
Nos. 20-55175, 20-55252

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GERARDO GONZALEZ; et al.,
Plaintiffs-Appellees,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT; et al.,
Defendants-Appellants.

On Appeal from the United States District Court, Central District of California
No. 2:13-cv-04416-AB-FFM

**BRIEF OF AMICUS CURIAE CATO INSTITUTE IN SUPPORT OF
PLAINTIFFS-APPELLEES AND URGING AFFIRMANCE**

BROOK DOOLEY
ANDREW S. BRUNS
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391 5400
Facsimile: (415) 397 7188

ILYA SHAPIRO
CATO INSTITUTE
1000 Massachusetts Ave. NW
Washington, DC 20001
Telephone: (202) 842 0200

Attorneys for Amicus Curiae Cato Institute

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STATEMENT OF IDENTITY AND INTEREST

The Cato Institute is a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, limited government, and peace. Cato believes that those values depend on holding government to rigorous standards of evidence and justification for its actions. Cato and its scholars have significant experience studying immigration law and policy in the United States. The Cato Institute believes that it can assist the Court by providing evidence relevant to the detainers issued by U.S. Immigrations and Customs enforcement against American citizens.

All parties consent to the filing of this brief.

RULE 29(A)(4)(E) STATEMENT

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No other person contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

SUMMARY OF ARGUMENT

Immigration and Customs Enforcement (ICE) routinely requests that local law enforcement detain U.S. citizens until ICE can pick them up. These detainers are often issued based on incomplete and inaccurate databases and without meaningful oversight. This process predictably leads to a disturbing number of errors, including the detention of U.S. citizens.

According to ICE's own records, it targeted 3,158 U.S. citizens from October 2002 to September 2019. But this figure dramatically undercounts the number of U.S. citizen targets because, among other things, ICE and immigration courts often fail to accurately update citizenship records after someone proves their citizenship status. Research by the Cato Institute and others across the country shows that ICE targets significantly higher numbers of U.S. citizens. For instance, roughly 1% of all detainers issued in Travis County, Texas were issued for U.S. citizens from October 2005 to August 2017. Extrapolated nationwide, that would translate to nearly 20,000 detainers targeting U.S. citizens.

The quantitative evidence overwhelmingly indicates that the U.S. government is regularly issuing immigration detainers for U.S. citizens. The qualitative evidence—the stories of Americans detained or even deported by ICE—provides a glimpse of the way these errors occur and the human toll they take on the Americans harmed by these mistakes. These individual cases highlight

the devastating consequences—legal, social, and economic—suffered by U.S. citizens targeted by detainers and the difficulties they often face in vindicating their claims of citizenship. Additional safeguards are required to prevent more Americans from suffering a similar fate.

ARGUMENT

I. ICE Has Unlawfully Detained Thousands of U.S. Citizens

A. Lack of oversight causes errors in the execution of ICE detainers by local law enforcement.

Immigration and Customs Enforcement (ICE) relies extensively on federal, state, and local law enforcement agencies in its day-to-day operations. For instance, ICE issues immigration detainers to local law enforcement, requesting that they detain an individual up to 48 hours beyond the time he or she would otherwise be released from custody in order for ICE to assume custody. ICE issued nearly 500,000 such detainers in the last three years alone.¹

Despite the significant impact of these detainers on individual's lives, there is little oversight related to their issuance. Any of the officers listed in 8 CFR § 287.7(b) may issue a detainer, and current ICE policy² requires that detainers be accompanied by administrative warrants, which may be issued by one of the immigration officials identified in 8 CFR § 287.5(e)(2). Detainers are never reviewed by anyone outside of ICE.

¹ That is, fiscal years 2017, 2018, and 2019, the most recent years for which data is available. Syracuse TRAC Immigration, "Latest Data: Immigration and Customs Enforcement Detainers," <https://trac.syr.edu/phptools/immigration/detain/> (last visited June 11, 2020).

² See U.S. Immigration & Customs Enf't, Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration (2017), § 5.2, <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

This lack of external review leads to mistakes with disturbing regularity. Among those errors are thousands of detainers issued for American citizens. Some of these citizens have even been deported.

Errors made by ICE are unlikely to be corrected by the local law enforcement agencies that enforce detainers. Local authorities are ill-equipped to determine whether detainers are appropriately issued due to the complexities of U.S. immigration and citizenship law (e.g., whether naturalized immigrants or those born abroad to American citizens are themselves U.S. citizens and which convictions make a legal permanent resident deportable) and they often simply defer to ICE. This lack of oversight has led to troubling errors by ICE and the local authorities who act on their behalf.

B. ICE's detainers targeting U.S. citizens are well-documented.

Perhaps most egregious among the errors in ICE's detainer requests are those issued mistakenly and unlawfully for American citizens. Numerous studies in recent years have shown that ICE has erroneously placed detainers on thousands of U.S. citizens, who, by definition, are not subject to deportation. Litigation has exposed still more evidence of this trend.

But the figures emerging from these studies and lawsuits are just the tip of the iceberg. ICE does not record or report every instance in which they target U.S. citizens with detainers. As a result, ICE's records only offer a glimpse into the

small subset of cases in which ICE both (a) learns that they have targeted a U.S. citizen, and (b) records that fact in its public-facing data. But even the numbers that are accessible show that this problem is widespread and persistent.

According to ICE’s own nationwide data, the agency issued a detainer *and* assumed custody of at least 3,158 American citizens from fiscal year 2003 through 2019.³ And records indicate that at least 2,549 U.S. citizens landed in removal proceedings that were ultimately terminated in their favor during the same period.⁴ These numbers are even more disturbing in context. ICE data show that the agency assumed custody of Americans at a higher rate than the citizens of the vast majority of the other countries on Earth. Of the 233 citizenship categories that ICE uses to identify those it detains, U.S. citizens were the 27th largest group of individuals held by ICE.⁵

³ Syracuse TRAC Immigration, “Latest Data: Immigration and Customs Enforcement Detainers,” *supra* n.1 (sort column 1 by “ICE Assumed Custody After Detainer Issued”, column 2 by “Citizenship,” and column 3 by “Fiscal Year”).

⁴ David Bier, “Details of 155 Immigration Detainers for U.S. Citizens,” Cato Institute (June 3, 2020), <https://www.cato.org/blog/details-155-immigration-detainers-us-citizens> (citing Jacqueline Stevens, “United States Citizens in Deportation proceedings,” Deportation Research Clinic, Northwestern University, available at <https://deportationresearchclinic.org/USCData.html>).

⁵ ICE data includes countries as well as more general categories where a detainee’s citizenship is not known (e.g., “Arabian peninsula” and “Not known”). “Not known” was one of the 26 groups larger than the category of U.S. citizens who were detained. *See* Syracuse TRAC Immigration, “Latest Data: Immigration and Customs Enforcement Detainers,” , *supra* n.1

And these numbers *drastically* understate the problem. They include only those individuals that ICE assumed custody of after issuing a detainer. They therefore exclude, for instance, citizens who were held on detainers but not picked up by ICE, citizens who were released by local officials or ICE prior to ICE assuming custody, and citizens whose detainers ICE lifted. Yet, we know from other studies that this problem is even *more* prevalent.

For instance, a 2018 report by the Cato Institute focused on Travis County, Texas from fiscal years 2006 through 2017.⁶ During that period, ICE issued detainers against 814 people who claimed U.S. citizenship and presented officers with a Social Security number. Of those 814 cases, ICE ultimately lifted its detainers in 228 instances, strongly suggesting that these individuals were, indeed, U.S. citizens.⁷

⁶ David Bier, “U.S. Citizens Targeted by Immigration and Customs Enforcement in Texas,” Cato Institute (Aug. 29, 2018), <https://www.cato.org/publications/immigration-research-policy-brief/us-citizens-targeted-ice-us-citizens-targeted>.

⁷ As one ICE official acknowledged under oath, there are generally two reasons for a canceled detainer: (1) the person was a U.S. citizen, or (2) the person was a legal permanent resident without a conviction eligible for removal. *Morales v. Chadbourne*, Case No. 12-cv-301 (D.R.I. 2012), “Deposition of John Drane,” April 21, 2015, at 152:19-153:11 <https://object.cato.org/sites/cato.org/files/wp-content/uploads/johndranedepositionmorales.pdf>.

Those 228 cases constitute 0.9% of all detainees in the county during that period.⁸ To put that figure into context, extrapolated to nationwide data, 0.9% would equal roughly 20,000 detainees during the same period. But that is the lowest possible number of U.S. citizens that ICE sought to detain in Travis County during this period. The true figure was certainly higher than 228, which accounts *only* for the people that ICE figured out were citizens *before* taking custody. The upper bound—i.e., all 814 detainees who presented a social security number to Travis County officials—would translate to 3.2% of all detainees, meaning that roughly 70,000 U.S. citizens were detained nationwide during the relevant period.⁹ And even *that* figure does not reflect U.S. citizens who could not send their social security numbers to ICE in time (e.g., because they were not served with their detainees or could not reach ICE by phone).

Travis County is not an outlier. The same pattern has emerged in various jurisdictions across the country and in national studies, as well. One example stems from a federal suit filed in 2012 by a Rhode Island resident.¹⁰ Discovery in that case revealed that, between 2003 and 2014, ICE issued to the Rhode Island Department of Corrections (“RIDOC”) 462 detainees against people who were

⁸ David Bier, “U.S. Citizens Targeted by Immigration and Customs Enforcement in Texas,” Cato Institute (Aug. 29, 2018), *See supra* n.6.

⁹ *Id.* (ICE issued 2,115,333 detainees during this period.)

¹⁰ *Morales v. Chadbourne*, Case No. 12-cv-301 (D.R.I. 2012)

identified in RIDOC's own records as U.S. citizens.¹¹ Detainer errors were so prevalent there that the plaintiff, Ada Morales, had been targeted by ICE detainers *twice* in the span of five years, despite the fact that she is a U.S. citizen.¹²

A more recent study looked at Florida's Miami-Dade County.¹³ From February 2017 to February 2019, ICE sent that county's jail 420 detainer requests for people listed as U.S. citizens, only to later cancel 83 of those requests—again, evidently because the agency determined that its targets were, in fact, U.S. citizens. *Id.* And again, this figure significantly understates the number of individuals ICE later determined to be US citizens, as it does not account for anyone identified as a U.S. citizen *after* ICE took custody.

As unsettling as these numbers are, they *still* fail to capture the full scope of

¹¹ *Id.* Memorandum of Law in Support of Plaintiff's Combined Motion for Summary Judgment Against Defendant Wall and Opposition to Defendant Wall's Summary Judgment Motion, ECF No. 175-1 at 7 (http://riaclu.org/documents/MSJ_Brief_against_Wall_1115.pdf).

¹² News Staff, "Immigration officials want RI lawsuit dismissed", Providence Journal (May 15, 2013), <https://www.providencejournal.com/breaking-news/content/20130315-immigration-officials-want-ri-lawsuit-dismissed.ece>

¹³ Douglas Hanks, "Immigration asked Miami-Dade jails to hold U.S. citizens for deportation, ACLU says", Miami Herald (March 21, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/article228181499.html>; Citizens on Hold: A Look at ICE's Flawed Detainer System in Miami-Dade County, A Report by ACLU Florida (March 20, 2019), https://www.aclufl.org/sites/default/files/field_documents/aclufl_report_-_citizens_on_hold_-_a_look_at_ices_flawed_detainer_system_in_miami-dade_county.pdf.

the problem, as Travis County’s data cover only those individuals who had their detainers canceled or unexecuted. Other research shows that ICE also assumed custody thousands of American citizens during this period only to release them *after* discovering evidence of their citizenship.¹⁴ And worse yet, some citizens have even been deported.

C. Detainers have profound consequences on the lives of their targets and the local authorities that enforce them.

ICE detainers can have significant and long-lasting effects on the lives of the individuals against whom they are executed. These erroneous detainers also have serious consequences for the state and local agencies that carry them out.

U.S. citizens subject to detainers are frequently kept in jail away from their jobs and families for weeks and, in some extreme cases, years. During this time, they face the terror of being told they will soon be deported to places they have never lived. This fear is particularly acute for individuals whose mental health issues limit their ability to defend themselves in deportation proceedings and for people whose citizenship is difficult to prove. Worse still are the experiences of

¹⁴ ICE data obtained by Berkeley Law School researchers show that from 2008 to 2011, ICE issued detainers for and then arrested roughly 3,600 U.S. citizens through the Secure Communities deportation program, which runs local submissions to the FBI past ICE records: Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, “Secure Communities by the Numbers: : An Analysis of Demographics and Due Process,” Warren Institute Research Report, October 2011, https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

those U.S. citizens who have actually been deported by ICE.

U.S. citizens targeted by ICE detainers are not the only victims of ICE's mistakes. Local law enforcement authorities face immense liability to the U.S. citizens they have erroneously detained at the behest of ICE, and they must bear the costs of litigation brought by the wrongfully detained. This risk is not theoretical. Due to their role in enforcing ICE detainers, localities have collectively paid millions of dollars in settlements in recent years.¹⁵

II. Individual Experiences Put a Human Face on the Costs of ICE's Erroneous Detention and Deportation Of U.S. Citizens

The impact of ICE's detainer mistakes is brought into the clearest relief by the stories of individuals who have experienced them. These stories represent a tiny fraction of the human toll caused by ICE's unlawful detainers.

¹⁵ For example, Grand Rapids, Michigan agreed to pay one U.S. citizen \$190,000 for its role in the unlawful detention of Jimlar Ramos-Gomez, discussed below. Sandra E. Garcia, "Grand Rapids Will Pay \$190,000 to Veteran Detained by ICE", New York Times, (Nov. 14, 2019), <https://www.nytimes.com/2019/11/14/us/ice-detaining-veteran-michigan.html>. In another case, Lehigh County Pennsylvania paid \$50,000 to settle a lawsuit filed by a U.S. citizen illegally detained there on an ICE detainer. Peter Hall, "Judges: Jails not required to hold suspected illegal immigrants", The Morning Call, (March 6, 2014), <https://www.mcall.com/news/mc-xpm-2014-03-06-mc-allentown-lehigh-prison-detainer-appeal-20140305-story.html>. And Salt Lake County in Utah paid a man \$75,000 for its role in his detention. Marjorie Cortez, "S.L. County settles 2011 lawsuit over man's unlawful detainment for immigration status check", Deseret News, (Aug. 25, 2014), <https://www.deseret.com/2014/8/25/20547242/s-l-county-settles-2011-lawsuit-over-man-s-unlawful-detainment-for-immigration-status-check>. These cases are not unique.

A. Examples of U.S. Citizens unlawfully detained by ICE

1. Peter Sean Brown was born in Philadelphia, Pennsylvania.¹⁶ Despite his U.S. citizenship, ICE and its predecessor agency have twice arrested him: once in New Jersey in the 1990s¹⁷ and again in Florida in 2018. The latter arrest occurred after Brown was detained on an alleged probation violation and led to Brown being threatened with deportation to Jamaica, a country to which Brown has no connection.

As if the prospect of deportation from the only country in which he'd ever lived was not frightening enough, Brown particularly feared what would happen to him, a gay man, in the country *Time* magazine once called “the most homophobic place on Earth.”¹⁸

Brown's detention in Monroe County was particularly shocking, given that

¹⁶ Isaac Stanley-Becker, “Born in Philadelphia, U.S. citizen says he was held for deportation to Jamaica at ICE's request,” WASHINGTON POST, (Dec. 4, 2018), <https://www.washingtonpost.com/nation/2018/12/04/born-philadelphia-us-citizen-says-he-was-held-deportation-jamaica-ices-request/>.

¹⁷ Gwen Filosa, “This Keys man was nearly deported to Jamaica. The Problem? He's from Philly,” MIAMI HERALD, (Dec. 3, 2018), <https://www.miamiherald.com/news/local/community/florida-keys/article222557500.html>.

¹⁸ Angeline Jackson, “Is 'The Most Homophobic Place on Earth' Turning Around?” TIME, (June 1, 2015), <https://time.com/3900934/most-homophobic-place-on-earth-turning-around/>

the county's own files indicated that Brown was born in Philadelphia. Brown also filed a series of written complaints and repeatedly called phone numbers listed on the ICE detainer, to no avail. His pleas to local officials also fell on deaf ears. They insisted they had no authority to determine the validity of the ICE hold. It appears that ICE was looking for another man named Peter *Davis* Brown.¹⁹ Brown has no connection to Jamaica.

Three weeks after initially being detained by ICE, he was transferred to another detention center in Miami. There, Brown again insisted that he is a U.S. citizen. ICE officers finally agreed to look at Brown's birth certificate, which a friend provided via email. He was released shortly thereafter.

2. Jilmar Ramos-Gomez. Born in Grand Rapids, Michigan, Jilmar Ramos-Gomez is a veteran of the U.S. Marine Corps.²⁰ Ramos-Gomez suffers from post-traumatic stress disorder as a result of his service in Afghanistan, and his condition

¹⁹ ICE's own records demonstrated that this was not the first detainer the federal government had wrongly issued for Mr. Brown. Those records stated that, in 2005, immigration agents mistakenly concluded that Mr. Brown was another person. Pl.'s Mtn for Summ. J., *Brown v. Ramsay*, No. 18-cv-10279 (S.D. Fla. Feb. 18, 2020), ECF No. 126, 2020 WL 1027435.

²⁰Eli Rosenberg, "A Latino Marine veteran was detained for deportation. Then ICE realized he was a citizen," WASHINGTON POST, (Jan. 16, 2019), <https://www.washingtonpost.com/national-security/2019/01/17/latino-marine-veteran-was-detained-deportation-then-ice-realized-he-was-citizen/>.

leads to episodes in which he disappears for periods of time only to have no recollection of his whereabouts when he is found.²¹ As a result of one such episode, Ramos-Gomez pleaded guilty to misdemeanor trespassing. A Grand Rapids judge ordered him released pending sentencing, but when his family came to bring him home from jail, they discovered that, pursuant to an ICE detainer request, Ramos-Gomez had been transferred to an immigration detention facility roughly 90 miles away. He remained there for three days before his family's attorney was able to convince ICE to release him. The ordeal would likely have lasted longer, had Ramos-Gomez's attorney not had proof of citizenship readily available due to other family members' immigration proceedings. ICE never explained why it issued a detainer for Ramos-Gomez, but Grand Rapids paid him \$190,000 to settle a lawsuit related to his detention.²²

²¹ Faith Karimi & Rob Frehse, "A Michigan city will pay \$190K to an American war veteran who was detained by ICE," CNN, (Nov. 14, 2019), <https://www.cnn.com/2019/11/14/us/michigan-city-to-pay-detained-american/index.html>

²² Alex Horton, "Police knew a war veteran was a U.S. citizen. ICE detained him anyway," WASHINGTON POST, (Nov. 14, 2019), <https://www.washingtonpost.com/national-security/2019/11/14/police-knew-war-veteran-was-us-citizen-ice-detained-him-anyway/>

3. Davino Watson. New Yorker Davino Watson was born in Jamaica but became a citizen when his father was naturalized in 2002.²³ Six years later, at the completion of a four-month state criminal rehabilitation program, Watson remained in custody on an ICE detainer. Watson stayed detained for another 1,273 days or nearly 3.5 years until ICE finally realized its mistake.

Only 23 at the time he entered ICE custody, Watson, did not have a high school diploma. Nor did he have a lawyer. But he did everything he could to convince ICE officials that he was a U.S. citizen. Among other things, he hand-wrote a letter to immigration officers, attaching his father's naturalization certificate.²⁴ But his pleas fell on deaf ears. Watson also gave ICE officials his father's phone number to check up on his story, but there is no evidence they ever called. Instead, they tried to look up Watson's father in an immigration database to verify his story. But they confused Watson's father with a man with a similar name who was *not* a citizen and continued to detain him.

²³ Paige St. John & Joel Rubin, "ICE held an American man in custody for 1,273 days. He's not the only one who had to prove his citizenship," LA TIMES, (April 27, 2018), <https://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htmlstory.html>.

²⁴ *Watson v. United States*, 865 F.3d 123 (2d Cir. 2017); see also Camila Domonoske, "U.S. Citizen Who Was Held By ICE For 3 Years Denied Compensation By Appeals Court, NPR, (Aug. 1, 2017), <https://www.npr.org/sections/thetwo-way/2017/08/01/540903038/u-s-citizen-held-by-immigration-for-3-years-denied-compensation-by-appeals-court>

When Watson finally left custody in 2011, ICE released him in Alabama, roughly 1,000 miles from home without money or explanation. Watson filed suit shortly after returning home, but the case was dismissed. It turns out that Watson was detained for so long that the two-year statute of limitations on his false imprisonment claims had expired while he was still in ICE custody and without an attorney.²⁵

4. Ada Morales. Ada Morales became a naturalized citizen of the U.S. in 1995. Nonetheless, she was *twice* held on ICE detainers in her home state of Rhode Island, once in 2004 and again in 2009.²⁶ In 2009, Morales was arrested on state charges and ordered released by a Rhode Island judge. But before she could go home, ICE lodged a detainer and local officials obliged. Morales was released more than 24 hours later and only after she was transferred to federal custody and interviewed by ICE. Her unlawful detention in 2004 involved nearly identical circumstances.

²⁵ *Id.*

²⁶ News Staff, “Immigration officials want RI lawsuit dismissed, Providence Journal, (Mar. 15, 2013), *supra* n.12.

B. Examples of U.S. citizens deported by ICE

ICE has deported multiple American citizens following its execution of a detainer.²⁷ Their stories are shocking but not surprising, given the frequency with which ICE illegally detains Americans. Here are three of those instances:

1. Andres Robles Gonzalez. Andres Robles Gonzalez, a U.S. citizen living in Louisiana, faced a similar years-long nightmare after ICE wrongfully ensnared him in deportation proceedings in 2008.²⁸ Robles repeatedly told ICE officials that he was a U.S. citizen. They refused to believe him or check his story.

Born in Mexico, Robles and his family came to the U.S. when he was six. Seven years later, Robles became a citizen when his father was naturalized. Nonetheless, Robles was deported to Mexico in December 2008. He remained there for nearly three years, as ICE refused to recognize his citizenship. After Robles was finally permitted to return home, ICE disturbingly issued *another* detainer against him in 2011.²⁹ Robles ultimately sued the federal government.

²⁷ David Bier, “Details of 155 Immigration Detainers for U.S. Citizens,” Cato Institute (June 3, 2020), *supra* n.4.

²⁸ Mary Sanchez, “How broken is our immigration system? We deport citizens,” Chicago Tribune (June 4, 2015), <https://www.chicagotribune.com/columns/sns-201506042000--tms--msanchezctnms-a20150604-20150604-column.html>

²⁹ Plaintiff’s Response in Opposition to Motion for Summary Judgment, *Gonzalez v United States of America*, No. 14-cv-696, (E.D. La. April 14, 2015), ECF No. 45 at 7.

The case settled for \$350,000.³⁰

2. Mark Lyttle. North Carolina-native Mark Lyttle was incarcerated in state prison in 2008 when he first interacted with immigration officials.³¹ Prison records inaccurately listed his country of birth as Mexico, which triggered a federal immigration check. ICE issued a detainer. Lyttle struggles with bipolar disorder and severe cognitive limitations.³² When faced with deportation proceedings, Lyttle attempted to prove his U.S. citizenship. ICE apparently made no effort to search for Lyttle's birth certificate, nor did it attempt to reach any of the family members who Lyttle identified to corroborate his story. None of these inconsistencies were raised before the immigration judge who ordered Lyttle deported in December 2008.

Days later, ICE flew Lyttle to Mexico and left him there. Lyttle had no money, spoke no Spanish, and had no connection to the country. Nonetheless, he

³⁰ Sanchez, "How broken is our immigration system? We deport citizens." *See supra* n.28.

³¹ Kristin Collins, "N.C. native wrongly deported to Mexico," CHARLOTTE OBSERVER, (Aug. 30, 2019), <https://www.charlotteobserver.com/news/local/article9028529.html>; *see also* Ted Robbins, "In The Rush To Deport, Expelling U.S. Citizens," NPR, (Oct. 24, 2011), <https://www.npr.org/2011/10/24/141500145/in-the-rush-to-deport-expelling-u-s-citizens>.

³² Complaint, *Lyttle v. Holder*, No. 10-cv-3302-CAP, (N.D. Georgia, October 13, 2010), ECF No. 1 ¶ 37.

made his way to the U.S. border ten days after arriving in Mexico. He told officials there that he was born in North Carolina, but nonetheless he was deported back to Mexico again within hours.

With no documents to prove residency anywhere, Lyttle was later shipped by Mexican authorities to Honduras. He was imprisoned there before being sent to Guatemala. In late-April 2009, Lyttle found the U.S. Embassy in Guatemala City. Officials there tracked down Lyttle's brother at the military base where he was serving. Within a day, the embassy was able to prove Lyttle's citizenship and Lyttle finally returned to the country where he was born and had always lived.

3. Pedro Guzman. ICE incorrectly identified Pedro Guzman—who was born in Los Angeles--as being present in the United States illegally.³³ As a result, he was deported to Mexico where he was stuck for three months. Like Mark Lyttle, Guzman struggles with cognitive limitations: “he is unable to read at more than a second grade level and is unable to commit to memory basic information

³³ Randal C. Archibold, “Deported in Error, Missing and Months Later Home,” N.Y. TIMES, (Aug. 8, 2007), <https://www.nytimes.com/2007/08/08/us/08border.html>; *see also* Dana Ford, “U.S. citizen back home after botched deportation,” REUTERS, (Aug. 7, 2007), <https://www.reuters.com/article/us-usa-immigration-deportation/u-s-citizen-back-home-after-botched-deportation-idUSN0727768520070808>.

like his home telephone number.”³⁴ During that time, he walked roughly 100 miles to reach a border crossing in Calexico, California. From there, Guzman was transported to Los Angeles where a judge ordered his release. Shortly after arriving in Mexico, Guzman borrowed a phone and called his sister to tell her that he’d been deported, but the call was dropped mid-conversation. His family did not hear from him again until his release. Like many of the Americans wrongfully detained and deported by ICE, Guzman is mentally disabled. At a press conference, Guzman’s mother indicated that the experience had understandably left a mark on her son: “They took him whole, but only returned half of him to me.”³⁵

III. These Errors Are the Direct Result of ICE’s Failure to Follow Its Own Protocols—and the Law—without External Oversight.

ICE’s unlawful detention and deportation of American citizens are as preventable as they are frustratingly common. As the Plaintiffs-Appellees’ brief has exhaustively explained,³⁶ ICE detainees are never subjected to a neutral

³⁴ Complaint for Violations of the First, Fifth and Fourteenth Amendments to the United States Constitution, *Guzman et al. v. Chertoff, et al.*, No. 08-1327-CAS (C.D. Cal. Feb. 27, 2008), ECF No. 1, ¶ 5, <https://www.courtlistener.com/recap/gov.uscourts.cacd.409690.1.0.pdf>.

³⁵ Orange County Register, “Wrongfully deported man ate from trash cans, bathed in rivers”, Orange County Register, (Aug. 8, 2007), <https://www.ocregister.com/2007/08/08/wrongfully-deported-man-ate-from-trash-cans-bathed-in-rivers/>

³⁶ *See, e.g.*, Cross-Appellant/Appellees’ Principal and Responsive Brief ECF No. 46-1 at 9-11.

probable cause determination. In practice, ICE often issues its detainers based on determinations made from immigration database searches alone.

As the stories above make clear, these databases are shockingly incomplete.³⁷ For instance, Ada Morales was targeted with multiple detainers because the databases lacked historical naturalization information that proved her citizenship. Rennison Castillo, a veteran of the U.S. Army, was nearly deported after ICE issued a detainer and insisted in immigration court that he had never naturalized—even though he had—because ICE agents had “checked the database” and failed to locate his naturalization record.³⁸ In Ada Morales’s case, three federal agencies—including the U.S. Department of State, U.S. Citizenship and Immigration Services, and ICE—had all previously concluded that she was a U.S. citizen, but the databases did not show that.³⁹ Even ICE’s own prior finding that

³⁷ Errors in these databases are at the heart of several other cases in which U.S. citizens have been targeted by detainers. *See, e.g., Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276, 1282 (S.D. Fla. 2018) (detainer issued against U.S. citizen based on biometric confirmation of identity and federal database checks); ; *Davila v. United States*, 247 F. Supp. 3d 650 (W.D. Pa. 2017) (ICE records from Immigrant Alien Query (IAQ) identify derivative U.S. citizen as “out of status”); *Mayorov v. United States*, 84 F. Supp. 3d 678, 685-686 (N.D. Ill. 2015) (detainer issued against US citizen identified as a lawful permanent resident, child of an asylee in Central Index System); *Makowski v. United States*, 27 F. Supp. 3d 901 (N.D. Ill. 2014).

³⁸ *Castillo v. Skwarski*, No. C08-5683BHS, 2009 WL 4844801, at *3 (W.D. Wash. Dec. 10, 2009).

³⁹ Morales had a U.S. passport, a prior ICE detainer against her had been canceled,

she possessed citizenship after it issued its first erroneous detainer did not prevent ICE from issuing a second erroneous detainer for her, resulting her unlawful detention.

What little oversight that exists is ineffectual and frequently flouted. ICE's own policies require all detainees to be accompanied by an administrative warrant, which is often signed by a supervisory enforcement officer.⁴⁰ But in practice, even this requirement is frequently ignored. ICE documents obtained via a Freedom of Information Act request showed that ICE officers forged supervisor signatures or signed on behalf of their supervisors.⁴¹ In other instances, supervisors gave officers pre-signed forms.⁴² These reports were echoed by the president of the National ICE Council (the union that represents ICE officers), who suggested that

and she had naturalized to become a U.S. citizen. *See* Plaintiff's Statement of Undisputed Facts, *Morales v. Chadbourne*, No. 12-cv-301-M-DLM (D.R.I. Nov. 13, 2015), ECF No. 177, http://riaclu.org/images/uploads/Statement_of_Undisputed_Facts.pdf.

⁴⁰ U.S. Immigration & Customs Enf't, Policy No. 10074.2: Issuance of Immigration Detainers by ICE Immigration (2017), § 2.4, *supra* n.2.

⁴¹ Bob Ortega, "ICE supervisors sometimes skip required review of detention warrants, emails show," CNN, (March 13, 2019), <https://www.cnn.com/2019/03/13/us/ice-supervisors-dont-always-review-deportation-warrants-invs/index.html>

⁴² At least one ICE prosecutor has also been caught forging signatures to illegally detain individuals, as well. THE SEATTLE TIMES, "Former Seattle immigration prosecutor gets 30 days for forging document," (April 20, 2016), <https://www.seattletimes.com/seattle-news/crime/former-seattle-immigration-lawyer-gets-30-days-for-forging-document/>.

officers had violated this ICE policy “hundreds if not thousands” of times “across the country.”⁴³

The risk associated with these practices are highlighted by the harrowing stories of the individuals discussed above. By basing detainers on simple database searches, ICE invites cases of mistaken identity, like some of the ones summarized above. This leads to detainers issued for U.S. citizens with the same or similar names as the people ICE is actually looking for. This risk is particularly acute when ICE issues detainers for people with common names, such as Peter Brown (discussed above) or Luis Hernandez (erroneously detained in New York in 2013)⁴⁴ without investigating whether they have the right person among the thousands who share the moniker.

By failing to adequately vet its detainers before their issuance, ICE often puts the onus on detainees to prove their citizenship. Paradoxically, people targeted with detainers cannot prove their citizenship until *after* they are held on the detainer, as Peter Brown’s story above illustrates. As the individual stories

⁴³ Ortega, *supra* n.41. (“According to National ICE Council President Chris Crane, who is also an ICE deportation officer, some supervisors handled that by telling officers to sign warrants themselves or by pre-signing blank warrants, which undermined the intent of requiring higher-level scrutiny.”)

⁴⁴ ICE detained Luis Hernandez, it was looking for “Luis Enrique Hernandez-Martinez.” *Hernandez v. United States*, 939 F.3d 191, 202 (2d Cir. 2019).

discussed above illustrate, that is a much more difficult challenge than it may first appear. In many instances, individuals' proof of citizenship is difficult to produce. For example, Mark Lyttle was adopted at the age of seven, which meant his birth records were kept by a different North Carolina agency than most such records.⁴⁵ Morales, Watson, and Robles all became citizens as minors when their parents were naturalized years or decades prior to their arrest. Thus, their proof of citizenship relied in part on records they did not necessarily possess. Individuals like them who are derivative or acquired citizens are under no obligation to obtain proof of citizenship and, therefore, many do not have it.

Another common challenge for U.S. citizens detained by ICE is mental disability. This is a common thread in the tragic stories of Ramos-Gomez, Lyttle, and Guzman, detailed above. All three suffer from mental health challenges that made it even more difficult for them to convince authorities of their U.S. citizenship.⁴⁶

Those detainees who are fortunate enough to be able to provide proof of

⁴⁵ William Finnegan, "The Deportation Machine," *NEW YORKER*, (April 22, 2013), <https://www.newyorker.com/magazine/2013/04/29/the-deportation-machine>.

⁴⁶ Cato has recently published the details of 155 U.S. citizens who have been targeted by ICE detainers. Among them are the stories of a dozen U.S. citizens with mental disabilities who have been targeted by ICE. *See* Bier, *supra* n.4, <https://www.cato.org/blog/details-155-immigration-detainers-us-citizens>.

citizenship are sometimes ignored by ICE officials and/or the local authorities who enforce ICE's detainers.⁴⁷ In many instances, local officials are unable to verify ICE's justifications for issuing their detainers.⁴⁸ In other circumstances, local authorities cannot tell whether naturalized immigrants or those born abroad to American citizens are themselves U.S. citizens due to the complexity of citizenship laws.⁴⁹

CONCLUSION

Even the most generous reading of ICE's data suggests that the agency has illegally detained thousands of Americans in the last decade, many of whom have been deported. These detainer errors are due in large part to the lack of oversight over their issuance and ICE's dependence on inaccurate and incomplete databases to identify individuals' citizenship. Significant logistical and structural challenges make it difficult for detainees to prove their citizenship to ICE and local law enforcement authorities enforcing ICE's orders. The result is a system that detains

⁴⁷ For instance, even though Davino Watson provided ICE officials with his father's naturalization certificate, he was detained for more than three years. St. John & Rubin, *supra* n.23.

⁴⁸ See, e.g., Kent County, Michigan Sheriff's Office, Statement re: Inmate Detention, Jan. 16, 2019, <https://www.accesskent.com/News/2019/01162019.pdf>.

⁴⁹ U.S. Citizenship and Immigration Services, "Citizenship through Parents" (Washington: Department of Homeland Security, November 10, 2015), <https://www.uscis.gov/us-citizenship/citizenship-through-parents>.

and deports U.S. citizens at alarming rates. Additional safeguards are required to prevent more Americans from suffering a similar fate. The Court should uphold the injunction issued by the district court.

Respectfully submitted,

/s/ Brook Dooley

BROOK DOOLEY
ANDREW S. BRUNS
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391 5400
Facsimile: (415) 397 7188
bdooley@keker.com
abruns@keker.com

ILYA SHAPIRO
CATO INSTITUTE
1000 Massachusetts Ave. NW
Washington, DC 20001
Telephone: (202) 842 0200
ishapiro@cato.org

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Attorneys for Amicus Curiae Cato Institute

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,449 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word, Times New Roman 14-point font.

/s/ Brook Dooley

Brook Dooley

CERTIFICATE OF SERVICE

I certify that on June 12, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Brook Dooley

Brook Dooley