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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 ISAAC KIGONDU KINITI, *et al.*,
16 on behalf of themselves and all others
17 similarly situated,

17 Plaintiffs,

18 v.

19 JULIE L. MYERS, *et al.*,

20 Defendants.
21

Case No. 3:05-cv-01013-DMS-PCL

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' EX PARTE APPLICATION
SEEKING ADDITIONAL TIME TO FILE
THEIR OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

22
23 Plaintiffs hereby respond to the application by U.S. Immigration and Customs
24 Enforcement (ICE) defendants to extend the deadline for responding to plaintiffs' motion for
25 class certification until 30 days after the Court rules on defendants' as yet unfiled motion to
26 dismiss. As plaintiffs' counsel indicated to ICE counsel prior to the filing of defendants'
27 application for additional time, plaintiffs would not oppose rescheduling the class certification
28

1 hearing, now set for May 25, 2007, so that both the class certification motion and defendants'
2 anticipated motion to dismiss could be heard on the same date, assuming defendants' motion were
3 to be filed by the first week of May. In plaintiffs' view, consolidating these hearings is the most
4 efficient use of the Court's time. However, as we expressed to ICE counsel, plaintiffs are
5 reluctant to join defendants' request to indefinitely postpone consideration of the class
6 certification motion, which has been pending and scheduled for a hearing since February.
7

8 Plaintiffs' concern about this delay stems from the fact that plaintiffs have alleged
9 ongoing violations of the fundamental constitutional rights of hundreds of people,
10 which constitute irreparable harm. *Faith Center Church Evangelistic Ministries v. Glover*, 480
11 F.3d 891, 906 (9th Cir. 2007) ("[T]he existence of a colorable First Amendment claim in this case
12 is sufficient to demonstrate irreparable injury."); *Von Colln v. County of Ventura*, 189 F.R.D. 583,
13 598 (C.D. Cal. 1999) ("Defendants do not argue that pain and suffering is not irreparable harm,
14 nor could they.") (jail conditions case). Defendants were served with the class certification
15 motion three months ago, and have had ample time to brief this motion. Moreover, it is doubtful
16 that defendants' scheduling proposal would obviate the need for the Court to consider class
17 certification. Defendants state that their motion to dismiss will argue that plaintiffs' claims are
18 moot; but in light of the Court's discussion of mootness in the Order granting leave to amend, it
19 appears unlikely that this case will be dismissed in its entirety on mootness grounds.¹ *See*
20 February 27, 2007 Order at 4-6.
21

22
23 For these reasons, plaintiffs respectfully oppose defendants' request to defer briefing on
24 class certification until 30 days after the Court rules on defendants' anticipated motion to dismiss,
25 although plaintiffs would not oppose a deferral of the class certification hearing so that both the
26

27 ¹ To the extent that defendants submit "evidentiary support" for their claim that they have "no intent
28 to overcrowd" in the future, *see* Defs.' Application at 2, such evidence is properly considered on summary
judgment, not a motion to dismiss, which is limited to the face of the complaint.

1 class certification motion and defendants' anticipated motion to dismiss could be heard on the
2 same date.

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Dated: April 27, 2007

s/ Gouri Bhat

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2007, I electronically filed the foregoing document in the above-entitled action with the Clerk of the Court, using the ECF system. The ECF system will send notification of this filing to the following counsel of record:

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