



## Final Settlement Regarding ICE Warrantless Arrests and Vehicle Stops: Overview of Settlement Requirements and Remedies <sup>1</sup>

### INTRODUCTION

On February 8, 2022, the district court approved a [final settlement agreement](#) in the class action lawsuit, *Castañon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757 (N.D. Ill.), which challenged ICE's practice of conducting unlawful warrantless arrests and vehicle stops within the ICE Chicago Field Office's jurisdiction through large-scale enforcement operations, pre-textual traffic stops, and other indiscriminate enforcement actions. The settlement has significant implications, within the Chicago Field Office and nationwide, given certain policy changes and documentation required under the settlement with respect to making arrests without an administrative warrant and certain vehicle stops. Once the settlement takes effect, class members may be able to seek individual remedies—including immediate release from detention—if they are arrested in violation of the settlement.

The settlement will take effect, and provide possible relief to impacted class members, once the parties finalize a nationwide training for all ICE officers with respect to a new nationwide policy on warrantless stops and certain vehicle stops, which was negotiated through the settlement and is attached as Exhibit A to the agreement. Once the settlement is implemented, class counsel will conduct various outreach to educate legal services providers and immigrant rights organizations and create a process for screening and referring potential class members.

The terms of the settlement, including next steps once the settlement takes effect, is described below.

**Once the settlement takes effect, individuals arrested by ICE in Illinois, Indiana, Wisconsin, Missouri, Kentucky, or Kansas without a warrant or during a vehicle stop may be able to seek remedies under the settlement, including release. In the coming months, class counsel will conduct various outreach with instructions for screening and referring impacted individuals.**

### BACKGROUND

In May 2018, persons arrested by ICE and impacted organizations, including the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) and Organized Communities Against Deportation (OCAD), challenged ICE's widespread, indiscriminate immigration sweeps in the Chicagoland area, which resulted in the collateral arrest of hundreds of individuals through warrantless arrests and pre-textual vehicle stops. Plaintiffs argued that ICE failed to comply with the terms of 8 U.S.C. § 1357(a)(2) and

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<sup>1</sup> Updated February 8, 2022. This overview does not purport to provide legal advice.

the Fourth Amendment in carrying out these arrests, including by failing to make findings that the person was likely to escape before ICE could obtain a warrant and that there was a reasonable suspicion that a person in the vehicle did not have lawful status. For more information, access the complaint here: [https://immigrantjustice.org/court\\_cases/castanon-nava-et-al-v-dhs-et-al](https://immigrantjustice.org/court_cases/castanon-nava-et-al-v-dhs-et-al).

After the U.S. District Court for the Northern District of Illinois denied the government's motion to dismiss, the parties entered settlement negotiations. The negotiated settlement agreement was ultimately approved by the court on February 8, 2022. The final settlement agreement is summarized below and can be accessed in full here: <https://immigrantjustice.org/NavaSettlement>.

### **SETTLEMENT AGREEMENT: WHEN WILL IT TAKE EFFECT?**

Now that the district court has approved the settlement, ICE must revise its training materials to conform to the new policy that establishes applicable standards and documentation requirements for warrantless arrests and certain vehicle stops (attached as Appendix A to the settlement agreement). Class counsel will have an opportunity to review the training materials and raise to the court any concerns where the training diverges from the terms of the policy. Once the training materials are approved, the policy will be issued and the settlement will go into effect. Counsel anticipates that the parties will finalize the training, and the settlement will be in effect by the summer of 2022.

### **SETTLEMENT AGREEMENT: WHAT WILL IT DO?**

The following is a summary of the key points in the settlement agreement. Under the agreement:

1. **ICE Must Issue a New Nationwide Policy Regarding Warrantless Arrests and Vehicle Stops.** Within ten days after the settlement takes effect, ICE must broadcast to all ICE officers nationwide the new policy (attached as Appendix A to the settlement agreement). The policy provides various factors required to be considered before ICE may make a warrantless arrest, including, for example, whether an individual's ties to the community (such as family, home, or employment) mitigate against authority to make an arrest without a warrant. Likewise, the policy establishes that ICE may only make a vehicle stop if it has reasonable suspicion—based on specific, articulable facts—that a particular person inside the vehicle does not have legal status. ICE may not state to the driver or the occupants of a vehicle that the purpose for a stop is related to any vehicle or traffic violation.
2. **Under Nationwide Policy ICE Must Document the Bases for Warrantless Arrests and Vehicle Stops.** Once the settlement takes effect, ICE officers nationwide must document the facts and circumstances surrounding warrantless arrests and vehicle stops in the narrative section of a person's Form I-213—including the fact that the person was arrested without a warrant, the location of the arrest, the person's ties to the community or lack thereof, and other particularized facts supporting a finding that the person was likely to escape justifying a warrantless arrest. With respect to vehicle stops, ICE must document specific facts that formed the basis for its reasonable suspicion that a person in the vehicle did not have legal status justifying the stop.
3. **ICE Must Undergo Training Nationwide.** ICE will immediately adopt or amend training materials (subject to counsel's input and review) that comply with the terms of the new policy.

Once these materials are finalized, the settlement will officially take “effect.” ICE must then broadcast the policy with ten days of the effective date; train officers within the Chicago Area of Responsibility within 45 days; and train all officers nationwide within six months.

4. **ICE Must Submit Documentation to Counsel to Confirm Compliance with the Settlement.** Once the settlement takes effect, every month ICE will produce copies of all Form I-213s related to warrantless arrests and vehicle stops conducted in the Northern District of Illinois to ensure compliance with the agreement.
  
5. **Enforcement Provisions for ICE Chicago Field Office: ICE Warrantless Arrests and Vehicle Stops in Illinois, Indiana, Kansas, Kentucky, Missouri, and Wisconsin.** Once the settlement takes effect, violations of the settlement agreement and policy are enforceable through class counsel and the Court for a period of three years. Individuals subject to arrests that violate the agreement and policy may be eligible for release or refund of bond money. ICE officers that violate the settlement and policy are subject to remedial measures and training. Finally, additional remedies are available in the event of repeated, material violations of the settlement and policy.

#### **SETTLEMENT AGREEMENT: WHO IS COVERED?**

A person is a “class member” covered by the settlement agreement if they have been arrested, or are arrested in the future, without a warrant within the jurisdiction of the ICE Chicago Field Office, consisting of Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. While certain terms of the agreement apply nationwide, such as the training and documentation requirements described above, only class members are eligible for individual remedies through the settlement itself.

#### **SETTLEMENT AGREEMENT: WHAT IF ICE MAKES A WARRANTLESS ARREST OR VEHICLE STOP IN ILLINOIS, INDIANA, WISCONSIN, MISSOURI, KENTUCKY, OR KANSAS?**

Once the settlement agreement takes effect, a class member must be released from ICE custody as soon as practicable, without paying a bond or being subject to conditions of release, if they are arrested contrary to the terms of the policy or settlement agreement. This applies to all class members, unless the person is subject to mandatory detention, a criminal detainer, or is deemed to pose a danger to the community,<sup>2</sup> such that neither ICE nor an immigration judge set a bond amount. ICE will also ensure that appropriate remedial measures and / or training is imposed on the ICE officer(s) who violated the settlement agreement.

The hope and expectation is that the settlement agreement will preclude unlawful warrantless arrests and vehicle stops from occurring in the first place, both within the ICE Chicago Field Office and across the country. In the event of a violation, however, class counsel may assist class members in seeking release under the agreement, including by filing a motion to enforce the terms of the statement of policy with the district court.

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<sup>2</sup> This determination must be confirmed by an Assistant Field Officer Director or higher; be based in the totality of the circumstances; and be supported by a written explanation and supporting materials. In addition, an immigration judge’s finding regarding mandatory detention or dangerousness shall control for purposes of the agreement.

**NEXT STEPS & FUTURE OUTREACH**

Once the settlement agreement takes effect, class counsel will reach out to legal services providers serving individuals detained in Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas to provide instructions for screening and referring individuals that might have remedies under the settlement.

In addition, the parties will post updated notices at detention centers within the jurisdiction of the Chicago Field Office. The notices will remain available for 180 days.

Class counsel will also conduct various other outreach to ensure that detained individuals, legal services providers, and immigrant rights organizations understand the implications of the settlement, including the requirement that ICE must document the bases for warrantless arrests and vehicle stops in the narrative portion of the I-213 and other challenges individuals may make in immigration court.

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Counsel intends to conduct further outreach after the agreement is implemented, anticipated in the summer of 2022. Counsel is available to respond to questions in the meantime.

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