



July 31, 2014

**By Facsimile and Standard Mail**

**Re: Legal Liability for Enforcing ICE Detainer Requests**

Dear Sheriff:

We are writing to ask you to stop honoring requests from Immigration and Customs Enforcement (ICE) to detain people in your custody who are otherwise free to be released. There is no legal requirement that you honor these requests, and continuing to do so will impose unreimbursed costs on your locality or jail authority and expose you to litigation regarding the constitutionality of your action.

As you may be aware, recent federal court decisions, referenced below, have made clear that detaining individuals on ICE detainer requests (also known as an "ICE hold" and "immigration hold")<sup>1</sup> is a violation of the detainee's Fourth Amendment and due process rights. These decisions also make clear that ICE detainers are voluntary and that sheriffs and jail officials who honor ICE detainers can be held liable for violating the constitutional rights of the unlawfully detained individual. As a result, many sheriffs throughout the U.S. have stopped honoring the ICE detainer requests.

On April 11, 2014, the Federal District Court in Portland, Oregon issued a decision in the case of *Maria Miranda-Olivares v. Clackamas County*.<sup>2</sup> Ms. Miranda-Olivares was arrested for violating a restraining order and was subsequently sentenced to time served and ready to be released. However, an ICE detainer was issued and she was held in jail for an additional 19 hours.<sup>3</sup> As a result of her prolonged detention, the Federal District Court found that Clackamas County had violated Ms. Miranda-Olivares' constitutional rights by detaining her without probable cause, when it chose to hold her pursuant to a detainer issued by ICE (on form I-247). The Court also held that the County was liable for damages to Ms. Miranda-Olivares pursuant to 42 U.S.C. § 1983 and that the amount of damages would be set a later date.

The court decision in *Miranda-Olivares* specifically rejected Clackamas County's argument that the county was required to comply with ICE detainers. The court pointed to internal and public statements from ICE demonstrating that the agency

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<sup>1</sup> ICE detainers requests identify a prisoner in your custody and ask you to continue to detain that prisoner for an additional 48 hours (excluding weekends and holidays) after he or she would otherwise be released. This request can potentially lead the locality or jail authority to hold an individual for up to an additional six days if the 48-hour period occurs over a holiday weekend. And, the locality or jail authority is responsible for the cost of detaining the individual for up to six additional days.

<sup>2</sup> *Miranda-Olivares v. Clackamas County*, No.3:12-cv-02317-ST. (D. Or. April 11, 2014).

<sup>3</sup> See:

[http://media.oregonlive.com/clackamascounty\\_impact/other/Miranda%20Olivares%20MSJ%20decision.140411.pdf](http://media.oregonlive.com/clackamascounty_impact/other/Miranda%20Olivares%20MSJ%20decision.140411.pdf)

recognized that ICE detainers are not mandatory but merely voluntary requests for the jail to detain someone. ICE recently reaffirmed this view in a letter to multiple U.S. congressional representatives, stating that "immigration detainers . . . are not mandatory as a matter of law."<sup>4</sup> This position is also consistent with a ruling from the U.S. Court of Appeals for the Third Circuit in *Galarza v. Szalczyk* that concluded ICE detainers are voluntary not mandatory.<sup>5</sup>

As the Major Cities Chiefs Immigration Committee has stated, ICE detainers are a "trap for unwary officers who believe them to be valid criminal warrants or detainers" that "do not fall within the clear criminal enforcement authority of local police agencies."<sup>6</sup> By refusing to honor these unconstitutional requests you can prevent your locality or jail authority from being subjected to legal action and ensure that the constitutional rights of community members are not violated.

We ask that you change your policy to ensure that all detainer requests require a judicial finding of probable cause in order to deprive someone of their liberty. This is the minimum requirement necessary to ensure the constitutional rights of individuals in your custody.

For more information or to discuss this in further detail, please feel free to contact either Joseph Montano, our immigrants' rights coordinator, at (804) 523-2150 or myself at (804) 523-2146.

Very truly yours,

  
Claire Guthrie Gastanaga

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<sup>4</sup> Letter from Daniel H. Ragsdale, Acting Director, U.S. Immigration and Customs Enforcement, to U.S. Representatives (Feb. 25, 2014), *available at*: <http://www.notonemoredeportation.com/wp-content/uploads/2014/02/13-5346-Thompson-signed-response-02.25.14.pdf>.

<sup>5</sup> *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

<sup>6</sup> [www.majorcitieschiefs.org/pdfpublic/MCC\\_Position\\_Statement\\_REVISED\\_CEF\\_2009.pdf](http://www.majorcitieschiefs.org/pdfpublic/MCC_Position_Statement_REVISED_CEF_2009.pdf), at 8