



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Trial Court Officials

FROM: Seth Kandl
Assistant Legal Counsel

DATE: November 27, 2024

SUBJECT: S.L. 2024-55 and Judicial Officials' Obligations Re: Detainees Subject to ICE Detainers¹

House Bill 10 became law on November 19, 2024, when the legislature overrode the Governor's veto of September 20, 2024, and is now chaptered as S.L. 2024-55 (hereinafter "The Act").² Section 9 amends the requirements of the sheriff and the court in G.S. 162-62 in determining the legal status of a person in the custody of a detention facility. Specifically, the Act amended G.S. 162-62 to add new subsection (b1) that creates a new obligation on judicial officials when individuals in the custody of detention facilities are subject to a detainer issued by Immigration and Customs Enforcement ("ICE") of the Department of Homeland Security. These new obligations consist of: **1)** receiving the administrative warrant or detainer issued by ICE from the detention facility staff, **2)** verifying the subject of the detainer and administrative warrant is the same individual brought before them, and, if so **3)** issuing an order directing the individual to be held. This memo summarizes these changes in the new G.S. 162-62(b1) applicable to judicial officials, which are effective December 1, 2024.

Receiving the Detainer and Administrative Warrant

The new G.S. 162-62(b1) provides that "[w]hen 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... has issued a detainer and administrative warrant that reasonably appears to be for the person in custody," the detainee "shall be taken without unnecessary delay before a State judicial official who shall be provided with the detainer and administrative warrant, or a copy thereof." Sec. 9.1.(a), S.L. 2024-55. Any ICE detainer will be received by the detention facility staff and presented to the judicial official. It is not the responsibility of the judicial official to inquire whether an ICE detainer exists.

Verifying Subject of Detainer and Administrative Warrant is Same Person as Detainee

New G.S. 162-62(b1)(2) requires judicial officials to "issue an order directing the prisoner to be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant." This language lays the obligation on the judicial official to verify the detainee brought before them is the individual referenced in the ICE detainer. After being sufficiently satisfied that

¹ For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)'s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo list for Criminal Memos.

² Full text of the enacted bill is available at: <https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H10v6.pdf>. The changes referenced by this memo appear in section 9.1.

the individual in the custody of the local agency is the same individual as the one referred to in the ICE detainer, the judicial official must issue the required order.

Issuing the Order

If the judicial official receives a detainer and administrative warrant issued by ICE and is sufficiently satisfied that the individual brought before them is the subject of the detainer and administrative warrant, then the judicial official shall issue an order to hold the individual in custody. The order shall state the individual is to be released, “unless continued custody of the prisoner is required by other legal process,” after:

- 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, or
- c) the detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

The existence of an ICE detainer does not prevent the issuance of a bond, per G.S. 162-62(c). Should a detainee be the subject of an ICE detainer, the detention order required under G.S. 162-62(b1) as well as conditions of release on the underlying offense should be entered.

To assist in the implementation of the newly required order, AOC created new form AOC-CR-662, Order After Receipt of ICE Detainer and Administrative Warrant. This form will be released shortly before December 1, 2024. AOC’s Business and Process Management Division will provide notice via email once the form has been posted for use.

Frequently Asked Questions

Is it the judicial official’s responsibility to determine if the person brought before them is a legal resident?

NO, the judicial official is only responsible for determining if the person before them is the same person referenced in the provided ICE detainer and administrative warrant. The facility administrator is responsible for determining residency status per G.S. 162-62(a).

Is it the judicial official’s responsibility to decide when the 48 hours begins or when the person is released?

NO, the administrator in charge of the detention facility decides when the 48 hours begins and how it applies, not the judicial official.

Court officials with questions about the issues described above should feel free to contact Seth Kandl at Seth.P.Kandl@nccourts.org. Questions about the use of NCAOC’s automated systems, forms, and recordkeeping procedures should be directed to the Emily.E.Mehta@nccourts.org or Courtney.Bailey@nccourts.org. Persons seeking information about ICE detainers, law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the legislation discussed above should consult their respective counsel; counsel for the NCAOC cannot provide legal advice to entities outside the Judicial Branch.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

STATE VERSUS

Name And Mailing Address Of Defendant

ORDER AFTER RECEIPT OF ICE DETAINER
AND ADMINISTRATIVE WARRANT

Race Sex Date Of Birth

Offender ID (if any)

G.S. 162-62(b1)

Name Of Facility (County Jail/Local Confinement Facility/District Confinement Facility/Satellite Jail/Work Release Unit) In Whose Custody Defendant Confined Or Committed

Name Of Person In Charge Of Facility

FINDINGS AND ORDER TO HOLD IN CUSTODY

I, the undersigned, find that the defendant named above, who is in the custody of the facility named above, appeared before me. I was provided with a detainer and administrative warrant, or copies thereof, issued by the Immigration and Customs Enforcement agency of the United States Department of Homeland Security. The detainer and administrative warrant were received by the facility at (time)_____ on (date)_____. The defendant named above is the same person as the person subject to the detainer and administrative warrant.

To The Person In Charge Of The Facility Named Above: You are ORDERED to hold in your custody the defendant named above, who shall be released from that hold, but not from continued custody when required by other legal process, upon the first of the following conditions:

- The passage of 48 hours from receipt of the detainer and administrative warrant.
- Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.
- The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

Date Name Of Judicial Official Signature Of Judicial Official ☐ Magistrate ☐ District Court Judge ☐ Superior Court Judge
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

FINDING THAT DEFENDANT IS NOT SUBJECT OF ICE DETAINER AND WARRANT

I, the undersigned, find that the defendant named above, who is in the custody of the facility named above, appeared before me. I was provided with a detainer and administrative warrant, or copies thereof, issued by the Immigration and Customs Enforcement agency of the United States Department of Homeland Security. The detainer and administrative warrant were received by the facility at (time)_____ on (date)_____. The defendant named above is **not** the same person as the person subject to the detainer and administrative warrant.

Date Name Of Judicial Official Signature Of Judicial Official ☐ Magistrate ☐ District Court Judge ☐ Superior Court Judge
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

Original - Person In Charge Of Facility Copy - Defendant Copy - Defendant's Attorney Copy - District Attorney Copy - File