AMERICAN CIVIL LIBERTIES UNION of OHIO FOUNDATION

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August 4, 2014

Sheriff Phil Plummer
Montgomery County Sheriff's Office
345 West Second Street
P.O. Box 972
Dayton, OH 45422

RE: ICE requests to hold immigrants

Dear Sheriff Plummer:

As you undoubtedly know, U.S. Immigration and Customs Enforcement ("ICE") has long depended on local law enforcement agencies like yours to detain immigrants in jail when they may be subject to deportation. We are writing to make you aware of recent federal court decisions clarifying that ICE detainers are requests, not orders, and that detentions pursuant to these detainers alone violate the Fourth Amendment of the U.S. Constitution and expose government entities and officials to possible monetary damages.

In light of the recent federal court decisions, and the discrepancies between those decisions and your policy, we urge you to revise your practices to avoid potentially costly liability and to respect the constitutional rights of all those in your custody.

On March 4, 2014, the U.S. Court of Appeals for the Third Circuit issued a decision in the case of *Galarza v. Szalczyk*. In *Galarza*, the Court determined ICE detainers are merely requests and law enforcement agencies can be held liable for constitutional violations if they elect to detain individuals on the basis of those requests.[1] The Court further noted that no U.S. Court of Appeals that had ever broached the issue had classified an ICE detainer as anything other than a request.[2] Other federal courts have consistently described ICE detainers as requests as well.[3] In fact, ICE itself has long maintained that law enforcement agencies are not legally obligated to abide by its detainers.[4]

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[1] Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014).
[2] *Id.* at 640.
[3] Miranda-Olivares v. Clackamas County, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014); Morales v. Chadbourne, C.A. No. 12-301-M, 2014 WL 554478, at *17 (D. R.I. Feb. 12, 2014); Buquer v. Indianapolis, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011).
[4] Letter from Daniel H. Ragsdale, Acting Director, U.S. Immigration and Customs Enforcement, to U.S. Representatives (Feb. 25, 2014), *available at*: http://immigrantjustice.org/sites/immigrantjustice.org/files/2014_02_25%20Thompson-signed-response-ICE.pdf.

On April 11, 2014, a federal district court in Portland, Oregon issued a decision in the case of *Miranda-Olivares v. Clackamas County*. The Court held that Clackamas County violated Ms. Miranda-Olivares' constitutional rights when it chose to detain her on an ICE request. The Court also determined the County was liable for money damages to Ms. Miranda-Olivares under 42 U.S.C. § 1983 (the amount of which was left to be determined later.) The Court found the continued detention of Ms. Miranda-Olivares after she was eligible for release on her criminal charges constituted a new arrest and thus required probable cause. The Court also concluded an ICE detainer alone does not demonstrate probable cause, and made clear detentions predicated solely on ICE detainers violate the Fourth Amendment (unless, of course, there is an independent judicial finding of probable cause.)

In response to these determinations, and as of the writing of this letter, more than one hundred counties across many diverse states—including Colorado, Kansas, Minnesota, Oregon, and Pennsylvania—have decided to stop holding individuals on ICE detainers in order to avoid liability and/or money damages for complying with such requests.

We understand your county currently has a practice of holding community members on ICE detainers, regardless of whether or not such detainers are accompanied by a judicial determination of probable cause. We believe only a policy that requires a judicial finding of probable cause is sufficient to meet the minimum constitutional requirements.

In addition, we know ICE has, in some jurisdictions, convinced authorities to accept documents such as I-200 administrative "warrants" and/or I-862 Notice to Appear forms to further detain immigrants. Once again, our position is that a judicial finding of probable cause is the only constitutionally acceptable method to meet the standards of the Fourth Amendment in this context.

The ACLU of Ohio sent identical letters to several jails in Ohio and will be watching closely to check for compliance or non-compliance. If you have any questions about this letter or need further information about this subject, please do not hesitate to contact us.

Sincerely,

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