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AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

**IMMIGRANTS'  
RIGHTS  
PROJECT**

# 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.

**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. The Tenth Amendment bars the federal government from forcing state and local law enforcement agencies to enforce federal regulatory schemes. *Printz v. United States*, 521 U.S. 898 (1997) (prohibiting the federal government from “command[ing] the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program” because “such commands are fundamentally incompatible with our constitutional system”). Although ICE in the past tried to dodge the question, it now recognizes that responses to detainer requests are voluntary. *See also Galarza v. Szalczyk*, 745 F.3d 634, 645 (3rd Cir. 2014) (federal regulations “merely authorize[] the issuance of detainers as requests” and do not “compel state or local LEAs to detain suspected aliens subject to removal pending release to immigration officials”). Hundreds of jurisdictions across the country have decided not to hold individuals beyond their release date on the mere basis of ICE detainer requests.

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

**2**

An ICE detainer is not a warrant. *See Morales v. Chadbourne*, 996 F. Supp. 2d 19, 39 (D.R.I. 2014) (“Warrants are very different from detainers . . . .”); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011) (“A detainer is not a criminal warrant . . . .”). A genuine criminal warrant must be issued by a judge based on an individualized determination of probable cause.

An ICE detainer, in contrast, is issued by a single ICE enforcement officer, not a judge—and thus, it does not meet the Constitution’s minimum standard for authorizing further detention. As multiple federal courts have found, ICE detainers have caused individuals, including U.S. citizens, to be detained without adequate legal cause in violation of the Fourth Amendment. *See, e.g., Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014); *Villars v. Kubiowski*, 45 F. Supp. 3d 791 (N.D. Ill. 2014); *Miranda-Olivares v. Clackamas County*, -- F.Supp.2d ----, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968 (D. Ut. Feb. 21, 2013); *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012).

In addition, except for the name, ICE “detainers” have virtually nothing in common with criminal detainers. A criminal detainer can be issued only if there are charges pending in another jurisdiction against a person who is currently serving a criminal sentence. Criminal detainers 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. See 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”).

# 3

## ICE’s recent changes to the detainer form under the Priority Enforcement Program (PEP) fail to fix the fundamental Constitutional problems with ICE detainers.

ICE began to release a new detainer form in June 2015 as part of its Priority Enforcement Program, or “PEP.” Yet the new detainer form does not make any attempt to provide for a judicial determination of probable cause, as required by the Fourth Amendment. Nor does the form establish that ICE has made an *individualized* determination of probable cause. The conclusory, boilerplate checkboxes that it provides do not establish the fact-based determination of probable cause that the Fourth Amendment requires.

## Holding someone for ICE is expensive.

# 4

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 spent over \$26 million per year on ICE detainers.

In addition to the costs of detention, your agency faces the costs of legal liability if you choose to comply with ICE detainers. 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 2014, for example, [Salt Lake County](#) in Utah agreed to pay \$75,000 after holding a man in jail for 39 days on an ICE detainer (well past the detainer’s own time limit). Also in 2014, [Lehigh County](#), Pennsylvania, agreed to pay \$95,000 in damages and attorney’s fees to a U.S. citizen who was wrongly held without bail for 3 days because of an ICE detainer.

## ICE frequently makes mistakes

5

ICE issues erroneous detainers 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. In Rhode Island, [Ada Morales](#), who became a naturalized U.S. citizen in 1995, has been wrongly subjected to ICE detainers, not once, but twice, because ICE never updated its records. From 2008 to 2012, ICE's own records show that it issued [834 detainers against U.S. citizens](#).

## Getting involved with ICE detainers undermines public safety.

6

When your department chooses to comply with ICE detainers, 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 hold individuals beyond their release date on the mere basis of an ICE detainer request, 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 limiting your role in immigration enforcement, and with ICE detainers. ICE detainers routinely violate constitutional rights, drain scarce local resources, and undermine your relationships with the communities you are working to keep safe.