UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI; JOHAN BARRIOS RAMOS, on behalf of himself and all others similarly situated, Petitioners, v. ALEJANDRO MAYORKAS,[1] in his official capacity as Secretary of U.S. Department of Homeland Security; THOMAS BROPHY, in his official capacity as Acting Director of Buffalo Field Office of Immigration and Customs Enforcement; JEFFREY SEARLS, in his official capacity as Acting Administrator of the Buffalo Federal Detention Facility; and MERRICK GARLAND,[2] in his official capacity as Attorney General of the United States, Respondents.	Case No. 17-cv-721 (EAW)

MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND NOTICE

[1] Alejandro Mayorkas is the current U.S. Secretary of Homeland Security. Accordingly, he is substituted as a respondent in this action. *See* Fed. R. Civ. P. 25(d).

[2] Merrick Garland is the current Attorney General of the United States. Accordingly, he is substituted as a respondent in this action. *See* Fed. R. Civ. P. 25(d).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

Johan Barrios Ramos, on behalf of himself and all others similarly situated ("Petitioners"), and Respondents in the action have executed a Settlement Agreement and Release (the "Settlement Agreement"), reflecting an agreement they have reached after years of negotiation and advocacy. The Settlement Agreement, which confirms that Respondents will provide certain parole procedures to the certified class of all arriving asylum-seekers who have passed a credible fear interview and who are or will be detained in federal immigration custody at the Buffalo Federal Detention Facility in Batavia, New York, resolves the Petitioners' parole-related claims in their First Amended Petition for a Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (the "Petition").[3]

Petitioners submit this Memorandum of Law in support of their unopposed motion, pursuant to Federal Rule of Civil Procedure 23(e), to (i) approve the form and manner of notice of the settlement reached by the parties; and (ii) schedule a final approval hearing to determine that the settlement is fair, reasonable, and adequate (the "Motion").[4]

The proposed settlement satisfies the Federal Rules of Civil Procedure because it is a fair, reasonable, and adequate resolution of the class claims. After nearly four years of litigation, including significant motion practice and negotiations, the parties have reached an agreement that they all view as an acceptable resolution of this action. Through the Settlement Agreement, class members will receive commitments from Respondents to abide by the terms of ICE Directive No. 11002.1: *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* (Dec.

[3] A true and complete copy of the Settlement Agreement is annexed to the accompanying Declaration of Robert Hodgson (the "Hodgson Decl.") as Exhibit A.

[4] The form of the notice to the class, titled "Notice of Proposed Settlement", is annexed to the Hodgson Decl. as Exhibit B.

8, 2009) as it applies to the class. In exchange for these commitments, class members will relinquish their injunctive and declaratory claims. And importantly, the Settlement Agreement's terms will benefit class members without harming others.

The Settlement Agreement meets the standards for preliminary approval as described in Federal Rule of Civil Procedure 23, as amended in 2018, as well as those developed by both the Second Circuit and this Court. For instance, no risk of fraud or collusion exists because the Settlement Agreement is the result of arms-length negotiations between experienced counsel—counsel who have zealously litigated multiple disputes in this case over the course of several years. The Settlement Agreement comes after ample opportunity for discovery and resolves complicated factual and legal issues in a highly specialized area of federal immigration law. It benefits the members of the certified class, while allowing all parties to avoid the delay, costs, and risks inherent in further litigation and trial.

For these reasons, and those discussed below, Petitioners ask the Court to find that it likely will conclude that the Settlement Agreement is a fair, adequate, and reasonable resolution of the class members' claims, and that the proposed content and method of notice are reasonable in view of the definition of the certified class. Accordingly, Petitioners respectfully request that the Court preliminarily approve the Settlement Agreement; approve their proposed Notice of Settlement; and set a schedule for the next steps in this action, including a fairness hearing.

BACKGROUND

On July 28, 2017, Petitioners commenced this action, seeking injunctive and declaratory relief on behalf of themselves and all others similarly situated—arriving asylum-seekers held at the Buffalo Federal Detention Facility—and filed the Petition on August 21, 2017. Dkt. 17 ¶ 69.[5]

[5] Pursuant to the applicable statute and regulations, the "Attorney General may . . . parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian

Among other things, the Petition alleges Respondents failed to adhere to and abide by a 2009 directive implemented by Immigration and Customs Enforcement ("ICE"), entitled "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture". Dkt. 38-3 at 8–17 (U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT DIRECTIVE 11002.1, PAROLE OF ARRIVING ALIENS FOUND TO HAVE A CREDIBLE FEAR OF PERSECUTION OR TORTURE (Dec. 8, 2009), https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf) [hereinafter "Parole Directive"]. The Parole Directive provides that "[e]ach alien's eligibility for parole should be considered and analyzed on its own merits," and when an alien "presents neither a flight risk nor a danger to the community," the Government "should, absent additional factors . . . parole the alien on the basis that his or her continued detention is not in the public interest." *Id.* (quoting Parole Directive ¶ 6.2). The Parole Directive further establishes a series of procedural protections concerning the prospect of parole, including notice of availability of parole, translation services, an opportunity to present evidence, an automatic parole interview, a thorough and reasoned parole adjudication, and an opportunity for reconsideration of an unfavorable parole outcome. Parole Directive ¶¶ 8.1, 8.2, 8.8.

Through this action, Petitioners seek declaratory and injunctive relief, on behalf of themselves and others similarly situated, requiring the Parole Directive's procedural safeguards to be implemented by the Government when adjudicating parole.[6]

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reasons or significant public benefit any alien applying for admission to the United States," Dkt. 56 at 34 (quoting 8 U.S.C. § 1182(d)(5)(A)), including when an asylum seeker's "continued detention is not in the public interest," *id.* at 10 (quoting 8 C.F.R. § 212.5(b)(5)). Petitioners are asylum-seekers who, as of the date of commencement of this action, had been detained under 8 U.S.C. § 1225(b)(1)(B)(ii) and for whom the prospect of parole was available.

[6] Petitioners also brought claims on behalf of sub-class of asylum-seekers whose detention exceeded, or would exceed, six months, and who did receive, or who would not receive, a bond hearing before an immigration judge following that time. Those claims are not subject to this motion, as discussed herein.

On August 25, 2017, Petitioners moved to certify a class of "[a]ll arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility and who have not been granted parole." Dkt. 19-1 at 11–12. On September 12, 2017, Respondents moved to dismiss the Petition for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. Dkt. 27. On September 25, 2017, Petitioners opposed the motion to dismiss and moved for a preliminary injunction to, *inter alia*, enjoin the Government from violating the Parole Directive. Dkt. 38.

On November 17, 2017, this Court denied Respondents' motion to dismiss and granted Petitioners' motion for a preliminary injunction, thus enjoining Respondents from, *inter alia*, executing their parole authority in contravention of the Parole Directive. Dkt. 56.

On December 19, 2017, this Court granted Petitioners' motion to certify a class, appointed a class representative and class counsel, and defined the certified class with respect to the parole claim as follows:

> All arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility and who have not been granted parole.

Dkt. 66 at 23.[7]

On March 18, 2019, in response to concerns regarding Respondents' implementation of the preliminary injunction, Petitioners moved to enforce the preliminary injunction and certain

[7] The Court further noted that "the preliminary injunction now applies to members of the certified class . . ., rather than members of the putative class." *Id.*

The Court's December 19, 2017 Decision and Order also certified a sub-class of "[a]ll arriving asylum-seekers who are or will be detained at the Buffalo Federal Detention Facility, have passed a credible fear interview, and have been detained for more than six months without a bond hearing before an immigration judge." *Id.* However, on September 24, 2019, this Court decertified the subclass and vacated in part the November 17, 2017 Decision and Order insofar as it obligated the Government to provide bond hearings upon six months' detention. Accordingly, Petitioners' bond claims are not within the scope of the instant motion, which respects class claims only.

class reporting obligations of Respondents. Dkt. 122. Following briefing, on April 30, 2019, the Court granted the motion to the extent that it ordered Respondents to produce a witness for deposition regarding their methodology for class member identification and reporting; the Court reserved decision on the remaining aspects of the motion, but later denied the motion as moot on September 24, 2019. Dkts. 129, 151.

On November 18, 2020, following unsuccessful settlement negotiations by the parties, the Court issued a summary judgment briefing schedule, after which Petitioners moved for partial summary judgment and Respondents moved for summary judgment. Dkts. 166, 167, 173. Thereafter, the Parties resumed settlement negotiations, and on August 12, 2021, jointly informed the Court that they had reached a settlement to resolve the instant action. Dkt. 186. The substance, adequacy, and fairness of the Settlement Agreement are discussed herein.

On August 18, 2021, the Court denied the parties' motions for summary judgment without prejudice to refiling. Dkt. 187. This Motion follows.

THE SETTLEMENT AGREEMENT

The Settlement Agreement applies to "[a]ll arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility in Batavia, New York, and who have not been granted parole." The terms of the Settlement Agreement are such that the Respondents will continue to abide by the terms of the Parole Directive as it applies to the class. The effect of such agreement is that the Respondents will continue to adjudicate parole applications of all class members, as set out in this Court's prior preliminary injunction Order, in conformance with their obligations under the Parole Directive, including: advising each asylum-seeker of the requirements to obtain parole in a language each asylum-seeker understands; a parole interview with an immigration officer; an individualized explanation of any denials of parole; and notification of any opportunity to seek reconsideration

of any adverse parole determination. In exchange, Petitioners and the class will release and discharge Respondents from any and all settled claims, including all claims for injunctive and declaratory relief pertaining to the Respondent's adherence to the Parole Directive.

The terms of the Settlement Agreement shall be effective immediately upon final judicial approval and shall expire three years from the date of such approval, or upon revocation, rescission, or amendment of the Parole Directive, whichever occurs first.

Finally, the Settlement Agreement requires Respondents, for the duration of the Settlement Agreement, to post notices in areas prominently visible to civil immigration detainees at the Buffalo Federal Detention Facility, in the five (5) written languages most commonly used by noncitizens appearing at the Batavia Immigration Court, which inform detainees: whether they fall within the class covered by the Settlement Agreement; the rights and protections guaranteed by the Settlement Agreement; and instructions for contacting class counsel.

LEGAL STANDARD

"Federal Rule of Civil Procedure 23(e) requires court approval of any settlement that affects the dismissal of a class action. Before such a settlement may be approved, the district court must determine that a class action settlement is fair, adequate, and reasonable, and not a product of collusion." *Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 52 (W.D.N.Y. 2018) (Wolford, J.) (quoting *Joel v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000)). As a matter of public policy, settlements are favorable—"[b]y lessening docket congestion, settlements make it possible for the judicial system to operate more efficiently and more fairly while affording plaintiffs an opportunity to obtain relief at an earlier time." *Id.* at 52–53 (quoting *Babock v. C. Tech Collections, Inc.*, No. 1:14-CV-3124 (MDG), 2017 WL 1155767, at *4 (E.D.N.Y. Mar. 27, 2017)). "A court determines a settlement's fairness by looking at both the settlement's terms and the negotiating

process leading to settlement." *Id.* at 53 (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)).

"A class action settlement approval procedure typically occurs in two stages: (1) preliminary approval—where prior to notice to the class, a court makes a preliminary evaluation of fairness, and (2) final approval—where notice of a hearing is given to the class members, and class members and settling parties are provided the opportunity to be heard on the question of final court approval." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 27 (E.D.N.Y. 2019) (alteration and internal quotations omitted).

"During the preliminary approval stage, a court must review the proposed terms of settlement and make a preliminary determination on the fairness, reasonableness and adequacy of the settlement terms." *Id.* (internal quotation omitted). "[I]n weighing a grant of preliminary approval, district courts must determine whether 'giving notice is justified by the parties' showing that the court *will likely be able to*: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.'" *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 28 (quoting Fed. R. Civ. P. 23(e)(1)(B)(i–ii)). "Because Rule 23(e)(2) sets forth factors that a court must consider when weighing *final* approval, it appears that courts must assess at the preliminary approval stage whether the parties have shown that the court will likely find that the factors weigh in favor of final settlement approval." *Id.*

ARGUMENT

As set forth below, the Settlement Agreement is fair, reasonable, and adequate—and the parties' notice plan is reasonably calculated to reach class members to inform them of their rights. Accordingly, the Court should preliminarily approve the parties' proposed settlement agreement, direct notice to the certified class, and schedule a fairness hearing.

I. Class Certification

The Court's reasoning in its December 19, 2017 Decision and Order granting class certification remains appropriate for final disposition of the instant action.[8]

At certification, the Court previously found the class is sufficiently numerous and joinder would be impracticable. Dkt. 66 at 11. To date, the class remains open and is defined as "[a]ll arriving asylum-seekers who have passed a credible fear interview and who are *or will be* detained at the Buffalo Federal Detention Facility and who have not been granted parole." *Id.* at 23 (emphasis added). Moreover, as this Court has concluded, common questions of law predominate the certified class claims. Dkt. 66 at 14 ("Petitioners seek compliance with certain procedural safeguards when adjudicating parole . . . determinations. Those same procedural safeguards are sought on behalf of all asylum-seekers.").

The typicality requirement also remains satisfied, as this Court previously concluded. All class claims "arise out of [the Government's] failure to follow the dictates of the ICE Directive," and, accordingly, "Petitioners' claims satisfy the typicality requirement." Dkt. 66 at 16. And finally, the class representative, Mr. Barrios Ramos, has continued vigorously to prosecute this case on behalf of the certified class.

Accordingly, class certification was appropriate in late 2017 and remains appropriate through settlement.

II. The Proposed Settlement Is Fair, Reasonable, and Adequate

District courts are guided by Rule 23's requirements to review proposed class action settlement agreements and determine whether they are substantively fair. Rule 23 requires parties

[8] The Court also initially certified a subclass of members who were subjected to an unlawfully prolonged detention of more than six months without a bond hearing. *See* Dkt. 66 at 20. However, the subclass was decertified on September 24, 2019, and is not relevant here. Dkt. 151 at 21–28.

to provide the court "with information sufficient to enable it to determine whether to give notice of the proposal to the class." Fed. R. Civ. P. 23(e)(1)(A).

With its 2018 amendments, Rule 23 lists four factors for the district court to consider as part of its fairness inquiry: "(1) adequacy of representation, (2) existence of arm's-length negotiations, (3) adequacy of relief, and (4) equitableness of treatment of class members." *In re GSE Bonds Antitrust Litig.*, 19-cv-1704 (JSR), 2019 WL 6842332, at *1 (S.D.N.Y. Dec. 16, 2019) (*citing* Fed. R. Civ. P. 23(e)(2)).

The Advisory Committee Notes to the 2018 amendments indicate that the above-referenced factors "were intended to supplement rather than displace" those developed by the courts prior to the amendment to assess the fairness of proposed class settlements. *Id.* (*citing* Fed. R. Civ. P. 23, Subdiv. (e)(2) advisory committee's note to 2018 amendments). In the Second Circuit, district courts have long been guided by the *Grinnell* factors to determine whether a proposed settlement is substantively fair. Those factors are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

Accordingly, district courts in the Second Circuit consider the Rule 23 factors, as well as the *Grinnell* factors, in evaluating the fairness of proposed class settlements. *See, e.g., id.* (noting "the Court considers both sets of factors in its analysis"); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("The Court first considers the

Rule 23(e)(2) factors and then considers the [Second Circuit's] additional *Grinnell* factors not otherwise addressed by the Rule 23(e)(2) factors.").

As addressed below, all relevant factors set forth in both Rule 23 and *Grinnell* support judicial approval of the proposed Settlement Agreement.

A. The Class Representatives and Class Counsel have Adequately Represented the Class

Rule 23 requires courts to consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2). Here, Petitioners stand on the representations set forth in Petitioners' granted motion for class certification—that class counsel is qualified, experienced, and more than capable of conducting this litigation wholly for the benefit of the certified class. *C.f. Charron v. Pinnacle Group N.Y. LLC*, 874 F. Supp. 2d 179, 194 (S.D.N.Y. 2012) ("As recognized in this Court's Certification Order, Class Counsel are 'qualified, experienced and more than able to conduct this litigation, no matter how complicated[.]]" (alteration in original) (internal citation omitted).

When this Court appointed class counsel on December 19, 2017, it found Petitioners' "counsel have, without question, demonstrated qualified and experienced legal representation in this matter;" that "Petitioners' counsel are familiar with and experienced in litigating federal civil rights cases in general, as well as the immigration issues specific to this case"; and that Petitioners' counsel have undertaken "substantial investigative work in developing this case." Dkt. 66 at 19. From commencement of this action, through and including the parties' extensive settlement negotiations, class counsel have continued vigorously to prosecute the interests of the certified class for the benefit of all its members.

B. The Settlement Agreement Is the Product of Extensive Arm's-Length Negotiations, Absent Fraud or Collusion

Rule 23 also requires courts to consider whether the proposed settlement was negotiated at arm's length. *See* Fed. R. Civ. P. 23(e)(2)(B). There is a presumption that a proposed settlement is fair, adequate, and reasonable when it is "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc.*, 396 F.3d at 116.

Here, the parties' negotiated the proposed Settlement Agreement in good faith and at arm's length. The Settlement Agreement follows extensive litigation, including thorough fact-finding and substantial motion practice, over the course of several years. The Settlement Agreement is the product of years of negotiations involving numerous settlement proposals exchanged and carefully considered by the parties, who have vigorously sought to advance their own interests. The outcome of such a thorough, arm's-length negotiation is the parties' proposed Settlement Agreement: an agreement that all parties believe will fairly resolve all claims in this action.

C. Considering the Risk of a Litigated Outcome and the Efficacy of the Proposed Settlement, the Relief Provided by the Settlement Is Fair, Reasonable, and Adequate

In addition to the procedural aspects of the Settlement Agreement, the Court also must conduct a "'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23(e)(2)(C)–(D) advisory committee's note to 2018 amendments. This inquiry focuses on many of the traditional *Grinnell* factors, including the risks and costs of litigation, the extent of discovery completed, and the reasonableness and quality of relief provided. *Id.*; *see also Wal-Mart Stores, Inc*, 396 F.3d at 117–19. Courts also consider whether attorneys' fees have been negotiated. Fed. R. Civ. P. 23(e)(2)(C)(iii).

As a preliminary matter, the Court has thoroughly considered and adjudged the relief provided for in the Settlement Agreement to be adequate: it mirrors the relief requested and

granted in the Court's November 17, 2017 Decision and Order granting Petitioners' motion for a preliminary injunction. There, the Court directed Respondents to adjudicate their parole authority in view of their obligations under the Parole Directive. Dkt. 56 at 65. The proposed Settlement Agreement provides for just the same, effective immediately upon the Court's final approval, for a period of three years from the date of final approval or until revocation, rescission, or amendment of the Parole Directive.

Furthermore, the complexity of this case, the inherent risks associated with continued litigation and trial, and the significant expense and delay that would result from continued litigation, all favor settlement of this action. In addition, the Settlement Agreement contains no award of attorneys' fees or costs, with each side bearing their own expenses fully to resolve Petitioners' injunctive and declaratory claims.

In addition, the parties engaged in thorough fact-finding throughout the pendency of this action. Indeed, the parties even stipulated to the completeness of the factual record before the Court prior to having submitted their respective motions for summary judgment. Dkt. 164 at 3–4.

For the above additional reasons, this Court should preliminarily approve the proposed settlement.

D. The Settlement Agreement Treats Class Members Equitably Relative to Each Other

Rule 23 also advises courts to consider whether a proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

Relevant to the instant action is "whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D) advisory committee's note to 2018 amendments. Where "the scope of the release applies uniformly to . . .

class members," the Court may find this factor as weighing in favor of granting approval. *See In re Payment Card Interchange Fee and Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 47.

In this case, the Settlement Agreement does not differentiate between class members; rather, it prescribes for uniform treatment of all class members. For these reasons as well, the Court should preliminarily approve the proposed Settlement Agreement.

* * *

For the reasons set forth above, the Settlement Agreement satisfies Rule 23(e)(2), as the proposed settlement meets the standards set forth by the factors delineated in the Federal Rules and those enumerated in *Grinnell*. The Settlement Agreement is a result of years' worth of litigation and entered into by knowledgeable parties and counsel, who have advocated vigorously throughout the pendency of this action. It is a product of arm's-length negotiations and a reasonable outcome for all parties. Furthermore, disposition by settlement will prevent the unnecessary delay, expense, and risk of continued litigation. For these reasons, put simply, the Settlement Agreement represents a fair, reasonable, and adequate resolution to this case.

III. The Proposed Notice Provides Adequate Information Regarding Settlement

"The decision to give notice of a proposed settlement to the class is an important event[,] [and] [i]t should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object."[9] *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 28 n.21 (quoting Fed. R. Civ. P. 23(e)(1) advisory committee's note to 2018 amendment). "[N]otice must fairly apprise the . . .

[9] "As the Supreme Court has explained, Rule 23 'provides no opportunity for . . . (b)(2) class members to opt out'" of a certified class. *McPherson v. Lamont*, No. 3:20cv534 (JBA), 2020 WL 4198749, at *2 (D. Conn. July 20, 2020) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362 (2011)). "That is because the 'key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Id.* (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 360).

members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceeding." *Wal-Mart Stores, Inc.*, 396 F.3d at 114 (citation omitted).

Moreover, a notice of settlement in a class action "will satisfy due process when it 'describe[s] the terms of the settlement generally,' . . . and provide[s] specific information regarding the date, time, and place of the final approval hearing.'" *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 58 (first citing *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993); then citing *Clark v. Ecolab Inc.*, Nos. 07-CV-8623, 04-CV-4488, 06-CV-5672, 2009 WL 6615729, at *6, (S.D.N.Y. Nov. 17, 2009)). "Notice is adequate if it may be understood by the average class member." *Wal-Mart Stores, Inc.*, 396 F.3d at 114 (internal citation omitted).

Here, Petitioners' proposed Notice of Proposed Settlement satisfies the requirements of Rule 23 to provide adequate information regarding the proposed settlement. *See* Exhibit B: Notice of Proposed Settlement. Specifically, the notice describes, in plain and clear terms, basic information including brief descriptions of this action, the proposed settlement, the class definition, class claims, rights of class members under the Settlement Agreement, the date and location of the final approval hearing, the rights of class members to object to the Settlement Agreement, and instructions for contacting class counsel. *See id.* The notice further explains how class members can comment on, or object to, the Settlement Agreement before the Court decides whether to grant final approval. *See id.*

Accordingly, the proposed notice will fairly apprise class members of this action, the content of the proposed settlement, and their rights under same. Under these circumstances, the content of the proposed notice should be approved.

IV. The Method of Notice of Settlement Is Reasonable

Rule 23 provides that "[t]he court must direct notice in a reasonable manner . . . if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B).

Here, the certified class comprises "[a]ll arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility [in Batavia, New York,] and who have not been granted parole." Dkt. 66 at 23. Petitioners propose that Respondents post the Notice of Settlement in areas prominently visible to civil immigration detainees at the Buffalo Federal Detention Facility, to inform class members of this action, the proposed settlement, the class definition, class claims, rights of class members under the Settlement Agreement, the date and location of the final approval hearing, the rights of class members to object to the Settlement Agreement, and instructions for contacting class counsel.

Accordingly, the proposed method of public notice is reasonable and tailored sufficiently to reach class members at the Buffalo Federal Detention Facility, to inform them of this action and their rights in connection with the proposed settlement.

In addition to the method of notice described above, Petitioners' counsel intends to circulate the Notice of Settlement to: (i) local practitioners and organizations who are working, or frequently work, with asylum-seekers at the Buffalo Federal Detention Facility or the Batavia Immigration Court (*see, e.g.*, Dkt. 38-19 (Decl. of Desiree Lurf)); and (ii) national practitioners, advocates, and other organizations which provide immigration and legal services or representation for matters consonant to the legal issues at the center of the instant action.

V. The Court Should Schedule a Fairness Hearing

In view of the above, Petitioners respectfully request this Court set a schedule, including a fairness hearing, for further consideration of the proposed Settlement Agreement. Specifically,

Petitioners request that such schedule include a date by which notice shall be administered in accordance with the terms of the Settlement Agreement; a date by which any class members' written comments or objections to the Settlement Agreement must be received by the Clerk of the Court or by class counsel; a date by which class counsel must file, using the Court's CM/ECF system, any and all comments or objections received by class counsel; a date by which Petitioners' motion and supporting papers in support of final approval of the Settlement Agreement shall be filed; and a date and time at which a fairness hearing will be held.

CONCLUSION

For the foregoing reasons, the Court should: (i) grant Petitioners' Motion; (ii) approve the form and manner of notice of the Settlement Agreement; and (iii) schedule a final hearing to determine that the settlement is fair, reasonable, and adequate.

Dated: October 7, 2021
New York, New York

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CERTIFICATE OF SERVICE

I hereby certify that, on October 7, 2021, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of this court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

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