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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**CALEB AIONA, JOSHUA SHANE
BARTLETT, WALTER BETSCHART,
TYRIK DAWKINS, JOSHUA JAMES-
RICHARDS, TANIELA KINI KIN LATU,
RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY, AND
TIMOTHY WILSON, on their behalf, and
on behalf of all others similarly situated,**

Petitioners,

v.

**PATRICK GARRETT, WASHINGTON
COUNTY SHERIFF, in his official
capacity.**

Respondent.

Case No. 3:23-cv-01097-CL

**MOTION AND MEMORANDUM IN
SUPPORT OF PROVISIONAL CLASS
CERTIFICATION**

**(EXPEDITED CONSIDERATION
REQUESTED)**

Introduction

The petitioners, through undersigned counsel, respectfully request that this proceeding be provisionally certified a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the following class:

All indigent persons facing criminal charges in Washington County, Oregon, who are housed in the Washington County Detention Center or are otherwise in custody because they have restrictions on their liberty in the community, and who have not had an attorney appointed to their case or have had an attorney appointed to their case who subsequently withdrew from the case and no substitute counsel has been appointed.

Because the Court has not yet screened and ordered the habeas petition served on the respondent, undersigned has not sought the position of opposing counsel as required by Local Rule 7-1.

This case is ideally suited for class certification. All class members are in custody without an appointed lawyer and have thus been deprived of their right to counsel and their right to equal protection and due process. Accordingly, all class members face irreparable harm based on a common legal question: whether holding indigent defendants in custody without counsel based on pending criminal charges violates their federal constitutional rights under the Sixth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

In addition to the common questions of law, class certification in the habeas corpus context provides the optimal form of litigation because: 1) the class members are too numerous for ease of individual litigation; 2) the cumulative loss of liberty and public expense is great; and 3) representation by counsel on a class basis assures equal treatment of petitioners while avoiding the inefficiencies of separate counsel for each class member. All members of the class face sufficient irreparable harm to have common interest in immediate injunctive relief.

A. Legal Standards For Class Certification

As with other civil actions, “a class action may lie in habeas corpus.” *Cox v. McCarthy*, 829 F.2d 800, 804 (9th Cir. 1987) (citing *Mead v. Parker*, 464 F.2d 1108, 1112-13 (9th Cir. 1972)); *see also United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125-27 (2d Cir. 1974); *Williams v. Richardson*, 481 F.2d 358, 361 (8th Cir. 1973). The principal purpose of a class action is “efficiency and economy of litigation.” *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553 (1974). When considering the certification of a class, the Court does not assess the merits of the claims. *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974); *Stockwell v. City & County of San Francisco*, 749 F.3d 1107, 1111-12 (9th Cir. 2014). All of the requirements under Rule 23 are met in this case. Therefore, this action should proceed as a class action on behalf of indigent persons who face criminal charges in Washington County, Oregon, who are in jail or on restrictive conditions in the community, who do not have an attorney representing them on their case, and who face irreparable harm from their unconstitutional custody while subject to criminal prosecution. While in custody, these individuals are unable to receive advice or advocacy from counsel during the pendency of their charges. Moreover, they have been forced to proceed with uncounseled hearings where they must choose to either make uncounseled statements or have no opportunity to be heard. As a whole, class members suffer from grave deprivation of counsel and of liberty in violation of their federal constitutional rights.

B. The Prerequisites For Class Certification Under Rule 23(a) Are Satisfied.

Rule 23 petitioners seeking to represent a class must first establish that the proposed class meets the following four requirements of Rule 23(a):

- (1) the class is so numerous that joinder of all members is impracticable;

- (2) common questions of law or fact exist among the class-members;
- (3) the claims of the class representative are typical of the claims of the class; and
- (4) the class representative will fairly and adequately represent the interests of the class.

These four prerequisites to a class action are commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 828 n.6 (1999) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997)).

1. The Numerosity Requirement Is Met.

Rule 23(a) requires that members of a class be sufficiently numerous that joinder of all members of the class is impracticable. *Amchem*, 521 U.S. at 613. In establishing this element, the representative need not show that the number of class members is so large that it would be impossible to join all of them; “impracticability does not mean impossibility.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). There is no fixed number of class members that either necessitates or precludes the certification of a class. *General Tel. Co. of the Northwest v. EEOC*, 446 U.S. 318, 330 (1980). “[A]s a ‘rough rule of thumb,’ approximately forty members is sufficient to satisfy the numerosity requirement.” *Oregon Laborers-Emp’rs Health & Welfare Tr. Fund v. Philip Morris*, 188 F.R.D. 365, 372 (D. Or. 1998) (citations omitted).

In this case, the class includes all indigent persons who are now or will be facing criminal charges in Washington County, Oregon, who are in custody without an appointed attorney. Based on records at the time of this filing, the number of potential class members is at least 288 persons, including 56 individuals facing criminal proceedings in Washington County jail without an attorney and 232 individuals in Washington County who are not in jail but have restraints placed on their liberty that constitute custody and are also without an attorney. *See Hensley v. Municipal Court*, 411 U.S. 345, 349 (1973) (state restrictions from release on recognizance pending execution

of sentence constitute custody under the federal habeas corpus statute); *Jones v. Cunningham*, 371 U.S. 236, 236 (1963) (same for state parole conditions). If litigated separately, the demands on the system to process individual motions and petitions would not only be extraordinarily inefficient, the results would be unfair because defendants who were unable to pursue litigation would be denied the remedy obtained by others.

In analyzing this element, courts are to consider not just the mere number of potential petitioners, but also such factors as “degree of sophistication, and class members’ reluctance to sue individually” in determining the impracticability of joinder. *Philip Morris*, 188 F.R.D. at 372-73 (citing *Jordan v. Los Angeles*, 669 F.2d 1311, 1319 (9th Cir.1982), *vacated on other grounds*, 459 U.S. 810 (1982)). The Supreme Court has noted the lack of sophistication and other impediments to indigent criminal defendants’ individual advocacy that militate in favor of class treatment. *See Halbert v. Michigan*, 545 U.S. 605, 607 (2005) (“Persons in Halbert’s situation, many of whom have little education, learning disabilities, and mental impairments, are particularly handicapped as self- representatives.”). Here, the numerosity requirement is met by the raw number of indigent defendants affected, the efficiency and fairness of litigating common legal issues, and the need to protect defendants whose circumstances make individual advocacy difficult and unlikely.

2. *The Questions Of Law Presented Are Common To The Class.*

The Ninth Circuit has repeatedly stated that the “commonality” requirement of Rule 23(a)(2) is “construed permissively.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)), *abrogated on other*

grounds by Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022).¹ It is satisfied by the existence of “shared legal issues” with divergent facts, or a “common core of salient facts,” with “disparate legal remedies.” *Rodriguez*, 591 F.3d at 1122 (quoting *Hanlon*, 150 F.3d at 1019). The commonality requirement is satisfied where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated. *Jordan*, 669 F.2d at 1320. As the Ninth Circuit explained, commonality does not require that class members are identically situated. *Rodriguez*, 591 F.3d at 1122 (“It is not necessary that ‘[a]ll questions of fact and law . . . be common to satisfy the rule.’” (quoting *Hanlon*, 150 F.3d at 1019)).

In *Rodriguez*, the putative class consisted of all immigration detainees held for more than six months without a bond hearing. *Id.* at 1111. The Ninth Circuit rejected the government’s argument that the various factual differences, such as variations in the detention authority and release status, defeated commonality. *Id.* Rule 23(a) does not require that petitioners show that all class members have identical factual and legal claims. *See In re First All. Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006) (“When the modern class action rule was adopted, it was made clear that ‘common’ did not require complete congruence.”); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (differences among class members regarding merits of individual cases were “simply insufficient to defeat the propriety of class certification”); *Celano v. Marriott Int’l*, 242 F.R.D. 544, 551 (N.D. Cal. 2007); *see also Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993) (the need for subsequent individual proceedings “does not supply a basis for concluding that [the named plaintiff] has not met the commonality requirement”); *Doe v. Los Angeles Unified Sch.*

¹ Although the substantive immigration law has shifted, the class certification aspect of *Rodriguez* remains good law. *See Rodriguez Diaz*, 53 F.4th at 1199 (noting subsequent developments in immigration law).

Dist., 48 F. Supp. 2d 1233, 1241 (C.D. Cal. 1999) (“[C]ommonality exists if plaintiffs share a common harm or violation of their rights, even if individualized facts supporting the alleged harm or violation diverge.”). The existence of one or more common facts or legal claims, as is present here, is sufficient. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012), *overruled on other grounds by Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022).

Additionally, where, as here, “the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.” *Philip Morris*, 188 F.R.D. at 373 (citing Newberg & A. Conte, *Newberg on Class Actions* § 3.10, at 51 (3d ed. 1992)). Stated another way, commonality is satisfied where the actions complained of are the product of centralized decision-making. *Staton v. Boeing Co.*, 327 F.3d 938, 956 (9th Cir. 2003); *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (“commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.”), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). In *Sacora v. Thomas*, Judge Marsh found that commonality was satisfied when federal inmates had shared legal questions concerning the legality of the BOP’s prerelease policies and practices implementing the Second Chance Act. No. CV 08-578-MA, 2009 WL 4639635, at *10 (D. Or. Dec. 3, 2009). Although Judge Marsh found the BOP’s regulation violated the Administrative Procedure Act, the Ninth Circuit affirmed his denial of relief based on informal rules in *Sacora v. Thomas*, 628 F.3d 1059, 1078 (9th Cir. 2010). However, both in the district court and on appeal, the common issues of law were deemed appropriate for class litigation.

Similarly, in this case, each class member raises the same fundamental question of law: whether holding indigent defendants in custody without counsel based on pending criminal charges violates their federal constitutional rights under the Sixth and Eighth Amendments and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Each class member is deprived of their right to counsel and their liberty while they languish in custody, either in jail or on restrictive conditions in the community. The deprivation is based on the state's failure to provide court-appointed counsel to indigent criminal defendants that applies to all class members, not on individual characteristics. The commonality requirement is satisfied.

3. *The Claims Of The Representative Petitioners Are Typical Of The Claims Of The Class.*

Although commonality and typicality tend to merge, the purpose of the typicality requirement is to ensure that the claims or defenses of the representative petitioners are typical of the claims or defenses of the class. *Staton*, 327 F.3d at 957 (citing *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982)); *Philip Morris*, 188 F.R.D. at 373. Typicality, like commonality, is “‘permissive’ and requires only that the representative’s claims are ‘reasonably co-extensive with those of absent class member; they need not be substantially identical.’” *Rodriguez*, 591 F.3d at 1124 (quoting *Hanlon*, 150 F.3d at 1020).

In *Rodriguez*, although the petitioners and putative class were at different points in the removal process, and hence did not raise identical claims, the typicality requirement was satisfied because they were “alleged victims of the same” governmental practice. *Id.* A representative is typical of the class where there is a nexus between the petitioner’s injury and the injuries suffered by the class members. *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977). “[A] nexus will be found where the named plaintiffs’ claims stem from the same event, practice or course of conduct that forms the basis of the class claims and is based on the same legal or

remedial theory.” *Bower v. Bunker Hill*, 114 F.R.D. 587, 594 (E.D. Wash. 1986) (internal citations omitted). The typicality requirement is satisfied where the respondent’s unlawful conduct was directed at or affected the class as a whole. *Rodriguez*, 591 F.3d at 1124. Significantly, even the representative’s release while putative class members remain in custody does not defeat typicality. *Id.* at 1124. Consequently, it is the nature of the claim or defense of the class representative, and not the facts related to the individual class member, that provides the necessary nexus. *Philip Morris*, 188 F.R.D. at 374.

Here, the petitioners’ and the class members’ claims arise from the same government conduct, namely the state’s failure to provide court-appointed counsel to indigent defendants in custody. The petitioners and the class members share similar injuries because they are all deprived of their right to counsel and their liberty. Although individual facts may bear on whether Washington County chooses to keep a defendant in jail or on restrictive conditions in the community, the predicate question is whether holding indigent defendants in custody without counsel based on pending criminal charges violates their federal constitutional rights under the Sixth and Eighth Amendments and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, which is typical of all class members. *See LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) (“The minor differences in the manner in which the representative’s Fourth Amendment rights were violated does not render their claims atypical of those of the class.”). The class representatives present claims typical of the class.

4. *The Representatives and Class Counsel Will Fairly And Adequately Advocate The Interests Of The Class.*

“Whether the class representatives satisfy the adequacy requirement depends on ‘the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.’” *Rodriguez*,

591 F.3d at 1125 (quoting *Walters*, 145 F.3d at 1046). Rule 23(a)(4) requires that the class representatives must “fairly and adequately protect the interests of the class.” *Amchem*, 521 U.S. at 613. To satisfy the requirement of adequate representation, (1) the proposed class representative must not have conflicts of interest with the proposed class, and (2) class counsel must be qualified and competent. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1238-39 (9th Cir. 1998); *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

In this case, the representative petitioners will fairly and adequately advocate the interests of the class. They have signed declarations indicating that the duties of a class representative have been explained to them and that, if appointed, they will stay informed about the case, stay in contact with class counsel, and put the interests of the class first. *See* Exhibits A-C, Declarations of Alex Santiago Sarat Xotoy, Richard Owens, Jr., and Leon Michael Polaski. Undersigned counsel is well qualified to represent the interests of the class. *See Sacora*, 2009 WL 4639635, at *11 (“Given [the Oregon Federal Public Defender’s] experience in handling the issues presented by the previous and pending habeas corpus petitions, there is no doubt that counsel will vigorously prosecute this action on behalf of the class as required under Rule 23(a)(4).”). The Oregon Federal Public Defender has a long history of representing large groups of petitioners in § 2241 litigations and has extensive experience litigating to enforce indigent criminal defendants’ rights generally. *See* Exhibit D, Declaration of Stephen R. Sady. Further, the firm of Sugerman Dahab appear on behalf of the petitioners on a pro bono basis and are experts in class action litigation. *See* Exhibit E, Declaration of Nadia H. Dahab. All representatives and counsel share the interest of the class in ensuring that defendants are released and ultimately receive court-appointed counsel. Because the resolution of the case depends on purely legal issues, there is no prohibitive conflict between the representative petitioners and class members.

C. A Class Action Is Maintainable Under Each Of The Requirements Of Rule 23(b)(2).

In addition to satisfying the prerequisites of Rule 23(a), the petitioners meet the requirements of Rule 23(b)(2) because the state's actions affect the class as a whole, thereby making injunctive and declaratory relief appropriate. For a class to be certified under Rule 23(b)(2), there must be a showing that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting to the class as a whole." Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) is satisfied if class members complain of a pattern or practice that is generally applicable to the class as a whole. *See Walters*, 145 F.3d at 1047. Although the petitioners maintain that this action can meet the standards of Rule 23(b)(1) and (3), "questions of manageability and judicial economy are irrelevant to 23(b)(2) class actions." *Rodriguez*, 591 F.3d at 1126 (quoting *Forbush*, 994 F.2d at 1105); *see Elliott v. Weinberger*, 564 F.2d 1219, 1229 (9th Cir.1977) ("By its terms, Rule 23 makes manageability an issue important only in determining the propriety of certifying an action as a (b)(3), not a (b)(2), class action."), *aff'd in pertinent part, rev'd in part sub nom. Califano v. Yamasaki*, 442 U.S. 682 (1979).

In *Rodriguez*, the Court rejected the government's argument that Rule 23(b)(2) was not satisfied because some class members may not ultimately be entitled to relief. 591 F.3d at 1126. The Court reasoned that "[t]he rule does not require us to examine the viability or bases of class members' claims for injunctive relief, but only to look at whether class members seek uniform relief from a practice applicable to all of them." *Rodriguez*, 591 F.3d at 1125. "[I]t is sufficient" to meet the requirements of Rule 23(b)(2) that "class members complain of a pattern or practice that is generally applicable to the class as a whole." *Rodriguez*, 591 F.3d at 1125 (quoting *Walters*, 145 F.3d at 1047; then citing *Alliance to End Repression v. Rochford*, 565 F.2d 975, 979 (7th Cir.

1977)). Injunctive relief is appropriate under Rule 23(b)(2) where the government agency engages in a pattern or practice of conduct adverse to the class. *LaDuke*, 762 F.2d at 1330. Even though some members of the putative class may have suffered different injuries from the challenged practice, such variables do not prevent the class from meeting the requirements of Rule 23(b)(2). *Rodriguez*, 591 F.3d at 1124; *Walters*, 145 F.3d at 1047.

Here, the requirements of Rule 23(b)(2) are easily satisfied. The petitioners allege that all class members have been or will be subject to custody by the Washington County Sheriff pending criminal proceedings for which they have not been appointed an attorney. The class members seek the same relief, a grant of the writ of habeas corpus, release from custody, and a declaratory judgment that their constitutional rights have been violated. Rule 23(b)(2) requires no more. *Rodriguez*, 591 F.3d at 1125 (requirements of Rule 23(b)(2) met although various statutes will govern class members' hearing, because "all class members seek the exact same relief as a matter of statutory or, in the alternative, constitutional right." (citing *Walters*, 145 F.3d at 1047)); *Marisol A. v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997) (certifying under Rule 23(b)(2) class of children seeking declaratory and injunctive relief from systemic failures in child welfare system despite differing harms experienced by class members).

D. Mootness and Ripeness Are Not Bars To Litigation As A Class Action.

Mootness, much less the potential for mootness, is not a basis to deny class certification. *Rodriguez*, 591 F.3d at 1117-118; *Gorbach v. Reno*, 219 F.3d 1087, 1092 n.24 (9th Cir. 2000) (en banc) ("a class action does not become moot merely because it has become moot as to a named plaintiff.") (citing *Sosna v. Iowa*, 419 U.S. 393, 402 (1975)). An action brought on behalf of a class does not become moot upon expiration of a named plaintiff's substantive claim because the proposed representative of the class retains a "personal stake" in obtaining class certification

sufficient to assure that Article III values are not undermined. *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 388 (1980). Moreover, in a case like this, the “inherently transitory” exception to the mootness doctrine applies to allow the Court to reach the merits even if the named petitioners have received “some relief” before class certification. *See Doe v. Trump*, 335 F.R.D. 416, 429 (D. Or. 2020) (citing *Nielson v. Preap*, 139 S. Ct. 954 (2019)).

In addition, the “capable of repetition, yet evading review” exception allows a named plaintiff to litigate the class certification issue despite loss of his personal stake in the outcome of the litigation. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975); *Geraghty*, 445 U.S. at 398; *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 752-757 (1976). Because the litigant faces some likelihood of becoming involved in the same controversy in the future, vigorous advocacy may continue on these grounds. *Geraghty*, 445 U.S. at 398.

For example, in *Gerstein v. Pugh*, the Supreme Court “assumed that the named plaintiffs were no longer in custody awaiting trial at the time the trial court certified a class of pretrial detainees. There was no indication that the particular named plaintiffs might again be subject to pretrial detention.” *Geraghty*, 445 U.S. at 399 (interpreting *Gerstein*). Nevertheless, the Court held that the case was not moot, because:

The length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release on recognizance, dismissal of the charges, or a guilty plea, as well as by acquittal or conviction after trial. It is by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain. The attorney representing the named respondents is a public defender, and we can safely assume that he has other clients with a continuing live interest in the case.

Gerstein, 420 U.S. at 110-11 n.11. Likewise, in *Sosna v. Iowa*, the Supreme Court held that even if a named plaintiff’s action becomes moot, mootness does not occur so long as the controversy

remains alive for the class of persons that the plaintiff has been certified to represent. 419 U.S. at 393.

Similarly, the petitioners and their representatives have a continuing interest in protecting all class members regardless of events in individual cases. And the ripeness doctrine is not a bar to class certification. All the class members' claims are ripe, either because they would be released from jail or their current restrictive conditions in the community would be lifted. Furthermore, all class members have immediate interests in their release from custody and a declaratory judgment that their constitutional rights have been violated.

Conclusion

This action should proceed as a class action because the requirements of Rule 23 have been met. In the absence of certification, the class members would be required to initiate individual suits raising identical claims. The injunctive and declaratory relief requested affects all class members. Proceeding as a class would provide for fair and efficient consideration of the class members' claims. For the foregoing reasons, the petitioners respectfully request that the Court:

1. Order the clerk's office serve to the instant motion on the respondent, along with the habeas petition and the motion for order to show cause (ECF 1, 4);
2. Enter an order provisionally certifying the proposed class;
3. Appoint Alex Sarat Xotoy, Richard Owens, Jr., and Leon Michael Polaski as Rule 23 class representatives, and;
4. Appoint undersigned counsel as class counsel.

Respectfully submitted this August 2, 2023.

/s/ Fidel Cassino-DuCloux
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/s/ Stephen R. Sady
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**CALEB AIONA, JOSHUA SHANE
BARTLETT, WALTER BETSCHART,
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RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY, AND
TIMOTHY WILSON, on their behalf, and
on behalf of all others similarly situated,**

Case No. 3:23-cv-01097-CL

**DECLARATION OF PETITIONER
ALEX SANTIAGO SARAT XOTOY IN
SUPPORT OF PETITIONERS' MOTION
FOR CLASS CERTIFICATION**

Petitioners,

v.

**PATRICK GARRETT, WASHINGTON
COUNTY SHERIFF, in his official
capacity.**

Respondent.

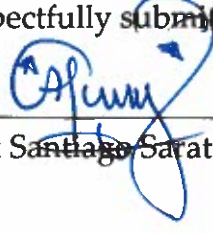
I, Alex Santiago Sarat Xotoy, declare under penalty of perjury as follows:

1. I make this declaration based upon my own personal knowledge. If called to testify to the following facts, I would and could competently do so.
2. I am one of the named petitioners and proposed class representatives in the above-captioned case. I make this declaration in support petitioners' motion for class certification.
3. I have been informed of the responsibilities of a class representative.
4. In general terms, I understand the claims in the case and am keeping informed about the progress of the case.
5. I am able and willing to serve as a class representative. I have no known conflicts with any members of the class.
6. If appointed, I will stay informed about the case. I will keep in contact with my lawyers. I will put the interests of the class first.
7. I have been facing criminal charges in Washington County Circuit Court since December 5, 2022, and do not have a lawyer representing me on those charges. I was held for months in the Washington County Detention Center without a lawyer. I am now in the community under restrictions. I am innocent yet cannot prove it without the help of a lawyer. Because of the restrictions on my liberty, I cannot even go to the grocery store or laundromat.
8. I have been provided a copy of this declaration in Spanish.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 1 day of 08, 2023.

Respectfully submitted,



Alex Santiago Sarat Xotoy

Fidel Cassino-DuCloux
Defensor público federal
Stephen R. Sady
Defensor público federal adjunto principal
Julie Vandiver, Jessica Snyder,
Robert Hamilton, Michael Benson,
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Abogados de los demandantes

**EN EL TRIBUNAL DE DISTRITO DE LOS ESTADOS UNIDOS
PARA EL DISTRITO DE OREGÓN**

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BARTLETT, WALTER BETSCHART,
TYRIK DAWKINS, JOSHUA JAMES-
RICHARDS, TANIELA KINI KIN LATU,
RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY Y
TIMOTHY WILSON, en nombre propio, y
en nombre de todos quienes estén en
situación similar,**

Causa No. 3:19-cv-00256-MO

**DECLARACIÓN DEL DEMANDANTE
ALEX SANTIAGO SARAT XOTOY
PARA AVALAR LA MOCIÓN DE
CERTIFICACIÓN COLECTIVA DE LOS
DEMANDANTES**

Demandantes,

vs.

**PATRICK GARRETT, ALGUACIL DEL
CONDADO DE WASHINGTON, a título
oficial.**

Demandado.

Yo, Alex Santiago Sarat Xotoy, declaro so pena de perjurio lo que sigue a continuación:

1. Hago esta declaración en base a mi leal saber y entender. Si me convocan para testificar sobre los siguientes hechos, lo haría y podría hacerlo competentemente.

2. Soy uno de los demandantes identificados y de los representantes propuestos del colectivo en la causa arriba mencionada. Hago esta declaración para avalar la moción de certificación colectiva de los demandantes.

3. Me han informado sobre las responsabilidades de ser un representante del colectivo.

4. En líneas generales, entiendo los reclamos en la causa y me mantengo informado sobre el progreso de la causa.

5. Soy capaz de prestar servicio como representante del colectivo y estoy dispuesto a hacerlo. No tengo ningún conflicto conocido con ningún miembro del colectivo.

6. Si me nombran, permaneceré informado sobre la causa. Voy a mantenerme en contacto con mis abogados. Pondré en primer lugar los intereses del colectivo.

7. Soy un acusado en una causa penal en el Tribunal de circuito del condado de Washington desde el 5 de diciembre de 2022, y no tengo un abogado que me represente en dichas acusaciones. Estuve detenido durante meses en el Centro de detención del condado de Washington, sin un abogado. Ahora estoy en la comunidad, con restricciones. Soy inocente, pero no puedo demostrarlo sin la ayuda de un abogado. Por

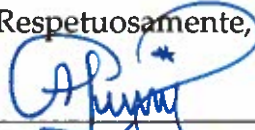
causa de las restricciones a mi libertad, ni siquiera puedo ir al supermercado o a la lavandería.

8. Me han dado una copia en español de esta declaración.

Por la presente, declaro que la afirmación que figura más arriba es auténtica, a mi leal saber y entender, y que entiendo que se hace para que la usen como prueba en el tribunal y que está sujeta a las penas por perjurio.

Con fecha de este día 1 de 8 de 2023.

Respetuosamente,



Alex Santiago Sarat Xotoy

Fidel Cassino-DuCloux

Federal Public Defender

Stephen R. Sady

Chief Deputy Federal Public Defender

Julie Vandiver, Jessica Snyder,

Robert Hamilton, Michael Benson,

Peyton E. Lee, and Megha Desai

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Attorneys for Petitioners

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**CALEB AIONA, JOSHUA SHANE
BARTLETT, WALTER BETSCHART,
TYRIK DAWKINS, JOSHUA JAMES-
RICHARDS, TANIELA KINI KIN LATU,
RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY, AND
TIMOTHY WILSON, on their behalf, and
on behalf of all others similarly situated,**

Petitioners,

v.

**PATRICK GARRETT, WASHINGTON
COUNTY SHERIFF, in his official
capacity.**

Respondent.

Case No. 3:23-cv-01097-CL

**DECLARATION OF PETITIONER
RICHARD OWENS, JR. IN SUPPORT
OF PETITIONERS' MOTION FOR
CLASS CERTIFICATION**

I, Richard Owens, Jr., declare under penalty of perjury as follows:

1. I make this declaration based upon my own personal knowledge. If called to testify to the following facts, I would and could competently do so.

2. I am one of the named petitioners and proposed class representatives in the above-captioned case. I make this declaration in support of petitioners' motion for class certification.

3. I have been informed of the responsibilities of a class representative.

4. In general terms, I understand the claims in the case and am keeping informed about the progress of the case.

5. I am able and willing to serve as a class representative. I have no known conflicts with any members of the class.

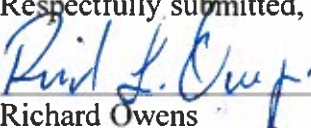
6. If appointed, I will stay informed about the case. I will keep in contact with my lawyers. I will put the interests of the class first.

7. I have been facing criminal charges in Washington County Circuit Court since June 12, 2023, and do not have a lawyer representing me on those charges. I am in custody at the Washington County Community Corrections Center.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 2nd day of August, 2023.

Respectfully submitted,


Richard Owens

Fidel Cassino-DuCloux
Federal Public Defender
Stephen R. Sady
Chief Deputy Federal Public Defender
Julie Vandiver, Jessica Snyder,
Robert Hamilton, Michael Benson,
Peyton E. Lee, and Megha Desai
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Robert_Hamilton@fd.org
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Peyton_Lee@fd.org
Megha_Desai@fd.org

Attorneys for Petitioners

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**CALEB AIONA, JOSHUA SHANE
BARTLETT, WALTER BETSCHART,
TYRIK DAWKINS, JOSHUA JAMES-
RICHARDS, TANIELA KINI KIN LATU,
RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY, AND
TIMOTHY WILSON, on their behalf, and
on behalf of all others similarly situated,**

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**PATRICK GARRETT, WASHINGTON
COUNTY SHERIFF, in his official
capacity.**

Respondent.

Case No. 3:23-cv-01097-CL

**DECLARATION OF PETITIONER
LEON MICHAEL POLASKI IN
SUPPORT OF PETITIONERS' MOTION
FOR CLASS CERTIFICATION**

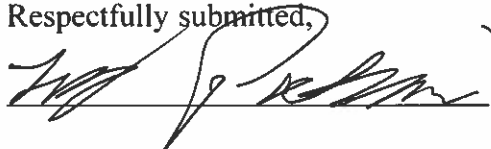
I, Leon Michael Polaski, declare under penalty of perjury as follows:

1. I make this declaration based upon my own personal knowledge. If called to testify to the following facts, I would and could competently do so.
2. I am one of the named petitioners and proposed class representatives in the above-captioned case. I make this declaration in support petitioners' motion for class certification.
3. I have been informed of the responsibilities of a class representative.
4. In general terms, I understand the claims in the case and am keeping informed about the progress of the case.
5. I am able and willing to serve as a class representative. I have no known conflicts with any members of the class.
6. If appointed, I will stay informed about the case. I will keep in contact with my lawyers. I will put the interests of the class first.
7. I have been facing criminal charges in Washington County Circuit Court since June 21, 2023, and do not have a lawyer representing me on those charges. I am in custody at the Washington County Detention Center.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 2nd day of August, 2023.

Respectfully submitted,


Leon Polaski

Stephen R. Sady
Chief Deputy Federal Public Defender
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Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**CALEB AIONA, JOSHUA SHANE
BARTLETT, WALTER BETSCHART,
TYRIK DAWKINS, JOSHUA JAMES-
RICHARDS, TANIELA KINI KIN LATU,
RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY, AND
TIMOTHY WILSON, on their behalf, and
on behalf of all others similarly situated,**

Petitioners,

v.

**PATRICK GARRETT, WASHINGTON
COUNTY SHERIFF, in his official
capacity.**

Respondent.

Case No. 3:23-cv-01097-CL

**DECLARATION OF STEPHEN R. SADY
IN SUPPORT OF CLASS
CERTIFICATION MOTION**

I, Stephen R. Sady, declare:

1. I am the Chief Deputy at the Federal Public Defender Office for the District of Oregon. I am a member of good standing of the Oregon State Bar, and counsel of record for petitioners in the above-captioned matter. I was a legal services attorney from 1977 to 1981. Since 1981, I have been an attorney with the Federal Public Defender Office. I have been the Chief Deputy for the last 40 years.

2. As required by FRCP 23(a)(4), this declaration addresses the adequacy of counsel. I ask that the Court appoint the Office of the Federal Public Defender and Sugerman Dahab as counsel in this case.

3. As a career public defender, I have extensive experience litigating on the behalf of the criminally accused and am able to understand the plight of the unrepresented. I also have experience in class action litigation, including:

- a. As a legal services attorney, I was the attorney for the class representative Charles La Duke in the successful class action for injunctive relief against immigration dragnet raids in immigration camps. *La Duke v. Castillo*, 455 F.Supp. 209 (E.D. WA 1978), class injunction affirmed sub nom. *La Duke v. Nelson*, 762 F.2d 1318 (9th Cir. 1985).
- b. I was class counsel for plaintiffs in *Crowell v. Smith*, 3:1981-cv-394 (D. Or. Nov. 4, 1981) (granting class certification and issuing consent decree regarding location of housing of federal detainees), consent decree amended, (D. Or. June 17, 2008).
- c. I, along with co-counsel David Sugerman, also represented the class of Bureau-of-Prisons inmates in *Sacora v. Thomas*, a class action challenge community placement rules. *Sacora v. Thomas*, 2009 WL 4639635 (D. Or. 2009) (class certification granted, regulation invalidated but relief denied on merits), *aff'd*, 628 F.3d 1059 (9th Cir. 2010).

4. I have also litigated on behalf of groups of petitioners with common legal issues under the federal habeas corpus statute in consolidated district court and appellate proceedings. *See, e.g., Cort v. Crabtree*, 113 F.3d 1081 (9th Cir. 1997) (consolidated habeas corpus appeal on

behalf of federal inmates); *Arrington v. Daniels*, 516 F.3d 1106, 1111 n. 3 (9th Cir. 2008) (describing consolidate habeas action with 18 petitioners); *Bottinelli v. Salazar*, 929 F.3d 1196 (9th Cir. 2019) (appeal regarding eight federal prisoners' joint petition for writ of habeas corpus). *See also United States v. Hernandez-Martinez*, 933 F.3d 1126 (9th Cir. 2019) (appeal regarding 23 defendants' motions for sentence reductions under 18 U.S.C. § 3582(c)(2)); *United States v. Padilla-Diaz*, 862 F.3d 856 (9th Cir. 2017) (appeal of three defendant's motions for sentence reductions under 18 U.S.C. § 3582(c)(2)).

5. I also have personal knowledge of the abilities and backgrounds of the Assistant Federal Public Defenders currently assisting on this matter: Julie Vandiver, Jessica Snyder, Michael Benson, Peyton Lee, Robert Hamilton, and Megha Desai. Because of their relationship with the proposed class representatives and their experience representing indigent defendants, they are qualified to serve as class counsel on this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 2nd day of August, 2023.

/s/ Stephen R. Sady
Stephen R. Sady
Chief Deputy Federal Public Defender

Fidel Cassino-DuCloux

Federal Public Defender

Stephen R. Sady

Chief Deputy Federal Public Defender

Julie Vandiver, Jessica Snyder,

Robert Hamilton, Michael Benson,

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Nadia H. Dahab, OSB No. 125630

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Attorneys for Petitioners

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

CALEB AIONA, JOSHUA SHANE
BARTLETT, WALTER BETSCHART,
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RICHARDS, TANIELA KINI KIN LATU,
RICHARD OWENS, LEON MICHAEL
POLASKI, ALEX SARAT XOTOY, and
TIMOTHY WILSON, individually and on
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Petitioners,

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PATRICK GARRETT, Washington County
Sheriff, in his official capacity,

Respondent.

Case No. 3:23-CV-01097-CL

**DECLARATION OF NADIA H. DAHAB
IN SUPPORT OF PETITIONERS'
MOTION FOR PROVISIONAL CLASS
CERTIFICATION**

I, Nadia H. Dahab, declare as follows:

1. I am an adult, and I reside in Oregon. I am counsel for Petitioners and the proposed class in the above-captioned matter. I have personal knowledge of the matters set forth in this declaration, and if called to testify thereto, I could and would competently do so.

2. I was admitted to practice in Oregon in 2012. I am also admitted to practice in the U.S. District Court for the District of Oregon, in the U.S. Court of Appeals for the Ninth Circuit, and in the Supreme Court of the United States.

3. Since 2015, I have focused my practice on representing plaintiffs in civil actions, including class actions. I have served as counsel or co-counsel on federal class actions since approximately 2015, including on securities and civil rights class actions in the U.S. District Court for the District of Oregon and the U.S. District Court for the District of Columbia. Those cases include, among others, *NECA-IBEW Pension Trust Fund v. Precision Castparts Corp.*, Case No. 3:16-cv-01756-YY (D. Or. 2017); *Doe #1 v. Trump*, No. 3:19-cv-01743-SI (D. Or. 2019); *Gomez v. Trump*, No. 1:20-cv-0141-APM (D.D.C. 2020); *Maney v. Brown*, 6:20-cv-00570-SB (D. Or. 2020); *Davis v. Multnomah County*, 3:20-cv-2041-SV (D. Or. 2021). I have also served as class counsel on class actions in Oregon state court, *see Stewart v. Albertsons Cos., Inc.*, No. 16CV15125 (Mult. Cty. Cir. Ct.), and have worked on appeals of class action matters in both state and federal court.

4. I am currently on the leadership team of the Oregon Trial Lawyers Association (OTLA) Legislative Committee, and on the Board of Governors of OTLA. In those capacities, I endeavor to stay up to date on changes in class action procedure, particularly in Oregon.

5. My law partner, David Sugerman, has been handling class actions since approximately 1994. He was admitted to practice in Oregon in 1986 and is also admitted in federal court and the U.S. Court of Appeals for the Ninth Circuit.

6. David has tried class actions to verdict in both Oregon and Washington. Most notably, he served as class counsel in *Scharfstein v. BP West Coast Products, LLC*, No. 1112-

17046 (Mult Cty Cir Ct), *aff'd* 292 Or App 69, *rev den*, 363 Or 815 (2018), *cert dismissed*, 140 S Ct 16 (2019). He also currently serves as class counsel on the *Maney*, *Davis*, and *Stewart* cases listed above.

7. In Spring 2024, David and I will co-teach Consumer Class Actions, a course offered at Lewis & Clark Law School.

8. I can provide more detailed testimony on our qualifications, in the event that the Court requires further evidence of adequacy.

9. My law firm does not have any conflicts of interest in representing the proposed class.

DATED this 1st day of August, 2023.

Respectfully submitted,

SUGERMAN DAHAB

/s/ Nadia H. Dahab

Nadia H. Dahab, OSB No. 125630

SUGERMAN DAHAB

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