

Detainer Discretion

Limiting Local Cooperation with Federal Immigration Authorities

THE PROBLEM

Municipalities around the country are unnecessarily spending precious resources to hold individuals in custody in their local jails subject to “immigration detainers.” These detainers are requests from federal Immigration and Customs Enforcement (ICE) to local law enforcement asking that an individual with potentially questionable immigration status be held by local authorities for 48 hours beyond the point at which his or her criminal case has been closed. Often these individuals have committed no crime (the case is dismissed) or they have committed a very low-level or status-based crime (driving without a license). A single encounter with the criminal justice system becomes a pipeline to deportation for thousands, a process that has been exacerbated by the rollout of the federal Secure Communities program (“S-Comm”, to opponents), which enables fingerprint sharing between the FBI and ICE.³

The impact on communities is immense. Collaboration between local law enforcement and immigration authorities erodes trust between immigrant communities and the police, meaning families are less likely to report crime or cooperate in police investigations. Cities, strapped for revenue, spend literally millions of dollars holding immigrants for ICE after the resolution of criminal charges.

THE SOLUTION

Municipalities around the country have responded to the human and economic impact of immigration detainers by enacting innovative “detainer discretion” policies, which direct local law enforcement to refuse to honor detainers under certain circumstances. Although immigration detainers are by their nature “requests” and local officials are not required to honor them, municipal detainer policies help to ensure that local criminal justice resources are conserved for their intended purpose and that immigrant communities are protected.⁴

POLICY ISSUES: Cities and counties have used a range of approaches in developing their detainer discretion policies. **New York City, Washington, DC, Chicago, and Santa-**



“[One] severe consequence of the city’s cooperation with federal immigration officials is the lack of trust in law enforcement that it creates among the public. A spouse, for example, may be reluctant to report abuse if she fears that the consequence will be the deportation of the father of her children.”

— **Robert Morgenthau**, former District Attorney, New York City¹

Clara, CA passed legislation; **Taos** has an internal police department policy; and **San Francisco’s** Board of Supervisors passed a resolution calling on the Sheriff to stop honoring detainers.⁵ Several key issues arise in the context of developing detainer policies:

COVERAGE: The gold standard for detainer policies is to draw a bright line between the criminal justice process and the civil immigration process and not honor any detainers. Short of achieving this goal, detainers should ideally be honored only in the cases of serious felonies, as in the **Santa Clara** policy. The policies in other jurisdictions, such as **New York City**, honor detainers for people with misdemeanor convictions and charges that resolve in criminal convictions. The policies in **NYC** and the statewide policy in **Connecticut** also exclude from coverage individuals who are in federal gang or terrorism databases.

One way to expand the scope of coverage for detainer policies is to honor only recent convictions. For example, in **Washington, DC**, detainers are honored for convictions for “dangerous crimes” and “crimes of violence” (as defined in the DC Code) within 10 years of the detainer request.

A final issue with respect to coverage is which agencies or entities within the city are covered. In cities where the municipality has jurisdiction over corrections facilities, policies

can and should cover the Department of Corrections. Following the implementation of Secure Communities, the speed with which federal ICE officials are able to communicate with local authorities and “drop” detainers has increased significantly and it has become important to consider policies that cover local police departments as well.



“My first encounter with the police was in 2007. I was driving my car and I was asked to stop because my license plate was expired. My record was clean so I was expecting a warning but after many questions about my personal information I was told that I was under arrest because of my migratory status. I was taken to Fairfax county jail and then to Hampton Roads detention where I was detained for 4 months before being deported to my country.”

– Elizabeth, from Virginia.²

REIMBURSEMENT: The policies in Washington, DC, Cook County, IL and Santa Clara, CA condition the honoring of detainers wholly or in part on a written agreement with the federal government to reimburse the county fully for the costs associated with holding individuals on immigration detainers. In effect, such policies result in very few detainers being honored because full reimbursement is unlikely.

YOUTH: The policies in DC and Santa Clara both refuse to honor detainers for individuals below 18 years of age, and in NYC detainers are not honored for individuals adjudicated as youthful offenders.

DATA: The NYC ordinance includes extensive reporting requirements related to the number of individuals held pursuant to immigration detainers, the types and numbers of convictions those individuals had, and the amount of federal financial assistance received for the purposes of holding immigrants on detainers, among other things. Such reporting requirements are useful to include to overcome the significant information gaps regarding the impact and costs of ICE holds on local municipalities and immigrant communities.

LIMITS ON LENGTH OF CUSTODY: Under federal law, an individual may not be held pursuant to an immigration detainer for more than 48 hours, not including weekends and holidays. Local detainer policies can shorten the length of time beyond which an individual may not be held, increasing the likelihood that ICE agents will not arrive in time to collect the individual and he or she may be released. **Washington,**

DC’s policy, for example, only allows for individuals to be held for 24 hours.

LANDSCAPE AND RESOURCES

The National Day Laborer Organizing Network (NDLON) has been active in a number of local and state campaigns related to ICE holds and has a website with useful resources focused on community organizations: <http://altopolimigra.com/detainers/>.

The Center for Popular Democracy has been supporting local and state detainer campaigns in partnership with NDLON, SEIU Local 32BJ, and other organizations and can provide assistance on policy development, bill drafting, and campaign strategy.

NOTES

1. Robert Morgenthau, “The Police and Immigration: New York’s Experience,” Wall Street Journal (May 19, 2010).
2. See Turning the Tide website, “The Real Impact of Police-ICE Collaboration,” at <http://altopolimigra.com/2011/08/16/the-real-impact-of-police-ice-collaboration/>
3. See: http://www.ice.gov/secure_communities/
4. 8 C.F.R. 287.7 (2011) (stating that “[t]he detainer is a request that the [local law enforcement] agency advise the Department [of Homeland Security], prior to release of the alien, in order for the Department to arrange to assume custody”). See also *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905 (2011).
5. The state of Connecticut has a Governor’s administrative policy that limits the honoring of detainers in Department of Corrections (DOC) facilities. State-level legislation called the TRUST Act was also pursued in California this past year, but was vetoed by the Governor.

Local Progress is a national municipal policy network of local elected officials and partners who want to create more just and equitable cities. Our purpose is to build a broad network to support and learn from each other, share best practices and policies, and develop strategies for advancing shared goals.

The **Center for Popular Democracy** promotes equity, opportunity, and a dynamic democracy in partnership with innovative community-based organizations, elected officials, local and state networks, and progressive unions across the country. We work with our allies to design, pass, and implement cutting-edge state and local policies that deliver tangible benefits for working families.