



EXPLAINING THE *GONZALEZ V. ICE* INJUNCTION

I. WHAT DOES THE DECISION SAY?

On September 27, 2019, a federal judge issued a permanent injunction limiting the issuance of ICE detainers by some ICE offices. The court in *Gonzalez v. ICE* held:

1. ICE violates the Fourth Amendment by relying on an unreliable set of databases to make probable cause determination for its detainers.
2. ICE violates the Fourth Amendment by issuing detainers to state and local law enforcement agencies in states that do not expressly authorize civil immigration arrests under state law.

The Court issued a permanent injunction barring ICE from issuing detainers:

1. To anyone who may be subject to an immigration detainer based solely on ICE's search of databases, and
2. To state and local law enforcement agencies in states where there is no explicit statute authorizing civil immigration arrests based on detainers.

II. TAKEAWAYS

1. Right now, ICE effectively cannot issue database-check-only detainers anywhere in the Los Angeles area.
2. Outside of the Los Angeles area, ICE offices will be carrying on as usual, because they are not bound by this court ruling.
3. The national effect of the injunction is because of PERC, which is an ICE office that issues after-hours detainers across the country.
4. Going forward, PERC cannot issue a detainer based solely on database checks, which is the main way that PERC issues detainers. But PERC can still issue detainers based on removal proceedings and final removal orders.
5. The following states do not receive detainers from PERC and will not feel any effects resulting from this ruling: Alaska, Washington, Oregon, Arizona, New Mexico, Colorado, Oklahoma, and Florida.

III. SCOPE OF THE INJUNCTION

GEOGRAPHY

This injunction does not apply everywhere, only to ICE detainers issued out of the Central District of California, which covers the Los Angeles ICE Field Office, plus regional sub-offices. This means that it affects detainers issued from ICE offices located anywhere in Los Angeles County, San Luis Obispo County, Santa Barbara County, Ventura County, Orange County, San Bernardino County, and Riverside County. However, it also applies to an ICE detainer hub that issues detainers across the country, called the Pacific Enforcement Response Center (PERC). Because PERC issues detainers after hours to 42 states, this injunction has nation-wide effects.

The injunction is based on where the ICE officer issuing the detainer is located - not the location of the jail where the detainer is sent.

AS OF 2009, ICE SUB-OFFICES IN THE LOS ANGELES AREA OF RESPONSIBILITY WERE LOCATED AT:

- Los Angeles - 24000 Avila Road, Laguna Niguel, CA 92677;
- Los Angeles - 34 Civic Center Plaza Santa Ana, CA 92701;
- Los Angeles - One World Trade Center, Ste. 521, Long Beach, CA 90831;
- San Bernardino - 655 West Rialto Ave., San Bernardino, CA 92410;
- Ventura - 7700 Paseo Camarillo #101, Camarillo, CA 93010;
- Ventura - 3600 Guard Rd, Lompoc, CA 93436.
- PERC is in Laguna Niguel, established in 2015.

TYPE OF DETAINERS

ICE DETAINERS LIST FOUR BASES FOR PROBABLE CAUSE TO ISSUE THE DETAINER:

1. Final order of removal
2. Person is already in ongoing removal proceedings
3. *Biometrics and database checks indicate the person is removable*
4. The person admitted lack of immigration status/ removability or provided other evidence showing removability

The Court found that Reason 3 - one of the most commonly checked boxes, does not provide ICE with probable cause in order to issue a detainer. Under this injunction, ICE offices in the Los Angeles area, including PERC, can only issue detainers based on reasons 1, 2, and 4.

Additionally, the court ruled that ICE cannot issue detainers to states that don't expressly provide authority to make civil immigration arrests by local law enforcement officers under state law. This is currently limited, however, to database-only detainers, because those are the detainers challenged in this lawsuit.

The Gonzalez case is a class-action that is limited to ICE detainers issued solely on the basis of database checks. Therefore, only database-only detainers are affected by the ruling.

The court ruled that ICE cannot issue detainers based only on database checks, because these checks don't provide probable cause for arrest.



Keep an eye out! The judge will further clarify the scope of the injunction regarding state authority to arrest on ICE detainers in the coming weeks.

III. HOW TO ASSESS IF A DETAINER IS COVERED BY THIS INJUNCTION

Detainers are invalid under this ruling if both of the following are true:

1. Detainer has the third box "Biometric confirmation..." checked.

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

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

2. Detainer was issued from the Los Angeles area, including Los Angeles County, San Luis Obispo County, Santa Barbara County, Ventura County, Orange County, San Bernardino County, and Riverside County. See highlighted area.

DEPARTMENT OF HOMELAND SECURITY
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TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

If such a detainer is issued, the person should not be held for ICE.

IV. SIGNIFICANCE FOR ICE REQUESTS OF NOTICE OF RELEASE DATES

In California, Colorado, Illinois, and some other places, state and local laws prohibit holding people on ICE detainers, but may allow or only partially restrict notification to ICE of release dates. The injunction does not address ICE requests for notification of release dates. However, ICE uses the same process and same detainer form (I-247A) to issue their requests. Therefore the injunction banning ICE from issuing detainers prevents ICE (in the Los Angeles area, including the PERC) from asking for notice of release dates, unless or until ICE develops a separate mechanism for sending notification requests.

Advocates should be watchful about how ICE may try to secure release date information without a detainer form. Also, remember that ICE offices outside the Los Angeles area are not bound by this injunction, and ICE may shift after hours and other detainer-issuing efforts to offices in some other region.

V. MORE DETAIL ON HOW ICE ISSUES DETAINERS

Where does ICE issue detainers from?

Most detainers are issued locally - a nearby ICE office covers jails in the area. However, PERC is an ICE detainer and data center where ICE agents issue detainers across the country. Specifically, the PERC provides after-hours coverage to issue detainers in 41 states, and 24/7 coverage in California. This means that across the country (except in 8 states - Alaska, Washington, Oregon, Arizona, New Mexico, Colorado, Oklahoma, and Florida), detainers issued at night or on weekends may likely have come from PERC and be subject to this injunction.

What is ICE's usual process for issuing a detainer?

ICE is required to have probable cause that a person is removable in order to issue a detainer. ICE frequently is alerted to a possible target through Secure Communities, and then may do further database checks to determine the person's current immigration status. Where the jail allows it, ICE officers will frequently question people in local custody about their immigration history in order to obtain probable cause for the detainer. Because PERC is remote, most of the detainers it issues are based solely on database assessments, and thus will be affected by the injunction.

VI. LOCAL ADVOCACY OPPORTUNITIES

PREVENT ICE INTERVIEWS IN LOCAL JAILS

ICE is known for its coercive tactics to pressure individuals to give information about their immigration status. In most county jails, this occurs when a person is interviewed by ICE over the phone or in person within the facility. Given the unreliability of database checks, ICE may become more reliant on these interviews to obtain information about an individual's removability. **Every detainee has the constitutional right to remain silent and refuse an interview with ICE, regardless of immigration status.** Prior to any interview with ICE, the local law enforcement entity overseeing the jail should provide all detainees with "know your rights" information and a written consent form that explains ICE's presence and allows the person the opportunity to decline going to speak with ICE at all. These procedures already exist in a number of places, including state laws in Colorado, California, and Washington.

DETAINDER REVIEW PROCEDURES

Local law enforcement and local governments may be held liable for assisting the unlawful actions of ICE, including invalid detainer requests. Localities may protect themselves from potential lawsuits regarding invalid ICE detainers by establishing a protocol for reviewing the legality of each detainer request they receive. Ultimately, local entities should make sure that they do not honor an invalid detainer request. The Sheriff and/or legal counsel for the county is often responsible for establishing and implementing such protocol.

VII. FAQ AND ADVICE ON THE EFFECTS OF THIS RULING IN CALIFORNIA

Who may request a copy of an issued detainer request?

California state law requires that local agencies receiving an ICE detainer serve a copy of the detainer on the person named in it. Others may be able to request a copy of the detainer request as well.

Where and when does PERC issue detainers in California?

PERC issues detainers across California at all times, but so do local ICE offices. We do not have any detailed information on the division of labor between different ICE offices and PERC. Since PERC is currently not issuing database-only detainers, local offices may increase their efforts.

Does this decision matter since California law prevents holding people on detainers?

ICE still issues detainers across California, in spite of SB54, because ICE detainers include a request for notice of release dates. California law allows jails to provide ICE with information about inmates' release dates in many circumstances. Since notification requests are on the ICE detainer form, ICE must develop another process for requesting notice of release dates. However, this only applies to the Central District region. ICE in Northern California and the border counties will continue using detainers to ask for notice of release dates under SB54.

What should I do if DHS has placed an invalid detainer on my client?

Contact the law enforcement agency who has custody over your client and advise them that the detainer is invalid under the Gonzalez injunction. This may or may not prevent the locality from notifying ICE of the person's release from custody, since that is not clearly covered by the injunction, even if the issuance of the detainer was unlawful. Alternatively, you could contact ICE to have them lift the detainer, but be wary because they may just direct an office outside of the Central District to reissue it.

VIII. FAQ AND ADVICE FOR CRIMINAL DEFENSE AND IMMIGRATION ATTORNEYS OUTSIDE OF CALIFORNIA

Who may request a copy of an issued detainer request?

The subject of the detainer and the subject's attorney(s), including criminal defense and immigration attorneys. Others may be able to request a copy of the detainer request as well, but at a minimum, the subject and the subject's attorneys should be entitled to a copy.

Where can PERC issue detainers?

PERC issues after-hours detainers to 42 states (all except Alaska, Washington, Oregon, Arizona, New Mexico, Colorado, Oklahoma, and Florida). Now, PERC is enjoined from issuing database-only detainers, but may still issue detainers based on removal orders or pending removal proceedings.

What should I look for on a detainer form (I-247A) to determine if ICE improperly alleged probable cause of removability?

First, check to see where the detainer was issued (see above, [HOW TO ASSESS IF A DETAINER IS COVERED BY THIS INJUNCTION](#)). The injunction only applies to detainers issued by: a) PERC, which is located in Laguna Niguel, California, and b) other ICE offices issuing detainers in the Los Angeles area, which includes Los Angeles County, San Luis Obispo County, Santa Barbara County, Ventura County, Orange County, San Bernardino County, and Riverside County.

Second, under section 1 of Form I-247A, a box should be marked which indicates how DHS has determined that probable cause exists that the detainer subject is a “removable alien.” If the detainer was issued from the Los Angeles area, ICE may not check the 3rd box, which indicates that the determination was based on a **“biometric confirmation of the alien’s identity and a records check of federal databases.”** If you come across a detainer form with this box checked, issued in the Los Angeles area, including Laguna Niguel where PERC is located, the detainer is invalid because ICE has not established probable cause of the subject’s removability. Even in states where detainers are mandatory, such as Texas, holding someone without probable cause violates the Fourth Amendment and is illegal.

What should I do if DHS has placed an invalid detainer on my client?

Contact the law enforcement agency who has custody over your client. If your client is being held in county jail, usually the County Sheriff’s office has custody. Inform the agency that the ICE detainer is invalid, explain why, and provide a copy of the *Gonzalez v. ICE* court decision. Make sure to clearly explain why the ICE detainer is invalid and request that the agency release your client immediately upon eligibility under state criminal law. Inform the agency that they may be subject to liability if they continue to hold your client on an invalid ICE detainer beyond the time in which they would otherwise be eligible for release from criminal custody. Make the request in writing and by telephone. Keep records and copies of all communications.

If the law enforcement agency indicates they will continue to hold your client pursuant to the ICE detainer request, consider contacting the nearest ICE processing center or field office with jurisdiction over your client. Advise the ICE office that you are representing someone subject to an unlawful detainer and that you are requesting ICE lift the detainer, which is invalid pursuant to the *Gonzalez v. ICE* injunction. **But think carefully about how and when to do this because the local ICE office is not bound by the injunction, and might issue a replacement detainer instead.**

Lastly, if contacting the law enforcement agency and/or ICE is unsuccessful, it may be necessary to file a lawsuit against the jail, or against ICE. It may also be helpful to contact community organizers in your locality and initiate a deportation defense campaign, in order to call public attention to the matter.

Under *Gonzalez v. ICE*, ICE is barred from issuing detainers from the Central District of California, which includes the Los Angeles ICE Field Office, plus regional sub-offices. It also includes detainers issued by the Pacific Enforcement Response Center (PERC).

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

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

ICE claims probable cause of removability, but state laws may require local law enforcement to have probable cause of a crime to arrest or detain someone, not of a civil immigration violation.

In *Gonzalez v. ICE*, the court said it was unconstitutional for ICE to issue detainers in states where there is no explicit statute authorizing arrests based on detainers.

Name of Alien: _____
Date of Birth: _____ Citizenship: _____ Sex: _____

Under *Gonzalez v. ICE*, Los Angeles area ICE offices are barred from issuing detainers that only check this box.

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

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

There is no review of probable cause by a judge or neutral magistrate as required by the 4th Amendment, either before issuing a detainer or after ICE takes custody.

The ICE detainer form includes two primary requests: 1) notice of release, and 2) hold for an extra 48 hours.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2)

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to return custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien'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) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien 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 ALIEN 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 alien 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)

There is no process for the subject of the request to contest the information or allegations made on the form.

Requests the local agency to sign that the detainer was served on the detainee. It is not clear what ICE will do if this notice is not provided to the detainee.