for delays in CFIs and bond hearings, but none affect Plaintiffs' claims: Defendants' practices of delaying CFIs more than 10 days after Plaintiffs express fear, and bond hearings more than 7 days after the bond hearing is requested, unnecessarily deprive Plaintiffs of their liberty in violation of their due process rights. *See infra* § II.C.2.b; *see also* Dkt. 45 at 20-23 (describing harm to Plaintiffs and class members due to these constitutional violations).

That some class members have not yet had bond hearings also fails to defeat commonality. While Defendants discuss the possibility that individual class members will be released from detention, Dkt. 68 at 15, Plaintiffs' bond claims relate to Defendants' *policies*: placing the burden of proof on noncitizens, failing to require recording or transcription, and failing to require contemporaneous written decisions with particularized findings.[2] There is no

[2] Even those proposed class members to whom IJs grant release face harm based on the lack of procedural protections—IJs may set higher bond amounts based on how well they met the burden of proof, leaving class

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dispute that Defendants apply these policies to each and every proposed class member. Because Plaintiffs' claims relate to the constitutionality of these *policies*, not their application in any particular case, they can be resolved in a "single stroke," *Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014), and Plaintiffs satisfy the commonality requirement. *See Rivera v. Holder*, 307 F.R.D. 539, 550 (W.D. Wash. 2015) (finding commonality requirement met where "[c]lass members share common questions of law and fact []concerning whether they received or will receive a bond hearing that does not comply with the law").

Plaintiffs can demonstrate commonality even where some proposed class members may have received one of the protections at issue. *See, e.g.*, *Mendez Rojas v. Johnson*, No. C16-1024RSM, 2017 U.S. Dist. LEXIS 73262, *16-17 (W.D. Wash. Jan. 10, 2017) (finding commonality in case seeking recognition of asylum seekers' right to receive notice of a filing deadline where some asylum seekers had received some form of notice). Defendants point out that the bond hearings of Plaintiffs Orantes and Vasquez were recorded and claim, without evidence, that "many" class members may be in the same position. Dkt. 68 at 15. Notably, they do not allege that the courts which conducted those hearings—or any immigration courts—have a policy of mandating that IJs record bond hearings. The record in fact suggests that, for the named Plaintiffs in this case, Defendants only recorded the bond hearings that took place *after* the filing of the First Amended Complaint adding claims related to delayed bond hearings. *Compare* Dkt. 66 ¶20 (bond hearing on July 16 recorded); Dkt. 67 ¶18 (bond hearing on August 20 recorded) *with* Dkt. 66 ¶¶18-19 (not mentioning recording of bond hearings); *cf. Walters*, 145 F.3d at 1046 (declining to allow an "agency to avoid nationwide litigation that challenges the constitutionality of its general practices simply by pointing to minor variations in procedure . . . , particularly because the variations were designed to avoid the precise constitutional

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members to decide whether to appeal and seek a lower bond amount without the benefit of a particularized written decision or recording.

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inadequacies" at issue in the case).

3. Asylum Claim

For the reasons discussed above, Plaintiffs also establish commonality as to their claims under asylum law. Contrary to Defendants' contention, Dkt. 68 at 15-16, Plaintiffs' motion alleges that Defendants policies violate Congress's intent to "create a 'uniform procedure' for consideration of asylum claims." Dkt. 37 at 11 (citing *Orantes-Hernandez*, *v. Thornburgh*, 919 F.2d 549, 552 (9th Cir. 1990) (citation omitted)); *see also* Dkt. 37 at 17, 19. Thus, this Court can resolve Plaintiffs' asylum claims on a class-wide basis.

C. Plaintiffs Are Adequate Representatives with Claims Typical of Those of Members of the Proposed Classes.

1. Adequacy

In challenging Plaintiffs' adequacy, Defendants fault them for failing to satisfy requirements Defendants have manufactured. *See* Dkt. 68 at 17-18. Plaintiffs are not required to submit declarations expressly affirming their interest, willingness, and capacity to serve as class representatives. Courts, including in this district, routinely appoint plaintiffs as class representatives without affidavits or declarations from them. *See, e.g.*, *Mendez Rojas*, 2017 WL 1397749, at *6; *Rivera*, 307 F.R.D. at 550; *Khoury v. Asher*, 3 F. Supp. 3d 877, 891 (W.D. Wash. 2014), *aff'd*, 667 F. App'x 966 (9th Cir. 2016); *Gonzales v. U.S. Dep't of Homeland Sec.*, 239 F.R.D. 620, 628 (W.D. Wash. 2006), *vacated and remanded sub nom. Gonzales v. Dep't of Homeland Sec.*, 508 F.3d 1227 (9th Cir. 2007).[3] Moreover, Defendants err in asserting that Plaintiffs "have not submitted a single sworn statement from any proposed representatives." Dkt. 68 at 17. *But see* Dkt. 57 (Plaintiff Orantes Decl.); Dkt. 61 (Plaintiff Vasquez Decl.).

Here, Plaintiffs' vigorous advocacy on behalf of themselves and the proposed classes is well documented. *See* Dkts. 8, 26, 37, 45. Plaintiffs' "involvement in the case shows that [they

[3] Plaintiffs nevertheless submit additional declarations concurrently herewith for the Court's consideration.

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Tel. (206) 957-8611

are] not merely a pawn of the class lawyers," *In re AEP ERISA Litig.*, No. C2-03-67, 2008 U.S. Dist. LEXIS 77165, at *6 (S.D. Ohio Sept. 8, 2008) (remarking also that "the threshold for establishing adequacy is quite low"), and easily distinguishes them from the negligent and disinterested plaintiffs in the cases Defendants cite, *see Spinelli v. Capital One Bank*, 265 F.R.D. 598, 613-14 (M.D. Fla. 2009) (plaintiff failed to appear for her deposition and had not made herself subsequently available); *In re AEP ERISA Litig.*, 2008 U.S. Dist. LEXIS 77165 at *11 (plaintiff had not, inter alia, had any contact or interest in the litigation in the three years preceding his deposition); *Byes v. Telecheck Recovery Servs., Inc.*, 173 F.R.D. 421, 427 (E.D. La. 1997) (plaintiff was unaware she had "any duties as a class representative or what those duties might entail" and class counsel's adequacy and candor to the court called into question).

Given their demonstrated commitment, there is no reason to seek "confirmation" of Plaintiffs' commitment to this litigation. Dkt. 68 at 18. Moreover, no developments in this case or in Plaintiffs' individual cases conflict with their commitment to vindicate the rights of similarly-situated asylum seekers—a commitment that satisfies adequacy requirements, for it is shared with putative class members. *See* Dkt. 37 at 19-20. Plaintiffs' ultimate release from detention does not undermine certification (or adequacy), *see* Dkt. 68 at 17, because the nature of immigration detention makes those claims "inherently transitory." *See* Dkt. 69 at 9, 21-22; *Rivera v. Holder*, 307 F.R.D. at 548. As their claims would otherwise "evade review," the certification analysis should "relate back" to the filing of the complaint. *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975); *Haro v. Sebelius*, 747 F.3d 1099, 1110 (9th Cir. 2014); *Rivera*, 307 F.R.D. at 548. No plaintiff had received a credible fear interview or a bond hearing at the time they filed suit. *See* Dkt. 1 ¶¶71, 86, 103; Dkt. 8 ¶¶112, 126-127. Contrary to Defendants' arguments, Dkt. 68 at 17 n.1, the relation back doctrine is equally applicable to the bond procedures claims, for, when Plaintiffs Orantes and Vasquez initially brought this action, *see* Dkt. 8, they faced the

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prospect of deficient bond hearings and now "similarly-situated class members would have the same complaint." *Rivera*, 307 F.R.D. at 548; *see also Southern Utah Wilderness Alliance v. Palma*, 707 F.3d 1143, 1152-53 (10th Cir. 2013); *Schreiber Foods, Inc. v. Beatrice Cheese, Inc.*, 402 F.3d 1198, 1202 n.3 (Fed. Cir. 2005); *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004). Defendants do not dispute the policies challenged by Plaintiffs and proposed BH Class members with respect to the burden of proof, requiring recording or transcription, and contemporaneous decisions with particularized findings. Accordingly, "there is a constantly changing putative class that will become subject to these allegedly unconstitutional conditions." *Lyon v. U.S. Immigration and Customs Enforcement*, 300 F.R.D. 628, 639 (N.D. Cal. 2014), *modified sub nom. Lyon v. U.S. Immigration and Customs Enforcement*, 308 F.R.D. 203 (N.D. Cal. 2015) (citation omitted). Accordingly, this Court should reject Defendants' request to delay class certification by first allowing Defendants to interrogate Plaintiffs as to their "suitability" to serve as class representatives. Dkt. 68 at 18.

2. Plaintiffs' claims are typical of proposed class members' claims

Plaintiffs' claims are typical of those of the class members they seek to represent. *See* Dkt. 37 at 17-19. While some features and background circumstances surrounding Plaintiffs' credible fear hearings and detention may vary, the actions at issue here form part of the *typical* CFI and bond hearing delays and baseline deficiencies in the bond hearings, as demonstrated by the considerable testimony of immigration practitioners confirming that Defendants' delays and bond-hearing due process violations are *not* "unique," Dkt. 68 at 19, to this time period. *See* Dkt. 39 ¶¶4-5; Dkt. 40 ¶¶3-5; Dkt. 41 ¶¶3-4; Dkt. 70-1 ¶¶4-6; Dkt. 43 ¶3-4; Dkt. 44 ¶¶3-5. Notably, Defendants do not refute or account for these declarations. The delay, deficient procedures, harm to Plaintiffs and their resulting legal claims are typical of those of the putative class members.

Defendants erroneously argue that Plaintiffs' claims are not typical of the CFI Class

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because of individual factors that are irrelevant to the credible fear process. Despite Defendants' allegations, Dkt. 68 at 19, whether Plaintiffs or proposed class members were "subject to criminal prosecution" for entering without inspection does not render their claims atypical of those who presented themselves at ports of entry. All individuals, regardless of manner of entry, are entitled to a timely credible fear determination. But to be clear, just as Plaintiffs do not seek to impose deadlines where delays are at the request of the applicant, they do not seek to require CFIs prior to a district court's disposition of a pending criminal charge.[4] Thereafter, they all go through the same credible fear process. Even for Plaintiffs subject to criminal prosecution, their CFIs were weeks after the criminal prosecution was completed. Dkt. 26 ¶¶80, 100-03. Notably, the regulation governing the timing of reasonable fear interviews does not contemplate a different application for asylum seekers subject to criminal prosecution based on entry without inspection. *See* 8 C.F.R. § 208.31(b). Nor do "processing and transfer times," ECF No. 68 at 19, affect the analysis of the issues at stake. *See supra* § II.B.

Plaintiffs Orantes and Vasquez assert claims that are typical of the BH Class. They, like all proposed class members, were not provided bond hearing within 7 days of requesting a hearing. The delays that Plaintiffs Orantes and Vasquez experienced are not attributable to an "influx" of detainees that caused ICE to house noncitizens at BOP facilities. Dkt. 68 at 19. Rather, such delays are customary for noncitizens in ICE custody throughout the country. *See* Dkt. 37 at 13-14 (citing practitioner declarations); Dkt. 45 at 5 (same). Both Plaintiffs Orantes and Vasquez suffered injury resulting from the delay in receiving a bond hearing—an injury that is typical of all proposed BH Class members.

Defendants also err in asserting that Plaintiffs Orantes and Vasquez are required to first

[4] Notably, Defendants did not bring criminal charges against all Plaintiffs. Moreover, that the federal government turns away noncitizens who attempt to seek asylum at ports of entry, *see generally Al Otro Lado, Inc. v. Nielsen*, No. 17-cv-02366-BAS-KSC, 2018 U.S. Dist. LEXIS 141025 (S.D. Cal. Aug. 20, 2018), necessarily leading some to enter the country without inspection, makes the prosecution of these asylum seekers especially troubling.

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file administrative appeals of their bond decisions in order to challenge procedural deficiencies on behalf of class members. The court in *Leonardo v. Crawford* dismissed an *individual* habeas claim for failure to exhaust administrative remedies because the petitioner did not "demonstrate[] grounds for excusing the exhaustion requirement." 646 F.3d 1157, 1161 (9th Cir. 2011). However, courts generally waive the exhaustion requirement when it "would be a futile attempt to challenge a fixed agency position." *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995); *see also Rivera*, 307 F.R.D. at 551-52 (discussing factors warranting waiver of prudential exhaustion requirement). Here, it would be futile to require exhaustion because Defendants have fixed policies with respect to the relevant procedures challenged by proposed BH Class members. *See* Dkt. 37 at 16-17; Dkt. 45 at 4-5.

Defendants further assert that Plaintiffs Orantes and Vasquez's bond hearings were recorded, Dkt. 68 at 21, but as noted this occurred before the first amended complaint was filed. *See supra* § II.B.2. Defendants do not assert they have a policy or practice of recording bond hearings, and they did not advise Plaintiffs of the availability of recordings at the time of their bond hearings. Moreover, both were still denied a bond hearing in which the government bears the burden of proof and the IJ provides contemporaneous particularized findings. Both plaintiffs thus suffered a violation of their right to procedural due process—an injury that is typical of all proposed BH Class members. Defendants further err in asserting that Plaintiff Orantes suffered no prejudice because she was eventually released, Dkt. 68 at 20, but only as a result of the nationwide injunction issued in *Ms. L v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018). Unlike the petitioner in *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), Plaintiff Orantes was prejudiced by having to bear the burden of proof: the IJ found her to be a flight risk, denied bond, and caused her to be detained for 8 additional days, during which she also suffered significant emotional harm. Dkt. 57 ¶¶14-17. The bond amount and condition Plaintiff Vasquez

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Seattle, WA 98104
Tel. (206) 957-8611

stipulated to were impacted by these procedures. *See* Dkt. 69 at 23 n.6; *cf.* Dkt. 61 ¶¶10-11.

D. Nationwide Class Certification is Appropriate and Warranted.

The proposed classes consist of asylum seekers who are subject to Defendants' unlawful policies and practices of delaying CFIs and bond hearings without procedural safeguards. The vast majority do not possess the resources or capacity to litigate these purely legal issues, even if they could do so while attempting to prepare asylum applications and evidence from inside a detention facility, often without the assistance of counsel. *See* Dkt. 49 ¶¶9-20; Dkt. 50 ¶¶10-15. Many class members are traumatized from the persecution they fled and face mental and physical health challenges, which also interfere with their ability to litigate. *See* Dkt. 45 at 21 (citing declarations); Dkt. 49 ¶¶3-8. Moreover, proposed class members are transferred across the country as they pass through this process. *See, e.g.*, Dkt. 37 at 11; Dkt. 50 ¶9; Dkt. 57 ¶¶4, 6, 10, 16; Dkt. 61 ¶¶2-3, 6. Thus, nationwide certification is particularly appropriate in this case.

Defendants rely on *Califano v. Yamasaki*, 442 U.S. 682 (1979) to suggest that nationwide certification is inappropriate, Dkt. 68 at 21, 22, but that decision supports Plaintiffs' motion. Indeed, the Court explained that a nationwide class is not "inconsistent with principles of equity jurisprudence, since the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class," and expressly "decline[d] to adopt the extreme position that such a class may never be certified." 442 U.S. at 702-03. *Califano* affirmed in relevant part an order consolidating and affirming two district court decisions, one of which, *Buffington v. Weinberger*, No. 734-73C2 (W.D. Wash. Oct. 22, 1974), was a nationally certified class. *Id.* at 689. Here, irrespective of geographical location, the proposed CF and BH class members face delayed credible fear interviews and bond hearings without procedural protections, respectively, and all stand to benefit from the same relief this Court can afford notwithstanding the differing factual circumstances that may affect the outcome

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Tel. (206) 957-8611

of those interviews and hearings.

Defendants' concerns about "intercircuit comity," "issues of local importance," and interference "with courts already assessing overlapping issues," Dkt. 68 at 21-22, ring hollow. *See Hamama v. Adducci*, No. 17-cv-11910, 2018 U.S. Dist. LEXIS 162410, *28-29 (E.D. Mich. Sept. 24, 2018) (rejecting as "too narrow" the government's contention "that certifying a nationwide class would violate principles of inter-circuit comity and strip other courts of jurisdiction over claims pending before them"). Plaintiffs are unaware of—and Defendants do not cite—*any* case involving proposed class members raising the legal claims presented in this case, let alone a case poised to resolve them.[5] Defendants' claim that "the constitutionality of placing the burden on the [noncitizen]," Dkt. 68 at 22, is play in *Rodriguez v. Jennings*, 887 F.3d 954, 956 (9th Cir. 2018), is inaccurate. That case may only implicate the burden with respect to prolonged detention, i.e., where persons have been detained at least six months.

Defendants also claim *Brevil v. Jones*, No. 1:17-cv-01529-LTS-GTW (S.D.N.Y.) is an example of competing litigation. *See* Dkt. 68 at 22. Although the case is sealed, it appears to involve a pro se habeas petition filed in February 2017 by a man who waited four months for a bond hearing after DHS placed him in removal proceedings (not through the credible fear process). *See Brevil v. Jones*, 283 F. Supp. 3d 205, 208-09, 211 (S.D.N.Y. 2018). After the government objected to the Magistrate Judge's recommendation of Mr. Brevil's release, the District Court Judge appointed counsel, and eventually ordered briefing on a burden of proof issue. *See Brevil*, No. 1:17-cv-01529-LTS-GTW, Dkt. 26 (Feb. 16, 2018), Dkt. 28 (Mar. 1, 2018), Dkt. 34 (Apr. 3, 2018), Dkt. 47 (Aug. 8, 2018). If anything, *Brevil* weighs in Plaintiffs' favor as it demonstrates that detained pro se noncitizens filing habeas petitions require the assistance of counsel and that habeas petitions may pend for years. It is also instructive that the

[5] If any such case exists, the proposed class in this case could exclude individuals with pending cases that raise the same legal issues presented here, as in *Buffington*. *See Califano*, 442 U.S. at 689.

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government points to only one district court case raising a tangentially related issue for a differently-situated individual. Indeed, *Brevil* undermines Defendants' assertion that class certification "may well impede [proposed BH class members'] access to speedier and/or particularized adjudication of their detention," Dkt. 68 at 24, as Mr. Bevil's pending habeas petition already has been pending for 18 months.

The government's "apparent preference for litigating a single issue in multiple circuits does not outweigh the factors here that favor certification of a nationwide class." *Clark v. Astrue*, 274 F.R.D. 462, 470-71 (S.D.N.Y. 2011) (certifying nationwide class despite contention that class "would foreclose litigation of the issue presented . . . in other circuits"). As Defendant Sessions explained, there is a "specific mechanism that the law provides for large numbers of similarly situated persons to pursue relief efficiently: the class action system." Memorandum from Jefferson B. Sessions, Att'y Gen., Litigation Guidelines for Cases Presenting the Possibility of Nationwide Injunctions at 5 (Aug. 28, 2018), https://tinyurl.com/y7lbf4hw (marshalling arguments against nationwide injunctions issued in *individual* cases and noting safeguards in class action rules). Here, these safeguards are both critical and necessary: most proposed class members do not have the resources to litigate these claims. Moreover, given the inherently transitory nature of the claims, the government will inevitably try to defeat adjudication of individual claims by arguing mootness, as they have done here. *See* Dkt. 36 at 13, 21.

Finally, certification of nationwide class actions is common in civil rights and immigration cases, in part because of Congress' interest in a uniform application of immigration law. *See* Dkt. 37 at 9-12. Plaintiffs have established commonality, *see id.* at 15-17; *supra* § II.B, and, as such, there are no barriers to nationwide resolution.

III. CONCLUSION

The Court should certify the proposed classes and enter the proposed certification order.

RESPECTFULLY SUBMITTED this 28th day of September, 2018.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

s/ Matt Adams
Matt Adams, WSBA No. 28287
Email: matt@nwirp.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
Email: glenda@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
Email: leila@nwirp.org

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Telephone: (206) 957-8611
Facsimile: (206) 587-4025

s/ Trina Realmuto
Trina Realmuto*
Email: trealmuto@immcouncil.org

s/ Kristin Macleod-Ball
Kristin Macleod-Ball*
Email: kmacleod-ball@immcouncil.org

AMERICAN IMMIGRATION COUNCIL
100 Summer Street, 23rd Floor
Boston, MA 02110
Telephone: (857) 305-3600

*Admitted *pro hac vice*

Attorneys for Plaintiffs-Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2018, I filed the foregoing motion for class certification as well as the accompanying supporting declarations with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 28th day of September, 2018.

s/ Matt Adams
Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Telephone: (206) 957-8611
Facsimile: (206) 587-4025
E-mail: matt@nwirp.org