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17 Guadalupe Robles Plascencia

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 GUADALUPE ROBLES
21 PLASCENCIA,

22 Plaintiff,

23 v.

24 UNITED STATES OF AMERICA;
ICE DOES 1-8; SAN BERNARDINO
25 COUNTY; SAN BERNARDINO
COUNTY SHERIFF'S
26 DEPARTMENT; and CALIFORNIA
DOES 1-10,

27 Defendants.
28

Case No. 5:17-cv-02515

COMPLAINT

JURY TRIAL REQUESTED

1 1. Plaintiff Guadalupe Robles Plascencia (“Ms. Plascencia”) is a U.S.
2 citizen of Mexican origin who naturalized over two decades ago. She has been a
3 resident of San Bernardino, California for approximately 38 years, where she raised
4 two daughters and three sons and works as a hairstylist. She is 60 years old.

5 2. On March 29, 2017, Ms. Plascencia accompanied her daughter to the
6 Ontario Police Department to collect property of theirs recovered from the scene of
7 a car accident. Instead of walking out with her things, however, Ms. Plascencia
8 found herself under arrest. To her shock and dismay, the San Bernardino County
9 Sheriff’s Department took her into custody and handed her over to Immigration and
10 Customs Enforcement (“ICE”) agents that arrested, handcuffed, and detained her—
11 even though Ms. Plascencia repeatedly told both county and federal officers that she
12 is an American citizen and offered to provide documents showing this to be true.

13 3. Ms. Plascencia is far from the only U.S. citizen that ICE has wrongfully
14 arrested and detained. The key electronic databases that ICE agents use to identify
15 enforcement targets and discern citizenship and immigration status contain no
16 electronic records of naturalization from before 1994, and only spotty
17 information from before 2008. Nevertheless, ICE agents rely on these databases,
18 which they know to be incomplete and full of errors, to target people for arrest and
19 detention.

20 4. Although information about ICE’s patterns and practices of wrongful
21 arrests is published and well known, the San Bernardino County Sheriff’s
22 Department continues to provide ICE agents with information about individuals in
23 the Sheriff’s custody and to notify ICE when an individual the agency is interested
24 in is ready to be released from County jail. The Sheriff’s Department then provides
25 ICE agents access to its facilities, including the jail building and the secure parking
26 lot—and, on information and belief, even delays the process of releasing people in
27 its custody—to assist ICE in carrying out immigration arrests.

28

1 10. Defendants “ICE Does 1-8” are individuals whose identities are not
2 currently known to Plaintiff, and who by their actions caused, prolonged, or
3 exacerbated Ms. Plascencia’s unlawful arrest and detention and violations of her
4 rights. On information and belief, they are and were at all relevant times agents,
5 employees, officers or otherwise representatives of ICE. At all times relevant to this
6 Complaint, ICE Does 1-8 were acting within the scope and course of their
7 employment with ICE, an executive agency of the United States. Plaintiff intends to
8 amend the complaint upon learning the identities of ICE Does 1-8. Ms. Plascencia
9 sues ICE Does 1-8 in their individual capacities.

10 11. Defendant County of San Bernardino (“San Bernardino County”;
11 “County”) is a proper defendant in this action as to Ms. Plascencia’s claims made
12 pursuant to the California Tort Claims Act, Cal Gov’t Code §§ 810-996 (CTCA).
13 San Bernardino County is a political subdivision, organized under the laws of the
14 State of California. The San Bernardino County Sheriff’s Department is a
15 department of San Bernardino County. The County is vicariously liable for the
16 tortious acts of its employees. San Bernardino County, through its Sheriff’s
17 Department, was at all relevant times the employer of California Does 1-10.

18 12. Defendant San Bernardino County Sheriff’s Department (“Sheriff’s
19 Department”) is and was at all relevant times the employer of California Does 1-10.
20 The Sheriff’s Department was at all relevant times responsible for ensuring that its
21 officers act in accordance with the U.S. Constitution, the California Constitution,
22 and federal and state law. Specifically, the Sheriff’s Department was at all relevant
23 times responsible for formulating, implementing, changing, approving, and/or
24 allowing policies, customs, or practices applicable to its deputies’ conduct with
25 respect to the detention and release of individuals, and their dealings and
26 communications with immigration officials. On information and belief, the
27 Sheriff’s Department maintains a policy, custom, or practice of communicating
28 information about individuals in its custody to ICE, notifying ICE when identified

1 individuals are being released, and granting ICE access to its secure facilities to
2 enable ICE agents to conduct arrests on the premises in order to transfer targeted
3 individuals to federal immigration detention.

4 13. Defendants California Does 1-10 are individuals whose identities are not
5 currently known to Ms. Plascencia, and who by their actions caused, prolonged, or
6 exacerbated Ms. Plascencia's unlawful detention and violations of her rights. On
7 information and belief, they were at all relevant times agents, employees, officers or
8 otherwise representatives of San Bernardino County and its Sheriff's Department, in
9 whose custody Ms. Plascencia was detained. Ms. Plascencia intends to amend the
10 complaint upon learning the identities of California Does 1-10. Ms. Plascencia sues
11 California Does 1-10 in their individual capacities.

12 **JURISDICTION AND VENUE**

13 14. The Court has subject matter jurisdiction over Ms. Plascencia's claims
14 under the U.S. Constitution, 42 U.S.C. § 1983, 28 U.S.C. § 1331 (federal question),
15 and 28 U.S.C. § 1343 (civil rights). The Court has supplemental jurisdiction over
16 Plaintiff's state law claims under 28 U.S.C. § 1367.

17 15. On May 24, 2017, Ms. Plascencia timely filed an administrative
18 complaint with the federal government. Ms. Plascencia is authorized to file her
19 FTCA claims in this District Court because her administrative tort claim has not
20 been resolved six months following filing. Accordingly, Ms. Plascencia's claims
21 are deemed denied, and she has exhausted all available administrative remedies.
22 *See* 28 U.S.C. §§ 2675, 1346.

23 16. On May 24, 2017, Ms. Plascencia timely filed an administrative tort
24 claim with San Bernardino County. The County issued a notice rejecting her claims
25 on June 27, 2017. She has exhausted all available administrative remedies. *See* Cal.
26 Gov't. Code §§ 913, 945.6(a)(1).

27 17. Venue is proper in this District under 28 U.S.C. § 1402(b) because the
28 acts at issue in this lawsuit occurred within the District.

1 **STATEMENT OF FACTS**

2 **Ms. Plascencia's Arrest**

3 18. On or about March 29, 2017, at approximately 4:00 p.m.,
4 Ms. Plascencia walked into the Ontario Police Department to collect her legally
5 obtained firearm that had been recovered from her vehicle following a motor vehicle
6 accident.

7 19. Upon her arrival, Ms. Plascencia produced her lawfully issued and valid
8 California driver's license and gun registration to police officers to reclaim the
9 firearm. The officers asked Ms. Plascencia to wait in a small room, ostensibly for
10 the purpose of locating and returning her property.

11 20. Instead of returning with her property, however, two police officers
12 arrived and informed Ms. Plascencia that she was being arrested based on a
13 10-year-old warrant.

14 21. The officers could not explain to Ms. Plascencia the legal basis for
15 issuance of the warrant, other than by describing the warrant as related to
16 "disobeying a court order." They never gave a clear answer to Ms. Plascencia's
17 repeated questions as to the basis of the warrant.

18 22. Ms. Plascencia was never read her *Miranda* rights or provided with a
19 writing summarizing her *Miranda* rights.

20 23. The officers placed Ms. Plascencia in a cell. After approximately seven
21 hours, they took her fingerprints, then placed her back in the cell.

22 **Ms. Plascencia's Transfer to the West Valley Detention Center**

23 24. After an indeterminate amount of time, officers handcuffed
24 Ms. Plascencia, chained her around the waist, and placed her in a transport truck.
25 Officers drove her to the West Valley Detention Center, a San Bernardino County
26 jail located at 9500 Etiwanda Ave, Rancho Cucamonga, California 91739.

27 25. After holding Ms. Plascencia in a cell for approximately three hours, a
28 Sheriff's deputy directed Ms. Plascencia to sign a document informing the Mexican

1 consulate of her arrest. Even though she should not have had to do so because the
2 Sheriff's Department already had her driver's license, gun registration, and other
3 paperwork, Ms. Plascencia explained and insisted that she was a U.S. citizen and
4 could prove it if given the opportunity to produce her passport. The deputy told Ms.
5 Plascencia the form would help her get an attorney, so she signed the consular
6 notification.

7 26. Ms. Plascencia spent the night in a cell in the West Valley Detention
8 Center.

9 **Ms. Plascencia's Detention Was Extended Without Explanation**

10 27. Early the following afternoon, before 2:00 p.m., a Sheriff's deputy
11 escorted Ms. Plascencia to a small desk where she was asked to sign a document
12 notifying ICE that she was being released. The document was entirely in English.
13 Ms. Plascencia asked why ICE was being notified of her release since she was a
14 U.S. citizen. The deputy responded that Ms. Plascencia would not be released
15 unless she signed the ICE notification form. As a result, Ms. Plascencia signed the
16 notification form. A deputy then gave Ms. Plascencia her driver's license, gun
17 registration, and other paperwork related to her arrest.

18 28. Although the deputy told Ms. Plascencia that she would be released
19 upon signing the ICE notification form, Sheriff's Department officers did not
20 actually permit her to leave the West Valley Detention Center. Instead,
21 Ms. Plascencia was told to go into a small cell across from the desk where she had
22 received her paperwork. A deputy instructed Ms. Plascencia to wait there for
23 further instruction. Though the cell door remained open, it was clear to
24 Ms. Plascencia that she was not permitted to walk out of the room. On information
25 and belief, the deputy directed Ms. Plascencia to wait in the cell as a ruse to delay
26 Ms. Plascencia's departure from the West Valley Detention Center until ICE
27 arrived. The deputy willfully and intentionally held Ms. Plascencia, knowing there
28 was no legal basis to do so.

1 29. After being detained for an additional 10 to 15 minutes in the small cell,
2 a deputy told Ms. Plascencia she was free to leave the building. The deputy did not
3 explain why she had been detained in this manner.

4 30. On information and belief, San Bernardino County Sheriff's Department
5 officers prolonged Ms. Plascencia's detention because ICE agents communicated an
6 intention to take Ms. Plascencia into custody. The officers stalled Ms. Plascencia's
7 release in order to afford ICE agents additional time to arrive at the West Valley
8 Detention Center and effect Ms. Plascencia's arrest. The San Bernardino County
9 Sheriff's Department maintains an unlawful policy, custom, or practice of delaying
10 the release of people in their custody whom they no longer have a legal basis to
11 detain, including by unreasonably extending the administrative processes associated
12 with their release from County custody, in order to aid and abet ICE arrests. The
13 deputies who prolonged Ms. Plascencia's detention acted in accordance with this
14 policy, custom, or practice.

15 **ICE Arrested Ms. Plascencia Without Probable Cause**

16 31. As Ms. Plascencia walked towards the exit of West Valley Detention
17 Center, two men approached her near the entrance and stopped her. They identified
18 themselves to Ms. Plascencia as ICE agents and immediately arrested her.

19 32. Ms. Plascencia explained to the ICE agents that she was a U.S. citizen.
20 Despite the fact that she had a validly issued California driver's license and gun
21 registration, the agents laughed at her and said that, if she were a U.S. citizen, she
22 would have paperwork on her person to prove it.

23 33. Ms. Plascencia, however, confirmed that she could provide additional
24 paperwork to prove her U.S. citizenship—namely her passport—if given the chance.
25 The ICE agents disregarded Ms. Plascencia's pleas for an opportunity to establish
26 her U.S. citizenship. Instead, they took her to an unmarked vehicle in the jail's
27 secure parking lot. Two additional ICE agents were waiting for Ms. Plascencia
28 inside the vehicle.

1 34. On information and belief, the San Bernardino County Sheriff's
2 Department had permitted the ICE agents to park their vehicle in the secure parking
3 lot of the West Valley Detention Center for the purpose of facilitating
4 Ms. Plascencia's unlawful arrest.

5 35. Ms. Plascencia was handcuffed before being placed in the back of the
6 unmarked vehicle. Without any explanation whatsoever, the ICE agents held
7 Ms. Plascencia in the vehicle—still in the secure parking lot of the West Valley
8 Detention Center—for approximately 30 minutes before they informed her that they
9 were taking her to ICE's San Bernardino Field Station.

10 36. The ICE agents transported Ms. Plascencia from the West Valley
11 Detention Center to the ICE Field Station. Still handcuffed, the agents escorted
12 Ms. Plascencia inside the field station and instructed her to wait. The ICE agents
13 never removed Ms. Plascencia's handcuffs during this time. The arresting ICE
14 agents then left the facility.

15 37. Another ICE agent approached Ms. Plascencia and told her to identify
16 herself. Ms. Plascencia gave her name. The officer laughed and said, "Here, you
17 are nobody, you're nothing." Ms. Plascencia asked the agent why they were
18 arresting and detaining her, but the ICE agent refused to provide an explanation.

19 38. After some time, an agent removed Ms. Plascencia's handcuffs. A
20 second ICE agent asked Ms. Plascencia for her lawfully issued California driver's
21 license, which she provided. She again told that agent that she was a U.S. citizen
22 and that her daughter had her passport. The requesting agent said that he could
23 review data accessible through a computer and determine her citizenship status, but
24 he mockingly stated that he knew the system would prove that Ms. Plascencia was
25 lying. During this time, in callous disregard of Ms. Plascencia and her rights, ICE
26 agents repeatedly accused Ms. Plascencia of identity theft, saying that she was using
27 a false name and documentation, and threatened her with deportation.

28

1 According to DHS, “CIS serves as a DHS-wide index used to track the location of
2 case files, to include Alien Files (A-File) nationally and to maintain alien status and
3 repository information. CIS contains information on the status of individuals,
4 including lawful permanent residents, naturalized citizens, U.S. border crossers,
5 apprehended aliens, legalized aliens, aliens who have been issued employment
6 authorizations, and other individuals of interest to DHS. CIS provides information
7 used for granting or denying benefits and capturing subsequent status changes;
8 documenting chain of custody for enforcement; keeping track of immigrant
9 statistics; and control and account of record keeping services in accordance with the
10 Code of Federal Regulations (CFR) to certify the existence or non-existence of
11 records.”

12 44. CIS is not a complete repository of information about all citizens and
13 noncitizens in the United States, nor does it provide a complete account of whether
14 individuals are subject to removal.

15 45. Even concerning information that it purports to maintain, the CIS
16 database is incomplete. On information and belief, DHS only began to digitize
17 applicants’ fingerprints (and to input the associated records electronically) in 1994.
18 USCIS only began to consistently digitize the fingerprints of those who apply for
19 immigration benefits in 2008. Therefore, naturalization and citizenship applications
20 created prior to 2008 are not consistently available in the CIS database; those
21 created prior to 1994 are not available at all.

22 46. On information and belief, the CIS database is replete with errors: these
23 include outdated information, misspelling of names, and erroneous immigration
24 status information, among other problems. The DHS Office of the Inspector
25 General and the Government Accountability Office have reported on these errors,
26 and they are well known throughout DHS. These errors in these databases have
27 given rise to litigation. *See, e.g., Gonzalez v. ICE*, No. 2:13-cv-04416 (C.D. Cal.).
28

1 47. ICE has acknowledged in the context of immigration detainers that it
2 does not have probable cause when it initiates arrests based on evidence of foreign
3 birth and no match in these databases.

4 48. On information and belief, ICE and its agents are aware of the
5 incomplete and inaccurate nature of these databases, but nonetheless relies on them
6 for arrest determinations.

7 49. On information and belief, the San Bernardino County Sheriff's
8 Department and its officers are aware of the incomplete and inaccurate nature of
9 these databases.

10 50. On information and belief, this practice contributes to ICE unlawfully
11 arresting U.S. citizens without authority and without probable cause.¹

12 51. On information and belief, Defendants ICE Does 1-8 arrested Ms.
13 Plascencia on the basis of evidence of her birth in Mexico and the *absence* of any
14 information in the CIS database or any other immigration database.

15 52. On information and belief, without any probable cause to believe she
16 was a noncitizen subject to removal, Defendants ICE Does 1-8 arrested Ms.
17 Plascencia solely on the basis of her national origin, place of birth, race, ethnicity, or
18 language ability.

19 **The San Bernardino County Sheriff's Department's Collaboration with ICE**

20 53. The San Bernardino County Sheriff's Department has a long-standing
21 collaborative relationship with ICE.

22 54. The San Bernardino County Sheriff's Department receives immigration
23 detainers from ICE. An immigration detainer is a fill-in-the-blank form completed
24 by an ICE officer that requests a law enforcement agency to maintain custody of an
25 individual for up to 48 hours beyond the time the individual becomes due for release
26 from custody so that ICE may take custody of the person for purposes of civil

27 ¹ See Joel Rubin and Paige St. John, "How a U.S. citizen was mistakenly targeted for deportation.
28 He's not alone," *L.A. Times* (Nov. 29, 2017), <http://www.latimes.com/local/lanow/la-me-ice-citizen-arrest-20171129-story.html>.

1 immigration enforcement. In the civil immigration context, ICE does not obtain a
2 warrant signed by a judge when it issues detainers or anytime thereafter, nor does it
3 provide a judicial warrant to the receiving law enforcement agency. In addition,
4 ICE does not make an individualized determination of probable cause prior to
5 issuing a detainer.

6 55. The San Bernardino County Sheriff's Department's policy is not to hold
7 inmates for up to 48 hours beyond the time they are eligible for release on an
8 immigration detainer. Instead, on information and belief, the Department's policy is
9 to treat a detainer as a request for notification of a person's release date. To that
10 end, the Department's policy is to notify ICE of the release dates of every person in
11 its custody who receives a detainer.

12 56. On information and belief, the San Bernardino County Sheriff's
13 Department maintains a policy, custom, or practice of notifying ICE of an
14 individual's release and detaining those individuals beyond the time they would
15 otherwise be released to facilitate ICE's arrival to the jail and arrest.

16 57. On information and belief, the San Bernardino County Sheriff's
17 Department commonly permits ICE access to its facilities, including the secure
18 parking lot, to effectuate the arrests of individuals.

19 58. On information and belief, these policies, customs, or practices have led
20 the San Bernardino County Sheriff's Department to unlawfully extend the detention
21 of several individuals in addition to Ms. Plascencia, in order for ICE to effectuate
22 their arrests.

23 59. On information and belief, these policies, customs, or practices
24 foreseeably do and in Ms. Plascencia's case did result in the Sheriff's Department
25 detaining individuals beyond the time they would otherwise be released from
26 custody and without probable cause for a new arrest.

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1 **Ms. Plascencia Suffered Financially and Continues**
2 **to Suffer from Mental and Emotional Pain as a Result of her**
3 **Unlawful and Arbitrary Arrest and Detention**

4 60. As a direct result of the events that form the basis of this lawsuit, Ms.
5 Plascencia's demeanor has changed: she is fearful, and every time she sees a police
6 officer drive by she feels profound anxiety and physical unease. This anxiety, and
7 its attendant physical symptoms, have on several occasions prevented
8 Ms. Plascencia from opening her shop for the day. Ms. Plascencia is afraid to travel
9 to Mexico, and indeed she has not left the country since her arrest, because she
10 worries that immigration authorities will not let her back in.

11 61. Ms. Plascencia has suffered and continues to suffer from serious
12 emotional distress, pain, suffering, trauma, worry, anxiety, humiliation, and
13 embarrassment, as well as physical symptoms, such as headaches, nausea, loss of
14 sleep, fatigue, and anxiety attacks. Ms. Plascencia has sought treatment from
15 professional therapists.

16 62. Ms. Plascencia also experienced loss of income due to loss of
17 employment during her detention and subsequent period of recovery from this
18 traumatic experience.

19 **PRAYER FOR RELIEF**

20 **COUNT I**

21 **Federal Tort Claims Act**

22 **False Arrest/False Imprisonment**

23 **(Against Defendant United States)**

24 63. The foregoing allegations are realleged and incorporated herein.

25 64. Defendant United States, through ICE Does 1-8, inflicted personal
26 injury on Ms. Plascencia by subjecting her to false arrest and imprisonment.

27 65. There was no lawful justification for Ms. Plascencia's arrest. ICE Does
28 1-8 did not have probable cause to believe she was a noncitizen subject to removal

1 from the United States. Upon information and belief, Ms. Plascencia was arrested
2 on the impermissible basis of race, ethnicity, language ability, and/or national
3 origin.

4 66. Further, on information and belief, ICE Does 1-8 intentionally caused
5 Ms. Plascencia's detention by the San Bernardino County Sheriff's Department to
6 be prolonged, without probable cause to believe she was removable, in the face of
7 substantial evidence that Ms. Plascencia is a U.S. citizen, in reliance on faulty
8 databases and/or due to failure to access readily available information.² This
9 detention was without legal justification or probable cause.

10 67. Ms. Plascencia did not freely and voluntarily consent to her
11 imprisonment.

12 68. ICE Does 1-8's conduct proximately caused Ms. Plascencia actual
13 harm: this unlawful arrest resulted in Ms. Plascencia's loss of liberty, lost wages,
14 and other personal injuries as set forth above.

15 69. ICE Does 1-8 were, at all times relevant, officers and/or employees of
16 ICE and, as such, acting as employees of Defendant United States.

17 **COUNT II**

18 **Federal Tort Claims Act**

19 **Negligence**

20 **(Against Defendant United States)**

21 70. The foregoing allegations are realleged and incorporated herein.

22 71. ICE officials have a duty to act with reasonable care and to not subject
23 individuals to personal injury during the course of their duties.

24 72. ICE officials have a duty to not subject individuals to discriminatory
25 treatment on the basis of actual or perceived race, ethnicity, and/or national origin.

26 ² ICE's own internal policies regarding the investigation of potential U.S. Citizenship requires
27 agents to check "all available DHS data systems *and any other reasonable means available to the*
28 *officer.*" Memorandum on Investigating the Potential U.S. Citizenship of Individuals Encountered
by ICE, No. 16001.2, § 5.1(1) (Nov. 10, 2015), available at:
<https://www.ice.gov/sites/default/files/documents/Document/2017/16001.2.pdf> (emphasis added).

1 73. ICE officials have a duty to not subject individuals to unreasonable
2 searches or seizures.

3 74. Defendant United States, through ICE, and Defendants ICE Does 1-8
4 breached one or more of these duties.

5 75. As set forth above, ICE officials routinely rely on databases that they
6 know and admit to be incomplete to authorize and justify the issuance of detainers
7 and arrests. This causes harm to individuals like Ms. Plascencia (including other
8 naturalized citizens) by depriving them of their liberty without probable cause to
9 believe they are removable. On information and belief, Defendants ICE Does 1-8's
10 negligent reliance solely on databases known to be flawed and Ms. Plascencia's
11 actual or perceived race, ethnicity, or national origin caused Ms. Plascencia's
12 unlawful detention and resulting injuries.

13 76. As set forth above, the ICE Does 1-8 who caused Ms. Plascencia's
14 detention by San Bernardino County Sheriff's Department officers to be prolonged,
15 and who arrested her at the West Valley Detention Center, did so in reliance on
16 ICE's faulty databases, in spite of her assertion of U.S. citizenship and abundant
17 legitimate countervailing evidence of U.S. citizenship that Ms. Plascencia offered
18 the officers, which could have been verified through readily available information.
19 On information and belief, ICE Does 1-8's lack of probable cause or reasonable care
20 caused Ms. Plascencia's unlawful detention and resulting injuries.

21 77. ICE Does 1-8 were, at all times relevant, officers and/or employees of
22 ICE and, as such, acting as employees of Defendant United States.

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COUNT III

Federal Tort Claims Act

Intentional Infliction of Emotional Distress or in the Alternative

Negligent Infliction of Emotional Distress

(Against Defendant United States)

78. The foregoing allegations are realleged and incorporated herein.

79. Despite Ms. Plascencia’s constant assertions and offers of proof that she is a U.S. citizen, Defendant United States, through ICE Does 1-8, intentionally took her into federal custody without probable cause. They also unnecessarily delayed the processing of her information and release. ICE officials denigrated, threatened, and insulted Ms. Plascencia as she objected to her treatment, denying her humanity by saying she was “nothing” and “nobody” and threatening to deport her to Mexico without cause.

80. These actions, carried out by agents in a relation or position of power with respect to Ms. Plascencia, were outrageous.

81. Defendant United States, through ICE Does 1-8, intended to cause or negligently caused Ms. Plascencia emotional distress. Defendant’s conduct was designed to cause and naturally caused severe emotional distress, including pain, suffering, trauma, worry, anxiety, humiliation, and embarrassment. Ms. Plascencia has had and continues to have physical and emotional symptoms such as headaches, nausea, loss of sleep, fatigue, and anxiety attacks for more than 10 months.

82. ICE Does 1-8 were, at all times relevant, officers and/or employees of ICE and, as such, acting as employees of Defendant United States.

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COUNT IV

Federal Tort Claims Act

The Bane Act (Cal. Civ. Code § 52.1(a))

(Against Defendant United States)

83. The foregoing allegations are realleged and incorporated herein.

84. Defendant United States, through ICE Does 1-8, intentionally caused Ms. Plascencia to be detained and detained her without probable cause to believe she was removable, solely on the basis of her race, ethnicity, and/or national origin, and despite her consistent assertions that she is a U.S. citizen. This unlawful detention was accomplished through coercion, *i.e.*, through Ms. Plascencia's forced continuing incarceration. Therefore, Defendant United States, through ICE Does 1-8, violated Ms. Plascencia's rights under California Civil Code § 52.1 and the following clearly established rights under law, including but not limited to:

- a. The right to be secure from unreasonable searches and seizures, as secured by the Fourth Amendment to the U.S. Constitution and the California Constitution, Article 1, Section 13; and
- b. The right to equal protection under law, regardless of perceived or actual race, ethnicity, or country of origin, as secured by the Fifth Amendment to the U.S. Constitution and the California Constitution, Article 1, Section 7.

85. As a direct and proximate result of Defendants' acts as set forth above, Ms. Plascencia sustained injuries and damages.

86. ICE Does 1-8 were, at all times relevant, officers and/or employees of ICE and, as such, acting as employees of Defendant United States.

COUNT V

Fourth Amendment (*Bivens*)

Unreasonable Seizure

(Against Defendants ICE Does 1-8)

87. The foregoing allegations are realleged and incorporated herein.

88. The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures.”

89. As set forth above, Defendants ICE Does 1-8 seized and detained Ms. Plascencia without probable cause to believe Ms. Plascencia was a noncitizen subject to removal and detention.

90. The detention constituted an unreasonable seizure in violation of Ms. Plascencia’s Fourth Amendment rights.

91. As of March 30, 2017, it was clearly established that an ICE officer must have probable cause to arrest an individual suspected of being a removable noncitizen. It was also clearly established that ICE does not have probable cause to arrest and detain a U.S. citizen or to make an arrest based on foreign place of birth and the absence of records in databases, which it knows to be incorrect and incomplete.

92. Even if Defendants ICE Does 1-8 had probable cause for the arrest, which they did not, probable cause ceased to exist the moment Ms. Plascencia informed ICE Does 1-8 that she is a U.S. citizen—a fact she asserted upon arrest.

93. ICE Does 1-8’s conduct proximately caused Ms. Plascencia harm, including loss of liberty, lost wages, and other personal injuries as set forth above.

94. In performing the acts alleged herein, ICE Does 1-8 acted maliciously, intentionally, recklessly, and/or with callous indifference to Ms. Plascencia’s constitutional rights, such that an award of punitive damages is appropriate.

COUNT VI

California Tort Claims Act (Cal. Gov't Code §§ 815.2, 820)

False Arrest/False Imprisonment

(Against Defendants San Bernardino County, San Bernardino County Sheriff's Department, and California Does 1-10)

95. The foregoing allegations are realleged and incorporated herein.

96. Defendants California Does 1-10 intentionally caused Ms. Plascencia to be imprisoned without probable cause, all in the face of substantial credible evidence that Ms. Plascencia is a U.S. citizen. There was no lawful justification for Ms. Plascencia's detention after County agents at the West Valley Detention Center purportedly released her. Nevertheless, as set forth above, California Does 1-10 failed to promptly release Ms. Plascencia, instead asking her to wait in the Detention Center.

97. On information and belief, Defendants California Does 1-10 intentionally caused Ms. Plascencia to be imprisoned because they knowingly gave ICE false and/or materially incomplete information regarding Ms. Plascencia's citizenship status. Such information could be expected to stimulate an arrest.

98. On information and belief, Defendants California Does 1-10 intentionally caused Ms. Plascencia to be imprisoned because they authorized, encouraged, directed, or assisted ICE agents by allowing ICE agents to use the West Valley facility secure parking lot to unlawfully detain Ms. Plascencia.

99. On information and belief, Defendants County, Sheriff's Department and California Does 1-10 also intentionally caused Ms. Plascencia to be imprisoned because they intentionally, recklessly, and/or negligently established and/or enforced policies and practices that caused Ms. Plascencia to be unlawfully and tortiously detained. Specifically, as set forth above, these Defendants adopted a policy of notifying ICE agents when individuals with immigration detainers are in County custody, detaining such individuals pending ICE's arrival, and allowing ICE

1 access to its facilities (including the secure parking lot) to effect their arrest, despite
2 knowing that ICE detainers are often unsupported by probable cause, an action
3 which would and did foreseeably result in the prolonged unlawful, nonconsensual
4 detention of Ms. Plascencia and others like her. They also failed to establish and/or
5 enforce policies and practices that would have prevented Ms. Plascencia's unlawful
6 and tortious detention.

7 100. At all times, Ms. Plascencia was aware of her confinement and did not
8 consent to it.

9 101. Ms. Plascencia was actually harmed: this unlawful arrest resulted in
10 Ms. Plascencia's loss of liberty, lost wages, and other personal injuries as set forth
11 above.

12 102. California Does 1-10 were, at all times relevant, officers and/or
13 employees of San Bernardino County and its Sheriff's Department and, as such,
14 acting within the scope of their employment. Under the CTCA, Defendants County,
15 Sheriff's Department, and California Does 1-10 are liable for these actions.

16 **COUNT VII**

17 **California Tort Claims Act (Cal Gov't Code §§ 815.2, 820)**

18 **Negligence**

19 **(Against Defendants San Bernardino County, San Bernardino County Sheriff's**
20 **Department, and California Does 1-10)**

21 103. The foregoing allegations are realleged and incorporated herein.

22 104. Defendants County, Sheriff's Department, and California Does 1-10
23 have a duty to act with reasonable care and not subject individuals to personal injury
24 during the course of their duties.

25 105. Defendants have a duty not to subject individuals to discriminatory
26 treatment on the basis of race, ethnicity, and/or national origin, or to unreasonable
27 searches and seizures.

28

1 106. Defendants have a mandatory duty under law to release an individual if
2 there is no probable cause to detain her, including if any action or warrant against
3 her has been dismissed.

4 107. Defendants have a duty not to maintain policies, customs, or practices
5 whose natural and foreseeable consequence is a violation of individuals' rights and
6 liberties secured by the U.S. Constitution.

7 108. As set forth above, Defendant California Does 1-10 breached these
8 duties by unlawfully extending Ms. Plascencia's detention for the purpose of
9 allowing ICE an opportunity to unlawfully arrest her. The breach was a proximate
10 cause of Ms. Plascencia's unlawful detention and resulting injuries.

11 109. As set forth above, on information and belief, Defendants County,
12 Sheriff's Department, and California Does 1-10 breached these duties by
13 negligently adopting and implementing a policy of notifying ICE agents when
14 individuals with immigration detainers are in County custody, delaying the process
15 of release for such individuals pending ICE's arrival, and allowing ICE access to its
16 facilities (including the secure parking lot) to effect their arrest, despite knowing
17 that ICE detainers are often unsupported by probable cause, an action which would
18 and did foreseeably result in the prolonged unlawful detention of Ms. Plascencia
19 and others like her.

20 110. California Does 1-10 were, at all times relevant, officers and/or
21 employees of San Bernardino County and its Sheriff's Department and, as such,
22 acting within the scope of their employment. Under the CTCA, Defendants County,
23 Sheriff's Department, and California Does 1-10 are liable for these actions.

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COUNT VIII

California Tort Claims Act (Cal. Gov't Code §§ 815.2, 820)

Intentional Infliction of Emotional Distress or in the Alternative

Negligent Infliction of Emotional Distress

**(Against Defendants San Bernardino County, San Bernardino County Sheriff's
Department and California Does 1-10)**

111. The foregoing allegations are realleged and incorporated herein.

112. On information and belief, Defendants California Does 1-10 intentionally or negligently inflicted Ms. Plascencia with emotional distress by unnecessarily delaying the processing of her information and release from West Valley Detention Center, which allowed ICE to unlawfully detain her—despite the fact that there was no reason to believe that Ms. Plascencia could have been the lawful subject of an ICE detainer, and Defendants California Does 1-10 knew or should have known that on March 30, 2017. These Defendants also forced Ms. Plascencia to sign a notification to ICE, threatening her with prolonged detention if she declined, even though she consistently asserted that she is a U.S. citizen.

113. These actions, carried out by agents in a relation or position of power with respect to Ms. Plascencia, were outrageous.

114. As a result of this conduct, Ms. Plascencia has suffered severe emotional distress over a prolonged period of time, including fright, grief, pain, suffering, trauma, worry, anxiety, humiliation, and embarrassment. Ms. Plascencia also has physical symptoms such as headaches, nausea, loss of sleep, fatigue, and anxiety attacks.

115. Ms. Plascencia's emotional distress was the natural consequence of the actions of Defendants California Does 1-10.

116. California Does 1-10 were, at all times relevant, officers and/or employees of San Bernardino County and its Sheriff's Department and, as such,

1 acting within the scope of their employment. Under the CTCA, Defendants County,
2 Sheriff's Department, and California Does 1-10 are liable for these actions.

3 **COUNT IX**

4 **The Bane Act (Cal. Civ. Code § 52.1)**

5 **(Against Defendants San Bernardino County, San Bernardino County Sheriff's**
6 **Department and California Does 1-10)**

7 117. The foregoing allegations are realleged and incorporated herein.

8 118. Defendants California Does 1-10 unlawfully extended Ms. Plascencia's
9 detention until the arrival of ICE agents, solely on the basis of her race, ethnicity,
10 and/or national origin and despite her consistent assertions that she is a U.S. citizen.
11 This unlawful detention was accomplished through coercion, *i.e.*, through Ms.
12 Plascencia's forced continuing incarceration. Therefore, Defendants California
13 Does 1-10 violated Ms. Plascencia's rights under California Civil Code § 52.1 and
14 the following clearly established rights under law, including but not limited to:

- 15 a. The right to be secure from unreasonable searches and seizures,
16 as secured by the Fourth Amendment to the U.S. Constitution and
17 the California Constitution, Article 1, Section 13; and
18 b. The right to equal protection under law, regardless of perceived or
19 actual race, ethnicity, or country of origin, as secured by the
20 Fourteenth Amendment to the U.S. Constitution and the
21 California Constitution, Article 1, Section 7.

22 119. As a direct and proximate result of Defendants' acts and/or omissions as
23 set for above, Ms. Plascencia sustained injuries and damages.

24 120. In performing the acts alleged herein, California Does 1-10 acted
25 maliciously, intentionally, recklessly, and/or with callous indifference to
26 Ms. Plascencia's constitutional rights, such that an award of punitive damages is
27 appropriate.
28

1 121. California Does 1-10 were, at all times relevant, officers and/or
2 employees of San Bernardino County and its Sheriff’s Department and, as such,
3 acting within the scope of their employment. Under the CTCA, Defendants County,
4 Sheriff’s Department, and California Does 1-10 are liable for these actions.

5 **COUNT X**

6 **Fourth and Fourteenth Amendment (42 U.S.C. § 1983)**

7 **Unreasonable Seizure**

8 **(Against Defendants California Does 1-10)**

9 122. The foregoing allegations are realleged and incorporated herein.

10 123. The Fourth Amendment to the U.S. Constitution prohibits
11 “unreasonable searches and seizures.” The Fourth Amendment’s guarantees are
12 applied to the States through the Fourteenth Amendment.

13 124. Defendants California Does 1-10 caused Ms. Plascencia to be detained
14 at West Valley Detention Center after she was entitled to release and after their
15 authority to detain her had ceased.

16 125. Defendants California Does 1-10 did not have probable cause to believe
17 that Ms. Plascencia was a noncitizen subject to removal and detention.

18 126. Despite Ms. Plascencia’s repeated claims that she was a U.S. citizen and
19 her willingness to demonstrate evidence of her citizenship, Defendants California
20 Does 1-10 refused to investigate her claims; instead, they forced Ms. Plascencia to
21 sign an ICE notification form under threat that she would not be released until she
22 signed.

23 127. With knowledge that detaining Ms. Plascencia without probable cause
24 was a Fourth Amendment violation, Defendants California Does 1-10 nonetheless
25 continued to detain Ms. Plascencia, including placing her in a cell after telling her
26 she was ready to be released.

27 128. As of March 30, 2017, it was clearly established that a police officer
28 must have probable cause to arrest an individual suspected of being a removable

1 noncitizen. It was also clearly established that ICE does not have probable cause to
2 arrest and detain a U.S. citizen. It was also clearly established that neither ICE nor a
3 police officer has probable cause to make an arrest based on foreign place of birth
4 and the absence of records in its databases, which it knows to be incorrect and
5 incomplete.

6 129. Defendants California Does 1-10 effected an unreasonable seizure and
7 deprivation of liberty in violation of Ms. Plascencia's Fourth and Fourteenth
8 Amendment rights.

9 130. In performing the acts alleged herein, California Does 1-10 acted
10 maliciously, intentionally, recklessly, and/or with callous indifference to
11 Ms. Plascencia's constitutional rights, such that an award of punitive damages is
12 appropriate.

13 **COUNT XI**

14 **Fourteenth Amendment (42 U.S.C. § 1983)**

15 **Equal Protection**

16 **(Against Defendants California Does 1-10)**

17 131. The foregoing allegations are realleged and incorporated herein.

18 132. The Fourteenth Amendment to the U.S. Constitution provides that "[n]o
19 State shall . . . deny to any person within its jurisdiction the equal protection of the
20 laws."

21 133. On information and belief, by causing Ms. Plascencia's information to
22 be reported to ICE solely on the basis of her place of birth, Hispanic name, Hispanic
23 appearance, and/or English-language ability, Defendants California Does 1-10
24 subjected Ms. Plascencia to adverse treatment (namely, reporting to ICE and
25 consequent detention) based on her race, ethnicity, and/or national origin, in
26 violation of her right to equal protection under the Fourteenth Amendment.

27 134. Defendants California Does 1-10 disregarded Ms. Plascencia's
28 statements that she was a U.S. citizen, and refused to consider her proof of her

1 citizenship, on the basis of her race, ethnicity, and/or national origin. They treated
2 Ms. Plascencia as presumptively subject to detention and removal as an allegedly
3 deportable noncitizen on the basis of her Hispanic identity.

4 135. On March 30, 2017, it was clearly established that it is unconstitutional
5 to detain an individual on the basis of her race, ethnicity, and/or national origin.

6 136. In performing the acts alleged herein, California Does 1-10 acted
7 maliciously, intentionally, recklessly, and/or with callous indifference to
8 Ms. Plascencia's constitutional rights, such that an award of punitive damages is
9 appropriate.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff requests that this Court:

- 12 a. Award compensatory and punitive damages against all individual
13 Defendants in their individual capacities for the above violations of
14 federal and state law;
- 15 b. Award compensatory damages against the United States under the
16 FTCA;
- 17 c. Award prejudgment interest on any award of damages to the extent
18 permitted by law;
- 19 d. Award reasonable attorney's fees and costs, pursuant to 42 U.S.C.
20 § 1988 and any other applicable law; and
- 21 e. Grant such other relief as the Court may deem appropriate.
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JURY TRIAL REQUESTED

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Date: December 19, 2017

SIDLEY AUSTIN LLP

By: /s/ Sean A. Commons

Sean A. Commons
SIDLEY AUSTIN LLP

/s/ Eva L. Bitran

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