

# ‘Try Something New’: Attorneys Secure Client’s Freedom in ‘Novel’ Immigration Habeas Case

By Alyssa Aquino

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**A** game-changer of a habeas decision may have come out of the Manhattan federal court—a finding that local police officers’ misconduct towards a migrant was so unlawful that his later custodians, U.S. Immigration and Customs Enforcement, had to release him.

The decision came from a collaboration between Gibson, Dunn & Crutcher, Make the Road, LatinoJustice and the Robert & Ethel Kennedy Human Rights Center, who had learned of Olvin Castillo Chaver’s arrest and detention through a hastily filed habeas suit in the U.S. District Court for the Southern District of New York.

The attorneys said they believe the decision marks the first time that any federal court has forced ICE to release an immigration detainee over Fourth Amendment violations committed by local police—and they think



Courtesy photos.

**David P. Salant (L) of Gibson, Dunn & Crutcher, and Stephanie Cordero (R) of LatinoJustice.**

the order provides a roadmap for advocates who represent people who lack any means under the Immigration and Nationality Act to challenge their detention, and must instead rely on the U.S. Constitution.

“In a normal case, someone would argue he was held too long and should have been placed on bond,” said David Salant,

a partner at Gibson Dunn. “But that wasn’t available here.”

“We had to try something new,” he said.

The case began on Feb. 13, when Castillo Chaver, 35, had been pulled over by Nassau County officers. They searched his car, discovered a yellow pill and arrested him, asserting in a complaint that the pill was cocaine.

Castillo Chaver, who had come to the United States unlawfully when he was 11, had an old removal order against him. ICE reinstated that order and had officers pick Castillo Chaver up, according to a transcript of a hearing conducted April 16.

During that hearing, Salant argued that the arrest was unlawful in a number of ways—no one would have mistaken the yellow pill for cocaine and even if the pill was enough to support an arrest, the officers couldn’t have stopped Castillo Chaver for a pill they couldn’t see from outside his car.

Salant argued that the arrest was pretextual. Pointing to a phone call that the Nassau County Police Department made to ICE an hour before the arrest, Salant argued that local authorities made a determination about Castillo Chaver’s ability to stay in the United States, advised ICE and then made sure to encounter and arrest Castillo Chaver later.

“We believe we’ve established a seriously violative Fourth Amendment stop and arrest,” Salant argued to U.S. District Judge Katherine Polk Failla. “What does that mean for Your Honor? ...the illegal arrest by local police infected ICE’s subsequent detention.”

During an interview with Law.com and the New York Law Journal, Salant admitted that the theory was new. But that old removal order meant there was no other basis to argue for Castillo Chaver’s release.

“He was detained under Section 1231 of the INA, which is this very harsh provision that calls for mandatory detention... and gives [Department of Homeland Security] and ICE extensive authority to detain,” he said.

“It was exciting ... to offer up a novel legal theory. It was also totally nervewracking,” he said. “We were transparent to the court about that.”

Stephanie Cordero, senior counsel at LatinoJustice, explained that part of the novelty of the theory is that most advocates focus on ICE’s actions.

“It’s an argument that is very novel, for sure, in the habeas litigation world. But it’s so commonsensical at the same time. We’re seeing so much collaboration and collusion between local law enforcement and ICE,” she said.

Under the Trump administration, ICE has expanded its Section 287(g) program, through which ICE trains and deputizes state and local police to conduct immigration enforcement actions. In a February 2026 report, the American Civil Liberties Union estimated that nearly one-third of U.S. residents live in a county whose law enforcement has joined the program.

Nassau County has such an agreement, but Salant argued that the officers who arrested Castillo Chaver weren’t the ones deputized by ICE.

Failla agreed that the encounter raised several issues, pointing out that throughout the entire affair, Castillo Chaver had been questioned about his immigration status, not the pill, in what may have been meant to get that old removal order reinstated. Failla, a former prosecutor, also found it laughable that anyone could mistake a yellow pill for cocaine. (“I’m just laughing. That’s implausible in the extreme,” she said, according to the transcript.)

“The conduct by the Nassau County Police Department is, again, an egregious constitutional violation, and it is so intertwined with ICE’s later encounter with Mr. Castillo Chaver that I don’t believe attenuation could come into play here and I don’t believe the Fourth Amendment violation can be remedied in that respect,” she said.

A spokesperson for the Nassau County Police Department didn’t immediately respond to a request for comment.

In the habeas context, judges traditionally rule on statutory claims and refrain from addressing any constitutional ones. But Cordero said that Failla’s decision was a

“pure” one on the Fourth Amendment issue that’s already been garnering interest.

“Folks know about [the case] and they’ve reached out to LatinoJustice and Gibson to talk about it,” Cordero said.

The current administration has instituted a policy to detain without bond anyone who has entered the country unlawfully, regardless of whether they were arrested at the border at their time of entry and how long they’ve been in the United States.

The Second Circuit has found that the policy violates federal immigration law, but the policy was endorsed by the Fifth and Eighth Circuits, meaning that detainees in those circuits lack a statutory case against their detention, Cordero said.

“This provides another claim that could be made in those cases, where they don’t have the statutory provision,” she said.

But also, “if the Supreme Court sides with the Fifth and Eighth Circuits and decides that mandatory detention applies... then there will be no statutory claims for those folks,” Cordero said.