ICE DETAINERS

Strategies & Considerations for Criminal Defense Counsel

I. Introduction to ICE Detainers

Immigration detainers, also called ICE holds, raise a variety of issues in a criminal case, from access to pre-trial release to deportation defense. This advisory provides guidance to criminal defense counsel about how to best represent clients subject to an immigration detainer.[1]

An ICE detainer is a request from Immigration and Customs Enforcement (ICE) to a jail to facilitate transfer of a person in the jail's custody directly to immigration authorities. Specifically, a detainer asks the jail (a) to notify ICE as to when the person will be released from criminal custody, and (b) to keep the person in custody for an additional period of up to 48 hours, to give ICE more time to pick the person up.[2]

The ICE detainer itself does not prove immigration status or lack of it, and does not determine specific immigration consequences. The detainer indicates ICE's interest in arresting the person upon their release from criminal custody, even if that is before the criminal case is concluded. Immigration detainers are the primary immigration enforcement tool ICE uses to apprehend suspected noncitizens. **An estimated 70% of ICE arrests nationwide result from a detainer and transfer of custody from another law enforcement agency. Therefore criminal defense counsel must be familiar with ICE detainers, how they can affect criminal proceedings, and strategies for mitigating the risk of ICE arrest.**

A. Why do ICE detainers matter in criminal proceedings?

ICE detainers affect many aspects of a criminal case, such as pre-trial release, access to diversion programs, and criminal defense strategy in general, because they present an imminent danger of ICE arrest and detention. Defense attorneys representing noncitizen clients must consider these risks and discuss them with their clients.

1. *Immigration consequences and Padilla obligations*[3] - for many immigrants who have few or no defenses to deportation (e.g. undocumented clients with no eligibility for immigration relief), avoiding apprehension by ICE is often their best defense against deportation.

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[1] Contact Lena Graber at lgraber@ilrc.org with any questions. California practitioners, see § N.5A Immigration Detainers in the ILRC Chart and Notes at https://www.ilrc.org/sites/default/files/resources/note_5a_ice_detainers_2021_final.pdf for California-specific guidance on ICE detainers.

[2] See Form I-247A; 8 C.F.R. § 287.7.

[3] The Supreme Court's 2010 decision in *Padilla v. Kentucky* clarified that criminal defense counsel's Sixth Amendment duty includes advising immigrant clients on the immigration consequences that could stem from a criminal case. *Padilla v. Kentucky,* 559 U.S. 356

2. *Pre-trial release strategy* – An ICE detainer might mean that it is not in the client's interest to seek release from jail while the case is pending. ICE may take immediate custody of people who have been ordered released while criminal charges remain pending, such as after they post bail or are released on recognizance, or some other supervision. This not only affects their ability to defend against the criminal charges; they may end up with a warrant for failure to appear and forfeit their bail money. The existence of an ICE detainer and threat of immigration detention can also affect the court's willingness to grant bail or release.
3. *Custody classifications and access to diversion programs* – in many places an ICE detainer can inhibit a client's access to diversion programs, and can also affect custody classification decisions in jail.
4. *Likelihood of immigration enforcement* – an ICE detainer signals that a client is likely (but not guaranteed!) to be transferred to ICE rather than released, which could lead to immigration detention and potential deportation.
5. *Client left in custody beyond release time* – ICE detainers also ask for a jail to hold a person in custody for extra time after they should be released, and in some cases, this has resulted in jails refusing to release people for extensive periods of time.

Key Questions about ICE Detainers for Evaluating a Criminal Case

1. Should my client pursue pre-trial release if they have an ICE detainer, and how?
2. Is the detainer valid under federal and state law?
3. Can the detainer be lifted/cancelled? By ICE or by the local or state custodian?[4]
4. How should I advise my client about the immigration risks and consequences of their criminal case?

B. Legal Framework for ICE detainers

Understanding federal, state, and local laws and policies governing ICE detainers, as well as law enforcement agencies' responses, is key to determining how your jurisdiction may respond to ICE detainers. The analysis of ICE detainers involves separate inquiries into the actions of two very distinct actors: 1) ICE, and 2) the receiving sheriff or criminal law enforcement agency. What rules apply to one do not necessarily apply to the other. This independence is important, because if the jail chooses not to comply with an ICE detainer, your client has much less risk of being transferred to ICE upon release from criminal custody.

1. Federal Law

Federal immigration law at 8 U.S.C. § 1357(d) contains express authority for issuing detainers. Detainers serve to advise the agency holding the person that the Department of Homeland Security (DHS) "seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien."[5] The statute provides that, upon a request to ICE from another law enforcement agency, ICE must determine whether or not to issue a detainer, and if the detainer is issued, the agency shall take custody

(2010). It has become a standard of practice for defense attorneys to ask all clients where they were born during the intake process to determine whether advice on immigration consequences will be required.

[4] This advisory will regularly refer to the sheriff as the custodian and local decisionmaker with power to reject or comply with the ICE detainer, because that is most commonly a sheriff. But the analysis applies to any jail and the particular authority in charge of it.

[5] 8 C.F.R. § 287.7(a).

once the person is no longer otherwise held under criminal custody.[6] The current detainer form is available in the appendix.

Although the regulations in 8 C.F.R. § 287.7(d) state that if a detainer is issued, the receiving agency "shall maintain custody" of the person for an extra 48 hours ("excluding Saturdays, Sundays, and holidays"), **an ICE detainer is merely a request.**[7] Additionally, the 48 hour hold requested on an ICE detainer no longer excludes weekends and holidays.[8] This means that is a person with an ICE hold is ordered released on a Friday, they should not be held beyond Sunday.

2. Local and State Rules on ICE Detainers

No federal law requires local law enforcement to work with ICE.[9] ICE detainers are voluntary requests, and they can be disregarded by the local agency.[10] This presents an important avenue of advocacy on behalf of a client. If the jail chooses not to comply with an ICE detainer, the chances of transfer to ICE directly from criminal custody are extremely low.

Although no federal law requires cooperation with ICE, many state and local laws, and sometimes court rulings, regulate compliance with ICE detainers. As of December 2021, several state statutes limit compliance with a detainer: California, Washington, Oregon, Colorado, Connecticut, Maryland, and Illinois; while court decisions and other policy directives limit such holds in Massachusetts, New York, Minnesota, New Jersey, Rhode Island, and Vermont. In contrast, some states have made compliance with detainers more or less mandatory, including Texas, Florida, Arkansas, Montana, Missouri, Iowa, and Tennessee. In other states, no state-wide rule applies, so policies and practices may vary from county to county. For more discussion of these laws and how you can use them to challenge compliance with a detainer, see section III below.

For initial, but not conclusive, information on a county's policy for responding to an ICE detainer, see www.ilrc.org/local-enforcement-map. Otherwise, ask the sheriff or custodial agency directly about their policy regarding ICE detainers.

C. How ICE Works With Jails and Issues Detainers

ICE relies heavily on the criminal legal system in order to identify, detain, and deport people. If your locality does not have a very strong sanctuary policy, the default is generally that sheriffs work closely with ICE, sharing information and funneling noncitizens directly into the deportation pipeline. Understanding the basic mechanics of this relationship is essential to protecting your immigrant clients' interests.

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[6] The daily practice of how ICE uses detainers looks almost nothing like the statute, and more closely resembles the regulations at 8 C.F.R. § 287.7. Notably, the statute limits the issuance of detainers to cases of noncitizens charged with *controlled substance violations*, but the regulations say nothing of this, and ICE issues detainers in cases of all kinds, even if charges have not been filed yet. The statute also requires the local agency to generate the detainer inquiry, not ICE, but more often than not, ICE will initiate a detainer without input or request.

[7] *See e.g.* Galarza v. Szalczyk, 745 F.3d 642, 645 (3d Cir. 2014) (ICE detainer is a voluntary request).

[8] See I-247A requesting only 48 hours detention; ICE Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers, p.2.6 (March 24, 2017), available at https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf.

[9] *United States v. California*, 921 F.3d 865 (9th Cir. 2019) (California is not obligated to do immigration enforcement).

[10] *Galarza v. Szalczyk*, 745 F.3d 642, 645 (3d Cir. 2014) and see, e.g., Miranda-Olivares v. Clackamas Cty., No. 3:12-CV-02317-ST, 2014 WL 1414305, at *4 (D. Or. Apr. 11, 2014) (ICE detainer is just a request).

ICE is automatically notified every time anyone is booked into jail anywhere in the country, because their fingerprints are sent to ICE to be checked against its databases. This automated immigration check is known as "Secure Communities." ICE uses Secure Communities fingerprint checks to target people for detainers and removal, or for further investigation. These fingerprint checks often result in a detainer being lodged within an hour of a person's arrest.

ICE agents also work closely with sheriffs and jailors to get other information about who is in custody. Many jails regularly send booking lists of everyone in the jail (or the people who indicated a foreign place of birth) to ICE, allow ICE to access jail databases, or establish a permanent desk or office for ICE agents within the jail. These efforts are part of the "Criminal Alien Program" and allow ICE to do further investigations, such as directly interrogate people who weren't fully identified through Secure Communities[11] in order to place detainers on them, as well as to ensure frequent ICE presence to apprehend people being released from local criminal custody. Some state laws requires sheriffs to provide a written consent form in advance of any such ICE interviews, explaining the purpose for the interview, that the interview is voluntary, and that the individual has the right to decline the interview, or consent on condition of having their attorney present.[12] **You should in almost all cases advise a client to decline such interviews and remain silent, since they are for the purpose of ICE getting information or admissions to use against the person in removal proceedings. Your client's ability to avoid making any admissions to ICE may be critical to protecting them from deportation.** If ICE is not able to talk with a client in jail, they may later travel to the person's home. For this reason, it is critical to provide clients with know-your-rights information, such as "red cards." [13]

ICE also forms contracts with local jails. Some, referred to as "287(g)" or "WSO" delegate certain immigration enforcement functions to local jail deputies themselves. These exist in a small minority of counties, and typically only anti-immigrant sheriffs participate in 287(g) contracts.[14] Additionally, ICE contracts with jails around the country to rent beds to detain people in removal proceedings. Legally, these are detainees in ICE custody, but in fact they are held in local jails, and the jails typically make a profit by renting beds to ICE. In these facilities, it is even more convenient for ICE to transfer someone to their custody, often blurring the line between immigration and criminal detention. An interactive map of ICE detention facilities and contracts is available here: https://www.freedomforimmigrants.org/map.

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[11] For example, a person who has never had prior contact with the criminal or immigration systems may not appear in ICE's databases. In these situations, ICE will interrogate people in local custody about their place of birth, citizenship status, or immigration status to get information to deport them. There is no obligation to speak to ICE, and sometimes noncitizens unknowingly provide information to ICE that is used to against them in removal proceedings, when ICE otherwise would not have had sufficient information to pursue the case. Therefore, it is very important to advise your clients right away of their right to refuse to speak to ICE, even if ICE pressures them.

[12] See, e.g. Cal. Govt. Code § 7283.1(a); RCW 10.93.160(b)(6); Colo. Rev. Stat. § 24-76.6-103.

[13] See here for information about ILRC's red cards and how to order them for your office: https://www.ilrc.org/red-cards.

[14] For more about these agreements, see www.ilrc.org/287(g).

D. "Notifications" of Release

An ICE detainer asks the current jailor for two things: 1) *notify* ICE about the person's time and date of release, and 2) *hold* them for an extra 48 hours to give ICE time to arrive and take custody.[15] Both requests work together to facilitate the direct transfer to ICE custody, but they are frequently separated functions, with separate rules, particularly under state and local laws. As explained in more detail below, there are many legal and constitutional issues and court rulings about the second ("hold") part of the request because it involves a seizure; fewer regarding the first ("notification") part. Many sheriffs across the country will in some or all cases refuse to hold a person beyond when they would otherwise be released from local custody, but they will still notify ICE of the timing of that release, so that ICE can show up right at that time to arrest the person.[16] And ICE will do just that, if they have the capacity. **Therefore, if a jail follows a law or policy on ICE detainers, it is essential to find out whether this applies to the notification part and/or the hold part of the request, because the legal arguments and the risks for your client will be different.**

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It is essential to know if your client has an ICE detainer, and to get a copy of it! If the sheriff's department will not agree to forward detainers automatically, then make it a practice routinely ask the sheriff for ICE detainers on all your clients (best practice to ask whether or not they have told you they are noncitizens, to avoid exposing them). This will help you to avoid being caught off guard.

II. Pre-Trial Release for Clients with ICE Detainers

The existence of an ICE detainer can impact a client's case early on by affecting their access to bail or other pre-trial release. If a client subject to an ICE detainer is ordered released on recognizance or posts bail, they may be transferred to ICE, instead of actually being released. If a client posts bail and is transferred to immigration detention, they must secure their release again, which presents many more challenges. If they are unable to secure their release from immigration detention, they may miss hearings in their criminal case, and it is often extremely difficult to get them back.

So right off the bat, ICE detainers affect a client's case strategy. If your client's release on recognizance means they will be immediately transferred to ICE, you need to make a decision with your client about their immigration goals before that happens. This underscores the value of getting the jail to always immediately forward ICE detainers to the public defenders or other counsel, so that they can be prepared to strategize around it, even before arraignment. If you are unaware of the ICE detainer, your client may be taken without your knowledge. This can unfairly result in a failure to appear and bench warrant and bail forfeiture, often creating more difficulties for your client.

[15] See 8 C.F.R. 287.7(a) and (d).
[16] Watch out for jailors stalling or slow-walking the release process of noncitizen clients while they wait for ICE to arrive.

A. Release *Without* Transfer to ICE

The goal of a pre-trial release strategy for a client subject to a detainer is to get the client released without being transferred to ICE. There are a variety of ways this can happen.

1. Client gets released before ICE files the detainer with the jail. Often ICE detainers are issued within a couple hours of arrest, so this may be rare, but can happen, especially for clients who have had no prior contact with the criminal and immigration systems and therefore do not appear in ICE's databases. If a detainer is not placed immediately, the client may be released from the jail prior to counsel even being retained.
2. If a client with an ICE detainer is released on recognizance from court and is not brought back to the jail for out-processing, then they may be at liberty and not transferred to ICE. This depends very much on local practices and procedures at the court and the sheriff's department, but should be a conscious part of your defense strategy.
3. Some jails have a relatively standard schedule when ICE may arrive, often depending on how far they are from the nearest ICE office. If your client can post bail after ICE has very recently visited the jail, then they might be released before ICE returns, especially if the jail does not hold people extra time for ICE pickup. In that scenario, posting bail late at night on a weekend, for example, might be a safer time to seek release.
4. If the jail does not comply with detainers, the client can seek pre-trial release without the threat of transfer to ICE. However, many state and local policies prohibit compliance with only some subset of detainers, often defined by criminal charges or prior convictions, so make sure that your client falls within the policy of non-compliance. Regardless of the general practice of the jail, if you can secure an agreement from the jail to reject your client's detainer, then you can get your client released.
5. If ICE is persuaded to lift the detainer, then the client can safely seek release without being transferred to immigration detention. This does not prevent ICE from making a later arrest at the person's home or work, but if ICE agreed to lift the detainer, it makes such an arrest unlikely.

B. If Transfer to ICE is Inevitable

If pre-trial release without transfer to ICE is unlikely or impossible, the client should consider remaining in criminal custody while planning their immigration defense. This decision will depend on the client's particular case and priorities, as well as an evaluation of their eligibility for immigration relief and immigration bond, and removal defense options.

Individuals transferred to ICE custody may in some cases be able to obtain release from immigration detention – either through release on their own recognizance, through payment of an immigration bond, or through alternatives to detention. However, some individuals may not be eligible for release from ICE custody *at all*, depending on their criminal history and/or manner of entry to the United States.[17] This is known as mandatory detention, and it can apply to immigrants even with quite minor criminal convictions.[18]

[17] 8 USC § 1226(c). For more information, see https://www.ilrc.org/how-avoid-mandatory-ice-detention.
[18] For more information about mandatory immigration detention, see: https://www.ilrc.org/sites/default/files/resources/mandatory_detention_update_11.2020.pdf.

ICE custody has tremendous disadvantages. The client will not be guaranteed counsel in removal proceedings; over 80% of ICE detainees go through their removal hearing without representation.[19] They can also be transferred far away to any ICE detention facility in the country.[20] In most cases it is very difficult to get a client back from ICE detention in order to attend state court proceedings. Intentionally remaining in criminal custody is obviously a difficult choice, but may be strategic for some clients to allow them time to assess the likelihood of release from ICE custody and prepare their immigration defense. Remaining in local custody allows easier access to communicate with counsel and family, as ICE detention is often more remote and isolated.

If the client will be eligible for, likely to obtain[21], and able to afford an immigration bond[22], then consider advising them to post bail in the criminal case, anticipating transfer to ICE, but then seeking to bond out of immigration detention as well.[23] This enables the client to be at liberty while pursuing both their criminal and immigration defenses. This may require close collaboration with an immigration attorney who can represent the client in immigration court.

Finally, if the client knows they will be transferred to ICE and deported, but has few defenses to deportation or does not wish to fight deportation, it could be in their interest to post bail and accept quick deportation, rather than face a long jail sentence. However, they could run the risk of extradition charges, particularly if it's a serious charge.

C. Effect on Bail Determinations

The ICE detainer form I-247A says on its face that "This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters".[24] In spite of this, prosecutors and/or judges may use immigration status and/or the existence of an ICE detainer as a negative factor in a person's request for bail or other pre-trial release. The Ninth Circuit has held that an ICE detainer (or any evidence of a person's lack of citizenship or lawful immigration status) cannot be a blanket ban on bail eligibility.[25] But in most states it is legal, and common, to consider immigration status and/or the existence of an ICE detainer as part of a flight risk analysis.

If a judge or prosecutor is citing your client's immigration status (or lack thereof) as a negative factor for bail, you should push back. There is no reason that a person's lack of lawful immigration status, on its own, should affect bail determinations. Countless immigrants living in the United States have deep community

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[19] See Ingrid Eagly and Steven Shafer, Access to Counsel in Immigration Court, American Immigration Council 2016, available at https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court.
[20] ICE detention facilities are often located in rural, remote places.
[21] Immigration bond is discretionary, so even if a noncitizen is eligible, they may still be denied an immigration bond. Alternatively, they may be issued a very high immigration bond that they are unable to pay.
[22] Unlike bond in criminal proceedings, immigration bonds must be paid in full. The statutory minimum for an immigration bond is $1500, but most bonds are often much higher. Talk to your client and their loved ones about whether they can pay an immigration bond, or if they need more time to gather money before the client is transferred to ICE. If a person is assessed an immigration bond that they cannot pay, immigration proceedings will continue while the person remains detained, and hearings will occur at a much faster pace than non-detained proceedings.
[23] For information on who is ineligible for bond during removal proceedings, see: https://www.ilrc.org/how-avoid-mandatory-ice-detention.
[24] See Form I-247A (2017) available in the appendix and at https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf. In practice, jails rarely read the fine print on the detainer and are unaware of this language.
[25] *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014) (striking down Arizona law that banned bail for undocumented immigrants for violating due process).

ties, work for or own local businesses, own homes, have children in school, etc. They are no more likely to be a flight risk than a U.S. citizen. It may also be helpful to point to the federal Bail Reform Act factors at 18 U.S.C. § 3142(g), which do not include immigration status.

ICE detainers, as opposed to information about lack of immigration status, present a slightly different problem: the risk of impending ICE arrest. Judges and prosecutors may be particularly concerned that an ICE detainer means that the person, if released on bail, will be transferred to ICE and will be unavailable to appear for their criminal case. And such concerns are not unjustified; they are a significant consideration for your defensive strategy as well. However, if you are trying to get your client out of custody, there are several arguments to raise to get around the ICE detainer concerns:

1. An ICE detainer is not a guarantee of ICE arrest.[26] ICE frequently issues detainers that it does not act upon, and only occasionally does the agency officially withdraw the detainer, as opposed to just deciding not to come take custody when the person is released. In particular, under the 2021 enforcement policies promulgated by the Biden-Harris administration,[27] ICE has declined to arrest many people that they had previously placed detainers on, because those individuals are no longer enforcement priorities.
2. Your client may be eligible for bond out of ICE custody, in which case even if the detainer is acted upon, they would be able to appear for their future state court proceedings. (Note that while this may be helpful in arguing for your client's pre-trial release, immigration bonds are highly discretionary and also may be unaffordable, so the reality may be more complicated. See B. above for more discussion.)
3. Several federal courts, and at least one state court, have found that the question of flight risk for a fair bail determination only applies to flight of the defendant's own volition.[28] The Supreme Court of New Jersey recently ruled against pre-trial detention on the basis of an ICE detainer or threat of deportation, holding that the relevant factors to be considered are based on the defendant's own conduct, not the possible actions of outside agencies or third parties.[29] But note that the applicability of these arguments to a particular state will depend very much on that state's bail statute and caselaw.

D. Diversion Programs

Immigration status and the existence of ICE detainers can also affect prosecutors' willingness to offer diversion, probation, or other alternatives to incarceration as part of a plea agreement to resolve charges.[30]

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[26] *United States v. Xulam*, 84 F.3d 441, 441 n.1 (D.C. Cir. 1996) ("The fact that a detainer has been lodged does not mean appellant necessarily will be taken into custody by the INS if released by this Court.").
[27] See https://www.ilrc.org/practice-advisory-criminal-defense-attorneys-biden-administration%E2%80%99s-interim-enforcement-priorities.
[28] See *United States v. Barrera-Omana*, 638 F. Supp. 2d 1108, 1110 (D. Minn. 2009) (court refused to consider the detainer as indicating flight risk because it was "an externality not under defendant's control"); *United States v. Villanueva-Martinez*, 707 F. Supp. 2d 855, 857 (N.D. Iowa 2010) (holding that if the government prevents a defendant from appearing, that is not a situation where the defendant has "failed" to appear).
[29] *New Jersey v. Lopez-Carrera*, A-9-20/084694 (Mar. 30, 2021) (holding that New Jersey law regarding risk of flight meant flight by defendant's own volition, not risk that the federal government would interfere).
[30] However, some diversion agreements, particularly those that contain an admission of guilt or stipulation to underlying facts, can still constitute a conviction for immigration purposes, even if it results in a dismissal under state law. For further discussion of what types of diversion agreements constitute a conviction for immigration purposes, see ILRC, Immigration Consequences of Pretrial Diversion and Intervention Agreements, (June 2021), https://www.ilrc.org/immigration-consequences-pretrial-diversion-and-intervention-agreements-0.

Because prosecutors may assume that the defendant will be directly transferred to ICE detention upon release from criminal custody, such as after the dismissal of charges, prosecutors are often afraid that the defendant will be unable to complete the obligations contained in a diversion agreement, such as classes or community service, if they are in ICE custody. The same arguments mentioned above may help demonstrate why the defendant will not be transferred to ICE, or may be released from ICE custody quickly, and therefore able to comply with the conditions of their diversion or other pretrial agreement.

On the defense side, if your client is likely to be transferred to ICE and ineligible for an immigration bond, you may want to reconsider entering into a time-bound diversion agreement that your client cannot comply with. Diversion agreements often include several waivers of rights, and if your client does not comply, it may put them in a worse situation than before. In addition, if the prosecutor requires that the defendant complete certain requirements before they will agree to dismiss the charges, but the defendant is stuck in ICE detention, you may need to seek an alternative case disposition or push to continue proceedings until the client is able to be released from ICE custody.

III. Legal Arguments Against an ICE Detainer

If your client is subject to an ICE detainer that is illegal or invalid, or your client is not an enforcement priority for ICE, then that detainer should be lifted by ICE. Alternatively, a sheriff might be prohibited from complying with the detainer on state law or constitutional grounds. You may be able to make this happen.

There are several bases to challenge an ICE detainer, either by challenging ICE for having improperly or illegally issued it, or challenging the sheriff's intention to accede to it. In terms of ICE, there may be practical defects with the detainer; for example, it may be placed on the wrong person, or lack or misstate essential information. There may also be legal defects based on constitutional requirements, as well as ICE's limited statutory authority. The detainer may have been placed on someone who is not actually removable or does not fit ICE's current enforcement priorities. Further, state or local law may prevent the sheriff from responding to the detainer. For all these reasons, it's important to get a copy of the detainer and review it. [31] **If the detainer is invalid, you may be able to get the sheriff to reject it, or get ICE to lift it. But in either case, be careful that the defect will not simply be cured by ICE issuing a new detainer.**

A. Challenges to ICE Issuance of a Detainer

1. Argue that the Detainer is Illegally Imposed

Constitutional and Statutory Limits: ICE must have probable cause that a person is subject to deportation in order to issue a detainer.[32] Holding someone on an ICE detainer after they would otherwise be released is a new arrest subject to Fourth Amendment requirements, and as a result, courts have held that ICE must have probable cause of removability prior to issuing the detainer.[33]

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[31] The detainer form says on its face that it must be served on the subject of the detainer to be a valid request. Actual compliance with this requirement varies significantly from place to place, as does a jail's willingness to provide a copy of the detainer to counsel. If you can't get a copy of the detainer directly from the jail, demand that they to give it to your client, who is clearly entitled to it.

[32] *Morales v. Chadbourne,* 793 F.3d 208, 223 (1st Cir. 2015) (an ICE agent must have probable cause to issue an immigration detainer); *Hernandez v. United States*, 939 F.3d 191 (2d Cir. 2019). *See Gonzalez v. Immigration and Customs Enf't*, 975 F.3d 788 (Ninth Cir. 2020).

[33] *Morales*, 793 F.3d at 223. For more discussion of the legal issues around ICE detainers, see: https://www.ilrc.org/ice-detainers-are-illegal-so-what-does-really-mean.

Second, ICE must also attach an administrative arrest warrant.[34] This is required by the statute defining ICE's arrest authority, and as a matter of policy and practice is now routine. But if the ICE warrant is for some reason not also provided to the jail, that is in violation of 8 U.S.C. § 1357(a).[35]

Third, the Ninth Circuit has held that the Fourth Amendment "requires a prompt probable cause determination by a neutral and detached magistrate" to justify continued detention on an ICE detainer.[36] Such a procedure does not currently exist in the immigration system, but this litigation is ongoing: see https://www.ilrc.org/explaining-gonzalez-v-ice-injunction.

The Person Must be a Removable Noncitizen: Legally, the requirement of probable cause means ICE can only issue a detainer against (a) a noncitizen, who (b) is already "removable." A removable noncitizen is someone who can be put in removal proceedings for possible deportation (regardless of whether they might be eligible to apply for some waiver or relief in those proceedings). For example, undocumented people, and permanent residents who already have been convicted of a deportable offense, are removable noncitizens and an ICE detainer is not necessarily illegal. But a permanent resident who maintains their status is not removable, and a detainer would be illegal. No U.S. citizen is a proper subject of a detainer (although many U.S. citizens have been the mistaken subject of ICE detainers and even prolonged detention and removal, despite their assertion of citizenship).

> ***Example:*** Maurice is a lawful permanent resident who is not deportable. However, recently he was arrested, jailed, and charged with California Penal Code § 273.5. He wants to be released on OR pending his criminal case, but you discover that he has an ICE detainer. The ICE detainer against Maurice is illegal, because he is not a removable noncitizen. If in the future Maurice is convicted of § 273.5, then he will be "removable," because § 273.5 is a removable offense. At that point, a detainer may be lawful. But *until* Maurice is convicted of that offense, ICE cannot legally lodge a detainer and they should lift it.

This is important to keep in mind, because ICE frequently makes mistakes and issues detainers against U.S. citizens or against noncitizens who have lawful immigration status and are not currently removable. These detainers that lack probable cause are illegal, and ICE must withdraw them or face liability.[37]

Database Detainers and Gonzalez v. ICE: Additionally, ICE has historically issued many of its detainers solely on the basis of database checks, and those have important limitations.[38]

- First, ICE has conceded in litigation that evidence of a person's foreign birth, combined with a lack of other information about that person in immigration databases, is insufficient to establish probable cause of removability to issue a detainer.[39]
- Second, even if there is information about a person in federal immigration databases, those databases are prone to errors and may be insufficient to provide probable cause. This question is

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[34] *Jimenez Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1006 (N.D. Ill. 2016) (ICE's statutory arrest authority requires probable cause and either a warrant or a determination that the person is likely to escape before a warrant can be obtained). The ICE warrant is basically meaningless for the sheriff who receives it, but they are required to attach it to the detainer. For more information about ICE warrants, see https://www.ilrc.org/legal-analysis-ice-warrants.
[35] Id.
[36] *Gonzalez*, 975 F.3d at 817.
[37] See cases against ICE for detainers on U.S. citizens, *e.g. Morales v. Chadbourne*, 235 F. Supp. 3d 388 (D.R.I. 2017); Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014); *Gonzalez v. Immigration & Customs Enf't*, 416 F. Supp. 3d 995 (C.D. Cal. 2019).
[38] *Gonzalez v. Immigration & Customs Enf't*, 416 F. Supp. 3d 995 (C.D. Cal. 2019).
[39] Id.

the subject of ongoing litigation in *Gonzalez v. ICE.* Although the injunction issued in that case is no longer valid, the court record provides many specific details about the flaws and high error rates of ICE databases.[40] You can still challenge an ICE detainer that may lack probable cause when it is based only on database information. For explanation of how to identify a database-detainer and more information on the Gonzalez litigation, see ILRC, *Explaining the Gonzalez v. ICE injunction* (Feb. 2021). https://www.ilrc.org/explaining-gonzalez-v-ice-injunction.

- In particular, watch out for people who may have derived or acquired citizenship, or who have had no prior contact with DHS, and thus ICE is relying only on some indicia of foreign birth.

2. Argue that the ICE Detainer is Outside of Applicable Enforcement Priorities.

Even if a detainer is legally issued, you still can assert that ICE should lift it if the person does not come within current, applicable enforcement priorities set out by DHS. ICE can lift a detainer as a matter of discretion at any time. Under the Biden-Harris administration, DHS has issued policy guidance on how ICE should use their discretion, and that applies to issuing detainers as well as many other immigration enforcement actions.[41] Federal policy guidance lays out enforcement priorities, and provides a basis to challenge a detainer placed on a client who does not fall in the priority categories.

As of December 2021, DHS Guidelines for the Enforcement of Civil Immigration Law provide certain categories of people that the agency will target for immigration enforcement:

1. "National Security" – This will be used against people who ICE alleges are involved in terrorism, spying, or other threats to "national security." This does not apply to general criminal activity.
2. "Border Security" – This applies to anyone who is attempting to enter the United States unlawfully at a port of entry (e.g. with fake papers) or who entered unlawfully on or after November 1, 2020.
3. "Public Safety" – People whom DHS thinks pose a current threat to public safety, based on serious criminal conduct.

An advisory that explains more about the current ICE enforcement priorities and how they apply is available here: https://www.ilrc.org/practice-advisory-criminal-defense-attorneys-final-enforcement-priorities.

On August 10, 2021, ICE issued a further policy affecting their use of discretion on ICE detainers: Using a Victim-Centered Approach with Noncitizen Crime Victims.[42] This policy directs ICE agents to exercise prosecutorial discretion in favor of people who are victims of crime and may be eligible for immigration benefits such as U visas, T visas, Special Immigrant Juvenile status, or protection under VAWA. The policy

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[40] Id. at 1007-1012. The court's findings of fact include details such as: "[I]ndividuals familiar with CLAIMS 3 [database of applications that would show someone has been granted legal status] consider the database's error rate to be close to 30 percent." "Both CLAIMS 3 and CLAIMS 4 destroy information after 15 years." "As recently as 2017, the DHS OIG found that ADIS [a particular enforcement database] incorrectly identified visa overstays more than 42 percent of the time." "ICE has never had access to any database of derivative or acquired citizens, because none exists."

[41] Guidelines for the Enforcement of Civil Immigration Law, Memorandum from DHS Sec. Mayorkas, (Sept. 30, 2021), available at https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf. (Replacing the previous interim enforcement guidance issued in January 2021 - *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, Memorandum from David Pekoske, Acting Secretary, to Troy Miller, Tae Johnson, and Tracey Renaud (Jan. 20, 2021), https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf.)

[42] Using a Victim-Centered Approach with Noncitizen Crime Victims, ICE Directive No. 11005.3, Aug. 10, 2021, https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.

explicitly applies to ICE decisions to issue a detainer or to take custody of someone under a previously issued detainer, as well as other discretionary enforcement actions like arrest and release, etc. The policy is quite broad and applies to people with pending applications as well as those who might qualify. An FAQ about the policy details is available at: https://asistahelp.org/wp-content/uploads/2021/08/ASISTA-Policy-Alert-New-ICE-Guidance-on-Victim-Centered-Approaches.pdf.

You also can ask ICE to lift a detainer even if the person is not specifically a subject for prosecutorial discretion under these policies, if you have some other reason to persuade ICE. Detainers are issued under ICE's discretion and they can be lifted at any time.

3. Asking ICE to Lift a Detainer

To request that ICE lift a detainer, generally counsel should send a written letter/email to the ICE Field Office describing why the detainer is invalid or should otherwise be withdrawn as a matter of discretion. Include legal arguments as well as policy or humanitarian arguments about why your client is not a priority for immigration enforcement or is particularly vulnerable. ICE operates out of regional field offices, and requests should be directed to the local field office or suboffice that covers where your client is detained. A list of ICE Field Offices and contact information is available here: https://www.ice.gov/contact/field-offices. Enforcement and Removal Operations (ERO) is usually the branch that handles ICE detainers.

Individuals representing people before ICE typically file a notice of their representation on form G-28. In many cases, ICE will require such a form in order to speak with counsel or provide any information about someone in their custody. This can be a roadblock for many criminal defenders who may not be authorized to or may not wish complete such a form, because such representation is considered to be outside the scope of their criminal defense. However, ICE detainers and state defense counsel is one area where these requirements are often loosened. Many public defenders have established points of contact in the local ICE field office for issues regarding ICE detainers, and have successfully gotten ICE to lift detainers without filing a G-28 on the case. You can also note on the G-28 that the scope of your representation before ICE is limited to detainer advocacy only.

If you request that ICE lift a detainer and the request is denied, you can seek a higher review of that decision through ICE's Case Review Process: https://www.ice.gov/ICEcasereview or by escalating the request up the chain of command within the ICE field office.

B. Challenges to a Sheriff's Compliance with a Detainer

1. State Law Authority on Detainers

As discussed above, many states have enacted laws affecting how local jails respond to detainers. These differ widely: some states prohibit compliance with detainers and others mandate it. Additionally, a number of cities and counties have local laws that restrict involvement with ICE. Below is a table linking to many of the state laws enacted in this realm, but there may be others that we have not identified, or that should be used in creative new ways to challenge compliance with detainers.

Read these statutes carefully; they do not all simply ban or require compliance with detainers, but may govern a variety of issues including information sharing, detention, inquiries into immigration status, and preemption of local policies. In particular, several states prohibit local "sanctuary" policies that limit involvement with ICE

– but these laws may not necessarily require any specific action be taken in a given case. For example, Tennessee law prohibits having local policies that limit compliance with ICE detainers, but does not include any mandate that every single detainer be complied with.

State policies limiting assistance to ICE	*State laws mandating some involvement with ICE*
California: 2016; 2017	Alabama: 2011* 2018
Connecticut: 2019	Arizona: 2010*
Colorado: 2019	Arkansas: 2019
District of Columbia: 2019	Florida: 2019*
Illinois: 2017, 2021	Georgia: 2011*; 2009
Maryland: 2021	Indiana: 2011*, 2018
New Jersey: 2019	Iowa: 2017
New York: 2018	Montana: 2021
Oregon: 2017, 2021	North Carolina: 2018
Rhode Island: 2014	South Carolina: 2012*
Vermont: 2017; 2019	Tennessee: 2018
Washington: 2017; 2019	Texas: 2017

*Law's provisions have been significantly limited by federal courts.

State Law Authority for Civil Immigration Arrests. Even if there is no governing state statute that speaks to detainers, your sheriff may lack authority to hold your client based on an ICE detainer. Courts agree that holding someone on a detainer is a new arrest and so the jail must meet Fourth Amendment requirements.[43] As a general matter, local and state law enforcement have no independent authority to make civil immigration arrests.[44] A detainer itself does not provide legal authority for arrest, so the jail must have independent legal authority to assist with detainers, such as under a specific state statute or a 287(g) agreement. Courts in several states have found that under state law, local officers have no authority to hold someone on an immigration detainer.[45] The majority of states actually have no statutes specifically addressing ICE detainers or providing state officials with arrest authority for federal civil immigration arrests, and so this argument may be persuasive in states without a specific court decision as well.

Local ordinances regulating involvement with ICE: Beyond state laws, check for local rules that may govern your sheriff or police. This national map of policies on assistance to ICE is a good place to start, but note that

[43] *Galarza v. Szalczyk*, 745 F.3d 642 (3d Cir. 2014); Miranda-Olivares v. Clackamas Cty., No. 3:12-CV-02317-ST, 2014 WL 1414305, at *4 (D. Or. Apr. 11, 2014); Morales v. Chadbourne, 235 F. Supp. 3d 388 (D.R.I. 2017); Vohra v. United States, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. Feb. 4, 2010); Roy v. Cty. of Los Angeles, No. CV1209012ABFFMX, 2018 WL 914773, at *23 (C.D. Cal. Feb. 7, 2018).

[44] *Arizona v. United Sta*tes, 567 U.S. 387 (2012).

[45] See *Lunn v. Commonwealth*, 477 Mass. 517, 526, 78 N.E.3d 1143, 1152 (2017) (state and local officers have no authority under Massachusetts law to make civil immigration arrests based on ICE detainers); *Cisneros v. Elder*, No. 18CV30549 (D. Colo., El Paso Cty. Dec. 6, 2018) (finding that Colorado law did not give local officers the authority to continue detaining people based on ICE detainers); *People ex rel. Wells v. DeMarco*, 88 N.Y.S.3d 518, 529 (N.Y. App. Div. 2018) (finding that New York statutes do not authorize state and local law enforcement to effectuate warrantless arrests for civil immigration law violations); *Esparza v Nobles County*, No. 53-CV-18-751, 2018 WL 6263254, at *10 (Minn. Dist. Ct. Oct. 19, 2018) (finding that there does not exist within Minnesota Statutes the power for Minnesota peace officers to arrest a person for a federal civil offense at the request of ICE officers).
Three further courts found no authority under state law, but then the Montana and Florida enacted specific authority to hold people on ICE detainers: *Ramon v. Short*, 2020 MT 69 (Mont. 2020) (finding that neither federal or Montana law provide law enforcement officers with authority to arrest individuals based on federal civil immigration violations*); C.F.C. v. Miami-Dade Cty.*, 349 F. Supp. 3d 1236, 1262 (S.D. Fla. 2018) (noting that Florida law did not give local officers the authority to arrest for civil immigration violations); *Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276, 1304 (S.D. Fla. 2018) (plaintiff's arrest by the County for an alleged immigration violation fell outside the scope of permissible "cooperation" under federal law Section 1357(g) and Florida state law).

it is not conclusive and may reflect administrative policies, rather than binding laws: www.ilrc.org/local-enforcement-map.

2. Asking a Sheriff to Reject an ICE Detainer

Convincing a jail not to honor an ICE detainer will depend significantly upon the nature of state and local law, as discussed above. Additionally, many sheriffs' departments have established internal policies and practices regarding ICE detainers that guide these decisions, although they may not exactly be binding on any given case. In contrast, jurisdictions with low immigrant populations may see very few ICE detainers, and may be completely unaware of the legal issues involved. In all but a few states, compliance with ICE detainers, is completely voluntary, and jails have no obligation to respond to ICE detainers, either by providing notice of release date or prolonging the person's detention.[46]

Even where state laws constrain responses to ICE detainers, sheriffs still have a lot of power. As discussed above, even without holding a person on a detainer, many sheriffs will notify ICE of a person's release date, with the specific purpose of enabling ICE to arrive at the time of release to take custody. The jail may also permit ICE to come into the release area or receive transfers of custody in secure areas of the jail where the person would have no opportunity to walk out.

Procedures or points of contact for advocacy on an ICE detainer will vary from jail to jail, but generally you can start with informal communications with jail staff, and then take issues to their legal counsel or higher command if necessary.

1. Ask the jail how they plan to respond to the ICE detainer. Do they plan to hold your client for ICE? Have they or will they communicate with ICE about the person's release and transfer the person directly to ICE?
2. If they intend to comply with the detainer, find out who has authority to review or reverse that decision and what options you have to get a commitment from them not to honor the detainer or transfer your client to ICE. Employ whatever legal or discretionary arguments (discussed above) may be the most useful. Remind them that a local jail that holds someone on an invalid detainer may be liable for unlawful detention.[47]
    a. Be careful not to divulge unnecessary information about your client or their actual immigration status. You can demonstrate the detainer's invalidity without disclosing your client's immigration status (or lack thereof).
    b. On the other hand, if your client has lawful status or is a U.S. citizen, it may be beneficial to demonstrate this affirmatively.

When advocating with the jail to reject an ICE detainer, keep in mind the distinction between holding a person on an ICE detainer beyond when they would otherwise be released and coordinating with ICE to arrive at the exact time of release for a transfer of custody. While courts agree that holding a person on an ICE detainer beyond when they would be released under state law is a new arrest, and the jail must meet Fourth Amendment requirements, this analysis has not been applied to the question of notifications of release date.

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[46] *Galarza v. Szalczyk*, 745 F.3d 642, 645 (3d Cir. 2014)
[47] *See Galarza*, 745 F.3d at 645; *Hernandez v. United States*, 939 F.3d 191 (2d Cir. 2019); *Roy v. County of Los Angeles*, 114 F.Supp.3d 1030 (C.D. Cal 2015) (partially denying motion to dismiss; Los Angeles subsequently settled with plaintiff class for $14 million).

Be specific about what you are asking, or the jail might notify ICE about the release date as a matter of routine, even if they tell you that they are not honoring the detainer.

Finally, depending on the case, transferring someone to ICE detention can be a near guarantee of their deportation. It is certainly a guarantee that the person will be transferred into a punitive immigration system that lacks basic legal protections. Compelling factors such as personal, family, humanitarian, medical, or other individual circumstances might be a basis for a sheriff to agree to reject a particular ICE detainer.

IV. Summary: Step By Step Analysis Of The Legal Arguments Against A Detainer

If the following requirements are not met, ICE or the local jail may be liable for violating either federal or state law. This is a basis to demand that the jail reject the detainer, or to demand that ICE withdraw it.

1. **Get a copy of the detainer to see what ICE says it's based on** – a prior order of removal, ongoing removal proceedings, database checks, or admissions by the person themself.
2. **Is ICE's issuance of the detainer legal or appropriate?**
    - Is the person actually subject to removal? Check with an immigration expert!
        i. Are they a U.S. citizen? ICE is particularly likely to miss acquired and derivative citizenship.[48]
        ii. If client is LPR, do they really have a deportable conviction? (Mere charges don't count.)
        iii. If some other status, do they already have a conviction that undermines that status?
    - Does ICE actually have probable cause of removability? What information does ICE have on this individual?
        i. ICE has conceded in litigation that foreign birth plus no other immigration records is insufficient for probable cause to issue a detainer.[49]
        ii. If your client has never filed any immigration applications and has had no prior contact with DHS officials (which can be tricky to ascertain), then you have a good argument that ICE lacks probable cause for the detainer.
        iii. If you work closely with an immigration attorney or do immigration cases, obtaining a copy of ICE's I-213 record[50] may reveal their basis for issuing the detainer.
    - Is the person within ICE's enforcement priorities?
        i. Are they considered a national security risk, or did they enter unlawfully since November 1, 2020?
        ii. Do they have compelling circumstances that warrant ICE lifting the detainer under its discretionary guidelines?
3. **Does state law affect the jail's response to the detainer?**
    - Is the client protected from transfer to ICE by a state law?

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[48] See ILRC, Acquisition & Derivation Quick Reference Charts (2020) https://www.ilrc.org/acquisition-derivation-quick-reference-charts.
[49] Gonzalez v. Immigration & Customs Enf't, 975 F.3d 788, 817 (9th Cir. 2020).
[50] An I-213 is the form ICE uses to document an arrest, including a detainer, and should list how ICE encountered the individual, as well as what database records they checked on the person.

i. California, Colorado, Connecticut, Illinois, Maryland, Oregon, Washington, and the District of Columbia all have state laws limiting compliance with ICE detainers.[51] New Jersey also limits them by directive of the Attorney General.[52]
ii. But be careful that even if the jail is not allowed to hold your client extra time, the law might still permit them to coordinate transfer to ICE directly at the time of release, or may permit other forms of collaboration.

- Does state law *require* compliance with an ICE detainer?
  i. Florida, Iowa, Montana, and Texas require jails to comply with ICE detainers – but you should check the details on what exactly is required.[53]
  ii. Even if state law mandates compliance with the detainer, the federal limitations discussed above still apply.
- If there is no state law on detainers specifically, does state law authorize holding someone for civil immigration purposes at the federal government's request?
  i. Courts in Massachusetts, Minnesota, and New York have found that state and local law enforcement lack the legal authority under state law to hold someone for civil immigration purposes.[54]
  ii. Even if a court has not specifically ruled on this, the default in most states is that local law enforcement does not have any authority to make arrests on detainers.[55]
  iii. But be careful because the jail might agree it can't hold someone, but then still notify ICE of the person's release time, such that ICE arrives to arrest your client right then.
- Is the client protected by an additional local law that places further limits on cooperation with ICE?

4. **Does the client have sympathetic factors that could persuade the jail to ignore the detainer as a matter of discretion?**

[51] Cal Govt. Code § 7283.1(a); Colo. Rev. Stat. § 24-76.6-103; CONN. GEN. STAT. § 54-192h; 5 ILCS 805/15; Md. Dignity not Detention Act, HB16 of 2021, veto-override Dec. 6, 2021; OR H.B. 3265, 81st Sess. 2021; RCW 10.93.160; District of Columbia Official Code § 24–211.07.
[52] Office of the Attorney General of New Jersey, Directive Strengthening Trust Between Law Enforcement and Immigrant Communities, Law Enforcement Directive 2018-6, (Sept. 27, 2019), available at https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6_v2.pdf, upheld in *Ocean County Board of Comm'rs v. Attorney General of New Jersey*, Nos. 20-2754 & 20-2755 (3d Cir. Aug. 9, 2021).
[53] § 908.105, Fla. Stat.; Iowa Code § 825.2; Mont. HB 223 (2021) enacted Apr. 16, 2021; Tex. Gov't Code § 752.053; (2017)) Tennessee and Arkansas state laws prevent any local policy against ICE detainers, but do not require compliance in any specific case. TN Code § 4-42-103 (2019); AR Code § 14-1-103 (2019).
[54] See supra fn. 43. Courts in Montana and Florida reached similar conclusions, but the rulings were vitiated by subsequent state laws creating detainer mandates.
[55] See *Arizona v. United Sta*tes, 567 U.S. 387, 390 (2012).

DEPARTMENT OF HOMELAND SECURITY

IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: Event #:	File No: Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON *(complete box 1 or 2).*

- ☐ A final order of removal against the alien;
- ☐ The pendency of ongoing removal proceedings against the alien;
- ☐ Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION *(complete box 1 or 2).*

- ☐ Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling ☐ U.S. Immigration and Customs Enforcement (ICE) or ☐ U.S. Customs and Border Protection (CBP) at _____. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

☐ If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

_____ (Name and title of Immigration Officer)

_____ (Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____ .

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____ , in the following manner:

☐ in person ☐ by inmate mail delivery ☐ other (please specify): _____

_____ (Name and title of Officer)

_____ (Signature of Officer) (Sign in ink)