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 (continued on next page)

15
 16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 DUNCAN ROY; ALAIN MARTINEZ-
 19 PEREZ, on behalf of himself and others
 20 similarly situated; ANNIKA ALLIKSOO,
 on behalf of herself and others similarly
 21 situated; CLEMENTE DE LA CERDA,
 on behalf of himself and others similarly
 22 situated, et al,

23 Plaintiffs,

24 vs.

25 COUNTY OF LOS ANGELES; LEROY
 26 D. BACA, Sheriff of Los Angeles
 27 County, in his official capacity,

28 Defendants.

CASE NO. CV-12-09012 BRO
 (FFMX)

[Hon. Beverly Reid O’Connell]

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

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1 **I. INTRODUCTION**

2 **A. The Challenged Practices**

3 1. This case challenges the legality of two practices of the Los Angeles
4 County Sheriff’s Department: (1) denying bail to thousands of people who want
5 to post bail and have already obtained a court order setting bail purely on the
6 ground that the federal government has placed an “immigration hold” on them;¹
7 and (2) denying them release from Los Angeles County jail for 48 hours or more
8 on the basis of the immigration hold, even though all charges against them have
9 been dismissed, they have been acquitted of the charge for which they were being
10 held, they were ordered released, or they have served their sentence. These
11 practices violate state law, as well as the Fourth and Fourteenth Amendments to
12 the U.S. Constitution, and their state law analogues (Cal. Constitution, Articles 1,
13 7, and 13). This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1367, and
14 2201-02, and Article III of the U.S. Constitution. Venue is proper under 28
15 U.S.C. § 1391(b)(2).

16 2. “In our society liberty is the norm, and detention prior to trial or
17 without trial is the carefully limited exception.” *U.S. v. Salerno*, 481 U.S. 739,
18 755 (1987). Yet the Los Angeles County Sheriff’s Department and Sheriff Leroy
19 Baca have turned these norms upside down by detaining tens of thousands of
20 individuals subject to so-called “immigration holds” (also known as “immigration
21 detainers” or “ICE holds”), beyond the time that state law mandates that they be
22 released.

23 ¹ Prior to filing this complaint, the LASD responded to a letter from Plaintiffs’
24 counsel and stated that it was not their intention to deny inmates with ICE holds
25 the opportunity to post bail on their state law charges. LASD further agreed to 1)
26 promulgate a policy that makes clear that the existence of an ICE hold does not
27 provide a basis to prevent the posting of bail on any pending criminal charge, and
28 2) notify LASD employees of this policy, and 3) review its database systems to
determine whether they could modify the “no bail” notation it places on the files of
persons with immigration holds.

1 3. Although these inmates are presumed to be innocent and are eligible
2 for bail, LASD has, until this week, forced them to languish in jail while they
3 await trial – at the cost of their jobs, their reputations, and their family and
4 community ties. This prolonged pretrial detention also coerces many to take plea
5 deals they would not otherwise accept because it is the only way to secure their
6 rapid release from jail.

7 4. In addition, LASD has unlawfully incarcerated, and continues to
8 unlawfully incarcerate, many thousands more individuals for days beyond their
9 release date after any state law basis for their custody has expired, because they
10 have been ordered released on their own recognizance, they have served their
11 sentences, their charges have been dropped, or they have been found not guilty
12 solely on the purported authority of the immigration holds. LASD subjected
13 19,725 individuals to such unlawful continued detention in 2011 alone.

14 **B. These Two Practices are not only Illegal, but are also Bad Policy**
15 **in Light of the Capacity Constraints of the County Jails**

16 5. On any given day, there are approximately 2,100 inmates in the Los
17 Angeles County Jails who have immigration holds (or 14% of the total jail
18 population). *See* James F. Austin, et al., “Evaluation of the Current and Future
19 Los Angeles County Jail Population,” at page 21, Table 10, *available at*
20 <http://www.aclu-sc.org/issues/prisoners-rights/jails-project/austin-report/>
21 (hereafter “Austin”).

22 6. Approximately 43% of the inmates who will be released to ICE are
23 classified as “low custody,” strongly suggesting that they are charged with minor
24 offenses. *Id.* Accordingly, many of them will have low bail. On information and
25 belief, many of them would have posted bail given the low bail amounts and been
26 released to ICE, or to the community if ICE is no longer interested in them, much
27 sooner if LASD had not denied them the opportunity to post bail.

28 7. Keeping an inmate in the County jail costs \$100 to \$150 per night.

1 The County is currently considering various measures—including expanding early
2 release options into programmed community beds, and even the drastic possibility
3 of shipping inmates to Kern County—to respond to the influx of more than 8,000
4 inmates into the L.A. County jails as a result of realignment.

5 8. Even as pressures on the jail population mount, Sheriff Baca has
6 expressed his strong desire to stop housing inmates in Men’s Central Jail because
7 it is an archaic and dangerous facility. *ACLU Study: Men’s Central Jail Can Be*
8 *Shuttered By 2013*, CBS Local News, April 10, 2012, <http://losangeles.cbslocal.com/2012/04/10/aclu-study-mens-central-jail-can-be-shuttered-by-2013/>.

9 The past practice of keeping inmates in jail who want to post bail, and the ongoing
10 practice of holding them for 48 hours or more after they are otherwise entitled to
11 release, is inconsistent with the County’s efforts to manage its jail population and
12 close Men’s Central Jail, and is a waste of taxpayer money.

13
14 **II. PARTIES**

15 9. Plaintiff Duncan Roy is a 52-year-old British citizen. Mr. Roy is an
16 acclaimed film director who owns a home in Malibu, California. He suffers from
17 prostate and colon cancer and requires regular monitoring to prevent recurrent
18 cancer. From November 15, 2011 to February 8, 2012, Defendants unlawfully
19 detained him for 89 days in the Lost Hills station and then in the “gay ward” of
20 Men’s Central Jail by unlawfully refusing to allow him to post the bail set by the
21 court in his criminal case.

22 10. Plaintiff Alain Martinez-Perez is a 37-year-old Mexican citizen. Mr.
23 Martinez-Perez has a one and a half-year-old U.S. citizen son. He lives in
24 Claremont, California and works as a dog trainer. From December 14 to
25 December 20, 2011, Defendants unlawfully detained him for six days in City of
26 Industry station first by refusing to allow him to post bail under the judicially-
27 determined County bail schedule based on his arresting charge, and, subsequently,
28 by continuing to detain him solely on the basis of the immigration hold after the

1 district attorney declined to file criminal charges against him. Plaintiff Martinez-
2 Perez seeks damages on behalf of himself and all others similarly situated for
3 LASD's practice of refusing to honor bail (Damages Classes One and Two) and
4 for LASD's practice of prolonging detention beyond the time that state law
5 mandates release (Damages Classes Three and Four). Plaintiff Martinez-Perez
6 also seeks damages on behalf of himself and all others similarly situated for
7 LASD's practice of prolonging detention for more than 48 hours beyond the time
8 that state law mandates their release (Damages Classes Five and Six).

9 11. Plaintiff Annika Alliksoo is a 34-year-old Estonian citizen. Ms.
10 Alliksoo is married to a U.S. citizen and lives near Palmdale, California. From
11 July 12 to July 30, 2012, Defendants unlawfully detained her for 18 days in the
12 Palmdale station and then in the Lynwood Jail. Defendants first refused to allow
13 her to post bail under the judicially-determined County bail schedule and then
14 under court-ordered bail. Then, after a superior court judge ordered her released
15 on her own recognizance, Defendants continued to detain her for an additional
16 three days solely on the immigration hold. Plaintiff Alliksoo seeks damages on
17 behalf of herself and all others similarly situated for LASD's practice of refusing
18 to honor bail (Damages Classes One and Two) and for LASD's practice of
19 prolonging detention beyond the time that state law mandates their release
20 (Damages Classes Three and Four). Plaintiff Alliksoo also seeks damages on
21 behalf of herself and all others similarly situated for LASD's practice of
22 prolonging detention for more than 48 hours beyond the time that state law
23 mandates their release (Damages Classes Five and Six).

24 12. Plaintiff Clemente De La Cerda is a 36-year-old Mexican citizen and
25 lawful permanent resident of the United States. He is also possibly a United
26 States citizen based on acquisition at birth. He has lived in the United States since
27 he was four years old. Mr. De La Cerda lives in Brea, California. He is currently
28 in LASD custody and an immigration hold is lodged against him. Plaintiff De La

1 Cerda seeks injunctive and declaratory relief on behalf of himself and all
2 individuals currently in the custody of and who will in the future be in the custody
3 of the Defendants on the basis of the immigration hold (Equitable Relief Class).
4 On behalf of this class, he seeks to bar Defendants from prolonging the detention
5 of him and other members of the class beyond the time that state law mandates
6 release solely on the basis of an immigration hold not supported by a probable
7 cause determination.

8 13. Defendant Leroy Baca is the Sheriff of Los Angeles County. As
9 Sheriff, he is the chief executive officer of LASD. He is responsible for the
10 management and control of all Los Angeles County Jails. He is responsible for
11 the custody of all inmates housed in the County Jails and jailed at LASD field
12 stations. Plaintiffs sue Sheriff Baca in his official capacity only.

13 14. Defendant County of Los Angeles is a county of the State of
14 California duly organized under the laws of the State of California. The Los
15 Angeles County Sheriff's Department ("LASD") is an agency of Defendant
16 County and the largest sheriff's department in the nation. It has a range of law
17 enforcement responsibilities, including the policing of various unincorporated
18 areas of the County and operating all of the County's jails and field stations.
19 Sheriff Baca directs LASD's work.

20 **III. STATEMENT OF FACTS**

21 15. LASD runs the largest jail system in the nation, with an average daily
22 population of approximately 15,000 inmates. The great majority of those housed
23 in the jail are pretrial detainees. On average, 2,100 inmates per day (or 14 percent
24 of the daily jail population) have immigration holds lodged against them. These
25 inmates spend on average 20.6 days longer in Los Angeles County jails than
26 inmates without immigration holds, despite almost half of them being classified as
27 low custody, meaning they are likely being held pre-trial on low level non-violent
28 offenses and thus are, on average, better candidates for pre-trial release or other

1 diversion programs than the average inmate in the jails who does not have an
2 immigration hold.

3 16. In recent years, LASD has *alone* detained more individuals on
4 immigration holds for the purposes of assisting the federal government with its
5 deportation efforts than any other county in the nation, and indeed more than any
6 other state except California and Texas. It has done so absent the requisite legal
7 authority to do so in outright and reckless disregard for the detainees'
8 constitutional rights and their most basic right to liberty. And it has done so
9 despite the fact that ICE could simply obtain custody of any person subject to an
10 immigration hold at the point at which they would normally be released from
11 LASD custody, without requiring LASD to detain them unconstitutionally for an
12 additional period of time.

13 17. Although immigration holds are voluntary requests, as explained
14 below, as a matter of practice and policy, LASD detains every person who
15 receives an immigration hold beyond their release dates solely on the basis of the
16 hold. Indeed, in August 2012, Sheriff Baca told members of the media that he
17 was mandated under federal law to detain any person for whom ICE lodges a
18 hold, despite the fact that federal law makes clear that immigration holds are not
19 mandatory but voluntary requests.

20 **A. Immigration Detainers, also Known as ICE Holds**

21 18. In August 2009, LASD, together with the federal immigration agency,
22 Immigration and Customs Enforcement (“ICE”) of the Department of Homeland
23 Security (“DHS”), activated the “Secure Communities” (or “S-Comm”) program
24 in Los Angeles County jails and stations. The program links the criminal justice
25 and immigration systems through the sharing of fingerprints. Under S-Comm,
26 LASD shares the fingerprints and booking information with ICE of every arrestee
27 during the booking process. An agent in ICE’s Law Enforcement Support Center
28 (“LESC”) checks the fingerprints against immigration and FBI databases to make

1 an immigration status determination and sends a notification to ICE's
2 Enforcement and Removal Operations unit ("ERO").

3 19. If the reviewing agent at ERO determines that ICE would like to take
4 some action with respect to the person detained, the agent sends LASD or the
5 local law enforcement agency a Form I-247, known as an "immigration detainer"
6 or an "ICE hold."

7 20. An immigration hold is an administrative notice by ICE to a local law
8 enforcement agency.

9 21. Pursuant to 8 C.F.R. § 287.7(a), the purpose of an immigration hold is
10 to "advise another law enforcement agency that [DHS] seeks custody of an alien
11 presently in the custody of that agency, for the purpose of arresting and removing
12 the alien. The detainer is a request that such agency advise [DHS], prior to release
13 of the alien, in order for [DHS] to arrange to assume custody, in situations when
14 gaining immediate physical custody is either impracticable or impossible."

15 22. The detainer form also states that ICE is requesting that the agency
16 hold the alien for a period of no more than 48 hours excluding Saturdays,
17 Sundays, and holidays "*beyond the time when the subject would have otherwise*
18 *been released from your custody.*" 8 C.F.R. § 287.7(d) (emphasis added).

19 23. Immigration holds are issued for various reasons. The face of the
20 Form I-247 lists four possible reasons for ICE to issue the hold, including that ICE
21 has "[i]nitiating an investigation to determine whether this person is subject to
22 removal from the United States;" "[i]nitiating removal proceedings and served a
23 Notice to Appear or other charging document," with the charging document
24 attached; "[s]erved a warrant of arrest for removal proceedings," with the warrant
25 attached; or "[o]btained an order of deportation or removal from the United States
26 for this person." The ICE agent may check a box next to one of these four reasons
27 to indicate the reason he or she is issuing the hold.
28

1 24. Upon information and belief, the box marked “initiated an
2 investigation to determine whether this person is subject to removal from the
3 United States” is checked when the agent wishes to begin an investigation to
4 determine whether the person is subject to removal. This decision is made by the
5 individual ICE agent reviewing the person’s fingerprints and ICE records. Upon
6 information and belief, ICE checks the box on the I-247 form for “[i]nitiating an
7 investigation to determine whether this person is subject to removal from the
8 United States” on approximately 78% of the holds it issues to the LASD.

9 25. In practice, ICE agents routinely issue immigration holds for the
10 “[i]nitiating an investigation” without probable cause to believe a person is
11 removable from the United States. An I-247 form with the investigation box
12 checked does not indicate that there has been any prior determination by ICE (let
13 alone a neutral decisionmaker) as to the person’s immigration status, and it does
14 not indicate that there is any warrant or court order as to the person’s immigration
15 status.

16 26. Upon information and belief, ICE does not require that its agents have
17 probable cause to believe a person is removable from the United States before
18 issuing a Notice to Appear or arrest warrants, nor does ICE require that agents
19 have probable cause to believe a person is removable from the United States
20 before issuing an I-247 detainer form with the boxes checked for arrest warrant or
21 a Notice to Appear or other charging document.

22 27. Due to ICE’s failure to apply any evidentiary standards and common
23 errors in immigration databases, ICE often places immigration holds in error on
24 persons who are not subject to removal, such as United States citizens and lawful
25 permanent residents who are not subject to removal. For example, in November
26 2011, ICE placed a hold on Romy Campos, a 19-year-old U.S.-born woman who
27 is a dual citizen with the United States and Spain, simply because years prior
28 when traveling alone as a minor she had entered the country on her Spanish

1 passport and in spite of other evidence that demonstrated her U.S. citizenship.
2 LASD detained Ms. Campos for two days on the immigration hold beyond her
3 release date despite her repeated protestations that she was an American citizen.

4 28. ICE provides no meaningful way for a detainee to contest the
5 immigration hold lodged against him or her. Rather, a detainee must wait to be
6 finally transferred to immigration custody before he or she will have an
7 opportunity to demonstrate that he or she is not in fact removable and/or that he or
8 she should be released.

9 29. Pursuant to 8 U.S.C. § 1357(d), Congress authorized DHS to issue
10 immigration holds only to non-citizens in state or local custody only in those
11 circumstances where the offenses related to controlled substance violations.
12 However, ICE places holds on anyone without regard to whether or not they have
13 been charged with a controlled substance violation.

14 30. The implementing regulation, 8 C.F.R. § 287.7(d), purports to
15 authorize DHS to issue immigration holds for any noncitizen regardless of the
16 underlying criminal offense.

17 31. The regulation also purports to require law enforcement agencies to
18 comply with the request, stating “[u]pon a determination by the Department to
19 issue a hold for an alien not otherwise detained by a criminal justice agency, such
20 agency shall maintain custody of the alien for a period not to exceed 48 hours,
21 excluding Saturdays, Sundays, and holidays in order to permit assumption of
22 custody by the Department.” The Form I-247 immigration detainer form states:
23 “IT IS REQUESTED THAT YOU: Maintain custody of the subject for a period
24 NOT TO EXCEED 48 HOURS, excluding Saturdays, Sundays and holidays,
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1 beyond the time when the subject would have otherwise been released from your
2 custody to allow DHS to take custody of the subject.”²

3 32. The LASD knew or should have known that ICE holds are voluntary
4 requests. ICE admits, and the law is and has been clear, that ICE holds are and
5 always have been voluntary requests, and neither legally require, nor purport to
6 legally require, that a person be held against their will on that basis. The principle
7 “*Ignorantia juris non excusat*” applies if anything with greater force to LASD
8 than to private citizens, and whether LASD properly understood or appreciated the
9 lawful reach of an ICE hold is not a justification for violating Plaintiffs’ rights.

10 33. In 2010, ICE clarified in communications with members of Congress
11 and Santa Clara County that ICE holds are voluntary requests.³

12 34. From at least 2005 until May 2015, ICE had an office in the Inmate
13 Reception Center area of the LASD jail system, where approximately one dozen
14 ICE agents were stationed. These agents worked alongside LASD staff on a daily
15 basis. LASD staff, from the senior leadership down to the deputies and custody
16 assistants, communicated on a regular basis with ICE. Upon information and
17 belief, any communication between LASD and ICE regarding whether or not
18 immigration holds were mandatory or voluntary requests made clear that they were
19 only voluntary.

20 35. In December 2012, California Attorney General Kamala D. Harris
21 issued an Information Bulletin to state and local law enforcement agencies which

22 _____
23 ² See <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.

24 ³ See Letter from David Venturella, Assistant Director, Secure Communities to
25 Miguel Marquez, Santa Clara County Counsel at 3, Aug. 16, 2010, *available at*
26 <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf> (“ICE views an
27 immigration detainer as a request”); ICE Memorandum on Secure
28 Communities Briefing to Congressional Hispanic Caucus at 3, Oct. 28, 2010,
available at <http://bit.ly/sHibJ7> (“Local LEAs are not mandated to honor a
detainer, and in some jurisdictions they do not.”).

1 stated that “immigration detainers are not compulsory. Instead, they are merely
2 requests enforcement *at the discretion of the agency* holding the individual
3 arrestee.”

4 36. In January 2014, California legislation known as the TRUST Act, or
5 AB4, went into effect, which stated in its preamble that “[e]xisting federal law
6 provides that the detainer is a request that the agency advise the department, prior
7 to release of the alien, in order for the department to arrange to assume custody in
8 situations when gaining immediate physical custody is either impracticable or
9 impossible.”

10 37. On April 7, 2014, LASD received a memorandum from the attorney
11 for the California Sheriff’s Association stating that immigration detainers were
12 optional requests.

13 38. The LASD knew or should have known that immigration detainers
14 were not lawful detention requests.

15 39. Unlike criminal detainers or holds, an immigration hold is not
16 accompanied by a judicial warrant or judicial determination of probable cause.
17 Rather, it is solely an administrative request, signed by a single ICE officer.
18 Although it is called a detainer, it is not accompanied by the same procedural
19 protections as criminal detainers.

20 40. LASD’s legal authority to detain persons beyond the time when they
21 became entitled to release on the charges on which LASD was holding them
22 extends only to hold those for whom there was probable cause to believe the
23 detainee had committed a crime. While a warrant is facially a document based on
24 probable cause to believe the detainee had committed a crime, an ICE detainer on
25 its face does not establish or purport to establish such probable cause.

26 41. In January 2014, the TRUST Act (AB4) went into effect, which stated
27 “[u]nlike criminal detainers, which are supported by a warrant and require
28 probable cause, there is no requirement for a warrant and no established proof,

1 such as reasonable suspicion or probable cause, for issuing an ICE detainer
2 request. Immigration detainers have erroneously been placed on United States
3 citizens, as well as immigrants who are not deportable.”

4 42. Because immigration detainers have never been accompanied by a
5 judicial warrant, any detention by LASD on an immigration detainer constituted a
6 warrantless arrest. LASD made such warrantless arrests despite not bringing
7 inmates held on the sole authority of an immigration detainer before a judicial
8 officer within 48 hours for a probable cause determination, as is required by the
9 Fourth Amendment. In a document circulated among LASD staff in February 2014
10 titled “ICE study guide” about the ICE Desk in the LASD Inmate Reception
11 Center, the LASD changed its policy stating “[w]e will not detain a person on the
12 basis of an immigration hold for longer than 48hrs, including weekends and
13 holidays” and explaining that “[a]lthough DHS generally requests a detention of
14 48hrs excluding weekends and holidays, and detention longer than 48hours
15 requires a probable cause hearing before a magistrate judge. DHS doesn’t provide
16 such hearings, therefore the local law enforcement agency will limit detention on
17 the basis of an ICE hold to 48hrs, including weekends and holidays.”

18 43. While LASD treated immigration detainers as mandatory holds, it did
19 not subject them to basic verification and tracking procedures that govern the
20 processing of warrants. Upon receipt of a warrant, LASD confirms the status of the
21 warrant and that the description matches the inmate. The unit responsible for
22 processing warrants, reviews the name, date of birth, height, weight, and CI
23 number (unique identifying number). Once this information has been verified,
24 LASD places a hold in its system, notifies the requesting agency that a hold has
25 been placed, and delivers copies of the warrant notification to the inmate. Any
26 warrants disputed by inmates are investigated and recorded in a disputed warrant
27 log. When all Los Angeles County criminal matters conclude and the inmate
28 becomes due for release, LASD notifies the requesting agency of the inmate’s

1 availability and calendars the deadline for release (specific number of days LASD
2 may hold the inmate solely on the basis of the warrant). LASD tracks time elapsed
3 against the deadline using a “tickler file,” which is reviewed on a daily basis to
4 ensure that the inmate is not over-detained. Inmates not picked up before the
5 deadline are processed for release. LASD did not subject ICE holds to these
6 procedures. LASD implemented no procedures to ensure or confirm the validity of
7 the ICE hold, that it matched the inmate in custody or that the ICE detainer
8 provided a basis for detention within the scope of LASD’s legal authority. LASD
9 likewise maintained no procedures to calendar the deadline for release, track the
10 deadline, and ensure release processing before the deadline elapsed. Thus, LASD’s
11 handling of ICE detainers represents a significant deviation from normal LASD
12 practices with regard to warrants and holds.

13 44. An individual detained by LASD solely on the basis of an
14 immigration hold remains in the legal and actual custody of LASD.

15 45. DHS does not reimburse local law enforcement agencies for the cost
16 incurred in detaining an inmate on an immigration hold. According to 8 C.F.R.
17 §287.7(e), DHS incurs no fiscal responsibility for detention pursuant to an
18 immigration hold.

19 46. The issuance of an immigration hold does not ensure that ICE will
20 assume custody over the detainee or that ICE will take any action against the
21 detainee. ICE may or may not pick up the detainee held on the immigration
22 detainer. If ICE picks up the detainee, it may or may not initiate removal
23 proceedings against the detainee after interviewing the individual and reviewing
24 the case. In some cases, ICE may discover that the detainee is not actually
25 removable, in which case ICE will take no action and release the individual. In
26 other cases, ICE may initiate or reinstate removal proceedings against the
27 individual. Once ICE initiates proceedings, an individual who is not subject to
28

1 mandatory immigration detention may be eligible for release on his or her own
2 recognizance, supervised released, or bond.

3 **B. LASD’s Pattern and Practice of Refusing to Allow Posting of Bail**
4 **when an Immigration Hold has been Lodged Against an Inmate.**

5 47. Until this week, LASD had a pattern and practice of refusing to allow
6 inmates admitted to bail by state law to post their bail bonds if they have an
7 immigration hold, thus preventing them from securing their release from custody
8 pending resolution of the charges against them.

9 48. The California Constitution provides a fundamental right to bail. The
10 existence of an immigration hold legally has no affect on a person’s right to post
11 bail and be released from criminal custody.

12 49. Upon information and belief, LASD electronically codes every
13 immigration hold as “no bail.” This coding applies to every person in LASD
14 custody, as well as to every person in the custody of police departments within Los
15 Angeles County. The “no bail” notation is placed on the record of any detainee
16 subject to an immigration hold, regardless of their eligibility for bail under the
17 County bail schedule or court order.

18 50. Upon information and belief, LASD jailers and bail administrators
19 have interpreted this coding to mean that they are not permitted to allow a person
20 subject to an immigration hold to post bail. As a result, they have routinely turned
21 away and refused to accept lawfully-tendered bail bonds from bail bondsmen,
22 family members and others when they attempt to lawfully post bail for an inmate.

23 51. Over the past few years, Plaintiffs’ counsel have represented or
24 assisted dozens of individuals who remained in LASD custody after their LASD
25 jailers would not permit them to post bail on account of an immigration hold
26 lodged against them.

27
28

1 52. Numerous bail bondsmen have confirmed that in the overwhelming
2 majority of cases, LASD personnel at both LASD stations and at the County Jails
3 will not permit them to post bail for individuals with an immigration hold.

4 53. The California state bail agency, Golden State Bail Bonds, reported in
5 a recent memo that Los Angeles County is one county in California where its
6 members are not able to post bail if their clients have an immigration hold.

7 54. Numerous phone calls to jailers at LASD jails and stations confirm
8 that, until this week, LASD's practice was not to allow detainees with ICE holds to
9 post bail.

10 55. LASD's practice of refusing to allow detainees to post bail if they had
11 an immigration hold has affected the practice of police departments within Los
12 Angeles County as well. Upon information and belief, immigration hold
13 information is routed to police departments through LASD, and those departments
14 also rely on the LASD's "no bail" notation for ICE holds. Accordingly, most, if
15 not all, police departments in Los Angeles County follow LASD's practice of
16 refusing to allow inmates to post bail if they have an immigration hold. As a
17 result, many police stations transfer individuals to LASD custody who they
18 otherwise would have released on bail prior to their arraignment.

19 56. Unlike other "no bail holds" in the criminal system, such as parole
20 holds, there is no legal authority that permits LASD to deny a person with an ICE
21 hold the opportunity to post bail.

22 **C. LASD's Continuing Pattern and Practice of Prolonging Inmates'**
23 **Detention Solely on the Basis of the Immigration Hold.**

24 57. LASD has a continuing pattern and practice of prolonging inmates'
25 detention solely on the basis of the immigration hold after the expiration of any
26 state law authority to detain them.

27
28

1 58. LASD, as a matter of policy and practice, detains every person with
2 an ICE hold beyond their release date on the sole basis of the immigration hold.

3 Thus, LASD continues the detention of every person subject to an immigration

4 59. hold beyond the state-mandated release date. In other words, the
5 LASD ignores its mandatory duty under state law to release detainees subject to
6 immigration holds after, for example, no charges were filed against them, they
7 have served the entirety of their sentence, they are ordered released on their own
8 recognizance, they have posted bail, or a jury has found them not guilty of the
9 crime with which they have been charged. Most commonly, LASD continues the
10 detention for 48 hours, excluding weekends and holidays. It regularly detains
11 individuals for more than 48 hours after they would otherwise be released from
12 custody.

13 60. The LASD asks every person booked into its custody what country
14 they were born in. Upon information and belief, even when a detainee declares
15 that he or she was born in the United States, LASD nonetheless complies with the
16 immigration hold.

17 **D. Plaintiffs' Allegations**

18 **1. Duncan Roy**

19 61. On November 15, 2011, LASD arrested Mr. Roy in Malibu,
20 California on an extortion charge for threatening to blog about an allegedly
21 fraudulent real estate deal. LASD booked him into the custody of the Lost Hills
22 Station in Malibu.

23 62. After booking, Mr. Roy was eligible for release on bail at \$35,000
24 according to the Los Angeles County bail schedule. Within hours of his arrest, a
25 bail bondsman traveled to the station and attempted to post bail for him. The jailer
26 refused to accept the bond, stating that Mr. Roy was going to have an immigration
27 hold lodged on him. Hours later, ICE lodged an immigration hold. LASD coded
28 Mr. Roy's inmate information as "no bail."

1 63. The bail bondsman again attempted to post the bail bond but the jailer
2 refused to accept it, stating that he could not post bail because Mr. Roy had an ICE
3 hold.

4 64. At arraignment on the charge, a judge approved Mr. Roy's bail at the
5 \$35,000 amount. Afterwards, LASD transferred him to Men's Central Jail. The
6 bail bondsman again attempted on multiple occasions and over the course of
7 multiple days to post bail for Mr. Roy, but each time LASD personnel refused to
8 allow him to post bail for Mr. Roy. LASD personnel stated that they could not
9 accept the bail bond because of the immigration hold lodged against Mr. Roy.

10 65. LASD also prevented the bail bondsman from meeting with Mr. Roy,
11 telling him that he was not permitted to visit with him because he was not
12 permitted to post bail for him.

13 66. Mr. Roy hired a criminal defense attorney and an immigration lawyer.
14 Neither of them was able to persuade LASD that it was obligated to accept Mr.
15 Roy's bail bond.

16 67. Mr. Roy was detained in the so-called "gay dorm" in Men's Central
17 Jail.

18 68. Mr. Roy suffers prostate and colon cancer and requires routine
19 monitoring to ensure that his cancer does not regress. Mr. Roy requested medical
20 care to check on his cancer, but LASD did not comply with his requests.

21 69. Mr. Roy also filed complaints with LASD stating that he could not
22 post bail due to the immigration hold and requesting that an ICE agent speak to
23 him so that he could tell them that the immigration hold was placed in error.
24 LASD never responded to his complaints and did not provide him an opportunity
25 to speak with an ICE agent.

26 70. After LASD held Mr. Roy in jail for 89 days, ICE lifted his
27 immigration hold on humanitarian grounds and LASD finally permitted Mr. Roy's
28

1 bail bondsman to post bail. Mr. Roy was released from LASD custody on
2 February 8, 2012.

3 71. Mr. Roy lost substantial income as a result of his imprisonment, and it
4 has affected his reputation. His mental and physical health also significantly
5 declined.

6 72. Plaintiff Roy seeks damages for himself and not on behalf of any class
7 for LASD's practice of refusing to honor bail. Prior to his arrest, Roy was granted
8 humanitarian immigration parole due to his ongoing cancer therapy and
9 monitoring. After his parole expired, he received an extension to remain in the
10 United States until December 23, 2011. Had he left the U.S. in compliance with
11 the deadline, he would not have incurred unlawful presence and implications for
12 his future ability to return to the United States. Though Roy booked a plane ticket
13 to return to Europe on December 23, and intended to return on that flight, he was
14 prevented from leaving because LASD refused to accept bail, unlawfully detaining
15 him until February 8, 2012. His inability to comply with his immigration
16 requirements has created barriers to his ability to be readmitted into the United
17 States.

18 73. As a result of the Defendants' unlawful conduct as alleged herein,
19 Plaintiff Roy suffered serious emotional distress, was not adequately treated for his
20 medical condition, and suffered lost income, profits and business opportunity.
21 Regarding the latter, at the time of his arrest, Mr. Roy was scheduled to begin
22 production on a film shortly after the date of his arrest. The film project fell apart
23 due to Roy's 89-day, unlawful imprisonment. Plaintiff Roy lost income associated
24 with the film project. He also lost rental income associated with three months of
25 lost rental bookings on the home he owns in Malibu, California because his
26 incarceration prevented him from renting his home as he normally does.

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1 **2. *Alain Martinez-Perez***

2 74. On December 14, 2011, LASD arrested Mr. Martinez-Perez about 6
3 a.m. on a domestic battery charge arising from a domestic dispute. Mr. Martinez-
4 Perez had left the house after his partner became physically violent with him.
5 Enraged, his partner called the police in an attempt to bribe Mr. Martinez-Perez to
6 come home. When the police arrived, Mr. Martinez-Perez explained that his
7 partner had in fact battered him. Nonetheless, LASD officers arrested him.

8 75. LASD booked Mr. Martinez-Perez into the Industry station. He was
9 eligible for release on bail by Los Angeles County bail schedule in the amount of
10 \$20,000.

11 76. Within a matter of hours, ICE lodged an immigration hold against
12 him. LASD coded Mr. Martinez-Perez's inmate information as "no bail."

13 77. Mr. Martinez-Perez's cousin contacted a bail bondsman to post bail
14 for him. The bail bondsman attempted to post bail but LASD would not allow him
15 to post bail because of the immigration hold.

16 78. On December 16, 2011, LASD provided Mr. Martinez-Perez with a
17 certificate of release and clearance letter pursuant to California Penal Code § 849.5
18 informing him that no charges were filed against him and that his arrest shall not
19 be deemed to be an arrest but a detention only.

20 79. LASD did not release him, however. It maintained custody over him
21 until December 20, 2011 at 3 p.m. solely on the basis of the immigration hold. At
22 that time, ICE came and picked him up.

23 80. After interviewing him, ICE issued a Notice to Appear – a document
24 charging him with grounds of removability from the United States – and booked
25 him into immigration custody. ICE detained him at the Mira Loma immigration
26 detention facility in Lancaster, California before Mr. Martinez bonded out of
27 immigration custody.

28

1 81. LASD detained Mr. Martinez-Perez for approximately two days as a
2 result of its refusal to allow him to post bail on account of the immigration hold. It
3 detained him for approximately four additional days beyond his release date solely
4 on the immigration hold.

5 **3. *Annika Alliksoo***

6 82. On July 12, 2012, LASD arrested Ms. Alliksoo outside a Walmart in
7 Palmdale, California charging her with grand theft. LASD accused her of
8 attempting to steal groceries.

9 83. LASD booked her into custody at the Palmdale station. She was
10 eligible to be released on bail of \$20,000 according to Los Angeles County bail
11 schedule. Within a matter of hours, ICE lodged an immigration hold on her.

12 84. Ms. Alliksoo's husband contacted two bail bondsmen on or about July
13 12 to post bail for her. Both bail bondsmen attempted independently to post bail
14 for Ms. Alliksoo, but LASD personnel at the Palmdale station would not allow
15 them to post bail for her due to the presence of the immigration hold.

16 85. At arraignment, the District Attorney filed a petty theft charge against
17 Ms. Alliksoo, and the court admitted her to bail at \$10,000. LASD transferred her
18 to Lynwood Jail.

19 86. Once in the custody of Lynwood Jail, the bail bondsmen again
20 attempted to post bail for her but the jailer would not accept the bail bond due to
21 the presence of the immigration hold.

22 87. At Ms. Alliksoo's next court hearing on July 27, having already spent
23 15 days in jail on a charge of petty theft, the judge ordered her released on her own
24 recognizance because she was not able to bail out.

25 88. LASD did not release her. Rather, they maintained custody over her
26 solely on the basis of the immigration hold until July 30.

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1 89. On July 30, ICE picked Ms. Alliksoo up. After interviewing her, ICE
2 booked her into custody and issued a Notice to Appear charging her with grounds
3 of removability. Hours later, ICE released her from custody on supervised release.

4 90. LASD detained Ms. Alliksoo for approximately 15 days due to its
5 refusal to allow her to post bail due to the immigration hold. It then detained her
6 an additional three days solely on the immigration hold.

7 **4. *Clemente De La Cerda***

8 91. On October 5, 2012, the Whittier police department arrested Plaintiff
9 De La Cerda for a probation violation and misdemeanor possession of nunchucks,
10 which the police apparently believed to be a weapon. Mr. De La Cerda uses
11 nunchucks in his Tae Kwon Do practice and carried the nunchucks in his backpack
12 because he had gone to his Tae Kwon Do studio earlier that day.

13 92. Upon information and belief, ICE placed an immigration hold on Mr.
14 De La Cerda shortly after he was booked into custody.

15 93. Mr. De La Cerda pled no contest to the possession of nunchucks
16 charge. Mr. De La Cerda has an upcoming hearing on October 29, 2012 regarding
17 a probation violation. He expects that he may be ordered released on or around
18 that date, but due to the immigration hold, will be detained by the LASD beyond
19 his release date.

20 **IV. CLASS ACTION ALLEGATIONS FOR EQUITABLE RELIEF**

21 94. Plaintiffs De La Cerda and Varela seek class-wide injunctive and
22 declaratory relief, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), on
23 behalf of a class and a subclass.

24 **1. *The Equitable Relief Class***

25 95. The equitable relief class is defined as all persons who are or will be
26 (1) detained in the custody of the LASD, (2) have an immigration hold placed on
27 them by ICE while in LASD custody that was not supported by a lawful probable
28 cause determination, (3) are entitled to be released from LASD custody under

1 applicable federal or state law (which creates a liberty interest in such release), (4)
2 due to LASD policy and practice are not released (to the extent that they were
3 otherwise entitled to release) but held in LASD custody on the authority of the ICE
4 hold after they were eligible for release from LASD custody.

5 a. Numerosity

6 96. The class meets the numerosity requirement of Rule 23(a)(1). There
7 are approximately 20,000 inmates confined in the Los Angeles County Jails each
8 year who are being or will be detained for 48 hours or more by LASD after they
9 would otherwise be entitled to release on the sole basis of the ICE hold. The
10 membership of the class continuously changes, rendering joinder of all members
11 impracticable. The inclusion within the class of future inmates in the class also
12 makes joinder of all members impracticable.

13 b. Commonality

14 97. The class meets the commonality requirement of Rule 23(a)(2).
15 Questions of law and fact presented by the named plaintiffs are common to other
16 members of the class. The common contentions that unite the claims of the class
17 include the following:

- 18 • The practice of holding class members in the Los Angeles County jails
19 for 48 hours or more after they are otherwise entitled to release on the
20 basis of an ICE hold violates the Fourth Amendment of the United States
21 Constitution.
- 22 • The practice of holding class members in the Los Angeles County jails
23 for 48 hours or more after they are otherwise entitled to release on the
24 basis of an ICE hold violates the Fourteenth Amendment of the United
25 States Constitution.
- 26 • The practice of holding class members in the Los Angeles County jails
27 for 48 hours or more on the basis of an ICE hold after they are otherwise
28 entitled to release violates the state common law protections against false

1 imprisonment;

- 2 • The practice of holding class members in the Los Angeles County jails
3 for 48 hours or more after they are otherwise entitled to release on the
4 basis of an ICE hold constitutes an unreasonable seizure under Article I,
5 Section 13 of the California Constitution; and
- 6 • The practice of holding class members in the Los Angeles County jails
7 for 48 hours or more after they are otherwise entitled to release on the
8 basis of an ICE hold violates the due process guarantee of Article I,
9 Section 7 of the California Constitution

10 c. Typicality

11 98. The claims of Plaintiffs De La Cerda and Varela are typical of those
12 of the class as a whole because they have an ICE hold placed on them that was not
13 supported by a lawful probable cause determination while they were in LASD
14 custody and will shortly be otherwise eligible for release, but will be detained for
15 48 or more hours by Defendants as a result of the ICE hold.

16 d. Adequacy of Representation

17 99. Plaintiffs are adequate class representatives and thus meet the
18 requirements of Rule 23(a)(4). De La Cerda and Varela are presently in the
19 custody of the LASD, have an ICE hold placed on them that is not based on
20 probable cause, and are being denied the opportunity to be released by LASD
21 because they have an ICE hold placed on them. They have no conflict of interest
22 with other class members, they will fairly and adequately protect the interests of
23 the class, and they understand their responsibilities as class representatives.

24 100. The foregoing Plaintiffs (as well as those Plaintiffs acting as class
25 representatives for the class damages claims, who are discussed *infra*) are
26 represented by highly qualified and experienced counsel: The ACLU of Southern
27 California, the ACLU Immigrants Rights Project, the National Day Laborer
28 Organizing Network and Kaye, McLane, Bednarski & Litt, who, as elaborated

1 below, are all highly experienced in cases of this type.

2 101. Plaintiffs' co-lead counsel on behalf of the ACLU of Southern
3 California, Peter Eliasberg, is the Legal Director of the ACLU Foundation of
4 Southern California. Since its founding in 1923, the ACLU of Southern California
5 has been litigating a broad variety of civil rights cases, including prisoners' rights
6 cases. Attorney Eliasberg has been lead counsel or co-lead counsel in numerous
7 federal civil rights class actions in the Central District of California as well as co-
8 counsel on a federal habeas petition on behalf of Susan McDougal. He has been
9 lead counsel in civil rights matters before the United States Court of Appeals for
10 the Ninth Circuit, the California Supreme Court, and the United States Supreme
11 Court, and has argued a case before the U.S. Supreme Court. Since 2009,
12 Eliasberg has served as co-lead class counsel for all the inmates in Los Angeles
13 County Jails in *Rutherford v. Baca* and in 2012 was named co-lead counsel for all
14 the inmates in Men's Central Jail and Twin Towers in *Rosas v. Baca*, a federal
15 class action in this Court. In addition, co-counsel Jennie Pasquarella, Peter Bibring,
16 and Ahilan Arulanantham all have experience serving as class counsel in large
17 civil rights cases litigated in federal court.

18 102. Plaintiffs' co-lead counsel on behalf of the Immigrants' Rights Project
19 of the American Civil Liberties Union is Cecilia Wang. Ms. Wang is Director of
20 the Immigrants' Rights Project of the ACLU Foundation ("ACLU IRP"). She has
21 substantial experience serving as plaintiffs' counsel in certified class action
22 lawsuits in federal court, including *Lopez-Valenzuela, et al. v. Maricopa County*,
23 No. 08-660 (D. Ariz. filed April 4, 2008), which seeks relief on behalf of pretrial
24 detainees in Arizona who are ineligible for bail because of their immigration status,
25 and *Ortega Melendres v. Arpaio, et al.*, No. 07-02513 (D. Ariz. filed Dec. 12,
26 2007), which challenges the Maricopa County Sheriff's Office's practice of race
27 discrimination and Fourth Amendment violations in traffic stops. In addition,
28 Omar Jadwat and Kate Desormeau, staff attorneys at ACLU IRP, have experience

1 serving as counsel in class-action lawsuits including *Valle Del Sol v. Whiting*,
2 No.10-01061 (D. Ariz. filed May 17, 2010), and *Utah Coalition of La Raza, et al.*
3 *v. Herbert*, No. 11-00401 (D. Utah filed May 3, 2011). Founded in 1987, the
4 ACLU IRP has extensive experience litigating civil rights and class action lawsuits
5 on behalf of detained individuals, including *Franco-Gonzalez v. Napolitano et al.*,
6 No. 10-02211 (C.D. Cal filed March 26, 2010), and *Rodriguez v. Robbins*, No. 07-
7 03239 (C.D. Cal filed May 16, 2007). The ACLU IRP will commit its expertise
8 and resources to successfully represent the proposed classes in this action.

9 103. Plaintiffs' co-lead counsel on behalf of the National Day Laborer
10 Organizing Network (NDLON), Chris Newman, is the Legal Director of the
11 National Day Laborer Organizing Network. Since its founding in 2001, NDLON
12 has litigated a variety of constitutional and civil rights cases. Attorney Newman
13 currently serves as co-counsel in the civil rights class action *Valle Del Sol v.*
14 *Whiting*, No.10-01061 (D. Ariz. filed May 17, 2010). He has also been counsel in
15 constitutional and civil rights matters before the United States Court of Appeals for
16 the Ninth and Eleventh Circuits, including *Hispanic Interest Coalition of Alabama*
17 *v. Bentley*, No. 11-14535 (11th Cir.), as well as the Central District of California.
18 In addition, Jessica Karp, staff attorney at NDLON, has experience serving as
19 counsel in civil rights class action *Valle Del Sol v. Whiting*, and has been counsel
20 in constitutional and civil rights matters before the United States Court of Appeals
21 for the Ninth and Eleventh Circuits.

22 104. Plaintiffs' co-lead counsel on behalf of Kaye, McLane, Bednarski &
23 Litt, Barrett S. Litt, specializes in complex civil rights litigation, particularly civil
24 rights class actions, and has extensive experience handling jail matters. The law
25 enforcement or jail/prison class actions in which he has been named class counsel
26 in certified classes are listed below. (Where there is a reported decision, the cite is
27 provided.)
28

- 1 ➤ *Multi-Ethnic Immigrant Worker Network v. City of Los Angeles*, Case
2 No.: CV 07-3072 AHM (FMMx) (class action for injunctive relief and
3 damages for challenging the LAPD’s assault on a lawful immigrant rights
4 rally in MacArthur Park on May 1, 2007: *Multi-Ethnic Immigrant Worker
5 Network v. City of Los Angeles*, 24 F.R.D. 621 (C.D. Cal. 2007)
6 (certifying class).
- 7 ➤ *Williams v. Block*, Case No.: CV-97-03826-CW (Central District of
8 California) and related cases (a series of county jail overdetention and
9 strip search cases, settled for \$27 Million and a complete revamp of jail
10 procedures); *Streit v. County of Los Angeles*, 236 F.3d 552, 556 (9th Cir.
11 2001) (finding that sheriff is a county actor and referring, at fn. 2, to the
12 concurrent, unreported reversal of the denial of class certification by the
13 district court).
- 14 ➤ *Craft v. County of San Bernardino*, Case No.: EDCV05-00359 SGL
15 (C.D.Cal.) (certified class action against the Sheriff of San Bernardino
16 County for blanket strip searches of detainees, arrestees, and persons
17 ordered released from custody; partial summary judgment decided for
18 plaintiffs; \$25.5 Million settlement approved April 1, 2008); *Craft v.
19 County of San Bernardino*, 468 F.Supp.2d 1172 (C.D.Cal. 2006)
20 (approving class settlement).
- 21 ➤ *Lopez v. Youngblood*, No. CV07-00474 LJO (DLBx) (E.D. Calif.) (class
22 action against Kern County, California, for unlawful pre-arraignment and
23 post-release strip searches and strip searches not conducted in private;
24 class certification and summary judgment on liability granted; settlement
25 approved in 2011 for class fund of approximately \$7 Million); *Lopez v.
26 Youngblood*, 2009 WL 909817 (E.D. Cal. Apr. 1, 2009).
- 27 ➤ *Bynum v. District of Columbia*, Case No.: 02-956 (RCL) (D.D.C.) (class
28 action against the District of Columbia for overdetentions and blanket

1 strip searches of pretrial jail detainees after they have been ordered
2 released from custody; final approval of \$12,000,000 settlement occurred
3 January 2006); *Bynum v. Dist. of Columbia*, 214 F.R.D. 27 (D.D.C. 2003)
4 (certifying class)

5 ➤ *Barnes v. District of Columbia*, Civil Action No: 06-315 (RCL) (D.D.C.)
6 (class action against District of Columbia for continuing to both over-
7 detain and strip search post-release inmates despite settlement in *Bynum*,
8 *supra*; class certification granted; partial summary judgment granted
9 plaintiffs and remaining issues to be set for trial); *Barnes v. Dist. of*
10 *Columbia*, 242 F.R.D. 113 (D.D.C. 2007) (certifying class)]

11 ➤ *Johnson v. District of Columbia*, Case No. 02-2364 (RMC) (D.D.C.)
12 (class action against the District of Columbia and United States Marshals
13 for blanket strip searches of arrestees initially taken to jail without
14 reasonable suspicion and not involved in drug or violent activity;
15 judgment for defendant on appeal); *Johnson v. Dist. of Columbia*, 248
16 F.R.D. 46 (D.D.C. 2008) (certifying class).

17 ➤ *Jones v. Murphy*, Case No. CCB 05 CV 1287 (D. Maryland) (class action
18 challenging overdetentions and illegal strip searches in Central Booking in
19 Baltimore, MD, jail; class certification granted in part and denied in part;
20 summary judgment motions pending); *Jones v. Murphy*, 256 F.R.D. 519
21 (D. Md. 2009) (certifying class).

22 ➤ *Gail Marie Harrington-Wisely, et al. v. State of California, et al.*, Superior
23 Court Case No.: BC 227373 (backscatter x-ray searches of visitors to
24 California prisons without reasonable suspicion; class certification
25 granted; stipulated injunction entered; case recently remanded back to
26 state court for further proceedings).

27 105. Mr. Litt has authored articles on law enforcement related class
28 certification issues. See “Class Certification in Police/Law Enforcement Cases”,

1 *Civil Rights Litigation and Attorney's Fee Annual Handbook*, Vol.18, Ch.3, West
2 Publishing 2002; "Obtaining Class Attorney's Fees," *Civil Rights Litigation and*
3 *Attorney's Fee Annual Handbook*, Vol. 26, Ch. 15, West Publishing 2010.

4 106. Plaintiffs meet the requirement of Rule 23(b)(2), as the Defendant has
5 acted, or omitted to act, on grounds generally applicable to the class, thereby
6 making equitable relief appropriate with respect to the class as a whole.

7 **2. *The Equitable Relief Sub-class***

8 107. The equitable relief sub-class is defined as all persons who are or will
9 be (1) detained in the custody of the LASD, (2) have an immigration hold placed
10 on them by ICE while in LASD custody that was issued to initiate an investigation
11 to determine whether the person is subject to removal, issued on the basis of a
12 warrant of arrest for removal proceedings, or issued on the basis of initiating
13 removal proceedings and serving a Notice to Appear or other charging documents,
14 (3) are entitled to be released from LASD custody under applicable federal or state
15 law (which creates a liberty interest in such release), (4) due to LASD policy and
16 practice are not released (to the extent that they were otherwise entitled to release)
17 but held in LASD custody on the authority of the ICE hold (5) for more than 48
18 hours after they were eligible for release from LASD custody without a probable
19 cause hearing before a neutral decisionmaker for a probable cause determination.
20 The distinctions between this sub-class and the equitable relief class are that this
21 sub-class asserts that, even if an ICE hold for 48 hours total is permissible,
22 additional holding time beyond 48 hours without a probable cause hearing before a
23 neutral decisionmaker is not, whereas the equitable relief class asserts that no
24 period of an ICE hold is permissible.

25 a. Numerosity

26 108. The subclass for class two meets the numerosity requirement of Rule
27 23(a)(1). There are approximately 20,000 inmates confined in the Los Angeles
28 County Jails each year who LASD will detain for ICE because ICE has placed a

1 hold on them, who are being, or will be, detained for more than 48 hours by LASD
2 after they would otherwise be entitled to release on the basis of the ICE hold.
3 More than 15,000 of those holds are issued as “investigatory holds” or on the basis
4 of a warrant issued by an ICE officer. For approximately 31% of those 15,000,
5 with investigatory or ICE officer warrant ICE holds, or 4,650 of the 15,000, their
6 continued detention on the ICE hold will run more than 48 hours because they are
7 held on Saturday, Sunday or holiday. Thus, approximately 4,650 will be held by
8 LASD for more than 48 hours after they were eligible for release from LASD
9 custody without a probable cause determination by a neutral decisionmaker. The
10 membership of the subclass continuously changes, rendering joinder of all
11 members impracticable. The inclusion within the subclass of future inmates in the
12 downtown Jail Complex also makes joinder of all members impracticable.

13 b. Commonality

14 109. The subclass meets the commonality requirement of Rule 23(a)(2).
15 Questions of law and fact presented by the named plaintiffs are common to other
16 members of the class. The common contentions that unite the claims of the class
17 include the following:

- 18 • The practice of holding subclass members in the Los Angeles County
19 jails for more than 48 hours after they are otherwise entitled to release on
20 the basis of an ICE hold without a probable cause determination by a
21 neutral decisionmaker violates the Fourth Amendment of the United
22 States Constitution;
- 23 • The practice of holding subclass members in the Los Angeles County
24 jails for more than 48 hours after they are otherwise entitled to release on
25 the basis of an ICE hold without a probable cause determination by a
26 neutral decisionmaker violates the due process guarantee of Fourteenth
27 Amendment of the United States Constitution;
- 28 • The practice of holding subclass members in the Los Angeles County

1 jails for more than 48 hours after they are otherwise entitled to release on
2 the basis of an ICE hold without a probable cause determination by a
3 neutral decisionmaker violates the state common law protections against
4 false imprisonment;

- 5 • The practice of holding subclass members in the Los Angeles County
6 jails for more than 48 hours after they are otherwise entitled to release on
7 the basis of an ICE hold without a probable cause determination by a
8 neutral decisionmaker constitutes an unreasonable seizure under Article
9 I, Section 13 of the California Constitution.
- 10 • The practice of holding subclass members in the Los Angeles County
11 jails for more than 48 hours after they are otherwise entitled to release on
12 the basis of an ICE hold without a probable cause determination by a
13 neutral decisionmaker violates the due process guarantee of Article 1,
14 Section 7 of the California Constitution.

15 c. Typicality

16 110. The claims of Plaintiff Varela are typical of those of those of the sub-
17 class because, due to the timing of Mr. Varela's release date, he will be detained
18 more than 48 hours and over the weekend without a probable cause determination
19 by a neutral decisionmaker solely on the basis of the ICE hold.

20 d. Adequacy of Representation

21 111. Plaintiffs are adequate class representatives and thus meet the
22 requirements of Rule 23(a)(4). Plaintiff Varela is presently in custody of the
23 LASD and will have been held for more than 48 hours after he is otherwise entitled
24 to relief on the basis of an ICE hold without a probable cause determination by a
25 neutral decisionmaker. He has no conflict of interest with other class members,
26 and he will fairly and adequately protect the interests of the class. He and the sub-
27 class are represented by highly qualified and experienced counsel: The ACLU of
28 Southern California, the ACLU Immigrants Rights Project, the National Day

1 Laborer Organizing Network and Kaye, McLane, Bednarski & Litt. Plaintiffs
2 incorporate by reference the allegations set forth in paragraphs 93-98 above.

3 112. Plaintiffs meet the requirement of Rule 23(b)(2) as the Defendant has
4 acted, or omitted to act, on grounds generally applicable to the class, thereby
5 making habeas corpus relief appropriate with respect to the class as a whole.

6 **V. CLASS ACTION ALLEGATIONS FOR DAMAGES**

7 113. Plaintiffs Martinez-Perez and Alliksoo bring this damages claim based
8 on federal and supplemental state law claims, including under 42 U.S.C. §1983,
9 seeking class-wide relief, pursuant to Federal Rules of Civil Procedure 23(a) and
10 (b)(3), on behalf of all Damages Classes alleged below.

11 114. The foregoing named Plaintiffs are also collectively referred to as the
12 “Damages Class Representatives.”

13 **1. Damages Classes One and Two (Federal and State**
14 **Respectively)**

15 115. Damages Class One (hereafter and in the course of this litigation also
16 referred to as the “Federal Bail Damages Class”) is defined as all persons who,
17 during the two years prior to the filing of this complaint, and continuing until the
18 practice has ceased or until entry of judgment, whichever is sooner, have been or
19 will be (1) detained in the custody of the LASD, (2) have an immigration hold
20 placed on them by ICE while in LASD custody, (3) were eligible to post bail on
21 the basis of the County-wide bail schedule as provided by statute, an arrest
22 warrant, or a court order setting the amount of bail (4) but are not allowed to post
23 bail and be released due to LASD policy and practice.

24 116. Damages Class Two (hereafter and in the course of this litigation also
25 referred to as the “State Bail Damages Class”) is defined as all persons who,
26 beginning November 7, 2011 (six months before filing the initial state law 910
27
28

1 class claim by Antonio Montejano),⁴ and continuing until cessation of the practice
2 or entry of judgment, whichever is sooner, have been or will be (1) detained in the
3 custody of the LASD, (2) have an immigration hold placed on them by ICE while
4 in LASD custody, (3) are eligible to post bail on the basis of the County-wide bail
5 schedule as provided by statute, an arrest warrant, or a court order setting the
6 amount of bail (4) but were or are not allowed to post bail and be released due to
7 LASD policy and practice.

8 **2. Damages Classes Three and Four (Federal and State**
9 **Respectively)**

10 117. Damages Class Three (hereafter and in the course of this litigation
11 also referred to as the “Federal ICE Damages Class”) is defined as all persons who,
12 during the two years prior to the filing of this complaint, and continuing until the
13 practice has ceased or until entry of judgment, whichever is sooner, have been or
14 will be (1) detained in the custody of the LASD, (2) have an immigration hold
15 placed on them by ICE while in LASD custody that was not supported by a lawful
16 probable cause determination, (3) are entitled to be released from LASD custody
17 under applicable federal or state law (which creates a liberty interest in such
18 release), and (4) due to LASD policy and practice are not released (to the extent
19 that they were otherwise entitled to release) but held in LASD custody on the
20 authority of the ICE hold after they were eligible for release from LASD custody.

21 118. Damages Class Four (hereafter and in the course of this litigation also
22 referred to as the “State ICE Damages Class”) is defined as all persons who,
23 beginning November 7, 2011 (six months before filing the initial state law 910
24 class claim by Antonio Montejano), and continuing until cessation of the practice
25

26 ⁴ Should the Court conclude for some reason that the Montejano 910 claim does
27 not begin the running of the period for which a claim can be made, there were also
28 subsequent 910 class claims filed that Plaintiffs can assert if necessary. This
applies to the other state damages classes asserted herein.

1 or entry of judgment, whichever is sooner, have been or will be (1) detained in the
2 custody of the LASD, (2) have an immigration hold placed on them by ICE while
3 in LASD custody that was not supported by a lawful probable cause determination,
4 (3) are entitled to be released from LASD custody under applicable federal or state
5 law (which creates a liberty interest in such release), and (4) due to LASD policy
6 and practice are not released (to the extent that they were otherwise entitled to
7 release) but held in LASD custody on the authority of the ICE hold after they were
8 eligible for release from LASD custody.

9 **3. *Damages Sub-Classes to Damages Classes Three and Four,***
10 ***AKA Classes Five and Six (Federal and State Respectively)***

11 119. As alleged previously regarding the injunctive relied sub-class, there
12 are also sub-classes to the ICE Damages Classes. Because a sub-class is ultimately
13 treated as a separate class, should it become appropriate to distinguish it from the
14 class of which it is a part, Plaintiffs also refer to the sub-classes alleged in this
15 section as Classes Five and Six.

16 120. The sub-class to Damages Class Three (hereafter and in the course of
17 this litigation also referred to as Damages Class Five or the “Federal Post-48 Hour
18 ICE Damages Class”) is defined as all persons who, during the two years prior to
19 the filing of this complaint, and continuing until the practice has ceased or until
20 entry of judgment, whichever is sooner, have been or will be (1) detained in the
21 custody of the LASD, (2) have an immigration hold placed on them by ICE while
22 in LASD custody that was issued to initiate an investigation to determine whether
23 the person is subject to removal, on the basis of a warrant of arrest for removal
24 proceedings, or on the basis of initiating removal proceedings and serving a Notice
25 to Appear or other charging documents (3) are entitled to be released from LASD
26 custody under applicable federal or state law (which creates a liberty interest in
27 such release), (4) due to LASD policy and practice are not released (to the extent
28 that they were otherwise entitled to release) but held in LASD custody on the

1 authority of the ICE hold (5) for more than 48 hours after they were eligible for
2 release from LASD custody without a probable cause hearing before a neutral
3 decisionmaker for a determination of probable cause.

4 121. The sub-class to Damages Class Four (hereafter and in the course of
5 this litigation also referred to as Damages Class Six or the “State Post-48 Hour ICE
6 Damages Class”) is defined as all persons who, beginning on November 7, 2011
7 (six months before the filing of the initial state law 910 class claim by Antonio
8 Montejano), and continuing until cessation of the practice or entry of judgment,
9 whichever is sooner, have been or will be (1) detained in the custody of the LASD,
10 (2) have an immigration hold placed on them by ICE while in LASD custody that
11 was issued to initiate an investigation to determine whether the person is subject to
12 removal, on the basis of a warrant of arrest for removal proceedings, or on the
13 basis of initiating removal proceedings and serving a Notice to Appear or other
14 charging documents, (3) are entitled to be released from LASD custody under
15 applicable federal or state law (which creates a liberty interest in such release), (4)
16 due to LASD policy and practice are not released (to the extent that they were
17 otherwise entitled to release) but held in LASD custody on the authority of the ICE
18 hold (5) for more than 48 hours after they were eligible for release from LASD
19 custody without a probable cause determination by a neutral decisionmaker.

20 **VI. THE FOREGOING DAMAGES CLASSES MEET THE**
21 **REQUIREMENTS OF FEDERAL RULES OF CIVIL PROCEDURE**
22 **23(A).**

23 122. Damages Classes One and Two meet the requirements of Rule 23 as
24 follows:

25 **1. Numerosity**

26 123. The classes meet the numerosity requirement of Rule 23(a)(1). There
27 are approximately 20,000 inmates (rounded to the nearest thousand) confined in
28 the Los Angeles County Jails each year who will be released to ICE because ICE

1 has placed a hold on them. Austin at pg. 21. Approximately 45% of the 20,000, or
2 9,000 are held solely on pre-trial status; in other words they are not serving a
3 sentence. Approximately 43% of them, or 3,870, are classified as “low custody”
4 and are thus likely to be held pre-trial on a minor charge and therefore a low bail
5 amount under the County-wide bail schedule as provided by statute, an arrest
6 warrant, or court order. On information and belief, well over 1000 such
7 individuals (quite likely substantially more) would have posted bail in a given year
8 in light of the low bail amounts set for those charged with low level offenses,
9 except for the LASD practice of refusing to allow them to post bail.

10 **2. Commonality**

11 124. The classes meet the commonality requirement of Rule 23(a)(2).
12 Questions of law and fact presented by the named plaintiffs are common to other
13 members of the class. The common contentions that unite the claims of the class
14 include the following:

- 15 • The practice of denying the ability to post bail to inmates with ICE holds
16 violates the right to due process of laws of the 14th Amendment of the
17 United States Constitution;
- 18 • The practice of denying the ability to post bail to inmates with ICE holds
19 violates the state common law protection against false imprisonment;
- 20 • The practice of denying the ability to post bail to inmates with ICE holds
21 violates California Penal Code Section Cal. Penal Code § 1269b(g);
- 22 • The practice of denying the ability to post bail to inmates with ICE holds
23 violates Article I, section 12 of the California Constitution.

24 **3. Typicality**

25 125. Plaintiffs meet the typicality requirement of Rule 23(a)(3), since, as
26 alleged below, the claims of the Plaintiffs are typical of those of the class.

27 126. Plaintiff Martinez-Perez was denied the ability to post bail due to the
28 presence of an ICE hold, and was held beyond the expiration of any state law basis

1 to detain him for four days, including over the weekend, on the ICE hold.

2 127. Plaintiff Alliksoo was denied the ability to post bail due to the
3 presence of an ICE hold and was held beyond the expiration of any state law basis
4 to detain her for three days, including over the weekend, on the ICE hold.

5 **4. Adequacy of Representation**

6 128. Plaintiffs are adequate class representatives and thus meet the
7 requirements of Rule 23(a)(4). Plaintiffs Martinez-Perez and Alliksoo were in the
8 custody of the LASD, were eligible for bail by County-wide bail schedule as
9 provided by statute, an arrest warrant, or had a court-ordered bail amount, had an
10 ICE hold placed on them, and were denied the opportunity to be released on bail
11 by Sheriff Baca because they had an ICE hold placed on them. They have no
12 conflict of interest with other class members, they will fairly and adequately
13 protect the interests of the class, and they understand their responsibilities as class
14 representatives.

15 129. The foregoing Plaintiffs (as well as those Plaintiffs acting as class
16 representatives for the class damages claims, who are discussed *infra*) are
17 represented by highly qualified and experienced counsel: The ACLU of Southern
18 California, the ACLU Immigrants Rights Project, the National Day Labor
19 Organizing Network and Kaye, McLane, Bednarski & Litt, who, as elaborated in
20 paragraphs 93-98, are all highly experienced in cases of this type.

21 130. Plaintiffs incorporate paragraphs 94 to 112, above, regarding the
22 parallel equitable relief class and its subclass. Except for the fact that the
23 Damages Class Representatives are out of custody, and the particular facts
24 showing that the claims are typical of the classes on whose behalf each acts as a
25 representative, the allegations contained in the foregoing paragraphs apply as well
26 to the Damages Class Representatives, and need not be repeated here, Damages
27 Classes One through Six accordingly meet the requirements of Federal Rule of
28 Civil Procedure 23(a) – numerosity, commonality, typicality and adequacy of

1 representation.

2 **VII. THE FOREGOING DAMAGES CLASSES MEET THE**
3 **REQUIREMENTS OF FEDERAL RULES OF CIVIL PROCEDURE 2**
4 **3(B)(3).**

5 131. Damages Classes One through Six also meet the requirements of
6 Federal Rule of Civil Procedure 23(b)(3).

7 **1. *Predominance of Common Questions***

8 132. The questions of law or fact common to class members predominate
9 over any questions affecting only individual members because the dominant issue
10 for all class members is whether there exists or existed a policy, custom and/or
11 practice of 1) refusing to allow class members to post bail because there was an
12 ICE hold on them, and 2) refusing to release class members otherwise entitled to
13 release on the basis of an ICE hold (either for the whole period – Damages Classes
14 Three and Four – or after the expiration of 48 hours after becoming entitled to
15 release – Damages Classes Five and Six.

16 133. The predominance of those issues for each damages class is sufficient
17 to certify the class under Rule 23(b)(3) pursuant to the provisions of F.R.Civ.P
18 23(c)(4), which authorizes the certification of a class “with respect to particular
19 issues,” even if there are other issues to be tried individually.

20 **2. *Superiority***

21 134. A class action is superior to other available methods for fairly and
22 efficiently adjudicating the controversy. Most of the class members were detained
23 unlawfully for sufficiently few days that an individual lawsuit for such damages is
24 not economically viable, given the complexity of the issues, and lawyers are
25 unlikely to take such cases individually. The great majority of class members
26 accordingly do not have an individual interest in controlling the prosecution of the
27 case. This district is the proper forum for the claims encompassed by this action,
28 and there are no individual cases of which Plaintiffs are aware pending in this

1 District pursuing damages for the violations at issue here despite the prevalence of
2 the problem.

3 135. The action is manageable. At a minimum, it will decide the critical
4 issue of *Monell* liability for all class members, and, given the nature of the claims,
5 it will also decide causation because the reason for the unlawful continuing
6 detention will be the policies asserted herein. These are all the issues that need to
7 be determined to establish liability to the respective classes.

8 136. General damages inherent in the constitutional violation could be
9 proven on a class wide basis. Individual (special) damages, to the extent a class
10 member chose to pursue them, would be proven on an individual basis under
11 procedures to be set by the Court.

12 137. Because the classes are confined to those regarding whom there
13 should be computerized jail records that will show, inter alia, the date of arrest,
14 whether bail was set, whether an ICE hold was placed on a person, the date of the
15 ICE hold, the date the person was entitled to release absent the ICE hold, and the
16 date of release or transfer to ICE, identifying the universe of likely class members
17 will be readily accomplished based on jail (and possibly court, if needed) records.

18 138. Thus, the proposed classes are manageable, and, without class
19 treatment, the overwhelming majority of class members would not have a viable
20 individual claim.

21 **VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES FOR STATE**
22 **DAMAGES CLAIMS**

23 139. Plaintiffs have complied with the jurisdictional prerequisites for filing
24 a tort claim for damages against the County. *See* Cal. Gov't Code § 911.2.

25 140. On May 9, 2012, Plaintiff Duncan Roy filed an administrative tort
26 claim against the Los Angeles County Sheriff's Department on behalf of himself
27 and the representative class. On May 23, 2012, he filed an amended claim. On
28 May 29, 2012, the County rejected his claim.

1 141. On May 7, 2012, Antonio Montejano, a U.S. citizen detained by
2 LASD on an immigration hold, filed an administrative tort claim against the Los
3 Angeles County Sheriff's Department on behalf of himself and the representative
4 class of persons detained solely on the basis of the immigration hold. On May 23,
5 2012, he filed an amended claim. On May 29, 2012, the County rejected his claim.
6 On September 13, 2012, Plaintiff Annika Alliksoo filed an administrative tort
7 claim against the Los Angeles County Sheriff's Department on behalf of herself
8 and the representative class. On October 9, 2012, she filed an amended claim.

9 **IX. FIRST CAUSE OF ACTION: FOURTEENTH AMENDMENT**
10 **VIOLATION (DUE PROCESS); 42 U.S.C. § 1983**

11 **(All Plaintiffs against all Defendants⁵)**

12 142. Plaintiffs incorporate the allegations of the preceding and subsequent
13 paragraphs as if fully set forth herein.

14 143. As set forth above, Defendants refused to allow Plaintiffs and those
15 similarly situated to post bail for which they were eligible under the County-wide
16 bail schedule, prior to Plaintiffs' arraignment, thus depriving Plaintiffs of their
17 liberty without due process of law.

18 144. As set forth above, Defendants refused to allow Plaintiffs and those
19 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
20 cases, thus depriving Plaintiffs of their liberty without due process of law.

21 145. As set forth above, Defendants continued to detain Plaintiffs and those
22 similarly situated after their criminal cases had been resolved and all state law

23 ⁵ For all causes of action pled, all claims for damages are made against Defendant
24 County of Los Angeles. All claims for injunctive relief are made against both
25 Defendant County of Los Angeles and Defendant Baca in his official capacity.
26 Claims by Plaintiff Defendant Roy are made for damages on his own behalf.
27 Claims by Plaintiffs Alain Martinez-Perez and Annika Alliksoo are made for
28 damages on behalf of themselves and others similarly situated. Claims by
Plaintiffs Clemente De La Cerda and Christian Michel Varela are made for
injunctive relief on behalf of themselves and others similarly situated.

1 grounds to detain them had evaporated solely on the basis of the immigration hold,
2 thus depriving Plaintiffs of their liberty without due process of law.

3 **X. SECOND CAUSE OF ACTION: FOURTH AMENDMENT**
4 **VIOLATION (UNLAWFUL SEIZURE); 42 U.S.C. § 1983**

5 **(All Plaintiffs against all Defendants)**

6 146. Plaintiffs incorporate the allegations of the preceding and subsequent
7 paragraphs as if fully set forth herein.

8 147. As set forth above, Defendants refused to allow Plaintiffs and those
9 similarly situated to post bail for which they were eligible according to their
10 warrant of arrest or under the County-wide bail schedule, prior to Plaintiffs'
11 arraignment, thus seizing Plaintiffs in violation of the Fourth Amendment.

12 148. As set forth above, Defendants continued to detain Plaintiffs and those
13 similarly situated after their release date and the expiration of any and all state law
14 basis to detain them solely on the basis that ICE issued a Form I-247, and without
15 probable cause to believe that Plaintiffs were removable, thus seizing Plaintiffs in
16 violation of the Fourth Amendment.

17 149. Absent an emergency or other extraordinary circumstance, a detention
18 of over 48 hours prior to judicial determination of probable cause violates the
19 Fourth Amendment as a matter of law. *See County of Riverside v. McLaughlin*,
20 500 U.S. 44, 57 (1991). The 48 hours includes weekends and holidays.

21 150. As set forth above, Defendants as a routine matter continued to detain
22 Plaintiffs and those similarly situated for more than 48 hours after their release date
23 and the expiration of any and all state law basis to detain them solely on the basis
24 that ICE issued a Form I-247 without providing a judicial or quasi-judicial
25 determination of probable cause on any purported immigration charges, thus
26 seizing Plaintiffs in violation of the Fourth Amendment.

27 **XI. FOURTH CAUSE OF ACTION: FALSE IMPRISONMENT**

28 **(All Plaintiffs against all Defendants)**

1 151. Plaintiffs incorporate the allegations of the preceding and subsequent
2 paragraphs as if fully set forth herein.

3 152. The duty of a jailor to release an inmate on bail is mandatory under
4 California law. California courts have held that jailers who failed to release an
5 inmate who satisfied bail requirements acted unlawfully and are liable for false
6 imprisonment. *See Shakespeare v City of Pasadena*, 230 Cal. App. 2d 375, 384
7 (1964); *Moore v. City & County of San Francisco*, 5 Cal. App. 3d 728 (1970).

8 153. As set forth above, Defendants refused to allow Plaintiffs and those
9 similarly situated to post bail for which they were eligible according to their
10 warrant of arrest or under the County-wide bail schedule, prior to Plaintiffs'
11 arraignment, thus non-consensually and intentionally confining Plaintiffs without
12 lawful privilege.

13 154. As set forth above, Defendants refused to allow Plaintiffs and those
14 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
15 cases, thus non-consensually and intentionally confining Plaintiffs without lawful
16 privilege.

17 155. The duty of a jailor to release a detainee after a judge has ordered her
18 released on her own recognizance, after she has served her sentence, after charges
19 are dismissed or no charges are filed, or after the expiration of any other state law
20 basis to detain is also mandatory. *See, e.g.*, Cal. Penal Code § 1384 (“If the judge
21 or magistrate directs the action to be dismissed, the defendant must, if in custody,
22 be discharged therefrom”); *Sullivan v. Los Angeles*, 12 Cal.3d 710, 722 n.11
23 (1974) (“Release of a prisoner after dismissal of charges against him is non-
24 discretionary since it is specifically mandated by Penal Code section 1384.”).

25 156. State law provides no authority for LASD to continue to detain an
26 individual beyond her release date and the expiration of any and all state law basis
27 to detain her solely on the basis of the immigration hold.
28

1 157. As set forth above, Defendants continued to detain Plaintiffs and those
2 similarly situated after their release date and the expiration of any and all state law
3 basis to detain them, thus non-consensually and intentionally confining Plaintiffs
4 without lawful privilege.

5 158. Defendants are liable for the tort of false imprisonment of Plaintiffs,
6 because their employees, acting within the course and scope of their duties, would
7 have been liable for the tort of false imprisonment, based on the allegations above.
8 California Government Code § 815.2.

9 **XII. FIFTH CAUSE OF ACTION: CALIFORNIA GOVERNMENT CODE**
10 **§§ 815.2 AND 815.6**

11 **(All Plaintiffs against all Defendants)**

12 159. Plaintiffs incorporate the allegations of the preceding and subsequent
13 paragraphs as if fully set forth herein.

14 160. California law imposes a mandatory duty on LASD to release on bail
15 any arrestee or inmate who meets the statutory conditions for bail. *See, e.g.*, Cal.
16 Const., Art. 1, section 12; Cal. Penal Code §§ 1268, 1269b, 1295(a). Further, the
17 federal and state constitutional provisions cited previously (due process, and search
18 and seizure) constitute mandatory duties under Article 1, § 26 of the California
19 Constitution.

20 161. As set forth above, Defendants refused to allow Plaintiffs and those
21 similarly situated to post bail for which they were eligible under a warrant of arrest
22 or the County-wide bail schedule, prior to Plaintiffs' arraignment, thus failing to
23 discharge their mandatory duties under California law and causing Plaintiffs and
24 those similarly situated injuries those duties were designed to prevent.

25 162. As set forth above, Defendants refused to allow Plaintiffs and those
26 similarly situated to post the bail set for Plaintiffs by the courts in their criminal
27 cases, thus failing to discharge their mandatory duties under California law and
28

1 causing Plaintiffs and those similarly situated injuries those duties were designed
2 to prevent.

3 163. As set forth above, California law also imposes a mandatory duty on
4 LASD to release a detainee after a judge has ordered her released on her own
5 recognizance, after she has served her sentence, after charges are dismissed or no
6 charges are filed, or after the expiration of any other state law basis to detain is also
7 mandatory.

8 164. State law provides no authority for LASD to continue to detain an
9 individual beyond her release date and the expiration of any and all state law basis
10 to detain her solely on the basis of the immigration hold.

11 165. As set forth above, Defendants continued to detain Plaintiffs and those
12 similarly situated after their release date and the expiration of any and all state law
13 basis to detain them solely on the basis of the immigration hold, thus failing to
14 discharge their mandatory duties under California law and causing Plaintiffs and
15 those similarly situated injuries those duties were designed to prevent.

16 166. Defendants are therefore liable to Plaintiffs and those similarly
17 situated under California Government Code § 815.6.

18 **XIII. SIXTH CAUSE OF ACTION: NEGLIGENCE PER SE**

19 **(All Plaintiffs against all Defendants)**

20 167. Plaintiffs incorporate the allegations of the preceding and subsequent
21 paragraphs as if fully set forth herein.

22 168. As set forth above, Defendants' employees refused to allow Plaintiffs
23 and those similarly situated to post bail for which they were eligible under a
24 warrant of arrest or the County-wide bail schedule, prior to Plaintiffs' arraignment,
25 thus violating their obligations under California law and causing injury to Plaintiffs
26 and those similarly situated in a manner in which California's guarantees of the
27 right to post bail were designed to prevent, for the benefit of Plaintiffs and those
28 similarly situated.

1 169. As set forth above, Defendants' employees refused to allow Plaintiffs
2 and those similarly situated to post the bail set for Plaintiffs by the courts in their
3 criminal cases, thus violating their obligations under California law and causing
4 injury to Plaintiffs and those similarly situated in a manner in which California's
5 guarantees of the right to post bail were designed to prevent, for the benefit of
6 Plaintiffs and those similarly situated.

7 170. As set forth above, Defendants continued to detain Plaintiffs and those
8 similarly situated after their release date and the expiration of any and all state law
9 basis to detain them solely on the basis of the immigration hold, in spite of their
10 mandatory duty under state law to release them, thus violating their obligations
11 under California law and causing injury to Plaintiffs and those similarly situated in
12 a manner in which California's guarantees of release were designed to prevent, for
13 the benefit of Plaintiffs and those similarly situated.

14 171. Defendants are therefore liable to Plaintiffs and those similarly
15 situated for negligence *per se* under California Government Code § 815.6.

16 **XIV. EIGHTH CAUSE OF ACTION: CIVIL CODE § 52.1 – VIOLATION**
17 **OF RIGHT TO TIMELY RELEASE [FOURTH AMENDMENT/DUE**
18 **PROCESS, PENAL CODE §§ 1384 AND 3000(B)(2)(A)]**

19 193. Plaintiffs incorporate the allegations of the preceding and subsequent
20 paragraphs as if fully set forth herein.

21 194. Defendants engaged in coercive acts that separately and independently
22 interfered with or attempted to interfere with the rights of Plaintiffs and Damages
23 Classes Two, Four, and Six to be timely released when they were entitled to
24 release in violation of their right to be free from unlawful seizure under the Fourth
25 Amendment and the Due Process clause, and their California equivalents, and in
26 violation of Penal Code §§ 1384 and 3000(b)(2)(A) (defendant must be
27 discharged from custody after dismissal [1384] or at the expiration of sentence
28 [3000(b)(2)(A)]).

195. For purposes of this cause of action, and any other claims pursuant to

1 Cal. Civil Code § 52.1, the phrase “class members” refers collectively to members
2 of any of Classes Two, Four and Six.

3 196. LASD’s record-keeping practices with regard to ICE holds constitute
4 coercion that is separate and independent from over-detention. While class
5 members were in the custody of LASD, Defendants recorded ICE detainees in
6 their electronic record systems as mandatory holds, treating such detainees as a
7 valid, lawful basis to deny release, including to release on bail, even though
8 LASD knew or should have known that an ICE detainer was nothing more than a
9 voluntary request, and provided no lawful basis to detain someone.

10 197. LASD’s practice of characterizing and recording ICE detainees as
11 mandatory holds was both unlawful and coercive. It was unlawful because the
12 detainees provided no lawful basis for detention. It was coercive because it falsely
13 communicated to employees and agents that ICE holds authorized and required
14 class members to be detained. This misrepresentation initiated various unlawful
15 consequences, including over-detention, denial of the right to post bail and
16 exclusion from various alternatives to custody programs.

17 198. LASD’s coercive and unlawful record-keeping practices were
18 separate and independent from the consequences that flowed from this record
19 keeping: LASD’s failure to release inmates when all criminal matters resolved
20 (i.e. illegal detention for civil purposes despite the absence of legal authority to do
21 so).

22 199. ICE admits, and the law is clear, that ICE detainees are voluntary
23 requests, and neither legally require, nor purport to legally require, that a person
24 be held against their will on that basis. Defendants knew or should have known
25 that an ICE detainer was nothing more than a voluntary request and was not a
26 lawful basis to detain someone after they became otherwise entitled to release,
27 including release on bail; that, in 2010, ICE submitted communications to
28 Congress explaining that ICE holds are voluntary requests; that ICE had an office

1 in LASD where inquiries about ICE’s view of their authority was readily
2 available; that the ICE detention forms on their face were requests and not orders
3 or mandatory detainers; that the relevant federal regulations state that an ICE
4 detainer is a “request”; and that an ICE detainer was not accompanied by a
5 judicial warrant or judicial determination of probable cause.

6 200. As a result of the foregoing unlawful data entries, when class
7 members became entitled to release from custody, they were not released, but
8 Defendants continued to hold them, including unlawfully holding them without a
9 warrant on the sole authority of the ICE detainer for more than 48 hours without
10 bringing them before a judicial officer for a determination of probable cause.
11 Separate from the predicate acts described previously, this failure a) violated their
12 Fourth Amendment right to be released, b) alternatively violated their due process
13 right to be released, and c) violated their right to be released pursuant to Penal
14 Code §§ 1384 and 3000(b)(2)(A).

15 **XV. NINTH CAUSE OF ACTION: CIVIL CODE § 52.1 – VIOLATION OF**
16 **RIGHT TO RELEASE ON BAIL**

17 201. Plaintiffs incorporate the allegations of the preceding and subsequent
18 paragraphs as if fully set forth herein.

19 202. Defendants engaged in coercive acts that separately and independently
20 interfered with or attempted to interfere with the rights of Plaintiffs and Damages
21 Classes Two, Four, and Six to be released on bail when they were entitled to such
22 release, in violation of their right to bail under Cal. Const. Article 1 § 12 (“a
23 person shall be released on bail by sufficient sureties” except for capital crimes
24 and certain felonies after court determination based on clear and convincing
25 evidence” that bail should be denied) and Penal Code § 1296(b)(g) (establishing a
26 jailer’s mandatory duty to release a person upon posting of bail).

27 203. For purposes of this cause of action, and any other claims pursuant to
28 Cal. Civil Code § 52.1, the phrase “class members” refers collectively to members

1 of any of Classes Two, Four and Six.

2 204. LASD's record-keeping practices with regard to ICE holds constitute
3 coercion that is separate and independent from the violation of class members'
4 rights to be released on bail. While class members were in the custody of LASD,
5 Defendants recorded ICE detainers in their electronic record systems as
6 mandatory holds, treating such detainers as a valid, lawful basis to deny release,
7 including to release on bail, even though LASD knew or should have known that
8 an ICE detainer was nothing more than a voluntary request, and provided no
9 lawful basis to detain someone. Defendants routinely entered into their data
10 systems that persons with an ICE detainer were "No Bail" inmates even though
11 they otherwise qualified for release on bail.

12 205. LASD's practice of characterizing and recording ICE detainers as
13 mandatory holds was both unlawful and coercive. It was unlawful because the
14 detainers provided no lawful basis for detention. It was coercive because it falsely
15 communicated to employees and agents that ICE holds authorized and required
16 class members to be detained. This misrepresentation initiated various unlawful
17 consequences, including over-detention, denial of the right to post bail and
18 exclusion from various alternatives to custody programs.

19 206. LASD's coercive and unlawful record-keeping practices were
20 separate and independent from the consequences that flowed from this record
21 keeping: LASD's failure to accept bail and release Plaintiffs and class members
22 on bail.

23 207. ICE admits, and the law is clear, that ICE detainers are voluntary
24 requests, and neither legally require, nor purport to legally require, that a person
25 be held against their will on that basis. Defendants knew or should have known
26 that an ICE detainer was nothing more than a voluntary request and was not a
27 lawful basis to detain someone after they became otherwise entitled to release,
28 including release on bail; that, in 2010, ICE submitted communications to

1 Congress explaining that ICE holds are voluntary requests; that ICE had an office
2 in LASD where inquiries about ICE's view of their authority was readily
3 available; that the ICE detention forms on their face were requests and not orders
4 or mandatory detainers; that the relevant federal regulations state that an ICE
5 detainer is a "request"; and that an ICE detainer was not accompanied by a
6 judicial warrant or judicial determination of probable cause.

7 208. As a result of the foregoing unlawful data entries, when class
8 members became entitled to release from custody on bail, they were not so
9 released, but Defendants continued to hold them. Separate from the predicate data
10 entry acts described previously this failure violated their Fourth and Fourteenth
11 Amendment rights to be released on bail.

12 209. As a further result of the foregoing unlawful data entries, class
13 members were effectively prevented from seeking the assistance of lawyers,
14 family members or bail bondsmen to procure their release, and thereby deprived
15 of their constitutional right to bail and their constitutional right to court redress.

16 210. As a further result of the foregoing unlawful data entries, bail
17 bondsmen were deterred, dissuaded or prevented from posting, agreeing to post,
18 or attempting to post, bail on class members' behalf, thereby depriving class
19 members of their ability to post bail.

20 **XVI. PRAYER FOR RELIEF**

21 Wherefore, Plaintiffs respectfully request that the Court grant the following
22 relief:

23 (1) Enter a judgment declaring that Defendants' refusal to allow inmates
24 admitted to bail under state law from posting bail due to the presence of an
25 immigration hold violated state and federal law;

26 (2) Issue an injunction ordering Defendants not to detain any individual
27 solely on the basis of the immigration hold;

28

1 (3) In the alternative, issue an injunction ordering Defendants not to
2 detain any individual solely on the basis of the immigration hold beyond 48 hours
3 without a probable cause hearing;

4 (4) Enter a judgment declaring that Defendants' detention of Plaintiffs
5 and other members of the proposed class solely on the immigration hold was and is
6 unauthorized by state and federal law;

7 (5) In the alternative, enter a judgment declaring that Defendants'
8 detention of Plaintiffs and other members of the proposed class solely on the
9 immigration hold beyond 48 hours without a probable cause hearing was and is
10 unauthorized by federal law;

11 (6) Award Plaintiff Duncan Roy individually compensatory damages
12 according to proof, or (to the extent applicable) up to treble his actual damages
13 pursuant to the provisions of the California Civil Code § 52(a), whichever is
14 greater;

15 (7) Award Plaintiffs Martinez-Perez and Alliksoo and members of the
16 proposed Damages Classes One, Three and Five general monetary damages on a
17 class wide basis for the time unlawfully spent in LASD custody and establish a
18 procedure for class members to seek individualized damages beyond general
19 damages;

20 (8) Award Plaintiffs Martinez-Perez and Alliksoo and members of the
21 proposed Damages Classes Two, Four and Six up to three times their general
22 monetary damages (to the extent applicable) on a class-wide basis for the time
23 unlawfully spent in LASD custody, or statutory damages of \$4000 per violation,
24 whichever is greater, and establish a procedure for class members to seek
25 individualized damages beyond general damages;

26 (9) Award Plaintiffs and other members of the proposed class reasonable
27 attorneys' fees and costs pursuant to 42 U.S.C. § 1988, CCP § 1021.5, and/or
28 California Civil Code §§ 52(b)(3), 52.1(h); and

1 (10) Grant any other relief that this Court may deem fit and proper.

2 Dated: December 4, 2015

Respectfully submitted,

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Kaye, McLane, Bednarski & Litt, LLP

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By: /s/ Barrett S. Litt

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Barrett S. Litt

7

JURY DEMAND

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9 Trial by jury of all issues is demanded.

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Dated: December 4, 2015

Respectfully submitted,

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Kaye, McLane, Bednarski & Litt, LLP

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By: /s/ Barrett S. Litt

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Barrett S. Litt

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