

IMMIGRATION DETAINERS LEGAL UPDATE

February 2017

Since 2014, the law on immigration detainers has changed substantially. Several federal court decisions have found key aspects of ICE's detainer system unconstitutional and in violation of federal statutes. Below we summarize the key court decisions and policy changes.

ICE DETAINERS ARE VOLUNTARY

2014 - In *Galarza v. Szalczyk*,¹ a U.S. citizen was held on an ICE detainer after he should have been released.

- The Third Circuit Court of Appeals ruled that Lehigh County, Pennsylvania did not have to enforce the detainer because it was voluntary.
- The Court found that the County could be found responsible for unlawfully holding Galarza for ICE because it was not required to comply with the detainer but instead chose to do so.

HOLDING SOMEONE ON A DETAINER IS A NEW ARREST REQUIRING PROBABLE CAUSE

2015 - In *Morales v. Chadbourne*,² a U.S. citizen was held on a detainer after she should have been released.

- The First Circuit Court of Appeals upheld the District Courts' finding that detaining someone beyond their release date is an arrest under the Fourth Amendment.
- The First Circuit also found that the Fourth Amendment requires ICE to have probable cause to issue such a detainer request.

2010 - In *Vohra v. United States*,³ the plaintiff was held beyond when he was ordered released because of an ICE detainer.

- The Central District of California found that this constituted a warrantless arrest.

ICE DETAINERS DO NOT PROVIDE PROBABLE CAUSE FOR ARREST

2014 - In *Miranda-Olivares v. Clackamas County*,⁴ the Clackamas County Sheriff in Oregon held Ms. Miranda-Olivares on a detainer after she could have been released on bail, and then transferred her to ICE.

- The Federal District Court in Oregon ruled that the detainer did not provide sufficient proof (probable cause) to allow the local jail to detain Ms. Miranda-Olivares for ICE.
- The court held that Clackamas County had unlawfully detained Ms. Miranda-Olivares and would have to pay her money for unlawfully holding her.
- It does not matter what immigration status Ms. Miranda-Olivares has. Being held on the detainer violated her Fourth Amendment right against unlawful arrest and detention.

¹ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014). See also

² *Morales v. Chadbourne*, 996 F.Supp.2d 19 (D.R.I. filed Feb. 12, 2014).

³ *Vohra v. United States*, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010).

⁴ *Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317 (D.Or. April 11, 2014).

2014 - In *Morales v. Chadbourne*,⁵ a U.S. citizen was held on a detainer after she should have been released.

- The District Court found that an ICE detainer indicating that a person is being investigated does not provide probable cause for arrest or detention under the Fourth Amendment.
- In 2017, the District Court also found that ICE databases are incomplete, and that an officer aware of foreign birth with no database records did not know sufficient facts to provide probable cause of removability.

January 2017 - In *Mercado v. Dallas County*,⁶ multiple plaintiffs sued for being denied bail because of ICE detainers and being detained after when they should have been released.

- The Northern District of Texas held that Dallas could be held liable for unlawful detention, because even if ICE detainers claim to be based on probable cause of deportability, that is not probable cause of a crime.
- The court held that to make an arrest, Texas law enforcement agencies must comply with the Fourth Amendment, which requires probable cause of a criminal offense, not a civil immigration offense.

DETAINERS EXCEED ICE'S OWN STATUTORY AUTHORITY

October 2016 - In *Jimenez-Moreno v. Napolitano*,⁷ ICE placed detainers on individuals without probable cause or adequate investigation. Plaintiffs brought a class action and claimed that ICE detainers exceeded ICE's own statutory authority and violate the Fourth Amendment.

- The Northern District of Illinois held that nearly all ICE detainers issued by the Chicago Field Office were invalid.
- The court found that ICE has limited authority to arrest without a warrant, and that detainers on individuals in local custody generally exceed this authority. ICE needs to get a warrant to seek the arrest of an individual already in local custody, or else make an individualized finding of risk of escape prior to issuing the detainer.

December 2016 - In *Orellana v. Nobles County*,⁸ an immigrant was prevented from posting bail because of an ICE detainer and sued for unlawful detention.

- The District of Minnesota held that ICE detainers issued without a finding of likelihood of escape before a warrant can be obtained violate the Fourth Amendment because they exceed ICE's statutory authority.

⁵ *Morales v. Chadbourne*, 996 F.Supp.2d 19 (D.R.I. filed Feb. 12, 2014).

⁶ *Mercado v. Dallas County*, No. 3:15-cv-3481 (N.D.Tx. Jan. 17, 2017)

⁷ *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452 (N.D. Ill. Sept. 30, 2016).

⁸ *Orellana v. Nobles County*, No. 0:15-cv-03852 (D. Minn. Jan. 6, 2017).