

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

MARGARITO CASTAÑON NAVA,)	
JOHN DOE, MIGUEL CORTES)	
TORRES, GUILLERMO HERNANDEZ)	
HERNANDEZ, and ERICK RIVERA)	Case No. 18-cv-3757
SALES, on behalf of themselves and others)	
similarly situated, ILLINOIS COALITION)	Judge Rebecca R. Pallmeyer
FOR IMMIGRANT AND REFUGEE)	
RIGHTS, and ORGANIZED)	
COMMUNITIES AGAINST)	SECOND AMENDED COMPLAINT
DEPORTATIONS,)	FOR DECLARATORY AND
)	INJUNCTIVE RELIEF
<i>Plaintiffs,</i>)	
)	
v.)	CLASS ACTION
)	
DEPARTMENT OF HOMELAND)	
SECURITY, U.S. IMMIGRATION AND)	
CUSTOMS ENFORCEMENT (ICE);)	
KIRSTJEN NIELSEN, Secretary,)	
Department of Homeland Security;)	
RONALD D. VITIELLO, ¹ Acting Director,)	
ICE; RICARDO WONG, Field Office)	
Director (FOD) of the ICE Chicago Field)	
Office,)	
)	
<i>Defendants.</i>)	
)	

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This case is about ensuring that Immigration and Customs Enforcement (ICE) complies with its clear statutory obligations under 8 U.S.C. § 1357(a)(2) when conducting

¹ Under Federal Rule of Civil Procedure 25(d), former ICE Acting Director Thomas D. Homan is automatically substituted by his successor, Ronald D. Vitiello.

warrantless arrests. The rule of law must matter not only when it is convenient to ICE's enforcement agenda, but also when it ensures the liberty interests of the individuals and families that are subject to ICE enforcement.

2. The current Administration has adopted a variety of strategies to penalize states and localities that have adopted sound, constitutional policies to limit their participation in civil immigration enforcement—so-called “sanctuary laws.” Recently, ICE has been conducting indiscriminate enforcement actions, through traffic stops, home raids, and other sweeps, rounding up likely hundreds of individuals in the greater Chicagoland area, many of whom had no prior encounters with ICE and whom ICE arrested without a warrant. ICE's conduct in Chicagoland, particularly within the Chicago city limits, fits the pattern of what has happened in other so-called sanctuary jurisdictions in recent months.² ICE's pattern and practice in conducting these enforcement actions violates the Immigration and Nationality Act (INA) and the U.S. Constitution and must be enjoined.

3. Cities like Chicago and states like Illinois have long recognized that immigrants make significant contributions to the social fabric of their communities and have found immigrants deserving of equal treatment by state and local officials. Over the past decade, ICE has increasingly co-opted state and local police encounters with immigrant populations for civil immigration enforcement. One central strategy from ICE has involved issuing immigration

² See, e.g., ICE, News Release, “ICE arrests 225 during Operation Keep Safe in New York” (April 17, 2018), <https://www.ice.gov/news/releases/ice-arrests-225-during-operation-keep-safe-new-york>; ICE, News Release, “232 illegal aliens arrested during ICE operation in Northern California” (March 1, 2018), <https://www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california>; ICE, News Releases, “ICE arrests 156 criminal aliens and immigration violators during Operation Keep Safe in Chicago area” (updated May 29, 2018), <https://www.ice.gov/news/releases/ice-arrests-156-criminal-aliens-and-immigration-violators-during-operation-keep-safe>.

detainers that, in effect, instruct local police to act as ICE officers. Not surprisingly, this forced coordination has sowed tremendous distrust of local and state police, has diverted scarce public-safety resources, and is incongruous with community policing strategies. To regain the trust of their constituents and align local expenditures with local priorities, the City of Chicago and the State of Illinois have acted in recent years, like other jurisdictions, to pass laws and policies that limit participation by state and local officials in civil immigration enforcement. *See* “Welcoming City Ordinance,” Chicago Code, Ch. 2-173; Illinois Trust Act, 5 ILCS 805, *et seq.*

4. In recent months, ICE has responded to these state and local laws by indicating that it would launch large-scale, indiscriminate immigration enforcement actions.³ Importantly, Thomas Homan, the acting ICE Director at the time of the original complaint, has repeatedly signaled that ICE would be conducting “at-large arrests in local neighborhoods and at worksites.”⁴ He acknowledged that these large-scale enforcement actions would “inevitably” result in “collateral arrests”; meaning arrests of individuals for whom ICE lacks an arrest warrant.⁵ Pursuant to 8 U.S.C. § 1357(a)(2), such collateral arrests are only permissible if (1) the ICE officer has “reason to believe” a person is in the United States in violation of the law; and (2) the ICE officer has “reason to believe” a person is likely to escape before a warrant can be obtained for his arrest—a finding that ICE officers are neither trained nor instructed to make. Thus, these “collateral” arrests are in blatant violation of ICE’s warrantless arrest authority under

³ Dep’t of Homeland Security, U.S. Immigration and Customs Enforcement, *Statement from ICE Acting Director Tom Homan on California Sanctuary Law* (Oct. 6, 2017), <https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law>; *see also supra* note 2.

⁴ *Id.*

⁵ *Id.* The current Acting Director of ICE, Ronald D. Vitiello, has not signaled a different direction with regards to sanctuary jurisdictions.

the INA.

5. Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales (“named Plaintiffs”) were arrested by ICE between May 18 and May 24, 2018, without either an administrative arrest warrant or particularized finding of their likelihood of escape.

6. Upon information and belief, the named Plaintiffs are representative of a group of more than one hundred people who were arrested and taken into immigration custody in the course of widespread immigration sweeps in the Chicagoland area. For example, some were taken into immigration custody after pretextual traffic stops, and others were taken into custody after ICE came to their home or neighborhood purporting to look for someone else. Many putative class members work in the construction industry, making the industry an apparent target for ICE. Many are Hispanic and live and work in largely Hispanic communities. ICE’s widespread immigration sweeps have adversely impacted community organizations that support the areas swept by ICE. For example, Plaintiff Illinois Coalition for Immigrant and Refugee Rights (ICIRR) and Plaintiff Organized Communities Against Deportations (OCAD) (“Organizational Plaintiffs”) have had their resources drained from supporting immigrant communities in responding to ICE’s actions.⁶

7. While the number of individuals arrested over the week of May 18-24, 2018, was uniquely high, ICE’s enforcement tactics have become familiar and consistent for some time now and are expected to continue. ICE has confirmed that of 156 individuals arrested during the

⁶ Plaintiffs re-attach Exhibits B-N of their First Amended Complaint (Dkt. Entries 21-3 through 21-15), which contain the declarations of the Individual Plaintiffs and other similarly situated individuals as well as the declarations of the Organizational Plaintiffs ICIRR and OCAD.

week-long intensified enforcement in the Chicago area, 106 (68%) were “at large” “collateral arrests,” for whom agents had not obtained warrants for arrest.⁷

8. In the INA, Congress has indicated a strong preference for immigration arrests to be executed pursuant to a warrant. Before an ICE officer can make a warrantless arrest, he or she must have “reason to believe” that an arrestee “is likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2); *see Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007 (N.D. Ill. 2016) (equating “reason to believe” with “probable cause.”). Despite this clear legal requirement, ICE does not have a policy or practice of making a particularized finding regarding an individual’s likelihood to escape before making a warrantless arrest and made no particularized finding regarding named Plaintiffs here.

9. In many of the instances, including in the arrest of all named plaintiffs, ICE did not have a reasonable suspicion that the arrested individual had broken the law to justify ICE’s initial stop and, in some cases, fingerprinting. Indeed, Plaintiff Miguel Cortes Torres was arrested while *walking down the sidewalk*. These arrests are not the product of a reasonable suspicion to make a stop and a reason to believe the person is likely to escape. Rather, ICE improperly makes assumptions. It improperly assumes that Hispanic looking, Spanish speaking people working in particular industries, e.g., construction work, are immigrants. It improperly assumes all immigrants meeting this profile are present in the United States without permission. It improperly assumes all immigrants would flee, and that these immigrants have no reason to stay in their homes and communities. ICE improperly assumes that all immigrants would hide in

⁷ ICE, News Releases, “ICE arrests 156 criminal aliens and immigration violators during Operation Keep Safe in Chicago area” (Updated May 29, 2018), <https://www.ice.gov/news/releases/ice-arrests-156-criminal-aliens-and-immigration-violators-during-operation-keep-safe> [hereinafter ICE Chicago News Release].

the shadows. Instead of making individualized probable cause determinations of whether ICE could reasonably bring a person into custody pursuant to a warrant, ICE improperly treats immigrants as a homogeneous group based on their possible lack of immigration status. As a result, many of the arrests that named Plaintiffs and putative class members endured reflect a policy of stopping people for “driving while brown” and then detaining them.

10. The immigration statute lays out clear requirements for a warrantless arrest, but ICE continually shirks its statutory obligations. If the rule of law matters, as the Administration says it must,⁸ it must matter not only when it suits ICE’s purposes but also when it requires ICE to take specific steps when making warrantless arrests, including in the first instance that its officers have reasonable suspicion to make an initial stop.

11. Named Plaintiffs on behalf of the proposed class seek to enforce the rule of law and require ICE to comply with the terms of 8 U.S.C. § 1357(a)(2) by either obtaining an arrest warrant or establishing probable cause of flight risk before making an arrest. Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, and Erick Rivera Sales further seek, on behalf of the proposed sub-class, to ensure that ICE’s pattern and practice of conducting traffic stops comport with the Fourth Amendment.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs’ claims arise from federal statutes, 5 U.S.C. § 702 and 8 U.S.C. § 1357(a)(2), and the Fourth Amendment to the U.S. Constitution.

⁸ White House, Office of the Press Secretary, *President Donald J. Trump Restores Responsibility and the Rule of Law to Immigration* (Sept. 5, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/05/president-donald-j-trump-restores-responsibility-and-rule-law>.

13. The United States' sovereign immunity is waived under the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706.

14. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, and Rule 65 of the Federal Rules of Civil Procedure.

15. The Court has the authority to issue a declaratory judgement under the Declaratory Judgement Act, 28 U.S.C. §§ 2201-02 and Rule 47 of the Federal Rules of Civil Procedure.

16. Venue is proper under 28 U.S.C. §1391(e) because a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred in this district, Organizational Plaintiffs ICIRR and OCAD are based in this district, and the ICE Chicago Field Office is within the district. All named Plaintiffs were arrested within the Area of Responsibility of the ICE Chicago Field office, and within the Northern District of Illinois.

PARTIES

17. Plaintiff Margarito Castañon Nava has lived in Chicago for the past seventeen years, and he lives with his partner of six years and two of her children. He has no criminal record. He currently works in construction. ICE officers stopped him in a traffic stop on the south side of Chicago with no reason to do so, fingerprinted him without his consent, and then arrested and detained him without a warrant or an individualized determination that he is a flight risk.

18. Plaintiff John Doe has been living in the Chicago area for nearly thirty years, and at the time of his arrest was living on the south side of Chicago. He is a construction worker, and ICE officers arrested him and the other members of his team as they were setting out for a job.

ICE arrested and detained him without a warrant or an individualized determination that he is a flight risk.

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

20. Plaintiff Guillermo Hernandez Hernandez has lived in and around Joliet, Illinois, for eighteen years. He works as a mechanic and has no criminal record. ICE officers pulled him over in Joliet with no explanation and arrested him after he showed them his driver's license. They also arrested the passenger in his car, who was visiting from Mexico on a valid visa.⁹ ICE arrested and detained Mr. Hernandez Hernandez without a warrant or an individualized determination that he is a flight risk.

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

22. Plaintiff Illinois Coalition for Immigrant and Refugee Rights (ICIRR) is a nonprofit, nonpartisan, statewide organization dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. With its member organizations, ICIRR educates and organizes immigrant and

⁹ See Jacqueline Serrato, CHICAGO TRIB., June 1, 2018, "This man had a visa but was picked up by ICE one day after entering the U.S.," <http://www.chicagotribune.com/voice/ct-this-man-had-a-visa-but-was-picked-up-by-ice-one-day-after-entering-the-us-20180601-story.html>.

refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; provides support and information during times of crisis; and educates the public about the contributions of immigrants and refugees.

ICIRR advocates for policies that protect immigrant families from deportation and separation, and uphold their rights to due process and equal protection under the law.

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

24. Defendant the Department of Homeland Security (DHS) is a Department of the Executive Branch of the United States government, headquartered in Washington, DC, and is responsible for enforcing federal laws governing border control, customs, trade, and immigration to promote homeland security and public safety.

25. Defendant Immigration and Customs Enforcement (ICE) is a component of DHS, headquartered in Washington, DC, and is in charge of enforcing federal immigration law, including arresting and detaining non-citizens.

26. Defendant Kirstjen Nielsen is sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she directs each of the component agencies

within DHS, including ICE. As a result, in her official capacity, Secretary Nielsen is responsible for the administration and enforcement of the immigration laws, including ICE officers' compliance with the INA and the Fourth Amendment.

27. Defendant Ronald D. Vitiello is the Acting Director of ICE, which is a sub-agency of the Department of Homeland Security. Acting Director Vitiello is responsible for enforcement and removal operations for ICE, including ICE officers' compliance with their limited warrantless arrest authority under the INA and Fourth Amendment.

28. Defendant Ricardo Wong is the Field Office Director (FOD) of the ICE Chicago Field Office, which has responsibility for Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. In his official capacity, FOD Wong has ultimate responsibility for all enforcement actions conducted out of the Chicago Area of Responsibility.

FACTUAL BACKGROUND

A. ICE's Immigration Sweeps.

29. In recent months, ICE has been conducting indiscriminate, large-scale immigration sweeps, principally targeting states and localities that have adopted so-called "sanctuary laws," which limit state and local participation in civil immigration enforcement.

30. For example, in late February 2018, ICE conducted a 4-day enforcement sweep in Northern California which led to the arrest of 232 individuals. ICE concedes that many of the individuals arrested in this enforcement sweep were "collateral arrests," i.e., individuals they randomly encountered and for whom they did not have a warrant.¹⁰

¹⁰ ICE, News Release, "232 illegal aliens arrested during ICE operation in Northern California" (March 1, 2018), <https://www.ice.gov/news/releases/232-illegal-aliens-arrested-during-ice-operation-northern-california>.

31. Likewise, in April 2018, ICE conducted a 6-day enforcement sweep, called “Operation Keep Safe,” in and around New York City, which led to 225 arrests. Again, ICE conceded that many of those individuals were “collateral arrests.”¹¹

32. The pattern of enforcement sweeps resulting in a significant number of collateral arrests has repeated itself in the Chicagoland area. This litigation arises as a result of the Chicago phase of “Operation Keep Safe.” This Operation bears many of the hallmarks of ICE’s enforcement tactics in California and New York.¹² ICE concedes that 106 of the 156 individuals arrested in the Chicagoland area during a week-long period of intensified enforcement in May 2018 were “at-large” collateral arrests and half had no criminal records.¹³ Defendant Ricardo Wong is quoted in ICE’s press release stating that the large-scale, indiscriminate enforcement action was in direct response to so-called Chicago area “sanctuary cities” that place limitations on complying with ICE’s voluntary immigration detainers.¹⁴ Finally, ICE is unequivocal that it intends to “continue targeted at-large arrests in local neighborhoods and at worksites, which will inevitably result in additional collateral arrests.”¹⁵

¹¹ ICE, News Release, “ICE arrests 225 during Operation Keep Safe in New York” (April 17, 2018), <https://www.ice.gov/news/releases/ice-arrests-225-during-operation-keep-safe-new-york>.

¹² ICE Chicago News Release, *supra* note 7.

¹³ *Id.*

¹⁴ *See id.*

¹⁵ *Id.*

33. Indeed, ICE conducted another large-scale sweep within the jurisdiction of the ICE Chicago Field Office in late August and late September 2018.¹⁶

34. As applied to the named Plaintiffs in this case, starting on or around May 18, 2018, ICE began conducting indiscriminate enforcement actions in the area of responsibility for the ICE Chicago Field Office. On information and belief, ICE employed a variety of strategies in these sweeps. In towns or counties that continue to cooperate with ICE, local police officials made pretextual stops and handed individuals over to ICE. Within the Chicago city limits, and in other regions where ICE cannot force local authorities to do its bidding, ICE officers made their own pretextual stops, profiling based on skin color, neighborhood, and apparent occupation. In these stops, ICE officers pretended to be local police and then arrested and detained the named Plaintiffs and others like them.

35. Upon information and belief, some of these stops were made under the pretext of traffic law violations which ICE has no authority or jurisdiction to enforce. Many Plaintiffs were stopped by ICE directly in a traffic stop and with no indication that they had violated any traffic law.

36. On information and belief, ICE particularly targeted some of its sweeps to the southwest side of Chicago, from around 31st Street to 55th Street, and from Western Avenue to Pulaski Road, a predominantly Latino neighborhood.

¹⁶ ICE, News Release, “ICE arrests 364 criminal aliens and immigration violators in 30-day enforcement surge in 6 Midwestern states” (Aug. 29, 2018), <https://www.ice.gov/news/releases/ice-arrests-364-criminal-aliens-and-immigration-violators-30-day-enforcement-surge-6>; ICE, News Release, “ICE arrests 83 criminal aliens and immigration violators in 4-day Wisconsin enforcement surge” (Sept. 25, 2018), <https://www.ice.gov/news/releases/ice-arrests-83-criminal-aliens-and-immigration-violators-4-day-wisconsin-enforcement>.

B. Stop and Arrest of Plaintiff Margarito Castañon Nava.

37. Plaintiff Margarito Castañon Nava, a Chicago resident for nearly 20 years with no criminal record, was pulled over at the corner of West 31st Street and Cicero Avenue, in Chicago, while driving a work truck. The ICE officers wore plain clothes, vests that generically said “police,” and drove unmarked vehicles. The ICE officers used their vehicle to barricade Mr. Castañon Nava’s truck on the side of road. The ICE officers who stopped and seized Mr. Castañon Nava never told him that he had violated any traffic laws.

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

39. Instead, the ICE officers asked to see Mr. Castañon Nava’s license. When he produced it, the ICE officers took thumbprints from Mr. Castañon Nava and the passenger in the car and forced them to be photographed. The ICE officers briefly returned to their vehicles. When they returned, the ICE officers asked Mr. Castañon Nava why he did not have a green card; without asking any other questions the ICE officers ordered them out of the car, handcuffed them, and placed them in unmarked vehicles. Only when Mr. Castañon Nava arrived at a building in downtown Chicago did he learn that the ICE officers who had arrested him were not Chicago police but in fact were ICE officers. The ICE officers did not have warrants for Mr. Castañon Nava or his passenger.

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

41. After his arrest on May 20, 2018, Mr. Castañon Nava was detained for 44 days before his first scheduled hearing in front of an Immigration Judge on July 3, 2018 for a bond

hearing. During those 44 days, Mr. Castañón Nava missed the last day of school for his two younger children, a month of his eldest daughter's pregnancy, and the quinceañera of his middle child.

C. Stop and Arrest of Plaintiff John Doe.

42. Plaintiff John Doe, a Chicago resident for nearly thirty years, was detained under similar circumstances. He was spending the night with his co-workers at West 48th Street and South Wood in Chicago so that they could depart early the next morning for a construction job, but when they set off to leave that morning they were detained and seized by ICE officers. An unmarked car pulled directly in front of the work truck, and a different unmarked vehicle pulled behind them, making it so that they could not leave.

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

44. The ICE officer asked Mr. Doe's boss, Luis Enrique Morales Huerta (who was the driver), for his license and registration. Upon information and belief, based on the form of Mr. Morales Huerta's driver's license, the ICE officer presumed that the entire van was filled with undocumented migrants. The ICE officers did not have warrants for the Mr. Morales Huerta, Mr. Doe, or any other passenger. The ICE officers instructed all the occupants to produce identification and fingerprinted at least some of them. The ICE officers ordered them out of the vehicle, handcuffed them, and then later shackled them. After holding this group of men for approximately two hours, the ICE officers took them into immigration custody in downtown Chicago. In Mr. Doe's case, the ICE officer who questioned him at immigration had been one of the same officers who participated in the stop on Chicago's South side.

45. Upon information and belief, the ICE officers who stopped and seized Mr. Doe did not have reason to believe that Mr. Doe was likely to escape before a warrant could be

obtained for his arrest.

46. After his arrest on May 19, 2018, Mr. Doe was detained for 44 days before his first scheduled hearing in front of an Immigration Judge on July 2, 2018 for a bond hearing.

D. Stop and Arrest of Plaintiff Erick Rivera Sales.

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

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

49. Mr. Rivera Sales and his passengers got out of their vehicle and the ICE officers handcuffed them and put them in a van. They then drove them to a Walmart parking lot. They waited in the van, in the parking lot, while ICE officers in other ICE vehicles apparently went looking for more people to arrest. After about an hour and a half of waiting, they drove to an ICE detention center. They remained at the detention center all day, then drove to Pulaski County Detention Center.

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

51. After his arrest on May 24, 2018, Mr. Rivera Sales was detained for 47 days before his first scheduled hearing in front of an Immigration Judge on July 10, 2018 for a bond hearing. Mr. Rivera Sales' partner was nine months pregnant at the time of his arrest, and his daughter was born days after his arrest. He was unable to see her during his 47-day detention.

E. Stop and Arrest of Plaintiff Guillermo Hernandez Hernandez.

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

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

54. The ICE officers also arrested the passenger in the car, a visiting tourist, despite Mr. Hernandez Hernandez's insistence that this friend was visiting with a valid visa. Attempting to help his friend, Mr. Hernandez Hernandez directed the ICE officers to his house to get his friend's passport and visa. The ICE officers drove them to the house, where they took Mr. Hernandez Hernandez's friend's paperwork and arrested another friend who happened to be there. The ICE officers took all three men with them and drove around looking through binoculars, upon information and belief, for more people to arrest. After arresting several more people, the ICE officers took them to an immigration office and processed their paperwork. Mr.

Hernandez Hernandez was transferred to McHenry County Jail.

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

56. After his arrest on May 19, 2018, Mr. Hernandez Hernandez was detained for 39 days before his first scheduled hearing in front of an Immigration Judge on June 27, 2018 for a bond hearing.

F. Stop and Arrest of Plaintiff Miguel Cortes Torres.

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

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

59. The ICE officers did not give Mr. Cortes Torres any reason for his arrest beyond saying, "you're an immigrant," and he did not know they were from ICE until the ICE officers had handcuffed him and put him in their truck.

60. After arresting him, the ICE officers took Mr. Cortes Torres to an immigration building, then transferred him and six others to Jerome Combs Detention Center in Kankakee, Illinois. They did not give Mr. Cortes Torres anything to eat or drink from the time of his arrest

until breakfast at the detention center the next morning. They also did not allow him to make a phone call. He was not able to make a phone call until several days later.

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

62. After his arrest on May 21, 2018, Mr. Cortes Torres was detained for 38 days before his first scheduled hearing in front of an Immigration Judge on June 28, 2018 for a bond hearing.

G. ICE's Pattern of Stop and Arrest of Similarly Situated Individuals.

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

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

Mr. Carmona Diaz were present in the United States illegally.

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

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

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

68. For each of these individuals, the ICE officers did not have warrants for their arrests. And although these individuals have had initial bond hearings before an Immigration Judge, they had to wait at least a month in detention.

69. In a bond hearing, the legality of ICE's arrest is not considered, the burden-of-proof for release on bond is placed on the immigrant, and bond amounts are routinely in the

thousands of dollars (e.g., \$4,000 in Guillermo Hernandez Hernandez’s case). And unlike bond in the criminal context, bonds in the immigration context need to be paid in full, such that the bond is often prohibitively high for many individuals to obtain their release.

70. ICE’s actions are not only consistent with recent enforcement in New York and California, described above, but others under the current Administration where additional data is available. For example, in a July 2017 operation, approximately 70% of those ICE arrested were considered “collateral” arrests.¹⁷ The July 2017 operation, known as “Operation Border Guardian/Border Resolve,” was announced by ICE as targeting “individuals who entered the country as unaccompanied alien children (UACs) and family units.”¹⁸ Upon conclusion of the operation, ICE announced that 650 individuals had been arrested nationally, of whom 193 met the definition of the target class and 457 were simply “encountered during this operation.”¹⁹

71. This data comports with then-Secretary John Kelly’s February 2017 memo implementing the President’s Executive Order on interior immigration enforcement, instructing immigration agents to abandon existing enforcement priorities and “initiate enforcement actions against removable aliens countered during the performance of their official duties”²⁰ In

¹⁷ Dara Lind, *Vox*, “What John Kelly’s final ICE raid tells us about Trump’s new chief of staff,” Aug. 2, 2017, <https://www.vox.com/2017/8/2/16076742/ice-raid-immigration>.

¹⁸ Immigration and Customs Enforcement Newsroom, “ICE announces result of Operation Border Guardian/Border Resolve,” Aug. 1, 2017, <https://www.ice.gov/news/releases/ice-announces-results-operation-border-guardianborder-resolve>.

¹⁹ *Id.*

²⁰ Memorandum, John Kelly, Secretary of Homeland Security, “Enforcement of the Immigration Laws to Serve the National Interest,” Feb. 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

other words, Secretary Kelly instructed ICE officers to sweep up every undocumented immigrant they encounter, regardless of whether the person is a priority for removal or the target of an enforcement action. In testifying to Congress regarding the new enforcement directives, former ICE Director Homan was unequivocal to all undocumented immigrants: “You should look over your shoulder, and you need to be worried.”²¹

H. Effect of ICE’s Pattern of Stop and Arrest on the Community.

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

²¹ Elise Foley, *Huffington Post*, “ICE Director to all undocumented immigrants: ‘You need to be worried,’” June 13, 2017, http://www.huffingtonpost.com/entry/ice-arrests-undocumented_us_594027c0e4b0e84514eebfbe.

LEGAL BACKGROUND

A. Under the Fourth Amendment, ICE Must Have Reasonable Suspicion of an Immigration Violation in Order to Make a Stop.

73. ICE does not have authority to make stops for the purpose of identifying and detaining individuals who appear to be Hispanic to determine their immigration status. Such conduct violates the Fourth Amendment. *See United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

74. In *Brignoni-Ponce*, the Supreme Court refused to permit border patrol agents authority to pull-over cars near, but not at, the U.S.-Mexico border for the sole purpose of assessing immigration status of people who appear to be Mexican nationals. There, the Court noted that, “the officers relied on a single factor to justify stopping respondent’s car: the apparent Mexican ancestry of the occupants.” *Brignoni-Ponce*, 422 U.S. at 885-86. The Court noted “even if [the officer’s] saw enough to think that the [vehicle] occupants were of Mexican descent, this factor alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country.” *Id.* at 886. The Court expressly held, “[e]xcept at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.” *Id.* at 884.

75. An additional lesson from *Brignoni-Ponce* is that immigration officials may not utilize a standard traffic stop to target and detain noncitizens present in the United States without permission. The INA does not grant ICE officers the authority or jurisdiction to enforce state laws. *See* 8 U.S.C. §§ 1357 (a)(4), (a)(5) (delineating the narrow circumstances in which ICE officers can make a criminal arrest). Section 1357(a) does not include the authority to issue

traffic citations, and therefore ICE officers may not conduct traffic stops to issue traffic citations. *See, e.g., United States v. Perkins*, 166 F. Supp. 2d 1116, 1125–26 (W.D. Tex. 2001) (citing § 1357(a)(5) in concluding that “[DHS] agents do not have authority to stop a vehicle based only on a suspicion that a person is violating a state traffic law”); *United States v. Rubio-Hernandez*, 39 F.Supp.2d 808, 830 (W.D. Tex. 1999) (same holding).

B. ICE Officers Lack Authority to Make a Warrantless Arrest Without an Individualized Determination of Flight Risk.

76. In the INA, Congress has enacted a strong preference that immigration arrests be based on warrants. ICE officers’ authority to conduct warrantless arrests is prescribed at 8 U.S.C. § 1357(a)(2). That provision requires an ICE officer to have “reason to believe” both that: (1) the noncitizen “is in the United States in violation of any [immigration] law or regulation,” and (2) the individual “is likely to escape before a warrant can be obtained for his arrest.” *Id.*

77. Courts have continually recognized and required strict adherence to § 1357’s terms. *See Arizona v. United States*, 567 U.S. 387, 408, 410 (2012) (holding that an Arizona statute was preempted because it purported to give Arizona law enforcement greater warrantless arrest authority “than Congress has given to trained federal immigration officers,” emphasizing that ICE’s warrantless arrest authority is limited to situations where there is a likelihood of escape before a warrant can be obtained); *United States v. Cantu*, 519 F.2d 494, 496-97 (7th Cir. 1975) (holding that the statutory requirement of likelihood of escape in 8 U.S.C. § 1357 “is always seriously applied”).²²

²² *See also De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) (“[E]ven if an agent has reasonable belief, before making an arrest, there must also be a likelihood of the person escaping before a warrant can be obtained for his arrest.”); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (quoting § 1357(a)(2)) (“Without a warrant, immigration officers are authorized to arrest an alien only if they have “*reason to believe that the alien so arrested is in the United*

78. In *Moreno v. Napolitano*, another judge in this district found that § 1357(a)(2) requires ICE officers to make *individualized* determination of flight risk, rather than categorical determinations of flight based on potential removability. 213 F. Supp. 3d at 1007. The court rejected the government’s argument that “simply by being potentially removable, an alien must be deemed to be likely to evade detention by ICE.” *Id.* The court reasoned that “such a reading would render the limitations on warrantless arrest created by 8 U.S.C. §§ 1226(a) and 1357(a)(2) meaningless.” *Id.* Rather, the requirement for a “‘reason to believe’ in § 1357(a)(2) requires the equivalent of probable cause, which in turn requires a particularized inquiry.” *Id.* (internal citations omitted). Absent a particularized inquiry of likelihood of escape, ICE officers lack authority to arrest the individual without a warrant. *Id.*

79. The Supreme Court and Seventh Circuit have found that probable cause cannot be based solely on categorical assumptions about an individual’s circumstances or behavior. In *Illinois v. Wardlow*, the Supreme Court held that an “individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime.” 528 U.S. 119, 124 (2000); *see also Moreno*, 213 F. Supp.

States in violation of any [immigration] law or regulation and *is likely to escape before a warrant can be obtained for his arrest.*”); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (holding that this statute requires an individualized determination of flight risk); *United States v. Harrison*, 168 F.3d 483, 1999 WL 26921, at *4 (4th Cir. 1999) (unpublished) (explaining that “the critical question remains did the INS believe Harrison was likely to flee before a warrant could be obtained. In making such a determination, a court examines the objective facts within the knowledge of the INS Agents”; rejecting Government’s position “that in every case in which an alien is deportable an arrest can be made without a warrant”); *Westover v. Reno*, 202 F.3d 475, 479-80 (1st Cir. 2000) (commenting that an immigration arrest was “in direct violation” of § 1357(a)(2) because “[w]hile INS agents may have had probable cause to arrest Westover by the time they took her into custody, there is no evidence that Westover was likely to escape before a warrant could be obtained for her arrest”); *United States v. Meza-Campos*, 500 F.2d 33 (9th Cir. 1975) (applying an individualized likelihood-of-escape analysis); *Contreras v. United States*, 672 F.2d 307 (2d Cir. 1982) (same).

3d at 1006 (citing *United States v. Marrocco*, 578 F.3d 627, 633 (7th Cir. 2009) (“The suspicion necessary to justify [a search] cannot be based solely on an officer’s conclusion that a suspect fits a drug-courier profile.”); *United States v. Walden*, 146 F.3d 487, 490 (7th Cir. 1998) (“Reasonable suspicion of criminal activity cannot be based solely on a person’s prior criminal record.”)).

80. Applied here, ICE officers cannot make categorical assumptions about flight risk based solely on an individual’s apparent race and alleged immigration status; ICE officers must make an individualized determination. § 1357(a)(2); *Moreno*, 213 F. Supp. 3d at 1006.

81. ICE currently has no policy or practice instructing its officers on the limits of their warrantless arrest authority and provides no guidance on how to make an individualized determination of likelihood of escape before a warrant can be obtained. *See Moreno*, 213 F. Supp. 3d at 1005-06.²³ ICE permits its officers to make warrantless arrests *carte blanche* in violation of the statute.²⁴

CLASS ACTION ALLEGATIONS

82. The named Plaintiffs seek to represent a class (hereinafter “Main Class”) under Federal Rules of Civil Procedure 23(b)(2) consisting of:

All current and future persons whom ICE arrests or has arrested without having a warrant, within the area of responsibility of the ICE Chicago Field Office, who remain detained.

²³ The last known guidance to agents is the now defunct Immigration Naturalization Service’s (INS) Manual on “The Law of Arrest, Search, and Seizure for Immigration Officers” (Jan. 1993), attached as Exhibit A to the First Amended Complaint (Dkt. 21-2) and reattached here. As addressed at page II-4 ties to the community such as family, home, or job are probative factors that diminish likelihood to escape under a §1357(a)(2) analysis.

²⁴ Here, ICE officers did not even comply with their regulatory obligations at the time of arrest to: “Identify himself or herself as an immigration officer” and “State that the person is under arrest and the reason for the arrest.” 8 C.F.R. §§ 287.8(c)(2)(iii).

83. Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, and Erick Rivera Sales also seek to represent a sub-class (hereinafter “Traffic Stop Sub-Class”) under Federal Rules of Civil Procedure 23(c)(5) consisting of:

All members of the Main Class who were subject to a traffic stop initiated by ICE officers within the area of responsibility of the Chicago Field Office.

84. Joinder of all class and sub-class members is impracticable. Because ICE, as a matter of policy and practice, continuously makes warrantless immigration arrests without making an individualized determination that there is a reason to believe the class member is likely to escape before a warrant can be obtained for his arrest, the composition of the class changes on a regular basis. ICE further has a pattern and practice for conducting some of its warrantless immigration arrests through traffic stops on less than a reasonable suspicion.

85. The proposed class and sub-class are numerous. Upon information and belief, between May 18 and 24, 2018 alone, ICE arrested more than 156 individuals within the area of responsibility for the ICE Chicago Field Office, most in the greater Chicagoland area. A significant majority of these arrests were “collateral arrests” where ICE had not obtained a warrant for the arrest. In recent raids, 70% of arrests were considered “collateral” arrests, *i.e.*, those for whom ICE had not already obtained an administrative immigration warrant.²⁵ Because ICE has a policy and practice of making warrantless arrests without the statutory flight risk determination, class membership is consistently replenished. ICE has confirmed that it intends “to continue to conduct . . . arrests in local neighborhoods, and at worksites, which inevitably

²⁵ Dara Lind, *Vox*, “What John Kelly’s final ICE raid tells us about Trump’s new chief of staff,” Aug. 2, 2017, <https://www.vox.com/2017/8/2/16076742/ice-raid-immigration>.

result in additional collateral arrests.”²⁶ And when conducting at-large arrests, one of ICE’s preferred tactics is traffic stops absent reasonable suspicion.

86. All members of the class are subject to ICE’s policies and practices regarding warrantless arrests, as well as the absence of policies relating to how an agent should make a probable cause determination of flight risk. There are questions of law and fact common to the class and sub-class:

- a. Whether ICE violates 8 U.S.C. § 1357(a)(2) when it arrests class members without a warrant and without probable cause that the individual is likely to escape before a warrant can be obtained for the arrest.
- b. Whether ICE lacks authority to detain class members whom ICE arrested without a warrant and without probable cause that the individual is likely to escape before a warrant can be obtained for the arrest.
- c. And as to the Sub-class, whether ICE violates 8 U.S.C. §§ 1357(a)(4), (a)(5), when it engages in traffic stops purporting to enforce state and local traffic laws.
- d. Whether ICE’s lack of policy for establishing and documenting a reasonable suspicion to conduct traffic stops of sub-class members in vehicles within the area of responsibility of the Chicago Field Office, without a reasonable suspicion that at least one person in the vehicle is present in the United States unlawfully, violate the Fourth Amendment.
- e. Whether ICE’s pattern and practice of conducting traffic stops of sub-class members within the area of responsibility of the Chicago Field Office, without a reasonable suspicion that at least one person in the vehicle is present in the United States unlawfully, violate the Fourth Amendment.

87. Defendants have acted and intend to act in a manner adverse to the rights of the proposed class and sub-class, making final injunctive and declaratory relief appropriate with respect to the class as a whole.

²⁶ ICE Chicago News Release, *supra* note 7.

88. Plaintiffs and the class and sub-class they seek to represent have been directly injured by the Defendants' statutory violations and are at risk of future harm from continuation of their acts and omissions in failing to adhere to their statutory obligations and the Fourth Amendment.

89. Plaintiffs will fairly and adequately represent the interests of the class and sub-class. Plaintiffs' legal claims are typical to all members of the proposed class and sub-class. Plaintiffs have no interests separate from those of the class and sub-class, and seek no relief other than the relief sought on behalf of the class and sub-class.

90. Plaintiffs' counsel are experienced in class action, civil rights, and immigrants' rights litigation. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

COUNT I

**Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C):
ICE's Warrantless Arrests Violate 8 U.S.C. § 1357(a)(2)
(Main Class and Organizational Plaintiffs)**

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

92. Between May 18 and 24, 2018, ICE arrested Plaintiffs Margarito Castañon Nava John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales without warrants. Before the arrests, ICE failed to make individualized findings of flight risk. All were "collateral arrests" as part of ICE's large-scale, indiscriminate enforcement actions in the Chicago area. Some were victims of aggressive ICE traffic stops where they had not been previously identified targets for enforcement and for whom ICE knew nothing to make any meaningful flight risk assessment.

93. ICE arrested Plaintiffs Margarito Castañon Nava, John Doe, Miguel Cortes Torres, Guillermo Hernandez Hernandez, and Erick Rivera Sales without a warrant and without

“reason to believe” that they were “likely to escape before a warrant can be obtained for [the] arrest” in violation of 8 U.S.C. § 1357(a)(2).

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

95. Defendants do not have a policy or practice for complying with the statutory limits of their warrantless arrest authority and provide no guidance on how to make an individualized determination of likelihood of escape before a warrant can be obtained. Defendants permit ICE officers to make warrantless arrests *carte blanche* in violation of the statute.

96. Based on ICE’s press release of its most recent enforcement actions, ICE will continue to arrest individuals without reason to believe that they are likely to escape before a warrant can be obtained for the arrests in violation of 8 U.S.C. § 1357(a)(2).

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

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

99. As a proximate result of Defendants' statutory violations, Plaintiff Main Class is suffering and will continue to suffer a significant deprivation of their liberty in violation of the statute, further causing Organizational Plaintiffs to continue to expend considerable, additional resources to their hotline and providing needed service and support to the families torn apart by Defendants' sudden, indiscriminate enforcement actions.

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

COUNT II

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

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

102. On May 20, 2018, ICE officers pulled over Plaintiff Margarito Castañon Nava—a Chicago resident for nearly 20 years with no criminal record—at the corner of West 31st Street and Cicero Avenue in Chicago, and proceeded to barricade Plaintiff's work truck on the side of the road with three unmarked ICE vehicles. Plaintiff was driving a work truck, having recently left a construction site. Plaintiff had a valid driver's license and insurance.

103. Without any explanation for the traffic stop, the plain clothed ICE officers asked for Plaintiff's identification and then immediately fingerprinted and photographed him without consent.

104. Upon information and belief, the ICE officers did not have a reasonable suspicion that either Plaintiff Margarito Castañon Nava or his co-worker were in violation of immigration laws or any other law to justify stopping their truck. Instead, Plaintiff contends that ICE officers stopped him because he appears Hispanic and because of stereotypes regarding the immigration status of Hispanics in the construction industry and in certain neighborhoods in Chicago in which ICE conducted this and likely other stops during recent enforcement actions.

105. On May 24, 2018, ICE officers pulled over Plaintiff Erick Rivera Sales, a resident of Chicago for four years who has missed the birth of his child because of his arrest. The arrest occurred in the early morning in Palatine, Illinois, when Mr. Rivera Sales was leaving home to go to work. In this case too, ICE utilized multiple different vehicles to physically block Mr. Rivera Sales' way: at the time of the stop, his car was surrounded on three sides by ICE vehicles.

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

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

108. Upon information and belief, the ICE officers did not have a reasonable suspicion that Mr. Hernandez Hernandez or his friend were in violation of immigration laws or any other law to justify stopping their truck. Instead, Plaintiff contends that ICE officers stopped him because he appears Hispanic.

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

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

111. As a proximate result of Defendants' unreasonable vehicle stops, Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, Erick Rivera Sales and the Traffic Stop Sub-Class are suffering and will continue to suffer a significant deprivation of their liberty in violation of their Fourth Amendment rights.

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

113. Plaintiffs Margarito Castañon Nava, Guillermo Hernandez Hernandez, Erick Rivera Sales and the Traffic Stop Sub-Class have no plain, adequate or complete remedy at law

to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiffs and sub-class is necessary to prevent continued and future irreparable injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Issue an order certifying this action to proceed as a class action with a subclass pursuant to Rule 23 of the Federal Rules of Civil Procedure.

B. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

C. Declare that ICE's actions making warrantless arrests without probable cause of flight risk violate 8 U.S.C. § 1357(a)(2).

D. Declare that ICE's lack of a policy and ICE's pattern and practice of making traffic stops of individuals in their vehicles, other than when its agents have reasonable suspicion that a previously identified individual for enforcement is within the vehicle, violate the Fourth Amendment.

E. Enter a permanent injunction prohibiting ICE from making any warrantless arrests in the area of responsibility of the ICE Chicago Field Office without an individualized probable cause determination that the arrestee is a flight risk in accordance with 8 U.S.C. § 1357(a)(2).

F. Enter a permanent injunction requiring ICE to adopt a policy for making and documenting an individualized probable cause determination that the arrestee is a flight risk in accordance with 8 U.S.C. § 1357(a)(2) for any warrantless arrests in the area of responsibility of the ICE Chicago Field Office.

G. Enter a permanent injunction requiring ICE to end traffic stops of individuals in vehicles within the area of responsibility of the ICE Chicago Field Office where there is no

reasonable suspicion of an identified individual for enforcement is within the vehicle.

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

I. Attorneys' fees and costs.

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

Dated: December 14, 2018

Respectfully Submitted:

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 14th day of December, 2018, a true and correct copy of the foregoing was served via ECF upon counsel of record.

/s/ Zachary L. Sorman