



The *Castañon Nava* Settlement Agreement: Screening and Referring Individuals ICE Arrests Without a Warrant or During a Vehicle Stop

This overview provides instructions on how to screen and refer individuals arrested by immigration in potential violation of the settlement agreement from the first Trump Administration in a case called *Castañon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757 (N.D. Ill.).

In that case, community organizations and impacted individuals challenged ICE's practice of conducting warrantless arrests and vehicle stops. In general terms, a warrantless arrest in this context refers to an action taken by immigration officials—without written documentation supporting their action—to arrest a person whom they believe to be unlawfully present in the United States.

As part of the settlement, ICE issued a nationwide policy setting forth requirements for making warrantless arrests and vehicle stops. The policy is attached to [the final settlement agreement](#) and can be found [here](#).

If immigration violates the policy by arresting an individual without a warrant or during a vehicle stop, the individual may qualify for certain relief. If immigration made the arrest in a specific region of the country called the Chicago Area of Responsibility—which includes Illinois, Indiana, Wisconsin, Kentucky, Kansas, and Missouri—the person is eligible for release. **Attorneys for the settlement class will assist individuals arrested by ICE in violation of the settlement in this geographic region.** In other parts of the country, an individual may also be eligible to make certain arguments, likely in a bond hearing, about their eligibility for release.

For possible violations outside this region, your legal options are less clear. People in that circumstance can contact NIJC: information about nationwide violations will help us consider ways to defend the national policy and may protect the impacted individual.

This document: (I) summarizes the new requirements for making a warrantless arrest or vehicle stop; (II) explains how to challenge violations; and (III) provides a path for referring individuals to NIJC.

I. REQUIREMENTS FOR WARRANTLESS ARRESTS & VEHICLE STOPS

The nationwide policy limits when ICE may make a warrantless arrest under immigration laws. In order to justify a warrantless arrest immigration officials must have “probable cause” (meaning a reasonable belief) that an individual is “likely to escape” before an arrest warrant can be obtained. The policy requires ICE to consider specific factors before making an arrest, including (a) the officer's ability to determine the individual's identity; (b) knowledge of prior escapes or evasions of immigration authorities; (c) attempts to flee to avoid being discovered by immigration; and (d) ties to the community, such as a family, home, or employment.

In addition, ICE may only make a vehicle stop if it has “reasonable suspicion”—a standard that is lower than a reasonable belief but that still requires the officer to point to specific facts—that a particular person inside the vehicle does not have lawful immigration status. When making a vehicle

stop, ICE may not tell the driver or the occupants of a vehicle that the purpose for a stop is related to any vehicle or traffic violation.

Under the policy, ICE must document the facts and circumstances surrounding a warrantless arrest or vehicle stop in the individual’s arresting documentation, called an I-213, including:

1. the fact the noncitizen was arrested without an administrative warrant;
2. the location of the arrest (e.g., place of business, residence, vehicle, or a public area);
3. if arrested at a business, whether the individual is an employee of the business; if arrested at a residence, whether the person resides at that place of residence;
4. ties to the community, if known at the time of arrest, including family, home, or employment;
5. the specific, particularized facts supporting the conclusion that the individual was likely to escape before a warrant could be obtained; **and**
6. a statement of how the ICE officers identified themselves as ICE and “state[d] that the person is under arrest and the reason for the arrest.”

With respect to vehicle stops, ICE must also document specific facts that formed the basis for its reasonable suspicion that a person in the vehicle did not have legal status.

II. REMEDIES FOR UNLAWFUL WARRANTLESS ARRESTS OR VEHICLE STOPS

While ICE’s policy applies nationwide, a person is a “class member” entitled to individual remedies if they are arrested without a warrant within the jurisdiction of the ICE Chicago Field Office’s Area of Responsibility, meaning **Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas**. Class members will typically be individuals who were arrested in the community and not people who were transferred to immigration custody from criminal custody or who were taken into custody as part of a probation check-in.

If a class member is arrested contrary to the terms of the policy, the individual must be released from ICE custody as soon as practicable, without paying a bond or being subject to conditions of release, subject to limited exceptions.

In the event of a violation, Attorneys for the settlement class will assist in seeking release, and any other available remedies from the court.

For individuals outside of the Chicago Area of Responsibility, please send us information regarding potential violations and we will coordinate with attorneys in those areas.

III. PROCESS FOR SCREENING AND REFERRING INDIVIDUALS

The policy is available on NIJC’s website, and it is attached to this document. A list of questions that NIJC will have about a potential referral is provided on the referral sheet that is also attached. Any one can make a referral on behalf of themselves or a community member. The referral should include sufficient information to identify and locate the individual, contact a friend or family member, and explain the circumstances surrounding the person’s being taken into immigration custody.

To make a referral, you can follow [THIS LINK](#), and answer the questions there, which are the same as the questions below on the referral form. Or you can fill out the referral form below and email the completed form to litigation@immigrantjustice.org, with the title “Warrantless Arrest” in the subject line. If you have it, please attach the individual’s I-213 and/or any other supporting documentation.

Referral Form: Individuals Detained by ICE Following a Warrantless Arrest or Vehicle Stop

ARRESTED PERSON'S NAME: _____

A NUMBER: _____

DATE OF BIRTH: _____

COUNTRY OF ORIGIN: _____

CURRENT LOCATION: _____

CONTACT INFORMATION of Family or Friend of Arrested Person (please include name, relationship to arrested person, and phone number):

GEOGRAPHIC LOCATION OF ICE ARREST: Where (city and state) did ICE arrest the person?

PLACE OF ARREST: Where (physically) was the person arrested by ICE? (e.g., home, work, vehicle, public area):

Has the person been previously deported/removed from the United States? **Y / N / Don't Know**

Does the person have an existing removal order? **Y / N / Don't Know**

DESCRIPTION OF ARREST (e.g., summary of any questioning; whether ICE stated they had a warrant; whether ICE was wearing a uniform and identified themselves; whether ICE asked for consent to question and explained that the person was under arrest; any use of force or intimidation) Please use extra pages if necessary:

COMMUNITY TIES (e.g., family members that the person lives with or cares for; length of residence in the United States; home ownership or rental; employment history) Please use extra pages if necessary:

Please email this form and any supporting documents (including the I-213, if available) to the National Immigrant Justice Center (NIJC) at litigation@immigrantjustice.org, with the title "Warrantless Arrest" in the subject line.