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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSE SANCHEZ, ISMAEL RAMOS  
CONTRERAS, and ERNEST GRIMES, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

UNITED STATES OFFICE OF BORDER  
PATROL; UNITED STATES CUSTOMS  
& BORDER PROTECTION;  
DEPARTMENT OF HOMELAND  
SECURITY; JOHN C. BATES, Chief  
Patrol Agent, Blaine Sector of the United  
States Border Patrol, in his official  
capacity; JANET NAPOLITANO,  
Secretary, Department of Homeland  
Security, in her official capacity; DAVID  
AGUILAR, Acting Commissioner, United  
States Customs & Border Protection, in his  
official capacity; MICHAEL J. FISHER,  
Chief of the United States Border Patrol, in  
his official capacity; and JAY CUMBOW,  
Agent in Charge for the Port Angeles  
Office of the Olympic Peninsula of the  
United States Border Patrol, in his official  
capacity,

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

CLASS ACTION

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF (No. \_\_\_\_\_) – 1

**INTRODUCTION**

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3 1. This civil rights lawsuit seeks to vindicate the rights of individual Plaintiffs and  
4 Class Members who have been—and/or who have a present fear that in the future they will  
5 be—unreasonably seized and/or interrogated in violation of the Fourth Amendment of the  
6 United States Constitution by the United States Border Patrol and its agents located throughout  
7 Washington State’s Olympic Peninsula.  
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12 2. This action arises from the Border Patrol’s practice of stopping vehicles or  
13 participating in vehicle stops on the Olympic Peninsula without appropriate reasonable  
14 suspicion in order to interrogate and unreasonably seize the occupants of such vehicles.  
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19 3. Plaintiffs and Class Members hereby seek a declaration:  
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21 a. that Defendants have violated their Fourth Amendment rights;  
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23 b. that Defendants have exceeded their statutory authority;  
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25 c. that it is unlawful for Border Patrol agents to stop a vehicle or participate  
26 in a vehicle stop without a valid search or arrest warrant, unless the  
27 Border Patrol agent has a particularized reasonable suspicion based upon  
28 specific and articulable facts and rational inferences therefrom that an  
29 occupant of the vehicle is unlawfully in the United States.  
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35 4. Plaintiffs and Class Members seek an injunction prohibiting Defendants from  
36 stopping vehicles or participating in vehicle stops:  
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38 a. without a reasonable suspicion that an occupant of the vehicle is  
39 unlawfully in the United States;  
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41 b. until each Border Patrol agent on the Olympic Peninsula has received  
42 training as to what constitutes reasonable suspicion for Border Patrol  
43 to stop a vehicle or for Border Patrol to participate in a vehicle stop;  
44  
45 and  
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1 c. until each Border Patrol agent on the Olympic Peninsula has  
2 demonstrated, through testing, that he or she understands what  
3 constitutes reasonable suspicion for a Border Patrol agent to stop a  
4 vehicle or to participate in a vehicle stop.  
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9 5. Plaintiffs and Class Members additionally seek an injunction requiring:

10 a. Defendants to maintain complete and accurate records that document  
11 that each agent has received training as to what constitutes reasonable  
12 suspicion to support a Border Patrol vehicle stop or for Border Patrol to  
13 participate in a vehicle stop;  
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17 b. Defendants to maintain complete and accurate records that document  
18 that each agent has been tested and understands what constitutes  
19 reasonable suspicion to support a Border Patrol vehicle stop or for  
20 Border Patrol to participate in a vehicle stop; and  
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24 c. Defendants to prepare documentation for all vehicle stops made by  
25 Border Patrol agents or in which Border Patrol agents participate, that  
26 sets forth in detail the basis for the reasonable suspicion used to justify  
27 the vehicle stop or interrogation of its occupants, and to maintain this  
28 documentation in such a manner that it is easily accessible for  
29 examination by a court-appointed special master for compliance,  
30 regardless of whether the Border Patrol ultimately determines that the  
31 occupant(s) stopped are undocumented citizens.  
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43 In support of this relief, Plaintiffs assert and allege as follows:

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45 **PARTIES**

46 6. Plaintiff Jose Sanchez is a resident of Forks, Washington, on the Olympic  
47 Peninsula. Plaintiff Sanchez is a correctional officer for Olympic Corrections Center. Plaintiff  
48 Sanchez was born in the United States and is of Latino/Hispanic descent.  
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1           7.       Plaintiff Ismael Ramos Contreras is a resident of Forks, Washington, on the  
2 Olympic Peninsula. Plaintiff Ramos Contreras is an eighteen-year-old high school senior at  
3 Forks High School. Plaintiff Ramos Contreras was born in the United States and is of  
4 Latino/Hispanic descent.  
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8           8.       Plaintiff Ernest Grimes is a resident of Neah Bay, Washington, on the Olympic  
9 Peninsula. Plaintiff Grimes is a correctional officer at Clallam Bay Corrections Center and a  
10 part-time police officer for the Neah Bay Police Department. Plaintiff Grimes was born in the  
11 United States and is African-American.  
12  
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14           9.       Defendant Office of Border Patrol (“Border Patrol”) is a subagency within the  
15 United States Customs & Border Protection (“CBP”), which is an agency of the United States  
16 Department of Homeland Security (“DHS”). The Border Patrol is a federal law enforcement  
17 agency responsible for the enforcement of the laws and regulations governing the admission of  
18 foreign-born persons to the United States. The Border Patrol has responsibility for and  
19 oversight over policies, procedures, and practices relating to stopping and interrogating  
20 individuals on Washington State’s Olympic Peninsula.  
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23           10.      Defendant United States Customs & Border Protection is an agency of the  
24 United States Department of Homeland Security. The United States Customs & Border  
25 Protection is responsible for securing the borders of the United States. The United States  
26 Customs & Border Protection has authority over policies, procedures, and practices relating to  
27 stopping and interrogating individuals on Washington State’s Olympic Peninsula.  
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30           11.      Defendant Department of Homeland Security is a Cabinet-level department that  
31 is responsible for the coordination and unification of national security efforts. The Department  
32 of Homeland Security has authority over policies, procedures, and practices relating to stopping  
33 and interrogating individuals on Washington State’s Olympic Peninsula.  
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36           12.      Defendant John C. Bates is the Chief Patrol Agent for the Blaine Sector of the  
37 Border Patrol. In that capacity, Defendant Bates has direct responsibility for and oversight over  
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1 Blaine Sector Border Patrol policies, procedures, and practices relating to stopping and  
2 interrogating individuals on Washington State's Olympic Peninsula. Defendant Bates is sued  
3 in his official capacity.  
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6 13. Defendant Janet Napolitano is the Secretary of the DHS vested with all  
7 functions of all officers, employees, and organizational units of DHS. Defendant Napolitano  
8 has authority over all DHS policies, procedures, and practices relating to stopping and  
9 interrogating individuals on Washington State's Olympic Peninsula. Defendant Napolitano is  
10 sued in her official capacity.  
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13 14. Defendant David Aguilar is the Acting Commissioner of CBP. In that capacity,  
14 Defendant Aguilar has authority over all CBP policies, procedures, and practices relating to  
15 stopping and interrogating individuals on Washington State's Olympic Peninsula. Defendant  
16 Aguilar is sued in his official capacity.  
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19 15. Defendant Michael J. Fisher is Chief of the Border Patrol. In that capacity,  
20 Defendant Fisher has direct responsibility for and oversight over Border Patrol policies,  
21 procedures, and practices relating to stopping and interrogating individuals on Washington  
22 State's Olympic Peninsula. Defendant Fisher is sued in his official capacity.  
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25 16. Defendant Jay Cumbow is the Agent in Charge for the Port Angeles Office of  
26 the Olympic Peninsula of the Border Patrol. In that capacity, Defendant Cumbow has direct  
27 responsibility for and oversight over Border Patrol policies, procedures, and practices relating  
28 to stopping and interrogating individuals on Washington State's Olympic Peninsula. Defendant  
29 Cumbow is sued in his official capacity.  
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### 32 **JURISDICTION AND VENUE**

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34 17. The Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331 and  
35 1343.  
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38 18. Venue in the Western District of Washington is proper under 28 U.S.C.  
39 § 1391(e)(1).  
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1 19. Declaratory relief is authorized under 28 U.S.C. §§ 2201, 2202 and Fed. R. Civ.  
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3 P. 57. Defendants' actions constitute agency action within the meaning of the Administrative  
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5 Procedure Act, 5 U.S.C. § 551, authorizing injunctive relief under the Administrative  
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7 Procedure Act, 5 U.S.C. § 702 and Fed. R. Civ. P. 65.  
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### 9 ALLEGATIONS

10 20. During or around the winter of 2008-2009, at Forks on the Olympic Peninsula,  
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12 Plaintiff Sanchez was traveling in a vehicle that was followed by one or more Border Patrol  
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14 agents. When Plaintiff Sanchez arrived at his house, the Border Patrol agents approached him.  
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16 Plaintiff Sanchez began to record the stop with his cell phone. At this point, the agents backed  
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18 away.  
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20 21. On information and belief, the Border Patrol lacked reasonable suspicion to  
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22 justify this stop. On information and belief, it is alleged that the Border Patrol selected this  
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24 vehicle for this stop solely because Plaintiff Sanchez appeared to the Border Patrol agents to be  
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26 a person of color based on his complexion and hair color.  
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28 22. During or around the summer of 2009, near Forks on the Olympic Peninsula,  
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30 Plaintiff Sanchez and a member of his family were traveling in a vehicle that was stopped by  
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32 Border Patrol agents. During the stop, Plaintiff Sanchez was interrogated by two Border Patrol  
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34 agents regarding his immigration status. Border Patrol agents told Plaintiff Sanchez that they  
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36 had stopped him because his vehicle windows were too dark. But during the stop, the agents  
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38 did not ask for his insurance or registration. When Plaintiff Sanchez provided those  
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40 documents, the agents refused to inspect them. The agents only wanted to see his ID and asked  
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42 him how long he had been in the United States.  
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44 23. On information and belief, the Border Patrol lacked reasonable suspicion to  
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46 justify this stop and interrogation. On information and belief, it is alleged that the Border  
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48 Patrol selected this vehicle for this stop and interrogation solely because Plaintiff Sanchez  
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1 appeared to the Border Patrol agents to be a person of color based on his complexion and hair  
2 color.  
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5 24. During or around the fall of 2011, at Forks on the Olympic Peninsula, Plaintiff  
6 Sanchez was traveling in a vehicle that was also stopped by one or more Border Patrol agents.  
7 During the stop, Plaintiff Sanchez was interrogated by two Border Patrol agents regarding his  
8 immigration status. Again, the Border Patrol agents told him that they had stopped him  
9 because the windows of the vehicle were too dark. But the driver's side window was not  
10 tinted. And again, the agents only wanted to see Plaintiff Sanchez's ID and asked him how  
11 long he had been in the United States.  
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19 25. On information and belief, the Border Patrol lacked reasonable suspicion to  
20 justify this stop and interrogation. On information and belief, it is alleged that the Border  
21 Patrol selected this vehicle for this stop and interrogation solely because Plaintiff Sanchez  
22 appeared to the Border Patrol agents to be a person of color based on his complexion and hair  
23 color.  
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29 26. Shortly after the most recent stop, Plaintiff Sanchez tried to file a complaint with  
30 Border Patrol because its agents were selecting his vehicles for stop and interrogation solely  
31 because he appeared to Border Patrol agents to be a person of color based on his complexion  
32 and hair color. The Border Patrol supervisor would not give him the names of the agents that  
33 had stopped his vehicles and would not take a complaint over the phone. When asked by  
34 Plaintiff Sanchez why Border Patrol agents repeatedly stopped and interrogated him regarding  
35 his immigration status, the Border Patrol supervisor stated: "We have certain cars that we need  
36 to pull over."  
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45 27. On or about July 22, 2011, at Port Angeles on the Olympic Peninsula, Plaintiff  
46 Ramos Contreras and four others were traveling in a vehicle that was stopped by Border Patrol  
47 agents. Once stopped, a Border Patrol agent tried unsuccessfully to grab the keys from the  
48 vehicle. The driver handed the keys to the Border Patrol agent; the agent retained the keys for  
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1 the duration of the stop. During the stop, Plaintiff Ramos Contreras was interrogated by four  
2 Border Patrol agents regarding his immigration status. The Border Patrol agents failed to  
3 provide Plaintiff Ramos Contreras with a reason for the stop, but insisted that the occupants  
4 hand over their identifying documents.  
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9 28. On information and belief, the Border Patrol lacked reasonable suspicion to  
10 justify this stop and interrogation. On information and belief, it is alleged that the Border  
11 Patrol selected this vehicle for this stop and interrogation solely because Plaintiff Ramos  
12 Contreras and the other occupants appeared to the Border Patrol agents to be persons of color  
13 based on their complexion and hair color.  
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19 29. Plaintiff Ramos Contreras was also questioned by Border Patrol outside the  
20 Clallam County District Courthouse in Forks on the Olympic Peninsula. On or about  
21 December 2, 2010, while walking out of the courthouse, Plaintiff Ramos Contreras was  
22 approached by a plainclothes Border Patrol agent who questioned him regarding his  
23 immigration status. The Border Patrol agent asked Plaintiff Ramos Contreras where he lived  
24 and where he was born.  
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31 30. On information and belief, the Border Patrol agent selected Plaintiff Ramos  
32 Contreras for this interrogation solely because he appeared to the Border Patrol agent to be a  
33 person of color based on his complexion and hair color.  
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37 31. On or about October 15, 2011, near Clallam Bay on the Olympic Peninsula,  
38 Plaintiff Grimes was traveling in a vehicle that was stopped by a Border Patrol agent. During  
39 the stop, the Border Patrol agent approached the passenger window of Plaintiff Grimes' car and  
40 had his hand on his holstered weapon. The agent seemed scared and volatile and yelled at  
41 Plaintiff Grimes to roll down his windows. During the stop, the agent did not provide a reason  
42 for stopping the vehicle. Instead, Plaintiff Grimes was interrogated by the Border Patrol agent  
43 regarding his immigration status. Plaintiff Grimes was wearing his correctional-officer uniform  
44 at the time of this stop.  
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1           32.     On information and belief, the Border Patrol lacked reasonable suspicion to  
2 justify this stop and interrogation. On information and belief, it is alleged that the Border  
3 Patrol selected this vehicle for this stop and interrogation solely because Plaintiff Grimes  
4 appeared to the Border Patrol agent to be a person of color based on his complexion and hair  
5 color.  
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10           33.     Each of the Plaintiffs has a reasonable fear that he is likely to again be stopped  
11 and questioned on the Olympic Peninsula by Border Patrol agents without appropriate  
12 reasonable suspicion for such actions.  
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15           34.     Historical events, current developments, and public statements by Defendants  
16 indicate that Border Patrol agents intend to continue stopping vehicles and interrogating vehicle  
17 occupants on the Olympic Peninsula without appropriate reasonable suspicion.  
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21           35.     Thirty years ago—in 1982—a class action complaint for injunctive and  
22 declaratory relief was filed in the United States District Court for the Eastern District of  
23 Washington, captioned *Nicacio v. United States Immigration & Naturalization Service*, Cause  
24 No. C82-1018 RJM (“*Nicacio*”). The Chief Border Patrol agent for the Blaine Sector, which  
25 has jurisdiction for the Olympic Peninsula, was one of the Defendants in that lawsuit. *See*  
26 *Nicacio v. INS*, 595 F. Supp. 19 (E.D. Wash. 1984), *aff’d*, 769 F.2d 1133 (9th Cir. 1985),  
27 *amended by* 770 F.2d 700 (9th Cir. 1985).  
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37           36.     In *Nicacio*, the District Court found that:

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39           INS agents were regularly conducting roving patrol motor vehicle  
40 stops, detentions and interrogations in the Yakima Valley area of  
41 the Spokane Sector. Many of the stops were based solely on  
42 Hispanic appearance, or the agents’ subjective feelings or  
43 intuition, or the suspected illegal aliens’ innocuous behavior or  
44 appearance traits.  
45

46           Persons stopped were required in most cases to provide  
47 identification or documentation of legal presence in the United  
48 States. Defendants keep no record of automobile stops in which  
49 no illegal aliens are apprehended.  
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51 *Id.* at 21.

1           37. The District Court entered judgment for the plaintiffs and the certified class that  
2 they represented (“All persons of Mexican, Latin, or Hispanic appearance who have been, are,  
3 or will be traveling by motor vehicle on the highways of the State of Washington.”), the  
4 operative portions of which are as follows:  
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9           1. IT IS HEREBY ORDERED: It is unlawful for the  
10 United States Immigration and Naturalization Service, its agents  
11 and employees and Border Patrol agents: To stop, detain, and  
12 interrogate persons of Hispanic appearance traveling by motor  
13 vehicle on the highways of the State of Washington without a  
14 valid search or arrest warrant, or unless they have a particularized  
15 reasonable suspicion based on specific articulable facts and  
16 rational inferences therefrom that the occupant of a vehicle is an  
17 alien unlawfully in the United States. Further, these specific  
18 articulable facts justifying the motor vehicle stops must be based  
19 upon particularized objective factors, and not solely upon the  
20 agents’ individual subjective impressions.  
21

22           2. IT IS FURTHER ORDERED that the United States  
23 Immigration and Naturalization Service, its agents and employees  
24 and Border Patrol agents: Shall not stop, detain, and interrogate  
25 persons of Hispanic appearance traveling by motor vehicle on the  
26 roadways of the State of Washington without documenting in  
27 writing the specific articulable facts on which defendants base  
28 their particularized reasonable suspicion for stopping, detaining  
29 and interrogating these persons. Defendants shall maintain this  
30 documentation for a period of not less than three years.  
31

32 *Id.* at 26.

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34           38. The District Court also required that “[c]opies of [its] Judgment shall be posted  
35 in the various INS and Border Patrol offices within the region and the supervisory personnel of  
36 INS shall proceed forthwith to implement the provisions of this Judgment.” *Id.*  
37

38           39. The defendants in *Nicacio* appealed; the Court of Appeals affirmed. *Nicacio v.*  
39 *INS*, 797 F.2d 700 (9th Cir. 1985). In addition to challenging the merits of the District Court’s  
40 findings and conclusions, the defendants argued that the injunction requiring them to document  
41 the grounds for vehicle stops that did not result in an arrest or seizure of property was  
42 “excessively intrusive and burdensome.” *Id.* at 706. The Court of Appeals held that the record  
43 did not support the defendants’ contention of burden and intrusiveness, and, in so holding,  
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1 stated, “Indeed, it is difficult to imagine a remedy that would be less burdensome to the  
2 government and at the same time serve in any way to prevent future constitutional violations.”

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4 *Id.* Further, the Court of Appeals noted that the District Court would retain jurisdiction and that  
5 the defendants could seek to have the injunction modified “if a change in circumstances so  
6 requires.” *Id.*  
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11 40. The defendants in *Nicacio* never sought to modify or seek relief from the  
12 affirmed judgment.  
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15 41. On September 2, 2004, with reference to *Nicacio*, a request pursuant to the  
16 Freedom of Information Act (“FOIA”) was made for documents regarding the interrogations of  
17 persons who appeared to be Hispanic and were traveling on the State of Washington’s roads  
18 and regarding the required postings of the *Nicacio* judgment. The Department of Homeland  
19 Security, Immigration and Customs Enforcement, responded to this FOIA request on August 3,  
20 2005, indicating that it had “located no records that are responsive to [the] request.” With  
21 reference to *Nicacio*, this FOIA response stated as follows:  
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29 After reviewing *Nicacio v. U.S.*, we found no order requiring a  
30 posting of the decision. It was ordered that INS could not stop,  
31 detain, and interrogate persons of Hispanic appearance traveling  
32 by motor vehicle in the State of Washington without  
33 documenting, in writing, the specific facts for stopping, detaining  
34 and interrogating these persons. INS is required to maintain this  
35 documentation for a period of three years. Records of all  
36 apprehensions are being documented on either an I-44 or an I-213  
37 (Record of Deportable Alien) and then filed in the individual’s  
38 alien file. Furthermore, Detention and Removal Operations  
39 (DRO) does not initiate any stops unless they are targeting a  
40 specific individual with a final order of removal.  
41

42 42. This FOIA response indicates that Defendants are not complying with the  
43 documentation and posting requirements of the judgment in *Nicacio*, especially as to  
44 individuals initially stopped but ultimately not apprehended as removable (for which an I-213  
45 form is used) or where no property was seized (and documented on an I-44 form).  
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1 43. Starting in 2007, Defendants established periodic immigration checkpoints  
2 along roadways on the Olympic Peninsula in order to try to intercept non-citizens without  
3 documented permission to be in the United States.  
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6 44. The Olympic Peninsula checkpoints were set up without advance notice and at  
7 locations where they could not be avoided by travelers who come upon them along the roads on  
8 which they are placed.  
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11 45. Many residents of the area and others who traveled on those roads found these  
12 checkpoints objectionable. *See, e.g.,* Manuel Valdes, *Border Patrol roadblock irks Forks*,  
13 *Seattle Post-Intelligencer*, Sept. 8, 2008.  
14  
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17 46. Public outcry over the Border Patrol's interior checkpoints was severe. In  
18 response to constituent concerns, both United States Senator Maria Cantwell and United States  
19 Representative Norm Dicks wrote to Defendant Napolitano.  
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23 47. In his February 9, 2009 letter, Representative Dicks questioned the value of the  
24 Olympic Peninsula checkpoint strategy and reported constituent complaints that "some degree  
25 of ethnic profiling has been occurring."  
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29 48. Senator Maria Cantwell wrote to Defendant Napolitano on March 27, 2009,  
30 expressing concern about the Border Patrol's overly aggressive police tactics. Specifically, she  
31 reported that constituents have complained about Border Patrol agents targeting "Muslim,  
32 Hispanic, and tribal communities . . . solely on their race, ethnicity, or religion."  
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36 49. In response to the public outcry and threat of legal action, the Border Patrol  
37 ceased operating checkpoints on the Olympic Peninsula.  
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40 50. Instead, however, the Border Patrol began a practice of stopping individual  
41 vehicles for questioning without appropriate reasonable suspicion. Like the checkpoints, this  
42 current practice of "roving patrol" stops as implemented by the Border Patrol is not focused on  
43 persons that the Border Patrol believes to have recently crossed the border from Canada. The  
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1 Border Patrol's practice of roving patrol stops has become increasingly prevalent in recent  
2 years.  
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5 51. It is this policy and practice, which echoes the days of *Nicacio* thirty years ago,  
6 that is the subject of this lawsuit.  
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9 52. It has long been established that a Border Patrol agent violates the Fourth  
10 Amendment of the United States Constitution when the agent stops a vehicle without  
11 reasonable suspicion of wrongdoing. *See, e.g., United States v. Brignoni-Ponce*, 422 U.S. 873,  
12 883 (1975) (“[A] requirement of reasonable suspicion for stops allows the Government  
13 adequate means of guarding the public interest and also protects residents of the border areas  
14 from indiscriminate official interference. Under the circumstances, and even though the  
15 intrusion incident to a stop is modest, we conclude that it is not ‘reasonable’ under the Fourth  
16 Amendment to make such stops on a random basis.”); *see also United States v. Mallides*, 473  
17 F.2d 859, 862 (9th Cir. 1973) (“Neither the Supreme Court nor this court has ever upheld the  
18 legality of a detention based upon an officer’s unsupported intuition, and we refuse to do so  
19 now.”).  
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31 53. The requirement of reasonable suspicion necessitates “specific articulable  
32 facts, together with rational inferences from those facts, that reasonably warrant suspicion  
33 that the vehicle[] contain[s] aliens who may be illegally in the country.” *Brignoni-Ponce*,  
34 422 U.S. at 884.  
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39 54. Reasonable suspicion cannot be based solely upon the ethnic and/or racial  
40 appearance of a vehicle’s occupants. *Id.* at 886.  
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43 55. Moreover, Congress has limited the statutory authority of Border Patrol agents  
44 to stop vehicles away from the border. According to 8 U.S.C. § 1357(a)(3), a Border Patrol  
45 agent is only allowed, “within a reasonable distance from any external boundary of the United  
46 States, to board and search for aliens any . . . vehicle . . . for the purpose of patrolling the  
47 border to prevent the illegal entry of aliens into the United States[.]” (Emphasis added).  
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1           56.     The accompanying regulations further limit a Border Patrol agent by requiring  
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3 that an agent must have a “reasonable suspicion, based upon specific articulable facts, that the  
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5 person being questioned is, or is attempting to be, engaged in an offense against the United  
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7 States or is an alien illegally in the United States” in order to stop a vehicle or participate in a  
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9 vehicle stop. 8 C.F.R. § 287.8(b)(2).

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11           57.     On information and belief, Defendants have implemented a practice of stopping  
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13 vehicles or participating in vehicle stops based on a hunch or intuition, including stops based  
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15 solely on the ethnic and/or racial appearance of the occupants of the vehicle, and thus without  
16  
17 sufficient suspicion on which to base the stop.

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19           58.     On information and belief, Defendants are aware that Border Patrol agents  
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21 are making stops on the Olympic Peninsula based on nothing more than a hunch or  
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23 intuition, and that they have no basis to assume that the cars that they have stopped have  
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25 entered from the border or are carrying persons coming in from the border.

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27           59.     On information and belief, Defendants are aware that the practice of stopping  
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29 vehicles or participating in vehicle stops based on a hunch or intuition results in stops based  
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31 only on the racial and/or ethnic appearance of vehicle occupants.

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33           60.     It is exactly this kind of discriminatory policing on the basis of ethnic and/or  
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35 racial appearance that the Department of Justice flatly condemned in its investigation of the  
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37 Maricopa County Arizona Sheriff’s Office. The Department of Justice found that the Maricopa  
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39 Sheriff’s Office had engaged in racial profiling of Latinos. The report charges that the  
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41 Maricopa County Sheriff’s Office, in the course of immigration-related activities, frequently  
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43 stopped or arrested Latinos without either probable cause or reasonable suspicion. As a result,  
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45 the Department of Homeland Security revoked the authority of the Maricopa County Sheriff’s  
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47 Office to enforce immigration laws pursuant to a prior written agreement under 8 U.S.C.  
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49 § 1357(g), and the Department of Justice threatened legal action against that Sheriff’s Office to  
50  
51 ensure that the discriminatory policing ends.

1           61. On information and belief, Border Patrol agents working on the Olympic  
2 Peninsula have not been given adequate training regarding the circumstances under which  
3 vehicles may be stopped or vehicle occupants interrogated consistent with the United States  
4 Constitution.  
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8           62. Additionally, Defendants have failed to establish policies and procedures that  
9 ensure that Border Patrol agents working on the Olympic Peninsula understand and can  
10 implement their training regarding the circumstances under which vehicles may be stopped or  
11 vehicle occupants interrogated consistent with the United States Constitution. According to a  
12 December 2011 Government Accountability Office report on Border Security, the Border  
13 Patrol lacks a national policy assigning responsibility to ensure that Border Patrol agents are  
14 sufficiently trained.  
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17           63. On information and belief, Defendants are aware that Border Patrol agents are  
18 not completing paperwork that documents the bases for their reasonable suspicion for all stops,  
19 specifically with respect to stops where Border Patrol agents discover that the person who is  
20 stopped is lawfully present in the United States.  
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23           64. On information and belief, the Border Patrol does not have in place a practice  
24 and procedure requiring the completion of paperwork that sets forth the bases of reasonable  
25 suspicion for all stops. The lack of an established policy and procedure encourages or at least  
26 allows for the Border Patrol's stopping of vehicles or participating in vehicle stops that are  
27 based on nothing other than the ethnic and/or racial appearance of a vehicle's occupants.  
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30           65. On information and belief, one factor that has resulted in the ever-increasing  
31 frequency and number of unlawful vehicle stops is the fact that there has been a dramatic  
32 increase in the number of Border Patrol agents situated on the Olympic Peninsula—and the  
33 number of agents continues to increase. Indeed, in the last decade the Port Angeles Office has  
34 grown from less than five agents to over forty agents.  
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1           66.     On information and belief, Border Patrol agents working on the Olympic  
2 Peninsula do not have enough work preventing the “illegal entry of aliens into the United  
3 States,” 8 U.S.C. § 1357(a)(3), across the Canada-United States border and have instead been  
4 directed or given permission to engage or participate in the detention of vehicles and  
5 interrogation of vehicle occupants who have not recently crossed the Canada-United States  
6 border.  
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12           67.     On July 29, 2011, Christian Sanchez provided testimony before the Advisory  
13 Committee on Transparency. Mr. Sanchez testified that he was employed as a Border Patrol  
14 agent, and that he had been stationed at Port Angeles on the Olympic Peninsula since  
15 September 2009. He testified that the number of Border Patrol officers in the Port Angeles  
16 office recently increased from four to forty and is still growing. As a stark example of this  
17 growth, a new Border Patrol office is being constructed in Port Angeles at a taxpayer-funded  
18 cost of around \$6 million. *See, e.g., New Border Patrol Agent in Charge at Port Angeles,*  
19 *Seattle Post-Intelligencer*, February 6, 2012.  
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28           68.     Mr. Sanchez also testified that the Port Angeles office was “in a remote area,  
29 with no border activity.” He testified that this situation has resulted in “high-energy men”  
30 being “bored,” a situation that he characterized as a “bad combination.” He further stated that  
31 the result was “bad morale and a dangerously unhealthy work environment.”  
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37           69.     Mr. Sanchez’s testimony has brought added public attention to the practice and  
38 policy of vehicle stops on the Olympic Peninsula, and in response Border Patrol representatives  
39 have spoken publicly about their “mission” on the Olympic Peninsula.  
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42           70.     Public statements by Border Patrol representatives demonstrates that Border  
43 Patrol’s current policy and practice goes well beyond stopping individuals based upon  
44 reasonable suspicion. Indeed, on August 16, 2011, the *Peninsula Daily News* reported on a  
45 presentation that Station Supervisor Jose Romero made to the Port Angeles Regional Chamber  
46 of Commerce. This story quotes Mr. Romero as saying that agents from his office are in areas  
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1 throughout the Olympic Peninsula “pretty much every day,” and that “We are the only law  
2 enforcement agency charged with protecting the whole country by patrolling the streets every  
3 day.”  
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7 71. This same news article quotes Romero as stating, “Questioning someone’s  
8 immigration status comes partly from a ‘gut feeling’ the agent might have about the person.”  
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11 **CLASS ACTION ALLEGATIONS**  
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13 72. Plaintiffs bring this class action on behalf of themselves and all others similarly  
14 situated. The proposed Class is defined as follows:  
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17 All persons operating or occupying a vehicle on the Olympic  
18 Peninsula who have been or will be in the future stopped,  
19 detained and/or interrogated by Border Patrol, excluding those  
20 vehicle operators or occupants disembarking from the  
21 international ferry in Port Angeles.  
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23 73. Plaintiffs and members of the Class seek class-wide equitable, declaratory and  
24 injunctive relief pursuant to Fed. R. Civ. P. 23(b)(2).  
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27 74. Membership in the Class is so numerous that individual joinder of all of their  
28 members would be impracticable. Such joinder is also impracticable as membership in the  
29 Class will change over time because many members of the Class are unaware of their rights,  
30 and because many members of the Class have limited access to legal services and  
31 representation.  
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35 75. There are many facts and questions of law common to the representative  
36 Plaintiffs and the members of the Class, including the following:  
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41 a. The legality of stopping, detaining, and interrogating Plaintiffs and  
42 members of the Class.  
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44 b. Border Patrol’s policy, procedure, or practice of stopping vehicles or  
45 participating in vehicle stops and interrogating vehicle occupants on the  
46 Olympic Peninsula without appropriate reasonable suspicion.  
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- 1 c. Border Patrol's policy, procedure, or practice of stopping vehicles or  
2 participating in vehicle stops and interrogating vehicle occupants on the  
3 Olympic Peninsula based on hunch or intuition.  
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7 d. Border Patrol's failure to maintain records of all stops, including those  
8 stops where the agents determine that the persons stopped have lawful  
9 status to reside in the United States.  
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13 76. The claims of the individual Plaintiffs are typical of the claims of the members  
14 of the Class.  
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17 77. The individual Plaintiffs will fairly and adequately protect the interests of the  
18 members of the Class. There is no conflict between the interests of the individual Plaintiffs and  
19 members of the Class with respect to the issues in this action.  
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23 78. Plaintiffs have retained legal counsel who are experienced in civil rights and  
24 class action litigation, and who will adequately represent the interests of the members of the  
25 Class as well as those of the individual Plaintiffs.  
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29 79. Defendants have acted on grounds generally applicable to both the individual  
30 Plaintiffs and the members of the Class, making declaratory and injunctive relief appropriate as  
31 to the Class as well as the individual Plaintiffs.  
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35 **FIRST CLAIM FOR RELIEF**  
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37 **Violation of the Fourth Amendment to the United States Constitution**  
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39 80. Plaintiffs repeat and reallege each of the allegations set forth above.  
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41 81. Defendants' unlawful practice of stopping vehicles without reasonable  
42 suspicion, as set forth above, in violation of Plaintiffs' and Class Members' Fourth Amendment  
43 rights, has adversely affected or aggrieved Plaintiffs and Class Members and caused them to  
44 suffer harm. Moreover, Defendants' unlawful practice is subject to repetition and is likely to  
45 continue, placing Plaintiffs and Class Members at an imminent risk of suffering a legal wrong.  
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1           1.       Certify the class according to the definition provided above and appoint the  
2 undersigned as class counsel;  
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4           2.       Declare that Defendants have violated Plaintiffs' and Class Members' rights  
5 under the Fourth Amendment to the United States Constitution;  
6

7           3.       Declare that Defendants' actions are in excess of Defendants' statutory  
8 jurisdiction or authority under 8 U.S.C. § 1357, and its implementing regulations at 8 C.F.R.  
9 § 287;  
10

11           4.       Declare that it is unlawful for Border Patrol agents to stop or participate in the  
12 stop of a vehicle without a valid search or arrest warrant unless the Border Patrol agent has a  
13 particularized reasonable suspicion based upon specific and articulable facts and rational  
14 inferences therefrom that the occupant of the vehicle is a person unlawfully in the United  
15 States;  
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17           5.       Declare that it is a violation of the Fourth Amendment to the United States  
18 Constitution to stop or participate in a stop of a vehicle based solely on the occupants' ethnic  
19 and/or racial appearance;  
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21           6.       Enjoin Defendants or their personnel from stopping vehicles or participating in  
22 stops:  
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24           a.       without reasonable suspicion that the occupants are not legally  
25 present in the United States; and  
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27           b.       until each Border Patrol agent has received training as to what  
28 constitutes reasonable suspicion for a Border Patrol vehicle stop or  
29 for Border Patrol to participate in a vehicle stop; and  
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31           c.       until each Border Patrol agent has demonstrated, through testing, that  
32 he or she understands what constitutes reasonable suspicion to  
33 support a Border Patrol vehicle stop or for Border Patrol to  
34 participate in a vehicle stop.  
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7. Enjoin Defendants' unlawful conduct and require:
    - a. Defendants to maintain complete and accurate records that document that each agent has received training as to what constitutes reasonable suspicion to support a Border Patrol vehicle stop or for Border Patrol to participate in a vehicle stop;
    - b. Defendants to maintain complete and accurate records that document that each agent has been tested, and understands what constitutes reasonable suspicion to support a Border Patrol vehicle stop or for Border Patrol to participate in a vehicle stop; and
    - c. Defendants to prepare documentation for all vehicle stops made by Border Patrol agents or in which Border Patrol agents participate, that sets forth in detail the basis for the reasonable suspicion used to justify the vehicle stop or interrogation of its occupants, and to maintain this documentation in such a manner that it is easily accessible for examination by a special master to ensure compliance, regardless of whether the Border Patrol ultimately determines that the occupant(s) stopped are undocumented citizens;

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8. Appoint a special master, pursuant to Fed. R. Civ. P. 53, to oversee and ensure implementation of the above injunctive measures, and to additionally audit and inspect Defendants' documentation to assure future compliance;

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9. Award Plaintiffs and Class Members the attorneys' fees and costs they incur herein, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A); and

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10. Grant any other relief that the Court may determine to be just and equitable.

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DATED: April 26, 2012

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