

Miranda-Olivares v. Clackamas County, Not Reported in F.Supp.3d (2014)
2014 WL 1414305 (only the Westlaw citation is currently available)

This case involves the detention of the plaintiff, Maria Miranda-Olivares in the Clackamas County Jail based solely on a federal immigration detainer issued by the United States Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security (DHS). The detainer indicated that ICE had initiated an investigation to determine whether Miranda-Olivares was subject to removal from the United States. Miranda-Olivares alleges that by keeping her in custody based on that ICE detainer, Clackamas County violated 42 USC § 1983 by depriving her of liberty without due process under the Fourteenth Amendment and her right to be free from unreasonable seizure under the Fourth Amendment, and also falsely imprisoned her in violation of Oregon law.

The County generally does not know a person's immigration status and did not know Miranda-Olivares's immigration status at any time during her incarceration. The County does, however, have a policy of notifying ICE when a foreign-born person is brought to the Jail on a warrant or probable cause charge. The County does not request that ICE issue an immigration detainer against a person.

The ICE detainer indicated that DHS had "initiated an investigation to determine whether [Miranda-Olivares] is subject to removal from the United States." The detainer stated no basis for the investigation and was not accompanied by an arrest warrant or any other charging document.

When the Jail receives an ICE detainer, it holds the person subject to the detainer for up to 48 hours beyond the time when the person would otherwise be released, even if the person posts bail. The Jail's practice is the same whether or not the ICE detainer is accompanied by an arrest warrant, statement of probable cause, or removal, or deportation order. Although Miranda-Olivares became aware of the ICE detainer the day it was issued, she was not provided a copy of it while she was incarcerated.

The Jail's practice is to hold an individual who is subject to an ICE detainer in custody, even if the underlying state criminal charges are resolved or bail is posted. The Jail told Miranda-Olivares's sister, Laura Miranda, approximately four or five times that even if bail was posted, Miranda-Olivares would not be released due to the ICE detainer.

On March 29, 2012 Miranda-Olivares would have been released from the Jail but for the ICE detainer. Instead, the County held Miranda-Olivares in custody for another 19 hours until about 8:30am on March 30, 2012 when she was released from the Jail to the custody of DHS agents.

Miranda-Olivares challenged her confinement by the County and specifically the County's custom and practice of incarcerating persons who are subject to ICE detainers after the lawful custody on state charges had ended. The County responded that federal law requires this custom and practice because ICE detainers are issued pursuant to 8 CFR § 287.7 which, in its view, mandates the detention of a suspected alien by a local law enforcement agency for up to 48 hours.

The court ultimately held the federal regulation in question, 8 CFR § 287.7, does not mandate detention by local law enforcement, but only requests compliance in detaining suspected aliens. The court concluded that 8 CFR § 287.7 does not require local law enforcement agencies to detain suspected aliens upon receipt of a federal immigration detainer from ICE and that the Jail was at liberty to refuse ICE's request to detain Miranda-Olivares if that detention violated her constitutional rights.