

IMMIGRATION DETAINERS LEGAL UPDATE

October 2016

Since 2014, the law on immigration detainers has changed substantially. Several federal court decisions found key aspects of ICE's detainer system unconstitutional. In response, DHS issued memos purportedly changing the Secure Communities Program to a new regime called the Priority Enforcement Program. Nonetheless, recent court decisions have found even greater legal defects with ICE's enforcement operations. Below we summarize the key court decisions and policy changes.

In *Galarza v. Szalczyk*, 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.

In *Morales v. Chadbourne*, another U.S. citizen was held on a detainer after she should have been released.

- The First Circuit Court of Appeals held that detaining someone beyond their release date is an arrest under the Fourth Amendment.
- The court also found that the Fourth Amendment requires ICE to have probable cause to issue such a detainer request.

In *Miranda-Olivares v. Clackamas County*, 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 held that Clackamas County had unlawfully detained Ms. Miranda-Olivares and would have to pay her money for unlawfully holding her.
- It does not matter what immigration status Ms. Miranda-Olivares has. Being held on the detainer violated her Fourth Amendment right against unlawful arrest and detention.
- The court ruled that the detainer did not provide sufficient proof (probable cause) to allow the local jail to detain Ms. Miranda-Olivares for ICE.

Following these decisions, hundreds of jails across the country stopped cooperating with ICE detainers. See <https://www.ilrc.org/detainer-map>. In November, 2014, the Obama Administration "terminated" Secure Communities and launched the Priority Enforcement Program, under which it promised that detainers would only be used in "special circumstances," and that ICE would shift to just asking jails about when a person was going to be released. In addition, ICE changed the former detainer request form, I-247, into 3 new forms: I-247D, I-247N, and I-247X. For more on PEP and these new detainers, see <https://www.ilrc.org/life-under-pep-comm>.

NEWEST DECISION SAYS ICE DETAINERS ARE INVALID

In October 2016, the Northern District of Illinois held that nearly all ICE detainers issued by the Chicago Field Office were invalid, but temporarily stayed the order cancelling all the current outstanding detainers.

- 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.

This decision does not reach detainers issued by other field offices, but the clear analysis applies equally across the country. Local jails should not rely on any ICE detainer as a basis for custody. ICE has requested local law enforcement to make hundreds of thousands of illegal arrests, and localities often pay the consequences.