

July 23, 2026

Dear North Carolina County:



North Carolina

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acluofnc.org

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Board President

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We write on behalf of the ACLU of North Carolina (ACLU-NC) and the North Carolina Justice Center (NCJC) in response to recent reports across the state regarding reported misapplications of H.B. 10 and H.B. 318 with respect to immigrant defendants in county custody. We are reaching out to explain the proper application of these laws to ensure that each county's implementation does not result in unlawful over-detention.¹ Detaining individuals without a lawful basis violates the Fourth and Fourteenth Amendments to the U.S. Constitution and could also constitute false imprisonment in violation of state law. The ACLU-NC and NCJC are closely monitoring these issues across the state and respectfully ask for your cooperation in ensuring that your county abides by the clear time limits on detention established by state law.

Pursuant to N.C. Gen. Stat. § 15A-534(d4), when a judicial official determines conditions of pretrial release in cases involving felonies, certain serious misdemeanors, domestic violence offenses, or impaired driving, that official shall attempt to determine whether the defendant is a United States citizen or legal resident by questioning the defendant, reviewing documents, or both. If the judicial official cannot determine whether a defendant is a legal resident or citizen, he or she must set conditions of pretrial release and commit the defendant to an appropriate detention facility for fingerprinting and for a query to the United States Immigration and Customs Enforcement (ICE). *This detention for the purpose of an ICE query may not exceed two hours.* If ICE does not issue an administrative warrant and detainer within that time, county and judicial officials are required by law to release the individual "pursuant to the terms and conditions of the release order." See N.C. Gen. Stat. § 15A-534(d4) (2026). If ICE issues an administrative warrant and detainer within that time period, the individual must be taken "without unnecessary delay before a State judicial official" and may be held *only* upon the issuance of a judicial order "directing the prisoner be held in custody and transferred to the custody of an officer of [ICE] upon that officer's appearance at the facility and request for custody." See N.C. Gen. Stat. § 162-62(b1).

¹ This letter focuses on compliance with the terms of the statute and does not address the constitutionality of the statute.



To be sure, individuals who are in jail pursuant to the provisions in N.C. Gen. Stat. § 162-62 remain state prisoners. An immigration detainer does not render these individuals federal detainees. Rather, they remain *state* detainees governed by the *state* law that authorizes an ICE query or a judicial order, unless and until ICE assumes custody of them. Consequently, county custody under N.C. Gen. Stat. § 162-62 is only lawful if it complies with the explicit terms of that statute.

Despite these statutory limits on detention, we have received reports from various counties revealing misapplications of these laws. For example, in one county, we received reports that, when pretrial release becomes available, county officials prevent individuals from posting bond if the jail has not yet received a response from ICE. This has occurred in situations where ICE has not issued a detainer and the two-hour window to do so has expired. Reports indicate that officials appear to be conducting a second ICE query at the time an individual attempts to post bond, presumably to provide ICE with an additional opportunity to issue a detainer. This practice contradicts the plain text of N.C. Gen. Stat. § 15A-534(d4), which provides only one two-hour window for ICE to respond to a query. Officials are therefore legally required to allow an individual to post bond once the two-hour period expires without a detainer being issued by ICE.

Additionally, judicial officials are prohibited from conducting duplicative immigration status inquiries—first at booking and again at pretrial release. This practice violates state law. N.C. Gen. Stat. § 15A-534 authorizes a single, preliminary inquiry into immigration status, which already places an overbroad duty on local judicial officials; any second, duplicative inquiry only compounds that harm.

Other concerns result from counties failing to comply with the 48-hour limit on detaining someone under the authority of an ICE detainer. We received a report from one county indicating that county officials refused to allow bond to be posted after ICE issued a detainer. The sole purpose of a detainer is to request the continued detention of an arrestee so that ICE officials may assume custody of that arrestee and investigate whether to initiate removal proceedings against her. Importantly, 8 C.F.R. § 287.7, the regulation authorizing ICE to issue a detainer, does not provide independent state authority to detain individuals on the basis of an alleged



violation of U.S. immigration laws. Rather, N.C. Gen. Stat. § 162-62(b1) provides state law authority, subject to enumerated statutory limitations, to confine a person pursuant to a judicial order.² N.C. Gen. Stat. § 162-62(b1)(3)(a) provides that: “Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order issued under this subsection shall be released upon...[t]he passage of 48 hours from the time the prisoner would otherwise be released from the facility.” *Continued detention beyond 48 hours is not authorized under North Carolina law.* Finally, N.C. Gen. Stat. § 162-62(c) provides that, except as authorized by N.C. Gen. Stat. § 162-62(b1), “nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.”

Accordingly, there is no lawful basis for counties to refuse to allow bond to be posted simply because the individual is subject to an ICE detainer. And legally, there is no such thing as a “permanent” or “indefinite” ICE hold; county officials suggesting otherwise could subject the county to legal liability for over-detention. While counties are obligated to honor the 48-hour holding period once a judicial order is issued, the ICE detainer provides no probable cause for detention and cannot be used to deny the posting of bond. *See* N.C. Gen. Stat. § 162-62(c). Counties also violate the Fourth Amendment and the plain text of N.C. Gen. Stat. § 162-62(b1)(3)(a) by detaining an individual subject to a judicial order for a period exceeding 48 hours from the time that individual would otherwise have been released. Such violations may result in county officials’ liability for damages under 42 U.S.C. § 1983 and state law, as well as attorneys’ fees under 42 U.S.C. § 1988.

An ICE detainer carries other restrictions evident from the face of the document. Specifically, detainers must be

² N.C. Gen. Stat. § 162-62(b1) provides that: when “the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant... [a] judicial official shall issue an order directing the prisoner be held in custody and transferred to the custody of an officer of Immigration and Customs Enforcement of the United States Department of Homeland Security upon that officer’s appearance at the facility and request for custody.”



served on the subject to be valid, and they cannot be used as a basis to alter the pre-trial conditions of release, bail, diversion eligibility, custody classification, or parole.³ Nor can ICE detainers be used as a basis to deny a bond hearing. Additionally, the detainer itself limits the duration of additional detention to 48 hours. Any actions that exceed the limits and conditions contained in the ICE detainer would fall outside the request from federal officials and, accordingly, would not be authorized by N.C. Gen. Stat. § 162-62.

Finally, please also note that Title VI of the Civil Rights Act of 1964 requires that the county courts and jails provide adequate access to interpretation and translation services for detained individuals so that they fully understand their rights and options throughout the legal process. *See Lau v. Nichols*, 414 U.S. 563 (1974) (holding that recipients of federal funds must take reasonable steps to provide meaningful language access to individuals with limited English proficiency).

We ask that you review your policies and practices to ensure that your county is complying with the limits as well as the mandate of the relevant state laws, and that you instruct deputies, assistant clerks, and any other relevant personnel accordingly. If you have any questions or concerns, we would be happy to discuss these issues with you. Thank you for your attention to this matter.

Respectfully,

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³ ICE Form I-247A; *Immigration Detainer FAQ*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/immigration-detainers> (last updated May 8, 2026); Class Action Settlement Agreement and Release at App. C, *Gonzalez v. U.S. Immigr. & Customs Enft.*, No. 13-cv-04416, (C.D. Cal. Dec. 4, 2024).

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