



The *Chavez* Case in North Carolina: Decision of North Carolina Supreme Court Q & A for Communities

IMPORTANT TERMS

IMMIGRATION DETAINER

A request from ICE to local jails to agree voluntarily to hold a person for an extra 48 hours after they would otherwise be freed so ICE may take them into its custody.

ADMINISTRATIVE WARRANT (ICE WARRANT)

A form issued by immigration officers to arrest a person they consider “deportable.” An ICE warrant is **not** a criminal arrest warrant. It does not allow entry to a home or private space. It typically accompanies an immigration detainer.

287(g) AGREEMENT

A voluntary federal program that deputizes local police to act as immigration agents.

WRIT OF HABEAS CORPUS

Gives a person who has been arrested or imprisoned the right to be brought to a judge or court to fight an unlawful detention or imprisonment.

Q. What is the *Chavez* case?

The *Chavez* case is an important legal case about whether immigrants can ask the state court to release them from state jails where ICE has issued an immigration detainer and/or administrative warrant.

Q. How did it begin?

The *Chavez* case involves two North Carolinians, Mr. Chavez and Mr. Lopez. In 2017, they were being held in Mecklenburg County jail for criminal charges and were released on bail. ICE had issued immigration detainers with ICE warrants, asking the sheriff’s office to keep them in jail for transfer to ICE custody and deportation.

The lawyers for Mr. Chavez and Mr. Lopez went to the Superior Court of North Carolina and asked a state judge to release them immediately. They argued that they were no longer in state custody and that they were being unlawfully detained. The state judge ordered them released.

Q. What happened next?

Although the state judge ordered their release, the Mecklenburg County Sheriff’s Office didn’t release Mr. Chavez and Mr. Lopez. Instead, they were turned over to ICE. The sheriff’s office also asked a higher court, the North Carolina Appeals Court, to overrule the judge’s decision to free Mr. Chavez and Mr. Lopez. They argued that Mecklenburg County had a 287(g) agreement with ICE and their officers were properly acting as ICE officers.

In November 2018, the appeals court agreed with the sheriff’s office and overruled the state judge. The appeals court also issued a broad **decision** that negatively impacted immigrants in the 92 counties without 287(g) agreements, finding that those individuals could not seek release in state court either. Mr. Chavez and Mr.

CHAVEZ IN THE COURT SYSTEM



WHO ARE THE PARTIES?

Chavez (Petitioner) v.
Mecklenburg County Sheriff's
Office (Respondent)



#1 - SUPERIOR COURT

The state court ordered the
release of Mr. Chavez.



#2 - COURT OF APPEALS

The state court of appeals
overruled the superior court
judge's ruling, denying
immigrants the fundamental
right to request freedom from
detention in state court.



#3 - THE SUPREME COURT OF NORTH CAROLINA

Lopez appealed the decision to the North Carolina Supreme Court. The Court issued a decision on June 5, 2020.

Q. What did the North Carolina Supreme Court decide?

The Court's decision did a few different things. First, the Court eliminated those parts of the Court of Appeals' opinion that addressed claims against sheriffs who *have not* entered into a 287(g) agreement. This is a very positive development and means that immigrants can once again ask state courts in the vast majority of counties without 287(g) agreements to release them from detention based on an ICE detainer and administrative warrant.

But disappointingly, the Court found that where the sheriff says that he is detaining an immigrant under a 287(g) agreement, the state court cannot order release because the sheriff is a de facto federal ICE officer. Rather, immigrants wanting to challenge their detention must bring the case in federal court.

Q. What does this case mean for immigrants in North Carolina?

It means that immigrants who are being held on ICE detainers and administrative warrants in counties without a 287(g) agreement can bring a case in state court for release. The Supreme Court did not indicate whether such detention is unlawful, but there are good arguments that state law **does not** allow sheriffs and their deputies to hold immigrants on the basis of a detainer **where there is no 287(g) agreement**. Individuals in this situation should contact Just Futures Law.

It also means that where there is a 287(g) agreement, including a Warrant Service Officer agreement, immigrants will need to go to federal court if, for example, the jail made a mistake and is detaining the wrong person or a U.S. citizen. As of July 7, 2020, counties in North Carolina that have entered into a 287(g) agreement are Alamance County, Albemarle District Jail, Cabarrus County, Caldwell County, Cleveland County, Duplin County, Gaston County, Henderson County, Lincoln County, Nash County, Randolph County, and Rockingham County.

Q. How can I learn more about the *Chavez* case?

Learn more at <https://justfutureslaw.org/chavez-v-carmichael>

Q. My family member is being held for ICE in a non-287(g) county, what should I do?

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