

CRIMMIGRATION UPDATE



Prepared by: Duke Immigrant Rights Clinic, Duke Criminal Defense Clinic, & Southern Coalition for Social Justice

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Introductions

Evan Fogel (she/her)
Director
Criminal Defense Clinic
Duke Law School
fogel@law.duke.edu

Kate Evans (she/her)
Director
Immigrant Rights Clinic
Duke Law School
evans@law.duke.edu

Taylor Dempsey (they/she)
5L, Criminal Defense Clinic & Immigrant Rights Clinic
Duke Law School
taylordempsey@duke.edu

Olivia Callan (she/her)
5L, Immigrant Rights Clinic
Duke University School of Law
olivia.callan@duke.edu

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Agenda

- HB10
- Criminal Defendants in Custody Pursuant to an ICE Detainer
- HB10 Implementation So Far
- How to Contest Clients' Detention
- Looking Forward
- What HB10 is *not*?

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What is HB10?

- S.L. 2024-55, now chaptered as G.S. 162-62
- Became law and went into effect on December 1, 2024
- Compels local sheriffs to cooperate with Immigration and Customs Enforcement (ICE)

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HB10 Notification Provisions

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit, the administrator or other person in charge of the facility shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both, if the person is charged with any of the following offenses:

1. A felony under G.S. 90-92 (Felonies related to the Controlled Substances Act (not simple possession of other misdemeanors)).
2. A felony under Article 20 (Homicide), Article 21 (Rape and Other Sex Offenses), Article 19 (Kidnapping and Abduction), Article 18A (Human Trafficking), or Article 15A (North Carolina Criminal Gang Suppression Act) of Chapter 11 of the General Statutes.
3. A Class A misdemeanor or below under Article 21 (Assaults (including Assault on a Female and the other most serious misdemeanors but not a simple assault) and Chapter 11 of the General Statutes.
4. A violation of G.S. 51B-1.1 (Violation of Valid Protective Order).

(b) If the administrator or other person in charge of the facility is unable to determine if that prisoner is a legal resident or citizen of the United States or its territories, the administrator or other person in charge of the facility holding the prisoner is responsible shall make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.

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HB10 Detainer Provision

(b)(1) When any person charged with a criminal offense is confined for any period in a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit, and 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 that reasonably means to be for the person in custody, the following shall apply:

1. Prior to the prisoner's release and after receipt of the detainer and administrative warrant, or a copy thereof, that the administrator or other person in charge of the facility has received, the prisoner shall be taken without unnecessary delay before a State judicial officer who shall be provided with the detainer and administrative warrant or a copy thereof.
2. The judicial official shall issue an order directing the prisoner be held in custody if the prisoner appears before the judicial official is the same person subject to the detainer and administrative warrant.
3. 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 the first of the following conditions:
 - a. The passage of 48 hours from receipt of the detainer and administrative warrant.
 - b. Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.
 - c. The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

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Practice Note

Outside of HB10 and N.C. Gen. Stat. §128-11(c1), counties have **NO** authority to hold noncitizens in county jails for non-criminal matters.

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HB10 Implementation So Far

- Sheriffs must serve detainer on person for detainer to take effect
- Where to find ICE detainees and administrative warrants
- Misunderstandings of HB10's clock
- Not setting bond because of HB10
- Rearrest with second ICE hold
- Not setting expiration time for ICE hold
- Inaccurate judicial orders (AOC-CR-662)
- Disappearing clients
- ICE's response to HB10

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How to Contest Detention

HB10 provides two primary opportunities for defense counsel to contest the continued detention of impacted clients:

Judicial order

+

Less than 48 hours

+

No state law basis for continued custody

=

HB10 Custody

Where no Form AOC-CR-662 judicial order has been validly entered

Where 48 hours have passed from receipt of your client's detainer or your client was not served with the detainer and there's no state law basis for custody

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Scenario 1: No Form AOC-CR-662 judicial order has been validly entered

G.S. 162-62(b1) requires, prior to the issuance of an HB10 detention order, both:

1. Presentment “without unnecessary delay before a State judicial official”; and
2. A determination that “the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant.”



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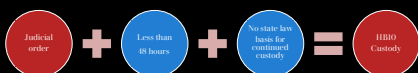
You can...

Seek to represent
clients in their HB10
judicial proceedings

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Scenario 2: 48 Hours Passed + No State Law Basis for Custody

- HB10 only allows detention for 48 hours from receipt of the ICE detainer and administrative warrant. This 48-hour period includes weekends and holidays.
 - The 48-hour clock will not necessarily align with the time when the judicial order was issued!



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Less than 48 hours

If 48 hours have elapsed since the detainer was received **and** your client has already posted bond, obtained an unsecured bond, or had their charges dismissed, you can....

Move for the immediate release of your client

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STATE OF NORTH CAROLINA
COUNTY OF **XXX**

GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NUMBER: **25C-0000**

STATE OF NORTH CAROLINA
v.
JOHN DOE
Defendant

MOTION FOR IMMEDIATE RELEASE

NOW COMES the Defendant, _____, by and through his undersigned counsel, _____, and respectfully moves this Honorable Court for review of his continued detention and to order his immediate release.

In support of this motion, the Defendant asserts:

- Defendant was arrested on _____, 202__, for allegedly violating _____ and held on a _____ bond.
- Defendant's ☐ pending case was resolved/dismissed ☐ bond was unsecured ☐ bond was posted ☐ bond was released to _____ and paid.
- The person charged as Mr./Ms. _____ is confined in the **XXX** County Detention Center pursuant to ☐ a judicial order ☐ an "ICE hold" or detainer issued pursuant to 8 CFR § 287.7.
- 8 CFR § 287.7 does not provide independent state authority to detain individuals in the **XXX** County Detention Center on the basis of an alleged violation of U.S. immigration laws. Rather, N.C.G.S. § 162-62 (b)(1) provides state law authority, subject to enumerated statutory limitations, to confer a person pursuant to a judicial order.
- N.C.G.S. § 162-62 (b)(1) 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 detaining the prisoner he held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."

*All references to the Defendant as Mr./Ms. _____ are intended for clarity and brevity in reference to the charging and detainer documents, not a true admission of the Defendant's identity.

6. N.C.G.S. § 162-62 (b)(7)(a) then provides that: "Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order under this subsection shall be released upon...the passage of 48 hours from receipt of the detainer and administrative warrant" (emphasis added).

7. N.C.G.S. § 162-62 (c) provides that, except as authorized by N.C.G.S. § 162-62 (b)(1), "nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when the prisoner is otherwise eligible for release."

8. Mr./Ms. _____ is "not otherwise detained by a criminal justice agency" and is "otherwise eligible for release."

9. Mr./Ms. _____ has been detained in the **XXX** County Detention Center for a period exceeding 48 hours from the receipt of the detainer and administrative warrant, in violation of the plain meaning of N.C.G.S. § 162-62 (b)(1).

Wherefore, Mr./Ms. _____ respectfully requests that this Honorable Court set the matter for immediate hearing and ☐ grant this Motion for Immediate Release ☐ order Mr./Ms. _____ release 48 hours from receipt of the ICE detainer and administrative warrant.

This the ____ day of _____, 202__.

Attorney for
Office of the Public Defender

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No state law basis for continued custody

If 48 hours have NOT elapsed since the detainer was received **and** your client has **NOT** posted bond, obtained an unsecured bond, or had their charges dismissed, you can....

Seek terms of release and assist in posting bond

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What is HB10 *not*?

- 287(g)
- Does not require local law enforcement officers to participate in ICE raids & does not involve people detained by ICE as the result of raids or other immigration arrests
- Does not require sheriffs to notify ICE that a noncitizen is being released
- Does not involve immigration bonds. It only involves the criminal release process
- The Laken Riley Act: amends INA § 236
 - The Attorney General **shall** take into custody any alien who:
 - (E) (i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a); and
 - (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person
 - (2) Definition. For purposes of paragraph (1)(E), the terms "burglary", "theft", "larceny", "shoplifting", "assault of a law enforcement officer", and "serious bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.
 - (3) Detainer. The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.

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Looking Forward

- HB10 is likely to change
HB 318 (The Criminal Illegal Alien Enforcement Act)
- Pending NC anti-immigrant bills
SB 153 (North Carolina Border Protection Act)
- Pending federal immigration changes
HR 30 (Preventing Violence Against Women by Illegal Aliens)

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Additional Support

- Sample motions
- For questions related to HB10:
hb10questions@scsj.org

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Additional Support

- ACLU-NC & NCJC Immigrant Civil Rights Assistance Request Form:
<https://forms.office.com/r/HGKQ8anFrs>
 - Prolonged detention of immigrants in local jails or in ICE detention facilities
 - Denial of access to counsel for non-citizens in jail/detention facilities
 - Dangerous or inhumane jail or detention conditions
 - Denial of bail based on immigration status, race, ethnicity
 - Roadblocks or other law enforcement actions (traffic stops) that appear to be targeted to a specific community based on race, national origin, color, religion, or ethnicity
 - Abusive/coercive law enforcement questioning, harassment, or threats by law enforcement against immigrants
 - Immigration enforcement targeting groups of immigrants rather than individuals—especially workplace or "knock and talk"
 - Inadequate translation/interpretation services in jails, courts, or other settings
 - ICE conducting enforcement activities within courthouses
 - Denial of essential services (for example: emergency medical care, K-12 education) to non-citizens

Immigrant Civil Rights Assistance Request Form



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Questions?

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