

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

ADA MORALES,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	No. 12-cv-301-M-DLM
BRUCE CHADBOURNE,	:	
et al.,	:	
	:	
Defendants.	:	

PLAINTIFF’S STATEMENT OF UNDISPUTED FACTS

In accordance with Local Rule 56(a)(2), Plaintiff Ada Morales respectfully submits this Statement of Undisputed Facts in support of her Motions for Summary Judgment against all Defendants.

I. PARTIES

A. Plaintiff Ada Morales

i. Personal History

1. Plaintiff Ada Morales is a U.S. citizen and long-time resident of Rhode Island. Pl. Ex. 46 at 8:20-24, 45:21 (Morales Dep.). She was born in Guatemala, immigrated to the United States in 1985, and became a Lawful Permanent Resident in 1989. *Id.*; Pl. Ex. 7 at 2 (Plaintiff’s A file, filed under seal). She became a naturalized U.S. citizen in September 1995. Pl. Ex. 46 at 68:21-69:3 (Morales Dep.); Pl. Ex. 4 (naturalization certificate).

2. Ms. Morales has a Social Security Number and a U.S. passport issued by the federal government. Pl. Ex. 46 at 27:2-6, 74:7-9, 75:22-76:2, 94:17-18 (Morales Dep.); Pl. Ex. 5 (passport).
3. Ms. Morales's maiden name is Ada Amavilia Cabrera. Pl. Ex. 7 at 35 (Plaintiff's A file, filed under seal); Pl. Ex. 67 at No. 1 (Plaintiff's Second Supp. Responses to Wall's First Interrogatories).
4. During her first marriage, Ms. Morales took her then-husband's surname, changing her name to Ada Madrid. Pl. Ex. 46 at 9:12-21, 85:16-21 (Morales Dep.).
5. Ms. Morales married her second and current husband, Hugo Morales, in 2001. Pl. Ex. 46 at 9:3-6 (Morales Dep.). At that time, she took her husband's surname, changing her name to Ada Morales. *Id.* at 86:12-16. She has used that name ever since. *Id.* at 85:24-86:1, 86:14-16.

ii. Prior Contact with Immigration Authorities

6. The federal immigration authorities maintain a physical "A file" on Ms. Morales, as they do for all naturalized citizens and immigrants who come into contact with the federal immigration authorities. Pl. Ex. 7 (Plaintiff's A file, filed under seal); Pl. Ex. 37 at 67:2-5 (Chadbourne Dep.). An A file contains records of previous encounters with immigration officials, including applications for naturalization and benefits. Pl. Ex. 36 at 39:7-40:13, 42:2-8 (Donaghy Dep.).
7. Ms. Morales's A file includes, among other things, her naturalization certificate. Pl. Ex. 7 at 1 (Plaintiff's A file, filed under seal). Her naturalization certificate is in her maiden name, Ada Amavilia Cabrera. *Id.*

8. Ms. Morales was the subject of an immigration detainer for the first time in 2004, when she was arrested by the Cranston Police Department for suspected shoplifting. Pl. Ex. 46 at 13:10-14 (Morales Dep.). The charge was later dismissed for insufficient evidence. Pl. Ex. 11 (dismissal of charge).
9. When Ms. Morales was brought to court the day after her arrest for arraignment, she learned that Immigration and Customs Enforcement (ICE) had issued a detainer against her. Pl. Ex. 46 at 14:10-15 (Morales Dep.).
10. ICE agents were waiting for Ms. Morales at court. Pl. Ex. 46 at 15:7-14 (Morales Dep.). They took her into federal custody and transported her to an ICE office, where they took her fingerprints and questioned her. *Id.* at 14:24-15:2, 15:15-16:15. Morales was in custody for approximately two hours, until ICE had verified that she was a U.S. citizen and let her go. *Id.* at 17:21-24.
11. ICE did not keep any record of the 2004 detainer or detention. Pl. Ex. 7 (Plaintiff's A file, filed under seal) (containing no detainers); Pl. Ex. 6 (CIS record, filed under seal) (showing no encounter in 2004); Pl. Ex. 36 at 212:2-213:16 (Donaghy Dep.) (ICE's Rhode Island sub-office "didn't keep any records of prior detainers" as of 2009, so an agent would have "no way of determining" that Ms. Morales had been previously subject to a detainer); Pl. Ex. 17 ¶10 (Donaghy's First Declaration) ("In May 2009, the ICE Field Office in Providence, Rhode Island did not have a system to verify if an individual had previously been subject to a detainer.").

B. RIDOC Director A.T. Wall

12. Director A.T. Wall has been the Director of the Rhode Island Department of Corrections (RIDOC) since 2000. Pl. Ex. 39 at 12:12-21 (Wall Dep.). Before that, he had been

assistant director of RIDOC since 1987. *Id.* at 11:20-12:11. He is a lawyer who “earned a juris doctor from Yale Law School in 1980.” *Id.* at 9:4-9.

13. In 2009, Director Wall’s responsibilities “include[d] . . . approving all RIDOC policies” and “ensur[ing] that RIDOC does not violate an inmate’s constitutional rights.” Pl. Ex. 39 at 15:20-16:10 (Wall Dep.).

14. Director Wall’s powers and duties are “defined by Rhode Island General Laws 42-56-10.” Pl. Ex. 39 at 15:15-19 (Wall Dep.).

15. In 2009, Director Wall had the authority to change RIDOC’s practices or procedures if he believed they violated an inmate’s constitutional rights. Pl. Ex. 39 at 19:16-21, 20:10-14 (Wall Dep.).

16. Since becoming Director in 2000, Director Wall was aware that ICE was issuing detainers to RIDOC. Pl. Ex. 39 at 25:4-19 (Wall Dep.).

C. ICE Agent Edward Donaghy

17. Defendant Edward Donaghy is an immigration enforcement agent in ICE’s Rhode Island sub-office. Pl. Ex. 36 at 12:17-22 (Donaghy Dep.). He has held that position since 2006. *Id.* at 12:17-24.

18. In 2009, Agent Donaghy’s job responsibilities included implementing ICE’s Criminal Alien Program (CAP), through which ICE accessed information about potential non-citizens in state and local custody and issued detainers against them. Pl. Ex. 36 at 17:10-23 (Donaghy Dep.).

D. ICE Field Office Director Bruce Chadbourne

19. Defendant Bruce Chadbourne was the Field Office Director (FOD) for ICE's Boston Field Office from 2003 until his retirement in 2011. Pl. Ex. 37 at 10:17-11:24 (Chadbourne Dep.).
20. In 2009, Director Chadbourne was responsible for "overs[eeing] [e]nforcement and [r]emoval [o]perations," including CAP, in ICE's Rhode Island sub-office and five other New England states. Pl. Ex. 37 at 12:5-9, 14:25-16:23 (Chadbourne Dep.). *See also* Pl. Ex. 47 ¶15 (Amended Complaint) (alleging that in 2009, Director Chadbourne was "responsible for formulating, implementing, approving, and[] allowing policies and[] customs applicable to ICE's immigration enforcement activities in Rhode Island, including ICE's . . . issuance of immigration detainers"); Pl. Ex. 48 ¶15 (U.S. Answer) (admitting allegation).
21. In 2009, Director Chadbourne was "responsible for ensuring that ICE's policies, customs, practices, and activities in these areas accord with the U.S. Constitution and applicable federal law and regulations." Pl. Ex. 47 ¶15 (Amended Complaint); Pl. Ex. 48 ¶15 (U.S. Answer) (admitting allegation).
22. In 2009, Director Chadbourne was responsible for "communicat[ing] national policy to the sub[-]offices," including by holding trainings and staff meetings, and ensuring that agents in the sub-offices were following national policy and "provid[ing] some clarification" if they were not. Pl. Ex. 37 at 19:11-21:13, 24:11-25:7 (Chadbourne Dep.); *see also* Pl. Ex. 41 at 69:2-7 (Monico Dep.) (testifying that "field office directors [are] responsible for communicating [national ICE] policy . . . [a]mongst their field offices . . . [and] for ensuring the policies are followed").

23. In 2009, Director Chadbourne knew that his subordinates were routinely issuing ICE detainers. Pl. Ex. 37 at 27:14-19, 29:17-30:6, 33:16-20; 35:2-7 (Chadbourne Dep.).

E. ICE Supervisory Detention and Deportation Officer John Drane

24. John Drane is a Supervisory Detention and Deportation Officer in ICE's Rhode Island sub-office. Pl. Ex. 38 at 12:16-25 (Drane Dep.). He has held that position since 2008. *Id.* at 12:16-19. In 2009, Officer Drane was Agent Donaghy's direct supervisor. Pl. Ex. 36 at 23:14-24:2 (Donaghy Dep.).

25. As Supervisory Detention and Deportation Officer, Officer Drane supervises the CAP program. Pl. Ex. 38 at 13:16-24, 17:14-18:24 (Drane Dep.). His job responsibilities include supervising immigration enforcement agents like Agent Donaghy, "[e]stablish[ing] guidelines and performance expectations for the staff members, . . . [o]bserv[ing] workers' performance, . . . [and] [i]nterpret[ing] and recommend[ing] administrative procedures and policies." Pl. Ex. 31 at 1-2 (SDDO job description); *see also* Pl. Ex. 38 at 20:7-21:25 (Drane Dep.).

26. In 2009, Officer Drane knew that the agents under his supervision were routinely issuing detainers to Rhode Island law enforcement agencies. Pl. Ex. 38 at 49:7-21, 69:7-19 (Drane Dep.).

II. MS. MORALES'S ARREST AND INITIAL COMMITMENT TO RIDOC ON MAY 2, 2009

A. Ms. Morales's Initial Commitment

27. On May 2, 2009, Rhode Island State Police arrested Ms. Morales on a state criminal charge. She was transported to the women's facility of RIDOC's Adult Correctional Institute and committed to RIDOC's custody later that day. Pl. Ex. 46 at 22:9-17 (Morales Dep.); Pl. Ex. 14 ("Inmate Details," filed under seal).

28. Ms. Morales was carrying her Social Security card and driver's license when she was arrested. Pl. Ex. 46 at 74:7-9 (Morales Dep.). *See also* Pl. Ex. 51 at No. 13 (Plaintiff's Second Supp. Responses to Wall's First Interrogatories) (stating that "ACI/RIDOC officials had my driver's license, social security card, and other identification cards in their possession upon my booking"); Pl. Ex. 68 at No. 3 (Wall's Supp. Responses to Plaintiff's Requests for Production) ("RIDOC is no longer in possession of an invoice of Plaintiff's belongings" because "every two . . . years the Women's Facility purges this type of document").
29. Officers within RIDOC's "Records and ID unit" are responsible for committing or "booking" all new inmates. Pl. Ex. 42 at 8:8-18, 25:17-19 (Lyons Dep. part 1).
30. As part of this booking process, RIDOC officials obtain and enter biographical, demographic, and other information into RIDOC's inmate database, "INFACTS." Pl. Ex. 42 at 16:24-17:21, 25:22-26:24 (Lyons Dep. part 1).
31. During Ms. Morales's booking process, a RIDOC officer asked her questions and recorded her date of birth, home address, Social Security Number, marital status, and husband's name in INFACTS. Pl. Ex. 46 at 25:15-16, 27:2-6 (Morales Dep.); Pl. Ex. 9 (INFACTS record).
32. The booking officer also asked Ms. Morales "where [she] was from." Ms. Morales responded that she was born in Guatemala, and that she is a U.S. citizen. Pl. Ex. 46 at 26:7-11 (Morales Dep.); *see also id.* at 74:18-75:6, 87:20-88:24.
33. INFACTS contains a field for "citizenship," but RIDOC officers can complete the booking process without recording anything in that field. Pl. Ex. 42 at 31:4-20 (Lyons Dep. part 1); Pl. Ex. 45 at 30:16-31:8 (Lanciaux Dep.).

34. The booking officer recorded Ms. Morales's place of birth as Guatemala in INFACTS, but he left the "citizenship" field blank. Pl. 45 at 29:15-30:10 (Lanciaux Dep.).

35. Ms. Morales remained in RIDOC's custody from Saturday evening until Monday morning, waiting for her initial appearance in court. Pl. Ex. 46 at 18:19-21, 40:3-8 (Morales Dep.); Pl. Ex. 14 ("Inmate Details," filed under seal).

B. RIDOC's Booking Policies and ICE's Access to INFACTS

36. RIDOC Policy No. 14.05-2, which governs the booking process, lists certain information that booking officers should obtain from inmates, but does not specifically mention citizenship. Pl. Ex. 39 at 17:8-18:2 (Wall Dep.); Pl. Ex. 22 (RIDOC Policy No. 14.05-2).

37. In 2009, RIDOC allowed ICE agents to log into INFACTS directly. Pl. Ex. 45 at 54:9-56:2, 83:5-9 (Lanciaux Dep.); Pl. Ex. 52 at No. 5 (Wall's Supp. Responses to Plaintiff's First Interrogatories) ("The practice was to allow ICE access to RIDOC INFACTS.").

38. In 2009, ICE agents were able to download "daily commitment reports" from INFACTS. Pl. Ex. 36 at 76:19-77:5, 101:15-102:3 (Donaghy Dep.). The daily commitment report contained certain information about everyone committed to RIDOC's custody on a given day—including each person's name, inmate ID number, date of birth, gender, and Social Security Number. *Id.* at 102:10-16; Pl. Ex. 38 at 67:25-68:5 (Drane Dep.).

39. As Director Wall admitted, at booking, "all persons are asked certain questions with respect to [their] national origin and . . . ICE would have access to this information from RIDOC's INFACTS computer system." Pl. Ex. 49 ¶68 (Wall Answer).

40. RIDOC made this information available to ICE with the express understanding that ICE would use it to issue immigration detainers. Pl. Ex. 45 at 57:1-24 (Lanciaux Dep.) (noting that "[i]t's actually called a . . . daily commitment report for immigration or

something,” and that ICE uses it to decide whether to issue a detainer); *id.* at 83:18-84:12 (testifying that “basically, they were using the system to get that information to get them started to see if they needed to . . . lodge [any] immigration detainers”).

III. AGENT DONAGHY’S ISSUANCE OF MS. MORALES’S DETAINER ON MAY 4, 2009

A. ICE’s General Detainer Practices

41. In 2009, each week one ICE agent in the Rhode Island sub-office would be responsible for reviewing RIDOC’s daily commitment reports. Pl. Ex. 36 at 76:19-77:5, 101:15-102:16 (Donaghy Dep.). Agent Donaghy was the agent responsible for reviewing the daily commitment report on May 4, 2009. *Id.* at 96:13-97:9.

42. For each inmate listed in the daily commitment report, the ICE agent on duty would typically enter his or her inmate ID number into INFACTS to search for basic biographical information. Pl. Ex. 38 at 69:3-71:17 (Drane Dep.) (“They go through every name on the list because you can’t tell by their name where they’re from.”); Pl. Ex. 36 at 125:22-25 (Donaghy Dep.).

43. Agent Donaghy’s general practice was to first identify all foreign-born inmates by searching INFACTS, and then to search the Central Index System (CIS) and National Crime Information Center (NCIC) databases for information about each foreign-born individual. Pl. Ex. 36 at 128:18-129:5, 129:17-19, 129:25-130:5, 137:22-138:8 (Donaghy Dep.).

B. Ms. Morales’s Detainer

44. Agent Donaghy issued a detainer against Ms. Morales at 8:32 a.m. on May 4, 2009. Pl. 36 at 35:23-36:15 (Donaghy Dep.); Pl. Ex. 1 (Detainer); Pl. Ex. 19 (Summary of Events).

45. The daily commitment report for the morning of May 4, 2009 listed approximately one hundred individuals. Pl. Ex. 36 at 126:14-21 (Donaghy Dep.); Pl. Ex. 15 (Daily Commitment Report part 1, filed under seal); Pl. Ex. 16 (Daily Commitment Report part 2, filed under seal).
46. Agent Donaghy estimates that his review of RIDOC's daily commitment report and his resulting computer searches on May 4, 2009, took between 60 and 90 minutes. Pl. Ex. 36 at 126:25-127:11 (Donaghy Dep.). He had completed the "INFACTS review of all the inmates on the daily commitment reports that [he] reviewed, the database searches of the inmates that [were] highlighted, prepared the detainers, and issued them at or about 8:32 in the morning" that day. *Id.* at 141:2-8.
47. Agent Donaghy interpreted the highlighting on his copy of the daily commitment report as denoting the individuals he identified as foreign-born based on his review of INFACTS. Pl. Ex. 36 at 116:4-117:7 (Donaghy Dep.). He highlighted the names of 10 individuals on the morning of May 4, 2009, including Ms. Morales. Pl. Ex. 15 (Daily Commitment Report part 1, filed under seal); Pl. Ex. 16 (Daily Commitment Report part 2, filed under seal).
48. Agent Donaghy does not recall what steps he took or what databases he searched on May 4, 2009, before issuing Ms. Morales's detainer. Pl. Ex. 36 at 136:18-137:13 (Donaghy Dep.) (testifying he has no "specific recollection" of searching CIS on May 4); *id.* at 172:21-173:10 (testifying that he "d[id] not know" whether he searched NCIC or what results he found on May 4); *id.* at 265:16-18 (testifying that he did not "recall" what results he found in INFACTS on May 4); *see also* Pl. Ex. 54 at No. 1 (Donaghy's

Responses to Plaintiff's First Interrogatories) (stating "I do not recall whether I also conducted a search based on Ms. Morales's social security number as well.").

49. All Agent Donaghy's statements about what searches he conducted and what information he learned—including his deposition testimony, both declarations, and the "summary of events" that he produced for his supervisors—were made after this litigation commenced, and were not based on his recollection of the events of May 4, 2009. *See supra* Pl. Fact ¶48; Pl. Ex. 17 ¶5 (Donaghy's First Declaration) (describing the results of "[a] review of the Central Index System," but not specifying when that review was conducted or by whom); Pl. Ex. 18 ¶¶15, 16 (Donaghy's Second Declaration) (describing the results of "more recent search[es]" of NCIC and CIS conducted in May 2012 and January 2013, after this litigation began); Pl. Ex. 19 (Summary of Events) ("Record checks routinely conducted during initial screening of these types of cases *would have revealed . . .*") (emphasis added); Pl. Ex. 36 at 176:8-12 (Donaghy Dep.) (confirming that the "information that [he] provided in [his] first declaration was . . . based on a search . . . conducted *after* May 4, 2009") (emphasis added); *id.* at 184:11-14 (confirming that the "testimony that [he] offered in this [first] declaration was based on a search . . . conducted *after* May 4, 2009") (emphasis added); *id.* at 258:10-17 (testifying that he produced the "summary of events" at his supervisors' request "[p]robably after we were notified of the lawsuit" in 2012).

50. The federal defendants were unable to produce any record of what searches Agent Donaghy may have performed on May 4, 2009. Pl. Ex. 59 at Nos. 1 & 2 (Plaintiff's First Requests for Production to Federal Defendants); Pl. Ex. 60 (United States' Responses to Plaintiff's First Requests for Production) (identifying no responsive documents other than

the “summary of events”); Pl. Ex. 64 (Donaghy’s Responses to Plaintiff’s First Requests for Production) (identifying no responsive documents); Pl. Ex. 36 at 32:5-15 (Donaghy Dep.) (testifying that he searched for “records in [his] computer, e-mail, [and] paper files that would indicate what [he] did or what [he] found” prior to issuing Ms. Morales’s detainer, and that “in that search the only thing [he] discovered was the commitment report”); *id.* at 160:22-161:2 (testifying that he “did not find any notes or information relating to [his] NCIC or CIS searches for May 4th, 2009 for Ms. Morales”).

51. In 2009, ICE policy required that “[c]opies of negative checks should be printed and included in the [A] file,” or, if there was no A file, in a temporary “work folder.” Pl. Ex. 41 at 62:14-63:25 (Monico Dep.). *See also id.* at 62:14-63:10 (explaining that agents should retain computer printouts showing that, for example, “I checked Jane Doe or John Doe a[nd] the date of birth and nothing came back on that”); Pl. Ex. 30 at 10 (“Lesson Plan: ACAP/IRP Operations”) (instructing that “[c]opies of negative checks should be printed and included in the file”).

52. The federal defendants were not able to produce any “negative checks” documentation in Ms. Morales’s case. *See* Pl. Ex. 7 (Plaintiff’s A file, filed under seal) (containing no “negative checks”); Pl. Ex. 66 (email correspondence) (federal defendants’ counsel stated that no “work file” exists, and all documentation relating to Agent Donaghy’s searches on May 4, 2009, had already been produced); Pl. Ex. 36 at 136:6-11 (Donaghy Dep.) (testifying that he did not believe he kept documentation of a CIS search because he “would have found it” if it existed).

53. Based on his general practice, Agent Donaghy believes that he would have queried INFACETS, CIS, and NCIC on May 4, 2009. Pl. Ex. 36 at 199:2-11 (Donaghy Dep.); Pl.

Ex. 19 (Summary of Events). Donaghy routinely ran searches using the subject's name and date of birth. Pl. Ex. 36 at 177:25-178:7, 184:18-23 (Donaghy Dep.).

54. Agent Donaghy testified that he issued the detainer because he concluded "there was no record of any prior encounter with ICE, [and] no record of Morales applying for immigration benefits" Pl. Ex. 36 at 158:6-20 (Donaghy Dep.).

55. The detainer incorrectly identified Ms. Morales as an "alien" and alleged that her "[s]ex" was "M[ale]" and her "[n]ationality" was "Guatemala[n]." Pl. Ex. 1 (Detainer). It stated that "[i]nvestigation ha[d] been initiated" into Ms. Morales's immigration status, and it requested that RIDOC "detain the alien" for up to 48 hours, plus weekends and holidays, after she would otherwise be released, to give ICE extra time to take her into federal custody. *Id.*

56. The detainer was not accompanied by a warrant or an assertion of probable cause to believe Ms. Morales was a removable non-citizen. Pl. Ex. 1 (Detainer); Pl. Ex. 36 at 158:21-159:5 (Donaghy Dep.).

57. Agent Donaghy expected RIDOC to hold Ms. Morales on the detainer. Pl. Ex. 36 at 261:6-262:5 (Donaghy Dep.). As of 2009, he knew of no instance in which RIDOC had refused to hold someone on an ICE detainer. *Id.* at 35:5-8.

C. Lack of Interview or Post-Issuance Investigation

58. Agent Donaghy never spoke with Ms. Morales or anyone else at RIDOC, either in person or by phone, before issuing her detainer. Pl. Ex. 36 at 161:3-19, 165:21-25 (Donaghy Dep.); Pl. Ex. 18 ¶13 (Donaghy's Second Declaration) ("I did not speak to anyone at [RIDOC] when I issued the detainer, as I had no reason to.").

59. Agent Donaghy has no reason to think RIDOC would refuse a request to interview an inmate in person or by phone. Pl. Ex. 36 at 161:20-163:10; 207:20-208:8 (Donaghy Dep.).
60. By logging into INFACETS, Agent Donaghy could see where Ms. Morales was housed at RIDOC, what her case status was, and her home address. Pl. Ex. 36 at 159:6-13 (Donaghy Dep.); Pl. Ex. 18 ¶5 (Donaghy's Second Declaration).
61. ICE national policy required agents to investigate and report any claim to U.S. citizenship. Pl. Ex. 27 ("Hayes Memorandum").
62. Agent Donaghy concluded that Ms. Morales "made no claim of being a United States citizen" even though he gave her no opportunity to do so. Pl. Ex. 18 ¶10 (Donaghy's Second Declaration). *See also* Pl. Ex. 36 at 207:13-208:15 (Donaghy Dep.) ("Q: Did you think to ask Ms. Morales whether she was a U.S. citizen before issuing a detainer? A: It wasn't our office practice to do so.").
63. Agent Donaghy does not recall doing any further investigation into Ms. Morales's status for the rest of the day. Pl. Ex. 36 at 141:9-17, 142:14-20 (Donaghy Dep.). Even after receiving notice from RIDOC that a detainer was the only remaining basis for an inmate's detention, ICE still "would really take no action until the following day." *Id.* at 100:11-101:3.
64. Ms. Morales had no opportunity to assert her claim of citizenship to ICE until the detainer had been issued and she had been transferred to ICE custody. Pl. Ex. 38 at 101:24-102:9 (Drane Dep.) ("Q. So before you issue the detainer, you don't talk to them. So they could only make a claim to you after being brought in? A. Right . . . we have to issue the detainer so they come to us so that we can find out more information."); *id.* at

103:25-104:21 (stating that “the first time [a detainer subject is] going to have the chance” to make a claim of citizenship to “somebody that . . . cares” is when he or she is brought into ICE custody).

65. Agent Donaghy went home for the day by 7:00 p.m. Pl. Ex. 36 at 97:10-23 (Donaghy Dep.).

D. Database Queries

i. INFANTS

66. A search of INFANTS on May 4, 2009, would have shown that Ms. Morales was born in Guatemala on XXXX XX, 1963. Pl. Ex. 9 (INFANTS record).

67. A search of INFANTS on May 4, 2009, would have shown that Ms. Morales was “married” and that her husband’s surname was also “Morales.” Pl. Ex. 36 at 191:5-24 (Donaghy Dep.); Pl. Ex. 9 (INFANTS record).

68. A search of INFANTS on May 4, 2009 would have shown that Ms. Morales had a Social Security Number, XXX-XX-6916. Pl. Ex. 36 at 159:14-17, 192:4-7 (Donaghy Dep.); Pl. Ex. 9 (INFANTS record); Pl. Ex. 15 (Daily Commitment Report part 1, filed under seal).

69. On May 4, 2009, the “citizenship” field in Ms. Morales’s INFANTS record was blank—neither “no” nor “yes.” Pl. Ex. 45 at 29:7-23, 67:20-68:5 (Lanciaux Dep.).

70. Agent Donaghy did not “know if anyone at [RIDOC] asked [Ms. Morales] if she was a citizen,” and he had no “evidence that she was asked if she was a U.S. citizen.” Pl. Ex. 36 at 205:6-17 (Donaghy Dep.).

71. ICE did not expect RIDOC officials to make assessments of inmates’ citizenship. Pl. Ex. 37 at 92:10-14 (Chadbourne Dep.) (testifying that he “didn’t really expect . . . anything from RIDOC” in terms of assessing claims of citizenship); Pl. Ex. 53 at No. 4 (United

States' Response to Wall's First Interrogatories) ("Defendant United States . . . did not expect [RIDOC] to verify the citizenship of Ms. Morales."); Pl. Ex. 38 at 104:20-21 (Drane Dep.) (testifying that local law enforcement agencies "don't understand immigration laws" and "[i]t's not part of their job" to make citizenship determinations).

72. Agent Donaghy never mentioned the blank "citizenship" field in Ms. Morales's INFACETS record as playing any role in his probable cause assessment in either of his two declarations or in his "summary of events." Pl. Ex. 17 ¶3 (Donaghy's First Declaration) (discussing RIDOC records without mentioning citizenship); Pl. Ex. 18 ¶¶5, 6 (Donaghy's Second Declaration) (listing the fields in INFACETS that he typically viewed before issuing a detainer, and not mentioning citizenship); Pl. Ex. 19 (Summary of Events) (not mentioning the citizenship field in INFACETS). Nor did he mention it in his response to Plaintiff's Interrogatory No. 1, which sought a description of "all . . . databases or records systems [he] queried . . . and what results [he] received" before issuing Ms. Morales's detainer. Pl. Ex. 54 at No. 1 (Donaghy's Responses to Plaintiff's First Interrogatories). Agent Donaghy responded that "the biographical information [that he viewed in INFACETS] typically included the inmate's name, the place where they were born and any aliases"—not their citizenship. *Id.*

ii. **Central Index System (CIS)**

73. The Central Index System (CIS) is a database maintained by U.S. Citizenship and Immigration Services. ICE uses the CIS database in part to identify a person's A number. Pl. Ex. 41 at 25:19-26:8 (Monico Dep.); Pl. Ex. 30 at 10 ("Lesson Plan: ACAP/IRP Operations"); Pl. Ex. 29 (CIS Privacy Impact Assessment).

74. CIS “serves as an initial screening process to provide a quick look at a person’s basic information . . . to determine if there is a need to request the physical [A] file.” Pl. Ex. 29 at 10 (CIS Privacy Impact Assessment). An ICE training document from January 2009 instructs agents to “[k]eep in mind that not all aliens will be found in CIS.” Pl. Ex. 30 at 10 (“Lesson Plan: ACAP/IRP Operations”).
75. CIS may be searched by a person’s name and date of birth. Pl. Ex. 41 at 34:4-8 (Monico Dep.).
76. ICE designated Supervisory Detention and Deportation Officer Daniel Monico under Rule 30(b)(6) to testify about ICE’s national detainer policies, procedures, and training. Pl. Ex. 41 at 7:21-23 (Monico Dep.); Pl. Ex. 34 (Rule 30(b)(6) notice).
77. Officer Monico testified that name-based searches of the federal government’s immigration databases are prone to false negatives because of, among other things, “input[]” errors, Pl. Ex. 41 at 62:14-63:11 (Monico Dep.), and cultural variations in naming conventions, *id.* at 66:4-67:5. *See also id.* at 65:12-20 (testifying “I personally experienced it a couple of times where . . . you would actually input an individual’s name and date of birth, run the query, and nothing would come back. And then . . . if in fact you had an immigration file number . . . [and] you were to put that in . . . , then all that historical data would come back”); Pl. Ex. 38 at 169:4-12 (Drane Dep.) (noting variations in spelling “Hispanic . . . last name[s]”).
78. ICE designated Special Agent Rodger Werner under Rule 30(b)(6) to testify about, among other things, the information available to ICE agents through the databases at issue in this case. Pl. Ex. 40 at 8:19-22 (Werner Dep.); Pl. Ex. 34 (Rule 30(b)(6) notice).

79. Agent Werner testified that a common drawback of name-based searches is that they do not yield correct information if the subject gives a false name or marries and take her spouse's name. Pl. Ex. 40 at 20:18-22:4 (Werner Dep.). *See also* Pl. Ex. 38 at 75:17-23 (Drane Dep.) (testifying that it was "common" for agents checking daily commitment reports to "encounter women who have changed their names after marriage").
80. Agent Donaghy knew that women "common[ly] . . . change their last name as a result of marriage and divorce." Pl. Ex. 36 at 26:17-19 (Donaghy Dep.).
81. U.S. citizens are under no obligation to report to the federal immigration authorities if, after naturalizing, they change their names. Pl. Ex. 40 at 22:5-10 (Werner Dep.) ("Once you become a citizen, your interactions with the Department of Homeland Security are at your leisure. There's no requirement [of a] U.S. citizen to go back and tell us anything.").
82. Agent Donaghy believes he searched CIS using Ms. Morales's current married name (Ada Morales) on May 4, 2009, but he did not search her maiden name (Ada Cabrera). Pl. Ex. 19 (Summary of Events).
83. On May 4, 2009, a CIS search for "Ada Morales" would have yielded no results. Pl. Ex. 36 at 218:12-21 (Donaghy Dep.).
84. In 2009, ICE agents could search CIS using a person's Social Security Number. Pl. Ex. 40 at 17:21-18:8 (Werner Dep.); Pl. Ex. 29 at 6 (CIS Privacy Impact Assessment) ("Information . . . [in CIS] can be retrieved by . . . Social Security Number . . .").
85. ICE's 30(b)(6) deponent Werner testified that identifying "numbers are the best search mechanisms inside of CIS." Pl. Ex. 40 at 18:4-5 (Werner Dep.).

86. ICE's 30(b)(6) deponent Monico testified that "[a]n ICE agent is expected to run a check based on the information he or she has available," including Social Security Number:

Q. So if a daily commitment report has a name, a date of birth, and a Social Security number, you would search on those fields?

A. Correct.

Q. And what circumstances would you not search on those fields?

A. There's none that I can think of.

Pl. Ex. 41 at 71:19-72:3 (Monico Dep.).

87. ICE's 30(b)(6) deponent Monico confirmed that it was "[a]bsolutely" "common for ICE agents to search [CIS] by different [identifying] numbers" in 2009. Pl. Ex. 41 at 34:4-20 (Monico Dep.). He testified that an ICE agent presented with the information available to Agent Donaghy "should check" the Social Security Number and "would . . . be expected" to do so. *Id.* at 113:16-114:1; *see also id.* at 34:21-35:6 (testifying that "it was a check you'd want to perform").

88. Ms. Morales's Social Security Number was listed in RIDOC's daily commitment report, in INFACETS, and in the NCIC—all of which Agent Donaghy believes he viewed on May 4, 2009. Pl. Ex. 36 at 127:16-21, 192:4-7, 194:6-195:9 (Donaghy Dep.); Pl. Ex. 15 (Daily Commitment Report part 1, filed under seal); Pl. Ex. 9 (INFACETS record); Pl. Ex. 8 (NCIC record, filed under seal).

89. Agent Donaghy did not run a search of CIS using Ms. Morales's Social Security Number on May 4, 2009. If he had done so, he would have found her CIS record, which showed that she was a U.S. citizen. *See* Pl. Ex. 6 at 5 (CIS record, filed under seal) (listing "SSN" as "XXX-XX-6916" and "NATZ DATE" as "09111995"). Agent Donaghy testified that he "would not have issued a detainer" if his search of "the CIS database

indicated that Ms. Morales was a U.S. citizen.” Pl. Ex. 54 at No. 1 (Donaghy’s Responses to Plaintiff’s First Interrogatories).

90. Agent Donaghy eventually located Ms. Morales’s CIS record in 2011, after this litigation began, by entering her Social Security Number into CIS. Pl. Ex. 36 at 219:5-220:4 (Donaghy Dep.).

91. Agent Donaghy admitted at his deposition that he knew nothing about how complete CIS was, testifying:

Q. So how far does the CIS data go back in time?

A. I don’t know.

. . . Q. So it’s possible someone applied for benefits in the 1980s and just isn’t in the CIS?

A. It’s possible. I don’t know.

Q. But you don’t know one way or the other how complete the CIS database is for people who applied for benefits in the 1980s?

A. No.

Q. You’ve never asked anyone?

A. No.

Q. To your knowledge, it could be more or less than 50 percent complete[]?

A. I don’t know.

Q. No idea one way or the other?

A. No.

Q. How about the 1990s?

A. I don’t know.

Q. You have no idea how complete the CIS database is for people who applied for benefits in the 1990s?

A. I don’t know.

Q. Never asked anyone?

A. No.

Q. Did anyone ever tell you?

A. No.

Q. To the best of your knowledge, you couldn’t say whether it’s more than 50 percent complete?

A. I do not know.

. . . Q. The fact that someone is born in another country [and] not located in the CIS, therefore, does not necessarily mean they’re not a U.S. citizen. Correct?

A. It’s possible.

Q. You don’t know one way or the other how likely it is?

A. No, I don't.

Pl. Ex. 36 at 131:13-15; 133:8-134:23 (Donaghy Dep.).

iii. National Crime Information Center (NCIC)

92. The National Crime Information Center (NCIC) is a criminal history database maintained by the Federal Bureau of Investigation (FBI). Pl. Ex. 36 at 138:2-14 (Donaghy Dep.);. It was routinely used by ICE officials in determining whether to issue a detainer. Pl. Ex. 41 at 332:4-14 (Monico Dep.).

93. A search of NCIC for “Ada Morales” on May 4, 2009, would have yielded an NCIC record that contains no information one way or another about her citizenship or immigration status. Pl. Ex. 8 (NCIC record, filed under seal).

E. Foreign Birth and Detainer Issuance

94. Agent Donaghy agreed that “it would be constitutionally improper . . . to issue an immigration detainer simply because the inmate was born outside the U.S.” Pl. Ex. 36 at 159:18-21 (Donaghy Dep.). *See also* Pl. Ex. 41 at 30:15-18 (Monico Dep.) (testifying that “the knowledge that someone is foreign born” is not “enough itself to trigger a detainer being issued”).

95. The U.S. Census Bureau reported that there were 17,476,000 naturalized U.S. citizens living in the United States in 2010. Pl. Ex. 32 at 2 (Census Report on the Foreign Born Population of the United States). The total number of U.S. citizens with a foreign place of birth was even higher, because the Census Bureau counts individuals who were born abroad to at least one U.S. citizen parent as “native born” rather than naturalized citizens. *Id.* at 1; *see also* 8 U.S.C. § 1401(c)-(d), (g). The Census Bureau estimates that

in 2009 there were approximately 3,882,008 such “native-born” U.S. citizens born abroad. Pl. Ex. 33 (2009 American Community Survey)

**F. ICE POLICY, TRAINING AND SUPERVISION REGARDING
DETAINERS**

i. Chadbourne and Drane’s Understanding of ICE Detainer Policy

96. One of the national ICE policies governing detainer issuance in 2009 was a 2008 Memorandum from then-ICE Director James Hayes, addressed to Field Office Directors, regarding “Reporting and Investigating Claims of United States Citizenship.” Pl. Ex. 27 (Hayes Memorandum); *see also* Pl. Ex. 55 at No. 4 (United States’ Responses to Plaintiff’s First Interrogatories) (identifying the Hayes Memorandum as an ICE policy “pertaining to detainer investigation, issuance, or cancellation”).
97. ICE’s 30(b)(6) deponent Monico confirmed that the Hayes Memorandum was national ICE policy in 2009, and that it should be “communicated to ICE agents . . . [t]hrough field office directors.” Pl. Ex. 41 at 51:9-52:12 (Monico Dep.).
98. The Hayes Memorandum sets forth mandatory procedures for ICE agents “exercising authority under . . . 8 U.S.C. § 1357.” Pl. Ex. 27 at 1 (Hayes Memorandum). It provides that an ICE agent “must ensure that s/he has reason to believe that the individual to be arrested is in the United States in violation of [federal immigration law],” *id.*, noting that courts have interpreted “reason to believe” as the equivalent of “probable cause.” *Id.* at 1 n.1 (internal quotation marks omitted). It also provides that ICE agents “must fully investigate all claims to U.S. citizenship immediately upon learning of the assertion of citizenship,” including by notifying the Field Office Director. *Id.* at 1.

99. National ICE training materials dated January 2009 instructed agents that detainers

“should be placed on aliens who the agent has determined to be removable.” Pl. Ex. 30 at 7 (“Lesson Plan: ACAP/IRP Operations”).

100. Director Chadbourne could not recall ever seeing a written detainer policy, and he could not say whether one existed. Pl. Ex. 37 at 30:14-31:7 (Chadbourne Dep.).

101. Director Chadbourne testified that issuing an ICE detainer “is just notifying the facility that [ICE] ha[s] an interest in them. . . . I don’t believe there’s any expectation for them to hold the individual at all.” Pl. Ex. 37 at 44:17-21 (Chadbourne Dep.).

102. Director Chadbourne testified that “an ICE agent does not have to make a determination that a person is in the country illegally before issuing a detainer.” Pl. Ex. 37 at 45:3-8 (Chadbourne Dep.). He testified that only “reasonable suspicion,” not “probable cause,” was necessary to issue a detainer. *Id.* at 32:6-9, 84:24-85:4, 86:8-14.

103. Director Chadbourne testified that the Hayes Memorandum “has nothing to do with issuing detainers It’s apples and oranges.” Pl. Ex. 37 at 57:2-58:17 (Chadbourne Dep.); *see also id.* at 53:2-21. He took no action to ensure that ICE agents followed the Hayes Memorandum when issuing detainers. Pl. Ex. 36 at 236:16-21 (“Q. What do you recall [F]ield [O]ffice Director Chadbourne doing to ensure that all affirmative claims to U.S. citizenship made by an individual . . . [were] appropriately reported and investigated? A. I can’t recall anything.”) (Donaghy Dep.).

104. Director Chadbourne did not require his subordinates to provide notice to people who were subject to detainers, to interview them, or to communicate with them in any way. Pl. Ex. 37 at 60:12-61:25 (Chadbourne Dep.); Pl. Ex. 57 at No. 2 (Chadbourne’s and the United States’ Responses to Plaintiff’s Requests for Admissions) (admitting that

“neither ICE Boston Field Office nor the ICE Rhode Island Office had any policy, practice, or procedure in May 2009 to notify a detainee that he or she was the subject of a detainer prior to the time when ICE took the detainee into federal custody”).

105. When asked how a person held on a detainer could “assert that they’re a citizen,” Director Chadbourne testified that the person would have to “br[ing] it to our attention,” either “in writing,” “in person” to an immigration official, or by “writ[ing] their congressman.” Pl. Ex. 37 at 56:12-23 (Chadbourne Dep.). *See also* Pl. Ex. 38 at 104:13-21 (Drane Dep.).

106. Officer Drane believed that agents needed only “reasonable suspicion,” not probable cause, to issue a detainer. Pl. Ex. 38 at 65:20-66:9 (Drane Dep.); *see also id.* at 86:25-87:19. He testified that in 2009 the purpose of a detainer was merely to “get[] us started with the process to be able to . . . get [the individual] to our office to talk to her more about what’s going on.” *Id.* at 65:23-66:2; *see also id.* at 102:7-9 (“So we have to issue the detainer so they come to us so that we can find out more information.”).

107. Officer Drane testified that if an agent “knew a person was foreign born and w[as] unable to find a CIS record,” that would “constitute reasonable suspicion,” but not “probable cause.” Pl. Ex. 38 at 82:6-13 (Drane Dep.). He nevertheless testified that it would be appropriate “issue the detainer so that we can get the probable cause.” *Id.* at 82:14-15. *See also id.* at 82:16-83:2 (“Q. And how then would you get the probable cause? A. By the person coming in to us after and talking to us and then—like more of a broader interview; where were you born; where your parents born; what are you doing here, type questions. Q. And the answers to those questions would then get the probable cause in order to—A. For us to issue an A file or to issue a charging document. Yes.”).

108. Officer Drane testified that “[f]or us to issue a charging document, we have to have certain information. We just can’t willy-nilly issue charging documents.” Pl. Ex. 38 at 87:12-14 (Drane Dep.). But, he testified, “the process for issuing a detainer is different.” *Id.* at 87:17-19.

ii. Lack of Supervision and Training

109. Agent Donaghy’s supervisors never evaluated his reasons for issuing a detainer in a particular case. Pl. Ex. 36 at 91:10-13 (Donaghy Dep.).

110. Director Chadbourne never discussed the detainer form with anyone or conducted any training regarding how to use it properly. Pl. Ex. 37 at 30:7-10 (Chadbourne Dep.). He could not recall whether the agents under his supervision were ever given detainer-related training. *Id.* at 21:18-22:2.

111. Officer Drane testified that “[t]here’s no supervision that really goes along with” the issuance of detainers, which he described as “an independent process” that “doesn’t take any oversight.” Pl. Ex. 38 at 62:24-63:8 (Drane Dep.); *see also* Pl. Ex. 36 at 91:10-92:23 (Donaghy Dep.). He did not believe oversight was necessary because he viewed detainer issuance as “a routine part of [the agents’] job,” like “a police officer issuing a ticket.” Pl. Ex. 38 at 22:14-19; 63:15-16 (Drane Dep.).

112. Officer Drane testified that he did not “consider it serious at all” when a detainer is issued against a U.S. citizen. Pl. Ex. 38 at 121:14-21 (Drane Dep.). It was not something he felt was worth discussing in an agent’s performance review, because it is “kind of a normal part of our job”; “that’s what happens sometimes,” and “if this situation happened again tomorrow, it happens.” *Id.* at 141:7-20; *see also id.* at 140:12-14 (“[W]hen she came in and said, I’m a U.S. citizen, she went home. It wasn’t an

issue.”). Officer Drane never disciplined Agent Donaghy for Ms. Morales’s detention.
Id. at 31:11-12.

113. Agent Donaghy could not remember ever receiving training on the “type of information . . . necessary to establish probable cause to issue a detainer.” Pl. Ex. 36 at 193:3-6 (Donaghy Dep.). He could not remember receiving guidance or instructions from his supervisors in how to issue detainers. *Id.* at 193:7-11; 239:25-240:14. *See also* Pl. Ex. 54 at No. 3 (Donaghy’s Responses to Plaintiff’s First Interrogatories) (“I am not aware of any formal policies as of May 2009 regarding immigration detainers.”). *See also* Pl. Ex. 41 at 108:13-23 (Monico Dep.) (testifying that in 2009, agents received “one to two hours . . . of instruction . . . on detainers” at the ICE Academy, and all other training was “just on the job and/or basically guidance from your first-line supervisor, if a question arose.”).

114. Director Chadbourne expected an agent to cancel a detainer “immediately” after learning that the subject was a U.S. citizen. Pl. Ex. 37 at 63:9-13 (Chadbourne Dep.).

115. Agent Donaghy did not send a detainer cancellation to RIDOC until October 19, 2009, over 5 months after Ms. Morales’s release. Pl. Ex. 36 at 257:19-258:6 (Donaghy Dep.); Pl. Ex. 38 at 156:19-157:17 (Drane Dep.); Pl. Ex. 3 (cancelled detainer).

116. Director Chadbourne expected an agent to update the ICE databases to reflect the fact that a person is actually a U.S. citizen. Pl. Ex. 37 at 64:8-20 (Chadbourne Dep.).

117. Agent Donaghy did not update ICE’s enforcement database to note Ms. Morales’s citizenship until Officer Drane instructed him to do so on April 24, 2012, shortly after this litigation began. Pl. Ex. 36 at 147:14-148:10 (Donaghy Dep.).

iii. Detainer Statistics and Lack of Oversight

118. ICE's statistics show that from fiscal year 2009 through fiscal year 2013, ICE agents under Director Chadbourne's supervision issued between approximately 1,500 and 3,000 detainers each year. Pl. Ex. 26 (ICE detainer statistics part 2).
119. In fiscal year 2009—the year Ms. Morales was detained—agents under Director Chadbourne's supervision issued 2,227 detainers and cancelled 1,024. Roughly two detainers were cancelled for every three that led to an individual being “[b]ooked [i]nto ICE [c]ustody.” Pl. Ex. 26 (ICE detainer statistics part 2). *See also* Pl. Ex. 37 at 78:17-79:7 (Chadbourne Dep.). Agent Donaghy personally issued 77 detainers in fiscal year 2009. Pl. Ex. 26 (ICE detainer statistics part 2). 31 of these detainers were later cancelled; only two led to an individual being “[b]ooked [i]nto ICE [c]ustody”. *Id.*; *see also* Pl. Ex. 37 at 81:17-23 (Chadbourne Dep.) (testifying that Donaghy's cancellation rate seemed “high” to him).
120. Canceled detainers may be an indication that the subject of the detainer is actually a U.S. citizen or a lawful permanent resident who is not subject to removal. Pl. Ex. 37 at 62:12-22 (Chadbourne Dep.); *see also id.* at 80:12-18 (the only reason for cancelling a detainer that Chadbourne could “think of” was if the subject “is here legally”).
121. RIDOC's statistics show that, between 2003 and 2014, RIDOC received 5,215 ICE detainers. Nearly a third of these detainers (1,708, or 32.75%) were later cancelled. Pl. Ex. 52 at No. 7 (Wall's Supp. Responses to Plaintiff's First Interrogatories); *see also* Pl. Ex. 44 at 31:5-12 (Eldridge Dep.).
122. According to RIDOC's statistics, between 2003 and 2014, 462 detainers issued to RIDOC were lodged against individuals identified in RIDOC's system as U.S. citizens.

Pl. Ex. 52 at No. 7 (Wall’s Supp. Responses to Plaintiff’s First Interrogatories); *see also* Pl. Ex. 44 at 48:3-15 (Eldridge Dep.). This figure amounts to an average of 42 detainers each year issued against people identified in RIDOC’s system as U.S. citizens.

123. ICE did not always cancel detainers that had been issued against U.S. citizens or other non-removable people, or log them as such in ICE’s record-keeping system. *See* Pl. Ex. 36 at 62:6-13 (Donaghy Dep.) (“Q. So there may be situations where you issue a detainer, you later determine that it’s a citizen, but no cancellation is ever given. Right? . . . A. Yes. Just within our system.”); Pl. Ex. 38 at 153:17-154:13 (Drane Dep.) (testifying that a detainer “should be” cancelled if ICE learns the individual is a U.S. citizen, but it may not be “right away”; “it could be one day. It could be 20 years.”).

124. Ms. Morales’s 2009 detainer was not cancelled until October 2009—five months after ICE had confirmed her U.S. citizenship and released her. Pl. Ex. 3 (cancelled detainer).

125. In 2004, ICE’s Rhode Island office did not track the numbers of detainers issued or cancelled. Pl. Ex. 55 at No. 3 (United States’ Responses to Plaintiff’s First Interrogatories) (“In 2004, ICE used paper detainers and no records of issued detainers were electronically maintained.”); *id.* at No. 10 (“ICE did not maintain detainer data prior to October 1, 2009”); *see also* Pl. Ex. 36 at 212:2-213:16 (Donaghy Dep.) (confirming that “Rhode Island ICE . . . didn’t keep any records of prior detainers back in 2009”).

126. A 2007 ICE national policy memorandum required Field Office Directors to collect and submit weekly statistics to ICE headquarters about their agents’ enforcement actions, including detainers. Pl. Ex. 28 (Torres Memorandum); Pl. Ex. 37 at 72:3-18 (Chadbourne Dep.).

127. During his time as FOD, Director Chadbourne did not view or request any statistics about the number of canceled detainees. Pl. Ex. 37 at 79:23-80:2, 81:13-16 (Chadbourne Dep.). Even after ICE began collecting detainee data, Chadbourne did not recall ever seeing statistics regarding his subordinates' cancelled detainees, and he never asked to see such statistics because he "didn't think it was an issue." *Id.*

128. When confronted with ICE's data regarding cancelled detainees for the first time at his deposition, Chadbourne admitted that he found the high cancellation rate "surprising." Pl. Ex. 37 at 79:5 (Chadbourne Dep.).

IV. MS. MORALES'S DETENTION ON THE ICE DETAINER

A. Ms. Morales's Detention

129. Upon receiving Ms. Morales's detainee from ICE on May 4, 2009, a RIDOC officer recorded the detainee in INFACTS. Pl. Ex. 14 ("Inmate Details," filed under seal) (logging "INS DET" at 8:53 a.m. on May 4, 2009); Pl. Ex. 45 at 113:20-114:4 (Lanciaux Dep.).

130. Ms. Morales appeared in Rhode Island Superior Court on May 4, 2009. She pleaded not guilty to the pending criminal charges, and Magistrate Judge Patricia Harwood ordered her released on personal recognizance. Pl. Ex. 12 at 19:18; 20:13-16 (arraignment transcript) ("Now, Ms. Morales, I am going to withdraw the warrant and release you on \$10,000 personal recogn[iz]ance[.]"); Pl. Ex. 13 (Order of Release).

131. Judge Harwood also informed Morales that she had an "immigration hold." Pl. Ex. 12 at 20:19-24 ("You do have an immigration hold, so once you resolve that issue, you do have to report over to the Attorney General's Office . . . for routine processing in

this matter which will include fingerprinting”). This was the first time Ms. Morales learned of her ICE detainer. Pl. Ex. 46 at 79:21-24 (Morales Dep.).

132. Normally, upon being ordered released on recognizance at court, an inmate would be free to “walk right out the courthouse doors.” Pl. Ex. 42 at 44:7-15 (Lyons Dep. part 1).

133. Instead, because of the ICE detainer, Ms. Morales was transported in handcuffs back to RIDOC and re-committed into prison custody. Pl. Ex. 46 at 44:11-16; 48:2-7 (Morales Dep.); Pl. Ex. 42 at 44:7-45:17 (Lyons Dep. part 1) (“If there is no hold, then they release the offender. If there is a hold of some nature or a detainer, they will then in turn send him or her back to the Department of Corrections via their transport.”); Pl. Ex. 43 at 64:4-13 (Lyons Dep. part 2).

134. When she returned to the RIDOC facility, Morales was subjected to a strip search. *See* Pl. Ex. 46 at 39:13-16 (Morales Dep.); *see also* Pl. Ex. 43 at 64:20-65:11, 135:1-8 (Lyons Dep. part 2) (confirming that “upon returning from court, [inmates] are strip searched by correctional officer staff”); Pl. Ex. 49 ¶47 (Wall Answer) (“admit[ting] that an inmate returning from Court would be subject to a strip search.”).

135. The experience of being strip-searched was “very shameful and very hard” for Ms. Morales. Pl. Ex. 46 at 39:16 (Morales Dep.).

136. When she was re-committed, she was sent to a different part of the facility in which convicted criminals were housed. Pl. Ex. 46 at 49:21-50:3 (Morales Dep.); *see also* Pl. Ex. 45 at 79:14-18 (Lanicaux Dep.) (RIDOC records indicate Ms. Morales was transferred to a different area on May 4).

137. After her return, Morales repeatedly told RIDOC correctional officers that she was a U.S. citizen. Pl. Ex. 46 at 50:4-51:12 (Morales Dep.).
138. At least one correctional officer called her a liar and told her she would be deported. Pl. Ex. 46 at 51:20-24 (Morales Dep.).
139. The additional night spent in RIDOC custody on May 4 was “the worst night of [her] life.” Pl. Ex. 46 at 53:22-54:2 (Morales Dep.). Other inmates yelled at her, intimidated her, and told her that she was on the list for deportation. *Id.* at 54:3-20. She was afraid that other inmates would hurt her, and she feared that, despite her citizenship, they were right when they said she would be deported and separated from her husband and children. *Id.* at 50:19-21; 54:3-55:8.
140. Director Wall recognized that “[a] night in jail can be traumatic,” and that an inmate could suffer “abuse from other inmates” and “could worry about the care of their children” while incarcerated. Pl. Ex. 39 at 38:21-39:10 (Wall Dep.).
141. Morales missed a day of work and lost wages as a result of the ICE detainer. Pl. Ex. 46 at 11:24-12:6, 65:3-7 (Morales Dep.).
142. Even though Ms. Morales told multiple RIDOC officials that she is a U.S. citizen, Pl. Ex. 46 at 50:4-12, 51:2-12, 60:13-18, 82:12-21 (Morales Dep.), she was nonetheless kept in prison for approximately 24 more hours after the judge ordered her released. *Id.* at 49:11-17, 55:13-23 (Morales Dep.) (testifying that she was taken back to RIDOC around midday on May 4, and picked up by ICE around 10:00 a.m. the following morning).

B. RIDOC Policies and Practices

i. Automatic Detention

143. RIDOC received ICE detainers on a “daily” basis. Pl. Ex. 43 at 35:6-15 (Lyons Dep. part 2).
144. In 2009, “RIDOC had a policy to treat all immigration detainers [as] mandatory under all circumstances.” Pl. Ex. 43 at 72:21-24 (Lyons Dep. part 2); *see also id.* 72:15-20 (testifying that “for inmates initially detained at RIDOC on state charges, RIDOC had a policy to use the issuance of a detainer as the sole basis for detaining an inmate who’s released at court on the original state charges”); *id.* at 148:2-5.
145. Director Wall “first learn[ed] about immigration detainers” when he “joined the Department of Corrections” as an assistant director in 1987. Pl. Ex. 39 at 25:4-7 (Wall Dep.); *id.* at 11:17-12:11. When he became Director of RIDOC in 2000, he understood “that ICE was issuing immigration detainers to RIDOC,” *id.* at 25:15-19, and he understood that RIDOC policy was to treat all ICE detainers as a basis for extending an inmate’s detention. *Id.* at 29:23-30:8 (“Q. When you became director in the year 2000, did you understand at that time that it was RIDOC’s policy to honor all immigration detainers? . . . A. Yes.”).
146. Director Wall knowingly permitted the existing policy of treating all ICE detainers as “automatic[ally]” triggering extended detention to continue. Pl. Ex. 39 at 27:24-28:3 (Wall. Dep.); *see also id.* at 29:23-30:8. He acquiesced in RIDOC’s practice and took no steps to ensure the detention was lawful, explaining that it “was longstanding practice and I didn’t question it.” *Id.* at 33:6-7; *see also id.* at 33:11-18.

147. In 2009, “[i]t was not RIDOC’s policy to separately analyze . . . whether the detainer was proper.” Pl. Ex. 39 at 28:9-13 (Wall Dep.). “RIDOC did not endeavor in any way to investigate whether the inmate subject to an immigration detainer was,” in fact, subject to removal from the United States. *Id.* 28:14-18.
148. RIDOC’s intake policy, which Director Wall signed, directs booking officers to “[r]eview[] the offender’s committing papers (warrants, mittimus, judgment and conviction), to ensure lawfulness of commitment”—a safeguard that Wall and RIDOC did not apply to detainees. Pl. Ex. 22 at 2 (RIDOC Policy No. 14.05-2); Pl. Ex. 43 at 95:17-98:15 (Lyons Dep. part 2).
149. RIDOC’s ICE detainer policy was memorialized in Standard Operating Procedure (“SOP”) 2.08, which governs the preparation of discharge certificates. Pl. Ex. 20 (RIDOC SOP 2.08); Pl. Ex. 43 at 14:2-9 (Lyons Dep. part 2). The SOP requires the Records and ID unit to ensure that an inmate has no unresolved detainees before releasing them, and describes ICE detainees as “holds that prevent release of the inmate.” Pl. Ex. 20 at 4 (RIDOC SOP 2.08); Pl. Ex. 52 at No. 3 (Wall’s Supp. Responses to Plaintiff’s First Interrogatories) (stating “that SOP No. 2[.]08 was followed by the Records and ID Unit from its inception and at the time of Ms. Morales’[s] detention.”).
150. Director Wall stated during discovery that he only “recently became aware” of SOP 2.08. Pl. Ex. 52 at No. 2 (Wall’s Supp. Responses to Plaintiff’s First Interrogatories).

ii. Lack of Opportunity to Contest a Detainer

151. No RIDOC official notified Ms. Morales that ICE had lodged a detainer against her or provided her with a copy. Pl. Ex. 46 at 42:9-16; 78:21-79:15 (Morales Dep.).

152. Director Wall did not consider it RIDOC's obligation to take any action if an inmate subject to an ICE detainer asserted that she was a U.S. citizen. Pl. Ex. 39 at 48:9-49:5 (Wall Dep.). When asked whether he believed "it would be okay for RIDOC to do nothing if an inmate[] subject to an immigration detainer claimed to be a U.S. citizen," Director Wall answered in the affirmative, explaining that he "d[id] not think that is part of RIDOC's job." *Id.* at 48:19-49:2.

153. Director Wall testified that he was not "aware of any practice or procedure that required staff to allow the inmate an opportunity to present evidence of citizenship" or "to allow the inmate to transmit to ICE in some way a claim of U.S. citizenship." Pl. Ex. 39 at 46:24-47:10 (Wall Dep.).

154. RIDOC 30(b)(6) deponent Kathleen Lyons agreed that there were no RIDOC policies or procedures in place to allow an inmate to offer proof of citizenship:

Q. What if the person is claiming U.S. citizenship?

A. Again, we would just defer to immigration.

Q. So you would treat the immigration detainers as mandatory?

A. Correct.

Q. And there was no mechanism or process for the inmate to make a claim in any way that the detainer has been lodged in error?

A. No.

Q. And there was no mechanism or process for the inmate to either produce or offer to produce evidence of U.S. citizenship, like a passport?

A. Not to us. We're not the immigration officials, so I would say no.

Pl. Ex. 43 at 90:19-91:11 (Lyons Dep. part 2). RIDOC would not alert ICE to an inmate's assertion of citizenship, even if a family member showed up to the facility with the inmate's passport in hand. *Id.* at 131:6-132:5.

155. Director Wall admitted that Ms. Morales "couldn't have issued a grievance to challenge the detainer" because the detainer was deemed "nongrievable" under the

Inmate Handbook, and could not have written a letter to Wall himself because “it would violate the grievance procedure to bring a grievance directly to . . . the director.” Pl. Ex. 39 at 62:21-64:15; 69:3-6 (Wall Dep.); *see also* Pl. Ex. 23 at 30-31 (Inmate Handbook); Pl. Ex. 24 at 4, 6-7, 10 (RIDOC Policy 13.10-1).

iii. Lack of Training and Oversight

156. Director Wall could not say whether he had looked at the ICE detainer form, or the regulation on which it relies, until after this litigation had begun. Pl. Ex. 39 at 42:3-24 (Wall Dep.) (“Q. You can’t testify that prior to May 4, 2009, you ever actually reviewed Form I-247, correct? A. You are correct.”); *id.* at 43:8-23 (“Q. Prior to May 4, 2009, do you recall ever having reviewed 8 CFR 287.7? A. No. . . . Q. It’s quite possible that prior to May 4, 2009, you didn’t really know anything about 8 CFR 287.7? A. It is possible.”).

157. Director Wall provided no training to his subordinates regarding detainers. Pl. Ex. 52 at No. 6 (Wall’s Supp. Responses to Plaintiff’s First Interrogatories) (identifying no “training provided to RIDOC officials as of May 4, 2009, pertaining to detainers” other than “general training pertaining to the intake of individuals” and undefined “on the job training”). He gave his subordinates no direction on what to do if a detainee claimed U.S. citizenship. Pl. Ex. 39 at 47:11-22 (Wall Dep.) (“Q: So is it fair to say that you didn’t provide any instructions to RIDOC staff regarding what to do if an inmate subject to an immigration detainer claimed to be a U.S. citizen? A: I myself, no. I don’t recall the issue coming up”). He testified that he was not aware of “anyone else under [his] command providing instructions to staff regarding what to do if an inmate subject to an immigration detainer claimed to be a U.S. citizen.” *Id.* at 47:24-48:5.

C. MS. MORALES'S TRANSPORT TO ICE AND RELEASE

158. When an inmate subject to an ICE detainer resolved her state charges, RIDOC's policy was to release him or her to ICE "the next business day." Pl. Ex. 43 at 43:23-44:15 (Lyons Dep. part 2). An officer in the Records and ID unit would typically transmit a fax to ICE in the evening—not when the inmate returns from court—to alert ICE that the inmate was ready for pickup the next day. *Id.* at 66:18-67:17, 70:3-72:3.
159. At 8:28 p.m. on May 4, 2009, RIDOC employee Deb Sherrill sent a fax to ICE. Pl. Ex. 43 at 67:18-68:2 (Lyons Dep. part 2); Pl. Ex. 2 (RIDOC fax to ICE). The fax named Ms. Morales and stated that "[a]n Immigration Detainer is the only document holding this inmate at the Department of Corrections. Please contact the Records Unit with any information you may have pertaining to this inmate." Pl. Ex. 2 (RIDOC fax to ICE). The fax requested that ICE "PLEASE PICK UP 5-5-09." *Id.*
160. ICE took no action in response to this fax on the evening of May 4, 2009. Pl. Ex. 36 at 100:11-101:6 (Donaghy Dep.). ICE's typical practice was not to respond to such faxes until the following day. *Id.*
161. On May 5, 2009, ICE agents arrived at the jail, handcuffed Ms. Morales, and took her into federal custody. Pl. Ex. 46 at 55:18-23 (Morales Dep.); Pl. Ex. 19 (Summary of Events); Pl. Ex. 48 ¶58 (United States Answer).
162. Ms. Morales was driven to ICE's office in Rhode Island, where ICE agents interviewed her, confirmed that she is a U.S. citizen, and ultimately released her. Pl. Ex. 46 at 58:15-59:2 (Morales Dep.); Pl. Ex. 19 (Summary of Events).
163. Before leaving, Ms. Morales protested to one ICE agent that this was the second time she had been targeted by an ICE detainer, and she asked for an assurance that it

would not happen a third time. The agent apologized, but told her “there’s nothing I can do” to ensure that she would not be detained again in the future. Pl. Ex. 46 at 93:19-94:1; 97:12-98:1 (Morales Dep.).

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Respectfully submitted,

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