

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

Florian Crainic,

Petitioner-Plaintiff,

v.

Chad Kolutwenzew, *et al.*,

Respondents-Defendants,

United States of America,

Interested Party.

Case No. 2:20-cv-2138-SEM-TSH

**MOTION FOR LEAVE TO FILE AMENDED COMPLAINT
AND TO JOIN ADDITIONAL PARTIES**

Petitioner-Plaintiff Florian Crainic (“Petitioner”) respectfully moves under Rules 15 and 20 of the Federal Rules of Civil Procedure for leave to file an Amended Complaint and to join seven additional petitioners. The proposed Amended Emergency Joint Habeas Petition and Complaint for Injunctive and Declaratory Relief (“Amended Complaint”) is attached as **Exhibit A**. In support of this motion, Petitioner states the following.

The current Emergency Representative Petition for a Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief, Dkt.1 (“Complaint”) was filed on May 21, 2020, on behalf of Mr. Crainic and other U.S. Immigration and Customs Enforcement (“ICE”) detainees at the Jerome Combs Detention Center (“JCDC”) who are similarly situated in risk (by age or medical or health condition) to serious illness and death from COVID-19. Petitioner also filed an Amended Emergency Motion for Leave to Pursue a Representative Habeas Corpus Action or, in the Alternative, for Class Certification, Dkt. 18 (“Class

Certification Motion”) on May 21, 2020.

Through discovery, Petitioner’s counsel has identified eight current ICE detainees at JCDC, including Mr. Crainic, who meet the criteria set forth in the Complaint. As reported to the Court at a status conference on June 18, 2020 and reflected in the minute entry of June 19, 2020, counsel for all parties have agreed “that Petitioners would seek leave of court to file an Amended Complaint joining these individuals as Petitioners pursuant to joinder rules.” This motion seeks such leave. If this Court were to grant leave to file the Amended Complaint to join additional petitioners, Mr. Crainic will withdraw with prejudice the Class Certification Motion.

On June 18, 2020, Petitioner’s counsel informed counsel for the United States of the names of the eight additional JCDC detainees whom Mr. Crainic sought to join into this action through the filing of an Amended Complaint. The Court’s minute entry of June 19, 2020 reflects that “[b]y agreement of [the] parties and through production/review of discovery, the individuals who have met the criteria have been narrowed down to eight including Petitioner Crainic,” and that counsel for the United States “expressed [the] intention to not object to [the] amended complaint/petition insofar as the new pleading seeks joinder rather than class certification.”

On June 25, 2020, Petitioner’s counsel informed counsel for the United States that the additional seven JCDC detainees seek to pursue solely the same claim for relief under the Fifth Amendment to the U.S. Constitution as Mr. Crainic—namely the claim that conditions of confinement for ICE detainees at JCDC place them, as people medically vulnerable to severe COVID-19, at an objectively unreasonable risk of harm. Nonetheless, counsel for the United States indicated that they would not consent to the filing of this motion unless they were provided the proposed Amended Complaint in advance of the filing of this motion. Since the Amended Complaint was not finalized until the filing deadline, Petitioner’s counsel were unable

to fulfill this request.

The Complaint may be amended “with the opposing party’s written consent or the court’s leave,” and “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Leave should be granted here because Petitioner seeks only to join six additional individuals who, like him, seek to pursue a Fifth Amendment claim against dangerous conditions of confinement for ICE detainees at the JCDC who are medically vulnerable to serious illness and death from COVID-19.¹ Amending the Complaint will streamline these proceedings. The proposed Amended Complaint places before the Court the specific individuals who seek relief, in lieu of asserting requests for representative habeas or class action relief.

When the Complaint was filed, the precise number of detainees meeting the proposed class criteria was unknowable. *See* Complaint ¶ 95 (Dkt. 1). Discovery has provided more clarity. Class treatment is permitted by Rule 23(a)(1) of the Federal Rules of Civil Procedure only if “the class is so numerous that joinder of all members is impracticable.” Discovery has revealed that joinder of the individual claimants at issue here is practicable — exactly the determination that Rule 23 prompts. Amendment of the Complaint to assert individual joined claims in lieu of class claims therefore furthers the purpose of the Federal Rules of Civil Procedure. *See, e.g., Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993) (when joinder is practicable, it serves judicial economy); *Haggerty v. Comstock Gold Co., L.P.*, No. 84 CIV. 7671 (JMW), 1986 WL 7797, at *3 (S.D.N.Y. July 8, 1986) (for judicial economy, “joinder is the proper remedy” in lieu of class action to address the claims of 20 individuals).

¹ This morning, Petitioner’s counsel learned that one of the seven detainees who was to be added to the Amended Complaint was released from JCDC. For this reason, the Amended Complaint includes a total of seven named petitioners, rather than eight, as Petitioner’s counsel had originally anticipated during the June 18, 2020 status conference with the Court.

Joinder of six additional individual plaintiffs in the proposed Amended Complaint is appropriate under Rule 20. Rule 20(a) provides:

(1) Plaintiffs. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

Rule 20 fosters “liberal party joinder” in order “to promote trial convenience and expedite the final determination of disputes.” 7 Wright & Miller, Fed. Prac. & Proc. Civ. § 1652 (3d ed.).

Those purposes are served by joinder here.

The proposed Amended Complaint asserts the claims of seven individuals who are detained at JCDC under common conditions during the COVID-19 pandemic. The Rule 20 joinder criteria can be satisfied when detainees are subject to common jail conditions. *See, e.g., Boriboune v. Berge*, 391 F.3d 852, 855 (7th Cir. 2004); *Beasley v. Hartshorn*, 2015 U.S. Dist. LEXIS 165787, *4–5 (C.D. Ill. Dec. 10, 2015) (“Plaintiffs have chosen to file their lawsuit together and Rule 20(a) of the Federal Rules of Civil Procedure permits joinder where each plaintiff’s claim presents a common question of law or fact. ... It appears the Plaintiffs’ claims concerning the living conditions at the Vermilion County Jail meets this standard.”). As in these cases, the Rule 20 joinder criteria are satisfied here.

Wherefore, under Rules 15 and 20 of the Federal Rules of Civil Procedure, Petitioner-Plaintiff respectfully asks the Court to grant leave to file the proposed Amended Complaint (**Ex. A**), and to allow the joinder of the additional plaintiffs.

Dated: June 26, 2020

Respectfully submitted,

/s/ Nusrat J. Choudhury
Counsel for Petitioners-Plaintiffs

Michael Tan*
Malita Picasso
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
mtan@aclu.org
mpicasso@aclu.org

David Fathi*
Eunice H. Cho
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
915 15th St. N.W., 7th Floor
Washington, DC 20005
(202) 548-6616
dfathi@aclu.org
echo@aclu.org

Nusrat J. Choudhury
Rebecca Glenberg
Juan Caballero
Aarón Siebert-Llera
Ana Torres
ROGER BALDWIN FOUNDATION OF
ACLU, INC.
150 North Michigan Avenue, Suite 600
Chicago, IL 60601
(312) 207-9740
nchoudhury@aclu-il.org
rglenberg@aclu-il.org
jcaballero@aclu-il.org
asiebert-llera@aclu-il.org
atorres@aclu-il.org

Colby A. Kingsbury
David Sudzus
Catherine M. Masters
Ehren M. Fournier
FAEGRE DRINKER BIDDLE
& REATH LLP
311 S. Wacker, Suite 4300
Chicago, IL 60606
(312) 212-6500
colby.kingsbury@faegredrinker.com
david.sudzus@faegredrinker.com
catherine.masters@faegredrinker.com
ehren.fournier@faegredrinker.com

Counsel for Petitioners-Plaintiffs

** Admission pending*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 26, 2020, she caused a copy of the above and foregoing MOTION FOR LEAVE TO FILE AMENDED COMPLAINT AND TO JOIN ADDITIONAL PARTIES to be served on all counsel of record via the Court's electronic filing system (CM/ECF).

/s/ Nusrat J. Choudhury