



TORRANCE POLICE

TRAINING

BULLETIN

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CHIEF OF POLICE

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ICE DETAINERS

OVERVIEW

In a ruling by the United States District Court of Oregon, it was ruled that a detention for an ICE hold in a jail facility stands alone and is not a continuation of an initial arrest. In addition, the hold is considered voluntary, not mandatory. On June 25, 2014, the California Attorney General issued a Bulletin indicating, "because compliance with an ICE detainer is voluntary, a local agency could violate the Fourth Amendment by detaining an individual solely based on the request of ICE, without some other probable cause for arrest."

BACKGROUND

Miranda-Olivares v. Clackamas County, issued April 11, 2014

In this case, United States Magistrate Judge Janice M. Stewart held that once Miranda-Olivares posted bail, "(t)he seizures that allegedly violated her Fourth Amendment rights were not a continuation of her initial arrest, but new seizures independent of the initial finding of probable cause for violating state law."

The court's ruling was based on the fact that, after she was arrested for violating a domestic violence restraining order and was booked into the county jail, "the Jail received an immigration detainer (Form I-247) issued by ICE," and the detainer was honored.

Based on testimony, the court found that "(w)hen the Jail receives an ICE detainer, it holds the person subject to the detainer for up to 48 hours, not including Saturdays, Sundays, and holidays, beyond the time when the person would otherwise be released, even if the person posts bail. The Jail's practice is the same whether or not the ICE detainer is accompanied by an arrest warrant, statement of probable cause, or removal or deportation order."

The court noted that "Miranda-Olivares challenges her confinement by the County from March 15 through March 30, 2012, and specifically the County's custom and practice of incarcerating persons who are subject to ICE detainers after the lawful custody on state charges has ended. The County responds that federal law requires this custom and practice because ICE detainers (Form I-247) are issued pursuant to 28 CFR § 287.7 which, in its view, mandates the detention of a suspected alien by a local law enforcement agency for up to 48 hours."

However, the court disagreed with the county and held that "neither 28 CFR § 287.7 nor the form of ICE detainer at issue here are mandatory. As a result, the County violated Miranda-Olivares's Fourth Amendment rights."

STATE OF CALIFORNIA'S POSITION

Both the federal government and the California Attorney General have taken a position that the detainer is not a mandate. As such, it appears that local governments will place themselves in legal jeopardy in an effort to support a federal regulation which, according to the federal (and state) government, is merely a request.

There is a current movement by the ACLU to enforce *Miranda-Olivares v. Clackamas County*. It appears, per the California Police Officer's Association (CPOA), that the ACLU has already filed suit against more than one jurisdiction which detains individuals based on the ICE detainer alone.

TORRANCE POLICE DEPARTMENT'S PRACTICE

As of today and until further direction from the City Attorney's Office, officers and jail staff are directed NOT to hold individuals solely on ICE detainers without a hearing by a judge. Officers are also directed not to place individuals into custody based solely on an ICE detainer.

September 28, 2016 Update:

Based on the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, officers and jail staff are instructed to notify ICE of an inmate's upcoming date and time of release. Current federal law authorizes ICE to issue an immigration "detainer" advising a Law Enforcement Agency (LEA) that ICE seeks custody of an alien presently held by that agency, for the purpose of arresting and deporting the alien. The detainer is a "request" that the agency advise ICE, prior to release of the alien, in order for ICE to assume custody of that person.

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