

ICE HOLDS: COSTLY AND DANGEROUS A FACT SHEET FOR POLICY MAKERS



An immigration detainer, or ICE hold, is a request from Immigration and Customs Enforcement (ICE) to local law enforcement officials. It asks local officials to detain an individual in their custody for 48 hours longer than they otherwise would, in order to facilitate transfer to ICE.

ICE holds are the linchpin of a number of programs of police-ICE collaboration, including 287(g), “Secure Communities,” and the Criminal Alien Program.

ICE regularly issues holds for any person booked into jail who ICE considers to be potentially deportable, regardless of the booking charge. This means that, for an undocumented person, being booked for a minor offense, which would normally result in a few hours in jail, may instead lead to months of detention followed by deportation.

ICE holds are not mandatory. As confirmed by federal courts and ICE itself, ICE holds are “requests.”¹ Local officials can—and do—decline to submit to ICE holds.²

Unlike arrest warrants, ICE holds are not required to meet any standard of proof.³ ICE’s current practice is to issue ICE holds without requiring a finding of probable cause that an individual is deportable.

ICE makes mistakes. In a number of high-profile cases, US citizens and lawful residents have been issued ICE holds.⁴ Data suggest that these mistakes may not be isolated occurrences, but instead reflect a pattern of wrongful detentions and arrests.⁵ In many cases, it is the local government that must pay for litigation that arises from unlawful ICE holds.⁶

Local governments bear the high costs of facilitating deportations by submitting to ICE holds. The economic cost of ICE holds goes well beyond the (not-negligible) cost of holding individuals for an extra 48 hours and bearing the liability for potential lawsuits. In practice, individuals with ICE holds rarely post bail, because doing so would result in immediate transfer to ICE. So they serve much more time in jail than others with similar charges. A study in New York found that individuals with ICE holds spent an average of 73 more days in jail than similarly situated individuals without ICE holds.⁷ The city foots the bill.

CONSTITUTIONAL LIMITS ON ICE HOLDS

The federal government could not force localities to submit to ICE holds even if it wanted to. A federal command that local officials use their own money and resources to detain individuals for suspected violations of federal civil immigration laws would constitute unconstitutional “commandeering” of local officers by the federal government.⁸

MORE AND MORE CITIES ARE REFUSING TO SUBMIT TO ICE HOLD REQUESTS

Cook County in Illinois and San Francisco and Santa Clara County in California have all passed ordinances either declining to submit to hold requests or limiting the situations in which they will submit.⁹

ICE HOLDS UNDERMINE COMMUNITY POLICING

When local law enforcement agencies submit to ICE holds, it undermines community policing. Through ICE holds, the local police department becomes the gateway to deportation proceedings. This blurs the line between local police and federal immigration enforcement. The effect is to increase fear and decrease trust between police and immigrant communities – exactly what community policing strategies seek to avoid.

NOTES

- ¹ See, e.g., *Buquer v. City of Indianapolis*, --- F. Supp. 2d. ---, 2011 WL 2532935 (S.D. Ind. 2011) (“A[n immigration] detainer is not a criminal warrant, but rather a voluntary request”); ICE FOIA 2674.020612, Congressional Briefing (“Local LE are not mandated to honor a[n immigration] detainer, and in some jurisdictions they do not.”).
- ² See, e.g., Cook County Code, Ch. 46 Law Enforcement, Sec. 46-37; Santa Clara Board Policy 3.54 Relating to Civil Immigration Detainer Requests.
- ³ See Form I-274 Immigration Detainer – Notice of Action (stating that a detainer may be issued upon the “initiat[ion]” of an “investigation” into an individual’s deportability).
- ⁴ See, e.g., National Immigration Forum, Immigration Detainer Backgrounder at <http://www.immigrationforum.org/images/uploads/2010/DetainersBackgrounder.pdf> (listing detainer-related civil rights lawsuits, including suits brought by wrongfully detained US citizens).
- ⁵ See Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, Oct. 2011 (finding that approximately 3,600 US citizens have been arrested by ICE through the Secure Communities program).
- ⁶ See National Immigration Forum, Immigration Detainer Backgrounder, *supra*, note 4.
- ⁷ Aarti Shahani, Justice Strategies, *New York City Enforcement of Immigration Detainers* (Oct. 2010), available at <http://www.justicestrategies.org/sites/default/files/publications/JusticeStrategies-DrugDeportations-PrelimFindings.pdf>.
- ⁸ See *Printz v. United States*, 521 U.S. 898, 925-35 (1997); Memorandum from Miguel Marquez, Santa Clara County Counsel, Sept. 1, 2010, available at <http://media.sjbeez.org/files/2011/10/5-PSJC-memo-9-1-10.pdf> (“We have serious doubts about whether ICE could make detainers mandatory under any circumstances due to the Tenth Amendment to the US Constitution, which forbids the federal government from “commandeering” state or local officials to implement federal policy objectives.”).
- ⁹ See Cook County Code, Ch. 46 Law Enforcement, Sec. 46-37; Santa Clara Board Policy 3.54 Relating to Civil Immigration Detainer Requests; see also Brent Begin, *San Francisco County jail won’t hold inmates for ICE*, San Francisco Examiner, May 5, 2011.