The Commonwealth of Massachusetts

Committee for Public Counsel Services
Immigration Impact Unit
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Immigration Case Notes for Massachusetts Criminal Defense Attorneys July 2015

U.S. Court of Appeals for the First Circuit

Morales v. Chadbourne, No. 14-1425, 2015 U.S. App. LEXIS 12383 (1st Cir. July 17, 2015)

Following a series of other federal court decisions, the First Circuit recently held that Immigration and Customs Enforcement (ICE) must have sufficient probable cause to issue an ICE detainer against an individual in state custody.[1]

A detainer is a form (DHS Form I-247) that is completed by an ICE officer requesting that a state custodian (police department, local sheriff's office, court officer, Massachusetts Department of Corrections, etc.) hold an individual for up to 48 hours, not including holidays or weekends, after the individual would otherwise be released from state custody. In short, the detainer requests that state authorities hold a person after the detention is no longer authorized by state criminal proceedings. The purpose of the detainer is to allow ICE to come to the state facility and take custody of the individual.

In this instance, the petitioner, Ada Morales, a naturalized U.S. Citizen, was arrested by state officials at her Rhode Island home in 2009. She was held briefly at the Rhode Island Adult Correctional Institute (ACI) and an ICE detainer was issued. The same day the detainer issued, the state court ordered Ms. Morales released on her own recognizance. However, instead of being released, she was re-booked, strip searched, and held for another 24 hours until ICE came to take custody of her. Once in ICE custody, ICE officers realized that Ms. Morales was a U.S. citizen and therefore not subject to removal. They released her immediately.

In 2012, Ms. Morales brought a civil damages action against the ICE officer who issued the detainer (as well as his supervisors) alleging their actions and her extended detention violated the 4th Amendment. In the ICE officer's motion to dismiss, he asserted that he was entitled to qualified immunity because in 2009, the time of the detainer, the law had not clearly established that probable cause was necessary before issuing a detainer. The First Circuit disagreed citing long standing precedent to confirm that "**it is**

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[1] While not expressly stated in the decision, it appears that the First Circuit means probable cause to believe the person is subject to removal.

beyond debate that an immigration officer in 2009 would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status." (*Morales v. Chadbourne*, No. 14-1425 at 15)

The court also noted that although the issuance of a detainer is not itself an arrest, and Ms. Morales was held by the state, not ICE, for the additional 24 hours, it is clearly established that a law enforcement officer is responsible for the natural consequences of his actions. In this case, the natural consequence of issuing a request for detention was that Ms. Morales would be held.

Finally, the court does not address the question of how to determine whether sufficient probable cause is provided. Unlike when a criminal warrant issues, an ICE detainer is not reviewed by a neutral magistrate and is simply issued by an ICE officer. There is no discussion of what would suffice as probable cause and who makes that determination.

Practice Tips

This decision confirms that individuals are subject to 4th Amendment protections when ICE detainers are issued and provides stronger arguments for defense attorneys to challenge continued detention on an ICE detainer by questioning whether sufficient probable cause supports the detainer. These arguments can be made in a variety of venues depending on who is the custodian. The IIU can assist defense counsel in preparing these arguments.