

## **Blatant Disregard for Constitutional Protections Exposed in the Government's Enforcement Practices**

### **Introduction**

Under President Obama's leadership, more immigrants have been deported than any other president - 2 million. Cognizant of the administration's executive power to curb its enforcement and detention policies and pressure to appear tough on enforcement to ease Congressional concerns regarding immigration reform, Heartland Alliance's National Immigrant Justice Center (NIJC) pursued ground breaking litigation to suspend the use of immigration detainers and encourage ordinances that prohibit the use of funds to cover the costs of detainers. With the support of the Barbara McDowell and Gerald S. Hartman Foundation, NIJC challenged the legality of the Department of Homeland Security's Immigration and Customs Enforcement's (ICE) use of immigration detainers through a class action lawsuit, *Jimenez Moreno v. Napolitano*. The lawsuit has propelled similar litigation nationwide, advanced due process protections for immigrants, and paved the way for punitive damages.

### **Nationwide Impact**

As a result of the lawsuits detailed below, ICE agreed to review the Secure Communities program to assess whether it is contributing to racial profiling.

- ***Expanded recognition that immigration detainers are voluntary:*** Drawing upon its groundbreaking lawsuits, NIJC's nationwide litigation propelled the suspension of immigration detainers in many jurisdictions as well as ordinances prohibiting the use of funds to cover the costs of detainers. Most significantly, in March 2014, the U.S. Court of Appeals for the Third Circuit affirmed that immigration detainers are voluntary requests that state and local law enforcement may ignore and held that local law enforcement may be found liable to individuals unlawfully held on immigration detainers. NIJC coordinated with the ACLU-Immigrant Rights Project and provided an *amicus* brief. The majority opinion relied on discovery obtained by NIJC in *Jimenez Moreno v. Napolitano* where ICE admitted that detainers were voluntary. As a result, two counties in Pennsylvania and the city of Philadelphia opted out of detainers. NIJC also provided *Jimenez Moreno* discovery and coordinated with lead counsel from the Oregon Law Center in another detainer case in the district court of Oregon. The district court cited to the *Jimenez Moreno* discovery in holding that the county sheriff had violated the plaintiff's Fourth Amendment rights by detaining her on an immigration detainer. That decision triggered 90 jurisdictions in seven states to opt out of honoring detainers.
- ***Exposed potential liability in detainer practices:*** In *Makowski v. United States*, the court agreed that ICE could be held financially liable under the Privacy Act and the Federal Tort Claims Act (FTCA) for Makowski's false imprisonment by a third party due to an unlawful immigration detainer. This decision creates a new avenue of potential liability to ICE's detainer practices. Building upon this success, NIJC is pursuing the following cases:
  - NIJC's U.S. citizen client plead guilty to a residential burglary with the understanding that he was eligible to serve a 120-day boot camp sentence. While serving his sentence, ICE lodged an unlawful detainer against him, which disqualified him from boot camp.

ICE did not conduct a reasonable investigation prior to issuing the detainer, never interviewed the client, and did not provide him with any mechanism to challenge the unlawful detainer. After he connected with NIJC and sought to intervene in NIJC's class action lawsuit, ICE released the client and cancelled his detainer. NIJC subsequently filed a complaint in federal district court under the FTCA seeking monetary damages for the 324-days he was wrongfully imprisoned due to the immigration detainer. The case is currently in discovery.

- NIJC and *pro bono* counsel are preparing a *Bivens* damages lawsuit on behalf of a U.S. citizen who was wrongfully arrested and detained by ICE for seven days. Despite NIJC's client's attempt to explain that he was a U.S. citizen, ICE detained, shackled, and transported him twice. Once he arrived in Chicago seven days later, ICE confirmed he was a U.S. citizen and released him. NIJC is planning to file a *Bivens* Fourth and Fifth Amendment claims in the Federal Court for the Central District of Illinois against the two arresting ICE officers for compensatory and punitive damages.

### **Moving Forward**

As immigration reform failed, litigation is the most powerful tool to address the human and due process violations inherent in the broken immigration enforcement and detention system, including rampant racial profiling. NIJC will continue to litigate *Jimenez Moreno* to secure fundamental due process rights in ICE's use of immigration detainees. In addition, NIJC will continue to challenge the unlawful detention of U.S. citizens as described above. In collaboration with allies in Colorado and Austin, Texas, NIJC also is exploring the next phase of immigration detainer litigation, which will target state and local police's unlawful arrests pursuant to immigration detainees.