

Detention of Noncitizens: Understanding North Carolina Law on Immigration Detainers

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I. Introduction

An immigration detainer is one of the key tools that the U.S. Department of Homeland Security (DHS)—through its Immigration and Customs Enforcement (ICE) unit—uses to apprehend individuals who come in contact with local and state law enforcement agencies. Sometimes, after a defendant has been arrested for a crime, an ICE officer will file an immigration detainer

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with the agency that has custody of the defendant.¹ Through the detainer, DHS requests that the agency (1) notify DHS when the defendant would otherwise be eligible for release and (2) hold the defendant for up to forty-eight hours thereafter to enable ICE to take custody of the defendant.

In general, an ICE agent may issue a detainer only when the agent believes that there is “probable cause” to believe that the subject of the detainer is a removable alien.² The detainer must be accompanied by an administrative warrant for arrest or warrant for removal.³ Although designated as warrants, these documents are issued by ICE officers, not by state or federal judicial officials.

An immigration detainer is a request that a custodial agency hold a subject after he or she would otherwise be released. A detainer does not require the custodial agency to do so.⁴ Prior to December 1, 2024, North Carolina law enforcement agencies could decide whether to honor detainer requests from federal agents. In 2024, the North Carolina General Assembly passed a law that required cooperation with ICE detainers and provided some guidance on procedures regarding the custody of noncitizens.⁵ The law was amended in 2025 to modify some of these procedures and create new procedures around setting pretrial release conditions for noncitizens.

This bulletin details the newly enacted statutory changes and addresses some frequently asked questions related to the implementation of the laws.

II. Pretrial Release

Effective October 1, 2025, [Session Law 2025-85 \(House Bill 318\)](#) enacted a new pretrial procedure which requires judicial officials, when determining conditions of pretrial release for defendants charged with certain offenses, to attempt to determine if the defendant is a legal resident or citizen of the United States.⁶ The following categories of offenses trigger the inquiry:

- any felony;
- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of Chapter 14 of the North Carolina General Statutes (hereinafter G.S.);
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order); and
- any offense involving impaired driving as defined in G.S. 20-4.01.

The judicial official may attempt to determine residency by making an inquiry of the defendant or by examining any relevant documents. If the defendant’s status as a legal resident or citizen of the United States cannot be determined, the judicial official must (1) set conditions of

1. See U.S. Dep’t of Homeland Sec., [Immigration Detainer – Notice of Action, DHS Form I-247A](#) (Mar. 2017).

2. *Probable cause*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“... probable cause . . . amounts to more than a bare suspicion but less than evidence that would justify a conviction”). According to 8 U.S.C. § 1229a(e)(2), the term “removable” means, (1) in the case of an alien not admitted to the United States, that the alien is inadmissible under 8 U.S.C. § 1182 or (2) in the case of an alien admitted to the United States, that the alien is deportable under 8 U.S.C. § 1227.

3. See U.S. Dep’t of Homeland Sec., [Warrant for Arrest of Alien, DHS Form I-200](#) (rev. Sept. 2016).

4. See *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

5. See S.L. 2024-55 (H. 10).

6. G.S. 15A-534(d4), as enacted by S.L. 2025-85 (H. 318).

pretrial release in the [AOC-CR-200](#) form (Conditions of Release and Release Order) and (2) using the [AOC-CR-663](#) form (Conditions of Release for Person Whom Judicial Official Is Unable To Determine To Be Legal Resident or Citizen of The United States), commit the defendant to a facility to be fingerprinted and held for a period of two hours after a query to ICE is made.⁷

Although any judicial official is authorized to conduct proceedings under this statute, in most cases that official will be a magistrate at a defendant's initial appearance. However, a magistrate or a clerk may be limited in the ability to set conditions of release for offenses that are subject to other pretrial release rules. For example, if a defendant is charged with a violation of G.S. 50B-4.1, the defendant will be subject to the provisions of G.S. 15A-534.1, in which case the magistrate or clerk must commit the defendant to a facility and make a query to ICE, but only a judge may set the conditions of pretrial release within the first forty-eight hours of arrest.⁸

A judicial official may not detain a person indefinitely simply because he or she is not a U.S. citizen or legal resident, though citizenship status and lawful residency status may be relevant in determining conditions of pretrial release, such as when there are facts to suggest the person may be a flight risk.⁹ Even when a detainer is issued, the detainer does not authorize the holding of a person without the setting of conditions of release or prevent a person from being released from confinement when the person is otherwise eligible for release.¹⁰

A. Receipt of Detainer and Administrative Warrant

If no detainer and administrative warrant are received from ICE within the two-hour period after the query is made to ICE (see the section immediately above), then the defendant must be released upon satisfaction of the conditions set forth in the AOC-CR-200 pretrial release order. If a detainer and administrative warrant are received within that two-hour period, then the defendant must be taken before a judicial official and processed pursuant to the provisions of G.S. 162-62(b1). The judicial official must be provided with a copy of the detainer and administrative warrant. If the judicial official determines that the person appearing before them is the person subject to the detainer and administrative warrant, the judicial official must issue a detention order using the [AOC-CR-662](#) form (Order After Receipt of ICE Detainer and Administrative Warrant). The governing statute, G.S. 162-62, does not specify how a judicial official is to assess whether a person who is brought before them is the same person referred to in the detainer. Nevertheless, a judicial official may rely on a valid passport or a state driver's license to make this assessment. The General Statutes state that a matricula consular or a locally issued identification card are not acceptable items for a judicial official, a law enforcement officer, or another government official to use in determining a person's identity.¹¹ Identification of the individual by another reliable person, including a law enforcement officer, may be acceptable.

In the detention order, the judicial official must direct that the defendant (1) be held in custody and (2) be transferred to the custody of an ICE officer upon that officer's appearance at

7. *Id.*

8. *Id.* § 534.1.

9. *See id.* § 534(c).

10. G.S. 162-62(c).

11. G.S. 15A-311(a).

the holding facility and request for custody.¹² The defendant must be held in custody until the earliest of the following:

- the passage of forty-eight hours from the time the defendant would otherwise be released from the facility,
- when ICE takes custody of the defendant, or
- when ICE rescinds the detainer.¹³

A judicial official issues a detention order only when ICE has issued a detainer and warrant. Mere interest in a person by ICE does not trigger any of the requirements under G.S. 162-62(b1).

B. Notification to ICE

Within two hours of the time when the defendant would otherwise be released, the administrator or other person in charge of the detention facility holding the defendant must notify ICE of the date and time that the defendant will be released pursuant to the order (i.e., when the forty-eight hours will expire; see the section immediately above).¹⁴ The notification must be made in the manner indicated on the “Department of Homeland Security Immigration Detainer – Notice of Action” form, which typically requires the facility to notify DHS by calling ICE or Customs and Border Patrol (CBP) at a phone number specified in the form.¹⁵

C. When the Detention Period Applies

The forty-eight-hour detention period discussed above applies only when the defendant is “otherwise eligible for release” from state custody—in other words, it applies when the defendant is able to satisfy conditions of release that are typically imposed in the AOC-CR-200 form. For example, if the judicial official imposes an unsecured bond, then the forty-eight-hour immigration detention begins once the defendant signs the release order. If the defendant is detained pursuant to a secured bond and posts the bond, then the forty-eight-hour immigration detention period begins at the time the bond is accepted by the judicial official. If the defendant is not able to satisfy the conditions of release that are imposed (i.e., is not able to make bond), then the forty-eight-hour detention period does not apply because the defendant is not “otherwise eligible for release.” In those circumstances, there is no immediate need for the jail holding the defendant to notify ICE as required under G.S. 162-62(b1)(4), which in turn signals a lack of urgency for ICE to take custody of the defendant. If, at a later time, the defendant is able to make bond or otherwise satisfy conditions of release, then the forty-eight-hour detention period will begin at that time, having the following practical effects:

- Although the bond has been posted, the defendant remains in custody and under immigration detention for up to forty-eight hours.
- The jail administrator or other person in charge of the facility holding the defendant has two hours from the time the bond is posted to notify ICE of when the forty-eight hours is set to expire.

12. G.S. 162-62(b1)(2), *as amended by* S.L. 2025-85 (H. 318).

13. *Id.* § 62(b1)(3), *as amended by* S.L. 2025-85 (H. 318).

14. *Id.* § 62(b1)(4), *as enacted by* S.L. 2025-85 (H. 318).

15. DHS Form I-247A, *supra* note 1.

- If by the end of the forty-eight-hour period ICE has failed to either take custody of the defendant or rescind the detainer, the defendant will be released pursuant to the conditions set forth in the AOC-CR-200 form.

D. Weekend and Holiday Detention

Under federal law, the forty-eight-hour detention period excludes Saturdays, Sundays, and holidays in order to permit assumption of custody by ICE.¹⁶ G.S. 162-62 does not describe a similar exclusion; instead, it states that the person subject to a detainer must be released after forty-eight hours from the time the person would otherwise be released. Despite the absence of language excluding weekends and holidays, which the General Assembly has included in other statutes,¹⁷ there is an argument that the legislature intended the forty-eight-hour period under state law to be calculated in the same way it is under federal law.

III. Role of the Jail Administrator

Prior to October 1, 2025, only jail administrators bore responsibility for inquiring about a person's residency status, monitoring the receipt of detainers and administrative warrants, and ensuring that the forty-eight-hour period discussed in the sections above was properly applied. S.L. 2025-85 now requires judicial officials to make residency determinations at the defendant's initial appearance. As a result, jail administrators may often find that a defendant who has recently been placed in their custody will have already had a residency determination conducted by a judicial official. In those circumstances, jail administrators can likely satisfy their obligation by reviewing the determination made by the judicial official.

On the occasion that the administrator finds an eligible defendant in custody whose residency has not been determined, G.S. 162-62 requires the administrator or other person in charge of the facility holding the defendant to conduct the residency inquiry. As with residency determinations made by judicial officials, the following categories of offenses trigger the inquiry:

- any felony;
- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of G.S. Chapter 14;
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order); and
- any offense involving impaired driving as defined in G.S. 20-4.01.¹⁸

If the person's status as a legal resident or citizen of the United States cannot be determined, the administrator or other person in charge of the facility must query ICE.¹⁹ If the administrator in charge of a confinement facility receives notice that ICE has issued a detainer and administrative warrant for a person charged with a criminal offense and currently confined in that facility, the administrator is required to take the person before a state judicial official to be processed pursuant to G.S. 162-62(b1).

16. 8 C.F.R. § 287.7(d).

17. See, e.g., G.S. 14-409.43 (forty-eight-hour window for reporting certain disqualifiers to National Instant Criminal Background Check System (NICS) "exclud[es] Saturdays, Sundays, and holidays"); 15A-1345(c) (hold of "seven working days" for alleged probation violators before preliminary hearing).

18. G.S. 162-62(a).

19. *Id.* § 62(b).

Although a judicial official often will have inquired into a person's residency status before confining the person to the facility, the jail administrator remains responsible for monitoring the receipt of detainers and administrative warrants for that person, including those that are issued outside of the initial two-hour detention period (see [Section II.A](#), above). The jail administrator also is responsible for ensuring that a defendant who is eligible for release is released at the appropriate time.

IV. Frequently Asked Questions

(1) How does a judicial official determine legal residency?

The new statute does not include any guidelines on how to determine legal residency, beyond the requirement that it be “by an inquiry of the defendant, or by examination of any relevant documents, or both.” A judicial official might consider preparing a list of questions to ask or a list of acceptable documents that would satisfy the official as to the defendant's citizenship or lawful residency status. Regardless of the method selected, the judicial official should consider uniformly applying the method to each defendant charged with a triggering offense so as to avoid any potential equal protection concerns.

(2) Does asking the defendant about his or her residency status raise self-incrimination concerns?

Possibly. The Fifth Amendment to the U.S. Constitution protects a person against compelled self-incrimination; a similar privilege exists in Section 23 of Article I of the North Carolina Constitution. The Fifth Amendment privilege protects against any compelled disclosures that a person reasonably believes could be used in a criminal prosecution or could lead to the discovery of other evidence that might be used in a prosecution.²⁰

The U.S. Supreme Court has explained that “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States,” and that the federal administrative process for removing someone from the country “is a civil, not criminal, matter.”²¹ Although being in the United States without legal status is a civil offense, criminal penalties may be imposed for some immigration violations, such as entering the country illegally in violation of 8 U.S.C. § 1325. Consequently, a person may invoke their Fifth Amendment right and refuse to answer questions about residency status if there is “even a remote risk” that he or she will be prosecuted and if the answers “might tend to reveal” that he or she committed a crime.²² If, during the residency inquiry, a defendant invokes the Fifth Amendment privilege and the judicial official lacks other reliable evidence regarding the defendant's residency and citizenship, the judicial official can reasonably consider themselves unable to determine the defendant's residency status and proceed in accordance with G.S. 15A-534(d4).

20. *Kastigar v. United States*, 406 U.S. 441 (1972).

21. *See Lunn v. Commonwealth*, 78 N.E.3d 1143 (Mass. 2017), *citing Arizona v. United States*, 567 U.S. 387 (2012).

22. *See generally Hernandez v. Hankook Tire Am. Corp.*, No. 2:12-CV-03618-WMA, 2014 WL 3052545, at *3 (N.D. Ala. July 3, 2014) (quoting *In re Corrugated Container Anti-Trust Litig.*, 620 F.2d 1086, 1091 (5th Cir.1980)).

Any information an in-custody defendant provides in response to a judicial official's residency inquiry may be inadmissible in any criminal proceeding unless the defendant first received *Miranda* warnings. However, the defendant's response may be used in immigration proceedings, including deportation proceedings, because these proceedings are civil and that a violation of *Miranda* does not require exclusion of the responses in those proceedings.²³

(3) If a magistrate conducts the residency inquiry at the initial appearance, will a judge have to again conduct the inquiry at the first appearance?

Unclear. One interpretation of G.S. 15A-534(d4) is that the residency inquiry must be conducted at every proceeding during which conditions of pretrial release are being considered for a defendant charged with an offense triggering the statute. This would include not only the initial appearance before a magistrate but also the first appearance before a judge, bond modification hearings, and appearances following orders for arrest. Absent reliable evidence regarding the defendant's residency and citizenship, this interpretation could subject a person to a two-hour detention at each stage of the process and could result in multiple, redundant queries to ICE. This would be particularly inefficient in cases where the proceedings are occurring in a short time span (e.g., when the initial appearance, first appearance, and bond modification hearing happen within the same week).

It is possible that a judge may properly rely on the inquiry conducted by a magistrate at the initial appearance. If the magistrate determined that the defendant is a legal resident or citizen of the United States, then the magistrate may wish to note that in the defendant's file, perhaps on the release order or on another local form. The judge could then rely on this notation during his or her residency determination as a "relevant document" within the meaning of the statute. If the magistrate was unable to determine the defendant's legal residency status, the judge will be made aware of such result through the existence of the AOC-CR-663 form in the defendant's case file. However, it is unlikely that a judge will be privy to the result of the ICE query since that information—to the extent that it is relayed by ICE—is not usually put in a defendant's case file. In those situations, since residency status remains unclear, a judge may wish to consider conducting an independent inquiry.

Another interpretation is that the inquiry is required only during the proceedings following an arrest. This includes both the initial arrest for the triggering offense and any appearances following orders for arrest but does not include first appearances and bond modification hearings. This interpretation is consistent with the General Assembly's phrasing of the requirement using language similar to that used in G.S. 15A-534(d2), which governs conditions of release for a defendant charged with a new felony while on probation. The context for this statute appears to contemplate only the initial determination of conditions of release.²⁴ Given that it is likely for significant amounts of time to have elapsed

23. See *Busto-Torres v. Immigr. & Naturalization Serv.*, 898 F.2d 1053 (5th Cir. 1990) (*Miranda* warnings are not required prior to questioning of person about information used to deport him or her, because deportation proceedings are civil, not criminal, in nature; deportation proceedings still must conform to due process standards, and involuntary statements are inadmissible).

24. See memorandum from the N.C. Admin. Off. of the Cts., "Pretrial Release and Bond Forfeitures—2009 Legislation and New/Amended Forms" (Nov. 9, 2009) ("When a subsequent judicial official reviews the eligibility for release of a defendant initially ordered detained pursuant to G.S. 15A-534(d2)(3), whether on the basis of additional information or at first appearance, the official apparently must make a definite yes/no

between arrests in a case, and since it is possible that a person's residency status could have changed since the last inquiry, it may be the more reasonable interpretation for the inquiry to be done during each "arrest cycle."

(4) What should a judicial official do if the defendant is not a legal resident or citizen?

In some cases, the judicial official's inquiry might lead the official to conclude that the defendant is not a legal resident or citizen of the United States. According to the statute, the mandatory detention period discussed in the sections above applies if the judicial official is "unable to determine" the person's legal residency status. Though the law does not expressly set forth any procedures that must be followed after a determination that a person does not have legal status, it is likely that the legislature intended for defendants without legal status to undergo an ICE query.

The language requiring a judicial official to conduct the residency inquiry mirrors the language in G.S. 162-62(b), which requires a jail administrator to conduct the same inquiry. G.S. 162-62(b) contains additional language stating that if the defendant has not been lawfully admitted to the United States, DHS will have been notified of the defendant's status and confinement at a facility by its receipt of the query from that facility.²⁵ There is an argument that the additional language in G.S. 162-62(b) evinces the legislature's intent that jail administrators query ICE both when a defendant's status is uncertain and when it is certain that the defendant does not have legal status. Though that additional language does not appear in G.S. 15A-534(d4), it is possible that the interpretation could be extended to the inquiry conducted by the judicial official.

On the other hand, there is an argument that a definitive determination that a defendant lacks legal status is not the equivalent of an inability to determine status within the meaning of the statute. The absence of the additional language found in G.S. 162-62(b) may signal a conscious decision by the legislature not to create a legal obligation to *report* a defendant's status to DHS or ICE, while maintaining the obligation to *inquire* when there is uncertainty. Under this interpretation, the judicial official would set release conditions as they normally would, without the imposition of a two-hour detention.²⁶ With either interpretation, the judicial official could reasonably consider a lack of legal status as a factor in setting conditions of release.²⁷

determination concerning the danger that the defendant poses to the public; the statute does not appear to allow for a second finding of 'insufficient information.' ").

25. G.S. 162-62(b).

26. In counties with what are known as 287(g) agreements, law enforcement officers may have certain reporting or enforcement duties. Judicial officials are not parties to these agreements, and the agreements do not require judicial officials to aid in the process. Given that G.S. 162-62 requires jail administrators to conduct the same residency inquiry, law enforcement officers in confinement facilities are likely to come to their own conclusions and take the appropriate action. See U.S. Dep't of Homeland Sec., U.S. Customs and Immigration Enf't, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, "[ICE's 287\(g\) Program](#)," ICE.GOV (updated Oct. 28, 2025) ("The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g) to the Immigration and Nationality Act (INA) — authorizing U.S. Immigration and Customs Enforcement (ICE) to delegate to state and local law enforcement officers the authority to perform specified immigration officer functions under the agency's direction and oversight.").

27. See G.S. 15A-534(c).

(5) Will magistrates be required to query ICE?

The statute does not explicitly require a judicial official to query ICE. Instead, the judicial official must commit the defendant to an appropriate detention facility “for a query of [ICE].” G.S. 162-62(b) explicitly requires a jail administrator or other person in charge of the facility to query ICE. Thus, the most reasonable interpretation is that the jail administrator will query ICE once the judicial official commits the defendant to the facility.

(6) Will ICE be able to issue a detainer and administrative warrant after the two-hour detention period ends?

Yes. If ICE has not issued a detainer and warrant by the end of the statutory two-hour detention period, then the defendant must be released pursuant to the conditions of release that have been set—which are typically memorialized on the AOC-CR-200 form—if and when he or she is able to satisfy those conditions. This, however, does not preclude ICE from issuing a detainer and warrant for a defendant who remains in custody beyond the initial two-hour detention period. A defendant who is not able to satisfy conditions of release beyond this period may later be subject to a forty-eight-hour immigration detention period upon receipt of the appropriate documents from ICE.

(7) Can improper detention be cured by later issuance of documents?

Not likely. A judicial official may issue the AOC-CR-662 form detention order for a defendant only when a detainer and warrant have been issued by ICE. If ICE has not issued a detainer and warrant by the end of the statutory two-hour detention period, then the defendant must be released, pursuant to the terms of release in the AOC-CR-200 form, if and when he or she is able to satisfy his or her conditions of release. This, however, does not preclude ICE from issuing a detainer and warrant for a defendant who remains in custody after the expiration of the two-hour detention period.

In the event a defendant is detained after satisfying conditions of release (e.g., under an erroneous belief that a detainer and warrant have been issued), a later issuance of those documents likely does not cure the mistake. This was addressed in *Santos v. Frederick County Board of Commissioners*²⁸ when ICE’s detainer request was sent forty-five minutes after officers had already arrested Santos for an immigration warrant. The court noted that the issuance of the ICE detainer did not cure the unlawful seizure because “the reasonableness of an official invasion of a citizen’s privacy must be appraised on the basis of the facts as they existed at the time that invasion occurred.”²⁹ The appropriate remedy under this circumstance would likely be to order the immediate release of the defendant, since a defendant who satisfied conditions of release would not be in custody if not for the unlawful detention.

28. 725 F.3d 451 (4th Cir. 2013).

29. *Id.* at 466 (quoting *United States v. Jacobsen*, 466 U.S. 109 (1984). *See also* *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (“Whether [an] arrest was constitutionally valid depends in turn upon whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.”).

(8) May a defendant challenge his or her detention pursuant to an ICE detainer?

Potentially. A defendant who is being held in custody in violation of North Carolina law may, in some circumstances, challenge the detention by filing a writ of habeas corpus.³⁰ A habeas corpus petition is used to argue that a person is being unlawfully held in custody and should be released. A habeas corpus proceeding is limited to reviewing the legality of the court's jurisdiction or authority to hold a person in custody; it may not be used to review general errors in the case.³¹ Therefore, state habeas may provide an avenue to challenge whether an immigration detainer exists but likely may not be used to challenge the validity of any such detainer.

North Carolina appellate courts have analyzed whether a defendant can challenge continued custody on an immigration detainer on habeas corpus grounds.³² The North Carolina Supreme Court held in *Chavez v. McFadden* that a trial court has jurisdiction to determine as an initial matter whether it has the authority to issue a writ of habeas corpus, but once that initial examination of the writ application shows that the defendant is being held pursuant to an immigration-related warrant or detainer in a county in which the sheriff has entered into a 287(g) agreement (see note 26, above), the trial court should summarily deny the application.³³ The court may not make any determination concerning the validity of the detainer or warrant, whether the petitioner is the person named in the immigration-related process, whether the law enforcement officers involved are properly certified, or whether the process has sufficient factual support.³⁴ Attempting to make such determinations would place the trial judge in the position of making decisions that have been reserved for federal, rather than state, judicial officials and potentially interfering with the manner in which federal immigration laws are administered.³⁵ The *Chavez* court noted, however, that a trial judge would have the authority to inquire into whether the custodian of the defendant has, in fact, entered into a 287(g) agreement that is presently in effect, though the validity of that agreement or the manner in which it is being implemented is an issue for the federal courts.³⁶

It remains unclear whether the existence of a 287(g) agreement in a given county is material in determining the availability of habeas relief for a defendant detained in that county. While the *Chavez* court noted several times that a trial judge must summarily deny a writ for habeas corpus if either the writ application or the return alleges that the custodian is a party to an active 287(g) agreement, the court made clear that it was expressing no opinion concerning the extent, if any, to which a defendant in the custody of a North Carolina agency that is not a party to a 287(g) agreement is entitled to discharge in a habeas proceeding conducted pursuant to state law.³⁷

30. For further discussion of the law related to state habeas corpus writs, see Jessica Smith, NC SUPERIOR COURT JUDGES' BENCHBOOK, [Habeas Corpus](#) (Mar. 2014; updated by Christopher Tyner Sept. 2024) (UNC Sch. of Gov't 2024).

31. See, e.g., *State v. Edwards*, 192 N.C. 321 (1926); *State v. Burnette*, 173 N.C. 734 (1917).

32. See *Chavez v. McFadden*, 374 N.C. 458 (2020).

33. *Id.* at 477.

34. *Id.* at 476.

35. *Id.*

36. *Id.*

37. *Id.* at 474.

Regardless of whether there is an active 287(g) agreement in place, a defendant cannot—in a habeas petition—challenge the *validity* of an ICE detainer or warrant or any other underlying issues. However, this probably does not preclude a defendant from challenging the *existence* of a detainer and warrant at the time of his or her detention. If a defendant who is otherwise eligible for release is detained at a time when no detainer and warrant have been issued, a court may be able to properly issue a writ of habeas corpus for, and order the release of, the defendant. Similarly, if a defendant who is otherwise eligible for release remains in detention beyond the forty-eight-hour window discussed in this bulletin, a court may be able to properly issue a writ of habeas corpus for, and order the release of, the defendant.