

CRIMMIGRATION COMMUNICATION



Federal Court Judge Holds that Suffolk County Violated the Rights of Non-citizens

On January 2, 2025, a federal court judge in the Eastern District of New York ruled that Suffolk County violated state law and the Fourth Amendment by holding more than 650 noncitizens beyond their scheduled release dates pursuant to ICE detainers. The estimated damages in this civil class action lawsuit could reach \$60 million.

Between 2014 and November 15, 2018, Suffolk County implemented a policy of detaining noncitizens for up to 48 hours beyond their release dates to allow ICE to pick them up and transfer them into federal custody.

In *Orellana Castaneda et al. v. U.S. Department of Homeland Security et al.*, case number 2:17-cv-04267, the Court emphasized that ICE detainers are merely requests from the federal government to hold noncitizens and do not impose mandatory obligations on local law enforcement agencies to comply. The court further noted that the federal government has established specific, limited circumstances under which local law enforcement may perform immigration enforcement functions, such as through a written agreement under INA 287(g). Since Suffolk County is not part of such an agreement, its actions were deemed unlawful.

The practice of detaining noncitizens based on ICE detainers ended in November 2018 following the Second Department's decision in *People ex rel. Wells on behalf of Francis v. DeMarco*, 168 A.D.3d 31 (N.Y. App. Div. 2d Dep't 2018). In *Francis*, the court held that it is unlawful for New York state and local officials to hold noncitizens under ICE detainers. Since then, Suffolk County has ceased holding noncitizens for ICE detention past the date of a scheduled release. However, Suffolk County and other municipalities do comply with ICE **NOTIFY REQUESTS**, despite the clearly establish law of the *Francis* decision, by alerting ICE of noncitizens' release date. ICE then may wait outside the jail to take the non-citizen into custody upon release.

If you encounter a client facing jail time, please contact the LIRIAC to discuss strategies to minimize the risk of ICE detention.

In *Orellana-Castaneda*, the initial plaintiffs filed their claim in 2017, prior to the issuance of the *Francis* decision. In July 2024, a federal judge granted class certification to approximately 650 noncitizens. This damage award comes on the heels of a recent settlement in New York City, where \$92.5 million was awarded in damages to noncitizens unlawfully detained under ICE detainers in city jails.

These rulings and settlements serve as critical reminders to local law enforcement to comply with the law. Nonetheless, Suffolk County has announced plans to appeal this decision.

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