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(continued on next page)

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

17 DUNCAN ROY; ALAIN MARTINEZ-
18 PEREZ, on behalf of himself and others
19 similarly situated; ANNIKA ALLIKSOO,
20 on behalf of herself and others similarly
21 situated; CLEMENTE DE LA CERDA,
22 on behalf of himself and others similarly
23 situated; and CHRISTIAN MICHEL
24 VARELA, on behalf of himself and
25 others similarly situated,

26 Plaintiffs,

27 vs.

28 COUNTY OF LOS ANGELES; LEROY
D. BACA, Sheriff of Los Angeles
County, in his official capacity,

Defendants.

2012 OCT 19 AM 10:43

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

CASE NO.

CV12-9012-RGK

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND DAMAGES**

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I. INTRODUCTION

A. The Challenged Practices

1. This case challenges the legality of two practices of the Los Angeles County Sheriff's Department: (1) denying bail to thousands of people who want to post bail and have already obtained a court order setting bail purely on the ground that the federal government has placed an "immigration hold" on them;¹ and (2) denying them release from Los Angeles County jail for 48 hours or more on the basis of the immigration hold, even though all charges against them have been dismissed, they have been acquitted of the charge for which they were being held, they were ordered released, or they have served their sentence. These practices violate state law, as well as the Fourth and Fourteenth Amendments to the U.S. Constitution, and their state law analogues (Cal. Constitution, Articles 1, 7, and 13). This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1367, and 2201-02, and Article III of the U.S. Constitution. Venue is proper under 28 U.S.C. § 1391(b)(2).

2. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *U.S. v. Salerno*, 481 U.S. 739, 755 (1987). Yet the Los Angeles County Sheriff's Department and Sheriff Leroy Baca have turned these norms upside down by detaining tens of thousands of individuals subject to so-called "immigration holds" (also known as "immigration detainers" or "ICE holds"), beyond the time that state law mandates that they be released.

¹ Prior to filing this complaint, the LASD responded to a letter from Plaintiffs' counsel and stated that it was not their intention to deny inmates with ICE holds the opportunity to post bail on their state law charges. LASD further agreed to 1) promulgate a policy that makes clear that the existence of an ICE hold does not provide a basis to prevent the posting of bail on any pending criminal charge, and 2) notify LASD employees of this policy, and 3) review its database systems to determine whether they could modify the "no bail" notation it places on the files of persons with immigration holds.

1 3. Although these inmates are presumed to be innocent and are eligible
2 for bail, LASD has, until this week, forced them to languish in jail while they await
3 trial – at the cost of their jobs, their reputations, and their family and community
4 ties. This prolonged pretrial detention also coerces many to take plea deals they
5 would not otherwise accept because it is the only way to secure their rapid release
6 from jail.

7 4. In addition, LASD has unlawfully incarcerated, and continues to
8 unlawfully incarcerate, many thousands more individuals for days beyond their
9 release date after any state law basis for their custody has expired, because they
10 have been ordered released on their own recognizance, they have served their
11 sentences, their charges have been dropped, or they have been found not guilty
12 solely on the purported authority of the immigration holds. LASD subjected
13 19,725 individuals to such unlawful continued detention in 2011 alone.

14 **B. These Two Practices are not only Illegal, but are also Bad Policy**
15 **in Light of the Capacity Constraints of the County Jails**

16 5. On any given day, there are approximately 2,100 inmates in the Los
17 Angeles County Jails who have immigration holds (or 14% of the total jail
18 population). *See* James F. Austin, et al., “Evaluation of the Current and Future Los
19 Angeles County Jail Population,” at page 21, Table 10, *available at*
20 <http://www.aclu-sc.org/issues/prisoners-rights/jails-project/austin-report/> (hereafter
21 “Austin”).

22 6. Approximately 43% of the inmates who will be released to ICE are
23 classified as “low custody,” strongly suggesting that they are charged with minor
24 offenses. *Id.* Accordingly, many of them will have low bail. On information and
25 belief, many of them would have posted bail given the low bail amounts and been
26 released to ICE, or to the community if ICE is no longer interested in them, much
27 sooner if LASD had not denied them the opportunity to post bail.

28 7. Keeping an inmate in the County jail costs \$100 to \$150 per night.

1 The County is currently considering various measures—including expanding early
2 release options into programmed community beds, and even the drastic possibility
3 of shipping inmates to Kern County—to respond to the influx of more than 8,000
4 inmates into the L.A. County jails as a result of realignment.

5 8. Even as pressures on the jail population mount, Sheriff Baca has
6 expressed his strong desire to stop housing inmates in Men's Central Jail because it
7 is an archaic and dangerous facility. *ACLU Study: Men's Central Jail Can Be*
8 *Shuttered By 2013*, CBS Local News, April 10, 2012, <http://losangeles.cbslocal.com/2012/04/10/aclu-study-mens-central-jail-can-be-shuttered-by-2013/>.
9 The past practice of keeping inmates in jail who want to post bail, and the ongoing
10 practice of holding them for 48 hours or more after they are otherwise entitled to
11 release, is inconsistent with the County's efforts to manage its jail population and
12 close Men's Central Jail, and is a waste of taxpayer money.
13
14

15 II. PARTIES

16 9. Plaintiff Duncan Roy is a 52-year-old British citizen. Mr. Roy is an
17 acclaimed film director who owns a home in Malibu, California. He suffers from
18 prostate and colon cancer and requires regular monitoring to prevent recurrent
19 cancer. From November 15, 2011 to February 8, 2012, Defendants unlawfully
20 detained him for 89 days in the Lost Hills station and then in the "gay ward" of
21 Men's Central Jail by unlawfully refusing to allow him to post the bail set by the
22 court in his criminal case.

23 10. Plaintiff Alain Martinez-Perez is a 37-year-old Mexican citizen. Mr.
24 Martinez-Perez has a one and a half-year-old U.S. citizen son. He lives in
25 Claremont, California and works as a dog trainer. From December 14 to
26 December 20, 2011, Defendants unlawfully detained him for six days in City of
27 Industry station first by refusing to allow him to post bail under the judicially-
28 determined County bail schedule based on his arresting charge, and, subsequently,

1 by continuing to detain him solely on the basis of the immigration hold after the
2 district attorney declined to file criminal charges against him. Plaintiff Martinez-
3 Perez seeks damages on behalf of himself and all others similarly situated for
4 LASD's practice of refusing to honor bail (Damages Classes One and Two) and for
5 LASD's practice of prolonging detention beyond the time that state law mandates
6 release (Damages Classes Three and Four). Plaintiff Martinez-Perez also seeks
7 damages on behalf of himself and all others similarly situated for LASD's practice
8 of prolonging detention for more than 48 hours beyond the time that state law
9 mandates their release (Damages Classes Five and Six).

10 11. Plaintiff Annika Alliksoo is a 34-year-old Estonian citizen. Ms.
11 Alliksoo is married to a U.S. citizen and lives near Palmdale, California. From
12 July 12 to July 30, 2012, Defendants unlawfully detained her for 18 days in the
13 Palmdale station and then in the Lynwood Jail. Defendants first refused to allow
14 her to post bail under the judicially-determined County bail schedule and then
15 under court-ordered bail. Then, after a superior court judge ordered her released
16 on her own recognizance, Defendants continued to detain her for an additional
17 three days solely on the immigration hold. Plaintiff Alliksoo seeks damages on
18 behalf of herself and all others similarly situated for LASD's practice of refusing to
19 honor bail (Damages Classes One and Two) and for LASD's practice of
20 prolonging detention beyond the time that state law mandates their release
21 (Damages Classes Three and Four). Plaintiff Alliksoo also seeks damages on
22 behalf of herself and all others similarly situated for LASD's practice of
23 prolonging detention for more than 48 hours beyond the time that state law
24 mandates their release (Damages Classes Five and Six).

25 12. Plaintiff Clemente De La Cerda is a 36-year-old Mexican citizen and
26 lawful permanent resident of the United States. He is also possibly a United States
27 citizen based on acquisition at birth. He has lived in the United States since he was
28 four years old. Mr. De La Cerda lives in Brea, California. He is currently in

1 LASD custody and an immigration hold is lodged against him. Plaintiff De La
2 Cerda seeks injunctive and declaratory relief on behalf of himself and all
3 individuals currently in the custody of and who will in the future be in the custody
4 of the Defendants on the basis of the immigration hold (Equitable Relief Class).
5 On behalf of this class, he seeks to bar Defendants from prolonging the detention
6 of him and other members of the class beyond the time that state law mandates
7 release solely on the basis of an immigration hold not supported by a probable
8 cause determination.

9 13. Plaintiff Christian Michel Varela (a.k.a. Santos Beltran) is a 31-year-
10 old Mexican citizen. He is a resident of South Gate, California. He is currently in
11 LASD custody and an immigration hold is lodged against him. Plaintiff Varela
12 seeks injunctive and declaratory relief on behalf of himself and all individuals
13 currently in the custody of and who will in the future be in the custody of the
14 Defendants on the basis of the immigration hold (Equitable Relief Class). On
15 behalf of this class, he seeks to bar Defendants from prolonging the detention of
16 him and other members of the class beyond the time that state law mandates
17 release solely on the basis of an immigration hold not supported by a probable
18 cause determination. Plaintiff Varela also seeks injunctive and declaratory relief
19 on behalf of himself and a subclass of all individuals who are currently in the
20 custody of and who will in the future be in the custody of Defendants to bar them
21 from continuing to detain him and other members of the sub-class for more than 48
22 hours solely on the basis of the immigration hold (Equitable Relief Sub-Class).

23 14. Defendant Leroy Baca is the Sheriff of Los Angeles County. As
24 Sheriff, he is the chief executive officer of LASD. He is responsible for the
25 management and control of all Los Angeles County Jails. He is responsible for the
26 custody of all inmates housed in the County Jails and jailed at LASD field stations.
27 Plaintiffs sue Sheriff Baca in his official capacity only.

28 15. Defendant County of Los Angeles is a county of the State of

1 California duly organized under the laws of the State of California. The Los
2 Angeles County Sheriff's Department ("LASD") is an agency of Defendant
3 County and the largest sheriff's department in the nation. It has a range of law
4 enforcement responsibilities, including the policing of various unincorporated
5 areas of the County and operating all of the County's jails and field stations.
6 Sheriff Baca directs LASD's work.

7 8 **III. STATEMENT OF FACTS**

9 16. LASD runs the largest jail system in the nation, with an average daily
10 population of approximately 15,000 inmates. The great majority of those housed in
11 the jail are pretrial detainees. On average, 2,100 inmates per day (or 14 percent of
12 the daily jail population) have immigration holds lodged against them. These
13 inmates spend on average 20.6 days longer in Los Angeles County jails than
14 inmates without immigration holds, despite almost half of them being classified as
15 low-custody, meaning they are likely being held pre-trial on low level non-violent
16 offenses and thus are, on average, better candidates for pre-trial release or other
17 diversion programs than the average inmate in the jails who does not have an
18 immigration hold.

19 17. In recent years, LASD has *alone* detained more individuals on
20 immigration holds for the purposes of assisting the federal government with its
21 deportation efforts than any other county in the nation, and indeed more than any
22 other state except California and Texas. It has done so absent the requisite legal
23 authority to do so in outright and reckless disregard for the detainees'
24 constitutional rights and their most basic right to liberty. And it has done so
25 despite the fact that ICE could simply obtain custody of any person subject to an
26 immigration hold at the point at which they would normally be released from
27 LASD custody, without requiring LASD to detain them unconstitutionally for an
28 additional period of time.

1 18. Although immigration holds are voluntary requests, as explained
2 below, as a matter of practice and policy, LASD detains every person who receives
3 an immigration hold beyond their release dates solely on the basis of the hold.
4 Indeed, in August 2012, Sheriff Baca told members of the media that he was
5 mandated under federal law to detain any person for whom ICE lodges a hold,
6 despite the fact that federal law makes clear that immigration holds are not
7 mandatory but voluntary requests.

8 **A. Immigration Detainers, also Known as ICE Holds**

9 19. In August 2009, LASD, together with the federal immigration agency,
10 Immigration and Customs Enforcement (“ICE”) of the Department of Homeland
11 Security (“DHS”), activated the “Secure Communities” (or “S-Comm”) program in
12 Los Angeles County jails and stations. The program links the criminal justice and
13 immigration systems through the sharing of fingerprints. Under S-Comm, LASD
14 shares the fingerprints and booking information with ICE of every arrestee during
15 the booking process. An agent in ICE’s Law Enforcement Support Center
16 (“LESC”) checks the fingerprints against immigration and FBI databases to make
17 an immigration status determination and sends a notification to ICE’s Enforcement
18 and Removal Operations unit (“ERO”).

19 20. If the reviewing agent at ERO determines that ICE would like to take
20 some action with respect to the person detained, the agent sends LASD or the local
21 law enforcement agency a Form I-247, known as an “immigration detainer” or an
22 “ICE hold.”

23 21. An immigration hold is an administrative notice by ICE to a local law
24 enforcement agency.

25 22. Pursuant to 8 C.F.R. § 287.7(a), the purpose of an immigration hold is
26 to “advise another law enforcement agency that [DHS] seeks custody of an alien
27 presently in the custody of that agency, for the purpose of arresting and removing
28 the alien. The detainer is a request that such agency advise [DHS], prior to release

1 of the alien, in order for [DHS] to arrange to assume custody, in situations when
2 gaining immediate physical custody is either impracticable or impossible.”

3 23. The detainer form also states that ICE is requesting that the agency
4 hold the alien for a period of no more than 48 hours excluding Saturdays, Sundays,
5 and holidays “*beyond the time when the subject would have otherwise been*
6 *released from your custody.*” 8 C.F.R. § 287.7(d) (emphasis added).

7 24. Immigration holds are issued for various reasons. The face of the
8 Form I-247 lists four possible reasons for ICE to issue the hold, including that ICE
9 has “[i]nitiating an investigation to determine whether this person is subject to
10 removal from the United States;” “[i]nitiating removal proceedings and served a
11 Notice to Appear or other charging document,” with the charging document
12 attached; “[s]erved a warrant of arrest for removal proceedings,” with the warrant
13 attached; or “[o]btained an order of deportation or removal from the United States
14 for this person.” The ICE agent may check a box next to one of these four reasons
15 to indicate the reason he or she is issuing the hold.

16 25. Upon information and belief, the box marked “initiated an
17 investigation to determine whether this person is subject to removal from the
18 United States” is checked when the agent wishes to begin an investigation to
19 determine whether the person is subject to removal. This decision is made by the
20 individual ICE agent reviewing the person’s fingerprints and ICE records. Upon
21 information and belief, ICE checks the box on the I-247 form for “[i]nitiating an
22 investigation to determine whether this person is subject to removal from the
23 United States” on approximately 78% of the holds it issues to the LASD.

24 26. In practice, ICE agents routinely issue immigration holds for the
25 “[i]nitiating an investigation” without probable cause to believe a person is
26 removable from the United States. An I-247 form with the investigation box
27 checked does not indicate that there has been any prior determination by ICE (let
28 alone a neutral decisionmaker) as to the person’s immigration status, and it does

1 not indicate that there is any warrant or court order as to the person's immigration
2 status.

3 27. Upon information and belief, ICE does not require that its agents have
4 probable cause to believe a person is removable from the United States before
5 issuing a Notice to Appear or arrest warrants, nor does ICE require that agents
6 have probable cause to believe a person is removable from the United States before
7 issuing an I-247 detainer form with the boxes checked for arrest warrant or a
8 Notice to Appear or other charging document.

9 28. Due to ICE's failure to apply any evidentiary standards and common
10 errors in immigration databases, ICE often places immigration holds in error on
11 persons who are not subject to removal, such as United States citizens and lawful
12 permanent residents who are not subject to removal. For example, in November
13 2011, ICE placed a hold on Romy Campos, a 19-year-old U.S.-born woman who is
14 a dual citizen with the United States and Spain, simply because years prior when
15 traveling alone as a minor she had entered the country on her Spanish passport and
16 in spite of other evidence that demonstrated her U.S. citizenship. LASD detained
17 Ms. Campos for two days on the immigration hold beyond her release date despite
18 her repeated protestations that she was an American citizen.

19 29. ICE provides no meaningful way for a detainee to contest the
20 immigration hold lodged against him or her. Rather, a detainee must wait to be
21 finally transferred to immigration custody before he or she will have an
22 opportunity to demonstrate that he or she is not in fact removable and/or that he or
23 she should be released.

24 30. Pursuant to 8 U.S.C. § 1357(d), Congress authorized DHS to issue
25 immigration holds only to non-citizens in state or local custody only in those
26 circumstances where the offenses related to controlled substance violations.
27 However, ICE places holds on anyone without regard to whether or not they have
28 been charged with a controlled substance violation.

1 31. The implementing regulation, 8 C.F.R. § 287.7(d), purports to
2 authorize DHS to issue immigration holds for any noncitizen regardless of the
3 underlying criminal offense.

4 32. The regulation also purports to require law enforcement agencies to
5 comply with the request, stating “[u]pon a determination by the Department to
6 issue a hold for an alien not otherwise detained by a criminal justice agency, such
7 agency shall maintain custody of the alien for a period not to exceed 48 hours,
8 excluding Saturdays, Sundays, and holidays in order to permit assumption of
9 custody by the Department.” The Form I-247 immigration detainer form states:
10 “IT IS REQUESTED THAT YOU: Maintain custody of the subject for a period
11 NOT TO EXCEED 48 HOURS, excluding Saturdays, Sundays and holidays,
12 beyond the time when the subject would have otherwise been released from your
13 custody to allow DHS to take custody of the subject.”²

14 33. ICE has privately clarified in communications with members of
15 Congress and Santa Clara County that ICE holds are voluntary requests.³

16 34. Unlike criminal detainers or holds, an immigration hold is not a
17 judicial order or a warrant. Rather, it is solely an administrative request. Although
18 it is called a detainer, it is not accompanied by the same procedural protections as
19 criminal detainers and holds.

20 35. An individual detained by LASD solely on the basis of an
21 immigration hold remains in the legal and actual custody of LASD.

22 ² See [http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-](http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf)
23 [form.pdf](http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf).

24 ³ See Letter from David Venturella, Assistant Director, Secure Communities to
25 Miguel Marquez, Santa Clara County Counsel at 3, Aug. 16, 2010, *available at*
26 <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf> (“ICE views an
27 immigration detainer as a request”); ICE Memorandum on Secure
28 Communities Briefing to Congressional Hispanic Caucus at 3, Oct. 28, 2010,
available at <http://bit.ly/sHibJ7> (“Local LEAs are not mandated to honor a
detainer, and in some jurisdictions they do not.”).

1 36. DHS does not reimburse local law enforcement agencies for the cost
2 incurred in detaining an inmate on an immigration hold. According to 8 C.F.R. §
3 287.7(e), DHS incurs no fiscal responsibility for detention pursuant to an
4 immigration hold.

5 37. The issuance of an immigration hold does not ensure that ICE will
6 assume custody over the detainee or that ICE will take any action against the
7 detainee. ICE may or may not pick up the detainee held on the immigration
8 detainer. If ICE picks up the detainee, it may or may not initiate removal
9 proceedings against the detainee after interviewing the individual and reviewing
10 the case. In some cases, ICE may discover that the detainee is not actually
11 removable, in which case ICE will take no action and release the individual. In
12 other cases, ICE may initiate or reinstate removal proceedings against the
13 individual. Once ICE initiates proceedings, an individual who is not subject to
14 mandatory immigration detention may be eligible for release on his or her own
15 recognizance, supervised released, or bond.

16 **B. LASD's Pattern and Practice of Refusing to Allow Posting of Bail**
17 **when an Immigration Hold has been Lodged Against an Inmate.**

18 38. Until this week, LASD had a pattern and practice of refusing to allow
19 inmates admitted to bail by state law to post their bail bonds if they have an
20 immigration hold, thus preventing them from securing their release from custody
21 pending resolution of the charges against them.

22 39. The California Constitution provides a fundamental right to bail. The
23 existence of an immigration hold legally has no affect on a person's right to post
24 bail and be released from criminal custody.

25 40. Upon information and belief, LASD electronically codes every
26 immigration hold as "no bail." This coding applies to every person in LASD
27 custody, as well as to every person in the custody of police departments within Los
28 Angeles County. The "no bail" notation is placed on the record of any detainee

1 subject to an immigration hold, regardless of their eligibility for bail under the
2 County bail schedule or court order.

3 41. Upon information and belief, LASD jailers and bail administrators
4 have interpreted this coding to mean that they are not permitted to allow a person
5 subject to an immigration hold to post bail. As a result, they have routinely turned
6 away and refused to accept lawfully-tendered bail bonds from bail bondsmen,
7 family members and others when they attempt to lawfully post bail for an inmate.

8 42. Over the past few years, Plaintiffs' counsel have represented or
9 assisted dozens of individuals who remained in LASD custody after their LASD
10 jailers would not permit them to post bail on account of an immigration hold
11 lodged against them.

12 43. Numerous bail bondsmen have confirmed that in the overwhelming
13 majority of cases, LASD personnel at both LASD stations and at the County Jails
14 will not permit them to post bail for individuals with an immigration hold.

15 44. The California state bail agency, Golden State Bail Bonds, reported in
16 a recent memo that Los Angeles County is one county in California where its
17 members are not able to post bail if their clients have an immigration hold.

18 45. Numerous phone calls to jailers at LASD jails and stations confirm
19 that, until this week, LASD's practice was not to allow detainees with ICE holds to
20 post bail.

21 46. LASD's practice of refusing to allow detainees to post bail if they had
22 an immigration hold has affected the practice of police departments within Los
23 Angeles County as well. Upon information and belief, immigration hold
24 information is routed to police departments through LASD, and those departments
25 also rely on the LASD's "no bail" notation for ICE holds. Accordingly, most, if
26 not all, police departments in Los Angeles County follow LASD's practice of
27 refusing to allow inmates to post bail if they have an immigration hold. As a
28

1 result, many police stations transfer individuals to LASD custody who they
2 otherwise would have released on bail prior to their arraignment.

3 47. Unlike other “no bail holds” in the criminal system, such as parole
4 holds, there is no legal authority that permits LASD to deny a person with an ICE
5 hold the opportunity to post bail.

6 **C. LASD’s Continuing Pattern and Practice of Prolonging Inmates’**
7 **Detention Solely on the Basis of the Immigration Hold.**

8 48. LASD has a continuing pattern and practice of prolonging inmates’
9 detention solely on the basis of the immigration hold after the expiration of any
10 state law authority to detain them.

11 49. LASD, as a matter of policy and practice, detains every person with
12 an ICE hold beyond their release date on the sole basis of the immigration hold.
13 Thus, LASD continues the detention of every person subject to an immigration
14 hold beyond the state-mandated release date. In other words, the LASD ignores its
15 mandatory duty under state law to release detainees subject to immigration holds
16 after, for example, no charges were filed against them, they have served the
17 entirety of their sentence, they are ordered released on their own recognizance,
18 they have posted bail, or a jury has found them not guilty of the crime with which
19 they have been charged. Most commonly, LASD continues the detention for 48
20 hours, excluding weekends and holidays. It regularly detains individuals for more
21 than 48 hours after they would otherwise be released from custody.

22 50. The LASD asks every person booked into its custody what country
23 they were born in. Upon information and belief, even when a detainee declares
24 that he or she was born in the United States, LASD nonetheless complies with the
25 immigration hold.

26 ///

27 ///

1 **D. Plaintiffs' Allegations**

2 **1. *Duncan Roy***

3 51. On November 15, 2011, LASD arrested Mr. Roy in Malibu,
4 California on an extortion charge for threatening to blog about an allegedly
5 fraudulent real estate deal. LASD booked him into the custody of the Lost Hills
6 Station in Malibu.

7 52. After booking, Mr. Roy was eligible for release on bail at \$35,000
8 according to the Los Angeles County bail schedule. Within hours of his arrest, a
9 bail bondsman traveled to the Station and attempted to post bail for him. The jailer
10 refused to accept the bond, stating that Mr. Roy was going to have an immigration
11 hold lodged on him. Hours later, ICE lodged an immigration hold. LASD coded
12 Mr. Roy's inmate information as "no bail."

13 53. The bail bondsman again attempted to post the bail bond but the jailer
14 refused to accept it, stating that he could not post bail because Mr. Roy had an ICE
15 hold.

16 54. At arraignment on the charge, a judge approved Mr. Roy's bail at the
17 \$35,000 amount. Afterwards, LASD transferred him to Men's Central Jail. The
18 bail bondsman again attempted on multiple occasions and over the course of
19 multiple days to post bail for Mr. Roy, but each time LASD personnel refused to
20 allow him to post bail for Mr. Roy. LASD personnel stated that they could not
21 accept the bail bond because of the immigration hold lodged against Mr. Roy.

22 55. LASD also prevented the bail bondsman from meeting with Mr. Roy,
23 telling him that he was not permitted to visit with him because he was not
24 permitted to post bail for him.

25 56. Mr. Roy hired a criminal defense attorney and an immigration lawyer.
26 Neither of them was able to persuade LASD that it was obligated to accept Mr.
27 Roy's bail bond.

28 57. Mr. Roy was detained in the so-called "gay dorm" in Men's Central

1 Jail.

2 58. Mr. Roy suffers prostate and colon cancer and requires routine
3 monitoring to ensure that his cancer does not regress. Mr. Roy requested medical
4 care to check on his cancer, but LASD did not comply with his requests.

5 59. Mr. Roy also filed complaints with LASD stating that he could not
6 post bail due to the immigration hold and requesting that an ICE agent speak to
7 him so that he could tell them that the immigration hold was placed in error.
8 LASD never responded to his complaints and did not provide him an opportunity
9 to speak with an ICE agent.

10 60. After LASD held Mr. Roy in jail for 89 days, ICE lifted his
11 immigration hold on humanitarian grounds and LASD finally permitted Mr. Roy's
12 bail bondsman to post bail. Mr. Roy was released from LASD custody on
13 February 8, 2012.

14 61. Mr. Roy lost substantial income as a result of his imprisonment, and it
15 has affected his reputation. His mental and physical health also significantly
16 declined.

17 62. Plaintiff Roy seeks damages for himself and not on behalf of any class
18 for LASD's practice of refusing to honor bail. Prior to his arrest, Roy was granted
19 humanitarian immigration parole due to his ongoing cancer therapy and
20 monitoring. After his parole expired, he received an extension to remain in the
21 United States until December 23, 2011. Had he left the U.S. in compliance with
22 the deadline, he would not have incurred unlawful presence and implications for
23 his future ability to return to the United States. Though Roy booked a plane ticket
24 to return to Europe on December 23, and intended to return on that flight, he was
25 prevented from leaving because LASD refused to accept bail, unlawfully detaining
26 him until February 8, 2012. His inability to comply with his immigration
27 requirements has created barriers to his ability to be readmitted into the United
28 States.

1 63. As a result of the Defendants' unlawful conduct as alleged herein,
2 Plaintiff Roy suffered serious emotional distress, was not adequately treated for his
3 medical condition, and suffered lost income, profits and business opportunity.
4 Regarding the latter, at the time of his arrest, Mr. Roy was scheduled to begin
5 production on a film shortly after the date of his arrest. The film project fell apart
6 due to Roy's 89-day, unlawful imprisonment. Plaintiff Roy lost income associated
7 with the film project. He also lost rental income associated with three months of
8 lost rental bookings on the home he owns in Malibu, California because his
9 incarceration prevented him from renting his home as he normally does.

10 **2. *Alain Martinez-Perez***

11 64. On December 14, 2011, LASD arrested Mr. Martinez-Perez about 6
12 a.m. on a domestic battery charge arising from a domestic dispute. Mr. Martinez-
13 Perez had left the house after his partner became physically violent with him.
14 Enraged, his partner called the police in an attempt to bribe Mr. Martinez-Perez to
15 come home. When the police arrived, Mr. Martinez-Perez explained that his
16 partner had in fact battered him. Nonetheless, LASD officers arrested him.

17 65. LASD booked Mr. Martinez-Perez into the Industry station. He was
18 eligible for release on bail by Los Angeles County bail schedule in the amount of
19 \$20,000.

20 66. Within a matter of hours, ICE lodged an immigration hold against
21 him. LASD coded Mr. Martinez-Perez's inmate information as "no bail."

22 67. Mr. Martinez-Perez's cousin contacted a bail bondsman to post bail
23 for him. The bail bondsman attempted to post bail but LASD would not allow him
24 to post bail because of the immigration hold.

25 68. On December 16, 2011, LASD provided Mr. Martinez-Perez with a
26 certificate of release and clearance letter pursuant to California Penal Code § 849.5
27 informing him that no charges were filed against him and that his arrest shall not
28 be deemed to be an arrest but a detention only.

1 69. LASD did not release him, however. It maintained custody over him
2 until December 20, 2011 at 3 p.m. solely on the basis of the immigration hold. At
3 that time, ICE came and picked him up.

4 70. After interviewing him, ICE issued a Notice to Appear – a document
5 charging him with grounds of removability from the United States – and booked
6 him into immigration custody. ICE detained him at the Mira Loma immigration
7 detention facility in Lancaster, California before Mr. Martinez bonded out of
8 immigration custody.

9 71. LASD detained Mr. Martinez-Perez for approximately two days as a
10 result of its refusal to allow him to post bail on account of the immigration hold. It
11 detained him for approximately four additional days beyond his release date solely
12 on the immigration hold.

13 **3. *Annika Alliksoo***

14 72. On July 12, 2012, LASD arrested Ms. Alliksoo outside a Walmart in
15 Palmdale, California charging her with grand theft. LASD accused her of
16 attempting to steal groceries.

17 73. LASD booked her into custody at the Palmdale station. She was
18 eligible to be released on bail of \$20,000 according to Los Angeles County bail
19 schedule. Within a matter of hours, ICE lodged an immigration hold on her.

20 74. Ms. Alliksoo's husband contacted two bail bondsmen on or about July
21 12 to post bail for her. Both bail bondsmen attempted independently to post bail
22 for Ms. Alliksoo, but LASD personnel at the Palmdale station would not allow
23 them to post bail for her due to the presence of the immigration hold.

24 75. At arraignment, the District Attorney filed a petty theft charge against
25 Ms. Alliksoo, and the court admitted her to bail at \$10,000. LASD transferred her
26 to Lynwood Jail.

27 76. Once in the custody of Lynwood Jail, the bail bondsmen again
28 attempted to post bail for her but the jailer would not accept the bail bond due to

1 the presence of the immigration hold.

2 77. At Ms. Alliksoo's next court hearing on July 27, having already spent
3 15 days in jail on a charge of petty theft, the judge ordered her released on her own
4 recognizance because she was not able to bail out.

5 78. LASD did not release her. Rather, they maintained custody over her
6 solely on the basis of the immigration hold until July 30.

7 79. On July 30, ICE picked Ms. Alliksoo up. After interviewing her, ICE
8 booked her into custody and issued a Notice to Appear charging her with grounds
9 of removability. Hours later, ICE released her from custody on supervised release.

10 80. LASD detained Ms. Alliksoo for approximately 15 days due to its
11 refusal to allow her to post bail due to the immigration hold. It then detained her
12 an additional three days solely on the immigration hold.

13 4. *Clemente De La Cerda*

14 81. On October 5, 2012, the Whittier police department arrested Plaintiff
15 De La Cerda for a probation violation and misdemeanor possession of nunchucks,
16 which the police apparently believed to be a weapon. Mr. De La Cerda uses
17 nunchucks in his Tae Kwon Do practice and carried the nunchucks in his backpack
18 because he had gone to his Tae Kwon Do studio earlier that day.

19 82. Upon information and belief, ICE placed an immigration hold on Mr.
20 De La Cerda shortly after he was booked into custody.

21 83. Mr. De La Cerda pled no contest to the possession of nunchucks
22 charge. Mr. De La Cerda has an upcoming hearing on October 29, 2012 regarding
23 a probation violation. He expects that he may be ordered released on or around
24 that date, but due to the immigration hold, will be detained by the LASD beyond
25 his release date.

26 5. *Christian Michel Varela*

27 84. On September 18, 2012, Plaintiff Varela was arrested by the LASD
28 for allegedly driving a stolen vehicle. Mr. Varela had in fact borrowed his

1 roommate's car, as he normally did. However, he and his roommate had a
2 miscommunication and his roommate did not understand that he was going to be
3 away with the car for one week. When Mr. Varela did not return home, his
4 roommate became worried. After one week of not hearing from him, his
5 roommate reported Mr. Varela and the car as missing to the police, believing that
6 something bad could have happened to both Mr. Varela and the car. Nonetheless,
7 when the police found the car, they arrested Mr. Varela for driving a stolen car.

8 85. The LASD booked him into the Lennox Station. Upon information
9 and belief, within a matter of hours, ICE placed an immigration hold on him. At
10 his arraignment, Mr. Varela pled guilty to the charge. The judge first ordered him
11 to pay a \$200 fine. However, when his attorney told the judge that he had an
12 immigration hold and would not be released from custody to pay the fine, the judge
13 ordered him to instead serve 120 days. Due to good credits earned, Mr. Varela's
14 expected release date is Wednesday, November 7, 2012.

15 86. Mr. Varela does not expect to be released then, however. Rather,
16 LASD will continue to detain him an additional number of days, including through
17 the weekend solely on the basis of the immigration hold.

18 19 **IV. CLASS ACTION ALLEGATIONS FOR EQUITABLE RELIEF**

20 87. Plaintiffs De La Cerda and Varela seek class-wide injunctive and
21 declaratory relief, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), on
22 behalf of a class and a subclass.

23 **1. *The Equitable Relief Class***

24 88. The equitable relief class is defined as all persons who are or will be
25 (1) detained in the custody of the LASD, (2) have an immigration hold placed on
26 them by ICE while in LASD custody that was not supported by a lawful probable
27 cause determination, (3) are entitled to be released from LASD custody under
28 applicable federal or state law (which creates a liberty interest in such release), (4)

1 due to LASD policy and practice are not released (to the extent that they were
2 otherwise entitled to release) but held in LASD custody on the authority of the ICE
3 hold after they were eligible for release from LASD custody.

4 a. Numerosity

5 89. The class meets the numerosity requirement of Rule 23(a)(1). There
6 are approximately 20,000 inmates confined in the Los Angeles County Jails each
7 year who are being or will be detained for 48 hours or more by LASD after they
8 would otherwise be entitled to release on the sole basis of the ICE hold. The
9 membership of the class continuously changes, rendering joinder of all members
10 impracticable. The inclusion within the class of future inmates in the class also
11 makes joinder of all members impracticable.

12 b. Commonality

13 90. The class meets the commonality requirement of Rule 23(a)(2).
14 Questions of law and fact presented by the named plaintiffs are common to other
15 members of the class. The common contentions that unite the claims of the class
16 include the following:

- 17 • The practice of holding class members in the Los Angeles County jails
18 for 48 hours or more after they are otherwise entitled to release on the
19 basis of an ICE hold violates the Fourth Amendment of the United States
20 Constitution.
- 21 • The practice of holding class members in the Los Angeles County jails
22 for 48 hours or more after they are otherwise entitled to release on the
23 basis of an ICE hold violates the Fourteenth Amendment of the United
24 States Constitution.
- 25 • The practice of holding class members in the Los Angeles County jails
26 for 48 hours or more on the basis of an ICE hold after they are otherwise
27 entitled to release violates the state common law protections against false
28 imprisonment;

- The practice of holding class members in the Los Angeles County jails for 48 hours or more after they are otherwise entitled to release on the basis of an ICE hold constitutes an unreasonable seizure under Article I, Section 13 of the California Constitution; and
- The practice of holding class members in the Los Angeles County jails for 48 hours or more after they are otherwise entitled to release on the basis of an ICE hold violates the due process guarantee of Article I, Section 7 of the California Constitution

c. Typicality

91. The claims of Plaintiffs De La Cerda and Varela are typical of those of the class as a whole because they have an ICE hold placed on them that was not supported by a lawful probable cause determination while they were in LASD custody and will shortly be otherwise eligible for release, but will be detained for 48 or more hours by Defendants as a result of the ICE hold.

d. Adequacy of Representation

92. Plaintiffs are adequate class representatives and thus meet the requirements of Rule 23(a)(4). De La Cerda and Varela are presently in the custody of the LASD, have an ICE hold placed on them that is not based on probable cause, and are being denied the opportunity to be released by LASD because they have an ICE hold placed on them. They have no conflict of interest with other class members, they will fairly and adequately protect the interests of the class, and they understand their responsibilities as class representatives.

93. The foregoing Plaintiffs (as well as those Plaintiffs acting as class representatives for the class damages claims, who are discussed *infra*) are represented by highly qualified and experienced counsel: The ACLU of Southern California, the ACLU Immigrants Rights Project, the National Day Laborer Organizing Network and Litt, Estuar & Kitson, who, as elaborated below, are all highly experienced in cases of this type.

1 94. Plaintiffs' co-lead counsel on behalf of the ACLU of Southern
2 California, Peter Eliasberg, is the Legal Director of the ACLU Foundation of
3 Southern California. Since its founding in 1923, the ACLU of Southern California
4 has been litigating a broad variety of civil rights cases, including prisoners' rights
5 cases. Attorney Eliasberg has been lead counsel or co-lead counsel in numerous
6 federal civil rights class actions in the Central District of California as well as co-
7 counsel on a federal habeas petition on behalf of Susan McDougal. He has been
8 lead counsel in civil rights matters before the United States Court of Appeals for
9 the Ninth Circuit, the California Supreme Court, and the United States Supreme
10 Court, and has argued a case before the U.S. Supreme Court. Since 2009,
11 Eliasberg has served as co-lead class counsel for all the inmates in Los Angeles
12 County Jails in *Rutherford v. Baca* and in 2012 was named co-lead counsel for all
13 the inmates in Men's Central Jail and Twin Towers in *Rosas v. Baca*, a federal
14 class action in this Court. In addition, co-counsel Jennie Pasquarella, Peter Bibring,
15 and Ahilan Arulanantham all have experience serving as class counsel in large
16 civil rights cases litigated in federal court.

17 95. Plaintiffs' co-lead counsel on behalf of the Immigrants' Rights Project
18 of the American Civil Liberties Union is Cecilia Wang. Ms. Wang is Director of
19 the Immigrants' Rights Project of the ACLU Foundation ("ACLU IRP"). She has
20 substantial experience serving as plaintiffs' counsel in certified class action
21 lawsuits in federal court, including *Lopez-Valenzuela, et al. v. Maricopa County*,
22 No. 08-660 (D. Ariz. filed April 4, 2008), which seeks relief on behalf of pretrial
23 detainees in Arizona who are ineligible for bail because of their immigration status,
24 and *Ortega Melendres v. Arpaio, et al.*, No. 07-02513 (D. Ariz. filed Dec. 12,
25 2007), which challenges the Maricopa County Sheriff's Office's practice of race
26 discrimination and Fourth Amendment violations in traffic stops. In addition,
27 Omar Jadwat and Kate Desormeau, staff attorneys at ACLU IRP, have experience
28 serving as counsel in class-action lawsuits including *Valle Del Sol v. Whiting*,

1 No.10-01061 (D. Ariz. filed May 17, 2010), and *Utah Coalition of La Raza, et al.*
2 *v. Herbert*, No. 11-00401 (D. Utah filed May 3, 2011). Founded in 1987, the
3 ACLU IRP has extensive experience litigating civil rights and class action lawsuits
4 on behalf of detained individuals, including *Franco-Gonzalez v. Napolitano et al.*,
5 No. 10-02211 (C.D. Cal filed March 26, 2010), and *Rodriguez v. Robbins*, No. 07-
6 03239 (C.D. Cal filed May 16, 2007). The ACLU IRP will commit its expertise
7 and resources to successfully represent the proposed classes in this action.

8 96. Plaintiffs' co-lead counsel on behalf of the National Day Laborer
9 Organizing Network (NDLON), Chris Newman, is the Legal Director of the
10 National Day Laborer Organizing Network. Since its founding in 2001, NDLON
11 has litigated a variety of constitutional and civil rights cases. Attorney Newman
12 currently serves as co-counsel in the civil rights class action *Valle Del Sol v.*
13 *Whiting*, No.10-01061 (D. Ariz. filed May 17, 2010). He has also been counsel in
14 constitutional and civil rights matters before the United States Court of Appeals for
15 the Ninth and Eleventh Circuits, including *Hispanic Interest Coalition of Alabama*
16 *v. Bentley*, No. 11-14535 (11th Cir.), as well as the Central District of California.
17 In addition, Jessica Karp, staff attorney at NDLON, has experience serving as
18 counsel in civil rights class action *Valle Del Sol v. Whiting*, and has been counsel
19 in constitutional and civil rights matters before the United States Court of Appeals
20 for the Ninth and Eleventh Circuits.

21 97. Plaintiffs' co-lead counsel on behalf of Litt, Estuar & Kitson, Barrett
22 S. Litt, specializes in complex civil rights litigation, particularly civil rights class
23 actions, and has extensive experience handling jail matters. The law enforcement
24 or jail/prison class actions in which he has been named class counsel in certified
25 classes are listed below. (Where there is a reported decision, the cite is provided.)

- 26 ➤ *Multi-Ethnic Immigrant Worker Network v. City of Los Angeles*, Case
27 No.: CV 07-3072 AHM (FMMx) (class action for injunctive relief and
28 damages for challenging the LAPD's assault on a lawful immigrant rights

1 rally in MacArthur Park on May 1, 2007: *Multi-Ethnic Immigrant Worker*
2 *Network v. City of Los Angeles*, 24 F.R.D. 621 (C.D. Cal. 2007)
3 (certifying class).

- 4 ➤ *Williams v. Block*, Case No.: CV-97-03826-CW (Central District of
5 California) and related cases (a series of county jail overdetention and
6 strip search cases, settled for \$27 Million and a complete revamp of jail
7 procedures); *Streit v. County of Los Angeles*, 236 F.3d 552, 556 (9th Cir.
8 2001) (finding that sheriff is a county actor and referring, at fn. 2, to the
9 concurrent, unreported reversal of the denial of class certification by the
10 district court).
- 11 ➤ *Craft v. County of San Bernardino*, Case No.: EDCV05-00359 SGL
12 (C.D.Cal.) (certified class action against the Sheriff of San Bernardino
13 County for blanket strip searches of detainees, arrestees, and persons
14 ordered released from custody; partial summary judgment decided for
15 plaintiffs; \$25.5 Million settlement approved April 1, 2008); *Craft v.*
16 *County of San Bernardino*, 468 F.Supp.2d 1172 (C.D.Cal. 2006)
17 (approving class settlement).
- 18 ➤ *Lopez v. Youngblood*, No. CV07-00474 LJO (DLBx) (E.D. Calif.) (class
19 action against Kern County, California, for unlawful pre-arraignment and
20 post-release strip searches and strip searches not conducted in private;
21 class certification and summary judgment on liability granted; settlement
22 approved in 2011 for class fund of approximately \$7 Million); *Lopez v.*
23 *Youngblood*, 2009 WL 909817 (E.D. Cal. Apr. 1, 2009).
- 24 ➤ *Bynum v. District of Columbia*, Case No.: 02-956 (RCL) (D.D.C.) (class
25 action against the District of Columbia for overdetentions and blanket
26 strip searches of pretrial jail detainees after they have been ordered
27 released from custody; final approval of \$12,000,000 settlement occurred
28 January 2006); *Bynum v. Dist. of Columbia*, 214 F.R.D. 27 (D.D.C. 2003)

1 (certifying class)

2 ➤ *Barnes v. District of Columbia*, Civil Action No: 06-315 (RCL) (D.D.C.)
3 (class action against District of Columbia for continuing to both over-
4 detain and strip search post-release inmates despite settlement in *Bynum*,
5 *supra*; class certification granted; partial summary judgment granted
6 plaintiffs and remaining issues to be set for trial); *Barnes v. Dist. of*
7 *Columbia*, 242 F.R.D. 113 (D.D.C. 2007) (certifying class)]

8 ➤ *Johnson v. District of Columbia*, Case No. 02-2364 (RMC) (D.D.C.)
9 (class action against the District of Columbia and United States Marshals
10 for blanket strip searches of arrestees initially taken to jail without
11 reasonable suspicion and not involved in drug or violent activity;
12 judgment for defendant on appeal); *Johnson v. Dist. of Columbia*, 248
13 F.R.D. 46 (D.D.C. 2008) (certifying class).

14 ➤ *Jones v. Murphy*, Case No. CCB 05 CV 1287 (D. Maryland) (class action
15 challenging overdetections and illegal strip searches in Central Booking in
16 Baltimore, MD, jail; class certification granted in part and denied in part;
17 summary judgment motions pending); *Jones v. Murphy*, 256 F.R.D. 519
18 (D. Md. 2009) (certifying class).

19 ➤ *Gail Marie Harrington-Wisely, et al. v. State of California, et al.*, Superior
20 Court Case No.: BC 227373 (backscatter x-ray searches of visitors to
21 California prisons without reasonable suspicion; class certification
22 granted; stipulated injunction entered; case currently pending to sort out
23 procedural issues preliminary to appeal or settlement)

24 98. Mr. Litt has authored articles on law enforcement related class
25 certification issues. See "Class Certification in Police/Law Enforcement Cases",
26 *Civil Rights Litigation and Attorney's Fee Annual Handbook*, Vol.18, Ch.3, West
27 Publishing 2002; "Obtaining Class Attorney's Fees," *Civil Rights Litigation and*
28 *Attorney's Fee Annual Handbook*, Vol. 26, Ch. 15, West Publishing 2010.

1 99. Plaintiffs meet the requirement of Rule 23(b)(2), as the Defendant has
2 acted, or omitted to act, on grounds generally applicable to the class, thereby
3 making equitable relief appropriate with respect to the class as a whole.

4 **2. *The Equitable Relief Sub-class***

5 100. The equitable relief sub-class is defined as all persons who are or will
6 be (1) detained in the custody of the LASD, (2) have an immigration hold placed
7 on them by ICE while in LASD custody that was issued to initiate an investigation
8 to determine whether the person is subject to removal, issued on the basis of a
9 warrant of arrest for removal proceedings, or issued on the basis of initiating
10 removal proceedings and serving a Notice to Appear or other charging documents,
11 (3) are entitled to be released from LASD custody under applicable federal or state
12 law (which creates a liberty interest in such release), (4) due to LASD policy and
13 practice are not released (to the extent that they were otherwise entitled to release)
14 but held in LASD custody on the authority of the ICE hold (5) for more than 48
15 hours after they were eligible for release from LASD custody without a probable
16 cause hearing before a neutral decisionmaker for a probable cause determination.
17 The distinctions between this sub-class and the equitable relief class are that this
18 sub-class asserts that, even if an ICE hold for 48 hours total is permissible,
19 additional holding time beyond 48 hours without a probable cause hearing before a
20 neutral decisionmaker is not, whereas the equitable relief class asserts that no
21 period of an ICE hold is permissible.

22 a. Numerosity

23 101. The subclass for class two meets the numerosity requirement of Rule
24 23(a)(1). There are approximately 20,000 inmates confined in the Los Angeles
25 County Jails each year who LASD will detain for ICE because ICE has placed a
26 hold on them, who are being, or will be, detained for more than 48 hours by LASD
27 after they would otherwise be entitled to release on the basis of the ICE hold.
28 More than 15,000 of those holds are issued as “investigatory holds” or on the basis

1 of a warrant issued by an ICE officer. For approximately 31% of those 15,000,
2 with investigatory or ICE officer warrant ICE holds, or 4,650 of the 15,000, their
3 continued detention on the ICE hold will run more than 48 hours because they are
4 held on Saturday, Sunday or holiday. Thus, approximately 4,650 will be held by
5 LASD for more than 48 hours after they were eligible for release from LASD
6 custody without a probable cause determination by a neutral decisionmaker. The
7 membership of the subclass continuously changes, rendering joinder of all
8 members impracticable. The inclusion within the subclass of future inmates in the
9 downtown Jail Complex also makes joinder of all members impracticable.

10 b. Commonality

11 102. The subclass meets the commonality requirement of Rule 23(a)(2).
12 Questions of law and fact presented by the named plaintiffs are common to other
13 members of the class. The common contentions that unite the claims of the class
14 include the following:

- 15 • The practice of holding subclass members in the Los Angeles County
16 jails for more than 48 hours after they are otherwise entitled to release on
17 the basis of an ICE hold without a probable cause determination by a
18 neutral decisionmaker violates the Fourth Amendment of the United
19 States Constitution;
- 20 • The practice of holding subclass members in the Los Angeles County
21 jails for more than 48 hours after they are otherwise entitled to release on
22 the basis of an ICE hold without a probable cause determination by a
23 neutral decisionmaker violates the due process guarantee of Fourteenth
24 Amendment of the United States Constitution;
- 25 • The practice of holding subclass members in the Los Angeles County
26 jails for more than 48 hours after they are otherwise entitled to release on
27 the basis of an ICE hold without a probable cause determination by a
28 neutral decisionmaker violates the state common law protections against

1 false imprisonment;

- 2 • The practice of holding subclass members in the Los Angeles County
3 jails for more than 48 hours after they are otherwise entitled to release on
4 the basis of an ICE hold without a probable cause determination by a
5 neutral decisionmaker constitutes an unreasonable seizure under Article
6 I, Section 13 of the California Constitution.
- 7 • The practice of holding subclass members in the Los Angeles County
8 jails for more than 48 hours after they are otherwise entitled to release on
9 the basis of an ICE hold without a probable cause determination by a
10 neutral decisionmaker violates the due process guarantee of Article 1,
11 Section 7 of the California Constitution.

12 c. Typicality

13 103. The claims of Plaintiff Varela are typical of those of those of the sub-
14 class because, due to the timing of Mr. Varela's release date, he will be detained
15 more than 48 hours and over the weekend without a probable cause determination
16 by a neutral decisionmaker solely on the basis of the ICE hold.

17 d. Adequacy of Representation

18 104. Plaintiffs are adequate class representatives and thus meet the
19 requirements of Rule 23(a)(4). Plaintiff Varela is presently in custody of the
20 LASD and will be held for more than 48 hours after he is otherwise entitled to
21 relief on the basis of an ICE hold without a probable cause determination by a
22 neutral decisionmaker. He has no conflict of interest with other class members,
23 and he will fairly and adequately protect the interests of the class. He and the sub-
24 class are represented by highly qualified and experienced counsel: The ACLU of
25 Southern California, the ACLU Immigrants Rights Project, the National Day
26 Laborer Organizing Network and Litt, Estuar & Kitson. Plaintiffs incorporate by
27 reference the allegations set forth in paragraphs 93-98 above.

28 105. Plaintiffs meet the requirement of Rule 23(b)(2), as the Defendant has

1 acted, or omitted to act, on grounds generally applicable to the class, thereby
2 making habeas corpus relief appropriate with respect to the class as a whole.

3
4 **V. CLASS ACTION ALLEGATIONS FOR DAMAGES**

5 106. Plaintiffs Martinez-Perez and Alliksoo bring this damages claim based
6 on federal and supplemental state law claims, including under 42 U.S.C. § 1983,
7 seeking class-wide relief, pursuant to Federal Rules of Civil Procedure 23(a) and
8 (b)(3), on behalf of all Damages Classes alleged below.

9 107. The foregoing named Plaintiffs are also collectively referred to as the
10 “Damages Class Representatives.”

11 **1. Damages Classes One and Two (Federal and State**
12 **Respectively)**

13 108. Damages Class One (hereafter and in the course of this litigation also
14 referred to as the “Federal Bail Damages Class”) is defined as all persons who,
15 during the two years prior to the filing of this complaint, and continuing until the
16 practice has ceased or until entry of judgment, whichever is sooner, have been or
17 will be (1) detained in the custody of the LASD, (2) have an immigration hold
18 placed on them by ICE while in LASD custody, (3) were eligible to post bail on
19 the basis of the County-wide bail schedule as provided by statute, an arrest
20 warrant, or a court order setting the amount of bail (4) but are not allowed to post
21 bail and be released due to LASD policy and practice.

22 109. Damages Class Two (hereafter and in the course of this litigation also
23 referred to as the “State Bail Damages Class”) is defined as all persons who,
24 beginning November 7, 2011 (six months before filing the initial state law 910
25 class claim by Antonio Montejano),⁴ and continuing until cessation of the practice
26

27 ⁴ Should the Court conclude for some reason that the Montejano 910 claim does
28 not begin the running of the period for which a claim can be made, there were also
(cont’d)

1 or entry of judgment, whichever is sooner, have been or will be (1) detained in the
2 custody of the LASD, (2) have an immigration hold placed on them by ICE while
3 in LASD custody, (3) are eligible to post bail on the basis of the County-wide bail
4 schedule as provided by statute, an arrest warrant, or a court order setting the
5 amount of bail (4) but were or are not allowed to post bail and be released due to
6 LASD policy and practice.

7 **2. *Damages Classes Three and Four (Federal and State***
8 ***Respectively)***

9 110. Damages Class Three (hereafter and in the course of this litigation
10 also referred to as the “Federal ICE Damages Class”) is defined as all persons who,
11 during the two years prior to the filing of this complaint, and continuing until the
12 practice has ceased or until entry of judgment, whichever is sooner, have been or
13 will be (1) detained in the custody of the LASD, (2) have an immigration hold
14 placed on them by ICE while in LASD custody that was not supported by a lawful
15 probable cause determination, (3) are entitled to be released from LASD custody
16 under applicable federal or state law (which creates a liberty interest in such
17 release), and (4) due to LASD policy and practice are not released (to the extent
18 that they were otherwise entitled to release) but held in LASD custody on the
19 authority of the ICE hold after they were eligible for release from LASD custody.

20 111. Damages Class Four (hereafter and in the course of this litigation also
21 referred to as the “State ICE Damages Class”) is defined as all persons who,
22 beginning November 7, 2011 (six months before filing the initial state law 910
23 class claim by Antonio Montejano), and continuing until cessation of the practice
24 or entry of judgment, whichever is sooner, have been or will be (1) detained in the
25 custody of the LASD, (2) have an immigration hold placed on them by ICE while
26 in LASD custody that was not supported by a lawful probable cause determination,

27 subsequent 910 class claims filed that Plaintiffs can assert if necessary. This
28 applies to the other state damages classes asserted herein.

(3) are entitled to be released from LASD custody under applicable federal or state law (which creates a liberty interest in such release), and (4) due to LASD policy and practice are not released (to the extent that they were otherwise entitled to release) but held in LASD custody on the authority of the ICE hold after they were eligible for release from LASD custody.

**3. *Damages Sub-Classes to Damages Classes Three and Four,
AKA Classes Five and Six (Federal and State Respectively)***

112. As alleged previously regarding the injunctive relied sub-class, there are also sub-classes to the ICE Damages Classes. Because a sub-class is ultimately treated as a separate class, should it become appropriate to distinguish it from the class of which it is a part, Plaintiffs also refer to the sub-classes alleged in this section as Classes Five and Six.

113. The sub-class to Damages Class Three (hereafter and in the course of this litigation also referred to as Damages Class Five or the “Federal Post-48 Hour ICE Damages Class”) is defined as all persons who, during the two years prior to the filing of this complaint, and continuing until the practice has ceased or until entry of judgment, whichever is sooner, have been or will be (1) detained in the custody of the LASD, (2) have an immigration hold placed on them by ICE while in LASD custody that was issued to initiate an investigation to determine whether the person is subject to removal, on the basis of a warrant of arrest for removal proceedings, or on the basis of initiating removal proceedings and serving a Notice to Appear or other charging documents (3) are entitled to be released from LASD custody under applicable federal or state law (which creates a liberty interest in such release), (4) due to LASD policy and practice are not released (to the extent that they were otherwise entitled to release) but held in LASD custody on the authority of the ICE hold (5) for more than 48 hours after they were eligible for release from LASD custody without a probable cause hearing before a neutral decisionmaker for a determination of probable cause.

114. The sub-class to Damages Class Four (hereafter and in the course of this litigation also referred to as Damages Class Six or the “State Post-48 Hour ICE Damages Class”) is defined as all persons who, beginning on November 7, 2011 (six months before the filing of the initial state law 910 class claim by Antonio Montejano), and continuing until cessation of the practice or entry of judgment, whichever is sooner, have been or will be (1) detained in the custody of the LASD, (2) have an immigration hold placed on them by ICE while in LASD custody that was issued to initiate an investigation to determine whether the person is subject to removal, on the basis of a warrant of arrest for removal proceedings, or on the basis of initiating removal proceedings and serving a Notice to Appear or other charging documents, (3) are entitled to be released from LASD custody under applicable federal or state law (which creates a liberty interest in such release), (4) due to LASD policy and practice are not released (to the extent that they were otherwise entitled to release) but held in LASD custody on the authority of the ICE hold (5) for more than 48 hours after they were eligible for release from LASD custody without a probable cause determination by a neutral decisionmaker.

VI. THE FOREGOING DAMAGES CLASSES MEET THE REQUIREMENTS OF FEDERAL RULES OF CIVIL PROCEDURE 23(A).

115. Damages Classes One and Two meet the requirements of Rule 23 as follows:

1. *Numerosity*

116. The classes meet the numerosity requirement of Rule 23(a)(1). There are approximately 20,000 inmates (rounded to the nearest thousand) confined in the Los Angeles County Jails each year who will be released to ICE because ICE has placed a hold on them. Austin at pg. 21. Approximately 45% of the 20,000, or 9,000 are held solely on pre-trial status; in other words they are not serving a

1 sentence. Approximately 43% of them, or 3,870, are classified as “low custody”
2 and are thus likely to be held pre-trial on a minor charge and therefore a low bail
3 amount under the County-wide bail schedule as provided by statute, an arrest
4 warrant, or court order. On information and belief, well over 1000 such
5 individuals (quite likely substantially more) would have posted bail in a given year
6 in light of the low bail amounts set for those charged with low level offenses,
7 except for the LASD practice of refusing to allow them to post bail.

8 **2. Commonality**

9 117. The classes meet the commonality requirement of Rule 23(a)(2).
10 Questions of law and fact presented by the named plaintiffs are common to other
11 members of the class. The common contentions that unite the claims of the class
12 include the following:

- 13 • The practice of denying the ability to post bail to inmates with ICE holds
14 violates the right to due process of laws of the 14th Amendment of the
15 United States Constitution;
- 16 • The practice of denying the ability to post bail to inmates with ICE holds
17 violates the state common law protection against false imprisonment;
- 18 • The practice of denying the ability to post bail to inmates with ICE holds
19 violates California Penal Code Section Cal. Penal Code § 1269b(g);
- 20 • The practice of denying the ability to post bail to inmates with ICE holds
21 violates Article I, section 12 of the California Constitution.

22 **3. Typicality**

23 118. Plaintiffs meet the typicality requirement of Rule 23(a)(3), since, as
24 alleged below, the claims of the Plaintiffs are typical of those of the class.

25 119. Plaintiff Martinez-Perez was denied the ability to post bail due to the
26 presence of an ICE hold, and was held beyond the expiration of any state law basis
27 to detain him for four days, including over the weekend, on the ICE hold.

28 120. Plaintiff Alliksoo was denied the ability to post bail due to the

1 presence of an ICE hold and was held beyond the expiration of any state law basis
2 to detain her for three days, including over the weekend, on the ICE hold.

3 4. *Adequacy of Representation*

4 121. Plaintiffs are adequate class representatives and thus meet the
5 requirements of Rule 23(a)(4). Plaintiffs Martinez-Perez and Alliksoo were in the
6 custody of the LASD, were eligible for bail by County-wide bail schedule as
7 provided by statute, an arrest warrant, or had a court-ordered bail amount, had an
8 ICE hold placed on them, and were denied the opportunity to be released on bail
9 by Sheriff Baca because they had an ICE hold placed on them. They have no
10 conflict of interest with other class members, they will fairly and adequately
11 protect the interests of the class, and they understand their responsibilities as class
12 representatives.

13 122. The foregoing Plaintiffs (as well as those Plaintiffs acting as class
14 representatives for the class damages claims, who are discussed *infra*) are
15 represented by highly qualified and experienced counsel: The ACLU of Southern
16 California, the ACLU Immigrants Rights Project, the National Day Labor
17 Organizing Network and Litt, Estuar & Kitson, who, as elaborated in paragraphs
18 93-98, are all highly experienced in cases of this type.

19 123. Plaintiffs incorporate paragraphs 87 to 105, above, regarding the
20 parallel equitable relief class and its subclass. Except for the fact that the
21 Damages Class Representatives are out of custody, and the particular facts
22 showing that the claims are typical of the classes on whose behalf each acts as a
23 representative, the allegations contained in the foregoing paragraphs apply as well
24 to the Damages Class Representatives, and need not be repeated here, Damages
25 Classes One through Six accordingly meet the requirements of Federal Rule of
26 Civil Procedure 23(a) – numerosity, commonality, typicality and adequacy of
27 representation.
28

**VII. THE FOREGOING DAMAGES CLASSES MEET THE
REQUIREMENTS OF FEDERAL RULES OF CIVIL PROCEDURE
23(B)(3).**

124. Damages Classes One through Six also meet the requirements of Federal Rule of Civil Procedure 23(b)(3).

1. *Predominance of Common Questions*

125. The questions of law or fact common to class members predominate over any questions affecting only individual members because the dominant issue for all class members is whether there exists or existed a policy, custom and/or practice of 1) refusing to allow class members to post bail because there was an ICE hold on them, and 2) refusing to release class members otherwise entitled to release on the basis of an ICE hold (either for the whole period – Damages Classes Three and Four – or after the expiration of 48 hours after becoming entitled to release – Damages Classes Five and Six.

126. The predominance of those issues for each damages class is sufficient to certify the class under Rule 23(b)(3) pursuant to the provisions of F.R.Civ.P 23(c)(4), which authorizes the certification of a class “with respect to particular issues,” even if there are other issues to be tried individually.

2. *Superiority*

127. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Most of the class members were detained unlawfully for sufficiently few days that an individual lawsuit for such damages is not economically viable, given the complexity of the issues, and lawyers are unlikely to take such cases individually. The great majority of class members accordingly do not have an individual interest in controlling the prosecution of the case. This district is the proper forum for the claims encompassed by this action, and there are no individual cases of which Plaintiffs are aware pending in this District pursuing damages for the violations at issue here despite the prevalence of

1 the problem.

2 128. The action is manageable. At a minimum, it will decide the critical
3 issue of *Monell* liability for all class members, and, given the nature of the claims,
4 it will also decide causation because the reason for the unlawful continuing
5 detention will be the policies asserted herein. These are all the issues that need to
6 be determined to establish liability to the respective classes.

7 129. General damages inherent in the constitutional violation could be
8 proven on a class wide basis. Individual (special) damages, to the extent a class
9 member chose to pursue them, would be proven on an individual basis under
10 procedures to be set by the Court.

11 130. Because the classes are confined to those regarding whom there
12 should be computerized jail records that will show, inter alia, the date of arrest,
13 whether bail was set, whether an ICE hold was placed on a person, the date of the
14 ICE hold, the date the person was entitled to release absent the ICE hold, and the
15 date of release or transfer to ICE, identifying the universe of likely class members
16 will be readily accomplished based on jail (and possibly court, if needed) records.

17 131. Thus, the proposed classes are manageable, and, without class
18 treatment, the overwhelming majority of class members would not have a viable
19 individual claim.

20 21 **VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES FOR STATE** 22 **DAMAGES CLAIMS**

23 132. Plaintiffs have complied with the jurisdictional prerequisites for filing
24 a tort claim for damages against the County. *See* Cal. Gov't Code § 911.2.

25 133. On May 9, 2012, Plaintiff Duncan Roy filed an administrative tort
26 claim against the Los Angeles County Sheriff's Department on behalf of himself
27 and the representative class. On May 23, 2012, he filed an amended claim. On
28 May 29, 2012, the County rejected his claim.

1 134. On May 7, 2012, Antonio Montejano, a U.S. citizen detained by
2 LASD on an immigration hold, filed an administrative tort claim against the Los
3 Angeles County Sheriff's Department on behalf of himself and the representative
4 class of persons detained solely on the basis of the immigration hold. On May 23,
5 2012, he filed an amended claim. On May 29, 2012, the County rejected his claim.

6 135. On September 13, 2012, Plaintiff Annika Alliksoo filed an
7 administrative tort claim against the Los Angeles County Sheriff's Department on
8 behalf of herself and the representative class. On October 9, 2012, she filed an
9 amended claim.

10 11 **IX. CLAIMS**

12 **First Cause of Action:**

13 **Fourteenth Amendment Violation (Due Process); 42 U.S.C. § 1983**

14 **All Plaintiffs against all Defendants⁵**

15 136. Plaintiffs incorporate the allegations of the preceding paragraphs as if
16 fully set forth herein.

17 137. As set forth above, Defendants refused to allow Plaintiffs and those
18 similarly situated to post bail for which they were eligible under the County-wide
19 bail schedule, prior to Plaintiffs' arraignment, thus depriving Plaintiffs of their
20 liberty without due process of law.

21
22
23 ⁵ For all causes of action pled, all claims for damages are made against Defendant
24 County of Los Angeles. All claims for injunctive relief are made against both
25 Defendant County of Los Angeles and Defendant Baca in his official capacity.
26 Claims by Plaintiff Defendant Roy are made for damages on his own behalf.
27 Claims by Plaintiffs Alain Martinez-Perez and Annika Alliksoo are made for
28 damages on behalf of themselves and others similarly situated. Claims by
Plaintiffs Clemente De La Cerda and Christian Michel Varela are made for
injunctive relief on behalf of themselves and others similarly situated.

1 138. As set forth above, Defendants refused to allow Plaintiffs and those
2 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
3 cases, thus depriving Plaintiffs of their liberty without due process of law.

4 139. As set forth above, Defendants continued to detain Plaintiffs and those
5 similarly situated after their criminal cases had been resolved and all state law
6 grounds to detain them had evaporated solely on the basis of the immigration hold,
7 thus depriving Plaintiffs of their liberty without due process of law.

8 **Second Cause of Action:**

9 **Fourth Amendment Violation (Unlawful Seizure); 42 U.S.C. § 1983**

10 **All Plaintiffs against all Defendants**

11 140. Plaintiffs incorporate the allegations of the preceding paragraphs as if
12 fully set forth herein.

13 141. As set forth above, Defendants refused to allow Plaintiffs and those
14 similarly situated to post bail for which they were eligible according to their
15 warrant of arrest or under the County-wide bail schedule, prior to Plaintiffs'
16 arraignment, thus seizing Plaintiffs in violation of the Fourth Amendment.

17 142. As set forth above, Defendants continued to detain Plaintiffs and those
18 similarly situated after their release date and the expiration of any and all state law
19 basis to detain them solely on the basis that ICE issued a Form I-247, and without
20 probable cause to believe that Plaintiffs were removable, thus seizing Plaintiffs in
21 violation of the Fourth Amendment.

22 143. Absent an emergency or other extraordinary circumstance, a detention
23 of over 48 hours prior to judicial determination of probable cause violates the
24 Fourth Amendment as a matter of law. *See County of Riverside v. McLaughlin*,
25 500 U.S. 44, 57 (1991). The 48 hours includes weekends and holidays.

26 144. As set forth above, Defendants as a routine matter continued to detain
27 Plaintiffs and those similarly situated for more than 48 hours after their release date
28 and the expiration of any and all state law basis to detain them solely on the basis

1 that ICE issued a Form I-247 without providing a judicial or quasi-judicial
2 determination of probable cause on any purported immigration charges, thus
3 seizing Plaintiffs in violation of the Fourth Amendment.

4 **Third Cause of Action:**

5 **Violation of California Constitution, Article 1, § 7 (Due Process)**

6 **All Plaintiffs against All Defendants**

7 145. Plaintiffs incorporate the allegations of the preceding paragraphs as if
8 fully set forth herein.

9 146. As set forth above, Defendants refused to allow Plaintiffs and those
10 similarly situated to post bail for which they were eligible under the County-wide
11 bail schedule, prior to Plaintiffs' arraignment, thus depriving Plaintiffs of their
12 liberty without due process of law.

13 147. As set forth above, Defendants refused to allow Plaintiffs and those
14 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
15 cases, thus depriving Plaintiffs of their liberty without due process of law.

16 148. As set forth above, Defendants continued to detain Plaintiffs and those
17 similarly situated after their criminal cases had been resolved and all state law
18 grounds to detain them had evaporated solely on the basis of the immigration hold,
19 thus depriving Plaintiffs of their liberty without due process of law.

20 **Fourth Cause of Action:**

21 **Violation of California Constitution, Article 1, § 13 (Unlawful Seizure)**

22 **All Plaintiffs against All Defendants**

23 149. Plaintiffs incorporate the allegations of the preceding paragraphs as if
24 fully set forth herein.

25 150. As set forth above, Defendants refused to allow Plaintiffs and those
26 similarly situated to post bail for which they were eligible according to their
27 warrant of arrest or under the County-wide bail schedule, prior to Plaintiffs'
28 arraignment, thus seizing Plaintiffs in violation of the California Constitution,

1 Article I, section 13.

2 151. As set forth above, Defendants continued to detain Plaintiffs and those
3 similarly situated after their release date and the expiration of any and all state law
4 basis to detain them solely on the basis that ICE issued a Form I-247, and without
5 probable cause to believe that Plaintiffs were removable, thus seizing Plaintiffs in
6 violation of the California Constitution, Article I, section 13.

7 152. As set forth above, Defendants as a routine matter continued to detain
8 Plaintiffs and those similarly situated for more than 48 hours after their release date
9 and the expiration of any and all state law basis to detain them solely on the basis
10 that ICE issued a Form I-247 without providing a judicial or quasi-judicial
11 determination of probable cause on any purported immigration charges, thus
12 seizing Plaintiffs in violation of the California Constitution, Article I, section 13.

13 **Fifth Cause of Action:**

14 **False Imprisonment**

15 **All Plaintiffs against all Defendants**

16 153. Plaintiffs incorporate the allegations of the preceding paragraphs as if
17 fully set forth herein.

18 154. The duty of a jailor to release an inmate on bail is mandatory under
19 California law. California courts have held that jailers who failed to release an
20 inmate who satisfied bail requirements acted unlawfully and are liable for false
21 imprisonment. *See Shakespeare v City of Pasadena*, 230 Cal. App. 2d 375, 384
22 (1964); *Moore v. City & County of San Francisco*, 5 Cal. App. 3d 728 (1970).

23 155. As set forth above, Defendants refused to allow Plaintiffs and those
24 similarly situated to post bail for which they were eligible according to their
25 warrant of arrest or under the County-wide bail schedule, prior to Plaintiffs'
26 arraignment, thus non-consensually and intentionally confining Plaintiffs without
27 lawful privilege.

28 156. As set forth above, Defendants refused to allow Plaintiffs and those

1 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
2 cases, thus non-consensually and intentionally confining Plaintiffs without lawful
3 privilege.

4 157. The duty of a jailor to release a detainee after a judge has ordered her
5 released on her own recognizance, after she has served her sentence, after charges
6 are dismissed or no charges are filed, or after the expiration of any other state law
7 basis to detain is also mandatory. *See, e.g.*, Cal. Penal Code § 1384 (“If the judge
8 or magistrate directs the action to be dismissed, the defendant must, if in custody,
9 be discharged therefrom”); *Sullivan v. Los Angeles*, 12 Cal.3d 710, 722 n.11
10 (1974) (“Release of a prisoner after dismissal of charges against him is non-
11 discretionary since it is specifically mandated by Penal Code section 1384.”).

12 158. State law provides no authority for LASD to continue to detain an
13 individual beyond her release date and the expiration of any and all state law basis
14 to detain her solely on the basis of the immigration hold.

15 159. As set forth above, Defendants continued to detain Plaintiffs and those
16 similarly situated after their release date and the expiration of any and all state law
17 basis to detain them, thus non-consensually and intentionally confining Plaintiffs
18 without lawful privilege.

19 160. Defendants are liable for the tort of false imprisonment of Plaintiffs,
20 because their employees, acting within the course and scope of their duties, would
21 have been liable for the tort of false imprisonment, based on the allegations above.
22 California Government Code § 815.2.

23 **Sixth Cause of Action:**

24 **California Government Code §§ 815.2 and 815.6**

25 **All Plaintiffs against all Defendants**

26 161. Plaintiffs incorporate the allegations of the preceding paragraphs as if
27 fully set forth herein.

28 162. California law imposes a mandatory duty on LASD to release on bail

1 any arrestee or inmate who meets the statutory conditions for bail. *See, e.g.,* Cal.
2 Const., Art. 1, section 12; Penal Code § Cal. Penal Code §§ 1268, 1269b, 1295(a).
3 Further, the federal and state constitutional provisions cited previously (due
4 process, and search and seizure) constitute mandatory duties under Article 1, § 26
5 of the California Constitution.

6 163. As set forth above, Defendants refused to allow Plaintiffs and those
7 similarly situated to post bail for which they were eligible under a warrant of arrest
8 or the County-wide bail schedule, prior to Plaintiffs' arraignment, thus failing to
9 discharge their mandatory duties under California law and causing Plaintiffs and
10 those similarly situated injuries those duties were designed to prevent.

11 164. As set forth above, Defendants refused to allow Plaintiffs and those
12 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
13 cases, thus failing to discharge their mandatory duties under California law and
14 causing Plaintiffs and those similarly situated injuries those duties were designed
15 to prevent.

16 165. As set forth above, California law also imposes a mandatory duty on
17 LASD to release a detainee after a judge has ordered her released on her own
18 recognizance, after she has served her sentence, after charges are dismissed or no
19 charges are filed, or after the expiration of any other state law basis to detain is also
20 mandatory.

21 166. State law provides no authority for LASD to continue to detain an
22 individual beyond her release date and the expiration of any and all state law basis
23 to detain her solely on the basis of the immigration hold.

24 167. As set forth above, Defendants continued to detain Plaintiffs and those
25 similarly situated after their release date and the expiration of any and all state law
26 basis to detain them solely on the basis of the immigration hold, thus failing to
27 discharge their mandatory duties under California law and causing Plaintiffs and
28 those similarly situated injuries those duties were designed to prevent.

1 168. Defendants are therefore liable to Plaintiffs and those similarly
2 situated under California Government Code § 815.6.

3 **Seventh Cause of Action:**

4 **Negligence Per Se**

5 **All Plaintiffs against all Defendants**

6 169. Plaintiffs incorporate the allegations of the preceding paragraphs as if
7 fully set forth herein.

8 170. As set forth above, Defendants' employees refused to allow Plaintiffs
9 and those similarly situated to post bail for which they were eligible under a
10 warrant of arrest or the County-wide bail schedule, prior to Plaintiffs' arraignment,
11 thus violating their obligations under California law and causing injury to Plaintiffs
12 and those similarly situated in a manner in which California's guarantees of the
13 right to post bail were designed to prevent, for the benefit of Plaintiffs and those
14 similarly situated.

15 171. As set forth above, Defendants' employees refused to allow Plaintiffs
16 and those similarly situated to post the bail set for Plaintiffs by the courts in their
17 criminal cases, thus violating their obligations under California law and causing
18 injury to Plaintiffs and those similarly situated in a manner in which California's
19 guarantees of the right to post bail were designed to prevent, for the benefit of
20 Plaintiffs and those similarly situated.

21 172. As set forth above, Defendants continued to detain Plaintiffs and those
22 similarly situated after their release date and the expiration of any and all state law
23 basis to detain them solely on the basis of the immigration hold, in spite of their
24 mandatory duty under state law to release them, thus violating their obligations
25 under California law and causing injury to Plaintiffs and those similarly situated in
26 a manner in which California's guarantees of release were designed to prevent, for
27 the benefit of Plaintiffs and those similarly situated.
28

1 173. Defendants are therefore liable to Plaintiffs and those similarly
2 situated for negligence *per se* under California Government Code § 815.6.

3 **Eighth Cause of Action:**

4 **Civil Code § 52.1**

5 **All Plaintiffs against all Defendants**

6 174. Defendants' unlawful conduct of refusing to allow Plaintiffs and the
7 Damages Class Two members the right to post bail was unlawful. As a result of
8 this unlawful conduct, Plaintiffs and the Damages Class Two members were held
9 in the custody of the Los Angeles County Jail beyond the time they were entitled to
10 release. Such unlawful detention was accomplished through coercion, i.e., the
11 forced continuing incarceration in LASD custody.

12 175. Defendants' unlawful conduct of holding Plaintiffs and the Damages
13 Class Four members on an ICE hold was unlawful. As a result of this unlawful
14 conduct, Plaintiffs and the Damages Class Four members were held in the custody
15 of the Los Angeles County Jail beyond the time they were entitled to release. Such
16 unlawful detention was accomplished through coercion, i.e., the forced continuing
17 incarceration in LASD custody.

18 176. Defendants' unlawful conduct of holding Plaintiffs and the Damages
19 Class Six members on an ICE hold beyond 48 hours was unlawful. As a result of
20 this unlawful conduct, Plaintiffs and the Damages Class Six members were held in
21 the custody of the Los Angeles County Jail beyond the time they were entitled to
22 release. Such unlawful detention was accomplished through coercion, i.e., the
23 forced continuing incarceration in LASD custody.

24 177. The foregoing conduct deprived Plaintiffs and the members of Classes
25 Two, Four and Six the protections afforded by provisions of federal constitutional
26 and state constitutional law, including but not limited to rights protected under the
27 Fourth and Fourteenth Amendments to the United States Constitution and Article I,
28 §§1, 7, and 13 of the California state constitution.

1 178. The acts of coercion alleged herein were separate from the unlawful
2 acts of denying Plaintiffs and the members of Classes Two, Four and Six the right
3 to post bail and of treating the immigration detainer as a mandate or authorization
4 to hold Plaintiffs and the Class members.

5 179. Therefore, Plaintiffs and the class are entitled to bring suit and recover
6 damages pursuant to Cal. Civ. Code §52.1(b). As a direct and proximate cause of
7 the aforementioned acts, Plaintiffs and class members were damaged in an amount
8 to be proven at trial, are entitled to an award of up to three times such damages, but
9 in any event not less than \$4,000 per violation pursuant to the provisions of
10 California Civil Code §52(b).

11
12 **X. PRAYER FOR RELIEF**

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

15 (1) Enter a judgment declaring that Defendants' refusal to allow inmates
16 admitted to bail under state law from posting bail due to the presence of an
17 immigration hold violated state and federal law;

18 (2) Issue an injunction ordering Defendants not to detain any individual
19 solely on the basis of the immigration hold;

20 (3) In the alternative, issue an injunction ordering Defendants not to
21 detain any individual solely on the basis of the immigration hold beyond 48 hours
22 without a probable cause hearing;

23 (4) Enter a judgment declaring that Defendants' detention of Plaintiffs
24 and other members of the proposed class solely on the immigration hold was and is
25 unauthorized by state and federal law;

26 (5) In the alternative, enter a judgment declaring that Defendants'
27 detention of Plaintiffs and other members of the proposed class solely on the
28 immigration hold beyond 48 hours without a probable cause hearing was and is

1 unauthorized by federal law;

2 (6) Award Plaintiff Duncan Roy individually compensatory damages
3 according to proof, or (to the extent applicable) up to treble his actual damages
4 pursuant to the provisions of the California Civil Code § 52(a), whichever is
5 greater;

6 (7) Award Plaintiffs Martinez-Perez and Alliksoo and members of the
7 proposed Damages Classes One, Three and Five general monetary damages on a
8 class wide basis for the time unlawfully spent in LASD custody and establish a
9 procedure for class members to seek individualized damages beyond general
10 damages;

11 (8) Award Plaintiffs Martinez-Perez and Alliksoo and members of the
12 proposed Damages Classes Two, Four and Six up to three times their general
13 monetary damages (to the extent applicable) on a class-wide basis for the time
14 unlawfully spent in LASD custody, or statutory damages of \$4000 per violation,
15 whichever is greater, and establish a procedure for class members to seek
16 individualized damages beyond general damages;

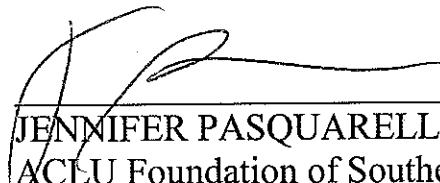
17 (9) Award Plaintiffs and other members of the proposed class reasonable
18 attorneys' fees and costs pursuant to 42 U.S.C. § 1988, CCP § 1021.5, and/or
19 California Civil Code §§ 52(b)(3), 52.1(h); and

20 (10) Grant any other relief that this Court may deem fit and proper.

21
22 Dated: October 18, 2012

Respectfully submitted,

23
24
25 By:


JENNIFER PASQUARELLA
ACLU Foundation of Southern
California