

# LIFE UNDER “PEP-COMM”

On November 20, 2014, President Obama announced the “end” of the much reviled Secure Communities (SComm) program. In its place, DHS created the “Priority Enforcement Program” or PEP. PEP works exactly the same way as Secure Communities. It tracks fingerprints and helps ICE agents issue detainers and retrieve people from local jails. This advisory explains the PEP forms and priorities.

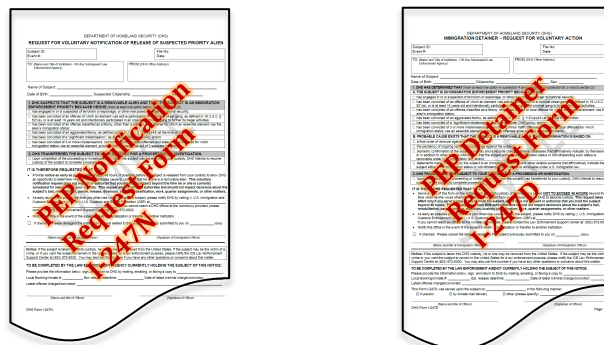
**The basic mechanisms of SComm remain in place under PEP.** When a person is arrested, the police take their fingerprints. All fingerprints taken by police are sent to ICE to check against immigration databases, and the local ICE office is notified if there is a match. If ICE wants to take action against the arrested person, ICE then issues a notice back to the local jail that requests the jail to let ICE know when the person will be released (called a “notification request”). ICE may also request the jail to hold the person for extra time to allow ICE to come get them (called an “ICE hold” or “detainer”). This is exactly the same in PEP as in SComm.

**Remember that SComm/PEP is NOT the only avenue for ICE to issue requests to local agencies.** See [www.ilrc.org/enforcement](http://www.ilrc.org/enforcement) to learn about other ICE enforcement programs.

## What has changed?

### 1. NEW ICE DETAINER FORMS

ICE has rearranged their detainer form into two forms: a notification request and a hold request. (The former detainer form included requests for both notification of release date and to hold the person for transfer to ICE. Now it is simply divided in two.)



**Both these PEP forms are to help ICE apprehend someone from local jail, just like under SComm.** With hold requests, the jail detains a person longer to be able to hand them directly over to ICE agents. With notification requests, ICE agents hope to arrive at the jail right at the moment when the person is scheduled to be released, so they can intercept the immigrant at that moment.

Many counties refuse to hold people extra time for ICE. To hold someone beyond when they should be released violates their constitutional rights, and local jails do not want to be liable for that. However, even among the jails that refuse to hold people extra time for ICE, most jails will still share information and provide notice of release dates with or even without a specific request from ICE. Therefore it takes extra work to fully end police-ICE collaboration.

## 2. TIMING of ICE DETAINERS AND NOTIFICATION REQUESTS

ICE claims that ICE holds and requests for notification will only be for those who fall within certain enforcement priorities:

### PRIORITY 1

- gang members
- one felony conviction
- one aggravated felony conviction (*defined under immigration law*)
- suspected of terrorism, espionage, or threat to national security

### PRIORITY 2

- Significant misdemeanor convictions:
  - DUI - driving under the influence of alcohol or drugs
  - Domestic violence
  - Gun-related
  - Drug sale
  - Sexual abuse
  - Burglary (unlawful entry of a building + theft)
  - Any other conviction if sentenced to 90 days or more in jail
- Three or more misdemeanor convictions of any kind, except minor traffic offenses or juvenile offenses

**All but two of these priorities require the person to be convicted of a crime, not just facing charges.** Therefore, ICE should not issue any detainers or notification requests when a person is first arrested or awaiting trial in court, unless they have prior convictions that fall under the priorities. Theoretically, fewer people should be subject to detainers and notification requests. **However, DHS detention and deportation quotas have not changed, and there is no evidence that ICE agents will actually modify their practices.**

Communities need to monitor their local jails to track when ICE is really issuing detainers and notification requests to make sure that ICE is held accountable. It is up to organizers and communities to remain vigilant and to record what they are seeing. PEP has been designed to make this monitoring harder for you.

**We should not accept ICE's enforcement priorities as defining who can or should be detained and deported.** We can continue to fight to keep our communities and families together, and insist that ICE respect the dignity and humanity of **all immigrants**.

### WARNING

**ICE will continue involvement with local jails through PEP fingerprint sharing and programs like the Criminal Alien Program (CAP) and 287(g). All these jail-related programs help ICE gather information, track, and apprehend more immigrants.**

## What has NOT changed?

### 1. LEGALITY OF ICE DETAINERS

**The law hasn't changed on ICE detainers, just the form.** Federal courts have found that holding someone on a detainer is unconstitutional, and it is unlikely that changes to the form will have a significant effect on the constitutional issues. But since ICE is still trying to co-opt local law enforcement into identifying and detaining immigrants for them, local policies against ICE detainers and notifications are still very important.

### 2. INFORMATION SHARING

**SComm = PEP. New name; same game. S-Comm was dismantled in name, but in fact it continues in practice as "PEP."** The FBI will continue sharing fingerprints with the Department of Homeland Security so that ICE can still detect immigrants in local and state law enforcement custody. This facilitates ICE's ability to issue detainer requests or notification requests – and it triggers ICE's attention at the moment of arrest. ICE has not changed any of SComm's architecture.

**At the heart of ICE's cooperation with local law enforcement is communication and information sharing.**

**Cooperation with local law enforcement:** ICE will continue tracking immigrants through PEP and through all its formal and information relations with local law enforcement. ICE's bedrock program, the Criminal Alien Program (CAP), shows no signs of slowing down. Through CAP, ICE agents get access to local jail databases, interview local inmates about their citizenship, receive daily updates from local jails, and have many other types of formal and informal collaboration. ICE receives reports of who has been booked into jail, whether they were born outside the U.S., when their anticipated release date will be, and other information about their case. Even as they claim to be reforming things with PEP ICE is reaching out to local law enforcement agencies across the country to rebuild, maintain, and expand their relations. ICE will continue to use any means to track people down and detain them.

### 3. MASS INCARCERATION AND MASS DEPORTATION

Communities of color are disproportionately targeted by law enforcement. ICE's local enforcement efforts continue to intensify this dynamic, as poor and brown communities are funneled from an unjust criminal justice system into an immigration deportation system that lacks even the most basic due process protections. Immigrant communities of color are targeted two-fold; based on race and immigration status. Over and over, the government's first response to dealing with people of color is through incarceration. ICE detention and collaboration with local jails only makes it harder for people to escape the system.

**PEP is not new, it's more of the same. PEP represents cosmetic changes to detainer forms and yet another revised list of enforcement priorities, in an increasingly long line of ignored priorities lists. PEP merely continues ICE's efforts to entwine immigration enforcement with local policing, at the expense of immigrant communities.**

# PEP NOTIFICATION FORM

Missing:

1. No requirement to tell the detainee that there is a notification request from ICE placed on them. The person will have no way of knowing that there is a notification request on them or what it says.
2. No process for the subject of the request to contest the information or allegations made on the form.

DEPARTMENT OF HOMELAND SECURITY (DHS)

## REQUEST FOR VOLUNTARY NOTIFICATION OF RELEASE OF SUSPECTED PRIORITY ALIEN

Subject ID: Event #:	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (DHS Office Address)

Name of Subject: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Suspected Citizenship: \_\_\_\_\_ Sex: \_\_\_\_\_

These are the PEP priorities (mostly the same as the overall enforcement priorities, but focused on those who are most likely to be in local custody)

<p><b>1. DHS SUSPECTS THAT THE SUBJECT IS A REMOVABLE ALIEN AND THAT THE SUBJECT IS AN IMMIGRATION ENFORCEMENT PRIORITY BECAUSE HE/SHE</b> (mark at least one option below, or skip to section 2):</p> <p><input type="checkbox"/> has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;</p> <p><input type="checkbox"/> has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is at least 16 years old and intentionally participated in an organized criminal gang to further its illegal activities;</p> <p><input type="checkbox"/> has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the alien's immigration status;</p> <p><input type="checkbox"/> has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43) at the time of conviction;</p> <p><input type="checkbox"/> has been convicted of a "significant misdemeanor," as defined under DHS policy; and/or</p> <p><input type="checkbox"/> has been convicted of 3 or more misdemeanors, not including minor traffic offenses and state or local offenses for which immigration status was an essential element, provided the offenses arise out of 3 separate incidents.</p>
<p><b>2. DHS TRANSFERRED THE SUBJECT TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION.</b></p> <p><input type="checkbox"/> Upon completion of the proceeding or investigation for which the subject was transferred to your custody, DHS intends to resume custody of the subject to complete processing.</p>

It's not clear what evidence ICE will use to determine this or whether there is any check on if it is correct.

This form requests notice for ICE as far before release as possible.

This form does not request extra detention, but ICE may also issue a hold request on the same person at any time.

### IT IS THEREFORE REQUESTED THAT YOU:

- Provide notice as early as practicable (at least 48 hours, if possible) before the subject is released from your custody to allow DHS an opportunity to determine whether there is probable cause to conclude that he or she is a removable alien. **This voluntary notification request does not request or authorize that you detain the subject beyond the time he or she is currently scheduled for release from your custody. This request arises from DHS authorities and should not impact decisions about the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.**
  - As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling ☐ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at \_\_\_\_\_. If you cannot reach a DHS official at the number(s) provided, please contact the ICE Law Enforcement Support Center at: (802) 872-6020.
  - Notify this office in the event of the subject's death, hospitalization or transfer to another institution.
- ☐ If checked: Please disregard the notification request related to this subject previously submitted to you on \_\_\_\_\_ (date).

ICE says this form should not affect bail or other custody decisions. In practice, however, courts and jails use detainers against people.

\_\_\_\_\_  
(Name and title of Immigration Officer) (Signature of Immigration Officer)

**Notice:** If the subject is taken into DHS custody, he or she may be removed from the United States. If the subject may be the victim of a crime, or if you want the subject to remain in the United States for a law enforcement purpose, please notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

### 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 by mailing, emailing, or faxing a copy to \_\_\_\_\_.

Local Booking/Inmate #: \_\_\_\_\_ Est. release date/time: \_\_\_\_\_ Date of latest criminal charge/conviction: \_\_\_\_\_

Latest offense charged/convicted: \_\_\_\_\_

\_\_\_\_\_  
(Name and title of Officer) (Signature of Officer)

No request for delivery to detainee. It appears that ICE hopes to issue notification forms without accountability to those affected.



# PEP DETAINER FORM



Missing:

1. The PEP memo requires "special circumstances" to issue a detainer. But this form does not describe any special circumstances.
2. By statute, ICE can only make a warrantless arrest (which is caused by a detainer) of someone who is likely to escape before a warrant can be obtained. However this form does not indicate anything about likelihood of escape.

## DEPARTMENT OF HOMELAND SECURITY (DHS) IMMIGRATION DETAINER – REQUEST FOR VOLUNTARY ACTION

Subject ID: Event #:	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (DHS Office Address)

Name of Subject: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Citizenship: \_\_\_\_\_ Sex: \_\_\_\_\_

### 1. DHS HAS DETERMINED THAT (mark at least one option in subsection A and one option in subsection B, or skip to section 2):

#### A. THE SUBJECT IS AN IMMIGRATION ENFORCEMENT PRIORITY BECAUSE HE/SHE:

- ☐ has engaged in or is suspected of terrorism or espionage, or otherwise poses a danger to national security;
- ☐ has been convicted of an offense of which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is at least 16 years old and intentionally participated in an organized criminal gang to further its illegal activities;
- ☐ has been convicted of an offense classified as a felony, other than a state or local offense for which an essential element was the alien's immigration status;
- ☐ has been convicted of an aggravated felony, as defined under 8 U.S.C. § 1101(a)(43) at the time of conviction;
- ☐ has been convicted of a "significant misdemeanor," as defined under DHS policy; and/or
- ☐ has been convicted of 3 or more misdemeanors, not including minor traffic offenses and state or local offenses for which immigration status was an essential element, provided the offenses arise out of 3 separate incidents.

#### B. PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON:

- ☐ a final order of removal against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

### 2. DHS TRANSFERRED THE SUBJECT TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION.

- ☐ Upon completion of the proceeding or investigation for which the subject was transferred to your custody, DHS intends to resume custody of the subject to complete processing.

### IT IS THEREFORE REQUESTED THAT YOU:

- Serve a copy of this form on the subject and maintain custody of him/her for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. **This request takes effect only if you serve a copy of this form on the subject, and it does not request or authorize that you hold the subject beyond 48 hours. This request arises from DHS authorities and should not impact decisions about the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.**
- As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling ☐ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at \_\_\_\_\_. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- Notify this office in the event of the subject's death, hospitalization or transfer to another institution.

☐ If checked: Please cancel the detainer related to this subject previously submitted to you on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer)

\_\_\_\_\_  
(Signature of Immigration Officer)

**Notice:** If the subject is taken into DHS custody, he or she may be removed from the United States. If the subject may be the victim of a crime or you want the subject to remain in the United States for a law enforcement purpose, please notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

### 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 by mailing, emailing, or faxing a copy to \_\_\_\_\_.

Local Booking/Inmate #: \_\_\_\_\_ Est. release date/time: \_\_\_\_\_ Date of latest criminal charge/conviction: \_\_\_\_\_

Latest offense charged/convicted: \_\_\_\_\_

This Form I-247D was served upon the subject on \_\_\_\_\_, in the following manner: ←

☐ in person ☐ by inmate mail delivery ☐ other (please specify): \_\_\_\_\_

\_\_\_\_\_  
(Name and title of Officer)

\_\_\_\_\_  
(Signature of Officer)

DHS Form I-247D

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It's not clear what evidence ICE will use to get this information or whether there is any check on if it is correct.

These are basically what ICE does now if they are investigating someone, but they are not specific facts amounting to probable cause.

ICE says this form should not affect bail or other custody decisions. In practice, however, courts and jails often use detainers against people.

Requests the local agency to sign that the detainer was served on the detainee. However it is not clear what ICE will do if this notice is not provided to the detainee.

## NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. **If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian** (the agency that is holding you now) to inquire about your release. **If you have a question or complaint regarding this detainer, please contact the ICE ERO Detention Reporting and Information Line at (888) 351-4024. For complaints related to alleged violations of civil rights or civil liberties connected to DHS activities, please contact the Joint Intake Center at (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.**

This page is for the local jail to provide to the detainee. However it is unclear if that means that the first page, containing DHS's claims about the person, would not be given to them. Without knowing what allegations DHS makes, the detainee has no way of challenging them.

## NOTIFICACIÓN AL DETENIDO

El Departamento de Seguridad Nacional (DHS) ha emitido una orden de detención inmigratoria en su contra. Una orden de detención inmigratoria es un aviso a la autoridad de seguridad pública que DHS tiene la intención de asumir custodia sobre usted (después que normalmente hubiera sido liberado de su custodia) porque existe causa probable que usted esté sujeto a ser removido de los Estados Unidos bajo la ley federal de inmigración. DHS ha pedido que la autoridad de seguridad pública que actualmente lo tiene detenido lo / la mantenga en su custodia por un período que no sobrepase 48 horas después del momento cuando usted hubiera sido liberado basado en sus cargos o condenas criminales. **Si DHS no lo toma bajo su custodia durante este período adicional de 48 horas, usted debe contactar a la agencia responsable por su custodia** (la que actualmente lo tiene detenido) para preguntar acerca de su liberación. **Si usted tiene alguna pregunta o queja concerniente a esta orden de detención, por favor contacte la Línea para Reportar e Información de ICE ERO al (888) 351-4024. Para quejas relacionadas a violaciones alegadas de derechos civiles o libertades civiles conectadas a las actividades de DHS, por favor contacte al Joint Intake Center (Centro de Admisión) al (877) 2INTAKE (877-246-8253). Si usted cree ser un ciudadano de los Estados Unidos o víctima de un crimen, por favor avísele a DHS llamando gratis al ICE Law Enforcement Support Center (Centro de Apoyo de ICE para las Agencias para el Cumplimiento de la Ley) al (855) 448-6903.**

## AVIS AU DETENU

Le Département de la Sécurité Nationale (en anglais: DHS) a émis un ordre d'arrêt d'immigration contre vous. Un ordre d'arrêt d'immigration est un avis à un organisme d'application de la loi que DHS a l'intention d'assumer votre garde (après votre libération) car il existe cause probable que vous soyez sujet à l'expulsion des Etats-Unis en vertu du droit fédéral de l'immigration. DHS a demandé à l'agence d'application de la loi qui actuellement vous détient, de vous maintenir sous garde pendant une période n'excédant pas 48 heures après avoir été libéré en fonction des accusations ou condamnations criminelles contre vous. **Si DHS ne vous prend pas en garde à vue au cours de cette période de 48 heures supplémentaires, vous devez contacter votre gardien** (l'agence qui vous retient aujourd'hui) pour enquêter au sujet de votre libération. **Si vous avez une question ou une plainte au sujet de cette demande, veuillez contacter la Ligne pour Rapporter et d'Information de ICE ERO au (888) 351-4024. Pour les plaintes relatives à des violations présumées des droits et libertés civils liés à des activités de DHS, veuillez contacter Joint Intake (Centre d'Admissions) au (877) 2INTAKE (877-246-8253). Si vous croyez que vous êtes un citoyen américain ou victime d'un crime, veuillez prévenir DHS, en appelant gratuitement ICE Law Enforcement Support Center (Centre d'Appui de ICE pour les Organismes d'Application de la Loi) au 855 448-6903.**

## AVISO AO DETENTO

O Departamento de Segurança Interna (DHS, pela sigla americana) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de aplicação da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja libertado. O DHS pediu que a agência de aplicação da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas após o período em que seria libertado pelas autoridades estaduais ou municipais de aplicação da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, você deverá entrar em contato com a agência custodiante** (a agência de aplicação da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua libertação 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 Joint Intake Center, que seja o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE, pela sigla americana) pelo telefone 1-877-246-8253. Se você acreditar que é cidadão dos EUA ou está sendo vítima de um crime, informe ao DHS, ligando para o Law Enforcement Support Center, que seja o Centro de Apoio para Aplicação da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903.**