

# LIMITING LOCAL ENTANGLEMENT WITH FEDERAL IMMIGRATION AUTHORITIES

*“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<sup>5</sup>

## **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). Often, a single encounter with the criminal justice system can lead to deportation of a community member, a process that has been exacerbated by the Priority Enforcement Program (PEP), which enables fingerprint sharing between the FBI and ICE when individuals are booked into local jails.<sup>1</sup>

The impact on communities is immense. Entanglement of local law enforcement with immigration

authorities erodes trust between immigrant communities and the police, causing families to be 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. Local agencies can also be held liable for constitutional violations by voluntarily holding individuals at ICE’s request.<sup>2</sup>

## **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. Because 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.<sup>3</sup>

**POLICY ISSUES:** More than 360 cities and counties as well as 2 states have now adopted detainer discretion policies.<sup>4</sup> 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. Some places, such as California, have opted to honor detainers in only a subset of cases, such as when the individual has been convicted of a serious or violent offense. The policies in New York City 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. As a result of PEP, 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.

**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 in order 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. 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 where the individual meets the criteria permitting detention.

## 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.<sup>6</sup>

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 Formerly called the Secure Communities program or S-Comm. Pursuant to a November 20, 2014 memorandum by Department of Homeland Security Secretary Jeh Johnson, PEP replaced S-Comm. See <https://www.ice.gov/sites/default/files/documents/Document/2015/pep-overview.pdf>.
- 2 See, e.g., *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *affirmed on appeal*, 2015 WL 4385945 (1st Cir. July 17, 2015) (U.S. citizen held on ICE detainer stated a valid Fourth Amendment claim against Rhode Island officials); *Galarza v. Szalczek*, 745 F.3d 634 (3d Cir. 2014) (county could be held liable for Fourth Amendment violation after holding U.S. citizen on ICE detainer, causing county to settle with Plaintiff for \$95,000); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (D. Oregon 2014) (granting summary judgment to individual held on ICE detainer because detainer and therefore detention not support by probable cause); *Mendoza v. Osterberg*, 2014 WL 3784141 (D. Neb. 2014) (U.S. citizen had viable Fourth Amendment claim against county resulting from detention on ICE detainer); *Villars v. Kubiatowski*, 45 F. Supp. 3d 791 (N.D. Ill. 2014) (Plaintiff had viable Fourth Amendment claim for detention pursuant to ICE detainer); *Uroza v. Salt Lake County*, 2013 WL 653968 (D. Utah 2013) (same).
- 3 See: [http://www.ice.gov/secure\\_communities/](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 See Turning the Tide website, “The Real Impact of Police-ICE Collaboration,” at <http://altopolimigra.com/2011/08/16/the-real-impactof-police-ice-collaboration/>
- 6 See Immigrant Legal Resource Center, <http://www.ilrc.org/enforcement>, for an updated map.

*Co-authored by the National Immigration Law Center*

