

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARGARITO CASTAÑON NAVA, JOHN)
DOE, MIGUEL CORTES TORRES,)
GUILLERMO HERNANDEZ HERNANDEZ,)
and ERICK RIVERA SALES, on behalf of)
themselves and others similarly situated;)
ILLINOIS COALITION FOR IMMIGRANT)
AND REFUGEE RIGHTS; and ORGANIZED)
COMMUNITIES AGAINST DEPORTATION,)

Plaintiffs,

v.

DEPARTMENT OF HOMELAND)
SECURITY, U.S. IMMIGRATION AND)
CUSTOMS ENFORCEMENT (ICE); KRISTI)
NOEM, Secretary, Department of Homeland)
Security; TODD LYONS, Acting Director, ICE;)
and SAM OLSON, Acting Field Office Director)
(FOD) of the ICE Chicago Field Office,¹)

Defendants.

Case No. 18-cv-03757

Judge Rebecca R. Pallmeyer

CLASS ACTION

**PLAINTIFFS' MOTION TO ENFORCE COURT ORDER
REGARDING SETTLEMENT AGREEMENT AND SUPPORTING
MEMORANDUM OF LAW**

¹ Under Federal Rule of Civil Procedure 25(d), Individual Defendants sued in their professional capacity are replaced with the current occupants of those positions.

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INTRODUCTION

In May 2018, Plaintiffs filed this action challenging Defendants' pattern or practice of conducting warrantless arrests and vehicle stops in the Chicago area in violation of federal immigration laws and the Fourth Amendment. The case followed a large-scale immigration enforcement action in 2018 called "Operation Keep Safe." That operation involved large-scale immigration arrests, which included "collateral arrests" of individuals encountered while in the community and previously unknown to immigration. Those arrests were warrantless under the Immigration and Nationality Act ("INA").

In 2022, this Court approved the Settlement Agreement, which contains a Nationwide Policy outlining the legal requirements for making warrantless arrests under the statute and restraining further illegal arrests by Immigration and Customs Enforcement ("ICE"). The Settlement covers the class of people Individual Plaintiffs sought to represent within ICE's Chicago Area of Responsibility. This Court approved the Settlement in a Final Approval Order entered February 8, 2022, stating in pertinent part:

The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

Dkt. 158, ¶ 12.

The Settlement and the Court's Approval Order required nothing novel or extreme. Defendants simply agreed to comply with the law set forth primarily in 8 U.S.C. § 1357(a)(2), which governs the warrantless arrest of immigrants in the United States. Defendants also agreed to train their officers to comply with the law.

Now, recent arrests of Class Members subject to this Court's jurisdiction demonstrate that Defendants have not complied with this Court's Order and do not intend to. This motion raises 22

violations identified within a few weeks after January 21, 2025, and Plaintiffs’ counsel have already identified more. Plaintiffs ask that the Court order Defendants to provide Class Members identified in this motion the individual remedies they are entitled to under Section IV.E. of the Settlement as ordered by this Court. Dkt. 155-1, § IV.E.; Dkt. 158, ¶ 12. Plaintiffs further request the additional relief detailed in Section III below to address “repeat, material violations” of the Settlement, its Policy, and this Court’s Order. *Id.*, § V.B.; *id.*, ¶ 12.

BACKGROUND

A. Lawsuit and Settlement Agreement

In 2018, the Trump administration took aim at “sanctuary jurisdictions”—places that limit local participation in immigration enforcement—like Chicago by pursuing mass enforcement operations, including Operation Keep Safe. In these efforts, ICE arrested hundreds of individuals at home, at businesses, in their cars, and simply on the street, without a warrant. *See* Dkt. 58.

A key architect of these actions, Thomas Homan, was then acting ICE Director and now carries the unofficial title of “Border Czar.”² Mr. Homan instructed ICE agents to make hundreds of warrantless and “collateral” arrests. DHS uses the term “collateral” to describe individuals it encounters when conducting community-based enforcement operations who were not targets.³ Mr. Homan correctly predicted that “collateral arrests” were “inevitabl[e]”; the majority of the hundreds arrested during Operation Keep Safe were collateral, warrantless arrests.⁴

² Jill Colvin & Rebecca Santana, *Trump names Tom Homan, former director of immigration enforcement, as ‘border czar,’* AP NEWS (Nov. 11, 2024), <https://tinyurl.com/dc6bf6e5>.

³ Immigration and Customs Enforcement, *Statement from ICE Acting Director Tom Homan on California Sanctuary Law* (Oct. 6, 2017), <https://tinyurl.com/yuzw4w8r>.

⁴ Dara Lind, “What John Kelly’s final ICE raid tells us about Trump’s new chief of staff,” Aug. 2, 2017, *Vox*, <https://tinyurl.com/4k8xy4nh>; *see also* Dkt. 58, ¶¶ 30-32; ICE, News Releases, “ICE arrests 156 criminal aliens and immigration violators during Operation Keep Safe in Chicago area,” (updated May 29, 2018), <https://tinyurl.com/kyhe4s75>.

Plaintiffs' 2018 suit argued primarily that this approach exceeded ICE's limited warrantless arrest authority under the INA, 8 U.S.C. § 1357(a)(2), which allows for a warrantless arrest only if the officer "has reason to believe that the [noncitizen] so arrested is in the United States in violation of any such law or regulation *and* is likely to escape before a warrant can be obtained for his arrest." *Id.* (emphasis added). After the Court denied Defendants' Motion to Dismiss, Dkt. 88, and with assistance from then Magistrate Judge Cummings, the parties held arm's-length settlement negotiations, which culminated in a Settlement Agreement, signed by the parties and approved by the Court. Dkt. 155-1; Dkt. 158. The Settlement became effective on May 13, 2022, carried a three-year term, and contained enforcement mechanisms Class Members now utilize.

The Settlement sets out a Broadcast Statement of Policy ("Policy"), attached to the Settlement at Appendix A, that states what the law requires in connection with warrantless arrests. Among other things, the Policy prohibits ICE Officers from making warrantless arrests without probable cause that the individual is in the United States in violation of U.S. immigration laws *and* probable cause that the individual is likely to escape before a warrant can be obtained. The Policy also specifies relevant factors to be considered when making a probable cause determination and specific information that must be documented in an arrest record, Form I-213.⁵

B. Agency Level Developments Leading to This Motion

Thomas Homan currently oversees the country's deportation efforts, and he has not been shy about his plans to pick up where he left off in 2018. He is once again targeting sanctuary

⁵ Form I-213, Record of Deportable/Inadmissible Alien, is a document used by the U.S. Department of Homeland Security ("DHS") to support removal proceedings. The form is often submitted to immigration judges at removal proceedings.

cities,⁶ and he named Chicago as his supposed “ground zero” for such actions.⁷ Indeed, Mr. Homan’s recent statements mirror those made before and during Operation Keep Safe regarding the role of collateral arrests as part of an enforcement plan. As before, Mr. Homan has complained that “sanctuary laws” leave immigration officers with “no choice” but to rely on at-large, targeted arrests that “will inevitably result in additional collateral arrests.”⁸ Mr. Homan has spoken in clear terms: “[S]anctuary cities will get exactly what they don’t want, more agents in their neighborhoods and more collateral arrests.”⁹

In early 2025, Defendants instructed that “each of the [ICE’s] field offices should make 75 arrests per day and managers would be held accountable for missing those targets.”¹⁰ The same day these quotas were announced, Defendants announced raids targeting Chicago, and Mr. Homan confirmed that any undocumented person could be arrested if they were near a person ICE was targeting as a priority for deportation.¹¹ On January 27, 2025, Defendants trumpeted that they had made triple-digit arrests in multiple cities, including Chicago, the day before.¹² Of those arrests, NBC News reported that Mr. Homan said “he was aware of ‘at least a few’ collateral arrests.”¹³ Mr. Homan also acknowledged that collateral arrests would “recur as immigration enforcement

⁶ Alec Hernández, *Tom Homan takes to conservative media to outline Trump’s plan for mass deportations*, NBC NEWS (Dec. 11, 2024), <https://tinyurl.com/3chwmueu>.

⁷ Tina Sfondeles, *Chicago to be ground zero for mass deportations, Trump border czar tells Illinois Republicans*, CHICAGO PUB. RADIO (Dec. 11, 2024), <https://tinyurl.com/528sp37r>.

⁸ Immigration and Customs Enforcement, *Statement from ICE Acting Director Tom Homan on California Sanctuary Law* (Oct. 6, 2017), <https://tinyurl.com/yuzw4w8r>.

⁹ Adam Shaw, *Trump border czar Tom Homan reveals ICE teams are already arresting ‘public safety threats,’* FOX NEWS (Jan. 21, 2025), <https://tinyurl.com/532a9tuf>.

¹⁰ Nick Miroff & Maria Sacchetti, *Trump officials issue quotas to ICE officers to ramp up arrests*, WASHINGTON POST (Jan. 26, 2025), <https://tinyurl.com/yeyrtrtkv>.

¹¹ Courtney Sisk, *Trump ‘border czar’ in Chicago as immigration enforcement crackdown begins*, NBC NEWS (Jan. 26, 2025), <https://tinyurl.com/4dnpzdzm>.

¹² Gabe Gutierrez & Nicole Acevedo, *ICE makes close to 1,200 arrests in one day*, NBC NEWS (Jan. 27, 2025), <https://tinyurl.com/4et4pffx>.

¹³ *Id.*

actions escalate across the nation.”¹⁴ These early 2025 operations, dubbed Operation Safeguard,¹⁵ mark a clear departure from the requirements of the Settlement, Order, and underlying Policy.

C. Harms Facing Individual Class Members

Defendants’ violations of this Court’s order fall into four categories. First, the Settlement Agreement and Order require ICE to have probable cause that a person is a removable noncitizen and to document all warrantless arrests even if the person turns out to be a U.S. citizen or have other status. Defendants are failing to do so, and as a result, ICE officers arrested and failed to document the arrest of at least one U.S. citizen, Julio Noriega.

Second, Defendants have attempted to circumvent the Settlement Agreement and Order by issuing administrative warrants *after* arrests of Class Members have occurred. When confronted with these violations, Defendants argue that arrests were not warrantless, and thus not subject to the Court’s Order regarding the Settlement. This characterization is legally improper. And even when Defendants claimed to make the arrests based on these post hoc administrative “warrants,” they did not adhere to the INA’s requirements for a warrant-based arrest. Plaintiffs are concerned that this strategy is based on a policy or practice to evade the Settlement Agreement and Order.

Third, contrary to the Court’s order and 8 U.S.C. § 1357(a)(2), Defendants have arrested Class Members without individualized probable cause assessments as to their “likel[i]hood to escape before a warrant can be obtained for [the] arrest” and have failed to document any probable cause in the individuals’ Form I-213 arrest record. ICE is required but failed to consider and document the individual’s community ties, such as whether they have a home, family, and employment. Instead, Defendants have tried to hide from this Court the deficiencies in these Class

¹⁴ *Id.*

¹⁵ Zolan Kanno-Youngs & Hamed Aleaziz, *Trump’s Deportation Plan Could Start Next Week in Chicago*, NEW YORK TIMES (Jan. 17, 2025), <https://tinyurl.com/fedswj4c>.

Members' Form I-213s by producing "supplemented" I-213s rather than the originals. Plaintiffs have included with this Motion the actual I-213s that DHS submitted to the immigration court, which show deliberate disregard for the Settlement Agreement and Court Order. Dkt 158, ¶ 12.

Finally, in the one instance where Defendants gave lip service to the "likelihood to escape" requirement of 8 U.S.C. § 1357(a)(2), Defendants did not make an individualized probable cause finding. Instead, they copied and pasted from a different arrest, with facts that were internally inconsistent with other information in the Class Member's Form I-213.

Below are specific examples of Defendants' violations.

1. Category 1: Warrantless Arrest Without Probable Cause That the Person Is a Noncitizen and Failure to Document Arrest.

Julio Noriega is 54 years old, was born in Chicago, and is a U.S. citizen. Ex. A, Decl. of Julio Noriega ¶ 1.¹⁶ On January 31, 2025, he was walking near the corner of Cermak Road and Harlem Avenue in Berwyn, Illinois, handing out his resume to local businesses. *Id.* ¶ 2. As he walked out of a Jiffy Lube, he was approached by ICE officers who grabbed and handcuffed him and put him into a van, without an opportunity to explain his citizenship. *Id.* ¶¶ 2-3. The officers drove Julio and others around for more than an hour before bringing him to an ICE processing center, where he remained, still handcuffed, for several more hours. *Id.* ¶ 4. All the while, Julio had a wallet containing identification that ICE had confiscated. *Id.* ¶ 3. The officers never showed Julio a warrant, and they did not ask him any questions to ascertain whether he was a noncitizen or a flight risk. *Id.* ¶¶ 3-5. After about 10 hours, ICE officers reviewed the contents of Julio's wallet, realized he was a U.S. citizen, and released him with no money and no paperwork. *Id.* ¶ 5.

¹⁶ Declarations detailing Class Members' experiences are attached to the declaration from Mark Fleming and cited as, for example, Ex. A, Decl. of Julio Noriega.

Julio reports that he was released with others, presumably others that ICE lacked basis to arrest. *Id.*

2. Category 2: Arrests Based On Post Hoc Administrative “Warrants”

Jhony Ariel Godoy Gregorio has been in the United States for more than 15 years and lives in Maywood, Illinois with family, including his brothers Marco and Bayron. Ex. B, Decl. of Jhony Godoy Gregorio ¶¶ 1, 7. On January 27, 2025, around 5:30 a.m., Jhony was driving to work in a car with his brother Bayron, who was wearing an ICE-mandated ankle monitor. *Id.* ¶¶ 2-3. An officer pulled over the car and asked Jhony if he was “Brian.” *Id.* ¶ 4. When he said no, the officer asked for his identification. *Id.* Jhony handed his identification through his window, and the officer opened the door from the outside, grabbed Jhony, pulled him from the car, and had him put his hands on the car. *Id.* The officer handcuffed Jhony at his hands and feet and said he was with ICE. *Id.* Multiple trucks carrying about 15 armed officers surrounded them. *Id.* ¶ 5. Officers purported to create a warrant in the field but used an old form, misspelled Jhony’s name, omitted the “file number,” and left it blank with respect to service. Ex. D, I-200 of Jhony Godoy Gregorio. The document is partially handwritten, but some portions—the date and place of entry marked as “unknown” and the issuing officer’s identifying information and signature—were pre-typed and pre-signed. *Id.* Jhony was not shown or served a warrant and has no criminal history, apart from traffic violations. Ex. C, I-213 of Jhony Godoy Gregorio at 2; Ex. B ¶¶ 6, 8. Jhony was detained in Indiana, then transferred to Louisiana before he was able to reunite with his wife and child after posting bond. Ex. B ¶¶ 7, 9.

Marco Tulio Godoy Gregorio also lives in Maywood, Illinois and was arrested with his brother Jhony, though in a separate car. Ex. E, Decl. of Marco Godoy Gregorio ¶¶ 1, 3. ICE also pulled over Marco and asked if he was “Brian.” *Id.* ¶ 4. After he said no, an officer requested identification. *Id.* Marco produced a Guatemalan consular ID. *Id.* The officer grabbed it and yelled

at him to turn off his car. *Id.* A second officer came to the window, said he was with ICE, and told Marco he would be arrested. *Id.* Based on the instruction to turn off his car, the statement he would be arrested, and the weapons carried by officers around the car, Marco did not believe he was free to leave. *Id.* Marco's Form I-200 created in the field contains various errors: There is no "file number," the version of the form is old, and the box for verifying service is blank. Ex. G, I-200 of Marco Godoy Gregorio. As with Jhony's warrant, the document is partially handwritten, but also partially pre-typed and pre-signed by the issuing officer. *Id.* Marco was never shown or served a warrant and has no criminal convictions. *Id.*; Ex. F, I-213 of Marco Godoy Gregorio at 3; Ex. E ¶¶ 5-6. Like his brother, he was initially detained in Indiana but subsequently transferred to Louisiana before he was granted bond. Ex. E ¶¶ 7-8. Marco spent 25 days in custody before he saw a judge to request bond. *Id.*

Sergio Bolanos Romero lives in Chicago with his family, including his U.S.-citizen child. Ex. H, Decl. of Sergio Bolanos Romero ¶ 1. He was arrested on January 26, 2025, blocks from his home, while driving to work. *Id.* ¶ 2. Defendants describe their target as having lived in the same building as Sergio, but Sergio's car did not match their target's car. Ex. I, I-213 of Sergio Bolanos Romero at 2. Officers confiscated Sergio's identification, ordered him to exit his vehicle, and instructed him to stand between his car and the officers' vehicle while one officer stood with him, rendering him unable to leave. Ex. H ¶¶ 4-5; Ex. I at 3. The officer asked Sergio for proof of his immigration status and handcuffed him when he did not produce any. Ex. H ¶ 6; Ex. I at 3. The officers took Sergio to a parking lot, an ICE processing center, and then a jail in Wisconsin. Ex. H ¶¶ 7-10; Ex. I at 3. Sergio was not shown or served a warrant, but ICE set bond and released him two days later. Ex. I at 3; Ex. H ¶¶ 9, 11-12. Sergio now fears another unlawful arrest. *Id.* ¶ 14.

Jose Octavio Ortega Gonzalez has lived in the United States for more than 20 years and in Kansas for more than 15, and he has U.S.-citizen children. Ex. J, Decl. of Jose Ortega Gonzalez ¶¶ 1, 6. He was arrested while driving to work the morning of February 6, 2025. *Id.* ¶ 2. The ICE officers approached the car and questioned him and a colleague who was a passenger. *Id.* ¶ 3. Jose told them he did not have a document to show he had lawful status. *Id.* The officers asked him if he had a drug trafficking arrest, to which Jose responded he had no criminal history apart from a traffic offense. *Id.* ¶¶ 3, 6. The officers handcuffed Jose without an assessment as to the risk of flight and without a warrant. *Id.* ¶¶ 4, 5; Ex. K, I-213 of Jose Ortega Gonzalez at 2-3. The I-213 states the arrest was conducted pursuant to a warrant. *Id.* at 3. The I-200 is handwritten. Ex. L, I-200 of Jose Ortega Gonzalez. On that form, Jose's File Number (A-number) and the signature of the officer attesting to serving Jose with the warrant are written in a different color, seemingly at a later time. *Id.* Jose was not shown or served a warrant when he was arrested. Ex. J ¶ 5. Jose was first transported to the local police and then taken into ICE custody. *Id.* ¶ 4. Jose spent three weeks in ICE custody before a judge issued a bond. *Id.* ¶ 7.

Bernardino Randa Marinas was arrested after leaving his house for work in Chicago on January 29, 2025. Ex. M, Decl. of Bernardino Randa Marinas ¶ 3. An officer took his identification to his car, while a remaining officer instructed Bernardino to keep his hands on the steering wheel and not to move for about 40 minutes, during which time he understood that he was not free to leave. *Id.* The officer running records checks found a note stating that a charging document for removal proceedings (a Notice to Appear) needed to be created. Ex. N, I-213 of Bernardino Randa Marinas at 2. Therefore, the I-213 says, a warrant was written up while Bernardino was held in his car. *Id.* The first officer returned and told Bernardino he was being arrested. Ex. M ¶ 5. Bernardino asked to see a warrant, but the officer allowed only a glimpse of a document on a cell

phone, which was too brief for Bernardino to see or read it. *Id.* ¶ 7. The I-200 “warrant” is handwritten and states that the basis for the warrant was the execution of a charging document to initiate removal proceedings. Ex. O, I-200 of Bernardino Randa Marinas. But Bernardino was not served with a Notice to Appear in the field, nor did he have removal proceedings pending at the time of his arrest. Ex. M ¶¶ 6, 7; Ex. N at 2-3. Bernardino has lived in the United States for more than two decades and has two U.S.-citizen children, and a third child due in May. *Id.* ¶ 1.

Abel Orozco Ortega¹⁷ is a 47-year-old resident of Lyons, Illinois, who has lived in the same house for 15 years. Ex. P, Decl. of Abel Orozco Ortega ¶ 1. ICE arrested him as he returned home from buying food for his family on January 26, 2025. *Id.* ¶ 2. Officers were apparently looking for one of Abel’s sons, who is decades younger but has the same name. Ex. Q, I-213 of Abel Orozco Ortega at 2. Upon seeing Abel’s driver’s license, the officer reached inside Abel’s car and unlocked and opened the door. Ex. P ¶ 4. He then grabbed Abel’s arm and told him that he was under arrest. *Id.* Officers handcuffed Abel and placed him in a car. *Id.* ¶¶ 4, 6. Abel’s U.S.-citizen son, Eduardo, heard Abel in the back of the car, and when he tried to speak to his father, the driver of the vehicle ran over Eduardo’s foot. *Id.* ¶ 7; Ex. Q at 3. Abel then had a medical emergency and required hospitalization. Ex. P ¶¶ 8-10; Ex. Q at 4. Following Abel’s discharge from the hospital, ICE moved him to a detention center in Indiana, where he remains. Ex. P ¶ 11. The I-200 includes an erroneous A-number and was purportedly signed by Assistant Field Office Director (“AFOD”) Bacon. Ex. R, I-200 for Abel Orozco Ortega. The I-213 does not mention AFOD Bacon as having been present at the arrest or as having communicated with anyone who had. *See generally* Ex. Q. The I-200’s box for service is blank, Ex. R., and the I-213 and I-200 contain different names for Abel. Ex. Q at 1; Ex. R.

¹⁷ ICE has Abel listed in its system as “Abelardo Ortega Ortega.”

Raul Lopez Garcia is a 44-year-old father and resident of Elgin, Illinois. Ex. S, Decl. of Raul Lopez Garcia ¶ 1. Raul was arrested early in the morning of January 28, 2025, when officers wearing Marshals' attire broke down the door to his home. *Id.* ¶¶ 2-4, 6. The officers found him in an unlocked room on the second floor of his house and immediately handcuffed him and took his identification. *Id.* ¶ 4. Raul was then transported to an ICE office, where he was processed. *Id.* ¶ 8. ICE states on the I-213 that officers came across Raul while looking for his stepson, for whom they had an arrest warrant. Ex. T, I-213 of Raul Lopez Garcia at 2. The I-213 also states they arrested Raul pursuant to a "warrant of arrest" issued on January 27, 2025—the day before his arrest. *Id.* However, the I-200 is dated January 28, 2025. Ex. U, I-200 for Raul Lopez Garcia. The I-200 does not have Raul's File Number (A-number); it describes the basis for the warrant as relying on biometrics or records checks. *Id.* Raul was not shown or served a warrant. Ex. S ¶ 11. ICE eventually released Raul pursuant to a bond. *Id.* ¶ 9.

Jocknuel Hernandez Rojas is a 24-year-old resident of Chicago. Ex. V, Decl. of Jocknuel Hernandez Rojas ¶ 1. He was arrested the morning of January 27, 2025, when ICE agents came to his apartment building in search of another man. *Id.* ¶¶ 2-5. Two officers knocked on the door and asked for "Carlos," but Jocknuel's roommate told them no one named Carlos lived there. *Id.* ¶ 2. The officers demanded entry anyway, and about eight more forced their way in, damaging the door in the process. *Id.* ¶ 3. The officers entered Jocknuel's bedroom, where he was watching television from bed, and ordered him to get dressed, telling him he was under arrest. *Id.* ¶ 4. After taking his identification, the officers handcuffed Jocknuel and marched him out of the building. *Id.* ¶ 5. Once he was in their vehicle, the officers informed Jocknuel that they were ICE, not police. *Id.* Jocknuel had previously been issued a Notice to Appear in immigration court, but his proceedings were

dismissed. Ex. W, I-213 of Jocknuel Hernandez Rojas at 3. Jocknuel was first detained in Indiana, then in Louisiana. Ex. V ¶ 7. He was released pursuant to a bond. *Id.* ¶¶ 8, 9.

3. Category 3: Warrantless Arrests at Restaurant in Liberty, Missouri, Without Probable Cause of Flight Risk or Form I-213 Documentation.

On February 7, 2025, a group of agents from ICE’s Homeland Security Investigations (“HSI”) entered El Potro’s Mexican Café and Cantina in Liberty, Missouri just before lunchtime. Ex. X, Decl. of Francisco De La Torre Oregon, ¶¶ 3-4. Security camera footage shows two agents wearing tactical gear entering the restaurant at 11:01 a.m., while another guards the front door. Ex. HH at 1, 2. More than 10 agents were present for the operation; they were armed and many concealed their faces. *Id.* at 6 (showing 13 HSI agents); Ex. X ¶ 5. The agents told the owner that they were looking for someone, but did not give a name or even provide a photograph. Ex. X ¶ 6. The agents demanded that the owner make his employees available for questioning, and the owner felt obliged to do so. *Id.* ¶¶ 7-14, 19.

Agents then rounded up the employees and detained them in four booths in a separate portion of the dining room with only two exits. Ex. HH at 3. By 11:18 a.m., the agents had detained eight employees in the booths, with at least one HSI agent guarding each exit at all times. *See id.* In addition to the agents immediately guarding the employees, agents are seen guarding the exits from the restaurant. *Id.* at 6. Each employee was directed to present an identity document. Ex. X ¶¶ 17, 19; Ex. Z, Report of Investigation (“ROI”) at 3-4. Beyond determining identities, the agents did not ask the employees questions despite holding them for nearly two hours. At 11:20 a.m., agents handcuffed one employee who had already been detained in the booths. Ex. HH at 4. By 11:32 a.m., 11 of the employees were being forced to remain in the guarded booths.

Twenty minutes later, at 11:54 a.m., camera footage shows HSI agents with the restaurant owner's records, *id.* at 5, pulling out particular files but not reviewing them. By 12:23 p.m., agents started to escort the employees out of the restaurant. *Id.* at 7; Ex. X, ¶ 25.

At the end of this ordeal, HSI handcuffed 12 total individuals and transported them to ICE for processing. Ex. X ¶¶ 25-26. This group includes Imelda Minquis Villaseca, Jesus Espinoza-Magana, Sandra Julieta Jurado-Castaneda, Uriel Windell Campechano-Pelayo, Julio Corona-Guerrero, Cristino Mosso-Portillo, Pastor Martinez-Manzanarez, Victor Espinoza-Magana, Gustavo Robles-Lopez, Nazario Tiburcio-Patricio, Reymundo Mauricio-Agustin, and Silvia Cerda-Sajuan. Ex. Z at 3-4.

Though I-213s were subsequently prepared for these 12 individuals, those documents do not contain an assessment of the relevant factors that would have been required to justify a warrantless arrest under the Settlement and Policy. Ex. Y; Ex. AA. After initial processing, 11 of these individuals were detained by ICE in Kansas, and one person was taken initially to Kentucky and then Indiana. The majority received and quickly posted a minimum bond. One individual has been deported, and one remains detained.

4. Category 4: Lack of Individualized Probable Cause or Documentation for Warrantless Arrest.

Senen Becerra Hernandez is a resident of Chicago, who was arrested without a warrant when federal agents broke down the door to his home in search of his roommate. Ex. BB, Decl. of Senen Becerra Hernandez ¶¶ 1-2, 5. Senen was immediately handcuffed and made to wait outside for more than an hour. *Id.* ¶¶ 6, 9. The agents then transported him to an ICE facility. *Id.* The agents did not ask him for the information required by the Settlement to determine whether he was a flight risk. *Id.* ¶ 8. Form I-213 states that Senen did not reside at the address where they arrested him—4724 W. Van Buren—and the agents cite that as the basis for his warrantless arrest. Ex. CC,

I-213 of Senen Becerra Hernandez at 2. However, the I-213 also states that Senen’s current address is 4729 Van Buren St., which appears to be a scrivener’s error as to the last digit of his address.¹⁸ *Id.* at 1. The I-213 then states that “based on the interview” the agents did not know of any community ties for Senen. *Id.* at 2. In fact, Senen lived at the address where he was arrested, had a job, and regularly attends church. Ex. BB ¶¶ 1, 3. The I-213s for two other individuals arrested at that same location that day contain, verbatim, the same content with respect to community ties. Ex. DD at 2, 5.

D. Dispute Resolution Efforts

On January 16, 2025, Plaintiffs’ counsel raised concerns regarding “potential noncompliance with the *Nava* settlement agreement in light of recent public statements by key officials” and requested a meet and confer to “understand[] what measures [were] being put in place to ensure [the] incoming administration officials are fully briefed on the settlement’s obligations; to maintain compliance with settlement terms during field operations; and to incorporate settlement requirements into any new enforcement directives.” On January 22, 2025, Defendants’ counsel stated that he forwarded Plaintiffs’ concerns to ICE but “[did not] see any basis for a meet and confer.”

On January 29, 2025, Plaintiffs notified Defendants of the first tranche of potential Settlement violations and requested to meet and confer within five days. Plaintiffs also stated that the violations demonstrated “a pattern of repeated material violations of the settlement agreement.” On February 4, 2025, Plaintiffs raised two additional violations and requested a second meet and confer. On February 5 and 12, the parties met as to these individuals; five cases remain unresolved.

¹⁸ There is no 4729 W Van Buren Street. There is a 4727 and a 4731.

On February 14, 2025, Plaintiffs notified Defendants of 17 additional violations. On February 24, 2025, the parties had a third meet and confer about these violations, at which time Defendants stated that they did not believe these cases represented Settlement violations.

This motion to enforce follows.

ARGUMENT

I. Plaintiffs Followed the Settlement’s Conflict Resolution Procedures Before Bringing This Motion.

The Settlement states that “[i]n the event Plaintiffs believe ICE has arrested and detained a Class Member contrary to the provisions of this Agreement, Plaintiffs shall raise the issue via written notice to Defendants as soon as practicable.” Dkt. 155-1, § V.A. Upon this notice, the Defendants “shall meet and confer with Plaintiffs” within five business days. *Id.* “If the dispute cannot be resolved within five (5) business days of the date of the meet and confer, Plaintiffs may move to enforce the terms of this Agreement through a Motion to Enforce.” *Id.* The Settlement also provides a process for raising “repeated, material violations.” *Id.*, § V.B. Under those provisions, Defendants are entitled to 10 business days to meet and confer and up to an additional 20 business days to resolve the dispute, assuming they intend to attempt to resolve it. *Id.* Consistent with these requirements, the parties have conferred multiple times but have been unable to resolve individual cases or address repeat, material violations of the Settlement.

II. Defendants Violated the Settlement, Court Order, and Statute in Multiple Ways.

Defendants have violated the Settlement and Court Order in at least four ways. They (1) arrested at least one Class Member without probable cause that the person is a removable noncitizen and failed to document such arrests, (2) created post-hoc “warrants” in the field after a person was already under arrest, (3) failed to assess whether there was probable cause that an individual was likely to flee before a warrant could be obtained for the arrest, and (4) failed to

perform required documentation. These violations justify the remedies sought.

A. Category 1: Defendants Arrested Julio Noriega, a U.S. Citizen, Without Probable Cause and Without Any Documentation of His Arrest.

The Settlement defines a “Class Member” as any “*persons* arrested without a warrant for a civil violation of U.S. immigration laws within the area of responsibility of the ICE Chicago Field Office.” Dkt. 155-1, § II. (emphasis added). The use of “persons” was intentional: a warrantless immigration arrest requires, first and foremost, probable cause that the person is a noncitizen. *Id.* at App. A. And that probable cause must be appropriately documented. *Id.*

Defendants claim to have no record of events pertaining to Julio’s arrest even though he has provided a detailed account of it, and even though counsel has contemporaneous text messages Julio sent to a loved one confirming that he was being arrested by ICE and separately received text messages about this arrest soon thereafter from his family and immigration advocates. At a minimum, body camera footage and/or security footage from ICE’s processing center should have confirmed Julio’s presence in ICE’s custody on January 31. Moreover, this unlawful arrest does not appear to have been an isolated mistake: Julio reports that he was released with other people, for whom ICE presumably lacked authority to arrest.

The Settlement requires ICE officers to document all warrantless arrests of Class Members. Dkt.155-1, at App. A. Their failure to do so undermines the ability of Plaintiffs and this Court to ensure compliance. And the warrantless arrest of a U.S. citizen flagrantly violates the Settlement, the Policy, and the statute, all of which require probable cause that the person being arrested is a noncitizen present in the United States in violation of U.S. immigration laws. *See* 8 U.S.C. § 1357(a)(2); Dkt. 155-1, at App. A.

B. Category 2: Defendants Created Improper Post Hoc “Warrants” in the Field.

With respect to Class Members who allegedly were arrested based on “warrants” created

in the field, Defendants seem to be following a notable practice: creating post hoc administrative warrants, after a person is already under arrest. Defendants claim to have arrested these individuals based on Form I-200, “Warrants” even though they do not dispute that no one received this document at the time of arrest. Defendants’ claim is not that they have followed the Settlement and Court Order, but that the Settlement requirements do not apply to the arrests described in this motion.

This position fails for two reasons. First, Class Members were already “under arrest” when these documents were created. The Settlement’s training specifically forbids reliance on post hoc administrative warrants to avoid the Settlement Policy’s warrantless arrest requirements. Second, the INA and regulations have specific requirements for making arrests pursuant to an administrative warrant, which Defendants failed to follow.

1. Class Members Were Arrested Before Defendants Created Warrants.

Though ICE officers may make investigatory vehicle stops based on reasonable suspicion that the vehicle contains an illegally present noncitizen, the stops here exceeded the bounds of what is permissible. For such an investigatory stop, i.e., a *Terry* stop, to “pass constitutional muster, the investigation following it must be reasonably related in scope and duration to the circumstances that justified the stop in the first instance.” *United States v. Bullock*, 632 F.3d 1004, 1015 (7th Cir. 2011) (internal citation omitted). A “*Terry* stop can ripen into a de facto arrest that must be based on probable cause if it continues too long or becomes unreasonably intrusive,” “including through a disproportionate use of force.” *Mwangangi v. Nielsen*, 48 F.4th 816, 824 (7th Cir. 2022) (internal citations omitted).

Plaintiffs do not dispute that Defendants may stop vehicles where there is reasonable suspicion that a specific immigrant whom they know or believe to be present in the United States illegally is present. But even if the arrests here started as investigatory stops, they quickly became

warrantless arrests. For brothers Jhony and Marco, the officers claimed to be looking for “Brian”; when both demonstrated that they were not Brian, authority for an investigatory stop ceased. Ex. B, ¶ 4; Ex. E, ¶ 4; *see Poolaw v. Marcantel*, 565 F.3d 721, 737 (10th Cir. 2009) (status as suspect’s sibling did not create reasonable suspicion for individual’s arrest). For Sergio, the officers’ authority to perform an investigatory stop is even more attenuated because the vehicle he was driving did not match the description of their suspect and, after the stop, officers quickly learned he was not the target. Ex. I at 2-3; Ex. H ¶¶ 5-7; *see United States v. Lopez*, 907 F.3d 472, 483 (7th Cir. 2018) (no reasonable suspicion where tip reported a white Chevrolet Malibu but officers apprehended individual in a white van); *United States v. Street*, 917 F.3d 586, 594 (7th Cir. 2019) (“Without more, a description that applies to large numbers of people will not justify the seizure of a particular individual. This is especially true where the description is based primarily on race and sex.”). In the case of Jose, the officers claimed to be looking for someone with a drug trafficking arrest, which he does not have. Ex. J ¶ 3. For Bernandino, like Jhony and Marco, the officers were looking for his brother, Constantino. Ex. N at 2. And the officers arrested Abel even though they claim to have been looking for someone much younger: his son. Ex. Q at 3; Ex. P ¶ 6; *United States v. Bey*, 911 F.3d 139, 146 (3d Cir. 2018) (invalidating officers’ reasonable suspicion because target was much younger than apprehended person).

Even if these stops started as valid “investigatory” stops, they quickly “ripened into a de facto arrest” well before Defendants issued the Form I-200s that they relied upon. Jhony, Abel, and Jose were handcuffed upon exiting their vehicles, Jhony and Abel forcibly. Ex. B ¶ 4; Ex. P ¶ 4; Ex. Q at 2; Ex. J ¶ 4. Marco was ordered to turn off his car while armed officers surrounded him. Ex. E ¶ 4. Sergio was ordered out of his vehicle and instructed to stand in a confined space with an officer, Ex. H ¶ 5, while Bernandino had to wait with his hands in view for about 40

minutes with an armed officer outside his car only to be subsequently removed from the car and handcuffed, Ex. M ¶ 3. These details converted each stop into an arrest. In particular, the “use of handcuffs substantially aggravates the intrusiveness of a *Terry* stop” and is one of the “hallmarks of formal arrest.” *United States v. Glenna*, 878 F.2d 967, 972 (7th Cir. 1989); see *Mwangangi*, 48 F.4th at 827 (encounter exceeded permissible scope of a *Terry* stop where the officer’s “use of handcuffs seems to have been automatic—a reflexive next step untethered to anything except highly generalized concerns about officer safety”); *Matz v. Klotka*, 769 F.3d 517, 526 (7th Cir. 2014). Even for those who were not immediately handcuffed, the duration of the stop, the number of armed officers surrounding the respective Class Member, and the other circumstances all led each person to the conclusion that he was not free to leave, converting these stops into arrests. *United States v. Ienco*, 182 F.3d 517, 525 (7th Cir. 1999) (thirty-minute detention in squad car was too long where reasonable suspicion was weak and suspects were not dangerous); *Sprosty v. Buchler*, 79 F.3d 635, 642 (7th Cir. 1996) (high degree of police control over environment indicative of arrest); *Rogers v. City of Wheaton*, 2024 WL 4007681, at *10 (N.D. Ill. Aug. 30, 2024) (individual under arrest where placed in squad car though individual “complied with the officers’ demands, never threatened to flee or cause harm to the officers, and was outnumbered by police at the scene”).

Likewise, Raul and Jocknuel were unquestionably already under arrest when agents began to create administrative warrants because officers entered their homes and immediately arrested them. Ex. S ¶ 4; Ex. V ¶¶ 4-5. An ICE officer arrested Raul at his home, surrounded by his family, after a joint task force knocked down the door, executing a parole warrant for someone else. Ex. S ¶ 4. And officers banged down Jocknuel’s door and encountered him in bed. Ex. V ¶ 4. These circumstances are hallmarks of a traditional arrest. *Orozco v. Texas*, 394 U.S. 324, 327 (1969)

(“[P]etitioner was under arrest and not free to leave when he was questioned in his bedroom in the early hours of the morning.”). The creation of a warrant after the fact does not cure the warrantless nature of these incidents, and the Settlement’s training materials specifically forbid reliance on post hoc administrative warrants to avoid warrantless arrest requirements. Ex. EE, DHS Training Materials (May 13, 2022).

2. Class Members’ Arrests Were Warrantless Because Defendants Failed to Comply with Requirements for Issuing Administrative Warrants.

The arrests in this category are warrantless for another reason: Agents failed to follow the requirements for making an arrest based on Form I-200, “Warrant of Arrest.” Arrest pursuant to an I-200 must be based on an existing Notice to Appear (“NTA”), the charging document for removal proceedings. 8 C.F.R. § 236.1(b)(1) (specifying that an administrative warrant of arrest can be issued “[a]t the time of issuance of the [NTA], or at any time thereafter,” not before); 8 U.S.C. § 1229 (legal requirements for NTA). This requirement is necessary because the use of Form I-200 is dependent on the arrest occurring “pending a decision” on removal.¹⁹ See 8 U.S.C. § 1226(a); 8 C.F.R. § 239.2(e) (explaining an I-200 warrant of arrest is *automatically canceled* when a NTA is canceled or removal proceedings terminated). Only two Class Members in this category had been previously issued NTAs, but even for them, the notice was not effective because proceedings had been terminated or dismissed, meaning a new NTA was necessary for each of them. Ex. W (Jocknuel) at 3; Ex. N (Bernandino) at 3. In fact, in Bernandino’s case, Defendants conceded that a new NTA was needed. Ex. N at 2. No Class Members were arrested “pending a decision” on their

¹⁹ The requirement that removal proceedings be initiated at the time of an arrest also makes constitutional sense because the I-200 is issued by an enforcement officer, not a neutral magistrate. 8 C.F.R. § 287.5(e)(2); *Gonzalez v. ICE*, 975 F.3d 788, 824 (9th Cir. 2020).

removal. And though Class Members in this category later received NTAs, those documents were created well after the purported I-200s.

Next, none of the eight Class Members in this group received service of the I-200 that purported to be the basis for their arrest. Under the regulations, and pursuant to the Form itself, the warrant only becomes operative upon service. 8 C.F.R. § 236.1(b).²⁰ Critically, the regulations emphasize that a Form I-200 is valid only upon service, stating that “[i]f, after the issuance of a warrant of arrest, a determination is made *not to serve it*,” the warrant may be cancelled. 8 C.F.R. § 236.1(b)(2) (emphasis added). Had it been contemplated that ICE could delay service of an administrative warrant when making warrant-based arrests, authority to cancel a warrant would be predicated on ICE’s determination not to make the arrest, not whether it was served.

This service requirement has been a longstanding feature of agency policy. Even in the context of transfers to ICE from criminal custody, the Agency has emphasized that a person “***is not detained in the legal custody of ICE until an immigration officer personally serves a Form I-200, Warrant of Arrest of Alien or a Form I-205 Warrant of Removal/ Deportation.***” (emphasis in original).²¹ Guidance from former Immigration and Naturalization Service (“INS”) instructs officers that only if the noncitizen is “likely to abscond before a warrant can be obtained to support an arrest without a warrant under [INA § 287(a)(2) / 8 U.S.C. § 1357(a)(2)], [should] a warrant of arrest [] be issued and served upon the [noncitizen].”²²

²⁰ See also DHS, Sample Form I-200 “Warrant of Arrest,” <https://tinyurl.com/47ceet48>.

²¹ Exhibit FF, Email from ICE Assistant Director for Enforcement and Removal Operations to all ICE Field Office Directors, “Transfer of Noncitizens from State and Local Law Enforcement Agency Custody to U.S. Immigration and Enforcement Custody” (Mar. 24, 2021).

²² Exhibit GG, INS, M-69: “The Law of Arrest, Search, and Seizure For Immigration Officers,” at VII-2 (Jan. 1993). Defendants produced this INS document in response to Plaintiffs’ discovery requests related to current ICE policies and practices regarding immigration arrests.

None of the Class Members were served with the I-200 that purportedly was the basis for their arrests or issued a proper NTA before or at the time of their arrest. Worse, Defendants *still* have not provided I-200 warrants that they purportedly created *at the time of arrest* for Class Members Sergio and Jocknuel.

Moreover, the I-200s that allegedly formed the basis of arrests for the other six Class Members here are insufficient to count as true “warrants” because they are riddled with defects. In particular:

- ICE’s purported I-200s for **Jhony** and **Marco** used an old form, were incomplete, contained misspellings, and left the service portion blank. Ex. D; Ex. G. Both I-200s had pre-typed supervisory signatures alongside handwritten notes that do not even clearly come from the same person. Ex. D; Ex. G.
- ICE’s purported I-200 for **Abel** includes an erroneous A-number and was purportedly signed by AFOD Bacon who, based on the I-213, was neither present nor in contact with the officers at the scene. *Compare* Ex. Q (I-213), *with* Ex. R (I-200).
- ICE’s purported I-200 for **Bernardino** was supposed to be supported by an NTA, even though removal proceedings had been terminated in 2020, and no new charging document had been issued, as the I-213 concedes. Ex. O (I-200); Ex. N (I-213) at 2-3.
- ICE’s purported I-200 for **Jose** states that the probable cause for arrest were “statements made voluntarily by the subject to an immigration officer” and was signed in ink by Deportation Officer Beveridge, who was not one of the arresting officers. *Compare* Ex. L (I-200), *with* Ex. K (I-213). Accordingly, Plaintiffs have reason to believe the I-200 produced was created after the vehicle stop and arrest.
- ICE’s purported I-200 for **Raul** also appears to have been created and served on Raul after his arrest. The I-213 indicates that Raul’s immigration status was not known until after ICE entered his home, yet officers claim that he was arrested based on a “Warrant of Arrest” issued the previous day. *See* Ex. T at 2. And the I-200 purports to be based on biometric confirmation of the subject’s identity (i.e., a fingerprint check). Ex. U. Likewise, the I-200 omits Raul’s A-number but purports to be based on a review of ICE’s electronic records, which are organized by A-Number. *Id.*

In sum, Defendants’ failure to properly serve warrants based on appropriate foundation before or at the time of arrest renders these arrests warrantless and subject to the Settlement.

C. Category 3: Warrantless Arrests at Restaurant in Liberty, Missouri Without Probable Cause of Flight Risk or Form I-213 Documentation.

As described above, *see supra* Background Part C.3, HSI agents entered a restaurant in Liberty, Missouri, claiming to be looking for an unknown and unnamed person. *See* Ex. Z; Ex. X ¶¶ 6-7. At the end of this incident, which lasted about two hours, HSI made 12 warrantless arrests. Numerous Settlement violations resulted.

1. Defendants Lacked Probable Cause and Failed to Document their Arrests.

First, the Settlement, Policy, and statute all required ICE Officers to establish probable cause that each of the 12 employees was likely to escape before a warrant could be obtained, taking into consideration community ties. 8 U.S.C. § 1357(a)(2); Dkt. 155-1, at App. A. The HSI agents did not. They did not, for example, inquire as to whether these individuals had U.S.-citizen children or other family members, if they were married, if they owned their home, or if they were employed, which they clearly were. *See generally* Exs. Y, Z, AA. They did not ask about other relevant community ties like church attendance or participation in other social organizations. *Id.* Indeed, based on the two hours of security footage, the agents did not ask them *any* questions.

Second, the officers were required to document that probable cause finding in each person's Form I-213, as soon as practicable after arrest. Dkt. 155-1, at App. A; Ex. EE. But because none of this information was collected, it could not be documented. *Id.* Tellingly, though Plaintiffs requested the I-213s from Defendants before the meet and confer, Defendants withheld them and instead produced the ROI, which was created on February 19, 12 days after the arrests. *See generally* Ex. II. Not only was this ROI late, it was not compliant with the Settlement's Policy requirements, and Defendants only produced it after Plaintiffs' counsel had raised the violations. *See* Ex. Z.

The use of the ROI demonstrates a third violation: The documented probable cause finding was required to have been based on information gathered at the time of arrest, not information gathered after the fact. Dkt. 155-1, at App. A; Ex. EE. And the ROI demonstrates other violations too. For example, the ROI shows that HSI never made a good-faith attempt to document the various factors for making a warrantless arrest under the Settlement Policy, and none of the I-213s later filed with the immigration court mention the post hoc justifications contained in the ROI. *See* Ex. Z; Ex. Y. Indeed, the I-213s reveal no evidence that officers ever undertook the queries required by the Settlement. Ex. Y. What's more, though the ROI claims that HSI agents completed I-200 administrative warrants for four employees, that claim does not appear to be supported. Ex. Z at 4. Defendants have failed to produce those warrants, and none of the employees was served with an administrative warrant at the restaurant, rendering those purported warrants invalid for the reasons discussed above, *see supra* Part II.B.2. And while Defendants were not forthcoming with the I-213s, Plaintiffs' counsel obtained them for 10 of the 12 Class Members, including for the four employees who supposedly received administrative warrants. *See* Ex. Y at 6-7 (Imelda), 13-14 (Jesus), 35-36 (Julio), and 45-47 (Pastor). None of these I-213s states that the employees were arrested pursuant to an I-200, and there is no indication that any of the other requirements for the issuance of an I-200 was satisfied. *Id.*; *see generally* Ex. Y.

Fourth, for those individuals Defendants concede they did not attempt to arrest pursuant to an administrative warrant, the ROI shows that these arrests violated the Settlement. Specifically, the ROI confirms that the HSI relied solely on a belief that each person was in the United States without lawful status. Ex. Z at 3-4. But the Settlement and Policy expressly state as a matter of law that "mere presence within the United States in violation of U.S. immigration law is not, by itself,

sufficient to conclude that an alien is likely to escape before a warrant for arrest can be *obtained*.” Dkt. 155-1, at App. A (emphasis in policy).

2. Defendants Deliberately Modified Documents, Apparently to Conceal Settlement Violations.

Three weeks after Plaintiffs initially raised these violations, Defendants deliberately manipulated the I-213s, apparently to hide their violations from this Court. On Friday February 14, 2025, Plaintiffs notified Defendants of the violations and requested a meet and confer within five business days. Ex. II at 9-12. On Tuesday February 18, 2025, Plaintiffs followed up with Defendants to confirm their intention to produce the Form I-213s. Ex. II at 8-9. On February 24, 2025, instead of producing the I-213s, Defendants’ produced the HSI ROI. *Id.* at 5; Ex. Z. Yet, in the interim days, Plaintiffs had reached out to the Class Members’ immigration attorneys and discovered that DHS had already filed the I-213s with the immigration court, many as early as February 10, 2025. *See* Ex. Y. Defendants have never produced these true I-213s to Plaintiffs.

Instead, on March 10, 2025, as the parties conferred on logistics regarding this Motion, Defendants unexpectedly produced to Plaintiffs “the I-213s” for each of the 12 Liberty Class Members. Ex. II at 1. Yet, instead of producing the actual I-213s that Plaintiffs already had in their possession from immigration counsel, Defendants produced new ones with self-serving and misleading “supplementation” from March 5 and 7, 2025, an entire month after the arrests. Ex. AA. Like the ROI, Defendants’ officers’ new justifications for many of the month-old arrests focus on purported information gathered from the I-9 and other employment records, not the totality of factors required under the Settlement Policy. *Id.* And as the restaurant’s owner has stated and the security footage shows, the employment records were not reviewed until well after the arrests had already occurred. *See* Ex. X, ¶ 24. Indeed, the Class Members were under arrest and detained by HSI agents before the employment records were even retrieved.

Finally, each of the “I-213s” contains a clearly workshopped, mendacious justification for all 12 warrantless arrests:

[A] total of 12 illegal alien employees were identified and interviewed in a separate area of the restaurant but were all seated next to each other in booths. If one was served with an immigration arrest warrant, the other could successfully flee due to a limited number of HSI Special Agents on scene. Consequently, the HSI Kansas City chain of command instructed the HSI Agents on the scene to arrest all 12 illegal alien employees. The on-scene HSI Supervisory Special Agent verbally authorized the HSI Special Agents to arrest all 12 illegal alien employees.

Ex. AA at 3, 6, 10, 14, 19-20, 23, 26, 31, 34, 39, 42, and 46. There were at least 10 heavily armed agents at the restaurant, with multiple agents at all times guarding the limited exits from the booths. Within two minutes of detaining the majority of the employees, the HSI agents handcuffed and escorted the first employee out of the restaurant. The other employees barely moved when their colleague was handcuffed. Each employee ultimately was individually escorted out of the restaurant, sometimes by multiple agents.

In sum, this Liberty restaurant raid was a brazen violation of the Settlement and Order, and its cover-up should be sanctioned.

D. Category 4: Defendants Failed to Ascertain and Document Probable Cause for a Warrantless Arrest Under the Settlement.

Defendants also have failed to establish and document individualized probable cause of likelihood to escape before a warrant could be obtained. *See* Ex. CC at 2. Senen Bacerra Hernandez was arrested at his apartment and immediately handcuffed after ICE agents broke down the door. *Id.* The Form I-213, which was completed by an ICE officer who apparently was not at the scene, reports that an officer conducting a field interview concluded that Senen was not a resident of the apartment. *See* Ex. CC. That was wrong. Ex. BB ¶¶ 3, 8; Ex. CC at 1. Defendants produced the Form I-213s of two other individuals arrested at the apartment, and it is clear that the ICE officers who created the Form I-213s simply copied the same text for each individual and pasted it from

one to the next. *Compare* Ex. CC at 2, *with* Ex. DD at 2, 5. Accordingly, the basis for the warrantless arrest—nonresidence at the address in question—was wrong, and Senen’s I-213 makes it plain that he did live where he was arrested, albeit recording the last digit of his address incorrectly. Ex. CC at 1. None of the other required factors are documented in the I-213. *Id* at 2-3.

III. Plaintiffs Are Entitled to Individualized and Systemic Relief to Remedy Repeat Material Violations of the Settlement.

Individual Class Members harmed by the Defendants’ violations of the Settlement, Policy, and this Court’s Order are entitled to certain remedies. Dkt. 155-1, § IV.E. Remedies are also available for repeated, material violations, both by the terms of the Settlement and pursuant to the Court’s inherent authority to enforce its own orders.

Remedies for Individual Violations. For individual violations, Defendants must release the Class Members who remain detained, without bond or conditions of release. They must also promptly reimburse bond payments and lift any imposed conditions for those already released. Next, they must identify individual ICE officers engaged in violations of the Settlement and ensure that these officers comply with the Settlement and Order in the future. They must communicate remedial efforts with Plaintiffs. *Id.* Although not specifically enumerated in the Order, such remedies could include employment discipline such as termination, probation, fines, and/or retraining. Finally, the Agreement provides that “Plaintiffs’ Counsel shall also be entitled to reasonable attorneys’ fees and costs for any successful Motion to Enforce . . . if the Court finds that Defendants’ position was not substantially justified.” Dkt. 155-1, § VII.B. Plaintiffs also seek fees for having to bring this motion.

Remedies for Repeat, Material Violations. In addition to individual remedies, the 22 violations described herein and the fact that there are more forthcoming show that Plaintiffs are entitled to see relief for repeat, material violations of the Settlement Order. Dkt. 155-1, § V.B.

These 22 violations were identified within just a few weeks by speaking to just a small sample of individuals arrested within the Chicago Area of Responsibility (“AOR”), where the Settlement applies. Further, statements by government actors show that these 22 violations represent just the beginning of ICE’s aggressive enforcement in the Chicago AOR.

This Court is empowered to grant additional equitable remedies to cure systemic violations of the Settlement and its Policy. *Id.* (authorizing the Court to “provide any equitable remedies not otherwise specified in this Agreement.”); Dkt. 158, ¶ 12 (“The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.”). The Court also has inherent authority to coerce compliance by ordering specific remedies. *United States v. Lippitt*, 180 F.3d 873, 877 (7th Cir. 1999); 18 U.S.C. § 401.

Plaintiffs request additional equitable relief to cure the ongoing violations described above. First, Plaintiffs request that the Court (a) declare and order that Defendants must document all arrests of Class Members irrespective of whether ICE later determines there was no probable cause for the arrest; (b) declare that Defendants’ policy or practice of evading the Settlement and its Policy by creating administrative warrants in the field after an arrest is improper and order Defendants to cease their policy or practice of arresting individuals based on administrative warrants created in the field until it can establish to this Court that it can do so in a lawful manner; (c) declare that Defendants’ failure to abide by the requirements for making warrant-based arrests renders those arrests warrantless and thus subject to the Settlement; (d) order Defendants to stay the removal of Class Member Abel Orozco-Ortega from the United States, rescind their reinstatement of his prior removal order, and issue him an NTA for removal proceedings before

an Immigration Judge; and (e) order Defendants to return Class Member Silvia Cerda-Sajuan to the United States.

Second, because of the number violations and the likelihood that violations will continue, Plaintiffs request that the Court order Defendants to (a) produce to Plaintiffs a report of all immigration arrests since January 20, 2025, made by ICE or others performing immigration enforcement in the Chicago AOR that did not originate as a transfer from another custodial setting;²³ (b) produce to Plaintiffs all Form I-213s and Form I-200s for such arrests, unless the arrest was based on a warrant of removal (Form I-205); (c) release individuals, return bond payments, and/or lift any conditions of release for any Class Members where Defendants violated the Settlement; (d) produce to Plaintiffs weekly reports going forward of all immigration arrests—made by ICE or agents performing immigration enforcement—in the Chicago AOR that do not originate as a transfer from another custodial setting; and (e) produce to Plaintiffs all Form I-213s and Form I-200s for such arrests unless the arrest is based on a warrant of removal (Form I-205).

Third, Plaintiffs seek the following training-based remedies. They ask the Court to (a) order that all ICE Officers and others assigned to immigration enforcement within the Chicago AOR be retrained on the terms of the Settlement, Order, and Policy; (b) order that ICE and HSI produce to Plaintiffs all communications related to the Form I-213s of the 12 Liberty, Missouri Class Members from February 14, 2025, when Plaintiffs’ counsel first raised those 12 violations, to the present; and (c) hold that any ICE or HSI officers or any other government official who participated in or condoned the “supplementation” of the Form I-213s after Plaintiffs’ counsel had raised the violations are in contempt of this Court’s Order. Dkt. 158.

²³ Plaintiffs’ counsel believe that ICE tracks its non-custodial arrests in its “Operations Management Module (OM²),” and that system can produce reports of this information.

Finally, Plaintiffs request that the Court award Plaintiffs attorneys' fees for the time spent on this motion to enforce, pursuant to Section VII. B. of the Settlement Agreement, and award any other remedies that the Court deems just and proper under Section V.B. of the Settlement.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion to enforce and Plaintiffs' requested relief.

Respectfully Submitted,

Dated: March 13, 2025

/s/ Mark Fleming

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CERTIFICATE OF SERVICE

I, Mark Fleming, certify that on March 13, 2025, I electronically filed the foregoing document with the Clerk of this Court by using the CM/ECF system, which effected service on all counsel of record.

/s/ Mark Fleming_____