



IMMIGRATION DETAINERS LEGAL UPDATE

KEY COURT DECISIONS ON ICE DETAINERS AS OF OCTOBER 2017

Since 2014, the law on immigration detainers has changed substantially. Significant state and federal court decisions have found key aspects of ICE's detainer system unconstitutional, in violation of federal statutes, and in excess of state authority. 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.

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.

¹ *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); see also *Santa Clara v. Trump*, No. 3:17-cv-00574 (N.D. Cal. Apr. 25, 2017).

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).

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

DETAINERS EXCEED ICE'S OWN STATUTORY AUTHORITY

2016 - In *Jimenez-Moreno v. Napolitano*,⁶ 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.

STATE AND LOCAL OFFICERS MAY NOT HAVE AUTHORITY TO ARREST BASED ON A CIVIL ICE DETAINER

2017 - In *Lunn v. Commonwealth*,⁷ Lunn was detained based solely on an ICE detainer after his criminal charges were dismissed.

- The Massachusetts Supreme Judicial Court (SJC) held that neither federal law or Massachusetts (MA) law granted MA officers the authority to arrest individuals based solely on ICE detainers alleging civil immigration violations.
- In reaching its decision, the SJC rejected the Government's argument that State and local officers have an inherent authority outside of Massachusetts' state law to make federal civil immigration arrests.

LOCAL POLICE MUST HAVE PROBABLE CAUSE OF A CRIME, NOT DEPORTABILITY, TO DETAIN SOMEONE

2013 - In *Buquer v. Indianapolis*,⁸ Buquer and other plaintiffs sued to prevent the implementation of an Indiana state law that would have authorized local officers to arrest individuals based on a variety of immigration documents, including ICE detainers.

- In permanently enjoining this part of the legislation from taking effect, the Southern District of Indiana found that the law violated the Fourth Amendment because it would allow officers to arrest individuals for activities that were not a crime.

2017 - In *Santoyo v. United States*,⁹ a man whose charges had been dismissed sued for being held on an ICE detainer for six weeks.

- The Western District Court of Texas held that Bexar County, TX, could be liable for unlawful detention, because the Fourth Amendment requires police to have probable cause of a crime to detain someone, and the ICE detainer was merely based on allegations of civil immigration violations. For that reason, the court rejected Bexar County's argument that they were entitled to rely on ICE's determination of probable cause.
- The court pointed out that ICE's issuance of detainers with allegations of previous criminal convictions does not provide probable cause of any new offense as a basis to arrest in the present.

2017 - In *City of El Cenizo v. Texas*,¹⁰ the Western District Court of Texas blocked several sections of SB4—an anti-immigrant law that would force state and local entities to cooperate with federal immigration officers in the detention and removal of immigrants. This case is currently under appeal in the Fifth Circuit.

- The Court held that state and local officers cannot be forced to detain persons based solely on an ICE detainer because such a mandate would prohibit local officers from undertaking any particularized assessment that the person committed a crime.
- In coming to this conclusion, the Court found that the probable cause assessments required by ICE and local officers are different in that local officers are required to find probable cause that a person has engaged in criminal activity and ICE only requires probable cause that the person is removable.

⁶ *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452 (N.D. Ill. Sept. 30, 2016); see also *Orellana v. Nobles County*, No. 0:15-cv-03852 (D. Minn. Jan. 6, 2017).

⁷ *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass., 2017).

⁸ *Buquer et al. v. City of Indianapolis*, No. 1:11-cv-00708 (S.D. Ind. Mar. 29, 2013).

⁹ *Santoyo v. United States*, No. 5:16-CV-855-OLG, (W.D. Tex. June 5, 2017); see also *Mercado v. Dallas County*, No. 3:15-cv-3481 (N.D. Tex. Jan. 17, 2017).

¹⁰ *City of El Cenizo v. Texas*, No. SA-17-CV-404-OLG (W.D. Tex. Aug. 30, 2017).