

## **Abigail Hernandez pleads not guilty**

### **Hernandez**

She's being held without bail in Monroe County jail

### **Sean Lahman**

Rochester Democrat and Chronicle USA TODAY NETWORK

Abigail Hernandez appeared in court Thursday morning to be arraigned on two counts of making a terroristic threat. The 21-year-old special education student is accused of posting a message to Facebook in February threatening to shoot students at East High School.

The hearing lasted just a few minutes. Monroe County Court Judge Vincent Dinolfo read the charges while Hernandez, wearing an orange jumpsuit and looking nervous, stood by, speaking only to answer yes-or-no questions.

Her defense attorney, Clark Zimmermann, entered a not guilty plea on her behalf.

Assistant District Attorney Greg Colavecchia requested that Hernandez be held without bail, and her attorney consented. Judge Dinolfo's "no bail, no release" order will allow Hernandez to be held in the Monroe County Jail rather than being returned to the Buffalo Federal Detention Center in Batavia, where she has been held since February.

Hernandez, who was born in Mexico, is considered an undocumented immigrant and is facing deportation as well as the criminal charge. Her father said he and his wife have green cards, and their two younger children are American citizens. But they did not obtain necessary documents for Abigail when she was brought to this country.

### **Disability concerns**

A spokesman for the Monroe County Jail confirmed Thursday afternoon that Hernandez was back in local custody. The change is a relief to her friends and family, who have said that visiting her in Batavia had been challenging.

"Where she was held before is a federal facility so it's not as easy to get in there as it is here," Zimmermann said.

Being in local custody will make it easier for defense attorneys to get a professional evaluation of any developmental disabilities Hernandez might have.

"She does have some limitations that I think are obvious," Zimmermann said. "In speaking with her she does have some limitations in her ability to comprehend."

Her parents say that Hernandez, 21, was part of a special education program in the Rochester City School District.

While they offered no specifics about her disability, they say she has special needs and is very dependent on her family. They said she doesn't leave the house on her own and insist that Hernandez was not capable of carrying out the threat she is accused of making.

Zimmermann said Hernandez's limitations have also made detention challenging.

“Abby is acclimating herself to being in custody. I don’t think she has a full understanding of what’s going on, frankly. She is a nice friendly kid, and she’s trying to make friends as best as she can.”

### Next steps

Judge Dinolfo set a tentative trial date for Aug. 20, although lawyers will return to court for an evidentiary hearing on May 24. That is assuming her deportation case does not take precedence in the meantime.

Officials with Immigration and Customs Enforcement have alleged that Hernandez is considered an undocumented immigrant and is facing deportation in addition to the criminal charges.

The DACA policy allows young peo-

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**Abigail Hernandez was arraigned on two counts of making a terroristic threat in Monroe County Court. Hernandez stood between her attorneys Michael Geraci and Clark Zimmermann. POOL PHOTO/WHEC-TV**

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#### Hernandez

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ple who were brought here unlawfully as minors to live, attend school and work without fear of deportation as long as they abide by the law and meet a range of guidelines.

If a so-called Dreamer is charged with a crime, judged a threat to public safety or found to have violated program rules, ICE can commence removal proceedings.

This is what appears to be happening with Hernandez. On Monday, a federal judge denied a request from her immigration attorney, Hannah Vickner-Hough, to allow Hernandez to be released from federal custody on bond.

The next step would be a hearing on the immigration allegations, which could lead to Hernandez being deported.

“The criminal case and immigration case run simultaneously,” Vickner-Hough explained. “They do have an effect on each other and I assume both counsels will use arguments to slow or delay or close one proceeding or the other, but they can run simultaneously.”

It's possible that those proceedings could reach a conclusion before the criminal case is resolved.

"As far as I'm aware she has lived in Rochester all of her life, and we're trying to keep her here," Zimmermann said. "My understanding is the majority of her family is here."

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**Attorneys Clark Zimmermann and Hannah Vickner-Hough address questions about Abigail Hernandez's charges. TINA MACINTYRE-YEE/@TYEE23/STAFF PHOTOGRAPHER**



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POOL PHOTO/WHEC-TV