

# EXHIBIT A

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

GERARDO GONZALEZ; et al.,

Plaintiffs,

vs.

IMMIGRATION AND CUSTOMS  
ENFORCEMENT; et al.,

Defendants.

Case No. CV 13-04416 AB (FFMx)

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

Honorable André Birotte, Jr.

1           **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2           Plaintiffs in *Gonzalez v. ICE*, Gerardo Gonzalez and Simon Chinivizyan,  
3 on behalf of themselves and all members of the Settlement Class (collectively,  
4 “Gonzalez Plaintiffs”) and Defendants U.S. Immigration and Customs  
5 Enforcement (ICE), ICE Deputy Director and Senior Official Performing the  
6 Duties of the Director Patrick J. Lechleitner, ICE Los Angeles Interim Field  
7 Office Director Michael V. Bernacke, and ICE Law Enforcement Support Center  
8 Director Christopher Graupe (collectively, “Defendants” and, with Plaintiffs, “the  
9 Parties”), through their counsel, enter into this Class Action Settlement  
10 Agreement and Release (“Agreement”) as of the date it is executed by all Parties  
11 (the “Agreement Date”) and effective 90 days after approval of the Court  
12 pursuant to Federal Rule of Civil Procedure 23(e), as set forth in Section IX  
13 below.

14           **WHEREAS:**

15           On June 19, 2013, Plaintiffs commenced a civil action on behalf of  
16 themselves and all others similarly situated challenging their ongoing and  
17 imminent detention on immigration detainers, captioned *Gonzalez v. ICE*, United  
18 States District Court for the Central District of California (“the District Court”),  
19 Case No. 13-cv-4416, and sought class certification, appointment of class  
20 counsel, and declaratory, injunctive, and habeas corpus relief.

21           On September 9, 2016, the District Court certified three Plaintiff classes  
22 under Federal Rule of Civil Procedure 23(b)(2): (1) the **Judicial Determination**  
23 **Class**, consisting of all current and future persons who are subject to an  
24 immigration detainer issued by an ICE agent located in the Central District of  
25 California, where the detainer is not based upon a final order of removal signed  
26 by an immigration judge or the individual is not subject to ongoing removal  
27 proceedings, and limited to those detained for more than 48 hours; (2) the  
28 **Probable Cause Subclass**, consisting of all current and future persons who are

1 subject to an immigration detainer issued by an ICE agent located in the Central  
2 District of California based solely on electronic database checks, where the  
3 detainer is not based upon a final order of removal signed by an immigration  
4 judge or the individual is not subject to ongoing removal proceedings; and (3) the  
5 **Statutory Subclass**, consisting of all current and future persons who are subject  
6 to an immigration detainer issued by an ICE agent located in the Central District  
7 of California, where the detainer is not based upon a final order of removal  
8 signed by an immigration judge or the individual is not subject to ongoing  
9 removal proceedings, for whom ICE did not issue an administrative warrant of  
10 arrest at the time it issued the immigration detainer.

11 On June 12, 2017, the District Court granted partial summary judgment for  
12 Defendants on the Judicial Determination Class’s claim that Defendants’ failure  
13 to provide a neutral probable cause determination within forty-eight hours of  
14 arrest violates the Fourth Amendment (“Plaintiffs’ *Gerstein* Claim”).

15 On February 7, 2018, the District Court granted partial summary judgment  
16 for Plaintiffs on two claims: (1) the Statutory Subclass’s claim that Defendants’  
17 policy of issuing detainers without either an administrative warrant or an  
18 assessment of flight risk violates 8 U.S.C. § 1357(a)(2) and (2) the Probable  
19 Cause Subclass’s claim that Defendants’ policy of issuing detainers based solely  
20 on evidence of foreign birth and failure to find a match in federal immigration  
21 databases violates the Fourth Amendment. The District Court denied Plaintiffs’  
22 Motion for Summary Judgment as to the Probable Cause Subclass’s claim that  
23 detainers issued based solely on database checks violates the Fourth Amendment,  
24 finding a factual dispute as to the reliability of ICE’s use of its databases to  
25 establish probable cause.

26 Between May 7 and May 16, 2019, the District Court conducted a seven-  
27 day trial.

28 On February 5, 2020, the District Court entered a final judgment in favor

1 of Plaintiffs on four claims: (1) the Probable Cause Subclass’s claim that  
2 Defendants violate the Fourth Amendment by issuing detainers for Probable  
3 Cause Subclass members based solely on database checks that rely upon  
4 information from sources that lack sufficient indicia of reliability for a probable  
5 cause determination for removal (hereinafter, “Plaintiffs’ Database Claim”); (2)  
6 the Probable Cause Subclass’s claim that evidence of foreign place of birth and  
7 no match in a federal immigration database does not establish probable cause of  
8 alienage and removability under the Fourth Amendment; (3) the Probable Cause  
9 Subclass’s claim that Defendants violate the Fourth Amendment by issuing  
10 detainers to state and local law enforcement agencies in states that do not  
11 expressly authorize civil immigration arrests in state statute and (4) the Statutory  
12 Subclass’s claim that Defendants violate 8 U.S.C. § 1357(a)(2) by issuing  
13 detainers without either an administrative warrant or determining that a person  
14 “is likely to escape before a warrant can be obtained for [their] arrest.” The  
15 District Court also entered two injunctions. The first prohibited Defendants from  
16 issuing detainers to Probable Cause Subclass members based on databases alone  
17 (“the Database Injunction”). The second prohibited Defendants from issuing  
18 detainers to the Probable Cause Subclass members in states that do not expressly  
19 authorize civil immigration arrests (“the State Authority Injunction”).

20 On February 14, 2020, Defendants filed a notice of appeal to the U.S.  
21 Court of Appeals for the Ninth Circuit (“Ninth Circuit”). Defendants appealed the  
22 District Court’s entry of the State Authority and Database Injunctions, as well as  
23 the District Court’s Certification of the Probable Cause Subclass. Plaintiffs filed a  
24 cross appeal, seeking review of the District Court’s June 12, 2017 order granting  
25 partial summary judgment for Defendants on Plaintiffs’ *Gerstein* Claim.

26 On September 11, 2020, the Ninth Circuit issued an opinion affirming in  
27 part, reversing and vacating in part, and remanding.

28 On October 29, 2021, following a status conference, the District Court

1 stayed further proceedings until January 31, 2022, ordering the Parties to focus  
2 their efforts during that time on attempting to settle this matter. The District  
3 Court has extended the stay multiple times over the ensuing nearly three years.

4 The Parties have conducted extensive discussions and arms-length  
5 negotiations with a view toward settling all matters in dispute in *Gonzalez*.  
6 Considering the expense and inconvenience of additional, potentially protracted  
7 litigation, and in consideration of the representations, promises, and agreements  
8 set forth herein, the Parties have agreed to the settlement of the *Gonzalez* Action.  
9 Counsel for Plaintiffs have concluded that the terms and conditions of this  
10 Agreement are fair, reasonable, and adequate.

11 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and  
12 among the Parties, through their respective attorneys, subject to the approval of  
13 the Court pursuant to Federal Rule of Civil Procedure 23(e), in consideration of  
14 the benefits flowing to the Parties from this Agreement, that this Agreement shall  
15 constitute a full, fair, and complete settlement of the Action, upon and subject to  
16 the following terms and conditions.

17  
18 **I. DEFINITIONS**

19 Wherever used in this Agreement, the following terms have the meanings  
20 set forth below:

- 21 A. "A-file" or "alien file" means the official U.S. Department of  
22 Homeland Security (DHS) record of an individual's immigration  
23 history to include the following materials and formats: (a) the paper A-  
24 file, (b) the electronic A-file, or (c) a combination of paper and  
25 electronic records and supporting documentation.
- 26 B. "Agreement Date" means the date this Agreement is executed by all  
27 Parties.
- 28 C. "Box 3 ICE Detainer" means an ICE Detainer issued based on

1 biometric confirmation of identity and records check of federal  
2 electronic databases. On the current detainer form, Form I-247A,  
3 Immigration Detainer – Notice of Action, it is the third checkbox in  
4 section 1, which states that the basis for the determination of probable  
5 cause is: “Biometric confirmation of the alien’s identity and a records  
6 check of federal databases that affirmatively indicate, by themselves or  
7 in addition to other reliable information, that the alien either lacks  
8 immigration status or notwithstanding such status is removable under  
9 U.S. immigration law.”

10 D. “Box 4 ICE Detainer” means an ICE Detainer issued based on:

11 “Statements made by the alien to an immigration officer and/or other  
12 reliable evidence that affirmatively indicate the alien either lacks  
13 immigration status or notwithstanding such status is removable under  
14 U.S. immigration law.” On the current detainer form, Form I-247A,  
15 Immigration Detainer – Notice of Action, it is the fourth checkbox in  
16 section 1. As part of this Agreement, Defendants agree to interpret the  
17 phrase “other reliable evidence” to encompass only an interview of the  
18 Settlement Class member or review of the Settlement Class member’s  
19 A-file.

20 E. “Cancel” or “Cancellation” of an ICE Detainer refers to the process by  
21 which ICE sends an ICE Detainer to a law enforcement agency with the  
22 “cancel the detainer” box checked and any other attendant procedures  
23 ICE uses to cancel a detainer from its systems and communicate its  
24 cancellation to the law enforcement agency to which the ICE Detainer  
25 was issued.

26 F. “Defendants” means ICE, ICE Deputy Director and Senior Official  
27 Performing the Duties of the Director Patrick J. Lechleitner, ICE Los  
28 Angeles Interim Field Office Director Michael V. Bernacke, and ICE

1 Law Enforcement Support Center Director Christopher Graupe, and  
2 their successors.

3 G. “Detainer Functions of the PERC” means the review of Immigration  
4 Alien Responses (IARs), including any successor process to the IAR,  
5 and issuance of Box 3 and Box 4 ICE Detainers for individuals detained  
6 in a geographical location identified in Appendix A during the times  
7 delineated in Appendix A, regardless of where the review of the IAR or  
8 issuance of the Box 3 and Box 4 ICE Detainer takes place.

9 H. “Effective Date” means the date this Agreement shall become effective,  
10 as set forth in Section IX below.

11 I. “Final Approval Order” means a Court order granting final approval of  
12 this Agreement; holding this Agreement to be fair, reasonable,  
13 adequate, and in the best interests of the class; finding that class  
14 representatives and class counsel have adequately represented the class;  
15 ordering that the Parties implement this Agreement in accordance with  
16 its terms and provisions; entering final judgment; dismissing Plaintiffs’  
17 claims with prejudice; and retaining jurisdiction over the interpretation,  
18 implementation, and enforcement of this Agreement.

19 J. “ICE” means U.S. Immigration and Customs Enforcement, including  
20 the Office of the Principal Legal Advisor (OPLA).

21 K. “ICE Detainer” means any ICE request that a federal, state, or local  
22 law enforcement agency maintain custody over an individual beyond  
23 the time the individual would otherwise be released from the agency’s  
24 custody, including but not limited to the request contained in any  
25 version of the Form I-247 and any successor form or request. The  
26 current detainer form, Form I-247A, Immigration Detainer - Notice of  
27 Action, and current ICE policy, expressly limit the request for  
28 continued law enforcement custody to no more than 48 hours beyond



1 when the subject would otherwise have been released. The terms of  
2 this settlement apply regardless of how the Detainer request is  
3 communicated and what Detainer form is used. This definition does  
4 not include Form I-247G, Request for Advance Notification of  
5 Release, Form I-247N, Request for Voluntary Notification of Release  
6 of Suspected Priority Alien, or any equivalent that does not request  
7 detention.

8 L. “Noncitizen” shall have the same meaning as the term “alien” defined  
9 in 8 U.S.C. § 1101(a)(3). The term does not include a noncitizen  
10 national of the United States.

11 M. “Ongoing Removal Proceedings” means removal, exclusion, or  
12 deportation proceedings initiated by the filing of a Notice to Appear or  
13 Order to Show Cause with the Immigration Court prior to the issuance  
14 of the ICE Detainer.

15 N. “Plaintiffs” means Gerardo Gonzalez and Simon Chinivizyan, on  
16 behalf of themselves and all members of the Settlement Class.

17 O. “Plaintiffs’ Counsel” means the American Civil Liberties Union  
18 (ACLU) of Southern California; the Seattle Clemency Project;  
19 McLane, Bernarski & Litt; the National Day Laborer Organizing  
20 Network (NDLON); and the National Immigrant Justice Center  
21 (NIJC).

22 P. “Probable Cause Statement” means a written explanation of the facts  
23 and circumstances within the officer’s knowledge and of which they  
24 have reasonably trustworthy information that are sufficient in  
25 themselves to warrant a person of reasonable caution in the belief that  
26 an individual is a noncitizen and removable from the United States.

27 Q. “Settlement Class” shall mean the class defined in Section II.

28 R. “Settled Claims” means all claims for declaratory, injunctive and other

1 equitable relief against Defendants arising from the facts and  
2 circumstances at the time of the allegations made by Plaintiffs in the  
3 Third Amended Complaint, including all declaratory and injunctive  
4 claims that could have been asserted arising out of the same facts and  
5 circumstances alleged. This definition does not include any equitable  
6 or other remedies that may be available to a Settlement Class member  
7 in removal proceedings before the Executive Office for Immigration  
8 Review.

9 S. "Settlement Termination Date" shall mean five years from the Effective  
10 Date.

11  
12 **II. SETTLEMENT CLASS**

13 **A. Class Definition**

14 The Parties agree to jointly move for certification of a Settlement Class  
15 under Rule 23(b)(2) defined as follows: All current and future individuals who  
16 are subject to a Box 3 or a Box 4 ICE Detainer, where the ICE Detainer is issued  
17 from a location within the Central District of California or where the ICE  
18 Detainer was issued under the Detainer Functions of the PERC regardless of  
19 where the ICE Detainer was issued.<sup>1</sup> The Settlement Class does not include  
20 individuals who are subject to an ICE Detainer issued based upon a final order of  
21 removal, deportation, or exclusion or Ongoing Removal Proceedings.

22 \_\_\_\_\_  
23 <sup>1</sup> Nothing in this Agreement limits the authority of Defendants to change the  
24 locations or times covered by the PERC, or make any other operational changes  
25 either permanently or on a temporary basis. However, should a function included  
26 in the Detainer Functions of the PERC be transferred outside the jurisdiction of  
27 the Central District of California, the requirements of this Agreement will  
28 continue to apply to such function. Defendants shall notify Plaintiffs' counsel  
within thirty (30) days regarding any change to the locations or times covered by  
the PERC. The Parties shall promptly meet and confer in order to update the  
Reporting requirements under Section VII to account for the changes.

1           **B. Class Representatives and Class Counsel**

2           1. The Parties agree that Plaintiffs Gerardo Gonzalez and Simon  
3 Chinivizyan shall serve as class representatives of the Settlement Class.

4           2. The Parties further agree that Plaintiffs' Counsel shall serve as counsel  
5 to the Settlement Class.

6           **C. Consent Motion**

7           To effectuate the agreement of the Parties regarding the certification of the  
8 Settlement Class, the Parties agree that Plaintiffs' Counsel will submit to the  
9 Court a motion on the consent of Defendants seeking certification of the  
10 Settlement Class concurrently with the Parties' joint application for approval of  
11 the Settlement.

12  
13           **III. NEUTRAL REVIEW OF PROBABLE CAUSE DETERMINATIONS**  
14           **UNDERLYING ICE DETAINERS**

15           A. If a Box 3 or Box 4 ICE Detainer is issued by an ICE officer against  
16 a Settlement Class member, the Box 3 or Box 4 ICE Detainer shall be presented  
17 to a Neutral Reviewer, as described herein, to conduct a neutral review of the  
18 underlying ICE probable cause determination. Defendants are under no  
19 obligation to create a neutral review process if they do not issue Box 3 or Box 4  
20 ICE Detainers.

21           1. Neutral Reviewers shall be housed within DHS Headquarters (DHS  
22 HQ), and the decision-making of such Neutral Reviewers shall be  
23 independent of ICE.

24           2. Neutral Reviewers will be personnel at the GS-15, equivalent, or  
25 higher level with a strong preference for individuals with a juris  
26 doctor degree and at least five years of relevant legal experience,  
27 preferably as an immigration judge, appellate immigration judge, or  
28 administrative law judge.

- 1                   3. DHS HQ shall set the policies and procedures governing the Neutral  
2                   Reviewers and their review of probable cause determinations,  
3                   consistent with this Settlement Agreement. DHS HQ will be solely  
4                   responsible for, and ICE will play no role in, the hiring, firing,  
5                   supervising, and day-to-day management of the Neutral Reviewers.  
6                   4. DHS HQ will require the Neutral Reviewers to undergo standardized  
7                   training. (*See* Section V, below).

8  
9                   B. If a neutral review process is created, Defendants shall notify  
10                  Plaintiffs’ counsel and the Court within ten (10) business days of the  
11                  establishment of that process and completion of the training contained in Section  
12                  V.

13  
14                  **IV. PROCEDURES FOR DETAINER ISSUANCE**

15                  ICE shall not issue a Box 3 or a Box 4 ICE Detainer against a Settlement  
16                  Class member unless and until ICE complies with the following procedures:

17                  **A. ICE Probable Cause Determinations**

- 18                  1. An ICE officer shall check the following databases, including any  
19                  successor database systems, whether individually or through an  
20                  automated means of consolidated review, to the extent that the  
21                  databases remain operational and accessible to ICE Enforcement and  
22                  Removal Operations (ERO) for immigration enforcement purposes:  
23                  i. National Crime Information Center (NCIC)  
24                  ii. National Law Enforcement Telecommunications System  
25                  (NLETS)  
26                  iii. DHS/USCIS Central Index System (CIS)  
27                  iv. DHS/USCIS Computer Linked Application Information  
28                  Management System (CLAIMS)

- 1 v. DHS/ICE Enforce Integrated Database (EID)
- 2 vi. DHS Automated Biometric Identification System (IDENT)
- 3 vii. DHS/CBP Arrival and Departure Information System (ADIS)
- 4 viii. DHS/ICE Student and Exchange Visitor Information System
- 5 (SEVIS)
- 6 ix. DHS/USCIS Global
- 7 x. DOJ Executive Office for Immigration Review (EOIR)
- 8 systems
- 9 xi. U.S. Department of State’s Consular Consolidated Database
- 10 (CCD), and
- 11 xii. When there are indicators that a person may have been born in
- 12 California before 1996, the California Birth Index
- 13 (<https://www.californiabirthindex.org/>).

- 14
- 15 2. An ICE officer shall not be permitted to issue a Box 3 ICE Detainer
- 16 against a Settlement Class member who falls within one of the
- 17 categories described in Subsection IV.D. below. For Settlement
- 18 Class members who fall within one of those categories, ICE shall
- 19 conduct an interview of the Settlement Class member or review the
- 20 Settlement Class member’s A-file before proceeding to subsection
- 21 IV.A.3. immediately below.
- 22 3. When issuing a Box 3 or Box 4 ICE Detainer, the ICE officer will
- 23 create a Probable Cause Statement. This Probable Cause Statement
- 24 will include reference to all sources that were relied upon to
- 25 formulate the probable cause assessment. This will include reference
- 26 to whether database(s) were checked, and if so, the name(s) of the
- 27 database(s) and the results of the database checks. The officer need
- 28 not summarize the contents of each system checked.

1                   4. The ICE officer shall submit the Probable Cause Statement together  
2                   with the results of all databases the officer checked (regardless of  
3                   whether they yielded a positive or negative result or whether they  
4                   were relied upon by ICE) to the Neutral Reviewer. This combined  
5                   information, along with a copy of the ICE Detainer, will be known  
6                   as the “detainer package.”

7                   **B. Neutral Review**

- 8                   1. As soon as practical, but no more than 48 hours (including  
9                   weekends and holidays) of issuance of an ICE Detainer against a  
10                  Settlement Class member, except in the case of an individual  
11                  detained in state or federal prison with three months or more  
12                  remaining on their sentence at the time of the interoperability hit,  
13                  currently known as an Interoperability Alien Query (IAQ), in which  
14                  case not more than 14 calendar days of detainer issuance, ICE shall  
15                  obtain review and concurrence with ICE’s probable cause  
16                  determination from a Neutral Reviewer.
- 17                  2. The Neutral Reviewer will assess the detainer package to determine  
18                  if the ICE officer has established probable cause that the person is a  
19                  noncitizen and removable under the immigration laws.
- 20                  3. The Neutral Reviewer’s decision will be limited to concurrence or  
21                  nonconcurrence with ICE’s probable cause determination.
- 22                  4. ICE will store detainer packages submitted for review and the  
23                  results of the neutral review until the Settlement Termination Date.

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25                  **C. Neutral Review Nonconcurrence or Expiration of 48 Hours**

26                  Should neutral review not be completed within the time period referenced  
27                  in Section IV.B.1. or should the neutral review result in nonconcurrence, absent  
28

1 extraordinary circumstances,<sup>2</sup> the following procedures apply:

- 2 1. ICE’s case management system shall automatically update to reflect  
3 that the ICE Detainer cannot be acted upon, and the ICE Detainer  
4 must be cancelled.
- 5 2. Within three hours, ICE shall notify the relevant law enforcement  
6 agency (LEA), through the typical channel of communication  
7 regarding ICE Detainers between ICE and that LEA (typically email  
8 or fax), that the LEA may not rely on the ICE Detainer. The  
9 notification will contain the language in Appendix B.
- 10 3. ICE will cancel the ICE Detainer as expeditiously as practicable,  
11 generally within 48 business hours, except for circumstances in  
12 which staffing or operational exigencies require additional time to  
13 complete the cancellation, in which case cancellation will take no  
14 longer than 10 calendar days. Only in extraordinary circumstances  
15 (defined in footnote 2), may a cancellation take longer than 10  
16 calendar days. ICE will only take longer than 48 business hours to  
17 cancel detainers in limited circumstances and in most cases will  
18 cancel the detainer expeditiously within 48 business hours.
- 19 4. Prior to assuming physical custody of a Settlement Class member,  
20 an ICE officer shall review ICE’s case management system to  
21 confirm that a Nonconcurrency or Expiration of the time period in  
22 Section IV.B.1 has not been issued. If the case management system  
23 reflects a Nonconcurrency or Expiration of the time period in  
24 Section IV.B.1, the officer will confirm that ICE cancelled the ICE

25  
26 <sup>2</sup> Extraordinary circumstances shall generally be understood to be IT-related delays or  
27 malfunctions, including with regard to non-ICE databases, or any event that would necessitate  
28 an office closure, such as weather-related emergencies (e.g., hurricanes, significant winter  
storms, tornados), other natural disasters, civil unrest, acts of terrorism, or a public health  
emergency such as a pandemic.

1 Detainer and, if not, will cancel the ICE Detainer.

2 5. If a Neutral Reviewer issues a nonconcurrency determination, ICE  
3 shall not issue a new ICE Detainer against the individual absent new  
4 evidence. The new ICE Detainer would be subject to the same  
5 procedures for detainer issuance set forth in this section.

6

7 *Remedies Where a Settlement Class Member is Taken into ICE Custody Prior to*  
8 *the Nonconcurrency or Expiration of the Time Period in Section IV.B.1*

9 6. If a Settlement Class member is taken into ICE physical custody  
10 within the time period in Section IV.B.1 but before neutral review  
11 has occurred, the neutral review shall still occur. For this subset of  
12 Settlement Class members, the following remedies apply depending  
13 on whether the time period in Section IV.B.1 expires or the Neutral  
14 Reviewer issues a nonconcurrency:

15 a. **Neutral Review Does Not Occur within the Time Period in**  
16 **Section IV.B.1:**

- 17 i. Class Members detained pursuant to section 236(a) of the  
18 Immigration and Nationality Act (INA), 8 U.S.C. §  
19 1226(a): These class members shall be released from ICE  
20 custody.
- 21 ii. Class Members detained pursuant to section 236(c) of the  
22 INA, 8 U.S.C. § 1226(c): These class members will not be  
23 released from ICE custody, but DHS will promptly notify  
24 the class member, their legal representative (if any), and  
25 the immigration judge presiding over the removal  
26 proceedings that there was no neutral review timely  
27 completed, as required by the *Gonzalez v. ICE* settlement  
28 agreement.



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**b. Neutral Review Results in a Nonconcurrency:**

- i. Class Members detained pursuant to section 236(a) of the INA, 8 U.S.C. § 1226(a): These class members shall be released from ICE custody.
- ii. Class Members detained pursuant to section 236(c) of the INA, 8 U.S.C. § 1226(c): These class members will be released from ICE custody, unless new evidence beyond that submitted to the Neutral Reviewer is obtained supporting removability. Where ICE uses additional evidence gathered after arrest to overcome a nonconcurrency, ICE must document in the class member's Form I-213, Record of Inadmissible/Deportable Alien: 1) the additional evidence; and 2) how that evidence was obtained. ICE must provide a copy of the Form I-213 (subject to redactions for Personally Identifying Information (PII) and Law Enforcement Sensitive information) to the class member and their legal representative (if any).

7. Notwithstanding Section IV.C., ICE may request that the Secretary of Homeland Security or the Secretary's designee review a Neutral Reviewer's nonconcurrency determination for a Settlement Class member's Box 3 or Box 4 Detainer. In response to an ICE request for review, the Secretary or the Secretary's designee may overrule the determination of the Neutral Reviewer, concur with the determination, or take no action. Elevation of a nonconcurrency determination to the Secretary for review should be exceptionally rare. If the Secretary or the Secretary's designee concurs with the Neutral Reviewer's nonconcurrency determination, or takes no

1 action within two business days of ICE’s request, the decision of the  
2 Neutral Reviewer shall stand and the procedures in Section IV.C  
3 shall apply. The Secretary’s review shall be limited to the question  
4 of whether probable cause of noncitizenship and removability has  
5 been established based on the detainer package, the conclusions of  
6 the Neutral Reviewer, and any other available evidence, including  
7 any evidence that was not available to the Neutral Reviewer. In the  
8 event the Secretary or the Secretary’s designee overrules a  
9 determination to cancel a Settlement Class member’s Box 3 or Box  
10 4 Detainer, Defendants shall notify Plaintiffs’ counsel which  
11 Settlement Class member’s neutral review determination was  
12 overruled in the next scheduled reporting period.

13 **D. ICE Detainers That Require an Interview or A-file Review**

14 ICE officers shall not be permitted to issue a Box 3 ICE Detainer against  
15 any Settlement Class member who falls within any of the following categories:

- 16 1. ICE has physical access to the jail or prison where the individual is  
17 in custody within 30 miles of the nearest ERO office, or the facility  
18 is willing to facilitate a video or telephonic interview with the  
19 individual;
- 20 2. There is no biometric fingerprint match with the DHS IDENT  
21 database (or any successor electronic repository for fingerprint  
22 records);
- 23 3. The sole evidence of a person’s current immigration status is based  
24 on the class of admission (“COA”) field in the CIS database, unless  
25 no other immigration database shows a change of the individual’s  
26 immigration status from the status reflected in the COA.
- 27 4. The individual is in state or federal prison and has more than six  
28 months remaining on their sentence from the time of the

- 1 interoperability hit, currently known as the IAQ, that brings an  
2 individual to ICE's attention;
- 3 5. The individual is in state or federal prison and has between three and  
4 six months remaining on their sentence at time of the  
5 interoperability hit, currently known as the IAQ, that brings an  
6 individual to ICE's attention; provided the A-File is in the physical  
7 possession of ICE ERO or an interview of the individual is permitted  
8 by the facility;
- 9 6. DHS databases include conflicting information regarding whether  
10 the individual was born in the United States or is otherwise a U.S.  
11 citizen;
- 12 7. Checks of databases referenced in Section IV.A.1 above indicate  
13 prior U.S. military service;
- 14 8. Database checks show the individual became a lawful permanent  
15 resident as a minor and the ICE officer cannot affirmatively confirm  
16 through database checks the identity of both parents and that neither  
17 parent naturalized prior to the individual's eighteenth birthday.

## 18 19 **V. TRAINING**

### 20 **1. Neutral Review Training**

21 Before a Neutral Reviewer conducts a neutral review of an ICE probable  
22 cause determination for any Box 3 or Box 4 Detainer ICE issues against a  
23 Settlement Class member, the Neutral Reviewer will receive training developed  
24 by DHS HQ. Training and related materials will include, at a minimum, the  
25 following topics:

- 26 1. Familiarity with the ICE Detainer form and the difference  
27 between Box 3 and Box 4 ICE Detainers;
- 28 2. U.S. citizenship law;

- 1 3. The various forms of immigration status;
- 2 4. Grounds of removability from the United States;
- 3 5. Class of admission (COA) and field codes utilized in the
- 4 databases listed in Section IV.A. above;
- 5 6. The content and any known objective gaps or limitations of the
- 6 databases listed in Section IV.A. and relied upon to issue ICE
- 7 Detainers;
- 8 7. The Neutral Review of Probable Cause Determinations and
- 9 Procedures for Detainer Issuance provisions of this Settlement
- 10 Agreement, including training on what must be included in a
- 11 detainer package and the circumstances under this Settlement
- 12 Agreement when a Probable Cause Statement must be supported
- 13 by an interview or A-File review.
- 14 8. The requirements for establishing Probable Cause.

15  
16 **2. ICE Officer Training**

17 Prior to issuing Box 3 or Box 4 ICE Detainers against Settlement Class  
18 members, ICE officers shall be trained, with periodic refresher training, at a  
19 minimum, on the following:

- 20 1. The provisions of Section IV of this Settlement Agreement.
- 21 2. The content and known objective gaps and limitations of the
- 22 databases listed in Section IV.A. and relied upon to issue ICE
- 23 Detainers.

24  
25 **VI. MODIFICATIONS TO ICE DETAINER FORM AND EXISTING**  
26 **PROCEDURES**

27 By the Effective Date, Defendants shall:

- 28 1. Amend the ICE Detainer forms to replace all uses of the word “alien” with

- 1 “individual.”
- 2 2. Amend the ICE Detainer forms to include a non-toll-free telephone number
- 3 to the existing ICE Law Enforcement Support Center (LESC) hotline, so
- 4 that individuals who are incarcerated can contact an ICE officer or
- 5 contractor if they believe a detainer was placed on them in error.
- 6 3. Amend the service language on the ICE Detainer forms as set forth in
- 7 Appendix C.
- 8 4. Post the Frequently Asked Questions, attached as Appendix D, on its
- 9 public facing website.
- 10 5. Ensure the following provisions, currently reflected in ICE Policy Number
- 11 10074.2, *Issuance of Immigration Detainers by ICE Immigration Officers*,
- 12 remain in force and are applied to all ICE Detainers issued against
- 13 Settlement Class members:
- 14 a. ICE immigration officers must establish probable cause to believe
- 15 that the subject is a noncitizen who is removable from the United
- 16 States before issuing an ICE Detainer.
- 17 b. The term “probable cause” is defined as the facts and circumstances
- 18 within the officer’s knowledge and of which they have reasonably
- 19 trustworthy information that are sufficient in themselves to warrant a
- 20 person of reasonable caution in the belief that an individual is a
- 21 removable noncitizen.
- 22 c. As a matter of policy, ICE may not establish probable cause to
- 23 believe that the subject is a noncitizen who is removable from the
- 24 United States solely based on evidence of foreign birth and the
- 25 absence of records in available databases.
- 26

27 **VII. REPORTING**

- 28 1. Six months after the Effective Date and continuing thereafter every

1 six months until the Settlement Termination Date, Defendants shall report to  
2 Plaintiffs' Counsel every six months the following statistical information about  
3 all Box 3 and Box 4 ICE Detainers issued against Settlement Class members in a  
4 searchable and sortable excel spreadsheet format:

- 5 1. Unique Subject Identifier
- 6 2. Subject's Country of Birth
- 7 3. Subject's Country of Citizenship
- 8 4. Date and Time of the Immigration Alien Query (IAQ) that triggered the  
9 detainer investigation
- 10 5. Name of Detention Facility where the biometric background check was  
11 initiated that resulted in the IAQ
- 12 6. State of the Detention Facility where biometric background check was  
13 initiated that resulted in the IAQ
- 14 7. Name of ICE Office issuing Detainer
- 15 8. Date and Time Detainer issued
- 16 9. Record of whether the Detainer was a Box 3, Box 4, or Both
- 17 10. Date and Time Detainer Package submitted for Neutral Review
- 18 11. Unique Neutral Reviewer Identifier
- 19 12. Date and Time of Neutral Review Determination (with notation when  
20 review is not completed within the time period in Section IV.B.1)
- 21 13. Neutral Review Probable Cause Result: Concurrence/ Nonconcurrence  
22 / Expiration of the time period in Section IV.B.1
- 23 14. Date and Time Case Management Systems updated to reflect Neutral  
24 Review Result: Concurrence, Nonconcurrence, or Expiration of the time  
25 period in Section IV.B.1
- 26 15. Whether the Secretary Overruled a Nonconcurrence Determination  
27 (Y/N)
- 28 16. Date and Time Detainer Cancellation communicated to LEA (where

- 1 applicable)
- 2 17 Date and Time Canceled Detainer issued (where applicable)
- 3 18. Date, Time, and Location Individual Booked into ICE custody (where
- 4 applicable)
- 5 19. For Individuals Booked into ICE custody prior to expiration of 48-hour
- 6 review period – Identify whether individual was subject to detention under
- 7 section 236(a) of the INA, 8 U.S.C. § 1226(a), or section 236(c) of the
- 8 INA, 8 U.S.C. § 1226(c).
- 9 20. If Column 19 applies: For individuals subject to detention under
- 10 section 236(a) of the INA, 8 U.S.C. § 1226(a) - Date and Time Individual
- 11 Released from ICE custody when neutral review results in Nonconcurrency
- 12 or Expiration of 48-hours
- 13 21. If Column 19 applies: For individuals subject to detention under
- 14 section 236(c) of the INA, 8 U.S.C. § 1226(c) [Expiration of 48-hours] -
- 15 Date and Time Written Notification of Noncompliance with Gonzalez
- 16 Settlement was provided to the Subject
- 17 22. If Column 19 applies: For individuals subject to detention under
- 18 section 236(c) of the INA, 8 U.S.C. § 1226(c) [Expiration of 48-hours] -
- 19 Date and Time Written Notification of Noncompliance with Gonzalez
- 20 Settlement was provided to the Immigration Court
- 21 23. If Column 19 applies: For individuals subject to detention under
- 22 section 236(c) of the INA, 8 U.S.C. § 1226(c) [Nonconcurrency] - Date
- 23 and Time Form I-213 was provided to the Subject

24

25 2. Six months after the Effective Date and continuing thereafter every

26 six months until the Settlement Termination Date, Defendants shall report to

27 Plaintiffs' Counsel statistical information from the previous six months

28 regarding all Immigration Alien Responses (IARs) from the ACRIME

1 Completed Queue that were assigned or routed to the PERC with an Originating  
2 Agency Identifier (ORI) from a law enforcement agency (LEA) located outside  
3 the Central District of California. Defendants shall produce the following data  
4 fields regarding those IARs in a searchable and sortable excel spreadsheet  
5 format:

- 6 1. Received Time
- 7 2. Query Type
- 8 3. AOR
- 9 4. Unique Identifier for Alien Number
- 10 5. IAR Status
- 11 6. PERC Case Status
- 12 7. Field Case Status
- 13 8. Immigration Status

14 For every entry where the “Field Case Status” indicates “Detainer,” Defendants  
15 shall produce a copy of the ICE Detainer that was issued [or a record of the ICE  
16 Office that issued the ICE Detainer and the date and time it was issued].

17  
18 **VIII. TERMS OF ORDER FOR FINAL JUDGMENT**

- 19 A. Within ten (10) business days after the Agreement Date, or by a different  
20 deadline agreed to between the Parties, the Parties shall jointly apply to the  
21 Court for approval of this Agreement, certification of the Settlement Class  
22 and request that the Court retain jurisdiction over this action to enforce the  
23 terms of this Agreement.
- 24 B. Should the Court enter an order preliminarily or finally approving the  
25 settlement that contains substantive provisions different from this  
26 Agreement, the Parties shall meet and confer in good faith regarding the  
27 differences and shall either accept the Court’s orders as written or use their  
28 best efforts to undertake whatever efforts are necessary to obtain Court



1 orders satisfactory to both Parties. The parties agree that alterations to  
2 filing deadlines or hearing dates shall not be considered modifications of  
3 substantive provisions.

4

5 **IX. EFFECTIVE DATE OF SETTLEMENT**

6 A. The Effective Date shall be 90 days after the date the Court enters its Final  
7 Approval Order of this Agreement.

8 B. Except as otherwise provided herein, if the Agreement is terminated or  
9 modified in any material respect or fails to become effective for any  
10 reason, then none of the Agreement's terms shall be effective or  
11 enforceable; the Parties to this Agreement shall be deemed to have reverted  
12 to their respective status in the Action as of the date and time immediately  
13 prior to the Agreement Date; and except as otherwise expressly provided,  
14 the Parties shall proceed in all respects as if this Agreement and any related  
15 orders had not been entered. If the Agreement is terminated or modified in  
16 any material respect, the Parties shall be deemed not to have waived, not to  
17 have modified, or not to be estopped from asserting any additional  
18 defenses or arguments available to them.

19

20 **X. TERMINATION OF OBLIGATIONS**

21 The obligations of this Agreement shall terminate five years from the  
22 Effective Date.

23

24 **XI. RELEASE OF CLAIMS**

25 As of the Effective Date, Plaintiffs, on behalf of themselves, their heirs,  
26 executors, administrators, representatives, attorneys, successors, assigns, agents,  
27 and Settlement Class members fully, finally, and forever release, relinquish, and  
28 discharge the Defendants of and from any and all of the Settled Claims. The

1 Parties agree and acknowledge that this Release shall not apply to claims that  
2 arise or accrue after the Effective Date of this Agreement.

3

4 **XII. NO ADMISSION OF WRONGDOING**

5 This Agreement, whether or not executed, and any proceedings taken  
6 pursuant to it:

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1. Shall not be construed to waive, reduce, or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Settlement Class members, consistent with the Constitution and laws of the United States, and applicable regulations;
2. Shall not be offered or received against the Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and
3. Shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, nor shall it create any substantive rights or causes of action against any of the Parties to this Agreement, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendants may refer to

1 it and rely upon it to effectuate the liability protection granted them  
2 hereunder.

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**XIII. DISPUTE RESOLUTION**

In the event of any disputes regarding implementation of the Settlement Agreement as set forth herein, they shall be resolved exclusively by this Court in the United States District Court for the Central District of California. The District Court shall have the power to award such relief and issue such judgments as the Court deems proper.

**XIV. MISCELLANEOUS PROVISIONS**

- A. Attorneys’ Fees and Costs. The Parties agree that ICE shall pay Plaintiffs the amount of \$ 675,000 in attorneys’ fees and costs.
- B. Entire Agreement. This Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party’s representative other than those expressly set forth in this Agreement.
- C. Modifications and Amendments. No amendment, change, or modification to this Agreement shall be valid unless in writing signed by the Parties or their counsel.
- D. Governing Law. This Agreement is governed by federal law and must be interpreted under federal law and without regard to conflict of laws principles.
- E. Further Assurances. The Parties shall execute and deliver any additional papers, documents, and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Agreement

1 and to carry out this Agreement’s expressed intent.

2

3 For and on behalf of Plaintiffs and the Class:

4

5 EXECUTED this 22<sup>nd</sup> day of November, 2024.

6

  
\_\_\_\_\_

7

MAYRA JOACHIN  
*mjoachin@aclusocal.org*  
ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
1313 W 8th Street, Suite 200  
Los Angeles, CA 90017  
Phone: (213) 977-5291

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*Mark Fleming*  
\_\_\_\_\_

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MARK FLEMING  
Director Of Litigation  
NATIONAL IMMIGRANT JUSTICE CENTER  
Chicago, IL  
Phone: (312) 660-1628

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18

Counsel for Plaintiffs

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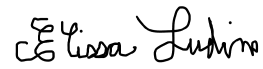
20

For and on behalf of Defendants:

21

EXECUTED this 22<sup>nd</sup> day of November, 2024.

22

  
\_\_\_\_\_

23

24

25

26

27

28

ELISSA P. FUDIM  
*Trial Attorney*  
Office of Immigration Litigation  
U.S. Department of Justice, Civil Division  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
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Counsel for Defendants

# APPENDIX A

**Appendix A**

For purposes of Section I.G. of the Agreement, regardless of any operational changes during the pendency of the Agreement, the “Detainer Functions of the PERC” includes the review of Immigration Alien Responses (IARs), including any successor process to the IAR, and issuance of Box 3 and Box 4 ICE Detainers, during the times set forth below for individuals detained in the geographical locations set forth below, regardless of where the review of the IAR or issuance of the Box 3 and Box 4 ICE Detainer takes place.

<b><u>Geographic Location of Subject</u></b>	<b><u>Time Period<sup>1</sup> Weekdays</u></b>	<b><u>Time Period<sup>2</sup> Weekends and Federal Holidays</u></b>
Alabama	4pm to 4am	4pm to 4am
Arkansas	4pm to 4am	4pm to 4am
American Samoa	6pm to 6am	6pm to 6am
California – Central District of California	24 hours/day	24 hours/day
California – Counties in ICE Enforcement and Removal Operations (ERO) San Francisco Area of Responsibility (AOR) <sup>3</sup>	6pm to 6am	6pm to 6am
Connecticut	3pm to 3am	3pm to 3am
Delaware	3pm to 3am	3pm to 3am

<sup>1</sup> All times included herein are Pacific Time.

<sup>2</sup> All times included herein are Pacific Time.

<sup>3</sup> Alameda County; Alpine County; Amador County; Butte County; Calaveras County; Colusa County; Contra Costa County; Del Norte County; El Dorado County; Fresno County; Glenn County; Humboldt County; Inyo County; Kern County; Kings County; Lake County; Lassen County; Madera County; Marin County; Mariposa County; Mendocino County; Merced County; Modoc County; Mono County; Monterey County; Napa County; Nevada County; Placer County; Plumas County; Sacramento County; San Benito County; The City and County of San Francisco; San Joaquin County; San Mateo County; Santa Clara County; Santa Cruz County; Shasta County; Sierra County; Siskiyou County; Solano County; Sonoma County; Stanislaus County; Sutter County; Tehama County; Trinity County; Tulare County; Tuolumne County; Yolo County; and Yuba County.

<u>Geographic Location of Subject</u>	<u>Time Period Weekdays</u>	<u>Time Period Weekends and Federal Holidays</u>
Florida: Limited Counties in the ICE ERO New Orleans AOR <sup>4</sup>	4pm to 4am	4pm to 4am
Georgia	7pm to 3am	7pm to 3am
Guam	6pm to 6am	6pm to 6am
Hawaii	6pm to 6am	6pm to 6am
Idaho	5pm to 5am	5pm to 5am
Illinois	4pm to 4am	4pm to 4am
Indiana	4pm to 4am	4pm to 4am
Iowa	4pm to 4am	4pm to 4am
Kansas	4pm to 4am	4pm to 4am
Kentucky	4pm to 4am	4pm to 4am
Louisiana	4pm to 4am	4pm to 4am
Maine	3pm to 3am	3pm to 3am
Maryland	3pm to 3am	3pm to 3am
Massachusetts	3pm to 3am	3pm to 3am
Michigan	3pm to 3am	3pm to 3am
Minnesota	4pm to 4am	4pm to 4am
Mississippi	4pm to 4am	4pm to 4am
Missouri	4pm to 4am	4pm to 4am

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<sup>4</sup> Escambia County and Santa Rosa County

<u>Geographic Location of Subject</u>	<u>Time Period Weekdays</u>	<u>Time Period Weekends and Federal Holidays</u>
Montana	5pm to 5am	5pm to 5am
Nebraska	4pm to 4am	4pm to 4am
Nevada	6pm to 6am	6pm to 6am
New Hampshire	3pm to 3am	3pm to 3am
New Jersey	3pm to 3am	3pm to 3am
New Mexico	9pm to 5am	9pm to 5pm on weekends and 24 hours on federal holidays
New York – Except the Five Boroughs of New York City	3pm to 3am	3pm to 3am
North Carolina	7pm to 3am	7pm to 3am
North Dakota	4pm to 4am	4pm to 4am
Northern Mariana Islands	6pm to 6am	6pm to 6am
Ohio	3pm to 3am	3pm to 3am
Pennsylvania	3pm to 3am	3pm to 3am on weekends and 24 hours on federal holidays
Rhode Island	3pm to 3am	3pm to 3am
South Carolina	7pm to 3am	7pm to 3am
South Dakota	4pm to 4am	4pm to 4am
Tennessee	4pm to 4am	4pm to 4am



<u>Geographic Location of Subject</u>	<u>Time Period Weekdays</u>	<u>Time Period Weekends and Federal Holidays</u>
Texas: Limited Counties in the ICE ERO El Paso AOR <sup>5</sup>	9pm to 5am	9pm to 5am on weekends and 24 hours on federal holidays
Texas: Limited Counties in the ICE ERO Harlingen AOR <sup>6</sup>	4pm to 4am	4 pm to 4am
Texas: Limited Counties in the ICE ERO Houston AOR <sup>7</sup>	4pm to 4am	4pm to 4am
Utah	5pm to 5am	5pm to 5am
Vermont	3pm to 3am	3pm to 3am
Virginia	3pm to 3am	3pm to 3am
Washington, D.C.	3pm to 3am	3pm to 3am
West Virginia	3pm to 3am	3pm to 3am
Wisconsin	4pm to 4am	4pm to 4am
Wyoming	5pm to 5am	5pm to 5am

<sup>5</sup> Andrews County; Brewster County; Crane County; Culberson County; Ector County; El Paso County; Hudspeth County; Jeff Davis County; Loving County; Martin County; Midland County; Pecos County; Presidio County; Reeves County; Terrell County; Upton County; Ward County; and Winkler County.

<sup>6</sup> Aransas County; Jim Wells County; Kleberg County; Nueces County; and San Patricio County.

<sup>7</sup> Angelina County; Austin County; Bee County; Brazoria County; Brazos County; Burleson County; Calhoun County; Chambers County; Colorado County; Dewitt County; Fayette County; Fort Bend County; Galveston County; Goliad County; Grimes County; Hardin County; Harris County; Houston County; Jackson County; Jasper County; Jefferson County; Lavaca County; Lee County; Leon County; Liberty County; Live Oak County; Madison County; Matagorda County; Milam County; Montgomery County; Nacogdoches County; Newton County; Orange County; Polk County; Refugio County; Robertson County; Sabine County; San Augustine County; San Jacinto County; Shelby County; Trinity County; Tyler County; Victoria County; Walker County; Waller County; Washington County; and Wharton County.

# APPENDIX B

Subject: PLEASE DISREGARD IMMIGRATION DETAINER for **[Subject's Name]**

This is an urgent ICE notification regarding an immigration detainer issued to your law enforcement agency for **[Subject's Name]**, **[DOB: XXX]**. The immigration detainer has not been authorized.

**You may not rely on the detainer to maintain custody of the individual.**

Please disregard the detainer.

# APPENDIX C

**IT IS THEREFORE REQUESTED THAT YOU:**

**Serve the individual** a copy of this form, and complete and return to ICE the service information at the bottom of this form. If the detainer is not served, the detainer is not valid and may not be relied upon to maintain custody of the individual.

**Notify DHS** as early as practicable (at least 48 hours, if possible) before the individual is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at \_\_\_\_\_. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.

**Maintain custody** of the individual for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. This detainer arises from DHS authorities and should not impact decisions about the individual's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.

Relay this detainer to any other law enforcement agency to which you transfer custody of the individual.

Notify this office in the event of the individual's death, hospitalization or transfer to another institution.

# APPENDIX D

## FREQUENTLY ASKED QUESTIONS

### **Q: What is an immigration detainer?**

A: An immigration detainer ([Form I-247A, Immigration Detainer – Notice of Action](#)) is a notice that DHS issues to federal, state, and local law enforcement agencies (LEAs) to inform the LEA that ICE intends to assume custody of an individual in the LEA's custody. An immigration detainer issued by ICE serves three key functions: 1) to notify an LEA that ICE intends to assume custody of a noncitizen in the LEA's custody once the noncitizen is no longer subject to the LEA's detention; 2) to request information from an LEA about a noncitizen's impending release so ICE may assume custody in a safe environment before the noncitizen is released from the LEA's custody; and 3) to request that the LEA maintain custody of the noncitizen for a period not to exceed 48 hours beyond when he or she would otherwise have been released to provide ICE time to assume custody. The immigration detainer is only a request and does not impose any obligations on the LEA.

### **Q: What are ICE's legal authorities to issue a detainer?**

A: ICE's authority to issue a detainer flows from federal regulations at 8 C.F.R. § 287.7, which arises from the Secretary's power under section 103(a)(3) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1103(a)(3), to issue "regulations . . . and perform other such acts he deems necessary for carrying out his authority" under the INA, and from ICE's general authority to detain noncitizens who are subject to removal or removal proceedings. *See, e.g.*, INA §§ 235, 236, 241, 8 U.S.C. §§ 1225, 1226, 1231.

**Q: Who within ICE issues detainers?**

A: Only ICE immigration officers and designated state and local officers authorized to perform certain immigration officer functions pursuant to section 287(g) of the INA, 8 U.S.C. § 1357(g) (“designated 287(g) officers”) may issue immigration detainers. Designated 287(g) officers must first obtain ICE approval before issuing detainers.

**Q: What is the standard required to issue a detainer?**

A: ICE policy requires a finding of probable cause to believe the subject is a removable noncitizen before a detainer may be issued. Except where the probable cause is based upon a final removal order or the pendency of ongoing removal proceedings against the subject, all probable cause determinations supporting a detainer issued by officers located in the Central District of California, including the Pacific Enforcement Response Center (PERC), are reviewed by a neutral reviewer within 48 hours of issuance, except in the case of an individual detained in state or federal prison with three months or more remaining on their sentence at the time of the interoperability hit, currently known as an IAQ, in which case the review takes place within not more than 14 calendar days of detainer issuance.

**Q: Is the detainer required to be served upon the subject?**

A: Yes, a detainer only takes effect upon service of a copy of the detainer on the subject of the detainer. The request of ICE that the law enforcement agency maintain custody of the individual is contingent on service of the detainer. If the law enforcement agency does not serve the detainer on the individual, it may not rely upon the detainer to maintain custody of the individual.



**Q: What impact does an ICE detainer have on decisions regarding bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, etc.?**

A: ICE only intends its detainers to serve the key functions noted above. The detainer should not impact decisions about an individual's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters. By issuing a detainer, ICE does not intend to impact or influence a state or local LEA's decision-making process.

**Q: What happens if ICE does not assume custody of the individual after 48 hours?**

A: If ICE does not assume custody after 48 hours, the LEA is required to release the individual. The LEA may not lawfully hold an individual beyond the 48-hour period.

**Q: What if the subject of the detainer believes that he or she has been held beyond the 48 hours, or has a complaint?**

A: If ICE does not take the subject of a detainer into custody during the 48-hour period, they should contact the LEA or entity that is holding them to inquire about their release from custody.

If the individual has a complaint regarding the detainer or violations of civil rights or civil liberties connected to DHS activities, the individual should contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).

**Q: What if the subject of the detainer believes the detainer was issued in error?**

A: If the subject of a detainer believes that a detainer was issued in error or contrary to ICE policy, the individual should advise ICE by calling the ICE Law Enforcement Support Center at (855) 448-6903 (toll free) or at [non-toll free number to be acquired].