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15 UNITED STATES DISTRICT COURT
 16 CENTRAL DISTRICT OF CALIFORNIA

17 GERARDO GONZALEZ and SIMON
 18 CHINIVIZYAN on behalf of
 themselves and others similarly situated.

19 Plaintiffs,

20 vs.

21 IMMIGRATION AND CUSTOMS
 22 ENFORCEMENT, an entity;
 THOMAS WINKOWSKI, in his official
 23 capacity; DAVID MARIN, in his
 official capacity; DAVID C.
 24 PALMATIER, in his official capacity,

25 Defendants.

CASE NO. 13-CV-4416 BRO (FFMx)

**THIRD AMENDED COMPLAINT
 FOR INJUNCTIVE AND
 DECLARATORY RELIEF AND
 PETITION FOR WRIT OF
 HABEAS CORPUS**

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 27
 28

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JURISDICTION AND VENUE

1. This case challenges Immigration and Customs Enforcement’s (“ICE’s”) practice of issuing immigration detainers and thereby causing the detention of thousands of people every year in violation of the Fourth Amendment, the Fifth Amendment’s Due Process Clause, and the governing federal statute. As alleged below, ICE routinely issues immigration detainers, also known as immigration holds, against people in the custody of federal, state, and local law enforcement agencies (“LEAs”) without probable cause to believe they are removable as the Constitution requires, without prompt judicial probable cause determinations as the Constitution requires, and without individualized determinations of probable cause of removability and likelihood of escape as required by statute.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and Article III of the U.S. Constitution. It has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202, and injunctive relief under 5 U.S.C. § 702. Alternatively, this Court has subject matter jurisdiction under 28 U.S.C. § 2241, as the issuance of an immigration detainer places Plaintiffs in the concurrent or future custody of ICE. Venue is proper under 28 U.S.C. § 1391(b)(2).

INTRODUCTION

3. An immigration detainer, also known as an ICE detainer, is a request that an LEA continue to detain an individual for 48 hours, excluding weekends and holidays, beyond the time when he or she would otherwise be released from criminal custody, to provide ICE extra time to assume physical custody of the person and investigate his or her immigration status.

4. Because an immigration detainer purports to authorize multiple days of imprisonment unrelated to the initial criminal custody, it effectively causes a new seizure, and thus must be supported by probable cause to believe the individual so detained is subject to detention and removal.

1 5. Yet, in practice, ICE does *not* require its agents to establish probable cause
2 before issuing immigration detainers. On the contrary, ICE agents, pursuant to
3 agency policy and practice, routinely issue immigration detainers without probable
4 cause, and they begin to investigate whether an individual is subject to removal
5 only *after* he or she has been subjected to additional detention on the detainer. At
6 no time does ICE provide any judicial probable cause determination. As a result,
7 ICE's issuance of immigration detainers violates the Fourth Amendment and/or the
8 Fifth Amendment's Due Process Clause by restraining and depriving individuals of
9 their liberty without probable cause, and without a prompt judicial determination
10 of probable cause.

11 6. ICE's issuance of immigration detainers also exceeds the statutory
12 limitations on ICE's warrantless arrest and enforcement powers at 8 U.S.C. §
13 1357(a) by effecting warrantless arrests of individuals without an individualized
14 determination of probable cause to believe that they are removable or that they are
15 likely to escape before a warrant can be obtained.

16 7. Nationally, between fiscal year 2008 and the beginning of fiscal year 2012,
17 ICE issued immigration detainers seeking the incarceration of nearly one million
18 people. In 2012 alone, ICE's Los Angeles Field Office issued more than 39,000
19 immigration detainers.

20 8. ICE's practice of issuing immigration detainers without probable cause to
21 believe that a person is subject to removal, without a prompt judicial probable
22 cause determination, and in excess of its statutory authority has deprived of their
23 liberty thousands of people who are not actually removable—including American
24 citizens and lawful permanent residents without criminal convictions that render
25 them removable.

26 9. Plaintiffs Gonzalez and Chinivizyan are two such people. Both are U.S.
27 citizens. When they entered this lawsuit, they were both in custody and subject to
28 immigration detainers. Mr. Gonzalez was facing imminent detention on his ICE

1 detainer, and Mr. Chinivizyan was already being detained solely on the basis of his
2 ICE detainer.

3 10. Plaintiffs Gonzalez and Chinivizyan seek on behalf of themselves and the
4 proposed class declaratory and injunctive relief to rescind their detainers and
5 enjoin ICE from requesting their detention in violation of their rights and the rights
6 of others who are similarly situated, or, in the alternative, class-wide habeas corpus
7 relief. The relief Plaintiffs seek would redress the injuries they faced upon
8 commencement of this lawsuit, as well as the injuries of class members, by
9 preventing their detention on ICE detainers.

10 **PARTIES**

11 11. **Plaintiff Gerardo Gonzalez, Jr.**, is a 25-year-old United States citizen who
12 was born in Pacoima, California. Mr. Gonzalez is a resident of Los Angeles,
13 California. Because ICE does not require that its agents establish probable cause
14 before issuing detainers, ICE lodged a detainer against Plaintiff Gonzalez.

15 12. At the time Plaintiff Gonzalez joined this lawsuit via the original complaint,
16 he was being held in pretrial detention in a Los Angeles County jail, and he was
17 subject to an ICE detainer. At that time, the detainer was preventing him from
18 posting bail, and it requested that the jail detain him for an additional period of
19 time—48 hours plus weekends and holidays—as soon as he was otherwise eligible
20 for release from custody.

21 13. **Plaintiff Simon Chinivizyan** is a 21-year-old United States citizen. He is a
22 resident of Burbank, California.

23 14. At the time he joined the lawsuit via the First Amended Complaint, Plaintiff
24 Chinivizyan was being detained in a Los Angeles County jail on the sole authority
25 of an immigration detainer. The detainer requested that the jail detain him for an
26 additional period of time—48 hours plus weekends and holidays—as soon as he
27 was otherwise eligible for release from criminal custody. At the time he joined this
28 lawsuit, Plaintiff Chinivizyan had already been released from criminal custody and

1 remained detained on the sole authority of the immigration detainer.

2 15. **Defendant ICE** is a component of the Department of Homeland Security
3 (“DHS”) and is responsible for overseeing and enforcing federal immigration laws.
4 Through its officers and employees, ICE issues immigration detainers to federal,
5 state, and local LEAs. Upon information and belief, both ICE headquarters and the
6 Los Angeles ICE Field Office have the authority and responsibility to set policies
7 and oversee detainer issuance.

8 16. **Defendant Thomas Winkowski** is the Acting Director of ICE. Acting
9 Director Winkowski establishes immigration detainer policy for ICE and its
10 subdivisions, including the application of detainer regulations, and approval of the
11 use of the Form I-247 detainer. Plaintiffs sue Acting Director Winkowski in his
12 official capacity.

13 17. **Defendant David Marin** is the Acting Field Office Director (“FOD”) for
14 the Los Angeles District of ICE, which has responsibility for the counties of Los
15 Angeles, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, and San Luis
16 Obispo, and all cities and municipalities within those counties. Acting FOD Marin
17 has ultimate responsibility for all immigration detainers issued from the Los
18 Angeles Field Office, including any and all sub-offices. On information and belief,
19 the Los Angeles Field Office (including any and all sub-offices) is listed as the
20 principal ICE custodian on all detainers issued out of its area of responsibility,
21 including those issued by ICE’s Secure Communities Interoperability Response
22 Center in Orange County, California. On information and belief, those detainers
23 may be sent to LEAs in California and other states around the country on
24 weekends and after hours. Plaintiffs sue Mr. Marin in his official capacity.

25 18. **Defendant David C. Palmatier** is the Unit Chief for the Law Enforcement
26 Service Center (“LESC”) of ICE. Mr. Palmatier oversees the issuance of
27 immigration detainers out of the LESL pursuant to law enforcement inquiries
28 throughout the United States. On information and belief, LESL is listed as the ICE

1 custodian on detainers issued from the LESC and is listed as emergency custodian
2 for detainers issued from ICE Field Offices, including Los Angeles. Plaintiffs sue
3 Mr. Palmatier in his official capacity.¹

4 **STATEMENT OF FACTS**

5 **Immigration detainers cause the warrantless seizure and extended**
6 **detention of people who would otherwise be released from criminal**
7 **custody.**

8 19. An immigration detainer has three stated purposes: (1) to “advise another
9 law enforcement agency that [ICE] seeks custody of an alien presently in the
10 custody of that agency, for the purpose of arresting and removing the alien,” 8
11 C.F.R. § 287.7(a), (2) to “request that such agency advise [ICE], prior to release of
12 the alien, in order for [ICE] to arrange to assume custody, in situations when
13 gaining immediate physical custody is either impracticable or impossible,” *id.* §
14 287.7(a), and (3) to request that the LEA "maintain custody of the alien for a
15 period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order
16 to permit assumption of custody by the Department." *Id.* § 287.7(d). ICE’s current
17 detainer form, Form I-247, expressly asks for and purports to authorize this
18 additional period of detention. *See* Exhibit A, B (Detainer forms) (stating "it is
19 requested that you maintain custody of the subject for a period not to exceed 48
20 hours, excluding Saturdays, Sundays, and holidays, beyond the time when the
21 subject would have otherwise been released from your custody."). Over a holiday
22 weekend, this period of detention can last five days or more.

23 20. Immigration detainers are not warrants or court orders, and they are not
24 issued or approved by judicial officers. Instead, they are unsworn documents that
25 may be issued by a wide variety of immigration officers, including immigration

26 ¹ Plaintiffs believe that each of the three individual Defendants currently hold their
27 respective positions. Should any one of the named Defendants no longer hold their
28 position, their successor is automatically substituted as a party under Federal Rule
of Civil Procedure 25(d) because the Defendants are sued in their official capacity.

1 enforcement agents and deportation officers. 8 C.F.R. § 287.7(b). ICE does not
2 provide any post-arrest judicial determination of probable cause of removability
3 for those it causes to be seized on immigration detainers.

4 21. The federal detainer regulation does not articulate an evidentiary standard,
5 and states only that a detainer may be issued “at any time.” 8 C.F.R. § 287.7(a).

6 22. Prior to December 21, 2012, ICE routinely issued detainers based on the
7 issuing agent’s assertion by checking a box on the face of the detainer form that
8 ICE had “initiated an investigation” to determine whether the person was subject to
9 removal from the United States.

10 23. As one government attorney explained, ICE uses detainers as “a stop gap
11 measure . . . to give ICE time to investigate and determine whether somebody’s an
12 alien, and/or subject to removal, before local law enforcement releases that person
13 from custody.” Oral Argument Transcript, ECF #79, *Galarza v. Szalczyk*, No. 10-
14 06815 (E.D. Pa. Jan. 10, 2012).

15 24. Numerous federal courts have recognized that investigative interest is a
16 constitutionally insufficient basis for detaining an individual, and have held ICE
17 detainers constitutionally invalid on that basis. *See, e.g., Villars v. Kubiowski*, --
18 F.Supp.2d --, 2014 WL 1795631 (N.D. Ill. May 5, 2014); *Miranda-Olivares v.*
19 *Clackamas County*, -- F.Supp.2d --, 2014 WL 1414305 (D. Or. Apr. 11, 2014);
20 *Morales v. Chadbourne*, -- F.Supp.2d --, 2014 WL 554478 (D.R.I. Feb. 12, 2014);
21 *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), *vacated in part*
22 *and rev’d in part on other grounds*, 745 F.3d 634 (3d Cir. 2014).

23 25. On December 21, 2012, the Director of ICE issued a policy memorandum
24 regarding ICE’s detainer practices. The memorandum still did not articulate any
25 required evidentiary standard for issuance, but merely stated as a policy matter that
26 “absent extraordinary circumstances, ICE agents and officers should issue a
27 detainer . . . only where . . . they have reason to believe the individual is an alien
28 subject to removal from the United States” *See* John Morton, Director of ICE,

1 Memorandum: Guidance on the Use of Detainers in the Federal, State, Local, and
2 Tribal Criminal Justice Systems, at 2 (Dec. 21, 2012), available at
3 <http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>. ICE also
4 issued a revised detainer form (Form I-247) on the same date. Both Plaintiffs'
5 detainers were issued using this revised form. *See* Exhibits A, B.

6 26. Upon information and belief, even after the policy memorandum and revised
7 detainer form, ICE did not take any steps to address the statutory and constitutional
8 defects with its detainer practices described herein. ICE still does not require its
9 agents to establish probable cause that the subject is removable before issuing a
10 detainer. ICE has refused to concede that “reason to believe” must be interpreted
11 to mean “probable cause” as the Constitution requires, and pursuant to agency
12 practice, ICE agents continue to issue detainers without an adequate investigation
13 and without probable cause of removability, as demonstrated by the detention of
14 U.S. citizens like Plaintiffs Gonzalez and Chinivizyan.

15 27. Defendants have not taken any steps to comply with the Fourth
16 Amendment’s requirement of a *judicial* probable cause determination either before
17 or promptly after a seizure.

18 28. Defendants have not taken any steps to ensure that ICE agents comply with
19 the statutory requirements at 8 U.S.C. § 1357(a) when issuing detainers, such as
20 making an individualized determination that the subject is likely to escape before a
21 warrant could be issued.

22 29. Thus, as a matter of consistent policy and practice at the time the named
23 Plaintiffs filed this lawsuit and at all subsequent times, ICE issues detainers in
24 violation of constitutional and statutory constraints. ICE continues to use detainers
25 as a tool to detain people first and investigate them later.

26 30. Indeed, in a federal lawsuit pending in the Northern District of Illinois,
27 ICE’s 30(b)(6) expert witness testified in his deposition that ICE’s changes to its
28 detainer form and guidance in 2012 did not “change how an immigration officer is

1 instructed to establish a reason to believe an individual is subject to removal,” and
2 confirmed that detainers are not “required to be supported by probable cause.”
3 Deposition of Philip T. Miller at 60-61, 88-89, *Jimenez Moreno v. Napolitano*, No.
4 11-5452 (N.D. Ill. June 6, 2013), at
5 [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/2013.06.06%20M](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/2013.06.06%20Miller%2C%20Philip%20%28Redacted%29.pdf)
6 [iller%2C%20Philip%20%28Redacted%29.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/2013.06.06%20Miller%2C%20Philip%20%28Redacted%29.pdf). *See also* Brief of Federal
7 Defendants, *Ortega v. ICE*, No. 12-6608 (6th Cir. filed Apr. 10, 2013) (“[T]he
8 *purpose* of issuing the detainer was to allow [ICE] time to conduct an investigation
9 that could have discovered whether Plaintiff-Appellant was removable or was, in
10 fact, a U.S. citizen.”) (emphasis in original).

11 31. According to ICE data, between October 2009 and February 2013, the ICE
12 Los Angeles Field Office checked the “[i]nitiating an investigation” box on the
13 previous I-247 Form or the “reason to believe” box on the current form on
14 approximately 83 percent of the detainers it issued. On an additional 9 percent of
15 detainers, ICE data do not reflect any basis on which the detainer was issued.

16 32. ICE agents know – and intend – that their detainers will cause the subjects to
17 be imprisoned for multiple days after they should be released. *See, e.g.*, Letter
18 from Acting ICE Director to Members of Congress, available at
19 <http://www.aila.org/content/default.aspx?docid=47957> (Feb. 25, 2014) (“By
20 issuing a detainer, ICE requests that an LEA maintain custody of an alien . . . after
21 he or she would otherwise be released by an LEA to provide time for ICE to
22 assume custody. . . . ICE relies on the cooperation of its law enforcement partners
23 in this effort to promote public safety.”); Memorandum of United States, Dkt. #29,
24 No. 12-301, *Morales v. Chadbourne* (D.R.I. Nov. 5, 2012) (stating that DHS
25 “expects state entities to cooperate and detain aliens upon receipt of a detainer,”
26 and asserting that “[t]he state is entitled to rely on the detainer . . . regardless of
27 whether the detainer is mandatory.”); Rachel Chason, “Local Authorities, Feds at
28 Odds Over Immigrant Detainees,” *USA Today* (July 31, 2014), available at

1 [http://www.usatoday.com/story/news/nation/2014/07/31/local-feds-detainers-](http://www.usatoday.com/story/news/nation/2014/07/31/local-feds-detainers-immigration/13171183/)
2 [immigration/13171183/](http://www.usatoday.com/story/news/nation/2014/07/31/local-feds-detainers-immigration/13171183/) (quoting ICE spokesperson Bryan Cox as saying that
3 “ICE anticipates that law enforcement agencies will comply with detainers”).

4 33. Although ICE agents know and intend that immigration detainers will cause
5 the re-arrest and extended detention of their subjects, and although 8 U.S.C. §
6 1357(a) limits ICE’s warrantless arrest authority to situations in which there is
7 probable cause to believe that the person is removable and “is likely to escape
8 before a warrant can be obtained for his arrest,” ICE does not require that agents
9 determine prior to issuing a detainer that there is probable cause that the subject is
10 removable or that the subject is likely to escape before an arrest warrant can be
11 obtained. Following agency policy and practice, ICE agents do not make flight
12 risk determinations before issuing detainers.

13 34. Upon information and belief, an individual ICE agent makes the decision to
14 issue a detainer after reviewing electronic ICE and FBI records triggered by a
15 person’s fingerprints, and/or booking information from the LEA. ICE’s practice is
16 to issue detainers at the earliest possible point in time, when a person is first
17 booked into LEA custody. ICE does not require its agents to follow up on
18 detainers they have issued to determine whether there is probable cause at the
19 moment when the detainer’s 48-hour detention period begins.

20 35. ICE’s practice is to issue detainers based on mere suspicion, even before
21 attempting to resolve discrepancies or gaps or interviewing the subjects. ICE
22 routinely treats inconclusive or ambiguous evidence suggesting removability as
23 sufficient reason to issue a detainer.

24 36. For example, ICE routinely places detainers on lawful permanent residents
25 even before they have been convicted of any offense that could make them
26 removable. ICE also routinely places detainers on people whom LEA officials
27 identify as foreign born solely because a database query fails to return affirmative
28 evidence of the person’s citizenship or immigration status.

1 37. Due to ICE's failure to require that ICE agents have probable cause before
2 issuing a detainer, and due to common errors and gaps in immigration databases,
3 ICE commonly issues immigration detainers against United States citizens and
4 authorized immigrants who are not subject to removal.

5 38. According to ICE's own data, between fiscal year 2008 and the beginning of
6 fiscal year 2012, ICE issued nearly one million detainers to LEAs nationwide. Of
7 these, it issued 28,489 detainers against lawful permanent residents, 20,281 of
8 whom had no record of any criminal conviction for which they could be
9 removable. According to the same data, ICE issued 834 detainers against U.S.
10 citizens. Upon information and belief, this number represents only a fraction of the
11 U.S. citizens and non-removable immigrants who are affected by immigration
12 detainers because many, if not most, have no recourse to meaningfully challenge
13 their detainers.

14 39. Nationwide, the fact that ICE places detainers on U.S. citizens has been the
15 subject of litigation and has been widely reported.

16 40. For example, in November 2008, ICE placed a detainer on Ernesto Galarza,
17 a 34-year-old U.S.-born citizen, resulting in his three-day imprisonment after he
18 had posted bail. *See Galarza v. Szalczyk*, No. 10-cv-6815, 2012 WL 1080020
19 (E.D. Pa. Mar. 30, 2012), *vacated in part and rev'd in part*, 745 F.3d 634 (3d Cir.
20 2014).

21 41. ICE twice placed a detainer on Ada Morales, a naturalized U.S. citizen, first
22 in 2004 and then in 2009, resulting in her extended detention. *See Morales v.*
23 *Chadbourne*, -- F.Supp.2d --, No. 12-cv-301, 2014 WL 554478 (D.R.I. Feb. 12,
24 2014).

25 42. In 2007, ICE placed a detainer on Conway Wiltshire, a naturalized U.S.
26 citizen, and subsequently held him for three months in immigration custody.
27 Complaint at 3-5, *Wiltshire v. United States*, No. 09-cv-4745 (E.D. Pa. filed Oct.
28 16, 2009).

1 43. In 2008, ICE placed a detainer on Mark Lyttle, a U.S.-born citizen, despite
2 his repeated statements that he was born in the United States, resulting in his
3 prolonged incarceration 51 days beyond his release date and his wrongful
4 deportation to Mexico. Complaint, *Lyttle v. United States of America*, No. 11-cv-
5 00152 (M.D. Ga. Oct. 13, 2010). See also William Finnegan, *The Deportation*
6 *Machine: A Citizen Trapped in the System*, THE NEW YORKER, Apr. 29, 2013, at
7 <http://www.newyorker.com/magazine/2013/04/29/the-deportation-machine>.

8 44. These are but a few examples of how ICE's detainer practices sweep up U.S.
9 citizens. See also, e.g., Complaint, *Makowski v. Holder, et al.*, No. 12-cv-05265
10 (N.D. Ill. filed July 3, 2012) (ICE placed detainer on U.S. citizen prolonging his
11 incarceration for approximately two additional months); Complaint at 5, *Castillo v.*
12 *Swarski*, No. 08-cv-5683 (W.D. Wa. filed Nov. 13, 2008) (ICE placed detainer on
13 naturalized U.S. citizen and detained him in immigration custody for 226 days
14 before acknowledging that he was a citizen).

15 45. The ICE Los Angeles Field Office, in particular, has repeatedly lodged
16 detainers against U.S. citizens and non-removable lawful permanent residents.

17 46. For example, in November 2011, the ICE Los Angeles Field Office placed a
18 detainer on Romy Campos, a 19-year-old U.S.-born woman who is a dual citizen
19 with the United States and Spain, simply because an electronic record showed she
20 once entered the country on her Spanish passport years prior when traveling alone
21 as a minor. ICE issued a detainer in spite of other evidence at its disposal that
22 conclusively demonstrated her U.S. citizenship. Due to the immigration detainer,
23 Ms. Campos was unable to post bail to secure her release from criminal custody
24 and was detained by the Los Angeles Sheriff's Department for two days beyond
25 her release date based on the immigration detainer alone, despite her repeated
26 protestations that she was an American citizen.

27 47. Also in November 2011, the ICE Los Angeles Field Office placed a detainer
28 on Antonio Montejano, a 40-year-old U.S.-born citizen, in spite of evidence at its

1 disposal that would have demonstrated his citizenship, including his declaration
2 when booked into local police and Sheriff's custody that he was born in Los
3 Angeles, California, evidence in the immigration system that he sponsored his wife
4 for her green card on account of his citizenship, and evidence that he possesses a
5 U.S. passport. Due to the immigration detainer, the Santa Monica Police
6 Department refused to allow Mr. Montejano to post bail to secure his release from
7 criminal custody, and the Los Angeles Sheriff's Department detained him for two
8 days beyond his release date on the immigration detainer despite his repeated
9 protestations that he was an American citizen.

10 48. On information and belief, after an immigration detainer has been issued,
11 ICE does not require that its agents conduct any further investigation or review of a
12 detainee's case until the detainee is transferred to ICE's physical custody.

13 49. Once the detainee has been transferred from an LEA to ICE's physical
14 custody, ICE interprets 8 C.F.R. § 287.3(d) to give it an *additional* 48 hours (or
15 more, in the event of "an emergency or other extraordinary circumstance," *id.*) to
16 make a charging and custody determination. Following transfer to ICE, an ICE
17 enforcement officer examines the detainee for the purpose of gathering evidence to
18 sustain a charge of removability. 8 U.S.C. § 1357(a); 8 C.F.R. §287.3(d).

19 50. Thus, a person subject to an immigration detainer may be detained for a
20 week or more after their lawful criminal custody ends—five or more days in LEA
21 custody on the immigration detainer, and two more days in ICE's physical custody
22 after that—before ICE even decides whether to pursue immigration charges and
23 whether to hold the person in immigration detention while awaiting a removal
24 hearing.

25 51. At no point during this process does a judicial official review the legality of
26 the detention. Neither the examination by the ICE enforcement officer nor the
27 custody and charging decision constitutes a judicial probable cause determination,
28

1 nor do they provide sufficient procedural protections to guard against erroneous
2 deprivations of liberty.

3 **Other Impacts of Immigration Detainers**

4 52. In addition to causing a week or more of additional warrantless
5 imprisonment, as described above, immigration detainers can have other
6 significant impacts on the custody and state criminal proceedings of their subjects.

7 53. Pretrial detainees subject to immigration detainers may stay in LEA custody
8 far longer than they otherwise would. For example, on average, inmates in the Los
9 Angeles County jails with immigration detainers lodged against them spend 20.6
10 days longer in jail than inmates without immigration detainers. This difference
11 occurs even though a disproportionately large share of these inmates are classified
12 as low custody, meaning they are likely being held pretrial on low level non-
13 violent offenses and thus are, on average, better candidates for pretrial release or
14 other diversion programs than other inmates in the jails who do not have
15 immigration detainers.

16 54. Within the jurisdiction of the ICE Los Angeles Field Office, immigration
17 detainers often prevent pretrial inmates from posting bail on their criminal charges,
18 either because an LEA will not permit inmates to post bail if there is an
19 immigration detainer present (a practice that is also unlawful) or because inmates
20 recognize that if they post bail to secure their release from criminal custody, they
21 will be transferred to ICE custody, where they could be subject to removal or
22 mandatory detention and may lose the opportunity to contest the criminal charges
23 against them.

24 55. An immigration detainer can affect the disposition of a criminal case by, for
25 example, preventing an inmate from accepting a plea contingent on participation in
26 diversion programs, remedial courses or payment of a fee, if the inmate believes he
27 will be transferred to ICE custody and will be unable to comply with the terms of
28 the agreement.

1 56. An immigration detainer can also affect an inmate's prison or jail
2 classifications or eligibility for work programs. For example, under California
3 Department of Corrections and Rehabilitation ("CDCR") regulations, an
4 immigration detainer affects a prisoner's classification score and affects where he
5 or she is housed. According to these regulations, prisoners with immigration
6 detainers may not be housed in Level One minimum-security facilities, and
7 therefore, many are sent to CDCR facilities out of state. CDCR regulations also
8 prevent inmates with immigration detainers from participating in or benefiting
9 from early release, vocational, educational, and substance abuse programs, and
10 immigration detainers are considered as a factor in deciding whether to recommend
11 the recall of an inmate's commitment and medical parole.

12 **Plaintiffs' Allegations**

13 ***Gerardo Gonzalez, Jr.***

14 57. Gerardo Gonzalez, Jr. was born at home in Pacoima, California, in 1991, and
15 is thus a U.S. citizen. *See* Exhibit C (Birth Certificate).

16 58. Plaintiff Gonzalez has been arrested on numerous occasions, first as a
17 juvenile and later as an adult. Records of his prior arrests all indicate that he was
18 born in California. His probation record indicates that he is a U.S. citizen.

19 59. Upon information and belief, FBI records of each of Plaintiff Gonzalez's
20 arrests indicate that he was born in California and is a U.S. citizen. In particular,
21 the FBI fingerprint form that an LEA completes and sends to the FBI at the time an
22 arrestee is booked into custody includes the detainee's place of birth and
23 citizenship. Plaintiff Gonzalez's fingerprints, as well as his FBI number, would
24 trigger these records, and would have been available to the ICE agent making the
25 detainer determination.

26 60. On December 27, 2012, the Los Angeles Police Department ("LAPD")
27 arrested Plaintiff Gonzalez on a felony charge of possession of methamphetamines.
28 After his arrest, he was detained in LAPD and Los Angeles Sheriff's Department

1 (“LASD”) custody while awaiting the resolution of his criminal case.

2 61. Upon information and belief, at booking, an LAPD or an LASD employee
3 incorrectly wrote on Plaintiff Gonzalez’s booking record that he was born in
4 Mexico, despite Plaintiff Gonzalez’s true statement that he was born in California.

5 62. On or about December 31, 2012, ICE placed an immigration detainer on
6 Plaintiff Gonzalez. *See* Exhibit A (Gonzalez Detainer). Upon information and
7 belief, ICE placed the detainer without probable cause to believe Plaintiff
8 Gonzalez was removable, without any judicial involvement, and without obtaining
9 an arrest warrant or making a determination that Plaintiff Gonzalez was likely to
10 escape before a warrant could be obtained.

11 63. To his knowledge, no one from ICE has ever interviewed or contacted
12 Plaintiff Gonzalez. Neither ICE nor the LASD informed Plaintiff Gonzalez that
13 ICE had placed a detainer on him and neither served him with a copy of the
14 detainer.

15 64. Until May 2013, Plaintiff Gonzalez was subject to a parole hold and not
16 eligible for release on bail. The parole hold expired on or around May 2013, and,
17 at the time this action commenced, he was eligible for release on bail at \$95,000.

18 65. Shortly after his parole hold expired, Plaintiff Gonzalez’s girlfriend
19 attempted to post bail. A bail bondsman told her that Plaintiff Gonzalez had an
20 immigration detainer. This was the first time Plaintiff Gonzalez learned that ICE
21 had lodged an immigration detainer against him.

22 66. As ICE was aware, LASD’s policy and practice was to comply with all ICE
23 detainers, including by acceding to ICE’s request that the subjects be detained for
24 an additional period of time after they would otherwise be released.

25 67. Because of the detainer, Plaintiff Gonzalez knew that as soon as his pretrial
26 custody ended—whether because he posted bail or was ordered released on
27 recognizance, because his charges were dismissed, because he was acquitted or
28 pleaded guilty to time served, or for any other reason—he would be subjected to

1 unlawful detention in LASD custody for up to 5 days or more on the sole authority
2 of the immigration detainer. In addition, at the end of the detainer period, he could
3 be taken into ICE's physical custody and detained for 2 more days, and perhaps
4 longer, while ICE decided whether it had any basis to initiate removal
5 proceedings—all without a judicial probable cause determination. Not only would
6 this detention violate his rights; it would also jeopardize his ability to defend
7 himself in his criminal case. Further, if Plaintiff Gonzalez's criminal case
8 proceeded while he was subject to an immigration detainer, he risked being
9 convicted and sentenced to state prison, where the immigration detainer would
10 likely impact the facility where he is sent, his prison classification, and access to
11 remedial programs. Reasonably fearing the consequences of his immigration
12 detainer, Plaintiff Gonzalez delayed posting bail and continued his next court
13 appearance to provide time to resolve the immigration detainer.

14 68. Plaintiff Gonzalez filed this lawsuit on June 19, 2013. At that time, he was
15 being harmed by the ICE detainer: He was entitled to release from pretrial custody
16 on bail, but he was prevented from posting bail because of the immigration
17 detainer in his file. In addition, he faced the imminent threat of unlawful detention
18 on the ICE detainer as soon as he posted bail or his pretrial custody ended for any
19 other reason. Through this lawsuit, Plaintiff Gonzalez sought to remedy those
20 injuries by obtaining a judicial order requiring ICE to rescind his detainer and stop
21 requesting that the LASD detain him beyond the time he became eligible for
22 release.

23 69. On June 19, 2013, hours after this action was commenced, ICE canceled the
24 immigration detainer it had unlawfully placed on Plaintiff Gonzalez. *See Exhibit*
25 *D (Gonzalez Detainer Cancellation)*. Upon information and belief, ICE canceled
26 the immigration detainer in response to the filing of this action.

27 ***Simon Chinivizyan***

28 70. Simon Chinivizyan is a U.S. citizen and native of Uzbekistan. Plaintiff

1 Chinivizyan moved to the United States when he was approximately four years
2 old.

3 71. Plaintiff Chinivizyan's father became a naturalized U.S. citizen in May 2008
4 when Plaintiff Chinivizyan was 14 years old. Plaintiff Chinivizyan's mother
5 became a naturalized U.S. citizen in January 2011 when Plaintiff Chinivizyan was
6 17 years old. As a minor residing in the United States in the legal and physical
7 custody of his U.S. citizen parents pursuant to a lawful admission for permanent
8 residence, Plaintiff Chinivizyan automatically acquired citizenship in May 2008
9 upon the naturalization of his father. *See* 8 U.S.C. § 1431.

10 72. On November 4, 2008, approximately six months after automatically
11 acquiring United States citizenship, Plaintiff Chinivizyan obtained a United States
12 passport. *See* Exhibit E (Chinivizyan Passport).

13 73. On approximately June 7, 2013, the Burbank Police Department arrested
14 Plaintiff Chinivizyan on two counts of possession of a controlled substance and
15 one count of receiving stolen property. Following his arrest, he was detained in
16 Burbank Police Department and LASD custody while he awaited resolution of his
17 criminal case.

18 74. On June 19, 2013, Plaintiff Chinivizyan pled no contest to the three charges.

19 75. On or about June 19, 2013, ICE placed an immigration detainer on Plaintiff
20 Chinivizyan. *See* Exhibit B (Chinivizyan Detainer). Upon information and belief,
21 ICE placed the immigration detainer without probable cause to believe Plaintiff
22 Chinivizyan was removable, without any judicial involvement, and without
23 obtaining an arrest warrant or making a determination that Plaintiff Chinivizyan
24 was likely to escape before a warrant could be obtained.

25 76. On July 2, 2013, a superior court judge ordered Plaintiff Chinivizyan to
26 spend six months in a residential drug treatment facility, and ordered him released
27 on his own recognizance on the condition that he be released to a representative of
28 the Assessment Intervention Resources ("AIR") program so that he could be

1 transferred to the residential drug treatment facility.

2 77. Upon information and belief, because the court ordered Plaintiff Chinivizyan
3 to spend time in a residential drug treatment facility, it did not sentence him to any
4 jail time.

5 78. Pursuant to the Court's order, on July 3, 2013, an AIR representative went to
6 the County jail to pick up Plaintiff Chinivizyan and transport him to a residential
7 drug treatment facility. Plaintiff Chinivizyan became eligible for release from
8 LASD custody when the AIR representative attempted to pick him up at the jail.
9 However, upon information and belief, LASD told AIR that Plaintiff Chinivizyan
10 would not be released because he had an immigration detainer. Accordingly, from
11 that point on, Plaintiff Chinivizyan was being held in LASD custody on the sole
12 authority of the immigration detainer.

13 79. To his knowledge, Plaintiff Chinivizyan has never been interviewed by or
14 had any contact with ICE. Neither ICE nor the LASD informed Plaintiff
15 Chinivizyan that ICE had placed a detainer on him and neither served him with a
16 copy of the detainer.

17 80. Plaintiff Chinivizyan only learned that ICE had lodged an immigration
18 detainer against him when his criminal defense attorney informed him on
19 approximately July 3, 2013, that the reason he had not been released to participate
20 in a rehabilitation program was because an immigration detainer had been lodged
21 against him.

22 81. As ICE was aware, LASD's policy and practice was to comply with all ICE
23 detainers, including by acceding to ICE's request that the subjects be detained for
24 an additional period of time after they would otherwise be released.

25 82. On approximately July 3, 2013, after learning of Plaintiff Chinivizyan's
26 immigration detainer, Plaintiff Chinivizyan's mother went to Men's Central Jail
27 with documentation establishing Plaintiff Chinivizyan's citizenship. At that time,
28 a LASD officer informed Plaintiff Chinivizyan's mother that nothing could be

1 done to lift the immigration detainer until Plaintiff Chinivizyan was transferred to
2 ICE custody.

3 83. Upon information and belief, on approximately July 3, 2013, after learning
4 of Plaintiff Chinivizyan's present immigration detainer, Plaintiff Chinivizyan's
5 criminal defense attorney called the ICE Los Angeles Field Office and told them
6 that her client had an immigration detainer and that he was a U.S. citizen. The ICE
7 representative told her that he could not locate Plaintiff Chinivizyan in the system
8 and that there was nothing he could do. Plaintiff Chinivizyan spent the July 4th
9 holiday weekend in jail.

10 84. On July 10, 2013, Plaintiff Chinivizyan joined this lawsuit with the filing of
11 the First Amended Complaint. At that time, he was being harmed by the ICE
12 detainer: Even though he was entitled to release to AIR per the court's order, he
13 was instead being held in jail solely because of the immigration detainer.

14 85. On July 12, 2013, two days after he joined this lawsuit, ICE lifted the
15 immigration detainer it had unlawfully placed on Plaintiff Chinivizyan. *See*
16 Exhibit F (Chinivizyan Detainer Cancellation). Upon information and belief, ICE
17 lifted the immigration detainer in response to his joining this action. Plaintiff
18 Chinivizyan was subsequently released to AIR.

19 **CLASS ACTION ALLEGATIONS**

20 86. Plaintiffs Gonzalez and Chinivizyan seek class-wide injunctive and
21 declaratory relief under Federal Rules of Civil Procedure 23(a) and (b)(2).

22 ***The Class***

23 87. The proposed class is defined as all current and future persons who are (1)
24 detained in the custody of a federal, state, or local LEA, (2) have an immigration
25 detainer placed on them by the ICE Los Angeles Field Office or by any other
26 office or sub-office acting in concert with or under the jurisdiction of the ICE Los
27 Angeles Field Office, and (3) are or will be detained by a federal, state or local
28 LEA on the sole authority of the immigration detainer when they become eligible

1 for release from criminal custody.

2 Numerosity

3 88. The class meets the numerosity requirement of Rule 23(a)(1). According to
4 ICE data, between October 2009 and February 2013, the ICE Los Angeles Field
5 Office issued more than 130,000 detainers. In 2012 alone, the ICE Los Angeles
6 Field Office issued more than 39,000 detainers. In 2011, it issued more than
7 46,000 detainers. And in 2010, it issued more than 40,000 detainers.

8 89. Individuals subject to immigration detainers issued by the ICE Los Angeles
9 Field Office are routinely detained by federal, state, or local LEAs beyond the time
10 they are otherwise eligible for release.

11 90. Upon information and belief, the ICE Los Angeles Field Office issues
12 detainers to individuals in LEA custody in California and other states.

13 91. On January 1, 2014, the California TRUST Act went into effect. The
14 TRUST Act prohibits city and county law enforcement agencies in California from
15 complying with ICE detainers for certain categories of low-level arrestees. *See*
16 Cal. Gov. Code §§ 7282, 7282.5 (enumerating categories of offenses for which
17 ICE detainers may still be enforced). The TRUST Act only limits ICE detainer
18 compliance; it does not prohibit it altogether. The TRUST Act does not apply to
19 federal or state law enforcement facilities in the State of California.

20 92. Joinder of all class members is impractical. As ICE continuously lodges
21 immigration detainers against individuals in LEA custody and then assumes
22 physical custody and/or cancels those detainers, the membership of the class
23 changes continuously. In addition, the inclusion within the class of future inmates
24 also makes joinder of all members impracticable.

25 Commonality

26 93. The class meets the commonality requirement of Rule 23(a)(2). Questions
27 of law and fact presented by the named plaintiffs are common to other members of
28 the class. The common questions of fact or law that unite the claims of the class

1 include the following:

- 2 • Does ICE have a practice of issuing immigration detainers without
3 determining whether there is probable cause to believe that the person
4 subject to the detainer is removable?
- 5 • Does that practice, which foreseeably results in class members being
6 detained in federal, state or local jails after they are otherwise entitled to
7 release, violate either the Fourth or Fifth Amendment of the U.S.
8 Constitution?
- 9 • Does that practice also constitute ultra vires agency action in violation of the
10 statutory limits on ICE's warrantless arrest authority at 8 U.S.C. § 1357(a)?
- 11 • Does ICE have a practice of issuing immigration detainers without
12 determining whether the person subject to the detainer is likely to escape
13 before a warrant can be obtained?
- 14 • Does that practice also constitute ultra vires agency action in violation of the
15 statutory limits on ICE's warrantless arrest authority at 8 U.S.C. § 1357(a)?
- 16 • Does ICE have a practice of issuing immigration detainers that result in the
17 subjects being held in custody after they would otherwise be released
18 without a prompt judicial probable cause determination?
- 19 • Does that practice violate either the Fourth or Fifth Amendment of the U.S.
20 Constitution?

21 Typicality

22 94. The Plaintiffs' claims are typical of those of the class as a whole. Mr.
23 Gonzalez was subject to an immigration detainer at the time this action
24 commenced, and Mr. Chinivizyan was being held on an immigration detainer at
25 the time he joined the lawsuit. Plaintiffs and members of the proposed class allege
26 that ICE has a practice of issuing immigration detainers without probable cause to
27 believe that they are removable, without any judicial involvement, and without
28 determining the likelihood of escape. This practice violates the Fourth or Fifth

1 Amendments and the governing federal statute.

2 Adequacy of Representation

3 95. Plaintiffs are adequate class representatives and thus meet the requirements
4 of Rule 23(a)(4).

5 96. At the time this action commenced, Plaintiff Gonzalez was in the pretrial
6 custody of the LASD with an immigration detainer in his file. ICE issued the
7 immigration detainer without probable cause to believe that he was removable or
8 likely to escape, and without any judicial involvement. Plaintiff Gonzalez was
9 suffering an ongoing injury at the time of filing because the detainer was
10 preventing his release on bail. In addition, he also faced an imminent future injury:
11 the imminent threat of additional detention on the detainer as soon as he became
12 eligible for release from custody.

13 97. Mr. Gonzalez seeks the same relief as the other members of the proposed
14 class. The relief he seeks would have redressed his injuries because it would have
15 required ICE to rescind his immigration detainer and to stop requesting his
16 extended detention. He has no conflict of interest with other class members, will
17 fairly and adequately protect the interests of the class, and understands his
18 responsibilities as a class representative.

19 98. At the time he joined this lawsuit, Plaintiff Chinivizyan was in the custody
20 of the LASD with an immigration detainer in his file. ICE issued the immigration
21 detainer without probable cause to believe that he was removable or likely to
22 escape, and without any judicial involvement. Plaintiff Chinivizyan was suffering
23 an ongoing injury at the time of filing because LASD was detaining him on the
24 sole authority of the immigration detainer and the detainer was preventing his
25 release to a rehabilitation program.

26 99. Mr. Chinivizyan seeks the same relief as the other members of the proposed
27 class. The relief he seeks would have redressed his injuries because it would have
28 required ICE to rescind his immigration detainer and to stop requesting his

1 extended detention. He has no conflict of interest with other class members, will
2 fairly and adequately protect the interests of the class, and understands his
3 responsibilities as a class representative.

4 100. Plaintiffs are represented by highly qualified and experienced counsel: the
5 ACLU of Southern California, the ACLU Foundation Immigrants' Rights Project,
6 the National Day Laborer Organizing Network, and Kaye, McLane, Bednarski &
7 Litt, who are all highly experienced in cases of this type and subject-matter. In
8 particular, all of Plaintiffs' counsel also serve as counsel in a federal class action,
9 *Roy, et al. v. County of Los Angeles*, No. 12-cv-9012 (C.D. Cal. filed Oct. 19,
10 2012), brought on behalf of current and former inmates of the Los Angeles County
11 jails who are or were detained on an immigration detainer.

12 101. Plaintiffs meet the requirement of Rule 23(b)(2), as Defendants have acted,
13 or omitted to act, on grounds generally applicable to the class, thereby making
14 equitable relief appropriate with respect to the class as a whole.

15 CLAIMS

16 First Cause of Action:

17 Violation of 5 U.S.C. §§ 706(2)(A)-(D) (Ultra Vires)

18 102. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully
19 set forth herein.

20 103. Pursuant to 8 U.S.C. § 1357(a), Congress limited Defendants' warrantless
21 arrest authority to situations in which there is probable cause of removability and a
22 likelihood of escape before a warrant can be obtained.

23 104. When Defendants issue detainers, they are asking and purporting to
24 authorize LEAs to make warrantless arrests of Plaintiffs and other class members
25 on ICE's behalf, yet they do so without an individualized determination of
26 probable cause of removability or likelihood of escape, in violation of the
27 limitations placed by 8 U.S.C. § 1357(a).

28 105. Defendants' issuance of detainers in excess of its statutory authority causes

1 Plaintiffs and other class members harm by taking away, limiting, and otherwise
2 impacting their liberty without lawful authority.

3 **Second Cause of Action:**

4 **Fourth Amendment Violation (Unlawful Seizure)**

5 106. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully
6 set forth herein.

7 107. As set forth above, Defendants' issuance of immigration detainers causes
8 Plaintiffs and other class members prejudice by unreasonably taking away,
9 limiting, and otherwise impacting their liberty without probable cause to believe
10 they are removable in violation of the Fourth Amendment.

11 **Third Cause of Action**

12 **Fifth Amendment Violation (Unreasonable Over-Detention)**

13 108. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully
14 set forth herein.

15 109. This cause of action is brought as an alternative to the second cause of
16 action, in the event the court rules that the detention of Plaintiffs and other class
17 members without probable cause to believe they are removable is properly
18 analyzed under the Due Process Clause rather than or in addition to the Fourth
19 Amendment.

20 110. As set forth above, Defendants' issuance of immigration detainers causes
21 Plaintiffs and other class members prejudice by unreasonably taking away,
22 limiting, and otherwise impacting their liberty in violation of their due process
23 right to be released within a reasonable time after the initial reason for their
24 detention has ended.

25 **Fourth Cause of Action:**

26 **Fourth Amendment Violation (Detention without**
27 **Prompt Judicial Probable Cause Determination)**

28

1 111. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully
2 set forth herein.

3 112. The Fourth Amendment requires that all arrests be approved by a neutral
4 judicial official, either before the arrest (in the form of a warrant) or promptly
5 afterward (in the form of a prompt judicial probable cause determination). *See*
6 *Gerstein v. Pugh*, 420 U.S. 103 (1975). Absent an emergency or other
7 extraordinary circumstance, a detention of more than 48 hours prior to a judicial
8 probable cause determination violates the Fourth Amendment as a matter of law.
9 *See County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). The 48 hours
10 includes weekends and holidays.

11 113. As set forth above, Defendants do not provide a judicial probable cause
12 determination at any time for Plaintiffs and those similarly situated. Defendants'
13 failure to provide Plaintiffs and those similarly situated with a prompt, judicial
14 probable cause determination causes them prejudice by unreasonably taking away,
15 limiting, and otherwise impacting their liberty in violation of the Fourth
16 Amendment.

17 **Fifth Cause of Action:**

18 **Fifth Amendment Violation (Procedural Due Process)**

19 114. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully
20 set forth herein.

21 115. This cause of action is brought as an alternative to the fourth cause of action,
22 in the event the court rules that the failure to provide Plaintiffs and class members
23 a prompt, judicial probable cause determination is properly analyzed as a
24 procedural due process claim, rather than or in addition to under the Fourth
25 Amendment.

26 116. As set forth above, Defendants as a routine matter fail to provide a judicial
27 probable cause determination, or any type of prompt hearing at all, for Plaintiffs
28 and those similarly situated, causing them prejudice by unreasonably taking away,

1 limiting, and otherwise impacting their liberty in violation of their procedural due
2 process rights.

3 **Petition for Writ of Habeas Corpus**

4 117. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully
5 set forth herein.

6 118. This claim for relief is brought as an alternative to the first five claims for
7 relief, in the event the court rules that the only vehicle for relief is by writ of
8 habeas corpus.

9 119. The issuance of an immigration detainer places Plaintiffs and those similarly
10 situated in federal custody for the purposes of 28 U.S.C. § 2241.

11 120. The issuance of an immigration detainer against Plaintiffs and those
12 similarly situated results in *ultra vires* detention without statutory authority in
13 contravention of the limits placed by Congress on Defendants' warrantless arrest
14 authority.

15 121. The issuance of an immigration detainer against Plaintiffs and those
16 similarly situated results in detention without probable cause that violates the
17 Fourth Amendment or, alternatively, the Fifth Amendment.

18 122. The failure to provide Plaintiffs and those similarly situated with a prompt,
19 judicial probable cause determination results in a detention that violates the Fourth
20 Amendment or, alternatively, the Fifth Amendment.

21 123. Plaintiffs seek to pursue a representative action to represent the proposed
22 class.

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

- 25 1. Issue an injunction ordering Defendants, their subordinates, agents,
26 employees, and all others acting in concert with them to rescind any
27 immigration detainers issued against Plaintiffs and members of the proposed
28 class;

