

Winston Pro Bono Team Wins Summary Judgment Against Federal Immigration Authorities for Issuing Unlawful Detainers

OCTOBER 3, 2016

In collaboration with the National Immigration Justice Center (NIJC), a Chicago-based Winston & Strawn pro bono team obtained summary judgment on behalf of a plaintiff class in a suit against federal immigration authorities. The case stems from the federal government's practice of issuing immigration detainers against people in state and local law enforcement custody who are suspected of being deportable. The detainers ask the law enforcement agencies to hold these individuals for up to 48 hours after they should otherwise be released, ostensibly so the federal government can assume custody.

With NIJC, we represented a class of current and future detainees, led by named plaintiffs who were issued detainers despite being either U.S. citizens or not otherwise subject to deportation. The complaint challenged the government's current practices on several grounds—including because the detainers are not supported by a sworn, individualized showing of probable cause, as required by the Fourth Amendment; do not entail prompt judicial review, in violation of the Fourth and Fifth Amendments; and do not rest upon an individualized assessment of flight risk, as required for a warrantless arrest under the Immigration and Nationality Act, 8 U.S.C. § 1357(a)(2).

The court certified a class and granted summary judgment in our clients' favor, holding that the U.S. Immigration and Customs Enforcement's (ICE) immigration detainer practices are unlawful because they exceed its statutory authorization. (The court left open the constitutional issues, given that we had demonstrated entitlement to relief under the statute.) The court concluded: "The bottom line is that, because immigration officers make no determination whatsoever that the subject of a detainer is likely to escape upon release before a warrant can be obtained, ICE's issuance of detainers that seek to detain individuals without a warrant goes beyond its statutory authority to make warrantless arrests under 8 U.S.C. § 1357(a)(2)." Although immigration advocates across the country are pressing similar claims, ours is the first case in the United States to succeed in establishing the unlawfulness of the detainer program.

Partner Linda Coberly led Winston's litigation team, which included Associate, with briefing assistance from Eric Shinabarger.

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