

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE JIMINEZ MORENO and MARIA JOSE)	
LOPEZ, on behalf of themselves and all others)	
similarly situated,)	
Plaintiffs,)	No. 11-CV-05452
)	
v.)	Judge John Z. Lee
)	
JANET NAPOLITANO, <i>et al.</i> , in their official)	Defendants' Answer to Amended
capacities,)	Complaint
)	
Defendants.)	
)	
)	
)	

STATEMENT OF THE CASE

1. This complaint presents a challenge to the U.S. Immigration and Customs Enforcement's (ICE's) assertion of general authority to instruct federal, state, and local law enforcement agencies (LEAs) to continue to detain individuals in the LEAs' jails, after no other basis for custody exists, in order for ICE to investigate their immigration status and possibly assume direct physical custody. ICE's statutory authority to issue detainers, without an arrest warrant, is limited. 8 U.S.C. § 1357(d); 8 U.S.C. § 1226(c); 8 U.S.C. 1357(a). As set forth below, ICE's exercise of detainer authority, however, regularly exceeds its statutory authority. In addition, ICE's conscription of state and local LEAs to detain individuals for civil immigration purposes violates separation of powers limits under the Tenth Amendment. Finally, the extended detention, unsupported by probable cause and without due process protections, that ICE's detainers cause plaintiffs and those similarly situated to them violates their rights under the Fourth and Fifth Amendments and/or entitles them to habeas relief.

Response: Defendants Admit the allegation in the first sentence that the suit purports to challenge ICE's detainer practice, but deny the remaining allegations.

2. A detainer lodged by ICE instructs an LEA to detain an individual after the period for the agency's lawful custody over the individual has expired while ICE assesses whether the individual is subject to removal proceedings and whether it will assume direct, physical custody.

Response: Defendants Deny the allegations in this paragraph.

3. At the time this action was commenced, the named plaintiffs in this case, Jose Jimenez Moreno and Maria Jose Lopez (hereinafter "Plaintiffs/Petitioners"), were individuals being held by LEAs, against whom ICE placed immigration detainers, without lawful authority or any legal basis to do so. The Defendants in this case are federal officials responsible for ICE's issuance of detainers, named because their inclusion is potentially required to effectuate the forms of relief this complaint requests.

Response: Defendants Deny the allegation in the first sentence and in the first clause of the second sentence. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegation in the second clause of the second sentence.

4. As to each Plaintiff/Petitioner, ICE justified the detainer it placed on them based solely on its initiation of an investigation to determine whether they are subject to removal from the United States. ICE did not accompany any of the Plaintiffs/Petitioners' detainers with an administrative arrest warrant, a Notice to Appear or other charging document, or a final removal order. ICE did not require notice of the immigration detainer to Plaintiffs/Petitioners. Moreover, ICE did not provide the Plaintiffs/Petitioners with a means to challenge the immigration detainers lodged against them. Plaintiffs'/Petitioners' claims are inherently transitory and are not moot. Dkt. No. 56 at 11.

Response: Defendants Deny the allegations in the first and fourth sentences. Defendants Admit the allegations in the second sentence as to the named plaintiffs. Defendants Admit the allegations in the third sentence that ICE requests, and does not require LEAs to provide notice of immigration detainers. Defendants Admit the Court found the Plaintiffs' claims are not moot.

5. Plaintiffs/Petitioners seek on their behalf and on behalf of similarly situated individuals, who have immigration detainers lodged against them that were issued from ICE's Chicago Area of Responsibility (AOR) including its sub-offices, declaratory and injunctive relief under the Administrative Procedures Act, 5 U.S.C. §706(a), under the Fourth, Fifth and Tenth Amendments for the ongoing violation of their rights, pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) and *Bond v. United States*, 131 S.Ct. 2355 (June 16, 2011), or, in the alternative, habeas corpus relief.

Response: Defendants Admit that the plaintiffs are seeking the relief alleged but deny that they are entitled to such relief.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

7. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

8. 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.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

9. Alternatively, this Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 2241, as the issuance of a detainer requiring or requesting detention places the Plaintiffs/Petitioners in a form of custody.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiffs/Petitioners' claims occurred, and continue to occur, in this District.

Response: Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations. To the extent an answer is required, Defendants deny the allegations.

11. Venue is proper in this judicial district because the principal custodian of the Plaintiffs/Petitioners (i.e., the individual under whose authority the detainer was issued) is located in this District, such that this Court has jurisdiction over the Plaintiffs/Petitioners' custodian.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

PARTIES

12. Plaintiffs/Petitioners are individuals against whom federal immigration officials issued immigration detainers (Form I-247). The sole stated basis of their detainers was that ICE had initiated an investigation into their removability from the United States, requiring an LEA to maintain custody of the Plaintiffs/Petitioners for up to 48 hours, excluding weekends and federal holidays, after their LEA authority expires, so that ICE can assume physical custody. ICE did not require that Plaintiffs/Petitioners be given notice of the immigration detainers nor has it provided a means by which to challenge the lawfulness of the detainers. Plaintiffs/Petitioners' immigration detainers were issued from the ICE Chicago AOR.

Response: Defendants Admit the allegation in the first sentence that federal immigration officials issued detainers against the two named plaintiffs, but deny that those detainers currently are in effect. Defendants Deny the allegation in the second sentence that a detainer, which is a legally-authorized request upon which a state or local law enforcement agency may rely, imposes a requirement upon the LEA to maintain custody. Defendants Admit the allegation in the third sentence that ICE requests, and does not require, LEAs to provide notice of immigration detainers. Defendants Deny the remaining allegations in the third sentence. Defendants Admit the allegation in the fourth sentence.

13. At the time this action was commenced, Plaintiff/Petitioner Jose Jimenez Moreno was a 34-year old United States citizen who was detained at the Winnebago County Jail in Illinois with an ICE I-247 immigration detainer lodged against him. Mr. Jimenez was arrested on March 21, 2011 in Rockford, Illinois. Without ever interviewing or speaking to him, ICE

issued an immigration detainer against Mr. Jimenez on March 22, 2011. Because of his detainer, at the end of his term of lawful custody, Mr. Jimenez would have been unlawfully subject to being held an additional 48 hours or more in the custody of a LEA when, but for the detainer, he would otherwise have been released.

Response: Defendants Admit the allegations in the first sentence. Defendants Deny the allegations in the third and fourth sentences of this paragraph. With respect to the allegation in the second sentence, Defendants lack sufficient knowledge or information to form a belief about the truth of the allegation.

14. At the time this action was commenced, Plaintiff/Petitioner Maria Jose Lopez was a 29-year old Legal Permanent Resident who was detained at the Federal Correctional Institution in Tallahassee, Florida (FCI-Tallahassee) with an ICE I-247 immigration detainer lodged against her. Ms. Lopez came to the United States at the age of four and is the mother and primary caregiver to her 3 minor United States children. In November 2010, Ms. Lopez pled guilty to “misprision of a felony” a non-removable offense for immigration purposes. Ms. Lopez was permitted to self-surrender on January 25, 2011. Without ever interviewing or speaking to her, the ICE Chicago AOR issued an immigration detainer against her on February 1, 2011. No later than March 22, 2011, FCI-Tallahassee informed ICE that Ms. Lopez was convicted of “misprision of a felony”—a non-removable offense. Because of her detainer, at the end of her term of lawful custody, Ms. Lopez would have been unlawfully subject to being held an additional 48 hours or more in the custody of FCI-Tallahassee when, but for the detainer, she would otherwise have been released.

Response: Defendants Admit the allegations in the first sentence. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the

second and sixth sentences. Defendants Admit the allegations in the third, fourth and fifth sentences. Defendants Deny the allegations in the seventh sentence.

15. Defendant Janet Napolitano is the Secretary for the Department of Homeland Security (DHS), which houses the office of Immigration and Customs Enforcement (ICE) and ICE's division of Enforcement and Removal Operations (ERO), the entities which issue the I-247 immigration detainers to federal, state and local law enforcement. Secretary Napolitano is ultimately responsible for how immigration regulations are applied and the approval of the use of the standard I-247 detainer form under which authority the Plaintiffs/Petitioners are detained.

Response: Defendants Deny that ICE and ERO are the only entities within DHS that issue detainers, but otherwise admit the allegations in the first sentence. Defendants Deny the allegations in the second sentence.

16. Defendant John Morton is the Director of Immigration and Customs Enforcement for DHS. As part of Director Morton's responsibilities, he establishes immigration detainer policy for ICE and its subdivisions, including the application of the detainer regulations and approval of the use of the standard I-247 detainer form under which authority the Plaintiffs/Petitioners are detained.

Response: Admit the allegations in the first sentence. With respect to the allegations and in the second sentence, admit that Director Morton has general oversight responsibilities for ICE but otherwise deny.

17. Defendant David C. Palmatier, based on information and belief, is the Unit Chief for ICE/ERO's Law Enforcement Support Center (LESC) located in Vermont. In his official capacity, Chief Palmatier oversees the issuance of thousands of immigration detainers out of the LESC pursuant to law enforcement inquiries from throughout the United States. Based on

information and belief, LESC is listed as the ICE custodian on detainers issued from the LESC and is listed as emergency custodian for many detainers issued from ICE/ERO Field Offices, including Chicago AOR.

Response: Defendants Deny the allegations in this paragraph.

18. Defendant Ricardo Wong is the Field Office Director (FOD) of the ICE/ERO Chicago AOR Field Office, which has responsibility for Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. In his official capacity, FOD Wong has ultimate responsibility for all immigration detainers issued out of the Chicago AOR, including its sub-offices and the ICE Detention Enforcement and Processing Offender by Remote Technology (DEPORT) center. Based on information and belief, the Chicago Field Office is listed as the principal ICE custodian on detainers issued out of its area of responsibility.

Response: Defendants Admit the allegations in the first sentence. With respect to the allegations in the second sentence, admit that Field Office Director Wong has general oversight responsibility for his office but otherwise deny. Defendants Deny the allegation in the third sentence.

FACTUAL ALLEGATIONS

19. Pursuant to 8 U.S.C. § 1103(a), DHS, through its division of ICE, has the authority to issue immigration detainers in accordance with the intent and requirements of the Immigration and Nationality Act (INA).

Response: Defendants Admit the allegation in paragraph 19, but deny that the cited statute is the sole source of the authority that DHS and ICE have to issue detainers.

20. Plaintiffs/Petitioners were all stopped or arrested by LEAs. Based on information and belief, the LEAs had communications with ICE and then ICE issued standard form I-247 detainers against the Plaintiffs/Petitioners. *See* Ex. A (Plaintiffs/Petitioners' ICE I-247 detainer forms). On the I-247 immigration detainers issued against the Plaintiffs/Petitioners, ICE officials justify continued detention of the Plaintiffs/Petitioners on the sole grounds that an "[i]nvestigation has been initiated to determine whether this person is subject to removal from the United States." ICE's detainers against the Plaintiffs/Petitioners instruct the LEAs that:

[f]ederal regulations (8 CFR 287.7) request that you [LEA] detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal holidays) to provide adequate time for ICE to assume custody of the alien. You may notify ICE by calling [local ICE/ERO Field Office telephone number] during business hours or [typically ICE Law Enforcement Support Center telephone number] after hours in an emergency.

Response: Defendants Admit the allegations in the first, second and fourth sentences with respect to the named plaintiffs. Defendants Admit the allegation in the third sentence that the detainers advised that an investigation had been initiated to determine whether the named plaintiffs were subject to removal from the United States, but otherwise deny.

21. None of the Plaintiffs/Petitioners' I-247 immigration detainers were issued pursuant to a Notice to Appear (NTA) or other charging document, warrant of arrest in removal proceedings, or a deportation order.

Response: Defendants Admit the allegations in this paragraph with respect to the named plaintiffs.

22. The I-247 detainer form does not require notice of the immigration detainers to the Plaintiffs/Petitioners. Based on information and belief, ICE never required the LEAs to provide the Plaintiffs/Petitioners with notice of the detainers lodged against them nor does ICE have a

written policy or procedure requiring that the Plaintiffs/Petitioners and similarly situated individuals be provided notice of immigration detainers lodged against them.

Response: Defendants Admit the allegation in the first sentence that the I-247 form requests, and does not require, LEAs to provide notice of an immigration detainer. Defendants Admit the allegation in the second sentence that the detainers issued against the named plaintiffs did not require that they be given notice of the detainer. Defendants deny the remaining allegations in the second sentence.

23. ICE does not provide an administrative procedure for challenging the issuance of a detainer. Likewise, the Board of Immigration Appeals (BIA) has ruled that it does not have jurisdiction to consider challenges to detainers because it has found that individuals held on detainers are not in federal immigration custody. *Matter of Sanchez*, 20 I. & N. Dec. 223, 225 (BIA 1990).

Response: Defendants Deny the allegation in the first sentence. Defendants Admit the existence of the BIA decision cited in the second sentence but deny the characterization of the decision.

24. The I-247 detainer form states that ICE “requests”¹ that the LEA detain the individual for an additional 48 hours, excluding weekends and holidays, so ICE can assume direct, physical custody of the individual. However, the regulation cited on the I-247 detainer form mandates that the LEAs detain the individual on ICE’s behalf. The regulation states: “such [criminal justice] agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding

¹ From 1997 to August 2010, the I-247 detainer form stated that it was required by 8 CFR 287.7 that the LEA detain the individual for an additional 48 hours in order for ICE to assume physical custody of the individual. *See* Ex. B. (example of prior detainer form).

Saturdays, Sundays, and holidays in order to permit assumption of custody by [ICE].” 8 C.F.R. § 287.7(d)(emphasis added).

Response: The allegations in this paragraph call for legal conclusions to which no response is required. To the extent a response is required Defendants Admit the allegations in the first and third sentences. Defendants Deny the allegation in the second sentence that the regulation cited on the I-247 form, which is a legally authorized request upon which a state or local law enforcement agency permissibly may rely, imposes a requirement upon the LEA to detain the individual on ICE’s behalf.

CLASS ACTION ALLEGATIONS

25. Pursuant to Fed. R. Civ. P. 23(b)(1), (b)(2) and/or (c)(4), Plaintiffs/Petitioners, Jose Jimenez Moreno and Maria Jose Lopez, seek to represent a class consisting of:

All current and future persons against whom ICE has an active immigration detainer that was issued out of its Chicago AOR where ICE has instructed a law enforcement agency (LEA) to continue to detain the individual after the LEA’s detention authority has expired and where ICE not served a Notice to Appear or other charging document, has not served a warrant of arrest for removal proceedings, and /or has not obtained an order of deportation or removal.

Response: Defendants Admit the plaintiffs seek to represent the described class but deny that they are entitled to do so.

26. In addition, Plaintiff/Petitioner Jose Jimenez Moreno, seeks to represent a sub-class, which consists of the persons described in paragraph 25, who have had detainers lodged against them while they are in state or local LEA custody where ICE has instructed their further detention pursuant to 8 C.F.R. § 287.7. The sub-class alleges that this violates their rights under the Tenth Amendment to the U.S. Constitution.

Response: Defendants Admit plaintiff Moreno seeks to represent the described subclass but deny that he is entitled to do so.

27. The Plaintiffs/Petitioners' class seeks declaratory and injunctive relief to eliminate or remedy Defendants' application of immigration detainer regulations, policies, practices, acts, and omissions that are depriving Plaintiffs/Petitioners of their liberty in violation of their rights.

Response: Defendants Admit the plaintiffs seek the specified relief but deny they are entitled to it.

28. The proposed ICE Detainer Class and Sub-Class are very numerous. In FY2009, at least 223,297 individuals detained by ICE (approximately 60% of ICE's FY2009 detention population) were first stopped, arrested, or criminally convicted by LEAs. *See* ICE, Dr. Dora Schriro, Special Advisor to Secretary Napolitano on ICE/DRO, "Immigration Detention Overview and Recommendations," pp. 11-12 (Oct. 6, 2009). Based on data obtained through a FOIA request, Plaintiffs/Petitioners believe that ICE issued 270,988 immigration detainers in FY2009 and 201,778 detainers through the first eleven months of FY2010.

Response: Defendants Deny the allegation in the first sentence. Defendants Admit the existence of the document referenced in the second and third sentences, but lack knowledge or information sufficient to form a belief about the truth of any allegations plaintiffs purport to incorporate from the contents of the cited report and deny plaintiffs' characterizations and allegations of the content of the report. Defendants respectfully refer the Court to the referenced document for a true and accurate statement of its contents. Defendants Lack knowledge or information sufficient to form a belief about the truth of the allegations in the fourth sentence.

29. Joinder of all class members is also impracticable. Because ICE continuously lodges immigration detainers against individuals and assumes physical custody of those held on immigration detainers, the membership of the class changes constantly.

Response: Defendants Deny that joinder of all putative class members would be impracticable and Deny that a class should be certified.

30. All individuals who would fall within the class definition have equally had ICE detainer regulations, policies, practices, acts and omissions applied against them causing unlawful deprivation of liberty in violation of their rights. There are questions of law or fact common to all class and sub-class members, including but not limited to:

- Whether Defendants have exceeded their constitutional and/or statutory authority (APA 5 U.S.C. § 706(2)) in placing detainers on class members, including whether promulgation of 8 C.F.R. § 236.1(a) and 8 C.F.R. § 287.7 exceed Defendants' statutory authority;
- Whether Defendants' issuance of an immigration detainer instructing further detention based either (1) on the initiation of an investigation to determine whether the class member is removable or (2) based on a determination that there is reason to believe the class member is an alien subject to removal violates the Fourth Amendment;
- Whether Defendants' issuance of an immigration detainer without a prior or concurrent service of a Notice to Appear or other charging document, an administrative arrest warrant, an order of deportation, or compliance with 8 U.S.C. § 1357(a)(2) violates the Fourth Amendment;
- Whether Defendants' issuance of an immigration detainer without providing or requiring notice to class members violates the Fifth Amendment;
- Whether Defendants' issuance of an immigration detainer without providing class members a means of challenging detainers violates the Fifth Amendment; and
- Whether Defendants' issuance of immigration detainers compelling state and local LEAs to detain sub-class members, pursuant to 8 C.F.R. § 287.7(d) and in furtherance of a federal regulatory program, violates the Tenth Amendment to the U.S. Constitution.

Response: Defendants Deny the allegations in this paragraph.

31. Given the commonality of the questions shared by all class members, prosecuting separate claims as to individual class members would establish incompatible standards of conduct for the Defendants and the adjudications as to individual class members' claims would be dispositive of the interests of other class members and thus would substantially impair their ability to protect their interests.

Response: Defendants Deny the allegations in this paragraph.

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

Response: Defendants Deny the allegations in this paragraph.

33. Plaintiffs/Petitioners and the class and sub-class they seek to represent have been directly injured by the Defendants' statutory and constitutional violations in the application of detainer regulations, policies, practices, acts and omissions and are at risk of future harm from continuation of these regulations, policies, practices, acts and omissions.

Response: Defendants Deny the allegations in this paragraph.

34. Plaintiffs/Petitioners will fairly and adequately represent the interests of ICE Detainer Class and Sub-Class. Plaintiffs/Petitioners legal claims are typical to all members of the proposed ICE Detainer Class and Sub-Class. Plaintiffs/Petitioners have no interests separate from those of the ICE Detainer Class and Sub-Class, and seek no relief other than the relief sought on behalf of the class.

Response: Defendants Deny the allegations in this paragraph.

35. Plaintiffs/Petitioners' counsel are experienced in class action, civil rights, and immigrants' rights litigation. Plaintiffs/Petitioners' counsel will fairly and adequately represent the interests of ICE Detainer Class and Sub-Class.

Response: Defendants lack knowledge sufficient to admit or deny the allegations in this paragraph.

FIRST CLAIM FOR RELIEF
(Violation of 5 U.S.C. §§ 706(2)(A)—(D))

36. Plaintiffs/Petitioners reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 35.

Response: Defendants reassert their responses to paragraphs 1-35.

37. Defendants' failure to restrict its issuance of detainers to its authority under the INA causes Plaintiffs/Petitioners significant prejudice by depriving them of their liberty.

Response: Defendants Deny the allegations in this paragraph.

38. Defendants' failure to issue detainers in accordance with due process protections required by the relevant provisions of the INA (8 U.S.C. § 1226(a), 8 U.S.C. § 1357(a)(2) and 8 U.S.C. § 1357(d)) causes Plaintiffs/Petitioners significant pain and suffering by depriving them of their liberty.

Response: Defendants Deny the allegations in this paragraph.

39. Defendants' application of the immigration detainer regulations and issuance of detainers against the Plaintiffs/Petitioners exceeds the Defendants' constitutional and statutory authority in violation of 5 U.S.C. §§ 706(2)(A)—(D).

Response: Defendants Deny the allegations in this paragraph.

40. As a proximate result of Defendants' statutory and constitutional violations, Plaintiffs/Petitioners are suffering and will continue to suffer a significant deprivation of their liberty without due process of law. Plaintiffs/Petitioners have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiffs/Petitioners is necessary to prevent continued and future injury.

Response: Defendants Deny the allegations in this paragraph.

SECOND CLAIM FOR RELIEF

(Violation of the Fourth Amendment to the U.S. Constitution)

41. Plaintiffs/Petitioners reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 40.

Response: Defendants reassert their responses to paragraphs 1-40.

42. Defendants' issuance of immigration detainers based solely on either (1) the initiation of an investigation into the Plaintiffs/Petitioners' removability from the United States or (2) on a determination that there is reason to believe an individual is an alien subject to removal causes the Plaintiffs/Petitioners prejudice by unreasonably taking away, limiting, and otherwise impacting their liberty without probable cause in violation of the Fourth Amendment.

Response: Defendants Deny the allegations in this paragraph.

43. Defendants' warrantless arrest of Plaintiffs/Petitioners through the issuance of detainers without providing a prompt hearing to determine whether Defendants have probable cause unreasonably deprives them of liberty without probable cause in violation of the Fourth Amendment.

Response: Defendants Deny the allegations in this paragraph.

44. Defendants' detainer regulations, policies, practices, acts and omissions cause unreasonable deprivation of Plaintiffs/Petitioners' liberty in violation of the Fourth Amendment to the United States Constitution.

Response: Defendants Deny the allegations in this paragraph.

45. As a proximate result of Defendants' unconstitutional detainer regulations, policies, practices, acts, and omissions, Plaintiffs/Petitioners are suffering and will continue to suffer an unreasonable deprivation of their liberty. Plaintiffs/Petitioners have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiffs/Petitioners is necessary to prevent continued and future injury.

Response: Defendants Deny the allegations in this paragraph.

THIRD CLAIM FOR RELIEF

(Violation of the Fifth Amendment to the U.S. Constitution)

46. Plaintiffs/Petitioners reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 45.

Response: Defendants reassert their responses to paragraphs 1-45.

47. Defendants' issuance of immigration detainers based solely on either (1) the initiation of an investigation into the Plaintiffs/Petitioners' removability from the United States or (2) on a determination that there is reason to believe an individual is an alien subject to removal causes the Plaintiffs/Petitioners significant pain and suffering by depriving them of their liberty without due process of law.

Response: Defendants Deny the allegations in this paragraph.

48. Defendants' issuance of immigration detainers without requiring that Plaintiffs/Petitioners receive effective notice of the detainer causes the Plaintiffs/Petitioners to

suffer substantial prejudice without affording them an opportunity to be heard prior to the deprivation.

Response: Defendants Deny the allegations in this paragraph.

49. Defendants' failure to provide any mechanism by which the Plaintiffs/Petitioners may challenge the issuance of a detainer against them causes the Plaintiffs/Petitioners substantial prejudice by depriving them of their liberty without due process of law.

Response: Defendants Deny the allegations in this paragraph.

50. Defendants' detainer regulations, policies, practices, acts and omissions cause significant deprivations of Plaintiffs/Petitioners' liberty without due process of law in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

Response: Defendants Deny the allegations in this paragraph.

51. As a proximate result of Defendants' unconstitutional detainer regulations, policies, practices, acts, and omissions, Plaintiffs/Petitioners are suffering and will continue to suffer a significant deprivation of their liberty without due process of law. Plaintiffs/Petitioners have no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiffs/Petitioners is necessary to prevent continued and future injury.

Response: Defendants Deny the allegations in this paragraph.

FOURTH CLAIM FOR RELIEF
(Violation of the Tenth Amendment to the U.S. Constitution)

52. Plaintiffs/Petitioners reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 51.

Response: Defendants reassert their responses to paragraphs 1-51.

53. Defendants' issuance of detainers compelling state and local LEAs to detain Plaintiff/Petitioner, Jose Jimenez Moreno, in enforcement of a federal regulatory program, as required under federal regulation 8 C.F.R. § 287.7, caused the Plaintiff/Petitioner significant pain and suffering by depriving him of his liberty.

Response: Defendants Deny the allegations in this paragraph.

54. Defendants' detainer regulations, policies, practices, acts and omissions compelling and conscripting state and local LEAs to enforce a federal regulatory program is a violation of the Plaintiff/Petitioner's rights under the Anti-Commandeering Principle of the Tenth Amendment of the United States Constitution.

Response: Defendants Deny the allegations in this paragraph.

55. As a proximate result of Defendants' unconstitutional conscription of state and local LEAs, Plaintiff/Petitioner is suffering and will continue to suffer a significant deprivation of his liberty. Plaintiff/Petitioner has no plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive and declaratory relief sought by Plaintiff/Petitioner is necessary to prevent continued and future injury.

Response: Defendants Deny the allegations in this paragraph.

FIFTH CLAIM FOR RELIEF
(Petition for Writ of Habeas Corpus)

56. Plaintiffs/Petitioners reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 55.

Response: Defendants reassert their responses to paragraphs 1-55.

57. This claim for relief is brought as an alternative to the first four claims for relief, above, in the event the court were to rule that the proper or only vehicle for relief is by writ of habeas corpus.

Response: Defendants lack knowledge sufficient to admit or deny the allegations in this paragraph, which concern plaintiffs' legal theories of alternative pleading. To the extent a response is required, Defendants deny the allegations.

58. The issuance of a detainer itself constitutes custody for purposes of 28 U.S.C. § 2241.

Response: Defendants Deny the allegations in this paragraph.

59. The issuance of a detainer against Plaintiffs/Petitioners in the absence of probable cause results in detention in violation of the laws or Constitution of the United States.

Response: Defendants Deny the allegations in this paragraph.

60. The issuance of a detainer against Plaintiffs/Petitioners, in the absence of procedural protections such as notice and an opportunity to be heard, results in detention in violation of the laws or Constitution of the United States.

Response: Defendants Deny the allegations in this paragraph.

61. The issuance of detainers against Plaintiffs/Petitioners that compel state and local law enforcement agencies to administer a federal regulatory program results in detention in violation of the laws or Constitution of the United States.

Response: Defendants Deny the allegations in this paragraph.

62. Plaintiffs/Petitioners seek to pursue a representative action to represent the group of similarly situated individuals subject to unlawful detainers.

Response: Defendants Admit that the plaintiffs seek to pursue the referenced action but deny that they are entitled to do so.

Affirmative Defenses

1. Some or all of Plaintiffs' claims are barred by the statute of limitations.
2. The United States has not waived sovereign immunity for all or part of Plaintiffs' claims in this lawsuit.
3. Plaintiffs' claims are barred by the equitable doctrines of laches, estoppel, unclean hands, and waiver.
4. Plaintiffs lack Standing.
5. Plaintiffs' claims are moot.
6. Plaintiffs' claims are not yet ripe.
7. The Court lacks subject-matter jurisdiction for all or some of Plaintiffs' claims.
8. Venue is improper.
9. Defendants Acted Reasonably.
10. Plaintiffs cannot adequately represent the class or subclass proposed by plaintiffs.
11. Plaintiffs cannot establish the requirements for a class to be certified.

WHEREFORE, defendants respectfully request that the Court enter judgment in favor of Defendants, and award Defendants such other relief as the Court deems proper.

Date: May 13, 2013

Respectfully submitted,

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