

Massachusetts High Court Rules That State Law Does Not Authorize Officials to Honor ICE Detainers

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On July 24, 2017, in the case *Lunn v. Commonwealth*, the Massachusetts Supreme Judicial Court (“SJC”) ruled that state and local officials are not authorized to arrest immigrants based on civil immigration detainers issued by U.S. Immigration and Customs Enforcement (“ICE”). In other words, Massachusetts officials cannot, in general, take or hold a person in custody based solely on the existence of an ICE detainer.

The case arose from the detention of Sreynoun Lunn. It appears that Mr. Lunn had been ordered removed from the United States in 2008. However, ICE was purportedly unable to execute that order because Mr. Lunn’s country of origin declined to issue the necessary travel documents.

In 2016, Mr. Lunn was held by Massachusetts authorities on a larceny charge. The state court dismissed that charge for lack of prosecution by the Commonwealth. Ordinarily, Mr. Lunn would have been free to go.

However, in Mr. Lunn’s case, ICE had issued an immigration detainer requesting that Massachusetts authorities continue to hold Mr. Lunn for up to two days after he would otherwise be released. Consequently, even though all charges had been dismissed, court officers locked Mr. Lunn in a holding cell for several more hours, until ICE agents arrived and took him into federal custody (from which he has since been released).

Mr. Lunn promptly sought a ruling that state officials were wrong to hold him based solely on ICE’s civil immigration detainer. A single justice of the SJC reserved and reported this question to the full Court.

In addressing this question, the SJC first explained that “the administrative proceedings brought by Federal immigration authorities to remove individuals from the country are civil proceedings, not criminal prosecutions.” The Court further explained that ICE detainers are issued for the purpose of this “civil process of removal” and are purely requests for voluntary state assistance. The federal government expressly conceded that state authorities are not obligated to enforce detainers.

The Court then turned to the question of whether Massachusetts officials have statutory or common law authority to arrest people solely because the officials received a voluntary request from the federal government to hold the person for a civil proceeding. The Court found no such authority. The Court also rejected the federal government’s argument that state law enforcement officers possess “inherent authority” to enforce detainers. Accordingly, it is, in general, unlawful for Massachusetts state and local officials to arrest and detain a person based solely on an ICE detainer.

The SJC’s decision leaves several open questions. For example, the SJC did not reach the question of whether such Mr. Lunn’s arrest would, if authorized by state statute or common law, be permitted by the state and federal constitutions. And, the SJC did not address whether the arrest would be permissible if the arresting officer had been specially deputized by ICE to enforce immigration law pursuant to a state-federal partnership under 8 U.S.C. §1357(g). These questions may be decided in future cases.

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