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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED FOOD AND COMMERCIAL WORKERS	§	
INTERNATIONAL UNION;	§	
ROSA ARELLANO;	§	CIVIL ACTION NO.:
DELFINA ARIAS;	§	
SONIA MENDOZA;	§	
ROSALVA RODRIGUEZ;	§	
CANDACE MICHELLE SVENNINGSEN;	§	
MICHAEL RAY GRAVES;	§	
ALICIA RODRIGUEZ;	§	
SERGIO B. RODRIGUEZ,	§	
Plaintiffs,	§	
v.	§	
UNITED STATES DEPARTMENT OF HOMELAND	§	
SECURITY, MICHAEL CHERTOFF, SECRETARY;	§	
UNITED STATES DEPARTMENT OF HOMELAND	§	
SECURITY, IMMIGRATION AND CUSTOMS	§	
ENFORCEMENT, JULIE L. MYERS, ASSISTANT	§	
SECRETARY;	§	
UNITED STATES IMMIGRATION AND CUSTOMS	§	
ENFORCEMENT, U.S. DEPARTMENT OF	§	
HOMELAND SECURITY;	§	
JOHN AND JANE DOES 1-100,	§	
Defendants.		

ORIGINAL COMPLAINT - CLASS ACTION
REQUEST FOR INJUNCTIVE AND DECLARTORY RELIEF AND DAMAGES
JURY DEMAND ON DAMAGE CLAIMS

I

PRELIMINARY STATEMENT

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4 1. This is a class action in which all plaintiffs seek declaratory and injunctive
5 relief compelling defendants the Secretary of U.S. Department of Homeland Security
6 and the United States Immigration and Customs Enforcement (sometimes hereinafter
7 referred to as "USICE") to comply with the Immigration and Nationality Act and the
8 First, Fourth and Fifth Amendments to the United States Constitution while
9 implementing work-place enforcement activities aimed at locating and deporting
10 undocumented immigrant workers. The named individual plaintiffs also seek
11 incidental damages for violations of their well-established Fourth Amendment right to
12 be free from unreasonable searches and seizures during USICE work-place enforcement
13 activities.

14
15 2. The manner in which defendants implement enforcement activities at work
16 sites not only flaunts Congress's will and the Fourth and Fifth Amendments to the
17 United States Constitution, it also unduly and unnecessarily disrupts the operation of
18 businesses and the work of union members throughout the United States.

19 II

20 JURISDICTION AND VENUE

21 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
22 question jurisdiction). Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

23
24 4. Venue is properly in this district pursuant to 28 U.S.C. § 1391(b) and (e)(1), (2)
25 and (4), because some of the acts complained of occurred in this district, some of the
26 plaintiffs reside in this district, defendants have offices in this district, and no real
27 property is involved in this action.

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III
PARTIES

5. Plaintiff UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (“UFCW”) was formed in 1979 as a merger between Retail Clerks International Union and the Amalgamated Meat Cutters International Union. The UFCW currently represents 1.3 million workers across the United States, Canada, and Puerto Rico in industries including retail food, meatpacking and meat processing, and food processing. UFCW’s membership includes approximately 250,000 workers employed in meatpacking plants. The UFCW’s goals and programs seek to improve the lives and working conditions of workers and their families and communities, and to protect the legal rights of its members, particularly when they are at work. UFCW members and potential members were detained without reasonable suspicion or probable cause to believe that they were immigrants present in the United States in violation of the Immigration and Nationality Act during the Swift Raids as more fully set forth below. Additionally defendants denied UFCW members detained and/or arrested at all five of the Swift plants access to UFCW attorneys or attorneys retained by the UFCW to represent its members. The unlawful and unconstitutional manner in which defendants’ have implemented and continue to implement work-place enforcement actions violates the rights of UFCW’s members, interferes with the UFCW’s goals and work and makes the achievement of its goals substantially more difficult. time-consuming, and expensive than would be the case if defendants conducted work-place enforcement activities in a manner consistent with the Immigration and Nationality Act and the United States Constitution. Defendants’ unlawful enforcement activities divert the limited resources of the UFCW and make its work and the achievement of its goals more difficult and costly.

1 6. Plaintiff DELFINA ARIAS is a citizen of the United States. She is a resident of
2 Cactus, Texas. She has worked at the Swift plant in Cactus, Texas for approximately five
3 years. She is a member of the UFCW, and has been a member for approximately five
4 years. On December 12, 2006, Immigration and Customs Enforcement agents, without
5 warrant or a reasonable suspicion based upon articulable facts that she was an
6 immigrant present in the United States in violation of the Immigration and Nationality
7 Act, or otherwise subject to seizure, detained plaintiff DELFINA ARIAS at the Swift plant
8 in Cactus, Texas for approximately four hours. At no time while she was detained was
9 she advised of her right to remain silent or right to counsel, or permitted access to
10 counsel.
11

12 7. Plaintiff ROSA ARELLANO is a citizen of the United States. She is a resident of
13 Dumas, Texas. She has worked at the Swift plant in Cactus, Texas for approximately 27
14 years. She has been a member of the UFCW for approximately 23 years, and a UFCW
15 steward for the last six years. On December 12, 2006, Immigration and Customs
16 Enforcement agents, without warrant or a reasonable suspicion based upon articulable
17 facts that she was an immigrant present in the United States in violation of the
18 Immigration and Nationality Act, or otherwise subject to seizure, detained plaintiff
19 ROSA ARELLANO at the Swift plant in Cactus, Texas for approximately four hours. At no
20 time while she was detained was she advised of her right to remain silent or right to
21 counsel, or permitted access to counsel.
22

23 8. Plaintiff SONIA MENDOZA is a citizen of the United States. She is a resident of
24 Dumas, Texas. She has worked at the Swift plant in Cactus, Texas for approximately 12
25 years. She is a member of the UFCW, and has been a member for approximately 12
26 years. On December 12, 2006, Immigration and Customs Enforcement agents, without
27 warrant or a reasonable suspicion based upon articulable facts that she was an
28 immigrant present in the United States in violation of the Immigration and Nationality

1 Act, or otherwise subject to seizure, detained plaintiff SONIA MENDOZA at the Swift
2 plant in Cactus, Texas for approximately four and a half hours. During this time period
3 ICE agents searched plaintiff SONIA MENDOZA's person without warrant or other lawful
4 justification. At no time while she was detained was she advised of her right to remain
5 silent or right to counsel, or permitted access to counsel.

6 9. Plaintiff ROSALVA RODRIGUEZ is a lawful permanent resident of the United
7 States. She is a citizen and national of Mexico. She is a resident of Sunray, Texas. She
8 has worked at the Swift plant in Cactus, Texas for approximately 27 years. She has been
9 a member of the plaintiff UFCW for over three years. On December 12, 2006,
10 Immigration and Customs Enforcement agents, without warrant or a reasonable
11 suspicion based upon articulable facts that she was an immigrant present in the United
12 States in violation of the Immigration and Nationality Act, or otherwise subject to
13 seizure, detained Plaintiff ROSALVA RODRIGUEZ at the Swift plant in Cactus, Texas for
14 approximately four hours. During this time period ICE agents searched plaintiff
15 ROSALVA RODRIGUEZ's person without warrant or other lawful justification. At no time
16 while she was detained was she advised of her right to remain silent or right to counsel,
17 or permitted access to counsel.
18

19 10. Plaintiff CANDACE MICHELLE SVENNINGSSEN is a citizen of the United States.
20 She is a resident of Dumas, Texas. She has worked at the Swift plant for approximately
21 ten years. She is a member of the UFCW, and has been a union member for
22 approximately ten years. On December 12, 2006, Immigration and Customs
23 Enforcement agents, without warrant or a reasonable suspicion based upon articulable
24 facts that she was an immigrant present in the United States in violation of the
25 Immigration and Nationality Act, or otherwise subject to seizure, detained plaintiff
26 CANDACE MICHELLE SVENNINGSSEN for approximately three to four hours. During this
27 time period ICE agents searched plaintiff CANDACE MICHELLE SVENNINGSSEN's personal
28

1 effects without warrant or other lawful justification. At no time while she was detained
2 was she advised of her right to remain silent or right to counsel, or permitted access to
3 counsel..

4 11. Plaintiff MICHAEL RAY GRAVES is a citizen of the United States. He is a
5 resident of Waterloo, Iowa. He has worked at the Swift meatpacking plant in
6 Marshalltown, Iowa for approximately 21 years. He has been a member of plaintiff the
7 UFCW union for over 20 years. On December 12, 2006, Immigration and Customs
8 Enforcement agents, without warrant or a reasonable suspicion based upon articulable
9 facts that he was an immigrant present in the United States in violation of the
10 Immigration and Nationality Act, or otherwise subject to seizure, detained Plaintiff
11 MICHAEL RAY GRAVES at the Swift plant in Marshalltown, Iowa for approximately eight
12 (8) hours. During this time period ICE Agents searched plaintiff MICHAEL RAY GRAVES'
13 person and personal effects without warrant or other lawful justification. ICE agents
14 also unlawfully physically restrained plaintiff MICHAEL RAY GRAVES. At no time while
15 he was detained or physically restrained was he advised of his right to remain silent or
16 right to counsel, or permitted access to counsel.
17

18 12. Plaintiff ALICIA RODRIGUEZ is a Lawful Permanent Resident of the United
19 States. She is a citizen and national of Mexico. She is a resident of Marshalltown, Iowa.
20 She has worked at the Swift plant in Marshalltown, Iowa for approximately five (5)
21 years. She has been a member of the UFCW union for approximately five (5) years. On
22 December 12, 2006, Immigration and Customs Enforcement agents, without warrant or
23 a reasonable suspicion based upon articulable facts that she was an immigrant present
24 in the United States in violation of the Immigration and Nationality Act, or had
25 committed a misdemeanor in their presence or a felony outside of their presence,
26 detained plaintiff ALICIA RODRIGUEZ at the Swift plant in Marshalltown, Iowa for
27 approximately six (6) hours. During this time period Plaintiff ALICIA RODRIGUEZ was
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1 unlawfully assaulted and battered by at least one ICE agent. At no time while she was
2 detained was she advised of her right to remain silent or right to counsel, or permitted
3 access to counsel.

4 13. Plaintiff SERGIO B. RODRIGUEZ is a lawful permanent resident of the United
5 States. He is a resident of Evans, Colorado. He has worked at the Swift meatpacking
6 plant in Greeley, Colorado for approximately 24 years. He is a member of the UFCW,
7 and has been a member for over 20 years. On December 12, 2006, Immigration and
8 Customs Enforcement agents, without warrant or a reasonable suspicion based upon
9 articulable facts that he was an immigrant present in the United States in violation of
10 the Immigration and Nationality Act, or otherwise subject to seizure, detained Plaintiff
11 SERGIO B. RODRIGUEZ at the Swift plant in Greeley, Colorado and then without warrant
12 or probable cause, arrested and transported him to a Denver detention center. Plaintiff
13 SERGIO B. RODRIGUEZ was unlawfully detained for approximately 12 hours. During the
14 time plaintiff SERGIO B. RODRIGUEZ was unlawfully detained and arrested by ICE
15 agents, his person and personal effects were searched without warrant or lawful cause.
16 At no time while he was detained was he advised of his right to remain silent or right to
17 counsel, or permitted access to counsel.
18

19
20 14. Defendant Michael CHERTOFF is the Secretary of the United States
21 Department of Homeland Security. Defendant CHERTOFF is charged with the
22 implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*, and
23 with the administration and oversight of the United States Immigration and Customs
24 Enforcement. He is sued in his official capacity.

25 15. Defendant Julie L. Myers is the Assistant Secretary of Homeland Security for
26 Immigration and Customs Enforcement, and as such is charged with the administration
27 and oversight of the United States Immigration and Customs Enforcement. She is sued
28 in her official capacity.

1 19. Members of the proposed class likely number in the thousands and are so
2 numerous that joinder of all members is impracticable. The claims of the proposed class
3 representatives and those of the proposed class members raise common questions of
4 law and fact concerning, *inter alia*, whether defendants may detain workers without
5 warrant or reasonable suspicion that they are immigrants present in the United States in
6 violation of the Immigration and Nationality Act. These questions are common to the
7 named plaintiffs and to the members of the proposed class because Defendants have
8 acted and will continue to act on grounds generally applicable to both the named
9 plaintiffs and proposed class members. The claims of the UFCW's members and those
10 of the individual named plaintiffs are typical of the class claims. The plaintiffs will
11 adequately represent all members of the proposed class.
12

13 20. The prosecution of separate actions by individual members of the class would
14 create a risk of inconsistent or varying adjudications establishing incompatible
15 standards of conduct for defendants. Work-place enforcement by agents of the
16 Immigration and Customs Enforcement is a national function, not a function performed
17 differently in each individual case or in each USICE district or region. Prosecution of
18 separate actions would create the risk that individual class members will secure court
19 orders that would as a practical matter be dispositive of the claims of other class
20 members not named parties to this litigation, thereby substantially impeding the ability
21 of unrepresented class members to protect their interests.
22

23 21. Defendants, their agents, employees, and predecessors and successors in
24 office have acted or refused to act, and will continue to act or refuse to act, on grounds
25 generally applicable to the class, thereby making appropriate injunctive relief or
26 corresponding declaratory relief with respect to the class as a whole. Plaintiffs will
27 vigorously represent the interests of unnamed class members. All members of the
28 proposed class will benefit by the action brought by the plaintiffs. The interests of the

1 plaintiffs and those of the proposed class members are identical. Plaintiffs are
2 represented *inter alia* by counsel associated with a non-profit public interest law firm
3 that includes attorneys highly experienced in federal class action litigation involving the
4 U.S. Constitution and the Immigration and Nationality Act.

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6 V

7
8 FACTUAL ALLEGATIONS

9
10 22. Swift and Company (“Swift”) is one of the largest meat producing companies
11 in the United States with some 15,000 employees. On December 12, 2006, six Swift
12 facilities located in Greeley, Colorado, Cactus, Texas, Grand Island, Nebraska, Hyrum,
13 Utah, Marshalltown, Iowa, and Worthington, Minnesota were raided by Immigration
14 and Customs Enforcement agents (“Swift Raids”). All of the plants had contracts with
15 the UFCW except for the plant in Hyrum, Utah.

16
17 23. Following the Swift Raids defendant Chertoff publicly announced that the
18 raids were conducted following “months of investigation ... targeted at [the] massive
19 use of document fraud to support illegal work in the workplace.” Defendant Chertoff
20 asserted that this investigation disclosed “substantial evidence” that some Swift
21 workers “illegally assumed the identities of U.S. citizens,” a crime under federal law.
22 Despite this purported prior knowledge of certain individuals who had allegedly
23 violated United States law, as alleged below, during the Swift Raids defendants
24 engaged in mass warrantless detentions of workers rather than focusing their
25 enforcement activities on those workers regarding whom they allegedly had prior
26 knowledge of illegal activity.

27
28 24. On information and belief, several thousand UFCW members were detained
during the Swift Raids, and administrative arrests totalled approximately 1,139, with
approximately 297 from Cactus, approximately 252 from Greeley, approximately 252
from Grand Island, approximately 239 from Worthington, and approximately 99 from

1 Marshalltown. On information and belief approximately 150 workers were arrested for
2 alleged crimes incident to immigration status, including approximately 53 workers at
3 Cactus, approximately 21 at Greeley, approximately 26 at Grand Island, approximately
4 20 at Worthington, and approximately 30 at Marshalltown. On information and belief
5 approximately 65 of those arrested, were charged with criminal violations related to
6 identity theft.

7
8 25. During the Swift Raids virtually all UFCW members at each Swift plant were
9 detained as a group, told to remain in specific locations for interrogation, and were not
10 free to leave those areas, regardless of their citizenship or immigration status, and
11 without reasonable suspicion based upon articulable facts that they were immigrants
12 present in the United States in violation of the Immigration and Nationality Act or
13 otherwise subject to seizure

14 26. During the Swift Raids members of plaintiff the UFCW union had their
15 person's and personal effects searched without warrant or other lawful justification.

16 27. During the Swift Raids UFCW members allegedly suspected of criminal
17 conduct were not advised of their rights to remain silent or to counsel.

18 28. During and immediately following the Swift Raids defendants' agents barred
19 lawyers associated with plaintiff UFCW from conferring with UFCW members detained
20 by agents of the Immigration and Customs Enforcement.

21 29. During and following the Swift Raids UFCW members were detained
22 without regard to the immediate need to provide care and custody for their minor
23 children, including United States citizen children.

24 30. Following the Swift Raids defendants' agents coerced members of plaintiff
25 UFCW into executing waivers of their statutory and constitutional right to a due
26 process removal hearing. On information and belief defendants employed such
27 coercion because they lacked sufficient detention space to hold UFCW members
28

1 pending removal hearings and sufficient Immigration Judges to process arrested UFCW
2 members for formal removal hearings.

3 31. Defendants carried out the unlawful searches and seizures of UFCW
4 members as alleged herein during the Swift Raids pursuant to custom, policy, practice
5 and usage that defendants have followed, and unless and until enjoined by this Court,
6 will continue to follow at dozens of work sites nationwide. Defendant Chertoff has
7 publicly declared that such raids will continue to occur into the foreseeable future.
8

9 VI

10 IRREPARABLE INJURY

11 32. The UFCW and the named individual plaintiffs and those similarly situated
12 are suffering and will continue to suffer irreparable injury unless this Court orders relief
13 as prayed for herein. Such injury includes, *inter alia*, violation of their right to be free
14 from unreasonable and unlawful detention and arrest in violation of the Fourth
15 Amendment, and deprivation of due process and equal protection in violation of the
16 Fifth Amendment. Damages cannot adequately address the injuries suffered by
17 plaintiffs and their proposed class members.
18

19 VII

20 FIRST CAUSE OF ACTION

21 [Unlawful mass detentions]

22 33. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
23 as though fully re-alleged here.

24 34. 8 U.S.C. § 1357(a)(1) permits USICE agents to interrogate, without detaining,
25 any person reasonably believed to be an alien as to his right to be or to remain in the
26 United States. Section 1357(a)(2) authorizes an USICE agent to arrest “any alien in the
27 United States, if he has reason to believe that the alien so arrested is in the United States
28 in violation of any ... law or regulation and is likely to escape before a warrant can be

1 obtained for his arrest." The Fourth Amendment permits USICE agents to detain
2 persons for deportation only upon a reasonable suspicion based upon articulable facts
3 that the person is an immigrant present in the United States in violation of the
4 Immigration and Nationality Act. Defendants' policy and practice of engaging in mass
5 warrantless group detentions of all workers during work-place enforcement activities
6 without reasonable suspicion based upon articulable facts that such detained workers
7 are immigrants present in the United States in violation of the Immigration and
8 Nationality Act violate 8 U.S.C. § 1357 and the Fourth and Fifth Amendments to the
9 United States Constitution.
10

11 VIII

12 SECOND CAUSE OF ACTION

13 [Unlawful warrantless arrests]

14 35. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
15 as though fully re-alleged here.

16 36. 8 U.S.C. § 1226 provides that "on a warrant" issued by the Secretary of
17 Homeland Security, an immigrant may be arrested and detained pending a decision on
18 whether the immigrant is to be removed from the United States. 8 U.S.C. § 1357(a)(2)
19 authorizes defendants to execute warrantless arrests only if they have "reason to
20 believe that the alien so arrested is in the United States in violation of any such law or
21 regulation *and is likely to escape before a warrant can be obtained for his arrest ...*"

22 Defendants' policy, practice, custom and usage are to conduct warrantless arrests of
23 plaintiffs and their proposed class members without any reason to believe they would
24 escape before warrants could be obtained for their arrest. Defendants' policy and
25 practice to arrest plaintiffs and their putative class members without warrants and
26 without determining whether the individuals arrested are likely to flee before warrants
27
28

1 can be obtained are violative of the Immigration and Nationality Act, 8 U.S.C. §§ 1226
2 and 1357(a)(2), and the Fourth and Fifth Amendments to the United States Constitution.

3 IX

4 THIRD CAUSE OF ACTION

5 [Failure to take into account the care of UFCW's members' children]

6 37. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
7 as though fully re-alleged here.

8 38. During the Swift Raids defendants' agents detained and arrested members of
9 plaintiff the UFCW without regard to children of such members who required the care
10 and custody of a responsible adult. Defendants' actions in this regard violated
11 defendants' internal policies and the due process guarantee of the Fifth Amendment of
12 the United States Constitution.
13

14 X

15 FOURTH CAUSE OF ACTION

16 [UNLAWFUL DENIAL OF ACCESS TO COUNSEL]

17 39. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
18 as though fully re-alleged here.

19 40. Defendants' policy, practice, custom and usage is to deny persons detained
20 during work place raids reasonably prompt access to attorneys who are willing and
21 available to advise and/or represent them. Said policy, practice, custom and usage
22 violate the First and Fifth Amendments to the United States Constitution.
23

24 XI

25 FIFTH CAUSE OF ACTION

26 [FOR DAMAGES UNDER BIVENS]

27 41. Plaintiffs incorporate by this reference the allegations set out in ¶¶ 1-32 above
28 as though fully re-alleged here.

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7. Grant such further relief as the Court may deem just and proper.

Dated: September 11, 2007

Respectfully submitted,

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