IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARGARITO CASTAÑON NAVA, and JOHN DOE, on behalf of themselves and others similarly situated,	
Plaintiffs,	Case No. _____
v.	**CLASS ACTION**
DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE); KIRSTJEN NIELSEN, Secretary, Department of Homeland Security; THOMAS D. HOMAN, Acting Director, ICE; RICARDO WONG, Field Office Director (FOD) of the ICE Chicago Field Office,	
Defendants.	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case is about ensuring that Immigration and Customs Enforcement ("ICE") complies with its clear statutory obligations under 8 U.S.C. § 1357(a)(2) when conducting warrantless enforcement actions. The rule of law must matter not only when it is convenient to ICE's enforcement agenda, but also when it ensures the liberty interests of the individuals and families that are subject to ICE enforcement.

2. The current Administration has adopted a variety of strategies to penalize states and localities that have adopted constitutional, sound policies to limit their participation in civil immigration enforcement—so-called "sanctuary laws." Over the past week, ICE has been

conducting indiscriminate enforcement actions, through traffic stops, home raids, and other sweeps, rounding up likely hundreds of individuals in the greater Chicagoland area, many of whom had no prior encounters with ICE and whom ICE arrested without a warrant. ICE's conduct in Chicagoland, particularly within the Chicago city limits, fits the pattern of what has happened in other so-called sanctuary jurisdictions in recent weeks and months.[1] ICE's pattern and practice in conducting these enforcement actions violates the Immigration and Nationality Act ("INA") and must be enjoined.

3. Cities like Chicago and states like Illinois have long-recognized that immigrants make significant contributions to the social fabric of their communities and have found immigrants deserving of equal treatment by state and local officials. Over the past decade, ICE has increasingly co-opted state and local police encounters with immigrant populations for civil immigration enforcement. One central strategy from ICE has involved issuing immigration detainers that, in effect, instruct local police to act as ICE agents. Not surprisingly, this forced coordination has sowed tremendous distrust of local and state police, diverted scarce public-safety resources, and is incongruous with community policing strategies. To regain the trust of their constituents and align local expenditures with local priorities, the City of Chicago and the State of Illinois have acted in recent years, like other jurisdictions, to pass laws and policies that limit participation by state and local officials in civil immigration enforcement. *See* "Welcoming City Ordinance," Chicago Code, Ch. 2-173; Illinois Trust Act, 5 ILCS 805, *et seq*.

[1] *See, e.g.,* ICE, News Release, "ICE arrests 225 during Operation Keep Safe in New York" (April 17, 2018), https://www.ice.gov/news/releases/ice-arrests-225-during-operation-keep-safe-new-york; ICE, News Release, "232 illegal aliens arrested during ICE operation in Northern California" (March 1, 2018), https://www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california; ICE, News Releases, "ICE arrests 156 criminal aliens and immigration violators during Operation Keep Safe in Chicago area" (updated May 29, 2018), https://www.ice.gov/news/releases/ice-arrests-156-criminal-aliens-and-immigration-violators-during-operation-keep-safe.

4. In recent months, ICE has responded to these state and local laws by indicating that it would launch large-scale, indiscriminate immigration enforcement actions.[2] Importantly, acting ICE Director Thomas Homan has repeatedly signaled that ICE would be conducting "at-large arrests in local neighborhoods and at worksites."[3] He acknowledged that these large-scale enforcement actions would "inevitably" result in "collateral arrests"; meaning arrests of individuals for whom ICE lacks an arrest warrant.[4] But absent an ICE agent's finding of flight risk—a finding that ICE officers are neither trained nor instructed to make—such "collateral" arrests are in blatant violation of ICE's warrantless arrest authority under the INA.

5. Plaintiffs Margarito Castañon Nava, and John Doe ("named Plaintiffs") were arrested by ICE over the weekend, May 18 to 20, without either an administrative arrest warrant or particularized finding of their likelihood of escape. The named plaintiffs are representative of a group of likely more than one hundred people who were arrested and taken into immigration custody over the past week in the course of widespread immigration sweeps in the Chicagoland area. Some were taken into immigration custody after pretextual traffic stops, others were taken into custody after ICE (or local authorities cooperating with ICE) came to their home or neighborhood looking for someone else. Plaintiffs live and work in largely Hispanic communities and are themselves Hispanic. Many work in the construction industry, an apparent target for ICE. While the number of individuals arrested over the past week has been uniquely high, ICE's enforcement tactics have become familiar and consistent for some time now and are

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[2] Dep't of Homeland Security, U.S. Immigration and Customs Enforcement, *Statement from ICE Acting Director Tom Homan on California Sanctuary Law* (Oct. 6, 2017), https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law; *see also supra* note 1.

[3] *Id.*

[4] *Id.*

expected to continue. ICE has confirmed that of 156 individuals arrested during the past week in the Chicago area, 106 (68%) were "at large" "collateral arrests," for whom agents had not obtained warrants for arrest.[5]

6. In the INA, Congress has indicated a strong preference for immigration arrests to be executed pursuant to a warrant. Before an ICE agent can make a warrantless arrest, he or she must have "reason to believe" that an arrestee "is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2); *see Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007 (N.D. Ill. 2016) (equating "reason to believe" with "probable cause."). Despite this clear legal requirement, ICE does not have a policy or practice of making a particularized finding regarding an individual's likelihood to escape before making a warrantless arrest and made no particularized finding regarding named Plaintiffs here.

7. Indeed in many of the instances over the past week, including the arrest of Plaintiff Margarito Castañon Nava, ICE had no reasonable suspicion that the arrested individual had broken the law to even allow for ICE's initial stop and fingerprinting. Many of the arrests that Plaintiffs and putative class members endured reflect a policy of stopping people for "driving while brown" and then detaining them.

8. Instead of having reasonable suspicion to make a stop and then finding probable cause of likelihood of escape before making a warrantless arrest, ICE makes assumptions. It assumes that Hispanic looking, Spanish speaking people working in particular industries, e.g., construction work, are immigrants. It assumes all immigrants meeting this profile are present in the United States without permission. It assumes all immigrants would flee, and that these

[5] ICE, News Releases, "ICE arrests 156 criminal aliens and immigration violators during Operation Keep Safe in Chicago area" (Updated May 29, 2018), https://www.ice.gov/news/releases/ice-arrests-156-criminal-aliens-and-immigration-violators-during-operation-keep-safe [hereinafter ICE Chicago News Release].

immigrants have no reason to stay in their homes and communities. ICE assumes that all immigrants would hide in the shadows. Instead of making individualized probable cause determinations of whether ICE could reasonably bring a person into custody pursuant to a warrant, ICE treats immigrants as a homogeneous group based on their possible lack of immigration status.

9. The law also requires ICE to bring an individual arrested without a warrant promptly before an Immigration Judge. *See* 8 U.S.C. § 1357(a)(2); *Arias v. Rogers*, 676 F.2d 1139, 1142 (7th Cir. 1982). But ICE does not have a policy or practice of bringing individuals subjected to warrantless arrests without unnecessary delay before an Immigration Judge and, to date, the named Plaintiffs have not been brought before an Immigration Judge for an examination regarding their arrest.

10. The immigration statute lays out clear requirements for a warrantless arrest, but ICE continually shirks its statutory obligations. If the rule of law matters, as the Administration says it must,[6] it must matter not only when it suits ICE's purposes but when it requires ICE to take specific steps when making warrantless arrests, including in the first instance that its officers have reasonable suspicion to make an initial stop.

11. Named Plaintiffs on behalf of the proposed class seek to enforce the rule of law and require ICE to comply with the terms of 8 U.S.C. § 1357(a)(2) by either obtaining an arrest warrant or establishing probable cause of flight risk before making an arrest. Plaintiffs further seek to enforce the rule of law by requiring ICE to bring individuals arrested without a warrant promptly before an Immigration Judge. Finally, Plaintiff Margarito Castañon Nava on behalf of

[6] White House, Office of the Press Secretary, *President Donald J. Trump Restores Responsibility and the Rule of Law to Immigration* (Sept. 5, 2017), https://www.whitehouse.gov/the-press-office/2017/09/05/president-donald-j-trump-restores-responsibility-and-rule-law.

the proposed sub-class seeks to ensure that ICE's pattern and practice of conducting traffic stops and pre-arrest fingerprinting comport with the Fourth Amendment.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' claims arise from federal statutes, 5 U.S.C. § 702 and 8 U.S.C. § 1357(a)(2), and the Fourth Amendment to the U.S. Constitution.

13. The United States' sovereign immunity is waived under the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

14. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, and Rule 65 of the Federal Rules of Civil Procedure.

15. The Court has the authority to issue a declaratory judgement under the Declaratory Judgement Act, 28 U.S.C. §§ 2201-02 and Rule 47 of the Federal Rules of Civil Procedure.

16. Venue is proper under 28 U.S.C. §1391(e) because a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred in this district and the ICE Chicago Field Office is within the district. All named plaintiffs were arrested within the Area of Responsibility of the ICE Chicago Field office, and within the Northern District of Illinois.

PARTIES

17. Plaintiff Margarito Castañon Nava has lived in Chicago for the past seventeen years, and he lives with his partner of six years and her two children. He has no criminal record. He currently works in construction. ICE agents stopped him in a traffic stop on the south side of Chicago with no reason to do so, fingerprinted him without his consent, and then arrested and detained him without a warrant or an individualized determination that he is a flight risk.

18. Plaintiff John Doe has been living in the Chicago area for nearly thirty years, and at the time of his arrest was living on the south side of Chicago. He is a construction worker, and ICE agents arrested him and the other members of his team as they were setting out for a job. ICE arrested and detained him without a warrant or an individualized determination that he is a flight risk.

19. Defendant the Department of Homeland Security ("DHS") is a Department of the Executive Branch of the United States government, headquartered in Washington, DC, and is responsible for enforcing federal laws governing border control, customs, trade and immigration to promote homeland security and public safety.

20. Defendant Immigration and Customs Enforcement ("ICE") is a component of DHS, headquartered in Washington, DC, and is in charge of enforcing federal immigration law, including arresting and detaining non-citizens.

21. Defendant Kirstjen Nielsen is sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she directs each of the component agencies within DHS, including ICE. As a result, in her official capacity, Secretary Nielsen is responsible for the administration and enforcement of the immigration laws, including ICE agents' compliance with the INA.

22. Defendant Thomas Homan is the Acting Director of ICE, which is the sub-agency of the Department of Homeland Security. Acting Director Homan is responsible for enforcement and removal operations for ICE, including the present enforcement action, including ICE agents' compliance with their limited warrantless arrest authority under the INA.

23. Defendant Ricardo Wong is the Field Office Director ("FOD") of the ICE Chicago Field Office, which has responsibility for Illinois, Indiana, Wisconsin, Missouri,

Kentucky, and Kansas. In his official capacity, FOD Wong has ultimate responsibility for all enforcement actions conducted out of the Chicago Area of Responsibility.

FACTUAL BACKGROUND

24. In recent weeks and months, ICE has been conducting indiscriminate, large-scale immigration sweeps, principally targeting states and localities that have adopted so-called "sanctuary laws," which limit state and local participation in civil immigration enforcement.

25. For example in late February 2018, ICE conducted a 4-day enforcement sweep in Northern California which lead to the arrest of 232 individuals, many of whom ICE concedes were "collateral arrests," i.e., individuals for whom they randomly encountered and did not have a warrant. ICE justified these arrests, noting that it "no longer exempts classes or categories of removable aliens from potential enforcement."[7]

26. Likewise in April 2018, ICE conducted a 6-day enforcement sweep, called "Operation Keep Safe," in and around New York City which lead to 225 arrests. Again, ICE conceded that many of those individuals were "collateral arrests."[8]

27. The pattern has repeated itself in the Chicagoland area. The Chicago phase of "Operation Keep Safe" bears many of the hallmarks of ICE's enforcement tactics in California and New York.[9] ICE concedes that 106 of the 156 individuals arrest in the past week were "at-large" collateral arrests and half had no criminal records.[10] Defendant Ricardo Wong is quoted in

[7] ICE, News Release, "232 illegal aliens arrested during ICE operation in Northern California" (March 1, 2018), https://www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california.

[8] ICE, News Release, "ICE arrests 225 during Operation Keep Safe in New York" (April 17, 2018), https://www.ice.gov/news/releases/ice-arrests-225-during-operation-keep-safe-new-york.

[9] ICE Chicago News Release, *supra* note 5.

[10] *Id.*

ICE's press release that the large-scale, indiscriminate enforcement action of the past week was in direct response to so-called Chicago area "sanctuary cities" that place limitations on complying with ICE's voluntary immigration detainers.[11] Finally, ICE is unequivocal that it intends to "continue targeted at-large arrests in local neighborhoods and at worksites, which will inevitably result in additional collateral arrests."[12]

28. Starting on or around May 18, 2018, ICE began conducting indiscriminate enforcement actions in the area of responsibility for the ICE Chicago Field Office. On information and belief, ICE employed a variety of strategies in these sweeps. In towns or counties that continue to cooperate with ICE, local police officials made pretextual stops and handed individuals over to ICE. Within the Chicago city limits, and in other regions where ICE cannot force local authorities to do its bidding, ICE agents made their own pretextual stops, profiling apparent immigrants based on skin color, neighborhood, and apparent occupation. In these stops, ICE agents pretended to be local police and then arrested and detained Plaintiffs and others like them.

29. On information and belief, ICE particularly targeted some of its sweeps to the southwest side of Chicago, from around 31st Street to 55th Street, and from Western Avenue to Pulaski Road.

30. Many Plaintiffs were stopped by ICE directly in a traffic stop and with no indication that they had violated any traffic law. For example, Plaintiff Margarito Castañon Nava, a Chicago resident for nearly 20 years with no criminal record, was pulled over at the corner of West 31st Street and Cicero Avenue, in Chicago, while driving a work truck. The

[11] *See id.*

[12] *Id.*

officers wore plain clothes, vests that generically said "police" and drove unmarked vehicles. The officers used their vehicle to barricade Mr. Castañon Nava's truck on the side of road. The officers who stopped Mr. Castañon Nava never told him that he had violated any traffic laws.

31. Instead, they asked to see his license and when he produced it, the officers took thumbprints from Mr. Castañon Nava and the passenger in the car and forced them to be photographed. The officers briefly returned to their vehicles. When they returned, the officers asked Mr. Castañon Nava why he did not have a green card; without asking any other questions the ICE officers ordered them out of the car, handcuffed them, and placed them in unmarked vehicles. Only when Mr. Castañon Nava arrived at a building in downtown Chicago did he learn that the officers who had arrested him were not Chicago police but in fact were ICE agents.

32. Plaintiff John Doe, a Chicago resident for nearly thirty years, was detained under similar circumstances. He was spending the night with his co-workers at West 48th Street and South Wood in Chicago so that they could depart early the next morning for a construction job, but when they set off to leave that morning they were detained by ICE. An unmarked car pulled directly in front of the work truck, and a different unmarked vehicle pulled behind them, making it so that they could not leave. Soon there were two more vehicles and seven officers on the scene. As in the other cases, the officers wore plain clothes and vests that said "police" but made no mention of immigration.

33. The officer asked Mr. Doe's boss (the driver of the car) for his license and registration and stated that the car was being stopped because of low tire pressure. Based on the form of driver's license that the driver produced, the officer concluded that the entire van was filled with undocumented migrants. The ICE officers instructed all the occupants to produce identification and fingerprinted them. The officers ordered them out of the vehicle, handcuffed

them, and then later shackled them. After holding this group of men for approximately two hours, the officials took them into immigration custody in downtown Chicago. In Mr. Doe's case, the officer who questioned him at immigration had been one of the same officers who participated in the stop on Chicago's southside.

34. ICE's actions are not only consistent with recent enforcement in New York and California but others under the current Administration where additional data is available.

35. For example, in a July 2017 operation, approximately 70% of those ICE arrested were considered "collateral" arrests.[13] The July 2017 operation, known as "Operation Border Guardian/Border Resolve," was announced by ICE as targeting "individuals who entered the country as unaccompanied alien children (UACs) and family units."[14] Upon conclusion of the operation, ICE announced that 650 individuals had been arrested nationally, of whom 193 met the definition of the target class and 457 were simply "encountered during this operation."[15]

36. This data comports with then-Secretary John Kelly's February 2017 memo implementing the President's Executive Order on interior immigration enforcement, instructing immigration agents to abandon existing enforcement priorities and "initiate enforcement actions against removable aliens countered during the performance of their official duties…."[16] In other

[13] Dara Lind, *Vox*, "What John Kelly's final ICE raid tells us about Trump's new chief of staff," Aug. 2, 2017, https://www.vox.com/2017/8/2/16076742/ice-raid-immigration.

[14] Immigration and Customs Enforcement Newsroom, "ICE announces result of Operation Border Guardian/Border Resolve," Aug. 1, 2017, https://www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve.

[15] *Id.*

[16] Memorandum, John Kelly, Secretary of Homeland Security, "Enforcement of the Immigration Laws to Serve the National Interest," Feb. 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

words, Secretary Kelly instructed ICE agents to sweep up every undocumented immigrant they encounter, regardless of whether the person is a priority for removal or the target of an enforcement action. In testifying to Congress regarding the new enforcement directives, ICE Director Homan was unequivocal to all undocumented immigrants: "You should look over your shoulder, and you need to be worried."[17]

LEGAL BACKGROUND

A. ICE Lacks Authority to Make a Warrantless Arrest Without an Individualized Determination of Flight Risk.

37. In the INA, Congress has enacted a strong preference that immigration arrests be based on warrants. ICE's authority to conduct warrantless arrests is prescribed at 8 U.S.C. § 1357(a)(2). That provision requires an ICE agent to have "reason to believe" both that: (1) the noncitizen "is in the United States in violation of any [immigration] law or regulation," *and* (2) the individual "is likely to escape before a warrant can be obtained for his arrest." *Id.*

38. Courts have continually recognized and required strict adherence to § 1357's terms. *See Arizona v. United States*, 567 U.S. 387, 408, 410 (2012) (holding that an Arizona statute was preempted because it purported to give Arizona law enforcement greater warrantless arrest authority "than Congress has given to trained federal immigration officers," emphasizing that ICE's warrantless arrest authority is limited to situations where there is a likelihood of escape before a warrant can be obtained); *United States v. Cantu*, 519 F.2d 494, 496-97 (7th Cir.

[17] Elise Foley, *Huffington Post*, "ICE Director to all undocumented immigrants: 'You need to be worried,'" June 13, 2017, http://www.huffingtonpost.com/entry/ice-arrests-undocumented_us_594027c0e4b0e84514eebfbe.

1975) (holding that the statutory requirement of likelihood of escape in 8 U.S.C. § 1357 "is always seriously applied").[18]

39. In *Moreno v. Napolitano*, another judge in this district found that § 1357(a)(2) requires ICE to make *individualized* determination of flight risk, rather than categorical determinations of flight based potential removability. 213 F. Supp. 3d at 1007. The court rejected the government's argument that "simply by being potentially removable, an alien must be deemed to be likely to evade detention by ICE. The court reasoned that such a reading would render the limitations on warrantless arrest created by 8 U.S.C. §§ 1226(a) and 1357(a)(2) meaningless." *Id.* Rather, "'reason to believe' in § 1357(a)(2) requires the equivalent of probable cause, which in turn requires a particularized inquiry." *Id.* (internal citations omitted). Absent a particularized inquiry of likelihood of escape, ICE lacks authority to arrest the individual without a warrant. *Id.*

[18] *See also De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) ("[E]ven if an agent has reasonable belief, before making an arrest, there must also be a likelihood of the person escaping before a warrant can be obtained for his arrest."); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (quoting § 1357(a)(2)) ("Without a warrant, immigration officers are authorized to arrest an alien only if they have "*reason to believe that the alien so arrested* is in the United States in violation of any [immigration] law or regulation and *is likely to escape before a warrant can be obtained for his arrest*."); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (holding that this statute requires an individualized determination of flight risk); *United States v. Harrison*, 168 F.3d 483, 1999 WL 26921, at *4 (4th Cir. 1999) (unpublished) (explaining that "the critical question remains did the INS believe Harrison was likely to flee before a warrant could be obtained. In making such a determination, a court examines the objective facts within the knowledge of the INS Agents"; rejecting Government's position "that in every case in which an alien is deportable an arrest can be made without a warrant"); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (commenting that an immigration arrest was "in direct violation" of § 1357(a)(2) because "[w]hile INS agents may have had probable cause to arrest Westover by the time they took her into custody, there is no evidence that Westover was likely to escape before a warrant could be obtained for her arrest"); *United States v. Meza-Campos*, 500 F.2d 33 (9th Cir. 1975) (applying an individualized likelihood-of-escape analysis); *Contreras v. United States*, 672 F.2d 307 (2d Cir. 1982) (same).

40. The Supreme Court and Seventh Circuit have found that probable cause cannot be based solely on categorical assumptions about an individual's circumstances or behavior. In *Illinois v. Wardlow*, the Supreme Court held that an "individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." 528 U.S. 119, 124 (2000); *see also Moreno*, 213 F. Supp. 3d at 1006 (citing *United States v. Marrocco*, 578 F.3d 627, 633 (7th Cir. 2009) ("The suspicion necessary to justify [a search] cannot be based solely on an officer's conclusion that a suspect fits a drug-courier profile."); *United States v. Walden*, 146 F.3d 487, 490 (7th Cir. 1998) ("Reasonable suspicion of criminal activity cannot be based solely on a person's prior criminal record.")).

41. Applied here, ICE cannot make categorical assumptions about flight risk based solely on an individual's apparent race and alleged immigration status; ICE must make an individualized determination. § 1357(a)(2); *Moreno*, 213 F. Supp. 3d at 1006.

42. ICE currently has no policy or practice instructing its agents and officers on the limits of their warrantless arrest authority and provides no guidance on how to make an individualized determination of likelihood of escape before a warrant can be obtained. *See Moreno*, 213 F. Supp. 3d at 1005-06.[19] ICE permits its officers to make warrantless arrests *carte blanche* in violation of the statute.

[19] The last known guidance to agents is the now defunct Immigration Naturalization Service's (INS) Manual on "The Law of Arrest, Search, and Seizure for Immigration Officers" (Jan. 1993), attached to this complaint as Exhibit A. As addressed at page II-4 ties to the community such as family, home, or job are probative factors that diminish likelihood to escape under a §1357(a)(2) analysis.

B. An individual arrested without a warrant must promptly be brought before an Immigration Judge.

43. When ICE conducts a warrantless arrest, it must bring the arrested individual "without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States." 8 U.S.C. § 1357(a)(2).

44. In *Arias v. Rogers*, the Seventh Circuit found that "an officer of the Service having authority to examine aliens as to their right to enter or remain" is a "reference [] to a special inquiry officer, also called an immigration judge. Special inquiry officers have judicial authority, and therefore correspond to the committing magistrate in a criminal proceeding." 676 F.2d 1139, 1142 (7th Cir. 1982) (indicating that the Fourth Amendment requires this interpretation of § 1357(a)(2)). Indeed, when § 1357(a)(2) was passed into law in 1952, the immigration adjudicators, known at the time as "special inquiry officers" (now Immigration Judges) were part of INS (a.k.a. "the Service") and were the "officers . . . having the authority to examine aliens as to their right to enter or remain in the United States." 8 U.S.C. § 1357(a)(2); Pub. L. No. 82-414, 66 Stat. 163 (enacted June 27, 1952).[20]

45. While the statutory phrase "without unnecessary delay" is not defined in the INA, the Seventh Circuit's *Arias* decision indicates the examination contemplated in the statute if the functional equivalent of a probable cause examination in the criminal context. 676 F.2d at 1142-43. The U.S. Supreme Court has subsequently determined that a prompt "probable cause" examination generally must occur with 48 hours of a warrantless arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991).

[20] Dep't of Justice, "Evolution of the U.S. Immigration Court System: Pre-1983" (updated April 30, 2015), *available at* http://www.justice.gov/eoir/evolution-pre-1983 (showing in 1973 "special inquiry officers" were authorized to use the title "immigration judge" and in 1983 the immigration court and its judges were separated from INS or "the Service" and placed in the newly established Executive Office of Immigration Review).

46. Accordingly, ICE must bring an individual arrested without a warrant before an Immigration Judge "without unnecessary delay," which presumptively should be within 48 hours of a warrantless arrest.

C. Under the Fourth Amendment, ICE must have reasonable suspicion of an immigration violation in order to make a traffic stop and consent to conduct pre-arrest fingerprinting.

47. Under the INA, ICE officers have no authority to enforce any state laws. *See* 8 U.S.C. §§ 1357(a)(4), (a)(5). Accordingly, ICE officers do not have authority to issue traffic citations.

48. ICE does not have authority to make traffic stops for the purpose of identifying and detaining individuals who appear to be Hispanic for purposes of identifying immigration status. Such conduct violates the Fourth Amendment. *See United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

49. In *Brignoni-Ponce*, the Supreme Court refused to permit border patrol agents authority to pull-over cars near, but not at, the U.S.-Mexico border for the sole purpose of assessing immigration status of people who appear to be Mexican nationals. There, the Court noted that, "the officers relied on a single factor to justify stopping respondent's car: the apparent Mexican ancestry of the occupants." *Brignoni-Ponce*, 422 U.S. at 885-86. The Court noted "even if [the officer's] saw enough to think that the [vehicle] occupants were of Mexican descent, this factor alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country." *Id.* at 886.

50. The lesson of *Brignoni-Ponce* is that immigration officials may not utilize a standard traffic stop to target and detain noncitizens present in the United States without permission. The Court expressly held, "Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts,

together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country." *Id.* at 884.

51. And even if the ICE officers were permitted to make the stops that occurred here, they were not permitted to forcibly demand that Plaintiffs submit to fingerprinting, as occurred here. *Davis v. Mississippi*, 394 U.S. 721, 727 (1969) ("Detentions for the sole purpose of obtaining fingerprints are no less subject to the constraints of the Fourth Amendment."). It is well established that "an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment." *INS v. Delgado*, 466 U.S. 210, 215 (1984). In this case, ICE agents stopped Plaintiff Castañon Nava and those similarly situated on the sole basis that they appeared to be Hispanic. And then, with the cars stopped and having provided no valid reason for the stop, the agents forced Plaintiff and others to provide their fingerprints. Neither action was permissible under the Fourth Amendment.

CLASS ACTION ALLEGATIONS

52. The named Plaintiffs seek to represent a class under Federal Rules of Civil Procedure 23(b)(2) consisting of:

> All current and future persons whom ICE arrests or has arrested, within the area of responsibility of the ICE Chicago Field Office, without an immigration warrant (Form I-200 or Form I-205) who remain detained without having had an examination before an Immigration Judge.

53. Plaintiff Margarito Castañon Nava also seek to represent a sub-class under Federal Rules of Civil Procedure 23(c)(5) consisting of:

> All current and future persons who are subject to a traffic stop initiated by ICE officers within the area of responsibility of the Chicago Field Office where ICE has not established a reasonable suspicion that an individual ICE had identified for arrest is in the vehicle.

54. Joinder of all class and sub-class members is impracticable. Because ICE, as a matter of policy and practice, continuously makes warrantless immigration arrests without individualized flight risk determinations and fails to bring those individuals arrested without a warrant promptly before an Immigration Judge, the composition of the class changes on a regular basis. ICE further has a pattern and practice for conducting some its warrantless immigration arrests through traffic stops on less than a reasonable suspicion and fingerprinting them without consent.

55. The proposed class and sub-class are numerous. Upon information and belief, since around May 18, 2018 alone, ICE has arrested more than 156 individuals within the area of responsibility for the ICE Chicago Field Office, most in the greater Chicagoland area. A significant majority of these arrests were "collateral arrests" where ICE had not obtained a warrant for the arrest. In recent raids, 70% of arrests were considered "collateral" arrests, *i.e.*, those for whom ICE had not already obtained an administrative immigration warrant.[21] Because ICE has a policy and practice of making warrantless arrests without the statutory flight risk determination and without bringing those individuals promptly before an Immigration Judge, class membership is consistently replenished. ICE has confirmed that it intends "to continue to conduct . . . arrests in local neighborhoods, and at worksites, which inevitably result in additional collateral arrests."[22] And when conducting at-large arrests, one of ICE's preferred tactics is traffic stops absent reasonable suspicion and with non-consensual fingerprinting.

56. All members of the class are subject to ICE's policies and practices regarding warrantless arrests, as well as the absence of policies relating to how an agent should make a

[21] Dara Lind, *Vox*, "What John Kelly's final ICE raid tells us about Trump's new chief of staff," Aug. 2, 2017, https://www.vox.com/2017/8/2/16076742/ice-raid-immigration.

[22] ICE Chicago News Release, *supra* note 5.

probable cause determination of flight risk and the necessity to bring individuals promptly before an Immigration Judge. There are questions of law and fact common to the class and sub-class:

a. Whether ICE violates 8 U.S.C. § 1357(a)(2) when it arrests an individual without a warrant and without probable cause that the individual is likely to escape before a warrant can be obtained for the arrest.

b. Whether ICE lacks authority to detain an individual whom ICE arrested without a warrant and without probable cause that the individual is likely to escape before a warrant can be obtained for the arrest.

c. Whether ICE violates 8 U.S.C. § 1357(a)(2) when it arrests individuals without a warrant and fails to bring them promptly before an Immigration Judge for an examination regarding the warrantless arrest.

d. Whether ICE lacks authority to detain an individual who ICE did not bring promptly before an Immigration Judge for an examination regarding the warrantless arrest.

e. And as to the Sub-class, whether ICE's pattern and practice of conducting traffic stops within the area of responsibility of the Chicago Field Office, when absent a reasonable suspicion that an individual ICE has identified for arrest is within the vehicle, violate the Fourth Amendment.

f. Whether ICE's pre-arrest fingerprinting of sub-class members without consent is an unreasonable search and seizure in violation of the Fourth Amendment.

57. Defendants have acted and intend to act in a manner adverse to the rights of the proposed class and sub-class, making final injunctive and declaratory relief appropriate with respect to the class as a whole.

58. Plaintiffs and the class and sub-class they seek to represent have been directly injured by the Defendants' statutory violations and are at risk of future harm from continuation of their acts and omissions in failing to adhere to their statutory obligations and the Fourth Amendment.

59. Plaintiffs will fairly and adequately represent the interests of the class and sub-class. Plaintiffs' legal claims are typical to all members of the proposed class and sub-class.

Plaintiffs have no interests separate from those of the class and sub-class, and seek no relief other than the relief sought on behalf of the class and sub-class.

60. Plaintiffs' counsel are experienced in class action, civil rights, and immigrants' rights litigation. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

COUNT I

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C): ICE's Warrantless Arrests Violate 8 U.S.C. § 1357(a)(2)

61. Plaintiffs repeat and reallege all the allegations above and incorporate them by reference here.

62. On May 19 and 20, ICE arrested Plaintiffs Margarito Castañon Nava and John Doe without warrants. Before the arrests, ICE failed to make individualized findings of flight risk. Both were "collateral arrests" as part of ICE's large-scale, indiscriminate enforcement actions in the Chicago area for the past week. Both were victims of aggressive ICE traffic stops where they had not been previously identified targets for enforcement and for whom ICE knew nothing to make any meaningful flight risk assessment.

63. ICE arrested Plaintiffs Margarito Castañon Nava and John Doe without a warrant and without "reason to believe" that they are "likely to escape before a warrant can be obtained for [the] arrest" in violation of 8 U.S.C. § 1357(a)(2).

64. Defendants do not have a policy or practice for complying with the statutory limits of their warrantless arrest authority and provide no guidance on how to make an individualized determination of likelihood of escape before a warrant can be obtained. Defendants permit ICE officers to make warrantless arrests *carte blanche* in violation of the statute.

65. Based on ICE's press release of its most recent enforcement actions, ICE will continue to arrest individuals without reason to believe that they are likely to escape before a warrant can be obtained for the arrests in violation of 8 U.S.C. § 1357(a)(2).

66. ICE's policy and practice of making warrantless arrests without the required individualized flight risk analysis is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

67. ICE's policy and practice of making warrantless arrests without the required individualized flight risk analysis is "in excess of statutory jurisdiction, authority, or limitations" under §1357(a)(2). 5 U.S.C. § 706(2)(C).

68. As a proximate result of Defendants' statutory violations, Plaintiff Class is suffering and will continue to suffer a significant deprivation of their liberty in violation of the statute. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiffs is necessary to prevent continued and future irreparable injury.

COUNT II

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(1): Failure to Provide Prompt Examination Following a Warrantless Arrest Violates 8 U.S.C. § 1357(a)(2)

69. Plaintiffs repeat and reallege all the allegations above and incorporate them by reference here.

70. On May 19 and 20, ICE arrested Plaintiffs Margarito Castañon Nava and John Doe without warrants. ICE has failed to bring Plaintiffs before an Immigration Judge for examination.

71. ICE's failure to bring Plaintiffs before an Immigration Judge without unnecessary delay of their warrantless arrest violates 8 U.S.C. § 1357(a)(2).

72. Defendants do not have a policy or practice for complying with the statutory limits of their warrantless arrest authority, requiring ICE officers to take individuals "without unnecessary delay" before an Immigration Judge.

73. ICE will continue to violate 8 U.S.C. § 1357(a)(2) by failing to provide a prompt examination before an Immigration Judge for those individuals it arrests without a warrant.

74. ICE's policy and practice of failings to bring individual subject to warrantless arrests promptly before an Immigration Judge is "agency action unlawfully withheld or unreasonably delayed" in violation of the APA. 5 U.S.C. § 706(1).

75. As a proximate result of Defendants' statutory violations, Plaintiff Class is suffering and will continue to suffer a significant deprivation of their liberty in violation of the statute and due process of law.

76. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiffs is necessary to prevent continued and future irreparable injury.

COUNT III

Fourth Amendment Violation:
Traffic Stops Lacking Reasonable Suspicion & Pre-Arrest, Non-consensual Fingerprinting

77. Plaintiff Margarito Castañon Nava repeats and realleges all the allegations above and incorporates them by reference here.

78. On May 20, 2018, ICE agents pulled over Plaintiff Margarito Castañon Nava—a Chicago resident for nearly 20 years with no criminal record—at the corner of West 31st Street and Cicero Avenue in Chicago, and proceeded to barricade Plaintiff's work truck on the side of

the road with three unmarked ICE vehicles. Plaintiff was driving a work truck, having recently left a construction site. Plaintiff had a valid driver's license and insurance.

79. Without any explanation for the traffic stop, the plain clothed ICE agents asked for Plaintiff's identification and then immediately fingerprinted and photographed him without consent.

80. Upon information and belief, the ICE agents had not established a reasonable suspicion that either Plaintiff Margarito Castañon Nava or his co-worker was in violation of immigration laws or any other law to justify stopping their truck. Instead, Plaintiff contends that ICE agents stopped him because he appears Hispanic and perhaps stereotypes regarding the immigration status of Hispanics in the construction industry and the particular part of Chicago in which ICE conducted this and likely other stops during recent enforcement actions.

81. Defendants have a pattern of practice of making traffic stops that are unsupported by a reasonable suspicion of violations of immigration laws.

82. Pursuant to these unlawful stops, Defendants have a pattern and practice of pre-arrest, non-consensual fingerprinting.

83. As a proximate result of Defendants' unreasonable traffic stops, Plaintiff Margarito Castañon Nava and the sub-class of similarly situated individuals subjected to ICE's traffic stops and pre-arrest fingerprinting within the area of responsibility of the ICE Chicago Office are suffering and will continue to suffer a significant deprivation of their rights in violation of the Fourth Amendment.

84. Plaintiff Margarito Castañon Nava and the proposed sub-class have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and

declaratory relief sought by Plaintiff and sub-class is necessary to prevent continued and future irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Issue an order certifying this action to proceed as a class action with a subclass pursuant to Rule 23 of the Federal Rules of Civil Procedure.

B. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

C. Declare that ICE's actions making warrantless arrests without probable cause of flight risk violate 8 U.S.C. § 1357(a)(2).

D. Declare that ICE's failure to bring individuals arrested without a warrant promptly before an Immigration Judge violates 8 U.S.C. § 1357(a)(2).

E. Declare that ICE's pattern and practice of making traffic stops, other than when its agents have reasonable suspicion that a previously identified individual for enforcement is within the vehicle, violates the Fourth Amendment.

F. Declare that ICE's pattern and practice of taking fingerprints pre-arrest without consent is an unreasonable search and seizure in violation of the Fourth Amendment.

G. Enter a preliminary and permanent injunction prohibiting ICE from making any warrantless arrests in the area of responsibility of the ICE Chicago Field Office without an individualized probable cause determination that the arrestee is a flight risk in accordance with 8 U.S.C. § 1357(a)(2).

H. Enter a preliminary and permanent injunction requiring ICE to bring any person it arrests without a warrant in the area of responsibility of the ICE Chicago Field Office before an

Immigration Judge within 48 hours of arrest or otherwise without unnecessary delay in accordance with 8 U.S.C. § 1357(a)(2).

I. Enter a preliminary and permanent injunction requiring ICE to stop conducting traffic stops within the area of responsibility of the ICE Chicago Field Office where there is no reasonable suspicion of an identified individual for enforcement is within the vehicle.

J. Enter a preliminary and permanent injunction ordering ICE to stop pre-arrest fingerprinting of individuals without their consent.

K. Issue a judgment ordering ICE to provide Plaintiffs Margarito Castañon Nava and John Doe an examination before an Immigration Judge in accordance with 8 U.S.C. § 1357(a)(2) within 48 hours and if they fail to do so, to release Plaintiffs from custody.

L. Attorneys' fees and costs.

M. Any other relief the Court deems equitable, just, and proper.

Date: May 29, 2018

Respectfully Submitted:

s/ Mark Fleming

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