



# Mecklenburg County Sheriff's Office

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## A Detailed Account by Sheriff Garry L. McFadden Concerning Luis Pineda-Ancheta

June 5, 2019

1. On May 15, 2019, Luis Pineda-Ancheta was arrested on six state charges (one felony and five misdemeanors, including two charges of Assault on a Female, Communicating Threats, Simple Assault, Injury to Personal Property, and Felony Larceny) and placed in the custody of the MCSO at its Central Detention Center in Charlotte. **(Click here to read MCSO's current Arrest Processing (AP) and Release Post (RP) procedures:**  
<http://www.mecksheriff.com/pdf/arrestprocessingproc.pdf>;  
<http://www.mecksheriff.com/pdf/releasepostproc.pdf>)
2. On May 16, 2019, a Mecklenburg County District Court Judge, in consideration of the nature of the charges and Pineda-Ancheta's criminal history, by Court Order, set secured bond amounts totaling \$5,000 and conditions of release for each charge. On May 17, 2019, upon payment of those bonds and fulfillment of the conditions of release, MCSO released Pineda-Ancheta.
3. On May 24, 2019, Pineda-Ancheta was re-arrested on the following additional state charges: Assault by Strangulation, Communicating Threats, Assault on a Female, First Degree Kidnapping, and a Domestic Violence Protection Order Violation. Again, a Mecklenburg County District Court Judge set bond amounts and conditions of release, this time to include Electronic Monitoring.
4. Upon meeting all conditions of release for the second time, including the posting of \$65,000 in total bond by a bonding company, Pineda-Ancheta was released on June 1, 2019. By Order of the Court, Pineda-Ancheta was placed on Electronic Monitoring to be managed by CMPD.  
**(Click here to read the current Mecklenburg County Bail/Bond Policy:**  
<http://www.mecksheriff.com/pdf/bondpolicy.pdf>)
5. MCSO subsequently learned that ICE arrested Pineda-Ancheta on June 2, 2019.
6. MCSO is required by law to release from its custody any individual who has satisfied his bond and all Court-Ordered conditions of release.

7. MCSO does not determine whether any individual in its custody is granted a bond or, if so, the amount of the bond or whether the bond must be secured. MCSO does not set terms and conditions of release. These determinations are the sole responsibility of Mecklenburg County (for State charges) and Federal (for Federal charges) Judges and Magistrates.

8. At my direction, MCSO does not honor voluntary ICE administrative detainers. However, MCSO does (and MCSO must) honor federal arrest warrants. **(Click here for examples of a voluntary ICE Administrative Detainer and Warrant and a Federal Criminal Warrant:** <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>; [https://www.ice.gov/sites/default/files/documents/Document/2017/I-200\\_SAMPLE.PDF](https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF); <https://www.uscourts.gov/sites/default/files/ao442.pdf>)

9. In addition, as set forth in the MCSO AP policy (linked above) MCSO follows the requirement of state law to report to ICE any person in MCSO custody who is charged with a felony or a DWI offense and who MCSO cannot conclusively determine to be a United States citizen or a legal resident of the United States. **(Click here to read North Carolina General Statute 162-62:** [https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_162/GS\\_162-62.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_162/GS_162-62.html))

10. It is a federal felony to re-enter the United States after having been previously deported (this offense is commonly referred to as Illegal Re-Entry). **(Click here to read United States Code Title 8 Sections 1326 (a), (b)(1) and (b)(2), which codify the federal felonies of Illegal Re-Entry, Illegal Re-Entry by Felon, and Illegal Re-Entry by Aggravated Felon:** <http://uscode.house.gov/view.xhtml;jsessionid=C75E49BDB52DA0127E743B95C672EC86?hl=false&edition=prelim&req=granuleid%3AUSC-1995-title8-section1326&f=treesort&fq=true&num=0>)

11. Pineda-Ancheta was deported in 2006 and re-entered the United States some time prior to May 15, 2019.

12. At the time of his arrest on May 15, 2019, MCSO would not have known whether Pineda-Ancheta had been previously deported, but that information would have been readily available to ICE.

13. By May 16, 2019, at approximately 4:00pm, ICE had determined that Pineda-Ancheta was in the United States illegally and faxed the MCSO a request to voluntarily detain him – notwithstanding ICE’s well-documented knowledge of MCSO’s policy not to honor such voluntary requests.

14. If ICE were to have obtained a criminal arrest warrant against Pineda-Ancheta or any individual – for Illegal Re-Entry or any other criminal offense – MCSO would not (MCSO could not) release that individual unless s/he had fulfilled all terms and conditions of release and payment of bond as ordered by a Federal Judge or Magistrate. However, as of June 1, 2019, the

date of Pineda-Ancheta's second release, ICE had not obtained a criminal arrest warrant against Pineda-Ancheta.

15. By detailing Pineda-Ancheta's bond amounts, MCSO does not mean to suggest that those bond amounts should have been higher. But perhaps they could have been, and perhaps higher bonds would have kept Pineda-Ancheta in custody on May 17 and again on June 1.

16. By detailing what appear to be facts in support of federal felony charges against Pineda-Ancheta, MCSO does not mean to suggest that ICE should have promptly sought those charges. But perhaps they could have, and those charges would have kept Pineda-Ancheta in custody on May 17 and June 1.

17. MCSO acknowledges that it could have honored ICE's voluntary detainer request which would have kept Pineda-Ancheta in custody and released to ICE for direct placement into deportation proceedings. However, ICE has known since December 2018 that MCSO no longer honors voluntary ICE administrative detainers and warrants. If ICE felt it necessary that Pineda-Ancheta remain in custody even after fulfilling all terms and conditions of his release on State charges, and if ICE had sufficient grounds to seek a Federal Criminal Warrant which would have kept Pineda-Ancheta in custody, I believe ICE could have sought that Criminal Warrant prior to May 17 when Pineda-Ancheta was first released and ICE certainly could have sought that Criminal Warrant before June 1 when Pineda-Ancheta was released for the second time. To be clear, I am not suggesting that ICE *should* have sought Federal charges against Pineda-Ancheta in order to keep him custody – what ICE should or should not do is not for me to say. However, I think it is important for the public to understand that ICE *could* have sought those charges, certainly prior to June 1.

18. I and all of MCSO have deep respect and appreciation for the discretionary judgment of the Courts, and every Judge's best efforts to set bonds that protect the public, insure against risks of flight, but also honor everyone's presumption of innocence and the need to minimize the use of secure detention. I and all of MCSO also have deep respect for ICE and every other law enforcement agency, state and federal, and their discretionary judgment when it comes to such things as charging decisions. It is true that I, as the Sheriff of Mecklenburg County, in my discretion, with the best interests of the citizens of Mecklenburg County at heart, have exercised my discretion not to honor voluntary ICE detainers. It remains my sincere belief that the benefits of not honoring voluntary ICE detainers, and not participating in ICE's 287(g) Program whereby MCSO personnel would carry out immigration enforcement, vastly outweigh the detriments associated with closer cooperation with ICE on these limited issues. I believe that my decisions to cease MCSO participation in 287(g) and to stop honoring voluntary ICE detainers have already and will continue to improve communication and, most importantly, the trust between the immigrant population in Mecklenburg County and local law enforcement that is required to make our community safer. Furthermore, to honor a voluntary detainer request in Pineda-

Ancheta's case and others like it would result in the accused being deported before the citizens of Mecklenburg County and the victim of his alleged crimes could see him prosecuted for those crimes. My position on 287(g) and voluntary ICE detainers does not mean that MCSO does not cooperate with ICE and all other law enforcement agencies regarding other matters, including without limitation, providing assistance to all law enforcement agencies in enforcement of their respective operations at the Mecklenburg Courthouse. **(Click here to read current MCSO Mecklenburg Courthouse access policy:** <http://www.mecksheriff.com/pdf/courthousepolicy.pdf>)

19. I believe it is unfair and inaccurate to suggest that my discretionary decisions regarding 287(g) and voluntary ICE detainers are the sole reasons for Pineda-Ancheta's releases on May 17 and June 1. The discretionary decisions of multiple stakeholders in the criminal justice system – including judicial and law enforcement must also be acknowledged and addressed by those who believe that Pineda-Ancheta should have been kept in custody and then placed directly into deportation proceedings.

20. I regret that Pineda-Ancheta, upon fulfilling his Court-Ordered terms and conditions of release and paying his bond on May 17 is subsequently alleged to have been involved in additional criminal conduct including horrific crimes of domestic violence and a lengthy and dangerous stand-off with CMPD prior to his re-arrest on May 24. I am relieved that no one was more seriously harmed, and grateful for my colleagues at CMPD who were able to end the stand-off without injury to themselves or any bystanders. However, notwithstanding what may be the contemptible conduct of Pineda-Ancheta, I continue to believe that on balance, Mecklenburg County is a safer place than it would otherwise be if MCSO were participating in 287(g) and honoring voluntary ICE detainers.