



LEGAL BULLETIN

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INFORMATION FROM
THE OFFICE OF THE GENERAL COUNSEL

UPDATE

IMMIGRATION DETAINERS: **PROBABLE CAUSE REQUIRED**

Recently, two federal courts have found that detainees' civil rights were violated when they were held on ICE immigration detainers (Form I-247) without a determination of probable cause.

In one of these cases, *Miranda-Olivares v. Clackamas County*, Case No. 3:12-cv-12317-ST, 2014 WL 1414305 (D. Ore. April 11, 2014) the plaintiff had been arrested on a domestic violence restraining order. Miranda-Olivares was given bail, but her family was told by jail staff that she could not be released because of the ICE detainer. Miranda-Olivares pled to the offense and was sentenced to time served. However, because of the ICE detainer she was delayed an additional 19 hours before being released to the custody of ICE agents.

The court analyzed the federal regulation that authorizes the detainers, and found that the detainers were merely "requests" to detain, and therefore the jail was at liberty to refuse ICE's request to detain Miranda-Olivares if that detention violated her constitutional rights. Because the ICE detainer placed on Miranda-Olivares did not establish "probable cause" to arrest, the court found that her continued detention after she had the opportunity to post bond violated her constitutional rights.

In light of these cases, personnel should not honor ICE detainers unless they are supported by probable cause. Accordingly, a subject may be detained for ICE only when accompanied by a warrant issued by a federal judge or magistrate. An administrative warrant issued by an ICE official may not be used to detain a subject.

Personnel employed outside of the Broward Sheriff's Office should contact their Legal Department regarding these issues.