



## Settling Litigation Challenging ICE’s Warrantless Arrests and Vehicle Stops in the ICE Chicago Field Office: Overview of Proposed Settlement Agreement <sup>1</sup>

### INTRODUCTION

The parties have reached a settlement agreement in the class action lawsuit, *Castañon Nava et al. v. Dep’t of Homeland Security et al.*, No. 18-cv-3757 (N.D. Ill.), which challenged ICE’s practice of conducting unlawful warrantless arrests and vehicle stops within the ICE Chicago Field Office’s jurisdiction through large-scale enforcement operations, pre-textual traffic stops, and other indiscriminate enforcement actions. The settlement has significant implications, within the Chicago Field Office and nationwide, given certain policy changes and documentation required under the settlement with respect to making arrests without an administrative warrant and certain vehicle stops. While the court still must approve the agreement, it is likely to be approved in its current form.

The general terms of the settlement and the process for approval is described below.

### BACKGROUND

In May 2018, persons arrested by ICE and impacted organizations, including the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) and Organized Communities Against Deportation (OCAD), challenged ICE’s widespread, indiscriminate immigration sweeps in the Chicagoland area, which resulted in the collateral arrest of hundreds of individuals through warrantless arrests and pre-textual vehicle stops. Plaintiffs argued that ICE failed to comply with the terms of 8 U.S.C. § 1357(a)(2) and the Fourth Amendment in carrying out these arrests, including by failing to make findings that the person was likely to escape before ICE could obtain a warrant and that there was a reasonable suspicion that a person in the vehicle did not have lawful status. For more information, access the complaint here: [https://immigrantjustice.org/court\\_cases/castanon-nava-et-al-v-dhs-et-al](https://immigrantjustice.org/court_cases/castanon-nava-et-al-v-dhs-et-al).

After the U.S. District Court for the Northern District of Illinois denied the government’s motion to dismiss, the parties entered settlement negotiations. The negotiated settlement agreement is subject to the final approval of the court and will fully resolve the issues raised in this litigation.

### SETTLEMENT AGREEMENT: WHAT WILL IT DO?

The following is a summary of the key points in the settlement agreement. Under the agreement:

1. **ICE Must Issue a New Nationwide Policy Regarding Warrantless Arrests and Vehicle Stops.** Once the settlement agreement goes into effect, ICE will broadcast to all ICE officers

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<sup>1</sup> Updated November 30, 2021. This overview does not purport to provide legal advice.

nationwide a new policy (attached as Appendix A to the settlement agreement) that establishes applicable standards for warrantless arrests and certain vehicle stops. The policy provides various factors required to be considered before ICE may make a warrantless arrest, including, for example, whether an individual's ties to the community (such as family, home, or employment) mitigate against authority to make an arrest without a warrant. Likewise, the policy establishes that ICE may only make a vehicle stop if it has reasonable suspicion—based on specific, articulable facts—about a particular person inside the vehicle does not have legal status. ICE may not state to the driver or the occupants of a vehicle that the purpose for a stop is related to any vehicle or traffic violation.

2. **Under Nationwide Policy ICE Must Document the Bases for Warrantless Arrests and Vehicle Stops.** The settlement and policy requires ICE officers nationwide to document the facts and circumstances surrounding warrantless arrests and vehicle stops in the narrative section of a person's Form I-213—including the fact that the person was arrested without a warrant, the location of the arrest, the person's ties to the community or lack thereof, and other particularized facts supporting a finding that the person was likely to escape justifying a warrantless arrest. With respect to vehicle stops, ICE must document specific facts that formed the basis for its reasonable suspicion that a person in the vehicle did not have legal status justifying the stop.
3. **ICE Must Undergo Training Nationwide.** ICE will adopt or amend training materials (subject to counsel's input and review) that comply with the terms of the new policy. It will train all officers nationwide within 6 months of the broadcast.
4. **ICE Must Submit Documentation to Counsel to Confirm Compliance with the Settlement.** On a monthly basis, ICE will produce copies of all Form I-213s related to warrantless arrests and vehicle stops conducted in the Northern District of Illinois to ensure compliance with the agreement.
5. **Enforcement Provisions for ICE Chicago Field Office: ICE Warrantless Arrests and Vehicle Stops in Illinois, Indiana, Kansas, Kentucky, Missouri, and Wisconsin.** Violations of the settlement agreement and policy are enforceable through class counsel and the Court for a period of three years. Individuals subject to arrests that violate the agreement and policy may be eligible for release or refund of bond money. ICE officers that violate the settlement and policy are subject to remedial measures and training. Finally, additional remedies are available in the event of repeated, material violations of the settlement and policy.

## **SETTLEMENT AGREEMENT: WHO IS COVERED?**

A person is a "class member" covered by the settlement agreement if they have been arrested, or are arrested in the future, without a warrant within the jurisdiction of the ICE Chicago Field Office, consisting of Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. While certain terms of the agreement apply nationwide, such as the training and documentation requirements described above, only class members are eligible for individual remedies through the settlement itself.

## **SETTLEMENT AGREEMENT: WHAT IF ICE MAKES A WARRANTLESS ARREST OR VEHICLE STOP IN ILLINOIS, INDIANA, WISCONSIN, MISSOURI, KENTUCKY, OR KANSAS?**

If a class member is arrested contrary to the terms of the settlement agreement, the person must be released from ICE custody as soon as practicable, without paying a bond or being subject to conditions of release. This applies to all class members, unless the person is subject to mandatory detention, a criminal detainer, or is deemed to pose a danger to the community<sup>2</sup> such that neither ICE nor an immigration judge set a bond amount. ICE will also ensure that appropriate remedial measures and / or training is imposed on the ICE officer(s) who violated the settlement agreement.

The hope and expectation is that the settlement agreement will preclude unlawful warrantless arrests and vehicle stops from occurring in the first place, both within the ICE Chicago Field Office and across the country. In the event of a violation, however, counsel is available to assist class members in seeking release under the agreement, including by filing a motion to enforce the terms of the statement of policy with the district court.

**If you believe the settlement agreement has been violated—*i.e.*, that you or someone you represent was arrested by ICE in Illinois, Indiana, Wisconsin, Missouri, Kentucky, or Kansas without a warrant or during a vehicle stop—please contact counsel as soon as possible.**

### **NEXT STEPS & APPROXIMATE TIMELINE**

Counsel anticipates that the settlement agreement will be approved and implemented in the first half of 2022. The district court has scheduled a class settlement fairness hearing for February 8, 2022. This is an opportunity for any affected class member to object to the terms of the settlement. More details regarding the fairness hearing can be found [here](#). If the district court approves the settlement and policy, ICE then must revise its training materials to conform with the new warrantless arrest and vehicle stop policy. Counsel will have an opportunity to review the new training materials and raise to the Court any concerns where the training diverges from the policy. Once the training materials are approved, the new policy will be issued and the settlement will go into effect.

The agreement will last three years from the date it becomes final, but ICE is allowed to ask to terminate the agreement after two years upon a showing of compliance.

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Counsel is available to respond to questions on this litigation in the meantime.

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<sup>2</sup> This determination must be confirmed by an Assistant Field Officer Director or higher; be based in the totality of the circumstances; and be supported by a written explanation and supporting materials. In addition, an immigration judge's finding regarding mandatory detention or dangerousness shall control for purposes of the agreement.