

QUICK INFORMATION ON IMMIGRATION DETAINERS

What is an immigration detainer?

An immigration detainer is a form sent to a law enforcement agency (LEA), such as a jail, prison, or Sheriff's Department. This form (officially titled Form I-247) advises an LEA that DHS, specifically Immigration and Customs Enforcement (ICE), seeks to investigate an individual currently in the custody of the LEA for immigration purposes.

In lodging a detainer against someone, ICE is requesting that the LEA notify ICE when the individual in custody is due to be released, and to hold them beyond the scheduled time of release for up to 48 hours, so that ICE may have the opportunity to come take the person into immigration custody.

Detainers are the lynchpin of ICE's programs that partner with state and local criminal law enforcement agencies: Secure Communities, 287(g), and the Criminal Alien Program (CAP). These programs allow ICE to locate and identify noncitizens in criminal custody. Detainers are the practical tool that enables ICE to apprehend individuals from criminal custody.

What are the problems with detainers?

Detainers are widely misunderstood and misused by ICE and local and state law enforcement agencies.

1. Individuals are frequently held unlawfully in jail beyond the time authorized by a detainer.
2. ICE regularly lodges detainers against people who may have been arrested unlawfully by a LEA.
3. Despite ICE's stated focus on "criminal aliens," detainers can be lodged on any suspected immigrant in criminal custody, whether or not they have been convicted, and whether or not that person is legally deportable. There appears to be no evidentiary standard for lodging a detainer; a number of U.S. citizens have been illegally held on immigration detainers.
4. Detainers lead to prolonged jail time for noncitizens because detainers are often used to raise or deny bail, prevent access to treatment services and jail diversion programs, and limit access to counsel.
5. Individuals with detainers are at a disadvantage in the criminal justice system and plead guilty at higher rates.
6. Communities bear the substantial costs of additional incarceration as a result of holding people on detainers. Because ICE has not yet assumed custody of individuals held on a

detainer, they remain technically in the custody of the state or local law enforcement agency.

7. Individuals held on detainers are frequently given no notification of why they are being held, and there is no clear process for lifting a detainer once it has been lodged.
8. Increased presence of immigration enforcement personnel and ready availability of detainers has resulted in increased traffic stops and low-level arrests of Latinos.

What can be done about these violations?

Abuses of detainers have sparked a growing number of lawsuits around the country. The following is a short list of litigation related to wrongful detention as a result of ICE detainers. This list only includes lawsuits or incidents publicly reported, and is far from exhaustive. Conversations with criminal defense attorneys, public defenders and immigration attorneys suggest a much broader pattern of abuse nationwide, with clients routinely kept in detention beyond the expiration of a detainers' authority, as well as denied bail or bond where a detainer has been lodged, and even arrested without charge merely to seek an ICE detainer.

Civil Rights Lawsuits for Unlawful Detention on Immigration Detainers

SETTLED CASES

Louisiana: [Antonio Ocampo](#) served a three month misdemeanor sentence in Louisiana and was ordered released by the Orleans Parish District Court on August 12, 2010. But Mr. Ocampo was not released because of an ICE detainer that had been lodged against him at the outset of his trial in February. ICE, however, did not assume custody of Mr. Ocampo, and the Sheriff refused to release him for 97 days, despite Mr. Ocampo's filing of numerous grievances and his complaining to jail officials that his release was past-due. On Friday, November 12, the New Orleans Worker Center for Racial Justice filed a petition for writ of habeas corpus on Mr. Ocampo's behalf. The Sheriff sought to turn Mr. Ocampo over to ICE, and then sought to bring ICE officers to the courtroom to testify during the habeas hearing. This provoked a standoff with community members, and finally Sheriff Gusman relented. U.S. District Chief Judge Sarah Vance released Mr. Ocampo on November 15.

New York: In May 2010, [Cecil Harvey](#) won a \$145,000 settlement from New York City for his unlawful detention at Rikers Prison, which held him on an expired immigration detainer for more than a month. Mr. Harvey, represented by NYU Law School Immigrant Rights Clinic, alleged that due to his unlawful imprisonment, he suffered aggravation of his medical condition, was separated from his family, and was unable to appear in his immigration case before the Second Circuit Court of Appeals, losing a crucial opportunity to argue against his deportation.

Texas: In April 2009, the [Otero County](#) Sheriff's Department agreed to a settlement of \$100,000 and changes to its operational procedures in response to a federal class-action lawsuit filed by the Paso del Norte Civil Rights Project. The federal lawsuit claimed that Otero County, New Mexico, sheriff's deputies were involved in unlawful holding of immigrants, racial profiling, unlawful stops and other civil-rights violations. Under the agreement, Otero Country Sheriff's

Department changed its Operational Procedure to read: "Deputies do not have the authority to "hold" an individual for the purpose of having the individual questioned by federal immigration officers, including telephonically, unless an authorized federal agency places a detainer or other legal hold on the suspect for violations of law and presents evidence of such detainer or hold to the Deputy, the Sheriff's Department or their agents. In such a case, the suspect shall be held only so long as allowed by federal law."

Washington: In September 2010, Spokane County agreed to pay \$35,000 to a Mexican citizen, [Enoc Arroyo-Estrada](#), for incarcerating him in the county jail for 20 days after he posted bail, based on an immigration detainer against him. While Mr. Arroyo was stuck in jail, his public defender called the jail and began preparing a habeas corpus petition, and Mr. Arroyo was finally released, but after missing 20 days, he had lost his job.

PENDING LAWSUITS

California: In September 2010, the ACLU of Northern California filed a lawsuit against [Sonoma County](#) Sheriff's Department and the U.S. Bureau of Immigration and Customs Enforcement (ICE) charging that they have been collaborating beyond the law to target, arrest, and detain Latino residents of Sonoma County. On March 10, 2010, Judge Phyllis J. Hamilton issued a [decision](#) granting in part, and denying in part, the motions to dismiss. The Court held that ICE's interpretation of 8 C.F.R. Section 287.7 as allowing the issuance of immigration detainers to initiate local custody was "reasonable" and entitled to deference. However, the Court specifically withheld judgment on whether the use of immigration detainers had violated the arrestees' constitutional or statutory rights.

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 is 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, 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) [Marcotulio Mendez](#) was held for four months based on an immigration detainer, even though he could have been released on bond. The jailers themselves advised him not to post bond, because the immigration detainer meant that he would not be released. In

September 2009, Mendez filed suit in U.S. District Court against Palm Beach County Sheriff Ric Bradshaw for alleged civil rights violations and to challenge the constitutionality of ICE detainees.

- 3) [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.

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 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.

Kansas: In November 2009, [U.S. Citizen and Samoan diplomat Hans Joachim Keil](#) filed suit against U.S. immigration officials for holding him unlawfully in Green County Jail on an immigration detainer. Mr. Keil is suing Glenn Triveline, the acting Field Office Director of ICE in Kansas City, three other ICE agents, and special agent Jack Barnhart of the State Department's Diplomatic Security Service. Mr. Keil's petition to the U.S. District Court in the Western District of Missouri asks for a jury trial, seeking actual and punitive damages for his unlawful detention, being denied the opportunity to contact his embassy, being denied the ability to leave Missouri for nearly four months to attend to diplomatic duties or personal interests, and for his pain and suffering.

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.

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.

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 Country 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.

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