

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

CARLOS HILARIO ARIAS, DULCE MARIA )  
HERNANDEZ ARIAS, DAVID COREA, FRANCISCO )  
MUÑOZ, JUAN MUÑOZ, ALBIS MUÑOZ, SAOMARA )  
MUÑOZ, JENNY MALDONALDO, TERESA DE JESUS )  
GUERRERO, SANTIAGO CORONEL, FABIOLA )  
CISNEROS, VICENTE CISNEROS ABONCE, )  
ANDREAS VEGA, AUDREY MITHUN, ESAU )  
ESTRADA, DANIRA MALDONALDO-HERNANDEZ, )  
ROSA DE JESUS BARRAJAS ARRELLANO, RAUL )  
VELIZ, JR., WENSCELAO PADILLA GUZMAN, )  
JORGE ZELAYA, LEAH GARCIA, JAIME REYES, )  
MARLEN ALONSO SORIANO, ALEX JOSUE SORTO, )  
ROSA SORTO LOPEZ, MARIA ELENA AMAYA, )  
ERMENCIA MENDEZ, MANUELA DE JESUS PINEDA, )  
SAMUEL ZELAYA, JOSE MANUEL RAMIREZ )  
CALIX, ALEJANDRO CARTAGENA, WILLIAM )  
RAMOS CASTILLO, and, JOSE ERASMO )  
MONTALVAN, the Consul of Honduras, as NEXT OF )  
FRIEND TO FORTY UNKNOWN WILLMAR AREA )  
RESIDENTS (A.K.A. JOHN/JANE DOE ##1-40), )

CASE NO. 07CV1959

Plaintiffs,

PLAINTIFFS'  
AMENDED  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
AND DAMAGES

UNITES STATES IMMIGRATION AND CUSTOMS )  
ENFORCEMENT DIVISION OF THE DEPARTMENT )  
OF HOMELAND SECURITY; MICHAEL CHERTOFF, )  
Secretary, Department of Homeland Security )  
JULIE L. MYERS, Assistant Secretary of Homeland )  
Security for Immigration and Customs Enforcement; )  
JOHN P. TORRES, Director of Detention and Removal )  
Operations, Immigration and Customs Enforcement; )  
SCOTT BANIECKE, St. Paul Field Office Director for )  
Detention and Removal Operation; JOHN DOE ICE )  
AGENTS ##1-30; JAMES A. KULSET, Willmar Police )  
Department Chief of Police; and, JOHN DOE WILLMAR )  
POLICE OFFICERS ##1-10, )

Defendants.

## INTRODUCTION

1. This is a Complaint for declaratory and injunctive relief and damages filed by and on behalf of the Plaintiffs named herein challenging a series of raids involving warrantless home searches in violation of the Plaintiffs Fourth Amendment rights and numerous other constitutional violations engaged in by agents of the United States Immigration and Customs Enforcement Division (ICE) of the Department of Homeland Security in Willmar, Minnesota between April 10 – 14, 2007.

2. This immigration action by ICE referred to as “Operation Crosscheck” involved egregious violations of Plaintiffs’ Fourth Amendment Rights in which ICE agents entered and searched private homes without warrants or without the consent of the Plaintiffs, detained and interrogated Plaintiffs in their homes based solely on the fact that they appeared to be of Latino origin, all in violation of the Plaintiffs’ Due Process and Equal Protection rights under the Fifth Amendment of the United States Constitution.

3. In addition, ICE agents conducted a campaign of terror and intimidation throughout the city of Willmar by going to locations such as trailer parks and apartment buildings that had known concentrations of Latino people and conducted unconstitutional stops and detentions of individuals solely on the basis of their race or national origin, all in violation of the Equal Protection rights under the Fifth Amendment of the United States Constitution.

4. These ICE raids were the product of racial and ethnic profiling at odds with the fundamental premise of the Equal Protection Clause of the Fifth Amendment.

5. Upon information and belief, these ICE raids in Willmar were authorized by Defendants and the other federal government officials at the highest levels of the U.S. Department of Homeland Security and ICE.

6. Plaintiffs seek injunctive and declaratory relief to prevent such egregious , Minnesota on April 10- 14, 2007.

7. Plaintiffs seek declaratory and injunctive relief to remedy violations of their constitutional and statutory rights.

### **JURISDICTION**

8. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*, as amended by the Illegal Immigration reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 2241, art. I, § 9, cl.2 of the United States Constitution (“Suspension Clause”), as detainees are presently in custody under color of authority of the United States. This Court may grant relief pursuant to 28 U.S.C. §§ 1651, 2201, 2002, 2241, and 2242 and Rule 57 of the Federal Rules of Civil Procedure.

### **VENUE**

9. Venue lies in the United States District Court for the District of Minnesota pursuant to 28 U.S.C. § 1391, the judicial district in which Defendants carried out immigration raids in the city of Willmar, where the events giving rise to the claims alleged herein occurred, and where some or all of Plaintiffs are being held.

**PARTIES**

10. Plaintiff **CARLOS HILARIO ARIAS** ("Plaintiff Arias") is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

11. Plaintiff **DULCE MARIA HERNANDEZ ARIAS** ("Plaintiff Hernandez") is a Latina female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

12. Plaintiff **DAVID COREA** ("Plaintiff Corea") is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

13. Plaintiff **FRANCISCO MUNOZ** ("Plaintiff Munoz") is a Latino male who is permanent resident of the United States and a native of Honduras. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

14. Plaintiff **JUAN MUNOZ** ("Plaintiff Munoz") is a Latino male who is a resident of Willmar and a native of Honduras. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

15. Plaintiff **ALBIS MUNOZ** ("Plaintiff Munoz") is a Latino female who is a resident of Willmar and a native of Honduras. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

16. Plaintiff **SAOMARA MUNOZ** (“Plaintiff Munoz”) is a Latino female who is a resident of Willmar and a native of Honduras. She is currently pregnant. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

17. Plaintiff **JENNY MALDONADO** (“Plaintiff Maldonado”) is a Latina female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

18. Plaintiff **TERESA DE JESUS GUERERO** (“Plaintiff Guerero”) is a Latina female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

19. Plaintiff **SANTIAGO CORONEL** (“Plaintiff Coronel”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

20. Plaintiff **FABIOLA CISNEROS** (“Plaintiff Cisneros”) is a Latina female who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

21. Plaintiff **VINCENTE CISNEROS ABONCE** (“Plaintiff Abonce”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

22. Plaintiff **ANDREAS VEGA** (“Plaintiff Vega”) is a Latina female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.



30. Plaintiff **LEAH GARCIA** (“Plaintiff Garcia”) is a Latina female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

31. Plaintiff **JAIME REYES** (“Plaintiff Reyes”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

32. Plaintiff **MARLEN ALONSO SORIANO** (“Plaintiff Soriano”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

33. Plaintiff **ALEX JOSUE SORTO** (“Plaintiff Sorto”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

34. Plaintiff **ROSA SORTO LOPEZ** (“Plaintiff Lopez”) is a Latino female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

35. Plaintiff **MARIA ELENA AMAYA** (“Plaintiff Amaya”) is a Latino female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

36. Plaintiff **ERMENCIA MENDEZ** (“Plaintiff Mendez”) is a Latino female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

37. Plaintiff **MANUELA DE JESUS PINEDA** (“Plaintiff Pineda”) is a Latino female who is a resident of Willmar. At all times relevant to this suit, she was a resident of Willmar, Kandiyohi County, Minnesota.

38. Plaintiff **SAMUEL ZELAYA** (“Plaintiff Zelaya”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

39. Plaintiff **JOSE MANUEL RAMIREZ CALIX** (“Plaintiff Calix”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

40. Plaintiff **ALEJANDRO CARTAGENA** (“Plaintiff Cartagena”) is a Latino male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

41. Plaintiff **WILLIAM RAMOS CASTILLO** (“Plaintiff Castillo”) is a Honduran male who is a resident of Willmar. At all times relevant to this suit, he was a resident of Willmar, Kandiyohi County, Minnesota.

42. Plaintiffs **FORTY UNKNOWN WILLMAR AREA RESIDENTS** (a.k.a. John/Jane Doe ##1-40) have been taken into custody by Immigration and Customs Enforcement (“ICE”) and whose identities have not been established. Upon information and belief, their identities will be known following this action.

43. Plaintiff **CONSÚL JOSE ERASMO MONTALVAN**, Petitioners' Next Friend, is the Consul of Honduras for Illinois, Ohio, Indiana, Michigan, Iowa, Wisconsin, North Dakota, South Dakota, and Minnesota.

44. Defendants **IMMIGRATION AND CUSTOMS ENFORCEMENT DIVISION OF HOMELAND SECURITY** ("Defendant ICE") and **JULIE L. MYERS** ("Defendant Myers"), in their official capacity, are charged with, among other things, administering the Executive Office of Immigration Review ("EOIR"). The EOIR conducts removal proceedings in immigration cases and decides administrative appeals of such cases.

45. Defendant, **DEPARTMENT OF HOMELAND SECURITY** ("Defendant DHS") is charged with, among other things, administering the United States Immigration and Customs Enforcement and implementing and enforcing the Immigration and Nationality Act. As such, it has decision-making authority over the matters alleged in this Petition and Plaintiffs' custody.

46. Defendant, **IMMIGRATION AND CUSTOMS ENFORCEMENT** ("Defendant ICE") is a bureau of the United States Department of Homeland Security. Defendant ICE is charged with investigative and enforcement responsibilities of federal immigration laws.

47. Defendant **MICHAEL CHERTOFF** ("Defendant Chertoff") is Secretary of the United States Department of Homeland Security. Defendant Chertoff is charged with the constitutional and lawful implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, and with the administration of Immigration and Customs Enforcement. Defendant Chertoff is sued in his official capacity.

48. Defendant **JULIE L. MYERS** (“Defendant Myers”) is the Assistant of the Immigration and Customs Enforcement. Defendant Myers is charged with the constitutional and lawful implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, and with the administration of Immigration and Customs Enforcement. Defendant Myers is sued individually and in her official capacity.

49. Defendant **JOHN P. TORRES** (“Defendant Torres”) is the Director of the Office of Detention and Removal for Immigration and Customs Enforcement. In this capacity, Defendant Torres is responsible for the apprehension, detention and removal of foreign nationals charged with violation of immigration law and the supervision of sworn law enforcement officers assigned to the Detention and Removal field offices, including the field office based in Minneapolis, Minnesota. Defendant Torres is sued in his official capacity.

50. Defendant, **SCOTT BANIECKE**, (“Defendant Baniecke”) is the Field Office Director for the St. Paul Office of Detention and Removal, where Plaintiffs are or were being held and remain under his administrative authority. Defendant Baniecke is responsible for managing enforcement activities of ICE within the geographic boundaries of Minnesota. Upon information and belief, Defendant Baniecke was personally involved and/or personally ordered or authorized the unlawful conduct of ICE agents alleged in the complaint. Defendant Baniecke is sued in his official capacity.

51. At all times relevant to the incidents complained of in this lawsuit, defendants **JOHN DOE ICE AGENTS 1-30** were federal law enforcement agents employed by Defendants Immigration and Customs Enforcement. Defendants were empowered by law

to execute searches and make arrests for violation of federal law. Defendants John Doe ICE agents 1-30 are sued individually and in their official capacity.

52. Defendant **JAMES A. KULSET** (“Defendant Kulset”) is the Chief of Police for the City of Willmar Police Department. In this capacity Defendant Kulset possesses administrative authority regarding the employees and officers in this department. Upon information and belief, Defendant Kulset was personally involved and/or personally ordered or authorized members of his department to cooperate with ICE agents during the activities alleged in the complaint.

53. At all times relevant to the incidents complained of in this lawsuit, defendants **JOHN DOE WILLMAR POLICE OFFICERS 1-10** were local law enforcement employed by the City of Willmar Police Department. Upon information and belief, Defendants were present at the scene of immigration activities conducted by ICE agents operating within the community of Willmar. Defendants John Doe Willmar Police Officers 1-10 are sued individually and in their official capacity.

### FACTS

54. Between April 10-14, 2007, all of the named Plaintiffs, with the exception of Raul Veliz, Jr. and Maria Elena Amaya, occupied homes forcibly entered by ICE agents. Plaintiffs submit that home invasions by ICE agents were nonconsensual, were performed without presentation of search or arrest warrants, and lacking both probable cause and exigent circumstances. (*See* Plaintiff’s Affidavits attached as Exhibits 1-19).

55. On April 12, 2007, Willmar Police Chief, James A. Kulset, while attending a public community forum in Willmar, stated that the Willmar Police Department provided “logistical assistance and support” to immigration agents operating in the community. According to Defendant Kulset, “assistance and support” included identifying the location of Latino residences. Upon information and belief, Willmar Police Department officers further contributed to Operation Crosscheck by participating in raids and stops throughout the community (*See Exhibits 2, 4, 7, 14-17*).

56. Defendants conducted these warrantless home searches by going to Plaintiffs’ doors and knocking loudly on the doors and/or windows. (*See generally Exhibits 1-19*) When asked by Plaintiffs’ to identify themselves, Defendant ICE agents would falsely claim “It’s the Police”. (*See Exhibit 2, 7-8, 18 Paragraph 2*). In several instances Plaintiffs would open their doors slightly to see who was present, Defendant ICE agents would burst through the door and push their way into Plaintiffs’ homes without a reasonable manifestation of consent to enter.

57. In the case of Plaintiff Guzman, ICE agents broke through his front door and entered his home (*See Exhibit 4*).

58. In the case of Plaintiff Lopez, ICE agents were witnessed breaking a window and opening a door to gain access to the home (*See Exhibit 10*).

59. In every known instance, Defendant ICE agents failed to produce search or arrest warrants to Plaintiffs before entering their homes. In every known instance, no fewer than 6-8 ICE agents broke into Plaintiffs’ homes and immediately detained all persons inside, and others they could find in the warrantless search of Plaintiffs homes.

60. When Plaintiffs would ask Defendant ICE agents why they were in their homes, ICE agents would frequently state they were looking for a fugitive, but would not ever give the name of the person they were allegedly looking for. (*See* Exhibit 3, 8,17, 19).

61. Once inside of the Plaintiff's homes, Defendant ICE agents went room to room throughout the homes, without any warrants, searching each room and requiring any persons that they found to come out of the room and go to a main area in the home where other ICE agents detained them.

62. In several instances, ICE agents entered bedrooms while Plaintiffs and their children were sleeping, waking them up by shining flashlights in their faces. (*See* Exhibits 1-3, 5, 7-8, 10-11, 15-16, 19). Plaintiffs' and their children were very scared and the children were often crying.

63. In the case of Plaintiff Mithun, Defendant ICE agents upon observing that she was white, never asked her for any identification. Instead, they simply ordered her out of her bedroom and into the living room where she was detained by ICE agents during the remainder of the raid and not allowed to leave the room.

64. The exact number of Plaintiffs taken into custody by Defendants is not specifically known. Based on interviews with members of the community and media reports, it appears that approximately 50 persons were seized.

65. All of the Plaintiffs, with the exception of Raul Veliz and Maria Elena Amaya, who were taken into custody were detained and arrested in their homes. Plaintiffs taken into custody are or were being held at detention facilities in Bloomington, MN, Hennepin County, Ramsey County, and Sherburne County. Plaintiffs are unclear as to the identity of

other facilities being used to house detainees. According to media reports Defendants acknowledge that:

“Those who have been arrested likely will be taken to ICE offices in Bloomington for processing, then housed in surrounding county jails until they appear in court and are released or deported.”

66. Plaintiffs submit that Defendants failed to make reasonable efforts to accommodate children of detainees. In the most egregious instances, nursing children of Plaintiffs have been and are continuing to be denied appropriate nourishment, leading to waning appetites.

67. On April 12, 2007, at approximately 7:00 AM, Plaintiff Raul Veliz, Jr., was stopped by an entire group of vehicles driven by ICE agents. (*See* Affidavit of Plaintiff Veliz attached as Exhibit 7). Just prior to being stopped by the vehicles, he had noticed that the vehicles drove by him and that the agents took notice of him while he drove his car. Mr. Veliz was never given any reason for why his vehicle was stopped by the ICE agents at the time that he was stopped. His car was completely surrounded by 7 to 8 ICE agents wearing guns and bullet proof vests and vehicles driven by ICE agents. Even after Mr. Veliz showed them a valid drivers license and told the agents that he was a United States citizen, ICE agents continued to detain him and question him for at least 15-20 minutes while ICE agents surrounded his vehicle. Mr Veliz also alleges that at one point during his interrogation, certain defendant ICE agents directed other ICE agents to go check the trailer home where they thought they saw Mr. Veliz exit. The ICE agents then went to that trailer home and began knocking on the door and looking in the windows.

68. On April 12, 2007, at approximately 6:30AM, Plaintiff Maria Elena Amaya was working at the Jennie-O turkey Store, where she had been employed for six years. She

was instructed by a supervisor to stop work and go to the general manager's office. Inside she was confronted by a plainclothes man identifying himself as "immigration." She was told she was under arrest, but no arrest warrant had been provided. After insisting several time she held Temporary Protected Status, and that her work status for employment was therefore valid, the plainclothes immigration agent eventually relented and made a phone call to verify her information, including name and date of birth. The agent received confirmation, heard by Plaintiff Amaya, that Plaintiff's status remains valid, after which the agent stated to Plaintiff and the general manager that no arrest would be happening today.

69. On information and belief, Plaintiffs have been or will be transported out of this District, and will be placed in removal proceedings. The practice of spiriting detainees out of the original District and into forums of convenience benefiting Defendants is consistent with similar raids conducted by ICE. This practice has been reviewed and halted by two United States District Courts: on December 13, 2006 in the District of Colorado, and, March 9, 2007 in the District of Massachusetts.

70. On information and belief, Defendants are using coercive methods of soliciting and obtaining waivers of rights and stipulated orders for removal, for the purpose of expediting removal of Plaintiffs out of the territorial borders of the United States. In some instances these deportations have already occurred, namely to Plaintiffs Corea and Cisneros. It is unknown under what conditions Plaintiffs have signed documents, nor if such documents have experienced substantive review by an immigration judge responsible for assuring Plaintiffs signed any such documents knowingly, intelligently, and voluntarily.

#### CLASS ACTION ALLEGATIONS

71. Plaintiffs claims set forth in the Counts below are brought by named Plaintiffs, individually and on behalf of all other similarly situated persons, pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, against Defendants for injunctive and declaratory relief

72. The named Plaintiffs provisionally propose all Counts be certified on behalf of the following class: All persons arrested, detained, in custody, or deported of Honduran, Latin, or Hispanic origin or appearance and affected by immigration operations (aka "Operation Crosscheck") in and around the City of Willmar, MN on or about April 10-14, 2007, and who are within the formal jurisdiction and actual territory covered by Immigration and Customs Enforcement agents receiving direction from the Detention and Removal Operations Field Office, or similarly controlling authority, for the State of Minnesota.

73. Members of the proposed class are numerous to the extent that joinder of all members is impracticable.

74. The difficulties in contacting and communicating with members of the class who were or are being detained by ICE officials, or have been removed from the country by immigration officials, makes joinder of all class members impractical.

75. There are questions of law and fact that are common concerning, *inter alia*, whether Defendants have implemented, enforced, encouraged and/or sanctioned a policy, practice and/or custom of: (a) conducting warrantless and nonconsensual entries and searches of homes occupied by Latinos and in absence of probable cause and exigent circumstances, in violation of the Fourth Amendment to the United States Constitution; and (b) stopping, detaining, investigating, searching and effecting seizures of persons and property in the absence of reasonable, articulable, and individualized suspicion of unlawful

activity or probable cause, in violation of the Fourth Amendment to the United States Constitution; (c) denying Plaintiffs of the right to remain silent or of the right to seek counsel prior to answering, in violation of the Fifth Amendment to the United States Constitution; (d) disparate application of the nation's laws experienced by Plaintiffs based on ethnicity, nationality, and/or skin color by Defendants conduct, in violation of the Fifth and Fourteenth Amendments to the United States Constitution; (f) Plaintiffs the right to counsel while undergoing custodial interrogation, in violation of the Sixth Amendment of the United States Constitution

76. These questions are common to the named Plaintiffs and to the members of the proposed class because Defendants have acted and will continue to act on grounds generally applicable to both the named Plaintiffs and proposed class members.

77. The claims of the named Plaintiffs are typical of the claims of the members of the proposed class.

78. The named Plaintiffs will fairly and adequately protect the interests of the members of the proposed class.

79. The Plaintiffs are represented by counsel who are highly experienced in federal class action litigation involving the issues common to the members of the proposed class.

80. The Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

**CLAIMS FOR RELIEF**

**COUNT I – FOURTH AMENDMENT CONSTITUTIONAL CLAIMS  
(CLASS ACTION AGAINST ALL DEFENDANTS)**

81. Plaintiffs allege and incorporate by reference paragraphs 1-80.

82. On April 10<sup>th</sup>, 2007 ICE agents, with assistance provided by local law enforcement, conducted warrantless and nonconsensual entries, searches, and seizures of Plaintiffs' homes and persons in violation of the Plaintiffs' Fourth Amendment Rights guaranteed by the United States Constitution.

83. Plaintiffs allege that Defendants' warrantless and nonconsensual entries, searches, and seizures of homes and persons caused damages to Plaintiffs and their family members directly affected. Plaintiffs face continued irreparable harm by these constitutional violations.

84. Additionally, on April 12, 2007, at approximately 7:00 AM, Plaintiff Veliz's vehicle was unlawfully stopped by ICE agents without probable cause nor reasonable, articulable suspicion. Rather, the stop was initiated solely on the basis of Veliz's race or national origin, all in violation of Plaintiffs Fourth Amendment rights.

85. As a consequence of Defendants' warrantless and nonconsensual entries, searches, and seizures, all evidence obtained thereby, including but not limited to statements and information gathered by ICE agents, is properly suppressed and prohibited from use in any government proceeding against Plaintiffs and/or their family members.

86. In violating Plaintiffs' Fourth Amendment Rights, Defendants' actions caused damages to Plaintiffs for which Plaintiffs seek relief.

**COUNT II- FIFTH AMENDMENT DUE PROCESS CLAIMS  
(CLASS ACTION BROUGHT AGAINST ALL DEFENDANTS)**

87. Plaintiffs allege and incorporate by reference paragraphs 1-86.

88. Defendants are liable for the conduct of ICE agents who performed warrantless and nonconsensual entries, searches, and seizures during operations in the community of Willmar between April 10-14, 2007.

89. By taking Plaintiffs into custody without affording Plaintiffs' constitutional rights Defendants, in acting under color of law, have violated and continue to violate Plaintiffs' Fifth Amendment Rights guaranteed by the United States Constitution.

90. To the extent that Plaintiffs' detention is without basis in law or fact and violates common law principles of due process and the Due Process Clause of the Fifth Amendment to the Constitution, Plaintiffs' detention creates a deprivation of liberty without due process of law.

91. Plaintiffs allege that they have been damaged by these violations of their Fifth Amendment rights and that they continue to be irreparably harmed by these violations.

92. In violating Plaintiffs' Fifth Amendment Rights, Defendants' actions caused damages to Plaintiffs for which Plaintiffs seek relief.

**COUNT III- FIFTH AMENDMENT PROTECTION AGAINST SELF INCRIMINATION  
AND RIGHT TO COUNSEL CLAIMS  
(CLASS ACTION BROUGHT AGAINST ALL DEFENDANTS)**

93. Plaintiffs allege and incorporate by reference paragraphs 1-92.

94. On April 10-14, 2007 Defendants announced both publicly and to Plaintiffs detained by ICE agents that Defendants were searching for known criminal fugitives.

95. Upon entering Plaintiffs' homes neither with arrest warrants nor consent, ICE agents failed to apprise Plaintiffs of their rights to remain silent and to speak with an

attorney prior to answering questions, as guaranteed by the Fifth Amendment of the United States Constitution.

96. Plaintiffs allege such violations of their Fifth Amendment Rights has caused and continues to impose irreparable harm.

97. In violating Plaintiffs' Fifth Amendment Rights, Defendants' actions caused damages to Plaintiffs for which Plaintiffs seek relief.

**COUNT IV – SIXTH AMENDMENT RIGHT TO COUNSEL CLAIMS  
(CLASS ACTION BROUGHT AGAINST ALL DEFENDANTS)**

98. Plaintiffs allege and incorporate by reference paragraphs 1-97.

99. By denying Plaintiffs access to counsel or the means to obtain counsel in a prompt and effective manner, Defendants violated Plaintiffs' Sixth Amendment right to counsel.

100. To the extent questioning of Plaintiffs occurred during custodial interrogations, such interrogations violate the Plaintiffs' Sixth Amendment Rights guaranteed by the United States Constitution.

101. In violating Plaintiffs' Sixth Amendment Rights, Defendants' actions caused damages to Plaintiffs for which Plaintiffs seek relief.

**COUNT V – *BIVENS* CLAIM OF PLAINTIFF CARLOS HILARIO ARIAS  
(AGAINST DEFENDANTS BANIECKE, JOHN DOE ICE AGENTS 1-30), AND,  
42 U.S.C. §1983 CLAIMS (AGAINST DEFENDANTS KULSET AND JOHN DOE  
WILLMAR POLICE OFFICERS 1-10)**

102. Plaintiff Arias incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

103. In committing the acts complained herein, Defendants deprived Plaintiff Arias of certain constitutionally protected rights, including, but not limited to:

- a. the right to be free from unlawful entries to and searches of his home and person without a valid warrant or voluntary consent and in the absence of probable cause and exigent circumstances;
- b. the right to be free from unlawful seizures of his person and effects without a valid warrant or voluntary consent and in the absence of probable cause and exigent circumstances;
- c. the right to be free from detentions without a lawful, reasonable and articulable suspicion of unlawful activity or probable cause; and
- d. the right to equal protection under the law, as guaranteed by the Fifth Amendment to the United States Constitution.

104. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, with regard to standards for home entry, search, seizure, questioning, and detention, they are not entitled to a good faith defense or official immunity defense.

105. The actions of these Defendants were intentional, malicious, and reckless and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

106. The actions of Defendants operating under color of authority provided by the Federal government creates a cause of action for damages against them in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

107. Similarly, the actions of Defendants operating under color of authority of local and state units of government, including but not limited to the Willmar Police Department, creates to a cause of action for damages in their individual capacities, pursuant to 42 U.S.C. § 1983.

108. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiff Arias has suffered harm, in the form of, *inter alia*, outrage, humiliation, and emotional distress. Plaintiff Arias is entitled to compensatory and punitive damages in an amount to be determined at trial.

**COUNT VI – BIVENS CLAIM OF PLAINTIFF DULCE MARIA HERNANDEZ ARIAS  
(AGAINST DEFENDANTS BANIECKE, JOHN DOE ICE AGENTS 1-30), AND,  
42 U.S.C. §1983 CLAIMS (AGAINST DEFENDANTS KULSET AND JOHN DOE  
WILLMAR POLICE OFFICERS 1-10)**

109. Plaintiff Arias incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

110. In committing the acts complained herein, Defendants deprived Plaintiff Arias of certain constitutionally protected rights, including, but not limited to:

- a. the right to be free from unlawful entries to and searches of her home and person without a valid warrant or voluntary consent and in the absence of probable cause and exigent circumstances;
- b. the right to be free from unlawful seizures of her person and effects without a valid warrant or voluntary consent and in the absent of probable cause and exigent circumstances;

- c. the right to be free from detentions without a lawful, reasonable and articulable suspicion of unlawful activity or probable cause; and
- d. the right to equal protection under the law, as guaranteed by the Fifth Amendment to the United States Constitution.

111. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, with regard to standards for home entry, search, seizure, questioning, and detention, they are not entitled to a good faith defense or official immunity defense.

112. The actions of these Defendants were intentional, malicious, and reckless and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

113. The actions of Defendants operating under color of authority provided by the Federal government creates a cause of action for damages against them in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

114. Similarly, the actions of Defendants operating under color of authority of local and state units of government, including but not limited to the Willmar Police Department, creates to a cause of action for damages in their individual capacities, pursuant to 42 U.S.C. § 1983.

115. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiff Arias has suffered harm, in the form of, *inter alia*, outrage, humiliation, and emotional distress. Plaintiff Arias is entitled to compensatory and punitive damages in an amount to be determined at trial.

**COUNT VII – BIVENS CLAIM OF PLAINTIFF DAVID COREA  
(AGAINST DEFENDANTS BANIECKE, JOHN DOE ICE AGENTS 1-30), AND,  
42 U.S.C. §1983 CLAIMS (AGAINST DEFENDANTS KULSET AND JOHN DOE  
WILLMAR POLICE OFFICERS 1-10)**

116. Plaintiff Corea incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

117. In committing the acts complained herein, Defendants deprived Plaintiff Corea of certain constitutionally protected rights, including, but not limited to:

- a. the right to be free from unlawful entries to and searches of his home and person without a valid warrant or voluntary consent and in the absence of probable cause and exigent circumstances;
- b. the right to be free from unlawful seizures of his person and effects without a valid warrant or voluntary consent and in the absent of probable cause and exigent circumstances;
- c. the right to be free from detentions without a lawful, reasonable and articulable suspicion of unlawful activity or probable cause; and
- d. the right to equal protection under the law, as guaranteed by the Fifth Amendment to the United States Constitution.

118. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, with regard to standards for home entry, search, seizure, questioning, and detention, they are not entitled to a good faith defense or official immunity defense.

119. The actions of these Defendants were intentional, malicious, and reckless and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

120. The actions of Defendants operating under color of authority provided by the Federal government creates a cause of action for damages against them in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

121. Similarly, the actions of Defendants operating under color of authority of local and state units of government, including but not limited to the Willmar Police Department, creates to a cause of action for damages in their individual capacities, pursuant to 42 U.S.C. § 1983.

122. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiff Corea has suffered harm, in the form of, *inter alia*, outrage, humiliation, and emotional distress. Plaintiff Corea is entitled to compensatory and punitive damages in an amount to be determined at trial.

**COUNT VIII – BIVENS CLAIM OF PLAINTIFF FRANCISCO MUÑOZ  
(AGAINST DEFENDANTS BANIECKE, JOHN DOE ICE AGENTS 1-30), AND,  
42 U.S.C. §1983 CLAIMS (AGAINST DEFENDANTS KULSET AND JOHN DOE  
WILLMAR POLICE OFFICERS 1-10)**

123. Plaintiff Munoz incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

124. In committing the acts complained herein, Defendants deprived Plaintiff Munoz of certain constitutionally protected rights, including, but not limited to:

- a. the right to be free from unlawful entries to and searches of his home and person without a valid warrant or voluntary consent and in the absence of probable cause and exigent circumstances;