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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

JOSE RIOS-DIAZ, ELIGIO DURAN-SANCHEZ, DELFIO MEJIA-OCHOA, and EDUARDO BARRAGAN-NARANJO, on behalf of themselves and all others similarly situated, and MONTANA IMMIGRANT JUSTICE ALLIANCE.

Plaintiffs,

v.

COLONEL TOM BUTLER, in his official capacity as Chief Administrator of the MONTANA HIGHWAY PATROL, ATTORNEY GENERAL TIM FOX, in his official capacity as head of the MONTANA DEPARTMENT OF JUSTICE.

Defendants.

Case No.

*CV-13-77-BU-SEH-CSO*

**COMPLAINT (Class Action)**

Plaintiffs Jose Rios-Diaz, Eligio Duran-Sanchez, Delfio Mejia-Ochoa and Eduardo Barragan-Naranjo, on behalf of themselves and all others similarly situated, and the Montana Immigrant Justice Alliance (collectively "Plaintiffs") allege as follows:

## INTRODUCTION

1. This is a class action to enforce the Fourth and Fourteenth Amendments to the United States Constitution; Title VI of the Civil Rights Act of 1964; and Article II, §§ 4 and 11 of the Montana Constitution. Plaintiffs seek prospective declaratory and injunctive relief against Defendants Colonel Tom Butler, sued in his official capacity as acting Chief Administrator of the Montana Highway Patrol, and Attorney General Tim Fox, sued in his official capacity as head of the Montana Department of Justice (collectively, “Defendants”).

2. As described below, Defendants have implemented a custom, policy and practice of seizing Latino residents and visitors of Montana and prolonging their detention longer than necessary to resolve the alleged violations of the law that Defendants have authority to enforce. The sole purpose of prolonging these individuals’ detention is to hold them as Defendants contact agencies within the Department of Homeland Security (“DHS”), including Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”), based on suspicions of civil immigration status violations.

3. Montana Highway Patrol has a custom, pattern, policy, and practice of seizing drivers and passengers it suspects of being in the country without authorization for a prolonged period, often between forty minutes to two hours, while attempting to make contact with DHS to ascertain their immigration status

and determine if an immigration enforcement officer wishes to assume custody of them. These drivers and passengers are seized, at least initially, upon the prerogative of the Montana Highway Patrol and not at the direction of DHS.

4. After Montana Highway Patrol officers detain individuals they suspect of immigration status violations for a prolonged period of time, DHS officers may or may not instruct patrol officers that they wish to assume custody of the individuals. However, Montana Highway Patrol's custom, policy, and practice is to seize an individual *before* DHS officers provide any instructions.

5. The Montana Highway Patrol has no statutory, constitutional, or inherent authority to arrest or detain people for civil violations of federal immigration law.

6. On information and belief, this custom, policy and practice is implemented in a discriminatory manner, as patrol officers use race and ethnicity as a motivating factor in forming a suspicion that a person is in the United States without valid immigration status. This policy disparately impacts Latinos who reside in, or are passing through, Montana.

7. The inferences that the Montana Highway Patrol uses to form a suspicion that a person is here without valid immigration status are based heavily on race. For example, the Montana Highway Patrol has attempted to justify this policy and practice based on observation of "inconsistencies" in vehicle registration or

insurance documents. However, white, non-Latino individuals with vehicle registration inconsistencies are not detained solely to contact DHS to confirm their immigration status, while Latino residents and visitors to Montana are.

8. On information and belief, the Montana Highway Patrol has also attempted to justify this policy and practice based on the pretense of needing a Spanish-speaking interpreter, and detaining Latino residents and visitors to utilize CBP for interpretation services. In the course of providing these “services,” Montana Highway Patrol prolongs the detention of these Latino residents and visitors while CBP attempts to ascertain their immigration status.

9. These activities have been occurring with great frequency for at least three years. As described below, at least two former Chief Administrators of the Montana Highway Patrol with final decision-making control over the Montana Highway Patrol’s customs, policies, and practices have explicitly sanctioned this unlawful activity.

10. Defendants have admitted in a collateral proceeding that the recently-retired Chief Administrator, Colonel Kenton Hicketier, ordered patrol officers “to arrest suspects [they] believed might be illegally in the country regardless of whether the facts supported an offense for which a person could be arrested under Montana law. His instructions were to get them to jail one way or another so Federal authorities could place detainers on them.” [*See* Complaint and Response,

attached as Exs. A and B.] On information and belief, at least some of these instructions were sent to patrol officers in written form. [*Id.*]

11. Defendants have engaged in a widespread pattern and practice of racial profiling and other racially and ethnically discriminatory treatment in an illegal, improper and unauthorized attempt to “enforce” federal immigration laws against Latino residents and visitors of Montana. In doing so, they have violated the Constitutional rights of numerous Latino residents and visitors to Montana.

12. To curtail Defendants’ illegal conduct, Plaintiffs bring this action as representatives of a class of Latino persons who, as a result of racial profiling and an illegal directive to enforce federal immigration laws, have been or will be stopped, detained, interrogated or searched without consent by Montana Highway Patrol in violation of the law.

13. Plaintiffs seek prospective declaratory and injunctive relief to enjoin Defendants’ unlawful racial profiling and the attendant constitutional injuries that Plaintiffs and the class will otherwise continue to endure.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. This Court has authority to grant declaratory and

injunctive relief pursuant to 28 U.S.C. § 1343, 2201 and 2202, and to award attorneys' fees under 42 U.S.C. §1988(b).

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), and in this division pursuant to Local Rules 1.2(c) and 3.2(b). This is a 42 U.S.C. § 1983 suit against Defendants in their official capacity for prospective injunctive relief, and is, in all respects other than name, to be treated as a suit against the State of Montana. *See Ky. v. Graham*, 473 U.S. 159, 165-66 (1985). Under MCA § 25-2-126, venue is proper because at least one Plaintiff resides in this division.

### **PARTIES**

16. Plaintiff Montana Immigrant Justice Alliance (“MIJA”) is a non-profit organization registered with the State of Montana, working to advance the civil rights of immigrants throughout the state. Its mission is to provide resources and services to empower migrants in our communities; to combat the mistreatment of immigrants from xenophobia, discrimination, harassment, or racial profiling; to promote policies that welcome and support the growth of immigrant communities in our state; and to combat policies that marginalize migrant communities. MIJA does not maintain a single headquarters. Its community activities are held predominantly in Gallatin County, Montana, where MIJA’s community advisory board resides. MIJA’s board members reside in Gallatin County, Lewis and Clark County, and Yellowstone County.

17. MIJA has associational standing to represent the interests of its members in pursuing the prospective declaratory and injunctive relief asserted herein, and participates in this suit to lend its expertise and financial support to its members in vindicating their rights.

18. Plaintiff Jose Rios-Diaz is a U.S. citizen and a resident of Belgrade, Montana. He was a member of MIJA at all times relevant hereto. He is Latino by physical appearance and descent. Mr. Rios-Diaz brings this action on behalf of himself and all others similarly situated.

19. Plaintiff Eligio Duran-Sanchez is a Mexican citizen and at the time of his arrest by Montana Highway Patrol was a resident of Culbertson, Montana. Mr. Duran-Sanchez pursues this lawsuit as a member of MIJA. He is Latino by physical appearance and descent. Mr. Duran-Sanchez brings this action on behalf of himself and all others similarly situated.

20. Plaintiff Delfio Mejia-Ochoa is a Guatemalan citizen and a resident of Sidney, Montana. Mr. Mejia-Ochoa pursues this lawsuit as a member of MIJA. He is Latino by physical appearance and descent. Mr. Mejia-Ochoa brings this action on behalf of himself and all others similarly situated.

21. Plaintiff Eduardo Barragan-Naranjo is a Mexican citizen and a resident of Ronan, Montana. Mr. Barragan-Naranjo pursues this lawsuit as a member of

MIJA. He is Latino by physical appearance and descent. Mr. Barragan-Naranjo brings this action on behalf of himself and all others similarly situated.

22. Jose Enriquez-Galicia is not a plaintiff but shares his experiences as a member of the proposed class. He is a Mexican citizen and a resident of Las Vegas, Nevada, who was passing through Montana when detained by Montana Highway Patrol. He is Latino by physical appearance and descent.

23. Defendant Colonel Tom Butler is sued in his official capacity as the Chief Administrator of the Montana Highway Patrol. He is responsible for setting and implementing the policies and practices of the Montana Highway Patrol, including but not limited to: supervising, discharging, demoting, or suspending patrol officers; designating all supervisory personnel; and formulating policies regarding the stops, arrests, and related treatment of individuals in motor vehicles in the State of Montana. The Chief Administrator has direct control and supervision of all patrol officers, subject to the approval of the Attorney General.

24. The Montana Highway Patrol is not a defendant, but answers for the conduct alleged herein through Defendant Colonel Tom Butler, acting in his official capacity. The Montana Highway Patrol is the largest law enforcement agency in the state, with jurisdiction to make arrests under the circumstances outlined in MCA § 44-1-1001, *et. seq.*

25. Defendant Attorney General Tim Fox is sued in his official capacity as the Attorney General of the State of Montana and head of the Montana Department of Justice. He has powers of supervision, approval, direction and appointment over the Montana Highway Patrol, its Chief Administrators, and its patrol officers.

26. The Montana Department of Justice is not a defendant, but answers for the conduct alleged herein through Defendant Attorney General Tim Fox, acting in his official capacity. The Montana Department of Justice has control and supervision of the Montana Highway Patrol, and is directed by statute to provide for the employment and supervision of the Montana Highway Patrol.

### **GENERAL ALLEGATIONS**

27. Montana Highway Patrol does not have the authority to prolong individuals' detention based on suspected civil immigration status violations, even if patrol officers have reasonable suspicion or probable cause to seize or detain individuals for violations of law that the patrol officers are authorized to enforce.

28. Montana Highway Patrol officers have no legal authority to prolong a detention to contact DHS and make inquiries based on suspicion of civil immigration status violations.

29. Montana Highway Patrol has a policy and practice of detaining Latino residents of Montana longer than necessary to resolve the alleged violations of the

law that they have jurisdiction to enforce, solely to inquire with agencies within DHS, including ICE and CBP, about individuals' immigration status.

30. This custom, policy and practice is not implemented in a race-neutral manner, but rather with discriminatory intent. On information and belief, this policy and practice permits the use of race as a motivating factor in formulating a suspicion that an individual lacks valid immigration status. The use of race in forming suspicion of civil immigration status violations disparately impacts Latinos who reside in, or are passing through, Montana.

31. At least two former Chief Administrators of the Montana Highway Patrol have approved of this unlawful custom, policy and practice.

32. Colonel Michael Tooley was Chief Administrator of the Montana Highway Patrol from around January 2009 to December 2012.

33. On April 14, 2011, Colonel Tooley responded to a discrimination complaint by Plaintiff Jose Ramos-Diaz, a U.S. citizen who was aggrieved after being held for at least 47 minutes for a simple speeding infraction because the Montana Highway Patrol officer wrongly suspected that he violated civil immigration laws. [See E-mail from Colonel Michael Tooley, attached as Ex. C.]

34. Colonel Tooley confirmed in writing that a Montana Highway Patrol officer had "called ICE to double check" on Mr. Ramos-Diaz's immigration status.

He further stated that: “This process turned a ten minute stop into a 47 minute stop. I wish it had been faster, but that isn’t how this encounter went. We often have trouble getting immediate calls back from ICE in these situations.” [*Id.*]

35. Colonel Tooley found no wrongdoing in this instance. [*Id.*]

36. Colonel Kenton Hicketier was Chief Administrator of the Montana Highway Patrol from about January 2013 to August 2013.

37. He was employed with Montana Highway Patrol for more than 27 years, 17 of those years spent in administrative capacities ranging from oversight responsibility for several districts, personnel management, policy implementation, budgetary oversight, and training.

38. Prior to August 2011, he had been promoted to Captain. He was promoted to Major on March 8, 2012, and oversaw operations east of the Continental Divide. He was promoted to Colonel and appointed as Chief Administrator of the Montana Highway Patrol by Attorney General Tim Fox around January 2013.

39. On or around July 10, 2013, Patrol Officer Glenn D. Quinnell with the Montana Highway Patrol filed a complaint with the Montana Human Rights Bureau within the Department of Labor and Industry, alleging that he suffered harassment, discrimination, and retaliation at the hands of Chief Hicketier, the Montana Highway Patrol, and the Montana Department of Justice. [*See Complaint*

of Discrimination ¶ 4(c), attached as Ex. A.]

40. Patrol Officer Glenn D. Quinnell alleged in his complaint that the following incident occurred during the week of August 16, 2011:

In one instance Hickethier ordered me to arrest suspects I believed might be illegally in the country regardless of whether the facts supported an offense for which a person could be arrested under Montana law. His instructions were to get them to jail one way or another so Federal authorities could place detainers on them. When others and I said we would not violate a person's civil rights he focused on me and said I would or I would be done. I understood this to be a threat to fire me if I did not make the illegal arrests. The next day, Hickethier pulled me aside and told me to stop being so 'hard headed.'

[*Id.*]

41. The Montana Department of Justice, on behalf of all respondents in that matter, admitted this paragraph of the complaint in its entirety. [*See* Response to Charge of Discrimination, attached as Ex. B.]

42. Patrol Officer Glenn D. Quinnell also reported other inappropriate race and sex-based comments made by Kenton Hickethier, then a Captain with the Montana

Highway Patrol. These were also admitted by the Montana Department of Justice, on behalf of all respondents in that matter. [*See id.*]

43. On August 27, 2011, Patrol Officer Glenn D. Quinnell reported Captain Hickethier instructions to violate the rights of suspected undocumented immigrants, as well as his other inappropriate comments, to Lieutenant Colonel Huseby in a detailed email. [*See Attachment A to Response to Charge of Discrimination, attached as Ex. B.*]

44. Patrol Officer Glenn D. Quinnell provided the following additional details about Captain Hickethier's remarks in his e-mail to Lieutenant Colonel Huseby:

Kelly's [Sergeant Kelly Manthooth's] uncle, whom I believe is named Steve, was telling war stories about his career. He was finishing up one that involved Immigration and Customs Enforcement when Capt. Hick [Hickethier] arrived. We had ordered food but had not eaten yet. I started to tell Steve the difficulties we have with getting ICE to take suspects in our area when Capt Hick interrupted and stated that I was doing it wrong. He said we were to arrest them for whatever offense we stopped them for and hold them for ICE. He stated he had made arrangements with ICE in Helena and had been guaranteed that they would go anywhere in the state to get illegals. He further stated that he had sent out an email regarding that. I told him that certainly if I had

an offense I could arrest for I would, but that I had called the number he had put out and had been declined more than once. I told him I could not arrest someone for a \$20 speed ticket. Case law is clear in Mt on that. He said I had to. I said again that I couldn't. Troy [Patrol Officer Muri] piped in at one point and said the same as me, that we had tried and ICE wouldn't come without more than just suspected illegal status. The exchange went back and forth a couple times and he said "you'll do it or you'll be done doing this!" About that time Steve looked at me and said, "Don't worry, your civil rights case will probably go OK". Everyone, including me, laughed. I wasn't taking it that serious at that point since we were off duty. At that point Captain Hick threw down some money, said "I'm done with Quinnell" and left. Everyone just got quiet.

[*Id.*]

45. Patrol Officer Glenn D. Quinnell made several references to specific emails written by Captain Hickethier about Montana Highway Patrol procedures for prolonging a detention to contact ICE:

I didn't sleep much that night. The next day I could tell that Capt. Hick was still upset but he didn't say anything initially. Kelly pulled me aside and told me that Capt. Hickithier [sp] would be pulling me

aside to talk later and to just let him have his say. During the first speakers session he pulled me out in to the lobby and said we needed to talk. He told me I needed to work on not being so Bullheaded. He also stated that I needed to read the emails I was sent and follow the procedures in them. I told him I believed I had. The night before when I got back to my room I double checked to make sure I had the email. I did. I had been following the procedures ICE had put out with the associated numbers to be called. At no time did he admit to being any way at fault for the incident. After his reaction the night before I just let him talk and went back to the training.

[*Id.*]

46. After an investigation, Captain Hickethier was issued a written warning for “several inappropriate comments . . . [s]pecifically the comments were in regard to the age of Trooper Glenn Quniell’s [sp] spouse, a joke in regard to a female instructor’s weight, and a comment about Trooper Quinell [sp] having dinner with black patrol officers from North Carolina.” [*See* Attachment B to Response to Charge of Discrimination, attached as Ex. B.]

47. Despite the fact that the complaint from Patrol Officer Glenn D. Quinnell provided detailed information about Captain Hickethier’s specific and adamant instructions to pretextually arrest people who “might be illegally in the country”

without probable cause, and to prolong their detention to contact ICE, there was no reprimand or written warning issued in connection with this misconduct. [*Id.*] This important issue was not even mentioned. [*Id.*]

48. After Kenton Hickethier's instructions to violate the rights of suspected undocumented immigrants came to the direct attention of Lieutenant Colonel Huseby, Hickethier was promoted to Major, and then to Colonel, and he was appointed Chief Administrator by Defendant Attorney General Tim Fox.

49. On information and belief, Colonel Hickethier's unlawful instructions and guidance continue to be implemented by Montana Highway Patrol. In addition, the custom, pattern, policy and practice of detaining Latino residents and visitors solely to inquire into their civil immigration status continues to be implemented by Montana Highway Patrol.

**Montana Highway Patrol Lacks Authority to Enforce Civil Immigration Laws**

50. Mere unauthorized presence in this country, without more, is not a criminal offense. Use of unauthorized methods of entry into this country generally constitutes at least misdemeanor or a petty criminal violation of federal immigration law. *See, e.g.*, 8 U.S.C. § 1325 (2005) (making it a federal misdemeanor to enter or attempt to enter the United States at "any time or place other than as designated by immigration officers."). However, aliens may also

enter the country legally, but become subject to removal either by staying longer than authorized or otherwise acting in excess of their authorization. Although a number of such aliens are here without or in excess of authorization, they have only committed a civil, as opposed to a criminal, violation of federal law.

51. As the Supreme Court recently explained: “As a general rule, it is not a crime for a removable alien to remain present in the United States. If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.” *Arizona v. United States*, 132 S. Ct. 2492, 2505, 183 L. Ed. 2d 351 (2012). State and local law enforcement officers may participate in the enforcement of federal immigration laws only in “specific, limited circumstances” authorized by Congress. *Id.* at 2507. “Detaining individuals solely to verify their immigration status would raise constitutional concerns.” *Id.* at 2509.

52. It is the law in the Ninth Circuit that local law enforcement officers cannot arrest individuals solely based on known or suspected civil immigration violations. *See Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012); *Melendres v. Arpaio*, No. PHX-CV-07-02513-GMS, 2013 U.S. Dist. LEXIS 73869, 2013 WL 2297173, at \*60-63 (D. Ariz. May 24, 2013).

53. The federal statutory structure instructs when it is appropriate to arrest a non-citizen. When an alien is suspected of being removable, a federal immigration

official issues an administrative document called a Notice to Appear. *See* 8 U. S. C. § 1229(a); 8 CFR § 239.1(a) (2012). The form does not authorize an arrest. Instead, it gives the alien information about the proceedings, including the time and date of the removal hearing. *See* 8 U.S.C. § 1229(a)(1).

54. To arrest an alien, federal immigration official typically needs a warrant. Warrants are executed by federal officers who have received training in the enforcement of immigration law. *See* 8 CFR §§ 241.2(b), 287.5(e)(3). If no federal warrant has been issued, those officers have more limited authority. *See* 8 U. S. C. § 1357(a). They may arrest an alien for being “in the United States in violation of any [immigration] law or regulation,” for example, but only where the alien “is likely to escape before a warrant can be obtained.” *Id.* § 1357(a)(2).

55. By detaining individuals based on mere suspicion of civil immigration status violations, the Montana Highway Patrol exceeds the authority Congress has given to trained federal immigration officers to make warrantless arrests of non-citizens based on possible removability. The program put in place by Congress does not allow state or local officers to adopt the warrantless arrest enforcement mechanism unless they enter into a special agreement with DHS.

56. Under Section 287(g) of the Immigration and Nationality Act (“INA”), the U.S. Attorney General is authorized to permit the delegation of certain immigration enforcement functions to state and local officers. Agreements entered pursuant to

Section 287(g) of the INA enable specially trained state or local officers to perform specific functions relating to the investigation, apprehension, or detention of aliens, during a predetermined time frame and under federal supervision. *See* INA § 287(g)(5); 8 U.S.C. §1357(g)(5).

57. The Montana Highway Patrol does not have an agreement under INA § 287(g) to enforce federal immigration laws, and did not have any such agreement at any times relevant to this lawsuit.

58. As a law enforcement agency without INA § 287(g) authority, the Montana Highway Patrol has no statutory, constitutional, or inherent authority to detain people for civil violations of federal immigration law.

59. In the Montana Highway Patrol's operations, there appears to be no practical difference between how it presently acts and how it could act if it had full INA § 287(g) authority.

60. When the Montana Highway Patrol merely suspects a person of being in the country without authorization, it does not, in the absence of additional facts that would make the person guilty of an immigration-related crime, have a basis to arrest or even engage in a brief investigatory detention of such persons.

61. It is the existence of a suspected crime that gives a Montana Highway Patrol officer the right to detain a person for the minimum time necessary to

determine whether a crime is in progress. Possible criminality is key to any investigatory stop or prolonged detention. Absent suspicion that a suspect is engaged in, or is about to engage in, criminal activity, Montana Highway Patrol may not stop, detain, or prolong the detention of an individual.

62. Even actual knowledge that a person is not lawfully in the country does not provide probable cause that the person has, additionally, crossed the border at an unauthorized place, and has thus committed a criminal immigration violation. *Martinez-Medina v. Holder*, 673 F.3d 1029, 1030-31 (9th Cir. 2011).

63. A seizure that is justified for a particular purpose can become unlawful if it is prolonged beyond the time reasonably required to complete that purpose. Any attempts to contact DHS, pass along the information to ICE or CBP, await a response, and/or deliver the arrestees to DHS inevitably takes time in which the subject is not free to leave, and is therefore arrested, regardless of whether the detention is officially termed an arrest.

64. On information and belief, the Montana Highway Patrol has a policy and practice of prolonging investigatory stops of Latino residents and visitors longer than needed to resolve actionable violations of the law. These individuals are seized based on suspicion of being in the country without authorization, even though patrol officers do not have probable cause to believe they are guilty of an immigration-related crime.

65. When the driver of a vehicle is stopped, passengers are legally seized for the same time it takes the officer to resolve the basis for the stop with the driver. Yet, stopping a driver for a traffic violation provides no basis to stop or detain the passengers. Montana Highway Patrol officers cannot substantially prolong a stop to investigate a passenger unless the patrol officer, through his or her observations, obtains particularized reasonable suspicion that the passenger is committing a violation that the deputy is authorized to enforce.

66. On information and belief, Montana Highway Patrol has a policy and practice of detaining Latino passengers in a vehicle to investigate their immigration status absent particularized reasonable suspicion that the passenger is committing a criminal violation. In these instances, the Montana Highway Patrol prolongs the detention of the passenger significantly longer than necessary to resolve the matter for which the driver is seized.

67. Montana Highway Patrol detains both drivers and passengers it suspects of being in the country without authorization for a prolonged period, often between forty minutes to two hours, while attempting to make contact with DHS to ascertain the individual's immigration status and to determine if an immigration enforcement officer wishes to assume custody of an individual. Such persons are investigated and apprehended, at least initially, upon the prerogative of the Montana Highway Patrol and not at the direction of ICE. Such apprehensions

occur despite the lack of any authority on the part of the Montana Highway Patrol to investigate or arrest for civil immigration violations.

68. No written agreement is necessary in order for a state or local officer to report “that a particular alien is not lawfully present in the United States,” or to “cooperate in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” INA § 287(g)(10), 8 U.S.C. §1357(g)(10). However, this does not authorize Montana Highway Patrol’s unilateral arrests.

69. The U.S. Supreme Court stated that: “There may be some ambiguity as to what constitutes cooperation under the federal law; but no coherent understanding of the term would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government.” *Arizona*, 132 S. Ct. at 2507.

70. In addition to unlawfully prolonging a stop to inquire into suspicion of civil immigration status violations, Montana Highway Patrol officers have been further instructed to pretextually arrest suspects they believe might be illegally in the country regardless of whether the facts support an offense for which a person could be arrested under Montana law. By Defendants’ admission, Montana Highway Patrol officers were instructed “to get them to jail one way or another so Federal authorities can place detainers on them.” [See Exhibits A and B, attached.]

71. On information and belief, Montana Highway Patrol is enrolled in the federal Secure Communities program, but this program does not confer any training or authority to enforce immigration laws, or allow an officer to prolong an arrest solely to inquire into an individual's immigration status.

72. Secure Communities is a federal program implemented by Immigration and Customs Enforcement ("ICE") that is used to identify criminal aliens in local law enforcement custody. State or local law enforcement officers enter data and fingerprints from individuals who they arrest and detain in the normal course of their duties. ICE monitors that database to identify aliens who may be removable. *See, e.g.*, U.S. Immigration and Customs Enforcement, Secure Communities: The Basics, available at [http://www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities).

73. The National Crime Information Center ("NCIC") database may include certain civil immigration records, including information on individuals subject to removal orders in civil immigration proceedings. However, inclusion of these civil immigration records in a law enforcement database does not confer independent authority to make independent arrests based on civil immigration violations. *See, e.g., Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 2013 U.S. App. LEXIS 16335, 2013 WL 4008189 (4th Cir. August 7, 2013)

74. Racial profiling is prohibited under MCA § 44-2-117. In addition to other requirements, this provision of law "prohibits the practice of routinely stopping

members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.”

75. On information and belief, Montana Highway Patrol officers have used their patrol vehicles to physically transport Latino residents and visitors of Montana to an agency within DHS, including CBP or ICE. By law, upon making an arrest, a Montana Highway Patrol officer must follow the procedures of MCA § 44-1-1101. Montana Highway Patrol officers have no authority to seize, handcuff, and deliver an individual to DHS.

76. In some instances, Montana Highway Patrol’s unlawful custom, policy, and practice results in arrest of undocumented aliens, including some who committed criminal immigration violations. However, whether an arrest was constitutionally valid depends upon whether, at the moment the arrest was made, the officers had probable cause to make that arrest.

### **CLASS REPRESENTATIVES**

#### **Plaintiff Jose Rios-Diaz**

77. On April 4, 2011, at approximately 10:00 am, Plaintiff Jose Rios-Diaz was pulled over by Patrol Officer Justin Moran with the Montana Highway Patrol for allegedly speeding while driving on the interstate near Billings, Montana.

78. Patrol Officer Moran asked Mr. Rios-Diaz for his driver’s license, and then almost immediately asked: “Are you here legally?”

79. Mr. Rios-Diaz objected to this line of questioning based on racial profiling, but acquiesced in response to the Montana Highway Patrol officer's show of authority. Mr. Rios-Diaz answered that he is here legally.

80. Mr. Rios-Diaz is a U.S. citizen.

81. Patrol Officer Moran noted that Mr. Rios-Diaz's vehicle was registered to someone else, but was insured by him. Mr. Rios-Diaz explained that he sold his vehicle to an acquaintance, who registered it under his name, but then he took the vehicle back when his friend ultimately did not pay for it.

82. Patrol Officer Moran asked if the person Mr. Rios-Diaz sold his vehicle to had been deported. Mr. Rios-Diaz answered that he did not know.

83. Mr. Rios-Diaz possessed a valid Montana driver's license, which was verified by Patrol Officer Moran.

84. Patrol Officer Moran went back to his vehicle and returned to Mr. Rios-Diaz several times. On each occasion, he resumed his line of questioning regarding Mr. Rios-Diaz's immigration status. He said: "Tell me the truth, are you here legally or not?"

85. Patrol Officer Moran's interrogation included detailed questions about the circumstances under which Mr. Rios-Diaz had originally obtained lawful permanent resident status, including who had petitioned for him.

86. At one point, Patrol Officer Moran said: “You don’t look like you are from around here.”

87. Mr. Rios-Diaz repeatedly confirmed that he has valid immigration status. At one point, Mr. Rios-Diaz asserted that since he has a valid Montana driver’s license, this should be sufficient proof of his lawful immigration status. Patrol Officer Moran answered: “Driver’s licenses can be fake.”

88. Mr. Rios-Diaz was detained while Patrol Officer Moran called ICE to “double check” on his immigration status.

89. Due to inquiries into his immigration status, Mr. Rios-Diaz was detained for longer than necessary to issue a speeding ticket, or to investigate any other actionable violations of the law.

90. This process extended Mr. Rios-Diaz’s detention by at least 37 minutes.

91. Mr. Rios-Diaz was issued a \$40.00 speeding ticket, which he paid.

92. On the same day, Mr. Rios-Diaz complained, through his attorney, to former Chief of the Montana Highway Patrol, Colonel Michael Tooley.

93. On April 14, 2011, Colonel Tooley courteously responded to Mr. Rios-Diaz’s counsel by e-mail, but stated that after reviewing the audio and video of the stop, Montana Highway Patrol found no wrongdoing. [See E-mail from Colonel Michael Tooley, attached as Ex. C.]

94. Colonel Tooley justified the length of the stop and inquiries with ICE by claiming that Patrol Officer Moran found “inconsistencies” in the vehicle registration and insurance documents, which “brought into question other documentation such as the driver’s license.” [*Id.*]

95. However, Colonel Tooley also confirmed that “[t]he license was verified with DMV almost immediately after the stop. It was a valid license and Trooper Moran never stated he thought it was fake on the presence of Mr. Rios-Diaz nor when he was back in the patrol car.” [*Id.*]

96. Colonel Tooley stated: “we have recently encountered driver’s licenses have been secured in Montana and other states (usually Washington) with unverified documentation by individuals from all over the world.”

97. Colonel Tooley stated that Patrol Officer Moran was attempting “to ensure there were no other violations of law outside of the initial stop.”

98. Colonel Tooley did not explain how “double checking” with ICE regarding Mr. Rios-Diaz’s immigration status was related to resolving any “inconsistencies” in the vehicle registration and insurance documents, and did not articulate any facts that could have been relied upon to form reasonable suspicion or probable cause that Plaintiff had an invalid driver’s license, or had committed a civil immigration violation — much less a criminal immigration violation.

99. Colonel Tooley confirmed that inquiries with ICE caused the delay: “This process turned what should have been a ten-minute stop into a 47-minute stop. I wish it had been faster, but that isn’t how this encounter went. We often have trouble getting immediate calls back from ICE in these situations.” [*Id.*]

100. Montana Highway Patrol had no authority to prolong Mr. Rios-Diaz’s detention to inquire with ICE about his immigration status.

101. Montana Highway Patrol can point to no race-neutral criteria that would justify prolonging Mr. Rios-Diaz’s detention to inquire with ICE about his immigration status. On information and belief, this prolonged detention was due to discriminatory racial profiling.

102. On at least one other occasion, a Montana Highway Patrol officer questioned Mr. Rios-Diaz about his immigration status. This occurred on or around April 19, 2009, when Mr. Rios-Diaz needed assistance after crashing his vehicle due to slippery road conditions.

103. Because of Mr. Rios-Diaz’s experiences with the Montana Highway Patrol, he is afraid that he will continue to be detained in the future based on racial profiling and unfounded suspicions regarding his immigration status. He feels like he cannot drive anywhere in the state without getting harassed. Because of this harassment he has even contemplated leaving Montana.

**Plaintiff Eligio Duran-Sanchez**

104. On August 30, 2013, at approximately 4:00 pm, Mr. Duran-Sanchez was the passenger in a vehicle stopped by a Montana Highway Patrol officer, ostensibly for a missing front license plate, while the vehicle was driving on Highway 2, just outside Culbertson, Montana.

105. The vehicle was driven by a Latino male.

106. The Patrol Officer also asked for a driver's license from Mr. Duran-Sanchez, although he was the passenger in the vehicle.

107. The Patrol Officer lacked reasonable suspicion or probable cause to believe that Mr. Duran-Sanchez had committed a crime, including any immigration-related crime.

108. Mr. Duran-Sanchez presented a form of Mexican identification.

109. The Patrol Officer asked Mr. Duran-Sanchez to additionally present a birth certificate. The vehicle was stopped near Mr. Duran-Sanchez's residence. He was told to get the birth certificate and return to the vehicle.

110. Upon returning to the vehicle, the Patrol Officer indicated that Mr. Duran-Sanchez was not free to leave.

111. On information and belief, the Montana Highway Patrol officer contacted CBP to inquire into the immigration status of Mr. Duran-Sanchez.

112. A second Montana Highway Patrol vehicle arrived at the scene.

113. On information and belief, Mr. Duran-Sanchez and Mr. Manuel-Sanchez were handcuffed and put in separate Montana Highway Patrol vehicles.

114. Up to this point, Montana Highway Patrol officers had detained Mr. Duran-Sanchez, without his consent or ability to leave, for almost two hours.

115. On information and belief, a Montana Highway Patrol officer drove Mr. Duran-Sanchez for over an hour to a CBP station in Plentywood, Montana.

116. CBP then took custody of Mr. Duran-Sanchez.

117. Mr. Duran-Sanchez was never issued any ticket or citation by Montana Highway Patrol in connection with this incident.

118. As a passenger in the vehicle, Montana Highway Patrol had no authority to detain Mr. Duran-Sanchez in the first instance, and had no authority to prolong his detention to inquire with DHS about his immigration status.

119. On information and belief, Montana Highway Patrol seized Mr. Duran-Sanchez without first forming probable cause or reasonable suspicion that Mr. Duran-Sanchez committed a criminal immigration violation.

120. Montana Highway Patrol can point to no race-neutral criteria that would justify prolonging Mr. Duran-Sanchez's detention to inquire with DHS about his immigration status.

**Plaintiff Delfio Mejia-Ochoa**

121. On September 21, 2013, around midnight, Plaintiff Delfio Mejia-Ochoa was the driver in a vehicle stopped by the Dawson County Sherriff's Department for allegedly speeding while driving on Highway 16, about 10 miles outside of Glendive, Montana.

122. After Mr. Mejia-Ochoa was pulled over, a Montana Highway Patrol vehicle arrived at the scene and jointly took part in his arrest and detention.

123. Mr. Mejia-Ochoa presented a valid Utah driver's license, but was informed that a technical problem prevented it from being verified.

124. Mr. Mejia-Ochoa was informed that he was being detained while one or both of the law enforcement officers called an agency within DHS to attempt to verify Mr. Mejia-Ochoa's immigration status.

125. A Patrol Officer with the Montana Highway Patrol demanded to see identification from the passenger in the vehicle, Mr. Mejia-Ochoa's fiancée, Kariann Sprankle.

126. One or both of the law enforcement officers handed Mr. Mejia-Ochoa a phone and demanded that he speak to an unknown immigration officer.

127. On information and belief, this immigration officer was with CBP in Plentywood, Montana.

128. Mr. Mejia-Ochoa did not consent to questioning into his immigration status, or to his prolonged detention to check his immigration status with DHS, but acquiesced in response to the law enforcement officers' show of authority.

129. Mr. Mejia-Ochoa truthfully answered all of the questions that were asked of him. Then, he was asked to wait while the law enforcement officers spoke amongst themselves.

130. By this point, the law enforcement officers had detained Mr. Mejia-Ochoa for approximately an hour and a half.

131. At one point, Mr. Mejia-Ochoa was informed: "It doesn't seem like they want you." He was told that if DHS didn't call back within five minutes, he would be released.

132. One or both of the law enforcement officers subsequently made another phone call to an immigration officer with DHS, and Mr. Mejia-Ochoa was informed: "They want to take you."

133. Mr. Mejia-Ochoa was placed under arrest, handcuffed, and put into the Dawson County Sherriff's patrol vehicle. He was driven approximately one hour and delivered to a CBP station in Plentywood, Montana.

134. A \$65.00 speeding ticket was issued by the Dawson County Sherriff's Department, which he paid in full.

135. Montana Highway Patrol jointly participated in this arrest, and had no authority to participate in prolonging Mr. Mejia-Ochoa's detention to inquire with DHS about his immigration status.

136. Montana Highway Patrol seized Mr. Mejia-Ochoa without first forming probable cause or reasonable suspicion that he had committed a criminal immigration violation.

137. Montana Highway Patrol can point to no race-neutral criteria that would justify its participation in prolonging Mr. Mejia-Ochoa's detention to inquire with DHS about his immigration status.

**Plaintiff Eduardo Barragan-Naranjo**

138. On April 21, 2011 at about 12:00 pm, Mr. Barragan-Naranjo was the passenger in a vehicle stopped by Montana Highway Patrol Officer Matt Cartwright, allegedly for speeding on Interstate 94 in Custer County, Montana.

139. Patrol Officer Cartwright asked the driver of the vehicle for his driver's license, which he provided.

140. Patrol Officer Cartwright also asked Mr. Barragan-Naranjo for his identification. He provided a valid driver's license.

141. Patrol Officer Cartwright asked if Mr. Barragan-Naranjo had any drugs. He answered that he did not.

142. Patrol Officer Cartwright requested assistance from Agent Dan Baker with the Montana Department of Justice because he suspected drug activity.

143. At some point, Patrol Officer Mike Rhodes also arrived at the scene.

144. One of the law enforcement officers asked Mr. Barragan-Naranjo for permission to search the vehicle. Mr. Barragan-Naranjo answered that he could not give permission to search the vehicle, since he did not own it, but that they could search his personal belongings.

145. Agent Baker questioned Mr. Barragan-Naranjo. A Montana Department of Justice report of the incident states:

Agent Baker asked Barragan if he was in the country legally or illegally and Barragan replied something to the effect that he was working on it. Agent Baker questioned him further and asked Barragan directly if he was here illegally. Barragan advised Agent Baker that he was in fact an illegal alien, living in the United States for 13 years. Agent Baker advised Troopers Cartwright and Rhodes that Barragan had admitted to being in the country illegally. Trooper Cartwright contacted U.S. Immigration and Customs Enforcement (ICE) regarding Barragan[.]

146. An ICE report of the incident states:

MHP Trooper [Cartwright] initiated a vehicle stop on I-94 West Bound near Miles City, Montana. Trooper [Cartwright] encountered two male subjects in the vehicle. One of the two occupants readily admitted to being a citizen of Mexico and supplied a foreign document to the trooper when he asked for identification. Trooper [Cartwright] then contacted ICE Special Agent [Redacted] in regards to the subject. SA [Redacted] interviewed Eduardo BARRAGAN-NARANJO and determined that the subject is illegally present in the United States.

147. Mr. Barragan-Naranjo Plaintiff did not consent to this line of questioning into his immigration status, or to his prolonged detention to check his immigration status with DHS, but acquiesced in response to the Montana Highway Patrol officer's show of authority.

148. Patrol Officer Cartwright searched Mr. Barragan-Naranjo's belongings and saw that he had approximately \$5,000.00 in cash.

149. Mr. Barragan-Naranjo explained that he had just sold a vehicle, and that this was the money he earned from that transaction. He stated that he was planning to buy a new vehicle with that money.

150. The law enforcement officers asserted that Mr. Barragan-Naranjo and

the driver of the vehicle were involved in the sale of methamphetamines.

151. The law enforcement officers seized Mr. Barragan-Naranjo's money, and placed him under arrest.

152. On September 1, 2011, the charges against Mr. Barragan-Naranjo were dismissed with prejudice.

153. After being released from state custody, Mr. Barragan-Naranjo was taken into ICE custody pursuant to a detainer.

154. After being taken into custody and put into Immigration Court proceedings, ICE exercised prosecutorial discretion and asked the Immigration Court to terminate the removal proceedings against Mr. Barragan-Naranjo. On October 15, 2012, the removal proceedings against him were terminated.

155. On information and belief, the Montana Department of Justice and Montana Highway Patrol officers who arrested Mr. Barragan-Naranjo lacked probable cause to believe that Mr. Barragan-Naranjo had committed a crime, including any immigration-related crime.

156. On information and belief, Mr. Barragan-Naranjo's arrest in this instance was in accordance with general instructions by then-Captain Kenton Hickethier "to arrest suspects [patrol officers] believed might be illegally in the country regardless of whether the facts supported an offense for which a person

could be arrested under Montana law. His instructions were to get them to jail one way or another so Federal authorities could place detainers on them.” [See Complaint and Response, attached as Exhibits A and B.]

**Proposed Class Member Jose Enriquez-Galicia**

157. On or about September 26, 2013, at approximately 7:00 pm, Mr. Enriquez-Galicia was the passenger in a vehicle stopped by a Montana Highway Patrol officer, ostensibly because the vehicle had a lighted license plate that was tinted blue, allegedly in violation of the law.

158. There were three Latino men in the vehicle. The driver was a U.S. citizen who presented a valid driver’s license.

159. The Patrol Officer also demanded identification from the passengers in the vehicle, Mr. Enriquez-Galicia and another unknown Latino male.

160. The Patrol Officer lacked reasonable suspicion or probable cause to believe that Mr. Enriquez-Galicia had committed a crime, including any immigration-related crime.

161. Mr. Enriquez-Galicia presented a form of Mexican identification.

162. The Montana Highway Patrol officer seized Mr. Enriquez-Galicia, preventing his freedom to leave, while the Patrol officer contacted CBP to verify his immigration status.

163. Montana Highway Patrol officers detained Mr. Enriquez-Galicia, without his ability to leave, for over an hour, until CBP officers arrived and took him into custody.

164. On information and belief, the other Latino male was also detained by Montana Highway Patrol until CBP officers arrived and took him into custody.

165. Mr. Enriquez-Galicia was never issued any ticket or citation by Montana Highway Patrol in connection with this incident.

166. As a passenger in the vehicle, Montana Highway Patrol had no authority to substantially prolong Mr. Enriquez-Galicia's detention without probable cause that he had committed a crime, and had no authority to prolong his detention to inquire with DHS about his immigration status.

167. Montana Highway Patrol can point to no race-neutral criteria that would justify prolonging Mr. Enriquez-Galicia's detention to inquire with DHS about his immigration status.

### **CLASS ALLEGATIONS**

168. This is a class action seeking declaratory and injunctive relief under Federal Rule of Civil Procedure 23(b)(2) on behalf of Plaintiffs and all other similarly situated individuals.

169. The appropriate statute of limitations for a civil rights claim under 42

U.S.C. 1983 is the time-period applicable to personal injury actions. *See, e.g., Wilson v. Garcia*, 471 U.S. 261 (1985). Montana has a three-year statute of limitations for general personal injury actions. MCA § 27-2-204(1).

170. The class that Plaintiffs seek to represent consists of:

All Latino persons who, since October 7, 2010, have been or will be in the future, stopped, detained, questioned or searched by Montana Highway Patrol officers while driving or sitting in a vehicle on a public roadway or parking area in the State of Montana.

171. This class is so numerous that joinder of all members is impracticable.

172. To generally support the numerosity of the class, several articles and press releases, going back to at least September 5, 2000, describe Montana Highway Patrol officers' involvement in detaining Latinos residing and passing through Montana based on suspected immigration status violations. [*See* Collected Articles and Press Releases, attached as Ex. D.] On information and belief, this publically-available information constitutes only a small segment of the class members affected. Because these articles and press releases are skewed toward reporting arrests of individuals who lacked valid immigration status, they are not fully representative of class members, like Plaintiff Jose Rios-Diaz, who never faced any charges as a result of the violation of their constitutional rights.

173. There are questions of law and fact common to all members of the class and all class members have been directly affected by the challenged actions of Defendants. Although the factual circumstances of the individual stops involving the named Plaintiffs and class members may differ, they claim generally that Montana Highway Patrol has a policy of racial profiling, in violation of the Fourteenth Amendment, which leads officers to detain individuals without reasonable suspicion or probable cause that they committed a crime, in violation of the Fourth Amendment. Each putative class member has been or will be subjected to discriminatory stops, impermissibly using race as a factor in questioning, detentions, arrests and/or searches conducted by Defendants without consent. Each putative class member has been or will be subjected to stops, detentions, interrogations and/or searches, pretextually and/or without any reasonable, articulable suspicion or probable cause that such class member had committed a crime, and in a manner to which Caucasian drivers and passengers in vehicles in the State of Montana are generally not subjected.

174. The claims and defenses of the representative Plaintiffs are typical of the claims and defenses of the class.

175. The representative Plaintiffs have no conflicts of interest with other class members, and will fairly and adequately protect the interests of the class.

176. The representative Plaintiffs complain of a pattern or practice that is

generally applicable to the class as a whole. Defendants in this case have taken actions in violation of the class members' constitutional rights, which are grounds generally applicable to the class, and the requested injunctions and declaratory judgments would provide relief to each member of the class from these constitutional violations.

177. Plaintiffs' counsel is competent and experienced in class action litigation of the type brought here.

### **REQUISITES FOR RELIEF**

178. As a result of the conduct of Defendants described above, Plaintiffs have been denied their constitutional and civil rights. Defendants' policies, practices, conduct and acts alleged herein have resulted and will continue to result in irreparable injury to Plaintiffs, including but not limited to further violations of their constitutional and civil rights.

179. Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs described herein. Plaintiffs therefore seek prospective injunctive and declaratory relief restraining Defendants from continuing to engage in and enforce the unlawful and unconstitutional policies, practices, conduct and acts described herein.

180. The provisions of MCA § 2-9-301, requiring certain "claims" against

the state to be first presented to the Department of Administration are not applicable here, because the prospective declaratory and injunctive relief sought herein is not a “claim” under MCA § 2-9-101.

**CLAIMS FOR RELIEF**

**COUNT I: EQUAL PROTECTION  
(Fourteenth Amendment)**

181. Plaintiff hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

182. As Latino persons, Plaintiffs are members of a protected class.

183. As Latino persons, those individuals stopped, detained, questioned or searched by Montana Highway Patrol officers during the class period are members of a protected class.

184. Defendants, acting under color of law and in concert with one another, engaged, and continue to engage, in profiling and discriminatory treatment of Plaintiffs and other Latino individuals based on their race, color and/or ethnicity.

185. Defendants have acted pretextually and impermissibly used race as a factor in forming reasonable suspicion or probable cause to prolong a stop, detention, search and/or to arrest of Plaintiffs or any of the other Latino individuals referred to above based on suspicion of immigration status violations.

186. By purposefully stopping, detaining, questioning, searching and/or arresting Plaintiffs and subjecting them to different, burdensome and injurious treatment because of their race, color and/or ethnicity, Defendants deprived Plaintiffs and members of the plaintiff class of the equal protection of the law within the meaning of the Fourteenth Amendment to the U.S. Constitution.

187. These actions violated Plaintiffs' and class members' Fourteenth Amendment rights and 42 U.S.C. § 1983.

188. Defendants, acting under color of law and in concert with one another, exceeded and/or abused the authority granted to them under state and federal law.

189. By their conduct described above, Defendants have devised and implemented a policy, custom and practice of illegally prolonging a stop, and detaining, questioning or searching Latino individuals because of their race, color and/or ethnicity.

190. Defendants' actions have caused and will continue to cause Plaintiffs and other similarly situated individuals to suffer public humiliation and additional harms, and be subjected to unlawful discrimination unless these actions are stopped.

191. As a direct, proximate result of Defendants' wrongful conduct, Plaintiffs and class members have suffered and will continue to suffer significant

and substantial injuries.

**COUNT II: UNREASONABLE SEARCH AND SEIZURE**  
**(Fourth and Fourteenth Amendments)**

192. Plaintiff hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

193. Pursuant to the Fourth and Fourteenth Amendments to the U.S. Constitution, state and local governments are prohibited from conducting unreasonable searches and seizures.

194. Defendants, acting under color of law and in concert with one another, stopped, seized, searched, arrested and/or impermissibly extended stops of Plaintiffs, pretextually, for racially motivated reasons and without probable cause or reasonable suspicion that they had violated the law. Such conduct violated the Fourth Amendment guarantee against unreasonable searches and seizures, the Fourteenth Amendment, and 42 U.S.C. § 1983.

195. Defendants violate 42 U.S.C. § 1983 because the unconstitutional policy, practice, and custom was specifically instructed by final policymakers, actions of subordinates were approved and authorized by the final policymakers, and there was a deliberate indifference to an obvious need for patrol officer training, such that this lack of training would inevitably result in a patrol officer violating individuals' rights.

196. Upon information and belief, the Defendants, acting under color of law and in concert with one another, have engaged in a custom, practice and policy of stopping, seizing, searching, arresting and/or impermissibly extending stops of other Latino individuals in Montana, pretextually, for racially motivated reasons and without probable cause or reasonable suspicion that they had committed any crime under their jurisdiction or authority.

197. Defendants, acting under color of law and in concert with one another, exceeded and/or abused the authority granted to them under state and federal law.

198. Defendants' actions have caused and will continue to cause Plaintiffs and other similarly situated individuals to suffer public humiliation and additional harms, and be subjected to unlawful discrimination unless these actions are stopped.

**COUNTS III AND IV: VIOLATIONS OF  
MONTANA CONSTITUTION ARTICLE II §§ 4, 11**

199. Plaintiff hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

200. Article II, § 4 of the Montana Constitution provides: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall

discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.”

201. Article II, § 11 of the Montana Constitution provides: “The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures.”

202. By their wrongful conduct described above, Defendants, acting under color of law and in concert with one another, have violated the rights guaranteed to Plaintiffs and other similarly situated individuals under Article II, §§ 4 and 11 of the Montana Constitution.

203. Defendants’ have caused and will continue to cause Plaintiffs and other similarly situated individuals to be subjected to unlawful discrimination, suffer public humiliation, and additional harms unless these actions are stopped.

**COUNT V: RACE DISCRIMINATION IN  
FEDERALLY FUNDED PROGRAMS**

204. Plaintiff hereby incorporate by this reference all allegations of the preceding paragraphs of this Complaint as if fully set forth herein.

205. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, provides: “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial

assistance.”

206. On information and belief, the Montana Highway Patrol and Montana Department of Justice receive federal funding and other financial assistance from the U.S. Department of Justice and other federal agencies. As a recipient of federal financial assistance, they are required to conduct their activities in a racially non-discriminatory manner pursuant to Title VI of the Civil Rights Act of 1964.

207. Federal regulations implementing Title VI further provide that no program receiving financial assistance through the DOJ shall utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color and/or ethnicity, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color and/or ethnicity.

208. The methods employed by Defendants discriminate against individuals based on their race, color and/or ethnicity as described herein.

209. Defendants’ violations of 42 U.S.C. §2000d and its implementing regulations have caused and will continue to cause Plaintiffs and other similarly situated individuals public humiliation and additional harms in that they will continue to be subjected to unlawful discrimination unless it is stopped.

**DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of a class of all those similarly situated, respectfully demand judgment against Defendants awarding the following:

- A. A declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202 that Defendants have engaged in discrimination based on race, color and/or ethnicity and denied Plaintiffs and plaintiff class equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. §1983;
- B. A declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202 that Defendants' stops, interrogations, detentions, searches and/or arrests of Plaintiffs and other similarly situated individuals without probable cause or reasonable, articulable suspicion to believe that they had committed a crime violated the Fourth Amendment guarantee against unreasonable searches and seizures, the Fourteenth Amendment and 42 U.S.C. § 1983;
- C. Declaratory judgments pursuant to 28 U.S.C. § 2201 and 2202 that Defendants' actions are unconstitutional because they violate the rights of Plaintiffs and other similarly situated individuals provided by Article II §§ 4 and 11 of the Montana Constitution;

- D. A declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202 that Defendants engaged in race discrimination in violation of Title VI of the Civil Rights Act of 1964 and 42 C.F.R. §101 *et. seq.*;
- E. A preliminary and permanent injunction prohibiting Defendants from continuing to engage in race, color and/or ethnicity-based discrimination as described herein and to put into place safeguards sufficient to ensure that such discrimination does not continue in the future;
- F. A preliminary and permanent injunction prohibiting Defendants from exceeding the limits of their authority under state and federal law;
- G. An award of attorneys' fees and costs of suit, plus interest, pursuant to 42 U.S.C. §1988; and
- H. Any other and further relief that this Court deems just and proper.

Respectfully submitted this 7th day of October 2013.

By: /s/ Shahid Haque-Hausrath  
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