

New York Officers Cannot Arrest or Hold People for Federal Immigration Enforcement

In November 2018, a New York State appellate court ruled that the Suffolk County Sheriff's Office violated state law by holding a Long Island man after he was ready to be released based on a detainer from U.S. Customs and Immigration Enforcement (ICE). Here's what the decision in *People ex rel. Wells o.b.o. Francis v. DeMarco* means for community members and advocates.

WHAT THE COURT HELD:

- In a decision that applies statewide, the court held that when state and local officers – including corrections officers at a county jail – arrest, seize, hold, or otherwise detain a person beyond the time that they would otherwise be released based on a civil immigration detainer, they are making an unauthorized arrest in violation of state law.
 - The authority that state and local officers have to make arrests comes from state law, and state law does not give those officers the authority to arrest people for civil immigration offenses. Those officers also don't have "inherent authority" to make civil immigration arrests.
 - An "administrative warrant" – a document issued by ICE claiming there is probable cause to arrest someone for violating civil immigration law – also does not give state and local officers the authority to arrest, seize, or detain someone for civil immigration purposes.
- The fact that a county may have a contract to rent out bed space to ICE to house immigration detainees does not give officers authority to hold a person beyond the time of their release based on an immigration detainer.

HOW THIS AFFECTS LAW ENFORCEMENT PRACTICES IN YOUR COMMUNITY:

- Many jails across the state will agree to hold inmates for up to 48 hours after they would otherwise be free to go, such as after posting bail or being released by a judge, if ICE sends a detainer request. This is typically done with an I-247A detainer form, accompanied by an I-200 or I-205 administrative warrant.
- After the court's decision, local jails cannot honor these detainers, and cannot hold people past the time of their release at the request of ICE.
- Local officers also can't stop or continue to stop people in the community because of suspected immigration violations. For example, if someone is pulled over for a traffic stop and the officer learns that they are wanted by ICE for civil immigration purposes, that officer can't keep them stopped longer for that reason.

WHAT THE COURT'S DECISION DOESN'T COVER:

- Not all cooperation between local law enforcement and ICE is covered by the court's decision. The court's holding does not prohibit local law enforcement from sharing information with ICE, such as giving them notice of a person's time of release or calling ICE if they think a person does not have lawful status.
- The court's decision also does not address whether local law enforcement and corrections officers can allow ICE access to their facilities to interrogate people for civil immigration offenses, so long as the local agency is not holding a person after they're otherwise free to go.

WHAT CAN I DO?

- Local advocates can play an important role in monitoring how law enforcement across the state are complying with the court's decision. **If you believe your local police or jail are violating the court's ruling, tell us about it at detainers@nyclu.org.**
- Advocates can also help make sure that local government officials are aware of the court's decision, and encourage them to adopt laws and policies to ensure compliance.
- Because the court's decision does not prohibit all types of cooperation between ICE and local government, advocates should still push their representatives to adopt local laws to disentangle law enforcement from immigration enforcement.
- For more information on how you can get involved, contact the NYCLU office in your region.

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