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ICE DETAINERS AND THE FOURTH AMENDMENT: WHAT DO RECENT FEDERAL COURT DECISIONS MEAN?

ICE detainers raise serious constitutional problems. They cause the extended detention of tens of thousands of people each year without probable cause, without judicial approval, and without basic due process protections. In recent years, numerous federal courts have agreed, focusing in particular on certain key Fourth Amendment problems. This backgrounder provides an overview of how these recent court decisions have applied longstanding Fourth Amendment law to impose limits on ICE's detainer issuance practices.[1]

1. Does the Fourth Amendment apply to ICE detainers?

Yes. By its terms, an ICE detainer asks a federal, state, or local law enforcement agency (LEA) to "[m]aintain custody" of a person for an additional 48 hours, plus weekends and holidays, "beyond the time when the subject would have otherwise been released" from the LEA's custody. DHS Form I-247 (rev. Dec. 2012); *see also* 8 C.F.R. §287.7(d). This new period of detention—which begins when the person's criminal custody has ended, and which may last up to five days over a holiday weekend—is

[1] In addition to the Fourth Amendment problems outlined here, ICE detainers raise serious due process problems. *See, e.g.*, *Ortega v. ICE*, 737 F.3d 435, 439 (6th Cir. 2013) (dismissing plaintiff's due process claims against individual officers based on qualified immunity, but clarifying for future cases that "transfer[ring] [a prisoner] from home confinement to prison confinement" based on an ICE detainer "amounts to a sufficiently severe change in conditions to implicate due process"), *cert. denied*, 135 S. Ct. 48 (2014); *Uroza v. Salt Lake Cnty.*, No. 11-713, 2014 WL 4457300, at *4 (D. Utah Sept. 10, 2014) ("conclud[ing] that Uroza has stated a . . . procedural due process claim" against federal defendants where he was held on an ICE detainer "without receiving any process"); *Villars v. Kubiatowski*, No. 12-4586, -- F. Supp. 2d ----, 2014 WL 1795631, at *6 (N.D. Ill. May 5, 2014) (slip op.) (holding that plaintiff stated "procedural and substantive due process" claims where he alleged that he was held on an ICE detainer after posting bond); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 40 (D.R.I. 2014) (holding that state defendant could be liable for due process violations because state "detained Ms. Morales and . . . offered her no opportunity to contest the ICE detainer").

In addition, there are multiple pending lawsuits arguing that ICE detainers contravene federal statutory limitations on immigration arrest authority, state-law limitations on arrest authority, or both. *See, e.g.*, *Jimenez Moreno v. Napolitano*, No. 11-5452, 2014 WL 4911938 (N.D. Ill. Sept. 30, 2014) (unpub.) (certifying class action raising various claims for injunctive relief, including the claim that ICE's detainer issuance practices are ultra vires to the federal statute, 8 U.S.C. § 1357); Third Amended Complaint, Dkt. #44, *Gonzalez v. ICE*, No. 13-04416 (C.D. Cal. filed Aug. 18, 2014) (proposed class action alleging, among other things, that ICE's detainer issuance practices are ultra vires to the federal statute, 8 U.S.C. § 1357); *Uroza v. Salt Lake Cnty.*, No. 11-713, 2014 WL 4457300, at *5 (D. Ut. Sept. 10, 2014) (denying federal defendants' motions to dismiss where complaint alleged, among other things, that "ICE . . . issues an I–247 detainer . . . without first determining . . . flight risk"); *see also Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (noting that the federal detainer statute authorizes only "a request for *notice* of a prisoner's release, not a command (or even a request) to LEAs to *detain* suspects on behalf of the federal government.") (emphasis added) (citing *Arizona v. United States*, 132 S. Ct. 2492, 2507 (2012)). This backgrounder, however, covers only the core Fourth Amendment issues that have been the focus of recent court decisions.

effectively a new arrest for Fourth Amendment purposes. In fact, ICE's predecessor, the INS, acknowledged as much in an agency manual over twenty years ago. *See* INS, *The Law of Arrest, Search, and Seizure for Immigration Officers*, at VII-2 (1993) ("A detainer placed under . . . [what is now 8 C.F.R. § 287.7] is an arrest which must be supported by probable cause.").[2]

This conclusion is supported by decades of Fourth Amendment case law. The Supreme Court has long made clear that being held in jail, "regardless of its label"—whether it is "termed 'arrest[]' or 'investigatory detention[]'"—is a seizure that triggers the Fourth Amendment's full protections. *Dunaway v. New York*, 442 U.S. 200, 215-16 (1979) (internal quotation marks and citations omitted); *see also Brown v. Illinois*, 422 U.S. 590, 605 (1975).[3] Further, courts have long recognized that when a person is *kept* in custody for a new purpose after he or she should otherwise be released, that is a new seizure that requires its own Fourth Amendment justification, separate from the original reason for custody. *See Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005) (once the initial reason for a seizure is resolved, officers may not prolong the detention without a new, constitutionally adequate justification); *see also Anaya v. Crossroads Managed Care Sys., Inc.*, 195 F.3d 584, 592 (10th Cir. 1999) ("A legitimate-though-unrelated criminal arrest does not itself give probable cause to detain the arrestee [for a separate civil purpose]"); *Barnes v. Dist. of Columbia*, 242 F.R.D. 113, 118 (D.D.C. 2007) ("Plaintiffs allege that, despite being entitled to release, they were taken back into custody . . . . [T]hey allege that they essentially were re-arrested or re-seized. These allegations of Fourth Amendment violations are sufficient to survive a motion to dismiss").

Moreover, it is well settled that civil immigration arrests, just like criminal arrests, must comply with the Fourth Amendment. *See Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012) (noting that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns," and citing Fourth Amendment cases); *see also Cotzojay v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013) ("[I]t is uncontroversial that the Fourth Amendment applies to aliens and citizens alike."); *Oliva-Ramos v. Attorney Gen. of U.S.*, 694 F.3d 259, 284-85 (3d Cir. 2012) (reaffirming that a civil immigration

[2] In recent litigation, however, ICE has taken the surprising and unjustifiable position that ICE detainers may not be governed by the Fourth Amendment at all. *See, e.g.*, ICE's Motion to Dismiss at 22, 23 n.9, Dkt. #31, *Gonzalez v. ICE*, No. 13-04416 (C.D. Cal. filed Mar. 10, 2014) (arguing that "none of the functions of an immigration detainer constitute an arrest or are the basis of any deprivation of liberty," and suggesting that "even if an immigration detainer implicated the Fourth Amendment in some way—which it does not— . . . 'a lesser standard than probable cause'" might apply) (in parenthetical; internal citations omitted).

[3] Certain brief, limited seizures—*Terry* stops—can be supported by the lower evidentiary standard of reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1 (1968). Being held in jail for up to 48 hours plus weekends and holidays, however, is far more intrusive than a limited *Terry* stop. *See generally United States v. Place*, 462 U.S. 696, 709-10 (1983) ("declin[ing] to adopt any outside time limitation for a permissible *Terry* stop," but noting that "we have never approved a seizure of the person for the prolonged 90-minute period involved here"); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975) (holding that while immigration agents may make "brief" *Terry*-style vehicle stops for questioning based on reasonable suspicion, "any further detention . . . must be based on . . . probable cause.").

enforcement actions must be "consistent with the limitations imposed by the Fourth Amendment"); *Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (applying Fourth Amendment to immigration arrests); *Au Yi Lau v. INS*, 445 F.2d 217, 222 (D.C. Cir. 1971) ("We agree with the Government that the [INA's] arrest provision must be read in light of constitutional standards," such that arrests must be supported by "probable cause"). As the Supreme Court has explained, "[t]he Fourth Amendment applies to all seizures of the person." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 881-82 (1975).

Applying these settled constitutional principles to ICE's contemporary detainer practices, numerous federal courts have recognized that ICE detainers must comply with Fourth Amendment requirements:

- *Mendoza v. Osterberg*, No. 13-65, 2014 WL 3784141, at *6 (D. Neb. July 31, 2014) (unpub.) (recognizing that "[t]he Fourth Amendment applies to all seizures of the person," and thus, "[i]n order to issue a detainer[,] there must be probable cause") (internal quotation marks, ellipses, and citations omitted)

- *Villars v. Kubiatowski*, -- F.Supp.2d ----, No. 12-4586, 2014 WL 1795631, at *10 (N.D. Ill. May 5, 2014) (slip op.) (holding that plaintiff stated a Fourth Amendment claim where he was held on an ICE detainer that "lacked probable cause")

- *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ----, No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (slip op.) (holding that plaintiff's detention on an ICE detainer after she would otherwise have been released "constituted a new arrest, and must be analyzed under the Fourth Amendment")

- *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29, 32-34 (D. R.I. 2014) (holding that plaintiff stated a Fourth Amendment claim where she was held for 24 hours on an ICE detainer issued without probable cause), *partial appeal docketed* (1st Cir. No. 14-1425)

- *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968, at *5-6 (D. Ut. Feb. 21, 2013) (unpub.) (holding that plaintiff stated a Fourth Amendment claim where ICE issued his detainer without probable cause; finding it clearly established that "immigration enforcement agents need probable cause to arrest . . . [and] detainees who post bail should be set free in the absence of probable cause to detain them again")

- *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (unpub.) (holding that where plaintiff was held for 3 days after posting bail based on an ICE detainer, he stated a Fourth Amendment claim against both federal and local defendants; it was clearly established that the "detainer caused a

seizure" that must be supported by "probable cause"), *rev'd on other grounds*, 745 F.3d 634 (3d Cir. 2014) (holding that the County operating the jail, too, may be liable for violating the Fourth Amendment)

- *Vohra v. United States*, No. 04-0972, 2010 U.S. Dist. LEXIS 34363, *25 (C.D. Cal. Feb. 4, 2010) (magistrate's report and recommendation) ("Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest" to which the "'probable cause' standard . . . applies"), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010) (unpub.)[4]

2. What does the Fourth Amendment require?

a. Probable cause

The Fourth Amendment's most basic requirement is that all arrests must be supported by probable cause. *See Dunaway*, 442 U.S. at 213. Probable cause requires that "the facts and circumstances within . . . the officers' knowledge and of which they ha[ve] reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (internal quotation marks, brackets, and citation omitted). Probable cause must be based on specific, individualized facts, not generalized suspicion. *See, e.g.*, *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

The recent decisions cited above agree that ICE detainers must be supported by probable cause. At a minimum, this means probable cause to believe that the subject is *both* a non-citizen *and* subject to removal from the United States. *See, e.g.*, *Mendoza*, 2014 WL 3784141, at *6 (ICE detainer must be supported by "probable cause to believe that the subject . . . is (1) an alien who (2) . . . is not lawfully present in the United States") (internal quotation marks and citation omitted); *Galarza*, 2012 WL 1080020, at *13 (same). So uncontroversial is this view that even ICE's predecessor, the INS, stipulated to it in a class action settlement in 1985. *See Cervantez v. Whitfield*, 776 F.2d 556, 560 (5th Cir. 1985) ("An immigration hold [i.e., a detainer] is an arrest without warrant [and thus] . . . may only be authorized by an officer of the INS . . . when the officer has determined that there is probable cause to believe that the person to be held (a) is an alien, (b) is in the United States in violation of the immigration laws, and (c) is

[4] The Sixth Circuit recently considered a different Fourth Amendment question: whether "moving a convict from home confinement to prison confinement" based on an ICE detainer "resulted in a new seizure within the meaning of the Fourth Amendment." *Ortega*, 737 F.3d at 441. The Sixth Circuit did not decide that question, concluding instead that the law was not clearly established in 2011, so the individual defendants were entitled to qualified immunity. *Id.* Importantly, the Sixth Circuit's decision hewed closely to the unusual facts of the case: the plaintiff alleged only that he was moved from home confinement to jail while serving his criminal sentence; he did not allege that the ICE detainer extended his time in custody at all. The Sixth Circuit's decision took care not to suggest that ICE detainers provide authority for *additional* detention after one's criminal custody ends.

likely to escape before a warrant can be obtained for his arrest.") (internal quotation marks omitted).

Thus, it is not enough for ICE to have probable cause to believe an individual is a non-citizen; ICE must also have probable cause to believe he or she is a non-citizen who is *subject to removal*. In the case of a Lawful Permanent Resident, for example, that generally means that he or she must have been *convicted*, not just *charged*, with a removable criminal offense. Moreover, a person's race, ethnicity, or national origin is not sufficient to establish probable cause to believe he or she is a non-citizen, let alone a removable one. *See, e.g.*, *Morales*, 996 F. Supp. 2d at 35 ("Using Ms. Morales'[s] nation of birth as a sole permissible basis for her loss of liberty does not pass constitutional muster."); *Douglas v. United States*, 796 F. Supp. 2d 1354, 1366-67 (M.D. Fla. 2011) (holding that ICE lacked probable cause to detain plaintiff once he told agents he was a derivative U.S. citizen, and rejecting the government's "argument[] that . . . foreign birth creates a presumption of alienage" for purposes of establishing probable cause); *Galarza*, 2012 WL 1080020, at *14 ("The fact that Mr. Galarza is Hispanic and was working at a construction site with three other Hispanic men—two of whom are citizens of foreign countries and another who claimed to have been born in Puerto Rico but is a citizen of the Dominican Republic—does not amount to probable cause to believe that Mr. Galarza is an alien not lawfully present in the United States.").

Some recent court decisions go a step further. The traditional definition of probable cause is probable cause to believe a *crime* has been committed, and as the Supreme Court recently reaffirmed, "it is not a crime for a removable alien to remain present in the United States." *Arizona*, 132 S. Ct. at 2505. Removability is a civil matter, not a criminal one. Therefore, the Supreme Court explained, "[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent." *Id.* Drawing on this principle, several courts have concluded that the Fourth Amendment does not permit state or local officers (who generally lack civil immigration enforcement authority) to imprison people based on ICE detainers alone. *See, e.g.*, *Villars*, 2014 WL 1795631, at *10 (holding that plaintiff stated a Fourth Amendment claim where defendants "lacked probable cause" to believed that he had "violated federal *criminal* law") (emphasis added); *People ex rel Swanson v. Ponte*, No. 14652, --- N.Y.S.2d ----, 2014 WL 5285250, at *3 (N.Y. Sup. 2014) (slip op.) (granting habeas petition because "there is . . . no authority for a local correction commissioner to detain someone based upon a civil determination" of removability); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 918 (S.D. Ind. 2011) (preliminarily enjoining section of state law that "authorize[d] state and local law enforcement officers to effect warrantless arrests" based on ICE detainers, because permitting arrests "for matters that are not crimes" would contravene the Fourth Amendment), *permanent injunction granted*, 2013 WL 1332158, at*8, *10 (S.D. Ind. Mar. 28, 2013) (unpub.) (concluding that an ICE detainer, "without more, does not provide the usual predicate for an arrest," and that "authoriz[ing] state and local law enforcement officers to effect warrantless arrests for matters that are not crimes . . . runs afoul of the Fourth Amendment"). In other

words, even if there is probable cause (in the sense of a sufficient quantum of evidence) to believe that a person is a non-citizen who is subject to removal, detaining that person on an ICE detainer may still be an "unreasonable" seizure in violation of the Fourth Amendment, U.S. Const. amend. IV, because state and local LEAs lack the authority to make warrantless civil immigration arrests.

b. Judicial approval

Not only does the Fourth Amendment require probable cause; it also requires that at some point, the probable cause "determination must be made by a *judicial* officer" who can make a neutral and detached assessment. *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975) (emphasis added). This judicial determination must occur "either before" the seizure in the form of a judicially issued warrant, or "promptly after" the seizure in the form of a probable cause hearing. *Id*. While *Gerstein* did not assign a specific time limit to "prompt[ness]," the Supreme Court subsequently clarified that, absent extraordinary circumstances, this determination must be made within 48 hours of the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 58-59 (1991) (setting 48 hours as the outer presumptive limit, and holding that County's policy of conducting probable cause hearings within "two days, exclusive of Saturdays, Sundays, or holidays[,]" was not reasonable).

Although *Gerstein* arose in the criminal context, the Supreme Court framed its ruling broadly as a Fourth Amendment rule that applies to "*any* significant pretrial restraint of liberty." *Gerstein*, 420 U.S. at 125 (emphasis added). And, as discussed above, it is well settled that immigration arrests must comply with the Fourth Amendment. In fact, the INS itself recognized twenty years ago that it was "clearly bound by . . . [judicial] interpretations [regarding arrest and post-arrest procedures], including those set forth in *Gerstein v. Pugh*[.]" Enhancing the Enforcement Authority of Immigration Officers, 59 Fed. Reg. 42406-01, 42411 (1994).

ICE's current detainer practices do not comply with *Gerstein*. Unlike warrants, which are issued by judges and are based on evidence "supported by oath or affirmation," U.S. Const., amend. IV, ICE detainers are unsworn documents that "[a]ny authorized immigration officer" may issue "at any time" on their own initiative. 8 C.F.R. § 287.7(a). Under *Gerstein*, then, a seizure based on an ICE detainer must be analyzed as a warrantless seizure. *See Morales*, 996 F. Supp. 2d at 39 ("Warrants are very different from detainers"); *Buquer*, 797 F. Supp. 2d at 911 ("A detainer is not a criminal warrant"); *Vohra*, 2010 U.S. Dist. LEXIS 34363, *25 (plaintiff "was subjected to the functional equivalent of a warrantless arrest"). Such detention would be constitutional only if ICE provided detainees with probable cause determinations by a neutral judicial official within 48 hours after detention begins.

ICE does not meet this constitutional requirement. Not only do ICE detainers purport to authorize exactly the period of detention that *Riverside* held was presumptively

unlawful—48 hours, *excluding* weekends and holidays, *see* 8 C.F.R. § 287.7(d)—but they also do not guarantee a judicial probable cause determination at the conclusion of that period, or indeed at *any* time.

As *Gerstein* emphasized, it necessary but not sufficient for an arresting officer to have probable cause before making a warrantless arrest. The Fourth Amendment also requires that the officer's assessment of probable cause be reviewed and approved by a neutral judicial official. This is because "the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty." *Gerstein*, 420 U.S. at 114. Nor does it matter that some people may be held on ICE detainers for fewer than 48 hours. In *Riverside*, the Supreme Court cautioned that even delays shorter than 48 hours will violate the Fourth Amendment if they are "unreasonable," such as "delays for the purpose of gathering additional evidence to justify the arrest" and "delay for delay's sake." *Riverside*, 500 U.S. at 56. ICE routinely uses detainers for precisely these impermissible purposes. *See, e.g.*, Brief of Federal Defendants at 27, *Morales v. Chadbourne*, No. 14-1425 (1st Cir. filed Aug. 15, 2014) (arguing that ICE detainers are used to give ICE "time to investigate the status of the person in the State's custody, including arranging for an interview of that person during which important information may be gathered"); Brief of Federal Defendants at 11, *Ortega v. ICE*, No. 12-6608 (6th Cir. filed Apr. 10, 2013) (arguing that "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.") (emphasis in original).

Several recent federal court decisions have recognized that detention on an ICE detainer must be analyzed as a warrantless arrest, *see supra*, and some have specifically noted the applicability of *Gerstein* and *Riverside*. *See Miranda-Olivares*, 2014 WL 1414305, at *9 (analyzing detention based on the ICE detainer as a new period of "warrantless, post-arrest, pre-arraignment custody") (internal quotation marks omitted); *Villars*, 2014 WL 1795631, at *5 ("Contrary to . . . Defendants' argument, *County of Riverside* did not grant law enforcement officials carte blanche to detain criminal suspects for forty-eight hours after their arrest. Rather, *County of Riverside* explicitly said that 'unreasonable delays, even within the forty-eight hour period, may be constitutionally troublesome.'"); *Buquer*, 797 F. Supp. 2d at 918-19 (preliminarily enjoining state statute that authorized arrests based on ICE detainers in part because the statute made "no mention of any requirement that the arrested person be brought forthwith before a judge for consideration of detention or release"). And, while none of these decisions had occasion to decide affirmatively what ICE must do going forward to bring its detainer practices into compliance with the Fourth Amendment, *Gerstein* and *Riverside* make clear what the Fourth Amendment requires: that every individual held on an ICE detainer be provided with a prompt judicial probable cause determination—i.e., a hearing before an immigration judge, not an enforcement official—within 48 hours after the detention begins. There are at least two currently pending lawsuits seeking such injunctive relief against ICE. *See* Amended Complaint, Dkt. #78, *Jimenez Moreno v.*

Napolitano, No. 11-5452 (N.D. Ill. filed May 1, 2013); Third Amended Complaint, Dkt. #44, *Gonzalez v. ICE*, No. 13-04416 (C.D. Cal. filed Aug. 18, 2014).

3. Who is liable?

When a seizure violates the Fourth Amendment, courts next consider who is liable for the violation. In the context of ICE detainers, liability may attach to both ICE (for requesting and purporting to authorize an unlawful detention) and the LEA (for carrying out the unlawful detention). *See Malley v. Briggs*, 475 U.S. 335, 344 n.7 (1986) (explaining that in the Fourth Amendment context, as in tort law generally, each actor is "responsible for the natural consequences of his actions") (internal quotation marks and citation omitted); *Berg v. Cnty. of Allegheny*, 219 F.3d 261, 272 (3d Cir. 2000) ("a government official's liability for causing an arrest is the same as for carrying it out").

The following recent decisions have concluded that ICE and/or ICE agents may be held liable for their role in causing detentions in violation of the Fourth Amendment:

- *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014) (where plaintiff alleged that ICE caused his extended detention by issuing an ICE detainer that precluded him from posting bail, his injury was traceable to ICE for purposes of establishing standing to sue for damages)

- Order, Dkt. #42, *Gonzalez v. ICE*, No. 13-04416, at *8 (C.D. Cal. July 28, 2014) (unpub.) (because "immigration detainers are intended to—and actually do—induce law enforcement agencies to incarcerate individuals beyond the time they would otherwise be released," the detention is "directly traceable to ICE" for purposes of establishing standing to sue for injunctive relief)

- *Uroza*, 2014 WL 4457300, at *6, *9 (holding that plaintiff who was held on an ICE detainer for 43 days had standing to sue ICE for injunctive relief, and denying ICE defendants' motion for summary judgment on damages claims)

- *Jimenez Moreno v. Napolitano*, No. 11-5452, 2012 WL 5995820, at *5 (N.D. Ill. Nov. 30, 2012) (unpub.) (where plaintiffs faced a threat of unlawful detention based on ICE detainers, they had standing to sue ICE for injunctive relief)

- *Morales*, 996 F. Supp. 2d at 33, 36-37 (plaintiff who was held on an ICE detainer for 24 hours stated claims for damages and injunctive relief against ICE defendants and the United States; denying qualified immunity to defendants)

- *Galarza*, 2012 WL 1080020, at *10, *15 (plaintiff who was held for 3 days on an ICE detainer stated claims for damages against ICE agent; denying qualified immunity to defendant)

- *Vohra*, 2010 U.S. Dist. LEXIS 34363, at *28-29 (denying ICE agent's summary judgment motion where questions of fact remained about the legality of plaintiff's detention; denying qualified immunity to defendant)

The following recent decisions have concluded that state or local law enforcement agencies and/or officials may be held liable for their role in causing detentions in violation of the Fourth Amendment:

- *Villars*, 2014 WL 1795631, at *6, *9 (plaintiff stated claims for damages against local defendants, explaining that "Defendants were not obligated to detain Villars pursuant to the ICE detainer" and that they cannot rely on the federal detainer regulation to "authorize the detention of an alien for 48 hours after local custody over the detainee would otherwise end")

- *Miranda-Olivares*, 2014 WL 1414305, at *11 (granting summary judgment to the plaintiff because "[t]here is no genuine dispute of material fact that the County maintains a custom or practice in violation of the Fourth Amendment to detain individuals over whom the County no longer has legal authority based only on an ICE detainer which provides no probable cause for detention")

- *Morales*, 996 F. Supp. 2d at 39 (director of the state Department of Corrections could be held liable for Fourth Amendment and other violations where his policies caused plaintiff to be held on an ICE detainer for 24 hours after her criminal custody ended)

- *Galarza*, 2012 WL 1080020, *10-11, *15 (plaintiff who was held for 3 days on an ICE detainer stated claims for damages against local police detective; denying qualified immunity to defendant), *rev'd on other grounds,* 745 F.3d at 636 (County, too, could be liable for its policy of detaining people in its jail based on ICE detainers, because "immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens")