

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

Ernest Herrera (pro hac vice)
Leticia M. Saucedo (pro hac vice)
Luis L. Lozada (pro hac vice)
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
634 S. Spring St., 11th Floor
Los Angeles, CA 90014
Telephone: (213) 629-2512
Facsimile: (213) 629-0266
eherrera@maldef.org
lsaucedo@maldef.org
llozada@maldef.org

F. Travis Buchanan, Esq.
NV Bar No. 9371
F. TRAVIS BUCHANAN, ESQ.,
& ASSOC., PLLC
701 E. Bridger, Ste. 540
Las Vegas, NV 89101
(702) 331-5478 T
(702) 629-6919 F
FtbLaw@gmail.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALICIA INES MOYA GARAY, JUAN
JAIME LOPEZ-JIMENEZ, and
ARRIBA LAS VEGAS WORKER
CENTER,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a municipality;
JASON POTTS, in his official capacity
as City of Las Vegas Chief of
Department of Public Safety;
BANANTO SMITH, in his individual
capacity; DANIELLE DAVIS, in her
official capacity as Deputy Chief of
Detention Services;

and

UNITED STATES IMMIGRATION AND

Case No. 2:20-cv-00119-ART-EJY

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

DEMAND FOR JURY TRIAL

Action Filed: May 23, 2023

Judge: Honorable Anne R. Traum

1 CUSTOMS ENFORCEMENT; TAE D.
2 JOHNSON, in his official capacity as
3 Deputy Director and Senior Official
4 Performing the Duties of the Director of
5 United States Immigration and Customs
6 Enforcement; MICHAEL BERNACKE, in
7 his official capacity as Salt Lake City ICE
8 Field Office Director,

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendants.

INTRODUCTION

1
2 1. Plaintiffs ALICIA INES MOYA GARAY, JUAN JAIME LOPEZ-JIMENEZ, and
3 ARRIBA LAS VEGAS WORKER CENTER file this civil rights litigation under the Fourth and
4 Fourteenth Amendments to the United States Constitution, challenging Defendants’ unlawful
5 policy and practice of detaining individuals in the City of Las Vegas jail (“City Jail”) beyond the
6 time they would otherwise be released, solely based on an immigration detainer and without
7 probable cause.¹

8 2. Freedom from imprisonment without a judicial warrant or probable cause lies at
9 the heart of the Fourth Amendment. Yet, Defendants City of Las Vegas, Bananto Smith, Jason
10 Potts, and Danielle Davis ignore their constitutional mandate to uphold the Constitution, choosing
11 instead to be an uncompensated extension of Defendant Immigration and Customs Enforcement
12 (“ICE”). Since 2017, City of Las Vegas Defendants have worked closely with Defendant ICE to
13 enforce civil immigration laws against Latino and other marginalized Las Vegas residents. City
14 Defendants maintain an internal policy (“ICE Notification Procedures”) and practice of informing
15 ICE about any foreign-born person who is arrested and booked in the City Jail. As a result of this
16 policy, ICE regularly issues immigration detainers, which are not judicial warrants and are
17 unsupported by probable cause, requesting that Defendants continue to maintain custody of
18 foreign-born arrestees in order to permit ICE to assume their custody. Despite the discretionary
19 nature of these detainers, it is Defendants’ policy and practice to honor these requests from ICE.
20 Defendants routinely hold individuals, including Plaintiffs Moya and Lopez-Jimenez, even if bail
21 is posted or the underlying state criminal charges are resolved. Defendants’ policy subjects
22
23

24 ¹ This is Plaintiffs’ Third Amended Complaint, which Plaintiffs file in order to comply with the Court’s March 7,
25 2023, Order that United States Immigration and Customs Enforcement is joined as a defendant in this action and a
26 required party. *See* Dkt. 96. In that Order, the Court ordered Plaintiffs “to properly name as a defendant United
27 States Immigration and Customs Enforcement (“ICE”) (or appropriate officials) and properly serve them within 90
28 days.” *See id.* Plaintiffs consider the Court’s Order (Dkt. 96) as “otherwise” ordering Plaintiffs to file an amended
complaint and obviating the need for Plaintiffs to file a motion seeking leave to amend as required by Local Rule 15-
1(a). *See* LR 15-1(a). This Third Amended Complaint therefore complies with Fed. R. Civ. P. 15(a)(2) and Local
Rule 15-1(b). If the Court’s Order did not constitute leave to amend, Plaintiffs move in this footnote for leave to
amend and file this complaint in order to comply with the Court’s Order.

1 individuals to a new seizure, which is not supported by probable cause and therefore violates the
2 Fourth Amendment's prohibition of unreasonable searches and seizures.

3 3. Las Vegas is one of the most diverse cities in the state with one of the highest per
4 capita immigrant populations in the country. Local families are put at risk every day due to
5 Defendants' collusion with ICE. Defendants' policy and practice not only violate individuals'
6 rights, they also undermine community safety and waste local public safety resources.

7 8 **JURISDICTION AND VENUE**

9 4. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 and under
10 42 U.S.C. § 1983 over Plaintiffs' claims under federal law and the Constitution of the United
11 States. This Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202,
12 and further authority to issue injunctive relief under 5 U.S.C. § 702. This Court has supplemental
13 jurisdiction over Plaintiffs' common and state law claims under 28 U.S.C. § 1367. Venue is
14 proper in this District under 28 U.S.C. § 1391(b)(2).

15 **PARTIES**

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

20 6. Plaintiff Juan Jaime Lopez-Jimenez ("Plaintiff Lopez-Jimenez" or "Mr. Lopez-
21 Jimenez") is a resident of Las Vegas, Nevada. He came to the United States as a minor. He is the
22 father of six U.S.-citizen children and is the primary wage earner for his family.

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

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

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

10 10. Defendant Danielle Davis is the Deputy Chief of Detention Services for DPS.
11 Plaintiffs are informed and believe Defendant Davis oversees and is responsible for the operation
12 and management of the City Jail, including the training, supervision, and control of her
13 subordinates, as well as the enforcement of DPS Detention Services policy and practices.
14 Defendant Davis is sued in her official capacity.

15 11. Defendant Bananto Smith is sued in his individual capacity. As the former Deputy
16 Chief of Detention Services, Defendant Smith is liable in his individual capacity for his own
17 culpable action or inaction in the training, supervision, or control of his subordinates, for his
18 acquiescence in the constitutional deprivations here described, and for conduct that showed a
19 reckless or callous indifference to the rights of others.

20 12. Defendant United States Immigration and Customs Enforcement (“ICE”) is a
21 component agency of the United States Department of Homeland Security. Defendant ICE is
22 responsible for, among other functions, enforcing federal immigration laws. *See* 6 U.S.C. § 251-
23 52.

24 13. Through its offices and employees, Defendant ICE issues detainers and
25 administrative warrants. Upon information and belief, Defendant ICE determines policy,
26 guidance, and practice regarding the issuance of detainers and administrative warrants to state and
27 local law enforcement agencies (“LEAs”); the application of detainer regulations; and the
28 apprehension and detention of individuals for whom detainers are issued. On information and

1 belief, both Defendant ICE and its sub-offices, including as the Salt Lake City Field Office and
2 Nevada sub-offices, may issue detainers and administrative warrants and set policy, guidance, and
3 practice regarding detainers and administrative warrants.

4 14. Defendant Tae D. Johnson is Deputy Director and Senior Official Performing the
5 Duties of the Director of United States Immigration and Customs Enforcement. On information
6 and belief, Defendant Johnson is responsible for setting, implementing, and enforcing policy,
7 guidance, and practice regarding the issuance of ICE detainers and administrative warrants.
8 Plaintiffs sue Defendant Johnson in his official capacity.

9 15. Defendant Michael Bernacke is the Field Office Director of ICE's Salt Lake City
10 Field Office in West Valley City, Utah. On information and belief, Defendant Bernacke is
11 ultimately responsible for ICE detainers and administrative warrants issued by offices within the
12 Salt Lake City Field Office's area of responsibility, which includes Utah, Idaho, Montana, and
13 Nevada. On information and belief, the Las Vegas ICE Field Office and Enforcement and
14 Removal Operations offices in Las Vegas answer to Defendant Bernacke. On information and
15 belief, Defendant Bernacke is also responsible for implementing and enforcing ICE policy,
16 guidance, and practices regarding the issuance of ICE detainers and administrative warrants in the
17 Salt Lake City Field Office's area of responsibility. Plaintiffs sue Defendant Bernacke in his
18 official capacity.

19 **FACTUAL ALLEGATIONS**

20 **A. Immigration Detainers**

21
22 16. An immigration detainer, also known as an ICE hold or ICE detainer, is a request
23 that a local enforcement agency (LEA) continue to detain an individual for 48 hours, excluding
24 weekends and holidays, beyond the time when he or she would otherwise be released from
25 criminal custody, to provide ICE extra time to assume physical custody of the person and
26 investigate his or her immigration status.
27
28

1 17. Immigration detainers are not warrants or court orders, and they are not issued or
2 approved by judicial officers or a neutral magistrate. They are unsworn documents that may be
3 issued by a wide variety of immigration officers.

4 18. An immigration detainer is discretionary. The federal regulation governing such
5 detainers, 8 C.F.R. § 287.7, does not mandate detention by LEAs, but only requests compliance in
6 detaining suspected undocumented immigrants.

7 19. Immigration detainers purport to authorize multiple days of incarceration unrelated
8 to the initial criminal custody, thereby effectively requesting LEAs engage in a new seizure of the
9 individual. To lawfully subject the individual to a new seizure LEAs must have probable cause—
10 independent of the initial finding of probable cause for violating state law—to believe that the
11 individual has committed or was committing a criminal offense.

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

17 21. Outside of contractual agreements authorized under 8 U.S.C. § 1357(g), the
18 Immigration and Nationality Act (INA) only allows the collaboration between local law
19 enforcement and federal immigration officials when individuals are in custody for controlled
20 substance law violations. 8 USC § 1357(d)(3) (“Detainer of aliens for violation of controlled
21 substances laws”). The INA establishes the “powers of immigration officers and employees” at
22 8 USC § 1357.

23 22. This section of the statute—8 USC § 1357(d)(3)—was enacted in 1988, as part of
24 implementing amendments of the Anti-Drug Abuse Act and the Immigration Reform and Control
25 Act of 1986. 53 Fed. Reg. 9281 9281-84 (March 22, 1988). As clearly stated in the title of
26 1357(d), the power to issue an immigration detainer is contingent upon the alien having been
27 arrested “for a violation of any law relating to controlled substances.” To put it differently, ICE
28

1 officers have no power to issue an immigration detainer for a person arrested by local law
2 enforcement for charges other than “relating to controlled substances.”

3 **B. Defendants’ Policy and Practice**

4
5 23. Since at least 2017, Defendants City of Las Vegas, Jason Potts, Bananto Smith,
6 and Danielle Davis (“City Defendants”) have worked closely with ICE and consistently
7 participated in immigration enforcement activities, including notifying ICE of individuals in City
8 custody and their release dates, as well as holding people on immigration detainers beyond the
9 time or authority permitted under state law.

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

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

22 26. On information and belief, Defendants ICE and Bernacke regularly issue detainers
23 to LEAs in Nevada such as the City of Las Vegas Department of Public Safety. Defendants ICE
24 and Bernacke also issue administrative warrants, which often accompany ICE detainers, to City
25 Defendants. Neither the ICE detainers nor the administrative warrants are based upon a
26 determination of probable cause by a judge or neutral magistrate.

27 27. Over a 26-month period, ICE picked up more than 1,000 people from City
28 Defendants’ custody. From January 1, 2017, to February 28, 2019, City Defendants provided

1 ICE with information resulting in detainers for 1,680 people. Of those, ICE picked up 1,139 – or
2 67.8 percent – of them. Additionally, City Defendants transferred 58 percent of people to ICE
3 before their cases were closed by a local judge. Further, City Defendants detained individuals in
4 the City Jail past their scheduled date of release, pending transfer to ICE, for an average of 1.17
5 days. While some individuals were picked up before their scheduled release date, others were
6 held for up to five days.

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

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

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

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

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

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

27 33. On July 17, after Plaintiff Moya called, her sister immediately went to the City Jail
28 to post bail, which was set at \$2,700. Plaintiffs are informed and believe that because the City

1 Jail generally detains those with alleged misdemeanors, bail is typically set without a formal bail
2 hearing. Bail is generally set at the time of booking according to a bail schedule.

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

6 35. No officer or individual served Plaintiff Moya with the ICE detainer while in City
7 Defendants' custody.

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

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

17 38. City Defendants held Plaintiff Moya for approximately 24 hours after her ordered
18 scheduled release. On the morning of July 26, 2018, ICE officers came to the City Jail, shackled
19 her, and transported her to ICE detention in Henderson, Nevada. This is the first time Plaintiff
20 Moya discovered that she was being held because of ICE. She was in ICE custody from then
21 until August 17, 2018, when she was released on \$2,000 bond.

22 39. Plaintiff Moya did not go before a judge or magistrate in City Defendants' custody
23 for a prompt probable cause determination to justify continued detention based on the ICE
24 detainer.

25 40. Plaintiff Moya did not go before a judge or magistrate in ICE's custody for a
26 prompt probable cause determination to justify continued detention based on the ICE detainer.

27
28

1 41. Any injury that Plaintiff Moya suffered was the direct result of Defendants’ policy,
2 practice, and custom of holding her beyond the date she was eligible for release based solely on
3 the ICE detainer.

4 42. City Defendants violated Plaintiff Moya’s constitutional and statutory rights both
5 by refusing to release her when she could have posted bail and by continuing to incarcerate her
6 beyond her release date as ordered by the court.

7 **D. Plaintiff Juan Jaime Lopez-Jimenez (“Plaintiff Lopez-Jimenez”)**

8 43. On or about April 20, 2018, at around 11:00 p.m., Plaintiff Lopez-Jimenez was
9 pulled over by Las Vegas Metropolitan Police Department for driving with a broken tail light and
10 arrested on a bench warrant for unpaid tickets. Plaintiff Lopez-Jimenez was taken to City
11 Defendants’ City Jail.

12 44. Upon his arrival at City Jail, Plaintiff Lopez-Jimenez was placed in a holding cell
13 with other arrestees. Eventually, City Defendants’ staff called out Plaintiff Lopez-Jimenez by
14 name and brought him into an office located within City Defendants’ City Jail. Once in the
15 office, Plaintiff Lopez-Jimenez was directed by Defendants’ staff to speak with an individual by
16 telephone.

17 45. The individual, who did not state his name, title, or whether he worked for City
18 Defendants, ICE, or any other law enforcement agency, questioned Plaintiff Lopez-Jimenez
19 regarding his immigration status.

20 46. The unidentified individual asked Plaintiff Lopez-Jimenez his country of birth and
21 something to the effect of, “Did you come here with papers?” Plaintiff Lopez-Jimenez responded
22 that he was born in Mexico and did not come to the United States “with papers.” The
23 unidentified individual did not ask Plaintiff Lopez-Jimenez whether he had any other status or
24 authorization.

25 47. On April 21, 2018, the morning after Plaintiff Lopez-Jimenez’s arrest, his wife
26 went to the City Jail to try to post bail. Plaintiffs are informed and believe that because the City
27
28

1 Jail generally detains those with alleged misdemeanors, bail is typically set without a formal bail
2 hearing. Bail is generally set at the time of booking according to a bail schedule.

3 48. However, when Plaintiff Lopez-Jimenez's wife traveled to City Defendant's City
4 Jail to pay the bail, she was not allowed to pay.

5 49. On April 22, 2018, Plaintiffs Lopez-Jimenez's wife grew increasingly desperate
6 and inquired about his bail to a bail bondsman. The bail bondsman informed Plaintiff Lopez-
7 Jimenez's wife that he was subject to an immigration hold. It was at this point that Plaintiff
8 Lopez-Jimenez's wife and family discovered that he was being detained because of an
9 immigration hold.

10 50. Plaintiffs are informed and believe that Plaintiff Lopez-Jimenez was entitled to
11 bail and, although his family was willing and able to pay his bail, City Defendants would not
12 allow Plaintiff Lopez-Jimenez to post bail. He remained in the City Jail for three days before he
13 went before a North Las Vegas Municipal Court judge on April 24, 2018.

14 51. The judge ordered Plaintiff Lopez-Jimenez released to payment of bail. Within an
15 hour of his hearing, Plaintiff Lopez-Jimenez's family paid the bail and he was ordered to be
16 released on April 24, 2018.

17 52. No officer or individual served Plaintiff Lopez-Jimenez with the ICE detainer
18 while in City Defendants' custody.

19 53. Despite being scheduled for release on April 24, Plaintiff Lopez-Jimenez
20 remained in City Defendants' custody until the next morning. On April 25, 2018, Plaintiff
21 Lopez-Jimenez was handed his clothes and told to dress-out for his release from Defendants' City
22 Jail. When Plaintiff Lopez-Jimenez returned from the restroom, ICE officers were present and
23 waiting for him. ICE officers told Plaintiff Lopez-Jimenez to turn around, shackled him, and
24 transported him to ICE detention in Henderson, Nevada. He was in ICE custody for
25 approximately a month and half, when he was released on \$7,000 bond.
26
27
28

1 54. Plaintiff Lopez-Jimenez did not go before a judge or magistrate in City
2 Defendants' custody for a prompt probable cause determination to justify continued detention
3 based on the ICE detainer.

4 55. Plaintiff Lopez-Jimenez did not go before a judge or magistrate in ICE's custody
5 for a prompt probable cause determination to justify continued detention based on the ICE
6 detainer.

7 56. Any injury that Plaintiff Lopez-Jimenez suffered was the direct result of
8 Defendants' policy, practice, and custom of holding him beyond the date he was eligible for
9 release based solely on the ICE detainer.

10 57. City Defendants violated Plaintiff Lopez-Jimenez's constitutional and statutory
11 rights both by refusing to release him when he could have posted bail and by continuing to
12 incarcerate him beyond his release date as ordered by the court.

13 58. City Defendants detained neither Plaintiff Moya nor Plaintiff Lopez-Jimenez based
14 on criminal charges related to controlled substances.

15 **E. Plaintiff Arriba Las Vegas Worker Center**

16
17 59. Plaintiff Arriba's mission is to develop, educate, and empower worker and migrant
18 communities to take action to defend their rights as workers and migrants. In furtherance of its
19 mission, Arriba: (1) provides training on workplace health and safety and supports workers to
20 report violations and address hazards at work, as well as support workers to advocate for safe and
21 healthy working conditions and access to personal protective equipment on the job; (2) assists
22 workers in addressing issues related to wage theft by unscrupulous employers/contractors; (3) and
23 supports Temporary Protected Status ("TPS") holders in Nevada build a movement for permanent
24 residency for all TPS families.

25 60. As a grassroots organization that unites low-wage and migrant workers and
26 empowers them to take action to defend their rights, regardless of their citizenship status, Arriba
27 relies on active involvement from workers and other allies within community. Defendants'
28 unlawful policy and practice has sowed local distrust of local law enforcement, created

1 uncertainty and fear among Arriba's membership, and frustrated Arriba's mission of empowering
2 low-wage and migrant workers to advocate for their rights.

3 61. Additionally, in the last few years, Arriba has also had to divert its resources,
4 including staff time, to address ICE detainers in Las Vegas' city and county jails. On January 30,
5 2019 and December 16, 2019, Arriba filed public record requests to learn more about City
6 Defendants' role in collaborating with ICE and has been tracking and analyzing the information
7 received from the City.

8 62. Arriba also directly supports individuals and their families who have been victim
9 to such local police/ICE collaboration. In this capacity, Arriba has had to divert its resources
10 towards education, training, and bond funds in order to counteract the increased cooperation
11 between City Defendants and ICE.

12 **F. Defendants Continue to Honor Immigration Detainers**

13
14 63. On September 27, 2019, the Central District for California ruled that ICE would be
15 enjoined from (1) issuing detainers to state and local law enforcement agencies in states where
16 there is no explicit state statute authorizing civil immigration arrests on detainers and (2) issuing
17 detainers based on probable cause, when the investigation of immigration status and removability
18 consists of only a database search. *Gonzalez v. Immigr. & Customs Enf't*, 416 F. Supp. 3d 995,
19 1000 (C.D. Cal. 2019), *rev'd and vacated sub nom. Gonzalez v. United States Immigr. & Customs*
20 *Enf't*, 975 F.3d 788 (9th Cir. 2020).

21 64. Nevada does not have a statute authorizing an arrest for civil immigration
22 violations. In response to this decision, on October 23, 2019, the Las Vegas Metropolitan Police
23 Department ("LVMPD), which is run by the Clark County Sheriff's Department, announced it
24 "would no longer honor federal immigration detainers for civil immigration violations," adding
25 that "[t]his decision would also affect LVMPD's jail-based Memorandum of Agreement with ICE
26 (287(g)), a contract between LVMPD and ICE which allowed some LVMPD officers to enforce
27 federal immigration laws in LVMPD detention facilities.

1 65. On October 24, 2019, the City of Las Vegas made an announcement on their
2 official Twitter page stating: “Our City Attorney has determined that we will also suspend our
3 287(g) agreement with ICE and will not detain inmates on federal immigration holds due to a
4 California court ruling. We’d like to remind the public that our city jail is for misdemeanors
5 only.”

6 66. Despite this announcement, Defendant City never entered into a formal 287(g)
7 agreement with ICE. In fact, Plaintiffs are informed and believe that the City explicitly declined
8 to enter into such an agreement with ICE.

9 67. Outside of a single social media post, Defendant City has neither issued a formal
10 announcement nor initiated an official suspension of its policy, practice and custom of
11 collaborating with ICE and honoring ICE detainers beyond the time an individual would
12 otherwise be released for their underlying state violation.

13 68. Plaintiffs are informed and believe that Defendants have continued to honor ICE
14 detainers despite Defendant City’s twitter announcement.

15 69. According to data provided by Defendants in response to a recent Nevada Public
16 Records request, ICE detainers have been issued against twenty-four people in Defendants’
17 custody between October 24, 2019 and December 15, 2019. At least five of these individuals
18 have been subjected to unlawful prolonged detention in City Jail after being held passed their
19 scheduled release date and ultimately released to ICE custody.

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

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

23 **Plaintiffs vs. Defendants City of Las Vegas, Bananto Smith, Jason Potts, Danielle Davis,**
24 **ICE, Tae D. Johnson, and Michael Bernacke.**

25 70. Plaintiffs re-allege and incorporate by reference the allegations set forth in all prior
26 paragraphs of this Complaint.

27 71. At all relevant times, City Defendants acted under color of state law.
28

1 72. Defendants’ policy, practice, custom, and actions deprived Plaintiffs of their
2 Fourth Amendment rights under the United States Constitution.

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

6 74. City Defendants intentionally violated Plaintiffs Moya and Lopez Jimenez’s right
7 to be free from unreasonable seizures without probable cause, by refusing to allow Plaintiffs to
8 post bail for which they were eligible.

9 75. As set forth above, Defendants continued to detain Plaintiffs Moya and Lopez-
10 Jimenez after the expiration of any and all state law basis to detain them, including after they
11 could have secured their release on bond and/or after the resolution of their state charges, solely
12 on the basis of ICE detainers and without probable cause to believe that Plaintiffs were
13 removable, thus seizing Plaintiffs in violation of the Fourth Amendment.

14 76. Plaintiffs Moya and Lopez-Jimenez suffered damages, including emotional
15 distress and economic losses, in an amount to be determined at trial, and as a proximate result of
16 Defendants’ conduct.

17 77. Defendants’ detention of individuals beyond the time they would otherwise be
18 released, solely based on an immigration detainer and without probable cause, is a violation of the
19 Fourth Amendment. Defendants’ unlawful conduct has forced Plaintiff Arriba to divert its
20 resources towards providing direct support for individuals subject to prolonged and unnecessary
21 detention and has frustrated Plaintiff Arriba’s mission of empowering low-wage and migrant
22 workers to advocate for their rights.

23 78. Defendants ICE, Johnson, and Bernacke’s issuance of ICE detainers for
24 individuals detained by City Defendants and detention of those individuals without “a prompt
25 probable cause determination by a neutral and detached magistrate to justify continued detention
26 pursuant to an immigration detainer” violate the Fourth Amendment. *See Gonzalez v. United*
27 *States Immigr. & Customs Enf’t*, 975 F.3d. 788, 798 (9th Cir.2020).

1 79. Defendants’ unlawful conduct therefore should be enjoined and Plaintiff Arriba is
2 entitled to a declaratory judgment that Defendants’ unlawful conduct violates the United States
3 Constitution.

4 **SECOND CAUSE OF ACTION**

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

6 **Plaintiffs vs. Defendants City of Las Vegas, Bananto Smith, Jason Potts, Danielle Davis,
7 ICE, Tae D. Johnson, and Michael Bernacke.**

8 80. Plaintiffs re-allege and incorporate by reference all allegations set forth in all prior
9 paragraphs of this Complaint.

10 81. The Eight Amendment provides that “[e]xcessive bail shall not be required, nor
11 excessive fines imposed[.]” While the Excessive Bail Clause of the Eighth Amendment “does not
12 bar the state from detaining arrestees without bail, or from considering interests other than flight
13 prevention in setting bail,” it does “prevent[] the imposition of bail conditions that are excessive
14 in light of the valid interests the state seeks to protect by offering bail.” *Galen v. Cty. of Los*
Angeles, 477 F.3d 652, 660 (9th Cir. 2007) (citing *U.S. v. Salerno*, 481 U.S. 739, 754 (1987)).

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

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

21 84. City Defendants’ practice of refusing to accept bail from Plaintiffs Moya and
22 Lopez-Jimenez and other individuals like them, who are willing and able to pay the bail amount
23 and could have secured their freedom but-for Defendants’ unlawful practice, solely on the basis
24 of immigration detainers filed against them, violated Plaintiffs right to have a state's bail system
25 administered without caprice or discrimination.
26
27
28

1 85. Plaintiffs Moya and Lopez-Jimenez suffered damages, including, but not limited
2 to, emotional distress and economic losses, in an amount to be determined at trial, and as a
3 proximate result of City Defendants' conduct.

4 86. City Defendants' denial of bail for individuals who are willing and able to pay the
5 bail amount, solely on the basis of immigration detainers filed against them, violates the
6 Fourteenth Amendment. City Defendants' unlawful conduct has forced Plaintiff Arriba to divert
7 its resources towards providing direct support for individuals subject to prolonged and
8 unnecessary detention and has frustrated Plaintiff Arriba's mission of empowering low-wage and
9 migrant workers to advocate for their rights.

10 87. City Defendants' unlawful conduct therefore should be enjoined and Plaintiff
11 Arriba is entitled to a declaratory judgement that Defendants' unlawful conduct violates the
12 United States Constitution and state law.

13
14 **THIRD CAUSE OF ACTION**

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

16 **Plaintiffs v. Defendants City of Las Vegas, Bananto Smith, Jason Potts, and Danielle Davis.**

17 88. Plaintiffs re-allege and incorporate by reference all allegations set forth in all prior
18 paragraphs of this Complaint.

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

21 90. City Defendants are responsible for the conduct of their employees under the
22 doctrine of *respondeat superior*.

23 91. City Defendants intentionally instigated or participated in the false imprisonment
24 of Plaintiffs Moya and Lopez-Jimenez, in violation of Nevada law, by detaining Plaintiffs in City
25 Defendants' custody beyond the time or authority permitted under state law, without probable
26 cause and in violation of the Fourth Amendment.

27 92. Plaintiffs Moya and Lopez-Jimenez suffered damages, including, but not limited
28 to, economic losses, humiliation, fear, and emotional distress, in an amount to be determined at

1 trial, and as a proximate result of City Defendants’ conduct. Plaintiffs are entitled to
2 compensation for physical discomfort or inconvenience, and for any resulting physical illness or
3 injury to health.

4 **FOURTH CAUSE OF ACTION**

5 **Violation of 5 U.S.C. §§ 706(2)(A)-(D) (Ultra Vires)**

6 **Plaintiffs vs. Defendants ICE, Tae D. Johnson, and Michael Bernacke.**

7 93. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set
8 forth herein.

9 94. Under 8 U.S.C. § 1357(a), Congress limited Defendant ICE’s warrantless arrest
10 authority to situations in which there is a probable cause of removability and a likelihood of
11 escape before a warrant can be obtained.

12 95. Under 8. U.S.C. § 1357(d)(3), Congress limited Defendant ICE’s ability to issue
13 immigration detainers to instances where a LEA arrested an individual “for a violation of any law
14 relating to controlled substances.”

15 96. When Defendants ICE, Johnson, and Bernacke issue detainers, they purport to
16 authorize LEAs to make warrantless arrests of Plaintiffs and other similarly detained individuals
17 on ICE’s behalf, but do so without a determination of probable cause of removability or
18 likelihood of escape, and do so for individuals not arrested for controlled substances law
19 violations.

20 97. Defendants ICE, Johnson, and Bernacke, therefore, issue detainers *ultra vires*, or
21 in excess of statutory authority, and deprive Plaintiffs and others, such as members of Plaintiff
22 Arriba, of liberty.

23 **JURY TRIAL**

24 98. Plaintiffs hereby request a jury trial.

25 **PRAYER FOR RELIEF**

26 99. WHEREFORE, Plaintiffs pray that this Court award:
27
28

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

4 b. A declaratory judgment that holding an individual based on an ICE detainer or
5 administrative warrant without a prompt probable cause determination by a neutral magistrate or
6 judge violates the Fourth Amendment to the United States Constitution;

7 c. A declaratory judgment that an ICE detainer issued for an individual who has not
8 been charged or detained in relation to violation of any controlled substance law is invalid as
9 *ultra vires*, or in excess of the authority granted to ICE by statute;

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

14 e. Monetary damages in an amount to be proven at trial;

15 f. Costs and attorneys’ fees against Defendants as to the causes of action alleged
16 under the Constitution and laws of the United States, under 42 U.S.C. § 1988;

17 g. All remedies provided by 42 U.S.C. § 1983; and

18 h. Such other relief as this Court may deem just and proper.

19 Dated: May 23, 2023

20 /s/ Ernest I. Herrera
21 Ernest I. Herrera
22 Leticia M. Saucedo
23 Luis L. Lozada
24 MEXICAN AMERICAN LEGAL DEFENSE
25 AND EDUCATIONAL FUND
26 634 S. Spring St., 11th Floor
27 Los Angeles, CA 90014
28 Telephone: (213) 629-2512
Facsimile: (213) 629-0266

Attorneys for Plaintiffs