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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

## How Gibson Dunn Turned A Bitter Pill Into A Sweet Release

By Britain Eakin

*Law360 (July 24, 2026, 7:01 PM EDT)* -- In the early hours of Feb. 13, Olvin Castillo Chaver was driving out of a gas station when Nassau County police officers stopped and questioned the native Honduran on where he was from. The officers arrested Chaver after turning up a yellow pill in his car they claimed was crack cocaine — a theory that made a federal judge laugh aloud.

That yellow pill served as the lynchpin for Chaver's attorney from Gibson Dunn & Crutcher LLP to argue that the drug possession charge was a pretext to arrest him so the officers could eventually hand him over to U.S. Immigration and Customs Enforcement, which U.S. District Judge Katherine Polk Failla deemed "an egregious constitutional violation."

During an April 16 bench hearing, Judge Failla said the theory that a yellow pill could be crack cocaine was "amusing." In her 26 years as a prosecutor handling crack offenses prior to becoming a judge, she said she had never seen the drug in that form.

"That's implausible in the extreme," she said. "Knowing how crack is made, the idea that someone would thereafter, upon cooking it, put it into pill form and color it yellow, that's fascinating to me."

Gibson Dunn partner David P. Salant said Judge Failla's doubt about the yellow pill — likely medication left behind by an elderly woman to whom Chaver offered rides to buy groceries — gave him an opening to persuade her to order Chaver's release. Even though ICE had a valid legal basis to detain his client again by way of a formal removal order, vindicating Chaver's constitutional rights took precedence over the possibility he could be immediately rearrested — and, it would also allow him a chance to establish credible fears for his safety and fight his removal, Salant said.

"That was the game plan, was to try to knock out the legal basis for the arrest, leaving only an illegal basis, and therefore he needed to be released," Salant said.

To prevail, Salant needed to persuade Judge Failla that everything that came after Chaver's arrest was invalid under the Fourth Amendment, which requires officers to have reasonable suspicion to stop individuals and probable cause to arrest them.

Judge Failla ultimately sided with Salant and Chaver during that April hearing, finding that the Nassau County police officers who arrested Chaver had fabricated criminal drug charges as a cover to conduct an immigration stop and were not deputized under the federal 287(g) program, which lets ICE delegate to local and state law enforcement the authority to carry out some immigration officer functions.

Because the officers were not deputized under 287(g), Judge Failla agreed with Salant that Chaver's Fourth Amendment rights were violated and tainted his resulting detention. While suggesting that she might view Chaver's presence in the country after numerous removals unfavorably, she said she was ordering his release nonetheless to vindicate his constitutional rights, and by extension, everyone else's.

Judge Failla's ruling could provide a road map for immigrants to seek outright release from detention if nondeputized local officers use ordinary policing powers as a backdoor for immigration stops, according to Stephanie Cordero, senior counsel for immigrant rights at Latino Justice who helped Chaver file his initial habeas petition before the pro se litigation unit in the Southern District of New York referred his case to Gibson Dunn.

However, even deputized officers must follow the Fourth Amendment and have reasonable suspicion that someone is in the country unlawfully, so had the officers who stopped Chaver been deputized, they still would have needed that reasonable suspicion he was in the country unlawfully, Cordero said.

"How do you know that someone driving ... is here unlawfully, and just through the window," she said.

The ruling could have an even broader impact as 287(g) agreements between ICE and local law enforcement authorities explode in number.

The Trump administration has increasingly relied on 287(g) agreements to carry out its mass arrest, detention and deportation agenda. According to ICE data, as of July 20, the agency had 2,179 agreements covering 39 states and two U.S. territories.

That constitutes a sharp increase from 135 agreements at the end of fiscal year 2024, according to the Migration Policy Institute. In the first half of 2025 alone, the Trump administration signed another 730 new agreements, the think tank said.

Attorneys will need to adjust their strategy in cases where local officers are deputized under the federal program and question if the officers' actions were within the scope of the 287(g) agreement, according to Salant.

In such cases, attorneys would need to argue that 287(g) agreements can't "vitiating the Fourth Amendment," and that the constitutional violation "was so egregious and violative that a court should not countenance it."

"It's a great next question to ask in the next case," Salant said.

According to the transcript from Chaver's hearing, Chaver contended that the Nassau County Police Department called ICE around 3:45 a.m. on Feb. 13 about someone they believed was in the country unlawfully. Roughly an hour later, officers stopped him at a gas station, searched his vehicle and arrested him after finding the yellow pill in his car.

Chaver alleged that the officers' first questions to him were about where he was born, underscoring his argument that they had surveilled him and found a pretextual reason to arrest him before handing him off to ICE.

The officers later took him to a precinct where Chaver said he was again questioned about his

immigration status, and told to sign paperwork that his legal team said the officers falsely described as a "ticket" that would allow him to go home once he signed it.

That ticket was actually a notice to reinstate a prior removal order against Chaver, according to Salant, who said ICE officers took him into custody after he signed the document.

Chaver had argued in his habeas petition that ICE had "exploited the unconstitutional conduct of their local law enforcement partner."

According to his petition, Chaver came to the U.S. alone in 2001 from Honduras when he was 11. He was deported to his home country in 2011 after pleading guilty to New York state charges stemming from an argument with his ex-girlfriend.

He was arrested again in 2014 for illegal reentry, and was again removed to Honduras. He has lived in New York since 2018 with his partner and his children, who are 9 and 6 years old and suffer from health issues, including "severe chronic asthma, sleep apnea, and other health complications," his petition said.

Political science professor Bradford Jones at the University of California, Davis said Chaver's legal team may have found "an Achilles' heel" for 287(g) agreement.

The case could serve as a template for others similarly situated to Chaver "if for no other reason than there are thousands of these 287(g) agreements out there," he said.

In her ruling, Judge Failla raised concerns about ICE "incentivizing misconduct by local law enforcement in the service of the joint venture." Jones said that concern is not unfounded in light of the Trump administration's mass deportation agenda.

"That's hard to do without having a force multiplier in the form of 287(g), and it's even harder to do without enlisting the assistance, most likely of the kinds of officers that we saw in the case in Nassau County," he said.

The case is Chaver v. U.S. Immigration and Customs Enforcement, case number 1:26-cv-01300, in the U.S. District Court for the Southern District of New York.

--Editing by Orlando Lorenzo.