

HB 318 UPDATE

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



IMMIGRANT
RIGHTS
CLINIC



**SOUTHERN
COALITION**
for SOCIAL JUSTICE

What is HB 318?

- Amends G.S. 162-62 and G.S. 15A-534
- Became law and went into effect on October 1, 2025
- Compels local sheriffs to cooperate with Immigration and Customs Enforcement (ICE) and mandates pre-trial hold to verify immigration status and facilitate transfer to ICE custody upon release from criminal custody

HB 318 Notification Provisions

(a) When any person 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 or citizen 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. Any felony
2. A Class A1 misdemeanor under Article 6A [Unborn victims], Article 7B [sex offenses], or Article 8 [Assaults (including Assault on a Female and the other most serious misdemeanors but not a simple assault)] of Chapter 14 of the General Statutes.
3. Any violation of G.S. 50B-4.1 [Violation of Valid Protective Order].
4. Any offense involving impaired driving as defined in G.S. 20-4.01

(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 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.

HB 318 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 appears 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, by the administrator or other person in charge of the facility, *the prisoner 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.
2. If the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant, *the judicial official shall issue an 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 transfer.
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 the time the prisoner would otherwise be released from the facility**
 - 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.

HB 318 Detainer Provision

4. For any prisoner held pursuant to an order issued under this subsection, *no later than two hours after the time when the prisoner would otherwise be released from the facility, the administrator or other person in charge of the facility shall notify [ICE] of the date and time that the prisoner will be released pursuant to sub-subdivision a. of the subdivision (3) of this subsection [i.e., the end of the 48-hour detainer hold].* The notification shall be made in the manner indicated on the DHS detainer – Notice of Action Form.

HB 318 Investigation Provision

(d4) When conditions of pretrial release are being determined for a defendant charged with

- Any felony
- A Class A1 misdemeanor under Article 6A [Unborn victims],
- Article 7B [sex offenses], or
- Article 8 [Assaults (including Assault on a Female and the other most serious misdemeanors but not a simple assault)] of Chapter 14 of the General Statutes.
- Any violation of G.S. 50B-4.1 [Violation of Valid Protective Order].
- Any offense involving impaired driving as defined in G.S. 20-4.01

The judicial officer shall attempt to determine if the defendant **is a legal resident or citizen of the Unites States** by and inquiry of the defendant or by examination of any relevant documents, or both. If the judicial official is unable to determine **if the defendant is a legal resident or citizen of the United States**, the judicial official shall set conditions of pretrial release pursuant to this Article and *shall commit the defendant to an appropriate detention facility pursuant to G.S> 15A-521 to be fingerprinted, for a query of [ICE], and to be held for a period of two hours from the query of [ICE].*

If by the end of this two-hour period no detainer and administrative warrant have been issued by [ICE], the defendant shall be released pursuant to the terms and conditions of the release order. *If before the end of this two-hour period a detainer and administrative warrant issued by [ICE] have been received by the facility, the defendant shall be processed pursuant to G.S> 162-62(b1).*

Four Required Conditions for Lawful HB 318 Custody

1. The ICE detainer is valid and accompanied by admin warrant;
2. There is a NC judicial order verifying the identity of the person named in the ICE detainer and administrative warrant;
3. 48 hours have not elapsed since the person would otherwise be released; and
4. There is no state law basis for continued custody.



Sample ICE Detainer Form

Requirements for validity:

- Must be served on noncitizen defendant (detainer form has place for NC officer to certify service)
- Detainer is not from PERC or issued between 10pm-6am and based on bottom 2 boxes for probable cause

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: _____
Event #: _____

File No: _____
Date: _____

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency) _____

FROM: (Department of Homeland Security Office Address) _____

Name of Individual: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

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

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

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

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

IT IS THEREFORE REQUESTED THAT YOU:

Serve the individual a copy of this form, and complete and return to ICE the service information at the bottom of this form. If the detainer is not served, the detainer is not valid and may not be relied upon to maintain custody of the individual.

• Notify DHS as early as practicable (at least 48 hours, if possible) before the individual 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 individual 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 individual 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 individual'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 individual.

• Notify this office in the event of the individual's death, hospitalization or transfer to another institution.

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

(Name and title of Immigration Officer)

(Signature of Immigration Officer) (Sign in Ink)

DHS Form I-247A (2/25)

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Sample ICE Detainer Form

What a detainer does not do:

- Authorize custody beyond 48 hours from time person would otherwise be released
- Authorize courts to deny bail hearings, alter conditions of release, diversion, custody classification, parole

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☐ The pendency of ongoing removal proceedings against the individual;

☐ Biometric confirmation of the individual's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ Statements made by the individual to an immigration officer and/or other reliable evidence that affirmatively indicate the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

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- **maintain custody of the individual 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 individual 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 individual's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.**
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☐ If checked: please cancel the detainer related to this individual previously submitted to you on _____ (date).

(Name and title of Immigration Officer)

(Signature of Immigration Officer) (Sign in Ink)

DHS Form I-247A (2/25)

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Sample HB318 Judicial Order (AOC-CR-662)

STATE OF NORTH CAROLINA			File No. _____		
_____ County			In The General Court Of Justice ☐ District ☐ Superior Court Division		
STATE VERSUS			ORDER AFTER RECEIPT OF ICE DETAINER AND ADMINISTRATIVE WARRANT		
Name And Mailing Address Of Defendant					
Race	Sex	Date Of Birth			
Offender ID (if any)					
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 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 as long as continued custody is required by other legal process. You are further ORDERED to hold the defendant in custody, to be released from that hold upon the first of the following conditions: - The passage of 48 hours from the time the prisoner would otherwise be released from the facility. - Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner. Custody of the prisoner shall be 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. - 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 ☐ Deputy CSC	☐ District Court Judge ☐ Assistant CSC	☐ Superior Court Judge ☐ 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 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 ☐ Deputy CSC	☐ District Court Judge ☐ Assistant CSC	☐ Superior Court Judge ☐ Clerk Of Superior Court
Original - Person In Charge Of Facility Copy - Defendant Copy - Defendant's Attorney Copy - District Attorney Copy - File					
AOC-CR-662, Rev. 10/25 © 2025 Administrative Office of the Courts					

Practice Note

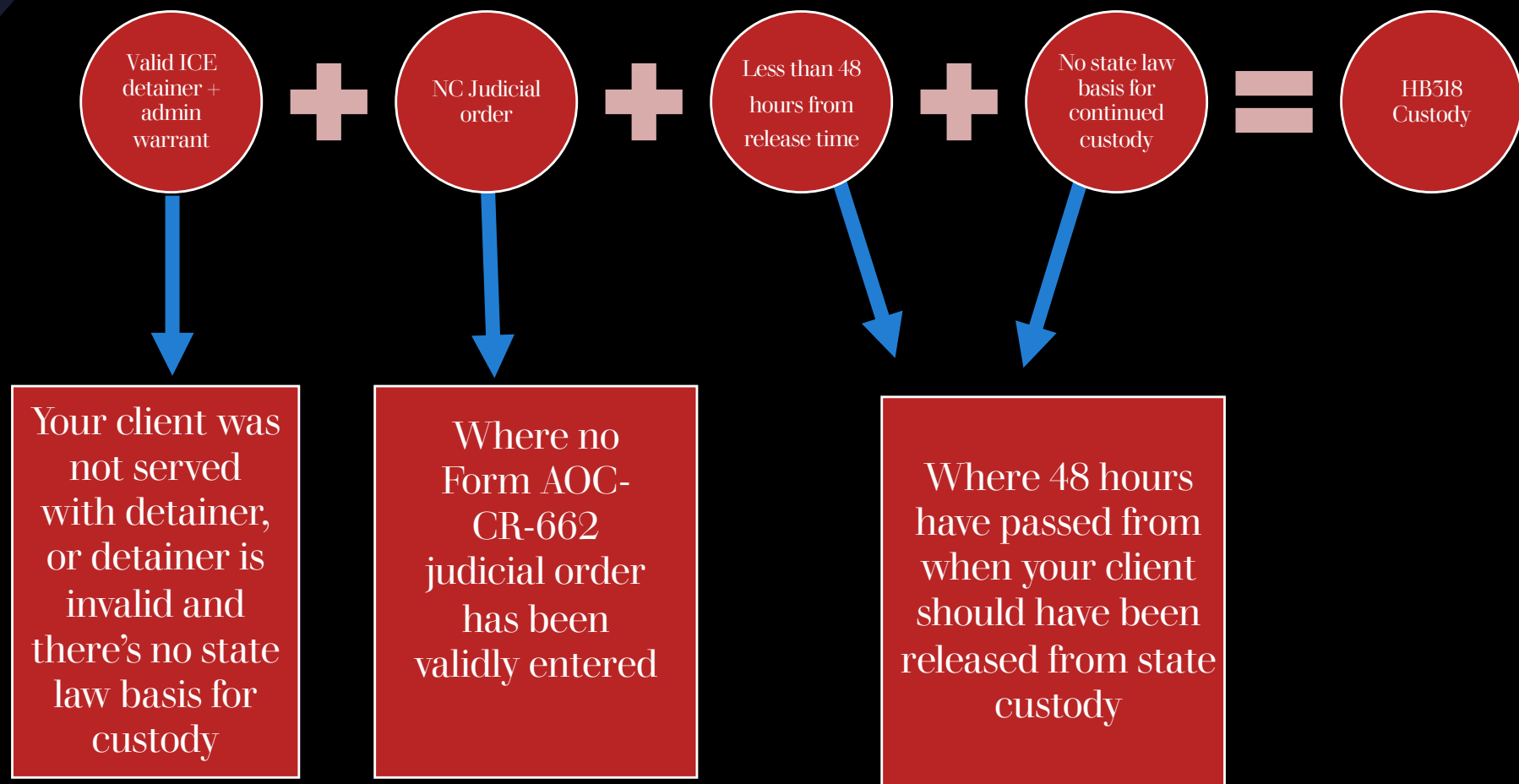
Outside of HB318 and N.C. Gen. Stat. §128-1.1(c1) [authorizing counties to enter 287g agreements], counties have NO authority to hold noncitizens in county jails for non-criminal matters.

What is HB 318 *not*?

- Does not mandate 287(g) agreements
- Does not require local law enforcement officers to participate in ICE raids
- Does not involve people detained directly by ICE as the result of raids or other immigration arrests
- Does not involve immigration bond or custody. It only involves the criminal release process
- Does not related to The Laken Riley Act:
 - Expands mandatory immigration detention for a noncitizen who-
 - (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.

How to Contest Detention

HB 318 provides three primary opportunities for defense counsel to contest the continued detention of impacted clients:



Scenarios 1 & 3:

No valid detainer or 48 Hours Passed + No State Law Basis for Custody

- HB318 requires a valid ICE detainer and administrative warrant and only allows detention for 48 hours from when person would otherwise be released from state custody, including weekends and holidays.
- HB 318 Inquiry provision uses “legal resident” without a definition & provides for only one two-hour hold to contact ICE



No Valid ICE
detainer +
admin
warrant

More than 48
hours

IF

1. Client was not served with detainer,
2. No admin warrant was included to jail,
3. ICE did not respond during 2-hour inquiry hold,
4. You want to challenge the 2-hour inquiry hold, or
5. 48 hours have elapsed since your client should have been released on bond, obtained an unsecured bond, had their charges dismissed, disposed of charge

YOU CAN...

Move for the
immediate release of
your client

STATE OF NORTH CAROLINA

COUNTY OF XXX

GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILE NUMBER: 25CR0000

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 Defense asserts:

1. Defendant was arrested on _____, 202__ for allegedly violating _____ and held on a \$ _____ bond.
2. Defendant's ☐ pending case was resolved/dismissed
☐ bond was unsecured
☐ bond was posted
☐ bond was reduced to _____ and paid.
3. The person charged as Mr./Ms. _____¹ is confined in the XYZ County Detention Center pursuant to:
☐ a judicial order
☐ an "ICE hold" or detainer issued pursuant to 8 CFR § 287.7.
4. 8 CFR § 287.7 does not provide independent state authority to detain individuals in the XYZ County Detention Center on the basis of an alleged violation of U.S. immigration laws. Rather, N.C.G.S. § 162-62 (b1) provides state law authority, subject to enumerated statutory limitations, to confine a person pursuant to a judicial order.
5. N.C.G.S. § 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 if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant."

¹ All references to the Defendant as Mr./Ms. _____ are intended for clarity and brevity in reference to the charging and detention documents, not a true admission of the Defendant's identity.

6. N.C.G.S. § 162-62 (b1)(3)(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 (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."
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 XYZ 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 (b1).

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

This the ____ day of _____, 202__.

Attorney for
Office of the Public Defender

No state law
basis for
continued
custody

If your client has NOT posted bond, obtained an unsecured bond, or had their charges dismissed, you can....

Seek terms of release

~~“ICE
HOLD”~~

Scenario 2:

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

Prior to the issuance of an HB 318 detention order, G.S. 162-62(b1) requires 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.”



You can...

Seek to represent
clients in their HB 318
judicial proceedings

Additional Support

- Sample motions
- For questions related to HB 318:

hb10questions@scsj.org

Additional Support

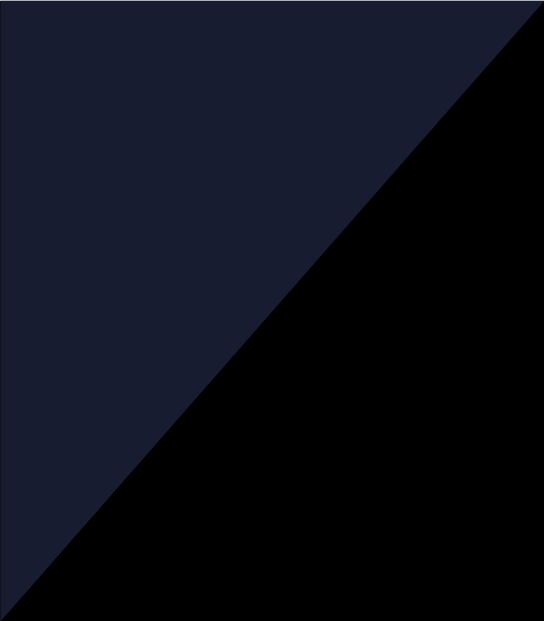
ACLU-NC & NCJC Immigrant Civil Rights Assistance Request Form:

<https://forms.office.com/r/DGKQBqnPrS>

Immigrant Civil Rights Assistance
Request Form



- 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



Questions?