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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22
23 UELIAN DE ABADIA-PEIXOTO, *et al.*,) Case No. CV 11-4001 RS
24 Plaintiffs,) **CLASS ACTION**
25 vs.) **REPLY BRIEF IN SUPPORT OF**
26 UNITED STATES DEPARTMENT OF) **PLAINTIFFS' MOTION FOR**
HOMELAND SECURITY, *et al.*,) **CLASS CERTIFICATION AND**
27 Defendants.) **APPOINTMENT OF CLASS**
28) **COUNSEL**
) Hearing Date: Nov. 17, 2011
) Hearing Time: 1:30 p.m.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION.....	1
II. ARGUMENT	3
A. Plaintiffs Satisfy All of the Requirements for Certification Under Rule 23(a).....	3
1. Plaintiffs Meet the Numerosity Requirement of Rule 23(a)(1) by Showing that the Proposed Class Is So Numerous that Joinder Is Impracticable.....	4
2. Plaintiffs Meet the Commonality Requirement of Rule 23(a)(2) by Showing that Questions of Law and Fact Are Common to All Members of the Proposed Class	7
3. Plaintiffs Meet the Typicality Requirement of Rule 23(a)(3) By Showing that the Named Plaintiffs’ Claims Are Typical of the Class They Seek to Represent.....	9
4. Plaintiffs Meet the Adequacy Requirement of Rule 23(a)(4) by Showing that the Named Plaintiffs are Adequate Representatives of the Proposed Class	10
B. The Proposed Class Satisfies Rule 23(b)(2).....	10
III. CONCLUSION	12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

CASES

<i>Andre H. v. Ambach</i> , 104 F.R.D. 606 (S.D.N.Y. 1985)	6
<i>Californians for Disability Rights, Inc. v. Cal. Dept. of Transp.</i> , 249 F.R.D. 334 (N.D. Cal. 2008)	4
<i>Cervantez v. Celestica Corp.</i> , 253 F.R.D. 562 (C.D. Cal. 2008)	4
<i>Int'l Molders' and Allied Workers' Local Union No. 164 v. Nelson</i> , 102 F.R.D. 457 (N.D. Cal. 1983)	6
<i>Nat'l Ass'n of Radiation Survivors v. Walters</i> , 111 F.R.D. 595 (N.D. Cal. 1986)	5, 6
<i>Nguyen Da Yen v. Kissinger</i> , 70 F.R.D. 656 (N.D. Cal. 1976)	4, 5, 6, 10, 11
<i>O'Connor v. Boeing N. Am., Inc.</i> , 184 F.R.D. 311 (C.D. Cal. 1998)	3
<i>Rodriguez v. Hayes</i> , 591 F.3d 1105 (9th Cir. 2010)	2, 8, 9, 10, 11
<i>Santillan v. Ashcroft</i> , No. C 04-2686 MHP, 2004 WL 2297990 (N.D. Cal. 2004)	3
<i>Schwartz v. Upper Deck Co.</i> , 183 F.R.D. 672 (S.D. Cal. 1999)	6
<i>Siles v. ILGU Nat'l Ret. Fund</i> , 783 F.2d 923 (9th Cir. 1986)	5, 6
<i>Wal-Mart v. Dukes</i> , 546 U.S. ___, 131 S.Ct. 2541 (2011)	7

RULES

Rule 23	1, 3
Rule 23(a)(1)	4, 5
Rule 23(a)(2)	2, 7, 8
Rule 23(a)(3)	9
Rule 23(a)(4)	10
Rule 23(b)(2)	10, 11

OTHER AUTHORITIES

1 Newberg on Class Actions (4th ed. 2002) § 3.5 at 247	4
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1 **I. INTRODUCTION**

2 As the Court will recall, Defendants here pursued a litigation strategy seeking to defer
3 any hearing on Plaintiffs' motion for class certification until after Defendants' planned motion to
4 dismiss was resolved. The Court rejected Defendants' request. Order Re Scheduling 1:24-26,
5 Sep. 12, 2011, ECF No. 29. Undaunted, Defendants have continued this pursuit with renewed –
6 and misguided – vigor by opposing certification based on arguments that clearly relate to their
7 motion to dismiss, and not the instant class certification motion. For example, Defendants argue
8 that Plaintiffs' claims are not “ripe” for adjudication because Plaintiffs have allegedly failed to
9 prove actual prejudice or harm from Defendants' practice of shackling adult immigration
10 detainees in San Francisco Immigration Court without any independent determination regarding
11 flight or security risk. *See* Opposition at 1, 2, 5-7, 10. But Defendants' recurring “actual
12 prejudice” argument has no bearing on the elements necessary to certify a class under Rule 23,
13 such as numerosity, commonality, typicality and adequacy. Likewise, Defendants' argument
14 that Plaintiffs' complaint insufficiently alleges a facial constitutional challenge to Defendants'
15 blanket shackling practice – *see* Opposition at 1, 2, 6-7 – pertains to their motion to dismiss, and
16 not the instant motion for class certification.¹

17 When this misdirection ploy is stripped away from Defendants' opposition brief, it
18 becomes clear that Plaintiffs easily satisfy Rule 23's certification requirements. Defendants'
19 arguments to the contrary – *see* Opposition at 7-16 – are infirm and unavailing. Specifically,
20 Defendants *do not dispute* that the proposed class actually numbers in the thousands with a
21 rotating membership (which ends the inquiry). Instead, Defendants argue that the Court should
22 not rely on a “seductive” statistical report from the Executive Office of Immigration Review
23 (“EOIR”) indicating that the class numbers in the thousands, while ignoring other evidence on
24 numerosity and the authorities cited by Plaintiffs in their opening brief. *See* Opposition at 9, 8-
25 11. Yet it is beyond dispute that Immigration and Customs Enforcement (“ICE”) runs the largest

26 _____
27 ¹ Indeed, Defendants implicitly concede as much when prefacing these supposed class
28 certification arguments with a citation to their motion to dismiss. *See* Opposition at 1:13-14 (“As
Defendants discuss in more detail in their pending motion to dismiss . . .”) and 5:24 (“As
discussed more fully in Defendants' motion to dismiss . . .”).

1 civil detention program in the country, with more than thirty-one thousand aliens in detention at
2 more than three hundred facilities throughout the nation, and that thousands of these detainees
3 are processed through the San Francisco Immigration Court each year. Defendants' failure to
4 offer any real response to the numerosity issue is especially glaring in that they have at their
5 disposal the exact number of members in the proposed class, but they choose not to proffer that
6 evidence. The above leads to one inescapable conclusion: the numerosity requirement is met
7 here.

8 On commonality, Defendants *do not dispute* that it is ICE's practice to shackle adult
9 immigrant detainees in San Francisco Immigration Court without any individualized
10 determination of the need for such restraints. This is the fact common to the class. The legal
11 issue common to the class is whether this common fact comports with constitutional due process
12 mandates and is sufficient as a matter of law to meet the commonality requirement of Rule
13 23(a)(2). Defendants seek to avoid this simple reality by attempting to recast the proposed class,
14 arguing that the class is focused on the injuries suffered from the shackling practice (*i.e.*,
15 physical pain, inability to fully participate in immigration hearings, and inability to confer
16 confidentially with counsel) rather than the practice itself, and claiming that because these
17 injuries differ among the various plaintiffs there is no identified "class of persons who have
18 suffered the same (or similar) alleged injury as the named Plaintiffs" *See* Opposition at 13,
19 8-12. Defendants' effort to re-frame the commonality inquiry is improper and totally at odds
20 with the Ninth Circuit's holding in *Rodriguez v. Hayes*. 591 F.3d 1105, 1122-23 (9th Cir. 2010)
21 ("Respondents are undoubtedly correct that members of the proposed class do not share every
22 fact in common or completely identical legal issues. This is not required by Rule 23(a)[(2)].
23 Instead, the commonality requirements ask us to look only for some shared legal issue or a
24 common core of facts"). The commonality element is met here.

25 Defendants' arguments against typicality and adequacy – *see* Opposition at 15-17 – fail
26 for the same reason their commonality argument fails: there is no requirement that all alleged
27 injuries of the Named Plaintiffs be shared by all class members. Defendants' effort to change the
28 nature of this class action to claim that the issue in this case is the injuries suffered by the class

1 members rather than the practice of shackling reflects their studied effort to avoid the reality of
 2 the conduct at issue, and is not a basis for denying class certification.

3 Based on the above, and as more fully set forth below, Plaintiffs' motion for class
 4 certification and appointment of class counsel should be granted.

5 **II. ARGUMENT²**

6 **A. Plaintiffs Satisfy All of the Requirements for Certification Under Rule 23(a)**

7 Plaintiffs have met the initial requirement of identifying a sufficiently defined class. *See*
 8 *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998) ("To satisfy Rule 23's
 9 requirements, the proponent must first establish that a class does in fact exist."). Plaintiffs seek
 10 to represent a class comprised of "All current and future adult immigration detainees who have
 11 or will have proceedings in San Francisco Immigration Court." Compl. ¶1; Plaintiffs' Opening
 12 Memorandum ("Open. Mem.") at 1, 6. Defendants do not contest that this class is readily
 13 identifiable. Thus, the preliminary requirement of identifying a class has been satisfied.

14
 15 ///

17 ² As noted above, Defendants spend much of their opposition arguing "ripeness," which is
 18 pertinent to Defendants' motion to dismiss and not the instant motion for class certification.
 19 Opposition at 1:13-16, 5:10-7:10. Accordingly, Plaintiffs will fully address this argument when
 20 filing their opposition to Defendants' motion to dismiss. Nevertheless, Plaintiffs are compelled
 21 to point out one flaw in this argument now. Defendants' blanket practice is to shackle adult
 22 detainees for all immigration proceedings without any determination as to whether such
 23 shackling is necessary to address security or risk of flight. The issue is whether or not that
 24 blanket practice offends due process protections provided in the Constitution. That issue is ripe
 25 for review right now. The "[r]ipeness doctrine protects against premature adjudication of suits in
 26 which declaratory relief is sought" in order to prevent "entanglement in theoretical or abstract
 27 disagreements that do not yet have a concrete impact on the parties." *Santillan v. Ashcroft*, No.
 28 C 04-2686 MHP, 2004 WL 2297990, at * 3 (N.D. Cal. 2004) (internal citations omitted). Here,
 the Defendants' practice has had, and unless appropriate immediate relief is issued, shall
 continue to have, a very real impact on the Named Plaintiffs and proposed class. Thousands of
 adult immigration detainees are forced to attempt to present their cases before the San Francisco
 Immigration Court in full restraints. These full metal restraints cause a variety of injuries to the
 class, including causing mental and physical pain and discomfort, affecting detainees' psyche,
 and impacting detainees' ability to meaningfully present their cases and communicate with the
 court and, if a detainee is one of the estimated 16% who have a lawyer, their counsel. *See* Open.
 Mem. at 8, n.4 (Iyengar Decl. ¶ 6, at 5-8). This injury and inherently prejudicial impact – which
 is described in the Complaint and supported in the Named Plaintiffs' declarations – is by no
 means "theoretical or abstract."

1 **1. Plaintiffs Meet the Numerosity Requirement of Rule 23(a)(1) by**
 2 **Showing that the Proposed Class Is So Numerous that Joinder Is**
 3 **Impracticable**

4 Plaintiffs’ opening brief set forth law and evidence establishing that the proposed class
 5 satisfies the numerosity requirement. *See* Open. Mem. at 7-9. Rule 23(a)(1) requires a proposed
 6 class to be so numerous that “joinder of all members is impracticable.” “Where the exact size of
 7 the class is unknown but general knowledge and common sense indicate that it is large, the
 8 numerosity requirement is satisfied.” *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D.
 9 Cal. 2008). Plaintiffs cited EOIR’s own statistical table reflecting that the class likely numbers
 10 in the thousands – *see* Open. Mem. at 8 (Iyengar Decl., Exhibit D at p. B3) – and submitted
 11 declarations further substantiating that the class includes numerous members, making joinder
 12 impracticable. *See* Chavez Declaration at ¶4; Mass Declaration at ¶5; Wei Declaration at ¶¶9-10;
 13 De Abadia-Peixoto Declaration at ¶¶10-12; Cifuentes Declaration at ¶¶9-10; Berger Declaration
 14 at ¶12. Numerosity is met where, as here, plaintiffs proffer evidence that the proposed class
 15 consists of hundreds or thousands of members. *See* 1 Newberg on Class Actions (4th ed. 2002) §
 16 3.5 at 247 (“[A]s few as 40 class members should raise a presumption that joinder is
 17 impracticable.”); *see also Californians for Disability Rights, Inc. v. Cal. Dept. of Transp.*, 249
 18 F.R.D. 334, 346 (N.D. Cal. 2008).

19 In their opposition, Defendants *do not deny* that the proposed class, if certified, would
 20 number in the thousands. They cannot do so in good faith. Instead, Defendants argue in passing
 21 that the Court may not rely on the “seductive” EOIR statistical report showing that the putative
 22 class numbers in the thousands (*see* Opposition at 9) and ignore altogether the evidence in the
 23 declarations supporting the numerosity prong of Plaintiffs’ motion.³

24 To make matters worse, Defendants ignore the authorities cited in Plaintiffs’ opening
 25 memorandum and instead rely on two cases – *Nguyen Da Yen v. Kissinger*, 70 F.R.D. 656 (N.D.

26 ³ Defendants undoubtedly have at their disposal statistics that would substantiate the exact
 27 number of the proposed class (*i.e.*, the number of adult detainees who are shackled in
 28 immigration proceedings as part of Defendants’ blanket shackling practice). Defendants have
 not even attempted to proffer such evidence. Plaintiffs respectfully submit that this is so because
 the statistics all support Plaintiffs’ argument that the numerosity element is satisfied here.

1 Cal. 1976) and *Siles v. ILGU Nat'l Ret. Fund*, 783 F.2d 923 (9th Cir. 1986) – wherein plaintiffs
2 failed to proffer any evidence at all of class size. In *Nguyen Da Yen*, the plaintiffs sought to
3 certify a class potentially consisting of up to two thousand children, but plaintiffs provided no
4 evidence or even a “reasonabl[e] estimate” that any more than “at least a few” individuals were
5 similarly situated to the named plaintiffs, and thus engaged in “mere speculation.” *Nguyen Da*
6 *Yen*, 70 F.R.D. at 661-62. Likewise in *Siles*, a plaintiff sought to represent a class of individuals
7 denied benefits under a pension fund – like she was – but attempted to establish numerosity
8 merely by “submit[ing] evidence that 31,000 employees covered by the plan *lost their jobs*”
9 during a given period. *Siles*, 783 F.2d at 930 (emphasis added). In its three-sentence discussion
10 of class certification, the court noted that the plaintiff provided “*no evidence*” of the number of
11 individuals denied benefits under the pension fund, and thus in the putative class. *Id.* (emphasis
12 added).

13 Defendants’ cited cases are limited to instances where the named plaintiff has provided
14 no basis to evaluate the viability of the numerosity element under Rule 23(a)(1). As noted in
15 *National Association of Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986),
16 *Nguyen Da Yen* is limited to its facts—*i.e.*, where a plaintiff offers no basis “even to determine
17 whether the class included more than ten members.” *Nguyen Da Yen* and *Siles* are
18 distinguishable where, as here, plaintiffs proffer evidence of class size. The court’s reasoning in
19 *Walters* is precisely applicable here:

20 [B]ased on the figures that are available to the court in this case and the
21 nature of both the class composition and the underlying claims, there is
22 good reason to believe that the proposed class is sufficiently large to make
23 joinder impracticable, even though the precise size of the class is
24 unknown. Moreover, as will be discussed below, joinder is impracticable
25 in this case for a number of other reasons which were either not applicable
26 or were not considered by the court in *Nguyen Da Yen*.

27 *Walters*, 111 F.R.D. at 599.

28 While the “precise size” of the proposed class is unknown, Plaintiffs have submitted
evidence of class size. The cited EOIR report indicates that the class numbers in the *thousands*,
and averments in declarations illustrate Plaintiffs’ counsel’s personal observation of *hundreds* of

1 immigration detainees subject to Defendants’ blanket shackling practices. This evidence
2 distinguishes this case from the situations in *Nguyen Da Yen* and *Siles*.^{4,5}

3 Plaintiffs have also demonstrated additional facts showing the impracticability of joinder,
4 including that the proposed class is composed of unnamed and unknown future members, with a
5 constantly revolving membership. Open. Mem. at 8:12-16. Defendants do not contest this point
6 – again choosing to largely ignore it altogether – which further supports the fact that Plaintiffs
7 have established numerosity.⁶ See *Walters*, 111 F.R.D. at 599 (“[W]here the class includes
8 unnamed, unknown future members, joinder of such unknown individuals is impracticable and
9 the numerosity requirement is therefore met,’ regardless of class size.”) (quoting *Int’l Molders’*
10 *and Allied Workers’ Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983)).

11 Defendants’ final argument against numerosity reveals a fundamental misunderstanding
12 of the proposed class as well as a misapprehension of the class action mechanism. Defendants
13 argue that because there are four named plaintiffs in this action, “only four appear to have been
14 identified” by Plaintiffs as having been prejudiced by Defendants’ blanket shackling practice.

15 _____
16 ⁴ Likewise, Defendants’ citation to *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672 (S.D. Cal.
17 1999) is unavailing. Opposition at 9:9-11. There, the plaintiff provided no evidence that the
18 purported class—persons who bought defendant Upper Deck’s sports cards for the purpose of
19 finding a valuable “chase” card—consisted of “hundreds of thousands of persons” because the
20 plaintiff merely provided Upper Deck’s “annual sales figure.” *Schwartz* at 681. The court thus
had “no idea who buys sports cards, or even how many, for the purpose of finding chase cards as
opposed to other rationales.” *Id.* (noting also that “[t]his is not a matter of general knowledge or
common sense.”).

21 ⁵ Defendants also assert that the “use of aggregate government data overestimates the size of
22 the proposed class” because it “does not differentiate between adult detainees . . . and juvenile
23 detainees.” Opposition at 10:17-19. But even if the figures in the EOIR report were 90%
24 comprised of juvenile cases – which clearly is not the case – the numerosity requirement would
25 still be met as the adult detainee class would exceed 300 individuals. But as a matter of fact, the
San Francisco Immigration Court processes far more adult detainees than juvenile detainees:
while there are weekly calendars for detained adult immigration detainees, there is only one
afternoon calendar per month in San Francisco Immigration Court for detained youth. See
Supplemental Declaration of Savith S. Iyengar ¶ 2.

26 ⁶ Defendants state that “Plaintiffs’ ‘rotating membership’ argument does not support
27 numerosity but is more appropriately made in connection with” whether “the certification can be
28 said to ‘relate back’ to the filing of the complaint.” Opposition at 11 n.5. This is just flat wrong.
See *Andre H. v. Ambach*, 104 F.R.D. 606, 611 (S.D.N.Y. 1985) (“The fact that the [detention
center] population . . . is constantly revolving establishes sufficient *numerosity* to make joinder
of the class members impracticable.”) (emphasis added).

1 Opposition at 11:7-9. Defendants then cite to cases indicating that a class size of four is
 2 insufficient to satisfy numerosity. Opposition at 11:11-16. On a very basic level, Defendants’
 3 argument is nonsensical; Plaintiffs obviously do not need to name as plaintiffs every single
 4 member of the class they seek to represent. Indeed, the very purpose of a class action is to allow
 5 even a single named plaintiff to represent a class of people with whom the representative shares
 6 common issues of fact or law. More fundamentally, Defendants’ argument is an effort to
 7 conflate the practice challenged by this case – Defendants’ blanket shackling practice – with the
 8 various injuries suffered by the thousands of class members. However, Defendants’ apparent
 9 confusion over the real issue is not a basis for denying certification.⁷

10 Plaintiffs have shown that the proposed class consists of thousands of adult immigration
 11 detainees, all of whom are subject to ICE’s blanket practice of shackling for court appearances
 12 without an individualized determination of the need for restraints, and have provided additional
 13 undisputed reasons demonstrating the impracticability of joinder. Thus, Plaintiffs have satisfied
 14 the numerosity requirement.

15 **2. Plaintiffs Meet the Commonality Requirement of Rule 23(a)(2) by**
 16 **Showing that Questions of Law and Fact Are Common to All**
 17 **Members of the Proposed Class**

18 Defendants fundamentally misunderstand controlling law and Plaintiffs’ class definition
 19 in claiming that, because Plaintiffs’ claims are “grounded in specific individual factual
 20 determinations for each Plaintiff, whose claims may require individual answers,” Plaintiffs have
 21 failed to satisfy the commonality requirement. Opposition at 14:19-21. Again, Defendants’ sole
 22 citation (to *Wal-Mart v. Dukes*, 546 U.S. ___, 131 S.Ct. 2541 (2011)) is inapposite given ICE’s

23 ⁷ Defendants also appear to contest numerosity on the same grounds it offers against
 24 typicality and commonality (*i.e.*, because the class members’ individual situations are
 25 purportedly different from the Named Plaintiffs’ and one another). Defendants argue that the
 26 aggregate data do not “specify whether other members of the putative class were harmed or
 27 prejudiced in the same way as Plaintiffs allege by being restrained during their immigration
 28 proceeding,” “differentiate between restrained detainees” and those whose restraints were
 “removed during their immigration proceedings” upon request, and “distinguish between the
 different purposes for which detainees may appear in immigration court.” Opposition at 10:20-
 23. As explained in Sections II.A.2-3, *infra*, Defendants’ contentions rely on a fundamental
 misunderstanding of the law on commonality and typicality and are inapposite where, as here, all
 named plaintiffs and members of the proposed class possess similar constitutionally-based
 arguments and seek uniform relief from the same, inherently prejudicial practice.

1 practice of blanket shackling. Instead, *Rodriguez v. Hayes* is controlling and supports a finding
2 of commonality. 591 F.3d 1105 (9th Cir. 2010).

3 Pursuant to *Rodriguez*, the commonality inquiry is not dependent upon individual factual
4 circumstances where, as here, there is a common question regarding the constitutionality of a
5 generally applicable practice whose answer will affect all members of the proposed class. *Id.* at
6 1125. The Ninth Circuit Court of Appeals explained:

7 Respondents are undoubtedly correct that members of the proposed class
8 do not share every fact in common or completely identical legal issues.
9 This is not required by Rule 23(a)[(2)]. Instead, the commonality
requirements ask us to look only for some shared legal issue or a common
core of facts.

10 *Id.* at 1122. Commonality is met where a common “question will be posed by the detention of
11 every member of the class and their entitlement to [the relief sought] will largely be determined
12 by its answer.” *Id.* at 1123 (finding that commonality was “certainly” met where the common
13 question was whether an individual could be detained for over six months without a bond
14 hearing under one of three statutes without generating serious constitutional concerns). Here, the
15 Court must determine whether serious constitutional concern is generated by Defendants’
16 blanket practice of shackling adult immigration detainees during San Francisco Immigration
17 Court proceedings without individualized determinations of the need for such restraints. This is
18 a common question posed by every member of the class. If the Court determines that blanket
19 shackling violates due process, then every member of the class will benefit and be entitled to
20 appropriate relief.

21 Further, the fact that certification of the proposed class will serve all purposes of the
22 commonality requirement also supports certification under Rule 23(a)(2). By answering the
23 proposed class’s common question, the Court “will facilitate development of a uniform
24 framework for analyzing detainee claims” to an individualized determination of the need for
25 restraints, “render management of these claims more efficient for the courts,” and “obviate[e] the
26 severe practical concerns that would likely attend them were [members of the proposed class]
27 forced to proceed alone.” *Id.*

28

1 **3. Plaintiffs Meet the Typicality Requirement of Rule 23(a)(3) By**
 2 **Showing that the Named Plaintiffs' Claims Are Typical of the Class**
 3 **They Seek to Represent**

4 Defendants argue that the Named Plaintiffs' claims are not typical of those of the
 5 proposed class because "the named Plaintiffs advance several and distinct legal theories that may
 6 inure from appearing at their immigration proceedings in restraints. . . ." Opposition at 15:21-26.
 7 As the Ninth Circuit Court of Appeals illustrates in *Rodriguez*, Defendants' contention again
 8 misses the point:

9 Though Petitioner and some of the other members of the proposed class
 10 are detained under different statutes and are at different points in the
 11 removal process and hence do not raise identical claims, they all, as
 12 already discussed, raise similar constitutionally-based arguments and are
 13 alleged victims of the same practice of prolonged detention while in
 14 immigration proceedings.

15 *Id.* at 1124. Likewise here, the Named Plaintiffs and all members of the proposed class "raise
 16 similar constitutionally-based arguments" and are "victims of the same practice" of being placed
 17 in metal restraints at their ankles, wrists, and waists for their immigration court appearances. *Id.*

18 That the Named Plaintiffs may suffer their own distinct injuries is immaterial to the
 19 question of whether they can act as representatives of a class challenging ICE's blanket practice
 20 of shackling adult immigration detainees for court appearances. Any differences in the specific
 21 facts of the Named Plaintiffs' detention properly affect the determination of whether restraints
 22 are warranted for that individual. It does not impact the question presented on behalf of the
 23 class, which is whether detainees are entitled to an individualized determination of the
 24 appropriate level of restraint, if any, in the first place. In *Rodriguez*, the court reasoned:

25 The claims of Petitioner and the class on the whole are that they are
 26 entitled to a bond hearing in which dangerousness and risk of flight are
 27 evaluated. While Petitioner's criminal history is currently central to the
 28 question of whether Petitioner will ultimately be removed and will almost
 certainly be relevant to any bond hearing determination, the determination
 of whether Petitioner is *entitled* to a bond hearing will rest largely on
 interpretation of the statute authorizing his detention.

29 *Id.* at 1124 (emphasis in original). Likewise here, the Named Plaintiffs' claims are typical of
 30 those of the class. Whether they have suffered injury as a result of physical pain, adverse effects
 31 on their ability to participate in their defense, or impeded access to counsel – each of the Named

1 Plaintiffs is a victim of the same failure to conduct an individualized determination before
 2 imposing the use of shackles. Their claims are therefore typical of those of the entire class.

3 **4. Plaintiffs Meet the Adequacy Requirement of Rule 23(a)(4) by**
 4 **Showing that the Named Plaintiffs are Adequate Representatives of**
 5 **the Proposed Class**

6 Defendants contest the adequacy of the Named Plaintiffs as class representatives for the
 7 same reasons that they contest commonality and typicality, *i.e.*, due to the “various and discrete
 8 injuries alleged by the named Plaintiffs and the disparate questions of law and fact that apply to
 9 the named Plaintiffs.” Opposition at 16:18-20. As such, this argument fails for the same reasons
 10 noted above. *See Rodriguez* at 1125 (“Respondents . . . challenge Petitioner’s adequacy only by
 11 re-asserting their commonality and typicality arguments. As we do not find that these arguments
 12 have merit, Respondents have provided no reason to conclude that class certification is properly
 13 denied for the reason that Petitioner is an inadequate class representative.”).

14 Defendants also reiterate their fundamental misunderstanding of the proposed class by
 15 alleging that Plaintiffs “fail to address – or even consider” the “important point” that a detained
 16 and shackled alien “might take comfort in knowing that he and his family member attending the
 17 hearing are protected by the use of restraints on other detainees.” Opposition at 16:21-17:5.
 18 Defendants’ argument is irrelevant. Plaintiffs seek an individualized determination of the need
 19 for restraints. The relief Plaintiffs seek would thus allow the shackling of detainees whose
 20 backgrounds warrant the use of restraints – providing the “comfort” to which Defendants refer.

21 **B. The Proposed Class Satisfies Rule 23(b)(2)**

22 Finally, Defendants claim that Plaintiffs’ “cause of action lacks the evidence needed” to
 23 satisfy Rule 23(b)(2) because, as in *Nguyen Da Yen*, “the class challenging Defendants’ restraint
 24 practices presents several distinct legal claims.” Opposition at 17:16, 26-27. However, the issue
 25 in *Nguyen Da Yen* was that Rule 23(b)(2) did not apply because “[s]ome two thousand individual
 26 adjudications” and “individual injunctive orders or judgments of some kind would be necessary”
 27 to determine the composition of the plaintiff’s putative class, *i.e.*, whether certain children who
 28 arrived in the United States pursuant to a particular government program were, in actuality,

1 brought to the United States illegally and were being detained in violation of their constitutional
2 rights, and should therefore be deported back to Vietnam. *Nguyen Da Yen*, 70 F.R.D. at 667.

3 Here, however, the proposed class consists of adult immigration detainees appearing
4 before the San Francisco Immigration Court, each of whom is subject to a blanket practice of
5 shackling for immigration court appearances (a practice not disputed by Defendants). Again,
6 *Rodriguez* is dispositive. There, as here, the defendants’

7 contentions miss the point of Rule 23(b)(2). [. . .] The rule does not
8 require us to examine the viability of bases of class members’ claims for
9 declaratory and injunctive relief, but *only to look at whether class*
10 *members seek uniform relief from a practice applicable to all of them.* As
11 we have previously stated, ‘it is sufficient’ to meet the requirements of
12 Rule 23(b)(2) that ‘class members complain of a pattern or practice that is
13 generally applicable to the class as a whole.’ The fact that some class
14 members may have suffered no injury or different injuries from the
15 challenged practice does not prevent the class from meeting the
16 requirements of Rule 23(b)(2).”

17
18 *Id.* at 1125 (internal citations omitted and emphasis added). Here, “relief from a single practice
19 is requested by all class members” and “all class members’ seek the exact same relief as a matter
20 of statutory or, in the alternative, constitutional right.” *Id.* at 1126. Accordingly, Plaintiffs have
21 satisfied the requirements of Rule 23(b)(2).
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1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs have satisfied all of the prerequisites to and
3 requirements of Rule 23(a) and 23(b)(2). Plaintiffs respectfully request that the Court certify the
4 proposed class, approve the Named Plaintiffs as class representatives, and appoint Plaintiffs'
5 counsel to represent the class.

6
7 Dated: October 24, 2011

Respectfully submitted,

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9
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