No. 17-1125

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ALEJANDRO MENOCAL, MARCOS BRAMBILA, GRISEL XAHUENTITLA, HUGO HERNANDEZ, LOURDES ARGUETA, JESUS GAYTAN, OLGA ALEXAKLINA, DAGOBERTO VIZGUERRA, and DEMETRIO VALEGRA, on their own behalf and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

THE GEO GROUP, INC.,

Defendant-Appellant.

Appeal from the U.S. District Court for the District of Colorado,
Civil Action No. 1:14-cv-02887-JLK, Judge John L. Kane, Presiding

BRIEF FOR AMICI CURIAE PUBLIC CITIZEN, INC. AND THE NATIONAL EMPLOYMENT LAW PROJECT IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

Adina H. Rosenbaum
Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Amici Curiae

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel certifies that Public Citizen, Inc. and the National Employment Law Project are nonprofit, non-stock corporations. They have no parent corporations, and no publicly traded corporation has an ownership interest in them.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES & STATUTES

OTHER AUTHORITIES

STATEMENT OF RELATED CASES

In *The GEO Group, Inc. v. Menocal*, No. 17-701, this Court granted Defendant-Appellant The GEO Group's Petition for Permission to Appeal Class Certification. Amici Curiae are aware of no other prior or related appeals in this Court.

GLOSSARY

Aplt. App. – Appellant's Appendix

GEO – The GEO Group, Inc.

TVPA – Trafficking Victims Protection Act

VWP – Voluntary Work Program

ICE – U.S. Immigration and Customs Enforcement

INTEREST OF AMICI CURIAE[1]

Public Citizen, Inc., a consumer-advocacy organization with members and supporters nationwide, appears before Congress, administrative agencies, and the courts to work for enactment and enforcement of laws protecting consumers, workers, and the general public. Public Citizen often represents consumer interests in litigation, including as amicus curiae in cases presenting issues concerning class actions in the United States Supreme Court and federal courts of appeals. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Torres v. S.G.E. Management, L.L.C.*, 838 F.3d 629 (5th Cir. 2016).

Public Citizen believes that class actions are a critically important tool for seeking justice where defendants have engaged in the same or similar unlawful conduct toward many people that has resulted in injuries that are large in the aggregate, but not cost-effective to redress individually. In that situation, class actions offer the best means of

[1] This brief is accompanied by a Motion for Leave to File as required by Federal Rule of Appellate Procedure 29(a). No party's counsel authored this brief in whole or in part, and no party or party's counsel made a monetary contribution to fund the preparation or submission of this brief. No person or entity other than amici curiae made a monetary contribution to the preparation or submission of this brief.

achieving both individual and class-wide redress, as well as deterrence of wrongful conduct, while simultaneously achieving definitive and binding resolution of claims on the broadest possible basis consistent with the requirements of due process.

The National Employment Law Project (NELP) is a non-profit legal, research, and policy organization with over 45 years of experience advocating for the employment and labor rights of low-wage and immigrant workers. In collaboration with community partners, including grassroots groups, national organizations, worker centers and unions, and local, state, and federal agencies, NELP seeks to ensure that all employees—especially the most vulnerable—can take advantage of the basic workplace protections guaranteed in our nation's labor and employment laws. Having access to class and collective actions to seek remedies is especially important for low-wage workers, who fear reprisals and have difficulty finding attorneys willing to take their claims on an individual basis.

Public Citizen and NELP are filing this brief because they believe that adoption of the appellant's arguments would distort and undermine Rule 23. Although the appellant focuses on the supposedly

"experimental" nature of the class's claims, GEO Br. 1, the case involves the application of well-established Rule 23 principles, under which the district court correctly certified the two classes at issue.

INTRODUCTION AND SUMMARY OF ARGUMENT

This class action lawsuit was brought on behalf of current and former detainees held at the Aurora Detention Facility, a detention center owned and operated by defendant The GEO Group, Inc. (GEO) that houses detained immigrants. Plaintiffs seek to represent two Rule 23(b)(3) classes: one alleging that GEO violated the Trafficking Victims Protection Act (TVPA) by forcing detainees to clean its facilities or face steep sanctions (TVPA class), and the other alleging that GEO violated Colorado's unjust enrichment doctrine by paying participants in its Voluntary Work Program (VWP) only $1 per day for all hours worked (unjust enrichment class). The district court certified both classes.

GEO's brief on appeal is aimed largely at the perceived merits of plaintiffs' legal claims. But although class certification "may 'entail some overlap with the merits of the plaintiff's underlying claim,' … Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*,

568 U.S. 455, 465–66 (2013) (quoting *Wal-Mart*, 564 U.S. at 351). A court's "primary function is to ensure that the requirements of Rule 23 are satisfied, not to make a determination on the merits of the putative class's claims." *CGC Holding Co., L.L.C. v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014).

This case is exactly the type of case for which Rule 23 was designed. Class actions are intended to promote efficient litigation, enable small claims to be aggregated, and deter wrongdoing through the vindication of legal rights. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553 (1974). The classes certified here comprise thousands of foreign nationals—many of whom do not speak English, many of whom cannot afford counsel, and all of whom were subject to the same sanitation and VWP policies challenged in this case. If this case does not proceed as a class action, either the courts will be faced with thousands of lawsuits that rely on identical evidence or, far more likely, the rights of thousands of people with potentially viable claims will go unredressed.

The district court correctly concluded that Rule 23's commonality, typicality, predominance, and superiority requirements were met as to

each of the two classes. GEO's arguments on commonality and predominance fail to come to grips with the fact that the claims of each class member will rise or fall together because they turn on identical evidence about GEO's uniform policies. Rule 23's typicality requirement is easily met because the class members have identical claims that turn on the same evidence. Finally, the superiority inquiry asks "whether a single suit would handle the dispute better than multiple suits." *In re Aqua Dots Prods. Liab. Litig.*, 654 F.3d 748, 752 (7th Cir. 2011). The class action vehicle is indisputably superior in this case because the alternative would be thousands of individual actions brought by globally dispersed individuals.

Although plaintiffs' merits arguments may ultimately raise novel legal questions, their motion for class certification does not. This Court should affirm.

ARGUMENT

I. Rule 23 Was Designed for Cases in Which Individuals Would Lack Effective Relief Without Representative Litigation.

Rule 23(b)(3) is intended for "cases 'in which a class action would achieve economies of time, effort, and expense, and promote ...

uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Amchem*, 521 U.S. at 615 (quoting Fed. R. Civ. P. 23 Advisory Committee Notes on 1966 Amendment). The advisory committee envisioned a "functional" rule "responsive to those recurrent life patterns which call for mass litigation through representative parties." Benjamin Kaplan, *A Prefatory Note*, 10 B.C. Indus. & Comm. L. Rev. 497, 497 (1969). To this effect, Rule 23 has the "dual missions" of combining what would otherwise be many separate actions into a single forum and "provid[ing a] means of vindicating the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Id.*

Vindicating the rights of unlikely litigants has compensatory and deterrent benefits, both stemming from Rule 23(b)(3)'s core purpose of aggregating small claims. *See Amchem*, 521 U.S. at 617. When the cost of litigation exceeds a likely damages award, a class action presents a practical solution to a plaintiff's recovery problem by enabling the aggregation of many factually similar claims. It allows interested

individuals to litigate on behalf of those who are unfamiliar with the legal system, geographically dispersed, or fearful of retaliation.

The benefits of aggregate litigation accrue not merely to class members, but to society more broadly. By "expos[ing] the defendants to the risk of liability," class actions deter defendants "from engaging in wrongdoing in the first place." Newberg on Class Actions § 1:8 (5th ed. 2012) (hereinafter "Newberg"). If those with viable claims could not bring class actions, the deterrent and punitive effects of many substantive laws would be severely reduced, and potential defendants would be free to cause small amounts of harm to large groups of individuals with effective impunity. *See id.*; *Hughes v. Kore of Indiana Enter., Inc.*, 731 F.3d 672, 677 (7th Cir. 2013).

This case is ideally suited for class treatment because it brings together thousands of individuals with near-identical claims who lack the ability to vindicate their rights independently. The two classes are composed of foreign nationals, the vast majority of whom likely lack familiarity with the U.S. legal system. Aplt. App. 812. Many of the class members reside in foreign countries, *id.* at 826, and thus, if they wished to initiate litigation, they would be required to locate and pay an

attorney in a foreign country, monitor a case from afar, and bankroll expensive discovery. Many of the class members are not fluent in English, *id.*, and would therefore need to spend additional funds translating documents in order to effectively participate in their cases. Particularly in light of the uncertain amount of damages each detainee would ultimately recover, it is unlikely that any of the detainees would individually enforce their rights against GEO, and the likelihood that *all* of them would be able to do so is nonexistent. Without a class action, potentially valid claims the detainees possess would go unredressed.

By contrast, a class action will "fairly and efficiently" resolve this dispute. Fed. R. Civ. P. 23(b)(3). Representative litigation will allow a small number of interested detainees and their attorneys to protect the rights of similarly situated individuals. By aggregating claims and consolidating costs, the class representatives will make this litigation economically feasible and, no matter the outcome, offer everyone a fair chance to vindicate his or her legal rights.

Similarly, the regulatory effect of this litigation will affirm the policy choices that Congress and Colorado made by creating the TVPA and unjust enrichment causes of action and enabling their enforcement

through class actions. Regardless of whether GEO coerced its detainees into providing it free labor or tricked them into working for $1 per day, detention centers across the country could engage in this activity with impunity if detainees were left without the effective ability to vindicate their rights. The legality of GEO's conduct is a question of significant importance, and the class action mechanism is ideally suited to enable this question to be answered effectively and efficiently.

II. This Case Easily Meets Rule 23's Requirements for Class Certification.

GEO objects to litigating "experimental claims" in a class action, GEO Br. 31, but Rule 23 contains no exception for untested legal theories, and the district court correctly concluded that the proposed classes meet Rule 23's commonality, predominance, typicality, and superiority requirements.

A. Common Questions Exist and Predominate over Individual Questions.

Rule 23(a)(2) requires that plaintiffs in any class action allege a common question of law or fact. For purposes of this requirement, "even a single common question will do." *Wal-Mart*, 564 U.S. at 359 (internal quotation marks, citation, and brackets omitted). "[A] common question

is one where the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (internal quotation marks and citation omitted).

Relatedly, under Rule 23(b)(3)'s predominance inquiry, plaintiffs must prove that common questions predominate over individual questions. Rule 23 "does *not* require a plaintiff seeking class certification to prove that each element of her claim is susceptible to classwide proof." *Amgen*, 568 U.S. at 469 (internal quotation marks, citation, and brackets omitted). Rather, the rule requires only that common questions "predominate." Fed. R. Civ. P. 23(b)(3).

GEO's brief demonstrates that common questions abound in this case, such as whether "Section 1589 appl[ies] to a private detention facility contractor," GEO Br. 16, whether GEO "'knowingly … obtain[s]' detainees' labor under the TVPA," *id.* at 38, and whether "a reasonable detainee would expect [more] than $1 per day for VWP work," *id.* at 33. Nonetheless, GEO argues that class treatment is inappropriate because, in its view, individual questions predominate over common ones. GEO's arguments fail with regard to both classes.

1. Common Questions Predominate in the TVPA Class's Claims.

In the TVPA claim, the plaintiffs allege that GEO unlawfully coerced them into cleaning its facilities under its mandatory Sanitation Policy. That policy and its corresponding sanctions appear in GEO's Detainee Handbook Local Supplement, Aplt. App. 697, 715, 722, which is distributed to every detainee, *id.* at 466, 746. This Handbook informed each class member that violation of the Sanitation Policy was punishable by up to thirteen sanctions, including initiation of criminal proceedings, disciplinary segregation, restriction to one's housing unit, and forced change of housing. *Id.* at 722. As the district court emphasized, the Sanitation Policy is "the glue that holds the allegations of the Representatives and putative class members together." *Id.* at 814. The policy applies uniformly to detainees, and determining its legality will drive the resolution of this litigation.

The substantial class-wide questions concerning the Sanitation Policy will predominate over any individual issues in this case. To begin with, the district court correctly disposed of GEO's argument that any need for individual damages calculations would defeat class

certification. *See id.* at 820. "When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages." *Tyson Foods*, 136 S. Ct. at 1045 (internal quotation marks and citation omitted). "Outside of the personal injury/mass tort context, cases in which individual damage concerns predominate and defeat certification rarely, if ever, come along." Newberg § 4:54 (internal quotation marks and citation omitted).

GEO's primary argument against predominance is that the TVPA "requires an examination of subjective, individual decisions about what caused each detainee to work in each instance," GEO Br. 42, and detainees might have different reasons for following the Sanitation Policy. It suggests, for example, that detainees "may like to have a sanitary environment," may "participate because of peer pressure," or "may willingly obey the facility's policy out of respect for it." *Id.* at 37. However, even if the TVPA requires a showing of subjective coercion (and appellees have argued that it does not), common questions predominate because the plaintiffs can make that showing through

"generalized, classwide proof." *CGC*, 773 F.3d at 1089. As this Court has recognized, class-wide proof can take the form of circumstantial evidence that raises "a commonsense inference of reliance applicable to the entire class." *Id.*; *see also Tyson Foods*, 136 S. Ct. at 1046–47 (relying on evidence that gave rise to a class-wide inference as to an element of the relevant cause of action). Thus, in *CGC*, the Court affirmed certification of a class of real estate borrowers who sued lenders under the Racketeer Influenced and Corrupt Organizations Act (RICO), alleging the lenders misrepresented their ability and intent to meet certain financing obligations in order to obtain up-front fees. The Court rejected the lenders' argument that, to show causation, each borrower would have to demonstrate that it relied on the lenders' misrepresentations, explaining that "the fact that a class member paid the nonrefundable up-front fee in exchange for the loan commitment constitutes circumstantial proof of reliance on the [defendants'] misrepresentations and omissions regarding … [their] ability or intent to actually fund the promised loan." 773 F.3d at 1091–92. "Resorting to this generalized inference of reliance," it explained, "addresses a critical

classwide piece of evidence and will not require individualized consideration that would belie class treatment." *Id.* at 1091.

Here, GEO's Detainee Handbook Local Supplement raises a "commonsense inference," *id.* at 1089, that the detainees complied with the Sanitation Policy because of the consequences of disobeying it. The Handbook informed detainees that the policy was mandatory and that noncompliance would be punished by sanctions such as initiation of criminal proceedings, disciplinary segregation, change of housing, and loss of jobs or personal property. Aplt. App. 715, 722. The choice between facing these sanctions and complying with GEO's Policy was no choice at all. *See United States v. Kozminski*, 487 U.S. 931, 959 (1988) (Brennan, J. concurring) ("In some minimalist sense the laborer always has a choice no matter what the threat: the laborer can choose to work, or take a beating; work, or go to jail. We can all agree that these choices are so illegitimate that any decision to work is 'involuntary.'"). And although GEO suggests that class members may have complied for reasons such as "preferring a clean living area, boredom, sociability, or simple respect for the rules," GEO Br. 31, "conjectural 'individualized questions of reliance,' which are 'far more imaginative than real[,] ... do

not undermine class cohesion and thus cannot be said to predominate for purposes of Rule 23(b)(3).'" *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 122 (2d Cir. 2013) (quoting *Amgen*, 133 S. Ct. at 1197). Indeed, that GEO imposed severe sanctions for violating its policy suggests that even GEO did not believe that bored or social detainees would have volunteered to clean its facilities without the policy's enforcement mechanism.

Moreover, the possibility that some detainees did clean the prison out of boredom or sociability—rather than because of a rule enforceable through defined punishments—does not defeat the court's ability to rely on a commonsense, class-wide inference. As the Supreme Court explained in a case in which an inference of reliance arose under the fraud-on-the-market theory, that "the defendant might attempt to pick off the occasional class member here or there through individualized rebuttal does not cause individual questions to predominate." *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014); *see also Tyson Foods*, 136 S. Ct. at 1047 (holding that class-wide proof could be used to establish liability without discounting the possibility that the defendant might have had "individual defenses").

Here, the inference of coercion is reasonable and a permissible means of establishing coercion on a class-wide basis.

2. Common Questions Predominate in the Unjust Enrichment Class's Claims.

Common questions likewise predominate as to the claims of the unjust enrichment class. Under Colorado law, a plaintiff claiming unjust enrichment must prove that "(1) the defendant received a benefit (2) at the plaintiff's expense (3) under circumstances that would make it unjust for the defendant to retain the benefit without commensurate compensation." *Lewis v. Lewis*, 189 P.3d 1134, 1141 (Colo. 2008). Here, all three prongs of Colorado's test raise questions common to each VWP participant: whether GEO benefited from paying workers $1 per day; whether any benefit came at the expense of the detainees; and whether it would be unjust for GEO to retain the benefit of the cheap labor.

These common, class-wide questions predominate over any individual questions. As the district court explained, GEO's treatment of VWP participants "was based on uniform policies, and, therefore, it is likely that, if its retention of a benefit was unjust with respect to one

class member, it was unjust with respect to all class members." Aplt. App. 824.

GEO suggests that, to certify this class, "it would be necessary for a plaintiff seeking compensation to establish that he or she had a reasonable expectation that GEO would pay more than $1 per day for VWP work, and that GEO unjustly failed to pay contrary to this expectation." GEO Br. 51. The district court was "not persuaded" by GEO's argument, Aplt. App. 824, and this Court should reject it as well.

First, GEO's argument misunderstands plaintiffs' claims. The detainees' unjust enrichment claims are based not on the premise that the detainees believed they would make more than $1 per day when they did VWP work, but on the premise that under the circumstances, including the captive nature of the workforce, it would be unjust for GEO to maintain the benefit of paying the detainees only $1 per day for their work. GEO contends that the detainees cannot succeed on this theory, but that contention only reinforces the conclusion that common issues predominate in this case: If GEO's contention is correct, all of the detainees' unjust enrichment claims will fail together.

Moreover, Colorado law will *not* require the detainees to each prove that they expected to make more than $1 per day when they undertook VWP work. GEO draws its "reasonable expectations" requirement from *Britvar v. Schainuck*, 791 P.2d 1183, 1184 (Colo. App. 1989), in which an intermediate court stated that "[a] plaintiff cannot recover for unjust enrichment on a quasi-contractual claim for services rendered absent proof of circumstances indicating that compensation is reasonably expected." But when the Supreme Court of Colorado "clarif[ied] and restate[d] the test for recovery under a theory of unjust enrichment" nine years after *Britvar*, it made no mention of a reasonable expectations requirement or any consideration of subjective injustice. *See DCB Constr. Co. v. Cent. City Dev. Co.*, 965 P.2d 115, 119 (Colo. 1998); *see also id.* ("The unjust enrichment claim in the context of a contract implied in law … [arises] from the law of natural immutable justice and equity… [and thus] a contract implied in law … may even be imposed in the face of a clearly expressed contrary intent if justice requires." (internal quotation marks and citations omitted)). Moreover, the Colorado Supreme Court has made clear that the unjust enrichment analysis differs based on the circumstances, *see Lewis*, 189 P.3d at

1142–43 (explaining that the "particularized" analysis applied to "claims arising from a close family member or confidant factual scenarios" differs from the analysis applied in landlord/contractor scenarios), and *Britvar*, in which a woman doing business as a real estate and management company sought compensation for management and leasing services rendered, did not involve a captive work force unable to seek work in the open market.

It is true that, in determining "[w]hether retention of the benefit is unjust, … courts look to, among other things, the intentions, expectations, and behavior of the parties." *Melat, Pressman & Higbie, L.L.P. v. Hannon Law Firm, L.L.C.*, 287 P.3d 842, 847 (Colo. 2012). Under the circumstances here, however, in which GEO paid all of the detainees in its VWP program $1 per day, a court would not need to consider the detainees' individual expectations to determine whether that amount was unjust.

B. The Plaintiffs' Claims Are Typical of the Class Claims.

In addition to meeting Rule 23's commonality and predominance requirements, the proposed classes meet its typicality requirement. Rule 23(a)(3) requires the class representative's claims to be typical of

the class claims. Like the commonality requirement, typicality focuses on whether class claims are sufficiently cohesive to justify aggregate litigation, and in that sense typicality "tend[s] to merge" with commonality. *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1216 (10th Cir. 2014) (quoting *Wal-Mart*, 564 U.S. at 349 n.5). "Differing fact situations of class members do not defeat typicality under Rule 23(a)(3) so long as the claims of the class representative and class members are based on the same legal or remedial theory." *Id.* (citation and brackets omitted).

Here, the class representatives are typical of the class members. In the TVPA class, everyone's claims turn on the uniformly applicable Sanitation Policy. GEO contends that because the class representatives' declarations mention the threat of solitary confinement, the representatives "are typical only of a class of detainees who *all* worked *only* based on the *threat* of disciplinary segregation." GEO Br. 39. But GEO's attempts to slice and dice the Sanitation Policy do not alter the fact that the class members' claims are all "based on the same legal or remedial theory." They are all based on the theory that GEO obtained the detainees' labor through the Sanitation Policy's threats.

GEO is likewise wrong to argue that the unjust enrichment representatives are atypical because only a few detainees inquired about whether they could earn more than $1 per day. GEO Br. 32. The detainees' claims do not depend on having so inquired. Indeed, even under GEO's own theory, such an inquiry is irrelevant, as the inquiry only confirmed what all plaintiffs in the program knew—that they would be paid $1 a day. In any event, the class representatives fall into both categories. Thus, even if GEO's point had any legal relevance, it would not undermine the argument for class certification.

C. A Class Action Is the Superior Method of Adjudicating this Case.

Rule 23(b) requires that a class action be superior to other methods "for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "It is enough that class treatment is superior because it will 'achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *CGC*, 773 F.3d at 1096 (quoting *Amchem*, 521 U.S. at 615).

GEO contends that the superiority requirement is not met because, in its view, the detainees' "policy agenda can and should be

carried out in a different forum—through efforts to change Congress's directives, petitioning for changes to agency rulemaking or policy, or even a suit against the relevant government policymakers." GEO Br. 4; *see also id.* at 45, 54. GEO misunderstands Rule 23(b)(3). The rule's reference to other methods of "adjudicating the controversy" compares the paradigms of individual and aggregate litigation. As the Seventh Circuit explained when a defendant argued that a recall program would be superior to a class action, "[Rule 23(b)(3)] poses the question whether a single suit would handle the dispute better than multiple suits." *In re Aqua Dots*, 654 F.3d at 752. Thus, it is irrelevant whether GEO thinks a policy approach would be better than a legal one, or whether it thinks plaintiffs' ultimate goals would be better realized if they pursued different claims against different defendants. *See id.* ("[A] district court's conclusion that it has a better idea [about how to resolve a dispute] does not justify disregarding the text of Rule 23."). The question for superiority is not whether the plaintiffs should have engaged in a different type of advocacy or brought a different claim, but whether a class action is "superior to ordinary one-on-one litigation." *CGC*, 773 F.3d at 1086.

Furthermore, under the superiority analysis, an alternative form of adjudication must be capable of resolving "the controversy." In this class action seeking monetary damages, "the controversy" is GEO's alleged completed violations of federal and state law by means of its Sanitation Policy and Voluntary Work Program. Even if plaintiffs were to pursue a legislative overhaul of ICE's housekeeping program or policies, they would not obtain the relief they seek: monetary compensation from GEO for its allegedly unlawful enforcement of its internal policies.

Finally, a legal challenge to ICE's policies would not be superior to this class action. For one thing, many of the class members would lack standing to challenge ICE's regulations because they are no longer detained at GEO's facility. Others would lack the knowledge or resources to bring individual cases and would have to rely on their fellow detainees to represent their interests without the protective benefits of Rule 23, such as judicial approval of a settlement. And if individual detainees brought their own cases challenging ICE's policies, courts would have to adjudicate numerous cases all raising the same claims. In other words, courts would face the exact type of problem the

class action mechanism was meant to address. By contrast, this class action allows the court to "fairly and efficiently" determine GEO's liability with respect to the entire class. The class action mechanism is the superior method of adjudicating this case.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's order.

Respectfully submitted,

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum
Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Public Citizen, Inc. and the National Employment Law Project

August 11, 2017

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) because it contains 4,548 words, excluding the parts of the brief exempted under Fed. R. App. P. 32(f) and 10th Cir. R. 32(b).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief was prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing document:

a. all required privacy redactions have been made as per 10th Cir. R. 25.5;

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/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system, which will send notification of such filing to counsel for all parties.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum