



# GONZALEZ V. ICE LITIGATION AGAINST ICE DETAINERS

*Tips for Criminal Defense Attorneys*

By Lena Graber

## I. Introduction

*Gonzalez v. ICE* is a class action lawsuit raising fundamental questions about ICE enforcement practices, in particular the use of databases to target people for detainers and arrests, and the lack of neutral review of probable cause in immigration arrests. The lawsuit has settled with significant ramifications for how ICE uses detainers, and it is important to monitor their compliance. Below we will explain the essential pieces of the case and how to report violations of the settlement. For more about the litigation and the legal filings, see: <https://immigrantjustice.org/gonzalezsettlement>.

## II. Basics of the Gonzalez Case

***Gonzalez v. ICE* is a lawsuit challenging ICE's practices of when they may legally issue detainers.** A detainer is a request from ICE (occasionally CBP) to a jail to facilitate transfer of a person in the jail's custody directly to immigration authorities. Specifically, the detainer asks the jail (1) to notify ICE as to when the person will be released from criminal custody, and (2) to keep the person in custody for an additional period of up to 48 hours, to give ICE more time to pick the person up. ICE detainers facilitate an estimated 70% of ICE arrests.

The Gonzalez settlement limits ICE's issuance of certain immigration detainers across the country, as explained below. It does not affect state and local policies that regulate whether a local jail may or may not comply with ICE detainers. The lawsuit is only against ICE. Similarly, **this settlement applies even in a state where local compliance with the detainer is mandated by state law.** This lawsuit is about what is required of ICE, regardless of how the receiving jail may respond.

## III. How to Assess If an Ice Detainer Is Affected by this Litigation

There are three central elements to check on an ICE detainer to see if it is covered by the Gonzalez settlement:

- 1) what was ICE's **basis** for issuing the detainer;
- 2) **where** was it issued, and
- 3) **when** was it issued?

## 1. Is the detainer based on biometric checks or statements made to an officer? (Boxes 3 and 4 on the basis for the detainer form, as shown below)

The Gonzalez case is focused on ICE detainers issued solely on **Box 3 and Box 4**, shown on the section from a detainer below or the [full annotated detainer](https://www.ilrc.org/resources/annotated-detainer-form) at <https://www.ilrc.org/resources/annotated-detainer-form>.

### 1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE INDIVIDUAL. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

- 1 A final order of removal against the individual;
- 2 The pendency of ongoing removal proceedings against the individual;
- 3 Biometric confirmation of the individual's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- 4 Statements made by the individual to an immigration officer and/or other reliable evidence that affirmatively indicate the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

## 2. Is the detainer issued from the Pacific Enforcement Response Center (PERC) or ICE office in the Los Angeles Area?

The top right of the detainer form shows what ICE office issued the detainer. “Laguna Niguel” is the main location of the PERC ICE facility that issues detainers across the country on nights and weekends. But you might also see other addresses, such as “ERO—Pacific Enforcement Response Center—Santa Ana, CA.”



Image from U.S. District Court, C.D. California

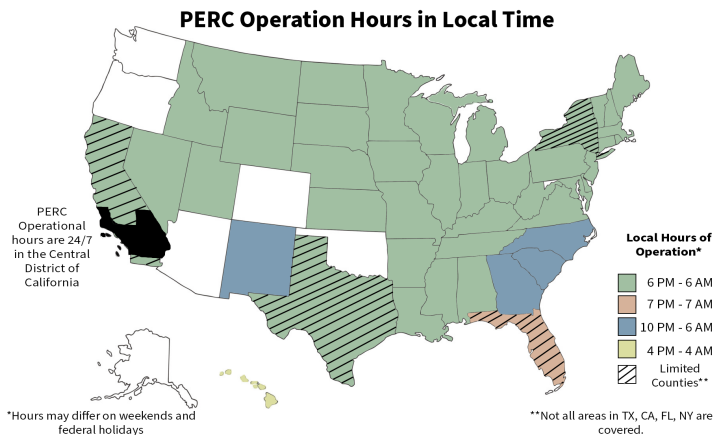
DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement <b>REQUEST FOR ADVANCE NOTIFICATION OF RELEASE</b>	
Subject ID: _____ Event #: _____	File No: _____ Date: _____
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency) SONOMA CO./NORTH COUNTY 2254 ORDINANCE SANTA ROSA, CA 95403	FROM: (Department of Homeland Security Office Address) ERO - Westminster, CA Sub Office ICE ERO PERC LAGUNA NIGUEL 24000 AVILA RD RM# 1552 LAGUNA NIGUEL, CA 92677
Name of Subject: _____ Date of Birth: _____ Suspected Citizenship: _____ Sex: <b>M</b>	

**NOTE:** Every Box 3 or 4 ICE detainer issued from the Central District of California since March 4, 2025 is a violation of the Gonzalez settlement.

### 3. Was the person arrested at night or during the hours that the PERC provides detainers for that area, even if the detainer says it came from a local field office?

Even if a detainer did not come from the PERC, was the detainer clearly issued during the time that the PERC covers your jurisdiction? This is generally nights and weekends. [See this table for PERC coverage.](#)

The detainer will have a date, but probably not a time of issuance on it. So how do you know if it was issued during the PERC coverage? If the detainer was faxed or emailed, there will likely be a timestamp on that. Otherwise, you may not know the timing for sure, but you can estimate based on when the person was arrested and booked. Fingerprints are automatically shared with ICE when they are booked by a local law enforcement agency, and the detainer investigation and issuance will usually start shortly thereafter.



Find your jurisdiction or where your client was detained. **If the detainer was issued during these hours, even if a local field office sent it, that is a violation of the Gonzalez settlement.**

For example, all of the state of Pennsylvania is covered by PERC on weekdays and weekends from 3 pm pacific time to 3 am Pacific Time (6 pm to 6 am local time in Pennsylvania), plus 24 hours on federal holidays.

[See full table for PERC coverage.](#)

**NOTE:** If a detainer was issued first thing in the morning after PERC hours, review it with suspicion. The PERC is not permitted to forward information about an arrest and potential detainer to another field office to have it be technically issued from outside the Central District of California after PERC hours. If your client was arrested in the evening and there is a detainer on them sent early the next morning, even if it was sent from the local field office, it may be a violation of the settlement.

## IV. What Do I Do If a Detainer Meets These Criteria?

1. Settlement monitoring and enforcement: **If you see a detainer that meets the criteria described above, please alert class counsel at: [Litigation@immigrantjustice.org](mailto:Litigation@immigrantjustice.org) and [GonzalezSettlement@aclusocal.org](mailto:GonzalezSettlement@aclusocal.org).**
  - Include a copy of the detainer, and if possible, the approximate time of arrest by local police and/or the email or fax cover sheet for the detainer.

2. Depending on the specific needs of your client in their immigration and/or criminal case, alert the local or state custodian that the ICE detainer was illegally issued, and therefore invalid. A locality that holds someone based on an invalid ICE detainer may be liable for unlawful detention.
  - For more advice on handling ICE detainers during criminal proceedings, see our practice advisory: [ICE Detainers: Advice and Strategies for Criminal Defense Counsel \(2021\)](#).
  - For California practitioners, specific advice on detainers including California state laws and practices is at: [https://www.ilrc.org/sites/default/files/resources/note\\_5a\\_ice\\_detainers\\_2021\\_final.pdf](https://www.ilrc.org/sites/default/files/resources/note_5a_ice_detainers_2021_final.pdf).
3. What if my state law that says detainers are mandatory, or conversely, prohibits responding to detainers?
  - This settlement is only about ICE and what ICE can do. So first, determine if the detainer, as issued, is a violation of the settlement or if it has other legal defects.
    - If the detainer was issued in violation of the settlement, it will not be a lawful basis for detention, even in a state that says compliance with detainers is mandatory. State law cannot override the Constitution. A state or local jail may be liable for unlawful detention if it holds someone without probable cause. Arguably even transferring the person to ICE without prolonging their detention would be facilitating an illegal arrest.
    - If the detainer is not covered by the settlement or is otherwise valid, the next step for advising your client is to analyze how your state law may apply to control how the jail responds, and strategizing with them on bail as well as the immigration consequences of potential convictions. See advisories above.

## V. How to Get a Copy of the ICE Detainer

Entry of an ICE hold or “want” in your local database or court system is an indication that a detainer has been filed on your client, but you need to get the actual document to see what it was based on and who issued it.

**Attorneys seeking to obtain a copy of the detainer should ask the sheriff or other custodian for a copy.** Jails/sheriffs may or may not be accustomed to providing this, and depending on the jurisdiction, getting a copy of the detainer may be simple or cumbersome. In some places, jails have required a subpoena or public records request to obtain the detainer; in others, the sheriff’s department automatically forwards all detainers to the public defender’s office.

**If the agency is uncooperative, remind them that they are required to serve the detainer on the person named in it.** Since the person must receive a copy of the detainer, their counsel should also be entitled to it. Or at the very least, you should be able to obtain it from your client directly. You can also ask for a copy from ICE, but finding a point of contact at ICE and establishing your representation to them may be more complicated than getting the detainer from the local or state jail.

**The detainer is not valid if not served on the individual.** The receiving jail is required to serve a copy of the ICE detainer on the person who is named in it. As part of the Gonzalez settlement, ICE has clarified this service requirement on the detainer form, and there is a space on the form for the custodial agency to verify that it has served the detainer and send that back to ICE.

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE INDIVIDUAL WHO IS THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to \_\_\_\_\_.

Local Booking/Inmate #: \_\_\_\_\_ Estimated release date/time: \_\_\_\_\_

Date of latest criminal charge/conviction: \_\_\_\_\_ Last offense charged/conviction: \_\_\_\_\_

This form was served upon the individual on \_\_\_\_\_, in the following manner:

☐ in person ☐ by inmate mail delivery ☐ other (please specify): \_\_\_\_\_

\_\_\_\_\_  
(Name and title of Officer)

\_\_\_\_\_  
(Signature of Officer) (Sign in ink)

Obtaining and reviewing the detainer is important and may be essential to a client's criminal defense or immigration legal strategy. For more information about how to handle ICE detainers during a criminal defense case, please see: <https://www.ilrc.org/ice-detainers-advice-and-strategies-criminal-defense-counsel>.

## VI. Warning About Other ICE Forms Served on Local Jails

Several other administrative ICE forms may be filed with local jails or otherwise arise during a person's criminal case. These include I-200 ICE Arrest Warrant, I-205 ICE Removal Warrant, I-203 ICE Custody Order, and I-247G DHS Request for Advance Notification of Release.

Both the I-200 and I-205 ICE warrants are only enforceable by federal immigration agents and have no direct import to local jails. For more information about ICE warrants, see: <https://www.ilrc.org/resources/ice-warrants-basics>. An I-203 relates to detaining someone under a contract with ICE for immigration detention and is not a legal basis to hold someone until ICE has officially taken custody.

**Form I-247G** is a version of an ICE detainer that does not request an agency to hold or transfer the person to ICE, only to provide advance notice of their release from custody. **It is not based on probable cause and does not provide any authority to detain someone for any time.** These are commonly issued from the PERC as a result of the Gonzalez case and may be even more widespread following the final settlement. Although the objective of an I-247G is to enable ICE to take custody of someone, it is essential to educate jails and sheriffs that it is not a detainer and not a basis for them to hold someone for transfer to ICE. An [annotated I-247G](#) is available on our website.

DEPARTMENT OF HOMELAND SECURITY (DHS)  
**REQUEST FOR ADVANCE NOTIFICATION OF RELEASE**

Subject ID: \_\_\_\_\_  
 Event #: \_\_\_\_\_

File No: \_\_\_\_\_  
 Date: \_\_\_\_\_

TO: (Name and Title of Institution - OR Any Subsequent Law  
 Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

Name of Subject: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Suspected Citizenship: \_\_\_\_\_ Sex: \_\_\_\_\_

**DHS SUSPECTS THAT THE SUBJECT IS A REMOVABLE ALIEN AND SEEKS AN OPPORTUNITY TO DETERMINE WHETHER  
 THERE IS PROBABLE CAUSE TO BELIEVE THAT THE SUBJECT IS A REMOVABLE ALIEN.**

**IT IS THEREFORE REQUESTED THAT YOU:**

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the subject is released from your custody to allow DHS an opportunity to determine whether there is probable cause to conclude that he or she is a removable alien. Please notify DHS by calling ☐ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at \_\_\_\_\_ If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
  - This request for notification **does not** request or authorize that you detain the subject beyond the time he or she is currently scheduled for release from your custody.
  - This request should not impact decisions about the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.
  - Relay this request to any other law enforcement agency to which you transfer custody of the subject.
  - Notify this office in the event of the subject's death, hospitalization or transfer to another institution.
- ☐ If checked: Please cancel the detainer related to this alien previously submitted to you on \_\_\_\_\_ (date).

\_\_\_\_\_  
 (Name and title of Immigration Officer)

\_\_\_\_\_  
 (Signature of Immigration Officer)

**Notice:** If the subject may be the victim of a crime or you want the subject to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS by mailing, emailing, or faxing a copy to \_\_\_\_\_.  
 Local Booking/Inmate #: \_\_\_\_\_ Est. release date/time: \_\_\_\_\_ Date of latest criminal charge/conviction: \_\_\_\_\_  
 Latest offense charged/convicted: \_\_\_\_\_

\_\_\_\_\_  
 (Name and title of Officer)

\_\_\_\_\_  
 (Signature of Officer)

Interim DHS Form I-247G (09/19)



**San Francisco**  
t: 415.255.9499  
f: 415.255.9792

[www.ilrc.org](http://www.ilrc.org)

**Washington D.C.**  
t: 202.777.8999  
f: 202.293.2849

**Houston**

**San Antonio**

#### **About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

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