



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

September 25, 2018

VIA EMAIL (pdonovan@salempd.com)

Paul T. Donovan
Chief of Police
Salem Police Department
33 Geremonty Drive
Salem, NH 03079

Re: Bashar Awawdeh. v. Town of Exeter, et al.

Dear Chief Donovan:

Today, the ACLU-NH filed a lawsuit against the Town of Exeter and several of its officers for, in violation of the Fourth Amendment and state law, seizing and detaining our client simply because they believed that he was unlawfully present in the United States. I am informing you of this lawsuit because your Department has similarly demonstrated a pattern of (i) prolonging the detention of individuals simply due to their suspected immigration status and (ii) detaining individuals based on detainers requested from Immigration and Customs Enforcement (ICE). This practice—which violates the Fourth Amendment and state law—is evidenced in the attached *Rodriguez* and *Martinez* cases.

It is well settled that a person's presence in the United States in violation of immigration laws, standing alone, is not a crime. The United States Supreme Court has explained that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," and, thus, "[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent." See *Arizona v. United States*, 567 U.S. 387, 407 (2012). The federal administrative process for removing someone from the country "is a civil, not criminal, matter." *Id.* at 396.

Courts have repeatedly held that local law enforcement officers cannot seize and arrest—or prolong the detention of—individuals solely based on known or suspected civil immigration violations. See, e.g., *Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013) ("absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law") (citing cases); *Carrero v. Farrelly*, 270 F. Supp. 3d 851, 872 (D. Md. 2017) ("Officer Farrelly's prolonged detention of Plaintiff after the initial stop also violated clearly established law. The facts alleged indicate that Officer Farrelly violated Plaintiff's Fourth Amendment rights by unreasonably prolonging the stop solely to investigate her immigration status."); *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012) ("[T]he Fourth Amendment does not permit a stop or detention based solely on unlawful presence.").

There is similarly no legal basis for the Salem Police Department to prolong a person's detention due to an ICE detainer. See *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1160 (Mass. 2017) (holding that Massachusetts court officers do not have the authority to arrest someone at the request of Federal immigration authorities pursuant to a civil immigration detainer—and hold them beyond the time that the



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individual would otherwise be entitled to be released from State custody—solely because the Federal authorities believe the person is subject to civil removal).

Following these legal principles is not only consistent with the law, but it also makes Salem safer. When local police departments detain individuals simply due to their alleged undocumented status, they create an environment where these individuals—including victims of domestic violence—are afraid to call for help or report crimes. The Salem Police Department, of course, needs to be accessible to all members of the public, regardless of their legal status, for the justice system to be meaningful and effective.

We request that you end this practice immediately. Thank you for your careful review of this important issue.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Gilles Bissonnette". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gilles Bissonnette
ACLU-NH Legal Director
Gilles@aclu-nh.org

Cc: Bart Mayer, Esq.
Deputy Chief Robert Morin, Esq.

Enclosures

Salem Police Department

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NARRATIVE FOR POLICE OFFICER LUCAS G WHITE

Ref: 18-1270-AR

On 07/14/18, at approximately 0701 hours, I was working a midnight shift for the patrol division of the Salem Police Department. I was wearing my Salem Police Department uniform and operating in a fully marked Salem Police cruiser. Salem Dispatch received a phone call from the Mall at Rockingham Park security reporting possible drug usage in the parking lot of the mall between the food court and Sears. Mall security stated the vehicle involved was a Toyota Corolla with Rhode Island registration (1CN8778).

I responded to the area and observed the Toyota Corolla parked in a parking spot with a male standing outside of the vehicle. I approached the male and asked him what he was doing at the mall. The male had a difficult time understanding me and he did not speak english well. I detected an odor of freshly burnt marijuana coming from the area where the male was standing. I asked the male if he had been smoking marijuana and he stated no. The male stated he was waiting for his co-workers to show up because they were painting in Sears today. I asked the male for his license and the male produced a Maryland license, which identified the male as, Wilfredo Miranda Rodriguez.

I ran Miranda Rodriguez through my Mobil Data Terminal (MDT) and I was advised that Miranda Rodriguez had an active arrest warrant out of Immigration and Customs Enforcement (ICE) for an immigration violation, failure to appear for removal. I contacted ICE and confirmed that the arrest warrant was active. I handcuffed Miranda Rodriguez, checked for tightness, and double-locked the handcuffs without incident. I searched Miranda Rodriguez for weapons, contraband, methods of escape and found nothing of interest. I placed Miranda Rodriguez in the rear passenger side of my cruiser, seat belted and secured him.

I transported Miranda Rodriguez to the Salem Police Department. ICE responded to the Salem Police Department and the Strafford County Sheriff's subsequently transported Miranda Rodriguez to the Strafford County House of Corrections. I had no further contact with Miranda Rodriguez.

Ofc. L. White 179

18-1270-AK

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No: A98040260
Date: 7/14/18

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)
SALEM Police
SALEM, NH

FROM: (Department of Homeland Security Office Address)
DRO - Manchester, NH Sub-Office
ICE
ERO MANCHESTER Sub Office
275 Chestnut Street, Room 210
MANCHESTER, NH 03077

Name of Alien: MIRANDA RODRIGUEZ, Wilfredo
Date of Birth: 9-1-61 Citizenship: EL SALVADOR Sex: M

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2):

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2):

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____ . If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

K. Brewer, Dep. Officer
(Name and title of Immigration Officer)

[Signature]
(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

- in person
- by inmate mail delivery
- other (please specify): _____

(Name and title of Officer)

(Signature of Officer) (Sign in ink)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. **If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian** (the agency that is holding you now) to inquire about your release. **If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

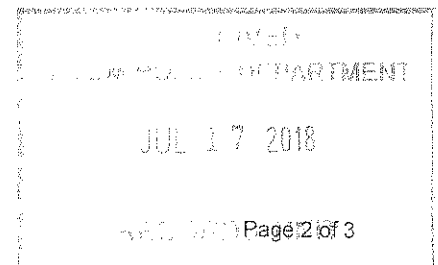
El Departamento de Seguridad Nacional (DHS) le ha puesto una retención de inmigración. Una retención de inmigración es un aviso a una agencia de la ley que DHS tiene la intención de asumir la custodia de usted (después de lo contrario, usted sería puesto en libertad de la custodia) porque hay causa probable que usted está sujeto a que lo expulsen de los Estados Unidos bajo la ley de inmigración federal. DHS ha solicitado que la agencia de la ley que le tiene detenido actualmente mantenga custodia de usted por un periodo de tiempo que no exceda de 48 horas más del tiempo original que habría sido puesto en libertad en base a los cargos judiciales o a sus antecedentes penales. **Si DHS no le pone en custodia durante este periodo adicional de 48 horas, usted debe de contactarse con su custodio** (la agencia que le tiene detenido en este momento) para preguntar acerca de su liberación. **Si usted cree que es un ciudadano de los Estados Unidos o la víctima de un crimen, por favor avise al DHS llamando gratuitamente al Centro de Apoyo a la Aplicación de la Ley ICE al (855) 448-6903.**

AVIS AU DETENU OU À LA DÉTENUÉ

Le Département de la Sécurité Intérieure (DHS) a placé un dépositaire d'immigration sur vous. Un dépositaire d'immigration est un avis à une agence de force de l'ordre que le DHS a l'intention de vous prendre en garde à vue (après cela vous pourrez par ailleurs être remis en liberté) parce qu'il y a une cause probable que vous soyez sujet à expulsion des États-Unis en vertu de la loi fédérale sur l'immigration. Le DHS a demandé que l'agence de force de l'ordre qui vous détient actuellement puisse vous maintenir en garde pendant une période ne devant pas dépasser 48 heures au-delà du temps après lequel vous auriez été libéré en se basant sur vos accusations criminelles ou condamnations. **Si le DHS ne vous prene pas en garde à vue au cours de cette période supplémentaire de 48 heures, vous devez contacter votre gardien (ne)** (l'agence qui vous détient maintenant) pour vous renseigner sur votre libération. **Si vous croyez que vous êtes un citoyen ou une citoyenne des États-Unis ou une victime d'un crime, s'il vous plaît aviser le DHS en appelant gratuitement le centre d'assistance de force de l'ordre de l'ICE au (855) 448-6903**

NOTIFICAÇÃO AO DETENTO

O Departamento de Segurança Nacional (DHS) expediu um mandado de detenção migratória contra você. Um mandado de detenção migratória é uma notificação feita à uma agência de segurança pública que o DHS tem a intenção de assumir a sua custódia (após a qual você, caso contrário, seria liberado da custódia) porque existe causa provável que você está sujeito a ser removido dos Estados Unidos de acordo com a lei federal de imigração. O DHS solicitou à agência de segurança pública onde você está atualmente detido para manter a sua guarda por um período de no máximo 48 horas além do tempo que você teria sido liberado com base nas suas acusações ou condenações criminais. **Se o DHS não leva-lo sob custódia durante este período adicional de 48 horas, você deve entrar em contato com quem tiver a sua custódia** (a agência onde você está atualmente detido) para perguntar a respeito da sua liberação. **Se você acredita ser um cidadão dos Estados Unidos ou a vítima de um crime, por favor informe ao DHS através de uma ligação gratuita ao Centro de Suporte de Segurança Pública do Serviço de Imigração e Alfândega (ICE) pelo telefone (855) 448-6903.**

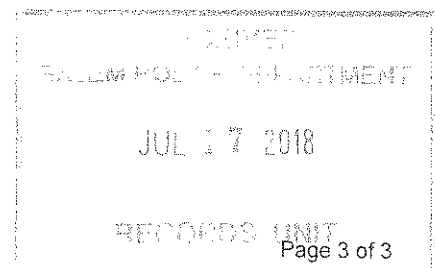


THÔNG BÁO CHO NGƯỜI BỊ GIAM

Bộ Nội An (DHS) đã ra lệnh giam giữ di trú đối với quý vị. Giam giữ di trú là một thông báo cho cơ quan công lực rằng Bộ Nội An sẽ đảm đương việc lưu giữ quý vị (sau khi quý vị được thả ra) bởi có lý do khả tín quý vị là đối tượng bị trục xuất khỏi Hoa Kỳ theo luật di trú liên bang. Sau khi quý vị đã thi hành đầy đủ thời gian của bản án dựa trên các tội phạm hay các kết án, thay vì được thả tự do, Bộ Nội An đã yêu cầu cơ quan công lực giữ quý vị lại thêm không quá 48 tiếng đồng hồ nữa. Nếu Bộ Nội An không đến bắt quý vị sau 48 tiếng đồng hồ phụ trội đó, quý vị cần liên lạc với cơ quan hiện đang giam giữ quý vị để tham khảo về việc trả tự do cho quý vị. Nếu quý vị là công dân Hoa Kỳ hay tin rằng mình là nạn nhân của một tội ác, xin vui lòng báo cho Bộ Nội An bằng cách gọi số điện thoại miễn phí 1(855) 448-6903 cho Trung Tâm Hỗ Trợ Cơ Quan Công Lực Di Trú.

被拘留者通知書

國土安全部(Department of Homeland Security, 簡稱DHS)已經對你發出移民拘留令。移民拘留令為一給予執法機構的通知書,闡明DHS意欲獲取對你的羈押權(若非有此羈押權,你將會被釋放);因為根據聯邦移民法例,並基於合理的原由,你將會被遞解離美國國境。DHS亦已要求現正拘留你的執法機構,在你因受到刑事檢控或定罪後,而在本應被釋放的程序下,繼續對你作出不超過四十八小時的監管。若你在這附加的四十八小時內,仍未及移交至DHS的監管下,你應當聯絡你的監管人(即現正監管你的機構)查詢有關你釋放的事宜。若你認為你是美國公民或為罪案受害者,請致電ICE執法部支援中心(Law Enforcement Support Center)知會DHS,免費電話號碼:(855)448-6903。



Salem Police Department

NARRATIVE FOR POLICE OFFICER JEFFREY J LAROSA

Ref: 17-655-AR

Entered: 05/11/2017 @ 0815 Entry ID: 173
Modified: 05/12/2017 @ 0806 Modified ID: 173
Approved: 05/14/2017 @ 0158 Approval ID: 103

COPY

On 05/11/2017 I was assigned to patrol Route 1. At approximately 0705 hours, I was traveling north on Route 28. During that time, I was traveling behind a Honda Civic, bearing Massachusetts registration . I observed the vehicle's left side tires cross over the center yellow lines several times, so I initiated a motor vehicle stop.

I made contact with the operator and the two male passengers. I first explained to the operator the reason why I had stopped her and then asked her to present me with her driver's license and registration. The operator handed me two El Salvador identification cards. The operator was then identified as Marta Martinez. I asked Martinez if she had a valid driver's license and she said "No." I then asked Martinez if she has ever had a driver's license and she said "No." Martinez was difficult to communicate with due to a language barrier. Martinez indicated to me that she does not speak English. Martinez indicated that she only speaks Spanish.

Shortly after learning that Martinez did not have a valid driver's license, I placed her under arrest for License Required/Operating Without a Valid License. She was secured in handcuffs which were checked for proper fit and double locked. Martinez was then secured in the rear seat of my cruiser.

While on scene the passengers were advised that they were free to leave. They then left the area on foot. The passengers had been identified by their non-driver identification cards as Ediberto Rosario and Nehemias Yulin. Sergeant Genest arrived on scene and waited with the vehicle until it was removed from the roadway by TNT Towing. I transported Martinez back to the Salem Police Department and proceeded through the booking process. Due to the language barrier, Detective Geha assisted me with booking Martinez. Detective Geha acted as a translator during the booking process.

When we arrived back at the Salem Police Department, Detective Geha confirmed by speaking with Martinez that she is living in the United States illegally. Detective Geha notified ICE after speaking with Martinez. ICE agents advised Detective Geha that they would be responding to the Salem Police Department to take custody of Martinez.

Martinez was charged with License Required/Operating Without a Valid License. Martinez was released on \$1,500.00 Personal Recognizance Bail. She was issued a court date for 06/28/2017 at 0800 hours in the 10th Circuit District Court-Salem Division. Custody of Martinez was later transferred to ICE agents. It should be noted that Martinez was convicted of License Required/Operating Without a Valid License on 10/17/2016 in the Salem District Court.

END OF REPORT