

# Class numerosity is just a number

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In approximately 2009, Defendant, the U.S. Department of Homeland Security, built a fence on land in Hidalgo County, Texas located along the border between Mexico and the United States. The border fence, a concrete structure about 13 feet tall with long steel bollards installed on top of the concrete base, was built for flood control of flows from the Rio Grande River and border security purposes. Six owners of land on which the fence was constructed, Gerald E. Bell and five other landowners (collectively “Bell”), brought an inverse condemnation lawsuit in the U.S. Court of Federal Claims, claiming that the fence exceeds the scope of the flood control easements held by the United States.

As a preliminary matter, Bell sought to have a class certified of all similarly situated owners of land on which the fence was constructed. Bell alleged that there were at least 60 potential members of the proposed class. To be certified as a class, plaintiffs must meet four prerequisites under Rule 23(a): (1) the class is so numerous that it would be impracticable to join all members; (2) questions of law or fact are common to the entire class; (3) the representative parties have claims or defenses typical of the class; and (4) the representative parties will adequately and fairly protect the interests of the class.

The Government opposed class certification, arguing that the Court had frequently handled Rails-to-Trails cases of over 60 plaintiffs without certifying a class.

The Court concluded that while there is no magic number for how many class members are needed, the potential class size of sixty members was not sufficiently numerous to support class certification. In addition, the Court noted that joinder of these plaintiffs would be practicable because all of the affected landowners are in a similar geographic area along the Rio Grande and all have been identified by the plaintiffs.

The Court thus held that although Bell had met the other three requirements of class certification, he had failed to demonstrate why a class action would be superior as required by Rule 23(b): “On balance, plaintiffs’ claim of superiority fails because other methods for fairly and efficiently adjudicating the controversy [namely, joinder] are available, and plaintiffs have not shown that a class action is superior to them.” And, “nothing in Rule 23 suggests that the mere existence of small claims is sufficient to establish the superiority of a class action, particularly where joinder is an available option.”

Read the full opinion by Chief Judge Campbell-Smith [here](#).