



Backgrounder on ICE detainer requests

An immigration detainer, or “ICE hold,” is a request from U.S. Immigration and Customs Enforcement (ICE) to a state or local law enforcement agency to hold someone until the person can be taken into federal immigration custody. A detainer asks the law enforcement agency to hold a person for up to 48 hours beyond the time that the person would otherwise be released (e.g., because charges were dropped, the person was released on bail or recognizance, the person was acquitted, or the person completed a jail or prison sentence). Detainers are requests from ICE; the federal government acknowledges that they are not mandatory.

Detention resulting from an immigration detainer constitutes a new arrest, which violates the Fourth Amendment when there is no judicial warrant or probable cause.

ICE’s detainer policy, updated in April 2017, requires ICE to attach Form I-200 or I-205 to any detainer request (now ICE Form I-247A).¹ Forms I-200 and I-205 are not judicial warrants but are instead signed by ICE agents, and they do not supply any additional authority to hold a person on a detainer, because, as the forms themselves state, only federal immigration officers can execute an I-200 or I-205. These forms also do not absolve the local arresting officers of liability under the Fourth Amendment for an illegal arrest or detention.²

Similarly, Form I-203 – which ICE sends to jurisdictions that have Intergovernmental Service Agreements or Basic Ordering Agreements – does not supply any additional authority to extend a person’s detention based on a detainer.³ The extended detention still constitutes a new arrest by the local law enforcement agency, which remains liable for Fourth Amendment violations, the same as with detainers.

According to ICE’s own records, between FY 2008 and FY 2012, it erroneously issued 834 detainer requests for U.S. citizens.⁴

The ACLU recommends that law enforcement agencies decline to effectuate any ICE detainer request absent a judicial warrant in order to minimize the risk and liability of holding a person in violation of the Fourth Amendment.

¹ <https://www.ice.gov/detainer-policy>.

² <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018>.

³ Intergovernmental Service Agreements (IGSAs) are contracts that allow ICE to rent detention bed space from local jails. Most of ICE’s detention beds are governed by IGSAs. For more information about Basic Ordering Agreements, see <https://www.aclu.org/fact-sheet/faq-ices-new-enforcement-partnerships-florida>.

⁴ TRAC, ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents, Feb. 20, 2013, <http://trac.syr.edu/immigration/reports/311/>; Eyder Peralta, You Say You’re an American, but What if You Had to Prove It or Be Deported?, NPR (Dec. 22, 2016), <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>.