



## **IMMIGRATION DETAINERS UPDATE**

### **May 12, 2014**

**Federal courts have recently issued groundbreaking rulings regarding immigration detainers.**

What do these decisions mean, and how can they be used in local advocacy efforts?

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First, 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. This was the first federal circuit court (federal circuit courts can only be overruled by the Supreme Court) to unequivocally rule that ICE detainers are not mandatory. (A few lower courts have also issued similar opinions).
  - 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.
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Second, 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.
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Third, since the Oregon decision, at least 50 sheriffs in Oregon, Washington, Colorado, and California have announced that they will no longer hold people based on ICE detainers, because of the risk of liability.

- Many sheriffs have said they will only hold someone for ICE if they receive a real judicial warrant for arrest, signed by a judge. An immigration detainer is just a request issued by an ICE agent, it is not a judicial warrant.
  - More sheriffs in California and other states are still analyzing the decision, and may soon decide to follow suit.
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**All law enforcement in the United States should be informed that holding someone based on an ICE detainer may be unconstitutional and could incur civil liability for unlawful detention!**

Even jurisdictions that already have policies limiting compliance with ICE detainers are at risk, because potentially any decision to hold someone on an ICE detainer may be unconstitutional and result in civil liability.

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For more information, see [www.ilrc.org/enforcement](http://www.ilrc.org/enforcement).

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## How can you use these recent decisions in your organizing and advocacy efforts?

1. Advocates should immediately work with a legal organization to inform their local law enforcement, including correctional agency, about these cases.
  - a. This might include many local officials involved in the criminal justice system:
    - i. District Attorney (prosecutors' office)
    - ii. Public defenders office
    - iii. Sheriff and/or jail administrators
    - iv. Police Chief
    - v. Probation department
    - vi. City or county counsel (lawyers for the local government)
    - vii. Elected County Board Members or City Council
  - b. Also consider alerting state officials:
    - i. Attorney General of your state
    - ii. State Department of Corrections
    - iii. State troopers/state police
    - iv. State legislators
  
2. Consider sending a letter explaining these issues and requesting a meeting to ask for an immediate change in policy. Explain the risk of civil liability if they continue to hold immigrants for ICE, and how localities across the nation are responding by adopting policies in which NO ICE detainers are honored, or are requiring a judicial warrant for arrest signed by a judge.

Sample letters are attached.

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### What other legal issues might arise?

- The Oregon court found that Clackamas County Jail had prevented Miranda-Olivares from paying bail, by telling her she would be held for ICE anyway. As a result of these statements from the jail, Miranda-Olivares was deterred from paying bail for nearly two weeks. The court found that deterring Ms. Miranda-Olivares from paying bail that she otherwise would have paid constituted an unlawful arrest by the jail.
  - This kind of bail denial is not uncommon in jails across the country. Highlight this finding for Sheriffs, county counsel, or other jail administrators who may be unlawfully preventing access to bail because of ICE detainers.
  
- Watch out for ICE administrative warrants. Numerous jurisdictions report ICE trying to use these warrants (Form I-200) in place of detainers. Although these are labeled “warrants,” they are issued by an ICE agent, not approved by a judge, and may not be based on probable cause. At least one federal district court, in *El-Badrawi v. DHS*, has found that an ICE warrant is not a valid warrant for arrest because it is not reviewed by a neutral magistrate.

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