

Exhibit

A

purposes violates separation of powers limits under the Tenth Amendment. Finally, the extended detention, unsupported by probable cause, that ICE's detainers cause plaintiffs and those similarly situated to them violates their rights under the Fourth and Fifth Amendments and/or entitle them to habeas relief.

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

3. The named plaintiffs in this intervention complaint, Sergey Mayorov and Nicholas Taylor-Jones (hereinafter "Intervenors")—like the original named plaintiffs in this action—are individuals being held by LEAs, against whom ICE has placed immigration detainers, without lawful authority or any legal basis to do so. The Defendants in this case are federal officials responsible for ICE's issuance of detainers, named because their inclusion is potentially required to effectuate the forms of relief this complaint requests.

4. As to each Intervenor, ICE has justified the detainer it has placed on them based solely on its initiation of an investigation to determine whether they are subject to removal from the United States. ICE has not accompanied any of the Intervenors' detainers with an administrative arrest warrant, a Notice to Appear or other charging document, or a final removal order. ICE does not require notice of the immigration detainer to Intervenors. Moreover, ICE has not provided the Intervenors with a means to challenge the immigration detainers lodged against them.

5. Intervenors seek on their behalf and similarly situated individuals, who have immigration detainers lodged against them that were issued from ICE's Chicago Area of

Responsibility (AOR) including its sub-offices, declaratory and injunctive relief under the Administrative Procedures Act, 5 U.S.C. §706(a), under the Fourth, Fifth and Tenth Amendments for the ongoing violation of their rights, pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) and *Bond v. United States*, 131 S. Ct. 2355 (June 16,2011), or, in the alternative, habeas corpus relief.

JURISDICTION AND VENUE

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

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

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

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

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

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

PARTIES TO INTERVENORS' CLAIMS

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

13. Intervenor Sergey Mayorov is a 21-year old United States citizen, who is being detained at the Shawnee Correctional Center in Illinois with an ICE I-247 immigration detainer lodged against him. Mr. Mayorov was arrested on December 24, 2010. Mr. Mayorov pled guilty, in reliance on his eligibility for boot camp and thus the possibility of serving no jail time. Mr. Mayorov in fact entered boot camp on January 25, 2011. Without ever interviewing or speaking to him, ICE issued an immigration detainer against him. Because of the immigration detainer Mr. Mayorov was disqualified from boot camp, and on March 18, 2011, Mr. Mayorov was transferred from boot camp to serve the jail sentence. To date, Mr. Mayorov continues to serve a jail sentence due to the unlawful immigration detainer. If Mr. Mayorov had completed boot camp, he would have been released on May 25, 2011. Because of his detainer, at the end of his term of custody, Mr. Mayorov is unlawfully subject to being held an additional 48 hours or more in the custody of Shawnee Correctional Center, as mandated by ICE, when but for the detainer, he would otherwise be released.

14. Intervenor Nicholas Taylor-Jones is an 21-year old United States citizen, who is being detained at the Pontiac Correctional Center in Illinois with an ICE I-247 immigration detainer lodged against him. Mr. Taylor-Jones was arrested on December 6, 2008. While being processed into state physical custody, Mr. Taylor-Jones told an ICE official that he was a U.S. citizen. Nevertheless, ICE issued an immigration detainer against him on October 13, 2009. Mr. Taylor-Jones was born November 8, 1990 in Springfield, Illinois. In September 2011, Mr. Taylor-Jones mailed a copy of his birth certificate and a letter explaining his citizenship to the ICE Broadview Service Processing Center address located on his I-247 detainer but never received a response. Mr. Taylor-Jones, through his guardian *ad litem*, also produced a copy of his birth certificate to ICE officials, but they refused to lift the detainer stating they need to see an original of the birth certificate. Because of the detainer, at the end of his term of lawful custody, Mr. Taylor-Jones is unlawfully subject to being held an additional 48 hours or more in the custody of Illinois Department of Corrections, as mandated by ICE, when but for the detainer, he would otherwise be released.

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

16. Defendant John Morton is the Director of Immigration and Customs Enforcement for DHS. As part of Director Morton's responsibilities, he establishes immigration detainer policy for ICE and its subdivisions, including the application of the detainer regulations and

approval of the use of the standard I-247 detainer form under which authority the Intervenor are detained.

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

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

FACTUAL ALLEGATIONS

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

20. Intervenor were all stopped or arrested by LEAs. Based on information and belief, the LEAs had communications with ICE and then ICE issued standard form I-247 detainers against the Intervenor. *See e.g.* Exhibit 1 (Intervenor Taylor-Jones' ICE I-247

detainer form).¹ On the I-247 immigration detainers issued against the Intervenors, ICE officials justify continued detention of the Intervenors on the sole grounds that an “[i]nvestigation has been initiated to determine whether this person is subject to removal from the United States.”

ICE’s detainers against the Intervenors instruct the LEAs to:

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

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

22. The I-247 detainer form does not require notice of the immigration detainers to the Intervenors. Based on information and belief, ICE never required the LEAs to provide the Intervenors with notice of the detainers lodged against them nor does ICE have a written policy or procedure requiring that the Intervenors and similarly situated individuals be provided notice of immigration detainers lodged against them.

23. ICE does not provide an administrative procedure for challenging the issuance of a detainer. Likewise, the Board of Immigration Appeals (BIA) has ruled that it does not have jurisdiction to consider challenges to detainers because it has found that individuals held on detainers are not in federal immigration custody. *Matter of Sanchez*, 201. & N. Dec. 223, 225 (BIA 1990).

¹ Due to the circumstances of his incarceration, Intervenor Mayorov has not yet had an opportunity to provide counsel with a copy of his I-247 detainer form.

24. The current I-247 detainer form, such as the one issued against Intervenor Mayorov, states that ICE “requests” instead of “requires”² that the LEA detain the individual for an additional 48 hours, excluding weekends and holidays, so ICE can assume direct, physical custody of the individual. However, the regulation cited on the I-247 detainer form mandates that the LEAs detain the individual on ICE’s behalf. The regulation states: “such [criminal justice] agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by [ICE].” 8 C.F.R. § 287.7(d)(emphasis added).

CLASS ACTION ALLEGATIONS

25. Pursuant to Fed. R. Civ. P. 23(b)(1), (b)(2) and/or (c)(4), Intervenor—like the original plaintiffs in this case—seek to represent a class consisting of:

All current and future persons against whom ICE has issued an immigration detainer out of the Chicago AOR where ICE has instructed the law enforcement agency (LEA) to continue to detain the individual after the LEA’s authority has expired and where ICE has indicated that the basis for the further detention is that ICE has initiated an investigation into the persons’ removability, but not including any noncitizen subject to mandatory detention under 8 U.S.C. § 1226(c).

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

² From 1997 to August 2010, the I-247 detainer form stated that it was required by 8 C.F.R. 287.7 that the LEA detain the individual for an additional 48 hours in order for ICE to assume physical custody of the individual. *See* Exhibit 2 (example of current detainer form (original named plaintiff Lopez)).

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

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

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

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

- Whether Defendants have exceeded their constitutional and/or statutory authority (APA 5 U.S.C. § 706(2)) in placing detainees on class members, including whether promulgation of 8 C.F.R. § 236.1(a) and 8 C.F.R. § 287.7 exceed Defendants' statutory authority;
- Whether Defendants' issuance of an immigration detainer instructing further detention based on the initiation of an investigation to determine whether the class member is removable violates the Fourth Amendment;
- Whether Defendants' issuance of an immigration detainer without a prior or concurrent service of a Notice to Appear or other charging document,

an administrative arrest warrant, an order of deportation, or compliance with 8 U.S.C. § 1357(a)(2) violates the Fourth Amendment;

- Whether Defendants' issuance of an immigration detainer without providing or requiring notice to class members violates the Fifth Amendment;
- Whether Defendants' issuance of an immigration detainer without providing class members a means of challenging detainers violates the Fifth Amendment; and
- Whether Defendants' issuance of immigration detainers compelling state and local LEAs to detain sub-class members, pursuant to 8 C.F.R. § 287.7(d) and in furtherance of a federal regulatory program, violates the Tenth Amendment to the U.S. Constitution.

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

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

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

34. Intervenors will fairly and adequately represent the interests of ICE Detainer Class and Sub-Class. Intervenors' legal claims are typical to all members of the proposed ICE Detainer Class and Sub-Class. Intervenors have no interests separate from those of the ICE

Detainer Class and Sub-Class, and seek no relief other than the relief sought on behalf of the class.

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

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

36. Intervenor realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 35.

37. Defendant's failure to restrict its issuance of detainers to its authority under the INA causes Intervenor significant prejudice by depriving them of their liberty.

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

39. Defendant's application of the immigration detainer regulations and issuance of detainers against the Intervenor exceeds the Defendant's constitutional and statutory authority in violation of 5 U.S.C. §§ 706(2)(A)-(D).

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

SECOND CLAIM FOR RELIEF

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

41. Intervenor's reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 40.

42. Defendants' issuance of immigration detainers based solely on the initiation of an investigation into the Intervenor's removability from the United States causes the Intervenor's prejudice by unreasonably taking away, limiting, and otherwise impacting their liberty without probable cause in violation of the Fourth Amendment to the United States Constitution.

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

44. Defendants' detainer regulations, policies, practices, acts and omissions cause unreasonable deprivation of Intervenor's liberty in violation of the Fourth Amendment.

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

THIRD CLAIM FOR RELIEF

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

46. Intervenor's reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 45.

47. Defendants' issuance of immigration detainers based solely on the initiation of an investigation into the Intervenor's removability from the United States causes the Intervenor significant pain and suffering by depriving them of their liberty without due process of law.

48. Defendants' issuance of immigration detainers without requiring that Intervenor receive effective notice of the detainer causes the Intervenor to suffer substantial prejudice without affording them an opportunity to be heard prior to the deprivation.

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

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

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

FOURTH CLAIM FOR RELIEF

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

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

53. Defendants' issuance of detainers compelling state and local LEAs to detain Intervenor in enforcement of a federal regulatory program, as required under federal regulation

8 C.F.R. § 287.7, causes the Intervenor significant pain and suffering by depriving them of their liberty.

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Intervenors respectfully request that the Court:

- a. Issue an order certifying this action to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- b. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;
- c. Alternately, to permit the action to proceed as a representative action in habeas corpus;
- d. Issue a judgment declaring that Defendants' detainer regulations, policies, practices, acts, and omissions described herein as applied to the Intervenors are unlawful and exceed defendants' constitutional and statutory authority in violation of 5 U.S.C. §§ 706(2)(A)-(D);
- e. Issue a judgment declaring that Defendants' detainer regulations, policies, practices, acts, and omissions described herein are unlawful and violate Intervenors' rights under the Fourth Amendment to the United States Constitution;
- f. Issue a judgment declaring that Defendants' detainer regulations, policies, practices, acts, and omissions described herein are unlawful and violate Intervenors' rights under the Fifth Amendment to the United States Constitution;
- g. Issue a judgment declaring that Defendants' detainer regulations, policies, practices, acts, and omissions described herein are unlawful and violate Intervenors' rights under the Tenth Amendment to the United States Constitution;

- h. Permanently enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Intervenors to these statutory violations and unconstitutional interpretation and application of regulations, policies, practices, acts and omissions described herein, and issue injunctive relief sufficient to rectify those statutory and constitutional violations;
- i. Grant Intervenors their reasonable attorney fees and cost pursuant to 28 U.S.C. § 2412, and other applicable law; and
- j. Grant such other relief as this Court deems just and proper.

Dated: November 23, 2011

Respectfully submitted:

By: /s/ Keith R. Pozulp
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