

U.S. Department of Homeland Security  
500 12<sup>th</sup> St., SW  
Washington, D.C. 20536



**U.S. Immigration  
and Customs  
Enforcement**

September 23, 2022

American Oversight  
1030 15th Street, NW  
Suite B255  
Washington, DC 20005

**RE: ICE FOIA Case Number 2020-ICFO-30047**

Dear Ms. Rasheed:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated February 24, 2020. You have requested all final directives, guidance, or decision memoranda implementing policies or actions in response to any state or local government failure to sufficiently cooperate with federal immigration enforcement agencies (including but not limited to ICE or CBP) on immigration enforcement matters. Directives or decision memoranda implementing policies or actions in response to the policies of so-called “sanctuary cities” or “uncooperative states,” for example, as well as any policies with “friendly states” to collect otherwise inaccessible information, are responsive to this request. Please provide all responsive records from January 1, 2019, through the date the search is conducted.

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Enforcement and Removal Operations (ERO) for records responsive to your request produced 16 pages that are responsive to your request. After review of those documents, I have determined that portions of 16 pages will be withheld pursuant to Exemptions of the FOIA as described below.

**FOIA Exemption 5** protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid

opinions and inhibit the free and frank exchange of information among agency personnel. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

ICE has applied FOIA Exemption 7(E) to protect from disclosure law enforcements sensitive information contained within the documents.

**FOIA Exemption 7(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at [GILDFOIAAppeals@ice.dhs.gov](mailto:GILDFOIAAppeals@ice.dhs.gov) or via regular mail to:

U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2020-ICFO-30047**. You may send an e-mail to [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov), call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Marcus Francis, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information

Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthias Headland". The signature is fluid and cursive, with the first name "Matthias" and last name "Headland" clearly distinguishable.

Matthias Headland  
Supervisory Paralegal Specialist

Enclosure(s): 16 pages

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### **Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers**

**Issue Date:** March 24, 2017

**Effective Date:** April 2, 2017

**Superseded:** Interim Policy No. 10074.1: *Detainers* (Aug. 2, 2010)

**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy and procedures regarding the issuance of civil immigration detainers to federal, state, local, and tribal law enforcement agencies (LEAs). ICE issues detainers to federal, state, local, and tribal LEAs to provide notice of its intent to assume custody of a removable alien detained in federal, state, local, or tribal custody. The Department of Homeland Security's (Department or DHS) detainer authority, codified in section 287.7 of title 8 of the Code of Federal Regulations (C.F.R.), arises from the Secretary of Homeland Security's power under section 103(a)(3) of the Immigration and Nationality Act (INA) to provide regulations "necessary to carry out his authority," and from ICE's general authority to arrest and detain aliens subject to removal or removal proceedings, pursuant to sections 236, 241, and 287 of the INA. The use of immigration detainers, however, long pre-dates any reference to detainers in the statute or regulations.<sup>1</sup> In fact, the former Immigration and Naturalization Service first used the Form I-247 as early as 1952.

Detainers enable ICE to judiciously deploy its investigative, detention, and removal resources consistent with the immigration enforcement priorities of the Department and the executive branch of the U.S. Government. Detainers also allow ICE immigration officers to avoid the risks to public safety and officer safety associated with arrests outside the custodial environment.

2. **Policy.** It is ICE policy to ensure that ICE immigration officers exercise detainer authority in a manner consistent with all legal requirements and in a manner that ensures ICE's LEA partners may honor detainers.
- 2.1. The consolidated detainer form, Form I-247A (Immigration Detainer – Notice of Action), attached to this Directive shall be used as of the effective date of this Directive. Form I-247D (Immigration Detainer – Request for Voluntary Action), Form I-247N (Request

---

<sup>1</sup> See, e.g., *Chung Young Chew v. Boyd*, 309 F.2d 857 (9th Cir. 1962); *Rinaldi v. United States*, 484 F. Supp. 916 (S.D.N.Y. 1977); *Slavik v. Miller*, 89 F. Supp. 575 (W.D. Pa. 1950), *aff'd*, 184 F.2d 575 (3d Cir. 1950), *cert. denied*, 340 U.S. 955 (1951); *Matter of Lehder*, 15 I&N Dec. 159 (BIA 1975).

for Voluntary Notification of Release of Suspected Priority Alien), and Form I-247X (Request for Voluntary Transfer), may no longer be issued. Detainers issued on prior versions of the detainer form remain active and need not be replaced with a Form I-247A. See Attachment 8.4 for guidance on how to complete the Form I-247A.

- 2.2. Only ICE immigration officers, including designated officers of a state or political subdivision of a state authorized to perform certain immigration officer functions under section 287(g) of the INA, may issue immigration detainers.
- 2.3. Regardless of whether a federal, state, local, or tribal LEA regularly cooperates with DHS immigration detainers, ICE immigration officers shall issue a detainer to the LEA for an alien in the LEA's custody after the alien is arrested for a criminal offense and the officer has probable cause to believe that the subject is an alien who is removable from the United States.
- 2.4. ICE immigration officers must establish probable cause to believe that the subject is an alien who is removable from the United States before issuing a detainer with a federal, state, local, or tribal LEA. Further, as a matter of policy, all detainers issued by ICE must be accompanied by either: (1) a properly completed Form I-200 (Warrant for Arrest of Alien) signed by an authorized ICE immigration officer; or (2) a properly completed Form I-205 (Warrant of Removal/Deportation) signed by an authorized ICE immigration officer.<sup>2</sup>
- 2.5. Except for circumstances in which the alien is detained in ICE custody at the time the detainer is issued, an ICE immigration officer shall not issue an immigration detainer to an LEA unless the LEA has arrested the alien for a criminal offense in an exercise of the LEA's independent arrest authority.<sup>3</sup> ICE Immigration officers shall not issue an immigration detainer for an alien who has been temporarily detained or stopped, but not arrested, by another LEA. This does not preclude the LEA from temporarily detaining an alien while an ICE immigration officer responds to the scene.
- 2.6. An ICE immigration officer may not issue a detainer based upon the initiation of an investigation to determine whether the subject is a removable alien. An ICE immigration officer may not establish probable cause of alienage and removability, for purposes of detainer issuance, solely based on evidence of foreign birth and the absence of records in available databases ("foreign-born-no match").

---

<sup>2</sup> Although ICE maintains that this is not legally required, ICE is implementing this warrant measure as a nationwide policy in light of one district court's ruling that detention pursuant to an ICE detainer constitutes a warrantless arrest and that section 287(a)(2) of the INA only authorizes a warrantless arrest if there is reason to believe the alien will escape before an arrest warrant can be secured. See *Moreno v. Napolitano*, --- F. Supp. 3d ---, 2016 WL 5720465, at \*8 (N.D. Ill. Sept. 30, 2016).

<sup>3</sup> Box 2 on Form I-247A (Immigration Detainer – Notice of Action) is used by ICE to ensure that an alien detained in ICE's custody is returned to ICE custody after being transferred to another LEA for a proceeding or investigation. Such detainers may be issued prior to the other LEA assuming custody of the subject of the detainer.

- 2.7. ICE immigration officers must promptly assume custody of an alien who is the subject of an immigration detainer. Further, ICE immigration officers should assume custody of an alien subject as soon as practicable, and as close as possible to the time at which the alien would otherwise have been released by the relevant LEA, but in no circumstances more than 48 hours after such time. If it becomes apparent that ICE cannot assume custody of the alien within 48 hours of when he or she would otherwise be released, the ICE immigration officer should immediately cancel the detainer.
- 2.8. In some cases, after issuing an immigration detainer for an individual in the custody of a federal, state, local, or tribal LEA, ICE may determine that it will not assume custody of the subject. In these cases, the ICE immigration officer must cancel the immigration detainer as soon as such determination is made.
- 2.9. As a matter of law, ICE cannot assert its civil immigration enforcement authority to arrest and/or detain a U.S. citizen.<sup>4</sup>
3. **Definitions.** The following definitions apply only for purposes of this directive.
- 3.1. **Detainer.** A notice that ICE issues to a federal, state, local, or tribal LEA to inform the LEA that ICE intends to assume custody of a removable alien in the LEA's custody.
- 3.2. **ICE Immigration Officer.** The term "ICE immigration officer" means Enforcement and Removal Operations (ERO) deportation officers and Homeland Security Investigations (HSI) special agents, including supervisory and managerial personnel who are responsible for supervising authorized immigration officers, as well as designated officers of a state or political subdivision of a state authorized to perform certain immigration officer functions under section 287(g) of the INA. *See* 8 C.F.R. § 287.7(b).
- 3.3. **Probable Cause.** The facts and circumstances within the officer's knowledge and of which they have reasonably trustworthy information that are sufficient in themselves to warrant a person of reasonable caution in the belief that an individual is a removable alien.
4. **Responsibilities.**
- 4.1. **All ICE employees** are responsible for complying with the policy and procedures set forth in this Directive.
- 4.2. **ICE immigration officers**, including designated immigration officers of a state or political subdivision of a state authorized to perform certain immigration officer functions under section 287(g) of the INA, are responsible for issuing and executing

---

<sup>4</sup> ICE immigration officers must comply with requirements of ICE Policy No. 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015), when issuing detainers. In particular, footnote 1 of that policy specifically applies to prior versions of the detainer "and/or any successor form serving the same or substantially similar" purpose.

immigration detainees in accordance with the policy and procedures set forth in this Directive.

- 4.3. ICE ERO Assistant Directors, Deputy Assistant Directors, Field Office Directors (FODs), and the Directors of the National Criminal Analysis and Targeting Center, the Pacific Enforcement Response Center, and the Law Enforcement Support Center, and their designees, as well as the ICE HSI Assistant Director for Domestic Operations and ICE HSI Special Agents in Charge (SACs) and their designees, are responsible for disseminating and ensuring compliance with this Directive.**

**5. Procedures.**

**5.1. Establishing Probable Cause.**

As a matter of policy, a detainer must be supported by probable cause based upon one of the following four categories of information:

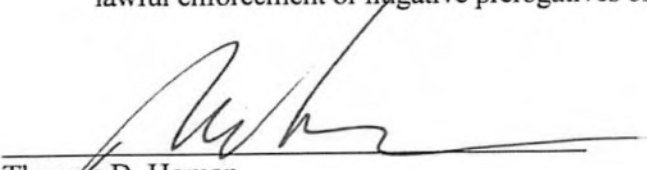
- 1) A final order of removal against the alien;
- 2) The pendency of ongoing removal proceedings against the alien, including cases in which DHS has issued a charging document and served the charging document on the alien;
- 3) Biometric confirmation of the alien's identity and a records match in federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks lawful immigration status or, notwithstanding such status, is removable under U.S. immigration law; and/or
- 4) Statements made voluntarily by the alien to an ICE immigration officer and/or other reliable evidence that indicate the alien either lacks lawful immigration status or, notwithstanding such status, is removable under U.S. immigration law.

An ICE immigration officer may not issue a detainer prior to establishing probable cause to believe that the subject is a removable alien. Further, an ICE immigration officer may not issue a detainer based upon the initiation of an investigation to determine whether the subject is a removable alien. The pendency of ongoing removal proceedings refers to cases in which DHS has issued a charging document and served the charging document on the alien. As a matter of policy, an ICE immigration officer may not establish probable cause of alienage and removability, for purposes of detainer issuance, solely based on evidence of foreign birth and the absence of records in available databases ("foreign-born-no match").

- 5.2. Issuing an Immigration Detainer and Administrative Warrant.** All immigration detainees (Form I-247A Immigration Detainer – Notice of Action) must be accompanied by either Form I-200 (Warrant for Arrest of Alien) or Form I-205 (Warrant of Removal/Deportation).

- 1) If the subject of the detainer is a removable alien who is not yet subject to a final order of removal, the ICE immigration officer who issues the detainer shall attach a Form I-200 (Warrant for Arrest of Alien) to the detainer.
    - a. The Form I-200 shall be issued by any of the supervisory immigration officials listed at 8 C.F.R. § 287.5(e)(2).
  - 2) If the subject of the detainer is also the subject of a final order of removal, including where the alien is subject to reinstatement of removal under section 241(a)(5) of the INA, the ICE immigration officer who issues the detainer shall attach a Form I-205 (Warrant of Removal/Deportation) to the immigration detainer.
    - a. The Form I-205 shall be issued by any of the supervisory immigration officials listed in 8 C.F.R. § 241.2(a)(1).
- 5.3. Declined Immigration Detainers.** When ICE becomes aware that an LEA failed to honor an immigration detainer issued by ICE, the ICE immigration officer shall document the declined detainer in the ENFORCE Alien Removal Module (EARM) through the use of the detainer lift code of “A – Declined by LEA.”
- 5.4. Cancelling an Immigration Detainer.** If after issuing an immigration detainer ICE determines that it will not assume custody of the subject, the ICE immigration officer must cancel the immigration detainer.
- 1) Form I-247A shall be issued to the relevant LEA requesting cancellation of the detainer; and
  - 2) All cancelled detainers shall be documented in EARM through the use of the detainer lift code of “L - Lifted”, or using another case-specific lift code requiring the cancellation of the detainer (e.g. “D – Died”, “N – Alien not subject to deportation”).
- 6. Recordkeeping.** ICE maintains records generated pursuant to this policy, specifically Forms I-247A (Immigration Detainer-Notice of Action), Forms I-200 (Warrant for Arrest of Alien) and Forms I-205 (Warrant of Removal/Deportation) in the Alien File.
- 7. Authorities/References.**
- 7.1. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, as amended (codified at 8 U.S.C. §§ 1101 *et seq.*).
  - 7.2. 8 C.F.R. §§ 236.1, 241.2, 287.3, 287.5, 287.7.
  - 7.3. *Moreno v. Napolitano*, --- F. Supp. 3d ---, 2016 WL 5720465 (N.D. Ill. Sept. 30, 2016).
  - 7.4. Executive Order 13768, *Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017).

- 7.5. Memorandum from DHS Secretary John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017).
- 7.6. ICE Policy No. 16001.2, *Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE* (Nov. 10, 2015).
- 7.7. ICE Policy No. 13001.1, *State Personnel Designated to Act as Immigration Officers for Immigration Enforcement Purposes* (Dec. 4, 2008).
- 8. **Attachments.**
  - 8.1. Form I-247A (Immigration Detainer – Notice of Action).
  - 8.2. Form I-200 (Warrant for Arrest of Alien).
  - 8.3. Form I-205 (Warrant of Removal/Deportation).
  - 8.4. ICE Guidance For Completing the Form I-247A.
- 9. **No Private Right Statement.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any rights, substantive or procedural, enforceable at law or equity by any party in any criminal, civil, or administrative matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



Thomas D. Homan  
Acting Director  
U.S. Immigration and Customs Enforcement

**From:** Office of the Executive Associate Director for ERO  
**Sent:** Thu, 12 Mar 2020 01:01:06 +0000  
**To:** Undisclosed recipients:  
**Subject:** Issuance of Detainers in Compliance with the Permanent Injunction Issued in Gonzalez v. ICE, No. 13-4416 (C.D. Cal. Feb. 5, 2020) [FO]  
**Attachments:** 574 Gonzalez v ICE Judgment 020620.pdf, DRAFT INTERIM FORM I-247G Request for Notification (CLEAN 10.3.2019).pdf



## Enforcement and Removal Operations Office of the Executive Associate Director

To: All ERO Personnel

This notice modifies existing U.S. Immigration and Customs Enforcement (ICE) detainer practices in order to comply with the permanent injunction issued by the U.S. District Court for the Central District of California in *Gonzalez v. ICE*, No. 13-4416 (C.D. Cal. Feb. 5, 2020). The permanent injunction affects immigration detainers issued by an ICE officer or agent located in the Central District of California, including those generated by Enforcement and Removal Operations (ERO) Los Angeles, the Pacific Enforcement Response Center (PERC), and Homeland Security Investigations (HSI) Los Angeles. To the extent this guidance conflicts with ICE Policy No. 10074.2, *Issuance of Immigration Detainers by ICE Immigration Officers* (Mar. 24, 2017), this guidance supersedes that policy.

The class to which the permanent injunction applies, referred to as the "Probable Cause Subclass" is defined as:

All current or future persons who are subject to an immigration detainer issued by an ICE agent [or officer] located in the Central District of California, where the detainer is not based upon a final order of removal signed by an immigration judge [(i.e., DHS Form I-247A, Section 1 Probable Cause Box 1)] or the individual is not subject to ongoing removal proceedings [(i.e., DHS Form I-247A, Section 1 Probable Cause Box 2)] and the detainer was issued solely on the basis of electronic database checks.

The district court enjoined ICE from issuing immigration detainers seeking the detention of applicable class members where:

the immigration detainer is based solely on federal database searches that rely

upon information from sources that lack sufficient indicia of reliability for a probable cause determination for removal [(i.e., DHS Form I-247A, Section 1 Probable Cause Box 3)].

The district court's injunction prohibits any ICE agent or officer within the Central District of California from issuing immigration detainers to any Probable Cause Subclass member based solely upon information found in the following databases, either individually or in any combination:

(b)(7)(E)

Consistent with the district court's judgment, immigration detainers issued by an ICE officer or agent located in the Central District of California to the Probable Cause Subclass (see above), are "null and void" and must be immediately rescinded. All affected detainers have since been rescinded. On March 5, 2020, ICE provided notice to all local, state, and federal law enforcement agencies in the Central District of California and in all of the states where detainers issued by the PERC could have been received of the Judgment, its impact on ICE detainers, and the limits of a local LEA's authority to make a civil immigration arrest, as required by the district court's judgment. The same notice was also posted on the ICE website ([www.ice.gov/legal-notices](http://www.ice.gov/legal-notices)).

ERO officers and HSI agents in the Central District of California must immediately suspend the issuance of ICE detainers to the probable cause subclass where the probable cause of removability is based solely on a records check of federal databases showing that an alien may be removable under U.S. immigration law, namely DHS Form I-247A, Section 1 Probable Cause Box 3.

ICE agents or officers within the Central District of California may continue to issue immigration detainers when the suspected removable alien:

1. is subject to a final order of removal signed by an immigration judge (DHS Form I-247A, Section 1 Probable Cause Box 1);
2. is subject to ongoing removal proceedings (DHS Form I-247A, Section 1 Probable Cause Box 2); or
3. admits during an interview that he or she is a removable alien or possesses physical copies of documents demonstrating current foreign citizenship and/or immigration status (DHS Form I-247A, Section 1 Probable Cause Box 4).

ICE agents or officers within the Central District of California may also rely on documents from an alien file to support a probable cause determination of alienage and removability.

Importantly, the district court's order does not impact ICE's ability to request advance notice of release from state and local LEAs. ERO Los Angeles and the PERC will continue sending such requests. However, in order to more clearly distinguish traditional detainers from requests only for advance notification of release, officers located at ERO Los Angeles and the PERC must immediately begin issuing the attached Interim DHS Form I-247G, Request for Advance Notification of Release, in those cases in which ICE is prohibited from issuing a detainer. This guidance does not impact the ability for officers and agents located outside the Central District of California to continue issuing detainers, consistent with existing policy.

The Government is seeking further review of the district court's judgment, *De La Cerda v. U.S. Dep't of Homeland Security*, No. 20-55175 (9th Cir. filed Feb. 14, 2020), and updates to this guidance will be provided as appropriate. If you have any questions regarding this message, please contact your supervisor or local Chief Counsel.

*Enrique M. Lucero*  
*Executive Associate Director*  
*Enforcement and Removal Operations*

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 DUNCAN ROY; et al.,  
14 Plaintiffs,

15 vs.

16 LOS ANGELES COUNTY SHERIFF'S  
17 DEPARTMENT; et al.,

18 Defendants.

19  
20 GERARDO GONZALEZ; et al.,

21 Plaintiffs,

22 vs.

23 IMMIGRATION AND CUSTOMS  
24 ENFORCEMENT; et al.,

25 Defendants.

Case No. CV 12-09012 AB (FFMx)  
Consolidated with:  
Case No. CV 13-04416 AB (FFMx)

Honorable André Birotte Jr.

**JUDGMENT**

1 In accordance with the evidence considered at trial, the Court's Findings of  
2 Fact and Conclusions of Law, issued on September 27, 2019 (Dkt. No. 548), and  
3 the Court's Order regarding the Gerardo Gonzalez ("Gonzalez") et al. Plaintiffs'  
4 Motion for Partial Summary Judgment, issued on February 7, 2018 (Dkt. No.  
5 346), the Court enters the following Judgment resolving all claims:

6 Judgment is entered in favor of Plaintiff Gonzalez and the Probable Cause  
7 Subclass<sup>1</sup> on their claims that Immigration and Customs Enforcement ("ICE")  
8 violates the Fourth Amendment by (1) issuing detainers based on probable-cause  
9 determinations from database searches alone (Dkt. No. 548) and (2) by issuing  
10 detainers based on probable-cause determinations from evidence of foreign place  
11 of birth and no match in a federal immigration database (Dkt. No. 346).

12 Judgment is entered in favor of Plaintiff Gonzalez and the Probable Cause  
13 Subclass on their claim that ICE violates the Fourth Amendment by issuing  
14 detainers to state and local law enforcement agencies in states that do not  
15 expressly authorize civil immigration arrests in state statute. (Dkt. No. 548).

16 Judgment is entered in favor of Plaintiffs Gonzalez and Simon Chinivizyan  
17 and the Statutory Subclass<sup>2</sup> on their claim that ICE violates 8 U.S.C. section  
18 1357(a)(2) by issuing detainers without either issuing an administrative warrant  
19

---

20 <sup>1</sup> The Probable Cause Subclass is comprised of all current and future persons who  
21 are subject to an immigration detainer issued by an ICE agent located in the  
22 Central District of California, where the detainer is not based upon a final order  
23 of removal signed by an immigration judge or the individual is not subject to  
24 ongoing removal proceedings and the detainer was issued solely on the basis of  
25 electronic database checks. (Dkt. No. 548 at 3, n.1).

26 <sup>2</sup> The Statutory Subclass is comprised of all current and future persons who are  
27 subject to an immigration detainer issued by an ICE agent located in the Central  
28 District of California, where the detainer is not based upon a final order of  
removal signed by an immigration judge or the individual is not subject to  
ongoing removal proceedings for whom ICE did not issue an administrative  
warrant of arrest at the time it issued an immigration detainer. (Dkt. No. 548 at 3,  
n.1).

1 or determining that a person “is likely to escape before a warrant can be obtained  
2 for [their] arrest.” (Dkt. No. 346).

3 **WHEREAS** ICE violates the Fourth Amendment by issuing detainers for  
4 Probable Cause Subclass members based solely on federal database searches that  
5 rely upon information from sources that lack sufficient indicia of reliability for a  
6 probable-cause determination for removal (Dkt. No. 548);

7 **WHEREAS** ICE violates the Fourth Amendment by issuing detainers to  
8 state and local law enforcement agencies in states that do not expressly authorize  
9 civil immigration arrests on detainers in state statute, and violated the Fourth  
10 Amendment in issuing such detainers (Dkt. No. 548);

11 **WHEREAS** evidence of foreign place of birth and no match in a federal  
12 immigration database does not establish probable cause of alienage and  
13 removability under the Fourth Amendment (Dkt. No. 346);

14 **WHEREAS** ICE violates 8 U.S.C. section 1357(a)(2) when it issues  
15 detainers without either an administrative warrant or a determination that a  
16 person “is likely to escape before a warrant can be obtained for their arrest”  
17 (Dkt. No. 346);

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

- 19 1. The federal databases that ICE relies on to issue its detainers are not  
20 reliable sources, when viewed together or on their own, for purposes  
21 of establishing probable cause of alienage and removability when an  
22 individual does not have a removal order or is not in ongoing removal  
23 proceedings.
- 24 a. The most reliable source of information about a person’s  
25 citizenship or immigration status (where a person is not subject  
26 to a removal order or ongoing removal proceedings) is the  
27 individual because some questions regarding an individual’s  
28 citizenship or immigration status can only be answered through  
an interview. Other reliable sources of information about an  
individual’s citizenship or immigration status are the A-File, if

1 the individual has an A-File;<sup>3</sup> and physical copies of documents  
2 demonstrating current citizenship and/or immigration status.  
(Dkt. No. 548 at 23–24).

3  
4 b. Prior to issuing a detainer to any individual who has not been  
5 ordered removed, is not in removal proceedings, and has not  
6 been interviewed, and in addition to other investigatory steps an  
7 ICE agent takes as a matter of policy and/or their own  
discretion, ICE shall confirm the individual's identity through a  
biometric match.

8  
9 2. Immigration detainers previously issued against members of the  
10 Probable Cause Subclass are declared null and void, and ICE shall  
immediately rescind all such detainers.

11  
12 3. ICE, including the ICE Los Angeles Field Office and the Pacific  
13 Enforcement Response Center (the "PERC"), is permanently enjoined  
14 from issuing detainers seeking the detention of Probable Cause  
Subclass members to law enforcement agencies in states that lack  
state law permitting state and local law enforcement agencies to make  
civil immigration arrests based on civil immigration detainers only.

15  
16 4. ICE, including the ICE Los Angeles Field Office and the PERC, is  
17 permanently enjoined from issuing detainers to Probable Cause  
18 Subclass members based solely on database searches that rely upon  
information from sources that lack sufficient indicia of reliability for a  
probable cause determination for removal.

19  
20 5. Should ICE move the PERC, or any successor(s) performing the  
21 detainer functions of the PERC, to a location outside of the Central  
District of California, ICE shall:

22  
23  
24 <sup>3</sup> An A-File is a physical file that contains hard copy documents on a person's  
25 immigration status. A-Files are capable of painting a more robust picture of a  
26 person's immigration status than database information. They are readily  
27 obtainable by ICE to review prior to issuing a detainer, and may be delivered by  
28 expedited mail without serious difficulty. (Dkt. No. 548 at 23–24). Short of an  
interview, the A-File is the next best source of information about a person's  
citizenship and immigration status.

- a. Notify the Court and the Plaintiffs in writing 30 days before any move occurs; and
- b. Continue to be bound by this injunction with respect to the detainer functions of the PERC.

**IT IS FURTHER ORDERED THAT**, to monitor and ensure compliance with this injunction,

6. Within 30 days of the entry of this Judgment, Defendants shall provide notice to local, state, and federal law enforcement agencies that could have been issued a detainer to be served on a member of the Probable Cause Subclass, informing these agencies of this Judgment, and advising them of the contents of the Court's ruling and its impact on detainees issued by ICE. This notice shall be posted prominently on ICE's website and circulated to all state and local law enforcement agencies to whom ICE issues detainees. Defendants shall specifically inform these agencies that a detainer does not provide the legal authority for a state or local law enforcement officer to make a civil immigration arrest. (Dkt. No. 548 at 30, ¶ 20).
7. Within 45 days of the entry of this Judgment, Defendants shall provide a report to the Court explaining how they complied with paragraph 6, including copies of any and all memoranda, directives, written guidance, notices, forms, and other communications made to effectuate this Judgment. Defendants' report should also include:
  - a. Any additional plans they have for notifying local, state, and federal law enforcement agencies of this Judgment; and
  - b. The number of detainees Defendants rescinded in compliance with this Judgment.
8. Within 90 days of the entry of this Judgment, ICE shall adopt and implement any policies, practices, trainings, and systems changes necessary to ensure consistent and effective compliance with the Court's Findings of Fact and Conclusions of Law (Dkt. No. 548) and this Judgment. ICE shall provide Plaintiffs and the Court with copies of any such policies, practices, trainings, or systems changes made.

1 This Court retains jurisdiction to entertain such further proceedings and to  
2 enter such further orders as may be necessary or appropriate to implement and  
3 enforce the provisions of this Order and Judgment.

4 **IT IS SO ORDERED.**

5 

6 Dated: February 5, 2020

7  
8 ANDRÉ BIROTTE JR.  
9 UNITED STATES DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page 16

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act