

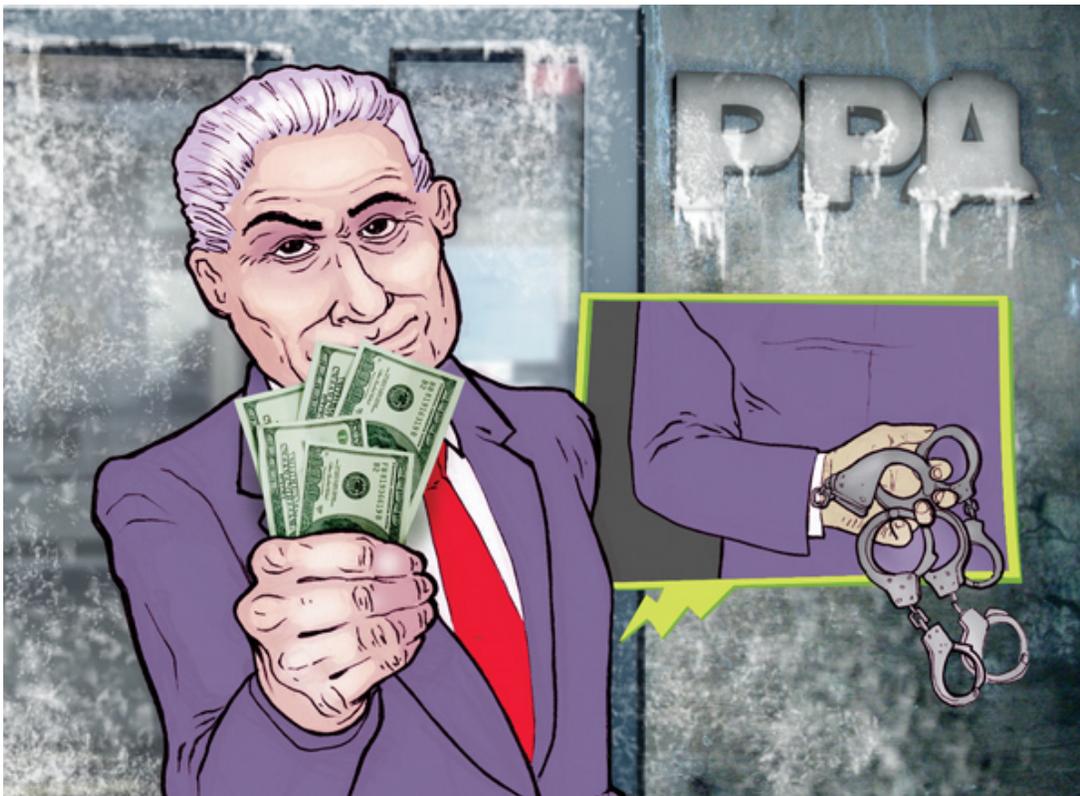
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## U.S. citizens score legal victories after ICE detention

By [Daniel Denvir](#)

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Evan M. Lopez

A federal appeals court has twice upheld the rights of American citizens wrongfully detained by Immigration and Customs Enforcement (ICE), including one case involving three Philly taxi drivers who allege they were held for hours after they proved their U.S. citizenship.

In the second case, the court's opinion takes aim at local government, ruling it can be held liable for detaining a citizen at ICE's request.

As the Third Circuit Court of Appeals handed down these recent rulings, Philadelphia Mayor Michael Nutter is reconsidering a policy in which city police cooperate with ICE requests to hold an immigrant who may be subject to deportation. The ICE holds are known as detainers.

The first case stems from one of Philadelphia's most controversial immigration stings. In 2010, the Philadelphia Parking Authority (PPA) sent letters to dozens of city taxicab drivers, informing them that an audit had discovered an accounting error in their favor.

"Congratulations," read the letter, which told the drivers to appear at PPA's South Philadelphia headquarters to receive a refund. "It appears that you are owed money." But when the drivers arrived, they were detained by ICE agents. PPA and ICE had compiled a list of taxicab drivers whom they believed to be undocumented immigrants. But three of those drivers — Oliver Lawal, Daosamid Bounthisane and Gazali Shittu — were U.S. citizens.

The three claim that they were "violently attacked, thrown against a wall and handcuffed." Agents then discovered that they were citizens — but the drivers say they were not allowed to leave. They were allegedly held for hours, and instructed not to stand or talk: Agents told them that they did not want other taxicab drivers to be tipped off to the sting. Armed officers stood by the door.

The drivers sued PPA, which settled. They also sued the agents, alleging they had violated their constitutional rights by recklessly including them on the list of undocumented immigrants, arresting them and then refusing to release them once their citizenship had been determined.

Last year, District Court Judge C. Darnell Jones threw out the suit. Jones found that the ICE agents were entitled to "qualified immunity" for placing the drivers on the list and then detaining them, and that the extended detention was a "minimal intrusion." He noted that they were "provided with food and drink."

But in a significant victory for the citizen taxicab drivers, the Third Circuit appeals court in December partially overturned the lower court's ruling. While it agreed with Jones that the agents did not violate the Constitution when they added the three to the sting list and made the arrest, the appeals court found that their "detention for several hours after they were no longer suspected of wrongdoing and the absence of allegations of serious criminal law violations or a dangerous, dynamic situation — may constitute an unlawful seizure under the Fourth Amendment." The lawsuit now returns to Judge Jones, and taxi-cab drivers plan to file an appeal to the U.S. Supreme Court, contending that their inclusion on the sting list and the detention of U.S. citizens was illegal.

"American citizens should not be detained as illegal aliens when authorities know or could easily know that they are not illegal aliens," says Tillman J. Breckenridge of Reed Smith LLP and managing attorney for William & Mary Law School's Appellate and Supreme Court Clinic, which is handling the appeals.

**The second case** involves the Allentown Police Department's detention of Ernesto Galarza. On a Thursday in November 2008, he was working on a construction site when his contractor sold cocaine to an undercover police detective. Galarza, along with the contractor and two other workers, was arrested on drug charges. Bail was posted for Galarza that Friday, but an official told him that he would have to spend the weekend at the prison. No one explained why.

An Allentown Police detective had contacted ICE to notify them of Galarza's arrest. The three other workers arrested were citizens of the Dominican Republic and Honduras. But Galarza is a New Jersey-born man of Puerto Rican descent.

A prison counselor visiting Galarza on Monday told him that he was being held because of an ICE detainer. At

the time of his arrest, Galarza was carrying his wallet, which contained his Social Security card and driver's license. The counselor allegedly denied Galarza's request to retrieve his documents from the property room. Galarza was released three days after his arrest, after ICE agents determined that he was indeed a U.S. citizen.

Galarza filed suit against the ICE agents, Allentown police and others, and most of the parties settled with him, but Lehigh County did not. District Court Judge James Knoll Gardner threw out Galarza's complaint against the county, contending that ICE detainers were mandatory and that the county had to comply. The appeals court overturned that ruling last week, finding that ICE detainers are voluntary and that local officials can thus be held liable for complying with them.

Galarza, who was acquitted of the drug charges, contends that he was held as a suspected undocumented immigrant because of his race.

ICE spokesperson Nicole Navas declined to answer questions about either case because of the pending litigation.

ICE has issued detainers for 834 U.S. citizens between fiscal years 2008 and 2012, according to a study by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University. An additional 28,489 detainers were issued for legal permanent residents, or green card holders. Northwestern University political scientist Jacqueline Stevens says the number of U.S. citizens detained is likely far higher.

The recent court ruling will likely encourage the growing number of states and localities that are limiting their cooperation with ICE. In Philadelphia, activists have criticized Secure Communities, which provides local law-enforcement fingerprint records to ICE, and faulted the city for giving ICE access to the police Preliminary Arraignment Reporting System. Now, the Nutter administration is considering ending compliance with ICE detainers, except in the case of some felonies. Advocates are pressing him to go further.

Stevens says the enormous Homeland Security apparatus that has been built to find and deport undocumented immigrants poses a risk to all Americans. "The reason that U.S. citizens get caught up in deportations," she says, "is because of the low level of constitutional protections for people who are believed to be aliens."

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