

## DETAINERS ARE VOLUNTARY

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**Federal courts, state and county counsel, and ICE itself all confirm that  
detainers are voluntary<sup>1</sup>:**

“A detainer is not a criminal warrant, but rather a voluntary request that the law enforcement agency ‘advise [DHS], prior to release of the alien, in order for [DHS] to arrange to assume custody.’”

*Buquer v. City of Indianapolis*, --- F.Supp.2d ----, 2011 WL 2532935 (S.D. Ind. 2011)

“ICE detainers are not akin to a criminal warrant, but rather a voluntary request of a law enforcement agency to cooperate with ICE. It is our opinion that ICE detainers may be treated by the Sheriff as requests for voluntary cooperation, not as orders with which they are required to comply.”

*Patrick T. Driscoll, Deputy State's Attorney, Cook County, Illinois*

“[W]e have serious doubts about whether ICE could make detainers mandatory under any circumstances due to the Tenth Amendment to the U.S. Constitution, which forbids the federal government from "commandeering" state or local officials to implement federal policy objectives. . . . Thus, County Counsel believes that there is no obligation for the County to hold individuals for 48 hours or more pursuant to immigration detainers.”

*-- Miguel Marquez, Santa Clara County Counsel*

"Local LE are not mandated to honor a detainer,  
and in some jurisdictions they do not."

-- ICE

(FOIA 2674.020612, Briefing to Congressional Hispanic Caucus)

Q: Is an ICE detainer a request or a requirement?

Answer: It is a request. There is no penalty if they don't comply."

-- ICE

(FOIA 2674.017695, Emailed Q&A)

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<sup>1</sup> The full text of all cited documents is available online at <http://altopolimigra.com/detainers>