

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

Farah IBRAHIM,  
Ibrahim MUSA,  
Khalid Abdallah MOHMED,  
Ismail JIMCALE ABDULLAH,  
Abdiwali Ahmed SIYAD,  
Ismael Abdirashed MOHAMED, and  
Khadar Abdi IBRAHIM, on behalf of  
themselves and all those similarly situated,

Plaintiffs/Petitioners,

v.

Juan ACOSTA, Assistant Field  
Officer Director, Miami Field Office,  
Immigration and Customs Enforcement;  
David HARDIN, Sheriff of Glades  
County;  
Marc J. MOORE, Field Office  
Director, Miami Field Office,  
Immigration and Customs Enforcement;  
Thomas HOMAN, Acting Director,  
Immigration and Customs Enforcement; Kirstjen  
NIELSEN,  
Secretary of Homeland Security.

Defendants/Respondents.

Case No.:

CLASS ACTION

**[PROPOSED] ORDER  
GRANTING  
PLAINTIFF'S/PETITIONER'S  
MOTION FOR CLASS  
CERTIFICATION**

**ORDER GRANTING PLAINTIFFS'/PETITIONERS'  
MOTION FOR CLASS CERTIFICATION**

THIS CAUSE is before the Court on the Plaintiffs'/Petitioners' Motion for Class Certification and the Court, having reviewed the Motion and being fully advised in the premises, for the reasons explained in this Order, finds that the Class should be certified pursuant to Federal Rule of Civil Procedure 23.

Accordingly, it is **ORDERED** and **ADJUDGED** that Plaintiffs'/Petitioners' Motion is **GRANTED**.

## I. BACKGROUND

In this putative class-action lawsuit the Plaintiffs/Petitioners seek class-wide injunctive relief and damages on behalf of a class defined as: All persons with final orders of removal and currently facing removal to Somalia who are located within the jurisdiction of the Miami ICE Field Office (“Class Members”), including all persons whom ICE sought to deport to Somalia on the December 7, 2017 contract flight (“Subclass Members”). The Plaintiffs/Petitioners have alleged that the Defendants/Respondents, as governmental officials with the Department of Homeland Security, Immigration and Customs Enforcement and the Glades County, Florida Sheriff’s Office are denying the Class Members constitutional due process by removing them back to Somalia without further process. Plaintiffs’/Petitioners have alleged that Defendants/Respondents must provide them with a chance to demonstrate that substantive immigration law forbids their current removal to Somalia under the current conditions. Plaintiffs/Petitioners have alleged that they all face significant risk of persecution and likely death at the hands of the terrorist group, Al Shabaab, if they are returned to Somalia.

The Plaintiffs have moved to certify a class, that includes 92 people who ICE subjected to inhumane conditions and egregious abuse during a failed attempt to deport them by plane to Somalia on December 7, 2017. For almost two days, the men and women sat bound and shackled in an ICE-chartered airplane. ICE ultimately aborted the trip and flew back to the United States, landing in Miami. In the early morning of Saturday, December 9th, ICE transported the still-shackled detainees to two detention centers in the South Florida area. Plaintiffs/Petitioners also seek redress for the injuries that they suffered at the hands of ICE during the December 7, 2017 flight.

Plaintiffs/Petitioners and the class they represent have asked this Court to issue an order preventing their removal to Somalia until 1) they are afforded a full and fair opportunity to seek reopening of their removal cases; 2) they have received adequate treatment for injuries sustained on the December 7 flight; and 3) Defendants/Respondents have taken adequate measures to ensure that they will not be abused on the next flight, including but not limited to the guarantee that none of the ICE and contract officers on the December 7 flight will be on any new flight[CBL5]. Plaintiffs/Respondents and the class further requested that the Court issue an order 1) forbidding Defendants/Respondents from transferring Plaintiffs/Respondents and the class out of Krome Service Processing Center in Miami, Florida or Glades Detention Center in Moore Haven, Florida; and 2) ordering Defendants/Respondents to return to Krome or Glades anyone who has already been transferred.

## II. LEGAL STANDARDS

The decision to certify a class action is governed by Federal Rule of Civil Procedure 23. The party seeking certification must demonstrate, first, 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). “A class action may be maintained if Rule 23(a) is satisfied and if . . . the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

“The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2550 (2011) (quotations omitted). Rule 23’s “four requirements – numerosity, commonality, typicality, and adequate representation – effectively limit the class claims to those fairly encompassed by the named plaintiff’s claims.” *Id.* (quotations omitted).

## III. DISCUSSION

### 1. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” While there is no fixed rule, generally a class size less than twenty-one is inadequate, while a class size of more than forty is adequate. *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 489-90 (S.D. Fla. 2003) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)). A plaintiff must present some evidence that the class to be certified will satisfy the numerosity requirement of Rule 23. The class meets the numerosity requirement of Rule 23(a)(1), as there were 92 individuals on the December 7 flight and other individuals who face removal to Somalia on the next flight in the Miami Field Office jurisdiction.

### 2. Commonality

Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” “Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citation omitted). The common contention of injury “must be of such a nature that it is capable of class wide resolution

– which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* “What matters to class certification . . . is . . . the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation. *Id.* (citation omitted). The class meets the commonality requirement of Rule 23(a)(2). Questions of law and fact presented by Plaintiffs/Petitioners’ cases are common to other members of the class. The common contentions that unite the claims of the class are that each member has a final order of removal, ICE is seeking to deport each class member to Somalia, and each class member has the same basis for a motion to reopen their removal order based on changed circumstances arising from the December 7 flight.

### 3. Typicality

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” “To meet the typicality requirement, the named representatives must be able to establish the bulk of the elements of each class member’s claims when they prove their own claims.” *Brooks v. S. Bell Tel. & Tel. Co.*, 133 F.R.D. 54, 58 (S.D. Fla. 1990). Plaintiffs/Petitioners’ claims are typical of those of the class because they all have final orders of removal are eligible to file motions to reopen their removal orders based on changed circumstances due to the December 7 flight.

### 4. Adequate Representation

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” The requirement of adequate representation addresses two issues: “(1) whether plaintiffs’ counsel are qualified, experienced, and generally able to conduct the proposed litigation and . . . (2) whether plaintiffs have interests antagonistic to those of the rest of the class.” *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 495 (S.D. Fla. 2003) (citations omitted). There is no argument that Plaintiffs’ counsel is not fully qualified, experienced, and generally able to prosecute this class action. Class counsel has experience in immigration-related class action cases and will adequately represent the interests of the class.

### 5. Predominance

After all the requirements of Rule 23(a) have been met, a court must still determine that “the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “Common issues of fact and law predominate if they have a direct impact on every class member’s effort to establish

liability and on every class member's entitlement to injunctive and monetary relief." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1255 (11th Cir. 2004). The proposed class satisfies the requirements of Rule 23(b)(2) for the injunctive relief sought, as Defendants/Respondents have acted on grounds generally applicable to the class, making equitable relief appropriate as to the class as a whole.

Finally, the Court finds that resolving the issues raised by the Plaintiffs in a class action would be superior to other available methods to fairly and efficiently resolve this controversy. Individual suits by each member of the class would be impracticable because they would create a risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for the parties opposing the class. In addition, the class members are all detained and indigent and lack the financial resources to vindicate their rights in Court.

### CONCLUSION

For the reasons explained in this Order, it is **ORDERED and ADJUDGED** that the Plaintiff's Corrected Motion for Class Certification is **GRANTED**.

**DONE and ORDERED** in Chambers at Miami, Florida, this \_\_\_\_ day of December 2017.

\_\_\_\_\_  
THE HONORABLE \_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

