

THE ALL-IN-ONE GUIDE TO

DEFEATING ICE HOLD REQUESTS

(a.k.a. Immigration Detainers)

APPENDIX 9

Documents Showing That ICE Detainers Are Not
Mandatory for Local Law Enforcement



ALL IN ONE GUIDE TO DEFEATING ICE HOLDS


APPENDIX 9

Materials Supporting the Non-Binding Nature Of Immigration Detainers

Table of Contents

1. California Attorney General’s Bulletin	1
Bulletin from the Attorney General on CA law enforcement obligations regarding ICE detainers, from December 2012	
2. What ICE Isn’t Telling You About Immigration Detainers	4
Brief fact sheet on immigration detainers, how they work, and what they mean, by the ACLU Immigrant Rights Project	
3. Frequently Asked Questions about Detainer Discretion	6
Succinct legal information about immigration detainers and Secure Communities, by the Immigration Justice Clinic, Cardozo School of Law, May 2012	
4. Jimenez Moreno v. Napolitano, Government Admissions	9
Court Records from a federal lawsuit in Illinois where ICE admits that Detainers do not impose any obligation on local law enforcement agencies to maintain custody of individuals (see highlighted admissions)	
5. Advisory on ICE’s 2012 Revised Detainer Guidance and Detainer Form	20
Explanation and analysis of ICE’s new detainer guidance and revised I-247 detainer form, from the National Immigration Project and the Immigration Legal Resource Center	
6. New ICE Policy Memorandum on Detainers	30
Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems, December 2012	
7. New ICE Detainer Form	34
Revised I-247 ICE detainer form as of December 2012	

Kamala D. Harris, Attorney General

<p>California Department of Justice CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION Larry Wallace, Director, Division of Law Enforcement</p>		<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> Responsibilities of Local Law Enforcement Agencies under Secure Communities</p>	<p><i>No.</i> 2012-DLE-01</p>	<p><i>Contact for information:</i></p>	
	<p><i>Date:</i> 12-4-12</p>	<p>Larry Wallace, Director, Division of Law Enforcement 916-319-8200</p>	

TO: Executives of State and Local Law Enforcement Agencies

The California Department of Justice (CalDOJ) and the Office of the Attorney General have received inquiries about state and local law enforcement responsibilities under Secure Communities, a federal program administered by the Immigration and Customs Enforcement agency (ICE) of the United States Department of Homeland Security (DHS). These inquiries have included whether local law enforcement must fulfill a federal detainer request even if that agency determines that fulfilling the request would not be consistent with public-safety priorities or the best use of limited local law enforcement resources; and whether a local law enforcement agency may adopt guidelines for fulfilling federal detainer requests. To provide needed clarity on these matters, this bulletin:

- Provides information on the purpose and operation of the Secure Communities program;
- Outlines the responsibilities of state and local law enforcement agencies regarding custody of unlawfully present immigrants subject to federal detainer requests;
- Clarifies that individual federal detainees are requests, not commands, to local law enforcement agencies, who make their own determination of whether to use their resources to hold suspected unlawfully present immigrants; and
- Determines that the Secure Communities program does not prohibit local law enforcement agencies from adopting a protocol governing the circumstances under which they will fulfill federal detainer requests.

What is Secure Communities?

DHS implemented the Secure Communities program as a way to identify, detain, and remove from the United States unlawfully present immigrants who have been convicted of a crime and those who pose a threat to public safety. The program does not require California law enforcement agencies to determine an individual's immigration status or to enforce federal immigration laws.

Secure Communities works when fingerprints taken by state and local law enforcement agencies are sent to CalDOJ to positively identify the arrestee and to check his or her criminal history. In addition to checking its own records, CalDOJ forwards the fingerprints to the FBI's Criminal Justice Information Services division to search for federal and out-of-state arrest, warrant, and conviction history—an action that is essential both for officer safety and to identify and detain fugitives who may have fled other jurisdictions. Under the Secure Communities program, the FBI forwards the fingerprints to DHS to be checked against immigration and other databases. DHS then sends the immigration response, if any, to the FBI, which sends it, along with any criminal history information, to CalDOJ, which generally delivers all the information to the requesting law enforcement agency.

If fingerprints match an immigration record, ICE evaluates whether to take action. In deciding how to respond, ICE has purported to use a risk-based approach that classifies arrestees into levels, beginning with those who have serious prior convictions and those who present the greatest threat to public safety, which it has described as a "worst first" approach. If ICE chooses to assume custody of a detainee, it sends an "Immigration Detainer – Notice of Action" (DHS Form I-247) to the jailor asking that the jailor hold the individual for up to 48 hours after he or she would otherwise be released to give ICE time to complete its evaluation or to take the person into immigration custody. Unlike arrest warrants and criminal detainers, however, immigration detainers may be issued by border patrol agents, including aircraft pilots, special agents, deportation officers, immigration inspectors, and other employees of ICE, without the review of a judicial officer and without meeting traditional evidentiary standards.

What Responsibilities Do State and Local Law Enforcement Agencies Have under Secure Communities?

As explained above, the Secure Communities program does not require state or local law enforcement officers to determine an individual's immigration status or to enforce federal immigration laws. Under the Secure Communities program, anyone who is arrested is automatically screened for immigration violations when his or her fingerprints are sent to the FBI to check for federal and out-of-state criminal history. And while the results of the immigration search generally are returned to the arresting law enforcement agency along with any criminal history, ICE alone evaluates whether to take immigration enforcement action based upon the facts of each case.

Are Local Law Enforcement Agencies Required to Fulfill Individual ICE Immigration Detainers?

No. Local law enforcement agencies in California can make their own decisions about whether to fulfill an individual ICE immigration detainer. After analyzing the public-safety risks presented by the individual, including a review of his or her arrest offense and criminal history, as well as the resources of the agency, an agency may decide for itself whether to devote resources to holding suspected unlawfully present immigrants on behalf of the federal government.

Several local law enforcement agencies appear to treat immigration detainers, sometimes called "ICE holds," as mandatory orders. But immigration detainers are not compulsory. Instead, they are merely requests enforceable at the discretion of the agency holding the individual arrestee. (See ICE Website, available at http://www.ice.gov/secure_communities ["Secure Communities imposes no new or additional requirements on state and local law enforcement"].) We reach this conclusion both because the I-247 form is couched in non-mandatory language and because the Tenth Amendment to the U.S. Constitution reserves power to the states to conduct their affairs without specific mandates from the federal government. Under the Secure Communities program, the federal government neither indemnifies nor reimburses local law enforcement agencies for complying with immigration detainers. (See 8 C.F.R. § 287.7(e).) Under principles of federalism, neither Congress nor the federal executive branch can require state officials to carry out federal programs at their own expense. If such detainers were mandatory, forced compliance would constitute the type of commandeering of state resources forbidden by the Tenth Amendment. (*Printz v. United States* (1997) 521 U.S. 898, 925 ["The Federal Government . . . may not compel the States to implement, by legislation or executive action, federal regulatory programs"]; *New York v. United States* (1992) 505 U.S. 144, 161 ["the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress's instructions"].)

In a time of shrinking financial resources, a growing range of critical public-safety priorities, limited space for housing prisoners, and layoffs of police officers and sheriffs deputies, it is appropriate that California law enforcement agencies that receive immigration detainer requests consider them carefully and determine what

course of action best protects public safety in light of the facts of each case. All efforts must be made to identify, detain, and remove from the United States unlawfully present immigrants who may be dangerous, pose a public-safety risk, or have been convicted of offenses of a serious or violent nature. Any action to the contrary could pose a great risk to public safety.

Does the Secure Communities Program Prohibit a Local Law Enforcement Agency from Adopting a Protocol Governing Its Response to ICE Immigration Detainers?

No. Immigration detainer requests are not mandatory, and each agency may make its own decision about whether or not to honor an individual request. Accordingly, local law enforcement agencies may establish a protocol to assist them in determining how to respond to a federal request to hold, at the local agency's own expense, suspected unlawfully present immigrants with minor or no criminal history, so long as any such protocol gives primary consideration to protecting public safety in determining whether to honor a detainer request.

Local agencies are best positioned to determine the highest use of local resources, and if the local law enforcement agency determines that releasing certain individuals does not present a risk to public safety, a federal detainer request cannot, by itself, reverse that determination.

###

WHAT ICE ISN'T TELLING YOU ABOUT DETAINERS

A fact sheet for local law enforcement agencies

You have probably been hearing a lot recently about ICE detainers (also known as “ICE holds,” “immigration holds,” or “detainer requests”). Here are some important facts about ICE detainers that ICE usually neglects to mention.

1

ICE detainer requests are not mandatory.

An ICE detainer request is just that: a request. There is no legal requirement for your department to comply. The federal government has [no legal right](#) to force your department to hold anyone beyond the time when they are eligible for release from state or local custody. Although ICE often tries to dodge the question in public, it has admitted in internal documents: “[A detainer] is a request. There is no penalty if [local agencies] don’t comply.” See also [Law Professors’ Letter to California Governor Jerry Brown](#) (Aug. 30, 2012) (noting that “agency statements have consistently described immigration detainers as non-binding requests”); [Buquer v. City of Indianapolis](#), 797

F.Supp.2d 905, 911 (S.D. Ind. 2011) (“A detainer is not a criminal warrant, but rather a voluntary request”). In fact, a growing number of jurisdictions across the country—including [Connecticut](#); [Cook County](#) and [Champaign County](#), IL; [Washington D.C.](#); [Santa Clara County, CA](#); [New York City, NY](#); and [Milwaukee, WI](#)—have already decided not to comply with ICE’s detainer requests, or to comply with them only in limited circumstances.

ICE detainer requests are not warrants, and they do not provide a lawful basis for arrest or detention.

2

An ICE detainer is not a warrant. A genuine criminal warrant must be issued by a judge and supported by a determination of probable cause. In contrast, ICE detainer is issued by an ICE officer, not a judge, and is frequently issued simply because ICE has [“initiated an investigation”](#) into a person’s status. The fact that ICE issues a detainer does not mean that the individual is actually a non-citizen subject to deportation, or even that ICE has probable cause to think so.

An ICE detainer is also [not a criminal detainer](#). A criminal detainer can be issued only if there are charges pending in another jurisdiction against a person currently serving a criminal sentence, and they are subject to multiple procedural safeguards, including a requirement of court approval. An ICE detainer lacks any comparable protections, and is often issued when there are *no* immigration proceedings pending. Except for the name, ICE detainers have virtually nothing in common with criminal detainers. See also [Major Cities Chiefs Immigration Committee Recommendations](#) at 6 (June 2006) (“[C]ivil detainers do not fall within the clear criminal enforcement authority of local police agencies and in fact lay[] a trap for unwary officers who believe them to be valid criminal warrants or detainers”).

The Supreme Court has emphasized that [“\[d\]etaining individuals solely to verify their immigration status would raise constitutional concerns.”](#) But that is precisely what ICE asks local agencies to do when it issues ICE detainers. Continuing to detain a person after they are eligible for release, based purely on an ICE detainer issued without probable cause that the person is actually deportable, is a clear violation of the Fourth Amendment.



3

Holding someone for ICE is expensive.

Holding people at ICE’s request is expensive for the state or local community. ICE has stated that it [“does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual.”](#) Your department will pay the costs of holding people at ICE’s request—and these costs can be substantial. They can amount to millions of dollars of state or local money being spent for ICE’s benefit. For example, a 2012 study found that Los Angeles County taxpayers spend over [\\$26 million per year](#) on ICE detainees.

In addition to the costs of detention, your agency faces the costs of legal liability if you choose to comply with ICE detainees. Detainer lawsuits are regular occurrences, and although the request comes from ICE, the choice to comply means a state, county, or city is liable for potential damages. In 2011, for example, Jefferson County in Colorado [agreed to pay \\$40,000](#) after holding a man in jail for 47 days on an ICE detainer (well past the detainer’s own time limit). In 2008, New York City [agreed to pay \\$145,000](#) to settle a lawsuit by a man who was wrongly held on ICE detainees for a total of 140 days. And in 2010, Spokane County, Washington, [agreed to pay a \\$35,000 settlement](#) to a man who was wrongly held without bail for 20 days because of an ICE detainer.

ICE frequently makes mistakes.

4

ICE issues erroneous detainees with disturbing regularity. In Washington State, for example, [Rennison Castillo, a U.S. citizen and army veteran](#), was held for seven months in immigration detention after ICE placed a detainer on him—despite his multiple attempts to prove his citizenship. After his release, ICE admitted their mistake, saying they had misspelled his name in their records and had assigned him multiple file numbers.

ICE has made many similar errors around the country in recent years. For example, in California, a [U.S. citizen named Antonio Montejano](#) was imprisoned because of an ICE detainer for four days after he should have been released. Although Mr. Montejano was born in Los Angeles, he “triggered a positive match” in ICE’s database because ICE had wrongly deported him in 1996 and failed to correct its records. And in Rhode Island, [Ada Morales](#), who became a naturalized U.S. citizen in 1995, has been wrongly held in jail twice on ICE detainees because ICE never updated its records.

5

Getting involved with ICE detainees undermines public safety.

When your department chooses to comply with ICE detainees, people in the community may come to see you as an arm of ICE. This perception can have devastating consequences for community relations, [eroding people’s trust](#) in your officers and [making them reluctant to come forward and report crimes](#) because they fear immigration consequences for themselves or others. By declining to comply with ICE detainer requests, you can maintain a clear distinction between your officers and federal immigration authorities, encourage people to report crimes and cooperate in community policing efforts, and ensure the safety of the whole community.

CONCLUSION

We urge you to put your community first by reducing or eliminating your compliance with ICE detainees. Every day they violate constitutional rights, drain scarce local resources, and undermine your relationships with the communities you are working to keep safe.

Frequently Asked Questions About Detainer Discretion

Kathryn O. Greenberg Immigration Justice Clinic, Benjamin N. Cardozo School of Law

May 9, 2012

1) What is an immigration detainer?

An immigration detainer is a request by Immigration and Customs Enforcement (ICE) that a jail or law enforcement agency detain a person for an additional 48 hours after the time he or she is supposed to be released.¹ A detainer is not a warrant or a judicial order; it only indicates a possible civil immigration violation and allows ICE to pick up any person it believes may be deportable.

2) Are immigration detainers mandatory?

Immigration detainers are NOT mandatory. According to the Tenth Amendment and case law, requests such as this are not mandatory in nature.² ICE as well as state and local governments in places like Cook County, Santa Clara County, New York City, San Francisco, Santa Fe, and the state of Connecticut have acknowledged that civil immigration detainers are merely requests and that state and local governments have discretion as to whether to comply with them.

3) What about that “shall” language in the regulation?

The correct way to interpret 8 C.F.R. § 287.7(d), as federal courts and ICE itself have implicitly acknowledged, is that the “shall” language defines the maximum number of hours that someone with an immigration detainer may be held. The “shall” language does not require local agencies to hold someone in the first place.³

4) How long are immigration detainers effective for?

48 hours. This excludes holidays and weekends.⁴

5) Would an immigration detainer discretion policy save my city money?

In all likelihood, yes. Contact Sonia Lin, Cardozo School of Law Immigration Justice Clinic, at (212) 790-0213 or slin@yu.edu for more information on how to calculate savings.

¹ See 8 C.F.R. § 287.7.

² See, e.g., *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905, 911 (S.D. Ind. 2011) (“A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency ‘advise [DHS], prior to release of the alien, in order for [DHS] to arrange to assume custody.’ . . . The detainer automatically expires at the end of the 48-hour period.”). See also *Printz v. United States*, 521 U.S. 898, 935 (1997) (Under Tenth Amendment, “[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”); *New York v. United States*, 505 U.S. 144, 161 (1992) (relying on Tenth Amendment principles to hold that “Congress may not simply ‘commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program’”).

³ See 8 C.F.R. § 287.7; see also Notes from ICE Oct. 2010 Briefing to Congressional Hispanic Caucus, ICE 2010FOIA 2674.020612 (“Local LE [law enforcement] are not mandated to honor a[n ICE] detainer, and in some jurisdictions they do not.”); DHS/ICE Emailed Q&A, Jan. 26, 2011, ICE 2010FOIA 2674.017695 (“Q: Is an ICE detainer a request or a requirement? Answer: It is a request. There is no penalty if they [local law enforcement agencies] don’t comply.”).

⁴ See 8 C.F.R. § 287.7(d).

6) Won't an immigration detainer discretion policy cause us to lose our SCAAP reimbursement?

No. SCAAP only reimburses for a very small amount of your expenses, and only for a very limited class of detainees.⁵ For a jurisdiction to receive SCAAP money, the detainee has to either have a felony or two misdemeanor convictions. And the money only covers certain costs incurred during the 48-hour period, and even then only reimburses a relatively small proportion of the costs—in FY 2010, the number was just 29.52 percent⁶—because Congress has consistently not appropriated enough money. ICE is in essence asking localities to foot the bill for these additional 48 hours.

7) Will the federal government cut off our SCAAP reimbursement if we pass an immigration detainer discretion policy?

Very unlikely. That hasn't happened in any jurisdiction. Nor has the federal government cut off any other federal funding in cities with immigration detainer discretion policies.

8) Am I exposing my city to liability for even complying with the 48-hour hold request because it is unconstitutional to do so under the Fourth Amendment, or because immigration detainees are not statutorily authorized for non-drug cases?

Maybe. These legal issues have yet to be finally resolved by the courts. Lawsuits have been filed in Illinois,⁷ California, and Connecticut⁸ that bring Fourth Amendment claims against jurisdictions for complying with immigration detainer requests, on the theory that immigration detainees are unlawful, unsupported by probable cause or sworn evidence, and provide no legal authority for continued detention. Lawsuits also allege that immigration detainees exceed ICE's statutory authority.⁹ In addition, courts have awarded significant damages to individuals who were mistakenly held for longer than 48 hours on immigration detainees. It is the local city or county that had custody over the individual that is responsible for paying damages arising from such litigation, not ICE.

9) Hasn't ICE adopted a prosecutorial discretion policy, so they won't issue immigration detainees against people without serious crimes?

We can't rely on ICE's prosecutorial discretion policy¹⁰ to protect our residents. First of all, it is not binding on ICE. They can always elect to bring a deportation case if they want to. Second, it has not been shown to have reduced the number of deportation cases.¹¹ Third, it is not easy to convince ICE to exercise prosecutorial discretion. Prosecutorial discretion is definitely a positive development but it's not a solution.

⁵ See FY 2011 SCAAP GUIDELINES, U.S. DEP'T OF JUSTICE BUREAU OF JUSTICE ASSISTANCE 2-3 (2012), available at https://www.bja.gov/Funding/11SCAAP_Guidelines.pdf; see also FY 2011 SCAAP Awards (2012), available at <https://www.bja.gov/Funding/11SCAAPAwards.pdf>.

⁶ See FY 2011 SCAAP GUIDELINES, *supra* note 5 at 5.

⁷ See *Jimenez Moreno v. Napolitano*, No. 11- 05452 (N.D. Ill. filed Aug. 11, 2011).

⁸ See *Brizuela v. Feliciano*, No. 3:12-cv-00226-JBA (D. Conn. filed Apr. 13, 2012).

⁹ *But see Committee for Immigrant Rights of Sonoma County v. County of Sonoma*, 644 F. Supp. 2d 1177, 1198 (N.D. Cal. 2009) (rejecting statutory authorization claim).

¹⁰ See John Morton, ICE Director, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>.

¹¹ TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE AT SYRACUSE UNIVERSITY, HISTORIC DROP IN DEPORTATION ORDERS CONTINUES AS IMMIGRATION COURT BACKLOG INCREASES (Apr. 24, 2012), available at <http://trac.syr.edu/immigration/reports/279> (reporting that less than 4% of recent closed cases are attributable to the prosecutorial discretion policy).

10) What happens to people if we decide not to comply with immigration detainers placed on them?

Those people will be treated like any other person in local custody. If they post bail or are otherwise eligible for release from criminal custody, they will be released.

11) Can't ICE just go pick those people up though? ICE has already issued a detainer against them so they are in the system.

Correct. If ICE wants to apprehend someone, they can do so with their *own* personnel and resources.

12) How do I respond to accusations that we are letting criminals back out on the street?

A detainer discretion policy doesn't change anything about how your jurisdiction punishes crime. When someone is due to be released from your custody, that is because a court or local law enforcement official has determined that he or she should be allowed to go free at that time. If, after receiving due process of law, a person is determined to be dangerous, he or she will still be incarcerated and punished just the same as ever. But people will not be subjected to additional incarceration and punishment based solely on a civil immigration detainer that is issued by ICE with no standard of proof.

13) How does not responding to immigration detainers benefit us?

Declining to use local government resources to funnel local residents into a broken immigration detention and deportation system will result in restored trust between local law enforcement and the immigrant community. That trust is what makes community policing possible and effective. A immigration detainer discretion policy also keeps families intact and reduces local and state spending.

14) Won't this law be largely useless because Secure Communities is going to begin operation nationwide in 2013?

The federal Secure Communities program automatically forwards to ICE all fingerprints that local law enforcement agencies send to the FBI, but it does not stop states and localities from exercising discretion not to hand over local residents to ICE. If SCOMM is activated in your jurisdiction, immigration detainer discretion becomes even *more* important in the effort to ensure that your residents receive due process and are treated fairly.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

JOSE JIMINEZ MORENO and MARIA JOSE)	
LOPEZ, on behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	No. 11-CV-05452
v.)	
)	Judge John Z. Lee
JANET NAPOLITANO, <i>et al.</i> , in their official)	
capacities,)	Defendants' Answer
)	
Defendants.)	
)	
)	
)	

STATEMENT OF THE CASE

1. This complaint presents a challenge to the U.S. Immigration and Customs Enforcement’s (ICE’s) assertion of general authority to instruct federal, state, and local law enforcement agencies (LEAs) to continue to detain individuals in the LEAs’ jails, after no other basis for custody exists, in order for ICE to investigate their immigration status and possibly assume direct physical custody. ICE’s statutory authority to issue detainers, without an arrest warrant, is limited. 8 U.S.C. § 1357(d); 8 U.S.C. § 1226(c); 8 U.S.C. 1357(a). As set forth below, ICE’s exercise of detainer authority, however, regularly exceeds its statutory authority. In addition, ICE’s conscription of state and local LEAs to detain individuals for civil immigration purposes violates separation of powers limits under the Tenth Amendment. Finally, the extended detention, unsupported by probable cause, that ICE’s detainers cause plaintiffs and those similarly situated to them violates their rights under the Fourth and Fifth Amendments and/or entitle them to habeas relief.

Response: Defendants Admit the allegation in the first sentence that the suit purports to challenge ICE's detainer practice, but deny the remaining allegations.

2. A detainer lodged by ICE instructs an LEA to detain an individual after the period for the agency's lawful custody over the individual has expired while ICE assesses whether the individual is subject to removal proceedings and whether it will assume direct, physical custody.

Response: Defendants Deny the allegations in this paragraph.

3. The named plaintiffs in this case, Jose Jimenez Moreno and Maria Jose Lopez (hereinafter "Plaintiffs/Petitioners"), are individuals being held by LEAs, against whom ICE has placed immigration detainers, without lawful authority or any legal basis to do so. The Defendants in this case are federal officials responsible for ICE's issuance of detainers, named because their inclusion is potentially required to effectuate the forms of relief this complaint requests.

Response: Defendants Deny the allegation in the first sentence and in the first clause of the second sentence. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegation in the second clause of the second sentence.

4. As to each Plaintiff/Petitioner, ICE has justified the detainer it has placed on them based solely on its initiation of an investigation to determine whether they are subject to removal from the United States. ICE has not accompanied any of the Plaintiffs/Petitioners' detainers with an administrative arrest warrant, a Notice to Appear or other charging document, or a final removal order. ICE does not require notice of the immigration detainer to Plaintiffs/Petitioners. Moreover, ICE has not provided the Plaintiffs/Petitioners with a means to challenge the immigration detainers lodged against them.

Response: Defendants Deny the allegations in the first and fourth sentences. Defendants Admit the allegations in the second sentence as to the named plaintiffs. Defendants Admit the allegations in the third sentence that ICE requests, and does not require, LEAs to provide notice of immigration detainees.

5. Plaintiffs/Petitioners seek on their behalf and similarly situated individuals, who have immigration detainees lodged against them that were issued from ICE's Chicago Area of Responsibility (AOR) including its sub-offices, declaratory and injunctive relief under the Administrative Procedures Act, 5 U.S.C. §706(a), under the Fourth, Fifth and Tenth Amendments for the ongoing violation of their rights, pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) and *Bond v. United States*, 131 S.Ct. 2355 (June 16, 2011), or, in the alternative, habeas corpus relief.

Response: Defendants Admit that the plaintiffs are seeking the relief alleged but deny that they are entitled to such relief.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

7. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

8. This Court has authority to grant injunctive relief in this action pursuant to 5 U.S.C. § 702, and Rule 65 of the Federal Rules of Civil Procedure.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

9. Alternatively, this Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 2241, as the issuance of a detainer requiring or requesting detention places the Plaintiffs/Petitioners in a form of custody.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiffs/Petitioners' claims occurred, and continue to occur, in this District.

Response: Defendants lack knowledge or information sufficient to form a belief about the truth of these allegations. To the extent an answer is required, Defendants deny the allegations.

11. Venue is proper in this judicial district because the principal custodian of the Plaintiffs/Petitioners (i.e., the individual under whose authority the detainer was issued) is located in this District, such that this Court has jurisdiction over the Plaintiffs/Petitioners' custodian.

Response: The allegations in this paragraph call for a legal conclusion to which no response is required. To the extent a response is required Defendants Deny the allegation.

PARTIES

12. Plaintiffs/Petitioners are individuals against whom federal immigration officials have issued immigration detainers (Form I-247). The sole stated basis of their detainers is that ICE has initiated an investigation into their removability from the United States, requiring an LEA to maintain custody of the Plaintiffs/Petitioners for up to 48 hours, excluding weekends and federal holidays, after their LEA authority expires, so that ICE can assume physical custody. ICE did not require that Plaintiffs/Petitioners be given notice of the immigration detainers nor has it provided a means by which to challenge the lawfulness of the detainers. Plaintiffs/Petitioners immigration detainers were issued from the ICE Chicago AOR.

Response: Defendants Admit the allegation in the first sentence that federal immigration officials issued detainers against the two named plaintiffs, but deny that those detainers currently are in effect. Defendants Deny the allegation in the second sentence that a detainer, which is a legally-authorized request upon which a state or local law enforcement agency may rely, imposes a requirement upon the LEA to maintain custody. Defendants Admit the allegation in the third sentence that ICE requests, and does not require, LEAs to provide notice of immigration detainers. Defendants Deny the remaining allegations in the third sentence. Defendants Admit the allegation in the fourth sentence.

13. Plaintiff/Petitioner Jose Jimenez Moreno is a 34-year old United States citizen who is being detained at the Winnebago County Jail in Illinois with an ICE I-247 immigration detainer lodged against him. Mr. Jimenez was arrested on March 21, 2011 in Rockford, Illinois. Without ever interviewing or speaking to him, ICE issued an immigration detainer against Mr. Jimenez on March 22, 2011. To date, ICE has never had contact with Mr. Jimenez. Because of his detainer, at the end of his term of lawful custody, Mr. Jimenez is unlawfully subject to being

held an additional 48 hours or more in the custody of the Winnebago County Jail when, but for the detainer, he would otherwise be released.

Response: Defendants Deny the allegations in the first, third, fourth and fifth sentences of this paragraph. With respect to the allegation in the second sentence, Defendants lack sufficient knowledge or information to form a belief about the truth of the allegation.

14. Plaintiff/Petitioner Maria Jose Lopez is a 29-year old Legal Permanent Resident who is being detained at the Federal Correctional Institution in Tallahassee, Florida (FCI-Tallahassee) with an ICE I-247 immigration detainer lodged against her. Ms. Lopez came to the United States at the age of four and is the mother and primary caregiver to her 3 minor United States children. In November 2010, Ms. Lopez pled guilty to “misprision of a felony” a non-removable offense for immigration purposes. Ms. Lopez was permitted to self-surrender on January 25, 2011. Without ever interviewing or speaking to her, the ICE Chicago AOR issued an immigration detainer against her on February 1, 2011. No later than March 22, 2011, FCI-Tallahassee informed ICE that Ms. Lopez was convicted of “misprision of a felony”—a non-removable offense. To date, ICE has never had contact with Ms. Lopez. Because of her detainer, at the end of her term of lawful custody, Ms. Lopez is unlawfully subject to being held an additional 48 hours or more in the custody of FCI-Tallahassee when, but for the detainer, she would otherwise be released.

Response: Defendants Deny the allegations in the first sentence. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the second, sixth and seventh sentences. Defendants Admit the allegations in the third, fourth and fifth sentences. Defendants Deny the allegations in the eighth sentence.

15. Defendant Janet Napolitano is the Secretary for the Department of Homeland Security (DHS), which houses the office of Immigration and Customs Enforcement (ICE) and ICE's division of Enforcement and Removal Operations (ERO), the entities which issue the I-247 immigration detainers to federal, state and local law enforcement. Secretary Napolitano is ultimately responsible for how immigration regulations are applied and the approval of the use of the standard I-247 detainer form under which authority the Plaintiffs/Petitioners are detained.

Response: Defendants Deny that ICE and ERO are the only entities within DHS that issue detainers, but otherwise admit the allegations in the first sentence. Defendants Deny the allegations in the second sentence.

16. Defendant John Morton is the Director of Immigration and Customs Enforcement for DHS. As part of Director Morton's responsibilities, he establishes immigration detainer policy for ICE and its subdivisions, including the application of the detainer regulations and approval of the use of the standard I-247 detainer form under which authority the Plaintiffs/Petitioners are detained.

Response: Admit the allegations in the first sentence. With respect to the allegations and in the second sentence, admit that Director Morton has general oversight responsibilities for ICE but otherwise deny.

17. Defendant David C. Palmatier, based on information and belief, is the Unit Chief for ICE/ERO's Law Enforcement Support Center (LESC) located in Vermont. In his official capacity, Chief Palmatier oversees the issuance of thousands of immigration detainers out of the LESC pursuant to law enforcement inquiries from throughout the United States. Based on information and belief, LESC is listed as the ICE custodian on detainers issued from the LESC

and is listed as emergency custodian for many detainers issued from ICE/ERO Field Offices, including Chicago AOR.

Response: Defendants Deny the allegations in this paragraph.

18. Defendant Ricardo Wong is the Field Office Director (FOD) of the ICE/ERO Chicago AOR Field Office, which has responsibility for Illinois, Indiana, Wisconsin, Missouri, Kentucky, and Kansas. In his official capacity, FOD Wong has ultimate responsibility for all immigration detainers issued out of the Chicago AOR, including its sub-offices and the ICE Detention Enforcement and Processing Offender by Remote Technology (DEPORT) center. Based on information and belief, the Chicago Field Office is listed as the principal ICE custodian on detainers issued out of its area of responsibility.

Response: Defendants Admit the allegations in the first sentence. With respect to the allegations in the second sentence, admit that Field Office Director Wong has general oversight responsibility for his office but otherwise deny. Defendants Deny the allegation in the third sentence.

FACTUAL ALLEGATIONS

19. Pursuant to 8 U.S.C. § 1103(a), DHS, through its division of ICE, has the authority to issue immigration detainers in accordance with the intent and requirements of the Immigration and Nationality Act (INA).

Response: Defendants Admit the allegation in paragraph 19, but deny that the cited statute is the sole source of the authority that DHS and ICE have to issue detainers.

20. Plaintiffs/Petitioners were all stopped or arrested by LEAs. Based on information and belief, the LEAs had communications with ICE and then ICE issued standard form I-247

detainers against the Plaintiffs/Petitioners. *See* Ex. A (Plaintiffs/Petitioners' ICE I-247 detainer forms). On the I-247 immigration detainers issued against the Plaintiffs/Petitioners, ICE officials justify continued detention of the Plaintiffs/Petitioners on the sole grounds that an “[i]nvestigation has been initiated to determine whether this person is subject to removal from the United States.” ICE’s detainers against the Plaintiffs/Petitioners instruct the LEAs that:

[f]ederal regulations (8 CFR 287.7) request that you [LEA] detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal holidays) to provide adequate time for ICE to assume custody of the alien. You may notify ICE by calling [local ICE/ERO Field Office telephone number] during business hours or [typically ICE Law Enforcement Support Center telephone number] after hours in an emergency.

Response: Defendants Admit the allegations in the first, second and fourth sentences of this paragraph with respect to the named plaintiffs. Defendants admit the allegation in the Third sentence that the detainers advised that an investigation had been initiated to determine whether the named plaintiffs were subject to removal from the United States, but otherwise deny.

21. None of the Plaintiffs/Petitioners' I-247 immigration detainers were issued pursuant to a Notice to Appear (NTA) or other charging document, warrant of arrest in removal proceedings, or a deportation order.

Response: Defendants Admit the allegations in this paragraph with respect to the named plaintiffs.

22. The I-247 detainer form does not require notice of the immigration detainers to the Plaintiffs/Petitioners. Based on information and belief, ICE never required the LEAs to provide the Plaintiffs/Petitioners with notice of the detainers lodged against them nor does ICE have a written policy or procedure requiring that the Plaintiffs/Petitioners and similarly situated individuals be provided notice of immigration detainers lodged against them.

Response: Defendants Admit the allegation in the first sentence that the I-247 form requests, and does not require, LEAs to provide notice of an immigration detainer.

Defendants Admit the allegation in the second sentence that the detainers issued against the named plaintiffs did not require that they be given notice of the detainer. Defendants deny the remaining allegations in the second sentence.

23. ICE does not provide an administrative procedure for challenging the issuance of a detainer. Likewise, the Board of Immigration Appeals (BIA) has ruled that it does not have jurisdiction to consider challenges to detainers because it has found that individuals held on detainers are not in federal immigration custody. *Matter of Sanchez*, 20 I. & N. Dec. 223, 225 (BIA 1990).

Response: Defendants Deny the allegation in the first sentence. Defendants Admit the existence of the BIA decision cited in the second sentence but deny the characterization of the decision.

24. The I-247 detainer form states that ICE “requests”¹ that the LEA detain the individual for an additional 48 hours, excluding weekends and holidays, so ICE can assume direct, physical custody of the individual. However, the regulation cited on the I-247 detainer form mandates that the LEAs detain the individual on ICE’s behalf. The regulation states: “such [criminal justice] agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by [ICE].” 8 C.F.R. § 287.7(d)(emphasis added).

¹ From 1997 to August 2010, the I-247 detainer form stated that it was required by 8 CFR 287.7 that the LEA detain the individual for an additional 48 hours in order for ICE to assume physical custody of the individual. *See* Ex. B. (example of prior detainer form).

Response: The allegations in this paragraph call for legal conclusions to which no response is required. To the extent a response is required Defendants Admit the allegations in the first and third sentences. Defendants Deny the allegation in the second sentence that the regulation cited on the I-247 form, which is a legally authorized request upon which a state or local law enforcement agency permissibly may rely, imposes a requirement upon the LEA to detain the individual on ICE's behalf.

CLASS ACTION ALLEGATIONS

25. Pursuant to Fed. R. Civ. P. 23(b)(1), (b)(2) and/or (c)(4), Plaintiffs/Petitioners, Jose Jimenez Moreno and Maria Jose Lopez, seek to represent a class consisting of:

All current and future persons against whom ICE has issued an immigration detainer out of the Chicago AOR where ICE has instructed the law enforcement agency (LEA) to continue to detain the individual after the LEA's authority has expired and where ICE has indicated that the basis for the further detention is that ICE has initiated an investigation into the persons' removability, but not including any noncitizen subject to mandatory detention under 8 U.S.C. § 1226(c).

Response: Defendants Admit the plaintiffs seek to represent the described class but deny that they are entitled to do so.

26. In addition, Plaintiff/Petitioner, Jose Jimenez Moreno, seeks to represent a sub-class, which consists of the persons described in paragraph 25, who have had detainers lodged against them while they are in state or local LEA custody where ICE has instructed their further detention pursuant to 8 C.F.R. § 287.7. The sub-class alleges that this violates their rights under the Tenth Amendment to the U.S. Constitution.

Response: Defendants Admit plaintiff Moreno seeks to represent the described subclass but deny that he is entitled to do so.



Revised 2012 ICE Detainer Guidance: Who It Covers, Who It Does Not, and the Problems That Remain¹

In December 2012, Immigration and Customs Enforcement (ICE) issued a new immigration detainer form I-247 and new policy guidance regarding immigration detainers.² This practice advisory analyzes the new guidance, including who is and is not likely to be subject to ICE detainers³ under the new policy, the significance of these changes, and what problems remain.

The following advisory will address:

1. What triggered the issuance of the December 2012 new detainer guidance and form?
2. What is ICE's stated purpose in issuing the guidance and new form?
3. What improvements have been made and whom does the guidance help avoid a detainer?
4. Who does the detainer guidance still capture?
5. How does ICE's new guidance address longstanding problems with detainers?

I. What triggered the issuance of the December 2012 New Detainer Guidance and Form?

On December 21, 2012, ICE announced new detainer guidance, allegedly focusing resources on key deportation priorities. The new guidance is likely a result of increasing pressure on ICE from local ordinances rejecting ICE detainers, lawsuits challenging their constitutionality, and public outcry about ICE undermining public safety by turning local law enforcement into immigration agents. In particular, the California Trust Act,⁴ statewide legislation modeled after similar local ordinances around the country, resulted in a national discussion of the nature of ICE detainers.⁵ Additionally, the California Attorney General issued a bulletin determining that California law enforcement was not legally required to hold individuals subject to ICE detainers.⁶

Nonetheless, the Obama administration has deported record-breaking numbers of individuals, largely enabled by widespread and indiscriminate use of immigration detainers. In 2012, deportations reached 409,849.⁷ ICE's most recent changes to the detainer form reflect the agency's concerns that local law enforcement might stop cooperating with immigration detainers. The changes attempt to encourage continued detainer compliance by

¹ For any questions on this advisory contact Angie Junck, Supervising Attorney, Immigrant Legal Resource Center at ajunck@ilrc.org or Lena Graber, Soros Justice Fellow, National Immigration Project at lena@nipnl.org.

² December 21, 2012 Memorandum from John Morton, Director of ICE, titled "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems," (herein titled "2012 Memo" and attached as Addendum A) and the revised ICE detainer form I-247 (attached as Addendum B). The 2012 Memo and new ICE detainer form are collectively referred to as "New Detainer Guidance" or "New Guidance."

³ Also known as an "immigration hold" or "ICE hold."

⁴ The Trust Act, AB 4, is legislation reintroduced in December 2012 in the California state legislature, which would set a state-wide standard for circumstances in which ICE hold requests would be enforced. The TRUST Act would set a floor not a ceiling for local jurisdictions, thereby not trumping local policies that are more expansive in declining to honor ICE detainers than the TRUST Act.

⁵ Such state wide discussions have not been limited to California. Under similar pressure from litigation and local advocacy, the Connecticut Department of Corrections adopted a state-wide policy dramatically limiting the circumstances in which Connecticut jails would comply with immigration hold requests. This is just a sampling of the many examples of efforts around the country to challenge ICE's controversial detainer practices.

⁶ Attorney General Kamala Harris, Attorney General, *Responsibilities of Local Law Enforcement Agencies under Secure Communities*, Information Bulletin, December 4, 2012. Available at https://www.aclunc.org/docs/immigration/ag_info_bulletin.pdf (accessed May 2013)

⁷ Immigration and Customs Enforcement (ICE), *FY 2012: ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources*, News Releases (December 21, 2012) Available at <http://www.ice.gov/news/releases/1212/121221washingtondc2.htm>

supposedly providing law enforcement agencies more information regarding the issuance of the ICE detainer. Without this cooperation, ICE would not be deporting nearly as many people.

II. What is ICE’s Stated Purpose in Issuing the Guidance and New Form?

The December 2012 ICE detainer guidance claims to limit

the use of detainers to individuals who meet the department's enforcement priorities and restricts the use of detainers against individuals arrested for minor misdemeanor offenses such as traffic offenses and other petty crimes, helping to ensure that available resources are focused on apprehending felons, repeat offenders and other ICE priorities.⁸

The guidance and new form may result in fewer detainers issued against individuals with minor traffic offenses. However, these alleged reforms fall short of ensuring that ICE detainers will be focused on its stated priority targets, namely noncitizens with serious or violent felony convictions. Instead, loopholes and catch-all provisions in the new form ensure that countless people who do not qualify as ICE priority targets will continue to be rounded up through the ICE detainer dragnet.⁹

III. What Improvements Have Been Made and Whom Does the Guidance Help?

The new guidance includes a series of structural changes in the ICE detainer form, the results of which are discussed below.

a. *The New Form Provides More Information About Why the Detainer Might Have Been Issued – But Misleads About Immigration Law*

The new guidance appears to provide a more detailed basis for the issuance of an ICE detainer. However, the form simply provides more information on the individual, which may or may not be a basis for deportation, but is meant to appeal to public safety concerns of law enforcement officials.

The previous ICE detainer (issued in 2011 and attached as Addendum C) provided the basis for issuing the detainer by stating “[t]he U.S. Department of Homeland Security (DHS) has taken the following action related to the person identified above, currently in your custody,” and in most cases ICE agents simply marked the box that said ICE has “[i]nitiating an investigation to determine whether this person is subject to removal from the United States.”¹⁰

On the new form, ICE has replaced “initiated an investigation” with more assertive language: DHS has “[d]etermined that there is reason to believe the individual is an alien subject to removal from the United States.”¹¹ This is followed by eight boxes which DHS may check including various criminal convictions, certain civil violations, a catch-all public safety category and a catch-all “other” category. Unfortunately, these subcategories are misleading. The form does not assert any particular relevance of the subcategories, but they seem to suggest bases for which someone should be detained, or

⁸ *Id.*

⁹ The new guidance “applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort,” and replaces prior ICE detainer interim guidance. John Morton, Director of ICE, December 21, 2012 Memorandum titled “Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems,” at Addendum A.

¹⁰ Department of Homeland Security, Immigration Detainer Notice of Action, DHS Form I-247 issued December 2011, at Addendum C.

¹¹ Department of Homeland Security, Immigration Detainer Notice of Action, DHS Form I-247 issued December 2012, Addendum B.

might be “dangerous.”

The real issue is that the ICE detainer form **fails to identify** alleged **deportability** under federal immigration law. The subcategories on the form do not correlate to the grounds of deportability under immigration law. For example, having “three or more prior misdemeanor convictions” as listed on the detainer form may not trigger deportability depending on the convictions.¹²



Only a Notice To Appear (NTA, Form I-862) formally lists the basis of deportability lodged by the government against an individual, and advocates should be clear that an immigration detainer is not commensurate to a NTA. Never assume deportability simply because ICE has issued a detainer or NTA. Similarly, a detainer does not necessarily mean that a NTA is going to be issued or has been issued, unless so indicated on the detainer form.

b. The New Guidance Comes Closer to a Standard of Proof

The new guidance now indicates that detainer issuance must meet a standard of proof. Whereas the previous form stated that DHS had “initiated an investigation,”¹³ into whether a person was deportable, which seemed to mean that ICE could put a detainer on anyone, the current form provides that “there is reason to believe the individual is an alien subject to removal from the United States.”¹⁴

While ICE has stated that there has always been a reason to believe standard of proof in issuing a detainer, the form provides clearer guidance that mere investigation of a person without reason to believe they are deportable, is insufficient to issue a detainer. However, ICE notably failed to use the more familiar, constitutional language of “probable cause.” There is also little evidence of any change in training or instruction to the field, so the impact remains to be seen.

c. The New Guidance Clarifies That ICE Detainers are Requests

The new guidance unequivocally states that ICE detainers are requests. While the prior form used the word request, it provided contradictory language in a subsequent part of the form stating, “a law enforcement agency ‘shall maintain custody of an alien’ once a detainer has been issued by DHS.”¹⁵ Law enforcement agencies continued to believe that compliance with ICE detainers was mandatory due to the “shall” language in federal regulations at 8 C.F.R. § 287.7(d). The new form omits the “shall” language, leaving only the “requests” language. Unfortunately, the federal regulations retain the same confusing language as before.¹⁶

¹² Moreover, DHS could have other grounds for deportation than those checked on the detainer form, since the form does not include every possible legal basis for deportation.

¹³ Department of Homeland Security, Immigration Detainer Notice of Action, DHS Form I-247 issued December 2011, at Addendum C.

¹⁴ *Id.* (emphasis added). Courts have equated “reason to believe” with the probable cause standard. *See e.g., Au Yi Lau v. INS*, 445 F.2d 217 (D.C. Cir. 1971). It is unknown whether instructions to ICE agents in the field clarify that “reason to believe” means agents must have probable cause of deportability.

¹⁵ Department of Homeland Security, Immigration Detainer Notice of Action, DHS Form I-247 issued December 2011, at Addendum C (quoting 8 C.F.R. section 287.8) (emphasis added).

¹⁶ The regulation governing ICE detainers, 8 C.F.R. section 287.7 has conflicting *shall* and *request* language in subsections (d) and (a), respectively, regarding compliance with ICE detainers. This conflict has caused confusion among law enforcement about whether compliance with ICE detainers is mandatory or discretionary.

d. The New Guidance May Result in Certain People no Longer Receiving ICE Detainers

The new guidance should **exclude** certain categories of people who previously were subject to ICE detainers, including:

- People (undocumented and **lawful status** alike) with no prior criminal convictions who have been picked up for certain traffic violations (e.g., **driving without a license, driving without insurance**). However, the new form specifically includes driving under the influence convictions so these charges/convictions will likely continue to trigger detainers.
- People (undocumented and **lawful status** alike) with two misdemeanor convictions not involving the enumerated crimes listed on the new form. For example, misdemeanor **theft** and other **property crimes** should not trigger a detainer. Thus, certain people who might actually be deportable, such as a lawful permanent resident with a first time petty theft within five years of admission, should not receive an ICE detainer.

BUT NOTE!

- Under 8 U.S.C. § 1357, the statute governing immigration detainers, lawful permanent residents should not receive immigration detainers at all, because detainers are limited to individuals who law enforcement officials have reason to believe entered illegally or are present without authorization.
- There is a catch all “other” category in the new form which may be used as a way to get around these categories. DHS might also claim that it has reason to believe that an individual is deportable without disclosing the exact basis.
- These categories assume that the person does not have prior convictions, which might otherwise trigger other grounds for ICE detainer issuance.

IV. Who Does the Detainer Guidance Still Capture?

Despite the aforementioned benefits, advocates should keep a watchful eye for abuse. The new guidance is vague, and **still captures** people with **minor offenses**, those with only **civil immigration charges**, those whose **charges** have not resulted in convictions, and those who are **not deportable** at all.

a. Even People Who Do Not Meet ICE’s Enforcement Priorities Will Continue Receive Detainers

The Administration has issued several memoranda meant to focus immigration enforcement resources on only a subset of noncitizens. Among these, the leading authority came on March 2, 2011,¹⁷ when ICE Director John Morton delineated three enforcement priorities including **1)** “Aliens who pose a danger to national security or are a risk to public safety,” **2)** “[r]ecent illegal entrants” and **3)** “[a]liens who are fugitives or otherwise obstruct immigration controls”¹⁸ (herein after “March 2011 Morton Memo”).

However, the new detainer guidance continues to capture offenses beyond those listed in the March 2011 Morton Memo. When reading the broad list of offenses covered by the new form, including charges for “driving under the influence of alcohol or a controlled substance,” “unlawful flight from the scene of an accident,” and “three or more prior misdemeanor convictions”¹⁹ this becomes a situation where the exceptions

¹⁷ This memorandum may be referenced interchangeably with the June 2010 Memorandum titled, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens.” The March 2, 2011 memorandum amended and updated the June 2010 memorandum.

¹⁸ Department of Homeland Security, Immigration and Customs Enforcement, Memorandum, Policy No. 10072.1, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (March 2, 2011), available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>

¹⁹ Department of Homeland Security, Immigration Detainer Notice of Action, DHS Form I-247 issued December 2012, Addendum B.

swallow the rule. Even the March 2011 Morton Memo recognizes that such offenses may not warrant enforcement resources,²⁰ yet under the new guidance these offenses continue to be targeted.

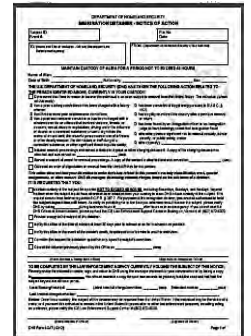
Example - Overly expansive, and reaches beyond ICE's own priorities:

John entered the US without inspection in 2005, when he was 23 years old. He has lived in Idaho since that time, working on a ranch. In 2013, he was pulled over by a state trooper for driving while intoxicated and without a license. He was arrested and taken into local custody.

John will probably receive an ICE detainer, likely leading to deportation proceedings, because ICE directs their agents to issue a detainer for anyone who “has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the case involves...driving under the influence of alcohol or a controlled substance.” This is regardless of whether this is a first time offense or if the charges are ultimately dropped, and even if John was not intoxicated at all. With the exception of a few unusual state crimes, DUI convictions generally do not trigger grounds of inadmissibility or deportation.

b. The Catch-all Categories New Limitations

The boxes following the language that DHS has “[d]etermined that there is reason to believe the individual is an alien subject to removal from the United States,” include certain categories that are vague and subject to abuse. Some of the more concerning categories are as follows:



- One box provides, “otherwise poses a significant risk to national security, border security, or public safety” Without requiring any proof for such statements or definitions for what these terms imply, this box could be checked in most any circumstance and without consistency.
- The last box is listed as an “other” category, serving as a catch-all box with very little room to provide further details.

Example - Vague and lacking protections for juveniles:

Donald is 17-years-old and entered the U.S. without inspection in 2002. He lives with his older brother in St. Louis, Missouri. Donald's brother used to be involved with a gang some years ago, but now works in construction. Donald is still in high school. In 2013, Donald was trying to buy beer with a friend's ID, but the liquor store took the ID and called the police. Instead of citing and releasing him, local police arrested him and took him into local custody.

If Donald is in a gang database as a result of his brother's former affiliation, Donald will probably get a detainer, because ICE says that they will place detainers on individuals who pose “a significant risk to national security, border security, or public safety.” ICE includes known gang members among these. Although Donald has not been involved with any gang, he could be in a gang database because of his brother, and therefore might receive a detainer, even if he ultimately is able to prove that he is not a gang member. ICE's detainer policy does not make any explicit exceptions for juveniles.

²⁰ Department of Homeland Security, Immigration and Customs Enforcement, Memorandum, Policy No. 10072.1, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, FN 4 (March 2, 2011), available at <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf> (“Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license”).

c. Persons with Civil Immigration Violations and No Criminal History May be Subject to a Detainer

The inclusion of categories dedicated only to civil immigration violations, such as having been served with a Notice to Appear or having received a prior deportation order, give the false impression that these categories carry public safety concerns. This is particularly troubling given the number of deportations attributed to such nonviolent civil offenses.²¹

- A box on the new form describes someone who “has illegally re-entered the country after a previous removal or return.” This is problematic because it appears to equate a “return” with an order of removal, or deportation order, which it is not. Individuals subject to a voluntary return who re-enter the country have not necessarily illegally re-entered.

Example - Captures purely civil immigration violations:

Lily came to the U.S. across the Mexican border in 2003. She was stopped by the Border Patrol outside of San Diego and briefly detained. She cannot remember if Border Patrol made her sign any papers, but she did not see an immigration judge. Border patrol returned Lily to Mexico the day after she was apprehended. Later that week, she successfully crossed the border and has lived in Fresno, California ever since. Lily was stopped for a broken taillight in 2012, and arrested because she did not have a valid license.

Lily will probably receive a detainer under ICE’s policy, even though she has no criminal history and was stopped merely for a traffic violation, because she was previously apprehended at the border. Lily may have signed a stipulated removal order at that time, or she may simply have been fingerprinted and returned. But in either case, ICE directs its agents to file detainers against anyone who has re-entered the country after a previous removal or return.

V. How does ICE’s new guidance address longstanding problems with detainers?

While ICE changed the language of the detainer form, it remains unclear if the administration or training will change. In the past, detainers have been incorrectly issued and there have even been cases of ICE detainers being issued to U.S. Citizens.²² Without transparency on the issuance of ICE detainers, there is no guarantee that these problems will cease. Furthermore, when detainers interact with the criminal justice system, they disrupt fundamental constitutional rights for immigrants and citizens alike.

a. ICE Detainers Still Cause a Second-Tier Criminal Justice System for Immigrants

The existence of ICE detainers under *any* policy revision results in different treatment of people with the same criminal history, based on immigration status alone. ICE detainers are used as an additional criminal

²¹ For example, Secure Communities (S-Comm) is one ICE program which generates ICE detainers. Since the inception of S-Comm in 2008 through December 2012, there have been 246,924 deportations, 57,793 of which have resulted purely from civil immigration violations including overstaying a visa and being ordered deported. This represents almost a quarter of deportations under that program. Moreover, according to data from the Transaction Records Access Clearinghouse, ICE issued nearly one million detainers in fiscal years 2008-2011. As of February 2013, ICE’s records on those individuals revealed that less than a quarter of them had any criminal conviction. Transactional Records Access Clearinghouse (TRAC), *Who Are the Targets of ICE Detainers*, (February 20, 2013) available at: <http://trac.syr.edu/immigration/reports/310/>.

²² See e.g., Transactional Records Access Clearinghouse (TRAC), *Who Are the Targets of ICE Detainers*, (February 20, 2013) (between fiscal years 2008 and fiscal years 2012, it was noted that detainers had been placed on 834 U.S. Citizens and 28,489 legal permanent residents), available at: <http://trac.syr.edu/immigration/reports/310/>.

enforcement tool against immigrants alone, and frequently results in the denial of bail, ineligibility for rehabilitative services and programs, and longer periods of incarceration.²³

Example - Two-tiered criminal justice system because of detainers:

Roger was born in San Diego, California and is a U.S. Citizen. Paola was born in Brazil but has spent most of her life in the United States. Both have recently received a first time possession of a controlled substance in California but are eligible for Proposition 36, a program which focuses on drug programming and rehabilitation and not incarceration.

Roger will not be incarcerated, will be able to participate in Proposition 36 drug program, and will move on with his life. Paola will receive an ICE detainer triggered by the controlled substance conviction and therefore, be detained even though Proposition 36 states that a person shall not be incarcerated. Paola will likely be denied drug rehabilitative relief, continue to be detained, and handed over to ICE upon completion of her sentence. Given the harsh immigration laws against controlled substances, she may also be deported.

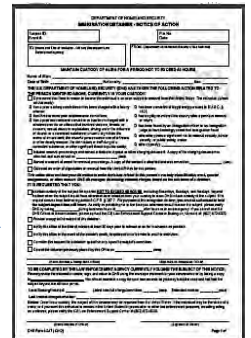
b. Persons Charged But Not Convicted of Criminal Offenses, Will Continue to Receive Detainers

The revised detainer guidance targets individuals who face criminal charges that have not resulted in convictions. This undermines due process and the principle of innocent until proven guilty. Many people are charged with more serious offenses than what they ultimately plead to.²⁴ A prosecutor, for example, may offer a criminal defendant a plea to a less serious offense for any number of reasons, including but not limited to the initial overcharging of the defendant, the strength of the evidence, and the lack of reliability or cooperation of witnesses. Moreover, sometimes charges are entirely dismissed. If the criminal justice system has not come to the conclusion that a person has committed a given offense, neither should ICE.

c. The New Detainer Guidance Still Fails to Include Procedural Safeguards

The bottom portion of the detainer form provides a series of requests to law enforcement, some of which should be mandatory in every case, but instead are empty check boxes:

- The second option, that a **copy of the detainer** should be provided to the subject, should be standard in every case. This is basic, easy to administer, and written notice is generally a fundamental requirement before depriving someone of their liberty.
- The box indicating that the request be considered “**operative only upon the subject’s conviction**” should also be standard. In addition to violating due process and the basic principle that one is innocent until proven guilty, the criminal justice process is disregarded if a detainer is operative before a conviction.



²³ Katherine Beckett and Heather Evans, Immigration Detainer Requests in King County, Washington: Costs and Consequences (University of Washington, March 26, 2013); Judith Greene, The Cost of Responding to Immigration Detainers in California (Justice Strategies, August 22, 2012); Andrea Guttin, The Criminal Alien Program: Immigration Enforcement in Travis County, Texas (Immigration Policy Center, August 2010).

²⁴ Today plea bargaining is the norm nationally, as 95% of criminal convictions result from plea bargains. *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 n. 13 (2010). See also Thomas H. Cohen & Tracey Kyckelhahn, Bureau of Justice Statistics, U.S. Dep’t of Justice, Felony Defendants in Large Urban Counties, 2006, at 10, Table 11 (2010), (providing evidence in the 75 largest counties in the country that 50% of felony defendants did not plead to original charge); Bureau of Justice Statistics, U.S. Dep’t of Justice, Sourcebook of Criminal Justice Statistics 2003, p. 418 (31st ed. 2005) (Table 5.17) (only approximately 5%, or 8,612 out of 68,533, of federal criminal prosecutions go to trial); *id.*, at 450 (Table 5.46) (only approximately 5% of all state felony criminal prosecutions go to trial).

Additionally, the guidance still fails to provide sufficient safeguards for victims of crimes and juveniles. ICE should articulate explicit exceptions for juveniles. And despite a notification at the bottom of the form that ICE should be informed if the subject is a victim of a crime, there is no assurance that such information will come to light or that ICE will not detain that person.

Example - Insufficient safeguards for victims:

Minnie entered the U.S. as a tourist in 1994 and never left the country. She married in 2007, and she and her husband live in rural South Carolina. In 2011, Minnie's husband began being controlling and abusive towards her. In 2013, Minnie's husband began to hit her and she fought back to defend herself. A neighbor called the police, and both Minnie and her husband were arrested for assault.

Minnie will probably receive an immigration detainer, even though she has no prior criminal history and is a victim of abuse, because ICE's detainer policy says that ICE should issue a detainer against an individual who has pending charges involving violence, threats, or assault. The detainer may also prevent her from being granted bail, making it much more difficult to obtain evidence in her defense. If Minnie were identified as a victim and the ICE office also considered the 2011 memorandum regarding prosecutorial discretion, then Minnie might not receive a detainer, or could have her detainer lifted. It is not clear, however, whether law enforcement will flag her status and alert ICE, or how ICE would review that information.

d. The New Guidance Does not Govern Border Patrol or Customs Agents

ICE is a component agency of the Department of Homeland Security, and it does not have control over Customs and Border Protection (CBP) or the Border Patrol, which is part of CBP. CBP and Border Patrol agents have authority to issue detainers, and they use the ICE detainer form I-247, but they are not governed by ICE policies. CBP does not have any known policy governing the issuance of immigration detainers.

Example - Border Patrol may not follow ICE priorities:

Sara came to the U.S. as a student in 1992, and overstayed after her student visa expired. She moved to Louisiana and married an undocumented immigrant, with whom she has three U.S. citizen children. In 2013, Sara is a passenger in a friend's car when they are stopped by local police for turning right at a red light. Although Sara's friend the driver has a valid drivers' license, she speaks broken English with an accent, as does Sara. The policeman holds them on the side of the road and calls Border Patrol. When the Border Patrol agents arrive, they interrogate both Sara and her friend about their immigration status.

Even though Sara has no criminal history and is not an ICE priority for deportation, Border Patrol is not subject to ICE policies, and may make its own determinations about whether to issue a detainer.

e. The New Guidance Fails to Address Persistent Constitutional Problems with ICE Detainers²⁵

i. Sixth Amendment Access to Counsel Problems

ICE detainers can obstruct the Sixth Amendment right to counsel if defendants are transferred to ICE prior to the conclusion of their criminal case. When ICE detainers are enforced, noncitizens are introduced to a

²⁵ Several lawsuits have challenged the constitutionality of ICE detainers. See, e.g., *Roy v. Los Angeles*, No. CV12-9012 (California Central District Court, filed 10/19/12); *Brizuela v. Feliciano*, No. 12-0226 (D. Conn. filed Feb. 13, 2012); *Morales v. Chadbourne*, No. 12-00301 (D.R.I. filed Apr. 24, 2012); *Uroza v. Salt Lake County* No. 11-00713 (D. Ut. filed Aug. 5 2012); *Jimenez v. Napolitano*, No. 11-5452 (N.D. Ill. Filed Aug. 11, 2011); *Galarza v. Szalczyk*, 2012 U.S. Dist. LEXIS 47023 (E.D. Pa. Mar. 30, 2012).

labyrinth of detention centers, which may result in the noncitizen being transferred across the country. Because ICE generally will not transfer a noncitizen back to criminal court to see his/her criminal attorney or adjudicate an open criminal case, transferring a noncitizen to ICE effectively cuts off access to his/her criminal counsel.

ii. Fourth Amendment Problems Due to Seizure Without Probable Cause

Fourth Amendment violations continue as flagrantly as before. The Fourth Amendment requires judicial approval in the form of a warrant or hearing shortly after detention, but such procedures rarely, if ever, follow an immigration detainer. ICE detainers continue to be issued by ICE agents, as opposed to a judge or neutral magistrate. This replaces the role of a reviewing judicial officer with an agent whose job is to deport people.

The Fourth Amendment requires a probable cause determination before law enforcement can take custody of an individual. In the new ICE detainer form, the words “initiated an investigation” have been deleted and the words “reason to believe” have been inserted. Courts have equated reason to believe with the probable cause standard.²⁶ However, the printed change on the detainer form does not necessarily equate to a change in the evidentiary standards under which ICE detainers are issued. Without some assurance that practices have actually changed, a mere change in wording does not ensure that Fourth Amendment rights are being protected.

iii. Unlawful and Prolonged Detention under Fifth and Fourteenth Amendment

Problems persist in violation of Fifth and Fourteenth Amendments rights to liberty and due process:

- Detainees do not receive consistent or prompt notification that they are subject to an ICE detainer.
- Local law enforcement agencies may or may not provide any review or even any opportunity to contact ICE to question or contest the placement of a detainer.²⁷
- ICE detainers continue to cause unlawful detention of individuals beyond the expiration of state custody, or even the supposed authority of the 48 hour period in the federal regulations.

VI. CONCLUSION

Amendments to ICE’s detainer form and policy do not change the underlying immigration laws, regulations, or constitutional rights of people in the United States. Without accompanying changes in agency training, protocol, supervision, and accountability, modifications to a form and a policy memorandum may have little effect on what the agency does. The few notable changes include a standard of proof on the detainer form and providing law enforcement more information on the individual in an effort to promote law enforcement compliance. However, ICE’s new guidance does not mark a significant policy development or change in ICE operations for the issuance or enforcement of immigration detainers.

²⁶ *Au Yi Lau v. INS*, 445 F. 2d 217 (D.C. Cir. 1971).

²⁷ In 2011, ICE created a hotline for citizens or victims of crime to report erroneous detainers. This is an important step, but leaves any other procedural violations unaddressed.

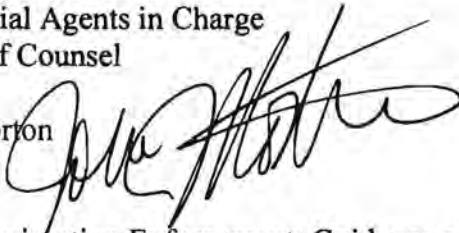
Addendum A



**U.S. Immigration
and Customs
Enforcement**

DEC 21 2012

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton
Director 

SUBJECT: Civil Immigration Enforcement: Guidance on the Use of Detainers
in the Federal, State, Local, and Tribal Criminal Justice Systems

Purpose

This memorandum provides guidance on the use of U.S. Immigration and Customs Enforcement (ICE) detainers in the federal, state, local, and tribal criminal justice systems. This guidance applies to all uses of ICE detainers regardless of whether the contemplated use arises out of the Criminal Alien Program, Secure Communities, a 287(g) agreement, or any other ICE enforcement effort. This guidance does not govern the use of detainers by U.S. Customs and Border Protection (CBP). This guidance replaces Sections 4.2 and 4.5 of the August 2010 *Interim Guidance on Detainers* (Policy Number 10074.1) and otherwise supplements the remaining sections of that same guidance.

Background

In the memorandum entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, issued in June 2010,¹ ICE set forth clear priorities that guide its civil immigration enforcement. These priorities ensure that ICE's finite enforcement resources are dedicated, to the greatest extent possible, to individuals whose removal promotes public safety, national security, border security, and the integrity of the immigration system.

As ICE's implementation of these priorities continues, it is of critical importance that ICE remain focused on ensuring that the priorities are uniformly, transparently, and effectively pursued. To that end, ICE issues the following guidance governing the use of detainers in the nation's criminal justice system at the federal, state, local, and tribal levels. This guidance will ensure that the agency's use of detainers in the criminal justice system uniformly applies the

¹ As amended and updated by the memorandum of the same title issued March 2, 2011.

principles set forth in the June 2010 memorandum and is consistent with the agency's enforcement priorities.

National Detainer Guidance

Consistent with ICE's civil enforcement priorities and absent extraordinary circumstances, ICE agents and officers should issue a detainer in the federal, state, local, or tribal criminal justice systems against an individual only where (1) they have reason to believe the individual is an alien subject to removal from the United States and (2) one or more of the following conditions apply:

- the individual has a prior felony conviction or has been charged with a felony offense;
- the individual has three or more prior misdemeanor convictions;²
- the individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
 - violence, threats, or assault;
 - sexual abuse or exploitation;
 - driving under the influence of alcohol or a controlled substance;
 - unlawful flight from the scene of an accident;
 - unlawful possession or use of a firearm or other deadly weapon;
 - the distribution or trafficking of a controlled substance; or
 - other significant threat to public safety;³
- the individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- the individual has illegally re-entered the country after a previous removal or return;
- the individual has an outstanding order of removal;
- the individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- the individual otherwise poses a significant risk to national security, border security, or public safety.⁴

² Given limited enforcement resources, three or more convictions for minor traffic misdemeanors or other relatively minor misdemeanors alone should not trigger a detainer unless the convictions reflect a clear and continuing danger to others or disregard for the law.

³ A significant threat to public safety is one which poses a significant risk of harm or injury to a person or property.

⁴ For example, the individual is a suspected terrorist, a known gang member, or the subject of an outstanding felony arrest warrant; or the detainer is issued in furtherance of an ongoing felony criminal or national security investigation.

Revised Detainer Form

To ensure consistent application of this guidance, ICE will revise the DHS detainer form, Form I-247. The revised detainer form, which should be used in all cases once it is issued, will specifically list the grounds above and require the issuing officer or agent to identify those that apply so that the receiving agency and alien will know the specific basis for the detainer. The changes to the form will make it easy for officers and agents to document the immigration enforcement priorities and prosecutorial discretion analysis they have completed leading to the issuance of the detainer.

Prosecutorial Discretion

This guidance identifies those removable aliens in the federal, state, local, and tribal criminal justice systems for whom a detainer may be considered. It does not require a detainer in each case, and all ICE officers, agents, and attorneys should continue to evaluate the merits of each case based on the June 2011 memorandum entitled *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* and other applicable agency policies.

Six-Month Review

ICE Field Office Directors, Chief Counsel, and Special Agents in Charge should closely evaluate the implementation and effect of this guidance in their respective jurisdictions for a period of six months from the date of this memorandum. Based on the results of this evaluation, ICE will consider whether modifications, if any, are needed.

Disclaimer

This guidance does not create or confer any right or benefit on any person or party, public or private. Nothing in this guidance should be construed to limit ICE's power to apprehend, charge, detain, administratively prosecute, or remove any alien unlawfully in the United States or to limit the legal authority of ICE or its personnel to enforce federal immigration law. Similarly, this guidance, which may be modified, superseded, or rescinded at any time, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

This guidance does not cover or control those detainers issued by officers and agents of CBP. Detainers issued by CBP officers and agents shall remain governed by existing CBP policy, and nothing in this guidance is intended to limit CBP's power to apprehend, charge, detain, or remove any alien unlawfully in the United States.

Addendum B

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: _____
Event #: _____

File No: _____
Date: _____

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):

- has a prior a felony conviction or has been charged with a felony offense;
- has three or more prior misdemeanor convictions;
- has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
- has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- has illegally re-entered the country after a previous removal or return;
- has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
- otherwise poses a significant risk to national security, border security, or public safety; and/or
- other (specify): _____.

Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).

Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).

Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

Provide a copy to the subject of this detainer.

Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

Consider this request for a detainer operative only upon the subject's conviction.

Cancel the detainer previously placed by this Office on _____ (date).

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253). Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253). Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据对你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 (现在拘留你的执法当局或其他单位), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。

Addendum C

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:

- Initiated an investigation to determine whether this person is subject to removal from the United States.
- Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____.
(Date)
- Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____.
(Date)
- Obtained an order of deportation or removal from the United States for this person.

This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.

IT IS REQUESTED THAT YOU:

- Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **You are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (ICE) Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- Provide a copy to the subject of this detainer.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- Consider this request for a detainer operative only upon the subject's conviction.
- Cancel the detainer previously placed by this Office on _____.
(Date)

(Name and title of Immigration Officer)

(Signature of Immigration Officer)

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to the Department using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

Notice: Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

(Name and title of Officer)

(Signature of Officer)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253).** **If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253).** **Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253).** **Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253.** **Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局，表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求，根据对你的刑事起诉或判罪的基础，在本当由州或地方执法当局释放你时，继续拘留你，为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未在不计周末或假日的额外 48 小时期限内将你拘留，你应该联系你的监管单位 (现在拘留你的执法当局或其他单位)，询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉，请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center)，电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人，请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center)，告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-6903。