

## Community and Courtroom Responses to Immigration Detainers

### I. Overview

Collaboration between local law enforcement agencies and the Department of Homeland Security (DHS) has been rapidly expanding in recent years, especially under the speedy deployment of Immigration and Customs Enforcement’s (ICE) “Secure Communities” program, which checks all fingerprints taken by participating jails and prisons against federal immigration databases. This collaboration has come under new scrutiny in the context of the current economic climate and increasing awareness of the negative effect such collaboration has on community policing. Recent criticisms have led to some changes. In response to repeated and widespread violations of detainer regulations (for example, some jurisdictions have been holding individuals far beyond the 48-hour maximum), ICE recently adopted a new detainer form emphasizing that detainers are a “request,” listing a hotline for detained individuals to call, requiring that individuals receive notice of a detainer issued against them, and reiterating that the individual should be held no longer than 48 hours on the detainer.<sup>1</sup> Over the last year, several jurisdictions—including New York City, Sonoma County, California, Santa Clara County, California, San Francisco County, California, and Cook County, Illinois—have announced that they will honor ICE detainers only if certain conditions are met. Additionally, lawsuits have been filed in over a half a dozen states challenging lengthy detentions by local authorities based on ICE detainers.

How do immigration detainers work? When a fingerprint check or an interview with an individual in the custody of a local law enforcement agency reveals that the person is sought by ICE, the immigration agency will send the local law enforcement agency a piece of paper known as an immigration detainer, which can extend an individual’s time in custody for up to two days beyond the completion of time served in the criminal justice system, excluding weekends and holidays. Local taxpayers absorb the costs. (The National Immigration Forum has previously looked at this issue in depth with its paper, [Immigrants Behind Bars: How? Why? And How Much?](#) That paper provides explanations of the ways that immigrants end up in local custody and are held there on the basis of their immigration status. It also explores the associated costs for states and counties. In this paper, the Forum examines reactions to ICE detainers, including litigation.)

### II. Abuse of Immigration Detainers

Extended detention of non-citizens in the criminal justice system is primarily triggered by an immigration detainer. An immigration detainer, also known as an “ICE hold,” is a *request* that another Federal, State or local law enforcement agency hold an individual for up to an additional

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<sup>1</sup> New ICE detainer form, available at: <http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>; See also, ICE Press Release, “ICE establishes hotline for detained individuals, issues new detainer form” December 29, 2011, available at: <http://www.ice.gov/news/releases/1112/111229washingtondc.htm>.

48 hours beyond their scheduled release. This extended detention is requested by ICE to give the agency the opportunity to investigate or take custody of the subject of a detainer.<sup>2</sup> The key in understanding ICE detainers is that they are not mandatory. Specifically, a federal district court in Indiana found that an ICE detainer “is not a criminal warrant, but rather a voluntary request that the law enforcement agency advise DHS prior to the release of the alien.”<sup>3</sup>

A few counties and localities are starting to reconsider how they respond to ICE detainers. Taos County and San Miguel County in New Mexico took action in early 2011 when they said they will not follow ICE detainers unless, at minimum, ICE will reimburse the counties for the cost.<sup>4</sup> In June of 2011, the San Francisco County Sheriff’s Department decided to stop honoring ICE detainers for certain inmates.<sup>5</sup> In September 2011, Cook County, Illinois, passed an ordinance stating that the Sheriff’s Office will honor certain ICE detainers under limited circumstances, among them: when ICE will reimburse Cook County for all the costs incurred; when ICE has a criminal warrant; or when Cook County has a law enforcement purpose not related to immigration to hold the person.<sup>6</sup> In October 2011, Santa Clara County, California, passed an ordinance saying it would not honor ICE detainers unless all costs incurred by the County to comply with these requests are reimbursed.<sup>7</sup> In November 2011, Washington, D.C., proposed a bill that will limit cooperation with ICE regarding detainers. The bill would limit non-criminal detainers to a 24-hour hold period, would require federal reimbursement for the District’s costs, and only permit the detainment of individuals who have been convicted of dangerous and violent crimes.<sup>8</sup>

However, the majority of localities honor ICE detainers without question, and many impermissibly detain individuals beyond the 48 hour limit set forth in 8 C.F.R. § 287.7(d), essentially continuing detention until ICE assumes custody. It is important to note DHS and ICE are not the custodians of individuals held on an ICE detainer. Instead, individuals held solely on an ICE detainer remain legally in the custody of the local law enforcement agency until ICE apprehends them and custody is transferred.

These localities are not only incurring extra detention costs—which can run more than \$60 a day in Texas and \$170 a day in New York<sup>9</sup> and are not reimbursed by DHS—but they are also

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<sup>2</sup> 8 CFR 287.7(a) (2011).

<sup>3</sup> *Buquer v. City of Indianapolis*, 2011 U.S. Dist. LEXIS 68326 (S.D. Ind. June 24, 2011).

<sup>4</sup> Warden Patrick Snedeker, Letter to Marcela Diaz, Dated December 16, 2010. Taos Jail Policy, Taos County Adult Detention Center Policies and Procedures Dated January 4, 2011.

<sup>5</sup> Barbara Taylor, “SF Sheriff To Stop Holding Low-Level Inmates For Deportation” CBS San Francisco (May 6, 2011) available at, <http://sanfrancisco.cbslocal.com/2011/05/06/san-francisco-sheriff-to-stop-holding-low-level-inmates-for-deportation/>.

<sup>6</sup> Policy for Responding to ICE detainers, Cook County, Illinois, Passed on September 7, 2011. Available at: [http://cookcountygov.com/ll\\_lib\\_pub\\_cook/cook\\_ordinance.aspx?WindowArgs=1501](http://cookcountygov.com/ll_lib_pub_cook/cook_ordinance.aspx?WindowArgs=1501).

<sup>7</sup> [Fernando Perez](#), [Raj Jayadev](#), “Santa Clara County Ends Collaboration with ICE, Creates Local Protections Against Controversial “Secure Communities” Program,” Silicon Valley De-Bug, available at; <http://www.siliconvalleydebug.org/articles/2011/10/18/santa-clara-county-votes-end-collaboration-IC>

<sup>8</sup> Immigration Detainer Compliance Amendment Act of 2011, Bill Number 19-585 Proposed November 2011, Washington, DC.

<sup>9</sup> National Immigration Forum, “Immigrants Behind Bars: How? Why? And How Much? (March 2011) available at; [http://www.immigrationforum.org/images/uploads/2011/Immigrants\\_in\\_Local\\_Jails.pdf](http://www.immigrationforum.org/images/uploads/2011/Immigrants_in_Local_Jails.pdf).

violating federal law, which may result in lawsuits against the local jurisdictions. This is not an improbability.

In many cases, local governments have been forced to settle, sometimes paying out tens of thousands of dollars. For example, in September 2009, New York City settled a suit with an immigrant inmate for \$145,000 in damages after the city unlawfully held him at the state correctional facility on Rikers Island under the auspices of an expired immigration detainer for more than a month.<sup>10</sup> Partly as a result of this case, in November of 2011, New York City reformed its detention policy.<sup>11</sup> The Department of Corrections will not comply with ICE detainers unless the immigrant has a criminal record, faces pending charges somewhere in the US, has an outstanding warrant of removal from ICE, has previously been subject to a final order of removal by an immigration court, or is on the terrorism watch list. In September 2010, Washington State settled a similar case with a Mexican immigrant for damages of \$35,000.<sup>12</sup> There the individual was held for 20 days after a traffic accident under the auspices of an ICE detainer. The criminal case against the immigrant was dismissed and he was ordered released by the judge. In July 2011, Sonoma County, California settled a lawsuit with two different plaintiffs for a total of \$8,000 and agreed to completely overhaul its policy surrounding its collaboration with federal immigration enforcement.<sup>13</sup> Under the agreement, the “Sherriff’s office will no longer participate in joint field operations with ICE unless ICE refrains from arresting or taking custody of persons solely based on a suspicion that they are unlawfully present in the country.” The Sonoma County Sheriff also agreed “not to volunteer information about people who are in the County’s custody due solely to traffic infractions or driving without a license to ICE.”<sup>14</sup>

In addition to cases that have reached settlement, there are at least a dozen detainer-related cases pending in several states including: Colorado, Florida, Louisiana, Indiana, Utah, Pennsylvania, and Tennessee (see Appendix A below). In these cases, allegedly unlawful detentions of individuals due to ICE detainers range from a week over the statutory maximum holding period of 48 hours all the way up to 164 days. In some states this appears to have become quite prevalent. In Lake County, Florida the ACLU claims this has happened to hundreds of people over the last few years.<sup>15</sup> In Rutherford County, Tennessee there is so much concern that detainer abuse has become routine that that one of the pending cases was filed as a class action lawsuit.<sup>16</sup>

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<sup>10</sup> NYU Immigrant Rights Clinic, “City Settles Rikers Lawsuit Alleging Violations of Immigrant’s Rights” (Sept. 1, 2009) available at <http://www.lawso.ucsb.edu/faculty/jstevens/113/harveypressrelease.pdf>.

<sup>11</sup> New York City Council, Law Number 656-A, Enacted November 22, 2011.

<sup>12</sup> Northwest Immigrants Rights Project, “Northwest Immigrant Rights Project & Center for Justice Achieve Settlement in Case of Immigrant Detained Unlawfully,” (Sept. 17, 2010).

<sup>13</sup> Committee for Immigrant Rights of Sonoma County “Sonoma County Sheriff to Limit Involvement in Immigration Cases” (July 21, 2011) available at [http://www.aclunc.org/cases/active\\_cases/asset\\_upload\\_file403\\_9271.pdf](http://www.aclunc.org/cases/active_cases/asset_upload_file403_9271.pdf).

<sup>14</sup> American Civil Liberties Union of Northern California, “ACLU Announces Settlement of Case to Protect Immigrants’ Rights in Sonoma County” (July 21, 2011) available at [http://www.aclunc.org/news/press\\_releases/aclu\\_announces\\_settlement\\_of\\_case\\_to\\_protect\\_immigrants'\\_rights\\_in\\_sonoma\\_county.shtml](http://www.aclunc.org/news/press_releases/aclu_announces_settlement_of_case_to_protect_immigrants'_rights_in_sonoma_county.shtml).

<sup>15</sup> American Civil Liberties Union, “Lake County Sheriff’s Office Investigation Of Immigrant Mother’s Unlawful Arrest And Detention A Whitewash, Says ACLU,” April 2, 2009 available at <http://www.aclu.org/immigrants-rights/lake-county-sheriffs-office-investigation-immigrant-mothers-unlawful-arrest-and-de>.

<sup>16</sup> Charles Maldando, The City Paper, “Rutherford County Sheriff’s Office facing two civil lawsuits” available at <http://nashvillecitypaper.com/content/city-news/rutherford-county-sheriffs-office-facing-two-civil-rights-lawsuits>.

Recently, immigrant advocacy groups took these lawsuits a step further in the summer of 2011 when the Heartland Alliance's National Immigrant Justice Center (NIJC) filed a class action lawsuit against DHS for causing the unlawful detention of immigrants and U.S. citizens identified through local law enforcement agencies.<sup>17</sup> It has been unusual for DHS to be sued in detainer-related suits because the agency is not the custodian.

### **III. Effect on Bond and Diversion Programs**

An individual charged in a criminal matter might ordinarily be released on bond pending his or her criminal proceedings. However, if ICE has placed a detainer on that individual, he or she would not be released on the criminal bond. Additionally, a local law enforcement agency might assume there is a major risk of flight, and consequently increase the bond or deny bond altogether. Some bail bondsmen believe that cases where an immigration detainer has been filed are too high risk. They fear that ICE will take custody of the individual as soon as bond has been posted, or that the individual will be deported, thus missing future criminal court dates and resulting in a revocation of the bond.

If that individual is subject to an immigration detainer, he or she might be denied placement in diversion programs.<sup>18</sup> When people are not released on bond, or are not placed in a diversion program because of an ICE detainer, the effect on the jurisdiction is higher incarceration costs.

### **IV. Lawsuits and Bail Bondsmen**

The confusion generated by the interplay between immigration detainers and the posting of a criminal bond has led to a good deal of litigation on the issue. The majority of these cases center on arguments from bail bondsmen posting criminal bonds that it is impossible for them to get the individual to the court date because, once out on bond, the individual may either be deported by ICE or taken into custody by ICE (and thus not at liberty to make his or her criminal court appearance).

When a defendant fails to appear in court, he or she forfeits the bond. Over the last few years, federal districts and the state of California have ruled that a person does not forfeit bond as long as ICE or some other authority retains custody, even if the person "fails to appear" for a scheduled court proceeding.<sup>19</sup> On the other hand multiple state courts, including those in New Jersey, North Carolina, and Georgia have ruled the other way—a person forfeits bond for failing to appear at a scheduled court appointment even if they are in ICE custody.<sup>20</sup> This split between

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<sup>17</sup> National Immigrant Justice Center "NIJC Sues Department of Homeland Security Over Key Component of Secure Communities Program" (August 12, 2011) available at [http://www.immigrantjustice.org/court\\_cases/jimenez-et-al-v-napolitano-et-al](http://www.immigrantjustice.org/court_cases/jimenez-et-al-v-napolitano-et-al).

<sup>18</sup> *People v. Lexington Nat. Ins. Corp.*, 181 Cal.App.4th 1485, (Cal.App. February 02, 2010).

<sup>19</sup> *United States v. Montoya-Vasquez*, 2009 U.S. Dist. LEXIS 2148, at 14 (D. Neb. Jan. 13, 2009); *United States v. Urquiza*, F. Supp 2006 WL2691074 (E.D. Wis. Dec. 19, 2006); *People v. Lexington Nat. Ins. Corp.*, 181 Cal.App.4th 1485, (Cal.App. February 02, 2010).

<sup>20</sup> *State v. Ventura*, 196 N.J. 203, (N.J. 2008); *State v. Lazaro*, 190 N.C.App. 670, (N.C.App. 2008); *Gomez-Ramos v. State*, 297 Ga.App. 113 (Ga.App. 2009).

jurisdictions has only added to the confusion among bail bondsmen and individuals subject to ICE detainers.

There have been lawsuits filed against bail bondsmen who failed to return the bond money given to them by the detained individual's family after the bondsman was unable to obtain the individual's release due to an immigration detainer. According to most bail bondsmen state regulations, bondsmen are either supposed to ask the subject of the detainer for additional funds to secure any second bond, often an immigration bond, to obtain release or they are supposed to refund the money due to their inability to obtain the release when the first bond was posted. Failure to follow this basic procedure, which exists in most states, may result in the revocation of the bail bondsmen's license, as it has in the State of Arkansas.<sup>21</sup>

## **V. Conclusion**

There is no shortage of strong opinions, confusion and even abuse surrounding ICE detainers. It is not likely the new ICE detainer form will completely eliminate detainer problems. There are substantial financial costs for local jurisdictions that continue to detain individuals as a courtesy to ICE. These costs are compounded when a jurisdiction must defend itself against or pay to settle lawsuits when procedures go awry. Other local law enforcement agencies have begun to address immigration detainer practices as they contemplate whether to collaborate with controversial immigration enforcement programs. Recently, some jurisdictions have opted not to honor ICE detainers, finding them too pricey, too burdensome, or too politically untenable. In the growing storm of controversy surrounding immigration detainers, the winds of litigation and politics are just beginning to swirl. This is one weather pattern that shows no sign of dissipating without answers to America's bigger immigration questions.

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<sup>21</sup> *Curen v. Arkansas Professional Bail Bondsmen Licensing Board*, 79 Ark. App. 43 (Ark App. 2003)

## Appendix A: Known Lawsuits

### 1. Lengthy Detentions Due to ICE hold:

**California:** In July 2011, Sonoma County settled a lawsuit with two different plaintiffs for a total of \$8,000 after unlawfully holding them at a correctional facility. Neither of these individuals were charged with any violation of state law and were only booked on “immigration detainers.” As part of the settlement, Sonoma County also agreed to overhaul its detainer policy.

**Colorado:** Colorado resident [Luis Quezada](#) sued the Jefferson County Sheriff for illegally imprisoning Mr. Quezada for 47 days in 2009 on an immigration detainer, after Mr. Quezada had already resolved the traffic charges against him. When ICE finally took custody of Mr. Quezada, they immediately released him on bond while his case was pending in immigration court. Mr. Quezada seeks compensation from Sheriff Mink for false imprisonment and violation of rights under the Fourth, Eighth, and Fourteenth Amendments. The ACLU filed suit on his behalf in April 2010, and due to multiple similar complaints in Colorado, the ACLU has written advisories to all the sheriffs in the state regarding the 48 hour limitation on detainers.

### Florida

- 1) [Jose Bernabe](#) was held for 7 days in Miami-Dade County Jail after he posted bail. In August 2010, Bernabé’s Miami attorney, John de León, sued Miami-Dade County jail officials for refusing to release his client even after immigration officials failed to take him into custody within the prescribed detainer deadline. Mr. De Leon has now teamed up with Miami’s famed immigration attorney Ira Kurzban to monitor detainer cases and assemble a class-action lawsuit.
- 2) [Rita Cote](#) was detained by the Lake County Sheriff’s Office without charge, both before an immigration detainer was lodged against her, and after it expired. The ACLU filed a habeas corpus petition on her behalf, and has collected information on hundreds of people unlawfully arrested and held in Lake County in similar circumstances.

**Louisiana:** In February 2011, [Antonio Ocampo](#), who was held for almost 3 months on an immigration detainer until finally ordered released by U.S. District Chief Judge Sarah Vance, filed a [civil rights complaint](#) against the Sheriff for his unlawful detention. Co-plaintiff Mario Cacho was also held in Orleans Parish Prison for even longer—approximately 164 days—and was only released after filing a complaint with the DHS Office for Civil Rights and Civil Liberties.

**New York:** In September 2009, New York City settled a suit with Cecil Harvey, an immigrant inmate, for \$145,000 in damages after unlawfully holding him at the correctional facility of Rikers Island under the auspices of an expired detainer for more than a month. As a result of this case, Rikers Island has reformed its detention policy and now adheres strictly to the 48 hour limitation on ICE detainers.

### Tennessee

- 1) [Carlos Ramos-Macario](#) was held for over four months by Rutherford County Sheriff’s Office based on the presence of an ICE detainer. Cases like this are so common that in

September 2010, Tennessee attorney Elliot Ozment filed a federal class-action lawsuit in U.S. District Court for Middle Tennessee against the Sheriff's Office for racial profiling.

- 2) Also in September 2010, U.S. permanent resident [Benigno Guzman-Ornelas](#), was unlawfully held by the Warren County Sheriff for 7 days because of an ICE detainer. A Warren County judge ordered Mr. Guzman-Ornelas released after the case was brought to his attention.

**Washington:** In September 2010, Spokane County settled a suit with Enoc Arroyo-Estrada, an immigrant from Mexico, for \$35,000 in damages after unlawfully holding him at a correctional facility for 20 days after being involved in a minor traffic accident.

## **2. Lengthy Detention Due to ICE Hold Even After Posting Bond:**

**Illinois:** In August 2011, the National Immigrant Justice Center brought a [class action lawsuit](#) in federal court in the Northern District of Illinois against DHS. The two lead plaintiffs are Jose Jimenez Moreno, a U.S. Citizen (who is not deportable), and Maria Jose Lopez, who has been in the United States since she was four-years-old and is the main caregiver for three children. The lawsuit states that DHS's use of immigration detainers and their effects on individuals violates the Fourth, Fifth and Tenth Amendments of the United States Constitution.

**Indiana:** In June 2010, Wendy Melendrez-Rivas sued LaGrange County's Sheriff's Department for holding her after her immigration detainer had expired and after she posted bond. The suit, filed by the Mexican American Legal Defense and Educational Fund (MALDEF), accuses the Sheriff's Department of violating Melendrez-Rivas's due process rights. The lawsuit also seeks damages to cover economic loss, emotional distress, and deprivation of her constitutional rights, as well as costs and attorney fees.

**Pennsylvania:** [Ernesto Galarza, a U.S. Citizen born in New Jersey](#), was held illegally in Lehigh County Prison in Pennsylvania on an ICE detainer. Although Galarza posted bail in his criminal matter, he was not released because of an ICE detainer. His Pennsylvania drivers' license and social security card were in his wallet at the time. As a result of his incarceration over the weekend, Galarza lost a job and missed wages he would have earned. He filed suit in the Eastern District of Pennsylvania in November 2010.

**Utah:** [Enrique Antonio Uroza](#), a 22-year-old Weber State University student, was booked on suspicion of forgery and theft by deception. He posted bail, but was subject to an immigration detainer, and was subsequently held for an additional 39 days. The [American Civil Liberties Union](#) of Utah filed a lawsuit on August 5<sup>th</sup>, 2011, over the illegal detention.

## **Appendix B: Local Government Responses**

**Cook County, Illinois:** In September 2011, Cook County, Illinois, passed an ordinance stating that the Sheriff's Office shall only honor certain ICE requests under limited circumstances. Those circumstances being: (a) ICE will reimburse Cook County for all the costs incurred; (b) if ICE has a criminal warrant; or (c) Cook County has a law enforcement purpose not related to immigration to hold the person.

**District of Columbia:** In November 2011, Washington, D.C., proposed a bill that will limit cooperation with ICE regarding detainers. The bill would limit non-criminal detainers to a 24-hour hold period, would require federal reimbursement for the District's costs, and only permit the detainment of individuals who have been convicted of dangerous and violent crimes. There is a hearing on this bill scheduled for early January 2012.

**New York City, New York:** In November 2011, New York City passed an ordinance stating that the Department of Corrections will not comply with ICE detainers in instances where the immigrant: has no criminal record; faces no pending charges anywhere in the US; has no outstanding warrant of removal from ICE; has not previously been subject to a final order of removal by an immigration court; and is not on the terrorism watch list.

**San Francisco County, California:** In June of 2011, the San Francisco County Sheriff's Department decided to stop honoring ICE detainers for certain individuals. This includes those who aren't being charged with a crime and those who were brought in after reporting a domestic violence incident, as long as they don't have a criminal history.

**Santa Clara County, California:** In October 2011, Santa Clara County, California, passed an ordinance saying it would not honor ICE detainers unless all the costs incurred by the county to comply with these requests will be reimbursed by ICE.

**San Miguel and Taos County, New Mexico:** In December 2010 and January 2011, respectively, the detention centers in these counties adopted a policy of not honoring ICE detainers unless, at minimum, the person has been convicted of a felony or at least two misdemeanors. Under current law, a jurisdiction may have its detention costs reimbursed from the federal government if it holds a person with these requisite convictions.

**Sonoma County, California:** In July 2011, Sonoma County settled a lawsuit and agreed to overhaul its policy surrounding its collaboration with ICE. Under the agreement, the Sheriff's Office agreed it will no longer participate in joint field operations with ICE unless ICE refrains from arresting or taking custody of persons solely based on a suspicion that they are unlawfully present in the country. The Sheriff's Office also agreed not to volunteer information to ICE about people who are in the County's custody due solely to traffic infractions or driving without a license.

*January 2012*