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The Swiftly Changing Legal Landscape Impacting ICE Detainers in Colorado: Questions and Answers

How have ICE detainers traditionally worked?

Federal immigration authorities routinely issue detainers, or “ICE holds,” to local jails requesting the jail hold an individual for an additional 48 hours, not including weekends or holidays, after the person would otherwise be released from custody. ICE detainers are issued by ICE officials without a statement of probable cause, unlike criminal warrants signed by a federal judge or magistrate. Generally, local jails are responsible for the additional cost of detaining individuals beyond the time they would normally be released.

What spurred the recent changes to detainer policies?

Recently, federal courts have strongly rejected the argument that local jails are required to honor such ICE detainer. Instead, courts have repeatedly held that ICE detainers are requests by federal immigration authorities, and such requests place no obligation on local jails to continue holding persons subject to a detainer.

- In *Galarza v. Szalczyk*, 2014 Y.S. App. LEXIS 4000 (3rd Cir. March 4, 2014), the Third Circuit Court of Appeals held that ICE detainer are merely requests, not commands by federal ICE officials.
- In *Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340 (D. Ore. Apr. 11, 2014), the Oregon District Court held that the County jail’s imprisonment of Ms. Miranda-Olivares violated her Fourth Amendment rights because, unlike a criminal warrant, there was no probable cause for her continued imprisonment. Within a week of this decision, 23 counties in Oregon changed their policies, refusing to honor ICE detainers.

This information is current as of May 1, 2014.

For the most current information, please call our office at 303-831-0817 or visit www.themeyerlawoffice.com.



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How have the recent federal decisions impacted Colorado?

As a direct result of these and other recent federal court decisions, multiple counties across Colorado are refusing to honor ICE detainers. As a result, local law enforcement officials are refusing to allow federal immigration authorities to commandeer local jails, law enforcement officials, and other State and local resources solely for the purpose of enforcing requests that raise serious constitutional concerns.

For example, on April 29, 2014, San Miguel County Sheriff Bill Masters said, “All persons physically inside San Miguel County, regardless of their nationality, are protected by the 4th Amendment of the Constitution which protects people against unreasonable seizure of their person and that warrants must be based on probable cause and supported by oath or affirmations of detaining officers.”

What could detainer policy changes mean for Colorado communities?

For communities in Colorado counties where ICE detainers are no longer honored, noncitizens arrested by state and local law enforcement authorities will not be held in local jails solely due to an ICE detainer. Instead, noncitizens will retain the Fourth Amendment protections enjoyed by every other person in the criminal justice system. Where persons are able to pay bond, where charges are dismissed, or where cases are otherwise resolved, such persons will not be subject to any additional custody by local authorities.

However, while local law enforcement agencies have announced that they will no longer honor ICE detainers, questions remain as to whether sheriffs will provide protections related to ICE administrative warrants, ICE access to detainees in county jails, or communication policies regarding custody status or release dates. Such bright-line policies to ensure clear division between local law enforcement agents and ICE will be essential to rebuild and strengthen community trust in local law enforcement.

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