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Judge Faults ICE Detainers as City Council Passes New Ban

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The New York City Department of Correction does not have the authority, without a court order or probable cause, to hold people beyond the end of their sentences based on detention requests issued by federal immigration authorities, a Brooklyn judge has ruled in ordering a defendant's immediate release from a Rikers Island jail.

The Oct. 15 ruling by Acting Justice Sheryl Parker ([See Profile](#)) in [People ex rel Mendoza v. Ponte](#), 14652/2014, marks the first time a New York court has ruled it is illegal for local law enforcement agencies to enforce federal detainers from U.S. Immigration and Customs Enforcement, which is part of the Department of Homeland Security. Parker called such detentions a violation of defendants' Fourth and Fourteenth Amendment rights.

The decision came just days before City Council passed Introductions [486-A](#) and [487-A](#) Wednesday, barring police and the city's Department of Correction from honoring detainer requests without a warrant from a federal judge. The only exceptions would be if an immigrant was convicted of a violent or serious crime or falls on the terrorist watch list.

The new measures also evict ICE from its offices on Rikers Island and other corrections department properties.

Mario Mendoza, 32, the defendant in Parker's case, was arrested in March for violating an order of protection and was found to possess cocaine. He was released on his own recognizance.

On Oct. 14, Mendoza pleaded guilty to second-degree harassment before Parker and was sentenced to time served and a conditional discharge. But the Department of Correction refused to release him based on a civil immigration detainer from ICE.

Mendoza's attorney, Amy Swenson of the Legal Aid Society, filed a writ of habeas corpus arguing the correction department had no authority to enforce a federal immigration detainer.

Federal immigration detainer requests are issued to local law enforcement agencies in cases where people suspected of being undocumented immigrants have been charged with misdemeanors involving violence or controlled substances. They request local corrections departments to hold people for 48 hours, excluding weekends and holidays, until they can be

transferred to ICE custody for possible deportation.

In her decision, Parker wrote that federal statutes on immigration detainers "cannot be interpreted as a demand to retain" immigrants—rather, they are merely requests. Further, she wrote, Mendoza's detention was a violation of a city law that went into effect in March 2013 that narrowed potential instances where correction officials could honor federal detainers.

Ultimately, Parker wrote, Mendoza's detention was an unreasonable seizure in violation of the federal and state constitutions.

"In the absence of a commitment order issued by a competent court, a detention of an inmate constitutes a seizure in the absence of probable cause," she wrote.

Tina Luongo, acting attorney-in-charge of Legal Aid's Criminal Practice, praised Parker's ruling.

"This is the first decision where a judge is agreeing that our client was held in violation of the Fourteenth Amendment," she said.

In the past few months, Legal Aid has filed writs of habeas corpus for the release of at least 23 clients held by the correction department because of ICE detainers, Luongo said. All but Mendoza were released before a judge had a chance to make a ruling.

According to the Department of Correction, between October 2012 and September 2013 it honored 3,047 detainer requests and handed over all of those individuals to ICE for deportation. It did not honor 1,163 requests.

Wednesday's City Council bill banning enforcement of warrantless ICE detainers takes the existing city laws a step further and provides an additional statutory basis for future rulings like Parker's.

"New York is a city that respects the constitutional rights and dignity of all residents," City Council Speaker Melissa Mark-Viverito said in a press release Wednesday. "We also have no reason to expend scarce resources assisting in the enforcement of broken immigration laws."

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