



# AILA's Take on Local Detainer Ordinances

For more information, go to [www.aila.org/detention](http://www.aila.org/detention).

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In just the past two years, Immigration and Customs Enforcement (ICE) has issued over [400,000 requests](#) for state and local police to hold people in jail, without a warrant or the guarantee of a prompt hearing. Many of these individuals pose no danger to the community and have never been convicted of a crime in their lives. Some of them are even U.S. citizens. Yet states, counties and cities have spent millions of their own tax dollars complying with the federal government's request to incarcerate people who are not public safety threats.

These hold requests are **civil immigration detainers**. The number of detainers has skyrocketed in the last six years, from around 65,000 in FY2007 to over 250,000 in FY2012. The linchpin of federal/state enforcement partnerships like Secure Communities, detainers are one of the least transparent (and least accountable) aspects of the immigration enforcement system. **AILA supports state and local efforts to push back against civil immigration detainers issued by ICE.**

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## What is a detainer?

A detainer is an ICE form that requests state or local police to hold someone in jail for 48 hours (exclusive of weekends/holidays), **after they would otherwise be released from police custody**. Police encounters can result in a detainer being placed by ICE even if the person is never actually charged with or convicted of a crime. Often, detainers are placed after fingerprints taken at booking are automatically shared with ICE through the Secure Communities program.

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## Detainers raise serious constitutional concerns.

- *Prolonged detention without a hearing:* Police often hold people longer—sometimes months longer—than 48 hours, and judges often deny bail because of a detainer, so detainers can lead to extensive jail time. A [study](#) in King County, WA found that people subject to ICE detainers stayed in jail **29.2 days longer** than others.
- *No warrant or probable cause:* Detainers do not require an established standard of proof for detainers, and ICE has mistakenly placed detainers on long-time legal residents who are not actually deportable, and even on U.S. citizens.
- *Inadequate notice:* Police are not required to provide a copy of the detainer to the detainee.

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## Detainers undermine community policing efforts that keep neighborhoods safe.

- A [study by the University of Illinois at Chicago](#) found that, in jurisdictions where police engage in immigration enforcement, 44% of Latinos said they would be less likely to call the police if they became a crime victim.
- This makes the whole community less safe. "If we have any group of citizens who are afraid to talk to us or don't trust us, that's going to compromise our ability to produce public safety." -Dayton, OH Police Chief Richard Biehl
- Blanket compliance with detainers "could undermine the trust and cooperation between police officers and immigrant communities," Miami-Dade County said in passing its own [resolution](#) limiting detainers.

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## Detainers do not target public safety threats.

- Individuals who pose no public safety threat whatsoever are often held on detainers. Nationwide, one [study](#) found that half of detainers ICE issued in FY2012 and FY2013 were placed on individuals without a single criminal conviction.
- The detainer [policy guidance](#) issued by ICE in December 2012 does not reflect either the agency's civil enforcement priorities or its prosecutorial discretion policies. Even [juveniles](#) are issued detainers.

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## Detainers impose a substantial financial burden on local communities.

- One [study](#) found the cost of housing inmates on detainers in FY 2008 was \$6.07 million in Travis County, Texas and \$49.6 million in New York, New York. ICE does not reimburse localities for the costs of complying with detainers; the Department of Justice's State Criminal Alien Assistance (SCAAP) program only covers a small fraction of that cost.

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## What can communities do?

- Pass state laws and local resolutions and ordinances limiting law enforcement cooperation with ICE detainers.
- Decisions by sheriffs in [Oregon](#), [Washington](#) and [Colorado](#) to curtail detainers are just the latest in a [tide](#) of pushback.
- [Federal courts](#) – and [ICE](#) – have made clear that detainers are merely requests, not federal mandates.
- Counties can be held liable for [constitutional violations](#) when holding people in jail on detainers alone.

Last Updated: 4/30/2014