

FILED
10-07-2025
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

NO. 2025AP002121

VOCES DE LA FRONTERA, INC.,

Petitioner,

v.

DAVE GERBER, IN HIS OFFICIAL CAPACITY AS SHERIFF OF WALWORTH COUNTY; TODD J. DELAIN, IN HIS OFFICIAL CAPACITY AS SHERIFF OF BROWN COUNTY; CHAD BILLEB, IN HIS OFFICIAL CAPACITY AS SHERIFF OF MARATHON COUNTY; DAVID ZOERNER, IN HIS OFFICIAL CAPACITY AS SHERIFF OF KENOSHA COUNTY; AND CHIP MEISTER, IN HIS OFFICIAL CAPACITY AS SHERIFF OF SAUK COUNTY,

Respondents.

**NON-PARTY BRIEF OF THE AMERICAN CONSTITUTIONAL RIGHTS UNION
IN OPPOSITION TO VOCES DE LA FRONTERA, INC.'S PETITION TO THE
SUPREME COURT TO TAKE JURISIDCTION OF AN ORIGINAL ACTION**

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STATEMENT OF INTEREST
OF AMICUS CURIAE

This brief of *amicus curiae* is submitted by The American Constitutional Rights Union (“ACRU”).¹ The ACRU is a nonpartisan, nonprofit legal policy organization formed pursuant to Section 501(c)(3) of the Internal Revenue Code, dedicated to educating the public on the importance of constitutional governance and the protection of our constitutional liberties. The ACRU Policy Board sets the policy priorities of the organization and includes some of the most distinguished statesmen in the nation on matters of constitutional law. Current Policy Board members include the 75th Attorney General of the United States Edwin Meese III, and J. Kenneth Blackwell, the former U.S. Ambassador to the United Nations Human Rights commission and Ohio Secretary of State.

ACRU strongly believes that the rule of law is foundational to a well-functioning and safe society. ACRU asserts that without the ability to rid society of criminal aliens who have violated the law, this rule of law is unable to be upheld. ACRU further believes that state and local law enforcement is empowered to work with the federal government to uphold this rule of law, and that the ability to continue to detain criminals who are wanted by the federal government is of paramount importance. ACRU has put this belief into practice by recognizing law enforcement agents who work tirelessly to uphold

¹ ACRU affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the ACRU or their counsel made a monetary contribution to the brief’s preparation or submission.

immigration laws. By doing so, ACRU believes that Americans are made safer and more prosperous. ACRU asserts that this belief reflects a comprehensive understanding of the sacrosanct relationship between the federal government and the states, as well as a healthy respect for the importance of a safe society populated by people with a healthy respect for the law.

SUMMARY OF THE ARGUMENT

Petitioner, Voces de la Frontera, Inc., would have this Court believe that the question presented by the case at bar is whether Wisconsin law enforcement officers may “deprive a person of liberty after all state law bases for custody have ended, solely on the basis of a federal immigration Detainer.” (Pet. at 8).

In establishing this question, Petitioner makes two key mischaracterizations. Firstly, Petitioner mistakenly asserts that Detainers are issued exclusively for civil infractions. This is simply not the case. In fact, the issuance of Detainers for civil infractions would appear quite rare.

Second, Petitioner asserts that because Detainers are not arrest warrants, law enforcement may not make novel arrests pursuant to them (Petitioner then re-asserts the incorrect idea that Detainers are issued exclusively for civil infractions). (Pet. at 23-24, ¶¶ 43-44). In one of its many incorrect and misleading conclusory statements, Petitioner claims that “most violations of the Immigration and Naturalization Act are not criminal offenses” incorrectly implying that most Detainers are issued where there is no reasonable basis to believe a crime may have been committed. (Pet. at 21-24, n. 13).

However, Wisconsin law allows arrest for probable cause, of which the Detainer, itself, is evidence—again Petitioner intentionally obscures this most pertinent authority for these Detainers expressly included in Wis. Stat. § 968.07(1)(d). Additionally, while Detainers are not filed pursuant to arrest warrants, as Petitioner concedes, they are, indeed, made pursuant to valid administrative warrants. (Pet. at 23, ¶ 44).

As will be explained in greater detail below, both of these assertions are verifiably false. Therefore, the point that “all state law bases for federal custody have ended” is inherently misleading. Indeed, the Wisconsin law cited by the Petitioner allows for arrest when there is “reasonable grounds” to believe that a crime has been committed. Wis. Stat. § 968.07(1)(d).

Section 287(g) of the Immigration and Nationality Act (8 U.S.C. § 1101, *et seq.*) (the “Act”) lays out which reasons the United States Immigration and Customs Enforcement (“ICE”) may invoke for issuing a Detainer – this process is rarely (if ever) invoked for civil cases – it is overwhelmingly criminal. (App. *at passim*) See 8 C.F.R. § 287.7. Additionally, ICE policy mandates that Detainers only be issued when there is probable cause of criminal activity, and accompanied by a warrant.² Because of the standard set by ICE, state and local law enforcement may reasonably rely on Detainers as proof of probable cause of criminal activity, thereby allowing arrest under Wisconsin law.

As such, cooperative law enforcement offices are not making warrantless arrests pursuant to civil charges. Rather, these offices are making criminal arrests in response to

² Thomas D. Homan, *Policy Number 1074.2: Issuance of Immigration Detainer by ICE Immigration Officers*, https://www.ice.gov/doclib/foia/policy/10074.2_IssuanceImmDetainers_03.24.2017.pdf.

probable cause – a standard and constitutional practice used by nearly every law enforcement agency. The question, therefore, is not whether Wisconsin law enforcement may “deprive a person of liberty after all state law bases for custody have ended, solely on the basis of a federal immigration Detainer.” Rather, the question before this Court is whether Wisconsin law enforcement may share information with federal law enforcement, and transfer custody of alleged criminal offenders to federal officers upon request. The Court will likely find that the answer to this question is a clear “yes” and realize that such cooperation between local, state and federal law enforcement is a fundamental pillar our system of Federalism necessary to uphold the rule of law throughout the Nation.

Because the foundational assertion on which Petitioner’s entire complaint is based (that ICE Detainers are only issued for civil offenses) is not grounded in fact, this Court should deny the Petition at bar so as to discourage the future use of Original Actions to this Court as a weapon against federal, state, and local law enforcement.

ARGUMENT

INTRODUCTION

Immigration is almost certainly one of the most polarizing political issues facing the United States. In great part due to his strong stance on the issue, President Donald J. Trump won the popular vote as well as the votes of 312 electors (nearly 60%) in the 2024 presidential election. Pursuant to this electoral mandate the Trump Administration is putting to use those tools already at its disposal to fulfill the President’s campaign

promises. This includes the ability for ICE to form working connections with state and local law enforcement agencies. This system includes the so-called Section 287(g) program, which allows state and local law enforcement to notify ICE when they make an arrest. ICE then checks its database to determine if the individual being detained is wanted for criminal infractions of immigration statutes. If ICE determines that they are, they will send a memo (a so-called “Detainer”) to the state or local law enforcement office to maintain custody of the alleged criminal for up to an additional 48 hours to allow enough time for federal officials to take custody of the alleged criminal in accordance with a valid warrant.

However, in an attempt to influence law and policy outside of failed attempts at the ballot box, some organizations are taking to the judicial branch in order to intimidate law enforcement, induce judicial activism and paint organizations like ACRU in a bad light for supporting law enforcement at the federal, state, and local levels. Petitioner appears to be one of them. One of the stated goals of Petitioner is “opposing local law enforcement cooperation with ICE.” (Pet. at 11, ¶5). Petitioner’s express goal of obstruction is disturbingly broad, not just opposing alleged violations of constitutional rights (*if any*), but rather Petitioner asserts to discourage any cooperation between ICE and state and local law enforcement agencies, whatsoever. Petitioner’s goal, and the goal of its Petition, is not grounded in the rule of law, it is grounded in its radical advocacy for amnesty for illegal immigrants and specifically its express desire for the abolition of

Section 287g of the Act.³ With its radical agenda having failed in the proper channels—the Petition inappropriately asks this Court to act as a super legislature and carry out its policy objectives instead.

ACRU fears that this goal has clouded the judgment of the Petitioner. Without any evidence of actual wrongdoing by Respondents, Petitioner is forced to rely upon generalized assertions that are not so, and use such assertions to accuse law enforcement of systemically violating the civil rights of the innocent. This systemic violation, however, is a fiction.

In reality, the Section 287(g) program at issue is nothing more than a successful and well-designed information-sharing arrangement between federal law enforcement and state and local law enforcement that was expressly directed by Congress in the Act. In such cases where state and local law enforcement happen to have custody of someone who has found to violate federal immigration law, they are simply to keep them for no more than two days until they are able to be apprehended by law enforcement, instead of allowing them back onto the streets to potentially commit more crimes, or, at the very least, avoid enforcement action for crimes already committed. Any characterization of the program that would claim that it is meant to deport law-abiding members of society based on illegal profiling is not grounded in fact.

³ See *No 287g*, VOCES DE LA FRONTERA (Oct. 7, 2025, 9:12 AM), <https://vdlf.org/no-287g/>.

**I. ICE Detainers Pursuant to Section 287(g) are Overwhelmingly
Issued for Criminal Charges**

ICE Detainers are designed to work as follows. When Wisconsin law enforcement arrests someone, the law enforcement agency may submit their name to ICE. ICE then has an opportunity to check their database to determine whether the individual in custody is eligible for removal – largely as a result of criminal offenses. If ICE determines that they are, ICE will ask Wisconsin law enforcement to keep the individual in custody for up to an additional 48 hours while they make arrangements to transfer the individual into federal custody.

In their complaint, Petitioner posits no fewer than thirty-two (32) times that participating in the Section 287(g) program is an abridgment of civil rights because it calls for the arrest of individual for civil offenses, which violates Wisconsin law. (Pet. at *passim*). Indeed, the implication that Detainers are only for civil offenses forms the linchpin of their entire argument, as they claim that “Detainers are issued by ICE immigration officers as part of the civil immigration enforcement and removal action.” (Pet. at 14, ¶15). Further, Petitioner does not contemplate in their complaint that Detainers even could be issued for criminal offenses.

Petitioners statement of the facts paints a dishonest picture of the Detainer process. ICE Detainers are largely issued pursuant to criminal offenses – not for civil ones. Positing such a falsity represents, at best, a misunderstanding of the 287(g) program, and, at its worst, the intentional misrepresentation of facts in order to deceive this Court and to reflect poorly on federal ICE officials and state and local law enforcement. In fact, in

describing the Section 287(g) program, ICE itself, only makes mention of Detainers being sent for criminal offenses.⁴

In advertising their 287(g) program, ICE states, “[t]he 287(g) Program allows your law enforcement agency to enforce certain aspects of U.S. immigration law, expanding your department’s authority to: Identify and process removable aliens with pending or active *criminal* charges. Enforce limited immigration authorities with ICE oversight during routine duties. Serve and execute administrative warrants on removable aliens in your jail.”⁵ Petitioner does not identify anywhere in ICE’s literature advertising or describing implementation of the program that state and local law enforcement are to enforce civil offenses.

Further, nowhere in the Immigration and Nationality Act, as Amended by the Immigration Reform and Control Act of 1986 (“the Act”) is it suggested that Detainers are intended to be issued for civil matters. Detainers are only to be issued in accordance with §236.1 of the Act. 8 CFR 287.7(a). In laying out which circumstances are Detainers allowed to be issued, Section 236.1 mentions only removability as a pre-requisite. 8 CFR 236.1. While it is, indeed, the case, that aliens may be deemed removable for civil offenses, such cases of removal for non-criminal offenses only make up around 17% of removal cases in the Chicago Area of Concern (which includes the entire State of Wisconsin). *See* ACRU.APP.004. Further, in its own accounting for the 149,764 Detainers issued in Fiscal Year 2024, ICE’s stated reasons for issuing such detainers were

⁴ *Partner with ICE Through the 287(g) Program*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Oct. 7, 2025), [Ice.gov/287g](https://ice.gov/287g).

⁵ *Id.* (emphasis added).

the following: assault, sexual assault and sex offenses, weapons offenses, burglaries, robberies, kidnappings, and homicides – obviously not civil offenses. *See* ACRU.APP.005.⁶

II. State and Federal Law Enforcement is Empowered to Make an Arrest Pursuant to a Finding of Probable Cause

Petitioner in this matter often points to the distinction between an ICE Detainer and an arrest warrant. Because there is no warrant, says Petitioner, state and local law enforcement is not empowered to make an arrest. However, even by using Petitioner's cited statute, this Court should find that a Detainer empowers Wisconsin law enforcement officials to make such new arrest, as Detainers are, themselves, proof of probable cause of criminal activity.

As pointed out in the Petitioner's brief, Wisconsin statute section 968.07(1)(a)-(d) states that Wisconsin law enforcement may arrest an individual when:

- (a) The law enforcement officer has a warrant commanding that such person be arrested; or
- (b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

⁶ ACRU notes that federal law provides that aliens who violate certain state laws (including the foregoing) are considered criminal aliens, and in violation of federal criminal law. (*See* 8 U.S. Code § 1226 (c)(1)-(3)).

(c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

(d) There are reasonable grounds to believe that the person is committing or has committed a crime." Wis. Stat. § 968.07(1)(a)-(d).

The Petitioner then proceeds to once again assume (baselessly) that Detainers are issued solely for civil offenses. However, even a cursory look into ICE's internal policy for the issuance of Detainers shows that law enforcement is empowered to honor Detainers based upon multiple interpretations of this statute.

ICE policy states that "ICE immigration officers must establish probable cause to believe that the subject is an alien who is removable from the United States before issuing a Detainer with a federal, state, local, or tribal LEA. Further, as a matter of policy, all Detainers issued by ICE must be accompanied by either: (1) a properly completed Form I-200 (Warrant for Arrest of Alien) signed by an authorized ICE immigration officer, or (2) a properly completed Form I-205 (Warrant of Removal/Deportation) signed by an authorized ICE immigration officer."⁷ In reasonable reliance of this Directive, law enforcement can make arrests in accordance with 968.07(1)(a).

As has been discussed prior, Detainers are overwhelmingly issued for criminal offenses, not for civil ones. As such, law enforcement may reasonably rely on the Detainers themselves as proof of probable cause of criminal activity and make a novel arrest.

⁷ See *infra* fn. 3.

CONCLUSION

Petitioner's complaint asserts that ICE Detainers are issued exclusively for civil infractions. The complaint then proceeds to make grandiose claims of violation of constitutions, violations of civil rights, and general malfeasance from law enforcement based on this fact. However, this is a false assertion on the part of the Petitioner. Indeed, ACRU asserts that Detainers are issued overwhelmingly in response to criminal violations – a realization which causes the complaint to collapse upon itself.

ACRU fails to see the merits of the complaint from a legal standpoint. Rather, ACRU fears that this complaint represents an attempt to use this Court and the judicial system as a weapon to paint federal, state, and local law enforcement in a bad light. ACRU believes that reasonable immigration laws are vital to the rule of law and an organized society. Likewise, ACRU believes that strict enforcement of such laws should be celebrated, and should not place law enforcement agencies at risk of frivolous litigation.

As such, this Court deny Petitioner's petition for lacking merit, thus discouraging similar harassing actions from other organizations.

Sincerely,

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Dated: October 7, 2025.

CERTIFICATE AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief produced with a proportionate serif font.

The length of this brief is 3,223 words calculated by Microsoft Word.

Date: October 7, 2025.

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