

Immigration Detainers: An Overview

Federal civil immigration enforcement often involves interactions with local law enforcement. When federal immigration agents want to assume custody of a person held by local law enforcement, a request called an immigration detainer—sometimes referred to as an “immigration hold”—plays a key role in the exchange.¹ A detainer is a heavily relied upon immigration enforcement tool yet is often misunderstood. This fact sheet explains detainers, how they are used by federal, state, and local law enforcement, briefly discusses the legal issues surrounding them, and the impact they have on immigrants.

What Is an Immigration Detainer?

An [immigration detainer](#) is a tool used by U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) officials when the agencies identify potentially removable individuals who are held in state or local criminal custody.² Typically, detainers are issued by an authorized immigration official, or a local police officer designated to act as an immigration official under [section 287\(g\)](#) of the Immigration and Nationality Act (INA).³

Detainers request federal, state, or local law enforcement agencies (LEA) to hold individuals for up to 48 hours beyond the time the LEA would otherwise release the person.⁴ Holding a person longer than otherwise necessary gives federal immigration enforcement agencies time to travel to that local jurisdiction and take the person—identified as potentially removable—into federal immigration custody. The issuance of a detainer and the extended

hold can occur at several stages of the criminal process, such as:

- when the LEA elects not to bring criminal charges or drops charges that have been brought;
- when a state judge determines that the person should be released on bail or on their own recognizance;
- when criminal charges have been disposed of through a finding of guilt or innocence; or
- when a person has served out their criminal sentence.

Detainers also request that LEAs notify ICE or CBP before a person’s expected release so that a federal immigration agent can wait outside a police station, jail, or prison to pick up a person at the moment of their release. While these “notification requests” are different than requests to hold a person beyond their release date, detainer forms have been used for both types of requests.⁵

- Detainers are requests made by a federal immigration agency, such as ICE and CBP; compliance by a LEA is voluntary. A LEA has discretion to decide which detainers to honor and under what circumstances.⁶
- To issue a detainer, ICE is required to have probable cause that the individual is removable. For example, a detainer could be issued if the person has a final order of deportation or is in removal proceedings, or if ICE has other evidence indicating that the person is deportable.⁷ However, in the past, ICE has used faulty information to issue detainers, including against U.S. citizens.⁸

- The presence of a detainer is not conclusive regarding an individual’s immigration status.
- Further, detainers do not initiate removal proceedings (a [Notice to Appear](#) (NTA) initiates removal proceedings) and do not signify whether a person will be deported.⁹

How Does ICE Identify Noncitizens to Issue Detainers?

ICE relies heavily on a network of interconnected databases to identify noncitizens to issue a detainer. Starting in 2008, ICE implemented an “interoperable” system that connects local, state, and federal databases to identify noncitizens in local jails and prisons.¹⁰ That program, called [Secure Communities](#), was initially voluntary for states and localities and ICE implemented the program in phases.¹¹ By 2013, ICE expanded the reach of the system to all jails and prisons in the country.¹² Through this system, ICE automatically receives fingerprints and biographic information of those taken into local or state criminal custody.¹³

ICE agents compare that identifying information to information in a network of government databases to determine the alleged immigration status of individuals and identify those they have probable cause to arrest for removal proceedings.¹⁴ A person is flagged as a “match” if, at the time they are arrested and booked by state or local police, their fingerprints and biographic information correspond to an existing immigration record in federal databases. If they are a match, ICE’s Law Enforcement Support Center (LESC) is notified. LESL, in turn, alerts either the Pacific Enforcement Response Center (PERC) or a local ICE field office. PERC or the ICE field office use databases to determine if a detainer should be issued.¹⁵

In any state prison or local jail where ICE agents are present,¹⁶ ICE may use the LEA’s booking information to make decisions about whom to interview directly and whether to issue a detainer.

What Role Do Local Law Enforcement Agencies Play?

The role of LEAs depends on the extent of their collaboration with ICE. Local officials may contact ICE agents in the local ICE field office with information about people they believe to be removable based on booking information or other criteria. Some states or localities mandate that jail administrators ask people booked into local jails about their place of birth and immigration status, including notifying ICE agents if they are unable to determine the person’s immigration status.¹⁷ However, other states and localities explicitly prohibit LEAs from asking about or documenting this information.¹⁸

If the LEA has a Task Force or Jail Enforcement Model-based [287\(g\) agreement](#) with ICE,¹⁹ deputized local law enforcement officers are authorized to work with ICE to interview people who are arrested and to issue detainers.²⁰ LEAs with Warrant Service Officer 287(g) agreements are not authorized to issue detainers but can serve other immigration documents to people in custody.²¹

Why Do Some Jurisdictions Limit Their Compliance with Detainers?

Hundreds of [local jurisdictions](#) have passed policies that limit local law enforcement cooperation with ICE, including how they respond to detainers.²² These policies resulted from concerns with honoring detainers, including creating impediments to trust-building between LEAs and their communities resulting from immigration arrests of people without criminal convictions or those charged with low-level offenses.²³ For example, between September 2023 and October 2025, only 29% of detainers were issued for individuals convicted of a crime.²⁴ ICE does not publicly disclose the types of charges, convictions, or public safety or national security risks associated with people subject to detainers, but independent analyses have found that many are issued for people facing charges for non-serious offenses.²⁵

In addition, immigration detainer policies and practices—including the role of LEAs—have been the

subject of multiple lawsuits. Courts have found that detainer-based detention can violate both state law and federal constitutional protections, particularly when individuals are held beyond their release dates without a proper legal basis. As a result, many local jurisdictions have acted based on concerns about their potential liability if they choose to honor detainers.²⁶

What Have Courts Said About Detainers?

Detainers are not mandatory.

Following lawsuits by individuals held in local jails under detainers, federal courts have found that compliance with detainers is not mandatory because federal law does not require state or local jurisdictions to honor them.²⁷ In *Galarza v. Szalczyk*, a court of appeals also noted that requiring states and localities to comply with detainers would unlawfully compel them to use their own resources to enforce federal immigration law, in violation of the anti-commandeering doctrine under the Tenth Amendment.²⁸ That doctrine generally prohibits the federal government from requiring state or local officials to administer or enforce federal regulatory programs.²⁹ As a result, jurisdictions retain discretion to decline detainer requests, and many have adopted policies limiting or prohibiting compliance due to legal concerns.

Detainers must be supported by probable cause.

Federal courts have found that immigration detainers violate the Fourth Amendment when they result in new arrests or prolonged detention without adequate probable cause.³⁰ Unlike criminal warrants, detainers are not reviewed or approved by a neutral judge; they are administrative requests signed by ICE officers based on internal determinations.³¹ In November 2025, a jury awarded more than 670 immigrants \$112 million after it found that New York’s Suffolk County Sheriff’s Office unlawfully detained them between 2014-2018 based solely on detainers issued by ICE that lacked sufficient probable cause.³² Beginning in 2017, in response to a court ruling, ICE updated its policy to require that all detainers be accompanied by an administrative arrest warrant, which should also be based on probable

cause that a noncitizen is removable.³³ However, administrative arrest warrants, like detainers, are not reviewed or approved by a neutral judge.

Lawsuits have also challenged ICE’s practices in issuing detainers for failing to establish probable cause. In *Gonzalez v. ICE*, plaintiffs argued that ICE’s reliance on flawed database information violated the Fourth Amendment.³⁴ In 2024, ICE entered into a class action settlement agreement, which, among other things, outlines the limited circumstances under which the agency may rely on database information to issue detainers.³⁵

State and local law enforcement agencies are not independently authorized to enforce detainers.

Courts have also found that state and local law enforcement agencies lack independent authority to enforce immigration detainers. While federal law provides avenues for ICE to delegate certain authorities to local law enforcement agencies, it does not otherwise grant LEAs the power to make civil immigration arrests. Instead, such arrest authority must be derived from other law.³⁶

In *Lunn v. Commonwealth*, the highest court in Massachusetts held that state law controlled the arrest authority of state law enforcement officers. The court found that state law enforcement officers lacked authority to detain individuals solely on civil immigration detainers.³⁷ Similarly, in *Roy v. Los Angeles County*, a federal district court found that the L.A. County Sheriff Department’s practice of continuing to detain people based solely on immigration detainers beyond the time authorized by state law could constitute unlawful confinement.³⁸ In 2020, Los Angeles County paid out \$14 million to settle the class-action lawsuit.³⁹

At least one federal court of appeals has upheld a state law requiring local law enforcement agencies to honor immigration detainers. In *City of El Cenizo v. Texas*, the Fifth Circuit Court of Appeals upheld a Texas law mandating compliance, reasoning that detainers were supported by administrative warrants establishing probable cause of removability and that local officers could rely on the “collective knowledge” of federal

officials.⁴⁰ The court distinguished cases like *Lunn*, where no comparable state-law authority existed.⁴¹

Is Everyone with an Immigration Detainer a “Criminal” or Undocumented?

Not everyone with a detainer has a criminal conviction.

Detainers may be issued when a person is merely arrested by police officers or booked into jail for suspected criminal activity, regardless of whether the person is eventually convicted of a crime. The charges may be dropped, or the person may be found not guilty.

An immigrant may also be subject to a detainer regardless of the severity of the arrest or conviction. This means a person simply arrested for a misdemeanor or traffic violation can be subject to a detainer.

The police may arrest survivors of, or witnesses to, certain crimes when the perpetrator is not clearly identified, such as domestic violence cases in which a survivor fights back in self-defense.⁴² This risk is heightened when one or both parties are not fluent in English and the officer does not understand their accounts.⁴³ Once taken into custody, these witnesses and survivors may then find themselves subjected to immigration detainers and at risk of deportation.

Not everyone with a detainer is an undocumented immigrant.

Individuals with immigration status in the U.S., including legal permanent residents (LPRs, or green card holders), may also be subject to immigration detainers if ICE determines they may be deportable under immigration law.⁴⁴

ICE also issues detainers erroneously. Even U.S. citizens have experienced this in instances when there was an error in ICE’s database, the person’s claims to citizenship were disregarded or difficult to prove, or the individual’s name was similar to someone else in ICE’s database.⁴⁵

What Happens if ICE Does Not Take Custody of a Person Held on a Detainer After 48 Hours?

If ICE issues a detainer request to a LEA and ICE does not take custody of the individual within the 48-hour window of time requested, the detainer automatically lapses and the LEA is required to release the individual. However, some law enforcement officers who do not understand the law, or otherwise disregard it, may erroneously keep the individual in custody for longer than the 48 hours, even when ICE does not assume custody.

- Some detained individuals have filed habeas petitions to challenge their continued detention.⁴⁶ A habeas petition calls upon a state or federal court to intervene when the government has unlawfully deprived an individual of liberty.⁴⁷
- In addition, some individuals held longer than 48 hours have successfully obtained civil damages from the detaining authority. For example, in *Roy v. Los Angeles County*, one plaintiff alleged he was held for eighty-nine days pursuant to an immigration hold and the sheriff’s office refused to allow him to post bail.⁴⁸
- While remedies to unlawful detention exist, many people held on detainers are not aware of their options. They may not have access to a lawyer or to the courts. In some cases, they may not be aware that they are being held on a detainer, or for longer than the time permitted by law. In December 2024, ICE entered into a settlement agreement requiring the agency to modify the Form I-247A to include explicit language requiring LEAs to properly serve the detainer for it to be valid.⁴⁹

Do Detainers Impact a Person’s Release on Bail from the Criminal Legal System?

A detainer may affect a person’s release on bail pending criminal charges. Many people who are jailed for criminal charges are released on bail while awaiting

trial. In other cases, they may be released on their own recognizance without having to pay any money to the court. However, when ICE issues a detainer, some courts may consider the detainer an adverse factor when determining a bail amount or whether to set bail at all.⁵⁰ In addition, some bail bonds agents may not provide services to individuals with pending detainers.⁵¹

Even when bail is granted or a person is otherwise released from state or local custody, an immigration detainer can result in immediate transfer to ICE custody. This transfer can impair an individual's ability to defend against pending criminal charges, as they may be detained out of state or ICE may prevent them from attending their court proceedings. In practice, ICE does not typically return individuals to local jurisdictions for criminal court appearances, which can prevent them from participating in and resolving their criminal cases.⁵²

Do Detainers Impact the Length of Incarceration in the Criminal Legal System?

Immigrants with detainers may have substantially longer jail stays than people without detainers.

- In addition to detainers extending a person's jail stay up to 48 business hours, they reduce the likelihood that a person will receive bail while awaiting trial. This means that immigrants held on detainers often stay in jail for the duration of the pre-trial period, while similarly situated U.S. citizens would be released on bond.
- Several studies show this trend. For example, in Pierce County, Washington, a 2019 [study](#) found that people with an immigration detainer on their booking sheet were detained 3.7 times longer than those without detainer requests.⁵³ Similarly, in New York City, a 2010 [study](#) found that noncitizens with an ICE detainer spent an average of 73 days longer in custody than those without a detainer.⁵⁴ Another [study](#) of Travis County, Texas found that immigrants under detainers have consistently stayed in jail three times longer than others.⁵⁵

Longer detention periods mean that more local tax dollars are spent detaining immigrants.

- The federal government reimburses local jails only for some of the costs of holding certain noncitizens. For example, state and local governments receive reimbursements through local contracts with DHS and the Department of Justice's [State Criminal Alien Assistance Program](#) (SCAAP) for certain costs for incarcerating undocumented noncitizens, but these payments are insufficient to cover all costs.⁵⁶
- State and local governments may receive compensation for certain activities supportive of federal immigration enforcement under funds provided in [the One Big Beautiful Bill Act](#), a reconciliation budget bill signed into law in July 2025.⁵⁷ However, these funds do not explicitly fund detainers.

Do Detainers Impact a Person's Access to Treatment Programs?

ICE states that detainers "should not impact decisions about an individual's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments or other matters."⁵⁸ However, researchers have documented that individuals subject to a detainer are less likely to have access to drug or alcohol treatment programs, or other rehabilitation services.⁵⁹

For example, a [report](#) by the New York City Bar, found many judges, prosecutors, and defense attorneys assume that a detainer disqualifies the individual from participating in these types of programs.⁶⁰ "Alternative-to-incarceration" (ATI) programs often provide defendants an opportunity to enter treatment instead of prison. Successful completion of such programs may result in a reduction or dismissal of the initial criminal charges or may lead to non-incarceration sentences such as probation.⁶¹ ATI programs have also successfully reduced recidivism and lowered the costs to the criminal justice system. Participation in ATI programs may help establish evidence of rehabilitation, which could be a positive factor for noncitizens seeking immigration relief and may provide defense for lawful permanent residents with certain deportation charges.⁶²

ENDNOTES

- 1 Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Immigration Detainer – Notice of Action” Form I-247A, February 2025, <https://immigrantjustice.org/for-attorneys/resources/form-i-247a-immigration-detainer-sample/>.
- 2 See 8 CFR § 287.7.
- 3 U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” updated December 15, 2025, <https://www.ice.gov/factsheets/287g>.
- 4 Importantly, Form I-247A and the regulations conflict in what counts toward the 48-hour period. Compare 8 C.F.R. § 287.7(d) (requesting agency maintain custody “not to exceed 48 hours, excluding Saturdays, Sundays, and holidays”) with Form I-247A (requesting LEA maintaining custody “not to exceed 48 hours” without mention of excluding weekends or holidays).
- 5 See Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Immigration Detainer – Notice of Action” Form I-247A, February 2025, <https://immigrantjustice.org/for-attorneys/resources/form-i-247a-immigration-detainer-sample/>. Previous versions distinguished between requests for notification and requests to hold the individual. See, e.g., Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Immigration Detainer – Notice of Action” Form I-247, December 2012, <https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>. The Department of Homeland Security may also use Form I-247G, Request for Advance Notification of Release, which is not a detainer, to request advanced notifications of releases. See *Gonzalez v. Immigr. & Customs Enf’t*, No. 13-cv-04416-AB-FFM, (C.D. Cal. Nov. 25, 2024), Doc. No. 195-2 at 8.
- 6 See *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1152 (Mass. 2017) (“Federal immigration detainers like Form I-247D, and now Form I-247A, by their express terms are simply requests. They are not commands, and they impose no mandatory obligations on the State authorities to which they are directed.”); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2013).
- 7 See 8 CFR § 287.7(a) (“A detainer serves to advise another law enforcement agency that [DHS] seeks custody of a [noncitizen] presently in the custody of that agency, for the purpose of arresting and removing the [noncitizen]”).
- 8 See *Gonzalez v. Immigr. & Customs Enf’t*, 416 F. Supp. 3d 995, 1016 (C.D. Cal. 2019), *rev’d and vacated by* 975 F.3d 788 (9th Cir. 2020) for further proceedings on reliability of faulty databases; see *id.* at 1011-12 (“Data produced by ICE during the period of May 2015 to February 2016 reveals that of the 12,797 detainers issued during that time frame, 771 were lifted because the individuals were either U.S. citizens or otherwise not subject to removal.”).
- 9 An immigration detainer must also be distinguished from an interstate detainer, which governs the transfer of incarcerated prisoners from one jurisdiction to another. An interstate detainer is part of criminal law, not civil immigration law. See National Center for Interstate Compacts, “Interstate Agreement on Detainers,” accessed December 12, 2025, <https://compacts.csg.org/compact/interstate-agreement-on-detainers/>.
- 10 Initially, the program was called “Secure Communities.” The initiative used technology to share information between ICE and federal, state, and local law enforcement agencies. See U.S. Immigration and Customs Enforcement, “Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens,” July 21, 2009, https://www.ice.gov/doclib/foia/secure_communities/securecommunitiesstrategicplan09.pdf.
- 11 See *id.*; see also Muzaffar Chishti, Claire Bergeron, and Lang Hoyt, “Unanswered Questions Surround ICE’s Secure Communities Program,” *Migration Policy Institute*, March 15, 2011, <https://www.migrationpolicy.org/article/unanswered-questions-surround-ices-secure-communities-program>.
- 12 See U.S. Immigration and Customs Enforcement, “Archived Content: Secure Communities,” updated July 9, 2025, <https://www.ice.gov/secure-communities> (noting that ICE completed full implementation of Secure Communities to all 3,181 jurisdictions within 50 states, the District of Columbia, and five U.S. Territories on January 22, 2013).

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- 13** *Id.*
- 14** See Department of Homeland Security, Office of Inspector General, “U.S. Immigration and Customs Enforcement’s Criminal Alien Program Faces Challenges,” OIG-20-13, Feb. 18, 2020, 2-4 https://tracreports.org/tracker/dynadata/2020_05/OIG-20-13-Feb20.pdf.
- 15** “Matches” alone may not be sufficient to establish removability. See, e.g., *Gonzalez v. Immigr. & Customs Enft.*, 416 F. Supp. 3d 995, 1011-12 (C.D. Cal. 2019), *rev’d and vacated by* 975 F.3d 788 (9th Cir. 2020) (“Data produced by ICE during the period of May 2015 to February 2016 reveals that of the 12,797 detainers issued during that time frame, 771 were lifted because the individuals were either U.S. citizens or otherwise not subject to removal.”).
- 16** Through the Criminal Alien Program (CAP), ICE placed agents in all prisons and some jails to identify individuals potentially subject to removal through interviews and records review. See *Gonzalez v. Immigr. & Customs Enft.*, No. 12-cv-09012-AB (FFMx), (C.D. Cal. Sept. 27, 2019), Doc. No. 548 at 7.
- 17** See, e.g., N.C.G.S. § 162-62 (2024) (North Carolina); O.C.G.A. §42-4-14 (2024) (Georgia); Ala. Code § 31-13-18 (2025) (Alabama).
- 18** See, e.g., Gov. Code, §§ 7284, 7284.6 (California); and 5 ILCS 805/15 (Illinois).
- 19** The 287(g) program is a partnership between DHS and local law enforcement agencies in which certain local law enforcement officers are deputized to enforce federal civil immigration laws. In the Task Force Model, deputized officers enforce civil immigration authority during their routine police duties. Under the detention or “Jail Enforcement Model,” deputized officers are in jails/correctional facilities to perform civil immigration enforcement functions after individuals are detained by police. “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” U.S. Immigration and Customs Enforcement, updated December 15, 2025, <https://www.ice.gov/factsheets/287g>.
- 20** See Immigration and Customs Enforcement, Template Memorandum of Agreement for 287(g) Jail Enforcement Model, Revised June 4, 2025, <https://www.ice.gov/doclib/about/offices/ero/287g/moaFillableJEM.pdf>; and Immigration and Customs Enforcement, Template Memorandum of Agreement for 287(g) Task Force Model, Revised August 19, 2025, <https://www.ice.gov/doclib/about/offices/ero/287g/moaFillableTFM.pdf>.
- 21** See Immigration and Customs Enforcement, Template Memorandum of Agreement for 287(g) Warrant Service Officer Program, Revised June 4, 2025, <https://www.ice.gov/doclib/about/offices/ero/287g/moaFillableWSO.pdf>.
- 22** Immigrant Legal Resource Center, “State Map on Immigration Enforcement 2024,” November 8, 2024, <https://www.ilrc.org/state-map-immigration-enforcement-2024>.
- 23** Danyelle Solomon, Tom Jawetz, and Sanam Malik, “The Negative Consequences of Entangling Local Policing and Immigration Enforcement,” *Center for American Progress*, March 21, 2017, <https://www.americanprogress.org/article/negative-consequences-entangling-local-policing-immigration-enforcement/>.
- 24** American Immigration Council analysis of data compiled by Relevant Research on its Detainers Dashboard with detainers filtered by criminal composition between September 1, 2023 and November 15, 2025. See Relevant Research, “Detainers Dashboard,” accessed January 9, 2026, <https://enforcementdashboard.com/ice-detainers>.
- 25** See e.g., Transactional Records Access Clearinghouse, “Few ICE Detainers Target Serious Criminals,” September 17, 2013, <https://tracreports.org/immigration/reports/330/>.

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- 26** See, e.g., *Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, at *11 (D. Ore. Apr. 11, 2014). See also Max Rivera and Alicia A. Caldwell, “Wealthy County in New York Must Pay \$112 Million Over Immigrant Rights Violations,” *Bloomberg*, December 4, 2025, <https://www.bloomberg.com/news/articles/2025-12-04/suffolk-county-home-of-hamptons-hit-with-112-million-payout-to-detainees>; Luis Ferré-Sadrúní, “New York City to Pay \$92.5 Million to Improperly Detained Immigrants,” *The New York Times*, December 18, 2024, <https://www.nytimes.com/2024/12/18/nyregion/migrants-detention-settlement-deportation.html>; American Civil Liberties Unions of Southern California, “L.A. County Settles Immigrant Detention Suit for \$14 Million,” October 13, 2020, <https://www.aclusocal.org/press-releases/la-county-settles-immigrant-detention-suit-14-million/>; American Civil Liberties Union, “Local jurisdictions remain legally vulnerable for honoring ICE detainers,” February 3, 2020, <https://www.aclu.org/documents/recent-ice-detainer-damages-cases>.
- 27** See, e.g., *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2013); *N.S. v. Dixon*, 141 F.4th 279, 282 (D.C. Cir. 2025) (citing 8 C.F.R. § 287.7 to note that “an ICE detainer is a ‘request,’ not an order, for another law enforcement agency [to] hold a particular [noncitizen]”).
- 28** See *Galarza v. Szalczyk*, 745 F.3d 634, 642 (3d Cir. 2013).
- 29** U.S. Const. amend. 10 (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).
- 30** See, e.g., *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*, Case No. 3:12-cv-02317-ST (D. Or. Apr 11, 2014) (finding that the ICE detainer was not supported by probable cause).
- 31** See *Gonzalez v. Immigr. and Customs Enf’t*, 975 F.3d 788, 824 (9th Cir. 2020) (“the Fourth Amendment requires a prompt probable cause determination by a neutral and detached magistrate to justify detention beyond that which may be initially justified by any probable cause determination of removability”).
- 32** *Orellana Castaneda v. Cnty. of Suffolk and Suffolk Cnty. Sheriff’s Office*, No. 2:17-cv-04267 (E.D.N.Y. November 12, 2025).
- 33** See U.S. Immigration and Customs Enforcement, “Issuance of Immigration Detainers by ICE Immigration Officers,” Policy No. 10074.2, March 24, 2017, <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf> (either a properly completed Form I-200 (Warrant for Arrest of Alien) or Form I-205 (Warrant of Removal/Deportation)); see also *Jimenez Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016) (holding that detainers were warrantless arrests and require a flight risk determination to comply with 8 U.S.C. § 1357(a)(2)).
- 34** See *Gonzalez v. Immigr. & Customs Enf’t*, 975 F.3d 788, 801-802 (9th Cir. 2020).
- 35** See National Immigrant Justice Center, “New Class Action Settlement Requires ICE to Stop Rampant Constitutional Violations for People Subject to ICE Detainers,” February 10, 2025, <https://immigrantjustice.org/blog/new-class-action-settlement-requires-ice-to-stop-rampant-constitutional-violations-for-people-subject-to-ice-detainers/>.
- 36** *United States v. Di Re*, 332 U.S. 581, 589-90 (1948) (finding that in absence of an applicable federal statute the law of the state where an arrest takes place determines its validity).
- 37** *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1154-55 (Mass. 2017).
- 38** See *Roy v. Cnty. of Los Angeles*, 114 F. Supp. 3d 1030, 1040 (C.D. Cal. 2015).
- 39** ACLU of Southern California, “Los Angeles County Settles Immigrant Detention Suit for \$14 Million,” October 13, 2020, <https://www.aclusocal.org/press-releases/la-county-settles-immigrant-detention-suit-14-million/>.
- 40** *City of El Cenizo v. Texas*, 885 F.3d 332, 353-57 (5th Cir. 2018).

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- 41** But see *Lopez-Flores v. Douglas Cnty.*, No. 6:19-cv-00904-AA, at 14 (D. Or. May 30, 2020) (noting the Ninth Circuit Court of Appeals has only recognized the ‘collective knowledge doctrine’ to apply in criminal not civil immigration investigations).
- 42** See, e.g., American Civil Liberties Union of Colorado, “Claudia’s Story: How a Domestic Violence Victim’s Call for Help Resulted in Three Days in Jail and Deportation Proceedings,” June 19, 2014, <https://www.aclu-co.org/news/claudias-story-how-domestic-violence-victims-call-help-resulted-three-days-jail-and-deportation/>; and American Civil Liberties Union of Maryland, Restoring Trust: How Immigration Detainers In Maryland Undermine Public Safety Through Unnecessary Enforcement (Baltimore, MD, 2013), 18, <https://www.aclu-md.org/publications/restoring-trust-how-immigration-detainers-maryland-undermine-public-safety-through-0/>.
- 43** See e.g., Asian Pacific Institute on Gender-Based Violence, “Survivors with Limited English Proficiency: Barriers to Access,” September 2016, <https://api-gbv.org/wp-content/uploads/2019/05/LEP-survivors-accessibility-9-2016-formatted-20191.pdf> (“Abusers who speak English deliberately misrepresent or falsify facts: (a) to first responders and law enforcement, often claiming that they were assaulted, leading to the arrest of the real victim”).
- 44** Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208 (1996), 110 Stat. 3009-546 § 348.
- 45** See Jay Waagmeester, “U.S. citizen receives favorable ruling following 2018 ICE detainment,” *Florida Phoenix*, May 30, 2025, <https://floridaphoenix.com/2025/05/30/u-s-citizen-receives-favorable-ruling-following-2018-ice-detainment/>; Esmey Jimenez, “ICE detained a U.S. citizen at the Tacoma detention center. Now he’s suing,” *KUOW*, June 11, 2021, <https://www.kuow.org/stories/ice-detained-a-u-s-citizen-at-the-tacoma-detention-center-now-he-s-suing>; and Andy East, “U.S. Citizen Jailed in Immigration Status Mistake,” *The Texas Tribune*, February 27, 2016, <https://www.texastribune.org/2016/02/27/us-citizen-held-immigration-question/>.
- 46** See, e.g., *People v. Demarco*, 168 A.D.3d 31, 88 N.Y.S.3d 518 (N.Y. App. Div. 2018) (Plaintiff was sentenced to time served but continued to be held under the county sheriff’s custody based on an immigration detainer. He filed a habeas petition requesting his immediate release and claiming his detention was unlawful. Despite being transferred out of state custody and into federal (ICE) custody two days later, the court held that the case was not moot because of the existence of the sheriff’s policy, which meant “this issue is likely to reoccur.” *People v. Demarco*, 168 A.D.3d 31, 88 N.Y.S.3d at 525.
- 47** American Immigration Council, “What Is Habeas Corpus and Why Is It Important? Here’s What DHS Secretary Kristi Noem Got Wrong,” May 22, 2025, <https://www.americanimmigrationcouncil.org/blog/what-is-habeas-corpus-and-why-is-it-important-heres-what-dhs-secretary-kristi-noem-got-wrong/>.
- 48** See *Roy v. Cnty. of Los Angeles*, 114 F. Supp. 3d 1030, 1033 (C.D. Cal. 2015).
- 49** See *Gonzalez v. Immigr. & Customs Enf’t*, “Class Action Settlement and Release,” No. 13-cv-04416 (C.D. Cal. Nov. 11, 2025), Doc. No. 195-2; see also National Immigrant Justice Center, “Explainer: Understanding the Gonzalez v. ICE Detainer Settlement Agreement and How to Identify Violations,” April 17, 2025, <https://immigrantjustice.org/for-attorneys/resources/explainer-understanding-the-gonzalez-v-ice-detainer-settlement-agreement-and-how-to-identify-violations/>.
- 50** See, e.g., *State v. Fajardo-Santos*, A-82-08 (N.J. July 8, 2009).
- 51** See, e.g., *Mendia v. Garcia*, 768 F.3d 1009 (9th Cir. 2014) (describing plaintiff’s inability to obtain assistance from bail bondsmen due to a pending immigration detainer).
- 52** See, e.g., Ben Markus and Allison Sherry, “ICE says it will stop letting detainees go to criminal court in some Colorado counties,” *CPR News*, June 27, 2025, https://www.cpr.org/2025/06/27/ice-says-it-will-stop-letting-detainees-go-to-criminal-court-in-some-colorado-counties/?utm_source=chatgpt.com.

ENDNOTES

- 53** University of Washington Center for Human Rights, “Unequal Justice: Measuring the Impact of ICE Detainers on Jail Time in Pierce County,” January 30, 2019, <https://jsis.washington.edu/humanrights/2019/01/30/unequal-justice-ice-detainers-pierce-county/>.
- 54** See Aarti Shahani, “New York City Enforcement of Immigration Detainers, Preliminary Findings,” *Justice Strategies*, October 2010, <https://immigrantjustice.org/sites/default/files/NYC%20Detainer%20Report.pdf>.
- 55** Andrea Guttin, *The Criminal Alien Program: Immigration Enforcement in Travis County, Texas* (Washington, DC: American Immigration Council, 2010), https://www.americanimmigrationcouncil.org/sites/default/files/research/Criminal_Alien_Program_021710.pdf.
- 56** A county or state must meet several requirements to be eligible for SCAAP funding. The institution must have incarcerated a person in the country without authorization who has been convicted of a felony or two or more misdemeanors for “at least 4 consecutive days during the reporting period.” The costs for incarcerating other individuals are not reimbursed. SCAAP reimburses both the pre-trial and post-conviction incarceration costs for eligible cases. Further, SCAAP does not necessarily cover the full salary costs of incarcerating undocumented immigrants. “State Criminal Alien Assistance Program (SCAAP),” *U.S. Dept. of Justice Bureau of Justice Assistance*, updated July 30, 2024, <https://bja.ojp.gov/program/state-criminal-alien-assistance-program-scaap/overview>.
- 57** See American Immigration Council, “What’s in the Big Beautiful Bill? Immigration and Border Security Unpacked,” July 14, 2025, <https://www.americanimmigrationcouncil.org/fact-sheet/big-beautiful-bill-immigration-border-security/>.
- 58** U.S. Immigration and Customs Enforcement, “Immigration Detainers,” updated May 13, 2025, <https://www.ice.gov/immigration-detainers>.
- 59** See, e.g., *Mercado v. Dallas Cnty.*, 229 F. Supp. 3d 501, 518-19 (N.D. Tex. 2017) (alleging that Dallas County refused pre-trial release on bond for any detainee with an immigration hold); see also Eisha Jain, “Jailhouse Immigration Screening,” *Duke Law Journal*, Vol. 70, No. 8, 1702, 1728-29 (May 2021) https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1576&context=faculty_publications (compiling lawsuits and studies).
- 60** Committee on Criminal Justice Operations, New York City Bar, “Immigration Detainers Need Not Bar Access to Jail Diversion Programs,” June 2009, http://www.nycbar.org/pdf/report/NYCBA_Immigration%20Detainers_Report_Final.pdf.
- 61** *Ibid.*
- 62** *Ibid.*