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Declined Detainer Report

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What is a detainer?

ICE issues detainers to federal, state, and local law enforcement agencies to provide notice of its intent to assume custody of a removable alien detained in federal, state, or local custody. A detainer requests that the law enforcement agency notify ICE as early as practicable – at least 48 hours, if possible – before a removable alien is released from criminal custody and 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 custody, to allow ICE to assume custody for removal purposes. ICE places detainers on individuals whom it has probable cause to believe are removable aliens in federal, state, and local law enforcement agency custody.

What is a declined detainer?

When law enforcement agencies fail to honor detainers and release aliens who have been arrested into the community, they have declined an ICE detainer. This undermines public safety and ICE's ability to carry out its mission. Federal law authorizes the Department of Homeland Security to issue detainers and provides ICE broad authority to detain removable aliens.

How is an individual placed under a detainer?

When an individual is booked into custody by a law enforcement agency, his or her biometric data is automatically routed through federal databases to the FBI, which shares this information with ICE. ICE lodges detainers with law enforcement agencies only when it has probable cause to believe the individual in question is a removable alien.

What is ICE's overall mission, and why does ICE want detainers honored?

ICE is committed to using its unique enforcement authorities to promote national security, uphold public safety, and preserve the integrity of our immigration system. The use of detainers is a lawful, efficient, and safe means to carry out ICE's mission. When jurisdictions fail to honor an ICE detainer, it risks both public and officer safety, and misuses limited resources. In particular, declined detainers result in the following:

- When aliens who have been arrested for criminal activity are released into the community, they have the opportunity to reoffend.
- When aliens who otherwise would have been transferred in a controlled and secure manner directly from state or local custody into ICE custody for removal proceedings or removal purposes, are instead released back into the community, ICE officers must identify, locate, and arrest them at-large, increasing the risks to all involved.
- Declined detainers also create operational inefficiency, because after the alien has been released from state or local custody, attempting to take the alien into federal custody typically requires ICE to operate in multi-officer Fugitive Operations teams. This entails a greater expenditure of time, effort, funds, and manpower relative to what is necessary to take custody of an alien directly from state or local detention.

Why do some jurisdictions ignore detainers?

In some cases, state or local laws, ordinances, or policies restrict or prohibit cooperation with ICE. In other cases, jurisdictions willfully decline to honor ICE detainers and refuse to even provide timely notification to ICE of an alien's release from criminal custody. The results in all cases are the same: Aliens who have been arrested for criminal activity are released into the community where they may potentially reoffend and harm members of the public.

Why can't ICE obtain a judicial warrant to take custody of an alien?

There is no authority or legal mechanism for a judge or magistrate to issue a criminal warrant for an administrative immigration arrest. Sanctuary policies fail to recognize federal jurisdiction to enforce immigration law, as mandated by Congress.

Why should the public care if jurisdictions don't observe ICE detainers?

If jurisdictions do not honor ICE detainers, aliens who have previously been arrested for criminal activity are released into the community where they can commit additional crimes and are subject to at-large arrests. With this report, ICE is highlighting recent cases where detainers have been declined and aliens have reoffended or, to the best of ICE's knowledge, remain at large, demonstrating the critical public safety threat posed by non-cooperation.

Why is the public safer when jurisdictions honor ICE detainers?

When aliens who have been arrested for criminal activity are released from local or state custody, they have the opportunity to reoffend. There are also risks involved when arresting potentially dangerous criminal aliens at-large in the community. It takes careful planning and extensive resources to mitigate those risks and make a safe apprehension in a community setting. Risk is reduced for the community, law enforcement officials, and the removable alien if ICE is able to take custody of the alien in the controlled environment of another law enforcement agency, as opposed to arresting an alien at his/her reported residence, place of work, or other public area. Further, due in large part to limited resources, ICE is only able to locate and arrest a small percentage of criminal aliens released from state and local custody. As a result, most of these aliens will remain at large in the community.

Does ICE still work with jurisdictions that do not observe detainers?

Yes. ICE is committed to maintaining and strengthening its relationships with state and local law enforcement. ICE continues to collaborate with its law enforcement partners to help ensure – to the greatest extent possible – that removable aliens who may pose a safety threat are not released into the community to reoffend.

Is this report inclusive of all declined detainers?

No. ICE is publishing recent cases where detainers have been declined and aliens have reoffended to demonstrate the significant threat to public safety posed by declined detainers. Each quarterly report will focus on significant public safety concerns in jurisdictions with policies resulting in the release of dangerous aliens.

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