

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.