UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANTHONIA NWAORIE, on behalf of herself and all others similarly situated, *Plaintiff*, v. U.S. CUSTOMS AND BORDER PROTECTION; UNITED STATES OF AMERICA; KEVIN McALEENAN, Commissioner, U.S. Customs and Border Protection, sued in his official capacity, *Defendants*.	Civil Action No. 4:18-cv-1406

COMPLAINT FOR RETURN OF PROPERTY AND CLASS-WIDE AND INDIVIDUAL INJUNCTIVE AND DECLARATORY RELIEF

Introduction

1. This class-action lawsuit challenges the U.S. Customs and Border Protection's ("CBP") policy or practice of demanding that owners of seized property waive their constitutional and statutory rights, and accept new legal liabilities, by signing a hold harmless agreement ("Hold Harmless Agreement") in order to obtain the return of their property. Named Plaintiff Anthonia Nwaorie ("Plaintiff" or "Anthonia"), the owner and claimant of over $40,000 of seized cash, seeks declaratory and injunctive relief on behalf of herself and all others similarly situated for violations of the Civil Asset Forfeiture Reform Act ("CAFRA"), 18 U.S.C. § 983, and the Attorney General's regulation promulgated thereunder, 28 C.F.R. § 8.13, as well as their due-process rights under the Fifth Amendment to the U.S. Constitution.

2. As Anthonia was boarding an international flight at Houston's George Bush Intercontinental airport to travel to Nigeria on October 31, 2017, CBP officers stopped her and seized $41,377 in U.S. Currency (the "seized cash") from her for an alleged violation of currency reporting requirements. All of her seized cash was lawfully earned and intended for lawful purposes. Anthonia was traveling to Nigeria to start a medical clinic for women and children; more than $30,000 of the seized cash was money she had saved over several years for that purpose from her income as a nurse. The remainder was money from family in the United States to deliver to family in Nigeria to pay for medical expenses, retirement expenses, home repair/remodeling, and the like. Like most travelers, Anthonia was unaware of the currency reporting requirements when *leaving* the United States.

3. After receiving a CAFRA seizure notice from CBP in November 2017, Anthonia timely submitted a claim under CAFRA on December 12, 2017, requesting that CBP refer the case to the U.S. Attorney's Office (USAO) for court action, thus electing a judicial forfeiture proceeding rather than an administrative forfeiture proceeding. The USAO declined to pursue forfeiture of the seized cash and the government failed to timely file a forfeiture complaint within the 90-day period required under CAFRA. *See* 18 U.S.C. § 983(a)(3)(A). At this point, CAFRA automatically required that CBP "promptly release" the seized property. *See* 18 U.S.C. § 983(a)(3)(B); 28 C.F.R. § 8.13.

4. But rather than promptly releasing the seized cash to Anthonia as required under federal law, CBP instead sent Anthonia a letter dated April 4, 2018, conditioning the return of the seized cash on Anthonia signing a Hold Harmless Agreement that waives her constitutional and statutory rights, and requires her to accept new legal liabilities, such as indemnifying the government for any claims brought by others related to the seized property. The letter stated that

if Anthonia did not sign the Hold Harmless Agreement within 30 days from the date of the letter, "administrative forfeiture proceedings will be initiated." On the other hand, if she signed the Hold Harmless Agreement, the letter said she would be mailed a "refund check" for the full amount of the seized cash in 8 to 10 weeks.

5. This Complaint is filed against CBP, Kevin McAleenan acting in his official capacity as CBP Commissioner, and the Unites States of America ("Defendants") and raises both class claims and individual claims.

6. The two class claims challenge Defendants' policy or practice of demanding that claimants (property owners or those with a possessory interest in seized property) sign Hold Harmless Agreements waiving their rights before Defendants will return property that Defendants are automatically required to return under CAFRA. In Claim One, Plaintiff alleges that Defendants' policy or practice exceeds Defendants' statutory authority and violates CAFRA, 18 U.S.C. § 983(a)(3)(B), and the Attorney General's regulation promulgated thereunder, 28 C.F.R. § 8.13. In Claim Two, Plaintiff alleges that Defendants' same policy or practice violates the Due Process Clause of the Fifth Amendment by imposing unconstitutional conditions. Specifically, Claim Two challenges Defendants' conditioning a "benefit" (the automatic release of the property under CAFRA, along with the constitutional right to possess property that one owns) on the waiver of other constitutional rights, such as the First Amendment right to petition the government for a redress of grievances by bringing suit against the government. To redress and prevent these systematic abuses, Plaintiff seeks class-wide injunctive and declaratory relief under Federal Rule of Civil Procedure 23(b)(2), including a court order: (1) declaring unlawful and unconstitutional Defendants' policy or practice of conditioning the return of property that Defendants are automatically required to return under

CAFRA on claimants signing Hold Harmless Agreements; (2) enjoining Defendants from continuing to engage in this practice; (3) declaring that any Hold Harmless Agreements signed by class members under these conditions are void; and (4) requiring Defendants to return property to any class members whose property has not been returned because they did not sign a Hold Harmless Agreement.

7. Plaintiff also brings two individual claims. In Claim Three, Plaintiff demands the immediate return of $41,377 seized from her, with interest, because the government has failed to timely file its forfeiture complaint and is thus automatically required to return the seized cash under 18 U.S.C. § 983(a)(3)(B). In Claim Four, Plaintiff seeks declaratory and injunctive relief to prevent Defendants from targeting her for additional, intrusive screening based on the October 31, 2017, seizure without affording her adequate notice and a meaningful opportunity to be heard, consistent with her due-process and equal-protection rights under the Fifth Amendment.

8. In essence, this case challenges CBP's systematic policy or practice of demanding that owners of seized property waive their constitutional and statutory rights, and accept new legal liabilities, as a condition of returning property that should be automatically returned under CAFRA. Plaintiff has filed this lawsuit to put CBP's policy or practice to an end, to void any Hold Harmless Agreements signed by class members as a result of this policy or practice, to recover Anthonia's seized cash and any other seized property that has not been returned to class members because they did not sign Hold Harmless Agreements, and to stop CBP from targeting her for additional, intrusive screening without giving her an adequate opportunity to challenge her classification.

Jurisdiction & Venue

9. This Court has jurisdiction over this action under 28 U.S.C. § 1331, as Plaintiff's claims arise under federal law.

10. Plaintiff brings her class-action claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 702, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, as well as "directly under the constitution," *Porter v. Califano*, 592 F.2d 770, 781 (5th Cir. 1979). Plaintiff seeks injunctive and declaratory relief against CBP's unlawful and unconstitutional policy or practice of demanding that members of the class—owners or other claimants of seized property that CBP is automatically required to "promptly release" under CAFRA—waive their constitutional and statutory rights, and accept new legal liabilities by signing Hold Harmless Agreements before their property will be returned to them.

11. Plaintiff brings her individual claim for the immediate return of her seized property under Federal Rule of Criminal Procedure 41(g).

12. Plaintiff brings her individual claim for declaratory and injunctive relief against Defendants under the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, as well as "directly under the constitution," *Califano*, 592 F.2d at 781.

13. Venue is proper in the United States District Court for the Southern District of Texas under 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1)(B), as well as Federal Rule of Criminal Procedure 41(g), because the seizure of Plaintiff's property occurred in Houston, Texas. Houston is located in the Houston Division, Southern District of Texas.

The Parties

A. Plaintiff

14. Plaintiff Anthonia Nwaorie is an adult citizen of the United States and a resident of Katy, Texas.

15. Anthonia was born and raised in Imo State, Nigeria. She moved to the United States from Nigeria in 1982.

16. Anthonia obtained her license as a registered nurse in 1983.

17. Anthonia became a United States citizen in 1994.

18. Anthonia has a possessory interest in all $41,377 of the seized cash, and she is the owner of $33,977 of that seized cash.

19. The remaining $7,400 belongs to Anthonia's brother Brendan Okoro, a U.S. citizen who also lives in the United States. He asked Anthonia to take the money to family members in Nigeria to help with retirement expenses and a home repair/remodeling project.

20. Anthonia planned to use approximately $30,000 of the seized cash that belonged to her (the $33,977) to build and operate a medical clinic for women and children in her birthplace, Imo State, Nigeria.

21. Anthonia planned to use the remainder of her $33,977 for travel and living expenses while in Nigeria, and to assist relatives there who had incurred unexpected medical expenses.

22. All of the $41,377 in seized cash remains in CBP's possession.

23. CBP has conditioned the release of the seized cash on Anthonia signing and returning a Hold Harmless Agreement by May 4, 2018—30 days from the date of CBP's April 4, 2018 letter.

24. To date, CBP has held Anthonia's property for over six months and says it will be another 8-10 weeks before it returns her property even if she signs the Hold Harmless Agreement.

25. In addition to her individual claims, Plaintiff seeks to represent a class of similarly situated claimants (owners of seized property or those who have a possessory interest in seized property) who were, are, or will be subject to CBP's policy or practice of conditioning the return of seized property on signing a Hold Harmless Agreement, despite CBP's automatic obligation to "promptly release" the seized property under CAFRA.

B. The Putative Plaintiff Class

26. The putative plaintiff class would consist of:

> All claimants to seized property for which CBP has pursued, or will in the future pursue, civil forfeiture under 18 U.S.C. § 983, and as to which:
> (1) within 90 days after a claim has been filed under 18 U.S.C. § 983(a)(2), the United States government:
> a. declines to pursue forfeiture and thus declines to file a complaint for forfeiture under 18 U.S.C. § 983(a)(3)(A); or
> b. does not file a complaint for forfeiture under 18 U.S.C. § 983(a)(3)(A) for any other reason; and
> c. has not taken any other action under 18 U.S.C. § 983(a)(3) that would avoid its obligation to file a forfeiture complaint within 90 days after a claim has been filed, namely: obtaining an extension from the court in the district in which the complaint would be filed, obtaining a criminal indictment containing an allegation that the property is subject to forfeiture and taking the steps necessary to maintain custody of the property, or returning the property pending filing of a complaint; and
> (2) CBP demands that the claimant sign a Hold Harmless Agreement waiving the claimant's constitutional rights as a condition of releasing the seized property.

C. Defendant U.S. Customs and Border Protection

27. Defendant U.S. Customs and Border Protection ("CBP") is a federal agency charged with enforcing U.S. customs laws at ports of entry and departure from the United States.

28. Annually, CBP conducts at least 120,000 seizures of property. Based on data from CBP's own seizure-tracking database, SEACATS, CBP conducted at least 125,583 seizures in FY 2016, at least 124,318 seizures in FY 2015, and at least 120,019 seizures in FY 2014. (These are the most recent fiscal years for which data is available.)

29. Upon information and belief, CBP pursues civil forfeiture (administrative or judicial) for a majority of these seizures.

30. Upon information and belief, each year, some of the forfeiture cases CBP refers to the relevant U.S. Attorney's Office (USAO) for judicial proceedings are either declined by the USAO, which does not timely file a forfeiture complaint, or the USAO otherwise fails to timely file a forfeiture complaint under 18 U.S.C. § 983(a)(3) and does not take any other action under 18 U.S.C. § 983(a)(3) that would avoid its obligation to file a forfeiture complaint within 90 days after a claim has been filed, namely: obtaining an extension from the court in the district in which the complaint would be filed, obtaining a criminal indictment containing an allegation that the property is subject to forfeiture and taking the steps necessary to maintain custody of the property, or returning the property pending filing of a complaint.

31. When the circumstances described above in Paragraph 30 occur, CBP is automatically required by both 18 U.S.C. § 983 (a)(3)(B), and the Attorney General's regulation promulgated thereunder, 28 C.F.R. § 8.13, to promptly release the property by promptly notifying the person with a right to immediate possession of the property and informing them to contact the property custodian for release of the property (unless there is an independent basis for continued custody of the property).

32. But CBP instead follows a policy or practice of demanding that property owners or other claimants sign Hold Harmless Agreements prepared by CBP as a condition of returning

the property, even when CBP is automatically required to return the seized property under CAFRA because the USAO has declined to pursue the case and/or failed to timely file a forfeiture complaint under CAFRA.

33. CBP followed that policy or practice in the instant case, by conditioning the release of Anthonia's property on her signing a Hold Harmless Agreement, even though CBP is automatically required to "promptly release" her property under CAFRA without any such preconditions.

34. In the circumstances described above in Paragraph 30, CAFRA prohibits CBP from "tak[ing] any further action to effect the civil forfeiture of such property in connection with the underlying offense." 18 U.S.C. § 983 (a)(3)(B).

35. But CBP nonetheless follows a policy or practice of threatening to proceed with administrative forfeiture of the property if the claimant does not sign the Hold Harmless Agreement within a specified period of time, usually 30 days.

36. CBP followed that policy or practice in the instant case, by threatening that "administrative forfeiture proceedings will be initiated" if Anthonia failed to sign the Hold Harmless Agreement within 30 days of April 4, 2018.

D. Defendant United States of America

37. Defendant United States of America is the national federal government established by the United States Constitution. As such, it is subject to limitations imposed by the United States Constitution—including, as relevant here, the First, Fifth, and Eighth Amendments.

38. The statutory and constitutional violations at issue involve the actions of federal agencies and employees and are therefore ultimately chargeable to the federal government itself.

E. Defendant Kevin McAleenan

39. Defendant Kevin McAleenan is the current Commissioner of CBP.

40. As Commissioner, Defendant McAleenan is responsible for overseeing the operations of CBP, including the policies or practices that are challenged in this litigation.

41. Defendant McAleenan is sued in his official capacity.

Individual Factual Allegations

42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in ¶¶ 1 through 41 above.

A. Anthonia's Clinic

43. Since 2014, Anthonia has traveled annually to Imo State, Nigeria, where she was born and raised, to operate a temporary, week-long free medical clinic, typically hiring a few local nurses to assist her at locations she rents, such as an open-air church hall. The focus of the clinic has been providing medical care for women and children who would not otherwise have access to health care.

44. Anthonia's personal mission is to open a permanent medical clinic in Imo State, Nigeria to provide medical care for women and children. The clinic would not be free for those who could afford to pay, but no one would be turned away for inability to pay.

45. Anthonia's father donated land that she could use for the clinic, but she needed to save up funds to demolish the existing building on the land and construct a new building for the clinic. She also needed funds to hire nurses and other staff to keep the clinic operating year-round, as well as to pay for supplies, equipment, and other operating expenses.

46. Anthonia saved money for several years from her income as a nurse, withdrawing up to $5,000 at a time to set aside for safekeeping until she had finally set aside enough money to open the clinic.

47. On October 31, 2017, Anthonia left her home for Houston's George Bush Intercontinental Airport ("IAH"), planning to fly to Nigeria to pursue her mission of opening a medical clinic for women and children.

48. Anthonia brought $41,377 in cash with her on the trip, with about $4,000 in her purse and the remainder in her carry-on luggage.

B. Lack of Notice about the Reporting Requirement

49. It was legal for Anthonia to travel with this amount of cash, including internationally, so long as she followed the federal currency reporting requirements.

50. Anthonia had entered the United States through U.S. Customs many times and was aware of the currency reporting requirement when *entering* the United States, but was unaware of the requirement to report currency of more than $10,000 when *departing* the United States.

51. Anthonia did not see any signs or hear any announcements at IAH that would have informed her about the currency reporting requirement for travelers *departing* the U.S.

52. Information about the currency reporting requirement for travelers *departing* the United States is not found in lists of tips for international travelers on government websites such as: CBP's "U.S. Traveler's Top Ten Travel Tips" webpage, https://www.cbp.gov/travel/us-citizens/know-before-you-go/us-travelers-top-ten-travel-tips; the list of "Documents You Will Need" (or elsewhere) on CBP's "Before Your Trip" webpage, https://www.cbp.gov/travel/us-citizens/know-before-you-go/your-trip;

the list of required documents on the State Department's "Traveler's Checklist" webpage: https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-checklist.html; TSA's "Top Travel Tips," https://www.tsa.gov/travel/travel-tips/; TSA's "Travel Checklist," https://www.tsa.gov/travel/travel-tips/travel-checklist; or TSA's "FAQ" for travelers, https://www.tsa.gov/travel/frequently-asked-questions.

53. Moreover, even if Anthonia had been aware of the requirement, complying with the reporting requirement would have been quite onerous.

54. Treasury Department regulations require that currency reports for travelers leaving the United States "shall be filed with the Customs officer in charge at any port of entry or departure" and "shall be filed . . . at the time of departure . . . from the United States." 31 C.F.R. § 1010.306. Only reports for currency "not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry." *Id.*

55. The required reporting form, FinCEN Form 105, states the same requirements: "Travelers carrying currency or other monetary instruments with them shall file FinCEN Form 105 . . . at the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure."

56. But according to CBP's website, CBP's office for IAH is not in the IAH terminal or even located on airport property. *See* https://www.cbp.gov/contact/ports/houston-airport. Instead, it is at 2350 N. Sam Houston Pkwy E. #900, Houston, TX 77032-3100, about one mile due south from the end of the IAH runway, on the ninth floor of a building on the opposite side of the Sam Houston Tollway from IAH.

57. According to Google Maps, the location of the CBP office for IAH is a 6.7-mile drive from IAH International Terminal E, from which Anthonia's flight departed.

C. The Seizure

58. On October 31, 2017, Anthonia was boarding an international flight in Terminal E at IAH, when she was stopped on the jetway by CBP officers and questioned.

59. Among the first questions she was asked were to the effect of: "How long have you been in the U.S.?"; "How many people are you carrying money for?"; "How many people are you traveling with?"; and "How much money do you have on you?"

60. Because the officers began by asking her how long she had been in the U.S., Anthonia initially believed she was being questioned for immigration-related purposes.

61. Anthonia was offended that the officers assumed she was not a U.S. citizen and suspected that they were discriminating against her based on her appearance, race, and national origin.

62. The CBP officers who confronted Anthonia on the jetway did not clearly inform her about the currency reporting requirement, and she did not understand the point of their questioning.

63. When asked, "How much money do you have on you?", Anthonia understood them to be asking about the amount of cash on her person. She replied that she had $4,000, wich was the amount of cash in her purse.

64. The CBP officers then asked Anthonia to fill out a form reporting the amount of money she had on her and she again wrote down $4,000, for the same reason.

65. The CBP officers then searched her carry-on luggage and found the remaining cash.

66. The CBP officers seized the entirety of the money Anthonia was carrying in her purse and carry-on luggage: $41,377.

67. During the search of her luggage on October 31, 2017, CBP officers cut open her large duffle bag that was secured with a luggage lock, even though Anthonia had provided them with a key for the luggage lock.

68. With a large hole in it, the duffle bag was rendered worthless and Anthonia can no longer use it.

69. As the result of being stopped and detained by CBP, Anthonia missed her international flight. United Airlines refused to refund her the money for ticket.

70. Although all of her money had been seized, Anthonia used a credit card to buy a new ticket and flew to Nigeria on November 9, 2017. She no longer had funds to open a permanent clinic as planned, but she knew that people expected her to come and she still wanted to operate a week-long free clinic to offer medical care for those who could not afford it.

D. Targeted for Additional Screening

71. Upon information and belief, Anthonia has been targeted for additional screening by CBP when she travels internationally as a result of the October 31, 2017 seizure. This additional screening by CBP is far more intrusive and invasive than the normal screening process when passing through Customs.

72. When she returned to the United States from her trip to Nigeria in December 2017, CBP officers directed Anthonia to a separate lane from other passengers and subjected her to additional, particularly intrusive and invasive screening.

73. During that screening, CBP officers ransacked her luggage and emptied everything out of her bags. One CBP officer slit open the bottom of her leather purse in order to search the lining, rendering it unusable.

74. During that humiliating screening, one CBP officer told Anthonia that he knew she had previously "had her money seized," and said that CBP would "follow her wherever she goes" and subject her to this invasive treatment every time she travels internationally.

E. Communications Between CBP and Anthonia After the Seizure

75. On November 6, 2017, CBP sent Anthonia a CAFRA Notice of Seizure, giving her until December 13, 2017 to respond if she wanted to request a referral to the USAO for judicial forfeiture proceedings, among other options. *See* Exhibit A, Notice of Seizure and Information to Claimants CAFRA Form.

76. Anthonia elected for a judicial forfeiture proceeding under CAFRA, asking CBP to "send the case to the U.S. Attorney for court action," and filed a CAFRA claim form stating her interest in the seized cash. *See* Exhibit B, Election of Proceedings – CAFRA Form and CBP CAFRA Seized Asset Claim Form.

77. Anthonia's CAFRA claim form and request for judicial forfeiture proceedings were timely filed with CBP on December 12, 2017. *See* Exhibit C, April 4, 2018 Letter from CBP.

78. Under 18 U.S.C. § 983(a)(3)(A), the federal government had 90 days from the filing of Anthonia's claim on December 12, 2017, to file a complaint for forfeiture.

79. The government's deadline to file a forfeiture complaint thus expired on March 12, 2018.

80. But the government never filed a forfeiture complaint.

81. The government also did not take any other action under 18 U.S.C. § 983(a)(3) that would avoid its obligation to file a forfeiture complaint within 90 days after a claim has been filed, namely: obtaining an extension from the court in the district in which the complaint would

be filed, obtaining a criminal indictment containing an allegation that the property is subject to forfeiture and taking the steps necessary to maintain custody of the property, or returning the property pending filing of a complaint.

82. Under CAFRA, if the government fails to file a complaint "before the time for filing a complaint has expired" (and does not obtain a criminal indictment containing an allegation that the property was subject to forfeiture), "the Government ***shall*** promptly release the property pursuant to regulations promulgated by the Attorney General and ***may not take any further action to effect the civil forfeiture of such property*** in connection with the underlying offense." 18 U.S.C. § 983(a)(3)(B)(ii) (emphasis added).

83. Thus, once the United States failed to timely file a forfeiture complaint in this matter (or obtain a criminal indictment containing an allegation that the property was subject to forfeiture), CBP was obligated under 18 U.S.C. § 983(a)(3)(B) to "promptly release the property pursuant to regulations promulgated by the Attorney General" and, under those regulations, CBP was obligated to "promptly notify the person with a right to immediate possession of the property"—which is Anthonia in this case—"informing that person to contact the property custodian within a specified period for release of the property." 28 C.F.R. § 8.13(b).

84. Once the United States failed to timely file a forfeiture complaint in this matter (or obtain a criminal indictment containing an allegation that the property was subject to forfeiture), CBP was also obligated to "not take any further action to effect the civil forfeiture of such property in connection with the underlying offense" under 18 U.S.C. § 983(a)(3)(B).

85. Instead, on April 4, 2018, CBP mailed Anthonia a letter demanding that she sign an enclosed Hold Harmless Agreement before CBP would return her seized cash. Ex. C.

86. In the April 4, 2018 letter, CBP informed Anthonia that the USAO had "declined" her forfeiture case, but incorrectly claimed that "[b]ased on declination from the USAO, it is our decision to remit the currency seizure in full," and also referred to its offer to return the seized cash as a "remission decision." Ex. C.

87. In fact, this was not a "remission" and CBP had no "decision" to make, nor any discretion not to release the property.

88. Under these circumstances, CAFRA *requires* CBP to "promptly release the property" once the time to file the forfeiture complaint has expired, 18 U.S.C. § 983(a)(3), which occurred on March 12, 2018, over three weeks *before* the date of the letter.

89. According to CBP's April 4, 2018 letter, if Anthonia signs the Hold Harmless Agreement, a "refund check . . . should be mailed to you within 8 to 10 weeks." Ex. C. But if she refuses to sign, or otherwise does not return the signed agreement in 30 days, "administrative forfeiture proceedings will be initiated" against the seized cash. Ex. C.

90. In fact, CBP cannot initiate administrative forfeiture proceedings once a claimant has timely filed a claim form electing for judicial forfeiture proceedings under 18 U.S.C. § 983(a)(2), as Anthonia did here, and must either initiate judicial forfeiture proceedings by timely filing a complaint in federal court not later than 90 days after the claim was filed (or obtaining a criminal indictment containing an allegation that the property is subject to forfeiture) or it must "promptly release the property" and "may not take any further action to effect the civil forfeiture of such property" under 18 U.S.C. § 983(a)(3).

F. CBP's Hold Harmless Agreement for $41,377

91. CBP's April 4, 2018 letter attaches a Hold Harmless Agreement ("CBP's Hold Harmless Agreement for $41,377"), *see* Exhibit D, and the letter states that "[b]y accepting this

remission decision, you understand that you are waiving any claim to attorney's fees, interest or any other relief not specifically provided for in this manner." Ex. C.

92. In fact, by signing CBP's Hold Harmless Agreement for $41,377, Anthonia would also waive her constitutional and statutory rights, and assume new legal liabilities—including indemnifying the federal government from claims brought by others—all in order to obtain the return of property that CBP is automatically required to return under CAFRA. *See* Ex. D.

93. Specifically, CBP's Hold Harmless Agreement for $41,377, Ex. D, requires Anthonia to agree to:

a. release and forever discharge "the United States, its officers, agents, servants, and employees, their heirs, successors, or assigns," ("the United States et al.") "from any and all actions, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and or demands whatsoever in law or equity . . . in connection with the detention, seizure, and/or release by the Customs and Border Protection of the above listed property."

b. "hold and save the [United States et al.] harmless from **any claims by any others**, including costs and expenses for or on account of any and all lawsuit or claims of any character whatsoever in connection with the detention, seizure, and/or release by the Customs and Border Protection of the above listed property" (emphasis added).

c. "reimburse the United States, its employees or agents from any necessary expenses, attorney's fees, or costs expenses incurred in the enforcement of any part of this agreement within thirty (30) days after receiving written notice."

d. "waiv[e] any claim to attorney's fees, interest, or any other relief not specifically provided for in this decision."

94. It would violate the terms of CBP's Hold Harmless Agreement for $41,377 for Anthonia to: seek interest on the seized cash from the federal government, bring any legal or equitable claims against the federal government or its agents seeking compensation and other damages for the damaged duffel bag and the wasted airline ticket, pursue other claims to vindicate any other rights that were violated during the seizure of her seized cash, initiate any administrative proceedings related to the seizure with CBP or other federal agencies, appeal any administrative decisions resulting from those administrative proceedings, or seek any other legal or equitable relief related to the seizure, detention, or release of the seized cash.

95. If Anthonia signs CBP's Hold Harmless Agreement for $41,377 and then initiates administrative proceedings by requesting public records under the Freedom of Information Act ("FOIA") from CBP or other federal agencies related to the seizure, detention, or release of her seized cash, Anthonia faces the risk that a court would find that doing so violates CBP's Hold Harmless Agreement for $41,377.

96. If Anthonia signs CBP's Hold Harmless Agreement for $41,377 and then files a lawsuit challenging a denial or other deficient response to any FOIA request by CBP or other federal agencies related to a request for public records about the seizure, detention, or release of her seized cash, Anthonia faces the risk that a court would find that doing so violates CBP's Hold Harmless Agreement for $41,377.

97. If Anthonia signs CBP's Hold Harmless Agreement for $41,377 and then initiates any administrative proceeding that challenges, appeals, or otherwise seeks to correct information or change her status with respect to being targeted for additional screening by CBP or other

federal agencies as a result of the seizure, detention, or release of her seized cash, including a request for redress under the Department of Homeland Security's Traveler Redress Inquiry Program ("DHS-TRIP"), Anthonia faces the risk that a court would find that doing so violates CBP's Hold Harmless Agreement for $41,377.

98. If Anthonia signs CBP's Hold Harmless Agreement for $41,377 and then files a lawsuit challenging the result of any administrative proceeding regarding her status with respect to being targeted for additional, intrusive screening by CBP or other federal agencies as a result of the seizure, detention, or release of her seized cash, including the outcome of a request for redress under DHS-TRIP, Anthonia faces the risk that a court would find that doing so violates CBP's Hold Harmless Agreement for $41,377.

99. If signed, CBP's Hold Harmless Agreement for $41,377 would thus prevent Anthonia from exercising her statutory and First Amendment rights to petition the government for a redress of grievances by filing a lawsuit or any other "actions, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and or demands whatsoever in law or equity" against the United States and others, seeking relief related to the seizure of her seized cash and the government's treatment of her and her property.

100. If signed, CBP's Hold Harmless Agreement for $41,377 would prevent Anthonia from exercising her statutory and due-process rights to seek relief for any injuries related to the seizure of her seized cash and from exercising her constitutionally protected property rights to interest and compensation for damages related to the seizure of her seized cash.

101. CBP's Hold Harmless Agreement for $41,377 thus requires Anthonia to surrender constitutional rights—including the right to petition, due-process rights, equal-protection rights, and property rights—in order to have her constitutional right to possess her property restored,

even though CBP is automatically required to promptly return that same property, independent of this agreement, under CAFRA.

102. Moreover, although CBP's Hold Harmless Agreement for $41,377 claims it is "made in consideration of the return of the property described above," CBP is already required to "promptly release" the $41,377 under CAFRA, so no consideration is offered for her waiver of these rights.

103. Incredibly, CBP's Hold Harmless Agreement for $41,377 also purports to require Anthonia to assume **two new legal liabilities** in order to secure the return of property that CBP is automatically obligated to return under CAFRA, and for which no consideration is provided. Under this agreement, Anthonia must:

a. indemnify the United States and others from any claims brought by third parties that are somehow related to her seized cash; and

b. reimburse the United States, its employees or agents from any expenses incurred enforcing the agreement.

Injury to Plaintiff

104. CBP's seizure of her seized cash on October 31, 2017 injured Anthonia, as described below.

105. CBP's continued retention of her seized cash since the seizure constitutes an ongoing injury to Anthonia, as described below.

106. Anthonia has been injured by CBP refusing to return her seized cash, even though CAFRA automatically requires that CBP return the seized cash in these circumstances, unless she signs a Hold Harmless Agreement, thereby waiving her constitutional and statutory rights, and assuming additional legal liabilities.

107. Anthonia is injured by having the "benefit" of the return of her seized cash—a "benefit" that CBP is automatically obligated to perform under CAFRA—conditioned on the waiver of other constitutional rights, including her First Amendment right to petition the government for a redress of grievances, due process, equal protection of the law, and property rights, including her rights to interest, attorney's fees and costs, and damages.

108. Anthonia is injured by being forced to trade one constitutional right—the right to the possession of her own property—for her waiver of other constitutional rights.

109. Because CBP seized Anthonia's savings as she was boarding her flight to travel to Nigeria on October 31, 2017, and has continued to retain her seized cash since that time, Anthonia has incurred significant opportunity costs: She has been unable to achieve her dream of opening a permanent medical clinic in Imo State, Nigeria, and thus has been unable to provide ongoing medical care to women and children who do not have access to medical treatment.

110. But for CBP's seizure and continued retention of the $41,377, Anthonia would have been able to use the majority of the seized cash (approximately $30,000) to build and open her clinic in Nigeria. Without the money, however, the land donated by her father has been left unused and her would-be patients have gone untreated.

111. But for CBP's seizure and continued retention of the $41,377, Anthonia would have been able to distribute the remainder of her seized cash to her relatives in Nigeria as intended, in order to assist with medical expenses, retirement expenses, and home repair/remodeling.

112. Throughout the time Anthonia's money has been in CBP's custody, Anthonia has not only been unable to use her seized cash for these intended purposes, she has also been losing interest on the seized cash.

113. Upon information and belief, but for CBP's conduct concerning Anthonia on October 31, 2017, Anthonia would not have been targeted for additional, intrusive screening by CBP when she travels internationally.

114. Being subject to additional, intrusive screening every time she travels internationally is humiliating and extremely inconvenient.

115. Being subject to additional, intrusive screening every time she travels internationally unjustifiably infringes on Anthonia's constitutionally protected rights and liberty interests including her right to privacy, her right to be free from unreasonable searches and seizures, and her right to travel.

116. Being subject to additional, intrusive screening every time she travels internationally will substantially inhibit Anthonia's ability to travel to Nigeria to visit family; to open, operate and oversee her planned medical clinic in Nigeria; and to continue with her mission to expand access to medical care in Nigeria.

117. Twice now, CBP has sliced open one of Anthonia's bags during this intrusive screening, rendering her bags unusable. If CBP continues to destroy her luggage as part of this intrusive screening process, she will have to continually replace her luggage every time she travels, incurring burdensome and unnecessary expenses and inconvenience that other travelers do not face.

Class Action Allegations

118. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in ¶¶ 1 through 117 above.

119. Defendants' conduct toward Plaintiff is part of a broader policy or practice, in which Defendants require claimants of seized property to sign Hold Harmless Agreements as a

condition of returning the property even when CBP is automatically required to "promptly release" the property under CAFRA.

120. Plaintiff and members of the putative class have faced, or will face, the following abusive pattern of behavior by Defendants: First, CBP seizes their property (or another law-enforcement agency seized their property and turned it over to CBP). Second, they receive a notice from CBP informing them of the seizure and the procedures for contesting the forfeiture available under CAFRA. Third, they timely file a claim form with CBP, electing to have the case referred to the USAO for judicial forfeiture proceedings. Fourth, the USAO declines to pursue forfeiture or the government otherwise fails to file a civil forfeiture complaint within 90 days of the date the claim was filed (or obtain a criminal indictment naming the property as subject to forfeiture), thus entitling these claimants to the prompt return of the seized property under CAFRA. Finally, CBP fails to promptly release the property as required by CAFRA and instead conditions the release of the property on claimant signing a Hold Harmless Agreement that requires them to waive their constitutional and statutory rights and incur new legal liabilities.

121. These Hold Harmless Agreements inform claimants that they must agree to waive their constitutional and statutory rights, and accept new legal liabilities, as a condition of the return of the property that CBP is already automatically required to return under CAFRA and that, if they refuse to sign them, administrative forfeiture proceedings will be initiated against their property.

122. Defendants' policy or practice of conditioning the return of seized property on Hold Harmless Agreements in these circumstances is *ultra vires* and directly violates CAFRA's command that "the Government ***shall*** promptly release the property pursuant to regulations promulgated by the Attorney General and ***may not take any further action to effect the civil***

forfeiture of such property in connection with the underlying offense." 18 U.S.C. § 983(a)(3)(B)(ii) (emphasis added).

123. The other members of the putative class have also been, or will be, injured by this policy or practice, which is *ultra vires* and in direct violation of CAFRA and the Attorney General's regulation promulgated thereunder.

124. Defendants' policy or practice runs afoul of the doctrine of unconstitutional conditions, which exists to vindicate "the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013).

125. Moreover, when the government forces a person to trade one constitutional right for another, as it does here, that falls into a special category of unconstitutional conditions cases in which no consideration of the government's asserted interests is required because no interest can possibly justify such a condition. *See, e.g., Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another.").

126. The other members of the putative class have been injured by the violation of their due-process rights due to Defendants' policy or practice. Every member of the putative class has been denied possession of seized property, which CBP is automatically required to return under CAFRA, unless they sign a Hold Harmless Agreement that imposes unconstitutional conditions upon them.

127. To redress and prevent these systematic abuses, Plaintiff seeks class-wide injunctive and declaratory relief under Federal Rule of Civil Procedure 23(b)(2), including a court order: (1) declaring unlawful and unconstitutional Defendants' policy or practice of

conditioning the return of property that Defendants are automatically required to return under CAFRA on claimants signing Hold Harmless Agreements; (2) enjoining Defendants from continuing to engage in this practice; (3) declaring that any Hold Harmless Agreements signed by class members under these conditions are void; and (4) requiring Defendants to return property to any class members whose property has not been returned because they did not sign a Hold Harmless Agreement.

128. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Upon information and belief, CBP has subjected, or will subject, hundreds or even thousands of claimants to this unlawful and unconstitutional policy or practice. With respect to each of these claimants, CBP's policy or practice is unlawful and unconstitutional for the same reasons. Allowing all claimants subjected to this CBP policy or practice to challenge it in a single lawsuit will avoid needless litigation expense, both for the absent class members and for Defendants.

129. In addition, a class action is superior for the fair and efficient adjudication of this controversy because individual challenges to this unconstitutional policy or practice will, by their nature, quickly become moot if the seized property is returned to its owner. A class action will allow for effective, class-wide relief to remedy this ongoing and repeated unlawful and unconstitutional behavior, which is not authorized by, and violates, CAFRA, the Attorney General's regulation promulgated under CAFRA, and the Due Process Clause of the Fifth Amendment.

130. Plaintiff proposes the following class definition:

> All claimants to seized property for which CBP has pursued, or will in the future pursue, civil forfeiture under 18 U.S.C. § 983, and as to which:
> (1) within 90 days after a claim has been filed under 18 U.S.C. § 983(a)(2), the United States government:

a. declines to pursue forfeiture and thus declines to file a complaint for forfeiture under 18 U.S.C. § 983(a)(3)(A); or
b. does not file a complaint for forfeiture under 18 U.S.C. § 983(a)(3)(A) for any other reason; and
c. has not taken any other action under 18 U.S.C. § 983(a)(3) that would avoid its obligation to file a forfeiture complaint within 90 days after a claim has been filed, namely: obtaining an extension from the court in the district in which the complaint would be filed, obtaining a criminal indictment containing an allegation that the property is subject to forfeiture and taking the steps necessary to maintain custody of the property, or returning the property pending filing of a complaint; and

(2) CBP demands that the claimant sign a Hold Harmless Agreement waiving the claimant's constitutional rights as a condition of releasing the seized property.

131. Plaintiff Anthonia Nwaorie will be the representative for the class.

132. CBP's unconstitutional policy or practice is appropriately addressed through a class certified under Rule 23(b)(2). First, the Defendants' actions or refusal to act are generally applicable to the class as a whole. Moreover, because Rule 23(b)(2) is considered an "effective weapon for an across-the-board attack against systematic abuse," it is the best vehicle to address the abusive policy and practice alleged here. *See Jones v. Diamond*, 519 F.2d 1090, 1111 (5th Cir. 1975).

133. This action meets all the Rule 23(a) prerequisites for maintaining a class action.

134. ***Numerosity under Rule 23(a)(1)***: The putative class is so numerous that joinder of all members is impracticable for the following reasons:

a. CBP conducts over 120,000 seizures per year.

i. In FY 2016, CBP conducted at least 125,583 seizures.

ii. In FY 2015, CBP conducted at least 124,318 seizures.

iii. In FY 2014, CBP conducted at least 120,019 seizures.

b. Upon information and belief, CBP pursues civil forfeiture (administrative or judicial) for a majority of these seizures.

c. In some of the cases that CBP refers to the USAO for judicial forfeiture, the USAO either declines to pursue forfeiture or otherwise does not timely file a forfeiture complaint (and does not obtain an extension or a criminal indictment alleging the property is subject to forfeiture).

d. CBP is automatically required to "promptly release" the seized property in the above-described cases under 18 U.S.C. § 983(a)(3)(B) and 28 C.F.R. § 8.13 unless there is an independent basis for continued custody of the property.

e. Each claimant in the above-described cases is thus automatically entitled to the prompt release of his or her property under CAFRA.

f. Each claimant in the above-described cases is a putative class member because, upon information and belief, it is CBP's policy or practice to require all claimants to sign a Hold Harmless Agreement as a condition of returning the property even when CBP is automatically required to return their property under CAFRA.

g. Upon information and belief, this has been CBP's policy or practice since at least January 2012 (and probably for much longer).

h. Forfeiture expert and attorney David B. Smith, author of the leading treatise on forfeiture law—*Prosecution and Defense of Forfeiture Cases* (Matthew Bender)—has encountered this CBP policy or practice before and, based on his familiarity with CBP seizure and forfeiture practices, believes that CBP regularly demands that property owners sign hold harmless agreements even when CBP is required to promptly return the seized property under CAFRA.

i. If the USAO declines to pursue judicial forfeiture or otherwise does not timely file a forfeiture complaint (and does not obtain an extension or a criminal indictment alleging the property is subject to forfeiture) in just 1% (1 in 100) of CBP seizures in a given year, there would be at least 1,200 claimants per year for whom CBP is automatically required to return their property under CAFRA.

j. If the USAO declines to pursue judicial forfeiture or otherwise does not timely file a forfeiture complaint (and does not obtain an extension or a criminal indictment alleging the property is subject to forfeiture) in just 0.1% (1 in 1,000) of CBP seizures in a given year, there would be at least 120 claimants per year for whom CBP is automatically required to return their property under CAFRA.

k. If the USAO declines to pursue judicial forfeiture or otherwise does not timely file a forfeiture complaint (and does not obtain an extension or a criminal indictment alleging the property is subject to forfeiture) in just 0.01% (1 in 10,000) of CBP seizures in a given year, there would be at least 12 claimants per year for whom CBP is automatically required to return their property under CAFRA.

l. Upon information and belief, the percentage of CBP seizures in which the USAO declines to pursue forfeiture or otherwise does not timely file a forfeiture complaint (and does not obtain an extension or a criminal indictment alleging the property is subject to forfeiture) is greater than 0.01% (1 in 10,000). Thus, for just the past six years, there have been at least 72

claimants for whom CBP is automatically required to return their property under CAFRA, and likely hundreds or thousands more.

m. Thus, for just the past six years, there will be at least 72 putative class members, and likely hundreds or thousands more.

n. Upon information and belief, CBP will continue to condition the release of property that CBP is required to return under CAFRA on claimants signing a Hold Harmless Agreement, giving rise to new putative class members until injunctive and declaratory relief is provided.

o. Upon information and belief, the current and future putative class members number in the hundreds, or even thousands.

p. Upon information and belief, the members of the putative class are dispersed across the United States, with many living far from the location where their property was seized.

135. ***Commonality under Rule 23(a)(2)***: This action presents questions of law and fact common to the putative class, the resolution of which will not require individualized determinations of the circumstances of any particular plaintiff. Common questions include but are not limited to:

a. Do the Defendants have a policy or practice of conditioning the return of seized property to class members on those class members signing CBP's Hold Harmless Agreement?

b. Is the above-described policy or practice by Defendants *ultra vires* and in violation of CAFRA and 28 C.F.R. § 8.13?

c. Does the above-described policy or practice by Defendants violate the Due Process Clause of the Fifth Amendment under the unconstitutional conditions doctrine?

d. Is a CBP Hold Harmless Agreement executed by a class member as a condition of the return of seized property void as unlawful and *ultra vires* under CAFRA and 28 C.F.R. § 8.13?

e. Is a CBP Hold Harmless Agreement executed by a class member as a condition of the return of seized property void as unconstitutional under the unconstitutional conditions doctrine?

f. Is a CBP Hold Harmless Agreement executed by a class member as a condition of the return of seized property void as lacking consideration?

g. Are Defendants' actions in withholding a class member's seized property because the class member has not signed a CBP Hold Harmless Agreement unlawful and *ultra vires* under CAFRA and 28 C.F.R. § 8.13?

h. Are Defendants' actions in withholding a class member's seized property because the class member has not signed a CBP Hold Harmless Agreement unconstitutional under the unconstitutional conditions doctrine?

136. ***Typicality under Rule 23(a)(3)***: Plaintiff's class claims are typical of the claims of the putative class. Plaintiff is challenging the same CBP policy or practice that affects the other members of the putative class. Plaintiff seeks the same relief for herself and other members of the putative class: (1) declaring unlawful and unconstitutional CBP's policy or practice of conditioning the return of property that CBP is automatically required to return under CAFRA on claimants signing Hold Harmless Agreements, (2) class-wide injunctive relief enjoining

Defendants from continuing to engage in this practice, (3) class-wide declaratory relief declaring that any Hold Harmless Agreements signed by class members under these conditions are void, and (4) class-wide injunctive relief requiring Defendants to return property to any class members whose property has not been returned because they did not sign a Hold Harmless Agreement.

137. ***Adequacy of representation under Rule 23(a)(4)***: The interests of the putative class are fairly and adequately protected by Plaintiff and her attorneys.

a. Plaintiff adequately represents the putative class because her interests are aligned and there are no conflicts of interest between the Plaintiff and members of the putative class.

b. Plaintiff and the putative class members are ably represented *pro bono* by the Institute for Justice ("the Institute"). The Institute is a nonprofit, public-interest law firm that since its founding in 1991 has litigated constitutional issues nationwide. The Institute has particular expertise in litigating to protect property rights, including representing property owners in federal civil forfeiture proceedings, *see U.S. v. 434 Main Street, Tewksbury, Mass.*, 961 F.Supp.2d 298 (D. Mass. 2013), and challenging civil-forfeiture programs on constitutional grounds, including by bringing unconstitutional conditions claims on behalf of a class of property owners. *See, e.g.*, *Sourovelis v. City of Philadelphia*, 103 F. Supp. 3d 694, 707 (E.D. Pa. 2015) (ruling claims may proceed past motion to dismiss). In bringing this action, the Institute has done extensive work to identify and investigate the claims of Plaintiff and the putative class members.

138. This action meets the requirements of, and is brought in accordance with, Rule 23(b)(2) of the Federal Rules of Civil Procedure. The Defendants have acted, or refused to act,

on grounds generally applicable to the class. Final injunctive and declaratory relief is appropriate with respect to all of the members of the class.

139. Finally, this action meets the definability/ascertainability requirement, to the extent that requirement even applies to Rule 23(b)(2) actions. *See O'Donnell v. Harris Cty.*, No. H—16-1414, 2017 WL 1542457, at *3 (S.D. Tex. April 28, 2017) (reasoning that precise ascertainability is not required when the only class-wide relief requested is injunctive and declaratory in nature). The membership of the class is ascertainable because CBP maintains records about: (1) the status of property it seizes, including whether and when the USAO notifies CBP, pursuant to 28 C.F.R. § 8.13(a), that it is declining to pursue forfeiture or that the 90-day deadline to file a complaint for forfeiture was not met (and no extension from the court or criminal indictment alleging the property is subject to forfeiture was obtained), and (2) the identity of claimants to whom it sends Hold Harmless Agreements.

Class Claims

Count I:
Class Claim for Class-Wide Injunctive and Declaratory Relief
For *Ultra Vires* Action in Violation of CAFRA and 28 C.F.R. § 8.13

140. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in ¶¶ 1 through 139 above.

141. Plaintiff brings this claim against Defendants under Federal Rule of Civil Procedure 23(b)(2).

142. Defendants' policy or practice of conditioning the return of seized property to putative class members on those class members signing Hold Harmless Agreements is *ultra vires* and violates 18 U.S.C. § 983(a)(3) of CAFRA and the regulation promulgated thereunder by the Attorney General.

143. It is the policy or practice of the Defendants to condition the return of property to putative class members on those class members signing CBP's Hold Harmless Agreements.

144. These Hold Harmless Agreements require putative class members to waive constitutional and statutory rights, and accept new legal liabilities.

145. CAFRA and 28 C.F.R. § 8.13 do not authorize Defendants to condition the release of seized property on putative class members signing Hold Harmless Agreements.

146. No other statute authorizes Defendants to condition the release of seized property on putative class members signing Hold Harmless Agreements.

147. Instead, in the circumstances that apply to members of the putative class, CAFRA requires that Defendants "**shall** promptly release the property pursuant to regulations promulgated by the Attorney General." 18 U.S.C. § 983(a)(3)(B) (emphasis added).

148. Defendants' policy or practice of conditioning the return of seized property on putative class members signing Hold Harmless Agreements is *ultra vires* and violates 28 C.F.R. § 8.13(b), which requires agencies to "promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within a specified period for release of the property." 28 C.F.R. § 8.13(b).

149. Defendants' policy or practice of conditioning the return of seized property on Hold Harmless Agreements in these circumstances is ultra vires and violates 28 C.F.R. § 8.13(b)-(c), because there are only two, very limited conditions that may be imposed on the person with the right to immediate possession of the property at this stage of the CAFRA process, and both are simply practical requirements to ensure that the property is promptly released to the correct person:

a. First, that person must "contact the property custodian within the specified period for release of the property," 28 C.F.R. § 8.13(b); and,

b. Second, that person must, if requested, "present[] . . . proper identification" so that the property custodian may "verify the identity of the person who seeks the release of the property" to confirm that they are "the person to whom the property should be released." 28 C.F.R. § 8.13(b)-(c).

150. CBP's policy or practice of threatening to initiate administrative forfeiture proceedings if putative class members do not sign Hold Harmless Agreements is *ultra vires* and violates CAFRA, which prohibits the government from "tak[ing] ***any further action to effect the civil forfeiture of such property*** in connection with the underlying offense." 18 U.S.C. § 983(a)(3)(B)(ii) (emphasis added).

151. CBP's policy or practice of threatening to proceed with administrative forfeiture at this stage is *ultra vires* because CAFRA simply does not authorize administrative forfeiture proceedings to be re-instituted once a property owner has filed a claim seeking judicial resolution of the forfeiture. *See generally* 18 U.S.C. § 983(a).

152. In addition, any failure by Defendants to return seized property to a putative class member because the putative class member did not sign a Hold Harmless Agreement is in direct violation of 18 U.S.C. § 983(a)(3)(B)(ii) and the regulation promulgated thereunder, and any such property must be immediately returned to property members.

153. Moreover, because the CBP is already required to "promptly release" the seized property under CAFRA, and the only "consideration" being offered by Defendants for signing the agreements is the return of that same property, Defendants fail to offer any genuine consideration for signing the Hold Harmless Agreements.

154. Accordingly, any Hold Harmless Agreements signed by putative class members under these circumstances are void and unenforceable.

Count II:
Class Claim for Class-Wide Injunctive and Declaratory Relief
For Violations of the Due Process Clause of the Fifth Amendment

155. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in ¶¶ 1 through 154 above.

156. Plaintiff brings this claim against the Defendants under Federal Rule of Civil Procedure 23(b)(2).

157. Plaintiff claims that Defendants violated Plaintiff's and putative class members' Fifth Amendment due-process rights by conditioning the release of property that CBP is automatically required to return under CAFRA on putative class members signing Hold Harmless Agreements and thereby waiving their constitutional rights, such as the First Amendment right to petition the government for a redress of grievances, due process, equal protection of the law, and property rights.

158. It is the policy or practice of the Defendants to condition the return of property to putative class members on those class members signing CBP's Hold Harmless Agreements, thus waiving their constitutional rights in exchange for the return of property that CBP is automatically required to return under CAFRA.

159. Among the constitutional rights that Defendants demand that Plaintiff and the putative class must waive before Defendants will return their seized property are the First Amendment right to petition the government for a redress of grievances related to the seizure of property by filing a lawsuit or any other proceeding against the government or any government officials, due-process rights, equal protection of the law, and property rights, including to interest, attorney's fees and costs, and damages.

160. Defendants' policy or practice of demanding that Plaintiff and other members of the putative class waive their constitutional rights in order to receive the "benefit" of the return of their property constitutes an unconstitutional condition and violates due process. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

161. As a direct and proximate result of the Defendants' policy or practice, Plaintiff and the other members of the putative class have suffered injury, including being deprived of their constitutional right to possess their property unless they waive other constitutional rights. This too violates due process. *See, e.g.*, *Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another."); *see also Garrity v. New Jersey*, 385 U.S. 493, 500 (1967) ("There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price.").

162. This due process violation affects every case in which the Defendants condition the return of property to putative class members—which is already automatically required to be returned by CBP under CAFRA—on those putative class members waiving constitutional rights by signing a Hold Harmless Agreement. As such, it is appropriately addressed by a class-wide injunction.

163. Declaratory and injunctive relief is necessary to remedy the Defendants' unconstitutional conduct, because without appropriate declaratory and injunctive relief, the Defendants' unconstitutional policies or practices will continue.

Individual Claims

Count III:
Individual Claim for Return of Property

164. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in ¶¶ 1 through 163 above.

165. Plaintiff brings this individual claim for return of seized property against Defendants under Federal Rule of Criminal Procedure 41(g) and this Court's general equity jurisdiction under 28 U.S.C. § 1331.

166. Anthonia is entitled to the immediate return of the $41,377 in seized cash, with interest.

167. CBP's continued detention of the seized cash is both *ultra vires* and in direct violation of CAFRA's commands. Anthonia's seized cash must be returned immediately because the government failed to timely file a complaint for forfeiture within 90 days after Anthonia filed her claim under CAFRA. Thus, as required by CAFRA and the Attorney General's regulation, CBP must "promptly return the property" to the person who, now that the deadline has been missed, has the "right to immediate possession." *See* 18 U.S.C. § 983(a)(3)(B); 28 C.F.R. § 8.13. That person is Anthonia, the person from whom CBP seized the cash.

168. CBP has no authority to continue detaining Anthonia's money and must return it immediately. As explained above, if the government fails to timely file a forfeiture complaint within the 90-day window after a claimant files their claim with the agency, CAFRA requires that "the Government **shall promptly release the property** pursuant to regulations promulgated by the Attorney General, and **may not take any further action to effect the civil forfeiture of such property** in connection with the underlying offense." 18 U.S.C. § 983(a)(3)(B) (emphasis added).

169. Here, the USAO declined to pursue the forfeiture and thus the government did not timely file a forfeiture complaint under 18 U.S.C. § 983(a)(3)(A).

170. The deadline for the government to file a forfeiture complaint expired on March 12, 2018, 90 days after December 12, 2017, when CBP received Anthonia's Election of Proceedings form.

171. No forfeiture complaint has been filed, nor has the government obtained either a criminal indictment containing an allegation that the property is subject to forfeiture or an extension of the period for filing a complaint.

172. Accordingly, CAFRA requires that CBP promptly return the seized cash to Anthonia.

173. Instead, CBP has continued to hold the seized cash and has unlawfully and unconstitutionally conditioned the release of the property on Anthonia surrendering constitutional and statutory rights, and on incurring new legal liabilities by signing the Hold Harmless Agreement.

174. CBP's actions are thus *ultra vires* and in direct violation of CAFRA's specific commands to the government in these circumstances.

175. Because the government failed to timely file a complaint for forfeiture within the 90-day timeframe specified by CAFRA, CBP must immediately return the seized cash, with interest, to Anthonia as required by 18 U.S.C. § 983(a)(3)(B).

176. In addition, Defendants violated Anthonia's constitutional due-process rights because they failed to provide her with sufficient notice regarding the currency reporting requirement before it seized her property. Individuals must have knowledge of the 31 U.S.C. § 5613 currency reporting requirement before their money is subject to being seized and forfeited. *See United States v. $173,081.04*, 835 F.2d 1141, 1143 (5th Cir. 1988); *United States v. Granada*, 565 F.2d 922, 926 (5th Cir. 1978); *United States v. Schnaiderman*, 568 F.2d

1208, 1211(5th Cir. 1978). Anthonia was not provided with that notice and was thus deprived of due process.

177. Moreover, forfeiting the entire $41,377 would be a grossly disproportionate penalty for what was, at most, a technical violation of a statute that Anthonia was not even aware existed, and would thus violate the Excessive Fines Clause of the Eighth Amendment.

Count IV:
Individual Claim for Declaratory and Injunctive Relief
Under the Fifth Amendment

178. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in ¶¶ 1 through 177 above.

179. Plaintiff brings this individual claim for declaratory and injunctive relief against Defendants for violation of her due-process and equal-protection rights under the Due Process Clause of the Fifth Amendment.

180. Upon information and belief, Anthonia is being singled out by Defendants for differential treatment since the day of the seizure on October 31, 2017.

181. Upon information and belief, Defendants have placed Anthonia on a list of passengers who are regularly subjected to additional screenings by CBP that are particularly intrusive and invasive (the “screening list”).

182. Upon information and belief, Anthonia remains on the screening list despite the fact that the USAO did not bring criminal charges against her and also declined to pursue civil forfeiture of her seized cash, even though the USAO would have only had to satisfy a much lower burden of proof (preponderance of the evidence) to civilly forfeit her seized cash than to prosecute Anthonia criminally.

183. Upon information and belief, Anthonia will not be automatically removed from this screening list by Defendants based on the fact that the USAO did not ultimately bring criminal charges or even pursue civil forfeiture of her seized cash.

184. Upon information and belief, Defendants are violating Anthonia's right to equal protection of the law by treating her differently from, and worse than, similarly situated international travelers who are U.S. citizens and who have not been charged with any federal crime, nor had any property forfeited for any alleged violations of federal law.

185. Anthonia has only just learned—from CBP's April 4, 2018 letter, which she received on April 16, 2018—that the USAO has declined to pursue forfeiture of her seized cash. In addition to seeking the return of that seized cash in this lawsuit, she also seeks to remedy the fact that she is being subjected to additional, intrusive screening based on the October 31, 2017 seizure.

186. Due to these recent developments in this matter, Anthonia has not yet had an opportunity to request redress via the DHS-TRIP process, but she plans to do so. Because she believes that her inclusion on this list may arise out of the same nucleus of operative facts as the seizure itself, she therefore brings this claim to preserve her ability to seek relief in the event that requesting redress through the DHS-TRIP process fails to resolve this problem.

187. Upon information and belief, Defendants are violating Anthonia's due-process rights by including her on the screening list because it has not given her "the opportunity to be heard at a meaningful time in a meaningful manner" about this deprivation of her liberty interests, either before or after she was included on the screening list. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1979) (internal quotation marks omitted).

188. Anthonia's "private interest[s] that will be affected by the official action," *id.*, are strong. Anthonia has important, constitutionally protected liberty interests in being able to travel internationally without harassment, in her reputation being free from false government stigmatization and humiliation by being included on a list of passengers who are publicly subjected to additional, intrusive screening, being free from discrimination based on her race or national origin, and in being free from unreasonable searches and seizures, including not being continuously targeted for particularly intrusive and invasive searches.

189. The Supreme Court has long recognized a constitutional right to international travel. *See Kent v. Dulles*, 357 U.S. 116, 126 (1958) ("Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."); *Aptheker v. Sec'y of State*, 378 U.S. 500, 514 (1964) (striking down passport restrictions for violating constitutional right to international travel).

190. Being constantly subjected to additional, intrusive screening by being on the screening list presents "a significant impediment to international travel," making "routine international travel into an odyssey that imposes significant logistical, economic, and physical demands on travelers." *Latif v. Holder*, 28 F. Supp. 3d 1134, 1149 (D. Or. 2014).

191. In addition, Plaintiff is stigmatized by being put on a government list of people subjected to these additional, intrusive screening procedures and then publicly subjected to these intrusive and invasive searches of every belonging in her luggage.

192. Upon information and belief, this screening list is disclosed to airline employees and other airport workers, as well as many CBP employees, including those not involved in implementing these screening procedures.

193. When Anthonia is specifically pulled aside for additional, intrusive screening, it is obvious to other travelers waiting to go through a CBP checkpoint. Moreover, other travelers can plainly observe her being subjected to this additional, intrusive screening in which her luggage is emptied and thoroughly searched in public view by a number of CBP officers.

194. This stigmatization and public humiliation harms her liberty interest in her "good name, reputation, honor, or integrity," *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971), and also infringes on her liberty interest in being able to travel internationally without harassment.

195. If this differential, intrusive treatment by Defendants persists, Anthonia will be greatly impeded in visiting family in Nigeria, in setting up, operating, and overseeing her medical clinic there, and in continuing with her mission to increase access to medical care in Nigeria.

196. There is a high risk of erroneous deprivation of Anthonia's liberty interests because the criteria for inclusion or removal from this screening list are a mystery. There is no transparency about the substantive standards or procedures for being included on, or removed from, this screening list. It is essentially a "black box" that simply renders a result without explanation, and without even informing the traveler of the outcome.

197. Upon information and belief, whatever procedures are used create a high risk of erroneous deprivation due to lack of notice about one's inclusion on the screening list in the first place. Anthonia has never formally received notice that she is on the list, and was only told informally that she would be subjected to such screenings every time she travels internationally by a CBP officer in December 2017 *while he was conducting that very screening*—far too late for her to challenge her inclusion on the screening list.

198. There is a high risk of erroneous deprivation because the administrative DHS-TRIP process for Anthonia to contest her placement the screening list is inadequate due to its lack of transparency and the limited scope of what can be contested or appealed.

199. An earlier incarnation of this DHS-TRIP process has previously been found to create a "high risk of erroneous deprivation in light of the low evidentiary standard for placement on [a screening list] together with the lack of a meaningful opportunity for individuals on the [screening list] to provide exculpatory evidence in an effort to be taken off of the [screening list]." *Latif*, 28 F. Supp. 3d 1134, 1153-54.

200. Upon information and belief, this process still suffers from these same flaws. For example, Anthonia has never been formally notified of her inclusion on the screening list and may only be able to correct "erroneous information" rather than have a meaningful opportunity to present arguments and other evidence challenging her inclusion on the screening list.

201. A federal court has already found that "additional procedural safeguards would provide significant probative value" to the DHS-TRIP process. *Id.* at 1153. "In particular, notice of inclusion on the [screening list] through the DHS-TRIP process after a traveler has been [deprived of liberty interests] would permit the complainant to make an intelligent decision about whether to pursue an administrative or judicial appeal." *Id.*

202. "In addition, notice of the reasons for inclusion on the [screening list] as well as an opportunity to present exculpatory evidence would help ensure the accuracy and completeness of the record to be considered at both the administrative and judicial stages." *Id.*

203. Upon information and belief, these improvements have not been made to the process. For example, Anthonia has still received no formal notice from Defendants about her inclusion on the screening list.

204. Upon information and belief, while Anthonia may be able to request that "erroneous information" be corrected through the DHS-TRIP process, that may be insufficient process if she is also not presented with the reasons for her inclusion on the screening list or an opportunity to present logical or legal arguments and other relevant evidence as to why she should be removed from the screening list.

205. Finally, Defendants' interest in keeping Anthonia on this screening list is very low. For example, Anthonia does not present any national security or terrorism concerns. Whatever screening list she is on involves Customs inspections; it is not a terrorist watch list or a no-fly list, where national security concerns predominate.

206. Moreover, Anthonia presents no danger to the United States. She is a 59-year-old grandmother and registered nurse dedicated to increasing access to medical care and whose primary mission is to open a medical clinic for women and children in Nigeria who cannot afford access to medical care. It was in the advancement of that mission that she brought her seized cash with her on her flight to Nigeria.

207. Defendants' only conceivable interest in keeping Anthonia on this screening list is its interest in subjecting someone to additional, intrusive screening indefinitely because she once, unintentionally, failed to comply with an obscure currency reporting requirement that she and most travelers did not know even existed. That is not a compelling or even important governmental interest.

208. Now that Anthonia has been made aware of the currency reporting requirement for travelers departing the U.S., she plans to comply with it, further reducing any government interest in continuing to subject her to additional, intrusive screenings.

209. Upon information and belief, Defendants would not be fiscally or administratively burdened if they were to remove Anthonia from the screening list

210. Upon information and belief, Defendants would not be fiscally or administratively burdened by providing Anthonia with constitutionally adequate notice and a meaningful opportunity to challenge being subjected to differential treatment and/or her placement on the screening list.

211. Accordingly, and upon information and belief, by continuing to subject Anthonia to additional, intrusive screenings based on the October 31, 2017 seizure without adequate notice and a meaningful opportunity to be heard, Defendants are violating Anthonia's due-process rights.

212. Because Anthonia's liberty interests are substantially burdened by being regularly subjected to these additional, intrusive screenings on an ongoing basis, and because she is suffering ongoing damages and other injuries from this treatment, Defendants must immediately remove her from any and all screening lists until they provide her with adequate notice and a meaningful opportunity to challenge this differential and invasive treatment.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Certify a class under Federal Rule of Civil Procedure 23(b)(2) consisting of:

> All claimants to seized property for which CBP has pursued, or will in the future pursue, civil forfeiture under 18 U.S.C. § 983, and as to which:
> (1) within 90 days after a claim has been filed under 18 U.S.C. § 983(a)(2), the United States government:
>
> a. declines to pursue forfeiture and thus declines to file a complaint for forfeiture under 18 U.S.C. § 983(a)(3)(A); or
> b. does not file a complaint for forfeiture under 18 U.S.C. § 983(a)(3)(A) for any other reason; and
> c. has not taken any other action under 18 U.S.C. § 983(a)(3) that would avoid its obligation to file a forfeiture complaint within 90

> days after a claim has been filed, namely: obtaining an extension from the court in the district in which the complaint would be filed, obtaining a criminal indictment containing an allegation that the property is subject to forfeiture and taking the steps necessary to maintain custody of the property, or returning the property pending filing of a complaint; and
>
> (2) CBP demands that the claimant sign a Hold Harmless Agreement waiving the claimant's constitutional rights as a condition of releasing the seized property.

B. Declare Defendants' policy or practice of demanding that class members waive their constitutional and statutory rights, as well as incur new legal liabilities, by signing CBP's Hold Harmless Agreements is *ultra vires* and unlawful under 18 U.S.C. § 983(a)(3) and the regulation promulgated thereunder, 28 C.F.R. § 8.13.

C. Declare that Defendants' policy or practice of imposing unconstitutional conditions on class members by demanding they sign Hold Harmless Agreements waiving their constitutional rights in order to secure the return of seized property and exercise their constitutional right to possession of that property violates their due-process rights under the Fifth Amendment.

D. Enjoin the Defendants from continuing to condition the return of seized property to class members on signing Hold Harmless Agreements or any other agreements demanding that class members waive their constitutional or statutory rights, or incur new legal liabilities.

E. Declare void and unenforceable any Hold Harmless Agreements executed by class members as a condition of CBP returning their seized property.

F. Enjoin Defendants from continuing to hold seized property because a class member has not signed a Hold Harmless Agreement, and requiring Defendants to immediately return all such seized property—with interest, as applicable—to class members whose property was seized on or after May 3, 2012.

G. Order Defendants CBP and the United States of America to immediately return Plaintiff Anthonia Nwaorie's seized property—$41,377 with interest—under Federal Rule of Criminal Procedure 41(g).

H. Declare that the process for being removed from Defendants' screening list of passengers who are subjected to additional, intrusive screening by CBP fails to provide Plaintiff Anthonia Nwaorie with adequate notice and a meaningful opportunity to be heard, in violation of the Due Process Clause of the Fifth Amendment.

I. Enjoin Defendants from including Plaintiff Anthonia Nwaorie on any screening list or otherwise targeting her for additional screening or any other differential and invasive treatment based on the seizure of her property on October 31, 2017, until it provides her with notice and a meaningful opportunity to challenge this differential and invasive treatment.

J. Declare that Defendants' inclusion of Plaintiff Anthonia Nwaorie on the screening list violates her right to equal protection of the law by treating her differently from, and worse than, similarly situated international travelers who are U.S. citizens and who have not been charged with any federal crime, nor had any property forfeited for any alleged violations of federal law.

K. Enjoin Defendants from including Plaintiff Anthonia Nwaorie on any screening list or otherwise targeting her for additional screening or any other differential and invasive treatment based on the seizure of her property on October 31, 2017, because it violates her equal-protection rights to be treated the same as similarly situated international travelers who are U.S. citizens and who have not been charged with any federal crime, nor had any property forfeited for any alleged violations of federal law.

L. Enter an award against all Defendants allowing Plaintiff to recover her attorney's fees, costs, and expenses in this action under 28 U.S.C. § 2412.

M. Award any further equitable or legal relief the Court may deem just and proper.

Dated: May 3, 2018

Respectfully submitted,

/s/ Dan Alban

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on this third day of May, 2018, I electronically filed the foregoing Complaint and accompanying exhibits, with the Clerk of Court using the CM/ECF system.

I further certify that I caused a copy of the foregoing Complaint and accompanying exhibits, and the Summons in this civil action, to be sent by certified mail to the following addresses:

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Southern District of Texas
1000 Louisiana, Ste. 2300
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U.S. Department of Justice
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U.S. Customs and Border Protection
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Commissioner Kevin McAleenan
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/s/ Dan Alban