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

ISAAC KIGONDU KINITI,  
  
Plaintiff,  
  
vs.  
  
BARBARA WAGNER, et al.,  
  
Defendants.

CASE NO. 05cv1013 DMS (PCL)  
  
**ORDER DENYING MOTION FOR  
RECONSIDERATION AND  
CLARIFYING ORDER  
GRANTING CLASS  
CERTIFICATION**  
  
(Doc. 115)

On August 17, 2007, this Court issued its Order granting Plaintiffs’ Motion for Class Certification. (Doc. 112). Defendants have moved for reconsideration. After careful consideration of the arguments, the Court DENIES Defendants’ motion. However, Defendants have pointed out an error in the Order that does not affect the Court’s decision. Thus, this Order clarifies the August 17, 2007 Order.

In the August 17, 2007 Order, the Court incorrectly stated, “[i]n *Hodgers-Durgin*, [199 F.3d 1037, 1041 (9th Cir. 1999)], the court affirmed the district court’s finding that the plaintiffs had standing to seek injunctive relief.” In fact, in that case, the Ninth Circuit affirmed the district court’s finding that the plaintiffs *did not* have standing to seek injunctive relief. *Id.* at 1039. The Court’s error was in focusing exclusively upon an analysis of the United States Constitution’s Article III standing

1 requirements without fully analyzing the requirements for standing when seeking injunctive relief.  
2 That analysis follows.

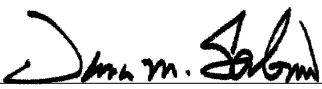
3         The court in *Hodgers-Durgin* held plaintiffs did not show a “likelihood of substantial and  
4 immediate irreparable injury” as required when seeking an injunction against the Government. The  
5 plaintiffs in *Hodgers-Durgin* sought injunctive relief from certain policies implemented by Border  
6 Patrol. The court found plaintiffs frequently came into contact with Border Patrol agents, but each of  
7 the two named plaintiffs were stopped only once in ten years. Those facts were insufficient to show  
8 plaintiffs faced a “likelihood” of again being stopped by Border Patrol.

9         Conversely, in the instant case, as described in the August 17, 2007 Order, Defendants  
10 admittedly engaged in triple-celling for several years. Moreover, Defendants continue to assert triple-  
11 celling is not unconstitutional, and continue to engage in other allegedly unconstitutional practices  
12 such as housing detainees in the common day room. (Order at 6:3-7). Finally, Defendants have failed  
13 to assure the Court that the practice of triple-celling will not resume in the future. (Id. at 6:7-12). These  
14 facts are sufficient to establish a likelihood of substantial and immediate irreparable injury.

15         Therefore, Plaintiffs have both Article III standing and standing to pursue injunctive relief as  
16 a class. Accordingly, Defendant’s motion is DENIED.

17 **IT IS SO ORDERED.**

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19 DATED: October 29, 2007

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22 HON. DANA M. SABRAW  
23 United States District Judge  
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