

The American Immigration Council Addresses Problems with Draft Immigration Detainer Policy

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Washington D.C. - The American Immigration Council has joined a number of organizations in formally [commenting](#) [1] on a [proposed detainer policy](#) [2] issued by Immigration and Customs Enforcement (ICE). Detainers are requests from ICE to local law enforcement agencies (LEAs) to hold people - whom they suspect may be in the country illegally or who may be deportable for other reasons - so they can be transferred into ICE's custody. There has been much criticism about how ICE uses detainers, and the use of detainers has expanded over time with enforcement programs like 287(g), Secure Communities, and the Criminal Alien Program. To address the criticisms, ICE developed new draft guidelines on the issuance of detainers.

The Immigration Council acknowledges ICE's attempt to ameliorate its detainer policies and is grateful for the opportunity to comment. However, the comments identify several major problems with the proposed guidance, including:

- **The proposed guidelines do not reflect ICE's stated enforcement priorities.** In July, ICE issued a memo on its enforcement priorities, focusing on immigrants with serious criminal histories. ICE's proposed detainer guidelines contradict those priorities. Although ICE claims to target convicted criminals who pose a threat to public safety, the proposed guidance would allow ICE to issue detainers against people arrested for minor offenses and suspects charged with crimes but not convicted.
- **The guidance does not address the continuing confusion about detainers.** Many LEAs mistakenly believe that detainers require them to detain people until ICE assumes custody. In fact, a detainer is merely a request, not a requirement. Moreover, federal regulations clearly state that detainers permit LEAs to hold people for no more than 48 hours (excluding weekends and holidays) after their release from local custody. Because LEAs regularly violate this rule, they unlawfully detain people who then languish in detention with little recourse. The proposed guidelines contain no provisions to educate LEAs about detainers and do not require ICE to educate detained people about their rights or their ability to challenge a detainer.

Getting detainer policy right is important because ICE detainers have severe consequences for people being held in jails. Apart from the concerns raised above, detainers impact whether people are granted bail, the amount of bail, and their ability to have legal representation and a fair hearing in their criminal cases. Communities also incur significant costs for the extended incarceration of people subject to ICE detainers.

Though ICE should be commended for formalizing a written detainer policy, the draft guidance leaves the most challenging issues unresolved.

To view American Immigration Council's comments in their entirety, see:

- [Comments on U.S. Immigration and Customs Enforcement Draft Detainer Policy](#) [1] (Legal Action Center, October 1, 2010)

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For more information on immigration detainers, see:

- [Immigration Detainers: A Comprehensive Look](#) [3] (Immigration Policy Center Fact Check, February 17, 2010)

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Links:

[1] <http://www.legalactioncenter.org/sites/default/files/docs/lac/NGO-DetainerCommentsFinal-10-1-2010.pdf>

[2] <http://www.legalactioncenter.org/sites/default/files/docs/lac/DraftICE-DetainerPolicyComment-8-1-10.pdf>

[3] http://www.immigrationpolicy.org/sites/default/files/docs/Immigration_Detainers_021710_0.pdf

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