

# Exhibit 5

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

- - - - -X

OSCAR ONADIA, on behalf of himself  
and all others similarly situated,

Index No.: 300940/10

Plaintiff,

**SECOND AMENDED  
VERIFIED CLASS COMPLAINT**

-against-

THE CITY OF NEW YORK, JOHN DOES 1-10  
(names being fictitious and presently  
unknown), and JOHN DOES 11-20 (names  
being fictitious and presently unknown),

Defendants.

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**OSCAR ONADIA** ("Plaintiff"), on behalf of himself and all  
others similarly situated, alleges upon personal knowledge as to  
himself and information and belief as to other matters, as  
follows:

**INTRODUCTION**

1. This class action seeks to vindicate the rights of  
hundreds of individuals who have been unlawfully detained in New  
York City jails, purportedly pursuant to detainers received from  
the United States Immigration and Customs Enforcement "(ICE)".

2. The stated purpose of these detainers ("ICE  
detainers") is to notify law enforcement agencies that an arrested  
individual is being investigated by ICE.

3. The ICE detainers request that law enforcement  
officials maintain custody of an alien subject for a period "not  
to exceed 48 hours . . . to permit assumption of custody by

[ICE]." In practice, however, New York City Department of Corrections ("NYC DOC") officials routinely and unlawfully maintain custody of those subject to ICE detainers well beyond the authorized 48 hour period.

4. NYC DOC officials have no authority to hold any individual past the 48 hour period specified in ICE detainers.

5. This lawsuit seeks to end defendants' illegal pattern and practice of unlawful detentions, and to vindicate the rights of those who have been unlawfully confined in connection with ICE detainers.

6. To that end, defendants' above-described unlawful policies, practices, and customs were and are inflicted on all persons who, while incarcerated in New York City jails, have been subject to ICE detainers, and who, because of said ICE detainers, have consequently been unlawfully detained in said New York City jails for more than 48 hours after all other conditions for their release have been satisfied.

#### **THE PARTIES**

7. That plaintiff is a resident of the State of New Jersey.

8. That at all times herein mentioned, defendant CITY OF NEW YORK (hereinafter "CITY") was and is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

9. Defendant CITY has established and maintains THE NEW YORK CITY DEPARTMENT OF CORRECTION (hereinafter "NYC DOC"),

which is an agency of the defendant CITY.

10. At all times hereinafter mentioned, defendant CITY owned, operated, maintained, controlled and managed a series of correctional facilities, including a correctional facility known as the Anna M. Kross Center ("AMKC"), located at 18-18 Hazen Street, East Elmhurst, New York 11370, which was and is part of the Rikers Island Correctional Complex.

11. At all times herein mentioned, defendants JOHN DOES 1-20 were employees, agents, servants, and/or representatives of defendant CITY and/or NYC DOC, acting within the course and scope of their employment with defendant CITY, and under color of state law.

12. That defendants JOHN DOES 1-20 are sued herein in their individual capacities.

13. A Notice of Claim was served upon the municipal Defendant as a pre-requisite to the commencement of this action within ninety (90) days of the accrual of the action.

14. More than thirty (30) days have elapsed since the claim was presented for adjustment to Defendant and those having the power to adjust such claim have neglected or refused to make payment thereof.

15. This action has been commenced within one year and ninety days of the causes of action accruing.

16. That all of the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules Article 16 with respect to joint and several liability.

### **BACKGROUND FACTS**

17. Law enforcement agencies routinely receive ICE detainers whose purpose is to notify law enforcement officials that an individual in DOC custody is being "investigated" by ICE.

18. The ICE detainers further request that pursuant to 8 C.F.R. 287.7, the alien be detained for a period "not to exceed 48 hours . . . to provide adequate time for Immigration to assume custody of the alien."

19. The detainers do not state when, or even whether, ICE will assume custody of the arrested individual.

20. ICE has no legal obligation to take any action with respect to any individual who is the subject of a detainer. After issuing a detainer, ICE may engage in further investigation, take an individual into custody, or take no action at all within the 48 hour hold period specified in the detainer.

21. The detainers provide no authority for law enforcement agencies to detain any arrested individuals for any period exceeding 48 hours.

22. The detainers provide no authority for a law enforcement agency to refuse to allow any arrested individuals to post court-appointed bail.

23. The detainers provide no authority for a law enforcement agency to discourage individuals from posting bail, or to refuse to accept bail.

### **STATEMENT OF FACTS RELATING TO OSCAR ONADIA**

24. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth at length

herein.

25. On or about December 10, 2008, plaintiff was arrested for unlicensed driving in New York County.

26. Plaintiff was arraigned in New York County Criminal Court (under docket number 2008NY090982) for one count each of Aggravated Unlicensed Operation in the Third Degree (VTL 511[1][a]) and Unlicensed Driving (VTL 509[1]).

27. Plaintiff then learned that he had an open unlicensed driving charge pending against him from an April 15, 2008, of which he was unaware, and for which he had believed he had paid the necessary fine.

28. Plaintiff was sentenced to five days jail on the April 15, 2008 charge.

29. Plaintiff pled not guilty to the December 10, 2008 unlicensed driving charge.

30. With respect to the December 10, 2008 unlicensed driving charge, the arraignment judge set bail<sup>1</sup> in the amount of one dollar.

31. Plaintiff thereafter was committed to the custody of the NYC DOC, and served his sentence for the April 15, 2008 charge.

32. State Corrections Law § 804 allows good time credits amounting to one-third of a definite sentence. Upon information and belief, plaintiff was entitled to credit for the

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<sup>1</sup> Throughout this Complaint, the term "bail" means the amount a court has demanded that a person pay to secure his or her release, irrespective of the manner of payment.

day he spent in custody pre-arraignment.

33. Or about December 12, 2008, plaintiff's sentence on the unlicensed driving charge expired, and plaintiff was scheduled to be released from the custody of NYC DOC.

34. On or about December 12, 2008, an ICE detainer for Plaintiff was received by NYC DOC, advising DOC that Plaintiff was being "investigated" and requesting that he be held for a period "not to exceed 48 hours."

35. On December 12, 2008, plaintiff attempted to pay his \$1 bail. Defendants, however, including but not limited to defendants JOHN DOES 1-10, refused to accept payment of bail for plaintiff and refused to allow plaintiff or others to post plaintiff's bail, purportedly on the basis of the ICE detainer.

36. For the next month and a half, Plaintiff remained confined in NYC DOC custody. Throughout this time, he repeatedly attempted to pay his \$1 bail himself, and others also repeatedly attempted to pay his bail on his behalf. But Defendants refused to accept plaintiff's \$1 bail payment from anyone, purportedly on the basis of the ICE detainer.

37. On or about January 15, 2009, defendants finally accepted the payment of plaintiff's \$1 bail.

38. After plaintiff's bail had been paid, defendants nonetheless refused to release plaintiff from NYC DOC custody.

39. Instead, defendants continued to detain plaintiff illegally in NYC DOC custody for approximately 8 more days.

40. Plaintiff was finally released from NYC DOC custody on January 23, 2009.

41. By refusing to accept plaintiff's bail and refusing to permit plaintiff and/or others to post plaintiff's bail, defendants intended to keep plaintiff confined in NYC DOC custody. During the entirety of the time that defendants refused to accept plaintiff's bail or to allow plaintiff or others to post plaintiff's \$1 bail, plaintiff remained confined in NYC DOC custody against his will.

42. During the entirety of this time, plaintiff wished to post bail and be released and did not consent to his continued confinement.

43. Defendants were statutorily obligated to allow plaintiff, his friends, family, and/or others to post plaintiff's bail, and did not have discretion to prevent plaintiff, his friends, family, and/or others from posting plaintiff's bail.

44. Accordingly, said period of confinement was unjustified, illegal, and not privileged.

45. By detaining plaintiff after all conditions for his release had been satisfied, defendants continued to unlawfully confine plaintiff.

#### **CLASS ACTION ALLEGATIONS**

46. Plaintiff brings this class action pursuant to Article 9 of the New York Civil Practices Law and Rules on behalf of all persons who have been the subject of an ICE detainer and who have been unlawfully detained in connection with said ICE detainer in New York City jails for more than 48 hours after all other conditions for their release have been satisfied.

47. The class is so numerous that joinder of all



members is impractical.

48. There are questions of law and fact common to the class that predominate over questions affecting only individual members.

49. The claims of the class representative are typical of the claims of the class or of subclasses.

50. By pursuing his own interests, the class representative will advance the interests of the absent class members.

51. Each class member has been unlawfully confined by NYC DOC after being the subject of an ICE detainer.

52. The class representative will fairly and adequately protect the interests of the class.

53. There are no conflicts of interest between the class representative and the absent class members, and the class representative will vigorously prosecute this action on behalf of the class.

54. On information and belief, criminal defense attorneys for indigent defendants have historically found the issue of overdeterment in connection with ICE detainers to be a recurring problem in New York City jails.

55. On information and belief, those who have been unlawfully confined after being subject to ICE detainers are unlikely to come forward individually to seek relief, due to their lack of resources, inability to find counsel, lack of familiarity with the legal system, and fear of potential adverse consequences, including adverse immigration consequences.

56. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

57. Defendants have consistently acted and refused to act in ways applicable to the class. Defendants have engaged in a pattern and practice of unlawful detention against individuals subject to ICE detainers. Thus, final declaratory and injunctive relief with respect to the class as a whole is appropriate.

**FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

**(False Imprisonment)**

58. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

59. That by refusing to permit plaintiff and/or others from posting plaintiff's bail, defendant CITY, its agents, servants, representatives, and/or employees, including but not limited to defendants JOHN DOES 1-10, intended to confine plaintiff.

60. That by refusing to accept and/or process the payment of plaintiff's bail, whether paid by plaintiff and/or others, defendant CITY, its agents, servants, representatives, and/or employees, including but not limited to defendants JOHN DOES 1-10, intended to confine plaintiff.

61. Plaintiff was aware of said confinement and did not consent to it.

62. Plaintiff's confinement was not privileged during

any period of time during which defendant CITY, through its agents, representatives servants and/or employees, including but not limited to defendants JOHN DOES 1-10, refused to permit plaintiff and/or others from posting plaintiff's bail.

63. Further, by refusing to release plaintiff once his bail had been paid and by continuing to detain and confine plaintiff past the time period authorized by law for his detention and confinement, defendant CITY, through its agents, servants, representatives, and/or employees, including but not limited to defendants JOHN DOES 11-20, intended to confine plaintiff.

64. Plaintiff was aware of said confinement and did not consent to it.

65. Plaintiff's confinement was not privileged during any period of time during which defendants continued to detain and incarcerate plaintiff and refused to release him from custody after his bail had been paid.

66. Said acts and conduct of defendant CITY, its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, were the direct and proximate cause of injury and damage to plaintiff and violated plaintiff's statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

67. That by virtue of the aforementioned acts of defendant CITY, its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, defendant CITY is liable to plaintiff for false imprisonment.

68. That defendant CITY is liable for the aforesaid actions of its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, under the doctrine of respondeat superior.

69. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

70. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**SECOND CAUSE OF ACTION AGAINST  
"JOHN DOES 1-10" AND "JOHN DOES 11-20"**

**(42 U.S.C. § 1983 based on False Imprisonment)**

71. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

72. That by virtue of the aforementioned unlawful imprisonment, plaintiff was deprived of his rights, privileges and immunities secured by the Constitution of the United States, including his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution to be free from unreasonable or unlawful searches and seizures.

73. That defendants JOHN DOES 1-10 and JOHN DOES 11-20

are sued in their individual capacities.

74. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

75. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**THIRD CAUSE OF ACTION AGAINST DEFENDANT CITY**

**(42 U.S.C. § 1983 - "Monell" Claim)**

76. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

77. Upon being informed that an inmate, or someone on his or her behalf, wishes to post said inmate's bail, NYC DOC staff, including but not limited to NYC DOC corrections officers, are required to communicate that information to the NYC DOC General Office ("G.O.") of the correctional facility where said inmate is being housed, and to all others to whom that vital and important information must be transmitted immediately.

78. If said inmate possesses adequate funds in his or her account to cover the cost of the bail payment, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, must allow said bail to be paid, and defendant CITY, through its agents, representatives, servants, personnel, and/or

employees, must accept and process said bail payment immediately.

79. If someone other than said inmate wishes to post said inmate's bail, and presents adequate means to cover the cost of said payment, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, must allow said bail to be paid, and defendant CITY, through its agents, representatives, servants, personnel, and/or employees, must accept and process said bail payment immediately.

80. In cases where said inmate's bail is \$1, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, must notify appropriate NYC DOC personnel and staff, including but not limited to NYC DOC "reverends," who thereafter must make a "donation" of said bail amount on said inmate's behalf.

81. If such a "donation" is made to pay the bail of an inmate, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, must allow said bail to be paid, and defendant CITY, through its agents, representatives, servants, personnel, and/or employees, must accept and process said bail payment immediately.

82. Although plaintiff repeatedly expressed his desire to post his bail throughout his incarceration in NYC DOC custody, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, failed to communicate this information to those to whom that this and important information was required to be transmitted immediately.

83. Although plaintiff repeatedly expressed his desire

to post his bail, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, refused to allow plaintiff, or others acting on his behalf, to post plaintiff's bail.

84. Although plaintiff repeatedly expressed his desire to post his bail, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, failed to notify appropriate NYC DOC personnel and staff, including but not limited to NYC DOC "reverends," to make a "donation" of bail on plaintiff's behalf.

85. Although plaintiff repeatedly expressed his desire to post his bail, defendant CITY, through its agents, representatives, servants, personnel, and/or employees, refused to process plaintiff's bail payment once made.

86. Despite knowledge of these institutionalized practices, defendant CITY has at no time taken any effective action to prevent NYC DOC personnel from continuing to engage in this and similar types of misconduct, and instead authorized, tolerated as institutionalized practices and ratified the misconduct detailed above, for plaintiff and others, by failing to take adequate precautions in the supervision and/or training of NYC DOC personnel.

87. Upon information and belief, on or about December 12, 2008, while plaintiff was in the custody of the NYC DOC, an immigration detainer was placed on plaintiff.

88. When an immigration detainer is placed on an inmate, said detainer does not in any way prevent said inmate, or

others on his/her behalf, from posting that inmate's bail.

89. When an immigration detainer is placed on an inmate, said detainer does not in any way prevent the aforementioned "donations" from being paid on behalf of said inmate in order to pay said inmate's bail.

90. When an immigration detainer is placed on an inmate, said detainer does not in any way prevent defendant CITY, its agents, representatives servants, and/or employees from processing a bail payment for said inmate.

91. In all cases, defendant CITY, through its agents, representatives servants, and/or employees, must allow an inmate's bail to be paid, and defendant CITY, through its agents, representatives servants, and/or employees, must accept and process said bail payment immediately, irrespective of whether there exists an immigration detainer or any other sort of detainer for said inmate.

92. Once an inmate's bail has been paid, however the method or means, defendant CITY, through its agents, representatives servants, and/or employees, must release said inmate from custody, confinement, and incarceration.

93. Where there exists an immigration detainer for an inmate, upon the payment of said inmate's bail defendant CITY, through its agents, representatives servants, and/or employees, must immediately contact federal immigration authorities and inform them that said inmate's bail has been posted.

94. In cases where an immigration detainer has been placed on an inmate, defendant CITY, through its agents,



representatives servants, and/or employees, may only detain said inmate for no more than 48 hours after said inmate's bail has been posted for immigration authorities to take custody of said inmate from NYC DOC.

95. If immigration authorities have not picked up said inmate within said 48 hours, defendant CITY is required to release said inmate from custody, confinement, and incarceration.

96. As described above, after plaintiff's bail had been paid, defendant CITY through its agents, servants, representatives and/or employees, refused to allow plaintiff to be released from NYC DOC custody as was lawfully required, and instead, defendant CITY, through its agents, servants, representatives and/or employees, continued to detain plaintiff illegally in NYC DOC custody for approximately 8 to 11 more days.

97. This conduct by defendant CITY was consistent with an institutionalized practice, and defendant CITY has at no time taken any effective action to prevent the NYC DOC personnel from continuing to engage in this type of misconduct, and instead authorized, tolerated as institutionalized practices and ratified the misconduct detailed above by failing to take adequate precautions in the supervision and/or training of NYC DOC personnel.

98. Most NYC DOC staff, including, but not limited to NYC DOC correction officers are "not knowledgeable" about the procedures, practices, policies, laws, rules, and/or directives governing bail and/or immigration holds.

99. Although inmates with immigration holds are

commonplace in NYC DOC, and although it is also commonplace for inmates' bail to be set in the amount of \$1, NYC DOC staff, including but not limited to NYC DOC corrections officers, are not trained on the procedures, practices, policies, laws, rules, and/or directives governing bail and/or immigration holds.

100. NYC DOC staff, including but not limited to NYC DOC corrections officers, in the housing units, and most NYC DOC staff and corrections officers generally, are never trained on the procedures, practices, policies, laws, rules, and/or directives governing, inter alia, payment of bail, what to do if an inmate expresses a desire to pay bail, what to do in circumstances where an inmate's bail is \$1, and an inmate's release from confinement upon the payment of bail.

101. The vast majority of NYC DOC staff, including but not limited to NYC DOC corrections officers in the housing units, are never trained on the procedures, practices, policies, laws, rules, and/or directives governing circumstances where an inmate has \$1 bail and wishes to post said bail.

102. NYC DOC staff, including but not limited to NYC DOC corrections officers in the housing units, and most NYC DOC corrections officers generally, are never trained on the procedures, practices, policies, laws, rules, and/or directives governing the effect, if any, an immigration detainer has on: an inmate and an inmate's detention generally; on said inmate's ability to post bail or have others do so on his/her behalf; on the requirement that said bail payment, whenever made and by whomever, be immediately accepted and processed; and/or on said

inmate's right to be released from detention, confinement and incarceration after said bail has been paid.

103. Defendant CITY does not ensure that NYC DOC staff, including but not limited to NYC DOC corrections officers, are kept informed and/or instructed on the procedures, practices, policies, laws, rules, and/or directives governing bail and/or immigration holds, and provides no training and/or instruction to its staff and/or corrections officers in those matters.

104. The only NYC DOC staff, including corrections officers, who receive any training on those matters are those few NYC DOC corrections officers who are assigned to the G.O.

105. Further, defendant CITY does not require that the NYC DOC corrections officers or staff know and/or be familiar with the policies and/or directives of the NYC DOC governing, inter alia, immigration holds and bail. In fact, NYC DOC staff, including but not limited to NYC DOC corrections officers, are not even provided a copy of NYC DOC directives.

106. The refusal by defendant CITY, its agents, representatives, servants and/or employees to permit plaintiff or others to post plaintiff's bail was due to an unconstitutional custom, policy, practice and procedure that was created and/or ratified by defendant CITY and NYC DOC.

107. The refusal by defendant CITY, its agents, representatives, servants and/or employees to permit plaintiff or others to post plaintiff's bail was due, inter alia, to the failure of defendant CITY to properly train and/or supervise its employees, agents, representatives and/or servants, and/or to

properly and adequately monitor and/or audit their performance of their job duties, and through its failure to have in place an appropriate and responsible procedure for accurate transmittal of vital information to and within NYC DOC.

108. Defendant CITY failed to promulgate, enforce, instruct, advise, abide by, require or ensure the appropriate rules, regulations, directives, guidelines, procedures, policies and/or protocols were abided by with respect to allowing pre-trial detainees to post bail generally, and to post \$1 bail specifically.

109. Defendant CITY failed to properly and adequately direct, instruct, train, supervise, and/or control its employees, servants, representatives, agents, and/or personnel in the appropriate rules, regulations, directives, guidelines, procedures, laws, policies and/or protocols governing allowing pre-trial detainees to post bail generally, and to post \$1 bail specifically.

110. Defendant CITY failed to properly and adequately direct, instruct, train, supervise, and/or control its employees, servants, representatives, agents, and/or personnel in the appropriate rules, regulations, directives, guidelines, procedures, laws, policies and/or protocols governing allowing pre-trial detainees to post bail generally, and to post \$1 bail specifically, in circumstances where a detainee has an immigration detainer lodged against him or her.

111. That the refusal by defendant CITY, its agents, representatives, servants and/or employees to release plaintiff

from custody, confinement and incarceration within the time period required by law once his bail was paid was due to and consistent with an unconstitutional custom, policy, practice and/or procedure that was created and/or ratified by defendant CITY and NYC DOC.

112. That the refusal by defendant CITY, its agents, representatives, servants and/or employees to release plaintiff from custody, confinement and incarceration once his bail had been paid and to not detain or confine him past the time period authorized by law was due to, inter alia, the failure of defendant CITY to properly train and/or supervise its employees, agents, representatives and/or servants, and/or to properly and adequately monitor and/or audit their performance of their job duties, and through its failure to have in place an appropriate and responsible procedure for accurate transmittal of vital information to and within NYC DOC.

113. Defendant CITY maintained a policy, custom, and/or practice of disregarding any and all rules, regulations, and laws requiring NYC DOC to release all inmates with an immigration detainer and for whom immigration authorities had not assumed custody within 48 hours of those inmates' bail being posted, and routinely and regularly detained those inmates in excess of the period of time for which they were lawfully authorized to do so.

114. Defendant CITY failed to promulgate, enforce, instruct, advise, abide by, require or ensure the appropriate rules, regulations, directives, guidelines, procedures, policies and/or protocols were abided by with respect to releasing pre-trial detainees from custody, confinement, and incarceration upon

the posting of their bail.

115. Defendant CITY failed to properly and adequately direct, instruct, train, supervise, and/or control its employees, servants, representatives, agents, and/or personnel in the appropriate rules, regulations, directives, guidelines, procedures, laws, policies and/or protocols governing release and discharge of pre-trial detainees after their bail had been posted.

116. Defendant CITY failed to properly and adequately direct, instruct, train, supervise, and/or control its employees, servants, representatives, agents, and/or personnel in the appropriate rules, regulations, directives, guidelines, procedures, laws, policies and/or protocols governing the effect, if any, an immigration detainer has on releasing an inmate release from NYC DOC custody after the bail for said inmate has been posted.

117. Defendant CITY failed to properly and adequately direct, instruct, train, supervise, and/or control its employees, servants, representatives, agents, and/or personnel in the appropriate rules, regulations, directives, guidelines, procedures, laws, policies and/or protocols governing release and discharge of pre-trial detainees who have immigration detainers after their bail had been posted.

118. As a result of the foregoing, defendant CITY proximately caused the illegal, wrongful, unprivileged, and excessive detention of plaintiff.

119. Defendant CITY's policies/customs and failure to supervise and/or train its servants, representatives, agents,

personnel, and/or employees, rose to the level of deliberate indifference to the consequences of its actions, and indifference to plaintiff's rights, privileges and immunities secured by the Constitution of the United States of America, inter alia, plaintiff's Fourth and Fourteenth Amendment rights.

120. That by virtue of the aforementioned unlawful imprisonment, plaintiff was deprived of his rights, privileges and immunities secured by the Constitution of the United States, including but not limited to his rights under the Fourth and Fourteenth Amendments to the U.S. Constitution.

121. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

122. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Negligence)**

123. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

124. Defendants, jointly and severally, negligently caused injuries, loss of liberty, emotional distress and damage to

plaintiff. The acts and conduct of defendants were the direct and proximate cause of injury and damage to plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

125. Defendant CITY is liable for the aforesaid actions of its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, under the doctrine of respondeat superior.

126. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

127. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Negligent Hiring, Screening, Retention, Supervision and Training)**

128. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

129. Defendant CITY negligently hired, screened, retained, supervised and trained its employees, representatives, agents and/or servants responsible for plaintiff's unreasonably prolonged and unlawful detention.



130. The acts and conduct of defendant CITY, its employees, agents and/or servants was the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

131. That defendant CITY is liable for the aforesaid actions of its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, under the doctrine of respondeat superior.

132. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

133. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Gross Negligence)**

134. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

135. Plaintiff's confinement between approximately December 12, 2008 and January 26, 2009 was directly and proximately caused by: the gross negligence, carelessness, and/or

recklessness of defendant CITY, its servants, representatives, agents, and employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20 in their wanton, willful and reckless disregard of their duties to plaintiff and the public at large.

136. The acts and conduct of defendant CITY, its employees, representatives, agents and/or servants, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20 were the direct and proximate cause of injury and damage to the plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

137. That defendant CITY is liable for the aforesaid actions of its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, under the doctrine of respondeat superior.

138. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

139. That by reason of defendant's gross negligence, constituting willful, wanton and reckless disregard for public safety, punitive damages should be awarded in an amount determined at trial.

**SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violation of Article I, § 12 of the New York State Constitution)**

140. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

141. That by virtue of the aforementioned acts, defendants are liable to plaintiff for violating his right to be free of unreasonable and unlawful searches and seizures under Article I, § 12 of the New York State Constitution.

142. The acts and conduct of the servants, representatives, agents, and employees of defendant CITY, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, were the direct and proximate cause of injury and damage to plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

143. That defendant CITY is liable for the aforesaid actions of its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, under the doctrine of respondeat superior.

144. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and

expenses, economic loss and other damages, and was otherwise damaged and injured.

145. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violation of Article I, § 6 of the New York State Constitution)**

146. Plaintiff repeats and re-alleges each and every allegation set forth above as though fully set forth at length herein.

147. That by virtue of the aforementioned acts, defendants deprived plaintiff of liberty without due process of law, in contravention of Article I, § 6 of the New York State Constitution.

148. The acts and conduct of the servants, representatives, agents, and employees of defendant CITY, including but not limited to defendants JOHN DOES 1-10 and JOHN DOES 11-20, were the direct and proximate cause of injury and damage to plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

149. That defendant CITY is liable for the aforesaid actions of its agents, representatives, servants and/or employees, including but not limited to defendants JOHN DOES 1-10 and JOHN

DOES 11-20, under the doctrine of respondeat superior.

150. That as a result of the foregoing, plaintiff was severely and seriously injured, both bodily and mentally, suffered a loss of enjoyment of life, loss of liberty, suffered pain and suffering, emotional distress, great humiliation, costs and expenses, economic loss and other damages, and was otherwise damaged and injured.

151. The amount of damages sought in this action exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction.

**IRREPARABLE HARM**

152. If defendants' policy, practice and custom of routinely and unlawfully maintaining custody of those inmates subject to ICE detainers beyond the authorized 48-hour period and refusing to accept bail for inmates who are subject to ICE detainers is not enjoined, the named Plaintiff and the members of the Plaintiff class will be subjected to immediate and irreparable injury for which no adequate remedy at law exists in that members of the Plaintiff class will suffer continued violations of their rights under the Fourth and Fourteenth Amendments to the United States Constitution, Article I, Section 12 of the New York State Constitution, and state law.

WHEREFORE, Plaintiff asks this Court:

- a. To issue an order certifying this class as a class action pursuant to Article 9 of the CPLR;
- b. To issue an order enjoining and barring defendants from detaining individuals subject to ICE detainers after the individual is eligible for release;
- c. To issue an order barring defendants from refusing to accept the posting of bail for any individual for whom there is an ICE detainer;
- d. To issue an order requiring defendants to pay compensatory damages in an amount against defendant herein which exceeds the jurisdictional limits of all lower Courts that might otherwise have jurisdiction herein;
- e. To issue an order requiring defendants to pay punitive damages in an amount to be determined by a jury;
- f. The convening of a jury to consider the merits of the claims herein;
- g. Attorney's fees pursuant to 42 U.S.C. § 1988 and CPLR § 909;
- h. An award of plaintiff's costs of suit;
- i. Pre-judgment and post-judgment interest;

j. Such other further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interest of justice.

Dated: New York, New York  
November 3, 2012

Yours, etc.,

By: \_\_\_\_\_  
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