

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE JIMENEZ MORENO and MARIA)
JOSE LOPEZ, on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

v.)

Case No. 11 C 5452

JANET NAPOLITANO, Secretary of the)
Department of Homeland Security;)
JOHN MORTON, Director of U.S.)
Immigration and Customs Enforcement;)
DAVID C. PALMATIER, Unit Chief,)
Law Enforcement Support Center;)
RICARDO WONG, Chicago Field Office)
Director, in their official capacities,)

Judge John Z. Lee

Defendants.)

PLAINTIFFS’ MOTION TO ALTER OR AMEND JUDGMENT

Plaintiffs Jose Jimenez Moreno and Maria Jose Lopez, on behalf of themselves and the class they represent, and pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, respectfully move this Court to alter or amend its Judgment entered on November 28, 2016. ECF No. 239. In support thereof, and as more fully set forth in the accompanying memorandum of law, Plaintiffs state the following:

1. Plaintiffs’ Amended Complaint sought both declaratory and injunctive relief under the Administrative Procedure Act, 5 U.S.C. §706(a), as well as under the Fourth and Fifth Amendments to the Constitution of the United States. ECF No. 78, ¶ 5. In each claim, Plaintiffs specifically requested injunctive relief “to prevent continued and future injury” resulting from Defendants’ unlawful detainer practice. *Id.* ¶¶ 40, 45, 51.

2. After certifying a class, this Court granted Plaintiffs' motion for summary judgment. *Moreno v. Napolitano*, --- F. Supp. 3d ---, No. 11-cv-05452, 2016 WL 5720465, at *1, *4 (N.D. Ill. Sept. 30, 2016). The Court held that the practice of issuing immigration detainers that seek to detain an individual without a warrant—without making any particularized determination that the individual is likely to escape before a warrant can be obtained—goes beyond Defendants' statutory authority to make warrantless arrests under 8 U.S.C. § 1357(a)(2). *Id.* at *8. Under the doctrine of constitutional avoidance—and because it intended the relief it would grant on that basis to resolve all claims—the Court elected not to address Plaintiffs' claims under the Fourth and Fifth Amendments. *Id.* at *9.

3. At the Court's request, Plaintiffs submitted a Proposed Judgment setting forth the terms of their requested relief. *See* Ex. A to accompanying Mem. Specifically, to prevent future harm to the named Plaintiffs and members of the certified class, Plaintiffs proposed that Defendants be “permanently enjoined from issuing immigration detainers that request the continued detention of individuals in the custody of law enforcement agencies,” unless either (a) an ICE officer finds probable cause and obtains and serves a warrant upon the individual in accordance with the applicable statute and regulations, or (b) an ICE officer finds probable cause and also makes (and sufficiently demonstrates) a particularized determination that the individual is likely to escape between when the detainer would be issued and when a warrant can be obtained. *Id.* ¶ 7.

4. On November 28, 2016, this Court entered its Judgment, narrowing the scope of relief in two important respects. First, the Judgment enjoins Defendants from issuing the unlawful detainers only from ICE's “Chicago Field Office.” ECF No. 239, ¶ 4. Second, the Judgment omits the words “and served” from the provision relating to warrants, so that

Defendants may continue to issue detainers in the future if those detainers are accompanied by warrants “obtained . . . in accordance with the applicable statute and regulations,” whether or not the warrant or detainer is actually “served.” *Id.* ¶ 4(a).

5. Unfortunately, the narrowed relief is insufficient to protect the named Plaintiffs and members of the certified class from suffering the identical harm in the future. This is so for two reasons.

6. First, by limiting the injunction to the Chicago Field Office, the Judgment would allow Defendants to continue their unlawful practices merely by shifting their detainer efforts for the Chicago Area of Responsibility to another field office elsewhere in the country. This has already begun to occur; a declaration filed after the summary judgment ruling in this case confirms that during the pendency of this case, Defendants shifted responsibility for after-hours detainers (nights, weekends, holidays) from the Chicago Field Office to an office in California. *See* ECF No. 234-1, Att. A. Further, while the parties were awaiting the Judgment in this case, Plaintiffs’ counsel discovered the following evidence further confirming that detainers are being routinely issued from California against detainees within the Chicago Area of Responsibility:

a. a copy of a detainer issued from California against a detainee at the Winnebago County Jail, Illinois—the same facility where named plaintiff Moreno was in custody when subjected to an immigration detainer, *see* Ex. B to accompanying Mem.; and

b. the deposition testimony of the Director of the California office, confirming that his office is now responsible for detainers issued against individuals held by law enforcement agencies within the Chicago Area of Responsibility after hours and on weekends, *see* Ex. C to accompanying Mem.

7. Second, by omitting the words “and served” from the proposed relief regarding detainers accompanied by warrants, the Judgment would allow Defendants to continue their practice of issuing detainers to the law enforcement agencies electronically, without any service of any document on the individual detainee at all—which effectively leaves Plaintiffs’ Due Process claim based on lack of service entirely unresolved. In its summary judgment ruling and Judgment, this Court expressed an intention to grant relief that resolves all claims in this case. Although Plaintiffs do not concede that the existing regulations regarding service are sufficient to protect their rights to Due Process, Defendants should at least be required to comply with those regulations in all respects—including the regulations that require personal service of the warrant by an ICE officer. 8 C.F.R. §§ 236.1(b)(1), 287.5(e)(3), 287.8(c).

8. Under Rule 59(e), and for the reasons set forth in the accompanying Memorandum, this Court should amend its Judgment to address both of these issues. Plaintiffs respectfully request that the Court amend Paragraph 4 of its Judgment to enjoin Defendants from issuing detainers from “*or into*” the Chicago Area of Responsibility, unless (1) the detainer is based on probable cause and a warrant is obtained “*and served*” in accordance with the applicable statute and regulations, or (2) the detainer is based on probable cause and there is reason to believe a particular individual is likely to escape before a warrant can be obtained.

Plaintiffs met and conferred with Defendants about the requested relief. Defendants were unable to express a position on this relief at this time, as the proposal is currently being evaluated by multiple agencies.

Dated: December 27, 2016

Respectfully submitted,

By: /s/ Linda T. Coberly

Linda T. Coberly
Lee B. Muench
Sean H. Suber
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5600
Fax: (312) 558-5700
lcoberly@winston.com
lmuench@winston.com
ssuber@winston.com

Mark M. Fleming
Charles Roth
Claudia Beatrice Valenzuela Rivas
NATIONAL IMMIGRANT JUSTICE CENTER
208 South LaSalle Street, Suite 1300
Chicago, Illinois 60604
Telephone: (312) 660-1370
Fax: (312) 660-1505
mfleming@heartlandalliance.org
croth@heartlandalliance.org
cvalenzuela@heartlandalliance.org

Attorneys for Plaintiffs

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

JOSE JIMENEZ MORENO and MARIA)
JOSE LOPEZ, on behalf of themselves and)
all others similarly situated,)

Plaintiffs,)

v.)

Case No. 11 C 5452

JANET NAPOLITANO, Secretary of the)
Department of Homeland Security;)
JOHN MORTON, Director of U.S.)
Immigration and Customs Enforcement;)
DAVID C. PALMATIER, Unit Chief,)
Law Enforcement Support Center;)
RICARDO WONG, Chicago Field Office)
Director, in their official capacities,)

Judge John Z. Lee

Defendants.)

CERTIFICATE OF SERVICE

I, Linda T. Coberly, hereby certify that on December 27, 2016, I caused a true and correct copy of the **Plaintiffs’ Motion to Alter or Amend Judgment** to be served via electronic mail upon the following:

Colin A. Kisor
William C. Silvis
Katherine E.M. Goettel
U.S. DPT. OF JUSTICE, CIVIL DIVISION
OFFICE OF IMMIGRATION LITIGATION,
DISTRICT COURT SECTION
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Colin.Kizor@usdoj.gov
William.Silvis@usdoj.gov
Kate.Goettel@usdoj.gov

Craig Arthur Oswald
UNITED STATES ATTORNEY’S OFFICE
NORTHERN DISTRICT OF ILLINOIS
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604
Craig.Oswald@usdoj.gov

By: /s/ Linda T. Coberly
Attorney for Plaintiffs