

based solely on the detainer also violates Mr. Brizuela's Fourteenth Amendment procedural and substantive due process rights. Mr. Brizuela's continued unlawful detention fits a widespread pattern and practice, custom, and policy applied to many Connecticut state prisoners detained after the conclusion of their state criminal custody solely on the basis of DHS issuance of an immigration detainer. Therefore, on behalf of himself and all others similarly situated, Mr. Brizuela respectfully applies to this Court for a writ of habeas corpus to remedy this unlawful detention by Respondents, in the alternative for relief under 42 U.S.C. §1983, and for declaratory and injunctive relief to prevent such harms from recurring.

STATEMENT OF FACTS

1. Sergio Brizuela has lived in the New York-Connecticut area for over 10 years. He is in a long-term, committed relationship with his U.S. citizen partner and he and his partner have a U.S. citizen child.

2. Mr. Brizuela was arrested by officers of the East Haven Police Department, in East Haven, Connecticut on November 20, 2011. He was thereafter transferred to the custody of Respondents Jose Feliciano, Leo C. Arnone, and the Connecticut Department of Correction ("CTDOC") at the New Haven Correctional Center.

3. Superior Court set bond for Mr. Brizuela. Upon information and belief, Mr. Brizuela attempted to post bond but was prohibited from doing so because an immigration detainer had been lodged against him. Despite his ability to make bond, Mr. Brizuela remained detained at the New Haven Correctional Center during the pendency of his criminal charges.

4. On February 10, 2012, Mr. Brizuela pled guilty to one count of Connecticut General Statutes § 14-215a (operation while license is suspended pursuant to § 14-140); one count of Conn. Gen. Stat. § 53a-181 (breach of peace in the second degree); and one count of

Conn. Gen. Stat. § 53a-167a (interfering with an officer), at the Superior Court for Geographical Area 23 at New Haven. All counts are misdemeanors or infractions under Connecticut law.

5. Mr. Brizuela was sentenced to pay a fine of \$150 for the first count, sentenced to 30 days in jail for the second count, and 1 year in jail for the third count, to be suspended after 30 days and conditionally discharged after two years. On information and belief, on February 10, 2012 the sentencing judge credited Mr. Brizuela for time served, which exceeded 30 days. Thus, the State of Connecticut's lawful custody of Mr. Brizuela terminated upon entry of the judgment of conviction and sentence, including the order that he be credited for time served, on Friday, February 10, 2012.

6. However, at this time, Mr. Brizuela remains in the custody of the CTDOC, at the New Haven Correctional Center.

7. An immigration detainer, issued by the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), has been lodged against Mr. Brizuela.

8. An immigration detainer is an administrative notice, not a warrant or a judicial order. It does not establish federal custody by DHS or any other agency over the subject of the detainer.

9. DHS asserts that by federal regulation local law enforcement officials must detain the individual named in the detainer for up to 48 hours, excluding weekends and holidays. See 8 CFR § 287.7; Form I-247, "Immigration Detainer – Notice of Action." That immigration detainer is now the sole basis for the CTDOC's custody over Mr. Brizuela.

10. Should ICE assume physical and legal custody of Mr. Brizuela and seek to remove him, Mr. Brizuela intends to apply for immigration relief, to contest his removal, and to

seek judicial review of any removal order that may be entered.

11. Respondents have a pattern and practice, custom, and policy of continuing the detention of Connecticut state prisoners after the conclusion of their state criminal custody solely on the basis of DHS issuance of an immigration detainer.

12. Upon information and belief, hundreds of Connecticut prisoners are continued in state custody each year after the conclusion of their criminal sentence solely on the basis of DHS issuance of an immigration detainer.

13. Many of those against whom these administrative detainers are lodged are immigrants, including legal permanent residents and others with lawful immigration status. Because of this, there is a high likelihood that those against whom immigration detainers are lodged will have an unsophisticated command of English. For the same reason, members of the putative class will likely have an insufficient understanding the U.S. judicial system. Together, these create a high probability that the putative class members will lack the ability to obtain the assistance of counsel in challenging their detention based on an immigration detainer, even if they were able to determine that such detention were susceptible to legal challenge.

14. Persons subject to an ICE detainer in Connecticut are typically confined by Respondents for 1-5 days each before ICE eventually takes physical and legal custody of the individual.

15. Upon information and belief, DHS does not reimburse the State of Connecticut for the cost of detaining persons held solely on the basis of an immigration detainer. Upon information and belief, DHS does not indemnify Respondents for liabilities they may incur based on injuries suffered by persons held by Respondents solely on the basis of an immigration detainer.

16. In the past six months, at least two individuals detained by Respondents Feliciano and Arnone solely on the basis of an immigration detainer have filed petitions for writs of habeas corpus in U.S. District Court, but those petitions have been rendered moot by Respondents' transfer, within days, of the petitioner to the physical and legal custody of DHS.

17. Petitioner seeks to represent a class consisting of all individuals currently in the custody of the CTDOC whose lawful state custody has expired but whom CTDOC continues to detain solely on the basis of an immigration detainer issued pursuant to 8 C.F.R. § 287.7(d), and all individuals in the future custody of CTDOC whose lawful state custody will expire but whom CTDOC will continue to detain solely on the basis of an immigration detainer.

18. The detention of Petitioner and other members of the proposed class pursuant to an immigration detainer is not authorized by statute and is unconstitutional. Petitioner and members of the proposed class seek a writ of habeas corpus to remedy their illegal and unconstitutional continued detention.

JURISDICTION AND VENUE

19. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343, 1361, 2201-02, 2241, 2243, and the Habeas Corpus Clause of the U.S. Constitution.

20. Venue lies within the District of Connecticut, because Petitioner and members of the proposed class are currently being held and/or will in the future be held in custody in facilities controlled by CTDOC in the State of Connecticut.

21. No petition for habeas corpus has previously been filed in any court to review Mr. Brizuela's case.

PARTIES

22. Petitioner is a representative of a proposed class of all individuals currently in the custody of the CTDOC whose lawful state custody has expired but whom CTDOC continues to them solely on the basis of an immigration detainer issued pursuant to 8 C.F.R. § 287.7(d), and all individuals in the future custody of CTDOC whose lawful state custody will expire but whom CTDOC will continue to detain them solely on the basis of an immigration detainer.

23. The named Petitioner, Sergio Brizuela, is presently detained in the New Haven Correctional Center. Since February 10, 2012, and continuing up to the filing of this complaint, the immigration detainer lodged against Mr. Brizuela is the sole basis for the CTDOC's custody over Mr. Brizuela.

24. Respondent Jose Feliciano is Warden of the New Haven Correctional Center, located at 245 Whalley Avenue, New Haven, Connecticut 06511. Mr. Brizuela is detained at the New Haven Correctional Center. Mr. Feliciano thus has physical and legal custody of Mr. Brizuela, and is the immediate custodian for habeas corpus purposes. He is sued in his official capacity.

25. Respondent Leo C. Arnone is Commissioner of the Connecticut Department of Correction. Mr. Brizuela and other similarly situated Petitioners are detained at CTDOC facilities. Mr. Arnone thus has physical and legal custody of Mr. Brizuela and other members of the proposed class, and is also the immediate custodian for habeas corpus purposes. He is sued in his official capacity.

26. The Connecticut Department of Correction is an agency of the Connecticut state government. Mr. Brizuela and other members of the proposed class are detained at facilities of the Connecticut Department of Correction.

REPRESENTATIVE HABEAS ACTION ALLEGATIONS

27. Petitioner Sergio Brizuela seeks certification of a class consisting of all individuals currently in the custody of the CTDOC whose lawful state custody has expired but whom CTDOC continues to detain solely on the basis of an immigration detainer issued pursuant to 8 C.F.R. § 287.7(d), and all individuals in the future custody of CTDOC whose lawful state custody will expire but whom CTDOC will continue to detain solely on the basis of an immigration detainer.

28. Longstanding Second Circuit precedent recognizes the authority of the United States District Courts to certify a representative class of habeas petitioners in the appropriate circumstances. United States ex rel. Sero v. Preiser, 506 F.2d 1115, 1125-26 (2d Cir. 1974). In Sero, the court articulated a number of reasons why class action treatment was appropriate, all of which apply in the instant case: the legal questions at issue are narrow and apply to all members of the putative class; there is substantial likelihood that many class members would never receive the relief sought due to their inability to challenge their detention themselves; and the interests of judicial economy would be best served by avoiding several successive habeas petitions raising the same claims.

29. The Sero court relied upon the requirements governing traditional class actions brought under Rule 23 of the Federal Rules of Civil Procedure to inform its reasoning in certifying a representative habeas action. Mr. Brizuela requests that this Court similarly certify a representative class of habeas petitioners in conformity with the requirements of Rule 23(b)(1) and/or (b)(2).

30. The representative class proposed here satisfies the four prerequisites for class certification enumerated in Rule 23(a)(1)-(4): numerosity, commonality, typicality, and adequacy

of representation.

a. The membership of the class, although subject to constant turnover, is sufficiently numerous at any given time. On information and belief, on a single day in December 2011, for instance, there were approximately 130 pretrial detainees and approximately 360 post-conviction detainees in CTDOC custody with immigration detainers lodged against them. Furthermore, many members of the class are difficult to access and unidentifiable at any given time, additional factors supporting a finding of sufficient numerosity. Sero, 506 F.2d at 1126.

b. The class members share largely overlapping questions of law and fact, and the claims of named petitioner Mr. Brizuela are typical of the claims of the class as a whole. All class members are or will be held in state custody solely on the basis of an immigration detainer subsequent to the termination of lawful state criminal custody. All members make the same legal claims and request the same relief: release from their detention in CTDOC facilities where their confinement is solely on the basis of an unlawful immigration detainer.

c. Mr. Brizuela, through undersigned counsel, fairly and adequately protects the interests of the class. Attorneys and law student interns of the Jerome N. Frank Legal Services Organization have extensive experience in litigating complex civil cases and habeas corpus actions involving immigrant law, civil rights, and constitutional claims, and will vigorously prosecute the claim on behalf of all members of the class.

31. This Court can certify a representative habeas action consistent with the requirements of Rule 23(b)(1) and (b)(2). Respondents have “acted or refused to act on grounds that apply generally to the class” and final relief is “appropriate respecting the class as a whole”

to ensure that Petitioners are subject to a consistent state policy.

First Cause of Action:

Fourth Amendment Violation

32. The allegations contained in paragraphs 1 through 31 above are repeated and alleged as though fully set forth herein.

33. 28 U.S.C. § 2241 empowers this Court to issue a writ of habeas corpus, ordering the production of any person held “in violation of the Constitution or laws or treaties of the United States.” Alternatively, 42 U.S.C. §1983 grants Petitioner and other members of the proposed class a cause of action to challenge Respondents’ deprivation of their “rights, privileges, or immunities secured by the Constitution and laws” under color of state and local law.

34. Petitioner and other members of the proposed class are held in violation of the Constitution and laws of the United States. Petitioner and other members of the proposed class are held solely on the basis of the ICE detainers issued in their names. CTDOC has no legal authority under which to continue to hold Petitioner and other members of the proposed class in custody.

35. Immigration detainers lack any standards guiding their issuance. The detainers issued to CTDOC regarding Petitioner and other members of the proposed class were not issued by ICE according to any legal standard. They were not issued based on evidence demonstrating reasonable suspicion, probable cause, or any other ground. Respondents’ continued detention of Petitioner and other members of the proposed class thus deprives them of their liberty without probable cause.

36. Petitioner and other members of the proposed class are therefore held in the

custody of the CTDOC, but without any basis in law and without any probable cause.

37. Respondents' continued detention of Petitioner and other members of the proposed class violates their Fourth Amendment constitutional right to be free from unreasonable seizure.

Second Cause of Action:

Fourth Amendment Violation: Ultra Vires

38. The allegations contained in paragraphs 1 through 37 above are repeated and alleged as thought fully set forth herein.

39. Pursuant to 8 U.S.C. § 1357(d), Congress authorized the limited issuance of immigration detainers to detain non-citizens in state or local custody only for offenses related to controlled substance violations.

40. Detaining non-citizens pursuant to an immigration detainer for an offense other than controlled substance violations exceeds the authority granted by Congress and is arbitrary and capricious, in excess of statutory jurisdiction.

41. 8 C.F.R. § 287.7(d), which purports to require state and local law enforcement agencies to comply with ICE detainers, is ultra vires insofar as it is relied upon to authorize immigration detainers for an offense other than controlled substance violations.

42. Respondents' detention of Petitioner and other members of the proposed class pursuant to an ultra vires regulation violates their Fourth Amendment constitutional right to be free from unreasonable seizure.

Third Cause of Action:

Fourth Amendment Violation: Detention Without a Hearing

43. The allegations contained in paragraphs 1 through 42 above are repeated and alleged as through fully set forth herein.

44. Petitioner and other members of the proposed class are being and will be held in violation of the Fourth Amendment prohibition against unreasonable searches and seizures.

45. Immigration detainers issued by ICE purport to require state and local law enforcement officials to hold individuals in custody, without any basis in state law and solely as a means of enforcing federal civil immigration statutes, for up to 48 hours, excluding weekends and government holidays. See 8 C.F.R. § 287.7.

46. Upon the resolution of the misdemeanor charges against Mr. Brizuela on February 10, 2012, and by resolution of the criminal cases or sentences against other members of the proposed class, the Respondents' legal authority to maintain custody of Petitioner and other members of the proposed class ended or will end. Respondents' continued detention of Petitioner and other members of the proposed class constitutes the equivalent of a new arrest.

47. Because of this, and the fact that immigration detainers are not warrants issued upon probable cause, these detainer procedures violate the Fourth Amendment's requirement that an individual arrested without a warrant be brought before a neutral magistrate for a probable cause hearing within 48 hours of arrest, *irrespective* of weekends or holidays. County of Riverside v. McLaughlin, 500 U.S. 44 (1991); see also Gerstein v. Pugh, 420 U.S. 103 (1975).

48. Petitioner and other members of the proposed class have not been brought before a neutral magistrate for a probable cause hearing. Upon information and belief, Respondents have no intention of, or process for, bringing Petitioner and other members of the proposed class

before a neutral magistrate for a probable cause hearing within 48 hours. Respondents' detention of Petitioner and other members of the proposed class therefore violates their Constitutional right to be free from unreasonable seizures.

49. Because the detainers are unconstitutional, Respondents' continued detention of Petitioner and other members of the proposed class therefore violates their Constitutional right to be free from unreasonable seizures.

Fourth Cause of Action:

Fourth Amendment Violation: Commandeering of State Personnel

50. The allegations contained in paragraphs 1 through 49 above are repeated and alleged as though fully set forth herein.

51. Petitioner and other members of the proposed class are being and will be held in violation of the Fourth Amendment prohibition on unreasonable search and seizure. The continuing detention of Petitioner and other members of the proposed class subsequent to the termination of lawful state custody is an unreasonable seizure because the authority for that detention is unlawful. The detainers issued by ICE purport to require state and local law enforcement officials to hold individuals in custody, without any basis in state law, as a means of enforcing the federal civil immigration statutes.

52. Such detainers violate the principle of dual sovereignty expressed by the Tenth Amendment. The federal government may not commandeer state personnel in order to implement federal regulatory programs. Printz v. United States, 521 U.S. 898 (1997); see also New York v. United States, 505 U.S. 144 (1992).

53. Because the detainers are unlawful, Respondents' detention of Petitioner and

other members of the proposed class violates their constitutional right to be free from unreasonable seizures and against federal commandeering.

Fifth Cause of Action:

Fourteenth Amendment Substantive Due Process Violation

54. The allegations contained in paragraphs 1 through 53 above are repeated and alleged as though fully set forth herein.

55. Substantive due process principles forbid the infringement of fundamental liberty interests, unless the infringement is narrowly tailored to serve a compelling government interest.

56. Freedom from physical restraint is a liberty interest protected by substantive due process. See Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

57. The continued unauthorized detention of an individual in the absence of any standards guiding the issuance of the detainer is not narrowly tailored to serve a compelling government interest. As they are currently detained or will be detained by Respondents past the point of their judicially authorized release, the fundamental liberty interests of Petitioner and other members of the proposed class guaranteed by the Fourteenth Amendment's substantive due process protections are being violated.

Sixth Cause of Action:

Fourteenth Amendment Procedural Due Process Violation

58. The allegations contained in paragraphs 1 through 57 above are repeated and alleged as though fully set forth herein.

59. Procedural due process requires that the government be constrained before it acts

in a way that deprives individuals of “liberty” interests protected under the Due Process Clause of the Fourteenth Amendment. See Mathews v. Eldridge, 424 U.S. 319, 332 (1976).

60. Detainers issued by ICE purport to require state and local law enforcement officials to hold individuals in custody, without any basis in state law, standards guiding their issuance, or any judicial review, solely as a means of enforcing federal civil immigration statutes, for up to 48 hours, excluding weekends and government holidays. See 8 C.F.R. § 287.7.

61. The Due Process Clause protects against the deprivation of liberty interests without the due process of law and requires notice and an opportunity to be heard prior to the deprivation as well as a method by which to challenge the deprivation. Petitioner and other members of the proposed class have been provided with none of these, in violation of their due process rights.

62. Under the Mathews balancing test, the private liberty interest of Petitioner and other members of the proposed class is overwhelming. The risk that they have been deprived of their liberty erroneously is high due to the fact that no court of law has adjudicated the lawfulness of Respondents’ continued detention of Petitioner and other members of the proposed class.

63. Interpreting immigration detainers as authorizing Respondents’ continued unauthorized detention of Petitioner and other members of the proposed class without judicial review violates the procedural due process rights guaranteed by the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner and other members of the proposed class pray that this Court grant the following relief:

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner and other members of the proposed class forthwith;
- (2) Issue an injunction ordering Respondents not to detain any individual solely on the basis of an immigration detainer;
- (3) Enter a judgment declaring that Respondents' detention of Petitioner and other members of the proposed class is and will be unauthorized by statute and contrary to law;
- (4) Award Petitioner and other members of the proposed class reasonable costs and attorney's fees; and
- (5) Grant any other and further relief that this Court may deem fit and proper.

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New Haven, Connecticut

Respectfully submitted,

/s/

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