

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

GILBERTO PEREIRA BRITO, FLORENTIN
AVILA LUCAS, and JACKY CELICOURT,
individually and on behalf of all those similarly
situated,

Plaintiff-Petitioners,

v.

WILLIAM BARR, et al.,

Defendant-Respondents.

Case No. 19-11314-PBS

MOTION TO MODIFY CLASS DEFINITION

Pursuant to Fed. R. Civ. P. 23(c)(1)(C), petitioners Gilberto Pereira Brito, Florentin Avila Lucas, and Jacky Celicourt, individually and on behalf of all those similarly situated, respectfully move for an order modifying the current class definition to include Count II. Defendants oppose this motion.

After a hearing on August 5, 2019, the Court allowed petitioners' motion for class certification on August 6, 2019 (D.E. 58). Specifically, the Court certified the following two classes for the due process claim (Count I):

Pre-Hearing Class: All individuals who 1) are or will be detained pursuant to 8 U.S.C. § 1226(a), 2) are held in immigration detention in Massachusetts or are otherwise subject to the jurisdiction of the Boston Immigration Court, and 3) have not received a bond hearing before an immigration judge.

Post-Hearing Class: All individuals who 1) are or will be detained pursuant to 8 U.S.C. § 1226(a), 2) are held in immigration detention in Massachusetts or are

otherwise subject to the jurisdiction of the Boston Immigration Court, and 3) have received a bond hearing before an immigration judge.

See D.E. 58 at 25.

Petitioners now submit this motion to modify the definitions of the Pre-Hearing and Post-Hearing classes to include Count II (Detention in Violation of the Immigration and Nationality Act and the Administrative Procedure Act).

As previously argued in their Memorandum of Law in Support of their Motion for Class Certification on Count I (D.E. 18), petitioners, individually and on behalf of all those similarly situated, meet all the requirements for class certification on their claims. Petitioners ask that the Court modify the class definitions because all individuals in these classes have had their statutory rights violated as a result of the Board of Immigration Appeals' decision in *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999) and its progeny, which constituted a departure from prior precedent without reasoned explanation and incorrectly relied upon inapplicable regulations.

Respectfully submitted,

GILBERTO PEREIRA BRITO, FLORENTIN AVILA LUCAS, and JACKY CELICOURT,
individually and on behalf of all those similarly situated,

By their attorneys,

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Dated: August 29, 2019

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), Plaintiff-Petitioners' counsel certifies that counsel conferred with counsel for the Defendants regarding this motion, and all oppose Plaintiff-Petitioners' Motion to Modify Class Definition.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2019, the above-captioned document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Susan Finegan
Susan M. Finegan