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

MARGARITO CASTAÑON NAVA, JOHN DOE, MIGUEL CORTES TORRES, GUILLERMO HERNANDEZ HERNANDEZ, and ERICK RIVERA SALES, on behalf of themselves and others similarly situated, ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, and ORGANIZED COMMUNITIES AGAINST DEPORTATIONS, *Plaintiffs,* v. 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.*	Case No. 18-cv-3757 Judge Rebecca R. Pallmeyer **FIRST AMENDED COMPLAINT** **CLASS ACTION**

FIRST AMENDED 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 sound, constitutional policies to limit their participation in civil immigration enforcement—so-called "sanctuary laws." Recently, 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 the constitution 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, has diverted scarce public-safety resources, and is incongruous with community policing strategies. To regain the trust of

[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.

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*.

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] Such collateral arrests are only permissible if (1) the ICE officer has "reason to believe" a person is in the United States in violation of the law; and (2) an ICE agent makes a finding of flight risk—a finding that ICE officers are neither trained nor instructed to make. Thus, these "collateral" arrests are in blatant violation of ICE's warrantless arrest authority under the INA.

5. Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales ("named Plaintiffs") were arrested by ICE between May 18 and May 24, 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 in the

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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.*

course of widespread immigration sweeps in the Chicagoland area. For example, some were taken into immigration custody after pretextual traffic stops, others were taken into custody after ICE came to their home or neighborhood purporting to look for someone else. Plaintiffs live and work in largely Hispanic communities and are themselves Hispanic. Many work in the construction industry, making the industry an apparent target for ICE. While the number of individuals arrested over the week of May 18-24 was uniquely high, ICE's enforcement tactics have become familiar and consistent for some time now and are expected to continue. ICE has confirmed that of 156 individuals arrested during the week-long intensified enforcement 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. In many of the instances, including in the arrest of all named plaintiffs, ICE had no reasonable suspicion that the arrested individual had broken the law to even allow for ICE's initial stop and, in some cases, fingerprinting. Indeed, Plaintiff Miguel Cortes Torres was

[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].

arrested while *walking down the sidewalk*. 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 improperly assumes that Hispanic looking, Spanish speaking people working in particular industries, e.g., construction work, are immigrants. It improperly assumes all immigrants meeting this profile are present in the United States without permission. It improperly assumes all immigrants would flee, and that these immigrants have no reason to stay in their homes and communities. ICE improperly 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 improperly treats immigrants as a homogeneous group based on their possible lack of immigration status.

9. Both the INA and Fourth Amendment also require 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); *Gerstein v. Pugh*, 420 U.S. 103 (1975). 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, only one of the five named Plaintiffs has been brought before an Immigration Judge, and none for an examination regarding the legality of their arrest, even though more than month has passed in each instance.

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 also 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, as required by § 1357(a)(2) and the Fourth Amendment. Finally, Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, and Erick Rivera Sales seek, on behalf of the proposed sub-class, to ensure that ICE's pattern and practice of conducting traffic stops 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.

[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.

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, Organizational Plaintiffs ICIRR and OCAD are based 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 two of her 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. Plaintiff Miguel Cortes Torres has lived in the Chicago area for 18 years. He supports his two children and has no criminal record. ICE arrested him while he was walking down the street, into a store in his neighborhood. They arrested and detained him without a warrant or an individualized determination that he is a flight risk.

20. Plaintiff Guillermo Hernandez Hernandez has lived in and around Joliet, Illinois, for eighteen years. He works as a mechanic and has no criminal record. ICE agents pulled him over in Joliet with no explanation and arrested him after he showed them his driver's license. They also arrested the passenger in his car, who was visiting from Mexico on a valid visa.[7] ICE arrested and detained Mr. Hernandez Hernandez without a warrant or an individualized determination that he is a flight risk.

21. Plaintiff Erick Rivera Sales has lived in Chicago for four years. He lives with his partner, who gave birth to their daughter shortly after ICE detained Mr. Rivera Sales. He has no criminal record. He is a construction worker, and ICE arrested him and his coworkers in a traffic stop while they were driving to work. They gave no reason for the stop and detained him without a warrant or individualized determination that he is a flight risk.

22. Plaintiff Illinois Coalition for Immigrant and Refugee Rights (ICIRR) is a nonprofit, nonpartisan statewide organization dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. With its member organizations, ICIRR educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; provides support and information during times of crisis; and educates the public about the contributions of immigrants and refugees. ICIRR advocates for policies that protect immigrant families from deportation and separation, and uphold their rights to due process and equal protection under the law.

[7] *See* Jacqueline Serrato, CHICAGO TRIB., June 1, 2018, "This man had a visa but was picked up by ICE one day after entering the U.S.," http://www.chicagotribune.com/voiceit/ct-this-man-had-a-visa-but-was-picked-up-by-ice-one-day-after-entering-the-us-20180601-story.html.

23. Plaintiff Organized Communities Against Deportations (OCAD) is a nonprofit organization that organizes against deportations, detention, criminalization, and incarceration, of black, brown, and immigrant communities in Chicago. Through grassroots organizing, legal and policy work, direct action and civil disobedience, and cross-movement building, OCAD aims to defend its communities, challenge the institutions that target and dehumanize them, and build collective power. OCAD fights alongside families and individuals challenging these systems to create an environment for its communities to thrive, work, and organize with happiness and without fear, including by providing information and education about their rights and providing support during times of crisis.

24. 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.

25. 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.

26. 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 and the Fourth Amendment.

27. 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 and Fourth Amendment.

28. 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

29. 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.

30. 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 they randomly encountered and for whom they did not have a warrant. ICE justified these arrests, noting that it "no longer exempts classes or categories of removable aliens from potential enforcement."[8]

31. 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."[9]

[8] 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.

[9] 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.

32. The pattern has repeated itself in the Chicagoland area, and this litigation arises as a result of the Chicago phase of "Operation Keep Safe." This Operation bears many of the hallmarks of ICE's enforcement tactics in California and New York.[10] ICE concedes that 106 of the 156 individuals arrested in the Chicagoland area during the week-long intensified enforcement were "at-large" collateral arrests and half had no criminal records.[11] Defendant Ricardo Wong is quoted in ICE's press release stating that the large-scale, indiscriminate enforcement action was in direct response to so-called Chicago area "sanctuary cities" that place limitations on complying with ICE's voluntary immigration detainers.[12] 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."[13]

33. 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 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. Upon

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

[11] *Id.*

[12] *See id.*

[13] *Id.*

information and belief, some of these stops were made under the pretext of traffic law violations which ICE has no authority or jurisdiction to enforce.

34. 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.

35. 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 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 and seized Mr. Castañon Nava never told him that he had violated any traffic laws.

36. Upon information and belief, the ICE officers who stopped and seized Mr. Castañon Nava did not have reason to believe that Mr. Castañon Nava was present in the United States illegally.

37. 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. The

ICE agents did not have warrants for Mr. Castañon Nava or his passenger.

38. Upon information and belief, the ICE officers who stopped and seized Mr. Castañon Nava did not have reason to believe that Mr. Castañon Nava was likely to escape before a warrant could be obtained for his arrest.

39. 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 and seized 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.

40. Upon information and belief, the ICE officers who stopped and seized Mr. Doe did not have reason to believe that Mr. Doe was present in the United States illegally.

41. The officer asked Mr. Doe's boss, Luis Enrique Morales Huerta (who was the driver), for his license and registration. Based on the form of Mr. Morales Huerta's driver's license, the officer presumed that the entire van was filled with undocumented migrants. The ICE officers did not have warrants for the Mr. Morales Huerta, Mr. Doe, or any other passenger. The ICE officers instructed all the occupants to produce identification and fingerprinted at least some of 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.

42. Upon information and belief, the ICE officers who stopped and seized Mr. Doe

did not have reason to believe that Mr. Doe was likely to escape before a warrant could be obtained for his arrest.

43. Plaintiff Erick Rivera Sales is a construction worker whom ICE arrested on his way to work, in Palatine, Illinois. He was driving with two other men when ICE officers in three unmarked cars surrounded and stopped them. An officer wearing regular clothes and a black vest that said "federal police" approached Mr. Rivera Sales and asked for his license and registration. Then, a different officer approached the passenger side and asked both passengers for their licenses as well. The officers took their licenses and left. When they returned, they arrested all three men. The ICE agents did not have warrants for Mr. Rivera Sales or the two passengers.

44. Upon information and belief, the ICE officers who stopped and seized Mr. Rivera Sales did not have reason to believe that Mr. Rivera Sales was present in the United States illegally.

45. Mr. Rivera Sales and his passengers got out of their vehicle and the officers handcuffed them and put them in a van. They then drove them to a Walmart parking lot. They waited in the van, in the parking lot, while the other ICE vehicles apparently went looking for more people to arrest. After about an hour and a half of waiting, they drove to an ICE detention center. They remained at the detention center all day, then drove to Pulaski County Detention Center. Mr. Rivera Sales' partner was nine months pregnant at the time of his arrest, and his daughter who was born days after his arrest. He has been unable to see her because of his detention.

46. Upon information and belief, the ICE officers who stopped and seized Mr. Rivera Sales did not have reason to believe that Mr. Rivera Sales was likely to escape before a warrant could be obtained for his arrest.

47. Plaintiff Guillermo Hernandez Hernandez was also arrested while driving, this time in Joliet, Illinois. Four ICE officers in two unmarked cars pulled him over and pulled up behind and next to his car. The officers wore street clothes and black police vests. Mr. Hernandez Hernandez assumed they were police. An officer walked to his car and asked him for identification without giving any explanation for the stop. Mr. Hernandez Hernandez gave him his driver's license. When the officer saw what type of license it was, he told Mr. Hernandez Hernandez to get out of the car and handcuffed him. The ICE agents did not have warrants for Mr. Hernandez Hernandez or his friend.

48. Upon information and belief, the ICE officers who stopped and seized Mr. Hernandez Hernandez did not have reason to believe that Mr. Hernandez Hernandez was present in the United States illegally.

49. The officers also arrested the passenger in the car, a visiting tourist, despite Mr. Hernandez Hernandez's insistence that this friend was visiting with a valid visa. Attempting to help his friend, Mr. Hernandez Hernandez directed the ICE officers to his house to get his friend's passport and visa. The officers drove them to the house, where they took Mr. Hernandez Hernandez's friends paperwork and arrested another friend who happened to be there. The ICE officers took all three men with them and drove around looking through binoculars for more people to arrest. After arresting several more people, the officers took them to an immigration office and processed their paperwork. While his friend was ultimately released (after several hours of unlawful detention), Mr. Hernandez Hernandez was transferred to McHenry County Jail.

50. Upon information and belief, the ICE officers who stopped and seized Mr. Hernandez Hernandez did not have reason to believe that Mr. Hernandez Hernandez was likely

to escape before a warrant could be obtained for his arrest.

51. Plaintiff Miguel Cortes Torres was arrested under distinct circumstances: while walking down the street. He was walking from the park on the corner of Diversey and Harding to a nearby store when four officials demanded to see his identification. The officers drove an unmarked car and dressed in plainclothes with black police vests. Assuming they were police, Mr. Cortes Torres gave them his consular identification, which immediately prompted his arrest. The ICE agents did not have a warrant for Mr. Cortes Torres' arrest.

52. Upon information and belief, the ICE officers who stopped and seized Mr. Cortes Torres did not have reason to believe that Mr. Cortes Torres was present in the United States illegally.

53. The officers did not give Mr. Cortes Torres any reason for his arrest beyond saying, "you're an immigrant," and he did not know they were from ICE until the officers had handcuffed him and put him in their truck. After arresting him, the officers took Mr. Cortes Torres to an immigration building, then transferred him and six others to Jerome Combs Detention Center in Kankakee, Illinois. They did not give Mr. Cortes Torres anything to eat or drink from the time of his arrest until breakfast at the detention center the next morning. They also did not allow him to make a phone call. He was not able to make a phone call until several days later.

54. Upon information and belief, the ICE officers who stopped and seized Mr. Cortes Torres did not have reason to believe that Mr. Cortes Torres was likely to escape before a warrant could be obtained for his arrest.

55. None of the named plaintiffs, with the exception of Guillermo Hernandez

Hernandez,[14] has had a court appearance as of June 27, 2018.

56. After filing the original complaint, Plaintiff Castañon Nava filed two separate motions: one seeking a probable cause hearing as is required by 8 U.S.C. § 1357(a)(2),[15] and one seeking bond. He filed these motions on June 18, 2018, and June 20, 2018, respectively. In the motion for a probable cause hearing he asked to be seen by a judge within 48 hours, but neither motion has been acted upon.

57. By the time of his first scheduled hearing on July 3, 2018, Mr. Castañon Nava will have been detained for 44 days without ever having been brought before a judge. During those 44 days, Mr. Castañon Nava missed the last day of school for his two younger children, a month of his eldest daughter's pregnancy, and the quinceanera of his middle child. Plaintiff John Doe has his first hearing on July 2, 2018. He too has requested release on bond, and his first hearing will also take place 44 days after his initial detention.

58. The circumstances surrounding the arrests of the named Plaintiffs are not unique. To the contrary, they reflect a pattern of behavior that ICE utilized during the time period in question and that it has openly stated it will continue using. For example, like Mr. Cortes Torres, Asuncion Ramirez Hernandez was stopped as a pedestrian when he was walking out of a clothing store. Upon information and belief, the ICE officers who stopped and detained Mr.

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[14] Mr. Hernandez Hernandez appeared before an immigration judge for the first time on June 27, 2018. While the immigration judge set bond in his case in the amount of $4,000, he remains in custody at the time of this filing.

[15] As Mr. Castañon Nava indicated in this motion, he proactively filed it notwithstanding the fact that the statute unambiguously imposes a requirement on ICE to promptly bring him before an immigration judge for a probable cause examination. This requirement is separate and apart from any remedy Mr. Castañon Nava and other plaintiffs can seek in the course of their immigration court proceedings, including release on bond pursuant to 8 U.S.C. § 1226(a) and suppression of evidence, which is typically limited in removal proceedings to instances of "egregious" constitutional violations. *See generally INS v. Lopez Mendoza*, 468 U.S. 1032 (1984) (holding that the exclusionary rule does not apply in civil deportation proceedings as a general matter).

Ramirez Hernandez did not have reason to believe that Mr. Ramirez Hernandez was present in the United States illegally.

59. Others were arrested in or around their vehicles, but with no reason given for their arrest that related to a traffic or moving violation. ICE arrested Fernando Salvador Reyes while standing next to the vehicle he was driving, as the car was parked at a Home Depot. ICE detained Salvador Ramirez Llamas as he was sitting in a parked car with his friend, about to help his friend repair the car. And ICE arrested Jose Angel Carmona Diaz as he was sitting in his parked car in his driveway, about to leave his house. Upon information and belief, the ICE officers who arrested Mr. Salvador Reyes, Mr. Ramirez Llamas, and/or Mr. Carmona Diaz did not have reason to believe that Mr. Salvador Reyes, Mr. Ramirez Llamas, or Mr. Carmona Diaz were present in the United States illegally.

60. For those whom ICE stopped in moving vehicles, it made these stops without the authority to make a traffic stop or reason to do so. As mentioned above, Luis Enrique Morales Huerta, the driver of the car carrying Plaintiff John Doe was stopped by ICE without reason when he was on his way to work. The same was true for Jose Miguel Aguirre.

61. In each of these stops, the officers drove unmarked vehicles with normal license plates and tinted windows. The officers themselves wore normal clothing with vests reading simply “POLICE.” The officers were never upfront about the reasons they were asking for identification or cooperation, and they did not explain that they were immigration officials until after making an arrest. Thus, even though the ICE officers had no authority or jurisdiction to make these purported traffic stops, the officers’ concealment of their identity and/or failure to properly identify themselves induced the Plaintiffs to believe they were not free to leave the presence of the officer.

62. Upon information and belief the ICE officers did not have a proper reason to believe that Plaintiffs were present in the United States illegally. Rather, upon information and belief, the ICE officers made these stops and arrests based on improper presumptions based on Plaintiffs' occupation as construction workers and that nearly all of them are Latino.

63. For all these individuals, the ICE agents did not have warrants for their arrests. And although these individuals have had initial hearings before an immigration judge as of June 27, 2018, none of them had that hearing within 48 hours of arrest, and many had to wait at least a month.

64. Even for those who have received a bond hearing, it is not a suitable substitute for ICE's statutory obligation to promptly bring them for an examination before an immigration judge. Indeed, in a bond hearing, the legality of ICE's arrest is not considered, the burden-of-proof for release on bond is placed on the immigrant,[16] and bond amounts are routinely in the thousands of dollars (*e.g.*, $4,000 in Guillermo's case).[17] And unlike bond in the criminal context, bonds in the immigration context need to be paid in full, such that the bond is often prohibitively high for many individuals to obtain their release.

65. ICE's actions are not only consistent with recent enforcement in New York and California, described above, but others under the current Administration where additional data is available. For example, in a July 2017 operation, approximately 70% of those ICE arrested were considered "collateral" arrests.[18] The July 2017 operation, known as "Operation Border

[16] 8 C.F.R. § 1003.19(h)(3).

[17] Pursuant to 8 U.S.C. § 1226(a)(2)(A), an immigration judge can order a respondent released on bond of at least $1,500.

[18] 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.

Guardian/Border Resolve," was announced by ICE as targeting "individuals who entered the country as unaccompanied alien children (UACs) and family units."[19] 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."[20]

66. 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…."[21] In other 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."[22]

67. Upon information and belief, ICE's enforcement tactics have caused substantial concern and confusion in the communities served by ICIRR and OCAD. For example, a telephone hotline service jointly run and staffed by ICIRR and OCAD has experienced nearly a

[19] 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.

[20] *Id.*

[21] 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.

[22] 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.

50% increase in call volume from those seeking help trying to find loved ones detained by ICE, those seeking information about their rights, and those reporting the increased ICE raids throughout the community. This increased need for support has significantly increased the amount of time, resources, and energy that OCAD and ICIRR must devote to the hotline. The increased need for ICIRR's and OCAD's services as a result of ICE's tactics has caused ICIRR and OCAD to either place on hold or abandon its efforts on other projects and programming in order to urgently hire and train new staff, meet community requests for Know Your Rights presentations, and develop other strategies to defend the rights of the communities they serve. Further, to meet the increase in the community's need for services, the organizational Plaintiffs have been forced to seek emergency donations from their benefactors, including through the preparation of additional grant applications and funding pitches—which in and of themselves require substantial amount of organizational time and resources.

LEGAL BACKGROUND

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

68. 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.*

69. 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. 1975) (holding that the statutory requirement of likelihood of escape in 8 U.S.C. § 1357 "is always seriously applied").[23]

70. 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

[23] *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).

particularized inquiry of likelihood of escape, ICE lacks authority to arrest the individual without a warrant. *Id.*

71. 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.").

72. 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.

73. 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.[24] ICE permits its officers to make warrantless arrests *carte blanche* in violation of the statute.[25]

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

74. 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).

75. 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)).

76. 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).[26]

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[24] 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 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.

[25] Here, ICE agents did not even comply with their regulatory obligations at the time of arrest to: "Identify himself or herself as an immigration officer" and "State that the person is under arrest and the reason for the arrest." 8 C.F.R. §§ 287.8(c)(2)(iii).

[26] 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

77. 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).

78. Indeed, the Fourth Amendment requires a "judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Gerstein*, 420 U.S. at 114. A judicial determination of probable cause involves a neutral judicial officer and can be made "either through an arrest warrant or through a probable cause hearing, also called a *Gerstein* hearing, promptly after the arrest." *Lopez v. City of Chicago*, 464 F.3d 711, 718 (7th Cir. 2006); *County of Riverside*, 500 U.S. at 56 (1991) (hearing required within 48 hours); *Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 801 (N.D. Ill. 2014) (Dow, J.) ("The forty-eight hour framework set forth in *County of Riverside* 'governs the length of time which may elapse before a probable cause hearing' in cases involving extended detention.") (quoting *Chortek v. City of Milwaukee*, 356 F.3d 740, 746 (7th Cir. 2004)).

79. Here, the only "neutral judicial officer" that exists in the immigration system for this purposes is an immigration judge; ICE officers or others within DHS tasked with enforcement are not neutral in the manner contemplated by this precedent. *Shadwick v. City of Tampa*, 407 U.S. 345, 348–50 (1972) (explaining that the term "magistrate" is flexible so long as the judicial officer is "neutral and detached" from the activities of law enforcement); *Gerstein*,

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"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).

420 U.S. at 114 ("[T]he detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty."). The Seventh Circuit in *Arias* unmistakenly indicated that the Fourth Amendment compels a prompt judicial determination of probable cause after a warrantless immigration arrest. 676 F.2d at 1142.

80. Accordingly, ICE must bring an individual arrested without a warrant before an Immigration Judge "without unnecessary delay," which, either as a matter of statutory interpretation or constitutional mandate, 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.

81. The INA does not grant ICE officers the authority or jurisdiction to enforce state laws. *See* 8 U.S.C. §§ 1357(a)(4), (a)(5) (delineating the narrow circumstances in which ICE officers can make a criminal arrest). Section 1357(a) does not include the authority to issue traffic citations, and therefore ICE officers may not conduct traffic stops to issue traffic citations. *See, e.g., United States v. Perkins*, 166 F.Supp.2d 1116, 1125-26 (W.D. Tex. 2001) (citing § 1357(a)(5) in concluding that "[DHS] agents do not have authority to stop a vehicle based only on a suspicion that a person is violating a state traffic law"); *United States v. Rubio–Hernandez*, 39 F.Supp.2d 808, 830 (W.D.Tex.1999) (same holding).

82. 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).

83. 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.

84. 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.

CLASS ACTION ALLEGATIONS

85. 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 a probable cause hearing before an Immigration Judge or other detached and neutral judicial officer.

86. Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, and Erick Rivera Sales 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.

87. 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 of its warrantless immigration arrests through traffic stops on less than a reasonable suspicion.

88. The proposed class and sub-class are numerous. Upon information and belief, between May 18 and 24, 2018 alone, ICE 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.[27] 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."[28] And when conducting at-large arrests, one of ICE's preferred tactics is traffic stops absent reasonable suspicion.

89. 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

[27] 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.

[28] 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 class members 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 class members 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 class members 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 class members who ICE did not bring promptly before an Immigration Judge for an examination regarding the warrantless arrest.

e. Whether ICE violates class members' Fourth Amendment rights by subjecting them to warrantless arrests without promptly, post-arrest obtaining a probable cause determination from a detached and neutral judicial officer, such as an immigration judge.

f. Whether ICE lacks authority to detain class members who ICE did not promptly, post-arrest obtain a probable cause determination from a detached and neutral judicial officer, such as an immigration judge.

g. And as to the Sub-class, whether ICE violates 8 U.S.C. §§ 1357(a)(4), (a)(5), when it engages in indiscriminate traffic stops purporting to enforce state and local traffic laws.

h. Whether ICE's lack of policy for establishing and documenting a reasonable suspicion to conduct traffic stops of sub-class members 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.

i. Whether ICE's pattern and practice of conducting traffic stops of sub-class members 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.

90. 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.

91. 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.

92. 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.

93. 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) (Main Class and Organizational Plaintiffs)

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

95. Between May 18 and 24, ICE arrested Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales without warrants. Before the arrests, ICE failed to make individualized findings of flight risk. All were "collateral arrests" as part of ICE's large-scale, indiscriminate enforcement actions in the Chicago area. Some 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.

96. ICE arrested Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales 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). Plaintiffs remain detained as a result of ICE's unlawful warrantless arrests.

97. As a result of the indiscriminate and unlawful ICE enforcement actions, Plaintiff organizations ICIRR and OCAD have had to divert considerable, additional resources to the activities of their Family Support Network and Hotline and other programing to inform affected community members of their legal rights, how to access legal representation, and how to access other essential resources, services and support when a family member is suddenly subject to ICE enforcement.

98. 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.

99. 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).

100. ICE's policy and practice of making warrantless arrests without the required individualized flight risk analysis is "final agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §§ 704, 706(2)(A).

101. ICE's policy and practice of making warrantless arrests without the required individualized flight risk analysis is "final agency action" that is "in excess of statutory jurisdiction, authority, or limitations" under §1357(a)(2). 5 U.S.C. §§ 704, 706(2)(C).

102. 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, further causing Organizational Plaintiffs to continue to expend considerable, additional resources to their hotline and providing needed service and support to the families torn apart by Defendants' sudden, indiscriminate enforcement actions.

103. 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); § 706(2)(B) § 706(2)(D): Failure to Provide Prompt Examination Following a Warrantless Arrest Violates 8 U.S.C. § 1357(a)(2) (Main Class)

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

105. Between May 18 and 24, ICE arrested Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales without warrants. ICE has continued to detain Plaintiffs despite failing to bring Plaintiffs before an Immigration Judge for examination.

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

107. 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.

108. 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.

109. ICE's policy and practice of failing to bring individuals subject to warrantless arrests promptly before an Immigration Judge is "final agency action" that is " unlawfully withheld or unreasonably delayed" in violation of the APA. 5 U.S.C. §§ 704, 706(1).

110. ICE's policy and practice of failing to bring individuals subject to warrantless arrests promptly before an Immigration Judge is "final agency action" that is "contrary to constitutional right, power, privilege, or immunity; unlawfully withheld or unreasonably delayed" in violation of the APA. 5 U.S.C. §§ 704, 706(2)(B).

111. ICE's policy and practice of failing to bring individuals subject to warrantless arrests promptly before an Immigration Judge is "final agency action" that is "without observance of procedure required by law" in violation of the APA. 5 U.S.C. §§ 704, 706(2)(D).

112. 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.

113. 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: Warrantless Arrest Without Prompt Judicial Determination of Probable Cause (Main Class)

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

115. Between May 18 and 24, ICE arrested Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales without warrants. ICE has failed to promptly obtain a probable cause determination from a detached and neutral judicial officer, such as an Immigration Judge.

116. Defendants' policies and practice of arrest and continued detention of Plaintiffs without a judicial warrant or obtaining a prompt, post-arrest determination of probable cause from an immigration judge or other detached and neutral judicial officer unreasonably deprive Plaintiffs of their liberty in violation of the Fourth Amendment.

117. As a proximate result of Defendants' unconstitutional arrest and detention policies, practices, acts, and omissions, Plaintiffs are suffering and will continue to suffer an unreasonable deprivation of their liberty without any legal recourse.

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

COUNT IV

Fourth Amendment Violation: Traffic Stops Lacking Reasonable Suspicion (Sub-Class and Organizational Plaintiffs)

119. Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, and Erick Rivera Sales repeat and reallege all the allegations above and incorporates them by reference here.

120. 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.

121. 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.

122. Upon information and belief, the ICE agents did not have a reasonable suspicion that either Plaintiff Margarito Castañon Nava or his co-worker were 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 because of stereotypes regarding the immigration status of Hispanics in the construction industry and in certain neighborhoods in Chicago in which ICE conducted this and likely other stops during recent enforcement actions.

123. On May 24, 2018, ICE agents pulled over Plaintiff Erick Rivera Sales, a resident of Chicago for four years who has missed the birth of his child because of his arrest. The arrest occurred in the early morning in Palatine, Illinois, when Mr. Rivera Sales was leaving home to

go to work. In this case too, ICE utilized multiple different vehicles to physically block Mr. Rivera Sales' way: at the time of the stop, his car was surrounded on three sides by ICE vehicles.

124. Upon information and belief, the ICE agents did not have a reasonable suspicion that either Mr. Rivera Sales or the passengers of his car were present in the United States in violation of immigration law prior to the stop. Nor did they provide any other justification for stopping the vehicle.

125. On May 19, 2018, Plaintiff Guillermo Hernandez Hernandez was pulled over in Joliet, Illinois, while driving with a friend home from having lunch. At the time of the arrest Mr. Hernandez Hernandez had a valid driver's license and all of the documentation relating to his car was current. Initially, Mr. Hernandez Hernandez was pulled over by a single, unmarked black truck. But soon after, a second vehicle, a van, pulled up next to Mr. Hernandez Hernandez's car, effectively blocking him in.

126. Upon information and belief, the ICE agents did not have a reasonable suspicion that Mr. Hernandez Hernandez or his friend were 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.

127. Defendants lack of a policy for establishing and documenting a reasonable suspicion to conduct traffic stops of Plaintiffs and sub-class members within the area of responsibility of the Chicago Field Office, in the absence of a reasonable suspicion that an individual ICE has identified for arrest is within the vehicle, violates the Fourth Amendment.

128. Defendants have a pattern of practice of making traffic stops of individuals in vehicles that are unsupported by a reasonable suspicion of violations of immigration laws.

129. As a proximate result of Defendants' unreasonable traffic stops, Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, Erick Rivera Sales and the sub-class of similarly situated individuals subjected to ICE's traffic stops within the area of responsibility of the ICE Chicago Office are suffering and will continue to suffer a significant deprivation of their liberty in violation of their Fourth Amendment rights.

130. As a proximate result of the indiscriminate and unlawful ICE enforcement actions, Plaintiff organizations ICIRR and OCAD have had to divert considerable, additional resources to the activities of their Family Support Network and Hotline and other programing to inform affected community members of their legal rights, how to access legal representation, and how to access other essential resources, services and support when a family member is suddenly subject to ICE enforcement.

131. Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, Erick Rivera Sales 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 warrantless arrest policies, practices, acts, and omissions described herein are unlawful and violate Plaintiffs' rights under the Fourth Amendment to a prompt judicial determination of probable cause.

F. Declare that ICE's lack of a policy and ICE's pattern and practice of making traffic stops of individuals in their vehicles, other than when its agents have reasonable suspicion that a previously identified individual for enforcement is within the vehicle, violate 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 adopt a policy for making and documenting an individualized probable cause determination that the arrestee is a flight risk in accordance with 8 U.S.C. § 1357(a)(2) for any warrantless arrests in the area of responsibility of the ICE Chicago Field Office.

I. 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 or other detached and neutral judicial officer within 48 hours of arrest or otherwise without unnecessary delay in accordance with 8 U.S.C. § 1357(a)(2) and the Fourth Amendment.

J. Enter a preliminary and permanent injunction requiring ICE to end traffic stops of individuals in vehicles 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.

K. Enter a preliminary and permanent injunction to require ICE to adopt a policy for establishing and documenting a reasonable suspicion in making traffic stops of individuals in vehicles within the area of responsibility of the Chicago Field Office that comport with the Fourth Amendment.

L. Issue a judgment ordering ICE to provide Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales 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.

M. Attorneys' fees and costs.

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

Date: June 27, 2018

Respectfully Submitted:

s/ Mark Fleming

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