IMMIGRATION DETAINERS LEGAL UPDATE

KEY COURT DECISIONS ON ICE DETAINERS AS OF JULY 2018

In the last several years, 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 held responsible for unlawfully holding Galarza for ICE because it was not legally required to comply with the detainer, but voluntarilymade the decision 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 court's 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 a detainer request.

2010 - In *Vohra v. United States*,[3] the plaintiff was held on an ICE detainer beyond the time when he was ordered released.

- 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 for the District of Rhode Island 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 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 because they exceeded ICE's statutory arrest authority.
- The court found that ICE has limited authority to arrest without a warrant, and that detainers placed 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.

2018 – In *Gonzalez v. ICE*,[7] plaintiffs brought a class action against ICE for violating the Fourth Amendment and federal statutory law in its issuance of detainer requests.

- The Central District of California ruled that the knowledge of a person's foreign birth plus the fact that there are no records of them in federal immigration databases is not sufficient to establish probable cause of removability. Therefore, the court found that issuing a detainer based on such facts alone violates the Fourth Amendment.
- The court found that a warrantless ICE detainer issued against an individual without first making an assessment of flight risk exceeds ICE's legal authority under 8 U.S.C. § 1357 and is thus invalid.

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

2017 - In *Lunn v. Commonwealth*,[8] Lunn was detained based solely on an ICE detainer after his criminal charges were dismissed.

- The Massachusetts Supreme Judicial Court held that neither federal law or Massachussetts law granted Massachusetts officers the authority to arrest individuals based solely on ICE detainers that alleged civil immigration violations.
- In reaching its decision, the court 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.

2018 – In *Cisneros v. Elder*,[9] plaintiffs Cisnero and Rodriguez attempted to post bond from El Paso County Sheriff's Office, but the sheriff's office refused to release them because they were subject to ICE detainers.

- The District Court of Colorado, El Paso County, determined that Colorado law does not grant the sheriff's office authority to hold plaintiffs after they have posted bond, completed their sentences, or otherwise resolved their criminal cases on the basis of an ICE detainer or administrative warrant.
- The court held that an ICE detainer or ICE administrative warrant does not constitute a warrant under Colorado law. In order to make a warrantless arrest in Colorado, an officer must have probable cause to believe that a crime was committed, but an ICE detainer or administrative warrant does not provide probable cause to believe that a criminal offense was committed.

[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] *Gonzalez v. ICE*, No. 2:13-cv-04416 (C.D.Cal. *filed* Aug. 18, 2014) consolidated with *Roy v. City of L.A.*, CV 12-09012-AB (C.D. Cal. Feb. 7, 2018).
[8] *Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass., 2017).
[9] *Cisneros v. Elder*, No. 18CV30549 (D. Colo., El Paso Cty. Mar. 19, 2018).

THE FOURTH AMENDMENT REQUIRES THAT LOCAL POLICE HAVE PROBABLE CAUSE OF A CRIME, NOT DEPORTABILITY

2013 – In *Buquer v. Indianapolis,*[10] 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 *Lopez-Aguilar v. Marion County Sheriff's Department*,[11] plaintiff was held in Marion County under an ICE detainer.

- The Southern District of Indiana held that Marion County's compliance with ICE detainers and immigration-court removal orders without criminal probable cause violates the Fourth Amendment, and permanently enjoined Marion County from complying with ICE detainers and immigration-court removal orders without criminal probable cause.
- Indiana state law prohibits an Indiana governmental body from restricting the enforcement of federal immigration laws to less than the "full extent permitted by federal law." The court determined that since the INA and Fourth Amendment do not permit Marion County to cooperate with ICE detainers or removal orders, the full extent of federal permission does not permit a state to require its LEAs to comply with ICE detainers or removal orders.

2018 – In *Roy v. Los Angeles*,[12] plaintiffs brought a class action against the Los Angeles County Sheriff's Department (LASD) challenging LASD's practice of detaining individuals solely on the basis of an ICE detainer as unconstitutional.

- The Central District of California held that holding an individual beyond his or her date for release on the basis of an ICE detainer is a new arrest. Since such a new arrest is made without probable cause that the individual was involved in criminal activity, the court held that LASD violated the Fourth Amendment by holding people based on ICE detainers.
- The court held that the recently passed Senate Bill 54 prohibits LASD from detaining an inidivdual on the basis of an ICE detainer.
- The court also held that LASD's practice of booking individuals subject to ICE detainers when those individuals would otherwise be subject to LASD's policy of not booking arrestees with a bail amount of less than $25,000 violates equal protection.

COUNTER AUTHORITY: A STATE LAW MAY DIRECT LOCAL POLICE TO HOLD PEOPLE ON ICE DETAINERS

2018 – In *City of El Cenizo v. Texas*,[13] the Fifth Circuit declined to strike down the provision of SB 4 requiring LEAs to comply with ICE detainer requests.

- The Fifth Circuit rejected the argument that the Fourth Amendment requires local officials to have probable cause of criminality for arrest, holding that establishing probable cause of removability is sufficient for compliance with an ICE detainer request.
- Also, the Fifth Circuit held that local officials may invoke the collective-knowledge doctrine to provide probable cause based on an ICE officer's knowledge of the specific facts establishing probable cause of removability.

[10] *Buquer et al. v. City of Indianapolis*, No. 1:11-cv-00708 (S.D. Ind. Mar. 29, 2013). *Accord. Cisneros v. Elder*, No. 18CV30549 (D. Colo., El Paso Cty. Mar. 19, 2018). See also *Santoyo v. United States*, No. 5:16-CV-855-OLG, (W.D. Tex. June 5, 2017) and *Mercado v. Dallas County*, No. 3:15-cv-3481 (N.D.Tx. Jan. 17, 2017) (both disavowed by the Fifth Circuit in City of El Cenizo v. Texas).
[11] Lopez-Aguilar v. Marion County Sheriff's Dep't, No. 1:16-cv-02457-SEB-TAB (S.D. ind.Nov. 7, 2017).
[12] *Roy v. City of L.A.*, No. CV 12-09012-AB (C.D. Cal. Feb. 7, 2018) consolidated with *Gonzalez v. ICE*, No. 2:13-cv-04416 (C.D.Cal. *filed* Aug. 18, 2014).
[13] City of El Cenizo v. Texas, 890 F.3d 164, (5th Cir. 2018).