

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

JESUS BARRERA, LOIDA NOHEMI  
CRUZ, JUAN MORALES GOMEZ,  
ROGELIO HERNANDEZ, JOSE PEDRO  
LIRA, MARIO MARTINEZ, PAUL  
MARTINEZ, JOSE ANGEL JUAREZ  
MENDEZ, MIGUEL A. MIRANDA, and,  
ROSA SAGASTUME,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; MICHAEL  
CHERTOFF, DIRECTOR OF THE  
DEPARTMENT OF HOMELAND  
SECURITY; UNITED STATES DIVISION  
OF IMMIGRATION AND CUSTOMS  
ENFORCEMENT; JULIE L. MYERS,  
ASSISTANT SECRETARY FOR  
HOMELAND SECURITY AND THE  
UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT; JOHN P.  
TORRES, DIRECTOR OF THE OFFICE  
OF DETENTION AND REMOVAL FOR  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT; SCOTT BANIECKE,  
FIELD OFFICE DIRECTOR FOR THE  
ST. PAUL OFFICE OF DETENTION AND  
REMOVAL; KENNETH BAIRD, ACTING  
RESIDENT AGENT IN CHARGE, U.S.  
I.C.E.; THOMAS M. BOYLE, SPECIAL  
AGENT, U.S. I.C.E.; CRAIG SCHERER,  
SPECIAL AGENT, U.S. I.C.E.; TRACY  
WARNER, SPECIAL AGENT, U.S. I.C.E.;  
JESSICA BEGRES, SPECIAL AGENT, U.S.  
I.C.E.; and, JOHN DOE ICE AGENTS  
NOS. 1-100,

Defendants.

CASE NO. 07-3879 JNE/SRN

PLAINTIFFS' COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND  
DAMAGES

SCANNED

SEP 04 2007

U.S. DISTRICT COURT MPLS

Plaintiffs above named, for their complaint against defendants above named, complain and allege as follows:

### **NATURE OF ACTION**

1. This action seeks declaratory and injunctive relief and damages on behalf of Jesus Barrera, Loida Nohemi Cruz, Juan Morales Gomez, Rogelio Hernandez, Jose Pedro Lira, Mario Martinez, Paul Martinez, Miguel A. Miranda, and, Rosa Sagastume (hereinafter, “plaintiffs”), for violations of their constitutional and statutory rights by defendants in connection with an immigration raid conducted by defendants on December 12, 2006, in Worthington, Minnesota. On December 12, 2006, plaintiffs—all ethnic Latinos holding United States citizenship or lawful immigration status with valid work authorization—were arrested, detained, and interrogated by agents of United States Immigration and Customs Enforcement (hereinafter, “ICE”) in violation of their constitutional and statutory rights.

### **JURISDICTION**

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 *et seq.*, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et seq.* This Court possesses jurisdiction under 28 U.S.C. §§ 1331 and 1343; 28 U.S.C. § 2241; and art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”), as plaintiffs were in custody under color of authority of the United States and

raise federal questions in this Complaint. This Court may grant relief pursuant to 5 U.S.C. § 706, and 28 U.S.C. §§ 1651 and 2202.

### **PARTIES**

3. Plaintiff **JESUS BARRERA** ("Plaintiff Barrera") is a Latino male and a United States Citizen. At all times relevant to this suit, Plaintiff Barrera was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

4. Plaintiff **LOIDA NOHEMI CRUZ** ("Plaintiff Cruz") is a Latina female and a lawful permanent resident with valid work authorization. At all times relevant to this suit, Plaintiff Cruz was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

5. Plaintiff **JUAN MORALES GOMEZ** ("Plaintiff Gomez") is a Latino male and lawful resident with valid work authorization. At all times relevant to this suit, Plaintiff Gomez was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

6. Plaintiff **ROGELIO HERNANDEZ** ("Plaintiff Hernandez") is a Latino male and lawful resident with valid work authorization. At all times relevant to this suit, Plaintiff Hernandez was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

7. Plaintiff **JOSE PEDRO LIRA** ("Plaintiff Lira") is a Latino male and United States Citizen. At all times relevant to this suit, Plaintiff Lira was a resident of Worthington, Nobles County, Minnesa, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

8. Plaintiff **MARIO MARTINEZ** (“Plaintiff M. Martinez”) is a Latino male and United States Citizen. At all times relevant to this suit, Plaintiff M. Martinez was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

9. Plaintiff **PAUL MARTINEZ** (“Plaintiff P. Martinez”) is a Latino male and United States Citizen. At all times relevant to this suit, Plaintiff P. Martinez was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of conduct complained herein.

10. Plaintiff **JOSE ANGEL JUAREZ MENDEZ** (“Plaintiff Mendez”) is a Latino male and lawful resident with valid work authorization. At all times relevant to this suit, Plaintiff Mendez was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

11. Plaintiff **MIGUEL A. MIRANDA** (“Plaintiff Miranda”) is a Latino male and possesses Temporary Protected Status and valid work authorization. At all times relevant to this suit, Plaintiff Miranda was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

12. Plaintiff **ROSA A. SAGASTUME** (“Plaintiff Sagastume”) is a Latina female and a lawful permanent resident with valid work authorization. At all times relevant to this suit, Plaintiff Sagastume was a resident of Worthington, Nobles County, Minnesota, and lawfully employed by Swift & Company, situs of the conduct complained about herein.

13. Defendant **UNITED STATES DEPARTMENT OF HOMELAND SECURITY** (“Defendant DHS”) is charged, among other duties, with administering

United States Immigration and Customs Enforcement, and implementing and enforcing the Immigration and Nationality Act. Defendant DHS possessed and exercised decision-making authority over the matters alleged in this Complaint.

14. Defendant **MICHAEL CHERTOFF** (“Defendant Chertoff”) is Secretary of the United States Department of Homeland Security. Defendant Chertoff is charged, among other duties, with the constitutional and lawful implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, and with the administration of the United States Immigration and Customs Enforcement. Defendant Chertoff is sued in his individual and official capacity.

15. Defendant **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT** (“ICE”) is a division of the United States Department of Homeland Security. Defendant ICE is charged with investigative and enforcement responsibilities of federal immigration laws.

16. Defendant **JULIE L. MYERS** (“Defendant Myers”) is the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement. Defendant Myers is sued individually and in her official capacity.

17. Defendant **JOHN P. TORRES** (“Defendant Torres”) is the Director of the Office of Detention and Removal for Immigration and Customs Enforcement. In this capacity, Defendant Torres is responsible for the apprehension, detention and removal of foreign nationals charged with violating United States immigration law, and possesses and exercises supervisory authority for officers employed by the Detention and Removal field office in State of Minnesota. Defendant Torres is sued in his individual and official capacity.

18. Defendant **SCOTT BANIECKE** ("Defendant Baniecke") is the Field Office Director for the St. Paul Office of Detention and Removal, where Plaintiffs are or were being held and remain under his administrative authority. Defendant Baniecke possesses responsibility for ICE enforcement activities within the State of Minnesota, including the community of Worthington. Upon information and belief, Defendant Baniecke was personally involved and/or ordered or authorized the unlawful conduct of ICE agents alleged in the Complaint. Defendant Baniecke is sued in his individual and official capacity.

19. Defendant **KENNETH BAIRD** ("Defendant Baird") was at all time relevant to this suit Acting Resident Agent in Charge for Immigration and Customs Enforcement. Upon information and belief, Defendant Baird was personally involved in and/or possessed operational authority over "Operation Wagon Train" activities centered on the Swift plant in Worthington, MN. Defendant Baird is sued in his individual and official capacity.

20. Defendant **THOMAS M. BOYLE** ("Defendant Boyle") is a Special Agent for Immigration and Customs Enforcement. Upon information and belief, Defendant Boyle was personally involved in and/or authorized unlawful conduct by ICE agents alleged herein. Defendant Boyle is sued in his individual and official capacity.

21. Defendant **CRAIG SCHERER** ("Defendant Scherer") is a Special Agent for Immigration and Customs Enforcement. Upon information and belief, Defendant Scherer was personally involved in and/or authorized unlawful conduct by ICE agents alleged herein. Defendant Scherer is sued in his individual and official capacity.

22. Defendant **TRACY WARNER** ("Defendant Warner") is a Special Agent for Immigration and Customs Enforcement. Upon information and belief, Defendant

Warner was personally involved in and/or authorized unlawful conduct by ICE agents alleged herein. Defendant Warner is sued in her individual and official capacity.

23. Defendant **JESSICA BEGRES** “(Defendant Begres”) is a Special Agent for Immigration and Customs Enforcement. Upon information and belief, Defendant Begres was personally involved in and/or authorized unlawful conduct by ICE agents alleged herein. Defendant Berges is sued in her individual and official capacity.

24. **JOHN DOE ICE AGENTS Nos. 1-100** (“Defendant ICE Agents”) were federal law enforcement agents employed by and acting under authority of the United States Immigration and Customs Enforcement at all times relevant to the incidents complained herein. Upon information and belief, Defendants ICE Agents executed the criminal investigatory raid on the Swift & Company plant in Worthington, MN. Defendants John Doe ICE Agents are sued individually and in their official capacity.

**CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

25. On December 12, 2006, United States Immigration and Customs Enforcement agents, operating under authority of the Department of Homeland Security, entered the Swift & Company processing plant located in Worthington, MN, using an administrative warrant obtained by ICE Special Agent Thomas M. Boyle.

26. Termed “Operation Wagon Train,” this law enforcement raid targeted Swift & Company plants in six states identified during a 10-month criminal investigation concerning the alleged use and distribution of fraudulent identity documents by Swift employees.

27. At a press conference immediately following the conclusion of operations, Defendant Chertoff declared, “... [the] raids that were conducted at six facilities for Swift & Co....[were] the product of months of investigation [ ] targeted at a massive use of

document fraud to support illegal work in the workplace.” The criminal investigation began in February 2006, and, according to Defendants Chertoff and Myers, uncovered “substantial evidence” that “hundreds of Swift workers illegally assumed the identities of U.S. citizens.” Defendant Chertoff stated, “Now, this is not only a case about illegal immigration, which is bad enough. It’s a case about identity theft in violation of the privacy rights and the economic rights of innocent Americans.”

28. Plaintiffs are United States citizens, legal residents, or Temporary Protected Status recipients. None of the plaintiffs was guilty of any crime or other offense at the time of “Operation Wagon Train.” At all times relevant to this Complaint, plaintiffs were lawfully employed by and present at the Worthington Swift plant when defendants took control of the facility.

29. During the raid at the Swift plant in Worthington on December 12, 2006, the ICE agents involved arrested the plaintiffs without probable cause, unlawfully confined plaintiffs against their will at the Swift plant, subjected the plaintiffs to searches and interrogations without advising them of their constitutional rights, used racial epithets directed at the plaintiffs and others of Latin descent, and otherwise insulted, abused, and humiliated the plaintiffs on account of their race.

30. The ICE agents named as defendants herein either directly participated in the conduct described in the foregoing paragraph, or encouraged and permitted said conduct. The remaining defendants planned, authorized, permitted, and approved said conduct.

31. Given the overwhelming number of armed agents throughout the plant and the aggression exhibited by agents, at no time did plaintiffs reasonably believe they were free to leave the facility. Plaintiffs’ Caucasian workmates, however, were allowed to



move freely around the plant and were subjected to no unlawful conduct from ICE agents.

32. Though neither targets nor suspects of the “Operation Wagon Train” investigation, and despite possessing readily verified U.S. citizenship or legal immigration status with valid work authorization, plaintiffs were rounded up and herded by ICE agents into designated interrogation areas within the Swift plant, and ICE agents demanded that plaintiffs “prove their real identities” and threatened plaintiffs with incarceration and deportation.

33. During interrogation, ICE agents loudly denounced plaintiffs as criminals, including claims of human trafficking.

34. Throughout the raid, defendants failed to act with reasonable, articulable, and individualized suspicion toward plaintiffs, failed to apprise plaintiffs of the right to remain silent, and failed to apprise plaintiffs of their right to speak with an attorney. Defendants failed to verify plaintiffs’ identities prior to arrest, detention, and interrogation. When presented by plaintiffs with clear evidence of innocence, defendants refused to take cursory steps to confirm plaintiffs’ claims of U.S. citizenship or valid immigration status, and frequently responded instead with more aggressive interrogation.

35. Defendants also failed to obtain knowing, intelligent, and voluntary consent or appropriate warrants permitting searches of plaintiffs’ personal belongings and worksite lockers. Defendants ordered a number of female employees to disrobe in front of ICE agents, and ordered other plaintiffs to keep bathroom doors open so that they could be watched while using the toilet—adding embarrassment and humiliation to plaintiffs’ unconstitutional treatment.

36. Defendants denied plant access to attorneys retained on behalf of Swift plant employees by United Food and Commercial Workers Local #1161—the representative union of all Swift employees in Worthington. This decision obstructed plaintiffs’ constitutional right to counsel.

37. The conduct of defendants set forth in paragraphs 24 to 35 violated plaintiffs’ Fourth Amendment protections against unreasonable searches and seizures, plaintiffs’ Fifth Amendment rights against self-incrimination, equal protection before the law, and right to counsel, and plaintiffs’ Sixth Amendment right to counsel.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE: FOURTH AMENDMENT CONSTITUTIONAL CLAIMS**

38. Plaintiffs hereby incorporate by reference paragraphs 1 through 37 above as if set forth in full herein.

39. The conduct of defendants described in said paragraphs violated plaintiffs’ rights to remain free from unreasonable searches and seizures guaranteed by the Fourth Amendment of the United States Constitution.

40. Defendants’ actions violating plaintiffs’ Fourth Amendment Rights have caused damage to plaintiffs for which plaintiffs hereby seek both monetary and equitable relief.

#### **COUNT TWO: FIFTH AMENDMENT CONSTITUTIONAL CLAIMS**

41. Plaintiffs hereby incorporate by reference paragraphs 1 through 37 above as if set forth in full herein.

42. The conduct of defendants described in said paragraphs violated plaintiffs' rights to substantive and procedural due process guaranteed by the Fifth Amendment of the United States Constitution.

43. Defendants' actions violating Plaintiffs' Fifth Amendment rights have caused damage to plaintiffs for which plaintiffs hereby seek both monetary and equitable relief.

### **COUNT THREE: SIXTH AMENDMENT CONSTITUTIONAL CLAIMS**

44. Plaintiffs hereby incorporate by reference paragraphs 1 through 37 above as if set forth in full herein.

45. The conduct of defendants described in said paragraphs violated plaintiffs' right to counsel guaranteed by the Sixth Amendment of the United States Constitution.

46. Defendants' actions violating plaintiffs' Sixth Amendment rights have caused damage to plaintiffs for which plaintiffs hereby seek both monetary and equitable relief.

### **COUNT FOUR: EQUAL PROTECTION CONSTITUTIONAL CLAIMS**

47. Plaintiffs hereby incorporate by reference paragraphs 1 through 37 above as if set forth in full herein.

48. The conduct of defendants described in said paragraphs violated plaintiffs' Equal Protection Rights guaranteed by the United States Constitution.

49. Defendants' actions violating Plaintiffs' Equal Protection Rights have caused damage to plaintiffs for which plaintiffs hereby seek both monetary and equitable relief.

**COUNT FIVE: STATUTORY CLAIMS**

50. Plaintiffs hereby incorporate by reference paragraphs 1 through 37 above as if set forth in full herein.

51. Defendants' actions violated plaintiffs' rights under the Immigration and Nationality Act.

52. Defendants' violations of the Immigration and Nationality Act have caused damage to plaintiffs for which plaintiffs hereby seek both monetary and equitable relief.

**COUNT SIX: *BIVENS* ACTION**

53. Plaintiffs hereby incorporate by reference paragraphs 1 through 37 above as if set forth in full herein.

54. Defendants named in their individual capacities violated the protections afforded by *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

55. Defendants' actions violating *Bivens* protections have caused damage to plaintiffs for which plaintiffs hereby seek both monetary and equitable relief.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs demand and pray that this Court grant the following relief:

A. Find, adjudge and decree that the defendants and each of them have committed the violations of law alleged herein.

B. Permanently enjoin the defendants and each of them from continuing to engage in each violation of law the Court shall find.

C. Award to each plaintiff such actual damages as the Court shall find each plaintiff to have sustained as a proximate result of each violation of law the Court shall find.

D. Award to each plaintiff punitive or exemplary damages equal to or an appropriate multiple of each plaintiff's actual damages.

E. Award to plaintiffs their costs of suit in bringing this action.

F. Award to plaintiffs their reasonable attorneys fees as the prevailing parties in this action.

G. Award to plaintiffs pre- and post-judgment interest as provided by law.

H. Grant plaintiffs all such other and further relief to which they are entitled, as is just and appropriate in these proceedings.

Dated: September 04, 2007

CENTROL LEGAL, INC.



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