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

Introduction

Immigration detainers are the lynchpin of the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) enforcement strategy. Through detainers, state and local law enforcement (LEA) hold immigrants and transfer them to ICE custody. These collaborative practices between federal immigration authorities and LEAs trap and isolate thousands of individuals in the immigration detention system, many of whom were identified through routine traffic stops. Yet, no policies or procedures exist to ensure the protection of fundamental due process rights. This dangerous cooperation relies on and promotes racial profiling and results in the illegal detention of U.S. citizens and lawful permanent residents (LPRs). With the support of the Barbara McDowell and Gerald S. Hartman Foundation, Heartland Alliance's National Immigrant Justice Center (NIJC) is litigating a class action lawsuit, *Jimenez Moreno v. Napolitano*, to challenge the legality of ICE's use of immigration detainers.

Litigation Summary

Over the past year, NIJC made significant progress in eroding the tactics the government employs to apprehend and detain immigrants. NIJC pursued the following lawsuits and activities:

➤ *Jimenez Moreno v. Napolitano,* 11-cv-5452 *(N.D. Ill.),* challenges the use of immigration detainers. In response, DHS released guidance on immigration detainers, developed a new form requiring justification that detainers meets the administration's enforcement priorities, and conceded that local enforcement officials are ***not*** required to honor detainers.[1]

➤ *Makowski v. United States, 12-5265 (N.D. Ill.),* challenges the legality of sharing fingerprints under the Secure Communities Program. The Court agreed with Mr. Makowski that ICE could be held financially liable under the Privacy Act and the Federal Tort Claims Act (FTCA) for his false imprisonment by a third party (the Illinois Department of Corrections) due to an unlawful immigration detainer. This decision creates a new avenue of potential liability to ICE's detainer practices. The court, however, afforded the FBI *Skidmore* deference to the department's interpretation of an ambiguous statute (8 U.S.C. § 1722(a)(2)), permitting it to share all U.S. citizens' fingerprints through Secure Communities pursuant to an exception to the Privacy Act. NIJC disagrees with the reasoning behind the judge's

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[1] NIJC has collaborated with national partners to support litigation in the U.S. Court of Appeals for the Third and Sixth Circuits. These lawsuits were filed by the ACLU and Ozment Law respectively. In addition, NIJC shared its fact discovery with ACLU-Southern California, NDLON, NIP, Immigration Law Group (Portland, OR), NWIRP, Cardozo Law School, Miami Law School, New Orleans Worker Center for Racial Justice, Jerome N. Frank Legal Services Organization at Yale Law School, Texas Civil Rights Project, American Immigration Council, Kurzban Law, Van Der Hout, Brigagliano, Nightingale LLP (San Francisco), Southern Poverty Law Center, Washington Defenders Immigration Project (Washington State), Carecen (San Francisco), Immigrant Defense Project, and Immigrant Legal Resource Center.

decision and is considering a motion to reconsider or possibly appeal to the U.S. Circuit of Seventh Circuit, if necessary.

In light of these lawsuits and pressure from advocates, ICE agreed to review the Secure Communities program to assess whether it is contributing to racial profiling.

National Impact:
Drawing upon its innovative lawsuits, NIJC has supported litigation nationwide to suspend detainer use and efforts to promulgate ordinances that prohibit the use of funds to cover the costs of detainers.[2] 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.[3] The Court further held that local law enforcement may be found liable to individuals unlawfully held on immigration detainers. NIJC provided an *amicus* brief in the litigation and coordinated significantly with lead counsel from the ACLU-Immigrant Rights Project in order to ensure consistent positive decisions on immigration detainers nationwide. In rebuttal to the dissenting judge, the majority opinion relied on discovery obtained by NIJC in *Jimenez Moreno v. Napolitano* where ICE admitted for the first time that detainers were voluntary. The Court agreed with NIJC's legal analysis that if mandatory, the detainer regulations run afoul of the Tenth Amendment, supported the legal theory that individuals subject to immigration detainers might be entitled to pre-deprivation hearing pursuant to the Fifth Amendment, and cited approvingly NIJC's work on the Cook County, Illinois, and Chicago anti-detainer ordinances.

NIJC is currently awaiting a number of decisions in our *Jimenez Moreno v. Napolitano* detainer class action, which should be released within the near future.

Moving Forward
As immigration reform is stalled in the U.S. House of Representatives, 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 detainers. In addition, NIJC intends to challenge the unlawful detention of U.S. citizens James Makowski and Sergey Mayorov, for 70 and 324 days respectively, due to immigration detainers. 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 detainers.

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[2] Cook County, IL (2011), Chicago (2012), and various other states and localities.
[3] See *Galarza v. Szalczyk, 12-3991 (3d Cir.)*