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Law Center



BY FIRST CLASS MAIL AND EMAIL

December 4, 2017

Sheriff Rick Ramsay
Monroe County Sheriff's Office
5525 College Road
Key West, FL 33040
Email: rramsay@keysso.net

Re: Unconstitutional Enforcement of Immigration Detainers in Monroe County

Dear Sheriff Ramsay:

It has come to our attention that Monroe County Detention Center has detained individuals pursuant to an out-of-date detainer form issued by Customs and Border Protection (CBP). *See* Attachment 1. This form states that the sole justification for the detainer is to investigate further the subject's immigration status. Local jails that detain individuals pursuant to such detainers have been found to violate the Fourth Amendment. We urge you to stop honoring these detainers immediately, as continued enforcement exposes your county to liability. Beyond that, such collaboration with immigration enforcement erodes community trust and endangers public safety by deterring immigrants from reporting crimes.

An immigration detainer (or "immigration hold") is not a court order or judicial warrant and provides no legal authority to continue holding an individual in custody. An immigration detainer is simply a request by a federal immigration agency that a local jail continue to detain an individual after he or she would otherwise be released in order to allow the agency to take custody of that individual.¹ An Immigration and Customs Enforcement (ICE) or CBP detainer "provides no probable cause for detention."² The detention of individuals based solely on ICE or CBP detainer requests violates the Fourth Amendment prohibition against unreasonable search and seizures, and local law enforcement agencies may be subject to significant damages for detaining individuals in response to such hold requests.³

¹ 8 CFR § 287.7; *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014).

² *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *12 (D. Or. Apr. 11, 2014).

Specifically, Monroe County Detention Center has enforced immigration detainers issued by CBP that permit the agency to check a box indicating: “Investigation has been initiated to determine whether this person is subject to removal from the United States.” The use of this specific form has been explicitly ruled unconstitutional by federal courts across the country because detention on the basis of mere investigation into an individual’s immigration status is unconstitutional.⁴ Local law enforcement agencies have repeatedly been held liable for unconstitutionally detaining individuals in response to ICE hold requests.⁵ For example, Clackamas County, Oregon paid a woman over \$97,000 after being held liable for detaining her pursuant to an immigration detainer for 19 hours.⁶ Lehigh County in Pennsylvania settled a lawsuit for \$95,000 for wrongfully holding a U.S. citizen under an immigration detainer.⁷ Indeed, ICE modified its detainer form following these court rulings. The current form used by ICE no longer permits the agency to issue a detainer when it has only begun an investigation.⁸

³ See Stipulation & Order of Settlement and Discontinuance, *Harvey v. City of New York*, No. 1:07-cv-0343 (E.D.N.Y. June 12, 2009) (settling for \$145,000 for detaining a man over one month under solely an immigration detainer); see also American Civil Liberties Union of Utah, *ACLU of Utah and Salt Lake County Settle Lawsuit Regarding Immigration Detention Policies* (Aug. 24, 2014), <http://acluutah.org/newsroom/item/864-aclu-of-utah-and-salt-lake-county-settle-lawsuit-regarding-immigration-detention-policies> (settling for \$75,000).

⁴ See *Morales v. Chadbourne*, 996 F. Supp. 2d 19, at 39 (D.R.I. 2014) (“[T]he Court finds that initiating an investigation and detaining an individual based solely on his/her national origin violates the United States Constitution.”); *Miranda-Olivares*, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014) (concluding that merely beginning an investigation is not sufficient to satisfy probable cause); see also *Arizona v. United States*, 567 U.S. 387, 413 (2012) (“[d]etaining individuals solely to verify their immigration status would raise constitutional concerns”); *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”).

⁵ State laws generally require local law enforcement to have probable cause of a crime to arrest or detain someone. See, e.g., *Morales v. Chadbourne*, 235 F.Supp.3d 388, 392 (D.R.I. 2017) (“[Ms. Morales’] twenty-four hour illegal detention revealed dysfunction of a constitutional proportion at both the state and federal levels and a unilateral refusal to take responsibility for the fact that a United States citizen lost her liberty due to a baseless immigration detainer through no fault of her own.”); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1008-09 (N.D. Ill. 2016) (concluding that ICE’s issuance of the plaintiffs’ immigration detainers exceeds its statutory authority and declaring the immigration detainers issued against the plaintiffs to be void); *Miranda-Olivares*, 2014 WL 1414305, at *1 (holding the county liable for seizure without probable cause in violation of the Fourth Amendment for detaining Ms. Miranda-Olivares pursuant to an ICE hold).

⁶ *Miranda-Olivares*, No. 3:12-cv-02317, 2015 WL 5093752 (D. Or. Aug. 28, 2015).

⁷ ACLU of Pennsylvania, *Galarza v. Szalczyk, et al.*, <https://www.aclupa.org/our-work/legal/legaldocket/galarzavszalczyketal/>.

⁸ The current version of the ICE detainer, DHS Form I-247A, is available here: <https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>.

Although the new form purports to list “probable cause” categories, Florida law does not authorize local law enforcement to arrest someone without a judicial warrant for a civil immigration violation.⁹ See Fla. Stat. § 901.15.

CBP’s careless reliance on the out-of-date detainer form underscores broader problems with your office’s needless participation in the agency’s immigration enforcement, which undermines your commitment to “uphold[ing] laws.”¹⁰

The undersigned organizations urge the Monroe County Jail to cease holding individuals under immigration detainers—whether under the old or the new detainer forms. In addition to our concern about their constitutionality, honoring detainers harms the local community. Immigrants in the community are fearful of reporting crimes to law enforcement because notifying the police may make them or their loved one a target for deportation.¹¹ Less crime reporting in Monroe County makes the county less safe for all residents.

Moreover, Monroe County families of mixed status may be separated—with breadwinners being taken into custody—thus endangering the stability of the family unit. Current federal immigration practice is not to consider whether immigrants have children or dependent relatives in the United States, their connections to the United States, or their significant contributions to the community. Between 2009 and 2013, more than half a million parents of U.S. citizen children were deported.¹² Researchers who conducted field surveys in multiple states, including Florida, found that children of deported parents experience economic hardship, as well as emotional and psychological distress.¹³ Thus, the harm of deportation affects

⁹ See *Santoyo v. United States*, No. 5:16-CV-855-OLG, 2017 WL 2896021, at *7 (W.D. Tex. June 5, 2017) (“[N]either the mere removability of an individual nor the entry of a final removal order against them equates to a showing of probable cause that they have committed a crime.”); *Orellana v. Nobles Cty.*, 230 F. Supp. 3d 934, 945 (Jan. 6, 2017) (noting that “‘reason to believe [that a detainee] is an alien subject to removal from the United States’ does not, without more, provide the probable cause needed to make a lawful arrest. . . . because, ‘[a]s a general rule, it is not a crime for a removable alien to remain present in the United States’” (quoting *Arizona*)); see also *Mercado v. Dallas Cty.*, 229 F. Supp. 3d 501, 512-13 (N.D. Tex. 2017).

¹⁰ For example, recent incidents of Monroe County Sheriff deputies calling CBP to the scene of traffic accidents and traffic stops have been a cause of great concern. Nancy Klingener, *One Island, Two Jurisdictions: Police Forces Differ on Approach to Immigration Enforcement*, WLRN (June 22, 2017), <http://wlrn.org/post/one-island-two-jurisdictions-police-forces-differ-approach-immigration-enforcement>.

¹¹ Risa Morris, *Crimes going unreported as illegal immigrants fear deportation*, NBC-2 (May 8, 2017), <http://www.nbc-2.com/story/35374241/crimes-going-unreported-as-illegal-immigrants-fear-deportation>.

¹² Lydia DePillis, *The U.S. has deported more than half a million parents since 2009. Here’s what happens to their kids*, The Washington Post (Sept. 21, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/09/21/this-is-what-would-happen-to-the-children-of-11-million-illegal-immigrants-if-president-trump-deported-them/?utm_term=.c7b3e8778778.

¹³ Urban Institute & Migration Policy Institute, *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* (2015), <http://www.migrationpolicy.org/research/health-and-social-service-needs-us-citizen-children-detained-or-deported-immigrant-parents>.

not only those who are deported, but their children and their surrounding communities, translating into additional foster care and other fiscal or social costs to state and local governments.¹⁴

During a time when Monroe County and the Florida Keys are recovering from the impact of Hurricane Irma, the primary focus of the Monroe County Sheriff's Office should be maintaining the safety and cohesion of these communities, not assisting in the separation of families and the deportation of community members. For these reasons, the undersigned organizations strongly urge the Monroe County Sheriff's Office to stop its unconstitutional enforcement of immigration detainers.

Thank you for your prompt consideration of this request. Please do not hesitate to contact Lisa Graybill at 850-521-3024 or Amien Kacou at 813-288-8390 should you have any additional questions or concerns.

Sincerely,

Lisa Graybill
SOUTHERN POVERTY LAW CENTER

Amien Kacou
ACLU OF FLORIDA

Kira Romero-Craft
LATINOJUSTICE PRLDEF

¹⁴ See, e.g., Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* 27-28 (2011), http://www.atlanticphilanthropies.org/app/uploads/2015/09/ARC_Report_Shattered_Families_FULL_RELEASE_Nov2011Release.pdf (finding that, in counties that participate in immigration enforcement, children in foster care are significantly more likely to have a detained or deported parent).



Inmigration Detainer - Notice of Action



SHERIFF or Officer in Charge
Monroe County Detention Facility
Florida Keys, Florida

Patrol Agent in Charge
U.S. Border Patrol
3770 Overseas Highway
Marathon, FL 33050

A- Number: _____ Date: 3/19/2017

Name of Alien: _____

Alien Date of Birth: _____ Nationality: _____ Gender: _____

You are advised that the action noted below has been taken by the United States Border Patrol concerning the above-named inmate of your institution:

- Investigation has been initiated to determine whether this person is subject to removal from the United States
- A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on: _____
- A warrant of arrest in removal proceedings, a copy of which is attached, was served on: _____
- Deportation or removal from the United States has been ordered

It is requested that you:

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work and quarters assignments, or other treatment that he or she would otherwise receive

- Federal regulations (8 CFR 287.7) require that you obtain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays) to provide adequate time for Border Patrol to assume custody of the alien. You may notify Border Patrol by calling (305-289-0942) during business hours or 1-877-772-8148 x 115 after hours in an emergency.
- When subject is ready for release/pick-up, please fax a copy of this detainer to 305-743-6091. Please include any police reports, court documents, conviction documents as well as FBI# _____ and SID# _____. This will aid in processing for deportation or removal hearing.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of subject's death or transfer to another institution
- Please cancel the detainer previously placed by this Agency on _____

[Signature] 814

Signature of Border Patrol Official

Border Patrol Agent

Title of Border Patrol Official

Receipt acknowledge:

Signature and title of official: _____

Agent Name & Phone Number: HERNAN MARIN (305) 289-0942

Supervisor Name & Phone Number: JAR MATZEL (305) 289-0942

Station Phone Number: 305-289-0942 Station Fax Number: 305-743-6091