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17
 18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

20
 21 ISIDORA LOPEZ-VENEGAS; ANA
 MARIA DUEÑAS; GERARDO
 22 HERNANDEZ-CONTRERAS; EFRAIN
 GARCIA-MARTINEZ; SAMUEL NAVA;
 23 ALEJANDRO SERRATO; ARNULFO
 SIERRA; GENARO MUÑOZ-FLORES,
 24 individually and on behalf of all others
 25 similarly situated; CANDELARIA FELIX,
 as next friend of YADIRA FELIX;
 26 PATRICIA ARMENTA, as next friend of
 MARTA MENDOZA; GORGONIO
 27 CABRERA; COALITION FOR HUMANE
 28 IMMIGRANT RIGHTS OF LOS

Case No. 13-cv-03972 JAK
 (PLA)

**FIRST AMENDED
 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.**

FILED
 2013 OCT -2 PM 3: 02
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES
 BY: _____

1 ANGELES; POMONA ECONOMIC
2 OPPORTUNITY CENTER; and SAN
3 BERNARDINO COMMUNITY SERVICE
4 CENTER,

5
6 Plaintiffs,

7 v.

8 RAND BEERS, ACTING SECRETARY OF
9 HOMELAND SECURITY; THOMAS
10 WINKOWSKI, DEPUTY
11 COMMISSIONER, U.S. CUSTOMS AND
12 BORDER PROTECTION; JOHN
13 SANDWEG, ACTING DIRECTOR,
14 BUREAU OF IMMIGRATION AND
15 CUSTOMS ENFORCEMENT (“ICE”);
16 PAUL BEESON, CHIEF BORDER
17 PATROL AGENT, SAN DIEGO SECTOR;
18 GREGORY ARCHAMBEAULT, ICE
19 FIELD OFFICE DIRECTOR, SAN DIEGO;
20 DAVE MARIN, ACTING ICE FIELD
21 OFFICE DIRECTOR, LOS ANGELES,

22 Defendants.

**(2) VIOLATION OF THE
IMMIGRATION AND
NATIONALITY ACT, 8 U.S.C.
§ 1101, ET. SEQ.**

**(3) VIOLATION OF THE FIFTH
AMENDMENT OF THE U.S.
CONSTITUTION (PROCEDURAL
DUE PROCESS)**

**(4) VIOLATION OF THE FIFTH
AMENDMENT OF THE U.S.
CONSTITUTION (SUBSTANTIVE
DUE PROCESS)**

23 **INTRODUCTION**

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

2. Several courts have noted that voluntary departure is the immigration
equivalent of a criminal plea bargain. An individual who consents to voluntary

1 departure avoids removal proceedings and possible detention, and in return accepts
2 expulsion from the United States. The criminal plea process, however, includes
3 rigorous procedural protections. In contrast, as administered in Southern
4 California, the “voluntary departure” program is unconstitutional and violates the
5 immigration enforcement agencies’ own statutes and regulations.

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

24 4. Immigration officers’ misstatements and omissions are exacerbated by
25 the fact that they regularly pressure individuals to agree to voluntary departure
26 before they have had any opportunity to speak to an attorney.

27 5. Immigration enforcement agencies in Southern California expel
28 individuals who have taken voluntary departure as rapidly as logistically possible—

1 in many instances, on the same day. This practice violates the agencies' governing
2 regulations, which require that immigration officers exercise discretion to
3 determine whether to allow an individual who has taken voluntary departure a
4 period of up to 120 days to leave the United States. Thus, individuals who have
5 been in the United States for decades are unlawfully ripped from their families and
6 established lives *for up to ten years* without having time to consider their other
7 legal options, put their affairs in order, or even say goodbye to family members.

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

1 Plaintiffs”) are organizations that work with immigrants and immigrant
2 communities. The Organizational Plaintiffs have been and continue to be adversely
3 affected by the way that Defendants implement voluntary departure in Southern
4 California. They seek a declaration that Defendants’ conduct and voluntary
5 departure practices are unlawful and an order mandating the implementation of
6 legally adequate safeguards over those procedures.

7 JURISDICTION AND VENUE

8 7. In this Complaint, the Individual Plaintiffs raise challenges—under the
9 Administrative Procedure Act, the immigration statutes and regulations, and the
10 U.S. Constitution—to the way that Defendants processed them for voluntary
11 departure. The Organizational Plaintiffs raise similar challenges to the way that
12 voluntary departure has been and will continue to be administered. This Court has
13 subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, which
14 confers jurisdiction to consider federal questions. This Court also has subject
15 matter jurisdiction over this matter pursuant to 28 U.S.C. § 2241 (habeas corpus),
16 because the Individual Plaintiffs remain in Defendants’ constructive custody; 28
17 U.S.C. § 1651 (All Writs Act); and the Suspension Clause of Article I of the U.S.
18 Constitution, because there must be some forum for judicial review where a non-
19 citizen challenges the lawfulness of removal from the United States. *See INS v. St.*
20 *Cyr*, 533 U.S. 289, 304 (2001).¹

21 8. This Court may grant relief under 28 U.S.C. § 1331 (federal question),
22 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2241 and 2243 (habeas corpus), 28
23 U.S.C. §§ 2201-02 (declaratory relief), 5 U.S.C. §§ 702, 706 (Administrative
24 Procedure Act), and Fed. R. Civ. P. 65 (injunctive relief). The United States has
25 waived any sovereign immunity it could claim for declaratory and injunctive relief
26

27 ¹ The Due Process Clause and Article III of the U.S. Constitution also require some
28 federal forum for judicial review of federal statutory and constitutional claims, at
least where liberty is at stake.

1 claims. 5 U.S.C. § 702; *see also, e.g., Clinton v. Babbitt*, 180 F.3d 1081, 1087 (9th
2 Cir. 1999).

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

7 **PARTIES**

8 10. Plaintiff Isidora Lopez-Venegas is a native of Mexico who lived in the
9 United States for more than a decade before an unlawful voluntary departure in
10 August 2011. Ms. Lopez-Venegas has an eleven-year-old U.S. citizen son who
11 suffers from Asperger's Syndrome who was effectively forced to move to Mexico
12 with his mother as a result of Defendants' unlawful conduct. Ms. Lopez-Venegas
13 remains in Mexico with her son.

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

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

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

28

1 14. Plaintiff Samuel Nava is a native of Mexico who lived in the United
2 States for more than a decade before an unlawful voluntary departure in March
3 2011. Mr. Nava has a U.S. citizen wife who has been effectively forced to move to
4 Mexico as a result of the government's unlawful conduct. He remains in Mexico
5 with his wife.²

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

11 16. Plaintiff Arnulfo Sierra is a native of Mexico who lived in the United
12 States for more than twenty-five years before an unlawful voluntary departure in
13 August 2013. Mr. Sierra has a wife, two step-daughters, and two U.S. citizen
14 children in the United States, from whom he is now separated. He remains in
15 Mexico.

16 17. Plaintiff Genaro Muñoz-Flores is a native of Mexico who lived in the
17 United States for more than two decades before an unlawful voluntary departure in
18 August 2012. Mr. Muñoz-Flores has a wife and a U.S. citizen child in the United
19 States, from whom he is now separated. He remains in Mexico.

20 18. Plaintiff Candelaria Felix is acting as next friend for her granddaughter
21 Yadira Felix. Yadira Felix is a native of Mexico who lived in the United States for
22 more than twenty years before an unlawful voluntary departure in August 2012.
23 Yadira Felix suffers from cognitive disabilities that make her unable to assert her
24 own rights in this litigation. As a result, her grandmother, who has acted *in loco*
25

26 _____
27 ² Mr. Nava was recently granted an immigrant visa allowing him to return to the
28 United States after obtaining a special waiver of the penalty that applies after a
voluntary departure. *See infra* ¶ 38. Mr. Nava and his wife hope to be permitted to
return to the United States soon.

1 *parentis* and as her caregiver throughout her life, is representing her interests as her
2 next friend. Yadira Felix remains in Mexico.

3 19. Plaintiff Patricia Armenta is acting as next friend for her mother
4 Marta Mendoza. Ms. Mendoza is a native of Mexico who lived in the United States
5 for more than three decades before an unlawful voluntary departure in July 2013.
6 Ms. Mendoza has a husband, five U.S. citizen children, and five U.S. citizen
7 grandchildren in the United States, from whom she is now separated. Ms. Mendoza
8 suffers from mental health issues that make her unable to assert her own rights in
9 this litigation. As a result, her daughter who, along with other family members, has
10 recently acted as her caregiver, is representing her interests as her next friend. Ms.
11 Mendoza remains in Mexico.

12 20. Plaintiff Gorgonio Cabrera is a native of Mexico who has been
13 coming to the United States using valid visas since he was an infant in the late
14 1980s. He had been living in the United States for about a year before an unlawful
15 voluntary departure in December 2009. Mr. Cabrera has a U.S. citizen wife and
16 two U.S. citizen children, from whom he is now separated.

17 21. Plaintiff Coalition for Humane Immigrant Rights of Los Angeles
18 (“CHIRLA”) is a non-profit, community based organization headquartered in Los
19 Angeles. CHIRLA’s mission includes advancing the human and civil rights of
20 immigrants, promoting harmonious multi-ethnic and multi-racial human relations,
21 empowering all immigrants and their allies to build a more just and humane society,
22 and promoting the integration of immigrants into their communities. At the
23 expense of fully pursuing these goals, CHIRLA has been compelled to devote
24 significant portions of its limited resources to counteract the unlawful practices
25 Defendants employ in the administration of voluntary departure. If CHIRLA had
26 not been compelled to expend these resources to address Defendants’ unlawful
27 administration of voluntary departure, it would have directed these resources
28 toward the advancement of pro-immigrant policies and immigrant integration.

1 22. Plaintiff Pomona Economic Opportunity Center (“PEOC”) is a non-
2 profit day laborer organization headquartered in Pomona. PEOC’s mission is
3 to provide an opportunity for day laborers to find safe work at a fair wage, to
4 organize and advocate for themselves, to obtain new trades and skills that improve
5 their employability and quality of life, and to improve the overall conditions for all
6 workers. At the expense of fully pursuing its organizational goals, PEOC has been
7 compelled to devote significant portions of its limited resources to counteract the
8 unlawful practices Defendants employ in the administration of voluntary departure.
9 If PEOC had not been compelled to expend these resources to address Defendants’
10 unlawful administration of voluntary departure, it would have directed these
11 resources toward the advancement of workers’ rights and other abuses in the
12 immigrant enforcement system.

13 23. Plaintiff San Bernardino Community Service Center (“SBCSC”) is an
14 organization headquartered in San Bernardino. SBCSC’s mission includes
15 advocating on behalf of indigent and low-income immigrants for access to the legal
16 system and robust procedural protections within it. At the expense of fully
17 pursuing those organizational goals, SBCSC has been compelled to devote
18 significant portions of its limited resources to counteract the unlawful practices
19 Defendants employ in the administration of voluntary departure. If SBCSC had not
20 been compelled to expend these resources to address Defendants’ unlawful
21 administration of voluntary departure, it would have directed these resources
22 toward the advancement of its advocacy concerning conditions of immigration
23 detention and the availability of bond hearings for individuals in removal
24 proceedings.

25 24. Defendant Rand Beers is the Acting Secretary of Homeland Security.
26 He exercises authority over both the U.S. Customs and Border Protection (“CBP”)
27 and the Bureau of Immigration and Customs Enforcement (“ICE”).
28

1 The statute provides that the non-citizen be provided a period of up to 120 days to
2 voluntarily depart from the United States. 8 U.S.C. § 1229c(a)(2)(A).⁴

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

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

25
26 ⁴ 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 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 34. 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 indicating, among other
7 things, “I wish to return to my country as soon as arrangements can be made to
8 effect my departure.” Accordingly, Form I-826 is incompatible with the statutory
9 and regulatory requirement that immigration officials exercise discretion to
10 designate a date by which time an individual must voluntarily depart the United
11 States.

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

21 36. As matter of regular practice in Southern California, Defendants
22 mechanically pre-check the “voluntary departure” box on Form I-826 that indicates,
23 among other things, “I give up my right to a hearing before the Immigration Court.
24 I wish to return to my country as soon as arrangements can be made to effect my
25 departure.” For example, Defendants pre-checked this “voluntary departure” box
26 for all six of the Individual Plaintiffs whose I-826 forms were produced pursuant to
27 the initial disclosures in this litigation. Use of the pre-checked form gives the
28 impression that accepting immediate expulsion to Mexico is the only option

1 available to an individual. It is further evidence that Defendants' implementation of
2 "voluntary departure" in Southern California does not provide a fair opportunity for
3 individuals to make a meaningful choice, but rather constitutes an unauthorized and
4 unlawful form of summary expulsion.

5 ***Consequences of Voluntary Departure***

6 37. By "accepting" voluntary departure, individuals forgo a number of
7 procedural rights that apply only after removal proceedings have been initiated.
8 Pursuant to agency policy and practice, Defendants' agents only provide *Miranda*-
9 type advisals to those arrested on suspicion of immigration violations *after* the
10 service of a notice to appear for immigration court proceedings. *See, e.g., Matter of*
11 *E-R-M-F & A-S-M*, 25 I. & N. Dec. 580, 588 (BIA 2011). Once an individual
12 appears before an immigration judge, a number of other procedural rights apply.
13 The individual has the right to representation by counsel; the right to examine,
14 present, and challenge evidence, including through cross-examination of the
15 government's witnesses; and the right not to be ordered removed from the United
16 States unless the government proves that she is removable by clear and convincing
17 evidence. *See* 8 U.S.C. § 1229a. An immigration judge must also "inform the
18 [person] of his or her apparent eligibility to apply for any of the benefits
19 enumerated in this chapter and shall afford the [person] an opportunity to make
20 application during the hearing." 8 C.F.R. § 1240.11(a)(2). If the immigration
21 judge orders the individual removed, she has the right to appeal that order to the
22 Board of Immigration Appeals and, if unsuccessful on appeal, to petition for review
23 of the removal order by a federal court of appeals.

24 38. Apart from the loss of these procedural rights, taking voluntary
25 departure also carries significant consequences as a matter of substantive
26 immigration law. Anyone who has been unlawfully present in the United States for
27 one year or more and takes voluntary departure is subsequently "inadmissible" to
28 the United States for ten years. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II). There is a

1 similar three-year period of inadmissibility for anyone who has been unlawfully
2 present in the United States for more than 180 days but less than one year. *See* 8
3 U.S.C. § 1182(a)(9)(B)(ii)(I). Taking voluntary departure after a triggering period
4 of unlawful presence renders an individual is ineligible for an immigrant visa for
5 lawful permanent resident status or any other type of lawful entry into the United
6 States. *See* 8 U.S.C. § 1182(a) (describing an alien who is inadmissible to be
7 “ineligible to receive visas and ineligible to be admitted to the United States”).
8 While some individuals may seek a wholly discretionary waiver of an unlawful
9 presence bar, the waiver is only available on a showing of “extreme hardship” to
10 the individual’s U.S. citizen or lawful permanent resident spouse or parent, and the
11 immigration statute bars review of decisions denying such waivers. *See* 8 U.S.C.
12 § 1182(a)(9)(B)(v). Several of the Individual Plaintiffs, as well as numerous class
13 members, are ineligible to even apply for this waiver of an unlawful presence bar
14 because they do not have a U.S. citizen or lawful permanent resident spouse or
15 parent. Individuals cannot avoid unlawful presence bars by reentering the United
16 States without inspection, as doing so subjects them to an even more severe ground
17 of inadmissibility and disqualifies them from relief against removal. *See* 8 U.S.C. §
18 1182(a)(9)(C)(i); *Garfias-Rodriguez v. Holder*, 702 F.3d 504, 507 (9th Cir. 2012)
19 (en banc) (finding that alien who was inadmissible due to his unlawful reentry into
20 country after accruing more than one year of unlawful presence was not eligible to
21 adjust to lawful permanent resident status based on marriage to United States
22 citizen).

23 39. An individual who takes voluntary departure also loses the opportunity
24 to seek a number of forms of relief against removal under the immigration laws and
25 the programs of the Department of Homeland Security:

26 a. Cancellation of removal and adjustment of status for certain
27 nonpermanent residents (“cancellation of removal”): An immigration judge may
28 grant cancellation of removal to an individual who has (1) been present in the

1 United States for a continuous ten year period, (2) displayed good moral character,
2 (3) no qualifying criminal convictions, and (4) a U.S. citizen or lawful permanent
3 resident spouse, parent, or child who would suffer exceptional and extremely
4 unusual hardship as a result of the individual's removal. *See* 8 U.S.C. § 1229b(b).
5 Because cancellation of removal is only available to individuals who have been
6 placed in removal proceedings before an immigration judge, an individual loses her
7 opportunity to seek this form of relief by signing a voluntary departure form and
8 waiving the right to a hearing before an immigration judge. The individual also
9 loses any period of continuous presence that had accrued prior to the voluntary
10 departure for purposes of future cancellation of removal applications. *See, e.g.,*
11 *Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 974–75 (9th Cir. 2003).

12 b. Adjustment of status under Immigration and Nationality Act
13 (“INA”) §§ 245(a) and 245(i): Under INA § 245(a), an individual who entered the
14 United States after being inspected may seek to adjust her status without leaving the
15 United States, even if her status has since expired.⁵ *See* 8 U.S.C. § 1255(a). There
16 is no need for her to go to Mexico in order to “fix” her papers. Similarly, under
17 INA § 245(i), an individual who entered the United States without inspection but is
18 the beneficiary of an immigrant visa petition filed on or before April 30, 2001 may
19 seek to adjust her status without leaving the United States. *See* 8 U.S.C. § 1255(a).
20 But if an individual who could have adjusted her status under either provision
21 leaves the United States after accruing a triggering period of unlawful presence,
22

23 _____
24 ⁵ A sizeable group of Mexican nationals who have been in the United States for
25 years would be eligible for § 245(a) relief. Estimates show that approximately 40
26 percent of undocumented immigrants in the United States first entered the United
27 States lawfully but then overstayed their authorized periods of admission. *See*
28 *Border Security: Measuring the Progress and Addressing the Challenges: Hearing*
Before the S. Comm. on Homeland Sec. and Governmental Affairs, 113th Cong.
(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 Oct. 1, 2013).

1 *supra* ¶ 38, then she is barred from re-entering the United States for three or ten
2 years.

3 c. The Deferred Action for Childhood Arrivals program
4 (“DACA”): DACA is a form of administrative relief available to non-citizen youth
5 who lack legal status. To qualify for DACA, an individual must satisfy a number
6 of requirements, including continuous presence in the United States since June 15,
7 2007. Expulsion from the United States through voluntary departure breaks that
8 continuous presence and renders the individual ineligible for DACA in the future.⁶

9 d. Adjustment of status with a Provisional Unlawful Presence
10 Waiver: An applicant for an immigrant visa for lawful permanent residence who is
11 an immediate relative of a U.S. citizen may apply for a provisional waiver of
12 unlawful presence, which would allow her to remain in the United States with her
13 family while the waiver is adjudicated before departing for a consular interview
14 abroad. *See* 8 C.F.R. § 212.7(e). By contrast, a visa applicant who has taken
15 voluntary departure must remain outside the United States and away from her
16 family while she awaits consular adjudication of her request for a waiver of the
17 unlawful presence bar.

18 e. The Trafficking Victims Protection Act (“TVPA”): To qualify
19 for relief under the TVPA, a victim of a severe form of trafficking must be
20 physically present in the United States. *See* 8 C.F.R. § 214.11(b). This is a
21 particularly significant form of relief in Southern California, where a substantial
22 proportion of undocumented migrants have been victims of human trafficking.⁷

23 f. The Violence Against Women Act (“VAWA”): To qualify for
24 VAWA relief, a victim of domestic violence that was inflicted by a U.S. citizen or

25 _____
26 ⁶ Information about DACA is available at
<http://www.uscis.gov/USCIS/Resources/daca.pdf> (last visited Oct. 1, 2013).

27 ⁷ *See* SHELDON X. ZHANG, LOOKING FOR A HIDDEN POPULATION: TRAFFICKING OF
28 MIGRANT LABORERS IN SAN DIEGO COUNTY 11 (2012), *available at*
<https://www.ncjrs.gov/pdffiles1/nij/grants/240223.pdf> (last visited Oct. 1, 2013).

1 lawful permanent resident spouse must be physically present in the United States at
2 the time of application for such relief. *See* 8 C.F.R. § 204.2(c); 8 U.S.C. §
3 1229b(b)(2).

4 g. Asylum, withholding of removal, and protection under the U.N.
5 Convention Against Torture (“CAT”): These forms of relief provide protection for
6 people who have a well-founded fear of persecution, whose lives or freedom are
7 likely to be threatened, or who are likely to be tortured in their home countries.
8 Over the past several years, Mexican nationals have increasingly sought asylum,
9 withholding, and CAT protection because of the drug wars and other violence in
10 Mexico.⁸ Defendants’ unfair and unlawful voluntary departure procedures have
11 already endangered those who would have had strong claims to protection here in
12 the United States.

13 40. Defendants have failed to adequately train their officers about the legal
14 consequences of voluntary departure. Defendants’ training manuals and operating
15 procedures concerning voluntary departure fail to appropriately inform officers that
16 expelling an individual pursuant to voluntary departure can carry penalties,
17 including the imposition of a ten year unlawful presence bar. Where Defendants’
18 training manuals and operating procedures address the disadvantages of voluntary
19 departure, those materials focus on an individual’s failure to timely depart the
20 United States after being granted voluntary departure.⁹ Thus, even if Defendants’
21 officers may be inclined to provide accurate and complete information to
22 individuals facing voluntary departure, they lack the training to do so.

23
24 ⁸ *See, e.g.,* Molly Hennessy-Fiske, *More from Mexico seek U.S. asylum as drug*
25 *violence rises*, L.A. TIMES, Oct. 28, 2012, *available at*
26 <http://articles.latimes.com/2012/oct/28/nation/la-na-texas-asylum-20121028> (last
visited Oct. 1, 2013).

27 ⁹ Given that Defendants do not allow any period of time for individuals subjected to
28 voluntary departure in Southern California to put their affairs in order before
departing the country, *see supra* ¶¶ 33-34, these disadvantages of voluntary
departure are effectively irrelevant, at least in Southern California.

1 41. While the legal consequences of expulsion from the United States are
2 significant, Defendants' administration of voluntary departure in Southern
3 California also has the significant practical consequence of separating family
4 members.

5 ***Plaintiff Isidora Lopez-Venegas***

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

11 43. On the evening of August 13, 2011, Ms. Lopez-Venegas and her son
12 were walking to her car when an officer approached her and asked for her driver's
13 license. When Ms. Lopez-Venegas asked who he was, he responded that he was an
14 immigration officer and demanded her papers. Several other officers appeared.
15 Some wore green uniforms (indicating affiliation with Border Patrol). The
16 immigration officers arrested Ms. Lopez-Venegas and her son, and took them to a
17 Border Patrol station.

18 44. Border Patrol agents presented Ms. Lopez-Venegas with a "voluntary
19 departure" form which had been mechanically pre-checked to indicate, in part, "I
20 give up my right to a hearing before the Immigration Court. I wish to return to my
21 country as soon as arrangements can be made to effect my departure." The agents
22 repeatedly directed her to sign it. In doing so, the Border Patrol agents failed to
23 inform Ms. Lopez-Venegas, orally, through the I-826 form, or otherwise, of the
24 rights she would abandon and the consequences of the decision to abandon those
25 rights if she agreed to "voluntary departure." For instance, among other defects in
26 the circumstances in which the "voluntary departure" form was presented, the
27 agents threatened Ms. Lopez-Venegas that if she refused to sign the form she could
28 be detained for several months and thus separated from her autistic eleven-year-old

1 son. The agents failed to inform Ms. Lopez-Venegas that she could be released on
2 her own recognizance or bond if she chose not to agree to “voluntary departure.”
3 Instead, the agents rushed her to make a decision and forcefully instructed her
4 approximately half a dozen times to sign the mechanically pre-checked voluntary
5 departure form. The agents further misinformed Ms. Lopez-Venegas that it would
6 be easy for her to obtain legal status through her son once in Mexico. Given her
7 son’s age, this statement is false—it will be about ten years before Ms. Lopez-
8 Venegas will be able to apply for adjustment of status based on her son’s U.S.
9 citizenship. The Border Patrol agents failed to inform her that she could contact an
10 attorney prior to deciding whether to elect “voluntary departure” and failed to
11 provide her time to contact an attorney. The agents also failed to provide her a list
12 of attorneys or non-profit legal service providers, such that even if they had
13 provided her an opportunity to contact an attorney she would have been unable to
14 do so. Further, the Border Patrol agents also failed to inform her of the ten year
15 unlawful presence bar to which she would be subjected upon leaving the country.

16 45. Ms. Lopez-Venegas was not provided a meaningful opportunity to
17 read the Form I-826. While the Form I-826 associated with Ms. Lopez-Venegas’s
18 processing indicates that a Border Patrol agent read the form to her in Spanish, the
19 officer failed to sign the “Certification of Service” portion of the form. Moreover,
20 Ms. Lopez-Venegas never actually signed the Form I-826, or any other form, that
21 would indicate her consent to be expelled in lieu of pursuing immigration relief in
22 the United States.

23 46. As a result of the misstatements, omissions, pressure, and/or threats of
24 or caused by the Border Patrol agents, Ms. Lopez-Venegas made an unknowing and
25 involuntary election of “voluntary departure” the same evening she was brought to
26 the Border Patrol station.

27 47. Ms. Lopez-Venegas and, effectively, her U.S. citizen son were
28 expelled from the United States soon after being brought to the Border Patrol

1 station. Since their expulsion from the United States, Ms. Lopez-Venegas and her
2 son have remained in Mexico.

3 48. Ms. Lopez-Venegas's removal has negatively impacted her U.S.
4 citizen son. In Mexico, he does not have adequate access to treatment for his
5 Asperger's Syndrome or sufficient educational opportunities in light of his
6 condition.

7 49. When Ms. Lopez-Venegas consulted with an immigration lawyer after
8 her expulsion, she learned about the ten year unlawful presence bar. Ms. Lopez-
9 Venegas also learned that by leaving the United States, she had lost her opportunity
10 to seek cancellation of removal. Had Ms. Lopez-Venegas appeared before an
11 immigration judge instead of taking voluntary departure, she would have been
12 eligible for cancellation of removal.

13 ***Plaintiff Ana Maria Dueñas***

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

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

25 52. A Border Patrol agent presented Ms. Dueñas with a "voluntary
26 departure" form which had been mechanically pre-checked to indicate, in part, "I
27 give up my right to a hearing before the Immigration Court. I wish to return to my
28 country as soon as arrangements can be made to effect my departure." The agent

1 directed her to sign it. The Border Patrol agent, however, failed to inform Ms.
2 Dueñas, orally, through the I-826 form, or otherwise, of the rights she would
3 abandon or the consequences of abandoning those rights if she agreed to “voluntary
4 departure.” For instance, among other defects in the circumstances in which the
5 “voluntary departure” form was presented, the agent misinformed Ms. Dueñas that
6 she could not obtain relief from an immigration judge in the United States, but that
7 she could easily and quickly obtain legal status through her adult U.S. citizen
8 children once in Mexico. The agent threatened Ms. Dueñas that if she refused to
9 sign the mechanically pre-checked form, she would be detained for a minimum of
10 two months, without informing her that she could be released on her own
11 recognizance or bond if she chose not to agree to “voluntary departure.” Further,
12 the Border Patrol agent failed to provide Ms. Dueñas time to contact an attorney,
13 and instead put undue pressure on her to quickly sign the “voluntary departure”
14 form. The agent also failed to provide her a list of attorneys or non-profit legal
15 service providers, such that even if he had provided her an opportunity to contact an
16 attorney she would not have been able to do so. The agent also failed to inform her
17 of the ten year unlawful presence bar to which she would be subjected if she left the
18 United States.

19 53. Ms. Dueñas never actually signed the Form I-826, or any other form,
20 that would indicate her consent to be expelled in lieu of pursuing immigration relief
21 in the United States.

22 54. As a result of the omissions, misinformation, pressure, and/or threats
23 of or caused by the Border Patrol agent, Ms. Dueñas made an unknowing and
24 involuntary election of “voluntary departure.”

25 55. Ms. Dueñas was expelled from the United States soon after being
26 brought to the Border Patrol station. Ms. Dueñas has remained in Tijuana since
27 leaving the United States. She deeply wishes to be reunited with her children and
28 grandchildren who live in San Diego.

1 56. It was only after Ms. Dueñas was expelled from the United States
2 pursuant to “voluntary departure” that she learned for the first time about the ten
3 year unlawful presence bar. Had Ms. Dueñas appeared before an immigration
4 judge instead of taking voluntary departure, she could have sought to adjust her
5 status based on the status of any of her U.S. citizen children under § 245(a).
6 Because Ms. Dueñas entered the United States with inspection, she would not have
7 been required to wait in Mexico for years while her petition was processed and
8 approved.

9 ***Plaintiff Gerardo Hernandez-Contreras***

10 57. Gerardo Hernandez-Contreras was born in Mexico but entered the
11 United States in 2001 when he was around fifteen years old. Mr. Hernandez-
12 Contreras settled in San Diego County. Mr. Hernandez-Contreras did not leave the
13 United States until he was expelled from the country pursuant to the unlawful
14 voluntary departure process in November 2012. In 2006, Mr. Hernandez-Contreras
15 married Aide Vasquez, a U.S. citizen. Mr. Hernandez-Contreras and Mrs. Vasquez
16 are the parents of two young U.S. citizen children. Mr. Hernandez-Contreras has
17 no criminal history and has never been ordered removed from the United States.

18 58. On November 27, 2012, Mr. Hernandez-Contreras was driving home
19 when two San Diego Police Department officers pulled him over for using a cell
20 phone while driving. Immigration officers wearing green uniforms (indicating
21 affiliation with Border Patrol) arrived on the scene soon thereafter. At the time of
22 the traffic stop, Mr. Hernandez-Contreras had been on the phone with Mrs.
23 Vasquez, who rushed to the scene. Mrs. Vasquez told the immigration officers that
24 she was Mr. Hernandez-Contreras’s U.S. citizen wife and that they have two U.S.
25 citizen children together. Despite Mrs. Vasquez’s pleas, the officers placed Mr.
26 Hernandez-Contreras in the back of their vehicle and drove him to a Border Patrol
27 station in Chula Vista.

28

1 59. Border Patrol agents presented Mr. Hernandez-Contreras with a
2 “voluntary departure” form which had been mechanically pre-checked to indicate,
3 in part, “I give up my right to a hearing before the Immigration Court. I wish to
4 return to my country as soon as arrangements can be made to effect my departure.”
5 The agents directed him to sign it. The Border Patrol agents, however, failed to
6 inform Mr. Hernandez-Contreras, orally, through the I-826 form, or otherwise, of
7 the rights he would abandon and the consequences of the decision to abandon those
8 rights if he agreed to “voluntary departure.” For instance, among other defects in
9 the circumstances in which the mechanically pre-checked form was presented, the
10 agents threatened Mr. Hernandez-Contreras that if he refused to sign he could be
11 detained for months, without informing him that he could be released on his own
12 recognizance or bond if he chose not to agree to “voluntary departure.” The agents
13 further misinformed Mr. Hernandez-Contreras that he could simply obtain legal
14 status through Mrs. Vasquez once in Mexico. The Border Patrol agents failed to
15 inform him that he could contact an attorney prior to deciding whether to elect
16 “voluntary departure,” failed to provide him time to contact an attorney, and instead
17 put undue pressure on him to quickly sign the “voluntary departure” form. The
18 agents failed to provide him a list of attorneys or non-profit legal service providers
19 such that even if they had provided him an opportunity to contact an attorney he
20 would not have been able to do so. The Border Patrol agents also failed to inform
21 him of the ten year unlawful presence bar to which he would be subjected if he left
22 the country.

23 60. As a result of the omissions, misinformation, pressure, and/or threats
24 of or caused by the Border Patrol agents, Mr. Hernandez-Contreras made an
25 unknowing and involuntary election of “voluntary departure.”

26 61. Mr. Hernandez-Contreras was expelled from the United States soon
27 after being brought to the Border Patrol station. Mr. Hernandez-Contreras has been
28 living in Tijuana since leaving the United States.

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

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

11 ***Plaintiff Efrain Garcia-Martinez***

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

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

26 66. On September 24, 2012, Mr. Garcia-Martinez was fishing at Shelter
27 Island in San Diego when a law enforcement officer demanded to see his papers.
28 When Mr. Garcia-Martinez responded that he did not have any papers, the officer

1 handcuffed him and called Border Patrol. Shortly thereafter, a Border Patrol agent
2 arrived and took Mr. Garcia-Martinez to a Border Patrol station.

3 67. Border Patrol agents presented Mr. Garcia-Martinez with a “voluntary
4 departure” form which had been mechanically pre-checked to indicate, in part, “I
5 give up my right to a hearing before the Immigration Court. I wish to return to my
6 country as soon as arrangements can be made to effect my departure.” The agents
7 directed him to sign it. The Border Patrol agents, however, failed to inform Mr.
8 Garcia-Martinez, orally, through the I-826 form, or otherwise, of the rights he
9 would abandon and the consequences of the decision to abandon those rights if he
10 agreed to “voluntary departure.” For instance, among other defects in the
11 circumstances in which the “voluntary departure” form was presented, Border
12 Patrol agents failed to inform Mr. Garcia-Martinez of the ten year unlawful
13 presence bar to which he would be subjected upon leaving the country. The agents
14 failed to inform him that he could contact an attorney prior to deciding whether to
15 elect “voluntary departure,” failed to provide him time to contact an attorney, and
16 instead put undue pressure on him to quickly sign the “voluntary departure” form.
17 The agents failed to provide him a list of attorneys or non-profit legal service
18 providers such that even if they had provided him an opportunity to contact an
19 attorney he would not have been able to do so. Although Mr. Garcia-Martinez
20 informed the Border Patrol agents multiple times that he did not want to sign the
21 voluntary departure form, the agents persisted in pressuring him to sign the
22 mechanically pre-checked form.

23 68. As a result of the omissions, misinformation, pressure and/or threats of
24 or caused by the Border Patrol agents, Mr. Garcia-Martinez made an unknowing
25 and involuntary election of “voluntary departure.”

26 69. Mr. Garcia-Martinez was expelled from the United States soon after
27 being brought to the Border Patrol station. He has remained in Tijuana since then.
28

1 70. It was only after Mr. Garcia-Martinez was expelled from the United
2 States pursuant to “voluntary departure” that he learned for the first time about the
3 ten year unlawful presence bar. Had Mr. Garcia-Martinez appeared before an
4 immigration judge instead of taking voluntary departure, he could have sought to
5 adjust his status based on the approved § 245(i) petition that his sister filed for him
6 in April 2001.

7 ***Plaintiff Sam Nava***

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

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

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

4 74. When a Border Patrol agent arrived, Mr. Nava explained that his
5 family had an approved immigrant visa petition. The Border Patrol agent said that
6 he could not find anything about Mr. Nava in the system and incorrectly informed
7 Mr. Nava he had to be deported because of his expired tourist visa. The officer
8 took Mr. Nava to a Border Patrol station in Campo.

9 75. Border Patrol agents presented Mr. Nava with a “voluntary departure”
10 form which had been mechanically pre-checked to indicate, in part, “I give up my
11 right to a hearing before the Immigration Court. I wish to return to my country as
12 soon as arrangements can be made to effect my departure.” The agents directed
13 him to sign it. The Border Patrol agents, however, failed to inform Mr. Nava,
14 orally, through the I-826 form, or otherwise, of the rights he would abandon and the
15 consequences of the decision to abandon those rights if he agreed to “voluntary
16 departure.” For instance, among other defects in the circumstances in which the
17 mechanically pre-checked form was presented, Border Patrol agents threatened Mr.
18 Nava that if he refused to sign he could be detained for months, without informing
19 him that he could be released on his own recognizance or bond if he chose not to
20 agree to “voluntary departure.” The agents further misinformed Mr. Nava that he
21 could not obtain relief from an immigration judge in the United States, but that he
22 could obtain legal status through Ms. Scott once in Mexico. The Border Patrol
23 agents failed to inform him that he could contact an attorney prior to deciding
24 whether to elect “voluntary departure,” failed to provide him time to contact an
25 attorney, and instead put undue pressure on him to quickly sign the “voluntary
26 departure” form. The agents failed to provide him a list of attorneys or non-profit
27 legal service providers such that even if they had provided him an opportunity to
28 contact an attorney he would not have been able to do so. The agents also made

1 threats against his family and failed to inform him of the ten year unlawful presence
2 bar to which he would be subjected upon leaving the country.

3 76. As a result of the omissions, misinformation, pressure, and/or threats
4 of or caused by the Border Patrol agents, Mr. Nava made an unknowing and
5 involuntary election of “voluntary departure.”

6 77. Mr. Nava was expelled from the United States soon after being
7 brought to the Border Patrol station. Since his expulsion from the United States,
8 Mr. Nava has been living in La Paz, Mexico.

9 78. Mr. Nava’s expulsion from the United States turned his life, and Ms.
10 Scott’s, upside down. He lost his volunteer work in ministries with the youth at
11 Foothills Christian Church, as well as his plans to start a family business. Mr.
12 Nava’s studies at Vision International have also been interrupted. Ms. Scott, who is
13 a U.S. citizen, had to leave her senior year of college at San Diego State University
14 and her job at Starbucks to live with Mr. Nava in La Paz, Mexico. Mr. Nava and
15 Ms. Scott were married in Mexico in April 2011.

16 79. When Mr. Nava and Ms. Scott hired an immigration lawyer to seek
17 lawful permanent residence for Mr. Nava, they learned that because Mr. Nava had
18 departed from the United States after accruing more than a year of unlawful
19 presence, he was barred from re-entering the country for ten years. If Mr. Nava had
20 appeared before an immigration judge instead of taking voluntary departure, he
21 could have sought to adjust his status through marriage to Ms. Scott under § 245(a)
22 without having to contend with the ten year bar.¹⁰

23 ***Plaintiff Alejandro Serrato***

24 80. Alejandro Serrato was born in Mexico but entered the United States
25 lawfully around 2000 or 2001 when he was approximately ten years old. Mr.
26 Serrato did not leave the United States until he was expelled from the country

27 ¹⁰ After the filing of the above captioned action, Mr. Nava was granted a waiver of
28 the unlawful presence bar and an immigrant visa. He and Ms. Scott hope to be
permitted to return to the United States soon.

1 pursuant to the unlawful voluntary departure process in October 2012. Mr. Serrato
2 attended elementary, middle and high school here, though he stopped attending
3 high school in eleventh grade. His three sisters and his mother live in the San
4 Diego region. Mr. Serrato married his wife Mayra, a U.S. citizen, on December 9,
5 2011. They have a young U.S. citizen son. Except for the incident where he was
6 arrested prior to his voluntary departure, Mr. Serrato has no criminal history. He
7 has never been ordered removed from the United States.

8 81. In late September 2012, Mr. Serrato was arrested at his house by San
9 Diego Police Department officers after having a non-violent, verbal argument with
10 a neighbor. The officers transported Mr. Serrato to the downtown jail, where ICE
11 placed an immigration hold on him. After several days, Mr. Serrato was moved to
12 an ICE office.

13 82. Mr. Serrato told the ICE officers that he has a U.S. citizen wife and
14 child. An ICE officer did not believe Mr. Serrato and instructed Mr. Serrato to call
15 his wife to prove he was telling the truth. Mr. Serrato called Mrs. Serrato, who
16 answered the officer's questions regarding her marriage and her citizenship. The
17 ICE officer then presented Mr. Serrato with a "voluntary departure" form which
18 had been mechanically pre-checked to indicate, in part, "I give up my right to a
19 hearing before the Immigration Court. I wish to return to my country as soon as
20 arrangements can be made to effect my departure." The officer directed him to sign
21 it. The ICE officer, however, failed to inform Mr. Serrato, orally, through the I-826
22 form, or otherwise, of the rights he would abandon and the consequences of the
23 decision to abandon those rights if he agreed to "voluntary departure." For
24 instance, among other defects in the circumstances in which the mechanically pre-
25 checked form was presented, the ICE officer misinformed Mr. Serrato that he could
26 simply obtain legal status through his wife once he was in Mexico and that an
27 immigration judge would not let him stay in the United States. The ICE officer
28 failed to provide him time to contact an attorney, and instead put undue pressure on

1 him to quickly sign the “voluntary departure” form. The officer failed to provide
2 him a list of attorneys or non-profit legal service providers such that even if the
3 officer had provided him an opportunity to contact an attorney he would not have
4 been able to do so. The ICE officer also failed to inform Mr. Serrato of the ten year
5 unlawful presence bar to which he would be subjected upon leaving the country.

6 83. As a result of the omissions, misinformation, pressure, and/or threats
7 of or caused by the ICE officer, Mr. Serrato made an unknowing and involuntary
8 election of “voluntary departure.”

9 84. Mr. Serrato was expelled from the United States soon after being
10 brought to the ICE office. He has remained in Tijuana since then.

11 85. Mr. Serrato’s expulsion from the United States has significantly and
12 negatively affected his life and his family. Among other things, Mr. Serrato lost his
13 job in the United States. Mr. Serrato’s expulsion also forced Mrs. Serrato and their
14 young son to leave San Diego to live with Mr. Serrato in Tijuana, Mexico.

15 86. When Mr. and Mrs. Serrato hired an immigration lawyer to seek
16 lawful permanent residence for Mr. Serrato after his expulsion, they learned that
17 because Mr. Serrato had departed from the United States after accruing more than a
18 year of unlawful presence, he was barred from re-entering the country for ten years.
19 Had Mr. Serrato appeared before an immigration judge instead of taking voluntary
20 departure, he would have been eligible for cancellation of removal and could have
21 sought to adjust his status based on the status of his U.S. citizen wife under
22 § 245(a). Because Mr. Serrato entered the United States with inspection, he would
23 not have been required to wait in Mexico for years while his visa petition was
24 processed and approved.

25 ***Plaintiff Arnulfo Sierra***

26 87. Arnulfo Sierra was born in Mexico in 1968. He came to the United
27 States in 1986. Mr. Sierra lived in the United until August 2013, when he was
28 expelled pursuant to the unlawful voluntary departure process.

1 88. Mr. Sierra settled in San Bernardino, California, with his wife. They
2 lived together with Mr. Sierra's two step-daughters and the couple's two daughters,
3 who are U.S. citizens.

4 89. Mr. Sierra has no criminal history. He has never been ordered
5 removed from the United States. Prior to his expulsion, he worked to support his
6 family in San Bernardino.

7 90. On the morning of August 17, 2013, Mr. Sierra was caught in an ICE
8 raid in San Bernardino. ICE officers took him into custody at a local detention
9 facility and presented him with a "voluntary departure" form, which they directed
10 him to sign. The ICE officers, however, failed to inform Mr. Sierra, orally, through
11 the I-826 form, or otherwise, of the rights he would abandon or the consequences of
12 abandoning those rights if he agreed to "voluntary departure." For instance, among
13 other defects in the circumstances in which the "voluntary departure" form was
14 presented, the ICE officers misinformed Mr. Sierra that he could not obtain relief
15 from an immigration judge in the United States, but that he could easily and quickly
16 obtain legal status and "fix" his papers once in Mexico. The officers threatened Mr.
17 Sierra that if he refused to sign the form, he would be detained for a minimum of
18 two to three months, without informing him that he could be released on his own
19 recognizance or on bond if he chose not to agree to "voluntary departure." The
20 officers also made threats against Mr. Sierra's family. Further, ICE officers failed
21 to inform Mr. Sierra that he could contact an attorney prior to deciding whether to
22 elect "voluntary departure," failed to provide him time to contact an attorney, and
23 instead put undue pressure on him to quickly sign the "voluntary departure" form.
24 The ICE officers also failed to provide him a list of attorneys or non-profit legal
25 service providers, such that even if they had provided him time to contact an
26 attorney he would not have been able to do so. None of the ICE officers informed
27 Mr. Sierra of the ten year unlawful presence bar to which he would be subjected if
28 he left the United States.

1 91. As a result of the omissions, misinformation, pressure, and/or threats
2 of or caused by the ICE officers, Mr. Sierra made an unknowing and involuntary
3 election of “voluntary departure.”

4 92. Mr. Sierra was expelled from the United States soon after being taken
5 into ICE custody. Mr. Sierra has remained in Tijuana since leaving the United
6 States. He deeply wishes to be reunited with his wife and children who live in San
7 Bernardino.

8 93. It was only after Mr. Sierra was expelled from the United States
9 pursuant to “voluntary departure” that he learned for the first time about the ten
10 year unlawful presence bar. Had Mr. Sierra appeared before an immigration judge
11 instead of taking voluntary departure, he would have been eligible for cancellation
12 of removal.

13 ***Plaintiff Genaro Muñoz-Flores***

14 94. Genaro Muñoz-Flores was born in Mexico in 1963. He came to the
15 United States in 1990. Mr. Muñoz-Flores did not leave the United States until
16 2012, when he was expelled pursuant to the “voluntary departure” process.

17 95. Mr. Muñoz-Flores settled in Santa Ana, California, with his wife and
18 their U.S. citizen son, who is now thirteen years old. Prior to the arrest that led to
19 his expulsion, Mr. Muñoz-Flores had no criminal history. He has never been
20 ordered removed from the United States.

21 96. Mr. Muñoz-Flores’ son has been diagnosed with attention deficit
22 disorder. Prior to his expulsion from the United States, Mr. Muñoz-Flores and his
23 wife were able to provide their son with sufficient support so that he did not have to
24 take medication. Since Mr. Muñoz-Flores’ expulsion, his son has had to start
25 medication for his disorder.

26 97. In August 2012, ICE officers took Mr. Muñoz-Flores into custody
27 after he was released from a Santa Ana jail after serving 45 days for driving under
28 the influence. Although Mr. Muñoz-Flores explained to the officers that he had

1 lived in the United States since 1990 and that he had a U.S. citizen son, the officers
2 gave him a “voluntary departure” form and directed him to sign it. The ICE
3 officers, however, failed to inform Mr. Muñoz-Flores, orally, through the I-826
4 form, or otherwise, of the rights he would abandon or the consequences of
5 abandoning those rights if he agreed to “voluntary departure.” For instance, among
6 other defects in the circumstances in which the “voluntary departure” form was
7 presented, the ICE officers informed Mr. Muñoz-Flores that they would deport him
8 immediately whether he signed the form or not. The officers did not inform Mr.
9 Muñoz-Flores that he could be released on his own recognizance or bond if he
10 chose not to agree to “voluntary departure.” Further, ICE officers failed to inform
11 Mr. Muñoz-Flores that he could contact an attorney prior to deciding whether to
12 elect “voluntary departure,” failed to provide him time to contact an attorney, and
13 instead put undue pressure on him to quickly sign the “voluntary departure” form.
14 The ICE officers also failed to provide him a list of attorneys or non-profit legal
15 service providers, such that even if they had provided him time to contact an
16 attorney he would not have been able to do so. Neither of the ICE officers
17 informed Mr. Muñoz-Flores of the ten year unlawful presence bar to which he
18 would be subjected if he left the United States.

19 98. As a result of the omissions, misinformation, pressure, and/or threats
20 of or caused by the ICE officers, Mr. Muñoz-Flores made an unknowing and
21 involuntary election of “voluntary departure.”

22 99. Mr. Muñoz-Flores was expelled from the United States shortly
23 thereafter. While he has remained in Mexico since then, he deeply wishes to be
24 reunited with his wife and son who live in Santa Ana.

25 100. Had Mr. Muñoz-Flores appeared before an immigration judge instead
26 of taking voluntary departure, he would have been eligible for cancellation of
27 removal. As a result of the ten year bar now applicable to Mr. Muñoz-Flores, it will
28

1 likely take at least an extra year for Mr. Muñoz-Flores to obtain an immigrant visa
2 once his U.S. citizen son is twenty-one years old and is able to petition for him.

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

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

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

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

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

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

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.¹¹ Yadira remains in Mexico.

3 106. 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.

7 107. 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 ***Plaintiff Patricia Armenta, as next friend of Marta Mendoza***

11 108. Marta Mendoza was born in Mexico. She entered the United States
12 unlawfully in 1981. Ms. Mendoza did not leave the United States for more than
13 thirty years—until she was expelled from the country pursuant to the unlawful
14 voluntary departure process in July 2013. Ms. Mendoza has six U.S. citizen
15 children, including Patricia Armenta, and five U.S. citizen grandchildren in the Los
16 Angeles area. Her husband also lives in the area. She has a history of mental
17 health issues that include depression, anxiety, a bipolar disorder that causes her to
18 hear voices, and hyperthyroidism, which causes her to have severe mood swings.
19 These mental and emotional health issues have recently made her incapable of
20 tending to her daily affairs. As a result, she is incapable of pursuing this action
21 without a next friend. Prior to the arrest that led to her expulsion, Ms. Mendoza

22
23 ¹¹ Border Patrol agents appear to have simply decided to repatriate Yadira without
24 giving her the choice of appearing before an immigration judge. Border Patrol
25 agents have expelled others without following even their own flawed voluntary
26 departure procedures. For example, in 2011, Border Patrol agents in the San Diego
27 Sector expelled Elizabeth Enriquez from the United States despite the fact that she
28 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 had no criminal history. She has never been ordered removed from the United
2 States.

3 109. In July 2013, Ms. Mendoza was arrested by Van Nuys Police officers
4 on suspicion of shoplifting. The officers transported Ms. Mendoza to the Van Nuys
5 Police Station, where ICE placed an immigration “hold” on her. After several days,
6 Ms. Mendoza was transferred to the Lynwood jail. At the Lynwood jail, she was
7 administered medication for one or more of her mental health issues.

8 110. Ms. Mendoza’s family was unable to locate her for several days.
9 When they finally found her at the Lynwood jail they attempted to post bail for her.
10 The bail was rejected because of the ICE “hold.”

11 111. At the Lynwood jail, a group of ICE officers visited Ms. Mendoza on
12 multiple occasions. She told the officers that she had six children here in the
13 United States. The ICE officers nevertheless repeatedly presented Ms. Mendoza
14 with a “voluntary departure” form and directed her to sign it. The ICE officers,
15 however, failed to inform Ms. Mendoza, orally, through the I-826 form, or
16 otherwise, of the rights she would abandon and the consequences of the decision to
17 abandon those rights if she agreed to “voluntary departure.” For instance, among
18 other defects in the circumstances in which the “voluntary departure” form was
19 presented, the officers threatened Ms. Mendoza that if she refused to sign she could
20 be detained for months, without informing her that she could be released on her
21 own recognizance or on bond if she chose not to agree to “voluntary departure.”
22 Further, ICE officers failed to inform Ms. Mendoza that she could contact an
23 attorney prior to deciding whether to elect “voluntary departure.” The ICE officers
24 also failed to provide her a list of attorneys or non-profit legal service providers.
25 The ICE officers also failed to inform Ms. Mendoza of the ten year unlawful
26 presence bar to which she would be subjected upon leaving the country.

27
28

1 112. As a result of the omissions, misinformation, pressure, and/or threats
2 of or caused by the ICE officers, Ms. Mendoza made an unknowing and involuntary
3 election of “voluntary departure.”

4 113. Ms. Mendoza was expelled from the United States on or around
5 Monday, July 22, shortly after Defendants pressured her to take “voluntary
6 departure.” Even as Ms. Mendoza was being processed for “voluntary departure,”
7 her family was consulting with an immigration attorney. By the time the attorney
8 attempted to contact ICE, Ms. Mendoza was already in Mexico. She has remained
9 in Mexico since then.

10 114. Had Ms. Mendoza appeared before an immigration judge instead of
11 taking voluntary departure, she would have been eligible for cancellation of
12 removal based on her sixteen-year-old U.S. citizen son who suffers from bi-polar
13 disorder and could have sought a Provisional Unlawful Presence Waiver. Ms.
14 Mendoza is described by other family members as the only one in the family who
15 can keep her bi-polar son calm.

16 ***Plaintiff Gorgonio Cabrera***

17 115. Gorgonio Cabrera was born in Mexico in 1987. He first came to the
18 United States in 1988, when he was about nine months old. He has been told that
19 his parents had visas to enter the United States and his father had permission to
20 work here. Mr. Cabrera returned to the United States using a valid visa in
21 December of 2008. Prior to his unlawful voluntary departure, he lived in Mecca,
22 California, with his wife, a U.S. citizen, and their two children, who are also U.S.
23 citizens. Mr. Cabrera has no criminal history and has never been ordered removed
24 from the United States.

25 116. On or around December 22, 2009, Mr. Cabrera and his wife were
26 driving home when a Border Patrol agent stopped them. The agent told Mr.
27 Cabrera that he would have to detain him and misinformed him that he could easily
28

1 “fix” his papers from Mexico based on the status of his U.S. citizen wife. The
2 agent took Mr. Cabrera to a Border Patrol station in Indio, California.

3 117. At the station, Border Patrol agents presented Mr. Cabrera with a
4 “voluntary departure” form and directed him to sign it. The agents, however, failed
5 to inform Mr. Cabrera, 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, the agents
9 likely presented Mr. Cabrera with a form in English, even though the agents knew
10 or should have known that he understood only Spanish. Further, the Border Patrol
11 agents failed to inform Mr. Cabrera that he could call the Mexican Consulate or an
12 attorney, failed to provide him time to contact an attorney, and instead put undue
13 pressure on him to quickly sign the “voluntary departure” form. The agents also
14 failed to provide him a list of attorneys or non-profit legal service providers, such
15 that even if they had provided him an opportunity to contact an attorney he would
16 not have been able to do so. Moreover, the agents also failed to inform Mr. Cabrera
17 that he could request a hearing in front of an immigration judge if he chose not to
18 take “voluntary departure.”

19 118. As a result of the omissions, misinformation, pressure, and/or threats
20 of or caused by the Border Patrol agents, Mr. Cabrera made an unknowing and
21 involuntary election of “voluntary departure.”

22 119. Mr. Cabrera was expelled from the United States soon after he was
23 brought to the Border Patrol station. He has remained in Mexico since then. Even
24 as Mr. Cabrera was being processed for “voluntary departure,” his wife was
25 desperately trying to locate him. By the time Mrs. Cabrera learned that he had been
26 held at the Indio station, she was told that it was too late and he had already been
27 transferred. Mrs. Cabrera did not hear from her husband until later that evening,
28 when he called from Mexico.

1 been compelled to respond to this practice by expending resources to inform
2 community members of the dangers of administrative voluntary departure.
3 Furthermore, the manner in which voluntary departure is administered – with
4 Mexican nationals being held incommunicado and expelled from the country within
5 hours – prevents CHIRLA from effectively following up with the most affected
6 members of Los Angeles’ immigrant community about whether they were
7 subjected to racial profiling or other mistreatment at the hands of local law
8 enforcement and immigration enforcement authorities, thereby frustrating
9 CHIRLA’s mission.

10 125. Coerced and misinformed “voluntary departures” have been prevalent
11 in the immigrant community of Los Angeles for years. CHIRLA focused on the
12 issue at least as early as 2007 when a woman told a CHIRLA community organizer
13 that she signed a voluntary departure form because immigration enforcement
14 officers yelled at her and threatened her. Following that incident, CHIRLA
15 received several more reports that individuals had signed for voluntary departure
16 due to misinformation or coercion. In 2008, CHIRLA also assisted a U.S. citizen
17 named Peter Guzman who was illegally expelled from the United States pursuant to
18 the unlawful voluntary departure process. *See infra* ¶ 159.

19 126. CHIRLA staff spent a substantial amount of organizational time and
20 transportation funds responding to immigration raids in Van Nuys in 2008 and in
21 Fullerton in 2009 by rushing to the scenes of the raids and advising workers who
22 were being detained that they had the right to decline to sign any documents,
23 including voluntary departure forms, and subsequently providing similar advice to
24 other community members in post-raid “Know Your Rights” presentations.

25 127. To address issues related to immigration enforcement, including
26 voluntary departure, CHIRLA established a free referral and information hotline.
27 Through this hotline and walk-in intake at its storefront office in Los Angeles,
28 CHIRLA has been in contact with dozens of individuals who have indicated that

1 they or a relative were pressured to sign a voluntary departure form. In the
2 instances where CHIRLA receives a report that an individual has been detained but
3 has not yet signed a voluntary departure form, CHIRLA staff members have
4 assisted in reaching the detained individual to provide her with information about
5 her rights, including her rights to see an immigration judge and not to sign
6 anything.

7 128. Because there is little that CHIRLA staff can do once an individual has
8 signed for voluntary departure, CHIRLA has also focused on educating the
9 immigrant community of Los Angeles and has expended considerable resources to
10 attempt to prevent coerced and misinformed voluntary departures. CHIRLA has
11 created printed materials and videos, and allocated staff resources to educate
12 immigrants about their constitutional rights, including the right to not sign any
13 forms they do not understand.

14 129. CHIRLA staff regularly convene “Know Your Rights” presentations
15 for immigrant communities in Los Angeles. These presentations address an
16 individual’s right to request to see an immigration judge and the consequences of
17 signing for voluntary departure. CHIRLA staff educate community members about
18 the pressure and deception that immigration enforcement officers might employ to
19 convince them to sign for voluntary departure. During the Question and Answer
20 segment of these “Know Your Rights” presentations, community members often
21 ask questions about voluntary departure and share first-hand accounts of the
22 coercive tactics immigration enforcement officers use to convince individuals to
23 take voluntary departure.

24 130. If CHIRLA had not been compelled to expend resources to address
25 coerced and misinformed voluntary departures, it would have directed these
26 resources toward the advancement of its core mission, including the advancement
27 of pro-immigrant policies and immigrant integration.

28

1 131. The voluntary departure regime has frustrated CHIRLA's mission of
2 advancing the human and civil rights of immigrants and fully integrating
3 immigrants into Los Angeles and California. At the cost of fully pursuing
4 organizational goals, CHIRLA has been compelled to devote significant resources
5 to counteract the coercive and abusive practices Defendants employ in the
6 administration of voluntary departure.

7 132. CHIRLA itself has been, and continues to be, harmed by Defendants'
8 practices and conduct because those practices undermine CHIRLA's organizational
9 mission and cause CHIRLA to divert resources from the pursuit of other goals.

10 ***Plaintiff Pomona Economic Opportunity Center***

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

18 134. PEOC's involvement in immigration enforcement issues arose out of
19 necessity as immigration enforcement officers periodically targeted day laborers
20 over the past decade. In 2009, immigration enforcement officers began raiding day
21 laborer sites and arresting day laborers in the Inland Empire. PEOC received
22 reports that day laborers were expelled from the United States within six to twelve
23 hours of being arrested in those raids. At that time, one of PEOC's key day laborer
24 leaders signed for voluntary departure under pressure and mistreatment by Border
25 Patrol and witnessed other day laborers being similarly pressured and mistreated.
26 PEOC has continued offering services to unorganized day laborers because it fears
27 that the coercive tactics employed by immigration enforcement officers will spread
28 to other areas.

1 135. In 2013, immigration enforcement officers began raiding day laborer
2 sites again, targeting unorganized sites in southern Riverside County. PEOC
3 received reports that individuals detained during those raids were pressured or
4 tricked into signing for voluntary departure as well.

5 136. In response to reports of voluntary departures that arose from
6 misinformation and coercion, PEOC was compelled to divert resources to learn
7 about immigration law and voluntary departure.

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

17 138. Additionally, in response to immigration raids on particular day
18 laborer sites, PEOC staff spend organizational time and gas money to reach the
19 affected day laborers to provide them with crucial information about their rights,
20 including the consequences of taking voluntary departure and immigrants’ right to
21 decline to take voluntary departure.

22 139. If PEOC had not been compelled to expend these resources to address
23 coerced and misinformed voluntary departures, it would have directed these
24 resources toward the advancement of its core mission, including advocating and
25 organizing to provide economic opportunity for day laborers. Instead of spending
26 time on rapid response and prevention, PEOC would focus on affirmative advocacy
27 in other areas, including adjustment of status and DACA cases.

28

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

6 141. PEOC itself has been, and continues to be, harmed by Defendants'
7 practices because those practices undermine PEOC's organizational mission and
8 cause PEOC to divert resources from the pursuit of other goals.

9 ***Plaintiff San Bernardino Community Service Center***

10 142. SBCSC was founded in 1998 and formally incorporated in 2001.
11 SBCSC is headquartered in San Bernardino, but its work encompasses Riverside
12 County as well. SBCSC's mission includes advocating on behalf of indigent and
13 low-income immigrants for access to the legal system and robust procedural
14 protections within it. SBCSC fulfills this mission in part through policy advocacy,
15 community education, and community organizing. SBCSC serves a diverse
16 community of immigrants, including Mexican nationals.

17 143. SBCSC believes that an unfair voluntary departure effectively denies
18 an individual access to the legal system because of the manner in which it is
19 administered – with Mexican nationals often being held incommunicado and
20 expelled from the country within hours of their initial detention – and the
21 significant legal consequences that it carries. Additionally, many individuals who
22 take voluntary departure have no legal recourse once they have been removed to
23 Mexico. Consequently, SBCSC has been compelled to respond to this practice by
24 engaging in rapid response to try to intervene before an individual is expelled
25 pursuant to an unfair and unlawful voluntary departure and by informing
26 community members of the consequences of administrative voluntary departure.

27 144. SBCSC staff have spent a substantial amount of organizational time
28 and resources responding to calls that an individual has been detained and is being

1 or has been pressured to sign a voluntary departure form. In many instances in
2 which SBCSC receives a report that an individual is being pressured to sign a
3 voluntary departure form, SBCSC staff members attempt to reach the detained
4 individual to provide her with information about her rights, including her rights to
5 see an immigration judge and not to sign anything. Also, in many instances in
6 which SBCSC receives a report that an individual already signed a voluntary
7 departure form due to coercion or misinformation and is awaiting removal, SBCSC
8 staff members attempt to reach that individual or ICE or Border Patrol officials in
9 order to rescind the signed voluntary departure form.

10 145. Because in many instances there is little that SBCSC staff can do once
11 an individual has signed for voluntary departure, SBCSC has also sought to educate
12 the immigrant community of San Bernardino and Riverside Counties about the
13 dangers associated with Defendants' unfair and unlawful voluntary departure
14 practices. SBCSC staff have convened presentations that address an individual's
15 right to request to see an immigration judge and the consequences of signing for
16 voluntary departure. SBCSC staff educate community members about the pressure
17 and deception that immigration enforcement officers might employ to convince
18 them to sign for voluntary departure. During the Question and Answer segment of
19 these "Know Your Rights" presentations, community members often ask questions
20 about voluntary departure and share first-hand accounts of the coercive tactics
21 immigration enforcement officers use to convince individuals to take voluntary
22 departure.

23 146. If SBCSC had not been compelled to expend resources to address
24 coerced and misinformed voluntary departures, it would have directed these
25 resources toward advocacy concerning conditions of immigration detention and the
26 availability of bond hearings for people in removal proceedings.

27 147. The voluntary departure regime has frustrated SBCSC's mission of
28 advocating for access to the legal system and for robust procedural protection for

1 indigent and low-income immigrants. At the cost of fully pursuing these goals,
2 SBCSC has been compelled to devote significant resources to counteract the
3 coercive and abusive practices Defendants employ in the administration of
4 voluntary departure.

5 148. SBCSC itself has been, and continues to be, harmed by Defendants'
6 practices and conduct because those practices undermine SBCSC's organizational
7 mission and cause SBCSC to divert resources from the pursuit of other goals.

8 ***Persistent Pattern of Abuse***

9 149. Plaintiffs re-allege and incorporate by reference each and every
10 allegation contained in the preceding paragraphs as if fully set forth herein.

11 150. Defendants regularly fail to inform individuals of the consequences of
12 taking voluntary departure, and regularly use misstatements, pressure, coercion and
13 threats in the administration of voluntary departure in Southern California. This
14 misconduct is a routine part of the way that the agencies enforce the immigration
15 laws.

16 151. As a matter of everyday practice, Defendants' officers direct
17 individuals to take voluntary departure, telling them that they "have to" sign and
18 that they have "no rights." This pressure persists even after an individual
19 affirmatively states that she wants to see an immigration judge and does not want to
20 sign. In addition, officers rely on lies and patently false "legal advice" to convince
21 individuals to sign away their rights. Defendants' officers threaten these
22 individuals with detention for months or years if they ask to see an immigration
23 judge, even though they would be immediately eligible for release on their own
24 recognizance or bond because they have no serious criminal history. Defendants'
25 officers also misinform individuals that they should sign for voluntary departure
26 because they can quickly and easily "fix their papers" (i.e., obtain legal status) from
27 Mexico. But because of the unlawful presence bar and other hurdles, obtaining
28 legal status from Mexico after voluntary departure is often slow and difficult, and

1 sometimes impossible. Those same officers misinform individuals who would have
2 extremely strong grounds to live lawfully in the United States – for example, the
3 parents of disabled or sick U.S. citizen children, or immigrant college students who
4 were brought to the United States when they were very young – that an immigration
5 judge would surely order them removed. Defendants’ officers threaten those who
6 do not sign and subject them to physical mistreatment.

7 152. Defendants also effectively prevent individuals from seeking advice of
8 counsel before choosing whether or not to take voluntary departure in multiple
9 ways. Defendants do not inquire as to whether individuals are represented by
10 counsel at the time of their arrest, and do not provide unrepresented individuals
11 with contact information for legal service providers or other opportunity to consult
12 with an attorney before being forced to choose whether to immediately leave the
13 United States. Defendants also fail to provide contact information for attorneys
14 despite providing that information to individuals *directly after* they refuse to accept
15 voluntary departure. For example, Border Patrol agents did not provide Plaintiff
16 Ana Maria Dueñas with a list of legal service providers before she was pressured
17 into accepting “voluntary departure.” Yet Border Patrol agents provided a man
18 they arrested and processed at the same time as Ms. Dueñas with a list of legal
19 service providers after he was referred for removal proceedings.

20 153. In rare cases where an individual already has retained counsel before
21 being arrested and processed for “voluntary departure,” Defendants’ officers often
22 affirmatively interfere with access to that counsel. *See infra*, ¶¶ 156-57 (Border
23 Patrol officers depriving S.J, a minor, of access to retained counsel prior to
24 subjecting her to “voluntary departure”); ¶ 161 (ICE officers depriving Miguel
25 Quiroz of access to retained counsel prior to subjecting him to “voluntary
26 departure”). For example, in September 2013, Border Patrol agents at the Imperial
27 Beach Station pressured two siblings – both of whom are DACA eligible and one of
28 whom has a U.S. citizen spouse – into accepting “voluntary departure.” When their

1 attorney contacted Border Patrol Supervisor Sigla in an attempt to intervene,
2 Supervisor Sigla hung up on the attorney after refusing to pass the attorney's phone
3 number on to the siblings and telling the attorney that the siblings had no right to
4 speak with their counsel. Only after reaching an official within the CBP General
5 Counsel's Office was the attorney able to have the siblings' "voluntary departures"
6 rescinded prior to their expulsion.

7 154. Defendants' history of misusing voluntary departure and related
8 authority is well documented. In the early 1980s, a class of Salvadoran asylum
9 seekers sued Border Patrol to stop the agency from engaging in exactly the kind of
10 practices that it now uses against Mexican nationals. As a result of that litigation,
11 this Court ordered Border Patrol to cease "employ[ing] threats, misrepresentation,
12 subterfuge or other forms of coercion, or in any other way attempt to persuade or
13 dissuade [Salvadoran nationals] when informing them of the availability of
14 voluntary departure." *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 386 (C.D.
15 Cal. 1982), *perm. injunction entered by Orantes-Hernandez v. Meese*, 685 F. Supp.
16 1488 (C.D. Cal. 1988), *aff'd sub nom Orantes-Hernandez v. Thornburgh*, 919 F.2d
17 549 (9th Cir. 1990). As recently as 2007, this Court found that Border Patrol still
18 failed to show that voluntary departure "is properly administered at ports of entry
19 and border patrol stations" to Salvadorans. *Orantes-Hernandez v. Gonzales*, 504 F.
20 Supp. 2d 825, 853 (C.D. Cal. 2007) (denying government's motion to dissolve
21 injunction), *aff'd sub nom Orantes-Hernandez v. Holder*, 321 F. App'x 625 (9th
22 Cir. 2009).

23 155. Also in the 1980s, a class of unaccompanied minor immigrants
24 similarly challenged the Immigration and Naturalization Service's (INS) practice of
25 "coerc[ing] class members into unknowingly and involuntarily selecting voluntary
26 departure, thereby waiving their rights to a deportation hearing or any other form of
27 relief." *Perez-Funez v. District Director*, 619 F. Supp. 656, 656-57 (C.D. Cal.
28 1985). In that case, this Court found the INS's voluntary departure procedures

1 unconstitutional and entered permanent injunctive relief in favor of the class, *id.* at
2 669–70, which led to the promulgation of federal regulations providing procedural
3 protections for unaccompanied minors presented with the choice of voluntary
4 departure.¹² See 8 C.F.R. § 236.3(g).

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

17 157. About thirty minutes later, S.J.’s father called the station and a Border
18 Patrol officer put S.J. on the phone with him using the speaker function. When
19 S.J.’s father told her that the family had hired an immigration attorney for her, the
20 Border Patrol officer who had told her to sign the form and who had been listening
21 to the conversation became visibly upset and began talking to another Border Patrol
22 officer. The other Border Patrol officer told the first Border Patrol officer that there
23 was nothing an immigration attorney could do. One of the officers then abruptly
24 told S.J.’s father to stop talking. After the call ended, that same Border Patrol
25 officer told S.J. that, “no lawyer can set foot in here – there’s nothing they can do.”
26 Despite the fact that Border Patrol knew S.J. had an attorney, they expelled her and
27

28 ¹² At the time of the case, Border Patrol was a part of INS.

1 the other two students to Mexico that afternoon. Only after sustained advocacy by
2 several non-profit organizations were the students permitted to return to the United
3 States.

4 158. A recent report on Border Patrol practices found that “most
5 unaccompanied Mexican minors do not understand their rights and are not making
6 an ‘independent decision’ to [voluntarily] return to Mexico ... [M]any children
7 stated that they were never asked whether they wanted voluntary departure; they
8 were simply told that they would be returning to Mexico.”¹³

9 159. Along with children, other exceptionally vulnerable individuals,
10 including those who are mentally disabled, have been summarily expelled through
11 Defendants’ unlawful voluntary departure regime. For example, ICE expelled Peter
12 Guzman, a mentally-disabled U.S. citizen, from Los Angeles pursuant to a
13 voluntary departure. *See Guzman, et al. v. Chertoff, et al.*, No. 08-cv-01327 (C.D.
14 Cal., filed Feb. 27, 2008).¹⁴ Mr. Guzman was lost on the streets of Mexico for
15 weeks before he managed to return to the United States border and was eventually
16 reunited with his family. More recently, ICE expelled Alejandro Cruz, a severely
17 mentally-disabled man, from Los Angeles pursuant to a voluntary departure. After
18 counsel in *Franco, et al. v. Napolitano, et al.*, No. 11-cv-02211 (C.D. Cal., filed
19 Nov. 2, 2010), a case concerning mentally ill immigration detainees, learned of Mr.

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21
22 ¹³ BETTY CAVENDISH & MARU CORTAZAR, CHILDREN AT THE BORDER: THE
23 SCREENING, PROTECTION AND REPATRIATION OF UNACCOMPANIED MEXICAN
24 MINORS 40 (2011), available at [http://appleseednetwork.org/wp-](http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf)
25 [content/uploads/2012/05/Children-At-The-Border1.pdf](http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf) (last visited June 2, 2013).

26 ¹⁴ Other U.S. citizens have also been subjected to “voluntary departure” by
27 Defendants’ officers. For example, Border Patrol agents expelled Luis Alberto
28 Delgado, a U.S. citizen born in Texas, under color of “voluntary departure” in June
2010, and only allowed him to return to the United States after protracted advocacy
by his attorney. *See Kari Huus, Wrongfully Deported American Home after 3
Month Fight*, NBCNews.com (September 16, 2010), available at
[http://www.nbcnews.com/id/39180275/ns/us-news-](http://www.nbcnews.com/id/39180275/ns/us-news-immigration-a-nation-divided/t/wrongfully-deported-american-home-after-month-fight/)
[immigration-a-nation-divided/t/wrongfully-deported-american-home-after-month-](http://www.nbcnews.com/id/39180275/ns/us-news-immigration-a-nation-divided/t/wrongfully-deported-american-home-after-month-fight/)
[fight/](http://www.nbcnews.com/id/39180275/ns/us-news-immigration-a-nation-divided/t/wrongfully-deported-american-home-after-month-fight/) (last visited Sept. 30, 2013).

1 Cruz's expulsion and advocated for his return, Defendants agreed to parole him
2 back into the country to be reunited with his family.

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

18 161. The immigration enforcement agencies' unlawful voluntary departure
19 practices in Southern California have also been challenged in individual lawsuits.
20 For example, in July 2012, Miguel Angel Quiroz sued ICE for coercing him into
21 signing for voluntary departure after preventing him from consulting with his
22 retained counsel. *See Quiroz v. Napolitano, et al.*, No. 12-cv-06607 (C.D. Cal.,
23

24 ¹⁵ *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 ¹⁶ *Id.*

27 ¹⁷ 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 filed July 21, 2012). After the lawsuit was filed, the government paroled Mr.
2 Quiroz back into the United States. The government has also been sued for
3 unlawfully expelling individuals under its voluntary departure authority in other
4 parts of the country. *See, e.g., Galicia v. United States*, No. 2:13-cv-00105
5 (D.N.M., filed Jan. 31, 2013) (alleging that Border Patrol officers in New Mexico
6 effected “voluntary departure” of a minor without allowing him to access to legal
7 counsel, family, or adult friends); *Maria S., as next friend for E.H.F., S.H.F., and*
8 *A.S.G., minors v. Four Unknown Named Agents of Customs and Border Protection*
9 *and/or Immigration and Customs Enforcement, et al.*, No. 13-cv-00108 (S.D. Tex.,
10 filed June 5, 2013) (alleging that Defendants’ officers “voluntarily returned” a
11 woman to Mexico over her objection that she feared her physically abusive former
12 partner and that the woman was shortly thereafter abducted, strangled, and killed in
13 Mexico by him).

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

1 would be subjected if he left the country. As a result of the omissions,
2 misstatements, pressure and/or threats of or caused by the Border Patrol agents, Mr.
3 Ibarra-Rocha made an unknowing and involuntary election of “voluntary
4 departure.” Had Mr. Ibarra-Rocha appeared before an immigration judge, he would
5 have been eligible for cancellation of removal. Moreover, his expulsion effectively
6 forced his wife and their U.S. citizen daughter to move to Mexico with him.

7 163. Despite this history of abuse in the voluntary departure regime,
8 Defendants’ unlawful policies and practices continue, and they have failed to
9 engage in meaningful reform.

10 **CLASS ALLEGATIONS**

11 164. The Representative Plaintiffs (plaintiffs Lopez-Venegas, Dueñas,
12 Hernandez-Contreras, Garcia-Martinez, Nava, Serrato, Sierra, and Muñoz-Flores)
13 bring this class action on behalf of themselves and all others similarly situated. The
14 proposed Class is defined as follows:

15 All individuals who are physically present in, or will in
16 the future be returned to, Mexico under color of an
17 administrative voluntary departure that occurred in the
18 territory under the jurisdiction of the San Diego Border
19 Patrol Sector, the ICE Field Office for San Diego, or the
20 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.

21 165. Representative Plaintiffs are members of the Class they seek to
22 represent.

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

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

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

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

20 169. The claims of the Representative Plaintiffs are typical of the claims of
21 the members of the Class.

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

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

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

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

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

25 **REQUISITES FOR RELIEF**

26 175. As a result of the general and specific conduct of Defendants described
27 above, Plaintiffs have been denied their constitutional and federal statutory rights.
28 Defendants’ conduct is the result of ongoing policies, practices, conduct and acts

1 that have resulted and will continue to result in irreparable injury to Plaintiffs,
2 including but not limited to further threats to and violations of their constitutional
3 and civil rights. Plaintiffs have no plain, speedy, or adequate remedy at law to
4 redress the violations alleged herein, and therefore seek injunctive relief restraining
5 Defendants from continuing to engage in the unlawful and unconstitutional
6 policies, practices, conduct and acts described in this Complaint.

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

13 **FIRST CAUSE OF ACTION**

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

16 177. Plaintiffs re-allege and incorporate by reference each and every
17 allegation contained in the preceding paragraphs as if set forth fully herein.

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

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

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1 **SECOND CAUSE OF ACTION**

2 **VOLUNTARY DEPARTURE WITHOUT A KNOWING AND VOLUNTARY WAIVER OF**
3 **RIGHTS: STATUTORY VIOLATION, 8 U.S.C. § 1101, *ET. SEQ.***

4 180. Plaintiffs re-allege and incorporate by reference each and every
5 allegation contained in the preceding paragraphs as if set forth fully herein.

6 181. The expulsion of the Individual Plaintiffs, and a class of individuals
7 similarly situated to the Representative Plaintiffs, from the United States in a
8 manner that is not knowing and voluntary, violates the Immigration and Nationality
9 Act, 8 U.S.C. § 1101, *et. seq.*, including 8 U.S.C. § 1229c(a)(1), which requires that
10 any voluntary departure be knowing and voluntary.

11 182. Defendants' voluntary departure practices likewise result in ongoing
12 waivers of rights in Southern California that are not knowing and voluntary, in
13 violation of the Immigration and Nationality Act, to the detriment and harm of the
14 Organizational Plaintiffs.

15 **THIRD CAUSE OF ACTION**

16 **VOLUNTARY DEPARTURE WITHOUT A KNOWING AND VOLUNTARY WAIVER OF**
17 **RIGHTS: CONSTITUTIONAL VIOLATION, U.S. CONSTITUTION AMENDMENT V**
(PROCEDURAL DUE PROCESS)

18 183. Plaintiffs re-allege and incorporate by reference each and every
19 allegation contained in the preceding paragraphs as if set forth fully herein.

20 184. The expulsion of the Individual Plaintiffs, and a class of individuals
21 similarly situated to the Representative Plaintiffs, from the United States in a
22 manner that was not knowing and voluntary violates the Due Process Clause of the
23 Fifth Amendment to the U.S. Constitution, which requires that an individual's
24 waiver of rights in connection with his or her expulsion from the United States be
25 knowing and voluntary.

26 185. Defendants' voluntary departure practices likewise result in ongoing
27 waivers of rights in Southern California that are not knowing and voluntary, in
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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 **FOURTH CAUSE OF ACTION**

4 **SUMMARY AND UNAUTHORIZED EXPULSION FROM THE UNITED STATES:
5 CONSTITUTIONAL VIOLATION, U.S. CONSTITUTION AMENDMENT V
6 (SUBSTANTIVE DUE PROCESS)**

7 186. Plaintiffs re-allege and incorporate by reference each and every
8 allegation contained in the preceding paragraphs as if set forth fully herein.

9 187. The summary and unauthorized expulsion of Yadira Felix from the
10 United States under color of the voluntary departure process, but without resort to
11 even the flawed procedures ordinarily relied upon by Defendants in Southern
12 California, violates the Due Process Clause of the Fifth Amendment to the U.S.
13 Constitution, which prohibits governmental conduct that shocks the conscience.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that the Court grant the
16 following relief:

- 17 1. Certify a class of individuals similarly situated to the Representative
18 Plaintiffs;
 - 19 2. Declare that Defendants' expulsion of the Individual Plaintiffs and Class
20 under guise of so-called "voluntary departure" violates the Administrative
21 Procedure Act, Immigration and Nationality Act, and/or the Due Process
22 Clause of the Fifth Amendment, and that Defendants' ongoing practices
23 violate the Administrative Procedure Act, Immigration and Nationality Act,
24 and/or the Due Process Clause of the Fifth Amendment;
 - 25 3. Declare that Defendants' expulsion of Yadira Felix violates the substantive
26 component of the Due Process Clause of the Fifth Amendment.
- 27
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- 1 4. Order that Defendants return the Individual Plaintiffs and Class to the United
2 States in a manner that restores them to the legal position that they occupied
3 prior to their respective voluntary departures;
- 4 5. Order that Defendants undertake all reasonable steps to inform Class
5 members of their rights under this case, including through publication of
6 notice in written, broadcast, and online media outlets in Mexico.
- 7 6. Issue injunctions against Defendants and any of their officers, agents,
8 successors, employees, representatives and any and all persons acting in
9 concert with them forbidding them from expelling individuals in Southern
10 California under color of voluntary departure unless they:
 - 11 a. Exercise their discretion and provide appropriate time periods for
12 voluntary departure to occur as provided by 8 C.F.R. § 240.25;
 - 13 b. Use Form I-210, or a form that is not materially distinguishable from
14 that form, in the administration of voluntary departure, as required by
15 8 C.F.R. § 240.25;
 - 16 c. Change Form I-210 so that it affirmatively advises individuals, at a
17 minimum, of: (1) loss of the ability to obtain lawful status here in the
18 United States through certain forms of relief from removal and
19 programs of the Department of Homeland Security, including, but not
20 limited to cancellation of removal; and (2) inadmissibility for at least
21 three years and as many as ten years for anyone who has accrued more
22 than 180 days of unlawful presence in the United States;
 - 23 d. Refrain from using threats, misrepresentation, subterfuge or other
24 forms of coercion, or from attempting in any other way to persuade or
25 dissuade individuals when informing them of the availability of
26 voluntary departure;


- 1 e. Take all further steps necessary to ensure that Defendants do not
- 2 process people for voluntary departure without first ensuring that their
- 3 waiver of the right to a removal hearing is knowing and voluntary;
- 4 f. Undertake the implementation of mechanisms that provide for
- 5 effective accountability and oversight in the administration of
- 6 voluntary departures;
- 7 7. Grant Plaintiffs reasonable attorneys' fees, costs, and other disbursements
- 8 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 9 8. Grant any and all such other relief as the Court deems just and equitable.

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Respectfully Submitted,

Dated: October 2, 2013

ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES


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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.

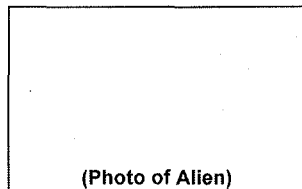
Additionally, if an Immigration Bond has been posted on the alien, the DHS will initiate the appropriate action in accordance with the terms of the executed bond and any attached rider or riders specified.

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.

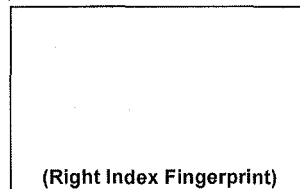
Alien's Acknowledgement of Conditions and Receipt of Form Date

Signature of Authorized DHS Official Date

DHS Official Serving Form (Name and Title) Office



If
Available



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				

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

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- 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.

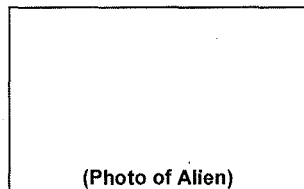
Additionally, if an Immigration Bond has been posted on the alien, the DHS will initiate the appropriate action in accordance with the terms of the executed bond and any attached rider or riders specified.

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 _____ Date _____

Signature of Authorized DHS Official _____ Date _____

DHS Official Serving Form (Name and Title) _____ Office _____



If Available



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				

APPENDIX B

Department of Homeland Security
Bureau of Customs and Border Protection

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

_____ 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.
Initials

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

Department of Homeland Security
Bureau of Customs and Border Protection

Notificación de Derechos y Solicitud de Resolución

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

- 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.
Iniciales _____

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 hrs.