

1 DAVID LOY (SBN 229235)
(davidloy@aclusandiego.org)
2 SEAN RIORDAN (SBN 255752)
(sriordan@aclusandiego.org)
3 GABRIELA RIVERA (SBN 283633)
(grivera@aclusandiego.org)
4 MITRA EBADOLAH (SBN 275157)
(mebadolahi@aclusandiego.org)
5 ACLU FOUNDATION OF SAN DIEGO &
6 IMPERIAL COUNTIES
7 P.O. Box 87131
San Diego, CA 92138-7131
8 Phone: (619) 398-4485
9 Fax: (619) 232-0036

10 ANTHONY STIEGLER (SBN 126414)
(stiegleram@cooley.com)
11 DARCIE TILLY (SBN 239715)
(dtilly@cooley.com)
12 COOLEY LLP
13 4401 Eastgate Mall
San Diego, CA 92121-1909
14 Phone: (858) 550-6035
15 Fax: (858) 550-6420

16 Counsel for PLAINTIFFS
17 *[Additional counsel on signature page.]*

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 **CV13- 3972** JAC/PLA

21 ISIDORA LOPEZ-VENEGAS; ANA
22 MARIA DUEÑAS; GERARDO
23 HERNANDEZ-CONTRERAS; EFRAIN
24 GARCIA-MARTINEZ; SAMUEL NAVA;
25 ALEJANDRO SERRATO, individually and
on behalf of all others similarly situated;
26 CANDELARIA FELIX, as next friend of
27 YADIRA FELIX; COALITION FOR
28 HUMANE IMMIGRANT RIGHTS OF
LOS ANGELES; and POMONA
ECONOMIC OPPORTUNITY CENTER,

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF
HABEAS CORPUS**

CLASS ACTION

**(1) VIOLATION OF THE
ADMINISTRATIVE PROCEDURE
ACT, 5 U.S.C. § 551, ET. SEQ.**

(2) VIOLATION OF THE

COMPLAINT

13 JUN -4 AM 11:24
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

FILED

1
2 Plaintiffs,

3 v.

4 JANET NAPOLITANO, SECRETARY OF
5 HOMELAND SECURITY; THOMAS
6 WINKOWSKI, DEPUTY
7 COMMISSIONER, U.S. CUSTOMS AND
8 BORDER PROTECTION; JOHN
9 MORTON, DIRECTOR, BUREAU OF
10 IMMIGRATION AND CUSTOMS
11 ENFORCEMENT ("ICE"); PAUL
12 BEESON, CHIEF BORDER PATROL
13 AGENT, SAN DIEGO SECTOR;
14 GREGORY ARCHAMBEAULT, ICE
15 FIELD OFFICE DIRECTOR, SAN DIEGO;
16 DAVE MARIN, ACTING ICE FIELD
17 OFFICE DIRECTOR, LOS ANGELES,

18 Defendants.

IMMIGRATION AND
NATIONALITY ACT, 8 U.S.C.
§ 1101, *ET. SEQ.*

(3) VIOLATION OF THE FIFTH
AMENDMENT OF THE U.S.
CONSTITUTION

14 INTRODUCTION

15 1. The immigration enforcement agencies operating in Southern
16 California regularly pressure, deceive, and threaten Mexican nationals who are
17 eligible to reside in the United States *lawfully*—and have built lives in the United
18 States over decades—into signing their own expulsion orders through misuse of a
19 process known as “voluntary departure.” These abusive and illegal practices rob
20 victims of their right to seek relief from removal. As administered and practiced in
21 Southern California, the “voluntary departure” program has become a regime of
22 unlawful coerced expulsion—one which tears numerous families apart every year.

23 2. Several courts have noted that voluntary departure is the immigration
24 equivalent of a criminal plea bargain. An individual who consents to voluntary
25 departure avoids removal proceedings and possible detention, and in return accepts
26 expulsion from the United States. The criminal plea process, however, includes
27 rigorous procedural protections. In contrast, as administered in Southern
28

1 California, the "voluntary departure" program is unconstitutional and violates the
2 immigration enforcement agencies' own statutes and regulations.

3 3. Voluntary departure must be accepted knowingly and voluntarily. Yet
4 in Southern California, immigration officials' misstatements, omissions, pressure,
5 and/or threats prevent this from happening. For instance, immigration officers
6 regularly tell individuals that: (1) if they do not agree to "voluntary departure" they
7 will be incarcerated for months; and (2) if they take "voluntary departure" they can
8 quickly and easily "fix" their papers in Mexico so that they can thereafter reside
9 legally in the United States. Such statements are patently false and fail to convey
10 the consequences of taking voluntary departure. Immigrants who elect not to
11 pursue voluntary departure are not automatically or necessarily detained pending a
12 hearing before an immigration judge. Moreover, obtaining a visa to return to the
13 United States from Mexico after a voluntary departure can be slow and difficult, if
14 not entirely impossible. Persons who would be eligible to remain in the United
15 States legally if they appeared before an immigration judge instead of taking
16 voluntary departure lose the ability to pursue many paths to legal status.
17 Additionally, after leaving the United States, many individuals are precluded from
18 obtaining a visa to return to the United States for up to ten years—even though they
19 could have obtained legal status if they had not been misinformed or coerced into
20 accepting voluntary departure.

21 4. Immigration officers' misstatements and omissions are exacerbated by
22 the fact that they regularly pressure individuals to agree to voluntary departure
23 before they have had any opportunity to speak to an attorney.

24 5. Immigration enforcement agencies in Southern California expel
25 individuals who have taken voluntary departure as rapidly as logistically possible—
26 in many instances, on the same day. This practice violates the agencies' governing
27 regulations, which require that immigration officers exercise discretion to
28 determine whether to allow an individual who has taken voluntary departure a

1 period of up to 120 days to leave the United States. Thus, individuals who have
2 been in the United States for decades are unlawfully ripped from their families and
3 established lives *for up to ten years* without having time to consider their other
4 legal options, put their affairs in order, or even say goodbye to family members.

5 6. Plaintiffs seek declaratory and injunctive relief to correct immigration
6 enforcement officers' unlawful voluntary departure practices in Southern
7 California. Individual Plaintiffs Isidora Lopez-Venegas, Ana Maria Dueñas,
8 Gerardo Hernandez-Contreras, Efrain Garcia-Martinez, Samuel Nava, Alejandro
9 Serrato, and Garcia-Martinez (collectively, the "Representative Plaintiffs"), and
10 Candelaria Felix, as next friend of Yadira Felix (collectively, with the
11 Representative Plaintiffs, the "Individual Plaintiffs") are in Mexico after
12 Defendants' agents deceived, pressured, and threatened them into taking voluntary
13 departure. The Individual Plaintiffs seek a declaration that their expulsion from the
14 United States was unlawful and an order that they be returned to the United States
15 in the legal position that they occupied before that expulsion. The Representative
16 Plaintiffs seek the same relief on behalf of a class of similarly situated individuals
17 who would have had a plausible basis to reside legally in the United States under
18 the immigration laws and programs of the Department of Homeland Security had
19 they not been expelled pursuant to the unlawful voluntary departure program as
20 administered in Southern California. Coalition for Humane Immigrant Rights of
21 Los Angeles and Pomona Economic Opportunity Center (collectively, the
22 "Organizational Plaintiffs") are organizations that work with immigrants and
23 immigrant communities. The Organizational Plaintiffs have been and continue to
24 be adversely affected by the way that Defendants implement voluntary departure in
25 Southern California. They seek a declaration that Defendants' conduct and
26 voluntary departure practices are unlawful and an order mandating the
27 implementation of legally adequate safeguards over those procedures.

JURISDICTION AND VENUE

7. In this Complaint, the Individual Plaintiffs raise challenges under the Administrative Procedure Act, the immigration statutes and regulations, and the U.S. Constitution to the way that Defendants processed them for voluntary departure. The Organizational Plaintiffs raise similar challenges to the way that voluntary departure has been and will continue to be administered. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, which confers jurisdiction to consider federal questions. This Court also has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and the Suspension Clause of Article I of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289, 304 (2001).

8. This Court may grant relief under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2241 and 2243 (habeas corpus), 28 U.S.C. §§ 2201-02 (declaratory relief), Fed. R. Civ. P. 65 (injunctive relief), and 5 U.S.C. §§ 702, 706 (Administrative Procedure Act). The United States has waived any sovereign immunity it could claim for declaratory and injunctive relief claims. 5 U.S.C. § 702; *see also, e.g., Clinton v. Babbitt*, 180 F.3d 1081, 1087 (9th Cir. 1999).

9. Venue is proper in the Central District of California because a defendant federal official and multiple plaintiffs reside in this District and because a substantial portion of the events giving rise to Plaintiffs' claims occurred in Los Angeles, Riverside, and Orange Counties. 28 U.S.C. § 1391(e)(1).

PARTIES

10. Plaintiff Isidora Lopez-Venegas is a native of Mexico who lived in the United States for more than a decade before an unlawful voluntary departure in August 2011. Ms. Lopez-Venegas has an eleven-year-old U.S. citizen son who suffers from Asperger's Syndrome who was effectively forced to move to Mexico

1 with his mother as a result of Defendants' unlawful conduct. Ms. Lopez-Venegas
2 remains in Mexico with her son.

3 11. Plaintiff Ana Maria Dueñas is a native of Mexico who lived in the
4 United States for more than three decades before an unlawful voluntary departure in
5 April 2011. Ms. Dueñas has five U.S. citizen children and six U.S. citizen
6 grandchildren in the United States, from whom she is now separated. She remains
7 in Mexico.

8 12. Plaintiff Gerardo Hernandez-Contreras is a native of Mexico who lived
9 in the United States for more than a decade before an unlawful voluntary departure
10 in November 2012. Mr. Hernandez-Contreras has a U.S. citizen wife and two
11 young U.S. citizen children in the United States, from whom he is now separated.
12 He remains in Mexico.

13 13. Plaintiff Efrain Garcia-Martinez is a native of Mexico who lived in the
14 United States for approximately two decades before an unlawful voluntary
15 departure in September 2012. Mr. Garcia-Martinez has family lawfully present in
16 the United States, from whom he is now separated. He remains in Mexico.

17 14. Plaintiff Samuel Nava is a native of Mexico who lived in the United
18 States for more than a decade before an unlawful voluntary departure in March
19 2011. Mr. Nava has a U.S. citizen wife who has been effectively forced to move to
20 Mexico as a result of the government's unlawful conduct. He remains in Mexico
21 with his wife.

22 15. Plaintiff Alejandro Serrato is a native of Mexico who lived in the
23 United States for more than a decade before an unlawful voluntary departure in
24 October 2012. Mr. Serrato has a U.S. citizen wife and son who have been
25 effectively forced to move to Mexico as a result of the government's unlawful
26 conduct. He remains in Mexico with his wife and son.

27 16. Plaintiff Candelaria Felix is acting as next friend for her granddaughter
28 Yadira Felix. Yadira Felix is a native of Mexico who lived in the United States for

1 more than twenty years before an unlawful voluntary departure in August 2012.
2 Yadira Felix suffers from cognitive disabilities that make her unable to assert her
3 own rights in this litigation. As a result, her grandmother, who has acted *in loco*
4 *parentis* and as her caregiver throughout her life, is representing her interests as her
5 next friend. Yadira Felix remains in Mexico.

6 17. Plaintiff Coalition for Humane Immigrant Rights of Los Angeles
7 ("CHIRLA") is a non-profit, community based organization headquartered in Los
8 Angeles. CHIRLA's mission is to advance the human and civil rights of
9 immigrants and refugees, promote harmonious multi-ethnic and multi-racial human
10 relations, and empower immigrants and their allies to build a more just and humane
11 society. At the expense of fully pursuing its organizational goals, CHIRLA has
12 been compelled to devote significant portions of its limited resources to counteract
13 the unlawful practices Defendants employ in the administration of voluntary
14 departure. If CHIRLA had not been compelled to expend these resources to
15 address Defendants' unlawful administration of voluntary departure, it would have
16 directed these resources toward the advancement of pro-immigrant policies and
17 immigrant integration.

18 18. Plaintiff Pomona Economic Opportunity Center ("PEOC") is a non-
19 profit day laborer organization headquartered in Pomona, California. PEOC's
20 mission is to provide an opportunity for day laborers to find safe work at a fair
21 wage, to organize and advocate for themselves, to obtain new trades and skills that
22 improve their employability and quality of life, and to improve the overall
23 conditions for all workers. At the expense of fully pursuing its organizational
24 goals, PEOC has been compelled to devote significant portions of its limited
25 resources to counteract the unlawful practices Defendants employ in the
26 administration of voluntary departure. If PEOC had not been compelled to expend
27 these resources to address Defendants' unlawful administration of voluntary
28

1 departure, it would have directed these resources toward the advancement of
2 workers' rights and other abuses in the immigrant enforcement system.

3 19. Defendant Janet Napolitano is the Secretary of Homeland Security.
4 She exercises authority over both the U.S. Customs and Border Protection ("CBP")
5 and the Bureau of Immigration and Customs Enforcement ("ICE").

6 20. Defendant Thomas Winkowski is the Deputy Commissioner of CBP
7 and performs the duties of Commissioner of CBP. He exercises authority over the
8 U.S. Border Patrol.

9 21. Defendant John Morton is the Director of ICE and exercises authority
10 over that agency.

11 22. Defendant Paul Beeson is the Chief Border Patrol agent for Border
12 Patrol's San Diego Sector, which encompasses the portions of Southern California
13 where the Border Patrol-related incidents described in this Complaint occurred. He
14 exercises authority over Border Patrol activities in that sector.

15 23. Defendant Gregory Archambeault is the ICE Field Office Director for
16 San Diego. He exercises authority over ICE activities in the San Diego region.

17 24. Defendant Dave Marin is the Acting ICE Field Office Director for Los
18 Angeles. He exercises authority over ICE activities in the Los Angeles region.

19 25. All Defendants are sued in their official capacities.

20 FACTS

21 *Legal Background*

22 26. The immigration enforcement agencies have for decades used
23 "administrative voluntary departure" – which the agencies also refer to as
24 "voluntary return" – as an expeditious, summary enforcement tool against non-
25 citizens who are not a high priority for formal "deportation" or "removal" because
26 they have no, or only insignificant, criminal history. The current statute authorizing
27 the practice reads, in part, "The Attorney General may permit an alien voluntarily to
28 depart the United States at the alien's own expense ... in lieu of being subject to

1 [removal proceedings before an immigration judge]....” 8 U.S.C. § 1229c(a)(1).
2 The statute provides that the non-citizen be provided a period of up to 120 days to
3 voluntarily depart from the United States. 8 U.S.C. § 1229c(a)(2)(A).¹

4 27. Federal regulations govern Defendants’ administration of voluntary
5 departure: “The authority contained in section 240B(a) of the Act [8 U.S.C.
6 § 1229c(a)(1)] to permit aliens to depart voluntarily from the United States may be
7 exercised in lieu of being subject to proceedings under section 240 of the Act,” by
8 certain authorized officers within the Department of Homeland Security. 8 C.F.R.
9 § 240.25(a). An “authorized officer, in his or her discretion, shall specify the
10 period of time permitted for voluntary departure, and may grant extensions thereof,
11 except that the total period allowed, including any extensions, shall not exceed 120
12 days.” 8 C.F.R. § 240.25(c). “[A]ny decision regarding voluntary departure shall
13 be communicated in writing on Form I-210, Notice of Action – Voluntary
14 Departure. Voluntary departure may not be granted unless the alien requests such
15 voluntary departure and agrees to its terms and conditions.” *Id.* Form I-210
16 includes fields for specifying a future departure date from the United States, which
17 by statute and regulation may be up to 120 days from the date on which the
18 voluntary departure form is signed. *See* Appendix A, Form I-210, which Plaintiffs
19 incorporate by reference.

20 28. When Border Patrol or ICE officers in Southern California arrest a
21 Mexican national who has no serious criminal history, they routinely direct her to
22 sign for voluntary departure. As a matter of common practice, however, they
23 neither follow the procedures required by regulation nor present the individual with
24 a Form I-210. Instead, they present an alternative voluntary departure document
25

26 ¹ Voluntary departure may also be granted by an immigration judge during or at the
27 conclusion of removal proceedings. This case concerns only the administrative
28 voluntary departure implemented by Department of Homeland Security officials
prior to the commencement of removal proceedings.

1 known as a Form I-826, Notice of Rights and Request for Disposition. See
2 Appendix B, Form I-826, which Plaintiffs incorporate by reference.

3 29. No statute or regulation authorizes Defendants to use Form I-826.
4 Moreover, Form I-826 does not include fields for specifying a future departure date
5 from the United States. To the contrary, when an individual takes voluntary
6 departure by signing a Form I-826, she must check a box stating, "I wish to return
7 to my country as soon as arrangements can be made to effect my departure."
8 Accordingly, Form I-826 is incompatible with the statutory and regulatory
9 requirement that immigration officials exercise discretion to designate a date by
10 which time an individual must voluntarily depart the United States.

11 30. In addition to being unauthorized by law, Form I-826 is legally
12 deficient in several other significant respects. Despite containing a section
13 captioned "Notice of Rights," the form fails to provide material information on the
14 legal consequences of taking voluntary departure, including: loss of procedural
15 rights that would attach in proceedings before an immigration judge; abandonment
16 of forms of relief that are unavailable outside the United States; and the imposition
17 of bars to readmission to the United States for anyone who has accrued a certain
18 period of unlawful presence here. Immigration enforcement officers do not cure the
19 form's deficiency, as they fail to provide such information orally or otherwise.

20 ***Consequences of Voluntary Departure***

21 31. By "accepting" voluntary departure, individuals forgo a number of
22 procedural rights that apply only after removal proceedings have been initiated.
23 Pursuant to agency policy and practice, Defendants' agents only provide *Miranda*-
24 type advisals to those arrested on suspicion of immigration violations *after* the
25 service of a notice to appear for immigration court proceedings. See, e.g., *Matter of*
26 *E-R-M-F & A-S-M*, 25 I. & N. Dec. 580, 588 (BIA 2011). Once an individual
27 appears before an immigration judge, a number of other procedural rights apply.
28 The individual has the right to representation by counsel; the right to examine,

1 present, and challenge evidence, including through cross-examination of the
2 government's witnesses; and the right not to be ordered removed from the United
3 States unless the government proves that she is removable by clear and convincing
4 evidence. *See* 8 U.S.C. § 1229a. An immigration judge must also "inform the
5 [person] of his or her apparent eligibility to apply for any of the benefits
6 enumerated in this chapter and shall afford the [person] an opportunity to make
7 application during the hearing." 8 C.F.R. § 1240.11(a)(2). If the immigration
8 judge orders the individual removed, she has the right to appeal that order to the
9 Board of Immigration Appeals and, if unsuccessful on appeal, to petition for review
10 of the removal order by a federal court of appeals.²

11 32. Apart from the loss of these procedural rights, taking voluntary
12 departure also carries significant consequences as a matter of substantive
13 immigration law. Anyone who has been unlawfully present in the United States for
14 one year or more and takes voluntary departure is subsequently "inadmissible" to
15 the United States for ten years. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II). There is a
16 similar three-year period of inadmissibility for anyone who has been unlawfully
17 present in the United States for more than 180 days but less than one year. *See* 8
18 U.S.C. § 1182(a)(9)(B)(ii)(I). By taking voluntary departure after a triggering
19 period of unlawful presence, an individual is ineligible for an immigrant visa for
20 lawful permanent resident status or any other type of lawful entry into the United
21 States. *See* 8 U.S.C. § 1182(a) (describing an alien who is inadmissible to be
22 "ineligible to receive visas and ineligible to be admitted to the United States").
23 While some individuals may seek a wholly discretionary waiver of an unlawful
24 presence bar, the waiver is only available on a showing of "extreme hardship" to a

25
26 ² The Illegal Immigration Reform and Immigrant Responsibility Act of 1996
27 ("IIRIRA") "replaced all references to 'deportation' with 'removal.'" *See, e.g.,*
28 *Mariscal-Sandoval v. Ashcroft*, 370 F.3d 851, 854 n.6 (9th Cir. 2004) ("The IIRIRA
merged deportation and exclusion proceedings into the broader category of
'removal' proceedings.").

1 citizen or lawful permanent resident spouse or parent of the individual seeking the
2 waiver, and the immigration statute bars review of decisions denying such waivers.
3 *See* 8 U.S.C. § 1182(a)(9)(B)(v). Individuals cannot avoid unlawful presence bars
4 by reentering the United States without inspection, as doing so subjects them to an
5 even more severe ground of inadmissibility and disqualifies them from relief
6 against removal. *See* 8 U.S.C. § 1182(a)(9)(C)(i); *Garfias-Rodriguez v. Holder*,
7 702 F.3d 504, 507 (9th Cir. 2012) (en banc) (finding that alien who was
8 inadmissible due to his reentry into country after accruing more than one year of
9 unlawful presence was not eligible to adjust to lawful permanent resident status
10 based on marriage to United States citizen).

11 33. An individual who takes voluntary departure also loses the opportunity
12 to seek a number of forms of relief against removal under the immigration laws and
13 the programs of the Department of Homeland Security:

14 a. Cancellation of removal and adjustment of status for certain
15 nonpermanent residents (“cancellation of removal”): An immigration judge may
16 grant cancellation of removal to an individual who has (1) been present in the
17 United States for a continuous ten year period, (2) displayed good moral character,
18 (3) no qualifying criminal convictions, and (4) a U.S. citizen or lawful permanent
19 resident spouse, parent, or child who would suffer exceptional and extremely
20 unusual hardship as a result of the individual’s removal. *See* 8 U.S.C. § 1229b(b).
21 Because cancellation of removal is only available to individuals who have been
22 placed in removal proceedings before an immigration judge, an individual loses her
23 opportunity to seek this form of relief by signing a voluntary departure form and
24 waiving the right to a hearing before an immigration judge. The individual also
25 loses any period of continuous presence that had accrued prior to the voluntary
26 departure for purposes of future cancellation of removal applications. *See, e.g.,*
27 *Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 974–75 (9th Cir. 2003).

1 b. Adjustment of status under Immigration and Nationality Act
2 ("INA") §§ 245(a) and 245(i): Under INA § 245(a), an individual who entered the
3 United States after being inspected may seek to adjust her status without leaving the
4 United States, even if her status has since expired.³ See 8 U.S.C. § 1255(a). There
5 is no need for her to go to Mexico in order to "fix" her papers. Similarly, under
6 INA § 245(i), an individual who entered the United States without inspection but is
7 the beneficiary of an immigrant visa petition filed on or before April 30, 2001 may
8 seek to adjust her status without leaving the United States. See 8 U.S.C. § 1255(a).
9 But if an individual who could have adjusted her status under either provision
10 leaves the United States after accruing a triggering period of unlawful presence,
11 *supra* ¶ 32, then she is barred from re-entering the United States for three or ten
12 years.

13 c. The Deferred Action for Childhood Arrivals program
14 ("DACA"): DACA is a form of administrative relief available to non-citizen youth
15 who lack legal status. To qualify for DACA, an individual must satisfy a number
16 of requirements, including continuous presence in the United States since June 15,
17 2007. Expulsion from the United States through voluntary departure breaks that
18 continuous presence and renders the individual ineligible for DACA in the future.⁴

19 d. Adjustment of status with a Provisional Unlawful Presence
20 Waiver: An applicant for an immigrant visa for lawful permanent residence who is
21

22 ³ A sizeable group of Mexican nationals who have been in the United States for
23 years would be eligible for § 245(a) relief. Estimates show that approximately 40
24 percent of undocumented immigrants in the United States first entered the United
25 States lawfully but then overstayed their authorized periods of admission. See
26 *Border Security: Measuring the Progress and Addressing the Challenges: Hearing*
27 *Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 113th Cong.
28 (2013) (statement of Edward Alden, Bernard L. Schwartz Senior Fellow, Council of
Foreign Relations), available at <http://www.cfr.org/immigration/measuring-effectiveness-border-enforcement/p30211> (last visited May 31, 2013).

⁴ Information about DACA is available at
<http://www.uscis.gov/USCIS/Resources/daca.pdf> (last visited May 31, 2013).

1 an immediate relative of a U.S. citizen may apply for a provisional waiver of
2 unlawful presence, which would allow her to remain in the United States with her
3 family while the waiver is adjudicated before departing for a consular interview
4 abroad. *See* 8 C.F.R. § 212.7(e). By contrast, a visa applicant who has taken
5 voluntary departure must remain outside the United States and away from her
6 family while she awaits consular adjudication of her request for a waiver of the
7 unlawful presence bar.

8 e. The Trafficking Victims Protection Act (“TVPA”): To qualify
9 for relief under the TVPA, a victim of a severe form of trafficking must be
10 physically present in the United States. *See* 8 C.F.R. § 214.11(b). This is a
11 particularly significant form of relief in Southern California, where a substantial
12 proportion of undocumented migrants have been victims of human trafficking.⁵

13 f. The Violence Against Women Act (“VAWA”): To qualify for
14 relief under VAWA, a victim of domestic violence that was inflicted by a U.S.
15 citizen or lawful permanent resident spouse must be physically present in the
16 United States at the time of application for such relief. *See* 8 C.F.R. § 204.2(c); 8
17 U.S.C. § 1229b(b)(2).

18 g. Asylum, withholding of removal, and protection under the U.N.
19 Convention Against Torture (“CAT”): These forms of relief provide protection for
20 people who have a well-founded fear of persecution, whose lives or freedom are
21 likely to be threatened, or who are likely to be tortured in their home countries.
22 Over the past several years, Mexican nationals have increasingly sought asylum,
23 withholding, and CAT protection because of the drug wars and other violence in
24 Mexico.⁶ Defendants’ unfair and unlawful voluntary departure procedures have

25 ⁵ *See* SHELDON X. ZHANG, LOOKING FOR A HIDDEN POPULATION: TRAFFICKING OF
26 MIGRANT LABORERS IN SAN DIEGO COUNTY 11 (2012), *available at*
27 <https://www.ncjrs.gov/pdffiles1/nij/grants/240223.pdf> (last visited May 31, 2013).

28 ⁶ *See, e.g.,* Molly Hennessy-Fiske, *More from Mexico seek U.S. asylum as drug violence rises*, L.A. TIMES, Oct. 28, 2012, *available at*

1 already endangered those who would have had strong claims to protection here in
2 the United States.

3 34. While the legal consequences of expulsion from the United States are
4 significant, Defendants' administration of voluntary departure in Southern
5 California also has the practical consequence of separating family members. This
6 unfair and unlawful voluntary departure regime has caused immeasurable human
7 suffering and imposed significant social costs on the State of California as U.S.
8 citizen children are forced into social service programs or foster care after a
9 parent's coerced expulsion.

10 ***Plaintiff Isidora Lopez-Venegas***

11 35. Isidora Lopez-Venegas was born in Mexico, but came to the United
12 States on a valid tourist visa in 2001. She settled in San Diego with her family and
13 is the mother of an eleven-year-old U.S. citizen son who has been diagnosed with
14 Asperger's Syndrome. Ms. Lopez-Venegas has no criminal history and has never
15 been ordered removed from the United States.

16 36. On the evening of August 3, 2011, Ms. Lopez-Venegas and her son
17 were walking to her car when an officer approached her and asked for her driver's
18 license. When Ms. Lopez-Venegas asked who he was, he responded that he was an
19 immigration officer and demanded her papers. Several other officers appeared.
20 Some wore green uniforms, indicating they were Border Patrol agents. The
21 immigration officers arrested Ms. Lopez-Venegas and her son, and took them to a
22 Border Patrol station.

23 37. Border Patrol agents presented Ms. Lopez-Venegas with a "voluntary
24 departure" form and directed her to sign it. The Border Patrol agents, however,
25 failed to inform Ms. Lopez-Venegas, orally, through the I-826 form, or otherwise,
26 of the rights she would abandon and the consequences of the decision to abandon

27 <http://articles.latimes.com/2012/oct/28/nation/la-na-texas-asylum-20121028> (last
28 visited May 31, 2013).

1 those rights if she agreed to "voluntary departure." For instance, among other
2 defects in the circumstances in which the "voluntary departure" form was
3 presented, the agents threatened Ms. Lopez-Venegas that if she refused to sign the
4 form she could be detained for several months and thus separated from her autistic
5 eleven-year-old son. The agents failed to inform Ms. Lopez-Venegas that she could
6 be released on her own recognizance or bond if she chose not to agree to "voluntary
7 departure." The agents rushed her to make a decision and forcefully instructed her
8 approximately half a dozen times to sign the voluntary departure form. The agents
9 further misinformed Ms. Lopez-Venegas that it would be easy for her to obtain
10 legal status through her son once in Mexico. Given her son's age, this statement is
11 false – it will be about ten years before Ms. Lopez-Venegas will be able to apply for
12 adjustment of status based on her son's U.S. citizenship. Further, Border Patrol
13 agents also failed to inform her of the ten year unlawful presence bar to which she
14 would be subjected upon leaving the country.

15 38. As a result of the misstatements, omissions, pressure, and/or threats of
16 or caused by the Border Patrol agents, Ms. Lopez-Venegas made an unknowing and
17 involuntary election of "voluntary departure" the same evening she was brought to
18 the Border Patrol station.

19 39. Ms. Lopez-Venegas and, effectively, her U.S. citizen son were
20 expelled from the United States soon after being brought to the Border Patrol
21 station. Since their expulsion from the United States, Ms. Lopez-Venegas and her
22 son have remained in Mexico.

23 40. Ms. Lopez-Venegas's removal has negatively impacted her U.S.
24 citizen son. In Mexico, he does not have adequate access to treatment for his
25 Asperger's Syndrome or sufficient educational opportunities in light of his
26 condition.

27 41. When Ms. Lopez-Venegas consulted with an immigration lawyer after
28 her expulsion, she learned about the ten year unlawful presence bar. Ms. Lopez-

1 Venegas also learned that by leaving the United States, she had lost her opportunity
2 to seek cancellation of removal. Had Ms. Lopez-Venegas appeared before an
3 immigration judge instead of taking voluntary departure, she would have been
4 eligible for cancellation of removal.

5 ***Plaintiff Ana Maria Dueñas***

6 42. Ana Maria Dueñas was born in Mexico in 1958. In 1976, Ms. Dueñas
7 and her family came to the United States, entering with inspection at a port of entry.
8 She settled in the San Diego area and is the mother of five U.S. citizens and the
9 grandmother of six U.S. citizens. Ms. Dueñas did not leave the United States until
10 she was expelled from the country pursuant to the unlawful voluntary departure
11 process in April 2011. Ms. Dueñas has no criminal history and has never been
12 ordered removed from the United States.

13 43. In April 2011, Ms. Dueñas was waiting for a bus in El Cajon,
14 California, when a Border Patrol agent approached her and asked for her papers.
15 Ms. Dueñas responded that she did not have any papers. The agent then told her
16 that she would have to go with him to the nearby Border Patrol station.

17 44. A Border Patrol agent presented Ms. Dueñas with a “voluntary
18 departure” form and directed her to sign it. The Border Patrol agent, however,
19 failed to inform Ms. Dueñas, orally, through the I-826 form, or otherwise, of the
20 rights she would abandon or the consequences of abandoning those rights if she
21 agreed to “voluntary departure.” For instance, among other defects in the
22 circumstances in which the “voluntary departure” form was presented, the agent
23 likely presented Ms. Dueñas with a form in English, even though the agent knew or
24 should have known that she only spoke Spanish. The agent also misinformed Ms.
25 Dueñas that she could not obtain relief from an immigration judge in the United
26 States, but that she could easily and quickly obtain legal status through her adult
27 U.S. citizen children once in Mexico. The agent threatened Ms. Dueñas that if she
28 refused to sign the form, she would be detained for a minimum of two months,

1 without informing her that she could be released on her own recognizance or bond
2 if she chose not to agree to "voluntary departure." Further, before presenting her
3 with the form, the Border Patrol agent failed to inform Ms. Dueñas that she could
4 call the Mexican Consulate or an attorney. The agent also failed to inform her of
5 the ten year unlawful presence bar to which she would be subjected if she left the
6 United States.

7 45. As a result of the omissions, misinformation, pressure, and/or threats
8 of or caused by the Border Patrol agent, Ms. Dueñas made an unknowing and
9 involuntary election of "voluntary departure."

10 46. Ms. Dueñas was expelled from the United States soon after being
11 brought to the Border Patrol station. Ms. Dueñas has remained in Tijuana since
12 leaving the United States. She deeply wishes to be reunited with her children and
13 grandchildren who live in San Diego.

14 47. It was only after Ms. Dueñas was expelled from the United States
15 pursuant to "voluntary departure" that she learned for the first time about the ten
16 year unlawful presence bar. Had Ms. Dueñas appeared before an immigration
17 judge instead of taking voluntary departure, she could have sought to adjust her
18 status based on the status of any of her U.S. citizen children under § 245(a).
19 Because Ms. Dueñas entered the United States with inspection, she would not have
20 been required to wait in Mexico for years while her petition was processed and
21 approved.

22 ***Plaintiff Gerardo Hernandez-Contreras***

23 48. Gerardo Hernandez-Contreras was born in Mexico but entered the
24 United States in 2001 when he was around fifteen years old. Mr. Hernandez-
25 Contreras settled in San Diego County. Mr. Hernandez-Contreras did not leave the
26 United States until he was expelled from the country pursuant to the unlawful
27 voluntary departure process in November 2012. In 2006, Mr. Hernandez-Contreras
28 married Aide Vasquez, a U.S. citizen. Mr. Hernandez-Contreras and Mrs. Vasquez

1 are the parents of two young U.S. citizen children. Mr. Hernandez-Contreras has
2 no criminal history and has never been ordered removed from the United States.

3 49. On November 27, 2012, Mr. Hernandez-Contreras was driving home
4 when two San Diego Police Department officers pulled him over for using a cell
5 phone while driving. Immigration officers wearing green uniforms (indicating
6 affiliation with Border Patrol) arrived on the scene soon thereafter. At the time of
7 the traffic stop, Mr. Hernandez-Contreras had been on the phone with Mrs.
8 Vasquez, who rushed to the scene. Mrs. Vasquez told the immigration officers that
9 she was Mr. Hernandez-Contreras's U.S. citizen wife and that they have two U.S.
10 citizen children together. Despite Mrs. Vasquez's pleas, the officers placed Mr.
11 Hernandez-Contreras in the back of their vehicle and drove him to a Border Patrol
12 station in Chula Vista.

13 50. A Border Patrol agent presented Mr. Hernandez-Contreras with a
14 "voluntary departure" form and directed him to sign it. The Border Patrol agents,
15 however, failed to inform Mr. Hernandez-Contreras, orally, through the I-826 form,
16 or otherwise, of the rights he would abandon and the consequences of the decision
17 to abandon those rights if he agreed to "voluntary departure." For instance, among
18 other defects in the circumstances in which the "voluntary departure" form was
19 presented, the agents threatened Mr. Hernandez-Contreras that if he refused to sign
20 he could be detained for months, without informing him that he could be released
21 on his own recognizance or bond if he chose not to agree to "voluntary departure."
22 The agents further misinformed Mr. Hernandez-Contreras that he could simply
23 obtain legal status through Mrs. Vasquez once in Mexico. They also failed to
24 inform him of the ten year unlawful presence bar to which he would be subjected if
25 he left the country.

26 51. As a result of the omissions, misinformation, pressure, and/or threats
27 of or caused by the Border Patrol agents, Mr. Hernandez-Contreras made an
28 unknowing and involuntary election of "voluntary departure."

1 52. Mr. Hernandez-Contreras was expelled from the United States soon
2 after being brought to the Border Patrol station. Mr. Hernandez-Contreras has been
3 living in Tijuana since leaving the United States.

4 53. Mr. Hernandez-Contreras' expulsion has placed an enormous financial
5 and emotional burden on Mrs. Vasquez as well as the couple's children. For
6 example, their four-year-old son frequently cries and has trouble sleeping without
7 his father and their six year-old daughter's school performance has suffered.

8 54. When Mr. Hernandez-Contreras and Mrs. Vasquez hired an
9 immigration lawyer to seek lawful permanent residence for Mr. Hernandez-
10 Contreras after his expulsion, they learned about the ten year unlawful presence bar.
11 Had Mr. Hernandez-Contreras appeared before an immigration judge instead of
12 taking voluntary departure, he would have been eligible for cancellation of removal,
13 or sought to adjust his status through the Provisional Unlawful Presence Waiver.

14 ***Plaintiff Efrain Garcia-Martinez***

15 55. Efrain Garcia-Martinez was born in Mexico but came to the United
16 States in the early 1990s and settled in the San Diego area. Mr. Garcia-Martinez
17 did not leave the United States until he was expelled from the country in September
18 2012 pursuant to the unlawful voluntary departure process. Mr. Garcia-Martinez
19 has extensive family ties in the United States. His mother and sister are lawful
20 permanent residents and his brothers are U.S. citizens. Mr. Garcia-Martinez has no
21 criminal history and has never been ordered removed from the United States.

22 56. In 2001, Mr. Garcia-Martinez's sister filed a family relative petition
23 with a priority date of April 30, 2001, which would make him eligible for
24 adjustment of status under INA §245(i). The petition was approved on August 26,
25 2005. The petition remained pending – as Mr. Garcia-Martinez awaited the
26 availability of an immigrant visa – until September 2012 when Mr. Garcia-Martinez
27 was expelled to Mexico pursuant to the unlawful voluntary departure process.

28

1 57. On September 24, 2012, Mr. Garcia-Martinez was fishing at Shelter
2 Island in San Diego when a law enforcement officer demanded to see his papers.
3 When Mr. Garcia-Martinez responded that he did not have any papers, the officer
4 handcuffed him and called Border Patrol. Shortly thereafter, a Border Patrol agent
5 arrived and took Mr. Garcia-Martinez to a Border Patrol station.

6 58. Border Patrol agents presented Mr. Garcia-Martinez with a "voluntary
7 departure" form and directed him to sign it. The Border Patrol agents, however,
8 failed to inform Mr. Garcia-Martinez, orally, through the I-826 form, or otherwise,
9 of the rights he would abandon and the consequences of the decision to abandon
10 those rights if he agreed to "voluntary departure." For instance, among other
11 defects in the circumstances in which the "voluntary departure" form was
12 presented, Border Patrol agents failed to inform Mr. Garcia-Martinez of the ten year
13 unlawful presence bar to which he would be subjected upon leaving the country.
14 Although Mr. Garcia-Martinez informed the Border Patrol agents multiple times
15 that he did not want to sign the voluntary departure form, the agents persisted in
16 pressuring him to sign the form.

17 59. As a result of the omissions, misinformation, pressure and/or threats of
18 or caused by the Border Patrol agents, Mr. Garcia-Martinez made an unknowing
19 and involuntary election of "voluntary departure."

20 60. Mr. Garcia-Martinez was expelled from the United States soon after
21 being brought to the Border Patrol station. He has remained in Tijuana since then.

22 61. It was only after Mr. Garcia-Martinez was expelled from the United
23 States pursuant to "voluntary departure" that he learned for the first time about the
24 ten year unlawful presence bar. Had Mr. Garcia-Martinez appeared before an
25 immigration judge instead of taking voluntary departure, he could have sought to
26 adjust his status based on the approved § 245(i) petition that his sister filed for him
27 in April 2001.

28

1 ***Plaintiff Sam Nava***

2 62. Sam Nava was born in Mexico in 1988, but his family has extensive
3 ties to the United States. His grandfather, who passed away in April 2011, was a
4 U.S. citizen. His parents first brought him to the United States on a tourist visa
5 around 1990 or 1991, when he was a toddler. Over the next ten years, the family
6 visited the United States regularly. Around August 2001, when Mr. Nava was
7 thirteen years old, he entered the United States on a valid tourist visa with his
8 family. They settled down in San Diego County. Mr. Nava last entered the United
9 States around April 2003 on his valid tourist visa and did not leave the country
10 again until he was expelled to Mexico in 2011 pursuant to the unlawful voluntary
11 departure process. Most of Mr. Nava's family lives in the United States. Mr. Nava
12 has no criminal history and has never been ordered removed from the United States.

13 63. Mr. Nava graduated from high school in San Diego County. While
14 growing up in San Diego, he became active in Foothills Christian Church and
15 eventually volunteered with the youth ministry. His ministry activities included
16 leading a Christian club on a junior high campus, interning at a youth teen center
17 and leading other activities on a weekly basis for several years. These years of
18 working with youth inspired Mr. Nava to pursue a bachelor's degree in ministry at
19 Vision International University and dedicate his life to serving youth. At Foothills
20 Christian Church, Mr. Nava met Suzanne Scott, a U.S. citizen with whom he
21 entered into a committed relationship and married after his expulsion from the
22 United States.

23 64. On the evening of March 10, 2011, Mr. Nava was driving home in the
24 eastern part of San Diego County when police officers pulled him over for having a
25 broken license plate light. The officers called Border Patrol.

26 65. When a Border Patrol agent arrived, Mr. Nava explained that his
27 family had an approved immigrant visa petition. The Border Patrol agent said that
28 he could not find anything about Mr. Nava in the system and incorrectly informed

1 Mr. Nava he had to be deported because of his expired tourist visa. The officer
2 took Mr. Nava to a Border Patrol station in Campo.

3 66. Border Patrol agents presented Mr. Nava with a "voluntary departure"
4 form and directed him to sign it. The Border Patrol agents, however, failed to
5 inform Mr. Nava, orally, through the I-826 form, or otherwise, of the rights he
6 would abandon and the consequences of the decision to abandon those rights if he
7 agreed to "voluntary departure." For instance, among other defects in the
8 circumstances in which the "voluntary departure" form was presented, Border
9 Patrol agents threatened Mr. Nava that if he refused to sign he could be detained for
10 months, without informing him that he could be released on his own recognizance
11 or bond if he chose not to agree to "voluntary departure." The officers further
12 misinformed Mr. Nava that he could not obtain relief from an immigration judge in
13 the United States, but that he could obtain legal status through Ms. Scott once in
14 Mexico. The officers also made threats against his family and failed to inform him
15 of the ten year unlawful presence bar to which he would be subjected upon leaving
16 the country.

17 67. As a result of the omissions, misinformation, pressure, and/or threats
18 of or caused by the Border Patrol agents, Mr. Nava made an unknowing and
19 involuntary election of "voluntary departure."

20 68. Mr. Nava was expelled from the United States soon after being
21 brought to the Border Patrol station. Since his expulsion from the United States,
22 Mr. Nava has been living in La Paz, Mexico.

23 69. Mr. Nava's expulsion from the United States turned his life, and Ms.
24 Scott's, upside down. He lost his volunteer work in ministries with the youth at
25 Foothills Christian Church, as well as his plans to start a family business. Mr.
26 Nava's studies at Vision International have also been interrupted. Ms. Scott, who is
27 a U.S. citizen, had to leave her senior year of college at San Diego State University
28

1 and her job at Starbucks to live with Mr. Nava in La Paz, Mexico. Mr. Nava and
2 Ms. Scott were married in Mexico in April 2011.

3 70. When Mr. Nava and Ms. Scott hired an immigration lawyer to seek
4 lawful permanent residence for Mr. Nava, they learned that because Mr. Nava had
5 departed from the United States after accruing more than a year of unlawful
6 presence, he was barred from re-entering the country for ten years. They have
7 applied for a waiver to the unlawful presence bar and are awaiting news about their
8 application. Had Mr. Nava appeared before an immigration judge instead of taking
9 voluntary departure, he could have sought to adjust his status through marriage to
10 Ms. Scott under § 245(a) without having to contend with the ten year bar.

11 ***Plaintiff Alejandro Serrato***

12 71. Alejandro Serrato was born in Mexico but entered the United States
13 lawfully in 2001 when he was approximately ten years old. Mr. Serrato did not
14 leave the United States until he was expelled from the country pursuant to the
15 unlawful voluntary departure process in October 2012. Mr. Serrato attended
16 elementary, middle and high school here, though he stopped attending high school
17 in eleventh grade. His three sisters and his mother live in the San Diego region.
18 Mr. Serrato married his wife Mayra, a U.S. citizen, on December 9, 2011. They
19 have a young U.S. citizen son. Except for the incident where he was arrested prior
20 to his voluntary departure, Mr. Serrato has no criminal history. He has never been
21 ordered removed from the United States.

22 72. In October 2012, Mr. Serrato was arrested at his house by San Diego
23 Police Department officers after having a non-violent, verbal argument with a
24 neighbor. The officers transported Mr. Serrato to the downtown jail, where ICE
25 placed an immigration hold on him. After several days, Mr. Serrato was moved to
26 an ICE office.

27 73. Mr. Serrato told the ICE officers that he has a U.S. citizen wife and
28 child. An ICE officer did not believe Mr. Serrato and instructed Mr. Serrato to call

1 his wife to prove he was telling the truth. Mr. Serrato called Mrs. Serrato, who
2 answered the officer's questions regarding her marriage and her citizenship. The
3 ICE officer then presented Mr. Serrato with a "voluntary departure" form and
4 directed him to sign it. The ICE officer, however, failed to inform Mr. Serrato,
5 orally, through the I-826 form, or otherwise, of the rights he would abandon and the
6 consequences of the decision to abandon those rights if he agreed to "voluntary
7 departure." For instance, among other defects in the circumstances in which the
8 "voluntary departure" form was presented, the ICE officer misinformed Mr. Serrato
9 that he could simply obtain legal status through his wife once he was in Mexico and
10 that an immigration judge would not let him stay in the United States. The ICE
11 officer also failed to inform Mr. Serrato of the ten year unlawful presence bar to
12 which he would be subjected upon leaving the country.

13 74. As a result of the omissions, misinformation, pressure, and/or threats
14 of or caused by the Border Patrol agents, Mr. Serrato made an unknowing and
15 involuntary election of "voluntary departure."

16 75. Mr. Serrato was expelled from the United States soon after being
17 brought to the ICE office. He has remained in Tijuana since then.

18 76. Mr. Serrato's expulsion from the United States has significantly and
19 negatively affected his life and his family. Among other things, Mr. Serrato lost his
20 job in the United States. Mr. Serrato's expulsion also forced Mrs. Serrato and their
21 young son to leave San Diego to live with Mr. Serrato in Tijuana, Mexico.

22 77. When Mr. and Mrs. Serrato hired an immigration lawyer to seek
23 lawful permanent residence for Mr. Serrato after his expulsion, they learned that
24 because Mr. Serrato had departed from the United States after accruing more than a
25 year of unlawful presence, he was barred from re-entering the country for ten years.
26 Had Mr. Serrato appeared before an immigration judge instead of taking voluntary
27 departure, he would have been eligible for cancellation of removal and could have
28 sought to adjust his status based on the status of his U.S. citizen wife under §

1 245(a). Because Mr. Serrato entered the United States with inspection, he would
2 not have been required to wait in Mexico for years while his visa petition was
3 processed and approved.

4 ***Plaintiff Candelaria Fernandez Felix, as next friend to Yadira Felix***

5 78. Yadira Felix was born in Mexico in 1988. Candelaria Felix is Yadira's
6 grandmother. She has acted as Yadira's parent since Yadira was very young.
7 Yadira was brought to the United States when she was around three years old.
8 Candelaria and Yadira settled in San Diego. Yadira did not leave the United States
9 between the time she first entered and August 2012 when she was unlawfully
10 expelled from the United States. Yadira has no criminal history and has never been
11 ordered removed from the United States.

12 79. Yadira has been evaluated as having an intelligence quotient that
13 indicates mental retardation. Yadira attended specialized programs in middle
14 school and high school and successfully completed an Individualized Education
15 Plan in 2008 at San Pasqual High School. Yadira relies heavily upon her
16 grandmother for nearly everything for her daily living and is unable to live
17 independently or support herself financially.

18 80. In or around 2010, Yadira was physically assaulted in San Diego
19 County. She reported the incident to the police and assisted in the prosecution of
20 her assailant by testifying in court.

21 81. On or around August 13, 2012, Yadira was waiting at a bus stop in
22 Escondido when Border Patrol agents approached her and demanded her papers.
23 Yadira responded that she did not have any papers but showed the agents her school
24 identification card and said that she had been in Escondido her whole life. One of
25 the officers asked if she graduated and she responded that she had, but another
26 officer said it did not matter and that she would have to go with them.

27 82. Soon thereafter, the Border Patrol agents drove Yadira to a waiting van
28 which transported her to the U.S.-Mexico border. As Border Patrol agents led

1 Yadira to the gate, she cried that she did not want to leave, but they told her she had
2 to and pushed her through.⁷ Yadira remains in Mexico.

3 83. As a result of the omissions, misinformation, pressure, and/or threats
4 of or caused by the Border Patrol agents, Yadira was unlawfully expelled from the
5 United States under color of "voluntary departure." Any "election" of "voluntary
6 departure" by Yadira was unknowing and involuntary.

7 84. If Yadira had appeared before an immigration judge instead of being
8 summarily expelled from the United States, she could have applied for relief under
9 DACA or sought a U-Visa for crime victims.

10 * * * *

11 85. On information and belief, Defendants did not exercise their required
12 discretion by making a determination (using an I-210 form or otherwise) of whether
13 to allow any of the Individual Plaintiffs to voluntarily depart from the United States
14 up to 120 days after their respective processing. Instead, each Individual Plaintiff
15 was expelled from the United States immediately as a matter of Defendants'
16 unlawful policy and practice of not exercising such discretion in Southern
17 California.

18 ***Plaintiff Coalition for Humane Immigrant Rights of Los Angeles***

19 86. CHIRLA was formed in 1986 in order to advance the human and civil
20 rights of immigrants and refugees across the Los Angeles region. CHIRLA's
21 mission also includes promoting harmonious multi-ethnic and multi-racial human

22
23 ⁷ It is conceivable that Border Patrol agents simply decided to repatriate Yadira
24 without giving her the choice of appearing before an immigration judge. Border
25 Patrol agents have expelled others without following even their own flawed
26 voluntary departure procedures. For example, in 2011, Border Patrol agents in the
27 San Diego Sector expelled Elizabeth Enriquez from the United States despite the
28 fact that she had refused to sign for voluntary departure and instead requested a
hearing before an immigration judge. She had been in the United States for more
than two decades and was forcibly separated from her U.S. citizen children in this
way. Only after an immigration attorney engaged in protracted advocacy on her
behalf did Border Patrol allow her to return to the United States.

1 relations and empowering all immigrants and their allies to build a more just and
2 humane society. CHIRLA fulfills this mission through policy advocacy,
3 community organizing, and community education. CHIRLA serves a community
4 of citizens and non-citizens alike, including Mexican nationals.

5 87. Because of the significant legal and practical consequences of taking
6 voluntary departure, such a coerced expulsion effectively prevents an individual,
7 and often that individual's family members, from fully integrating into the
8 community. Consequently, CHIRLA has been compelled to respond to this
9 practice by expending resources to inform community members of the dangers of
10 administrative voluntary departure. Furthermore, the manner in which voluntary
11 departure is administered – with Mexican nationals being held incommunicado and
12 expelled from the country within hours – prevents CHIRLA from effectively
13 following up with the most affected members of Los Angeles' immigrant
14 community about whether they were subjected to racial profiling or other
15 mistreatment at the hands of local law enforcement and immigration enforcement
16 authorities, thereby frustrating CHIRLA's mission.

17 88. Coerced and misinformed "voluntary departures" have been prevalent
18 in the immigrant community of Los Angeles for years. CHIRLA focused on the
19 issue at least as early as 2007 when a woman told a CHIRLA community organizer
20 that she signed a voluntary departure form because immigration enforcement
21 officers yelled at her and threatened her. Following that incident, CHIRLA
22 received several more reports that individuals had signed for voluntary departure
23 due to misinformation or coercion. In 2008, CHIRLA also assisted a U.S. citizen
24 named Peter Guzman who was illegally expelled from the United States pursuant to
25 the unlawful voluntary departure process. *See infra* ¶ 113.

26 89. CHIRLA staff spent a substantial amount of organizational time and
27 transportation funds responding to immigration raids in Van Nuys in 2008 and in
28 Fullerton in 2009 by rushing to the scenes of the raids and advising workers who

1 were being detained that they had the right to decline to sign any documents,
2 including voluntary departure forms, and subsequently providing similar advice to
3 other community members in post-raid "Know Your Rights" presentations.

4 90. To address issues related to immigration enforcement, including
5 voluntary departure, CHIRLA established a free referral and information hotline.
6 Through this hotline and walk-in intake at its storefront office in Los Angeles,
7 CHIRLA has been in contact with dozens of individuals who have indicated that
8 they or a relative were pressured to sign a voluntary departure form. In the
9 instances where CHIRLA receives a report that an individual has been detained but
10 has not yet signed a voluntary departure form, CHIRLA staff members have
11 assisted in reaching the detained individual to provide her with information about
12 her rights, including her rights to see an immigration judge and not to sign
13 anything.

14 91. Because there is little that CHIRLA staff can do once an individual has
15 signed for voluntary departure, CHIRLA has focused on educating the immigrant
16 community of Los Angeles and has expended considerable resources to attempt to
17 prevent coerced and misinformed voluntary departures. CHIRLA has created
18 printed materials and videos, and allocated staff resources to educate immigrants
19 about their constitutional rights, including the right to not sign any forms they do
20 not understand.

21 92. CHIRLA staff regularly convene "Know Your Rights" presentations
22 for immigrant communities in Los Angeles. These presentations address an
23 individual's right to request to see an immigration judge and the consequences of
24 signing for voluntary departure. CHIRLA staff educate community members about
25 the pressure and deception that immigration enforcement officers might employ to
26 convince them to sign for voluntary departure. During the Question and Answer
27 segment of these "Know Your Rights" presentations, community members often
28 ask questions about voluntary departure and share first-hand accounts of the

1 coercive tactics immigration enforcement officers use to convince individuals to
2 take voluntary departure.

3 93. If CHIRLA had not been compelled to expend resources to address
4 coerced and misinformed voluntary departures, it would have directed these
5 resources toward the advancement of its core mission, including the advancement
6 of pro-immigrant policies and immigrant integration.

7 94. The voluntary departure regime has frustrated CHIRLA's foundational
8 mission of fully integrating immigrants into Los Angeles and California. At the
9 cost of fully pursuing these goals, CHIRLA has been compelled to devote
10 significant resources to counteract the coercive and abusive practices Defendants
11 employ in the administration of voluntary departure.

12 95. CHIRLA itself has been, and continues to be, harmed by Defendants'
13 practices and conduct because those practices undermine CHIRLA's organizational
14 mission and cause CHIRLA to divert resources from the pursuit of other goals.

15 ***Plaintiff Pomona Economic Opportunity Center***

16 96. PEOC was formed to advance the rights of day laborers and encourage
17 them to organize to protect their rights as workers. PEOC fulfills this mission
18 through organizing, community education, and advocacy on behalf of day laborers.
19 PEOC serves a community of citizens and non-citizens alike, including Mexican
20 nationals. PEOC is headquartered in the city of Pomona in Los Angeles County,
21 but its work is focused on the Inland Empire, including Riverside and San
22 Bernardino Counties.

23 97. PEOC's involvement in immigration enforcement issues arose out of
24 necessity as immigration enforcement officers periodically targeted day laborers
25 over the past decade. In 2009, immigration enforcement officers began raiding day
26 laborer sites and arresting day laborers in the Inland Empire. PEOC received
27 reports that day laborers were expelled from the United States within six to twelve
28 hours of being arrested in those raids. At that time, one of PEOC's key day laborer

1 leaders signed for voluntary departure under pressure and mistreatment by Border
2 Patrol and witnessed other day laborers being similarly pressured and mistreated.
3 PEOC has continued offering services to unorganized day laborers because it fears
4 that the coercive tactics employed by immigration enforcement officers will spread
5 to other areas.

6 98. In 2013, immigration enforcement officers began raiding day laborer
7 sites again, targeting unorganized sites in southern Riverside County. PEOC
8 received reports that individuals detained during those raids were pressured or
9 tricked into signing for voluntary departure as well.

10 99. In response to reports of voluntary departures that arose from
11 misinformation and coercion, PEOC was compelled to divert resources to learn
12 about immigration law and voluntary departure.

13 100. Because there is little that PEOC staff can do once an individual has
14 signed for voluntary departure, PEOC has focused on educating day laborers to
15 attempt to prevent coerced and misinformed voluntary departures. PEOC has had
16 to divert resources to present "Know Your Rights" educational sessions at day
17 laborer corners. These presentations address an individual's right to request to see
18 an immigration judge, call a lawyer, and the consequences of signing for voluntary
19 departure. PEOC staff educate day laborers about the pressure and deception that
20 immigration enforcement officers might employ to convince them to sign for
21 voluntary departure.

22 101. Additionally, in response to immigration raids on particular day
23 laborer sites, PEOC staff spend organizational time and gas money to reach the
24 affected day laborers to provide them with crucial information about their rights,
25 including the consequences of taking voluntary departure and immigrants' right to
26 decline to take voluntary departure.

27 102. If PEOC had not been compelled to expend these resources to address
28 coerced and misinformed voluntary departures, it would have directed these

1 resources toward the advancement of its core mission, including advocating and
2 organizing to provide economic opportunity for day laborers. Instead of spending
3 time on rapid response and prevention, PEOC would focus on affirmative advocacy
4 in other areas, including adjustment of status and DACA cases.

5 103. The voluntary departure regime has frustrated PEOC's foundational
6 mission of improving overall conditions for day laborers in Los Angeles and
7 Riverside counties. At the cost of fully pursuing these goals, PEOC has been
8 compelled to devote significant resources to counteract the coercive and abusive
9 tactics Defendants employ in the administration of voluntary departure.

10 104. PEOC itself has been, and continues to be, harmed by Defendants'
11 practices because those practices undermine PEOC's organizational mission and
12 cause PEOC to divert resources from the pursuit of other goals.

13 ***Persistent Pattern of Abuse***

14 105. Plaintiffs re-allege and incorporate by reference each and every
15 allegation contained in the preceding paragraphs as if fully set forth herein.

16 106. Defendants regularly fail to inform individuals of the consequences of
17 taking voluntary departure, and regularly use misstatements, pressure, coercion and
18 threats in the administration of voluntary departure in Southern California. This
19 misconduct is a routine part of the way that the agencies enforce the immigration
20 laws.

21 107. As a matter of everyday practice, Defendants' officers direct
22 individuals to take voluntary departure, telling them that they "have to" sign and
23 that they have "no rights." This pressure persists even after an individual
24 affirmatively states that she wants to see an immigration judge and does not want to
25 sign. In addition, officers rely on lies and patently false "legal advice" to convince
26 individuals to sign away their rights. Defendants' officers threaten these
27 individuals with detention for months or years if they ask to see an immigration
28 judge, even though they would be immediately eligible for release on their own

1 recognizance or bond because they have no serious criminal history. Defendants'
2 officers also misinform individuals that they should sign for voluntary departure
3 because they can quickly and easily "fix their papers" (i.e., obtain legal status) from
4 Mexico. But because of the unlawful presence bar and other hurdles, obtaining
5 legal status from Mexico after voluntary departure is often slow and difficult, and
6 sometimes impossible. Those same officers misinform individuals who would have
7 extremely strong grounds to live lawfully in the United States – for example, the
8 parents of disabled or sick U.S. citizen children, or immigrant college students who
9 were brought to the United States when they were very young – that an immigration
10 judge would surely order them removed. Defendants' officers threaten those who
11 do not sign and subject them to physical mistreatment. Officers also refuse to let
12 individuals contact their families or counsel while they are faced with the "choice"
13 of whether or not to take voluntary departure.

14 108. Defendants' history of misusing voluntary departure and related
15 authority is well documented. In the early 1980s, a class of Salvadoran asylum
16 seekers sued Border Patrol to stop the agency from engaging in exactly the kind of
17 practices that it now uses against Mexican nationals. As a result of that litigation,
18 this Court ordered Border Patrol to cease "employ[ing] threats, misrepresentation,
19 subterfuge or other forms of coercion, or in any other way attempt to persuade or
20 dissuade [Salvadoran nationals] when informing them of the availability of
21 voluntary departure." *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 386 (C.D.
22 Cal. 1982), *perm. injunction entered by Orantes-Hernandez v. Meese*, 685 F. Supp.
23 1488 (C.D. Cal. 1988), *aff'd sub nom Orantes-Hernandez v. Thornburgh*, 919 F.2d
24 549 (9th Cir. 1990). As recently as 2007, this Court found that Border Patrol still
25 failed to show that voluntary departure "is properly administered at ports of entry
26 and border patrol stations" to Salvadorans. *Orantes-Hernandez v. Gonzales*, 504 F.
27 Supp. 2d 825, 853 (C.D. Cal. 2007) (denying government's motion to dissolve
28

1 injunction), *aff'd sub nom Orantes-Hernandez v. Holder*, 321 F. App'x 625 (9th
2 Cir. 2009).

3 109. Also in the 1980s, a class of unaccompanied minor immigrants
4 similarly challenged the Immigration and Naturalization Service's (INS) practice of
5 "coerc[ing] class members into unknowingly and involuntarily selecting voluntary
6 departure, thereby waiving their rights to a deportation hearing or any other form of
7 relief." *Perez-Funez v. District Director*, 619 F. Supp. 656, 656–57 (C.D. Cal.
8 1985). In that case, this Court found the INS's voluntary departure procedures
9 unconstitutional and entered permanent injunctive relief in favor of the class, *id.* at
10 669–70, which led to the promulgation of federal regulations providing procedural
11 protections for unaccompanied minors presented with the choice of voluntary
12 departure.⁸ See 8 C.F.R. § 236.3(g).

13 110. Despite *Perez-Funez* and the ensuing federal regulations, Border Patrol
14 has continued to engage in widespread abuses in administering voluntary departure
15 to minors. For example, on May 20, 2009, Border Patrol officers in San Diego
16 arrested three students, sixteen-year-old S.J., a seventeen-year-old boy, and a
17 fifteen-year-old boy, as they were on their way to their high school. All three
18 students had lived in the United States with their families for years and were on
19 their way to high school that morning. Border Patrol officers drove the three
20 minors to the Imperial Beach Border Patrol station. At the station, a Border Patrol
21 officer told S.J. to sign a form without giving her sufficient time to read the form or
22 an explanation of the consequences of signing it. When S.J. said, "I don't have a
23 legal signature," the Border Patrol officer told her to write her name in the signature
24 block, which she did. It was a voluntary departure form.

25 111. About thirty minutes later, S.J.'s father called the station and a Border
26 Patrol officer put S.J. on the phone with him using the speaker function. When
27

28 ⁸ At the time of the case, Border Patrol was a part of INS.

1 S.J.'s father told her that the family had hired an immigration attorney for her, the
2 Border Patrol officer who had told her to sign the form and who had been listening
3 to the conversation became visibly upset and began talking to another Border Patrol
4 officer. The other Border Patrol officer told the first Border Patrol officer that there
5 was nothing an immigration attorney could do. One of the officers then abruptly
6 told S.J.'s father to stop talking. After the call ended, that same Border Patrol
7 officer told S.J. that, "no lawyer can set foot in here – there's nothing they can do."
8 Despite the fact that Border Patrol knew S.J. had an attorney, they expelled her and
9 the other two students to Mexico that afternoon. Only after sustained advocacy by
10 several non-profit organizations were the students permitted to return to the United
11 States.

12 112. A recent report on Border Patrol practices found that "most
13 unaccompanied Mexican minors do not understand their rights and are not making
14 an 'independent decision' to [voluntarily] return to Mexico ... [M]any children
15 stated that they were never asked whether they wanted voluntary departure; they
16 were simply told that they would be returning to Mexico."⁹

17 113. Along with children, other exceptionally vulnerable individuals,
18 including those who are mentally disabled, have been summarily expelled through
19 Defendants' unlawful voluntary departure regime. For example, ICE expelled Peter
20 Guzman, a mentally-disabled U.S. citizen, from Southern California pursuant to a
21 voluntary departure. *See Guzman, et al. v. Chertoff, et al.*, No. 08-cv-01327 (C.D.
22 Cal., filed Feb. 27, 2008). Mr. Guzman was lost on the streets of Mexico for weeks
23 before he managed to return to the United States border and was eventually reunited
24 with his family. More recently, ICE expelled Alejandro Cruz, a severely mentally-

26 ⁹ BETTY CAVENDISH & MARU CORTAZAR, CHILDREN AT THE BORDER: THE
27 SCREENING, PROTECTION AND REPATRIATION OF UNACCOMPANIED MEXICAN
28 MINORS 40 (2011), available at <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf> (last visited June 2, 2013).

1 disabled man, from Southern California pursuant to a voluntary departure. After
2 counsel in *Franco, et al. v. Napolitano, et al.*, No. 11-cv-02211 (C.D. Cal., filed
3 Nov. 2, 2010), a case concerning mentally ill immigration detainees, learned of Mr.
4 Cruz's expulsion and advocated for his return, Defendants agreed to parole him
5 back into the country to be reunited with his family.

6 114. Defendants' broader reliance on omissions, misinformation, pressure,
7 coercion and threats in the administration of voluntary departure and related
8 enforcement measures is also well documented. The group No More Deaths has
9 documented numerous incidents of migrants being "[c]oerc[ed] into signing
10 voluntary repatriation documents under threat of violence, criminal charges, or
11 lengthy detentions" by Border Patrol officers.¹⁰ In one reported incident, a Border
12 Patrol agent told a Mexican migrant who had come to the United States seeking
13 protection from a drug cartel that had kidnapped him, "The illegals here don't have
14 any rights. Here you are nothing," before other agents physically abused him until
15 he signed papers that resulted in his expulsion to Mexico.¹¹ Similarly, a report on
16 "stipulated removals" – a summary process through which immigration detainees
17 give up the right to contest removal by signing a form that is then reviewed by an
18 immigration judge – noted that "immigrants have reported being coerced to sign
19 stipulated orders of removal or being pressured to accept stipulated orders of
20 removal as a way to get out of immigration detention."¹²

21 115. The immigration enforcement agencies' unlawful voluntary departure
22 practices in Southern California have also been challenged in individual lawsuits.

23
24 ¹⁰ See NO MORE DEATHS, A CULTURE OF CRUELTY 32 (2011), available at
25 http://www.cultureofcruelty.org/documents/2011_report/ (last visited June 2, 2013).

26 ¹¹ *Id.*

27 ¹² JENNIFER LEE KOH, JAYASHRI SRIKANTIAH & KAREN C. TUMLIN, DEPORTATION
28 WITHOUT DUE PROCESS 2 (2011), available at
<http://www.law.stanford.edu/organizations/clinics/immigrants-rights-clinic/report-deportation-without-due-process> (last visited June 2, 2013).

1 For example, in July 2012, Miguel Angel Quiroz sued ICE for coercing him into
2 signing for voluntary departure after preventing him from consulting with his
3 retained counsel. *See Quiroz v. Napolitano, et al.*, No. 12-cv-06607 (C.D. Cal.,
4 filed July 21, 2012). After the lawsuit was filed, the government paroled Mr.
5 Quiroz back into the United States. The government has also been sued for
6 unlawfully expelling individuals under its voluntary departure authority in other
7 parts of the country. *See, e.g., Galicia v. United States*, No. 2:13-cv-00105
8 (D.N.M., filed Jan. 31, 2013) (alleging that Border Patrol officers in New Mexico
9 effected “voluntary departure” of a minor without allowing him to access to legal
10 counsel, family, or adult friends).

11 116. Plaintiffs’ counsel have documented numerous other cases where
12 Defendants have used omissions, misstatements, pressure, and threats to try to
13 convince individuals to take “voluntary departure.” For example, in 2013 Border
14 Patrol agents in the San Diego Sector arrested Ismael Ibarra-Rocha, who had lived
15 in the United States for more than a decade and is the father of a U.S. citizen child
16 with a serious health condition. Border Patrol agents presented him with a
17 voluntary departure form and directed him to sign it. The Border Patrol agents,
18 however, failed to adequately inform him, orally, through the I-826 form, or
19 otherwise, of the rights he would abandon or the consequences of abandoning those
20 rights if he agreed to “voluntary departure.” For instance, among other defects in
21 the circumstances in which the “voluntary departure” form was presented, an agent
22 presented him with a form in English even though the agent knew or should have
23 known that he spoke only Spanish. Further, the Border Patrol agent failed to
24 inform him in Spanish that he could call the Mexican Consulate or an attorney. The
25 agent also failed to inform him of the ten year unlawful presence bar to which he
26 would be subjected if he left the country. As a result of the omissions,
27 misstatements, pressure and/or threats of or caused by the Border Patrol agents, Mr.
28 Ibarra-Rocha made an unknowing and involuntary election of “voluntary

1 departure.” Had Mr. Ibarra-Rocha appeared before an immigration judge, he would
2 have been eligible for cancellation of removal. Moreover, his expulsion effectively
3 forced his wife and their U.S. citizen daughter to move to Mexico with him.

4 117. Despite this history of abuse in the voluntary departure regime,
5 Defendants’ unlawful policies and practices continue, and they have failed to
6 engage in meaningful reform.

7 **CLASS ALLEGATIONS**

8 118. The Representative Plaintiffs (plaintiffs Lopez-Venegas, Dueñas,
9 Hernandez-Contreras, Garcia-Martinez, Nava and Serrato) bring this class action on
10 behalf of themselves and all others similarly situated. The proposed Class is
11 defined as follows:

12 All individuals who are physically present in, or will in
13 the future be returned to, Mexico under color of an
14 administrative voluntary departure that occurred in the
15 territory under the jurisdiction of the San Diego Border
16 Patrol Sector, the ICE Field Office for San Diego, or the
17 ICE Field Office for Los Angeles on or after January 1,
2009 and who would have had a plausible basis to seek
the opportunity to reside legally in the United States
under the immigration laws and programs of the
Department of Homeland Security had they not been
expelled under administrative voluntary departure.

18 119. Representative Plaintiffs are members of the Class they seek to
19 represent.

20 120. Representative Plaintiffs and members of the Class seek class-wide
21 equitable, declaratory and injunctive relief pursuant to Fed. R. Civ. P. 23(b)(2).

22 121. Membership in the Class is so numerous that individual joinder of all
23 of their members would be impracticable. Such joinder is also impracticable as
24 membership in the Class is geographically diverse and will change over time,
25 because many members of the Class are unaware of their rights, and because many
26 members of the Class have limited access to legal services and representation.

1 122. There are many questions of fact and law that admit answers common
2 to the Representative Plaintiffs and the members of the Class, including, but not
3 limited to the following:

- 4 a. There is an unlawful pattern and practice of administering voluntary
5 departure to Class Members in a manner inconsistent with the
6 governing statute and implementing regulations, such that no Class
7 Members received the benefit of up to 120 days to depart from the
8 United States;
- 9 b. There is an unlawful pattern and practice to deny Class Members
10 sufficient accurate information so that they can make a knowing
11 election of "voluntary departure";
- 12 c. There is an unlawful pattern and practice to provide Class Members
13 deceptive information, or to make misstatements, regarding the rights
14 Class Members give up by, and the consequences of, agreeing to
15 "voluntary departure"; and
- 16 d. There is an unlawful pattern and practice to obtain Class members'
17 agreement to "voluntary departure" by pressure and threats.

18 123. The claims of the Representative Plaintiffs are typical of the claims of
19 the members of the Class.

20 124. The Representative Plaintiffs will fairly and adequately protect the
21 interests of the members of the Class. There is no conflict between the interests of
22 the Representative Plaintiffs and members of the Class with respect to the issues in
23 this action.

24 125. Representative Plaintiffs have retained legal counsel who are
25 experienced in civil rights and class action litigation, and who will adequately
26 represent the interests of the members of the Class as well as those of the individual
27 Plaintiffs.

1 126. Defendants have acted on grounds generally applicable to both the
2 Representative Plaintiffs and the members of the Class, making declaratory and
3 injunctive relief appropriate as to the Class as well as the Representative Plaintiffs.

4 127. Pursuant to Fed. R. Civ. P. 23(c), notice is not required in an action
5 certified pursuant to Fed. R. Civ. P. 23(b)(2). To the extent notice is to be
6 provided, notice would be provided by (at least) publication and/or broadcast in
7 Mexico and the geographic area covered by the jurisdiction of the San Diego
8 Border Patrol Sector, the ICE Field Office for San Diego, and the ICE Field Office
9 for Los Angeles.

10 128. In addition to, and in the alternative to, certification under Fed. R. Civ.
11 P. 23(b)(2), Representative Plaintiffs also seek partial certification under Fed. R.
12 Civ. P. 23(c)(4). *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
13 Cir. 1996) (“Even if the common questions do not predominate over the individual
14 questions so that class certification of the entire action is warranted, Rule 23
15 authorizes the district court in appropriate cases to isolate the common issues under
16 Rule 23(c)(4)[] and proceed with class treatment of these particular issues.”).
17 Further, should the Court find that neither of these rules permit certification,
18 Plaintiffs alternatively seek certification of a representative action under a common
19 law analogue to Rule 23 under the general federal habeas statute, 28 U.S.C. § 2241.
20 *See Bijeol v. Benson*, 513 F.2d 965, 968 (6th Cir. 1975) (“[A] representative
21 procedure analogous to the class action provided for in Rule 23 may be appropriate
22 in a habeas corpus action under some circumstances.”).

23 REQUISITES FOR RELIEF

24 129. As a result of the general and specific conduct of Defendants described
25 above, Plaintiffs have been denied their constitutional and federal statutory rights.
26 Defendants’ conduct is the result of ongoing policies, practices, conduct and acts
27 that have resulted and will continue to result in irreparable injury to Plaintiffs,
28 including but not limited to further threats to and violations of their constitutional

1 and civil rights. Plaintiffs have no plain, speedy, or adequate remedy at law to
2 redress the violations alleged herein, and therefore seek injunctive relief restraining
3 Defendants from continuing to engage in the unlawful and unconstitutional
4 policies, practices, conduct and acts described in this Complaint.

5 130. An actual controversy exists between Plaintiffs and Defendants in that
6 Plaintiffs contend that the policies, practices, conduct and acts of Defendants as
7 alleged in this Complaint are unlawful and unconstitutional, whereas Plaintiffs are
8 informed and believe that Defendants contend that said policies, practices, conduct
9 and acts are lawful and constitutional. Plaintiffs seek a declaration of rights with
10 respect to this controversy.

11 **FIRST CAUSE OF ACTION**

12 **VOLUNTARY DEPARTURE IN VIOLATION OF REGULATIONS:** 13 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 551, *ET. SEQ.***

14 131. Plaintiffs re-allege and incorporate by reference each and every
15 allegation contained in the preceding paragraphs as if set forth fully herein.

16 132. The expulsion of the Individual Plaintiffs, and a class of individuals
17 similarly situated to the Representative Plaintiffs, from the United States through
18 voluntary departure procedures other than those specified in 8 C.F.R. § 240.25
19 violates the Administrative Procedure Act. 5 U.S.C. § 551, *et. seq.*

20 133. Defendants' continued use of voluntary departure procedures in
21 Southern California other than those specified in 8 C.F.R. § 240.25 likewise results
22 in ongoing violations of the Administrative Procedure Act to the detriment and
23 harm of the Organizational Plaintiffs.

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1 violation of the Due Process Clause of the Fifth Amendment to the U.S.
2 Constitution, to the detriment and harm of the Organizational Plaintiffs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that the Court grant the
5 following relief:

- 6 1. Certify a class of individuals similarly situated to the Representative
7 Plaintiffs;
- 8 2. Declare that Defendants' expulsion of the Individual Plaintiffs and Class
9 under guise of so-called "voluntary departure" violates the Administrative
10 Procedure Act, Immigration and Nationality Act, and/or the Due Process
11 Clause of the Fifth Amendment, and that Defendants' ongoing practices
12 violate the Administrative Procedure Act, Immigration and Nationality Act,
13 and/or the Due Process Clause of the Fifth Amendment;
- 14 3. Order that Defendants return the Individual Plaintiffs and Class to the United
15 States in a manner that restores them to the legal position that they occupied
16 prior to their respective voluntary departures;
- 17 4. Order that Defendants undertake all reasonable steps to inform Class
18 members of their rights under this case, including through publication of
19 notice in written, broadcast, and online media outlets in Mexico.
- 20 5. Issue injunctions against Defendants and any of their officers, agents,
21 successors, employees, representatives and any and all persons acting in
22 concert with them forbidding them from expelling individuals in Southern
23 California under color of voluntary departure unless they:
 - 24 a. Exercise their discretion and provide appropriate time periods for
25 voluntary departure to occur as provided by 8 C.F.R. § 240.25;
 - 26 b. Use Form I-210, or a form that is not materially distinguishable from
27 that form, in the administration of voluntary departure, as required by
28 8 C.F.R. § 240.25;

- 1 c. Change Form I-210 so that it affirmatively advises individuals, at a
2 minimum, of: (1) loss of the ability to obtain lawful status here in the
3 United States through certain forms of relief from removal and
4 programs of the Department of Homeland Security, including, but not
5 limited to cancellation of removal; and (2) inadmissibility for at least
6 three years and as many as ten years for anyone who has accrued more
7 than 180 days of unlawful presence in the United States;
8 d. Refrain from using threats, misrepresentation, subterfuge or other
9 forms of coercion, or from attempting in any other way to persuade or
10 dissuade individuals when informing them of the availability of
11 voluntary departure;
12 e. Take all further steps necessary to ensure that Defendants do not
13 process people for voluntary departure without first ensuring that their
14 waiver of the right to a removal hearing is knowing and voluntary;
15 f. Undertake the implementation of mechanisms that provide for
16 effective accountability and oversight in the administration of
17 voluntary departures;
18 6. Grant Plaintiffs reasonable attorneys' fees, costs, and other disbursements
19 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
20 7. Grant any and all such other relief as the Court deems just and equitable.
21
22
23

24 Dated: June 4, 2013

Respectfully Submitted,

ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES

26 
27 SEAN RIORDAN (SBN 255752)
28 Email: sriordan@aclusandiego.org

1 [Additional Counsel]

2 AHILAN T. ARULANANTHAM (State Bar No. 237841)
(aarulanantham@aclu-sc.org)

3 ACLU IMMIGRANTS' RIGHTS PROJECT
1313 West 8th Street

4 Los Angeles, California 90017

Telephone: (213) 977-5211

5 Facsimile: (213) 417-2211

6 BELINDA ESCOBOSA HELZER (BAR NO. 214178)

(bescobosahelzer@aclu-sc.org)

7 BARDIS VAKILI (BAR NO. 247783)

(bvakili@aclu-sc.org)

8 LUCERO CHAVEZ (BAR NO. 273531)

(lchavez@aclu-sc.org)

9 ACLU FOUNDATION OF SOUTHERN CALIFORNIA

2100 N. Broadway, Suite 209

10 Santa Ana, California 92706

Telephone: (714) 450-3962

11 Facsimile: (714) 543-5240

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APPENDIX A

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
VOLUNTARY DEPARTURE AND VERIFICATION OF DEPARTURE

To: (Alien's Last Name, First Name, Address)	Alien's Phone Number	A: Number
		FIN Number

☐ You have violated the terms of your admission as a nonimmigrant. Consequently, the permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____.

☐ On _____ you were granted voluntary departure by the ☐ IJ ☐ BIA ☐ DHS. You are required to depart from the United States on or before _____ ☐ at your expense. ☐ at government expense. ☐ under safeguard.

☐ Your request for an extension of time to depart from the United States has been _____. You are required to depart on or before _____ (Granted/Denied)

☐ You state that you will be departing the United States on _____ through _____ (Port of Departure)
on _____
(Give Airlines, Flight Number and Time or Other Manner of Departure)

NOTICE: The Immigration Judge's Alternate Order of Removal will take effect if the alien does not depart within the time specified. Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your removal. A warrant for your arrest will be issued if this office has not received verification of your departure by the specified date. Failure to depart on or before the specified date may also subject you to a possible civil penalty of not less than \$1,000 and not more than \$5,000, and render you ineligible for a period of 10 years for any further authorization for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Immigration and Nationality Act.

Additionally, if an Immigration Bond has been posted on the alien, the DHS will initiate the appropriate action in accordance with the terms of the executed bond and any attached rider or riders specified.

To any U.S. official: This document can be completed and transmitted to DHS/ICE Headquarters Office of Detention and Removal via VD-Bond-Verifications@dhs.gov.

Alien's Acknowledgement of Conditions and Receipt of Form

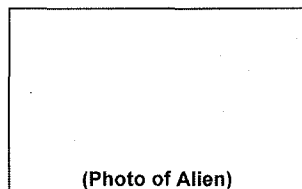
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Signature of Authorized DHS Official

Date

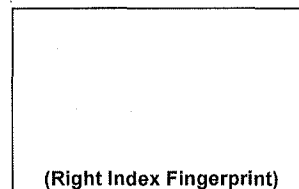
DHS Official Serving Form (Name and Title)

Office



(Photo of Alien)

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(Right Index Fingerprint)

Verification of Departure
(Completion by an official of the Department of Homeland Security or the U.S. Department of State)

Printed Name/Title	Signature of Official Verifying Identity	Office	Date	Phone Number
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Method of Departure: <input type="checkbox"/> Air <input type="checkbox"/> Train <input type="checkbox"/> Boat <input type="checkbox"/> Other:				
Comments				

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
VOLUNTARY DEPARTURE AND VERIFICATION OF DEPARTURE

To: (Alien's Last Name, First Name, Address)	Alien's Phone Number	A: Number
		FIN Number

- ☐ You have violated the terms of your admission as a nonimmigrant. Consequently, the permission previously granted you to remain in the United States is rescinded. You are required to depart from the United States at your own expense on or before _____.
- ☐ On _____ you were granted voluntary departure by the ☐ IJ ☐ BIA ☐ DHS. You are required to depart from the United States on or before _____ ☐ at your expense. ☐ at government expense. ☐ under safeguard.
- ☐ Your request for an extension of time to depart from the United States has been _____. You are required to depart on or before _____ (Granted/Denied).
- ☐ You state that you will be departing the United States on _____ through _____ (Port of Departure) on _____ (Give Airlines, Flight Number and Time or Other Manner of Departure).

NOTICE: The Immigration Judge's Alternate Order of Removal will take effect if the alien does not depart within the time specified. Failure to depart on or before the specified date may result in the withdrawal of voluntary departure and action being taken to effect your removal. A warrant for your arrest will be issued if this office has not received verification of your departure by the specified date. Failure to depart on or before the specified date may also subject you to a possible civil penalty of not less than \$1,000 and not more than \$5,000, and render you ineligible for a period of 10 years for any further authorization for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Immigration and Nationality Act.

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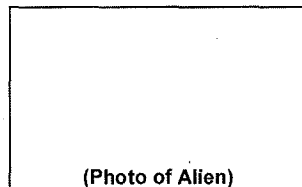
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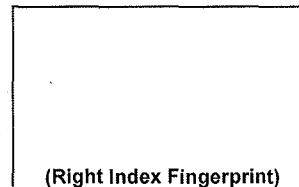
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DHS Official Serving Form (Name and Title)

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Verification of Departure
(Completion by an official of the Department of Homeland Security or the U.S. Department of State)

Printed Name/Title	Signature of Official Verifying Identity	Office	Date	Phone Number
U.S. Departure Place				Date
Method of Departure	<input type="checkbox"/> Air <input type="checkbox"/> Train <input type="checkbox"/> Boat <input type="checkbox"/> Other:			
Comments				

Alien Copy

ICE Form I-210 (08/08)

APPENDIX B

Notice of Rights and Request for Disposition

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 hearing, 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 officers 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

Initials

☐ 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 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.

Signature of Subject

Date

CERTIFICATION OF SERVICE

☐ Notice read by subject

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

Name of Service Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service

App. Zone: _____ Entry Zone: _____ POB: _____ DOB: _____ / _____ / _____ A# _____

Nombre: _____ Father: _____ Mother: _____

NOTIFICACION DE DERECHOS

Usted ha sido detenido porque el Servicio de Inmigración opina que se encuentra en los Estados Unidos ilegalmente. Tiene derecho a una audiencia ante el Tribunal de Inmigración, con el fin de decidir si puede permanecer en los Estados Unidos. En el caso de que Usted solicite esa audiencia, pudiera quedar detenido o tener derecho a la libertad bajo fianza hasta la fecha de la audiencia. Tiene la opción de solicitar el regreso a su país a la brevedad posible, sin que se celebre la audiencia.

Usted tiene derecho a comunicarse con un abogado u otro representante legal para que lo represente en la audiencia, o para responder a cualquier pregunta acerca de sus derechos conforme a la ley en los Estados Unidos. Si Usted se lo pide, el funcionario que le haya entregado esta Notificación le dará una lista de las asociaciones jurídicas que podrían representarlo gratuitamente o a poco costo. Tiene derecho a comunicarse con el servicio consular o diplomático de su país. Puede usar el teléfono para llamar a un abogado, o a otro representante legal, o a un funcionario consular en cualquier momento anterior a su salida de los Estados Unidos.

SOLICITUD DE RESOLICION

Iniciales

☐ Solicito una audiencia ante el Tribunal de Inmigración que resuelva si puedo o no permanecer en los Estados Unidos.

Iniciales

☐ Considero que estaría en peligro si regreso a mi país. Mi caso se trasladará al Tribunal de Inmigración para la celebración de una audiencia.

Iniciales

☐ Admito que estoy ilegalmente en los Estados Unidos, y no considera que estaría en peligro si regreso a mi país. Renuncio a mi derecho a una audiencia ante el Tribunal de Inmigración. Deseo regresar a mi país en cuanto se pueda disponer mi salida. Entiendo que pudiera permanecer detenido hasta mi salida.

Firma del sujeto

Fecha

CERTIFICATION OF SERVICE

☐ Notice read by subject

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

Name of Service Officer (Print)

Name of Interpreter (Print)

Signature of Officer

Date and Time of Service