

March 20, 2025

Re: County Liability for Honoring ICE Detainers

Dear County Commissioners,

The American Civil Liberties Union of Pennsylvania (ACLU-PA) has heard that U.S. Immigration and Customs Enforcement (ICE) is contacting counties across Pennsylvania to request that they honor ICE detainers. We are writing to remind you that ICE has no authority to require counties to detain individuals for alleged immigration violations. In addition, detaining individuals at ICE's request can put counties at significant risk of liability. In Pennsylvania and across the country, federal courts have held local law enforcement agencies liable when they unlawfully hold individuals on immigration detainers, resulting in payment of substantial damages and attorneys' fees.

In 2014, the U.S. Court of Appeals for the Third Circuit held that ICE detainers are merely requests and that local detention facilities can be held liable, alongside ICE, for constitutional violations if a wrongfully detained person decides to sue. *See Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014). As a result, many counties changed their policies to stop holding people on ICE detainers.¹

The law on ICE detainers has not changed since the *Galarza* decision. If your county does not have a detainer policy consistent with current law, we urge you to adopt a policy prohibiting all county employees from complying with any ICE detainer request unless it is accompanied by a judicial warrant backed by probable cause, as required by the Fourth Amendment.

I. About ICE Detainers

An ICE detainer (also known as an "ICE hold" or an "immigration hold") is a request by ICE to a local law enforcement agency to hold a person for up to 48 hours beyond the time they would otherwise be released from custody (excluding weekends and federal holidays) so that



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¹ REBECCA COLE, ET AL., A CHANGING LANDSCAPE: PENNSYLVANIA COUNTIES REEVALUATE POLICIES ON IMMIGRATION DETAINERS, SHELLER CENTER FOR SOCIAL JUSTICE, TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW 2 (2015), <https://law.temple.edu/cs/publication/a-changing-landscape-report/> (concluding that over half the counties in Pennsylvania did not honor ICE detainers as of March 2015).

federal immigration officials may assume custody.² Compliance with ICE detainers is voluntary.³

A detainer is not an arrest warrant. Unlike genuine criminal warrants, which are supported by a determination of probable cause, it is unclear what evidentiary standard ICE uses when deciding whether to issue a detainer. In addition, while warrants are issued by a judicial officer, ICE detainers are issued by ICE enforcement agents themselves, without any authorization or oversight by a judge or any other neutral decisionmaker. And there is no clear, expeditious method for challenging a detainer or getting the detainer lifted or cancelled once it has been issued. This lack of basic Fourth Amendment protections in the ICE detainer context explains why ICE has mistakenly issued detainers for many U.S. citizens and non-removable immigrants.

Although ICE benefits from the misperception by some that ICE detainers are mandatory orders, in fact, ICE detainers are non-binding requests.⁴ ICE itself has acknowledged that local law enforcement agencies are not required to hold anyone based on an ICE detainer without an accompanying warrant or a court order.⁵

Since ICE detainers are merely requests, state and local law enforcement agencies and detention facilities open themselves up to legal liability for making the decision to detain an individual—for any length of time—based solely on an ICE detainer request.

II. ICE Regularly Issues Detainers Based on Flawed Information, Putting Counties at Risk of Liability

There is good reason not to trust ICE's detainer requests: ICE regularly issues detainers based on faulty information from unreliable databases. Under longstanding Supreme Court precedent, database sources used by law enforcement agencies must be reliable to satisfy the Fourth Amendment.⁶ A federal court has described ICE's databases as, "Inaccurate, Incomplete, and Error-Filled."⁷

² 8 C.F.R. § 287.7.

³ See *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) ("The [a]ct does not authorize [F]ederal officials to command [S]tate or local officials to detain suspected aliens subject to removal").

⁴ See, e.g., *Form I-247, Immigration Detainer - Notice of Action*, DEP'T OF HOMELAND SEC. 1, <https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf> ("IT IS REQUESTED THAT YOU: Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS.**") (emphasis in original).

⁵ *Galarza*, 745 F.3d at 645; *Lunn v. Commonwealth*, 78 N.E. 3d 1143, 1152 (Mass. 2017) ("The United States, in its brief as amicus curiae, concedes that compliance by State authorities with immigration detainers is voluntary, not mandatory."); *Galarza*, 745 F.3d at 639 n.3, 641-642 (summarizing cases and statements; "In short, the position of [F]ederal immigration agencies has remained constant: detainers are not mandatory").

⁶ *Arizona v. Evans*, 514 U.S. 1, 17 (1995) (O'Connor, J. concurring); see also *United States v. Esquivel-Rios*, 725 F.3d 1231, 1238 (10th Cir. 2013) (Gorsuch, J.) (holding, "in a case that hinges entirely on the reliability of a computer database, the district court overlooked" testimony "casting doubt on its reliability").

⁷ *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)) (issuing a permanent injunction limiting certain ICE offices from issuing detainers). Although the Ninth Circuit reversed the District Court's decision, it did not hold that the databases used by ICE to make probable cause determinations for its detainers are actually reliable. Instead, it provided a clear legal standard for determining database reliability and remanded the case to the District Court for additional fact-finding in line with this standard. The case settled in November 2024, with its terms taking effect in March 2025. See Class Action Settlement Agreement & Release, *Gonzalez v. Immigr. & Customs Enf't*, No. CV. 13-04416 AB (FFMx) (C.D. Cal.

The databases that ICE uses contain an individual’s immigration status at a fixed point in time.⁸ They do not, however, reliably account for the fact a person’s immigration status may change over time, leading to foreseeable errors.⁹ For example, ICE’s central database does not provide information on derivative citizenship – the process by which a child under 18 can become a citizen if at least one parent is a U.S. citizen.¹⁰ That same database “‘frequently’ shows naturalized citizens as green card holders or fails to reflect an extension of a non-immigrant’s period of stay.”¹¹ ICE is well aware of these flaws; a federal court found that “[c]ommunications between an ICE senior officer and ICE headquarters indicates that the misclassification of U.S. citizens as [Lawful Permanent Residents] was a frequent occurrence.”¹² Equally troubling is that no single database relied upon by ICE is “intended to provide any indication of probable cause of removability.”¹³ Instead, ICE “cobble[s] together information from disparate systems that are not at all intended to establish probable cause of removal.”¹⁴

As a result of ICE’s reliance on these faulty databases, many Lawful Permanent Residents - and even U.S. citizens - end up improperly held by county law enforcement on ICE detainers.¹⁵ This creates significant risk to counties that elect to honor ICE detainers.

Following years of litigation, ICE entered into a settlement agreement last November, which will take effect in March 2025, barring its Pacific Enforcement Response Center (PERC) from issuing any detainers. PERC issues detainers after business hours for individuals in custody in 42 states across the country – *including Pennsylvania*.¹⁶ The agreement requires PERC to implement a neutral review process for most ICE detainers.¹⁷ Until ICE establishes this process, PERC can only issue Form I-247N Requests of Notification of Release, not detainers; these forms do not permit law enforcement to detain the individual for any period of time beyond

Nov. 25, 2024), https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2025-01/Gonzalez-Detainers-Class-Settlement-Agreement_Nov2024.pdf (hereafter “*Gonzalez Settlement Agreement*”).

⁸ *Gonzalez*, 416 F. Supp. 3d at 1018.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1018-19.

¹² *Id.* at 1019.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See e.g. *Gonzalez*, 416 F. Supp. 3d 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 Of those 771 detainers lifted, 42 explicitly provide that the detainer was lifted because the individual was a U.S. citizen. . . . The cited instances of citizens being misclassified are not exhaustive.”); *id.* at 1012 (citing testimony from ICE counsel who reviewed between 50 and 200 memos regarding detainers issued to potential U.S. citizens “arising solely out of the Los Angeles area in a two year period.”); *Uroza v. Salt Lake Cnty.*, No. 2:11CV713DAK, 2014 WL 4457300, at *5 (D. Utah Sept. 10, 2014) (“Between 2008 and 2012, ICE issued detainers against more than 800 U.S. citizens and 28,000 legal permanent residents.”).

¹⁶ Appendix A, Class Action Settlement Agreement & Release, *Gonzalez v. Immigr. & Customs Enf’t*, No. CV 13-04416 AB (FFMx), at 4 (C.D. Cal. Nov. 25, 2024), https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2025-01/Gonzalez-Detainers-Class-Settlement-Agreement-Appendices_Nov2024.pdf.

¹⁷ *Gonzalez Settlement Agreement*, *supra* note 7, at 9; see also *New Class Action Settlement Requires ICE to Stop Rampant Constitutional Violations For People Subject To ICE Detainers*, NAT’L IMMIGRANT JUST. CTR. (Feb. 10, 2025), <https://immigrantjustice.org/staff/blog/new-class-action-settlement-requires-ice-stop-rampant-constitutional-violations-people>.

when they would normally be released.¹⁸ Furthermore, ICE is required to amend its detainer forms to clarify that all ICE detainers must be served by local authorities to people in their custody.¹⁹ If local law enforcement does not serve the detainer on the individual in their custody, *the detainer is not valid and may not be relied upon to maintain custody of the individual – and the individual can challenge their detention in court.*²⁰

III. Counties in Pennsylvania Have Been Held Liable for Complying with Improper ICE Detainers

Because detainers are voluntary, courts have held local law enforcement agencies in Pennsylvania liable for their role in causing unlawful detention when a detainer lacks a constitutionally valid basis.²¹ In *Galarza*, ICE mistakenly sought a detainer for a New Jersey-born U.S. citizen of Puerto Rican descent upon his release from the Lehigh County Prison.²² Lehigh County honored this wrongful detainer holding the man for three days after he would otherwise have been released. After the ACLU of Pennsylvania sued on Mr. Galarza's behalf, a local police detective and the City of Allentown settled Mr. Galarza's claims against them for \$25,000.²³ Lehigh County agreed to pay \$95,000 and adopt a policy to no longer honor ICE detainers without a court order.²⁴

In *Davila v. Northern Regional Police Department*, ICE issued a detainer for a U.S. citizen born in Mexico who immigrated to the United States at age two.²⁵ After a traffic stop, Allegheny County held her overnight on an ICE detainer.²⁶ The ACLU of Pennsylvania sued on her behalf, and Allegheny County settled the case, agreeing to stop honoring ICE detainers and paying Ms. Davila \$25,000 in damages.²⁷ After an additional four years of litigation, the police department that arrested her on the detainer and transported her to the jail settled the claims against it for \$175,000.²⁸

¹⁸ Form I-247N, Request for Voluntary Notification of Release of Suspected Priority Alien, DEP'T OF HOMELAND SEC., <https://www.ice.gov/sites/default/files/documents/Document/2016/I-247N.PDF>.

¹⁹ *Gonzalez Settlement Agreement*, supra note 7, at 19; Appendix D, Class Action Settlement Agreement & Release, *Gonzalez v. Immigr. & Customs Enf't*, No. CV 13-04416 AB (FFMx), at 12 (C.D. Cal. Nov. 25, 2024), https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2025-01/Gonzalez-Detainers-Class-Settlement-Agreement-Appendices_Nov2024.pdf.

²⁰ *Id.*

²¹ *Galarza*, 745 F.3d at 640.

²² *Id.* at 636-37.

²³ *Galarza v. Szalczyk, et al.*, ACLU OF PENNSYLVANIA, <https://www.aclupa.org/en/cases/galarza-v-szalczyk-et-al>.

²⁴ *Id.*

²⁵ *Davila v. Northern Regional Police Department, et al.*, ACLU OF PENNSYLVANIA, <https://www.aclupa.org/en/cases/davila-v-northern-regional-police-department-et-al>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Western Pennsylvania Police Department Settles Lawsuit Involving U.S. Citizen Illegally Detained by Immigration Agents*, ACLU OF PENNSYLVANIA (Sept. 17, 2019), <https://www.aclupa.org/en/press-releases/western-pennsylvania-police-department-settles-lawsuit-involving-us-citizen-illegally>.

IV. Cities and Counties Around the Country have entered into Multi-Million Dollar Settlements after Honoring Improper ICE Detainers or for Holding People Past Their Release

Beyond Pennsylvania, jurisdictions around the country have faced similar – or significantly higher – penalties when improperly honoring an ICE detainer request.²⁹ In December 2024, New York City resolved a class-action lawsuit about its conduct unlawfully detaining people pursuant to ICE detainers for \$92.5 million.³⁰ Los Angeles agreed to pay a \$14 million settlement for similar conduct by its sheriff’s department.³¹

There are many additional examples from around the country of counties settling suits brought by individuals held on improper detainers for significant amounts, including but not limited to:

- *Palacios-Valencia v. San Juan County*, No. 14-cv-1050 (D.N.M. settled 2017) (San Juan County paid \$350,000 to settle detainer class action lawsuit, including \$25,000 and \$15,000 to the named plaintiffs);
- *Figueroa-Zarceno v. City and County of San Francisco*, No. 17-cv-229 (N.D. Cal. settled 2017) (San Francisco paid \$190,000 settlement to person unlawfully turned over to ICE);
- *Roy v. County of Los Angeles*, No. 12-cv-9012, 2018 WL 914773 (C.D. Cal. Feb. 7, 2018) (ruling in favor of a class of noncitizens held on detainers seeking damages against Los Angeles County, which had paid \$255,000 to settle one named plaintiff’s detainer claim);
- *In re: Jilmar Ramos-Gomez* (Mich. Dept. Civil Rights settled Nov. 2019) (Grand Rapids settled claim of individual held for ICE for \$190,000).³²

These large settlements provide a clear picture of the liability that counties risk incurring if they comply with ICE detainers.

Beyond facing liability for complying with ICE detainers, localities can also face liability under the Equal Protection clause for continuing to detain people based on a person’s country of birth, as this is a “classic example of national-origin discrimination.”³³

²⁹ See, e.g., *Local jurisdictions remain legally vulnerable for honoring ICE detainers*, AM. CIV. LIBERTIES UNION (Feb. 3, 2020), <https://www.aclu.org/documents/recent-ice-detainer-damages-cases> (collecting numerous cases).

³⁰ Luis Ferré-Sadurní, *New York City to Pay \$92.5 Million to Improperly Detained Immigrants*, N.Y. TIMES (Dec. 18, 2024), https://www.nytimes.com/2024/12/18/nyregion/migrants-detention-settlement-deportation.html?unlocked_article_code=1.nU4.huNk.6bIEt4vhDE7P&smid=url-share.

³¹ Alene Tchekmedyan, *Judge approves \$14-million settlement over Sheriff’s Department’s illegal immigration holds*, L.A. TIMES (Feb. 4, 2022), <https://www.latimes.com/california/story/2022-02-04/immigration-detainer-settlement>.

³² See *Local jurisdictions remain legally vulnerable for honoring ICE detainers*, AM. CIV. LIBERTIES UNION (Feb. 3, 2020), <https://www.aclu.org/documents/recent-ice-detainer-damages-cases> (contains these four cases and a more comprehensive list compiled in 2020)

³³ *Parada v. Anoka Cnty.*, 54 F.4th 1016, 1020 (8th Cir. 2022).

V. Detainers Are Also Likely Unlawful Under Pennsylvania Law

Law enforcement agencies in Pennsylvania have no authority to detain individuals on immigration violations, which are civil offenses. Although Pennsylvania courts have not yet addressed this issue, other state courts have held that their state laws do not permit state or local law enforcement agencies to hold individuals on immigration detainers.³⁴ For example, in *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1159 (Mass. 2017), the Massachusetts Supreme Court held that continuing to detain someone on a civil immigration detainer constituted a new arrest, and that because no state law provided for such an arrest, local law enforcement had no authority to make civil immigration arrests. Accordingly, counties that honor ICE detainers risk liability under both federal and state law.

* * *

We urge your county to ensure that it has a clear policy in place prohibiting its employees from complying with any ICE detainer requests unless such detainers are accompanied by a judicial warrant backed by probable cause, as required by the Fourth Amendment. If your county would like to discuss your policy or any of the contents of this letter in greater detail, you may contact us by email at vsstine@aclupa.org.

Respectfully,

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³⁴ *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31 (N.Y. App. Div. 2018) (holding that its state laws do not authorize state and local law enforcement to effectuate an immigration detainer); *Ramon v. Short*, 460 P.3d 867, 880 (Mont. 2020); *Esparza v. County of Nobles*, No. 53-cv-18-751, 2018 WL 6263254 (Minn. Dist. Ct. Oct. 19, 2018) (same); *Nash v. Mikesell*, 557 P.3d 369 (Colo. App. 2024) (holding that Colorado statute prohibiting law enforcement officers from honoring ICE detainers was not preempted by federal law).