



Frequently Asked Questions: Immigration Detainers and Detainer Requests

What is an immigration “detainer”?

The Department of Homeland Security (DHS) has the option to issue an immigration detainer request when it identifies a potentially deportable individual being held by a state or local law enforcement agency. A detainer¹ is a [written request](#)² to the state or local law enforcement agency to notify DHS at least 48 hours prior to a designated individual’s release from custody and to hold the individual for 48 hours³ beyond the date on which he or she would have otherwise been released. Within this time period, DHS’s Immigration and Customs Enforcement (ICE) must decide whether to take custody of the individual for purposes of removal from the United States.

Who could be subject to an immigration detainers?

When an individual is booked into a local law enforcement agency’s custody, his or her information is shared with the FBI and subsequently with ICE. If ICE has reason to believe the individual may be deportable, it may issue a detainer request to the local law enforcement agency.

Are immigration detainers used only for those with criminal offenses or felonies?

No. The use of immigration detainers are neither limited to individuals who have been charged with a criminal offense nor are they contingent on the severity of the offense. For example, immigration detainers may be issued for individuals booked into custody for a minor infraction, such as a traffic offense, even if the charges are subsequently dropped. There have been instances in which detainers have been [improperly issued against U.S. citizens](#).⁴

If an immigration detainer is issued, is ICE required to take custody of the individual?

No. ICE is not required to assume custody of an individual for whom it has issued a detainer request. If ICE does not take custody of the individual within the allotted time frame, the local law enforcement agency is required to release the individual.

Are localities legally required to comply with detainers?

No. Compliance with detainer requests are voluntary and localities are not legally required to comply. The Administration, however, has [indicated](#)⁵ that it will make receipt of certain federal funds, such as the Edward Byrne Memorial Justice Assistance Grant, contingent on compliance with detainer requests. [California](#)⁶ and the [city of Chicago](#)⁷ filed lawsuits against the Department



of Justice over the Administration's policy. The United States District Court for the Northern District of Illinois [recently issued](#) a nationwide preliminary injunction that will temporarily halt the Administration's implementation of the policy while the court decides whether the Administration is legally permitted to tie such federal funding to the new conditions.⁸

Why would a locality choose not to fulfill a detainer request?

Some jurisdictions do not honor detainer requests because they feel that it will create a perception that local law enforcement officers are acting as agents of ICE. Such a perception could undermine the hard-won trust between immigrant communities and local police and decrease the willingness of undocumented immigrants to report crimes. Additionally, jurisdictions may choose not to enforce detainers due to potential liability. In recent years, numerous individuals have brought lawsuits against their cities for carrying out allegedly unlawful detainer holds.⁹ These suits have included constitutional challenges, such as Fourth and Tenth Amendment claims.¹⁰ Recently, the Supreme Judicial Court of Massachusetts found that it was [unlawful](#)¹¹ for law enforcement officials in their state to comply with detainer requests, as they amount to unconstitutional arrests.

What is USCCB's position?

The principle of subsidiarity, a tenet of Catholic Social Teaching, requires decisions to be made by people closest and most affected by the issues and concerns of the community. Localities should develop policies regarding detainers which are appropriate for their community. While the Bishops and Catholic Social Teaching recognize the right of the federal government to enforce our immigration laws and the importance of national safety, such policies must be just and they must be humanely implemented. The federal government should not penalize those communities which have adopted community safety policies prioritizing community trust over DHS enforcement as solutions tailored to their communities.

Endnotes

1 8 CFR 287.7.

2 DHS created a new detainer form (I-247A) and implemented it on April 2, 2017. *DHS Form I-247A: Immigration Detainer – Notice of Action*, DEPARTMENT OF HOMELAND SECURITY (MARCH 2017), AVAILABLE AT [HTTPS://WWW.ICE.GOV/SITES/DEFAULT/FILES/DOCUMENTS/DOCUMENT/2017/I-247A.PDF](https://www.ice.gov/sites/default/files/documents/document/2017/I-247A.pdf).

3 The 48 hour period does not include weekends or holidays.

4 Jerry Iannelli, *ACLU Sues Miami-Dade County for Illegally Detaining U.S. Citizen for ICE*, MIAMI NEW TIMES (JULY 5, 2017), [HTTP://WWW.MIAMINEWTIMES.COM/NEWS/ACLU-SUES-MIAMI-DADE-COUNTY-FOR-ILLEGALLY-DETAINING-US-CITIZEN-ON-ICE-IMMIGRATION-CHARGES-9470711](http://www.miaminewtimes.com/news/acLU-sues-miami-dade-county-for-illegally-detaining-us-citizen-on-ice-immigration-charges-9470711).

5 *Read the Department of Justice Letters*, LOST ANGELES TIMES (AUG. 3, 2017), [HTTP://DOCUMENTS.LATIMES.COM/READ-JUSTICE-DEPARTMENT-LETTERS/](http://documents.latimes.com/read-justice-department-letters/).

6 Dan Levine, *California Sues Trump Administration Over Sanctuary Policy*, REUTERS (AUG. 14, 2017), [HTTPS://WWW.REUTERS.COM/ARTICLE/US-USA-IMMIGRATION-SANCTUARY/CALIFORNIA-SUES-TRUMP-ADMINISTRATION-OVER-SANCTUARY-POLICY-IDUSKCN1AU1TI](https://www.reuters.com/article/us-usa-immigration-sanctuary/california-sues-trump-administration-over-sanctuary-policy-idUSKCN1AU1TI).





7 Rafael Bernal, *Chicago Files Suit Over Sanctuary City Funding*, THE HILL (AUG. 7, 2017), [HTTP://THEHILL.COM/LATINO/345622-CHICAGO-FILES-SUIT-OVER-SANCTUARY-CITY-FUNDING](http://thehill.com/latino/345622-chicago-files-suit-over-sanctuary-city-funding).

8 Janan Hanna and Kartikay Mehrotra, *Judge Blocks Trump on Threat to Punish Sanctuary Cities*, BLOOMBERG POLITICS (SEPT. 15, 2017), [HTTPS://WWW.BLOOMBERG.COM/NEWS/ARTICLES/2017-09-15/TRUMP-BLOCKED-BY-JUDGE-ON-THREAT-TO-PUNISH-SANCTUARY-CITIES](https://www.bloomberg.com/news/articles/2017-09-15/trump-blocked-by-judge-on-threat-to-punish-sanctuary-cities).

9 See, e.g., *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014), *affirmed on appeal*, 793 F.3d 208 (1st Cir. 2015); *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D.Pa. Mar. 30, 2012), *reversed in part on appeal*, 745 F.3d 634 (3rd Cir. 2014); *Davila v. NRJPB*, 2013 WL 5724939 (W.D. Pa. 2013).

10 In 2014, a federal court in Oregon determined that detainer orders violate the Fourth Amendment's prohibition of holding someone without probable cause. *Miranda-Olivares v. Clackamas Cnty.*, No. 3:12-cv-02317-ST, slip op. at 21 (D. Or. April 11, 2014). In addition, some individuals have argued that such orders violate the 10th Amendment's separation of powers between federal and local authorities. *Moreno et al. v. Napolitano et al.*, No. 11-cv-05452 (N.D. Ill. Sept. 29, 2012); *Brizuela v. Feliciano*, No. 3:12-cv-00226-JBA (D.Conn. Feb. 13, 2012). As a result of this line of argument, the Third Circuit has interpreted detainers to be voluntary requests. *Galarza*, 745 F.3d at 644-45 (finding that any other reading would put detainer requests in conflict with the 10th Amendment).

11 Nate Raymond and Scott Malone, *Massachusetts Immigrant Ruling Could Guide Other States*, REUTERS (JULY 26, 2017), [HTTP://WWW.REUTERS.COM/ARTICLE/US-MASSACHUSETTS-HEALEY/MASSACHUSETTS-IMMIGRANT-RULING-COULD-GUIDE-OTHER-STATES-OFFICIAL-IDUSKBN1AB2YY](http://www.reuters.com/article/us-massachusetts-healey/massachusetts-immigrant-ruling-could-guide-other-states-official-idUSKBN1AB2YY).

