

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ROBERTO MUÑIZ, ANTONIO )  
TORRES-FRANCO, JUANA MUÑIZ-TORRES, )  
LUIS ENRIQUE MUÑIZ-MUÑIZ by next friend )  
María Muñiz-Muñiz, MARÍA MUÑIZ-MUÑIZ, )  
EMETERIO NIETO-MEDINA, ROCÍO ANANI )  
SAUCEDO-CARRILLO, ROSA )  
CARRILLO-VASQUEZ, )  
MARÍA DE BELÉN MARTÍNEZ-CASTRO, JOSÉ )  
CALDERÓN, BELINDA VEGA, ALFONSO )  
PALAFOX, individually and on behalf of a )  
class of others similarly situated, )  
the OHIO IMMIGRANT WORKER PROJECT, )  
and the FARM LABOR ORGANIZING )  
COMMITTEE (FLOC), AFL-CIO, )  
Plaintiffs, )

v. )

RANDY L. GALLEGOS, individually and in )  
his capacity as Chief Patrol Agent, Detroit )  
Sector, United States Border Patrol; JOHN )  
DOES 1 - 15, United States Border Patrol )  
Agents assigned or working from the Sandusky, )  
Ohio United States Border Patrol Station, )  
individually and in their capacity )  
as Border Patrol Agents; )  
CHIEF JEFFREY A. BRIGGS, ATTICA OHIO )  
POLICE DEPARTMENT, in his official capacity; )  
CHIEF KEVIN CASHEN, NORWALK OHIO )  
POLICE DEPARTMENT, in his official capacity; )  
and, CHIEF CHARLES D. DOAN, PLYMOUTH )  
OHIO POLICE DEPARTMENT, in his official )  
Capacity; JOHN DOES 16 - 18, Attica Ohio Police )  
Department officers, individually and in their )  
Official capacities; JOHN DOES 19 - 21, Norwalk )  
Ohio Police Department officer, individually )  
and in their official capacities; and, JOHN DOE 22, )  
Plymouth Police Department officer, )

COMPLAINT -  
CLASS ACTION

No. \_\_\_\_\_

Hon. \_\_\_\_\_

individually and in his official capacity, )  
 )  
 Defendants. )

**COMPLAINT FOR CLASSWIDE DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. The individual Plaintiffs and class members are persons of Hispanic descent or perceived Hispanic descent. The organizational plaintiffs, the Ohio Immigrant Worker Project (IWP) and the Farm Labor Organizing Committee, AFL-CIO (FLOC), work with and organize Hispanics to vindicate their rights and to enhance their lives. The individual Plaintiffs and members of both the IWP and FLOC have been restrained, interrogated, and sometimes arrested by the Defendants.
2. Plaintiffs bring this lawsuit to remedy their and their members being restrained (seized) and interrogated by Ohio law enforcement agencies and United States Border Patrol agents about their immigration status because of their Hispanic appearance. This restraint, interrogation, and arrest regarding immigration status based solely on Hispanic appearance will be referred to herein as "profiling."
3. This profiling of persons of Hispanic appearance for immigration status questioning is done even though Ohio local law enforcement authorities have no jurisdiction regarding the enforcement of the civil provisions of federal immigration law and the Border Patrol agents were and are without reasonable suspicion or probable cause to believe Plaintiffs and the class members are non-United States citizens in the U.S. without proper authorization.
4. Plaintiffs and class members seek relief against the illegal and unconstitutional actions of the Border Patrol Agents stationed at or working out of the Sandusky Station, Detroit Sector, of the U.S. Border Patrol. Agents

- of that Station are engaged in a pattern or practice of restraining, interrogating, and arresting persons regarding their immigration status based on their Hispanic appearance. These seizures and interrogations have taken place in gas stations, retail establishments, at soccer games, and in other public settings.
5. The actions of the Border Patrol agents have caused fear and concern in Hispanic communities.
  6. The actions of the Border Patrol agents violate the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, the 4<sup>th</sup> Amendment prohibition against unreasonable searches and seizures, and the 5<sup>th</sup> Amendment’s guarantee of Due Process and Equal Protection of the law.
  7. The Border Patrol has also held seminars, meetings, or has otherwise communicated with local law enforcement agencies in Northwest Ohio urging them to restrain and interrogate persons of Hispanic appearance regarding their immigration status.
  8. The Border Patrol has also stated to these local law enforcement agencies that the Border Patrol will come and restrain and interrogate persons that the local law enforcement agencies have already seized based on the profiling activities of the agencies.
  9. Local law enforcement authorities in Ohio, including the Defendant Attica, Norwalk, and Plymouth police departments, have profiled and stopped, restrained, and interrogated the individual Plaintiffs and class members regarding their immigration status. These actions violate the 14<sup>th</sup> Amendment’s guarantees for Due Process and Equal Protection of the law

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983, 1985, and 1986. Because this lawsuit alleges violations of the United States Constitution as well as violations of federal statutes and

regulations, it raises questions of federal law. The actions of the Defendants also constitute a conspiracy to deprive the individual plaintiffs, the class, and members of the IWP and FLOC of their constitutional right to equal protection of the laws.

11. This Court has the authority to grant injunctive relief, declaratory relief, and other related relief pursuant to 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
12. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

#### **PLAINTIFFS**

13. Plaintiff Rocío Anani Saucedo-Carrillo is a resident of Norwalk, Huron County, Ohio. She is married with one child and is pregnant. She is a 2005 graduate of Norwalk High School. She was restrained, interrogated and arrested by a Border Patrol Agent at a Marathon gas station in Norwalk, Ohio, on September 13, 2009.
14. Rosa Carrillo-Vasquez is a resident of Norwalk, Huron County, Ohio. She was restrained, interrogated, and arrested by a Border Patrol Agent at a Marathon gas station in Norwalk, Ohio, on September 13, 2009.
15. Emeterio Nieto-Medina is a resident McAllen, Hidalgo County, Texas, and works and lives during the agricultural season in Willard, Huron County, Ohio. He was restrained and interrogated about his immigration status by Village of Attica, Ohio, police officers on September 27, 2009.

16. Roberto Muniz is a resident of Tulsa, Oklahoma. He was restrained and interrogated about his immigration status by Village of Attica, Ohio, police officers on September 27, 2009. At the time Mr. Muñiz was temporarily residing in an agricultural labor camp in Willard, Huron County, Ohio.
17. María Muñiz-Muñiz is a resident of Tulsa, Oklahoma. She was restrained and interrogated about her immigration status by Village of Attica, Ohio, police officers on September 27, 2009. At the time Mrs. Muñiz was temporarily residing in an agricultural labor camp in Willard, Huron County, Ohio.
18. Antonio Torres-Franco is a resident of McKinney, Collin County, Texas. He was restrained and interrogated about his immigration status by Village of Attica, Ohio, police officers on September 27, 2009. At the time Mr. Torres was temporarily residing in an agricultural labor camp in Willard, Huron County, Ohio.
19. Juana Muñiz-Torres is a resident of McKinney, Collin County, Texas. She was restrained and interrogated about her immigration status by Village of Attica, Ohio, police officers on September 27, 2009. At the time Mrs. Muñiz was temporarily residing in an agricultural labor camp in Willard, Huron County, Ohio, with her husband, Antonio Torres-Franco.
20. Luis Enrique Muñiz-Muñiz, a minor, is a resident of Tulsa, Oklahoma. He was restrained and interrogated about his immigration status by Village of Attica, Ohio, police officers on September 27, 2009. At the time Mr. Muñiz

was temporarily residing at an agricultural labor camp in Willard, Huron County, Ohio, with his parents, Roberto Muñiz and María Muñiz-Muñiz. He is a minor and this action is brought on his behalf by his mother, María Muñiz-Muñiz.

21. María de Belén Martínez-Castro is a resident of Norwalk, Huron County, Ohio. She has been followed on several occasions and asked her immigration status by a Norwalk Police Department officer when she was escorting her son from school.
22. José Calderón is a resident of Donna, Hidalgo County, Texas. During the incidents related herein he was living in an agricultural labor camp in Willard, Huron County, Ohio. He has been restrained and interrogated about his immigration status on at least three occasions by Village of Plymouth, Ohio, police officers.
23. Belinda Vega, the wife of Plaintiff José Calderón, is a resident of Donna, Hidalgo County, Texas. During the incidents related herein she was living in an agricultural labor camp in Willard, Huron County, Ohio. She has been restrained and interrogated about her immigration status on at least three occasions by Village of Plymouth, Ohio, police officers.
24. Alfonso Palafox is a resident of Fremont, Sandusky County, Ohio. He was restrained and interrogated on the street in Fremont by Border Patrol agents on November 3, 2009.

25. The Ohio Immigrant Worker Project (IWP), an unincorporated association, is dedicated to the struggle for justice and human dignity for Ohio's rural immigrant workers from Latin America. The IWP was initiated in 1999 as a result of a study commissioned by the Ohio Catholic Rural Life Conference. The IWP works with and organizes immigrants regarding, e.g., workplace rights, human and immigration rights, leadership training, Limited English Proficiency (LEP) rights and health care, advocacy and networking, cultural and pastoral celebrations, educational programs, and microenterprise.
26. The Farm Labor Organizing Committee, AFL-CIO (FLOC), is both a social movement and a labor union. FLOC's immediate constituency is migrant workers in the agricultural industry, but FLOC is also involved with immigrant workers, Latinos, local communities, and national and international coalitions concerned with justice. The FLOC vision emphasizes human rights as the standard and self-determination as the process for achieving these rights. FLOC struggles for full justice for those who have been marginalized and exploited for the benefit of others, and works to change the structures of society to enable these people a direct voice in their own conditions. FLOC has negotiated collective bargaining contracts for workers in both Ohio and North Carolina.
27. IWP and FLOC have members, or Hispanics who have worked with them, who have been restrained, interrogated, and sometimes arrested by local law enforcement authorities or Sandusky Station Border Patrol Agents because of

their Hispanic appearance. This illegal and unconstitutional behavior by the Defendants has deprived IWP and FLOC members of the equal protection of the laws and has also made some fearful of travel and association in the Ohio communities in which they live.

### DEFENDANTS

28. Defendant Randy L. Gallegos is the Chief Agent of the Detroit Border Patrol Sector. As Chief Agent Defendant Gallegos is the supervisor of the Detroit, Gibraltar, Marysville, Sault Sainte Marie, and Sandusky Border Patrol Stations that encompass the Detroit Sector. Gallegos oversees the daily activities of the Border Patrol Agents within those five Stations and is responsible for ensuring that their duties are carried out in a legal manner. Defendant Gallegos is sued in his individual and official capacities.
29. Defendants John Does 1 - 15 are Border Patrol Agents assigned to or working out of the Sandusky, Ohio, Border Patrol Station. These unknown and unnamed Agents are restraining, interrogating and arresting Plaintiffs and the members of the class based on Hispanic appearance and without reasonable suspicion or probable cause that they are aliens without a right to be or to remain in the United States. They are sued in their individual and official capacities.
30. At all relevant times, Defendants Gallegos and John Does 1 - 15 were acting under color of federal law, pursuant to their authority as officials, agents, contractors, or employees of U.S. governmental agencies or entities.



31. Defendant Jeffrey A. Briggs is the Police Chief of the Attica, Ohio Police Department in Seneca County, Ohio. He is sued in his official capacity.
32. Defendant Kevin Cashen is the Police Chief of the Norwalk, Ohio Police Department in Huron County, Ohio. He is sued in his official capacity.
33. Defendant Charles D. Doan is the Police Chief of the Plymouth, Ohio Police Department in Huron and Seneca Counties, Ohio. He is sued in his official capacity.
34. Defendants John Does 16 - 18 are police officers of the Attica, Ohio Police Department and are sued in their individual and official capacities.
35. John Does 19 - 21 are police officers of the Norwalk, Ohio Police Department and are sued in their individual and official capacities.
36. John Doe 22 is a police officer of the Plymouth, Ohio Police Department and is sued in his individual and official capacity.

#### **FACTUAL ALLEGATIONS**

37. Upon information and belief the Border Patrol Agents assigned to the Sandusky, Ohio Station have targeted Hispanics in the area for restraint and interrogation regarding their immigration status without any reasonable suspicion or probable cause that the individual Hispanic has no right to be or to remain in the United States.
38. Upon information and belief the Agents assigned to the Sandusky Station have adopted a pattern or practice of targeting Hispanics encountered in

public settings for restraint and interrogation based on their appearance and without any specific articulable facts other than their Hispanic appearance.

39. Upon information and belief the Sandusky Border Patrol Station and its officers have held seminars, trainings or otherwise communicated with numerous local law enforcement agencies, including the Defendant Attica, Norwalk, and Plymouth Police Departments, encouraging those local law enforcement agencies to target Hispanics for restraint and interrogation about their immigration status.

**Plaintiffs Anani Saucedo-Carrillo and Rosa Carrillo-Vasquez**

40. Plaintiff Rocío Anani Saucedo-Carrillo (Saucedo) parked at a gas pump in the Marathon gasoline station on U.S. 250/Milan Road, in Norwalk, Huron County, Ohio, in the early afternoon of September 13, 2009.
41. Saucedo went into the station to pay in advance and when she exited the station to return to the pump she saw a Border Patrol Chevrolet Suburban SUV traveling on Rte. 250.
42. After seeing Plaintiff Saucedo, the Border Patrol officer quickly pulled into the Marathon gas station and parked his car directly in front of and perpendicular to Plaintiff Saucedo's pickup truck, blocking Plaintiff Saucedo's exit.
43. Saucedo's pickup truck has Ohio license plates and has no "cap" on it.
44. The Border Patrol Agent, John Doe 1, dressed in a green uniform, exited the Border Patrol vehicle and approached her as she was pumping gas.

45. Border Patrol Agent John Doe 1 started interrogating Saucedo in English. He did not introduce himself nor explain why he approached her. He asked for an ID. He then asked for her “papers,” which she understood to mean immigration documents. He then asked for her resident card. She presented an unexpired Michigan driver’s license to Winner.
46. Saucedo did not believe she was free to leave the Marathon station or refuse to answer the Agent’s questions due to his blocking her exit with his vehicle, his uniform, and the aggressive form of his questioning.
47. Eventually John Doe 1 asked Saucedo to move her pickup truck from the gas pump area to a small parking lot on the side of the building.
48. John Doe 1 then asked similar questions of Saucedo’s mother, Plaintiff Rosa Carrillo-Vasquez (Carrillo), a passenger in Saucedo’s pickup truck.
49. Plaintiff Carrillo did not believe she was free to leave nor to refuse to answer Winner’s questions based on his ordering Plaintiff Saucedo to move her pickup truck, John Doe 1’s uniform, and the nature of the questions and Doe 1’s tone of voice.
50. John Doe 1 then arrested Plaintiffs Saucedo and Carrillo.
51. Plaintiff Saucedo asked John Doe 1 if she could give the keys to her vehicle to a young woman Saucedo knew who was walking past the Marathon gas station.
52. The Agent gave Plaintiff Saucedo permission to give her truck’s keys to Saucedo’s acquaintance.

53. John Doe 1 then placed the Plaintiffs in the locked part of his Border Patrol vehicle.
54. On the way to the Border Patrol Station in Sandusky, Plaintiff Saucedo started to cry. John Doe 1 told her "No tears, or you'll leave (the United States) right now."
55. Plaintiff Saucedo was seven months pregnant on September 13, 2009, and is to deliver the baby by Caesarean section in November, 2009.
56. John Doe 1 then transported Plaintiffs Saucedo and Carrillo to the Sandusky Border Patrol Station where they were fingerprinted, photographed and interrogated further.
57. Plaintiffs Saucedo and Carrillo signed documents requesting an immigration hearing before an Immigration Judge presented to them by John Doe Border Patrol Agents.
58. A relative of the Plaintiffs came to pick them up in Sandusky and take them back to their homes in Norwalk.
59. The next day, September 14, 2009, John Doe 1 called Plaintiff Saucedo and told her he needed her and Plaintiff Carrillo's signatures on some documents he had failed to have them sign on the 13<sup>th</sup>. The Plaintiffs met with John Doe 1 around noon in Norwalk and signed as requested.
60. Plaintiffs Saucedo and Carrillo are agricultural workers and at the time of their arrest by John Doe 1 were so employed.

61. Upon information and belief the Sandusky Border Patrol Station has also restrained, interrogated and arrested Hispanics because of their Hispanic appearance at soccer games, in grocery stores, and at the same gasoline station as Plaintiffs Saucedo and Carrillo.
62. Upon information and belief the restraint and interrogation of Hispanics by the Sandusky Border Patrol Station Agents was not based on reasonable suspicion or probable cause, but solely on their Hispanic appearance.
63. Upon information and belief the Sandusky Border Patrol has restrained and interrogated persons who were or are U.S. citizens, Lawful Permanent Residents, or immigrants lawfully admitted and present in the United States.

**Plaintiffs Roberto Muñiz, Emeterio Nieto-Medina, María Muñiz-Muñiz, Antonio Torres-Franco, Juana Muñiz-Torres, and Luis Enrique Muñiz-Muñiz**

64. Plaintiff Roberto Muñiz (Muñiz) was stopped by the Attica Police Department on or about September 27, 2009. Two occupants of the vehicle, Emeterio Nieto-Medina and Muñiz's son, Luis Enrique Muñiz-Muñiz, were placed in the Attica Police Department vehicle.
65. Muñiz and the other six occupants of the vehicle were asked by an Attica Police Department officer for their immigration documents and "who doesn't have papers?" The pretext for the stop was that the light on the rear license plate was "too dim." No ticket was issued by the Attica Police Department.

66. Plaintiff Emeterio Nieto-Medina was a passenger in the vehicle driven by Plaintiff Roberto Muniz when stopped by the Attica Police Department as described in paragraph 64 *supra*.
67. Mr. Nieto was riding in the back of Mr. Muniz's pickup truck within a camper shell. When stopped by the Attica Police Department the Attica officer shined a flashlight into the camper shell, ordered Mr. Nieto out, searched him, and then placed Mr. Nieto in the locked back seat of the Attica police car.
68. The Attica police officer asked Mr. Nieto for his "papers" and whether he was "illegal."
69. Plaintiff María Muñiz-Muñiz (Muñiz-Muñiz) was a passenger in the truck driven by her husband, Plaintiff Roberto Muñiz, when stopped by the Attica Police Department as described in paragraph 57 *supra*.
70. Mrs. Muñiz-Muñiz heard the Attica Police Department officer ask her and the other occupants of the vehicle whether anyone was "illegal" and for their "documents." By "documents" the officer meant immigration documents.
71. Plaintiff Antonio Torres-Franco was a passenger in the vehicle driven by Plaintiff Roberto Muniz when stopped by the Attica Police Department as described in paragraph 64 *supra*.
72. Mr. Torres heard the Attica Police Department officer ask him and the other occupants of the vehicle whether anyone was "illegal" and for their "documents." By "documents" the officer meant immigration documents.

73. Plaintiff Juana Muñiz-Torres was a passenger in the vehicle driven by Plaintiff Roberto Muniz when stopped by the Attica Police Department as described in paragraph 64 *supra*.
74. Mrs. Muñiz-Torres heard the Attica Police Department officer ask her and the other occupants of the vehicle whether anyone was “illegal” and for their “documents.” By “documents” the officer meant immigration documents.
75. Plaintiff Luis Enrique Muñiz-Muñiz was a passenger in the vehicle driven by his father, Plaintiff Roberto Muniz, when stopped by the Attica Police Department as described in paragraph 64 *supra*.
76. Mr. Muñiz-Muñiz was riding in the back of his father’s pickup truck within a camper shell. When stopped by the Attica Police Department the Attica officer shined a flashlight into the camper shell, ordered Mr. Muñiz-Muñiz out, searched him, and then placed Mr. Muñiz-Muñiz in the locked back seat of the Attica police car.
77. The Attica police officer asked Mr. Muñiz-Muñiz for his “papers” and whether he was “illegal.”

**Plaintiff María de Belén Martínez-Castro**

78. Plaintiff María de Belén Martínez-Castro was pregnant and escorting her son from school when she was approached by a Norwalk police officer who asked her if she was “legal.” She responded: “Why are you asking me? Because I’m brownie?” The officer stopped questioning her and left.

79. On several other occasions Norwalk police officers followed her while she was taking her son from or to his elementary school in Norwalk. On one occasion she was followed by a Norwalk police officer. On the other occasion she was followed when she went into a drug store. A Norwalk police officer who had followed her parked his car and waited for her outside of the drug store. When she came out of the drug store she walked home while the Norwalk police officer watched her.

**Plaintiffs Belinda Vega and José Calderón**

80. Plaintiffs Belinda Vega and José Calderón and their two young children, ages 5 and 4, were restrained and interrogated on three separate occasions by an officer of the Plymouth, Ohio, Police Department and, the Plaintiffs believe, an Immigration and Customs Enforcement (ICE) officer.

81. The first incident occurred on or about Sunday, June 28, 2009, at 1 p.m. Plaintiffs Belinda Vega and José Calderón and their minor children were stopped about two or three miles outside of Plymouth, on their way to Mansfield. The speed limit on the road is 35 miles per hour, and the stated reason for the stop was speeding. Plaintiff José Calderón is sure that he wasn't speeding because he recalls that the road was very bumpy and he was driving slowly.

82. The officer, whom the Plaintiffs believe is an ICE agent, approached the driver's window and asked Calderón for his license and registration.



Calderón did not produce his license, so the alleged ICE agent told Calderón to write down his name, date of birth, and Social Security number.

83. The ICE agent then went back to the Plymouth Police Department car and informed the Plymouth Police Officer, who was sitting in the driver's seat, of Calderón's information. The Plaintiffs saw the Plymouth Police Officer on his computer. After being stopped for about 10 minutes, the Plymouth Police Officer returned to the Plaintiff's truck and informed Calderón that he was free to go. No citation or warning was issued.
84. The second incident occurred on or about Sunday, August 9, 2009, at 10:00 a.m. Plaintiffs Vega and Calderón, along with their young children, were stopped in Plymouth on their way to the Dollar General store. On this occasion, the same Plymouth Police Department officer and ICE agent approached the vehicle. The ICE agent stood outside of Vega's (passenger) window, and the Plymouth Police Officer stood outside of Calderón's (driver) window. Both Plaintiffs were asked for identification and proof of registration.
85. Plaintiffs' identification cards were in the vehicle, but they did not want to search for them because they suspected they were being profiled and because their documents were not in a location that could be easily reached. Plaintiffs' documents were in the back of the vehicle with their laundry, and they told the officers that they didn't have their identification cards with them.

86. The Plymouth Police Officer then went back to his vehicle, and the ICE agent went to Calderón's window; he told Calderón to write down his name, date of birth, and Social Security number. The ICE agent then returned to the Plymouth Police Department car and waited outside the driver's door.
87. Plaintiffs saw the ICE agent giving the Plymouth Police Officer the sheet of paper with Calderón's information, and the Plymouth Police Officer started using the computer. The ICE agent sat in the passenger seat of the car, and the Plymouth Police Officer approached Calderón and asked him if there is anything in the vehicle that should "concern" him.
88. Calderón, frustrated that this was his second time being stopped by the same officer and ICE agent, said no.
89. The Officer told Calderón that he was free to go. No reason was ever stated for the stop nor was any citation or warning issued.
90. The third incident occurred on or about Sunday, August 30, 2009, at 12:30 p.m. The Plaintiffs and their children were stopped as they were visiting numerous garage sales in the Plymouth area.
91. At the beginning of the stop, as with the two previous stops, the ICE agent, who was sitting in the passenger seat of the Plymouth Police Department car, approached Calderón and asked for his license and car registration. Calderón did not produce the requested documents, and the ICE agent told Calderón to write down his name, date of birth, and Social Security number on a small white sheet of paper.

92. Calderón complied and asked the ICE officer the reason for the stop; the ICE agent responded that it was “just a traffic stop.” Calderón again asked for the reason, and the ICE officer responded the same.
93. The ICE agent returned to and entered the Plymouth Police Department car and the Plymouth Police Officer was on his computer. Within two or three minutes, the Plymouth Police Officer approached Calderón’s car and told him that he was free to leave. No reason was ever stated for the stop nor was any citation or warning issued.

**Plaintiff Alfonso Palafox**

94. Plaintiff Alfonso Palafox was walking with his 4 year old son on the sidewalk of a residential street in Fremont, Ohio, on November 3, 2009, after picking up his son from Head Start.
95. A U.S. Border Patrol vehicle came alongside him and asked Palafox if he knew the location of a particular street.
96. The two Border Patrol Agents in the vehicle then exited the vehicle and approached Palafox. Palafox answered that he did not know the street.
97. The Border Patrol Agents then asked Palafox where he was from, and then continued interrogating Palafox, asking him if he used drugs or knew anyone who sold drugs. The Border Patrol Agents also asked Palafox if he knew of any more Hispanics in the area. Palafox told them the Hispanics had all left the area.

98. The Border Patrol Agents asked Palafox for his date of birth, phone number and address and told him to take care of his son. One Agent also told him not to change his phone number so they could have business dealings later. The Agents refused him permission to take a picture of their vehicle and also asked if Palafox was working.
99. Upon information and belief, the Defendants Gallegos and the John Doe Border Patrol Agents 1 - 15 of the Sandusky Border Patrol Station have held seminars, trainings, or otherwise communicated with local law enforcement agencies (LEA), including Defendant Attica, Norwalk, and Plymouth Police Departments, encouraging those LEAs to restrain and interrogate Hispanics about their immigration status and then call the Sandusky Border Patrol Station to request assistance if any of those restrained and interrogated Hispanics appear to be without proper immigration documentation.
100. Upon information and belief the Defendants Gallegos and John Doe 1 - 15 Border Patrol Agents of the Sandusky Border Patrol Station have not monitored the LEAs in those agencies' restraint and interrogation of Hispanics or have shown deliberate indifference to the restraint and interrogation of Hispanics by those LEAs, resulting in the restraint and interrogation of Hispanics by the LEAs without any reasonable belief that they have violated immigration laws of the United States.
101. Upon information and belief, the Defendants Gallegos and John Doe 1 - 15 Border Patrol Agents of the Sandusky Border Patrol Station know or should

know that their encouragement of the LEAs to restrain and interrogate Hispanics about their immigration status results in those Hispanics being deprived of the equal protection of the laws of the United States and is unconstitutional.

102. Upon information and belief, the Defendants Gallegos and John Doe 1 - 15 Border Patrol Agents of the Sandusky Border Patrol Station know or should know that suppression of unlawfully obtained evidence is very difficult in Immigration Court hearings and thus believed that their illegal restraint and interrogation of Hispanics and their encouragement of LEAs to do the same would go unnoticed or unpunished.
103. Upon information and belief, police officers of the Attica, Norwalk, and Plymouth, Ohio police departments have participated in seminars, trainings or otherwise communicated with Defendants Gallegos and John Does 1 - 15 of the Sandusky Border Patrol Station about restraining and interrogating Hispanics about their immigration status.
104. These restraints and interrogations have been as a result of the class members' appearance to be of Hispanic descent.
105. The Attica, Norwalk, and Plymouth police departments have official policies or a pattern or practice of restraining and interrogating Hispanics about their immigration status based on their Hispanic appearance.
106. These official policies or a pattern or practice of restraining and interrogating Hispanics about their immigration status based on their Hispanic appearance

- have been encouraged by Defendants Gallegos and John Doe 1 - 15 Sandusky Station Border Patrol Agents.
107. Defendants have shown a deliberate indifference to the Plaintiffs right to equal protection under the laws of the United States.
  108. The Defendants Gallegos and John Does 1 -15 Sandusky Station Border Patrol Agents have conspired to deprive Hispanics in Ohio of the equal protection of the laws by restraining and interrogating them about their immigration status solely based on their Hispanic appearance.
  109. The Defendants Briggs and John Does 16 - 18 Attica Ohio Police Department officers have conspired with the Sandusky Border Patrol Station defendants to deprive Hispanics in Ohio of the equal protection of the laws by restraining and interrogating them about their immigration status solely based on their Hispanic appearance.
  110. The Defendants Cashen and John Does 19 - 21 of the Norwalk Ohio Police Department have conspired with the Sandusky Border Patrol Station defendants to deprive Hispanics in Ohio of the equal protection of the laws by restraining and interrogating them about their immigration status solely based on their Hispanic appearance.
  111. The Defendants Doan and John Doe 22 of the Plymouth Ohio Police Department have conspired with the Sandusky Border Patrol Station defendants to deprive Hispanics in Ohio of the equal protection of the laws

by restraining and interrogating them about their immigration status solely based on their Hispanic appearance.

112. Defendant Randy L. Gallegos, the Chief Border Patrol Agent, Detroit Sector, has actual knowledge of the profiling of Hispanics by Sandusky Ohio Border Patrol Station Agents as a result of his supervision of those offices, statistics gathered by that office and reported to him, and his and their communication with local law enforcement agencies regarding the enforcement of the civil provisions of federal immigration law.
113. Defendant Gallegos had the authority to stop the profiling by his Agents and the authority to stop his Agents from encouraging and participating in profiling by local law enforcement agencies. He neglected or refused to prevent the profiling.

#### **CLASS ACTION ALLEGATIONS**

114. Plaintiffs bring this class action on behalf of themselves and all others similarly situated. The proposed Classes are defined as follows:

Class 1: All persons of Hispanic descent who have been or will be restrained and interrogated by Sandusky Border Patrol Agents based on their Hispanic appearance.

Class 2: All persons of Hispanic descent who have been or will be restrained and interrogated by officers of the Attica, Norwalk, or Plymouth police departments based on their Hispanic appearance.

115. Plaintiffs and members of the Class bring this action for equitable, declaratory, and injunctive relief pursuant to subdivision (b)(2) of Rule 23 of the Federal rules of Civil Procedure.
116. Plaintiffs are informed and believe and based thereon allege that members of the Class are so numerous that individual joinder of all of their members would be impracticable. Joinder is also impracticable because the Hispanic population of the counties in the area of the Sandusky Border Patrol Station undergoes considerable change as one of the busiest agricultural areas for migrant farm workers in Ohio, because many class members are unaware of their rights, and, because class members' access to legal services and representation is hampered by language, cultural and economic barriers.
117. There were approximately 282,603 Hispanics residing in the State of Ohio in 2007, the latest date for which demographic data is available. Of these residents, Erie County has 1,896, Huron County has 3,064, Ottawa County has 1,685, Sandusky County has 4,698, and Lucas County has 23,168. Additionally, Hispanic residents of counties in the Eastern Division number 22,184 in Lorain County and 52,960 in Cuyahoga County. <http://pewhispanic.org/states/?stateid=OH>. Hispanic residents of Lorain and Cuyahoga Counties frequently travel to or through counties in the Western Division of the Northern District.
118. There are tens of thousands of Hispanics within the Western Division of the Northern District of Ohio who could encounter profiling by various



Defendants. There are also thousands of Hispanics who reside in close proximity to the Western Division of the Northern District of Ohio who are subject to profiling while traveling through or to the counties within the Western Division of the Northern District.

119. There are many questions of law and fact common to the representative Plaintiffs and the members of the Class, including the following:

a. The legality of the restraint, interrogation, and arrest of Plaintiffs and members of the classes based on their Hispanic appearance.

b. The existence of the policy or pattern and practice of the Sandusky Station of the U.S. Border Patrol to restrain, interrogate, and arrest Plaintiffs and members of the Classes based on their Hispanic appearance.

c. The existence of the policy or pattern and practice of the Sandusky Station of the U.S. Border Patrol to encourage local law enforcement agencies and their officers to restrain, interrogate, and arrest Plaintiffs and members of the Classes based on their Hispanic appearance.

d. The existence of the policies or patterns and practices of the Attica, Norwalk, and Plymouth Police Departments to restrain, interrogate, and arrest Plaintiffs and members of the Classes based on their Hispanic appearance.

e. The failure of any of the Defendants to stop the policy or pattern and practice of restraining, interrogating, and arresting Plaintiffs and members of the Classes based on their Hispanic appearance.

120. The claims of the named Plaintiffs are typical of the claims of the Class because the named Plaintiffs have been subjected to or threatened with policies or practices that are identical or substantially similar to the policies and practices to which the class members have been subjected or with which the members of the Class have been threatened.
121. The organizational Plaintiffs, IWP and FLOC, have memberships that are primarily Hispanic. Their members have been subjected to profiling by the Defendants.
122. The named Plaintiffs will fairly and adequately protect the interests of the class. There is no conflict between the Plaintiffs and other class members. Moreover, Plaintiffs have retained counsel who are experienced in class action litigation and can adequately represent the interests of the class members as well as those of the named Plaintiffs.
123. Defendants have acted on grounds generally applicable to both the named Plaintiffs and other class members, making appropriate final declaratory and injunctive relief with respect to the members of the Class. The injuries suffered by the named Plaintiffs and other class members as a result of Defendants' actions are capable of repetition yet may evade review, thereby making individual and class relief appropriate.

**FIRST CLAIM FOR RELIEF**

***Bivens* Claims for Violation of the Fourth Amendment Prohibition Against**

**Unreasonable Searches and Seizures**

(On behalf of all individual plaintiffs and Class 1 class members against defendants Gallegos and John Does 1 - 15)

124. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
125. Defendants Gallegos and John Does 1 - 15 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
126. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
127. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**SECOND CLAIM FOR RELIEF**

***Bivens* Claims for Violation of the Fifth Amendment Prohibition Against**

**Deprivation of Liberty Without Due Process of Law**

(On behalf of all individual plaintiffs and Class 1 class members against defendants Gallegos and John Does 1 - 15)

128. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

129. Defendants are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 5<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
130. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
131. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 5<sup>th</sup> Amendment rights.

### **THIRD CLAIM FOR RELIEF**

#### ***Bivens* Claims for Violation of the Fifth Amendment Prohibition Against**

#### **Deprivation of Liberty Without Equal Protection of the Law**

(On behalf of all individual plaintiffs and Class 1 class members against defendants Gallegos and John Does 1 - 15)

132. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
133. Defendants are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 5<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
134. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard in that non-Hispanics are not subjected to these types of restraint and interrogation even though the Border Patrol Station was

established to detect and seize persons or goods coming into the United States from Canada without United States authorization.

135. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 5<sup>th</sup> Amendment right to equal protection of the laws.

**FORTH CLAIM FOR RELIEF**

***Bivens* Claims for Violation of the Fifth Amendment Prohibition Against Conduct**

**That Shocks the Conscience**

(On behalf of all individual plaintiffs and Class 1 class members against defendants Gallegos and John Does 1 - 15)

136. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
137. Defendants are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 5<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
138. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard in that non-Hispanics are not subjected to these types of restraint and interrogation, even though the Sandusky Border Patrol Station was established to detect and seize persons or goods coming into the U.S. from Canada without U.S. authorization.
139. Defendants' actions are shocking in that the policy or practice of the Sandusky Border Patrol Station to target, restrain and interrogate all

Hispanics and then release them if they are U.S. citizens, Lawful Permanent Residents, or immigrants lawfully in the U.S., but to arrest Hispanics who are not authorized to be in the U.S. These actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 5<sup>th</sup> Amendment due process rights.

**FIFTH CLAIM FOR RELIEF**

**42 U.S.C. § 1983 Claims for Violation of the Fourth Amendment Prohibition Against Unreasonable Searches and Seizures**

(On behalf of plaintiffs Nieto, Muniz, Torres-Franco, Muñiz-Torres, María Muñiz-Muñiz, Luis Enrique Muñiz-Muñiz, and Class 2 class members against defendants Chief Jeffrey L. Briggs and John Does 16 - 18)

140. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
141. Defendants Briggs and John Does 16 - 18 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
142. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
143. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**SIXTH CLAIM FOR RELIEF**

**42 U.S.C. § 1983 Claims for Violation of the Fourth Amendment Prohibition Against  
Unreasonable Searches and Seizures**

(On behalf of all individual plaintiffs and Class 2 class members against defendants Chief Kevin Cashen and John Does 19 - 21)

144. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
145. Defendants Cashen and John Does 19 - 21 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
146. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
147. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**SEVENTH CLAIM FOR RELIEF**

**42 U.S.C. § 1983 Claims for Violation of the Fourth Amendment Prohibition Against  
Unreasonable Searches and Seizures**

(On behalf of Plaintiffs Belinda Vega, José Calderón, and Class 2 class members against defendants Chief Charles D. Doan and John Doe 22)

148. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

149. Defendants Doan and John Doe 22 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
150. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
151. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**EIGHTH CLAIM FOR RELIEF**

**42 U.S.C. § 1985(3) Claim for Conspiracy to Violate Hispanics Right to Equal**

**Protection of the Law**

(On behalf of plaintiffs Nieto, Muñiz, Torres-Franco, Muñiz-Torres, María Muñiz-Muñiz, Luis Enrique Muñiz-Muñiz, and Class 2 class members against defendants Chief Jeffrey L. Briggs and John Does 16 - 18)

152. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
153. Defendants Briggs and John Does 16 - 18 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
154. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.



155. These Defendants have conspired to deprive Hispanics of the equal protection of the laws and have, in furtherance of that conspiracy, restrained and interrogated them because of their Hispanic appearance.
156. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**NINTH CLAIM FOR RELIEF**

**42 U.S.C. § 1985(3) Claim for Conspiracy to Violate Hispanics Right to Equal**

**Protection of the Law**

(On behalf of Plaintiff Martinez and Class 2 class members against defendants Chief Kevin Cashen and John Does 19 - 21)

157. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
158. Defendants Cashen and John Does 19 - 21 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
159. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
160. These Defendants have conspired to deprive Hispanics of the equal protection of the laws and have in furtherance of that conspiracy restrained and interrogated them because of their Hispanic appearance.

161. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**TENTH CLAIM FOR RELIEF**

**42 U.S.C. § 1985(3) Claim for Conspiracy to Violate Hispanics Right to Equal**

**Protection of the Law**

(On behalf of Plaintiffs Belinda Vega, José Calderón, and Class 2 class members against defendants Chief Charles D. Doan and John Does 22)

162. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

163. Defendants Doan and John Doe 22 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.

164. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.

165. These Defendants have conspired to deprive Hispanics of the equal protection of the laws and have in furtherance of that conspiracy restrained and interrogated them because of their Hispanic appearance.

166. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**ELEVENTH CLAIM FOR RELIEF**

**42 U.S.C. § 1986 Claim for Failure to Stop Conspiracy to Violate Hispanics Right to  
Equal Protection of the Law**

(On behalf of plaintiffs Nieto, Muñiz, Torres-Franco, Muñiz-Torres, María Muñiz-Muñiz, Luis Enrique Muñiz-Muñiz, and Class 2 class members against defendant Chief Jeffrey L. Briggs and John Does -16 - 18)

167. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
168. Defendants Briggs and John Does 16 - 18 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
169. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
170. These Defendants have conspired to deprive Hispanics of the equal protection of the laws and have in furtherance of that conspiracy restrained and interrogated them because of their Hispanic appearance.
171. These Defendants failed to take action to prevent the 42 U.S.C. § 1985(3) violations.
172. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**TWELTH CLAIM FOR RELIEF**

**42 U.S.C. § 1986 Claim for Failure to Stop Conspiracy to Violate Hispanics Right to  
Equal Protection of the Law**

(On behalf of Plaintiff Martinez and Class 2 class members against defendants Chief Kevin Cashen and John Does 19 - 21)

173. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
174. Defendants Cashen and John Does 19 - 21 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
175. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
176. These Defendants have conspired to deprive Hispanics of the equal protection of the laws and have, in furtherance of that conspiracy, restrained and interrogated them because of their Hispanic appearance.
177. These Defendants failed to take action to prevent the 42 U.S.C. § 1985(3) violations.
178. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

**THIRTEENTH CLAIM FOR RELIEF**

**42 U.S.C. § 1986 Claim for Failure to Stop Conspiracy to Violate Hispanics Right to  
Equal Protection of the Law**

(On behalf of Plaintiffs Belinda Vega, José Calderón, and Class 2 class members against defendants Chief Charles D. Doan and John Does 22)

179. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
180. Defendants Doan and John Doe 22 are restraining or will restrain Plaintiffs' liberty. Accordingly, under the 4<sup>th</sup> Amendment these restraints must be justified by reasonable suspicion that the person seized has no right to be or remain in the United States.
181. Restraining and interrogating Hispanics because of their Hispanic appearance is contrary to that standard.
182. These Defendants have conspired to deprive Hispanics of the equal protection of the laws and have in furtherance of that conspiracy restrained and interrogated them because of their Hispanic appearance.
183. These Defendants failed to take action to prevent the 42 U.S.C. § 1985(3) violations.
184. Defendants' actions have caused, are causing, and will cause Plaintiffs irreparable injury in the form of deprivation of their 4<sup>th</sup> Amendment rights.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Issue an order certifying this action to proceed as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- b. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure;
- c. Issue a judgment declaring that Defendants' policies, practices, acts, and omissions described herein violate Plaintiffs' rights under the Constitution of the United States, and federal statutory law;
- d. Permanently enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Plaintiffs to the unconstitutional and illegal conditions described herein, and issue injunctive relief sufficient to rectify those conditions, including:
  - i. An order that Defendants not restrain or seize members of the Classes without reasonable suspicion that the person has no right to be or to remain in the United States;
  - ii. An order allowing monitoring of the actions of the Sandusky Border Patrol Station by provision of redacted records of questioning, restraint of, interrogation of, and arrest of Hispanics by that Station. These forms would include, but not be limited to, the I-213, I-862, and other documents and incident reports prepared by Sandusky Border Patrol Agents.

- e. Grant Plaintiffs their reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 42 U.S.C. § 1988, and other applicable law.
- f. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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/s/ Eugenio Mollo, Jr.  
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