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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.¹ 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 ¹ 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.

24
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,² 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 ² 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].

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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.

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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

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and to carry out this Agreement’s expressed intent.

For and on behalf of Plaintiffs and the Class:

EXECUTED this 22nd day of November, 2024.



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




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

Counsel for Plaintiffs

For and on behalf of Defendants:

EXECUTED this 22nd day of November, 2024.



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
Tel: (202) 598-6073
Email: *Elissa.P.Fudim@usdoj.gov*

Counsel for Defendants