

1 Belinda Escobosa Helzer (pro hac vice)
 2 Adrian Hernandez (pro hac vice)
 3 Ernest Herrera (pro hac vice)
 4 MEXICAN AMERICAN LEGAL DEFENSE
 5 AND EDUCATIONAL FUND
 6 634 S. Spring St., 11th Floor
 7 Los Angeles, CA 90014
 8 Telephone: (213) 629-2512
 9 Facsimile: (213) 629-0266
 10 bescobosa@maldef.org
 11 ahernandez@maldef.org
 12 eherrera@maldef.org

13 F. Travis Buchanan, Esq.
 14 NV Bar No. 9371
 15 The Cochran Firm – Las Vegas
 16 701 E. Bridger, Suite 540
 17 Las Vegas, NV 89101
 18 Telephone: (702) 331-5478
 19 Facsimile: (702) 629-6919
 20 FtbLaw@gmail.com

Attorneys for Plaintiffs

21 UNITED STATES DISTRICT COURT
 22 DISTRICT OF NEVADA

23 ALICIA INES MOYA GARAY and
 24 ARRIBA LAS VEGAS WORKER
 25 CENTER,

Plaintiffs,

vs.

26 CITY OF LAS VEGAS, a municipality;
 27 MICHELE FREEMAN, in her official
 28 capacity as City of Las Vegas Chief of
 Department of Public Safety;
 BANANTO SMITH, in his official
 capacity as Deputy Chief of Detention
 Services; DOES 1 through 25, inclusive,

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND DAMAGES**

DEMAND FOR JURY TRIAL

Action Filed: January 17, 2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1. Plaintiffs ALICIA INES MOYA GARAY and ARRIBA LAS VEGAS WORKER CENTER file this civil rights litigation under the Fourth and Fourteenth Amendments to the United States Constitution, challenging Defendants' unlawful policy and practice of detaining individuals in the City of Las Vegas jail ("City Jail") beyond the time they would otherwise be released, solely based on an immigration detainer and without probable cause.

2. Freedom from imprisonment without a judicial warrant or probable cause lies at the heart of the Fourth Amendment. Yet, Defendants ignore their constitutional mandate to uphold the Constitution, choosing instead to be an uncompensated extension of Immigration and Customs Enforcement ("ICE"). For at least the last two years, Defendants have worked closely with ICE to enforce civil immigration laws against Latino and other marginalized Las Vegas residents. Defendants maintain an internal policy ("ICE Notification Procedures") and practice of informing ICE about any foreign-born person who is arrested and booked in the City Jail. As a result of this policy, ICE regularly issues immigration detainers, which are not judicial warrants and are unsupported by probable cause, requesting that Defendants continue to maintain custody of foreign-born arrestees in order to permit ICE to assume their custody. Despite the discretionary nature of these detainers, it is Defendants policy and practice to honor these requests from ICE. Defendants routinely hold individuals, including Plaintiff Moya, even if bail is posted or the underlying state criminal charges are resolved. Defendants policy subjects individuals to a new seizure, which is not supported by probable cause and therefore violates the Fourth Amendment's prohibition of unreasonable searches and seizures.

3. Las Vegas is one of the most diverse cities in the state with one of the highest per capita immigrant population in the country. Local families are put at risk every day due to Defendants collusion with ICE. Defendants' policy and practice not only violates individuals' rights, it also undermines community safety and wastes local public safety resources.

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION AND VENUE

4. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 and under 42 U.S.C. § 1983 over Plaintiffs’ claims under federal law and the Constitution of the United States. This Court has supplemental jurisdiction over Plaintiffs’ common and state law claims under 28 U.S.C. § 1367. Venue is proper in this District under 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff Alicia Ines Moya Garay (“Plaintiff Moya” or “Ms. Moya”) is a resident of Las Vegas, Nevada. She came to the United States when she was an infant. She is married to a U.S. citizen and is the mother of two U.S.-citizen children. Ms. Moya has lived in the United States her entire life. She is the primary wage earner for her family.

6. Plaintiff Arriba Las Vegas Worker Center is a grassroots organization that unites day laborers, domestic workers, and other low-wage and migrant workers to defend their rights, fight for dignity, and win justice for all. Its mission is to develop, educate, and empower worker and migrant communities to take action to defend their rights as workers and migrants.

7. Defendant City of Las Vegas (“City”) is a municipal entity with the capacity to sue and be sued. It is a Charter City under the laws of the State of Nevada. Employees of the City have engaged in the acts complained of herein pursuant to City policies, practices, and customs.

8. Defendant Michele Freeman is the Chief of the Department of Public Safety (“DPS”), a department of the City. DPS provides the public with law enforcement and detention services, manages the City Jail and includes the deputy city marshals who provide public safety at city parks and facilities. Plaintiffs are informed and believe Defendant Freeman oversees and is responsible for the operation and management of DPS. Defendant Freeman is sued in her official capacity.

9. Defendant Bananto Smith is the Deputy Chief of Detention Services for DPS. Plaintiffs are informed and believe Defendant Smith oversees and is responsible for the operation and management of the City Jail. Defendant Smith is sued in his official capacity.

1 15. Mere unauthorized presence in the United States is neither a criminal matter nor
2 gives rise to an inference that an individual is engaged in criminal activity. Indeed, deportation
3 and removal proceedings are purely civil actions to determine an individual's eligibility to remain
4 in the country. Therefore, an immigration detainer alone is not sufficient to establish probable
5 cause of criminal activity to justify continued detention.

6 **B. Defendants' Policy and Practice**

7
8 16. Since at least 2017, Defendants have worked closely with ICE and consistently
9 participated in immigration enforcement activities, including notifying ICE of individuals in City
10 custody and their release dates, as well as holding people on immigration detainers beyond the
11 time or authority permitted under state law.

12 17. When an individual is taken into Defendants' custody, Plaintiffs are informed and
13 believe that City personnel ask those individuals who look "foreign" (generally people of color)
14 where they were born. If the individual states that he or she was born outside of the United
15 States, Defendants inform ICE that the individual is in their custody. Defendants maintain an
16 internal policy ("ICE Notification Procedures") of informing ICE about any foreign-born person
17 who is arrested and booked. Plaintiffs are also informed and believe that an ICE officer who
18 works in the City Jail interviews identified individuals regarding his or her immigration status.

19 18. ICE may then issue an immigration detainer. If Defendants receive an
20 immigration detainer for an individual in their custody, Defendants' written policy states that they
21 will detain a person for up to 48 hours beyond the time when he or she would have otherwise
22 been released from custody.

23 19. Over a 26-month period, ICE picked up more than 1,000 people from Defendants'
24 custody. From January 1, 2017, to February 28, 2019, Defendants provided ICE with information
25 resulting in detainers for 1,680 people. Of those, ICE picked up 1,139 – or 67.8 percent – of
26 them. Additionally, Defendants transferred 58 percent of people to ICE before their cases were
27 closed by a local judge. Further, Defendants detained individuals in the City Jail past their
28 scheduled date of release, pending transfer to ICE, for an average of 1.17 days. While some

1 individuals were picked up before their scheduled release date, others were held for up to five
2 days.

3 **C. Plaintiff Alicia Ines Moya Garay (“Plaintiff Moya”)**

4
5 20. On or about July 17, 2018, at around 7 a.m., Plaintiff Moya was pulled over by the
6 Nevada Highway Patrol for allegedly running a red light and arrested on a bench warrant for
7 unpaid tickets. Plaintiff Moya was taken to Defendants’ City Jail. She called her sister to let her
8 know that she was being taken to City Jail.

9 21. Upon her arrival at City Jail, Plaintiff Moya was asked by City personnel
10 something to the effect of, “Where are you from?” Plaintiff Moya answered that she was born in
11 Mexico. Plaintiff Moya was not informed that this casual conversation with Defendants’ staff
12 was related to immigration enforcement or Defendants’ policy and practice of collaborating with
13 ICE.

14 22. Shortly thereafter, Plaintiff Moya was briefly questioned by an ICE agent who
15 asked her whether she was a U.S. citizen or lawful permanent resident. Plaintiff Moya responded
16 that she was neither. The ICE agent did not ask Plaintiff Moya whether she had any other status
17 or authorization. The interview lasted about 2-3 minutes.

18 23. Although there were other women who were being processed at the same time,
19 Plaintiff Moya only saw the ICE officer speak to the only other Latina arrestee.

20 24. After being booked and processed, Plaintiff Moya was taken to her cell at
21 approximately 1 p.m. that day. Before she went to her cell she was able to speak to her sister,
22 who informed her that they were trying to post bail.

23 25. On July 17, after Plaintiff Moya called, her sister immediately went to the City Jail
24 to post bail, which was set at \$2,700. Plaintiffs are informed and believe that because the City
25 Jail generally detains those with alleged misdemeanors, bail is typically set without a formal bail
26 hearing. Bail is generally set at the time of booking according to a bail schedule.

1 26. At around 9 a.m., the City Jail clerk informed Plaintiff Moya's sister that Plaintiff
2 was subject to a hold, and that posting bail would not result in her sister's release. It was not until
3 later that Plaintiff Moya and her family learned that she was subject to an ICE detainer.

4 27. Although Plaintiff Moya was entitled to bail, Defendants would not allow Plaintiff
5 Moya to post bail. She remained in the City Jail for two to three days before she went before a
6 judge. In hopes of getting back to her family as soon as possible, Plaintiff Moya pled guilty to the
7 traffic charges. She was sentenced to ten days in City Jail, with three days for time served, and
8 was ordered to be released on July 25, 2018.

9 28. Despite being scheduled for release at 6:15 a.m. on July 25, Defendants did not
10 release Plaintiff. By 8 p.m. on the evening of July 25, Plaintiff, who remained in her cell, asked
11 Defendants' personnel why she wasn't being released. A female officer told her that she would
12 not be "released to the streets."

13 29. Plaintiff Moya was held by Defendants for approximately 24 hours after her
14 ordered scheduled release. On the morning of July 26, 2018, ICE officers came to the City Jail,
15 shackled her, and transported her to ICE detention in Henderson, Nevada. This is the first time
16 Plaintiff Moya discovered that she was being held because of ICE. She was in ICE custody from
17 then until August 17, 2019, when she was released on \$2000 bond.

18 30. Any injury that Plaintiff Moya suffered was the direct result of Defendants' policy,
19 practice, and custom of holding her beyond the date of she was eligible or released based solely
20 on the ICE detainer.

21 31. Defendants violated Plaintiff Moya's constitutional and statutory rights both by
22 refusing to release her when she could have posted bail and by continuing to incarcerate her
23 beyond her release date as ordered by the court.

24 **D. Plaintiff Arriba Las Vegas Worker Center**

25
26 32. Plaintiff Arriba's mission is to develop, educate, and empower worker and migrant
27 communities to take action to defend their rights as workers and migrants. In furtherance of their
28 mission Arriba: (1) provides training on workplace health and safety and supports workers to

1 report violations and address hazards at work, as well as support workers to advocate for safe and
2 healthy working conditions and access to personal protective equipment on the job; (2) assists
3 workers in addressing issues related to wage theft by unscrupulous employers/contractors; (3) and
4 supports Temporary Protected Status (“TPS”) holders in Nevada build a movement for permanent
5 residency for all TPS families.

6 33. As a grassroots organization that unites low-wage and migrant workers and
7 empowers them to take action to defend their rights, regardless of their citizenship status, Arriba
8 relies on active involvement from workers and other allies within community. Defendants’
9 unlawful policy and practice has sowed local distrust of local law enforcement, created
10 uncertainty and fear among Arriba’s membership, and frustrated Arriba’s mission of empowering
11 low-wage and migrant workers to advocate for their rights.

12 34. Additionally, in the last few years, Arriba has also had to divert its resources,
13 including staff time, to address ICE detainees in Las Vegas’ city and county jails. On January 30,
14 2019 and December 16, 2019, Arriba filed public record requests to learn more about Defendants’
15 role in collaborating with ICE and has been tracking and analyzing the information received from
16 the City.

17 35. Arriba also directly supports individuals and their families who have been victim
18 to such local police/ICE collaboration. In this capacity, Arriba has had to divert its resources
19 towards education, training, and bond funds in order to counteract the increased cooperation
20 between Defendants and ICE.

21 **E. Defendants Continue to Honor Immigration Detainers**

22
23 36. On September 27, 2019, the Central District for California ruled that ICE is
24 enjoined from (1) issuing detainers to state and local law enforcement agencies in states where
25 there is no explicit state statute authorizing civil immigration arrests on detainers and (2) issuing
26 detainers based on probable cause, when the investigation of immigration status and removability
27 consists of only a database search. *Gonzalez v. Immigration and Customs Enforcement*, No. 2:12-
28 cv-09012-AB (FFMx), 2019 WL 4734579 (C.D. Cal. Sept. 27, 2019).

1 **Fourth Amendment Violation (Unlawful Seizure); 42 U.S.C. § 1983**

2 43. Plaintiffs incorporate all the allegations of the preceding and subsequent
3 paragraphs as if fully set forth herein.

4 44. At all relevant times, Defendants acted under color of state law.

5 45. Defendants policy, practice, custom, and actions deprived Plaintiff of her Fourth
6 Amendment rights under the United States Constitution.

7 46. The Fourth Amendment provides “[t]he right of the people to be secure in their
8 persons” and protects against “unreasonable searches and seizures” without a warrant and without
9 probable cause. U.S. Const. Amend. IV.

10 47. Defendants intentionally violated Plaintiff Moya’s right to be free from
11 unreasonable seizures without probable cause, by refusing to allow Plaintiff to post bail for which
12 she was eligible.

13 48. As set forth above, Defendants continued to detain Plaintiffs after the expiration of
14 any and all state law basis to detain them, including after they could have secured their release on
15 bond and/or after the resolution of their state charges, solely on the basis of ICE detainers and
16 without probable cause to believe that Plaintiffs were removable, thus seizing Plaintiffs in
17 violation of the Fourth Amendment.

18 49. Plaintiff suffered damages, including emotional distress and economic losses, in an
19 amount to be determined at trial, and as a proximate result of Defendants’ conduct.

20 **SECOND CAUSE OF ACTION**

21 **Fourteenth Amendment Violation (Due Process); 42 U.S.C. § 1983**

22 50. Plaintiff incorporates all of the allegations contained in the previous paragraphs of
23 this complaint as though fully set forth here.

24 51. The Eight Amendment provides that “[e]xcessive bail shall not be required, nor
25 excessive fines imposed[.]” While the Excessive Bail Clause of the Eighth Amendment “does not
26 bar the state from detaining arrestees without bail, or from considering interests other than flight
27 prevention in setting bail,” it does “prevent[] the imposition of bail conditions that are excessive
28

1 in light of the valid interests the state seeks to protect by offering bail.” *Galen v. Cty. of Los*
2 *Angeles*, 477 F.3d 652, 660 (9th Cir. 2007) (citing *U.S. v. Salerno*, 481 U.S. 739, 754 (1987)).

3 52. Furthermore, while an accused does not have an absolute right to bail, she does
4 have “a Fourteenth Amendment due process right to have a state’s bail system administered
5 without caprice or discrimination.” *Kelly v. Springett*, 527 F.2d 1090, 1093 (9th Cir. 1975)).

6 53. Under Nevada law, a person arrested for an offense other than murder of the first
7 degree must be admitted to bail. Nev. Rev. Stat. § 178.484. The state court is bestowed with the
8 discretionary power to set bail within statutory and constitutional limits. *See id.*; *see also Bergna*
9 *v. State*, 102 P.3d 549, 551 (Nev. 2004).

10 54. Defendants practice of refusing to accept bail from Plaintiffs and those like her,
11 who were willing and able to pay the bail amount and could have secured their freedom but-for
12 Defendants’ unlawful practice, solely on the basis of immigration detainers filed against them,
13 violated Plaintiffs right to have a state’s bail system administered without caprice or
14 discrimination.

15 55. Plaintiffs suffered damages, including, but not limited to, emotional distress and
16 economic losses, in an amount to be determined at trial, and as a proximate result of Defendant’s
17 conduct.

18 THIRD CAUSE OF ACTION

19 **False Imprisonment in Violation of Nevada Law**

20 56. Plaintiff incorporates all of the allegations contained in the previous paragraphs of
21 this complaint as though fully set forth here.

22 57. Under Nevada law, false imprisonment is an unlawful violation of the personal
23 liberty of another, and consists in confinement or detention without sufficient legal authority.

24 58. Defendants are responsible for the conduct of their employees under the doctrine
25 of *respondeat superior*.

26 59. Defendants intentionally instigated or participated in the false imprisonment of
27 Plaintiff Moya, in violation of Nevada law, by detaining her in Defendants’ custody beyond the
28

1 time or authority permitted under state law, without probable cause and in violation of the Fourth
2 Amendment.

3 60. Plaintiff Moya suffered damages, including, but not limited to, economic losses,
4 humiliation, fear, and emotional distress, in an amount to be determined at trial, and as a
5 proximate result of Defendants' conduct. Plaintiff is entitled to compensation for physical
6 discomfort or inconvenience, and for any resulting physical illness or injury to health.

7 **JURY TRIAL**

8 61. Plaintiff hereby requests a jury trial.

9 **PRAYER FOR RELIEF**

10 62. WHEREFORE, Plaintiffs pray that this Court award:

11 a. A declaratory judgment that Defendants' policy, practice, and/or custom of
12 detaining arrestees in the City Jail solely on the basis of an immigration detainer and beyond the
13 time or authority permitted under state law, violates the United States Constitution and state law;

14 b. A preliminary and permanent injunction restraining Defendants, their
15 representatives, successors, assigns, officers, agents, servants, employees, and all other persons
16 acting or claiming to act or, on behalf of, or in active concert or participation with Defendants,
17 from continuing or engaging in the unlawful conduct complained of herein;

18 c. Monetary damages in an amount to be proven at trial;

19 d. Costs and attorneys' fees against Defendants as to the causes of action alleged
20 under the Constitution and laws of the United States, pursuant to 42 U.S.C. § 1988;

21 e. All remedies provided by 42 U.S.C. § 1983; and

22 f. Such other relief as this Court may deem just and proper.

23 Dated: January 17, 2020

24 /s/ F. Travis Buchanan
25 F. Travis Buchanan, Esq.
26 NV Bar No. 9371
The Cochran Firm – Las Vegas

27 *Attorneys for Plaintiffs*

28