

July 14, 2014

Sheriff Steven W. Tompkins
Executive Office
20 Bradston Street
Boston, MA 02118

Re: Federal Court Decision on ICE Detainer/Hold Requests

Dear Sheriff Tompkins:

We are writing to alert you to an important federal court ruling that detention pursuant solely to a U.S. Immigration and Customs Enforcement (“ICE”) detainer request violates the Fourth Amendment of the U.S. Constitution. As a result of this ruling, and as of the date of this letter, more than 100 counties and cities in Oregon, Washington, California, Kansas, Iowa, Minnesota and Colorado have decided to stop holding individuals on ICE detainers to avoid liability for complying with such requests. We hereby ask that you follow suit and stop complying with ICE detainers, unless or until such detainers are accompanied by a judicial determination of probable cause to satisfy the requirements of the Fourth Amendment.

On April 11, 2014, the Federal District Court in Portland, Oregon issued a decision in the case of *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST.¹ The Court held that Clackamas County had violated the constitutional rights of Ms. Miranda-Olivares by detaining her without probable cause when it chose to hold her on an ICE detainer (Form I-247). The Court held that the County was liable for damages to Ms. Miranda-Olivares under 42 U.S.C. §1983.

Significantly, the court held that continuing to detain Ms. Miranda-Olivares solely on the ICE detainer constituted a new arrest, and thus required probable cause. **The court concluded that the detainer did not demonstrate probable cause to detain her.** The decision makes clear that local law enforcement agencies that detain individuals on the sole authority of an ICE detainer violate the Fourth Amendment, unless there has been an independent judicial finding of probable cause to justify the continued detention.

ICE detainers are generally not supported by judicial determinations of probable cause,² rather, they are issued without any judicial involvement by an individual immigration enforcement officer.³ This lack of basic due process explains why ICE has mistakenly placed so many

¹ Link to the decision is available at <http://bit.ly/lexis-nexis-miranda-olivares-case>.

² Courts have repeatedly held that ICE detainers are not warrants. *Morales v. Chadbourne*, 2014 WL 554478, *16 (D.R.I. Feb. 12, 2014) (“Warrants are very different from [ICE] detainers”); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011) (“A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency advise [ICE], prior to release of the alien, in order for [ICE] to arrange to assume custody.”). See also *Buquer*, No. 11-0708, 2013 WL 1332158 (S.D. Ind. Mar. 28, 2013) (describing seizures based on ICE detainers as warrantless arrests).

³ As the Court explained in *Miranda-Olivares*, the detainer, on its own, did not demonstrate probable cause, particularly because its stated purpose was to *initiate* an investigation. ICE has made clear in other contexts that it does not require agents to have probable cause to believe an individual is subject to removal when they issue detainers. In a recent federal lawsuit about the wrongful detention of a U.S. citizen on an ICE

detainers on U.S. citizens and non-removable immigrants.

In the *Miranda-Olivares* decision, the court specifically rejected Clackamas County's argument that law enforcement was required to comply with ICE detainers. The court pointed to internal and public statements from ICE acknowledging that ICE detainers are not mandatory, but merely voluntary requests. ICE has recently reaffirmed its position that law enforcement agencies are not legally obligated to abide by detainers in a letter to U.S. Congressman Adam Smith (attached). This position is also consistent with a ruling from the U.S. Court of Appeals for the Third Circuit in *Galarza v. Szalczyk*, 745 F.3d 634 (3rd Cir.2014), which concluded that ICE detainers are voluntary—not mandatory.

Following the *Miranda-Olivares* decision, any law enforcement agency that maintains a policy and/or practice of detaining individuals on ICE detainers not supported by a judicial probable cause finding violates the Fourth Amendment and may be held liable for damages under 42 U.S.C. §1983.

In response to the *Miranda-Olivares* ruling, over one hundred sheriffs in states across the country have issued moratoriums on complying with ICE detainers, and more are expected to follow suit. See Matthew Heller, Sheriffs Defy Feds By Refusing To Honor "Detainer" Requests For Immigrants, MINTPRESSNEWS, June 17, 2014; Julia Preston, Sheriffs Limit Detention of Immigrants, N.Y. TIMES, Apr. 18, 2014 (reporting that nine Oregon counties announced just days after the *Miranda-Olivares* ruling that they would no longer comply with ICE detainers); Raya Zimmerman, Ramsey County Jail Stops Honoring Immigration Holds, *TwinCities.com*, June 11, 2014.

In Colorado, the San Miguel County Sheriff's Office announced that under its new policy "ICE agents will be required to file an arrest warrant, signed by a U.S. Magistrate, with the Sheriff's office before the Sheriff will detain a federal prisoner." *Press Release*, San Miguel County Sheriff's Office, SMSO Changes Policy on Detaining Suspected Undocumented Immigrants (Apr. 29, 2014). Similarly, the Riverside, California Sheriff's Department policy says that "ICE detainers will not be honored unless accompanied with documentation of proof a federal probable cause hearing occurred and such proof is signed by a judge."

These cities and counties join cities like Philadelphia, PA, and Champaign, IL, which—prior to the *Miranda-Olivares* ruling—had already completely banned compliance with immigration detainers absent a judicial probable cause determination. See Michael A. Nutter, Mayor, Executive Order No. 1-14, available at http://www.ilrc.org/files/documents/philadelphia_executive_order.pdf; Letter from Champaign County Sheriff Dan Walsh to ICE, March 8, 2012, available at <http://bit.ly/1fUeB5W>.

Because we understand that your agency currently has a policy or practice of detaining community members on ICE detainers without requiring a finding of probable cause by a judicial officer, we request that you change your policy and practice to ensure that you do

detainer, ICE's attorney told the district court that ICE uses detainers as "a stop gap measure. . . to give ICE time to investigate and determine whether somebody's an alien, and/or subject to removal, before local law enforcement releases that person from custody." Oral Argument Transcript, ECF #79, *Galarza v. Szalczyk*, No. 10-06815 (E.D. Pa. Jan. 10, 2012). See also Brief of Federal Defendants, *Ortega v. ICE*, No. 12-6608 (6th Cir. filed Apr. 10, 2013) (stating, in a case involving a U.S. citizen held on a detainer, "the purpose of issuing the detainer was to allow [ICE] time to conduct an investigation that could have discovered whether Plaintiff-Appellant was removable or was, in fact, a U.S. citizen.").

not inadvertently violate the constitutional rights of community members.

We believe that only a policy that requires a judicial finding of probable cause that individuals are subject to removal from the United States before you deprive them of their liberty is sufficient to meet the minimum constitutional requirements.

While there is currently a bill in the Massachusetts legislature, the MA Trust Act (Senate bill 1135), that would address concerns about the local application of ICE detainers, the federal decision in *Miranda-Olivares* creates distinct limitations on compliance with ICE detainers, which are grounded in Constitutional requirements. The state legislation would provide additional guidance to reinforce the distinction between local public safety and federal immigration enforcement, helping to foster trust between immigrant communities and local law enforcement. However, the requirements of the Fourth Amendment already apply to law enforcement officers in Massachusetts and thus we urge you to take swift action to adjust County policy.

We would be happy to discuss any of these matters or provide any resources that would be helpful to move this process forward. You can reach Salvador Sarmiento at 202-746-2099 or sgsarmiento@ndlon.org. We look forward to your response.

Sincerely,

**American Friends Service Committee
Centro Presente
Chelsea Collaborative
Harvard Immigration Project
Just Communities
National Day Laborer Organizing Network
National Immigration Project of the National Lawyers Guild**