

SETTLEMENT AGREEMENT BETWEEN
PLAINTIFF COMMITTEE FOR IMMIGRANT RIGHTS OF SONOMA COUNTY
AND

**THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION
AND CUSTOMS ENFORCEMENT; ICE SPECIAL AGENTS CHRISTOPHER
MERENDINO AND MARIO HUELGA IN THEIR OFFICIAL CAPACITIES**

CV-08-4220 (RS)

This Settlement Agreement (“Agreement”) is entered into by and between remaining Plaintiff, Committee for Immigrant Rights of Sonoma County (referred to hereinafter as “Plaintiff CIRSC”), and remaining Federal Defendants, U.S. Department of Homeland Security, Immigration and Customs Enforcement (“ICE”), and ICE Special Agents Christopher Merendino and Mario Huelga in their official capacities, (collectively referred to hereinafter as “Defendants.”). The effective date of this Agreement is December 5, 2011 (the “Effective Date”).

RECITALS

WHEREAS, Plaintiffs Francisco Sanchez-Lopez (“Sanchez-Lopez”); Christyan Sonato-Vega, (“Sonato-Vega”); and Plaintiff CIRSC filed a Complaint against Defendants United States of America (“USA”); U.S. Department of Homeland Security, Immigration and Customs Enforcement (“ICE”); Special Agent Mario Huelga (“Huelga”), in his official and individual capacities; Special Agent Chris Merendino (“Merendino”), in his official and personal capacities; ROES 1-50; County of Sonoma, Sheriff-Coroner Bill Cogbill (“Cogbill”), in his official and individual capacities; Deputy Sheriff Morris Eric Salkin (“Salkin”), in his official and individual capacities; and DOES 1-50, (collectively referred to hereinafter as “County Defendants”) on September 5, 2008, in the United States District Court for the Northern District of California, styled *Committee for Immigrant Rights of Sonoma County, et al. v. County of Sonoma, et al.*,

Case No. 08-4220, seeking injunctive and declaratory relief against ICE, County of Sonoma, and officials with both agencies, and seeking monetary relief against the USA, County of Sonoma and against Huelga, Merendino, Cogbill, and Salkin in their personal capacities,

WHEREAS, Plaintiffs filed a Second Amended Complaint (“SAC”) on September 14, 2009, claiming violations of: the Fourth Amendment against County Defendants, ICE, Huelga, Merendino, and ROES 1-50; the Fifth Amendment (Equal Protection and Due Process) against ICE, Huelga, Merendino, and ROES 1-50; the Fourteenth Amendment (Equal Protection and Due Process) against County Defendants; 8 U.S.C. § 1357 and 8 C.F.R. §§ 287.3 and 287.7 (through the Due Process Clause and the Administrative Procedure Act) against ICE, Huelga, Merendino, and ROES 1-50; Title VI of the Civil Rights Act of 1964 against County Defendants; 42 U.S.C. §§ 1983 and 1985(3) against Federal and County Defendants, except the USA; California Constitution (Art. I, § 13 and Art. I, § 7(a)) against County Defendants; Bane Act (California Civil Code § 52.1) against County Defendants; California Government Code against County Defendants; state tort claims against the County Defendants; and Federal Tort Claims Act against USA,

WHEREAS, on March 10, 2010, the Court dismissed Plaintiffs’ challenges to ICE’s interpretation of 8 C.F.R. § 287.7, holding the regulation could reasonably be interpreted to allow the issuance of a detainer for persons not already in custody pursuant to an independent criminal or other state law arrest, but reserved statutory and constitutional claims arising from the application of 8 C.F.R. § 287.7 based on this interpretation,

WHEREAS, on August 2, 2010, ICE issued an interim policy governing the use of immigration detainees, which is subject to change at the discretion of ICE (“Interim Policy”)

(attached hereto as **Exhibit A**) that, among other things, prohibits the use of immigration detainers to initiate local custody of aliens,

WHEREAS, on April 7, 2011, Plaintiffs Sanchez-Lopez and Sonato-Vega dismissed with prejudice all of their claims against the Federal Defendants,

WHEREAS, on July 22, 2011, and on August 25, 2011, all Plaintiffs dismissed with prejudice all of their claims against County Defendants,

NOW, THEREFORE, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the Action, remaining Plaintiff CIRSC and Defendants reached settlement of all Plaintiff CIRSC's remaining claims against Defendants pursuant to the terms and conditions below.

AGREEMENT

1. ICE acknowledges that its Interim Policy (attached hereto as **Exhibit A**) states that an immigration detainer may serve three key functions. *See also* 8 C.F.R. § 287.7. One such function is to advise a law enforcement agency ("LEA") of ICE's intent to assume custody of an alien in the LEA's custody. Another key function is to request information regarding an alien's release in order to allow ICE to make arrangements to take the alien into custody. The third key function is to request that an LEA maintain custody of an alien who may otherwise be released, so as to allow ICE to decide whether to assume custody of the alien. Indeed, as to the third function, 8 C.F.R. § 287.7(d) provides that under certain circumstances, an LEA "shall maintain custody of the alien for a period not to exceed 48 hours, exclusive of Saturdays, Sundays and holidays in order to permit assumption of custody" by ICE. ICE acknowledges to Plaintiff CIRSC that pursuant to current ICE policy, ICE will not seek to compel compliance with its detainers by local LEAs in Sonoma County.

2. ICE acknowledges to Plaintiff CIRSC that the Interim Policy prohibits the use of immigration detainers to initiate local custody of aliens. Specifically, ICE agents and officers shall issue detainers only after an LEA has exercised its independent authority to arrest the alien for a criminal violation, and detainers may not be issued if an LEA temporarily detains, but does not arrest, the alien. This does not preclude temporary detention of an alien by the LEA while ICE responds to the scene. As of the date of execution of this Agreement, the Interim Policy is in effect and ICE is not planning or presently taking any steps to reverse the Interim Policy's prohibition against the use of detainers to initiate local custody. As with other policies issued, ICE has discretion to revise, supersede or revoke the Interim Policy at any time.

3. ICE agrees to take a one-time action to provide a copy of the Interim Policy to each and every ICE law enforcement officer who is authorized to issue detainers and is assigned, as of the Effective Date, to the San Francisco field offices of ICE's Enforcement and Removal Operations and Homeland Security Investigations. The Interim Policy will be conveyed to such officers within ten (10) days of the Effective Date, and it will be accompanied by the following statement: "Officers are reminded that they must comply with the Interim Policy's prohibition against using detainers to initiate local custody of aliens."

4. ICE agrees to request that Sonoma County Jail post in the booking/intake areas of each Sonoma County jail facility, as well as in each housing module where postings are otherwise allowed, the forms attached hereto as **Exhibit B**, specifically, (1) ICE's current list of free legal providers, and (2) a blank I-826 "Notice of Rights and Request for Disposition" accompanied by the following printed statement: "This form is provided to people who are taken into custody by Immigration and Customs Enforcement. It explains certain rights and procedures in the immigration system." ICE agrees to request that Sonoma County Jail post the forms within

thirty (30) days of the Effective Date, and to continue the postings for a period of three (3) years from the Effective Date. The parties acknowledge that Sonoma County Jail has the exclusive authority to decide whether, where, or how to post forms in its facilities, and that in the event that Sonoma County Jail declines to post the forms, such action shall not constitute a breach of this Agreement.

5. ICE has prepared a new detainer form, I-247, attached hereto as **Exhibit C** ("New I-247"). As of the Effective Date, the New I-247 is in limited use and ICE has not approved it for use in Sonoma County. ICE agrees to begin, within ten (10) days of the Effective Date, using the New I-247 as the exclusive detainer form in Sonoma County, and to continue using the New I-247 there for a period of one (1) year following the Effective Date unless a court decision or order or exceptional operational requirement necessitates otherwise.

6. To effectuate the complete dismissal of this matter and to foreclose any appeal of interlocutory orders that have disposed of claims in this litigation prior to this Agreement, Defendants and Plaintiff CIRSC agree to jointly move the Court to vacate only the Court's Order Re: Motions to Dismiss the SAC, dated March 10, 2010 (Dkt. 164) through filing of a Joint Motion, attached hereto as **Exhibit D**, within three (3) business days of the Effective Date of this Agreement. This term of this Agreement is satisfied upon the filing of the Joint Motion, and any action or inaction by the Court on the motion shall not constitute a breach of this Agreement.

7. In consideration of the terms and conditions set forth herein, Plaintiff CIRSC hereby releases and forever discharges Defendants, and all of their past and present agencies, officials, employees, agents, attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of action, claims, and demands of any kind and nature whatsoever, whether suspected or unsuspected, arising in law or equity, arising from or by reason of any and all

known, unknown, foreseen, or unforeseen injuries, and the consequences thereof, resulting from the facts, circumstances and subject matter that gave rise to the Action, including all claims that were asserted or that Plaintiff CIRSC could have asserted in the Action (the "CIRSC Released Claims").

8. This release of claims is intended by Plaintiff CIRSC to be completely effective and binding irrespective of whether any CIRSC Released Claims have been asserted and irrespective of any present lack of knowledge on the part of Plaintiff of any such claims. With respect to the CIRSC Released Claims, Plaintiff CIRSC expressly waives the benefits and provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

GENERAL RELEASE - CLAIMS EXTINGUISHED

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiff CIRSC also waives the benefits and provisions of any similar law of any other jurisdiction concerning the CIRSC Released Claims.

9. In consideration of the terms and conditions set forth herein, Plaintiff CIRSC agrees that it will immediately upon execution of this Agreement also execute a Stipulation of Dismissal, which stipulation shall dismiss with prejudice its claims in the Action against Defendants. A copy of the Stipulation of Dismissal is attached hereto as **Exhibit E**. The fully executed Stipulation of Dismissal will be held by counsel for the Plaintiffs and will be filed with the Court within three (3) business days of the Court's ruling on the parties' Joint Motion or sixty (60) days from the Effective Date, whichever date is earlier. Both parties shall receive fully executed copies of this Agreement, with counsel for the party completing full execution of this Agreement

being responsible to provide a fully executed copy of this Agreement to counsel for the other party.

10. The parties acknowledge that neither this Agreement nor anything contained herein shall constitute an admission of liability or fault on the part of the Defendants, sued in their official or personal capacities, or their agents, servants, or employees. This Agreement is entered into by the parties for the purpose of compromising disputed claims, avoiding the expenses and risks of litigation, and buying peace.

11. It is also agreed by and among Plaintiff CIRSC and Defendants that neither Plaintiff CIRSC nor any of their attorneys may make any claim for attorneys' fees or other costs against the Defendants.

12. It is also agreed by and among Plaintiff CIRSC and Defendants that neither Defendants nor any of their attorneys may make any claim for attorneys' fees or other costs against Plaintiff.

13. The parties further acknowledge that the parties have mutually participated in the drafting of this Agreement and it is agreed that no provision herein shall be construed against any party hereto by virtue of the drafting of this Agreement. If any provision of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This instrument shall constitute the entire agreement between the parties, and it is expressly understood and agreed that this Agreement has been freely and voluntarily entered into by the parties hereto with the advice of counsel, who have explained the legal effect of this Agreement. The parties further acknowledge that no warranties or representations have been made on any subject other than as set forth in this Agreement.

14. The persons signing this Agreement, as well as the Joint Motion and Stipulation of Dismissal provided for herein, warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of this Agreement. This Agreement may not be altered, modified, or otherwise changed in any respect except in writing, duly executed by all of the parties or their authorized representatives.

15. This Agreement may be signed in counterparts and facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF and in agreement herewith, the Parties have entered into and executed this Agreement as of the effective date.

COMMITTEE FOR IMMIGRANT RIGHTS
OF SONOMA COUNTY

Dated:

By: attached
RICHARD COSHNEAR
On Behalf of Plaintiff CIRSC

MELINDA HAAG
United States Attorney

Dated: 12/5/2011

By: [Signature]
ILA C. DEISS
Assistant United States Attorney
Attorneys for the Federal Defendants

WILLIAM ORRICK, III
Deputy Assistant Attorney General, Civil Division
DAVID J. KLINE
Director

By: Colin A. Kisor
COLIN A. KISOR
Deputy Director
LANA VAHAB
Trial Attorney
Attorneys for the Federal Defendants

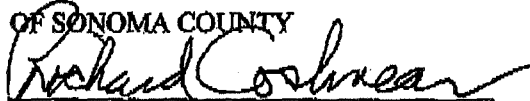
IN WITNESS WHEREOF and in agreement herewith, the Parties have entered into and executed this Agreement as of the effective date.

COMMITTEE FOR IMMIGRANT RIGHTS

OF SONOMA COUNTY

Dated:

By:



RICHARD COSHNEAR
On Behalf of Plaintiff CIRSC

MELINDA HAAG
United States Attorney

Dated:

By:

ILA C. DEISS
Assistant United States Attorney
Attorneys for the Federal Defendants

WILLIAM ORRICK, III
Deputy Assistant Attorney General, Civil Division
DAVID J. KLINE
Director

By:

COLIN A. KISOR
Deputy Director
LANA VAHAB
Trial Attorney
Attorneys for the Federal Defendants

EXHIBIT A

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

INTERIM Policy Number 10074.1: Detainers

Issue Date: 08/02/2010

Effective Date: 08/02/2010

Superseded: LESC LOP 005-09 (September 23, 2009)

Federal Enterprise Architecture Number: 111-601-001-a

1. **Purpose/Background.** This directive establishes the interim policy of U.S. Immigration and Customs Enforcement (ICE) regarding the issuance of civil immigration detainers.
2. **Definitions.** The following definitions apply for purposes of this directive only.
 - 2.1. A **detainer** (Form I-247) is a notice that ICE issues to Federal, State, and local law enforcement agencies (LEAs) to inform the LEA that ICE intends to assume custody of an individual in the LEA's custody. An immigration detainer may serve three key functions—
 - notify an LEA that ICE intends to arrest or remove an alien in the LEA's custody once the alien is no longer subject to the LEA's detention;
 - request information from an LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA's custody; and
 - request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody.
 - 2.2. An **Immigration officer** includes an officer or an agent who is authorized to issue detainers pursuant to 8 C.F.R. § 287.7(b), or who a state, local, or tribal officer or agent who is delegated such authority pursuant to § 287(g) of the Immigration and Nationality Act.
3. **Policy.**
 - 3.1. Only immigration officers may issue detainers.
 - 3.2. Immigration officers shall issue detainers only after an LEA has exercised its independent authority to arrest the alien for a criminal violation.
4. **Procedures.**
 - 4.1. Immigration officers shall not issue a detainer unless an LEA has exercised its independent authority to arrest the alien. Immigration officers shall not issue detainers for aliens who have been temporarily detained by the LEA (i.e., roadside or *Terry* stops)

but not arrested. This policy, however, does not preclude temporary detention of an alien by the LEA while ICE responds to the scene.

- 4.2. If an immigration officer has reason to believe that an individual arrested by an LEA is subject to ICE detention for removal or removal proceedings, and issuance of the detainer otherwise comports with this policy and appears to advance the priorities of the agency, the immigration officer may issue a detainer (Form I-247) to the LEA.
- 4.3. If the alien is the subject of an administrative arrest warrant, warrant of removal, or removal order, the immigration officer who issues the detainer should attach the warrant or order to the detainer, unless impracticable.
- 4.4. Immigration officers are expected to make arrangements to assume custody of an alien who is the subject of a detainer in a timely manner and without unnecessary delay. Although a detainer serves to request that an LEA temporarily detain an alien for a period not to exceed 48 hours from the time the LEA otherwise would have released the alien (excluding Saturdays, Sundays, and holidays) to permit ICE to assume custody of the alien, immigration officers should avoid relying on that hold period. If at any time after a detainer is issued, ICE determines it will not assume custody of the alien, the detainer should be withdrawn or rescinded and the LEA notified.
- 4.5. ICE shall timely assume custody of the alien if ICE has opted to lodge a detainer against an alien in any of the following categories—
 - aliens who are subject to removal based upon certain criminal or security-related grounds set forth in INA § 236(c);
 - aliens who are within the “removal period,” as defined in INA § 241(a)(2); and
 - aliens who have been arrested for controlled substance offenses under INA § 287(d).
- 4.6. Immigration officers shall take particular care when issuing a detainer against a lawful permanent resident (LPR) as some grounds of removability hinge on a conviction, while others do not [eg. removability pursuant to INA § 237(a)(4) and INA § 237(a)(1)(E).] Although in certain instances ICE may hold LPRs for up to 48 hours to make charging determinations, immigration officers should exercise such authority judiciously and seek advice of counsel for guidance if the LPR has not been convicted of a removable offense.
- 4.7. Immigration officers should consult their supervisors or local chief counsel office with all inquiries, questions, or concerns regarding this policy.

5. Authorities/References.

- 5.1. INA §§ 103(a)(3), 236, 241, 287.
- 5.2. 8 C.F.R. §§ 236.1, 287.3, 287.5, 287.7, 287.8, 1236.1.

6. Attachments.

6.1. Form I-247: Immigration Detainer - Notice of Action.

- 7. No Private Right Statement.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.

A handwritten signature in black ink, appearing to read "John Morton", is written over a horizontal line.

John Morton

Director

U.S. Immigration and Customs Enforcement

EXHIBIT B

This form is provided to people who are taken into custody by Immigration and Customs Enforcement. It explains certain rights and procedures in the immigration system.

U.S. Department of Homeland Security

Notice of Rights and Request for Disposition

Subject ID :

Event No:

FINS #:

File No: _____

Name: _____

NOTICE OF RIGHTS

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. If you request a hearing, you may be detained in custody or you may be eligible to be released on bond, until your hearing date. In the alternative, you may request to return to your country as soon as possible, without a hearing.

You have the right to contact an attorney or other legal representative to represent you at your hearings, or to answer any questions regarding your legal rights in the United States. Upon your request, the officer who gave you this notice will provide you with a list of legal organizations that may represent you for free or for a small fee. You have the right to communicate with the consular or diplomatic officer from your country. You may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to your departure from the United States.

REQUEST FOR DISPOSITION

☐ I request a hearing before the Immigration Court to determine whether or not I may remain in the United States.

Initials

☐ I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.

Initials

☐ I admit that I am in the United States illegally, and I believe that I do not face harm if I return to my country. I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made to effect my departure. I understand that I may be held in detention until my departure.

Initials

Signature of Subject

Date

CERTIFICATION OF SERVICE

☐ Notice read by subject.

☐ Notice read to subject by _____, in the _____ language.

Name of Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service



U.S. Department of Justice

Executive Office for Immigration Review

*Immigration Court
120 Montgomery Street, Suite 800
San Francisco, CA 94104*

LIST OF FREE LEGAL SERVICE PROVIDERS

ASIAN LAW CAUCUS

55 Columbus Avenue
San Francisco, CA 94111
(415) 896-1701-No collect calls are accepted
Mon.-Fri. 9am-5pm, Contact: Philip Van

Free legal consultation to low income aliens in criminal removal matters. Will represent aliens in some asylum cases. Languages: Mandarin, Vietnamese, Cantonese, Tagalog. Serves the San Francisco Bay area.

ASYLUM PROGRAM OF THE SAN FRANCISCO LAWYERS' COMMITTEE FOR CIVIL RIGHTS

131 Steuart Street, #400
San Francisco, CA 94105
(415) 543-9444, Contact: Philip Hwang
Mon.-Fri. 9am-5:30pm
Interviews Wed-Fri by appt. Pro Bono or nominal fee.

Must meet income guidelines for representation. Asylum cases screened for finances & meritorious claims. Languages: Spanish & French. Serves San Francisco Bay area.

CENTRAL AMERICAN RESOURCE CENTER (CARECEN)

3101 Mission Street, Suite 101
San Francisco, CA 94110
(415) 824-2330
Mon.-Fri. 9am-5 pm.

Charges nominal fee. Must meet (HUD) income guidelines for representation. Will represent Latin American aliens in asylum cases. Language: Spanish.

CATHOLIC CHARITIES IMMIGRATION PROGRAM

2625 Zanker Road, Suite 201
San Jose, CA 95134
(408) 944-0691
Mon.-Fri. 9am-5 p.m.

Must meet low income guidelines for representation;

Will represent aliens in immigration cases. Languages: Spanish, Tagalog, Vietnamese, Italian, Portuguese, Mandarin.

LA RAZA CENTRO LEGAL

474 Valencia Street, Suite 295
San Francisco, CA 94103
(415) 575-3500

May charge nominal fee. Will represent aliens in asylum cases. Language: Spanish

ADDITIONAL PROVIDERS ON BACK OF PAGE 13

LIST OF FREE LEGAL SERVICE PROVIDERS

SANTA CLARA UNIVERSITY, SCHOOL OF LAW CIVIL CLINICAL PROGRAMS EAST SAN JOSE COMMUNITY LAW CENTER

1030 The Alameda
San Jose, CA 95126
(408) 288-7030
Every Tuesday from 1-4pm.
Contact: Lynette Parker

Drop-in advice clinics as well as representation before Immigration Court. Must meet low income guidelines for representation.

IMMIGRATION LAW CLINIC U.C. DAVIS SCHOOL OF LAW

400 Mrak Hall
Davis, CA 95616-5201
(530) 752-6942 -No collect calls are accepted.
Mon.-Fri. 8am- 5pm
Contact: Amagda Perez or James Smith
Must meet income guidelines for representation.

Will represent aliens in asylum and cancellation cases. Language: Spanish. Pro Bono.
Serves Davis, Yolo, Solano, Sacramento within a 60-mile radius.

ASIAN PACIFIC ISLAND LEGAL OUTREACH

1188 Franklin Street, Suite 202
San Francisco, California 94109
(415) 567-6255

Willing to represent indigent aliens in asylum proceedings. Provides legal services in the following languages: Cantonese, Japanese, Korean, Mandarin, and Vietnamese.

NATIONAL CENTER FOR LESBIAN RIGHTS (NCLR)

870 Market Street, Suite 370
San Francisco, CA 94102
(415) 392-6257
Fax: (415) 392-8442

Seeks to represent lesbian, gay, bisexual, and transgender (LGBT) indigent aliens in asylum proceedings. Assists LGBT aliens and immigrants in understanding visas, asylum claims, and HIV exclusion, and provides legal and practical strategies for bi-national couples.

EXHIBIT C

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER – NOTICE OF ACTION

File No:

Date:

TO: (Name and Title of Institution – OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

- ☐ Initiated an investigation to determine whether this person is subject to removal from the United States.
- ☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (Date) _____.
- ☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (Date) _____.
- ☐ Obtained an order of deportation or removal from the United States for this person.

(This action does not limit your discretion to make decisions related to this person's custody classification, work quarter assignments, or other matters. ICE discourages dismissing criminal charges based on the existence of a detainer.)

IT IS REQUESTED THAT YOU:

- ☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (ICE) Law Enforcement Support Center in Burlington, Vermont at (802) 872-6020.
- ☒ Provide a copy to the subject of this detainer.
- ☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- ☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- ☐ Consider this request for a detainer operative only upon the subject's conviction.
- ☐ Cancel the detainer previously placed by this Office on _____ (Date) _____.

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to the Department using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center at (802) 872-6020.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un periodo no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto migratorio durante este periodo adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe contactarse con la autoridad estatal o local que lo tiene detenido (el organismo policial u otra entidad a cargo de su custodia) para obtener mayores detalles sobre el cese de su reclusión. Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253). Si cree que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (802) 872-6020.**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253). Si vous croyez être la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au (802) 872-6020.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone (802) 872-6020.**

EXHIBIT D

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15 Attorneys for Federal Defendants

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 COMMITTEE FOR IMMIGRANT RIGHTS OF
SONOMA COUNTY, et al.,

19 Plaintiffs,

20 v.

21 COUNTY OF SONOMA, et al.,

22 Defendants.

CASE NO. CV-08-04220-RS

**JOINT ADMINISTRATIVE MOTION
TO VACATE PRIOR ORDER;
[PROPOSED] ORDER**

L.R. 7-11

1 Pursuant to the established practice of the court, the authorities cited below, and the
2 parties' Settlement Agreement, effective December 5, 2011, all remaining parties hereby jointly
3 move the Court to vacate the Order Re Motions to Dismiss dated March 10, 2010 (Dkt. 164) as
4 moot.

5
6 **I. FACTUAL BACKGROUND**

7 In their Second Amended Complaint, Plaintiffs alleged that the issuance of immigration
8 detainers to arrest any person not already in custody of a state or local law enforcement agency
9 was not authorized by 8 C.F.R. § 287.7. *See* Dkt. 135 ¶¶ 164-65, 178.

10 On March 10, 2010, the Court issued an order dismissing Plaintiffs' claims for relief to
11 the extent they relied on an interpretation of 8 C.F.R. § 287.7 that would not authorize issuance
12 of immigration detainers for any person not already in the custody of a state or local law
13 enforcement agency on an independent criminal or state-law basis ("Independent LLEA Basis
14 for Custody").¹

15
16 On or about August 10, 2010, ICE issued an Interim Policy on Detainers (the "Interim
17 Policy") that specifically instructs that immigration detainers not be issued for any person not
18 already in the custody of a state or local law enforcement agency on an independent criminal or
19 state-law basis.

20 On April 7, 2011, Plaintiffs Sanchez-Lopez and Sonato-Vega dismissed with prejudice
21 all of their claims against all Federal Defendants.

22
23 On July 22, 2011, all Plaintiffs dismissed with prejudice all of their claims against all
24 County Defendants.

25 On December 5, 2011, the remaining parties, Plaintiff Committee for Immigrant Rights
26 of Sonoma County ("CIRSC") and Federal Defendants, entered into a settlement agreement.

27
28 ¹ In the March 10, 2010 order, the Court allowed Plaintiffs' constitutional and statutory claims
regarding the *application* of the regulation to proceed. Dkt. 164, p. 11, lines 1-3.

1 Under the terms of that settlement agreement, the parties hereby jointly seek vacatur of the
2 Court's March 10, 2010 order.

3 **II. VACATUR IS APPROPRIATE BECAUSE THE INTERIM POLICY RENDERS**
4 **MOOT A POTENTIAL APPEAL OF THE COURT'S MARCH 10, 2010 ORDER**

5 ICE's unilateral decision to enact the Interim Policy has mooted Plaintiff's potential
6 appeal of the March 10, 2010 order making vacatur appropriate. "Vacatur must . . . be granted
7 where mootness results from the unilateral action of the party who prevailed in the lower court."
8 *United States Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23 (1994). On March 10,
9 2010, the Court upheld Federal Defendants' interpretation of 8 C.F.R. § 287.7 as allowing
10 detainees to be issued without an Independent LLEA Basis for Custody. In August, 2010, ICE
11 issued the Interim Policy, explicitly stating that ICE agents may not issue detainees without an
12 Independent LLEA Basis for Custody. The adoption of the Interim Policy by the Federal
13 Defendants constituted unilateral action, mooting the Plaintiffs' challenge to the practice of
14 issuing detainees without an Independent LLEA Basis for Custody as well as Plaintiffs' potential
15 appeal of the March 10, 2010 order.

16
17 The unilateral action standard for vacatur as articulated in *Bancorp* has been applied in
18 both the Ninth Circuit and the Northern District of California to vacate decisions after the
19 prevailing party has unilaterally changed their policy rendering a court's decision on an issue
20 moot. In *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1032 (9th Cir.
21 2006), the Ninth Circuit vacated a judgment by the district court that upheld the validity of a City
22 of Santa Monica ordinance that required prior authorization for distribution of food on public
23 sidewalks. After the district court granted summary judgment in favor of the defendant, the City
24 of Santa Monica amended its food distribution policy to allow for the non-commercial
25 distribution of food on public sidewalks in Santa Monica. *Id.* at 1029-1030. Based on this
26 policy change, the plaintiffs abandoned their challenge to the food distribution ordinance and the
27
28

1 Ninth Circuit “vacate[d] the district court’s judgment insofar as it upheld [the ordinance’s]
2 validity” on the grounds that the ordinance “amendments made subsequent to the filing of this
3 suit render moot the challenge to the food distribution ordinance.” *Id.* at 1032.

4 In *Davis, Cowell & Bowe v. Social Security Administration*, 281 F.Supp.2d 1154 (N.D.
5 Cal. 2003), the court granted the defendant’s summary judgment motion and dismissed
6 plaintiff’s Freedom of Information Act (“FOIA”) request on the grounds that the W-2 and W-3
7 statements that the plaintiffs sought constituted confidential tax information exempt from
8 disclosure under FOIA. Following the court’s order granting summary judgment, the Internal
9 Revenue Service changed its policy regarding the treatment of W-2 and W-3 statements as
10 confidential tax return information. Based on this change and a declaration filed by defendants,
11 the parties jointly moved for vacatur of the court’s order granting summary judgment. The court
12 granted the motion for vacatur because, in part, the “unilateral change in policy also moots the
13 case.” *Id.* at 1156.

14 In the instant case, the Federal Defendants prevailed in their motion to dismiss Plaintiffs’
15 claims for relief to the extent they were based on a regulatory interpretation that would have
16 prohibited the issuance of detainers without an Independent LLEA Basis for Custody. Less than
17 six months later, while the litigation was still ongoing, ICE unilaterally issued the Interim Policy
18 which specifically prohibits the issuance of detainers without an Independent LLEA Basis for
19 Custody. The issuance of the Interim Policy, like the amendment to the food distribution
20 ordinance in *Santa Monica Food Not Bombs*, renders moot an appeal of the March 10, 2010
21 order by the Plaintiff. Thus, in accordance with the parties’ settlement agreement and desire to
22 avoid litigating any appeal of the March 10, 2010 order, Plaintiff and Defendants jointly seek the
23 order’s vacatur.

24 ///

1
2 IT IS HEREBY JOINTLY REQUESTED that the Court vacate as moot the Order Re
3 Motions to Dismiss dated March 10, 2010 (Dkt. 164).
4

5 COMMITTEE FOR IMMIGRANT RIGHTS
6 OF SONOMA COUNTY

7 DATED: December 5, 2011

LATHAM & WATKINS LLP

Alfred C. Pfeiffer

Megan Bouchier

Jason Daniels

Casey R. O'Connor

Robert Studley

Stephanie Song

11 By:

CASEY R. O'CONNOR

12 Julia Harumi Mass

13 Alan L. Schlosser

14 AMERICAN CIVIL LIBERTIES UNION
15 FOUNDATION OF NORTHERN CALIFORNIA

16 Attorneys for Plaintiffs

17 DATED: December , 2011

Respectfully submitted,

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19 United States Attorney

20 By:

ILA DEISS

Assistant United States Attorney

22 WILLIAM ORRICK, III.

Deputy Assistant Attorney General, Civil Division

23 DAVID J. KLINE

Director

24 By:

25 COLIN KISOR

Deputy Director

26 Attorneys for Federal Defendants
27
28

1
2 IT IS HEREBY JOINTLY REQUESTED that the Court vacate as moot the Order Re
3 Motions to Dismiss dated March 10, 2010 (Dkt. 164).
4

5 COMMITTEE FOR IMMIGRANT RIGHTS
6 OF SONOMA COUNTY

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16 Attorneys for Plaintiffs

17 DATED: December 5, 2011

Respectfully submitted,

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20 By:

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Deputy Assistant Attorney General, Civil Division

23 DAVID J. KLINE

Director

24 By:

25 COLIN KISOR

Deputy Director

Attorneys for Federal Defendants

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[PROPOSED] ORDER

Pursuant to Joint Motion, the Court hereby vacates as moot the Order Re Motions to Dismiss, dated March 10, 2010 (Dkt. 164).

IT IS SO ORDERED.

Dated:

RICHARD SEEBORG
United States District Judge

EXHIBIT E

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Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

COMMITTEE FOR IMMIGRANT
RIGHTS OF SONOMA COUNTY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, IMMIGRATION AND
CUSTOMS ENFORCEMENT;
DEPORTATION OFFICER MARIO
HUELGA and SPECIAL AGENT CHRIS
MERENDINO, in their official capacities,

Defendants.

No. C 08-4220 RS

**STIPULATION TO DISMISS ALL
REMAINING CLAIMS BROUGHT BY
PLAINTIFF COMMITTEE FOR
IMMIGRANTS RIGHTS OF SONOMA
COUNTY AGAINST FEDERAL
DEFENDANTS WITH PREJUDICE; and
[proposed] ORDER**

STIPULATED DISMISSAL
C 08-4220 RS

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2
3
4 WHEREAS, on December 5, 2011, remaining Plaintiff Committee for Immigrant Rights
5 of Sonoma County (CIRSC) and the remaining Federal Defendants entered into a Settlement
6 Agreement resolving all remaining claims in this Action,

7 IT IS HEREBY STIPULATED that all remaining claims brought by Plaintiff CIRSC
8 against the Federal Defendants be dismissed with prejudice pursuant to Fed. R. Civ. P.
9 41(a)(1)(ii) and the parties' December 5, 2011 Settlement Agreement, each party to bear its own
10 costs and fees.

11
12 COMMITTEE FOR IMMIGRANT RIGHTS
13 OF SONOMA COUNTY

14 DATED: December 5, 2011

15 LATHAM & WATKINS LLP
16 Alfred C. Pfeiffer
17 Megan Bouchier
18 Jason Daniels
19 Casey R. O'Connor
20 Robert Studley
21 Stephanie Song

22 By:

23 
24 CASEY R. O'CONNOR

25 Julia Harumi Mass
26 Alan L. Schlosser

27 AMERICAN CIVIL LIBERTIES UNION
28 FOUNDATION OF NORTHERN CALIFORNIA

Attorneys for Plaintiffs

24 ///
25 ///
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1 DATED: December 5, 2011

Respectfully submitted,

2 MELINDA HAAG
3 United States Attorney

4 By:

ILA DEISS
Assistant United States Attorney

6 WILLIAM ORRICK, III.
7 Deputy Assistant Attorney General, Civil Division
8 DAVID J. KLINE
Director

9 DATED: December 5, 2011

By:

Colin Kisor
COLIN KISOR
Deputy Director

Attorneys for Federal Defendants

14 [Proposed] ORDER

15 Pursuant to Stipulation,

16 IT IS SO ORDERED. The Clerk shall close this case.

18 Dated:

RICHARD SEEBORG
United States District Judge