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Declined Detainer Outcome Report

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What is a detainer?

U.S. Immigration and Customs Enforcement (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 - ideally at least 48 hours - before a removable alien is released from criminal custody and briefly maintain custody of the alien for up to 48 hours to allow DHS to assume custody for removal purposes.

What is a declined detainer?

When law enforcement agencies fail to honor immigration detainers and release a criminal alien onto the streets, they have declined an ICE detainer. This undermines ICE's ability to protect public safety and carry out its mission. Federal immigration laws authorize DHS to issue detainers and provide 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. The FBI shares this information with ICE. If ICE has probable cause to suspect the individual is a removable alien, ICE sends a detainer to the law enforcement agency.

Why is ICE providing these reports now?

The president's Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, and DHS Secretary Kelly's memorandum on the implementation of the same, instructs the ICE Director to make this report public.

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 choose to willfully decline ICE detainers and release criminals back into the community. The results in both cases are the same: aliens released onto the streets to potentially reoffend or harm individuals living within our communities.

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

If jurisdictions do not honor ICE detainers, criminals are released into communities, where they can commit more crimes and are subject to at-large arrests which may be disruptive to communities. Three examples of criminal aliens who are subject to removal but were released despite the issuance of an active detainer within the last few months follow; all have been re-arrested and are currently in custody:

- Milton Berrera-Lopez was released from local custody when a detainer lodged with Philadelphia authorities was not honored. The Guatemalan national has a previous conviction for two counts of indecent exposure involving minors.
- Estivan Rafael Marques Velasquez, a self-admitted MS-13 gang member, was released from New York City custody with an active ICE detainer in place. The Salvadoran national has a criminal history in the United States which includes reckless endangerment in the second degree, criminal possession of a weapon in the fourth degree, and disorderly conduct.
- Ramon Aguirre Ochoa was deported in May 2009. In 2015, he was arrested on domestic aggravated assault charges in Philadelphia. The charges were dismissed, despite ICE filing a detainer to take custody and remove him from the country again. Philadelphia ignored that detainer and released Aguirre Ochoa back into the community. He was arrested again in Philadelphia on July 26, 2016, and charged with involuntary sexual intercourse, unlawful contact with a minor, unlawful restraint, false imprisonment, indecent assault on person less than 13, indecent exposure, and simple assault.

Does ICE still work with jurisdictions that do not observe detainers on other law enforcement actions?

Yes. ICE is committed to maintaining and strengthening its relationships with local law enforcement. ICE continues to collaborate with all law enforcement agencies to help ensure that individuals who may pose a threat to our communities are not released onto the streets to potentially reoffend and harm individuals living within our communities.

Where does the list come from?

ICE maintains records for each detainer or request for notification that is issued and updates those records when a detainer or request for notification is declined. The list is generated from this data.

Why is the public safer when jurisdictions honor ICE detainers?

When criminal aliens are released from local or state custody, they have the opportunity to reoffend. There are also many risks and uncertainties involved when apprehending 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. It is much safer for everyone - the community, law enforcement, and even the criminal alien - if ICE officers take custody of the alien in the controlled environment of another law enforcement agency as opposed to visiting a reported alien's residence, place of work, or other public area.

What is ICE's overall mission? Why do they want the detainers enforced?

ICE is committed to using its unique enforcement authorities and available resources and tools to promote national security, uphold public safety, and preserve the integrity of our immigration system. The use of detainers is an efficient, effective and safe means to carry out ICE's mission.

Are detainers placed on random criminal aliens?

ICE places detainers on individuals whom ICE has probable cause to suspect are removable aliens in state and local law enforcement agency custody on criminal charges.

Are the jurisdictions or agencies on this list considered sanctuary locations?

The Declined Detainer Outcome Report (DDOR) is intended to provide the public with information regarding criminal actions committed by aliens and any jurisdiction that ignores or otherwise failed to honor any detainers or requests for information with respect to such aliens. As set forth in Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, the Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Department of Homeland Security (DHS) continues to evaluate the appropriate criteria for such designation.

How does the report inform the decision on whether a location is a sanctuary jurisdiction?

The president's Executive Order, *Enhancing Public Safety in the Interior of the United States*, requires publication of this report. The report lists locations that have ignored or otherwise failed to honor an immigration detainer or request for notification. As set forth in the Executive Order, the Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. DHS continues to evaluate the appropriate criteria for such designation.

My jurisdiction is on the Declined Detainer Outcome Report. Will we lose our federal funding? What federal funding might my jurisdiction lose? For example, if a natural disaster occurs, will we receive federal assistance?

The DDOR is intended to provide the public with information regarding criminal actions committed by aliens and any jurisdiction that ignores or otherwise failed to honor any detainers or requests for notification with respect to such aliens. ICE does not administer grants, and inclusion on the DDOR will not automatically result in ineligibility for grants. Section 9(a) of the Executive Order recognizes the authority of the Attorney General and the Secretary of Homeland Security, in their discretion and consistent with law, to ensure that jurisdictions that willfully refuse to comply with 8 USC § 1373 are not eligible to receive federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. DHS is currently working to develop a process, in coordination with the Department of Justice and other interagency partners, to address this requirement of the EO.

Does this report include Requests for Notification (I-247N)? If so, why?

Yes. The Request for Voluntary Notification (Form I-247N) is one of the tools ICE has used to notify law enforcement agencies of its interest in taking custody of an alien in state or local custody. The declination of Requests for Voluntary Notification also result in the release of criminal aliens, which provides an unnecessary risk to public and officer safety as ICE personnel are forced to arrest such aliens in an at-large setting. Although this report includes information relating to Form I-247N, DHS will be replacing Forms I-247D, I-247N, and I-247X in the near future. Information related to the superseding detainer form and its predecessors will be documented and reported by ICE going forward. Until fully vetted, reviewed, and approved, ICE will utilize the existing detainer and notification forms as an interim measure.

This report notes that it may reflect instances in which a law enforcement agency may have provided notification to ICE in advance of an alien's release, but where the LEA did not provide "sufficient advance notification" for ICE to arrange the transfer of custody prior to release due to geographic limitations, response times, or other logistical reasons. What is sufficient advance notification?

Lack of sufficient advance notification is based on the judgment of immigration officers, taking into consideration geographic limitations, response times, and other local logistical details. Advance notification is sufficient when ICE is given enough time to mobilize its resources to effectuate a safe transfer into ICE custody. Sufficient advance notice is a commonly understood standard for law enforcement jurisdictions working closely together.

How many of these instances were included in this report for my jurisdictions? Please provide the details of these instances and why ICE thought they did not have sufficient advance notification.

Detainers and Requests for Notification are not honored for a variety of reasons, as noted in the Declined Detainer Outcomes Report. ICE documents non-honored Detainers and Requests for Notification once discovered by ICE personnel during their enforcement activities. In instances of insufficient notification to ICE, these are generally cases in which the law enforcement agency did not provide ICE with enough time to mobilize its resources to effectuate a safe custody transfer.

Is DHS changing its legal position that ICE detainers are voluntary?

DHS has not retreated from its position that detainers serve as a legally-authorized request, upon which a law enforcement agency may rely, to continue to maintain custody of the alien for up to 48 hours so that ICE may assume custody for removal purposes.

The February 21 DHS implementing memorandum on the Executive Orders stated that DHS will eliminate the existing forms (I-247D, I-247N, and I-247X) and replace them with a new form to more effectively communicate with recipient law enforcement agencies. Why are old forms still being used? When will they be replaced?

DHS is in the process of creating a new detainer form to more effectively communicate with recipient law enforcement agencies. Although this report includes information relating to Form I-247N, DHS will be replacing Forms I-247D, I-247N, and I-247X in the near future. Information related to the superseding detainer form and its predecessors will be documented and reported by ICE going forward. Until fully vetted, reviewed, and approved, ICE will utilize the existing detainer and notification forms as an interim measure.

Why are jurisdictions listed here when they are prohibited from honoring detainers based on state laws, binding judicial opinions, or consent decrees limiting detainer compliance?

Regardless of the reason for which a jurisdiction does not honor ICE detainers or requests for notification, such action by the jurisdiction nonetheless adversely impacts public safety. When a jurisdiction declines to honor an ICE detainer or request for notification, a criminal alien is released into the community, where he or she has the opportunity to commit additional crimes, rather than being safely detained and processed for removal by ICE.

What does "notable criminal activity" mean? Why aren't all criminal charges and convictions listed in this report?

"Notable criminal activity" documents egregious charges and convictions of the alien for whom a detainer was not honored. This report includes criminal charges contained in local, state, and federal indexes and recorded in ICE's database.

I have information that contradicts what is on this report. What is the process for correcting the information on this report?

Concerns from the community can be relayed to a local community relations officer who may be contacted via a local ICE field office, which can be found at: <https://www.ice.gov/contact/field-offices>.

Is this report inclusive of all declined detainees?

This report is inclusive of declined detainees that were not honored by a law enforcement agency, discovered by ICE personnel during their enforcement activities as not being honored, and documented in ICE systems during the reporting period specified.

Can I get more information about a specific case?

Members of the public may submit requests for information to ICE's Freedom of Information Act (FOIA) Office. Each request will be evaluated under the disclosure provisions of FOIA.