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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GERARDO GONZALEZ, *et al.*, Plaintiffs, v. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*, Defendants.	No. 2:13-cv-4416-BRO (FFMx) **DEFENDANTS' NOTICE OF MOTION TO DISMISS & MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** DATE: Monday, June 16, 2014 TIME: 1:30 p.m. JUDGE: Beverly Reid O'Connell

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Monday, June 16, 2014, at 1:30 p.m., or as soon thereafter as the parties may be heard, Defendants will bring for hearing a motion to dismiss Plaintiffs' Second Amended Complaint. The hearing will take place before the Honorable Beverly Reid O'Connell in Courtroom 14, 312 N. Spring Street, Los Angeles, California 90012.

This motion is based on the memorandum of points and authorities attached hereto, all pleadings, papers and files in this action, and such oral argument as may be presented at the hearing on the motion. This motion is also made following conferences between counsel for the Plaintiffs and Defendants pursuant to L.R. 7-3, which took place by telephone on March 3, 2014. During the March 3, 2014 conference, Plaintiffs' counsel confirmed that Plaintiffs oppose Defendants' motion.

DATED: March 10, 2014

Respectfully Submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

This is a putative class action immigration case in which Plaintiffs broadly challenge U.S. Immigration and Customs Enforcement's ("ICE's") practice of issuing immigration detainers to local, state, or federal law enforcement agencies ("LEAs") relating to individuals in their jails or prisons. Plaintiffs have asserted five causes of action, as well as an alternative petition for writ of habeas corpus. *See* Second Amended Complaint ("SAC"), ECF No. 20-1, at 28-31.

This Court should dismiss Plaintiffs' second amended complaint for the following reasons. First, although Plaintiffs seek only relief that is prospective and equitable in nature, they have failed to establish standing to seek such relief. Second, Plaintiffs lack standing to bring any of the causes of action they allege in their complaint because they have not suffered an injury-in-fact fairly traceable to Defendants. Third, even if they did not lack standing, each of Plaintiffs' claims is moot because ICE has canceled the detainers that it had lodged against Plaintiffs. Fourth, this Court lacks jurisdiction over Plaintiffs' habeas claim because neither Plaintiff was in ICE's custody at the time they filed their complaint (nor, indeed, have they ever been). Finally, the Court must dismiss Plaintiffs' claim that Defendants' issuance of immigration detainers is *ultra vires* because Plaintiffs fail to state a claim upon which the Court can grant the relief they request. For these reasons, explained more fully below, under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), this Court should dismiss Plaintiffs' second amended complaint in its entirety.

LEGAL AND FACTUAL BACKGROUND

A. The nature and purposes of immigration detainers.

ICE, the principal investigative arm of the U.S. Department of Homeland Security (DHS), has as its primary mission the promotion of homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.[1] ICE's Enforcement and Removal Operations (ERO) enforces the nation's immigration laws, identifies and apprehends removable aliens, detains these individuals when necessary and removes illegal aliens from the United States.[2] This unit prioritizes the removal of criminal aliens, and it meets that priority in part by issuing immigration detainers (Form I-247), which serve primarily as a communication tool between ICE and federal, state, and local law enforcement agencies ("LEAs") holding individuals who might be illegal aliens. *See* 8 C.F.R. § 287.7(a). To this end, an immigration detainer may be lodged for one or more purposes, with the purpose(s) of each detainer evident on the completed detainer form itself.

The top half of the immigration detainer form provides information to the LEA-recipient regarding the individual to whom the detainer applies, identifying via four checkboxes the action(s) ICE has taken with regard to that individual. *See, e.g.*, Exh. 1. If checked, the first checkbox indicates that the ICE officer issuing the detainer form has "[d]etermined there is reason to believe the individual is an alien subject to removal from the United States." *See id.* Additional boxes are available to be checked to identify the basis of that determination. *See id.* The remaining three checkboxes on the top half of the form indicate that ICE has already either "initiated removal proceedings," "served a warrant for arrest for

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[1] *See* www.ice.gov/about/overview/ (last visited March 3, 2014).

[2] *See* www.ice.gov/about/offices/enforcement-removal-operations/ (last visited March 3, 2014).

removal proceedings," or "obtained an order of deportation or removal" for the individual. *See id.*

The bottom half of the immigration detainer form indicates what action ICE is requesting that the LEA take and provides a portion for the LEA to complete and return to ICE, providing additional information regarding the individual. *See id.* The first listed potential action that ICE may request of an LEA is to maintain custody of the individual "when the subject would have otherwise been released from [the LEA's] custody." *Id*. The second, third, and fourth actions ICE may request concern providing notice, either to ICE or to the individual. *Id*. The fifth and sixth options limit or cancel the detainer's effect. *Id*.

B. The detainers lodged against Plaintiffs Gonzalez and Chinivizyan.

Neither of the two named plaintiffs in this case, Gerardo Gonzalez and Simon Chinivizyan, has ever been in the physical custody of ICE, and neither currently has an ICE detainer lodged against him. *See* SAC ¶¶ 46, 60. The Los Angeles Police Department ("LAPD") arrested Plaintiff Gonzalez on December 27, 2012, for felony possession of methamphetamines. *Id.* ¶ 39. The LAPD transferred Plaintiff Gonzalez to the custody of the Los Angeles Sheriff's Department ("LASD"), in whose custody he remained at the time Plaintiffs filed the SAC. *Id*. ¶¶ 39-40. According to the SAC, an LAPD or LASD employee incorrectly wrote on Plaintiff Gonzalez's booking record that he was born in Mexico. *Id*. ¶ 41. On December 31, 2012, ICE lodged an immigration detainer for Plaintiff Gonzalez. *Id*. ¶ 42; *see* Exhibit 1. On June 19, 2013, ICE canceled the detainer lodged against him. *Id*. ¶ 46; *see also* Exhibit 2. ICE never took Plaintiff Gonzalez into its custody. *Id*. ¶ 71 (alleging that Plaintiff Gonzalez "*would have been* detained . . . by ICE") (emphasis added).

The Burbank Police Department arrested Plaintiff Chinivizyan on June 7, 2013, charging him with two counts of possession of a controlled substance and one count of receiving stolen property. SAC ¶ 49. He pleaded no contest to all

three charges on June 19, 2013. *Id*. ¶ 50. On June 19, 2013, ICE lodged an immigration detainer against Plaintiff Chinivizyan. *See* Exhibit 3. Plaintiffs allege that on July 2, 2013, a California superior court judge sentenced Plaintiff Chinivizyan to spend six months in a residential drug treatment facility and did not sentence him to any jail time. *Id*. ¶¶ 52-53. Plaintiff Chinivizyan alleges that on July 3, 2013, LASD denied his transfer to the residential drug treatment facility because of the ICE detainer. *Id*. ¶ 54. On July 11, 2013, ICE canceled the detainer lodged against him, without ever having taken him into its custody. *Id*. ¶ 60; *see also* Exhibit 4.

STANDARDS OF REVIEW

Federal courts have limited jurisdiction, and they may exercise that jurisdiction only where it is specifically authorized by federal statute. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure tests the existence of such jurisdiction. *See Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039-40 (9th Cir. 2003). If a court determines that jurisdiction is lacking, that court cannot proceed at all, and its sole remaining duty is to state that it lacks jurisdiction and dismiss the case. *See Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83, 94, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). A court must presume the lack of jurisdiction until the party asserting jurisdiction proves otherwise. *Kokkonen*, 511 U.S. at 377.

A court must also dismiss a complaint that fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal may be based on the lack of a cognizable legal theory or on a plaintiff's failure to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). When assessing a Rule 12(b)(6) motion, a court

must take as true allegations of material fact and must construe them in the light most favorable to the non-moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). A court need not accept as true pleadings that are no more than legal conclusions or the "formulaic recitation of the elements" of a cause of action. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

ARGUMENT

I. This Court must dismiss Plaintiffs' Second Amended Complaint for lack of jurisdiction.

A. Plaintiffs lack standing to seek prospective equitable relief because they cannot show an imminent threat of irreparable injury.

The Court must dismiss this case under Federal Rule of Civil Procedure 12(b)(1) because Plaintiffs Gonzalez and Chinivizyan lack standing to assert their claims for prospective equitable relief. In their SAC, Plaintiffs seek (1) an injunction restricting the circumstances in which Defendants can issue immigration detainers; (2) an injunction requiring Defendants to rescind and reconsider the issuance of all existing immigration detainers; (3) an injunction requiring judicial proceedings for individuals subjected to immigration detainers; and declaratory judgments regarding Defendants' compliance with (4) the Fourth Amendment and (5) their statutory authority. *See* SAC at 31-32 (Prayer for Relief). All of these requested forms of relief are equitable and prospective in nature. Plaintiffs, however, have failed to establish – and, in fact, cannot establish – standing to seek such relief.

Article III of the Constitution limits the power of federal courts to the resolution of actual "Cases" and "Controversies." U.S. Const., art. III, § 2; *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 471, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982). "[A]n essential and unchanging part of the case-or-controversy requirement of Article III" is "the

requirement that a litigant have standing to invoke the authority of a federal court." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, 126 S. Ct. 1854, 1861, 164 L. Ed. 2d 589 (2006). The irreducible minimum of constitutional standing consists of three elements: (1) injury-in-fact, (2) causation, and (3) redressability. *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). Plaintiffs, as the party seeking to establish jurisdiction, bear the burden of demonstrating the existence of standing, *Lujan*, 504 U.S. at 561, and they "must demonstrate standing separately for each form of relief sought," *see Friends of the Earth, Inc. v. Laidlaw Envt'l Servs., Inc.*, 528 U.S. 167, 185, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000).

As shown above, Plaintiffs seek only prospective equitable relief.[3] *See* SAC at 31-32. When a plaintiff seeks prospective equitable relief, the injury-in-fact analysis involves two distinct components. *See Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1042 (9th Cir. 1999). First, courts consider the constitutional requirements for standing, under which a plaintiff must show a credible threat of future injury that is sufficiently concrete and particularized to meet the case-or-controversy requirement of Article III. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101-04, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983). Second, courts consider whether a plaintiff has established an entitlement to prospective equitable relief. *See id.* at 111; *Hodgers-Durgin*, 199 F.3d at 1042. To establish such entitlement for a prospective injunction, the plaintiff must not only establish a likelihood of

[3] This Court need not consider whether Plaintiffs would have standing to seek remedial relief because Plaintiffs have not sought such relief in this litigation. *See* SAC at 31-32. Moreover, whether Plaintiffs would have standing to seek such relief has no bearing on whether they have standing to seek *prospective* equitable relief. *See Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010) ("[A] plaintiff who has standing to seek damages for a past injury, or injunctive relief for an ongoing injury, does not necessarily have standing to seek prospective relief such as a declaratory judgment.").

future injury, but also show an imminent threat of irreparable harm. *Lyons*, 461 U.S. at 111. If "the named plaintiffs fail to establish imminent injury for the purposes of injunctive relief, their related claims for declaratory relief must be dismissed . . . ." *See Stevens v. Harper*, 213 F.R.D. 358, 366-67 (E.D. Cal. 2002). Finally, although Plaintiffs have filed this action as a putative-class action, alleged injuries to unnamed members of a proposed class are irrelevant to the standing analysis, *see Hodgers-Durgin*, 199 F.3d at 1045, and cannot rescue the case from dismissal if the named plaintiffs lack standing, *see B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999) ("A class of plaintiffs does not have standing to sue if the named plaintiff does not have standing.").

i. Plaintiffs lack standing to seek a prospective injunction.

Plaintiffs have not shown a "likelihood of substantial and immediate irreparable injury" and therefore lack standing to seek prospective injunctive relief. In their SAC, Plaintiffs Gonzalez and Chinivizyan allege that ICE lodged immigration detainers for them and that the detainers were unlawful because they are U.S. citizens. *See* SAC ¶¶ 41-42 (Gonzalez), 47-51 (Chinivizyan). Both acknowledge, however, that ICE has already canceled the detainers. *Id*. ¶¶ 46 (Gonzalez, canceled June 19, 2013), 60 (Chinivizyan, canceled July 11, 2013); *see also* Exhs. 2, 4. Moreover, Plaintiffs Gonzalez and Chinivizyan understandably fail to allege either that they will again be subjected to an immigration detainer or that they face some future harm because of the canceled detainers. *See O'Shea v. Littleton*, 414 U.S. 488, 496, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974) ("[T]he prospect of future injury rests on the likelihood that respondents will again be arrested for and charged with violations of the criminal law and will again be subjected to bond proceedings, trial, or sentencing before petitioners.").

Because Plaintiffs seek only *prospective* equitable relief, the operative question for the standing inquiry is *not* whether they were *previously* injured by ICE's lodging of immigration detainers against them, but whether they face an

imminent threat of *future* irreparable harm. And although past wrongs could perhaps factor into the determination of whether there is a real and immediate threat of repeated injury, "[p]ast exposure to illegal conduct does not in itself show a . . . case or controversy" sufficient to support a prospective injunction. *See id.* at 495-96. Based on the allegations in the SAC, Plaintiffs have failed to identify any likelihood of personal *future* harm. Indeed, the Ninth Circuit and other courts have consistently held that a single occurrence is insufficient to establish a likelihood that the challenged action will occur again in the future. *See, e.g.*, *Hodgers-Durgin*, 199 F.3d at 1044 (finding it "not sufficiently likely" that plaintiffs who had been stopped only once would be stopped again); *Farm Labor Org. Comm. v. Ohio State Highway Patrol*, 95 F. Supp. 2d 723, 730 (N.D. Ohio 2000) (holding that "the current named plaintiffs, having been stopped but once, lack standing to seek equitable relief"). Rather, courts generally require multiple or repeated occurrences before finding that a plaintiff has standing to seek a prospective injunction. *See, e.g.*, *Wooley v. Maynard*, 430 U.S. 705, 712, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977) (equitable relief was available where plaintiff had been prosecuted three times for obscuring "Live Free or Die" motto on his license plate in a span of five weeks).[4]

Accordingly, because each Plaintiff alleges only a single occasion on which he contends to have improperly been the subject of an immigration detainer and because neither has shown any likelihood that it will happen again in the imminent future, both Plaintiffs lack standing to seek a prospective injunction.

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[4] *See also Kolender v. Lawson*, 461 U.S. 352, 357 n.3, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983) (plaintiff who had been stopped fifteen times had standing to challenge an anti-loitering statute as unconstitutionally vague because there was a "credible threat" that he might be detained again); *Nicacio v. INS*, 797 F.2d 700 (9th Cir. 1985) ("The possibility of recurring injury ceases to be speculative when actual repeated incidents are documented."), *overruled on other grounds by Hodgers-Durgin*, 199 F.3d at 1042.

ii. Plaintiffs lack standing to seek a prospective declaratory judgment.

Plaintiffs' claim for a prospective declaratory judgment – *i.e.*, that Defendants' current policies and/or practices are unlawful – is similarly not ripe for adjudication. The Ninth Circuit has previously held that a claim for prospective declaratory judgment "is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Hodgers-Durgin*, 199 F.3d at 1044 (quoting *Texas v. United States*, 523 U.S. 296, 118 S. Ct. 296, 140 L. Ed. 2d 406 (1998)) (dismissing plaintiffs' claims that they would be stopped again by the Border Patrol because they were "simply too speculative to warrant an equitable judicial remedy, including declaratory relief . . . ."). "Both the Supreme Court and [the Ninth] [C]ircuit have repeatedly found a lack of standing where the litigant's claim relies upon a chain of speculative contingencies." *Nelsen v. King Cnty.*, 895 F.2d 1248, 1252 (9th Cir. 1990).

Here, Plaintiffs have not alleged that they are likely to be the subject of another ICE detainer in the future. Indeed, any claim that Plaintiffs are likely to be subjected to another ICE detainer would rely on a string of contingencies insufficient to support standing. *See id*. Of particular relevance to this analysis is California's recent enactment of the TRUST Act, which was signed into law on October 5, 2013. *See* Cal. Gov't Code § 7282 *et seq*. The express purpose of the TRUST Act is to "prohibit law enforcement official[s] . . . from detaining an individual" on the basis of an immigration detainer except where specified, limited conditions are met. *See* Legislative Counsel's Digest, 2013 California Assembly Bill No. 4, 2013 Cal. Legis. Serv. Ch. 570.

Under the TRUST Act, all California state and local law enforcement officials are prohibited from cooperating with immigration detainers in any fashion unless two conditions are met. *See* Cal. Gov't Code § 7282.5(a) (addressing compliance generally), § 7282.5(b) (specifically addressing detention pursuant to an immigration detainer). First, state and local law enforcement officials may only

comply with an immigration detainer if doing so would not violate another federal, state, or local law, or any local policy. *Id.* Among other things, this provision recognizes the existence of state and local laws, ordinances, or policies that limit or, at times, completely prohibit cooperation with immigration detainers. *See, e.g.*, SAC at 13 n.2 (noting the LAPD's policy limiting its cooperation with immigration detainers).

Second, state and local law enforcement officials may only comply with an immigration detainer if the individual meets one of the six enumerated circumstances, including that the individual: (1) has been convicted of a "serious or violent felony;" (2) has been convicted of a felony punishable by imprisonment in state prison; (3) has been convicted of one of a list of enumerated offenses; (4) "is a current registrant on the California Sex and Arson Registry;" (5) has already had a magistrate judge make a probable finding for certain types of crimes; or (6) has been convicted of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43). *See* Cal. Gov't Code § 7282.5(a)(1)-(6). Finally, even when the TRUST Act does not prohibit a law enforcement official from complying with an immigration detainer, such compliance remains discretionary. *See id.* § 7282.5(a) ("A law enforcement official shall have *discretion* to cooperate with federal immigration officials . . . ." (emphasis added)).

Thus, in order to have an immigration detainer lodged against them again in the future, and in order for that immigration detainer to be recognized and complied with by an LEA, Plaintiffs would first have to: (i) be arrested for the commission of an additional crime; (ii) be detained by an LEA that does not entirely prohibit cooperation with immigration detainers; (iii) have their information shared with or referred to ICE; (iv) have an ICE agent ignore their now-clearly noted U.S. citizenship status and determine that an immigration detainer should be lodged; *and* (v) have an LEA decide, in his or her discretion, to comply with ICE's immigration detainer. The prospect of such a future string of

events happening is hypothetical at best. *See Lee v. State of Or.*, 107 F.3d 1382, 1388 (9th Cir. 1997) (finding no standing for plaintiffs seeking injunction where prospect of future harm relied on a "chain of speculative contingencies"); *see also, Northwest Airlines, Inc. v. Federal Aviation Admin.*, 795 F.2d 195, 201 (D.C. Cir. 1986) (stating that "[t]he injury requirement will not be satisfied simply because a chain of events can be hypothesized in which the action challenged eventually leads to actual injury"). Moreover, Plaintiffs themselves have the ability to avoid committing any additional crimes, and thus retain control over the trigger in the above line of contingencies. *See O'Shea*, 414 U.S. at 497 ("We assume that respondents will conduct their activities within the law and so avoid . . . the challenged course of conduct said to be followed by petitioners."). As such, Plaintiffs "themselves are able – and indeed required by law – to prevent such a possibility from occurring." *See Lane v. Williams*, 455 U.S. 624, 633 n.13, 102 S. Ct. 1322, 71 L. Ed. 2d 508 (1982).

In summary, to establish standing to seek prospective equitable relief, "the named plaintiffs themselves must show that they are likely to be repeat victims."[5] *Farm Labor Org. Comm.*, 95 F. Supp. 2d at 733 (citing *Allee v. Medrano*, 416 U.S. 802, 828-29, 94 S. Ct. 2191, 40 L. Ed. 2d 566 (1974)). Plaintiffs have not so shown, and, indeed, are not so likely. Based on their own allegations, Plaintiffs have failed to demonstrate a likelihood of substantial and imminent irreparable injury sufficient to establish an entitlement to prospective injunctive relief against Defendants. Likewise, because any possibility that Plaintiffs will again suffer the same alleged harm hinges on a line of contingencies that is speculative at best and over which they retain control, their related claims for prospective declaratory

[5] The "capable of repetition but evading review" doctrine has no bearing on this analysis. *See Nelsen*, 895 F.2d at 1254 (noting that the "doctrine is an exception only to the mootness doctrine; it is not transferable to the standing context").

relief are unripe. Accordingly, the Court should dismiss Plaintiffs' prospective equitable claims for lack of subject-matter jurisdiction.[6]

B. Plaintiffs lack standing to bring their Fourth and Fifth Amendment claims because they have not suffered an injury-in-fact fairly traceable to the immigration detainers.

Beyond lacking standing based on the nature of relief they seek, Plaintiffs also lack standing to bring their second, third, fourth, and fifth causes of action because they have not suffered the requisite injury-in-fact for each claim. Specifically, Plaintiffs allege that the immigration detainers lodged against them violated the Fourth Amendment because they resulted in an unlawful seizure, SAC ¶¶ 96-97 (second cause of action), and "fail[ed] to provide Plaintiffs . . . with a prompt, judicial probable cause determination," thus "unreasonably taking away,

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[6] In reaching its holding in *Hodgers-Durgin*, the Ninth Circuit was also mindful of Supreme Court precedent that federal courts should exercise extreme caution in granting equitable relief that could interfere with the operations of the Executive branch:

> It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution . . . . [T]he distinction between the two roles would be obliterated if, to invoke intervention of the courts, no actual or imminent harm were needed, but merely the status of being subject to a governmental institution that was not organized or managed properly.

Hodgers-Durgin, 199 F.3d at 1043 (quoting *Lewis v. Casey*, 518 U.S. 343, 349-50, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)). The Ninth Circuit further stated that, "[i]n the absence of a likelihood of injury to the named plaintiffs, there is no basis for granting injunctive relief that would restructure the operations of the Border Patrol and that would require ongoing judicial supervision of an agency normally, and properly, overseen by the executive branch." *Id.* at 1044.

limiting, and otherwise impacting their liberty," *id.* ¶¶ 101-103 (fourth cause of action). Alternatively, Plaintiffs contend that the detainers violated their substantive due process rights under the Fifth Amendment by restricting their "right to be released within a reasonable time after the initial reason for their detention has ended," *id.* ¶¶ 98-100 (third cause of action), and their procedural due process rights by failing to provide a prompt judicial probable cause determination. *Id.* ¶¶ 104-106 (fifth cause of action). As shown below, Plaintiffs cannot plausibly demonstrate that they have suffered any injury under the Fourth or Fifth Amendment sufficient to provide standing to bring any of these four claims.

i. Plaintiffs have not suffered an injury under the Fourth Amendment.

The Fourth Amendment protects an individual's right to be secure against "unreasonable searches and seizures." U.S. Const., Amend IV. A seizure has not occurred (and the Fourth Amendment does not apply), however, unless "by means of physical force or show of authority, [the government] has in some way restrained the liberty of a citizen." *Terry v. Ohio*, 392 U.S. 1, 20, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889 (1968). Accordingly, Plaintiffs' claims under the Fourth Amendment depend upon their contention that the lodging of immigration detainers resulted in their unlawful seizures. The detainers here did not.

At the time ICE issued the detainers for Plaintiffs Gonzalez and Chinivizyan, both individuals had already been arrested and were in criminal custody. Plaintiff Gonzalez had been arrested on December 27, 2012, for felony possession of methamphetamines and was in the custody of LASD. *See* SAC ¶¶ 39-40. Plaintiff Chinivizyan had been arrested on June 7, 2013, on two controlled substance charges and one charge of receiving stolen property, and was also in the custody of LASD. *Id.* ¶ 49. Even after the detainers were lodged, however, both Plaintiffs remained in LASD custody. *See id.* ¶¶ 42-44, 51-54.

Thus, the lodging of the detainers did not result in the arrest or detention of Plaintiffs. Nor could it – they were already detained.

Plaintiffs similarly cannot plausibly argue that the immigration detainers reasonably resulted in a restraint on their liberty. Plaintiff Gonzalez contends his liberty was restrained because "*if [he had] posted bail*, he would have been subject to unlawful detention of up to 5 days on the sole authority of the immigration hold and subject to further unlawful detention for up to 2 days by ICE." SAC ¶ 45 (emphasis added). Additionally, he contends that *had he been convicted* while subject to an immigration detainer, *it might have affected* aspects of the state's decisions regarding imprisonment and access to remedial programs. *Id*. (emphasis added). Both of these allegations are entirely speculative and hypothetical, however, because Plaintiff Gonzalez *never actually* posted bond prior to ICE canceling the detainer, nor was he convicted while the detainer was in effect. A threat of injury that is "conjectural" or "hypothetical" is insufficient to establish standing. *Lyons*, 461 U.S. at 102-03. Moreover, the facts of this case belie any contention by Plaintiff Gonzalez that the immigration detainer impacted his detention. Indeed, based on his allegations, he remained in LASD custody at the time Plaintiffs filed their SAC, despite the fact that ICE canceled his immigration detainer several months earlier. *SAC* ¶¶ 8, 39-40, 45-46.

Similarly, Plaintiff Chinivizyan alleges that the immigration detainer caused LASD to deny him release into a rehabilitation program in accordance with a court order. SAC ¶¶ 53-55. The detainer lodged against Plaintiff Chinivizyan, however, specifically expressed that it did *not* limit LASD's *discretion* regarding the conditions of Plaintiff Chinivizyan's incarceration. *See* Exh. 3 ("This [detainer] does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters."). Assuming that Plaintiff Chinivizyan is correct that LASD refused to transfer him to a rehabilitation facility, that decision was based entirely on LASD's own policies

and procedures; such a refusal was not directed or requested by ICE, where, as here, he remained subject to state criminal detention. *See* 8 C.F.R. §287.7(d) (ICE's request to detain only applies when the alien is "not otherwise detained by a criminal justice agency"). Moreover, the Ninth Circuit has found time and again that there exists in the Fourth Amendment context "no constitutional right to rehabilitation." *Rizzo v. Dawson*, 778 F.2d 527, 531 (9th Cir. 1985) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1254-55 (9th Cir. 1982)).

For the purposes of this motion, the Court need not accept as true Plaintiff Chinivizyan's self-serving and conclusory allegation that he was "detained for 7 days in LASD custody on the sole authority of the immigration hold." *See* SAC ¶ 55, *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) ("[W]e are not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint, and we do not necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations." (internal quotation marks, citations, and alterations omitted)). Indeed, Plaintiffs' allegations themselves undermine their conclusory assumption regarding the basis for Chinivizyan's custody. By regulation, an LEA is responsible for all costs associated with continued detention until "actual assumption of custody by [ICE]," providing a strong incentive for an LEA to inform ICE when it is holding an individual solely based on an immigration detainer. *See* 8 C.F.R. § 287.7(e); *see also* Complaint ¶¶ 7-8, 36, *Roy v. Cnty. of Los Angele*s, No. 12-cv-9012 (C.D. Cal.) (alleging that LASD detention costs $100-150 per night, which will not be reimbursed, and that LASD is seeking to reduce its prison population). Nevertheless, Plaintiffs do not contend that LASD informed ICE it was holding Plaintiff Chinivizyan for ICE to pick up; instead, they concede that ICE was unaware of the fact that Plaintiff Chinivizyan was being held pursuant to a detainer. *See* SAC ¶ 59. Nor do Plaintiffs address the fact that, inexplicably, LASD held Plaintiff Chinivizyan longer than even Plaintiffs

recognize as typical in such situations. *Compare* SAC ¶ 15 ("A person subject to an immigration detainer may thus be detained for up to . . . five days in LEA custody on the immigration detainer . . .") *with* ¶ 55 ("Plaintiff Chinivizyan had been detained for 7 days in LASD custody on the sole authority of the immigration hold . . ."). Moreover, alternative sentencing to a rehabilitation program does not terminate a state's criminal custody of an individual. *Cf. Khadr v. Bush*, 587 F. Supp. 2d 225, 237 (D.D.C. 2008) (holding, in the habeas context, that a request for "a transfer from adult detention into a rehabilitation and reintegration program for juveniles . . . is not tantamount to a request for outright release and is more accurately characterized as a request seeking a different program or location or environment" (quotations omitted)).

Thus, the only reasonable inference the Court may draw from Plaintiff Chinivizyan's continued detention is that the State of California retained criminal custody over Plaintiff Chinivizyan and denied him transfer to a rehabilitation facility based entirely on its own policies and procedures. *See Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) ("[F]or a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief."). Accordingly, any injury suffered by Plaintiff Chinivizyan is not fairly traceable to ICE. *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 733 F.3d 939, 950 (9th Cir. 2013) (noting that for Article III standing, a petitioner "must show that the injury is fairly traceable to the challenged action of the defendant, and is not the result of the independent action of some third party not before the court" (internal quotations omitted)).

Finally, because the immigration detainers did not cause Plaintiffs' detention, no judicial probable cause hearing was required. Indeed, even the cases Plaintiffs cite in the SAC recognize that a probable-cause hearing is only required when there will be "extended restraint of liberty *following arrest*." *Gerstein v.*

Pugh, 420 U.S. 103, 114, 95 S. Ct. 854, 863, 43 L. Ed. 2d 54 (1975) (emphasis added); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56, 111 S. Ct. 1661, 1670, 114 L. Ed. 2d 49 (1991) ("[W]e believe that a jurisdiction that provides judicial determinations of probable cause *within 48 hours of arrest* will, as a general matter, comply with the promptness requirement of *Gerstein*." (emphasis added)). Plaintiffs were not arrested – indeed, they were not even detained – as a result of the immigration detainers lodged against them; therefore, a judicial probable cause hearing was not required.

Accordingly, any deprivation of liberty Plaintiffs Gonzalez and Chinivizyan experienced (or are experiencing) is solely the result of their criminal custody and is not fairly traceable to the immigration detainers. Plaintiffs lack standing to assert their second and fourth causes of action under the Fourth Amendment because they have not suffered the requisite injury-in-fact.[7]

ii. Plaintiffs have not suffered an injury under the Fifth Amendment.

Plaintiffs bring their third and fifth causes of action under the Fifth Amendment, as alternatives to the second and fourth causes of action "in the event the court rules that . . . [they are] properly analyzed" under the Fifth Amendment. *See* SAC ¶¶ 99, 105. These claims mirror Plaintiffs' claims under the Fourth Amendment, and the Court must dismiss them for the same reasons.

The third cause of action in the SAC purports to implicate the substantive component of the Fifth Amendment. *See* SAC ¶¶ 98-100. "Substantive due process analysis must begin with a careful description of the asserted right." *Reno v. Flores*, 507 U.S. 292, 302, 113 S. Ct. 1439, 1447, 123 L. Ed. 2d 1 (1993); *see also Log Cabin Republicans v. United States*, 658 F.3d 1162, 1169 (9th Cir. 2011) ("[T]he Court requires a careful description of the asserted fundamental liberty

[7] Because ICE did not arrest or detain them, but, rather, the local LEAs did, Plaintiffs also lack standing to bring their first cause of action, in which they allege that ICE exceeded its statutory warrantless-arrest powers. *See* SAC ¶¶ 91-95.

interest" and "eschew[s] breadth and generality in favor of narrowness, delicacy, and precision" (internal quotations and citations omitted)). Here, Plaintiffs assert the "right to be released within a reasonable time after the initial reason for their detention has ended." SAC ¶ 100. As shown above, however, even without determining whether Plaintiffs have properly described and indeed have such a right, this Court must dismiss this claim because, regardless, ICE did not violate that purported right. Plaintiffs cannot ascribe their arrests or detentions to the immigration detainers lodged against them, nor did the immigration detainers reasonably result in a restraint on Plaintiffs' liberty. *Cf. Moody v. Daggett*, 429 U.S. 78, 86-87, 97 S. Ct. 274, 278, 50 L. Ed. 2d 236 (1976) (holding that, "[w]ith only a prospect of future incarceration which is far from certain, we cannot say that the parole violator warrant has any present or inevitable effect upon the liberty interests" of an individual already in detention for other convictions).

The Court must similarly dismiss Plaintiffs' fifth cause of action, which they bring under the procedural component of the Fifth Amendment. *See* SAC ¶¶ 104-06. As discussed above, the right to a judicial probable cause determination does not exist unless an individual has been subjected to arrest. *See Gerstein*, 420 U.S. at 114. Because Plaintiffs were not arrested or even detained as a result of the immigration detainers lodged against them, a judicial probable cause hearing was not required. Thus, Plaintiffs lack standing to assert their third and fifth causes of action under the Fifth Amendment because they have not suffered the requisite injury-in-fact.

C. Plaintiffs' claims are moot because ICE has canceled the immigration detainers that it lodged against them.

As with standing, the Constitution's case-or-controversy requirement imposes the justiciability doctrine of mootness. *See Culinary Workers Union, Local 226 v. Del Papa*, 200 F.3d 614, 617 (9th Cir. 1999). "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable

interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969). In deciding whether a case is moot, the question for the court is "whether there can be any effective relief." *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001). "If an event occurs that prevents the court from granting effective relief, the claim is moot and must be dismissed." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

In this case, ICE canceled the immigration detainers issued lodged against both Plaintiffs. *See* Exhs. 2, 4. Accordingly, they face no likelihood that they will suffer future harm due to the previously lodged and now-canceled detainers. And because Plaintiffs do not seek damages or any remedial relief but instead seek only prospective, equitable relief, this Court can no longer grant any effective relief to them. *See supra* Section I.A.

Moreover, the "capable of repetition, yet evading review" exception to mootness does not apply. The exception, which applies only in "extraordinary cases," *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 798 (9th Cir. 1999) (en banc), requires a plaintiff to make two showings. First, "the 'capable of repetition' prong of the exception requires a 'reasonable expectation' that the same party will confront the same controversy again." *W. Coast Seafood Processors Ass'n v. Natural Res. Def. Council, Inc.*, 643 F.3d 701, 704 (9th Cir. 2011) (citation omitted). Second, should the situation arise again, the claim must be "inherently limited in duration such that it is likely always to become moot before federal court litigation is completed" and, therefore, would "evade review." *Id*. at 705 (internal quotations and citations omitted). Plaintiffs cannot meet either prong of the test here. First, Plaintiffs have not shown and cannot show a reasonable expectation that they will be the subject of an immigration detainer again in the future. *See supra* Section I.A; *see also Alvarez v. Hill*, 667 F.3d 1061, 1064-65 (9th Cir. 2012) (finding that plaintiff's claim that it is reasonably likely he will return to jail's custody in the future is "too speculative a basis on which to conclude [his] claims

are capable for review"). Second, Plaintiffs have themselves put forward cases in which similar claims were not rendered moot before federal court litigation was completed. *See* SAC ¶ 25. Accordingly, all of Plaintiffs' claims related to their immigration detainers are now moot and this Court should dismiss the SAC.

D. Because Plaintiffs have never been in ICE's custody, the Court must dismiss the habeas claim.

This Court must also dismiss Plaintiffs' habeas claim because at the time they filed their complaint they were not (and indeed, have never been) in ICE's custody. Federal courts have jurisdiction to issue a writ of habeas corpus only if the petitioner "is in custody under . . . the authority of the United States." 28 U.S.C. § 2241(c). The Ninth Circuit and Supreme Court have clarified that the "in custody" requirement is jurisdictional and thus is a threshold issue. *See Williamson v. Gregoire*, 151 F.3d 1180, 1182 (9th Cir. 1998); *Maleng v. Cook*, 490 U.S. 488, 490, 109 S. Ct. 1923, 104 L. Ed. 2d 540 (1989) (per curiam). To satisfy the "in custody" requirement, a petitioner must be in custody at the time of the filing of a habeas petition. *See Abdala v. INS*, 488 F.3d 1061, 1063-64 (9th Cir. 2007).

Here, Plaintiffs have never been in ICE's custody; accordingly, the Court lacks subject-matter jurisdiction over the habeas claim. 28 U.S.C. § 2241(c). Plaintiffs, to be clear, do not contend that they have ever been in ICE's physical custody; rather, they contend that "the issuance of an immigration detainer place[d] Plaintiffs . . . in federal custody for purposes of 28 U.S.C. § 2241." SAC ¶ 109. Ninth Circuit precedent, however, forecloses this argument. *See Campos v. INS*, 62 F.3d 311, 313 (9th Cir. 1995) ("The bare detainer letter alone does not sufficiently place an alien in INS custody to make habeas corpus available.") (quoting *Garcia v. Taylor*, 40 F.3d 299, 303 (9th Cir. 1994)). Moreover, because ICE canceled the detainers lodged against Plaintiffs while they were still in state criminal custody, there is no chance that such detainers will ever result in Plaintiffs

being transferred into ICE's custody. This Court, therefore, must dismiss Plaintiffs' habeas claim for lack of jurisdiction.

II. This Court must dismiss Plaintiffs' first cause of action for failure to state a claim because Plaintiffs rely on an inapplicable statutory subsection and, in any event, ICE's detainer policies are not *ultra vires*.

Finally, this Court must also dismiss Plaintiffs' first cause of action, in which they allege that ICE issues immigration detainers in excess of their statutory authority to do so. *See* SAC ¶¶ 91-95. Specifically, Plaintiffs contend that immigration detainers "cause[] warrantless arrests without an individualized determination of probable cause of removability or likelihood of escape in violation of the limitations placed by 8 U.S.C. § 1357(a)." *Id*. ¶ 93. The Court must dismiss this cause of action, in addition to Plaintiffs' failure to demonstrate standing, *see supra* note 7, because it fails to state a claim upon which the Court can grant the requested relief.

First, although Plaintiffs have identified the applicable statute, they cite to and rely on the wrong subsection.[8] Subsection (a) of § 1357 is a generally applicable subsection providing immigration officers with specified "powers

[8] Defendants note that ICE's authority to issue immigration detainers flows from multiple sources, only one of which is 8 U.S.C. § 1357(d). *See* 8 C.F.R. § 287.7 ("Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1."). Section 1357(d) addresses only ICE's authority to issue detainers with respect to aliens arrested for controlled substances violations, *see* 8 U.S.C. § 1357(d), though ICE has authority to issue detainers in other contexts under other sources of authority. *See* 8 C.F.R. § 287; *see also Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma*, 644 F. Supp. 2d 1177, 1199 (N.D. Cal. 2009) ("[T]he court reads the language of § 1357 as simply placing special requirements on officials issuing detainers for a violation of any law relating to controlled substances, not as expressly limiting the issuance of immigration detainers solely to individuals violating laws relating to controlled substances."). Nevertheless, because Plaintiffs were both arrested for, and convicted of, controlled substance violations, only ICE's authority under § 1357(d) is at issue in this litigation at this time.

without warrant." *See* 8 U.S.C. § 1357(a). Other subsections, however, directly address specific situations. For example, subsection (c) governs conducting a search without a warrant. *See id.* § 1357(c). Most importantly for the instant litigation, however, subsection (d) governs the issuance of detainers for aliens arrested for "violation of any law relating to controlled substances." *See id.* § 1357(d). Accordingly, the Court must judge ICE's compliance with its Congressionally-mandated powers based on the language of 8 U.S.C. § 1357 subsection (d), not subsection (a). *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071, 182 L. Ed. 2d 967 (2012) (noting that where "a general authorization and a more limited, specific authorization exist side-by-side . . . [t]he terms of the specific authorization must be complied with"). Plaintiffs' claim based on subsection (a), therefore, must be dismissed.

Second, Plaintiffs' claim ignores the multiple possible purposes and functions of an immigration detainer, none of which "causes warrantless arrests." *See supra* at 1-2. These purposes/functions can be restated more simply as threefold. First, the detainer form can notify an LEA that ICE intends to arrest or remove an individual in the LEA's custody once the individual is no longer subject to the LEA's detention. *See* 8 C.F.R. § 287.7(a). Second, an immigration detainer can request information from an LEA about an individual's impending release so that ICE may assume custody before that release from the LEA's custody. *See id.* Third, an immigration detainer may *request* that the *LEA maintain* custody of an individual who would otherwise be released to provide ICE time to assume custody. *See id.* § 287.7(d). In other words, none of the functions of an immigration detainer constitute an arrest or are the basis of any deprivation of liberty. *See Campos*, 62 F.3d at 313 ("The bare detainer letter alone does not sufficiently place an alien in INS custody to make habeas corpus available.") (quoting *Garcia*, 40 F.3d at 303); *see also Dow v. Circuit Court of First Circuit*

Through Huddy, 995 F.2d 922, 923 (9th Cir. 1993) (noting that "custody" for habeas purposes encompasses more than mere physical detention).[9]

[9] Indeed, even if an immigration detainer implicated the Fourth Amendment in some way – which it does not – as a matter of practice, ICE's detainer issuance complies both with the Fourth Amendment and with § 1357(d). As Plaintiffs note, since December 21, 2012, the ICE detainer form has required an immigration officer to note that, at a minimum, he or she has "determined that there is reason to believe the individual is an alien subject to removal from the United States." *See* SAC ¶ 18; *see also* Exh. 1. The Ninth Circuit and some other courts have interpreted the "reason to believe" standard as being analogous to the "probable cause" standard normally associated with criminal proceedings. *See United States v. Gorman*, 314 F.3d 1105, 1110 (9th Cir. 2002) (holding that "the 'reason to believe' standard of *Underwood* embodies the same standard of reasonableness inherent in probable cause" in the context of the "limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within"); *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980) (holding that "[t]he phrase 'has reason to believe' has been equated with the constitutional requirement of probable cause" in the context of a warrantless arrest under 8 U.S.C. § 1357(a)(2)); *see also, e.g.*, *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975) (same). *But see United States v. Pruitt*, 458 F.3d 477, 483 (6th Cir. 2006) (holding that "reasonable belief is a lesser standard than probable cause" in the context of the "limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within"); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005) (same); *United States v. Route*, 104 F.3d 59, 62-63 (5th Cir. 1997) (same); *United States v. Risse*, 83 F.3d 212, 216-17 (8th Cir. 1996) (same); *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995) (same).

Moreover, the Court must analyze ICE's issuance of an immigration detainer in light of California's new TRUST Act. *See* Cal. Gov't Code § 7282 *et seq*. As previously discussed, the Act bars California's state and local LEAs from cooperating with federal immigration officials (*e.g.*, complying with the terms of an immigration detainer) unless one of the conditions listed in section 7282.5(a) of the TRUST Act is met. *See supra* Section I.A.ii. These conditions include convictions for specified offenses, charges for a narrower set of felonies for which a judge has found probable cause under section 872 of the Penal Code, inclusion on the California Sex and Arson Registry, and outstanding federal criminal arrest warrants. Where none of these conditions is met, section 7282.5(b) of the TRUST Act *requires* local officials to release detainees once they are "eligible for release from custody." Cal. Gov't Code § 7282.5(b). To be clear, regardless of what the

In summary, because Plaintiffs rely on the wrong statutory subsection as the basis for their claim, the cause of action is not based on a cognizable legal theory and thus should be dismissed for failure to state a claim upon which relief can be granted. Indeed, this is in addition to the fact that a detainer alone does not constitute an arrest or otherwise form the basis of any deprivation of liberty. Accordingly, the Court must dismiss Plaintiffs' first cause of action under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which the Court could grant the requested relief.

CONCLUSION

This Court should dismiss Plaintiffs' SAC in its entirety. Plaintiffs seek only prospective equitable relief in this action, but they lack standing to seek such relief because they do not face a likelihood of imminent future harm. Additionally, Plaintiffs lack standing to bring their claims because they have not suffered the requisite injury-in-fact. Moreover, because the immigration detainers lodged against Plaintiffs have been canceled, any controversy they had is now moot. This Court also lacks jurisdiction over Plaintiffs' habeas claim because Plaintiffs were not and have never been in ICE's custody. Finally, this Court should dismiss Plaintiffs' challenge based on 8 U.S.C. § 1357 for failure to state a claim upon which relief can be granted because it is based on the wrong statutory subsection and because a detainer alone does not constitute an arrest or otherwise form the basis of any deprivation of liberty.

ICE official represents on the immigration detainer form as the basis for issuing the detainer, the TRUST Act makes *local* officials ultimately responsible for determining whether an exception is met in a particular case.

Accordingly, Plaintiffs' contention that ICE's detainer practices are unconstitutional is untenable.

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