UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MINNESOTA

Myriam Parada, Plaintiff, v. Anoka County; Anoka County Sheriff James Stuart; Coon Rapids Police Officer Nicolas Oman; Coon Rapids Police Department; unknown/unnamed defendants John Doe & Jane Doe; All individuals being sued in their individual and official capacity. Defendants.	Civil Action No: _____ **COMPLAINT FOR DAMAGES AND OTHER RELIEF** **JURY TRIAL DEMANDED**

Plaintiff, Myriam Parada ("Plaintiff"), by her attorneys of record, files this complaint and would show that Defendants violated her constitutionally guaranteed Fourth and Fourteenth Amendment rights when Defendants wrongfully detained and imprisoned Plaintiff following an automobile accident of which she was the victim. Plaintiff's interest in liberty and right to due process were intentionally violated by Defendants.

STATEMENT OF CLAIMS

1. Plaintiff brings this action on behalf of herself for declaratory, injunctive and monetary relief against Defendants for violating her constitutional rights and for injunctive relief on behalf of other persons who may be similarly victimized by Defendants under Minnesota state law.

2. Plaintiff was unlawfully arrested by Defendants and unlawfully jailed by Defendants after she was the victim of a traffic accident.

3. Plaintiff was the victim of racial profiling by Defendants based on her nationality.

4. The detention and imprisonment of Plaintiff was in violation of the Fourth and Fourteenth Amendment to the U.S. Constitution, Article 1 §10 of the Minnesota Constitution, and Minnesota law against false imprisonment.

5. Plaintiff brings suit under 42 U.S.C. § 1983.

6. Plaintiff seeks an order of this Court declaring unlawful and enjoining Defendants' policy and systemic practice of holding foreign-born persons, like Plaintiff, in the Anoka County jail on any request from the United States Immigration and Customs Enforcement division of the Department of Homeland Security ("ICE.")

7. Plaintiff also seeks compensatory damages and reasonable attorneys' fees and costs, as authorized by 42 U.S.C. §§ 1983 and 1988.

8. Plaintiff has served notice of her state law claims upon Defendants in compliance with Minn. Stat § 466.05.

JURISDICTION

9. This Court has jurisdiction over the claims alleged in this Complaint pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil rights), 28 U.S.C. § 2201 (declaratory relief), and 42 U.S.C. §§ 1981, 1983, and 1988.

10. Supplemental jurisdiction over the pendent state law claims is proper pursuant to 28 U.S.C. § 1367.

11. This action arises under the United States Constitution, as applied to state and/or local authorities through 42 U.S.C. § 1983.

VENUE

12. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b), as Defendants are residents of this judicial district and the acts or occurrences giving rise to these claims took place in Minnesota.

PARTIES

13. Plaintiff, Myriam Parada, resides in Ramsey, Minnesota. She has lived in the United States for several years. Plaintiff is a Hispanic woman who legally entered the United States as a child.

14. Defendants are all, upon information and belief, Minnesota municipal entities and/or individual members of law enforcement agencies, in an appointed or elected capacity.

15. Defendant Anoka County is a political subdivision of the State of Minnesota that can sue and be sued in its own name. Defendant Anoka County includes, operates and is responsible for the Anoka County Jail. Plaintiff bases all applicable and appropriate claims on the doctrine of *respondeat superior* or vicarious liability and municipal liability pursuant to *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658 (1978) as to Defendant Anoka County.

16. Defendant City of Coon Rapids is a municipality under Minnesota law with the capacity to sue and be sued. The city is the legal entity responsible for the Coon Rapids Police Department. Plaintiff bases all applicable and appropriate claims on the doctrine of *respondeat superior* or vicarious liability and municipal liability pursuant to *Monell v.*

Dep't of Soc. Services of City of New York, 436 U.S. 658 (1978) as to Defendant City of Coon Rapids.

17. Defendant City of Coon Rapids operates law enforcement agencies and is a municipality capable of being sued under Minnesota law

18. Anoka County Sheriff James Stuart was, at all times relevant, the Sheriff of Anoka County. He is sued in both his personal, individual and official capacities pursuant to Minn. Stat. § 466.01 et seq. and other applicable law. Defendants Anoka County, Anoka County Sherriff James Stuart, and agents of the Anoka County jail whose names are not presently known are referred to herein as the "Anoka County Defendants."

19. Coon Rapids Police Officer Nicolas Oman is an officer in the Coon Rapids Police Department and is a law enforcement officer acting under color of state law as contemplated by 42 U.S.C. § 1983. Officer Oman is being sued in his personal, individual, and official capacities pursuant to Minnesota Statutes § 466.01 et seq. and other applicable law.

20. John Doe & Jane Doe are unknown/unnamed defendants whom, upon information and belief, are believed to be deputies and/or employees in the Anoka County Sheriff's department, and were acting under color of state law as contemplated by 42 U.S.C. § 1983. These individuals are being sued in their personal, individual, and official capacities pursuant to Minnesota Statutes § 466.01 et seq. and other applicable law.

21. When the names of the unknown and unnamed defendants are ascertained, Plaintiff will seek leave to amend this complaint to indicate their names.

22. All named and unnamed individual defendants were, at all times relevant to this complaint, acting under color of state law and within the scope and course of their official duties and employment.

FACTS

23. On July 25, 2017, at around 6:40 pm, Plaintiff was rear ended in Coon Rapids while driving her younger siblings, and two cousins, home from her younger sister's birthday party.

24. At the time, Plaintiff was 20 years old.

25. Plaintiff's car was legally registered .

26. The other driver was a 24 year old Caucasian woman.

27. Plaintiff called her parents who came quickly to the scene.

28. The other driver called 911 and Coon Rapids Officer Nicolas Oman was sent to the scene.

29. According to his CAD Data, Defendant Oman arrived at the scene at 6:46 p.m.

30. Despite the other driver's considerable driving violation records – she had 12 convictions for traffic violation since 2012 including DWI, speeding and obstructing the legal process – Officer Oman did not cite her for rear ending Plaintiff and allowed her to leave the scene of the crime.

31. On information and belief, Defendant Oman let the other driver leave despite her long history of driving violations as well as not having a Minnesota state driver's license, despite living in Minnesota.

32. Instead, Officer Oman was more interested in Plaintiff.

33. He asked for her driver's license.

34. Plaintiff gave him her proof of insurance and a Mexican Consular card, commonly referred to as a Matrícula Consular card. The Matrícula Consular card is an official identification card issued by the Mexican consulate. Plaintiff did not have a Minnesota driver's license.

35. The Matrícula Consular card listed her full name, date of birth and address in the United States as well as a recent photo of her. In order to obtain a Matrícula Consular, one must apply in person at a consulate in the U.S., provide biographic and biometric information (including a digital photograph and fingerprint), pay a fee, and present a Mexican birth certificate along with another official Mexican ID, and proof of address within the issuing consulate's consular district. The card itself has security features to ensure its authenticity.

36. Plaintiff confirmed to Defendant Oman that all of the information on her Matricula card was true and accurate.

37. When Plaintiff's step-father arrived at the accident scene, he further verified to Defendant Oman that the information on Plaintiff's Matrícula Consular card was accurate and confirmed that he was the registered owner of the car.

38. Defendant Oman went inside his police car and ran the name of Plaintiff's step-father though his database.

39. On information and belief, Defendant Oman then spoke with Anoka county staff on his personal phone inside his car for several minutes.

40. When Defendant Oman went back to Plaintiff, he told her that his supervisor told him to bring her in to get her prints and it would just take a couple hours.

41. Defendant Oman told Plaintiff "I need to make sure who you are."

42. Plaintiff's step-father asked if he could drive her but was told no.

43. Defendant Oman then arrested Plaintiff and drove her to the Anoka County Jail.

44. Defendant Oman wrote on his police report that he "transported Parada to jail since I was also unable to positively identify her."

45. On information and belief, Defendant Oman arrested Plaintiff because of her immigration status or suspected immigration status.

46. On information and belief, Defendant Oman had issued six (6) citations in the previous year for failure to possess a Minnesota driver's license, and never arrested anyone.

47. On information and belief, Plaintiff is the first person Defendant Oman arrested for failure to possess a driver's license in, at least, over a year. The only reason Defendant Oman arrested Plaintiff was because of her race, ethnicity and national origin.

48. Plaintiff was brought into the Anoka County Jail by Defendant Oman at around 7:20 pm on July 25, 2017.

49. She was placed into handcuffs at the jail.

50. She was received by an Officer Johnson.

51. At the jail, Plaintiff was patted down and had a mug shot taken. She was told to take out her piercings and hand over her phone.

52. She was placed in a cell with several other women and waited.

53. Anoka County jail staff and Officer Oman never were in doubt about Plaintiff's true identity. Instead, on information and belief, both sets of Defendants treated Plaintiff as an immigration detainee from the outset and her imprisonment was in violation of the Fourth Amendment.

54. Anoka County jail records reflect that Plaintiff was cleared and free to leave on July 25, 2017.

55. On information and belief, Defendant Oman gave Plaintiff's name, date of birth and address to Officer Johnson to help fill out certain booking forms.

56. On information and belief, while she was detained at the Anoka County jail, no one asked Plaintiff information about her name, address or date of birth.

57. Lieutenant Sheila Larson of the Anoka County Sheriff's Office, Jail Division, confirmed in emails to the American Civil Liberties Union of Minnesota that Plaintiff was cleared from custody on July 25, 2017.

58. Anoka Defendants refused to tell Plaintiff's family, including her younger brother and sister, the status of Plaintiff's release until several hours after she had already been taken away by ICE.

59. Instead of releasing Plaintiff, Defendants continued to hold her based on her nationality and suspected immigration status.

60. At around 11:00 p.m. on July 25, 2017, Plaintiff was brought to one of the unknown/unnamed Defendants, an unidentified older male Anoka County staff member who questioned her for a few minutes and then brought her back to her cell.

61. Despite having no probable cause to hold Plaintiff, the Anoka County Sheriff's department brought Plaintiff back to the unidentified older male Anoka County staff member's desk to talk to ICE officers about half an hour later.

62. Plaintiff was again brought to the unknown Anoka County Defendant and handed a phone and instructed to talk to the person on the other end.

63. They identified themselves as ICE officials and asked her if she was a United States citizen and how did she get to the US.

64. Plaintiff looked at the unknown Anoka County Defendant and asked "[d]o I need a lawyer?"

65. The unknown Anoka County Defendant told her he did not know and to ask ICE.

66. She asked the ICE official if she needed an attorney and the ICE official replied that "it goes faster without a lawyer."

67. She then answered ICE's question about how she entered the United States.

68. After she finished talking to ICE, the Defendant placed her back in her cell. Approximately an hour later, they took her fingerprints.

69. On July 26, 2017, ICE sent Anoka Defendants an I-200 form, Warrant for Arrest of an Alien. This form was not served on Plaintiff.

70. On July 26, 2017, ICE also sent a draft form of an I-247 form, ICE Detainer, to Anoka Defendants. The form was stamped with "Draft Not Complete" on every page.

71. According to Anoka County Jail records, NCIC searches were made at 1:14 a.m. on July 26, 2017.

72. Plaintiff asked to call her family to comfort them, because Plaintiff felt they would be very worried. She was allowed to do so.

73. Plaintiff was brought back to her cell for a little while.

74. Around 2:00 a.m., she was then brought out of the cell and handed her citation for not having a Minnesota driver's license.

75. She then handed over to two ICE agents.

76. Defendants gave the ICE agents her belongings.

77. ICE agents handcuffed her hands and ankles and then took her and drove her to Sherburne County Jail.

78. Anoka County Defendants waited until 3:00 a.m. to tell Plaintiff's family that ICE had taken Plaintiff.

79. Plaintiff's family was later able to pay immigration bond and get Plaintiff released from immigration custody.

80. Plaintiff is currently in removal proceedings fighting against her deportation.

I. Plaintiff's Detention was unlawfully based on an Administrative Warrant.

81. Anoka County Defendants held Plaintiff simply because of an organizational animus toward immigrants.

82. Anoka County Defendants' actions are well known and a cause of great concern in the immigration community.

83. While still in custody after she should have been released from state custody, Plaintiff was interviewed by an immigration official late in the night on July 25, 2017, or early morning July 26, 2017.

84. Despite asking about her rights, Defendants refused to advise Plaintiff that she could refuse to speak with immigration officials. To the contrary, Defendants held her longer than needed to set-up that phone call and refused to tell Plaintiff what her rights were when she asked.

85. It is the policy of the Anoka County Sheriff not to advise individuals in its custody that they have a right to refuse to speak to, or refuse to be interviewed by, immigration officials at their jail.

86. On July 26, 2017, after Plaintiff should have been released from state custody, immigration officials issued a DHS Warrant for Arrest of an Alien on Form I-200 ("Administrative Warrant") for Plaintiff.

87. The Administrative Warrant was unsigned.

88. The Administrative Warrant states that Plaintiff has been determined to be removable from the United States and authorizes "any immigration officer" under sections 236 and 287 of the INA and 8 C.F.R. 287, to take Plaintiff into custody.

89. The Administrative Warrant does not authorize state or local officials to take any action.

90. Defendants are not authorized immigration officers under sections 236 and 287 of the INA and 8 C.F.R. 287.

91. Defendants held Plaintiff at the jail without probable cause of any crime, in violation of this Court's decision in *Orellana v. Nobles County*, 230 F.Supp.3d 934, 945 (D. Minn. 2017).

92. There is no other basis, other than the Administrative Warrant, for the immigration hold designation placed on the Plaintiff by immigration.

93. Immigration had not even placed a detainer notice on Plaintiff.

94. When ICE is investigating whether it should initiate deportation proceedings against a person in jail whom it suspects is not a citizen, ICE issues immigration detainers.

95. The I-247 Detainer makes a request to state or local law enforcement agencies (LEA) that ICE has "determined that probable cause exists that the subject is a removable alien." Through issuing the form, ICE requests that the LEA "maintain custody of the subject for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays), beyond the time when the subject would have otherwise been released from your custody."

96. The detainer form states in bold that "[t]he alien must be served with a copy of this form for the detainer to take effect."

97. No immigration forms were served by Anoka Defendants upon Plaintiff, and no I-247 detainer was filed at all.

98. The Fourth Amendment does not permit Defendants to detain and imprison individuals based on immigration violations as they have no probable cause of a crime.

99. Instead of relying on probable cause, Defendants relied solely on an I-200 administrative warrant.

100. An I-200 "warrant issued under this discretionary authority is necessarily a warrant for civil – as opposed to criminal – immigration enforcement. See *Arizona*, 567

US at 407 ("As a general rule, it is not a crime for a removable alien to remain present in the United States.") *Ochoa v. Campbell*, 266 F.Supp.3d 1237 (E.D.Wash. 2017).

101. The I-200 warrant is an administrative warrant that is specifically only enforceable by immigration officers "authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants for immigration violations."

102. Defendants are not authorized under any of those sections of law.

103. Were it not for the actions of the Defendants, Plaintiff would have been released from jail.

104. Defendants illegally deprived Plaintiff of her liberty by refusing to release her after until ICE officers could come and take her.

105. Defendants have been put on extensive notice that holding people for ICE without probable cause was a violation of state and federal law. On or about May 4, 2014, every sheriff in Minnesota, including the Anoka County Sheriff, received a letter from the American Civil Liberties Union of Minnesota (see **Exhibit B**) explaining the illegality of holding people without probable cause for immigration.

106. About a month later, every sheriff in Minnesota, including the Anoka County Sheriff, received a follow-up email and attachments from the Minnesota Sheriff's Association and Hennepin County Attorney explaining that the Hennepin County Sheriff was discontinuing his practice of honoring ICE holds because of a concern about the unconstitutionality of the practice, and urging the sheriffs to follow suit. (See **Exhibit A**).

107. ICE has long taken the position that liability and responsibility for the individuals in custody remain in the hands of the state actor, in this case Anoka County. See Defendant ICE's Motion to Dismiss, *Gonzalez v. ICE*, No. 13-4416 at 10, 14-17, 23-24 n.p. (C.D. Cal. Filed Mar. 10, 2014)(stating that it is the responsibility of local law enforcement official to decide, in his or her discretion, to comply with ICE's immigration detainer," and arguing that it was the county sheriff, not ICE, who bore ultimate responsibility for plaintiff's detention on ICE detainers.).

108. Defendants were warned by the American Civil Liberties Union of Minnesota in a March 27, 2017, letter which outlined the legal liability they would face if they held individuals without probable cause for ICE. (**Exhibit C**).

109. State law enforcement agencies are limited in the role they can play in enforcing immigration laws. "Although the Supreme Court has not resolved whether local police officers may detain or arrest an individual for suspected *criminal* immigration violations, the Court has said that local law officers generally lack authority arrest individuals for *civil* immigration violations." *Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 464 (4th Cir. 2013) (emphasis in original).

110. This Court has also held that local law enforcement agencies face liability for holding individuals without probable cause for immigration. *Orellana* at 946.

111. Upon information and belief, Sheriff Stuart knew of these constitutional infirmities and refused to follow advice to stop holding people without probable cause for immigration, including opinions from this Court. Therefore, his deliberate willfulness created the harm that affected Plaintiff.

112. It is the policy, practice, and custom adopted by the Anoka County Jail, in direct opposition to the decisions of this Court, the policies and memos issued by the Sheriff's Association, and established case law around the country to hold foreign-born persons like Plaintiff in jail while awaiting pick-up by federal immigration authorities and to prevent friends and family from seeking to post bail on such a person's behalf by telling them that they will not be released from custody because of immigration detainers, even if bail is posted on their behalf, if federal immigration authorities have not come to pick up such persons within that time.

113. The Anoka County Sherriff's Department has also failed to properly supervise and train its employees at the Anoka County jail, causing its employees to unlawfully deny detainees their right to post bail to secure their release when they are subject to an immigration hold by refusing to accept bail and informing people seeking to post bail that the detainee will not be released because of their immigration hold, and by refusing to release individuals even when bail is posted. Defendant has acted with such deliberate indifference that these constitutional violations were the inevitable result.

II. Plaintiff's Imprisonment Due to ICE Detainer was Unlawful.

114. Since holding individuals for ICE causes continued imprisonment, such imprisonment could not lawfully be issued on less than probable cause.

115. Anoka County received nothing that would suggest they had probable cause to hold Plaintiff for ICE.

116. As a starting point, ICE administrative warrants do not meet the probable cause standard required by the Fourth Amendment nor do they pretend to. This court has

already stated that ICE detainers must meet the requirements of a warrantless arrest. *Orellana v Nobles* at 946.

117. In this case, Anoka Defendants were holding Plaintiff for ICE without any legally sufficient materials. See also *Ochoa v. Campbell* (holding that an I-200 warrant by itself did not create the probable cause needed to hold an individual).

III. Defendants Have No Authority to Imprison, on Less than Probable Cause, Individuals who ICE Authorities May Want.

118. Anoka Defendants never even followed the general Immigration Detainer program to hold Plaintiff. Even if they had, it would not have supported her detention.

119. An immigration detainer is merely a "request," not a legally-enforceable command, to hold an alien subject to removal for up to 48 hours (excluding holidays and weekends). 8 C.F.R. § 287.7(a). Under the "anti-commandeering" doctrine, a federal official is constitutionally barred from asserting authority to order a state or local official to exercise sovereign authority to imprison. *Printz v. United States*, 521 U.S. 898. 910 (1997); *Galarza*, 745 F.3d at 643.

120. ICE has stated in several litigations that ICE detainers constitute warrantless arrests. *Ochoa* at *10; *Moreno v. Napolitano*, 213 F.Supp.3d 999, 1005 (N.D. Ill, 2016).

121. Detainers lack the probable cause requirements that the Fourth Amendment requires. Administrative warrants have even less validity toward the Fourth Amendment.

122. Consequentially, any arrest by Anoka Defendants that wasn't even supported, at a minimum, by an ICE detainer must meet the requirements of a warrantless

arrest. Defendants agreed to imprison Plaintiff on less than probable cause and disregarded her rights under the Fourth and Fourteenth Amendments.

123. Plaintiff continues to reside in Anoka County. Because of Defendants' unconstitutional conduct in the past and their continued policy, practice and customs, Plaintiff fears that, if she is stopped by police or arrested in the future, she will again be subject to Defendants' unconstitutional policy, practice and customs of holding foreign-born nationals without lawful justification pursuant to an ICE hold.

COUNT I
42 U.S.C. § 1983 Fourth Amendment Illegal Search and Seizure

124. All previous paragraphs are incorporated herein by reference as though fully set forth.

125. This is a claim under 42 U.S.C. § 1983 for violation of the Fourth Amendment of the U.S. Constitution.

126. Defendant Oman subjected Plaintiff to custodial arrest in violation of the Rule 6.01 of the Minnesota Rules of Criminal Procedure. Defendant Oman, therefore, lacked the legal authority to take Plaintiff into custody and her custodial arrest was in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures, depriving her of her liberty without due process and causing significant pain and suffering.

127. The Anoka County Defendants held Plaintiff in the Anoka County jail in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures, depriving her of her liberty without due process and causing significant pain and

suffering.

128. Anoka Documents show that Plaintiff was cleared from custody on July 25, 2017, but she was not released until the following day.

129. Defendants' continued detention of Plaintiff beyond any time at which she should have been freed, constituted a new, unauthorized arrest without probable cause.

130. Because Plaintiff's continued detention constituted a new arrest, and because Defendants could not rely on any documents to support probable cause for a warrantless arrest, Defendants' individual actions and official policies, practices, customs, lack of supervision, failure to train, acts, and omissions violate the Fourth Amendment's requirement that persons arrested without a warrant be brought before a neutral magistrate for a probable cause hearing within 48 hours of arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991); see also *Gerstein v. Pugh*, 420 U.S. 1003 (1975). Such failure to train was done with such deliberate indifference on the part of Defendants that this constitutional violation inevitably would occur. Defendant's policies, practices, customs, lack of supervision, failure to train, acts, and omissions were the moving force behind this constitutional violation and the cause of such violation.

131. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff has suffered damages in an amount in excess of $75,000.00 exclusive of costs and interest, plus attorneys' fees as authorized by law.

COUNT II
42 U.S.C. § 1983 Fourteenth Amendment Substantive Due Process Violations

132. All previous paragraphs are incorporated herein by reference as though fully set forth.

133. Defendants' unlawful custodial arrest and detention of Plaintiff, which violated her rights under the Fourteenth Amendment, caused her significant pain and suffering by infringing on her fundamental liberty interests.

134. The principles of substantive due process under the Fourteenth Amendment forbid the infringement of fundamental liberty interests, unless that infringement is narrowly tailored to serve a compelling government interest. Freedom from physical restraint is a liberty interest protected by the Fourteenth Amendment's promise of substantive due process.

135. Further, a person who has been cleared from custody has a strong liberty interest in being freed from jail, as the state's justification for holding that person is gone. It is a deprivation of liberty to continue to detain the person.

136. The unauthorized, and unlawful custodial arrest and detention of Plaintiff has no basis in state law.

137. As a proximate result of Defendant's unconstitutional policies, practices, customs, lack of supervision, failure to train, acts, and omissions, done under color of law and official authority, Plaintiff suffered significant deprivations of her constitutional rights detailed in the preceding causes of action, namely her Fourth Amendment right to be free from unreasonable seizures and her Fourteenth Amendment substantive and procedural due

process rights. The failure to train was done with such deliberate indifference on the part of Defendants that these constitutional violations inevitably would occur. Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions were the moving force behind these constitutional violations and the cause of such violations.

138. Wherefore, as a direct and proximate cause of the actions of Defendant, Plaintiff has suffered damages in an amount in excess of $75,000.00 exclusive of interest and costs, plus damages as allowed by law.

COUNT III
42 U.S.C. § 1983 Fourteenth Amendment Procedural Due Process Violation
Deprivation of Liberty

139. All previous paragraphs are incorporated herein by reference as though fully set forth.

140. Procedural due process requires that the government be constrained before it acts in a way that deprives a person of liberty interests protected under the Due Process Clause of the Fourteenth Amendment. See *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976).

141. The Fourteenth Amendment's Due Process Clause protects against the deprivation of liberty interests without the due process of law, requiring notice and an opportunity to be heard prior to the deprivation of liberty. It also mandates a method by which to challenge the deprivation of liberty. Defendants refused to provide Plaintiff with any of these protections, in violation of her due process rights.

142. Relying only on phone conversations with ICE officials as its sole justification, the Anoka County Defendants detained Plaintiff without lawful authority and

without judicial review. Such acts and omissions violate Fourteenth Amendment procedural due process rights.

143. As a proximate result of Defendants' unconstitutional policies, practices, customs, lack of supervision, failure to train, acts, and omissions, done under color of law and official authority, Plaintiff suffered significant deprivations of her constitutional rights detailed in the preceding causes of action, namely her Fourth Amendment right to be free from unreasonable seizures and her Fourteenth Amendment substantive and procedural due process rights. The failure to train was done with such deliberate indifference on the part of Defendants that these constitutional violations inevitably would occur. Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions were the moving force behind these constitutional violations and the cause of such violations.

144. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff has suffered damages in an amount in excess of $75,000.00 exclusive of interest and costs plus damages as allowed by law.

COUNT IV
§ 1983 Fourteenth Amendment Equal Protection Claim against Defendant Oman and the Coon Rapids Police Department

145. Defendant Oman acted pursuant to an unwritten policy, custom or pattern of practice to engage in racial and ethnic profiling and arresting Hispanic motorists for pre-textual reasons to place them into immigration custody. By refusing to recognize the validity of the Matricula Consular card as a form identification, Defendant Coon Raids Police Department maintains an unwritten policy, custom or pattern of practice that results in discrimination against individuals based upon race, ethnicity and/or national origin by

subjecting individuals, including Plaintiff, who use the Matricula Consular card for identification to additional scrutiny and custodial arrest. Defendant Oman, by refusing to recognize the validity of the Matricula consular card as a form of identification, acted with intent to discriminate against Plaintiff and others similarly situated based upon race and/or national origin. Discrimination on the basis of an individual's race and/or national origin is a violation of the Equal Protection Clause of the Fourteenth Amendment.

146. The constitutional violations suffered by Plaintiff and those similarly situated to Plaintiff are directly and proximately caused by policies, practices and /or customs implemented and enforced by the Defendants Coon Rapids Police Department and Oman, as set forth in this complaint.

147. Defendant Coon Rapids Police Department's policy, custom or pattern of practice of not recognizing the validity of the Matricula Consular as an identification document intentionally discriminates on the basis of race, ethnicity and/or national origin. Plaintiff's arrest is a direct and proximate result of that discrimination in violation of Plaintiff's Fourteenth Amendment rights.

148. Defendant Oman has acted with intent to discriminate on the basis of race and/or national origin arresting Plaintiff and as a direct and proximate result of the acts and omissions of the Defendant Oman, Plaintiff's Fourteenth amendment rights have been violated.

149. Defendant Oman has intentionally targeted Hispanic individuals and individuals who present the Matricula Consular card as a form of identification for arrest in areas where the named plaintiffs and members of the plaintiff class reside or visit. Under

these practices, policies and/or customs, the Equal Protection rights of Plaintiff are violated.

150. Plaintiff lives near and travels through the City of Coon Rapids and uses the Matricula Consular card as a form of identification.

151. Plaintiff and those similarly situated to Plaintiff have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant Oman's actions are enjoined from continuing to racially profile Hispanic motorists and if Defendant Oman and the Coon Rapids Police Department are allowed to continue to refuse to recognize the Matricula Consular card as a valid form of identification for individuals charged with misdemeanors.

152. Defendant Oman has by the above-described actions deprived Plaintiff of her rights to be free from unconstitutional stops, searches and detention. As a result, Plaintiff suffered harm under the Fourth and Fourteenth Amendments, and 42 U.S.C. §1983.

153. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff has suffered damages in an amount in excess of $75,000.00 exclusive of interest and costs plus damages as allowed by law.

COUNT V
State Constitutional violation – Art 1 § 10 – Unlawful Seizure

154. All previous paragraphs are incorporated herein by reference as though fully set forth.

155. Defendant Oman subjected Plaintiff to an unlawful custodial arrest in violation of Rule 6.01 of the Minnesota Rules of Criminal Procedure.

156. The Anoka County Defendants held Plaintiff after she could have been released under state law solely because of a policy to hold aliens for ICE.

157. Defendants detained Plaintiff without lawful authority and without judicial review. Such acts and omissions violate Article 1, § 10 of the Minnesota Constitution.

158. As a proximate result of Defendants' unconstitutional policies, practices, customs, lack of supervision, failure to train, acts, and omissions, done under color of law and official authority, Plaintiff suffered significant deprivations of her constitutional rights detailed in the preceding causes of action, namely her Article 1 §10 Minnesota constitutional right to be free from unreasonable seizures. The failure to train was done with such deliberate indifference on the part of Defendants that these constitutional violations inevitably would occur. Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions were the moving force behind these constitutional violations and the cause of such violations.

159. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff seeks injunctive relief prospectively enjoining Defendants from wrongfully detaining and imprisoning persons based upon their nationality or suspected immigration status.

COUNT VI
State Constitutional violation – Art 1 sec 7 – Due Process Violations

160. All previous paragraphs are incorporated herein by reference as though fully set forth.

161. Due process requires that an individual receive adequate notice and an opportunity to be heard before being deprived of life, liberty, or property. *State v. Ness*, 819 N.W.2d 219, (Minn. Ct. App. 2012) *aff'd*, 834 N.W.2d 177 (Minn. 2013).

162. Defendants violated Plaintiff's Minnesota Constitutional right to due process under Article 1 § 7 by depriving her of liberty interests under the U.S. and Minnesota Constitution as set forth in the preceding paragraphs, without giving her notice or an opportunity to be heard regarding her continued detention without probable cause.

163. As a proximate result of Defendants' unconstitutional policies, practices, customs, lack of supervision, failure to train, acts, and omissions, done under color of law and official authority, Plaintiff suffered significant deprivations of her constitutional rights as detailed in the preceding causes of action, namely her Article 1 §10 and Fourth Amendment right to be free from unreasonable seizures and her Fourteenth Amendment substantive and procedural due process rights. The failure to train was done with such deliberate indifference on the part of Defendants that these constitutional violations inevitably would occur. Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions were the moving force behind these constitutional violations and the cause of such violations.

164. Plaintiff lives near and travels through the City of Coon Rapids and lives in Anoka County. The harm she has suffered, as detailed above, is capable of being repeated.

165. Wherefore, as a direct and proximate cause of the actions of Defendants, Plaintiff seeks injunctive relief for herself and others similarly situated prospectively enjoining Defendants from wrongfully detaining and imprisoning persons based upon their nationality or suspected immigration status.

COUNT VII
Tort Claims – False Imprisonment Against all Defendants

166. All previous paragraphs are incorporated herein by reference as though fully set forth.

167. All of the individual Defendants named in this Complaint are employees, deputies or agents of municipalities.

168. All acts of the individual Defendants alleged above were conducted within the scope of the Defendants' employment or duties.

169. The actions of Defendants were willful, malicious and in violation of the known rights of Plaintiff.

170. Plaintiff's initial arrest by Defendant Oman was not supported by law but was rather the result of racial profiling, done under color of law and official authority, pursuant to official policy or custom and because of lack of supervision, constitutes false imprisonment in violation of Minnesota law. Plaintiff's continued detention by Anoka Defendant's for ICE officials is an unconstitutional policies, practices, customs, lack of supervision, failure to train, acts, and omissions were the moving force behind this state

law violation and the cause of such violation. The failure to train was done with such deliberate indifference on the part of Defendants that this constitutional violation inevitably would occur.

171. Defendants intentionally confined and restrained Plaintiff without her consent by not releasing her from custody when they should have. Defendants intentionally confined Plaintiff beyond the time permitted by law and Plaintiff did not consent to this unlawful detention.

172. Defendants knew it had no lawful authority to arrest Plaintiff nor to continue detaining Plaintiff.

173. Defendants did not have probable cause to continue to keep Plaintiff in jail; nor did any immigration documents provide probable cause for Plaintiff's continued detention.

174. As a direct and proximate result of this false imprisonment, Plaintiff suffered injuries and damages, in an amount in excess of $ 75,000.00 exclusive of interests and costs, together with legal fees as authorized by law.

DECLATORY RELIEF

175. This suit involves an actual controversy within the Courts' jurisdiction and the Court may declare the rights of Plaintiff under the Constitution and laws of the United States and the laws of Minnesota and grant such relief as necessary and proper. Plaintiff seeks declaratory relief on her own behalf.

176. Plaintiff seeks declaratory judgment that Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions described herein of

holding foreign born persons in the Anoka County jail based on requests by ICE, with or without immigration holds and denying foreign born persons the ability to post bail to secure their release based on immigration holds are unlawful and violate their rights and those of the class under the Fourth and Fourteenth Amendments to the U.S. Constitution and constitute false imprisonment in violation of Minnesota state law.

177. Defendants have shown a pattern of violating the rights of Hispanic immigrants and their actions have been seen as unconstitutional by this Court yet they continue to do violate the Constitution.

INJUNCTIVE RELIEF

178. Because Plaintiff may continue to experience violations of her Fourth and Fourteenth Amendment rights and suffer false imprisonment because of Defendants' policies, practices, customs, lack of supervision, failure to train, acts and omissions, temporary and permanent injunctive relief is necessary to stop such unlawful activity.

179. Plaintiff requests that the Court enjoin Defendants from continuing further the policies, practices, customs, lack of supervision, failure to train, acts, and omissions complained of above and order that Defendants cease holding foreign-born prisoners on behalf of an immigration detainer if a prisoner offers to post bail on the underlying criminal offense or if bail is offered for the prisoner.

180. Plaintiff requests that the Court enjoin Defendants from continuing further the policies, practices, customs, lack of supervision, failure to train, acts, and omissions complained of above and order that Defendants cease refusal to recognize the Matricula Consular card as a valid form of identification for individuals charged or cited with

misdemeanors, or during arrests of individuals suspected to be present in the U.S. without authorization.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this court enter judgment in favor of Plaintiff and against the Defendants, and grant the following:

A. Enter a declaratory judgment on behalf of Plaintiff that the Anoka County Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions, described herein, of holding foreign born persons in the Anoka County jail based on requests form ICE, either orally or through immigration detainers after they have been ordered released on their own recognizance and denying foreign born persons the ability to post bail to secure their release based on immigration detainers are unlawful and violate their rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, the Minnesota Constitution and constitute false imprisonment in violation of Minnesota state law;

B. Enter a declaratory judgment on behalf of Plaintiff that the Coon Rapids Defendants' policies, practices, customs, lack of supervision, failure to train, acts, and omissions, described herein, of refusing to recognize the validity of the Matricula Consular, and arresting foreign born persons based on their suspected immigration status are unlawful and violate their rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, the Minnesota Constitution and constitute false imprisonment in violation of Minnesota state law;

C. Enter a preliminary injunction, followed by a permanent injunction, on behalf of Plaintiff against Defendants, enjoining Defendants from continuing further the policies, practices, customs, lack of supervision, failure to train, acts, and omissions complained of above and ordering that Defendants cease holding foreign born prisoners on behalf of ICE when there are no longer any state grounds to hold the individual;

D. Enter judgment on behalf of Plaintiff against Defendants for reasonable actual damages sufficient to compensate her for the violation of her Fourth and Fourteenth Amendment rights and rights under the Minnesota Constitution and Minnesota state law;

E. Order Defendants to pay Plaintiff's damages and attorneys' fees and costs as authorized by 42 U.S.C. §1988; and,

F. Grant all other and additional relief to which Plaintiff may be entitled in this action, at law or in equity.

KUTAK ROCK, LLP

Dated: March 22, 2018.

By: *s/Amanda R. Cefalu*

Alain M. Baudry (#0186685)
Amanda Cefalu (#0309436)
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AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA

Ian Bratlie (#0319454)
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709 S. Front Street

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ACLU of Minnesota
2300 Myrtle Avenue
Suite 180
St Paul, MN 55114-1879
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Email: tnelson@aclu-mn.org

Exhibit A

From: Jim Franklin
To: Ben Feist
Subject: RE: ICE detainers
Date: Thursday, January 8, 2015 10:39:36 AM
Attachments: FW ICE Detainers (29.3 KB).msg
Hennepin County Sheriff"s Office Announcement on ICE Detainers (912 KB).msg

---

Ben
Will try it again……
Let me know if you got this one?

James Franklin
Executive Director
Minnesota Sheriffs' Association
100 Empire Drive Suite 222
St. Paul, MN 55103
Phone: 651-451-7216 x 2
jfranklin@mnsheriffs.org
www.mnsheriffs.org

From: Jim Franklin
Sent: Wednesday, January 07, 2015 4:13 PM
To: 'Benjamin Feist'
Subject: ICE detainers

Ben:
This is a copy of the Mike Freeman memo/announcement with Stanek on the issue of ICE holds. We sent this out to all Sheriffs and I think Joh Kingrey sent this out to all County attorneys also. Other than a few short communications with Sheriffs this about all of the communications we have sent out on this issue.FYI……

James Franklin
Executive Director
Minnesota Sheriffs' Association
100 Empire Drive Suite 222
St. Paul, MN 55103
Phone: 651-451-7216 x 2
jfranklin@mnsheriffs.org
www.mnsheriffs.org

From: John Kingrey
To: Jim Franklin
Subject: FW: ICE Detainers
Date: Wednesday, June 11, 2014 10:56:09 AM
Attachments: ICE Detainers Memorandum-DPR.pdf

Jim – here you go. You might want to see if Rich has anything in addition to this. John.

Subject: ICE Detainers

Colleagues, Today Hennepin County Sheriff Richard Stanek declared that his office will no longer hold in the Hennepin County Jail individuals after their state proceedings had been concluded on the basis of an ICE immigrant detainer hold. This previous practice of holding detainees up to 48 hours based on the conclusion of an ICE agent that the individual was a person believed to be subject to removal for the United States had been based on Federal Law and regulations which ICE lawyers had argued was mandatory on local law enforcement.

This issue has recently been litigate several times and several Federal Courts have ruled that these ICE detainer requests are voluntary on local officials and not mandatory. Even ICE lawyers have backed down from their previous positions and now have acknowledged to us that these requests are just that, requests and are voluntary and no longer mandatory.

At the most recent MCAA Board meeting this topic was discussed and I volunteered to share with Members the fruits of our research and legal conclusion. A short version of that work is attached. We have a more complete version of our opinion as well.

A number of other jurisdictions have arrived at this same legal and policy conclusions such as New York, Washington D.C. Miami, and ,most recently, San Diego. If we can be of further assistance please let me know.

Mike Freeman

****

Michael O. Freeman
Hennepin County Attorney
C-2000 Government Center
300 S. 6th Street
Minneapolis, MN 55487
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HENNEPIN COUNTY ATTORNEY'S OFFICE
Civil Division
M E M O R A N D U M

TO: Michael O. Freeman, Hennepin County Attorney

FROM: Jim Keeler, Assistant Hennepin County Attorney

RE: ICE Detainers

DATE: June 11, 2014

In response to a change in interpretation of a federal regulation and several federal court decisions, a growing number of state and local governments are refusing to honor U.S. Immigration and Customs Enforcement (ICE) detainers. These recent and significant legal developments require a reevaluation of past legal advice and current HCSO policy regarding honoring ICE detainers.

ICE Detainers

An Immigration Detainer – Notice of Action or DHS Form I-247 ("ICE Detainer") is a request to a state or local law enforcement agency (LEA) to maintain custody of an individual for a period not to exceed 48 hours (excluding Saturdays, Sundays and federal holidays) after such individual would otherwise be released to give ICE time to assume custody on the individual for further investigation. The governing authority for ICE detainers appears in 8 CFR §287.7 (the "Regulation") and reads in relevant part as follows:

> (a) *Detainers in general:* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form 1-247 Immigration Detainer – Notice of Action, to any other Federal, State of local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to the release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.
>
> * * * *
>
> (d) *Temporary detention at Department request.* Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency **shall** maintain custody of the alien for a period not to exceed 48

> hours, excluding Saturdays, Sundays and holidays in order to permit assumption of custody by the Department.

(emphasis added). ICE issues detainers in cases where it has reason to believe that a person may be subject to removal from the United States. ICE detainers arose out of a federal information-sharing partnership between ICE and the FBI. When a person is arrested and booked into the system, the local law enforcement agency ("LEA") shares the arrested person's fingerprints with the FBI to see if the person has a criminal record. The FBI automatically shares these fingerprints with ICE to check against its immigration databases. In addition, pursuant to the Criminal Alien Program (CAP) ICE agents interrogate foreign-born inmates in local jails. Based on the information ICE is able to collect, if ICE believes a person could be deported, the agency issues a detainer to facilitate their arrest.

Based on what appears to be the mandatory language of 8 CFR §287.7(d) ("shall maintain custody") and ICE's previous construction of this statute, the HCSO's policy to date has been to honor ICE detainers and detain individuals for up to an additional 48 hours after other state or federal holds on the individuals have terminated.

The Changed Landscape

Over the past several months, the legal landscape has changed dramatically. First, several court decisions have held that that what appears to be a mandatory requirement to hold individuals subject to an ICE detainer in 8 CFR §287.7(d) is not mandatory, but rather merely a request to a local agency. *See, e.g. Galarza v. Szalczyk*, 745 F.3d 634 (3rd Cir. 2014); *Morales v. Chadbourne*, 2014 WL 554478 (D. RI 2014); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 *1 (D. Or., April 11, 2014).

Second, ICE has changed its interpretation of 8 CFR 287.7. In a February 25, 2014 letter to Representative Keith Ellison (D-MN5), the Acting Director of ICE clarified that immigration detainers are not mandatory "as a matter of law." ICE confirmed this construction. In a May 22, 2014 voice mail message, local ICE Chief Legal Counsel Jennifer Longmeyer-Wood said that the detainer form is in fact a "request" and Hennepin County may choose how to respond to that "request." This is a significant change from ICE's previous communications to the HCAO regarding these detainers.

HCAO Recommendation

There is no controlling precedent in the Eight Circuit. However, the recent federal court rulings and change in ICE policy lead to only one logical conclusion: ICE detainers are requests rather than mandatory orders. In other words, an ICE detainer or DHS Form I-247 without more is not legally sufficient to hold an individual in custody. ICE detainers alleging that DHS has merely "determined there is reason to believe the individual is an alien subject to removal . . ." should no longer be relied upon by the HCSO to hold an individual in custody.

From: Rich Stanek
To: Jim Franklin
Subject: Hennepin County Sheriff"s Office Announcement on ICE Detainers
Date: Wednesday, June 11, 2014 11:22:34 AM
Attachments: 06.11.2014 Sheriff Stanek Statment on ICE detainers.doc

Jim,

As we discussed, please forward the below to MN Sheriffs. Thank you.

****

Fellow Minnesota Sheriffs,

This morning, Hennepin County Attorney Mike Freeman and I announced that as of midnight tonight, the Hennepin County Jail will no longer honor US Immigration and Customs Enforcement detainers, absent judicial authority.

Recent directives by Immigrations & Customs Enforcement that detainers are now considered discretionary along with subsequent Federal Court decisions articulating the same, are strong indicators that the legal landscape is changing on this matter.

My decision comes after a long, thoughtful, and deliberate process and upon advice from our County Attorney and others.

Attached is the official statement we released that includes additional information and background.

Please feel free to call me if you have any questions. Thank you.

Sheriff Rich Stanek
Hennepin County Sheriff's Office
350 South 5th Street, Room 6 Courthouse
Minneapolis, MN 55415
612.348.2347
www.Hennepinsheriff.org

HENNEPIN COUNTY SHERIFF'S OFFICE
News Release

Media Contact:
Jennifer Johnson
(612) 919-5918

Sheriff Stanek Statement on U.S. Immigration and Customs Detainers

June 11, 2014 (MINNEAPOLIS) – Hennepin County Sheriff Rich Stanek has issued the following statement:

Effective Thursday, June 12, the Hennepin County Sheriff's Office will no longer honor U.S. Immigration and Customs Enforcement detainers absent judicial authority.

The Hennepin County Sheriff's Office receives approximately 36,000 inmates each year. Of those 36,000 inmates, approximately 1.5 percent have a detainer placed on them by U.S. Immigration and Customs Enforcement. U.S. Immigration and Customs Enforcement detainers is a request for local jails to hold individuals up to 48 hours after their local charges have been satisfied.

Historically, U.S. Immigration and Customs Enforcement detainers were interpreted as "mandatory," requiring jails to honor them. However, recent directives by U.S. Immigration and Customs Enforcement that detainers are discretionary and subsequent Federal Court decisions articulating the same, are strong indicators that the legal landscape is changing. Therefore the Hennepin County Sheriff's Office will no longer honor U.S. Immigration and Customs Enforcement detainers absent judicial authority.

My decision comes after a long, thoughtful, and deliberate process that included meetings and discussions with Hennepin County Attorney Mike Freeman, residents across Hennepin County, local and national elected officials, the Sheriff's Office Community Advisory Board, the American Civil Liberties Union (ACLU), and representatives from the many diverse communities of Hennepin County.

My first responsibility as Sheriff of Hennepin County will always be to enforce the law and abide by the Constitution.

Rich Stanek
Hennepin County Sheriff

For further information, please contact PIO Jennifer Johnson at 612-919-5918 or jennifer.a.johnson@ hennepin.us
####

Exhibit A

Exhibit B

AMERICAN CIVIL LIBERTIES UNION of MINNESOTA FOUNDATION

May 7, 2014

Sheriff James Stuart,
Anoka County Sheriff's Office
13301 Hanson Blvd NW
Andover, MN 55304

Dear Sheriff Stuart,

We write to ask you to promptly review and revise your policy and practice with regard to immigration detainers sent to your office by the Immigration and Customs Enforcement (ICE) division of the Department of Homeland Security. These documents, ICE form I-247, which are also called "ICE holds," identify a prisoner in your custody. They ask you to continue to detain that prisoner for an additional 48 hours (excluding weekends and holidays) after he or she would otherwise be released.[1] Thus, they ask that you hold the prisoners for up to an additional 6 days if the 48-hour period occurs over a holiday weekend. We ask that you immediately stop the practice of holding prisoners in custody on the basis of these ICE detainers.

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA FOUNDATION
2300 MYRTLE AVENUE
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www.aclu-mn.org

In the past, you may have believed that these detainers represent an order or a command from the federal government that you have a legal obligation to obey. Indeed, for many years, the wording of the I-247 form suggested that compliance with the federal request was mandatory. The wording of the form has changed, and it is now clear, and federal officials and recent court decisions agree, that these detainers represent a mere request, not a command. You have no legal obligation under federal law to honor or comply with the detainer's request to hold prisoners who would otherwise be released.[2]

In the last few years, as more courts and federal officials have acknowledged that detainers are mere requests, not commands, a growing number of local law enforcement agencies have revised their policies. To date, over fifty jurisdictions outside of Minnesota – including several major cities and two states – have abandoned their prior practice of automatically honoring all ICE detainers.[3] Just this month, Philadelphia and numerous Oregon counties joined more than a dozen other jurisdictions that had adopted policies that effectively

[1] ICE issues immigration detainers pursuant to 8 C.F.R. § 287.7.
[2] In this letter, references to "honoring" detainers refer only to honoring the request to hold prisoners in custody after they would otherwise be released.
[3] *See, e.g.*, Catholic Immigration Network, "States and Localities That Limit Compliance with ICE Detainer Requests (Jan 2014)," (listing over twenty jurisdictions), *available at* https://cliniclegal.org/resources/articles-clinic/states-and-localities-limit-compliance-ice-detainer-requests-jan-2014; Immigrant Law Group PC, "Recent Developments on ICE Holds in Oregon," updated April 25, 2014 (listing 28 Oregon counties), *available at* http://www.ilgrp.com/iceholds.

prohibit honoring any ICE detainers.[1] Sheriffs in several additional localities, including major metropolitan areas like Los Angeles,[2] San Francisco,[3] and Chicago,[4] now refuse to honor immigration detainers when the subjects have only minor criminal records.[5]

Because federal law does not require you to honor detainers, you must choose whether to honor them or not. In this letter, we will outline multiple legal and policy reasons why your sheriff's department must promptly join the growing number of law enforcement agencies that has chosen to stop honoring them altogether. First, around the country, sheriffs are facing (and losing) lawsuits filed by prisoners who argue that extending their incarceration on the basis of an immigration detainer violated their constitutional rights. Second, your choice to honor immigration detainers incurs substantial costs not only in dollars, but also in diminished community trust. And finally, this letter explains that sheriffs in Minnesota simply have no authority under Minnesota law to deprive someone of liberty on the basis of an immigration detainer.

1. Immigration Detainers are not Warrants

Immigration detainers are not warrants;[6] they are not court orders; they are not issued or approved by judges. Instead, they are unsworn documents that may be issued by a wide variety of immigration enforcement agents and deportation officers. 8 C.F.R. § 287.7(b). They are frequently issued without even a supervisor's review and simply because an ICE agent has "initiated an investigation" to determine whether a person may be deportable. They do not represent a finding of a person's immigration status. The fact that ICE has issued a detainer does

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[1] *See, e.g.*, Gosia Wozniacka, "Oregon court decision adds to several cases that shed scrutiny on use of immigration detainers," StarTribune, April 17, 2014, *available at* http://www.startribune.com/politics/national/255713171.html; Andrea Castillo, "Six Oregon counties join metro area sheriff's offices in suspending immigration detainer policies," THE OREGONIAN, Apr. 17, 2014, available at http://www.oregonlive.com/pacific-northwest-news/index.ssf/2014/04/five_oregon_counties_join_metr.html. These twenty-plus jurisdictions effectively prohibit honoring detainers by declining to hold individuals for ICE on the basis of an immigration detainer unsupported by a warrant or court order and/or by prohibiting the expenditure of any taxpayer resources to hold individuals on a detainer.

[2] *See* Cindy Chang, "Baca will no longer turn over low-level offenders to immigration," LOS ANGELES TIMES, Dec. 5, 2012, *available at* http://nowcrj.org/wp-content/uploads/2013/08/Los-Angeles-County-ICE-Hold-Policy-To-Be-Promulgated.pdf.

[3] *See* Brent Begin, "San Francisco County jail won't hold inmates for ICE," SAN FRANCISCO CHRONICLE, May 6, 2011, available at http://www.sfexaminer.com/sanfrancisco/san-francisco-county-jail-wont-hold-inmates-for-ice/Content?oid=2174504.

[4] *See* Chicago Municipal Code § 2-173-005 *et. al*, *available at* http://www.immigrationpolicy.org/sites/default/files/docs/SO2012-4984.pdf.

[5] *See* n.2, *supra.* Notably, in 2013, California and Connecticut adopted their version of the Trust Act, which applies throughout the state and forbids law enforcement authorities to comply with immigration detainers issued on prisoners who do not have a significant criminal history. *See* Cal. Gov. Code § 7282 (California Trust Act); Conn. Gen. Stat. § 54-192h (Connecticut Trust Act).

[6] *See, e.g., Buquer v. Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011) ("A detainer is not a criminal warrant but rather a voluntary request . . . ."); *Morales v. Chadbourne*, 2014 U.S. Dist. LEXIS 19084, at *48 (D. R.I. Feb. 12, 2014) ("Warrants are very different from detainers . . . ."). In addition, as discussed in more detail at footnote 32, *infra*, administrative warrants issued by ICE are also very different from the criminal warrants to which Minnesota law enforcement officers are accustomed. ICE administrative warrants are not issued by a judge, and they lack the procedural protections required by the Minnesota Constitution.

not mean that the subject is actually a non-citizen subject to deportation. ICE frequently issues immigration detainers without even probable cause to believe the subject is deportable. Indeed, with disturbing regularity, ICE has been issuing detainers erroneously against United States citizens and legal residents who are not subject to deportation.[7]

Immigration detainers are also nothing at all like the criminal detainers that are governed by the Interstate Agreement on Detainers, C.R.S. §§ 24-60-501 to 507 or the Uniform Mandatory Disposition of Detainers Act, C.R.S. §§ 16-14-101 to 108. Criminal detainers do not request or purport to authorize additional time in custody; they are lodged when a prisoner has actual criminal charges pending in a different jurisdiction, and the statutes provide prisoners with a prompt procedural mechanism for disputing or resolving those pending charges. Immigration detainers, in contrast, are lodged when there are *no* pending immigration proceedings; they ask the custodian to extend a prisoner's time in custody, and they lack any due process mechanisms that prisoners can invoke to contest the extended custody.

2. Immigration Detainers are Requests, Not Commands and Complying with that Request May Result in Legal Liability of a Sheriff

In part because of the total absence of procedural protections, extending the time of a prisoner's custody solely on the basis of an immigration detainer raises serious constitutional concerns. These concerns have been accentuated for sheriffs like yourself as it has become increasingly clear that ICE detainers are mere requests, not commands. The result is that *you* must take full responsibility for the legal and policy consequences of deciding to honor them.

A. Federal officials acknowledge that detainers are requests, not commands

ICE officials and their attorneys have acknowledged in various forums that immigration detainers represent a mere request, not a command:

- In 2010, the County Attorney of Santa Clara County, California, posed a number of written questions to ICE about the soon-to-be-implemented Secure Communities program. David Venturella, Assistant Director of ICE's Secure Communities program, provided a detailed response, repeating the question and supplying an answer, as follows:
    - Question: "Is it ICE's position that localities are required to hold individuals pursuant to Form I-247 or are detainers merely requests with which a county could legally decline to comply?"
    - Answer: "ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who may otherwise be released . . . ."[8]

[7] According to data compiled by Syracuse Transactional Records Access Clearinghouse (hereinafter "TRAC"), in a four-year period ending in 2012, ICE placed detainers on 834 U.S. citizens and 28,489 legal permanent residents. TRAC, "ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents," *available at* http://trac.syr.edu/immigration/reports/311/.

[8] *See* Letter from David Venturella to Miguel Martinez, undated (hereinafter "Venturella Letter"), *available at* http://www.scribd.com/doc/38550589/ICE-Letter-Responding-to-SCC-Re-S-Comm-9-28-10.

- In a brief filed in 2013 in a case challenging ICE detainers, government attorneys representing the Department of Homeland Security acknowledged that "ICE detainers issued pursuant to 8 C.F.R. § 287.7 are voluntary requests."[9] In response to a discovery request in that case, the DHS attorneys made a formal admission: "Defendants admit that ICE detainers . . . do not impose a requirement upon state or local law enforcement agencies."[10]

- In a letter dated October 17, 2013, Representative Keith Ellison and 48 additional members of Congress wrote to the Acting Secretary of the Department of Homeland Security. They asked for clarification that "I-247 detainers are requests, imposing no requirements on [local law enforcement agencies]." On February 25, 2014, David Ragsdale, Acting Director of ICE, replied. He confirmed that ICE detainers "are not mandatory as a matter of law."[11]

B. Recent court decisions recognize that detainers are requests, not commands, and sheriffs may be legally liable for complying with that request

Three 2014 court decisions have squarely held that an immigration detainer is merely a request, not a command that local law enforcement must obey. The result is that local law enforcement agencies cannot rely on the ICE detainer to shield them from liability. Thus, local law enforcement agencies are on the hook when prisoners show that detaining them solely on the authority of an immigration detainer violates rights guaranteed by such provisions as Fourth Amendment, the Due Process Clause, or local tort law. As all three decisions make clear, a sheriff clearly violates the Fourth Amendment when he holds a prisoner on the basis of an ICE detainer that is not supported by probable cause.

***i. Galarza v. Szalczyk* (3rd Cir. 2014)**

The most extensive explanation of why detainers are requests, not commands, appears in *Galarza v. Szalczyk*, 2014 U.S. App. LEXIS 4000 (3rd Cir. March 4, 2014). Mr. Galarza, a United States citizen, was arrested and posted bail. The jail refused to release him, however, because ICE had issued a detainer that said that "investigation has been initiated" to determine whether Galarza was deportable. *Id.* at *5-*6. He spent three days in jail before ICE recognized that he was a citizen and withdrew the detainer. *Id.* at *2. When Galarza sued, the jail argued that it was legally obligated to comply with the detainer's request to hold Galarza an additional 48 hours after bail had been posted.

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[9] *Jimenez v. Morales*, No. 11-CV-05452 (N.D. Il.), Dkt # 107, Def. Mem. In Support of Mtn for Partial J., at 8-9, *available at* http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Government%20Brief%20in%20Support%20of%20Motion%20for%20Partial%20Judgment%20on%20Pleadings.pdf.

[10] *Jimenez v. Morales*, No. 11-CV-05452 (N.D. Ill.), Def's Resp. to Pl's First Set of Requests For Admissions, Resp. to Request No. 16, *available at* http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Govt%27s%20Responses%20to%20First%20Requests%20for%20Admission.pdf.

[11] http://www.notonemoredeportation.com/wp-content/uploads/2014/02/13-5346-Thompson-signed-response-02.25.14.pdf

The Third Circuit squarely rejected the jail's argument, holding that "immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens . . . ." *Id.* at *3. If an immigration detainer were indeed a command, the court explained, it would violate the anti-commandeering principle of the Tenth Amendment:

> Under the Tenth Amendment, immigration officials may not order state and local officials to imprison suspected aliens subject to removal at the request of the federal government. Essentially, the federal government cannot command the government agencies of the states to imprison persons of interest to federal officials. *Id.* at *23-*24.

Thus, the plaintiffs' claims against the jail could proceed.

***ii. Morales v. Chadbourne* (D. R.I. Feb. 12, 2014)**

Earlier this year, a federal district court in Rhode Island also held that a jail could not escape liability by claiming that it was compelled to honor immigration detainers. In *Morales v. Chadbourne*, 2014 U.S. Dist. LEXIS 19084 (D. R.I. Feb. 12, 2014), a United States citizen was granted a personal recognizance bond on a state criminal charge. *Id.* at *6. She was not released, however, because ICE sent an immigration detainer to the jail asking that it continue to hold Ms. Morales for 48 additional hours. *Id.* at *6-*7. The box checked on the detainer form stated that ICE had "initiated an investigation" to determine whether Ms. Morales was subject to deportation. *Id.* at *17. Ms. Morales spent an additional day in jail, solely on the purported authority of the ICE detainer. After ICE agents took Ms. Morales into custody, they released her after realizing she was a citizen. *Id.* at *7.

In a motion to dismiss, the jail authorities argued that they had no liability because they detained Ms. Morales on the basis of what they characterized as a facially valid immigration detainer, which they analogized to an arrest warrant. *Id.* at *46-*48. The court rejected the argument, explaining that "[w]arrants are very different from detainers, and there was no accompanying warrant in this case." *Id.* at *48. The court quoted *Buquer v. Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011), which explained that "a detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency 'advise [DHS] prior to release of the alien, in order for [DHS] to arrange to assume custody.'" *Id.* at *48. The court held that the jail must answer the charge that it deprived Ms. Morales of liberty without adequate legal authority.

***iii. Miranda-Olivares v. Clackamas County* (D. Ore. Apr. 11, 2014)**

In *Miranda-Olivares v. Clackamas County*, 2014 U.S. Dist. LEXIS 50340 (D. Ore. Apr. 11, 2014), a federal district court in Oregon held that a county violated the Fourth Amendment when its jail held the plaintiff in custody solely on the basis of an immigration detainer. The plaintiff was arrested on a minor criminal charge, and ICE issued a detainer the following day. Family members were prepared to post the $500 bail, but jail officials on multiple occasions said

that posting bail would not result in release, because the jail would keep Ms. Miranda-Olivares in custody pursuant to the immigration detainer. After two weeks, she resolved her criminal case with a sentence of time served. Instead of releasing Ms. Miranda-Olivares, the jail kept her in custody an additional day, until ICE assumed custody. The plaintiff argued that the county was legally liable for unjustifiably depriving her of liberty, solely on the basis of the immigration detainer, when it 1) denied her release on bail and 2) refused to release her immediately after she resolved her state court case.

The county argued that the detainer was an order from the federal government that it was legally obligated to carry out. The court rejected that argument, explaining that the detainer regulation, 8 C.F.R. § 287.7, "does not require LEAs [Law Enforcement Agencies] to detain suspected aliens upon receipt of a Form I-247 from ICE." *Id.* at *23. The court further concluded "that the Jail was at liberty to refuse ICE's request to detain Miranda-Olivares if that detention violated her constitutional rights." *Id.* at *23-*24. The court granted summary judgment to the plaintiff, holding that the county imprisoned her without probable cause in violation of the Fourth Amendment. *Id.* at *33. Within a few days of the court's ruling, sheriff's offices in twenty-eight Oregon counties announced that they would stop honoring immigration detainers.[12]

3. Your Sheriff's Department Incurs Unnecessary Costs in Dollars, Diminished Public Safety, and Reduced Community Trust When It Chooses To Honor Immigration Detainers

Enforcing immigration law is the responsibility of the federal government. Local law enforcement agencies incur substantial costs when they choose to honor immigration detainers. These costs include not only concrete fiscal and financial expenditures that can be measured in dollars, but also the cost of strained relations and lack of trust with Minnesota's large immigrant community.

A. Honoring ICE detainers is expensive

Immigration detainers impose significant costs that are not reimbursed by the federal government. It is your sheriff's department, not ICE that bears the costs of incarcerating people for up to six days on an ICE detainer.[13] This cost is significant. Between October 2011 and August 2013, ICE issued over 5,300 detainers to Minnesota jails.[14] Almost every county jail in Minnesota was asked to hold prisoners past their release date on the basis of a detainer.[15]

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[12] *See* Immigrant Law Group PC, "Recent Developments on ICE Holds in Oregon," updated April 25, 2014, *available at http://www.ilgrp.com/*iceholds; *see also* Andrea Castillo, "Immigration detainer changes spread across Oregon: 23 counties have modified their policies so far," THE OREGONIAN, Apr. 24, 2014, *available at* http://www.oregonlive.com/pacific-northwest-news/index.ssf/2014/04/immigration_detainer_changes_s_2.html.

[13] Pursuant to 8 C.F.R. § 287.7(e), ICE is not responsible for reimbursing a local law enforcement agency for the cost of incarcerating any individual against whom a detainer is lodged until "actual assumption of custody" by ICE.

[14] *See* TRAC, "ICE Detainers Issued for Facilities by Level of Most Serious Conviction," (data by state/facility), *available at* http://trac.syr.edu/immigration/reports/343/include/table3.html. Ian Bratlie, "ICE Holds: Costing Minnesotans Money and Much More," The Hennepin Lawyer, March 2012.

[15] *See* TRAC, "ICE Detainers Issued for Facilities by Level of Most Serious Conviction," (data by state/facility), *available at* http://trac.syr.edu/immigration/reports/343/include/table3.html..

The financial burden your sheriff's department bears for its choice to honor immigration detainers is even greater. Several studies have concluded that the presence of an immigration detainer typically doubles the amount of a time that a prisoner spends in pre-trial detention.[16] Because of these extended pre-trial stays, a study by the Colorado Fiscal Institute estimated that Colorado is spending $13 million per year detaining and housing suspected immigration violators.[17] An unpublished internal ACLU-MN study of ICE costs in Minnesota found that jails were spending an average of $125 per day housing suspected immigration violators, costing tax payers millions of dollars.

In addition to detention costs, your sheriff's department faces the very real risk of legal liability if it continues to hold prisoners on the basis of ICE detainers. Lawsuits like the three discussed earlier in this letter are becoming increasingly frequent, with increasing success for plaintiffs. These lawsuits are not only expensive to litigate, but may result in fiscal liability for Minnesota counties. In 2011, for example, after a lawsuit brought by the ACLU of Colorado, Jefferson County agreed to pay $40,000 for unjustifiably holding Luis Quezada on an ICE detainer.[18] In 2009, New York City agreed to pay $145,000 to settle a lawsuit by a man who was wrongly held on ICE detainers.[19] In 2010, Spokane County Washington agreed to pay $35,000 to a man who was wrongly held without bail for 20 days because of an ICE detainer.[20] As detailed above, three federal courts in 2014 have ruled in favor of plaintiffs who sued county jails for holding them solely on the authority of an immigration detainer. While these cases have yet to be reduced to a dollar sum, the liability of the jailers is quite clear. Importantly, ICE refuses to indemnify localities found liable for choosing to honor detainers.[21]

B. Honoring ICE detainers undermines public safety and diminishes community trust in law enforcement

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[16] Three such studies are citied in ACLU of Maryland, RESTORING TRUST: HOW IMMIGRATION DETAINERS IN MARYLAND UNDERMINE PUBLIC SAFETY THROUGH UNNECESSARY ENFORCEMENT, Nov. 2013, at p. 9, n.15, *available at* https://immigrantjustice.org/sites/immigrantjustice.org/files/ACLU%20Maryland--Detainer%20Report.pdf.

[17] Colorado Fiscal Institute, MISPLACED PRIORITIES: SB90 & THE COSTS OF LOCAL COMMUNITIES, Dec. 2012, at p. 11, *available* at http://www.coloradofiscal.org/wp-content/uploads/2013/05/2013-3-1-v.2-SB90-Misplaced-Priorities-Ed.pdf. Studies in other jurisdictions yield similar findings. *See* ACLU of Maryland, RESTORING TRUST: HOW IMMIGRATION DETAINERS IN MARYLAND UNDERMINE PUBLIC SAFETY THROUGH UNNECESSARY ENFORCEMENT, Nov. 2013, at p. 9, n.15, *available at* https://immigrantjustice.org/sites/immigrantjustice.org/files/ACLU%20Maryland--Detainer%20Report.pdf

[18] *See* "JeffCo Sheriff to pay $40k to settle claim of illegally imprisoning Colorado resident," ACLU of Colorado press release, *available at* http://aclu-co.org/jeffco-sheriff-to-pay-40k-to-settle-claim-of-illegally-imprisoning-colorado-resident/.

[19] Settlement Agreement, *Harvey v. City of New York*, Case No. 1:07-cv00343-NG-LB, United States District Court, Eastern District of New York, *available at* http://www.legalactioncenter.org/sites/default/files/docs/lac/Harvey%20v.%20City%20of%20NY%20Stip%20Dismissal%20and%20Settlement.pdf.

[20] *See* "Northwest Immigrant Rights Project & Center for Justice Achieve Settlement in Case of Immigrant Detained Unlawfully," Northwest Immigrants' Rights Project press release, *available at* http://www.nwirp.org/news/viewmediarelease/15.

[21] See n.10, *supra*, Venturella Letter, page 3 ("ICE will not indemnify localities for any liability incurred [because of detention based on an ICE detainer]"), *available at* http://www.scribd.com/doc/38550589/ICE-Letter-Responding-to-SCC-Re-S-Comm-9-28-10.

When you choose to comply with ICE detainers, you risk seriously undermining both public safety and community trust by transforming local law enforcement, in the eyes of the community, into proxy immigration enforcers. The public pronouncements of ICE propagate a myth that ICE's detainer system protects public safety by selecting only serious criminal aliens for deportation proceedings. The reality is different. The vast majority of detainers are lodged against persons with no criminal conviction or only a minor conviction.[22] Across the country, the top three criminal offenses committed by individuals with ICE detainers are: (1) driving under the influence, (2) trafficoffense; and (3) marijuana possession.[23]

In Minnesota, an incredible 54% of immigration detainers are lodged against individuals with **no criminal record**.[24] These are individuals who would typically be released promptly from pre-trial detention and returned to their communities, but instead are often held for lengthy periods because of an ICE hold.[25]

Many individuals targeted by detainers are persons who have been living and working peacefully in the United States, sometimes for years, and who come into contact with law enforcement through traffic stops or other routine matters – or even as victims of domestic violence or other crimes. Immigrants understand that any encounter with the police – whether it's a traffic stop, participation in a police investigation, or requesting help from the police – can lead to computer checks of family and friends at the scene. Immigrants understand that discovery of a warrant for even the most minor offense, such as failure to appear on a traffic ticket, can lead to arrest and ultimate deportation when law enforcement honors ICE detainers. It is no surprise then, that a recent study confirmed that Latinos, both documented and undocumented, often fear even minimal contact with the police, including something as benign as reporting a crime or cooperating with a criminal investigation, because of fears about potential immigration consequences for themselves or their family members.[26]

When you choose to honor ICE detainers, particularly when the subjects have little or no criminal history, you send a strong signal to the friends, family and community of those detained individuals that deportation is a potential consequence of any interaction with law enforcement. This signal has predictable effects. First, it deters persons who have undocumented friends or relatives – including citizens and legal permanent residents as well as undocumented immigrants

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[22] TRAC, "Few ICE Detainers Target Serious Criminals," *available at* http://trac.syr.edu/immigration/reports/330/.

[23] TRAC, "Few ICE Detainers Target Serious Criminals," *available at* http://trac.syr.edu/immigration/reports/330/.

[24] TRAC, "Targeting of ICE Detainers Varies Widely by State and by Facility," *available at* http://trac.syr.edu/immigration/reports/343/

[25] *See* ACLU of Maryland, RESTORING TRUST: HOW IMMIGRATION DETAINERS IN MARYLAND UNDERMINE PUBLIC SAFETY THROUGH UNNECESSARY ENFORCEMENT, Nov. 2013, at 9 ("One damaging side effect [of honoring detainers] is to unnecessarily prolong the pretrial detention of individuals with the most minor offenses who pose no public safety threat or flight risk and who ordinarily would have been released on minimal bond."), *available at* https://immigrantjustice.org/sites/immigrantjustice.org/files/ACLU%20Maryland--Detainer%20Report.pdf .

[26] University of Illinois at Chicago, Department of Urban Planning and Policy, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT, May 2013, *available at* http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf.

– from contacting law enforcement for any reason.[27] Second, it diminishes the goodwill towards peace officers that your sheriff's department undoubtedly seeks to foster with Minnesota's substantial immigrant community. The Major Cities Chiefs Association has come to just this conclusion, stating:

> Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.[28]

In sum, by entangling your sheriff's department in immigration enforcement, honoring detainers undermines public safety and community trust in local law enforcement and contributes to a culture of fear and suspicion. By shifting the burden of legal liability and most of the direct and indirect costs of additional time in detention to local jurisdictions, honoring detainers imposes significant financial costs. Thus, honoring immigration detainers comes at significant social, economic, and public safety costs to your sheriff's department.

4. Minnesota Sheriffs Have No Authority Under Minnesota Law To Hold Someone On An Immigration Detainer

As explained earlier, courts have held, and the federal officials acknowledge, that immigration detainers are not commands that local law enforcement authorities are required to obey. When a Minnesota sheriff honors an immigration detainer, the sheriff is making a choice, not discharging a mandatory duty. As recent court decisions have made clear, a sheriff choosing to honor an immigration detainer is legally liable if that choice is not justified by law. In numerous jurisdictions around the country, imprisonment that is justified solely on the basis of immigration detainers is being challenged – with increasingly frequent success – as a violation of federal constitutional rights.

Even if you believe you are prepared to defend against such legal claims, however, you face another formidable obstacle if you choose to continue to honor immigration detainers. In Minnesota, sheriffs do not have the legal authority to make that choice — nothing in Minnesota law allows a sheriff to deprive someone of liberty on the basis of an immigration detainer.

In Minnesota, the authority of a peace officer to make an arrest or otherwise deprive a person of liberty derives from the Minnesota Constitution and the Minnesota statutes.

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[27] This disincentive to report is particularly troubling in the case of victims of domestic violence. When calling police, they must not only overcome their fear of the abuser's retaliation, but also the additional fear that reporting their abuse will lead to immigration consequences for them or their family.

[28] Major Cities Chiefs Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies, at 6, *adopted by* Major Cities Chiefs Association, June 2006, *available at* http://www.houstontx.gov/police/pdfs/mcc_position.pdf.

- A peace officer may arrest a person when he has a warrant commanding the person's arrest. Minn stat. § 629.30(1). An immigration detainer is not a warrant.[29]

- A peace officer may make a warrantless arrest when he has probable cause to believe a crime was committed and probable cause to believe that the suspect committed it. Minn Stat § 629.34. Even in a case where an immigration detainer is actually based on probable cause to believe the subject is present in violation of the federal immigration laws, that status is not a crime under federal law.[30] Nor is it a crime under Minnesota law.

Minnesota peace officers must rely on the authority of statutes that expressly provide them the authority to deprive persons of liberty when specified conditions are met.[31] Nowhere does Minnesota law authorize peace officers to deprive persons of liberty on the ground that they are suspected of a civil violation of federal immigration law. **When Minnesota sheriffs rely on an immigration detainer to deprive a person of liberty, they act without lawful authority.** In doing so, they violate the Minnesota Constitution, which, like the Fourth Amendment, forbids unreasonable seizures.

After you and your legal counsel review this letter and your current policies, we are confident that you will agree that a prompt change in policy is required, and that you must stop holding persons in custody on the basis of immigration detainers. We ask that you provide the ACLU a written response to this letter by **June 2, 2014.**

Sincerely,

Charles Samuelson
Executive Director

Teresa Nelson
Legal Director

[29] ICE sometimes issues administrative "warrants" on ICE form I-200, and ICE sometimes relies on the issuance of an administrative warrant when it asks sheriffs to hold prisoners on the basis of an ICE detainer. Minnesota peace officers have no authority, however, to deprive persons of liberty on the basis of ICE administrative warrants. The authority of Minnesota peace officers to deprive persons of liberty on the basis of a warrant assumes a warrant that complies with the provisions of the Fourth Amendment and the Minnesota Constitution. A constitutionally-sufficient warrant is issued only upon oath or affirmation of facts submitted to a judicial officer, one who is "neutral and detached" from enforcement activities, *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), and only if the judicial officer determines that the facts demonstrate probable cause. In contrast, ICE administrative warrants are not issued by judges or judicial officers. Indeed, ICE regulations allow these administrative warrants to be issued by ICE enforcement officers themselves. Because of these deficiencies, a Connecticut court ruled that an arrest made on the basis of an ICE administrative warrant was, essentially, a warrantless arrest. *See El Badrawi v. DHS*, 579 F. Supp. 2d 249, 276 (D. Conn. 2008).

[30] See *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) ("As a general rule, it is not a crime for a removable alien to remain present in the United States.").

[31] Minnesota statutes provide authority to deprive persons temporarily of liberty in additional specific situations, when certain conditions are met, none of which apply to immigration detainers.

Exhibit C

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MINNESOTA
2300 Myrtle Avenue, Suite 180
St. Paul, Minnesota 55104

March 27, 2017

Dear Minnesota Sheriffs and Police Chiefs:

Given clear indications that the Trump Administration seeks to encourage, if not compel, local jurisdictions to divert scarce resources to support federal immigration enforcement,[1] the ACLU of Minnesota wants you to be aware of the costs and risks of local law enforcement agencies' involvement in federal immigration enforcement.

Here is our perspective:

1. Threats against cities and counties who do not want their police forces deputized as immigration officials are abhorrent and unjustified. No federal statute, no federal rule, and no other requirement forces local authorities to divert resources away from their own priorities to satisfy politicians' whims.
2. No proclamation, order, or policy imposed by anyone can override the Fourth Amendment's prohibition against unreasonable searches and seizures.
3. No one on the national political scene is going to stand behind local authorities who allow themselves to be deputized into doing other people's dirty work and trample on the rights of the citizens they have sworn to protect.

Article 1, Section 8 of the US Constitution assigns the task of enforcing immigration laws to the federal government, not to the states and not to local units of government. Even before the current administration announced plans to engage in mass deportations, many states and localities in Minnesota[2] and across the nation had opted to leave immigration enforcement to the federal government and to focus their resources on their own public safety missions.[3] That number has only increased since the recent bewildering flurry of Executive Orders.

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[1] Executive Order: Enhancing Public Safety in the Interior of the United States (January 25, 2017); Executive Order: Border Security and Immigration Enforcement Improvements (January 25, 2017); DHS Memoranda: Enforcement of the Immigration Laws to Serve the National Interest (February 20, 2017).
[2] http://www.startribune.com/henn-co-jail-will-stop-honoring-feds-request-to-hold-immigration-violators/262719361/
[3] Recent reaction from law enforcement leaders to Trump Administration policies captures this same sentiment: https://www.theguardian.com/us-news/2017/mar/01/police-chiefs-letter-trump-deportation-immigrants, and even prior to the Trump Administration, localities had expressed clear reservations in this area – see, for example, the 2013 Statement from the Major Cities Chiefs Association: http://democrats-judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/MCCAPC130821.pdf.

Here are Four Good Reasons to Decline Involvement in Immigration Enforcement:

- *Local Priorities* – Local law enforcement has traditional priorities that include responding to emergencies, patrolling neighborhoods to prevent crime, facilitating certain functions of the court system, and many other duties. Time spent on enforcing federal immigration laws starves these core duties of scarce resources. Immigration enforcement does not advance local priorities because it so often targets individuals who pose no threat to public safety.[4] Which is more important: Apprehending and prosecuting violent criminals or tracking down parents and children who may have overstayed a visa?[5]

- *Community Relations* – You know that to protect and serve the public, you need cooperation from local communities. Local residents serve as witnesses, report crime, and otherwise assist law enforcement. Police officers and sheriffs who are perceived as facilitators of deportation have a hard time getting the cooperation they need.[6] For example, survivors of domestic violence refrain from reporting offenses and individuals with information about burglaries fail to contact the police. These outcomes are not limited to the undocumented population. Many undocumented immigrants have US-citizen spouses and children. And because ICE enforcement often victimizes citizens and immigrants with legal status, their views toward local officials can sour as well.[7]

- *Money* – Immigration enforcement is expensive.[8] The federal government does not reimburse the cost of most programs and practices, and local jurisdictions can incur millions of dollars in added expenses as a result. These costs come through additional detention expenses, overtime payments for personnel, and litigation costs.[9]

- *Legal Exposure* – Local jurisdictions that participate in immigration enforcement expose themselves to substantially increased liability and often end up in court, incurring legal fees

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[4] Transactional Records Access Clearinghouse (TRAC), Who Are the Targets of ICE Detainers?, Feb. 20, 2013 ("In more than two out of three of the detainers issued by ICE, the record shows that the individual who had been identified had no criminal record —either at the time the detainer was issued or subsequently."), http://trac.syr.edu/immigration/reports/310/.

[5] Few ICE Detainers Target Serious Criminals, TRAC Immigration, http://trac.syr.edu/immigration/reports/330/ (Mar. 2, 2017).

[6] See, e.g. the University of Illinois at Chicago report from May 2013: https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf.

[7] Data over a four year period analyzed by Syracuse Transactional Records Access Clearinghouse revealed that ICE had placed detainers on 834 U.S. citizens and 28,489 legal permanent residents.

[8] Edward F. Ramos, Fiscal Impact Analysis of Miami-Dade's Policy on "Immigration Detainers" (2014) ("[T]he annual fiscal impact of honoring immigration detainers in Miami-Dade County is estimated to be approximately $12.5 million."), https://immigrantjustice.org/sites/immigrantjustice.org/files/Miami%20Dade%20Detainers--Fiscal%20Impact%20Analysis%20with%20Exhibits.pdf.

[9] A study by Justice Strategies of Los Angeles' compliance with ICE detainers indicated that the program cost the county over $26 million per year: http://www.justicestrategies.org/publications/2012/cost-responding-immigration-detainers-california.

and damages for constitutional violations. Courts have also sanctioned them for violating prohibitions against racial profiling, especially under 287(g) "taskforce" agreements.[10]

Three Bad Ideas That Increase Your Risks and Costs

Bad Idea #1: Complying with ICE Detainers

An "ICE detainer" is nothing but a request that local law enforcement detain an individual for an extra two days after he/she would otherwise be released. ICE detainers are typically issued with no judicial warrant and no showing of probable cause. For that reason, holding someone in jail for an extra two days violates the Fourth Amendment's ban on unreasonable seizures. Federal courts across the nation have held local law enforcement agencies liable for unconstitutional detentions under ICE detainers.[11]

Here in Minnesota, for example, the US District Court recently rejected a county's argument that an ICE detainer, which recited that ICE had "reason to believe" an alien was removable, was sufficient to protect the sheriff from liability.[12] The Court ruled that "this alone does not provide a constitutionally sufficient basis to further detain [an alien] beyond the time he would have otherwise been released."[13] The Court specifically held that probable cause to believe that someone is in the country unlawfully "does not provide the probable cause to make an arrest."[14] Quoting the US Supreme Court, the District Court held again that "as a general rule, it is not a crime for a removable alien to remain present in the United States."[15]

In other words, when you accept an ICE detainer as a substitute for a warrant signed by a judge, you—not ICE—end up on the hook.

ICE's detainers are often merely the beginning of an investigation into someone's status, and often that investigation goes nowhere. According to government data, in one four-year period the Obama Administration issued detainer requests for 834 U.S. citizens—who no one thinks are subject to removal. Given the Trump Administration's pledge to expand ICE's headcount by 10,000 agents[16] and heighten focus on immigration enforcement,[17] it is inevitable that these mistakes will increase. Relying on ICE detainers as substitutes for arrest warrants exposes your law enforcement agency to increased liability. And rest assured that ICE will not be there to protect you.

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[10] Letter from ACLU, to Bruce Friedman, Senior Policy Advisor, Office for Civil Rights and Civil Liberties, Dep't of Homeland Sec. (Mar. 15, 2016), *available at* https://www.aclu.org/letter/aclu-letter-dhs-crcl-re-287g-renewals-march-2016.
[11] https://www.aclu.org/other/recent-ice-detainer-cases?redirect=recent-ice-detainer-cases.
[12] *Orellana v. Nobles County, et al.*, 2017 W.L. 72397, ___ F.3d ___ (D.Minn. 2016).
[13] *Id.* at *9.
[14] *Id.* at *8.
[15] *Id.* at *8.
[16] http://www.npr.org/2017/02/23/516712980/trumps-plan-to-hire-15-000-border-patrol-and-ice-agents-wont-be-easy-to-fulfill.
[17] http://www.sfchronicle.com/bayarea/article/Trump-s-new-priorities-expose-more-immigrants-10949458.php.

Remember: ICE detainer requests are voluntary, not mandatory. Prudent localities refuse to honor them unless supported by a proper warrant.[18] Localities that insist on warrants are protecting themselves and promoting adherence to the Constitution. They are not violating any law, including 8 U.S.C. § 1373, which deals with maintaining and providing immigration-related information, not detaining people. In fact, the Tenth Amendment of the Constitution protects you from being compelled to perform the federal government's functions. ICE not only should not—it may not—rely on you to carry out its assigned role to enforce immigration laws.

Bad Idea #2: Participating in the 287(g) program

Section 287(g) of the Immigration and Nationality Act allows ICE to enter into agreements with local government units that purport to make local law enforcement officers into deputy immigration enforcement officers. There are two principal forms of 287(g) agreements – "task force" models and "jail" models. Under the task force model, local police interrogate and arrest alleged noncitizens encountered in the field whom they believe to be deportable. Under the jail model, local police interrogate alleged noncitizens in criminal detention who have been arrested on local charges, issue detainers on those believed to be subject to deportation, and begin deportation proceedings.

The 287(g) program is the most extensive form of local entanglement in federal immigration enforcement. It effectively transforms local police into federal immigration agents – yet without the same level of training that federal agents receive, and without federal funds to cover all of the expenses incurred by the local jurisdiction. These agreements often involve the full spectrum of negative results outlined above: diversion from core responsibilities, deterioration in community trust, negative fiscal impact, and legal exposure. Indeed, the DHS Inspector General has documented these dangers, noting, for example, that "claims of civil rights violations have surfaced in connection with several [law enforcement agencies] participating in the program."[19] The public has become more sensitized to these problems by the unconstitutional implementation of a 287(g) program in Maricopa County, Arizona, under Sheriff Joe Arpaio, who was then voted out of office.[20]

Even the Department of Homeland Security has admitted the flaws in its attempts to offload its duties to local law enforcement. When it ended its so-called Secure Communities Program, it admitted, "A number of federal courts have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainers issued under the current Secure Communities program."[21] DHS realized that immigration enforcement "must be implemented in a way that supports community policing and sustains the trust of all elements of

[18] *See, e.g.* the clear recommendation from the Kentucky Association of Counties from September 2014: http://www.aclu-ky.org/wp-content/uploads/2014/09/kaco-memo.pdf.
[19] DHS OIG Report on 287(g), https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf.
[20] *Melendres v. Arpaio*, 598 F. Supp. 2d 1025 (D. Ariz. 2009).
[21] https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

the community in working with local law enforcement."[22] Ignoring the lessons it learned the hard way, DHS is now headed down the same dangerous path it previously abandoned.

The people of Minnesota understand these dangers. No jurisdiction in Minnesota is currently a party to one of these 287(g) agreements.

Bad Idea #3: Uncritically relying on legal advice from a for-profit company like Lexipol

You may have seen model policies marketed by the for-profit, California-based company Lexipol. Lexipol claims its policies "reduce risk and avoid litigation." But its so-called immigration-violation policies are likely to do the opposite. You should think long and hard before implementing them.

"[As] a general rule, it is not a crime for a removable alien to remain present in the United States."[23] In fact, even "actual knowledge, let alone suspicion, that an alien is illegally present is not sufficient to form a reasonable belief he has violated federal criminal immigration law."[24] For that reason, it is both wrong and dangerous to suggest that a law enforcement officer can stop someone based on the mere suspicion of an immigration-law violation, such as a violation of 8 USC § 1325, a misdemeanor offense for crossing the border.

First, walking down the street is not evidence of a violation of 8 USC § 1325.

Second, the legitimacy of such a stop is disproved by the suggestion that an officer contact ICE or CBP, not a US attorney who might prosecute a violation of 8 USC § 1325.

Third, even when stops not supported by probable cause are justified, they are intended to be brief. But the very nature of an immigration check requires the officer to detain the individual long enough to consult with ICE or CBP.

Fourth, such stops are justified only to investigate actionable criminal activity. If an individual's entry into the US is beyond the scope of prosecution for statute-of-limitations or other reasons, then 8 USC § 1325 would not apply.

Finally, such stops require reasonable suspicion that an individual might be engaged in criminal activity. That suspicion must be individualized and not rely on stereotypes, especially those based on a person's skin color. Moreover, an officer cannot conduct a *Terry* stop in order to acquire the reasonable suspicion necessary to justify the stop itself; the "demand for specificity in the information upon which police action is predicated is the central teaching of [the Supreme Court's] Fourth Amendment jurisprudence."[25] In other words, an officer cannot guess that an individual is in violation of a federal criminal law and then seek information to confirm that.

In short, uncritically adopting the Lexipol policy is a recipe for violating the constitutional rights of individuals in your jurisdiction, creating a chilling effect in local communities, and fostering an atmosphere of distrust for both victims of crimes and witnesses.

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[22] *Id.*
[23] *Arizona v. US*, 132 S. Ct. 2492, 2505 (2012).
[24] *Ortega-Melendres v. Arpaio*, 836 F.Supp.2d 959, 973 (D. Ariz. 2011).
[25] *Terry v. Ohio*, 392 U.S. 1, 22, n. 18 (1968).

ACLU-MN Recommendation: Place Local Communities and the Constitution First

In order to preserve the Constitutional rights of Minnesotans, the ACLU of Minnesota recommends adopting policies that place local communities first and limit involvement in federal immigration enforcement. This includes requiring judicial warrants, declining to participate in the 287(g) program, and avoiding other forms of voluntary entanglement in federal immigration enforcement, such as voluntarily notifying ICE of an individual's release date or home address, which can prolong detention and sow distrust in the community. We believe, and evidence has shown, that such a decision is in the best interest of local communities. The Constitution protects states and localities from being compelled to perform federal functions; and choosing to engage in federal immigration enforcement harms public safety, diverts local resources, and increases liability risk.

In short: It is consistent with federal law for state and local law enforcement to avoid engagement in federal immigration enforcement.

We at the ACLU of Minnesota offer our support to help you implement policies that follow the law, protect rights guaranteed by the Constitution, and allow you to do your job free from improper pressures. We can provide information, and we can help develop policies to deal with these issues, including policies that limit inquiries by police regarding immigration status.

Attached to this letter are model provisions/rules that your jurisdiction should adopt, if they are not already in place. Provisions adopted by jurisdictions around the country and related information are in a recent guidance document issued by the New York Attorney General.[26]

Abiding by the Fourth Amendment and relying on the Tenth Amendment to the US Constitution will not make your jurisdiction into a "sanctuary jurisdiction," despite what you may have heard. Please call us with any concerns you may have in that area.

We stand by the rule of law in this country, and we encourage you to stand with us.

Respectfully yours,

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA

Teresa Nelson, Executive Director

John B. Gordon, Legal Director

[26] Guidance Concerning Local Authority Participation in Immigration Enforcement and Model Sanctuary Provisions, https://ag.ny.gov/sites/default/files/guidance.concerning.local_.authority.particpation.in_.immigration.enforcement.1.19.17.pdf.