



# Restoring Trust

How Immigration Detainers In Maryland Undermine Public Safety Through Unnecessary Enforcement

Issue Brief



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This report has been a project of the American Civil Liberties Union of Maryland. The report was researched and authored by ACLU of Maryland Immigrants' Rights Attorney and Arthur Liman Public Interest Fellow Sirine Shebaya. ACLU of Maryland staff Sara Love, Meredith Curtis, Toni Holness, and Peter Cimboic as well as ACLU Immigrants' Rights Project staff Kate Desormeau provided invaluable review and feedback. Meredith Curtis created the layout.

Special thanks goes to ACLU of Maryland interns Alexandria Kim and Annie Stallman for their many hours of work on the data entry and analysis that was so integral to the production of this report.

The report is dedicated to the hundreds of thousands of aspiring citizens who have faced indescribable obstacles to live and work in the United States and who have needlessly been detained, criminalized, deported, separated from their families, and treated without compassion or justice by a broken and inhumane immigration enforcement system.

Cover photo shows a U.S. Immigration and Customs Enforcement agent arresting an immigrant (Creative Commons, <https://creativecommons.org/>).

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## Executive Summary

Amid record numbers of deportations and a climate of stepped-up immigration enforcement that reaches deep into the heart of Maryland communities, local law enforcement officials are unwittingly being transformed into proxy immigration enforcers through their responses to immigration detainer requests. Immigration detainers shift the burden of immigration enforcement activities from the federal government to local law enforcement agencies. This imposes substantial costs on those agencies and undermines the trust the Maryland communities they serve have in them.

Immigration detainers, often referred to as “ICE holds” or “immigration holds,” are notices sent from U.S. Immigration and Customs Enforcement (ICE) to local law enforcement agencies. Their purpose is to request that the local law enforcement agency continue to hold the person named in the detainer for up to 48 hours (exclusive of weekends and holidays) past the date they are eligible for release on state grounds. Immigration detainers are issued by a single administrative ICE officer, without any due process or review, and often for no better reason than that ICE wishes to investigate whether the person has committed a civil immigration violation. The local law enforcement agency is then asked to incur the expense of holding the person named in the detainer until ICE comes to pick him or her up, potentially adding someone who may only ever have been picked up for a traffic violation to the record number of deportations that break apart families all over the United States.

However, more and more jurisdictions are refusing to act as surrogates in the current deportation frenzy. Recently, the Maryland Attorney General joined a number of other state and county attorneys in recognizing that complying with immigration detainers is discretionary. Maryland should join other states in deciding that complying with these requests is an inefficient use of our limited law enforcement resources and results only in destroying our communities.

Immigration detainers are not public safety tools. Their sole purpose is to further federal civil immigration enforcement efforts. Both in Maryland and nationwide, most immigration detainers are lodged against individuals with no criminal record. In Maryland, most are lodged against individuals charged only with traffic violations or with misdemeanors. Only a very small percentage are lodged against individuals with serious or felony charges. The effect of this is simply to prolong the detention of individuals who would otherwise have been released—not to enhance public safety or local policing efforts in any way.

Much confusion about the legal status of immigration detainers pervades state and local authorities’ understanding of their obligation to respond to immigration detainers. As several state and county attorneys, including the Maryland Attorney General, have now concluded, immigration detainers are purely discretionary, and the federal government does not have the authority to mandate compliance with such requests. Immigration detainers are not criminal warrants; they are not civil administrative warrants; and they are not and bear almost no resemblance to criminal detainers. Immigration detainers are merely requests initiated at the sole discretion of a single administrative officer and with no review by a neutral magistrate or even by a supervising officer. Because of this, detention on the sole basis of an immigration detainer raises serious constitutional concerns under the Fourth and the Fourteenth Amendments.

Immigration detainers also impose significant financial costs on state and local jurisdictions, which do not get reimbursed for the cost of responding to these requests. Every jurisdiction that has con-

ducted a fiscal impact study has found the net result to be a significant strain on local budgets.

Immigration detainers undermine public safety and community trust in police by turning them into immigration enforcers; and they often catch victims and witnesses of crimes in their net. They also reinforce perceptions of racial profiling. Both in Maryland and nationwide, they are used overwhelmingly against individuals of Latin American origin. In large part as a result of such disproportionate targeting, studies have found a resulting fear and unwillingness among Latinos to report crimes or to otherwise cooperate with local law enforcement.

As a result, several states, counties, and cities, including most recently the State of California, have enacted policies or laws that eliminate or strictly narrow the parameters of their responsiveness to immigration detainers. Law enforcement officials around the country have spoken out in favor of these efforts, including former Secretary of the Department of Homeland Security Janet Napolitano, who publicly stated that she supports legislation in California that will limit state and local collaboration with the very federal agency she herself once headed.

Because of the negative impacts of immigration detainers on public safety, victims of crime, and local budgets, Maryland should take control of its own policies and procedures with regard to federal immigration enforcement. By declining to comply without scrutiny with every immigration detainer request that comes through the door, Maryland would eliminate a major source of fear within the Latino and immigrant communities and would join the growing number of jurisdictions around the country that are taking similar steps.

## Background: Overzealous Enforcement of a Broken Immigration System

Over the past few years, deportations from the United States have hit record highs. As of December 2012, President Obama had deported 1.5 million individuals, reaching an unprecedented 409,849 deportations in the 2012 fiscal year (up from 396,906 in the 2011 fiscal year).<sup>1</sup> The number of immigrants in detention has also grown exponentially: it now approaches half a million individuals annually and more than 34,000 on any given day.<sup>2</sup> Hundreds of thousands of immigrants, including asylum seekers, victims of trafficking, families with small children, and the mentally disabled are routinely detained for months or even years in connection with their civil immigration proceedings, even when their release from detention would pose no danger or flight risk and even when they have a strong chance of prevailing in their civil immigration proceedings.<sup>3</sup>

In this climate of stepped-up enforcement, tens of thousands of working families have been caught in the fray. Those deported include individuals who have been living and working peacefully in the United States, sometimes for years, and who come into contact with law enforcement through traffic stops or other routine matters—or even worse, as victims of domestic violence or other crimes.<sup>4</sup> They include parents with U.S. citizen children who have long-standing ties to the United States and no criminal records; veterans of the U.S. military with old, minor, or post-traumatic stress disorder related criminal records;<sup>5</sup> and unaccompanied children or mentally disabled individuals who appear in immigration court without access to legal counsel. Even U.S. citizens have wrongfully been deported,<sup>6</sup> as have lawful permanent residents who have known no home other than the United States since they were children, and many others who have valid claims to remaining in the U.S. but lack the expertise to navigate an unwieldy, complicated, and broken immigration system.

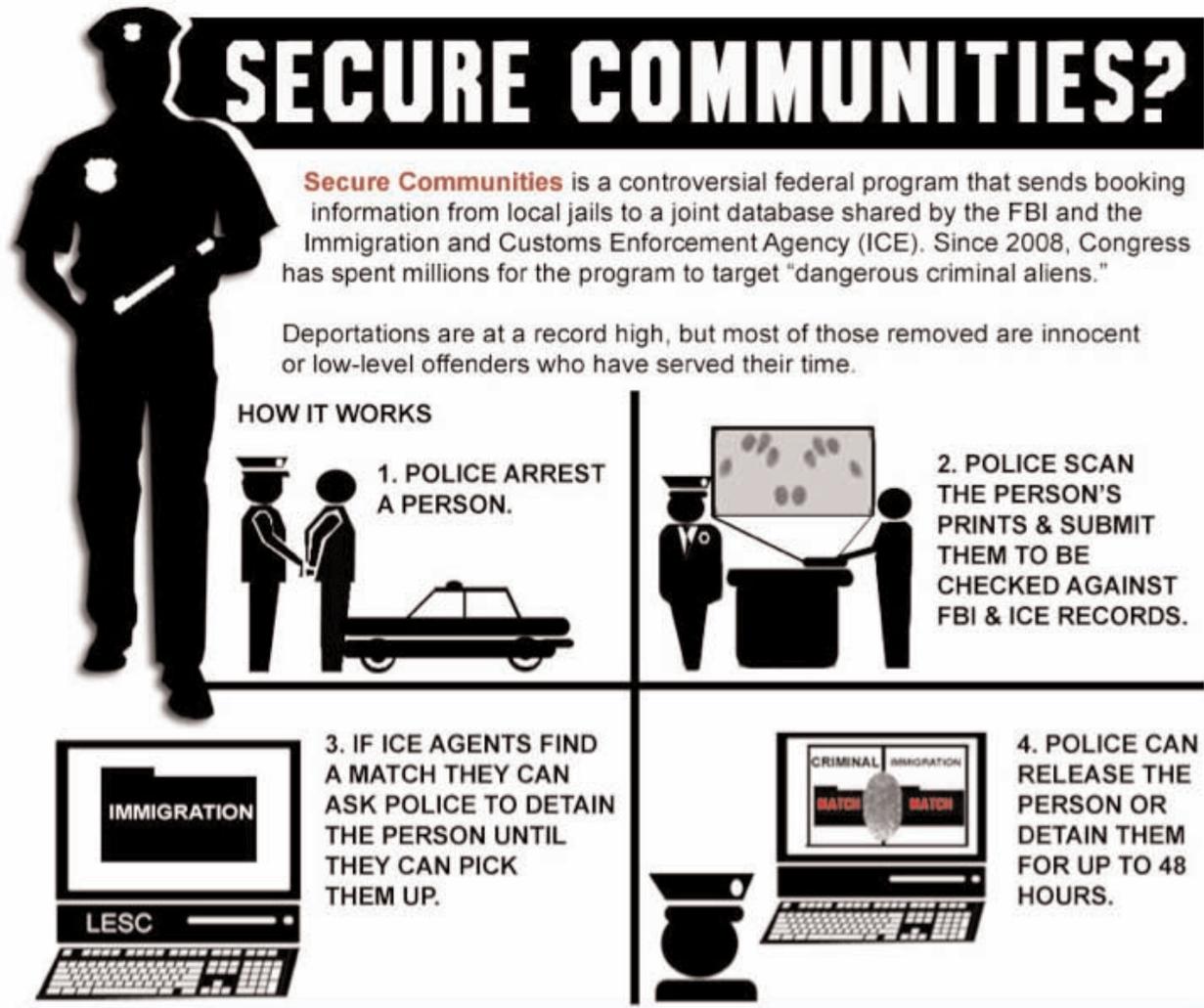
The Secure Communities program (S-Comm), a federal biometrics program launched in 2008 and operationalized in all Maryland jurisdictions by April 2011,<sup>7</sup> has been a key tool in this enforcement effort that has caught so many in its web. S-Comm has expanded the reach of immigration enforcement deep into local communities in unprecedented ways. When an individual is fingerprinted at a local law enforcement agency, the agency usually uploads the fingerprints to be checked against FBI criminal databases. Under S-Comm, those fingerprints are then automatically sent on to the Department of Homeland Security (DHS), where they are checked against various databases that provide information about immigration status.

As a result of this program, even the most routine encounter with local law enforcement can become a direct pipeline into deportation proceedings. S-Comm is currently active in every jurisdiction in Maryland and in most of the United States. Even localities that initially attempted to opt out of the program — for example, New York State<sup>8</sup> — were forced back in when the federal government made “interoperability” between FBI and DHS databases automatic, thereby effectively making the program mandatory for any law enforcement agency that wishes to check fingerprints against FBI criminal databases.

Meanwhile, federal comprehensive immigration reform efforts, while still ongoing, are slow in coming, leaving states to bear the full brunt of a broken immigration system that cuts into the heart of communities so integral to their social, economic, and cultural fabric. Responding to this pressure, more and more states have begun to take action to mitigate the problems the federal immigration system has created. Over the past two years, numerous states have passed laws providing in-state tuition for DREAM-ers—undocumented immigrants brought to the U.S. as children;<sup>9</sup> expanding access to

# Figure 1: How the Secure Communities Program Works

Credit: Advancing Justice - Asian Law Caucus and Center for Popular Democracy



driver's licenses for undocumented immigrants;<sup>10</sup> and, most recently, strictly narrowing the parameters under which local law enforcement participate in federal immigration enforcement efforts.<sup>11</sup>

While Maryland now has an in-state tuition law and a driver's license law that is set to take effect in January 2014, we have yet to take any real action to disentangle state and local law enforcement agencies from immigration enforcement efforts. This lack of clear separation has detrimental effects on public safety. As the Major Cities Chiefs Association has stated, "[w]ithout assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community . . . disappear[s]. Such a divide between the local police and immigrant groups . . . result[s] in increased crimes against immigrants and in the broader community, creating a class of silent victims and eliminat[ing] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts."<sup>12</sup> This effect is exacerbated by the fact that, as the data presented in this report will show, the overwhelming majority of immigration detainees in Maryland (and nationwide) are lodged against individuals charged only with traffic violations or minor offenses, with only a very small percentage lodged against individuals charged with felonies or serious offenses.

## A Way Forward: How Local Jurisdictions Can Take Control of Their Entanglement With Immigration Enforcement

Despite S-Comm, state and local jurisdictions have a clear avenue for taking control of whether and under what circumstances they wish to be pulled into immigration enforcement efforts: since ICE does not reimburse localities for the costs of responding to these requests, the federal government lacks the authority to mandate that state and local law enforcement agencies continue to respond to them. The most common way local law enforcement have — sometimes unwittingly — become proxy immigration enforcers is through their responses to ICE immigration detainer requests.

### What Is an Immigration Detainer?

Immigration detainers or Form I-247, often referred to as “ICE holds” or “immigration holds,” are notices sent from ICE to local law enforcement agencies. Their purpose is to request that the local law enforcement agency continue to hold the person named in the detainer for up to 48 hours (exclusive of weekends and holidays) past the date he/she is eligible for release on state grounds. Eligibility for release on state grounds can happen because an individual has posted bond, has been acquitted, has had charges dismissed, or has otherwise received a final disposition or resolution of his or her state charges. Thus, the most basic effect of an immigration detainer is to prolong the detention of individuals in state or local custody past the time when they should otherwise be released.

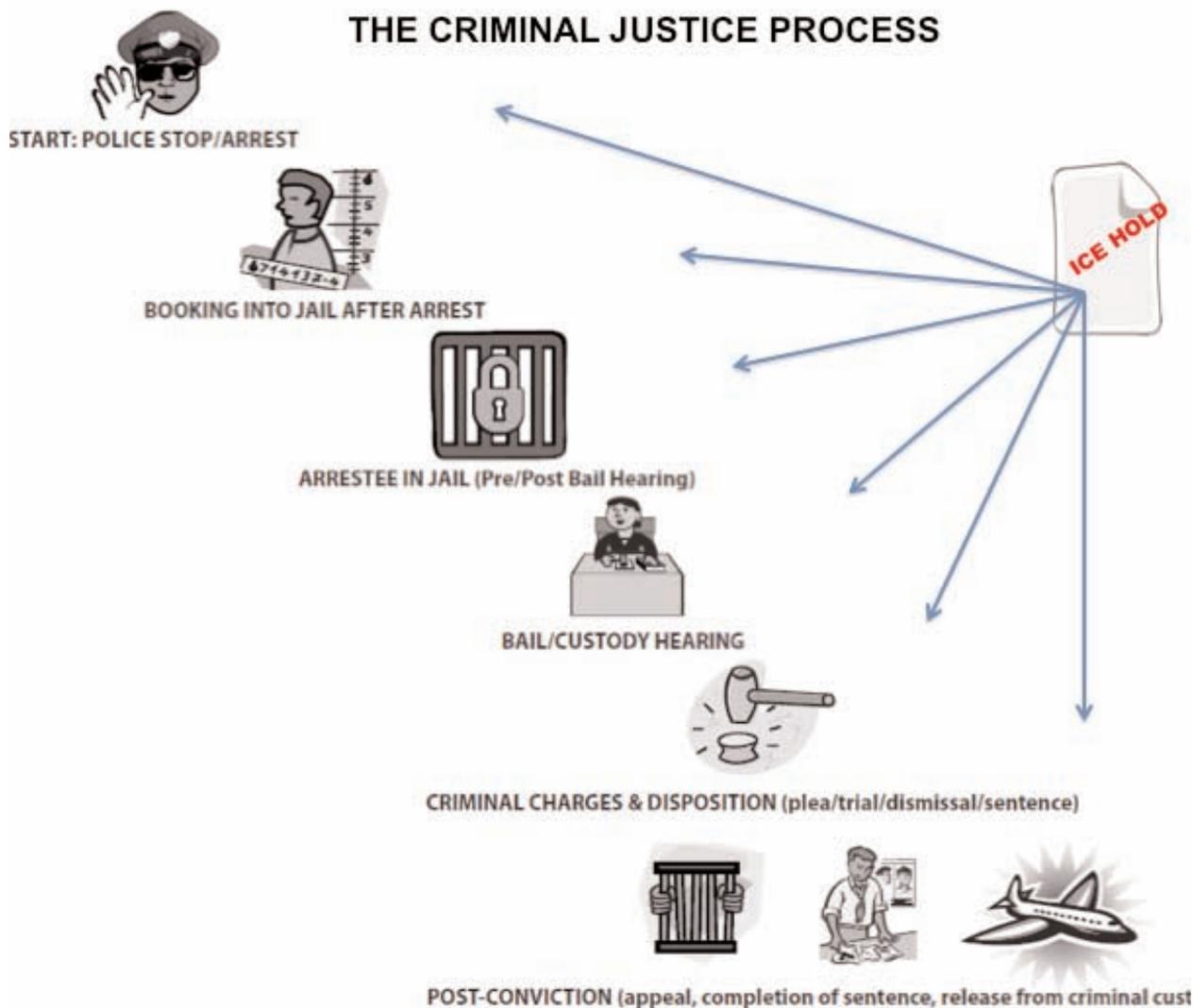
This request for additional detention is made solely by ICE agents themselves, without any kind of review by a neutral magistrate, most often without so much as an underlying administrative warrant, and even when no immigration charges are pending, simply because ICE wants additional time to investigate the person’s immigration status. It is worth stressing, as will be discussed more fully in this report, how astonishing and unique the looseness of this request is when compared to standard law enforcement tools such as warrants and criminal detainers.

An immigration detainer is not a public safety tool. It is purely a means for ICE to take hold of individuals who may be of interest to them in their civil immigration enforcement efforts. Immigration detainers do not substitute for state bail hearings, which are the proper avenue for determining whether an individual poses a flight risk or a safety threat and whether he/she should be released or detained. Indeed, most immigration detainers, nationwide and in Maryland, are lodged against individuals with no criminal record; and in Maryland, most are lodged against individuals with traffic charges only.<sup>14</sup>

An immigration detainer may be issued against an individual at any point during the criminal justice process, from initial arrest to final resolution. ICE can issue an immigration detainer request during the initial police stop or arrest; at the point of booking into jail after an arrest; while the arrestee is in jail (both before and after the bail hearing); at bail or custody hearings; anytime during the course of the arrestee’s state criminal proceedings; and during the post-conviction stage.

## Figure 2: When An Immigration Detainer May Be Issued

Credit: Advancing Justice – Asian Law Caucus and Center for Popular Democracy



One damaging side effect is to unnecessarily prolong the pretrial detention of individuals with the most minor offenses who pose no safety threat or flight risk and who ordinarily would have been released on minimal bond.<sup>15</sup> This flies in the face of Maryland’s commitment to, in the recent words of the state’s Court of Appeals, “avoid whenever possible the pre-trial detention of accused persons.”<sup>16</sup> And, again, immigration detainers do not — and cannot—substitute for state court determinations of flight risk or dangerousness in bond hearings.<sup>17</sup> Instead, they merely prolong the detention of individuals who for the most part should not be detained without any due process and for the sole purpose of aiding federal immigration enforcement efforts.

To better understand the anomalous nature of immigration detainer requests, consider how they compare with three other familiar law enforcement tools with which they are sometimes confused: criminal warrants; administrative warrants; and criminal detainers.

### **An immigration detainer is not a criminal warrant.**

An immigration detainer differs from a criminal warrant in many ways. First, a criminal warrant may only be issued by a court. While ICE, just like any other law enforcement agency, can put in a warrant application to a court that results in the issuance of a criminal warrant, as an administrative agency, it cannot issue a criminal warrant on its own authority. Second, a criminal warrant of arrest must be supported by probable cause that the person named in the warrant has committed a crime and must be issued by a neutral magistrate. By contrast, immigration detainers issue at the sole discretion of a single administrative official working for ICE, the law enforcement agency. They are not reviewed by a judge or neutral magistrate, and there is no clear standard of proof or probable cause that governs their issuance. For this reason, immigration detainers raise serious constitutional concerns under the Fourth, Fifth, and Fourteenth Amendments.

### **An immigration detainer is not a civil administrative ICE warrant.**

An immigration detainer is also not an administrative ICE warrant (Form I-200). An ICE warrant issues against individuals who are suspected of civil immigration violations. While administrative ICE warrants also lack the significant procedural and substantive safeguards applied to criminal warrants and criminal detainers, they at least indicate that the person in question is facing civil immigration charges. Immigration detainers are frequently not based on an underlying immigration warrant and do not even have the force of an ICE administrative warrant.<sup>18</sup>

### **An immigration detainer is not a criminal detainer.**

Finally, an immigration detainer is not, and does not have the same legal force as, a criminal detainer. Criminal detainers do not call for additional detention time, and they are based on pending charges for which a trial will be held. Criminal detainers are also subject to extensive procedural safeguards, usually including approval by a judge. By contrast, immigration detainers call for additional detention without due process or an opportunity for a prompt hearing to contest the detention. As previously noted, they involve no meaningful substantive safeguards or procedural review.

For all these reasons, immigration detainers raise significant constitutional concerns under the Fourth and Fourteenth Amendments that are not at issue for criminal warrants and criminal detainers, and that differ in substance and context from the constitutional concerns that arise with respect to administrative ICE warrants.<sup>19</sup> Indeed, the Major Cities Chiefs Association concluded long ago that “civil detainers do not fall within the clear criminal enforcement authority of local police agencies and in fact lay[] a trap for unwary officers who believe them to be valid criminal warrants or detainers.”<sup>20</sup>

### **Immigration detainers are discretionary**

Immigration detainers are requests, not orders. Local jurisdictions have the discretion to determine how, if at all, they wish to respond to them. As an initial matter, the revised immigration detainer form itself states, more than once, that immigration detainers are requests.<sup>21</sup> Second, the regulation under which these forms are issued also states that immigration detainers are requests.<sup>22</sup> Third, ICE officials have stated, repeatedly and in a variety of contexts, that compliance with these requests is not mandatory.<sup>23</sup> In recent litigation, ICE formally stated in a brief it submitted to the court that “ICE detainers issued pursuant to 8 C.F.R. § 287.7 are voluntary requests” and that “[i]t does not conscript state or local law enforcement to take any action or administer any program.”<sup>24</sup> Indeed, if immigration detainers were not discretionary, they would violate the Tenth Amendment. Under the Supreme

Court’s ruling in *Printz v. United States*,<sup>25</sup> the federal government does not have the authority to commandeer state and local resources for its own purposes.<sup>26</sup> Thus, the federal government does not have the authority to mandate compliance with immigration detainees.

In fact, the Maryland Attorney General recently issued a letter of advice stating exactly that—that immigration detainees are discretionary. This opinion is consistent with that of other state and county attorneys across the country, including the California Attorney General and the Illinois Attorney General, who have concluded for similar reasons that immigration detainees are discretionary.<sup>27</sup>

Yet despite the fact that compliance with detainees is discretionary, most jurisdictions in Maryland treat immigration detainees as though they were mandatory, and local law enforcement agencies expend limited resources by responding to every immigration detainee request sent to their agencies. Indeed, in the face of all evidence to the contrary, some counties have explicitly taken the position that such requests are mandatory. For example, in correspondence with the ACLU of Maryland, the County Attorney for Montgomery County stated that immigration detainees are “lawfully binding” requests and that county officials are obligated to enforce them.<sup>28</sup> This contradicts ICE’s own repeated statements and would, if true, entail that immigration detainees violate the Tenth Amendment by commandeering state and local resources.

In effect, immigration detainees shift the burden of immigration enforcement activities from the federal government to local law enforcement agencies. ICE does not assume responsibility or liability for inmates held by local facilities.<sup>29</sup> This has led to significant indirect costs for jurisdictions that detain individuals on the sole basis of an immigration detainee.<sup>30</sup> ICE also does not reimburse for the direct or indirect costs of responding to immigration detainees.<sup>31</sup>

From this overview, the negative impacts of local compliance with immigration detainee requests should be clear. Immigration detainees are not public safety tools. They are purely civil immigration enforcement tools and are issued indiscriminately and without due process or oversight. By entangling local law enforcement in immigration enforcement, they undermine public safety and community trust in local police and contribute to a culture of fear and suspicion. By shifting all the liability and all or most of the direct and indirect costs of additional time in detention to local jurisdictions, they impose significant financial costs. Thus, responding to immigration detainees comes at social, economic, and public safety costs to state and local jurisdictions.

Responding to these problems, a number of states, cities, and counties, including California, the District of Columbia, Connecticut, New Orleans, LA, Newark, NJ, New York City, NY, and Champaign County, IL have enacted laws or policies eliminating or strictly limiting their entanglement with ICE detainees.

## What the Numbers Show: Immigration Detainers Are Used Mostly Against Individuals Charged with Traffic Violations and Minor Offenses

A number of myths pervade perceptions about immigration enforcement and recent ICE policies, including: that ICE is now targeting and deporting mostly criminals; that the subjects of immigration detainers are always undocumented or out-of-status individuals; that immigration enforcement has no negative effects on U.S. citizens; and that immigration enforcement efforts are not based on race or national or ethnic origin. Yet the numbers tell a very different story.

### Most ICE detainers target non-criminals and minor offenders

While it is assumed that recent changes in ICE policy have resulted in more high-level criminals being targeted, the most recent national data shows otherwise. According to data gathered and analyzed by the Syracuse Transactional Records Clearinghouse, six months after the new guidelines were issued in December 2012,<sup>32</sup> less than 11 percent of detainers were lodged against individuals who pose a threat to public safety or to national security. Only 38 percent were listed as having any criminal conviction at all, including minor traffic violations. Indeed, if traffic offenses and marijuana possession are discounted from that total, only 26 percent of individuals against whom detainers issued had criminal convictions.<sup>33</sup> For nearly half the individuals against whom detainers were lodged (47.7 percent), ICE listed no record of criminal convictions, not even for a traffic violation.<sup>34</sup>

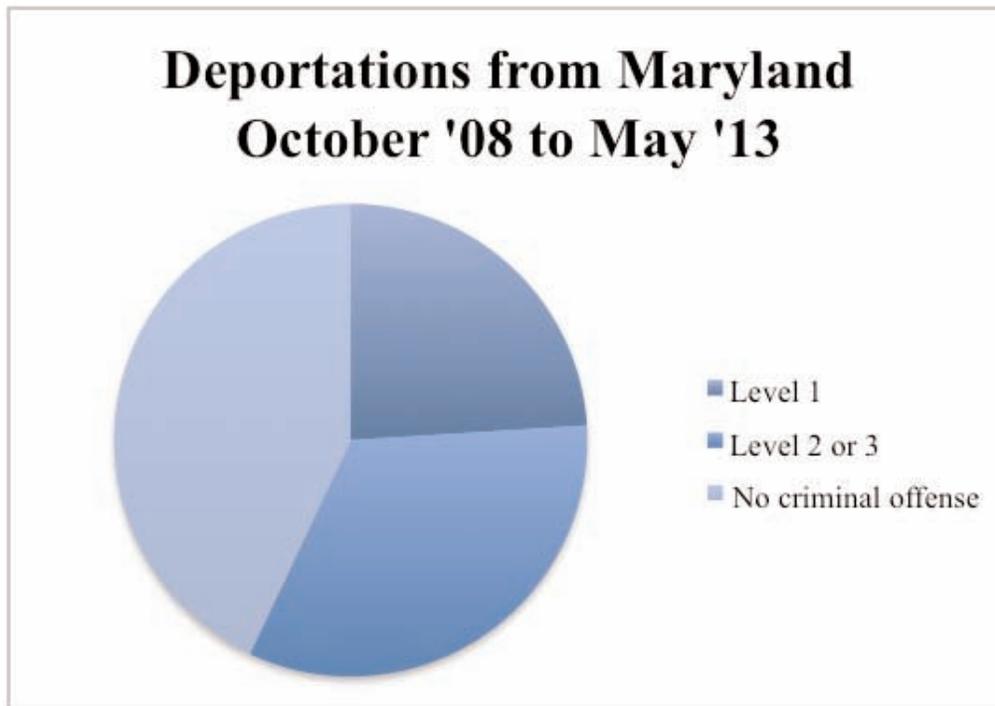
This continues a long trend of enforcement that targets individuals without a criminal record or with only low-level offenses. During a 50-month period from 2008 to 2012, more than two out of three detainers issued by ICE—over 77 percent—were against individuals who had no criminal record either at the time the detainer issued or subsequently. Of those who had a criminal record, only 8.6 percent were classified as Level 1 (the category of offenses ICE considers most serious).<sup>35</sup>

These numbers are replicated throughout the immigration system, not just at the point of issuance of immigration detainers. Only 14 percent of recent immigration court filings over the past year were based on any kind of criminal offense.<sup>36</sup> Moreover, many of these were old offenses: almost half (49 percent) of the most serious offenses occurred more than five years ago; about a quarter (23 percent) occurred more than 10 years ago; and a significant number occurred as long as 20 or 40 years ago.<sup>37</sup> According to ICE's own data, between October 27, 2008 and May 31, 2013, only 29 percent of deported individuals were convicted of Level 1 offenses; 49 percent of Level 2 and 3 offenses; and 22 percent had no criminal conviction whatsoever.<sup>38</sup>

In Maryland, the rates are even starker: of 1475 deportations during that period, only 350 (24 percent) were for Level 1 offenses; 484 (33 percent) were for Level 2 or 3 offenses, which include traffic violations and possession of marijuana; and fully 641 (43 percent) were individuals with no criminal offenses whatsoever.

### Figure 3: Deportations in Maryland

Chart created based on TRAC data



### Immigration detainees are lodged against U.S. citizens and Lawful Permanent Residents

There is a common misperception that immigration detainees are lodged only against undocumented individuals. In reality, an immigration detainer does not mean that a person is not lawfully present in the country. Indeed, over the same 50-month period covered in the TRAC data, ICE lodged at least 834 detainees against U.S. citizens, 724 (almost 87 percent) of whom had no criminal convictions. At least seven of those individuals, none with criminal convictions, were from Maryland, with at least 3 from Prince George's County. The real numbers are likely higher, since fully 263 of the U.S. citizens held on immigration detainees were from unspecified locations,<sup>39</sup> and data the ACLU of Maryland collected locally shows at least 6 individuals from Puerto Rico who were mistakenly held on an immigration detainer.

Nationwide, 28,489 immigration detainees were lodged against lawful permanent residents, nearly three quarters (20,281) of whom had no criminal convictions. At least 108 of those were from Maryland, with only 21 (19.4 percent) recorded as being convicted of any crime.<sup>40</sup>

It is important to note that U.S. citizens are never properly the subjects of immigration detainees, and are never deportable, whether or not they are convicted of any crimes. Lawful permanent residents are deportable only for very specific crimes and often have substantial defenses against deportation, none of which are taken into account in the issuance of immigration detainees. Thus, by responding to immigration detainees, local jurisdictions are often wasting their resources and possibly exposing themselves to liability for unlawful detention when they indiscriminately rely on immigration detainer requests as sufficient legal grounds for continued detention.

### **Immigration enforcement negatively affects U.S. citizens**

According to a recent study by the Berkeley Warren Institute, more than one-third (39 percent) of individuals arrested through Secure Communities report having a U.S. citizen spouse or child. This translates to about 88,000 families with US citizens nationwide who are impacted by immigration enforcement actions.<sup>41</sup>

### **Immigration enforcement disproportionately targets Latinos**

The burden of overzealous immigration enforcement unquestionably falls most heavily on Latino and Hispanic communities. The Warren Institute report concluded that 93 percent of those detained through S-Comm are Latino, even though Latinos account only for about 77 percent of the total undocumented population in the US.<sup>42</sup>

The Maryland data, which will be laid out more fully in the next section, shows a similar trend of lopsided enforcement against individuals of Latin American origin.

## Spotlight on Maryland: A Deeper Look at Local Immigration Detainer Practices

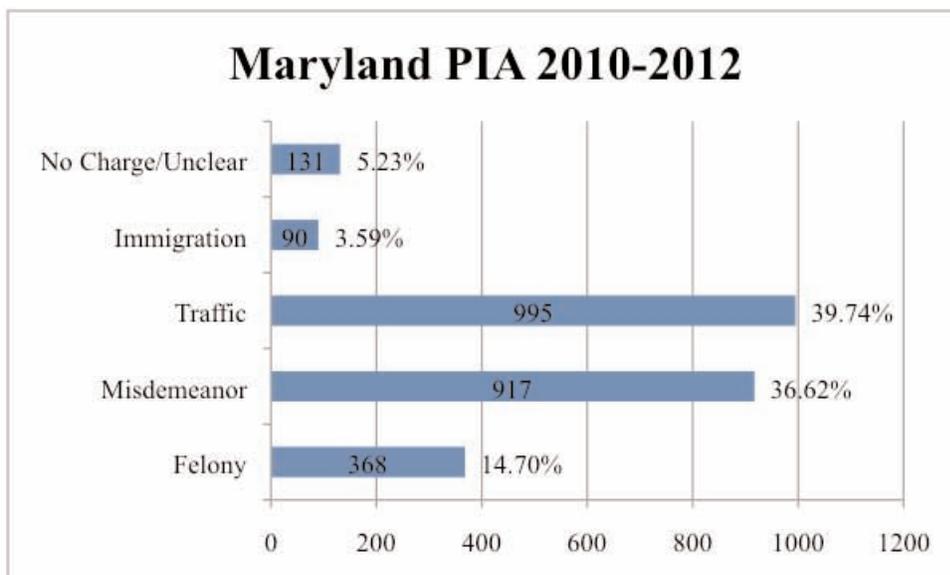
In an effort to better understand how immigration detainers are used in Maryland, the ACLU of Maryland sent a public records request to all state and local detention centers or departments of corrections seeking detailed information about detainer practices in each jurisdiction. Based on the responses we received and our analysis of the data,<sup>43</sup> we were able to draw some important conclusions about detainer practices in Maryland, at least for those counties that responded to our request.<sup>44</sup> For those counties that did not respond to our request or supplied insufficient information, we supplemented the data through information obtained in a nationwide ACLU Freedom of Information Act request to ICE, from which we were able to isolate some data, at least about overall numbers and countries of origin, for several counties in Maryland.<sup>45</sup>

From this data, we were able to draw three important conclusions about detainer practices in Maryland:<sup>46</sup> 1) that they are lodged mostly against individuals with only traffic offenses; 2) that they are lodged mostly against individuals of Latin American origin; and 3) that most jurisdictions do not have specific policies for dealing with immigration detainers but instead automatically respond to every request that comes through their door.

### Immigration detainers are lodged mostly for traffic offenses

First, immigration detainers in Maryland are used mostly against individuals with traffic violations or misdemeanor charges, and only rarely against individuals with serious or felony charges. Note that since the data reflects only charges, not convictions, the results would likely be even starker with respect to the targeting of only minor offenders or persons with no criminal record once acquittals and dismissals are factored in. These results were true both overall and for each county for which we had good available information. The graphs below represent the totals for Anne Arundel County, Baltimore County, Charles County, Frederick County, Kent County, St. Mary's County, Talbot County, and Washington County. Individual fact sheets for each of those counties are included in the Appendix to this report.

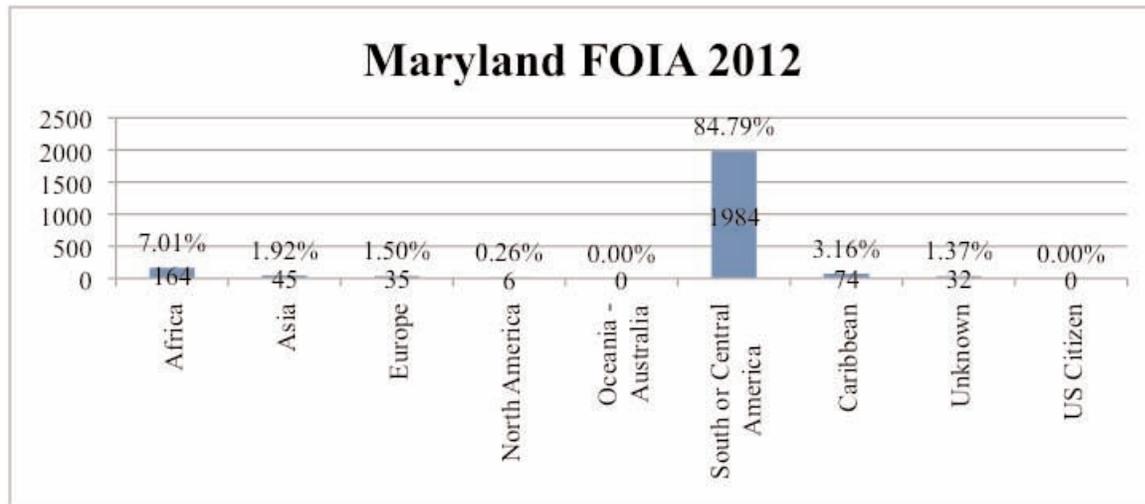
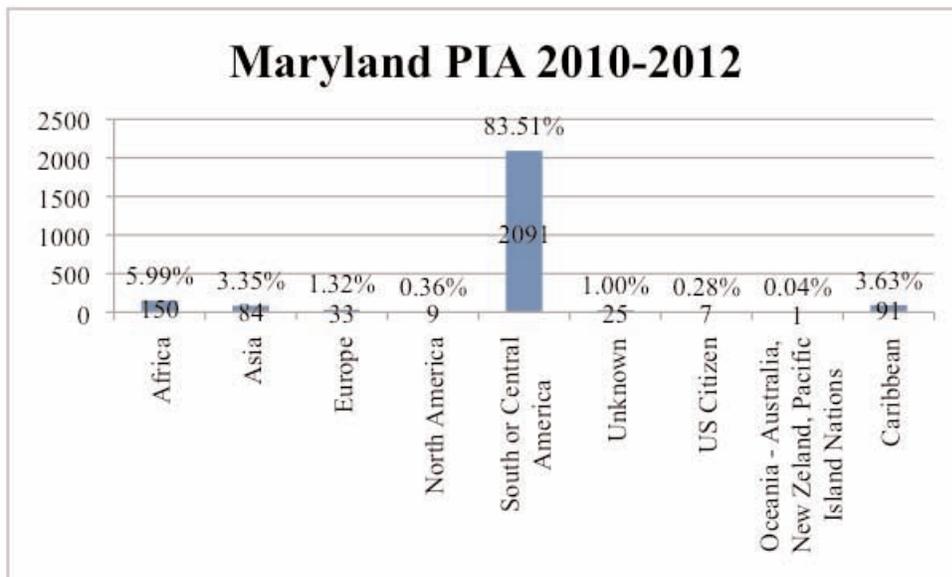
**Figure 4: Maryland immigration detainers by offense category**

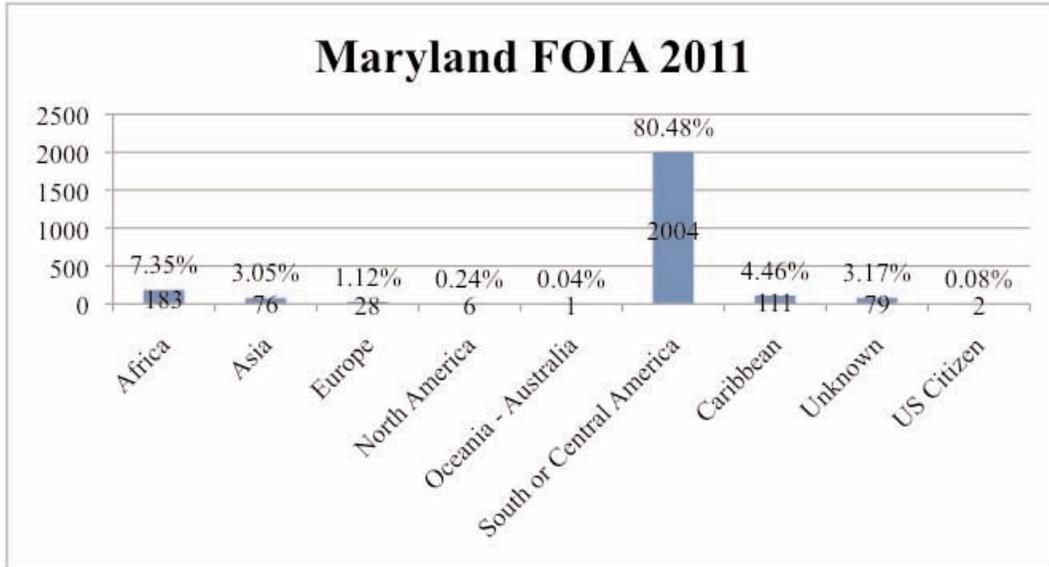


**Immigration detainees are used overwhelmingly against people of Latin American origin**

While the specific breakdown of the undocumented population in Maryland is unavailable, the overall proportion of foreign-born persons from Latin American countries in Maryland is approximately 37 percent.<sup>47</sup> Yet, enforcement patterns against individuals from Latin American countries are consistently in the 85 percent range. The “Maryland PIA” graphs represent totals from the Maryland Public Information Act request.<sup>48</sup> The “Maryland FOIA” graphs represent totals from all Maryland counties except Allegany, Carroll, Dorchester, and Washington.

**Figures 5-7: Maryland immigration detainees by region of origin**





**Law enforcement in Maryland automatically respond to virtually every immigration detainer request**

Almost no county in Maryland has policies specific to immigration detainer requests. Only one county in Maryland, Talbot County, has its own limiting policy and does not respond to immigration detainer requests against individuals with civil traffic violations. Neither any other county nor the State of Maryland has any kind of policy limiting responsiveness to immigration detainer requests. Indeed, most jurisdictions do not even have written policies for procedures relating to immigration detainer requests. By and large, neither the State of Maryland nor the counties distinguish between warrants and immigration detainers, and most counties do not even keep records about their practices with respect to immigration detainer requests.

## Costs:

### The Social, Public Safety, and Financial Costs of Immigration Detainers

Local law enforcement entanglement with immigration enforcement harms victims of crime. This is best illustrated by stories of victims who call law enforcement for help and instead find themselves in deportation proceedings.

This is exactly what happened to Maria Bolanos Hernandez.<sup>49</sup> One Christmas Eve a few years ago, she had a heated argument with the father of her two-year-old daughter. The argument turned violent, and she called the police for help. To this day, she regrets having made that call. The Prince George's County Police officers who responded to her call chose to later charge her with illegally selling a \$10 phone card—an allegation that was unsubstantiated and that the police later dropped. In the meantime, however, they had already run her fingerprints through the system. Because of S-Comm, her fingerprints were transferred automatically to Immigration and Customs Enforcement, who sent an immigration detainer request to Prince George's County Police, who detained her then turned her over to Immigration and Customs Enforcement to face immigration proceedings.

The only contact Ms. Bolanos had ever had with local law enforcement was the one phone call she made to try to escape a domestic violence situation. Instead of helping her, police charged her with an unrelated minor offense, which was sufficient to route her into immigration proceedings.

Domestic violence victims, in fact, are a group particularly vulnerable to the negative effects of local entanglement with immigration enforcement efforts. Victims of domestic violence can get caught up when, as with Ms. Bolanos, police file unrelated charges against them. They can also get caught up when police arrive and arrest everyone on the scene.<sup>50</sup> Sometimes, their assaulters file cross-charges against them after they complain to the police. Finally, domestic violence survivors often report not wanting to call the police because, while they would like their assaulter to be removed from their presence, they do not wish to see him deported, for various complicated reasons sometimes having to do with their ability to generate sufficient income to support children they may have had with their abusers.

The public safety impacts of stories like this are significant. A recent study found that Latinos, both native-born and immigrants, often fear contacting the police, even when they are victims of crime, and are unwilling to cooperate with criminal investigations because of fears about racial profiling and immigration consequences for themselves or their family members.<sup>51</sup> Law enforcement officials also acknowledge these public safety effects, and a number of them have spoken out in favor of state and local measures that stop or significantly limit responses to immigration detainer requests or have enacted such policies on their own.<sup>52</sup>

Significantly, former Department of Homeland Security Janet Napolitano recently endorsed the California TRUST Act, which will limit local collaboration with the federal agency she herself once headed.<sup>53</sup> As previously noted, the Major Cities Chiefs Association has also long taken a position against state and local enforcement of immigration laws.

In California, three of San Diego County's top law enforcement officers also endorsed these limitations: San Diego Police Chief William Lansdowne; Chula Vista Police Chief David Bejarano, and National City Police Chief Manuel Rodriguez. Each of them released a letter in support of California legislation limiting local responsiveness to immigration detainers.<sup>54</sup>

In addition to these social and public safety costs, immigration detainers also impose financial costs on state and local jurisdictions—costs that the federal government does not reimburse. In every locality where a study has been conducted, the finding has been that holding individuals on an immigration detainer imposes a significant financial burden on local agencies. As previously noted, the presence of an immigration detainer has generally been found to result on average in doubling the amount of time an individual spends in state or local detention, partly because of indirect effects such as the denial of bond or failure to post bond for fear of being transferred to ICE. In addition, because ICE does not assume any liability for individuals held in local custody based solely on an immigration detainer request, several counties have incurred costs defending and settling lawsuits. While the ACLU of Maryland has not yet been able to obtain sufficient information to conduct a full estimate of the fiscal impact of immigration detainers on Maryland’s state and local jurisdictions, there is every reason to expect that those costs are significant.

Under the State Criminal Alien Assistance Program (SCAAP), some limited reimbursement may be available to local jurisdictions, but only for a fraction of the total cost and only if the person is undocumented, has been convicted of a felony or of multiple misdemeanors, and has spent more than four days in state or local detention. Most individuals held on an immigration detainer in Maryland do not meet these criteria. In addition, SCAAP reimbursement only takes account of the costs for correctional officers, the number of “eligible” undocumented individuals and the number of days in detention, and only reimburses for a fraction—usually well under 25 percent—of the total costs. Thus, SCAAP reimbursement does not cover the total costs of this additional detention and does not affect the conclusion that responding to immigration detainers is a costly undertaking and a strain on local budgets.

## Conclusion

Every day in Maryland, local resources are being wasted on immigration enforcement efforts. Local law enforcement are dragged into those efforts through ICE immigration detainer requests. Both in Maryland and nationwide, those requests are lodged mostly against individuals charged with traffic violations or misdemeanors and do not serve any discernible local law enforcement public safety function.

But state and local authorities can take back control of their entanglement in this broken system. Because immigration detainer requests are discretionary, state and local jurisdictions can set their own parameters for how they wish to respond to these requests. Those parameters should include safeguards that address the significant due process and other constitutional concerns raised by immigration detainers; safeguards that restore and help build community trust in law enforcement and the willingness of local community members to seek help from and collaborate with police; and safeguards that ensure that local jurisdictions are fully reimbursed for any expenses they incur in the process of responding to immigration detainer requests.

More and more states and local jurisdictions are acting to take control of their own policies and practices with respect to immigration detainers. It is time for Maryland to do the same.

## Endnotes

<sup>1</sup> See ICE Total Removals, <http://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals1.pdf>; ICE Removal Statistics (FY 2012), <https://www.ice.gov/removal-statistics/>.

<sup>2</sup> See Nick Miroff, Controversial quota drives immigration detention boom, *Washington Post*, October 13, 2013, [http://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890\\_story.html](http://www.washingtonpost.com/world/controversial-quota-drives-immigration-detention-boom/2013/10/13/09bb689e-214c-11e3-ad1a-1a919f2ed890_story.html); Gretchen Gavett, Map: The U.S. Immigration Detention Boom, *PBS Frontline*, October 18, 2011, <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/map-the-u-s-immigration-detention-boom/>.

<sup>3</sup> See Amnesty International, *Jailed Without Justice: Immigration Detention in the USA* (September 2008), <http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf>; National Immigration Forum, *The Math of Immigration Detention* (August 2013), <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

<sup>4</sup> See, e.g., Lee Romney & Paloma Esquivel, Noncriminals Swept Up in Federal Deportation Program, *LA Times*, April 25, 2011, <http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425>; Stephen Magnanini, Mexican couple's deportation leaves behind two small children in Lodi, *Sacramento Bee*, November 2, 2010, <http://www.mcclatchydc.com/2010/11/02/103001/mexican-couples-deportation-leaves.html>.

<sup>5</sup> See, e.g., Griselda Nevarez, Deported U.S. Veterans Want to Return Home, Many Find Safe Haven Near Mexican Border, *Huffington Post*, April 26, 2013, [http://www.huffingtonpost.com/2013/04/26/deported-veterans-want-to-return-home\\_n\\_3165406.html](http://www.huffingtonpost.com/2013/04/26/deported-veterans-want-to-return-home_n_3165406.html); Kevin Sullivan, Deported veterans: Banished for committing crimes after serving in the U.S. military, *Washington Post*, August 12, 2013, [http://articles.washingtonpost.com/2013-08-12/politics/41333669\\_1\\_u-s-marine-u-s-citizens-immigration](http://articles.washingtonpost.com/2013-08-12/politics/41333669_1_u-s-marine-u-s-citizens-immigration); Immigrant Justice Network, Howard Dean Bailey, <http://immigrantjusticenetwork.org/read-the-stories/infographic-howards-story/>.

<sup>6</sup> See, e.g., William Finnegan, The Deportation Machine, *The New Yorker*, April 29, 2013, [http://www.newyorker.com/reporting/2013/04/29/130429fa\\_fact\\_finnegan](http://www.newyorker.com/reporting/2013/04/29/130429fa_fact_finnegan); Julia Preston, Immigration Crackdown Also Snares Americans, *NY Times*, December 13, 2011, <http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?page-wanted=all>.

<sup>7</sup> See ICE, *Activated Jurisdictions*, <http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>.

<sup>8</sup> *NYCLU Applauds Gov. Cuomo for Suspending Federal Deportation Program in New York State*, June 1, 2011, <http://www.nyclu.org/news/nyclu-applauds-gov-cuomo-suspending-federal-deportation-program-new-york-state>.

<sup>9</sup> To date, Texas, California, Utah, New York, Washington, Illinois, Kansas, New Mexico, Nebraska, Wisconsin, Maryland, Connecticut, and Rhode Island provide in-state tuition to certain undocumented immigrants brought to the U.S. as children.

<sup>10</sup> To date, California, Colorado, Connecticut, the District of Columbia, Illinois, Maryland, New Mexico, Nevada, Oregon, Puerto Rico, Utah, Vermont, and Washington State have enacted laws providing access to driver's licenses for certain undocumented immigrants.

<sup>11</sup> To date, at least 18 jurisdictions have enacted policies or laws stopping or strictly restricting the circumstances under which local law enforcement will respond to immigration detainers, including California, Connecticut, the District of Columbia, New York City, NY, New Orleans, LA, and Champaign County, IL. A number of other state and local jurisdictions are currently considering enacting such measures.

<sup>12</sup> Major Cities Chiefs Immigration Committee Recommendations For Enforcement of Immigration Laws By Local Police Agencies, Adopted by: Major Cities Chiefs Association, June 2006, [http://www.houstontx.gov/police/pdfs/mcc\\_position.pdf](http://www.houstontx.gov/police/pdfs/mcc_position.pdf), p. 6.

<sup>13</sup> ICE has stated that it “does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual.” Letter from David Venturella, Assistant Director of Immigration and Customs Enforcement, to Mr. Miguel Marquez, County Counsel, County of Santa Clara, CA, <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf>. Thus, local jurisdictions pay the cost of holding people at ICE’s request. Every local jurisdiction that has conducted a fiscal impact study has found that holding individuals on immigration detainers imposes substantial costs. For example, a 2012 study found that Los Angeles County taxpayers spend over \$26 million per year on ICE detainers. See Judith A. Greene, *The Cost of Responding to Immigration Detainers in California* (August 2012), <http://big.assets.huffingtonpost.com/Justicestrategies.pdf>.

<sup>14</sup> See below for nationwide and Maryland data to this effect.

<sup>15</sup> For example, responses to an ACLU of Maryland public records request under the Maryland Public Information Act revealed numerous instances of individuals spending a month or more, in some cases up to 4 or 5 months, in jail for very minor offenses such as traffic violations, making a false statement to a peace officer, and other very minor charges that would ordinarily not have resulted in time in detention. Similar effects have been found in other jurisdictions, where the presence of an immigration detainer has generally been found to result on average in doubling the amount of time a person would typically spend in detention. See, e.g., Andrea Guttin, *The Criminal Alien Program: Immigration Enforcement in Travis County, Texas*, Immigration Policy Center (Feb. 2010); Aarti Shahani, *New York City Enforcement of Immigration Detainers, Preliminary Findings*, Justice Strategies (Oct. 2010), [http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings\\_0.pdf](http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_0.pdf); and Judith A. Greene, *The Cost of Responding to Immigration Detainers in California*, Justice Strategies (Aug. 2012).

<sup>16</sup> *Big Louie Bail Bonds LLC v. State of Maryland*, Md. C. A. No. 31, Sept. 2013 (argued Dec. 4, 2012; filed Oct. 23, 2013) at \*19.

<sup>17</sup> In this connection, ICE itself has stated that it does not view immigration detainers as relevant to bond determinations: “It is not ICE’s position that the existence of an immigration detainer should have any particular consequence for bail or bond.” ICE Briefing Video, *How to Respond to an Immigration Detainer*, available at [http://www.ice.gov/news/galleries/videos/immigration\\_detainers\\_ad.htm](http://www.ice.gov/news/galleries/videos/immigration_detainers_ad.htm) (at 5:20).

<sup>18</sup> While ICE warrants problematically appear in the National Crime Information Center (NCIC) database despite the fact that they merely indicate civil and not criminal charges, immigration detainers do not appear in NCIC.

<sup>19</sup> The Fourth Circuit recently held, in *Orellana Santos v Frederick County*, 725 F.3d 451 (4th Cir. 2013), that local law enforcement do not have the authority to stop, arrest, or detain an individual based solely on a civil immigration warrant against that individual unless they have specifically been deputized to do so by federal authorities. The Santos court noted that the Supreme Court “has said that local officers generally lack authority to arrest individuals suspected of civil immigration violations.” *Id.* at 464, citing *Arizona v. United States*, 132 S.Ct. 2492, 2505 (2012). Neither the Fourth Circuit nor the Supreme Court have yet ruled on the constitutionality of detention based solely on immigration detainer requests. However, in *Arizona v. United States*, the Supreme Court emphasized that “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns.” 132 S.Ct. 2492, 2509 (2012). Yet that is precisely what ICE asks local agencies to do when it issues an immigration detainer. With respect to the constitutionality of immigration detainers, the key issues are that they result in detention in the absence of due process and probable cause.

<sup>20</sup> Major Cities Chiefs Immigration Committee Recommendations For Enforcement of Immigration Laws By Local Police Agencies, Adopted by: Major Cities Chiefs Association, June 2006,

[http://www.houstontx.gov/police/pdfs/mcc\\_position.pdf](http://www.houstontx.gov/police/pdfs/mcc_position.pdf), p. 8.

<sup>21</sup> See Appendix I, Form I-247 (immigration detainer request).

<sup>22</sup> See 8 C.F.R. § 287.7(a) and § 287.7(d).

<sup>23</sup> For example, ICE has stated in internal documents that [a detainer] is a request. There is no penalty if [local agencies] don't comply." <http://altopolimigra.com/wp-content/uploads/2011/12/ICE-FOIA-2674.017695.pdf>. See also Appendix V, ICE admissions that immigration detainers are requests.

<sup>24</sup> Def. Mem. In Support of Mtn for Partial Judgment on the Pleadings, Dkt # 107, Jimenez v. Morales, No. 11-CV-05452 (N.D. Ill.) at 8-9. See also Def's Resp. to Pl's First Set of Requests For Admissions, Dkt. # , Jimenez v. Morales: "Request No. 16: Admit that ICE has no legal authority to require state or local law enforcement to detain an individual during the 48-hour detention period. Response to Request No. 16: Defendants admit that ICE detainers . . . do not impose a requirement upon state or local law enforcement agencies."

<sup>25</sup> 521 U.S. 898, 925-35 (1997).

<sup>26</sup> Note that in its brief cited in n.24, above, ICE itself acknowledged this point by arguing that detainers do not violate the Tenth Amendment because they are voluntary.

<sup>27</sup> See Appendix II, Letter of Advice from the Maryland Attorney General, Office of Counsel to the General Assembly to the Honorable Victor R. Ramirez, State Senator, October 31, 2013.

<sup>28</sup> "For over twenty years, it has been the view of the Managing Officials of the Montgomery County Department of Correction (which view has been supported by legal counsel) that 8 C.F.R. § 287.7 requires DOCR to maintain custody of inmates regarding whom DOCR receives INS detainers for a period of 48 hours (pending the arrival of ICE agents), if the individual is not otherwise committed to custody. . . . The language of the ICE detainer, which is based upon the language of the federal regulation, constitutes a lawfully binding request that the County Department of Correction hold/detain the affected persons in custody." Letter from David Stevenson, Assistant County Attorney for Montgomery County to Sirine Shebaya, ACLU of Maryland, June 24, 2013 (on file with author).

<sup>29</sup> See Letter from David Venturella, Assistant Director of Immigration and Customs Enforcement, to Mr. Miguel Marquez, County Counsel, County of Santa Clara, CA, <http://media.sjbeez.org/files/2011/10/4-ICE-response-to-SCC.pdf> (stating that ICE does not reimburse for the cost of detaining individuals and that ICE does not indemnify localities against liability).

<sup>30</sup> See, e.g., *Quezada v. Mink*, No. 10-879 (D. Colo.) (filed April 21, 2010) (\$50,000 settlement); *Harvey v. City of New York*, No. 07-0343 (E.D.N.Y.) (filed June 12, 2009) (\$145,000 settlement).

<sup>31</sup> For more on the costs of immigration detainers, see the final section of this report.

<sup>32</sup> See John Morton, December 21, 2012 Memorandum re: Civil Immigration Enforcement: Guidance on the Use of Detainers, <https://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>.

<sup>33</sup> Syracuse Transactional Records Access Clearinghouse (hereinafter "TRAC"), "New ICE Detainer Guidelines Have Little Impact," <http://trac.syr.edu/immigration/reports/333/>.

<sup>34</sup> TRAC, "Few ICE Detainers Target Serious Criminals," <http://trac.syr.edu/immigration/reports/330/>.

<sup>35</sup> TRAC, "Who Are the Targets of ICE Detainers?" <http://trac.syr.edu/immigration/reports/310/>.

<sup>36</sup> TRAC, "Fewer Immigration Removal Filings Based on Criminal Activity," <http://trac.syr.edu/what-snew/email.131015.html>.

<sup>37</sup> TRAC, "Few ICE Detainers Target Serious Criminals," <http://trac.syr.edu/immigration/reports/330/>.

<sup>38</sup> ICE, Secure Communities Monthly Statistics through May 31, 2013, [http://www.ice.gov/doclib/foia/sc-stats/nationwide\\_interop\\_stats-fy2013-to-date.pdf](http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf).

<sup>39</sup> TRAC, "ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents," <http://trac.syr.edu/immigration/reports/311/>.

<sup>40</sup> TRAC, "ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents," <http://trac.syr.edu/immigration/reports/311/>.

<sup>41</sup> Berkeley Warren Institute Report, "Secure Communities by the Numbers", [http://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

<sup>42</sup> Berkeley Warren Institute Report, “Secure Communities by the Numbers”, [http://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

<sup>43</sup> A note on methodology: Data provided in response to the ACLU of Maryland’s April 15, 2013 request for information on immigration detainer practices in Maryland under the Maryland Public Information Act (PIA data) was analyzed in the following manner: raw data was entered into a spreadsheet, duplicates were eliminated, offenses were categorized by felony, misdemeanor, traffic, immigration, or unclear/no charge; and countries of origin were grouped into regions. The data was verified through double-entry and comparison. For the FOIA data reflected in some of the region of origin graphs, Maryland data was isolated from a national spreadsheet provided by ICE to the ACLU’s Immigrants Rights Project. Because ICE included only the name of the detention facility and not the state in which it was located, we did not include counties for which it was not possible to determine to a reasonable degree of certainty that the detention facility was in Maryland (Allegany, Carroll, Dorchester, and Washington).

<sup>44</sup> We received thorough, helpful, and for the most part prompt responses from Anne Arundel County, Baltimore County, Charles County, Frederick County, Kent County, St. Mary’s County, Talbot County, and Washington County. Prince George’s County Detention Center and the Pretrial Division of the Maryland Department of Public Safety and Correctional Services, which runs the Baltimore City detention facilities, informed us that they do not have records available other than a snapshot of individuals currently in detention who had immigration detainers lodged against them. While they provided us with that information and, in the case of Prince George’s County, with supplemental information we sought about data on that list, the sample size in both cases was unfortunately too insignificant to allow us to draw any meaningful conclusions about detainer practices over time in those counties. Garrett County informed us via letter that they have not had experience with immigration detainers in the recent past. The remainder of the counties unfortunately—and unlawfully—either denied us the information we sought or wished to charge us exorbitant fees in order to provide it. Inexplicably, several of those counties asserted that the request for information did not qualify for a waiver of fees because the information sought would not contribute to the public interest. We hope that this report will help dispel their confusion on that point. Montgomery County very surprisingly refused to provide us with any information at all even though the records we sought are clearly public records covered by the MPIA. Part of their reasoning for the denial rested on confusion between immigration detainees held in ICE custody or pursuant to a contractual agreement with ICE on the one hand, and individuals in local custody but against whom an immigration detainer request had been lodged, held by and at the discretion of the local facility, on the other. By and large, one important takeaway from our experience with this records request has been that most detention and correctional facilities across the State of Maryland need to be more transparent and need to do a better job of keeping records relating to immigration detainers, given the unique nature of this detention, the questions surrounding the legal basis for it, and the significant direct and indirect costs incurred as a result.

<sup>45</sup> The FOIA data itself was incomplete in a number of important respects. For one thing, it provided no information about the substance of the charges and instead only indicated whether they were Level 1, 2, or 3, which made it impossible to parse out the felonies from the misdemeanors from the traffic offenses. Second, the recordkeeping about levels of offenses was woefully incomplete, with only a small fraction of the entries including even the level of the offense. Finally, because the FOIA data inexplicably failed to include the location of the named detention facility, in some cases it was not possible to conclude to a reasonable certainty that the numbers we were looking at represented Maryland numbers. For this reason, our information about Maryland totals usually represent only the counties for which we received complete responses to our MPIA request. The country of origin FOIA graphs represent totals not including Allegany, Carroll, Dorchester, and Washington counties. Note that the ACLU of Maryland sent a separate FOIA request to ICE on April 15, 2013 (received on April 17, 2013) requesting Maryland-specific information. For reasons that remain mysterious, we never received an

acknowledgment or response to our request.

<sup>46</sup> Except for graphs based on FOIA data, aggregated data is based on results from the counties that responded to our PIA requests. However, we have every expectation, based on information from community organizations, immigration lawyers and public defenders as well as patterns we have observed over time, that those conclusions would be confirmed and possibly even exacerbated by any additional data from the counties that failed to provide it. The more expansive FOIA data reinforces this conclusion.

<sup>47</sup> Department of Legislative Services 2011, *International Immigration to Maryland: Demographic Profile of the State's Immigrant Community at 6* (data source: US census bureau 2006-2008).

<sup>48</sup> "South or Central America" includes Mexico. "North America" includes only Canada.

<sup>49</sup> Shankar Vedantam, *Call for help leads to possible deportation for Hyattsville mother*, Washington Post, November 1, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/01/AR2010110103073.html>.

<sup>50</sup> This is what happened to Maria Perez-Rivera, who was arrested along with her boyfriend after a domestic violence call and was deported to Mexico, leaving two small U.S. citizen children behind, Stephen Magnanini, *Sacramento Bee*, November 2, 2010, available at <http://www.mcclatchydc.com/2010/11/02/103001/mexican-couples-deportation-leaves.html>; and to Elena Cabrera, who was arrested along with her partner and turned over to ICE, Edward Sifuentes, *North Country Times*, October 19, 2011, <http://www.utsandiego.com/news/2011/oct/19/exclusive-es-condido-woman-turned-over-to/>.

<sup>51</sup> Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago (May 2013), [http://www.uic.edu/cuppa/gci/documents/1213/Insecure\\_Communities\\_Report\\_FINAL.pdf](http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf).

<sup>52</sup> See Appendix IV, quotes from law enforcement in support of limited detainer policies.

<sup>53</sup> See Larry Gordon, *UC student leaders meet with new system president Napolitano*, LA Times, October 1, 2013, <http://www.latimes.com/local/lanow/la-me-ln-napolitano-students-20131001,0,286409.story#axzz2jt6Ox6LY>; and Elise Foley, *Janet Napolitano Endorses Trust Act To Limit U.S. Agency She Headed*, Huffington Post, October 2, 2013, [http://www.huffingtonpost.com/2013/10/02/janet-napolitano-trust-act\\_n\\_4032806.html](http://www.huffingtonpost.com/2013/10/02/janet-napolitano-trust-act_n_4032806.html).

<sup>54</sup> See ACLU of San Diego, *Three San Diego County Police Chiefs Back TRUST Act to Limit Deportations*, August 20, 2013, <http://www.aclusandiego.org/breaking-news/three-san-diego-county-police-chiefs-back-trust-act-to-limit-deportations/>.

# Appendices

Appendix I: Form I-247

Appendix II: Maryland Attorney General October 31 Letter of Advice to Senator Victor Ramirez  
Re: Immigration Detainers

Appendix III: County fact sheets

Appendix IV: Law enforcement speak out in support of limited detainer policies

Appendix V: ICE admissions that immigration detainers are voluntary

# Appendix I

## Form I-247

### DEPARTMENT OF HOMELAND SECURITY IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:  
Event #:

File No:  
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

**MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS**

Name of Alien: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Sex: \_\_\_\_\_

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

- Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):
  - has a prior a felony conviction or has been charged with a felony offense;
  - has three or more prior misdemeanor convictions;
  - has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
  - has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
  - has illegally re-entered the country after a previous removal or return;
  - has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
  - otherwise poses a significant risk to national security, border security, or public safety; and/or
  - other (specify): \_\_\_\_\_.
- Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on \_\_\_\_\_ (date).
- Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on \_\_\_\_\_ (date).
- Obtained an order of deportation or removal from the United States for this person.

***This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.***

**IT IS REQUESTED THAT YOU:**

- Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling \_\_\_\_\_ during business hours or \_\_\_\_\_ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- Provide a copy to the subject of this detainer.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- Consider this request for a detainer operative only upon the subject's conviction.
- Cancel the detainer previously placed by this Office on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer) (Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to \_\_\_\_\_. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: \_\_\_\_\_ Latest criminal charge/conviction: \_\_\_\_\_ (date) Estimated release: \_\_\_\_\_ (date)  
Last criminal charge/conviction: \_\_\_\_\_

**Notice:** Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

\_\_\_\_\_  
(Name and title of Officer) (Signature of Officer)

## NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

## NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención migratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto migratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253). Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmele al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

## Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre rencontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre rencontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253). Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

## AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agência de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**

## THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ Quốc Phòng (DHS) đã có lệnh giam giữ quý vị vì lý do di trú. Lệnh giam giữ vì lý do di trú là thông báo của DHS cho các cơ quan thi hành luật pháp là DHS có ý định tạm giữ quý vị sau khi quý vị được thả. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giữ quý vị phải tiếp tục tạm giữ quý vị trong không quá 48 giờ đồng hồ (không kể thứ Bảy, Chủ nhật, và các ngày nghỉ lễ) ngoài thời gian mà lẽ ra quý vị sẽ được cơ quan thi hành luật pháp của tiểu bang hoặc địa phương thả ra dựa trên các bản án và tội hình sự của quý vị. **Nếu DHS không tạm giam quý vị trong thời gian 48 giờ bổ sung đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với bên giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi về việc cơ quan địa phương hoặc liên bang thả quý vị ra. **Nếu quý vị có khiếu nại về lệnh giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hoặc tự do công dân liên quan tới các hoạt động của DHS, vui lòng liên lạc với ICE Joint Intake Center tại số 1-877-2INTAKE (877-246-8253). Nếu quý vị tin rằng quý vị là công dân Hoa Kỳ hoặc nạn nhân của phạm tội, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-9903.**

### 对被拘留者的通告

美国国土安全部 (DHS) 已发出对你的移民监禁令。移民监禁令是美国国土安全部用来通告执法当局, 表示美国国土安全部意图在你可能从当前的拘留被释放以后继续拘留你的通知单。美国国土安全部已经向当前拘留你的执法当局要求, 根据对你的刑事起诉或判罪的基础, 在本当由州或地方执法当局释放你时, 继续拘留你, 为期不超过 48 小时 (星期六、星期天和假日除外)。如果美国国土安全部未能在不计周末或假日的额外 48 小时期限内将你拘留, 你应该联系你的监管单位 (即在拘留你的执法当局或其他单位), 询问关于你从州或地方执法单位被释放的事宜。如果你对于这项拘留或关于美国国土安全部的行动所涉及的违反民权或公民自由权有任何投诉, 请联系美国移民及海关执法局联合接纳中心 (ICE Joint Intake Center), 电话号码是 1-877-2INTAKE (877-246-8253)。如果你相信你是美国公民或犯罪被害人, 请联系美国移民及海关执法局的执法支援中心 (ICE Law Enforcement Support Center), 告知美国国土安全部。该执法支援中心的免费电话号码是 (855) 448-9903。

## Appendix II

### Maryland Attorney General October 31 Letter of Advice to Senator Victor Ramirez

DOUGLAS F. GANSLER  
ATTORNEY GENERAL

KATHERINE WINFREE  
Chief Deputy Attorney General

JOHN B. HOWARD, JR.  
Deputy Attorney General



DAN FRIEDMAN  
Counsel to the General Assembly

SANDRA BENSON BRANTLEY  
BONNIE A. KIRKLAND  
KATHRYN M. ROWE  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

October 31, 2013

The Honorable Victor R. Ramirez  
303 James Senate Office Building  
Annapolis, Maryland 21401-1991

Dear Senator Ramirez:

You have asked for advice concerning immigration detainees. Specifically, you have asked whether the detainees are mandatory, or whether state and local jurisdictions may make their own decisions about how to respond to the detainees. You have also asked whether an individual may ever be held for longer than 48 hours (exclusive of weekends and holidays) past their State release date. Finally, you have asked whether there is a legal difference between immigration detainees and criminal detainees and whether local facilities should take care to distinguish between the two in their policies and procedures.

*Mandatory or Discretionary?*

An immigration detainer, DHS Form I-247, “serves to advise another law enforcement agency that the Department of Homeland Security (“DHS” or “the Department”) seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien.” 8 C.F.R. § 287.7(a). While the regulation states that a law enforcement agency that receives a detainer “shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department,” it also states that:

The detainer is a *request* that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

8 C.F.R. § 287.7(a) (emphasis added). A federal court in Indiana has held that an immigration detainer is not a criminal warrant, but rather it is a voluntary request and local law enforcement may hold an individual pursuant to 8 C.F.R. § 287.7(d) “if it chooses to do so.” *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011). On the other hand, in *Galarza v. Szalczyk*, 2012 U.S. Dist. LEXIS 47023 (E.D. Pa. March 30, 2012), the court said:

although an immigration detainer ‘serves to advise another law enforcement agency that the Department seeks custody’ and ‘is a request’ to the federal, state, or local law enforcement agency presently holding the individual named in the detainer that it ‘advise the Department, prior to release’ of that individual, once the immigration detainer is issued, the local, state, or federal agency then holding the individual ‘shall’ maintain custody.

*See also, Davila v. N. Reg'l Joint Police Bd.*, 2013 U.S. Dist. LEXIS 150672 (W.D. Pa. October 21, 2013). In *Rios-Quiroz v. Williamson County*, 2012 U.S. Dist. LEXIS 128237 (M.D. Tenn. September 10, 2012), plaintiff argued that “‘shall’ in subsection (d) should be read as ‘shall maintain the individual for no more than 48 hours,’ requiring that if the agency takes the person into custody, that custody shall last no longer than 48 hours.” The court disagreed, and held that the provision is mandatory because “the subsection says ‘shall maintain,’ which indicates an obligation to maintain custody.” No court in Maryland has addressed this issue. The reading of the provision as a whole as mandatory, however completely negates the lead-in language of the regulation. While it could be argued that the alternate reading would negate the meaning of the term “shall,” it is my view, that the mandatory meaning of the term “shall” should be limited to the length of the stay. Thus, when a law enforcement agency decides to detain a person as requested, the person must be detained for the full 48 hours and may not be detained for a longer period.

The mandatory interpretation applied by some courts is also in contradiction to the position of federal officials in charge of the program. The current language of Form I-247 makes clear that Immigration and Customs Enforcement (“ICE”) does not see the request as mandatory. The form reflects that an action has been taken by the Department of Homeland Security with respect to a person currently in custody, but specifically states that “[t]his action does not limit your discretion to make decisions related to this person’s custody classification, work, quarter assignments, or other matters.” In addition, the portion of the form relating to actions to be performed by the law enforcement agency, which can include maintaining custody of the subject for a period not to exceed 48 hours beyond which the subject would have otherwise been released, has also been phrased as a request, rather than a requirement.

This approach reflects the traditional view that compliance with detainers is a matter of comity between jurisdictions. *Immigration Detainers: Legal Issues*, Kate Manual, Legislative Attorney, Congressional Research Service page 12 (August 31, 2012).<sup>1</sup> It also reflects the possibility that mandating state and local compliance with detainers would violate the Tenth Amendment of the U.S. Constitution as interpreted in *Printz v. United States*, 521 U.S. 898 (1997).<sup>2</sup> *Id.* The Attorney

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<sup>1</sup> [trac.syr.edu/immigration/library/P6608.pdf](http://trac.syr.edu/immigration/library/P6608.pdf)

<sup>2</sup> There is also an issue as to whether the regulation is within the Department’s authority. Federal law, at 8 U.S.C. § 1357 expressly provides for detainer of aliens arrested for violations of

General of California has taken this position, advising law enforcement agencies that they are not required to fulfill individual ICE immigration detainers but can make their own decisions and basing the advice both on the language of Form I-247 and on the conclusion that “[u]nder principles of federalism, neither Congress nor the federal executive branch can require state officials to carry out federal programs at their own expense.” Attorney General Kamala Harris, *Responsibilities of Local Law Enforcement Agencies under Secure Communities*, Information Bulletin, December 4, 2012.<sup>3</sup>

Thus, it is my view that the best reading of the regulation, supported by the position of ICE, allows state and local jurisdictions to exercise discretion when determining how to respond to individual detainers.

### *Exceeding 48 Hours*

Federal regulations provide that a law enforcement agency is to maintain custody of the alien “for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.” 8 C.F.R. § 287.7(d). Guidance from ICE states that:

[i]f ICE does not assume custody after 48 hours (excluding weekends and holidays), the local law enforcement agency (LEA) is required to release the individual. The

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controlled substances laws, but does not mention other offenses. The only court to have considered this issue held that the regulation was supported by the authority of the Department to “establish such regulations ... and perform such other acts as [it] deems necessary for carrying out [its authority under the provisions of this chapter.” 8 U.S.C. § 1103(a)(3). *Committee for Immigrant Rights v. County of Sonoma*, 644 F. Supp. 2d 1177, 1197-1198 (N.D. Cal. 2009).

<sup>3</sup> [https://www.aclunc.org/docs/immigration/ag\\_info\\_bulletin.pdf](https://www.aclunc.org/docs/immigration/ag_info_bulletin.pdf) California recently passed the “Trust Act,” which prohibits compliance with immigration detainers except in six listed circumstances, specifically (1) when the individual has been convicted of a serious or violent felony listed in statute; (2) the individual has been convicted of a felony punishable by imprisonment in the state prison; (3) the individual has been convicted within the last five years of a misdemeanor that can also be charged as a felony or has been convicted at any time of a felony for certain listed offenses; (4) the individual is on the sex abuse and arson registry; (5) the individual has been arrested for certain charges and a magistrate has found probable cause with respect to those charges; and (6) the individual has been convicted of a federal crime that is an aggravated felony under federal law or is identified by the Department of Homeland Security as the subject of an outstanding federal felony arrest warrant. California Government Code, § 7282.5(a). Where one or more of these circumstances are present, a law enforcement official has the discretion to cooperate with federal immigration officials by detaining an individual “only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy.” *Id.* [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB4](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB4)

LEA may not lawfully hold an individual beyond the 48-hour period.<sup>4</sup>

Form I-247 emphasizes this limit, stating that it is requested that the law enforcement agency “[m]aintain custody of the subject for a period NOT TO EXCEED 48 HOURS, excluding Saturdays, Sundays, and holidays.” (Emphasis in the original). My research reflects that much of the litigation arising from immigration detainers involves detention for longer than the 48 hours. It is clear that detention for longer than this period is not permitted.

### *Criminal Detainers and Immigration Detainers*

Criminal detainers in Maryland are issued under the Interstate Agreement on Detainers, Correctional Service Article (“CS”), Title 8, Subtitle 4, or under statutory provisions relating to Intrastate Detainers, CS Title 8, Subtitle 5. The two provisions are “identical as to purpose and rationale,” and they are *in pari materia* and should be construed together so that they will harmonize with each other and be consistent with their general object and scope. *State v. Barnes*, 273 Md. 195, 208-209 (1974). The term detainer, as used in these sections and prior to their adoption, refers to a notice directed to prison authorities informing them that charges are pending in another jurisdiction against an inmate. *State v. Boone*, 40 Md. App. 41, 44 (1978); *Medley v. Warden of Maryland House of Correction*, 210 Md. 649, 653 (1956). Both provisions apply when the Division of Correction, the Patuxent Institution, of a local correctional facility receives notice of an untried indictment, information, warrant, or complaint against an inmate of the facility. CS §§ 8-405(a), 8-502(a). The official having custody of the prisoner must inform the prisoner of the source and contents of the detainer, and the prisoner may send written notice and request for final disposition of the indictment, information or complaint. CS §§ 8-405(c), 8-503(b). If such a request is made the inmate must be brought to trial within 180 days of the request in the case of an interstate detainer, CS § 8-405(a), and within 120 days of the request in the case of an intrastate detainer. CS § 8-502(b).

The differences between this procedure and an immigration detainer are clear. Among them are that the criminal detainers do not call for the detention of any person beyond the time they would ordinarily be held. In addition, any transfer that occurs during the sentence that the prisoner is serving is made only at the request of the prisoner. Moreover, the operation of the detainer is determined by an interstate agreement, in one case, and based on state law, in the other, and is based on the existence of an untried indictment, information, warrant, or complaint against the prisoner for which a trial will be held. *Clipper v. State*, 295 Md. 303, 307 (1983). In contrast, an immigration detainer is an administrative request, authorized by federal regulation, to hold a person longer than would otherwise be the case. That request can be based on past convictions, current immigration proceedings including civil proceedings, current criminal allegations, or generalized allegations that the person “poses a significant risk to national security, border security, public safety, or other matters. See Form I-247. Given the differences between the two, it would make sense to approach

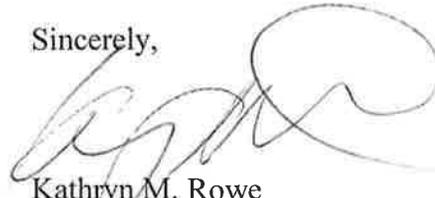
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<sup>4</sup> <http://www.ice.gov/news/library/factsheets/detainer-faqs.htm>

The Honorable Victor R. Ramirez  
October 31, 2013  
Page 5

them differently.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Rowe', with a large, stylized flourish at the end.

Kathryn M. Rowe  
Assistant Attorney General

KMR/kmr  
ramirez07.wpd

DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:  
Event #:

File No:  
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

**MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS**

Name of Alien: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Nationality: \_\_\_\_\_ Sex: \_\_\_\_\_

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

- Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):
  - has a prior a felony conviction or has been charged with a felony offense;
  - has three or more prior misdemeanor convictions;
  - has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
  - has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
  - has illegally re-entered the country after a previous removal or return;
  - has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
  - otherwise poses a significant risk to national security, border security, or public safety; and/or
  - other (specify): \_\_\_\_\_.
- Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on \_\_\_\_\_ (date).
- Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on \_\_\_\_\_ (date).
- Obtained an order of deportation or removal from the United States for this person.

***This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.***

**IT IS REQUESTED THAT YOU:**

- Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours**. As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling \_\_\_\_\_ during business hours or \_\_\_\_\_ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.
- Provide a copy to the subject of this detainer.
- Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.
- Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.
- Consider this request for a detainer operative only upon the subject's conviction.
- Cancel the detainer previously placed by this Office on \_\_\_\_\_ (date).

\_\_\_\_\_  
(Name and title of Immigration Officer)

\_\_\_\_\_  
(Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to \_\_\_\_\_. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: \_\_\_\_\_ Latest criminal charge/conviction: \_\_\_\_\_ (date) Estimated release: \_\_\_\_\_ (date)

Last criminal charge/conviction: \_\_\_\_\_

**Notice:** Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

\_\_\_\_\_  
(Name and title of Officer)

\_\_\_\_\_  
(Signature of Officer)

## Appendix III

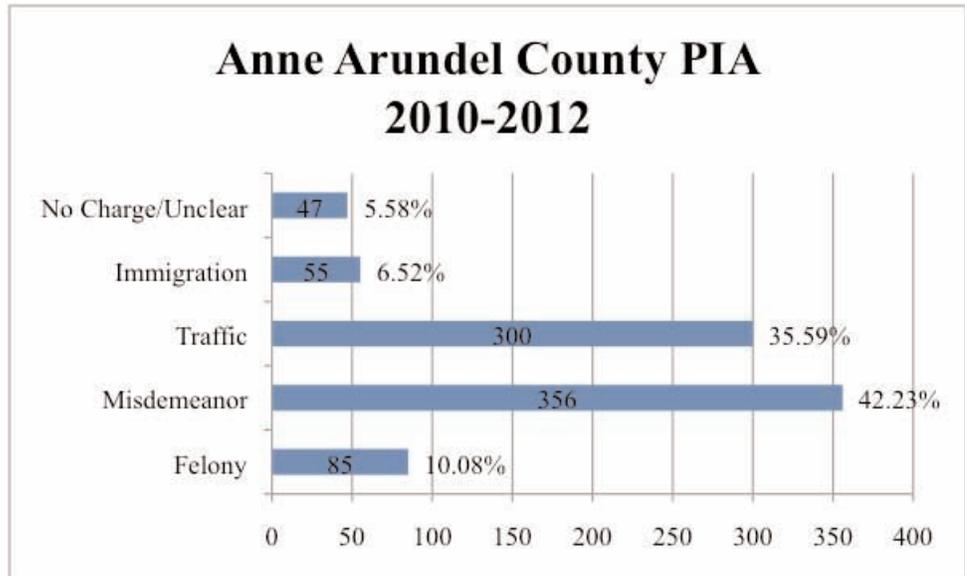
### County Facts and Graphs

This Appendix provides more detailed facts and graphs on immigration detainees in each of the counties for which we were able to obtain reliable data. The graphs are based on responses to an ACLU of Maryland Public Information Act request to state and local detention facilities. Where such responses were not provided, we were for the most part able to obtain some more limited information from a response to an ACLU Immigrants' Rights Project Freedom of Information Act request to ICE. We have included this more elementary data for Montgomery County and Prince George's County in this Appendix. We were unable to obtain reliable information from either source for Allegany, Carroll, and Dorchester counties.

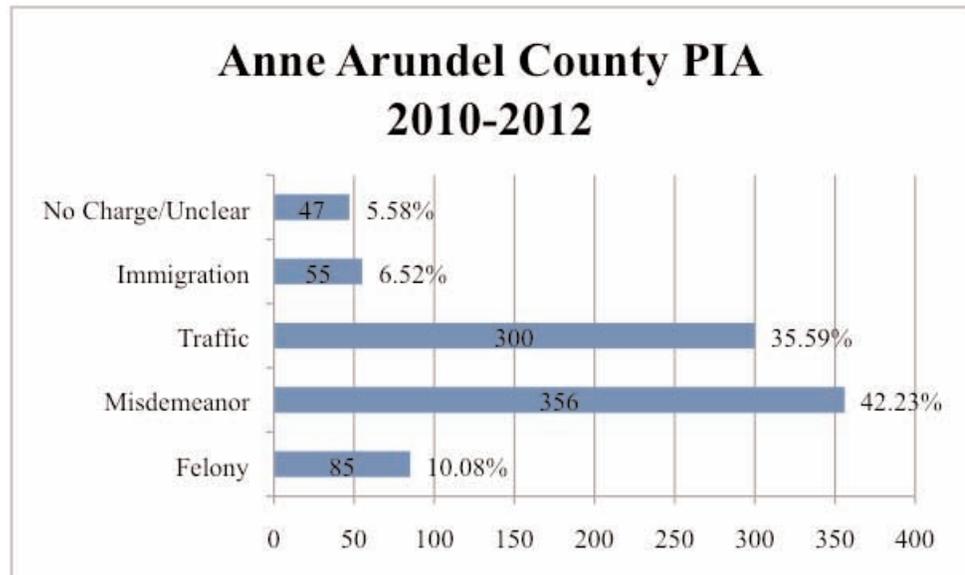
For more detailed information and yearly breakdowns from the PIA data or for data and graphs from the FOIA data for other counties, please contact the ACLU of Maryland at (410) 889-8555 or at [aclu@aclu-md.org](mailto:aclu@aclu-md.org).

**ANNE ARUNDEL COUNTY**  
**MPIA Data**

- Between 2010 and 2012, about 843 individuals were held on an immigration detainer.
- More than 40 percent were charged only with traffic violations or held solely on the basis of civil immigration charges.
- More than 42 percent were charged only with misdemeanors.

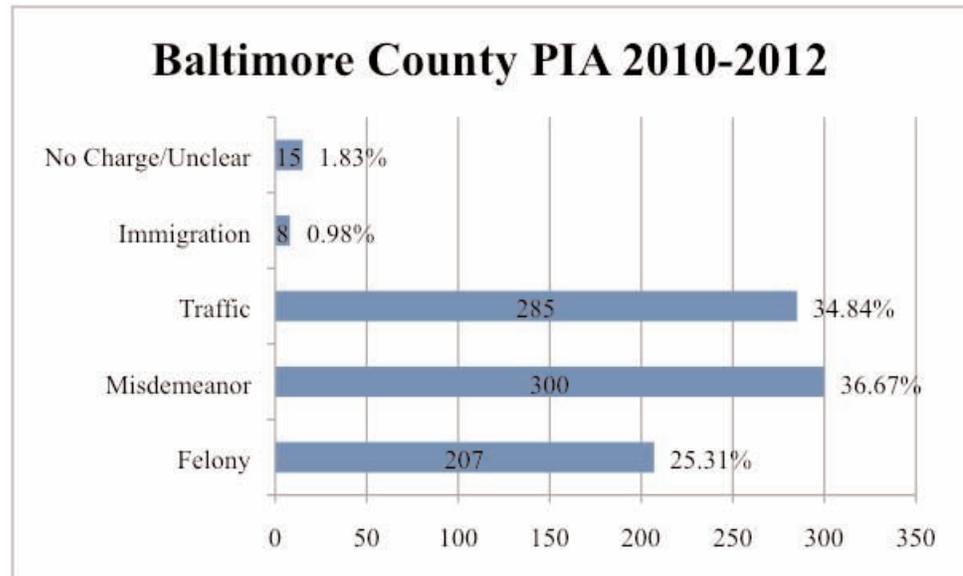


- Over 90 percent were from Latin American countries.
- At least 2 were U.S. citizens.

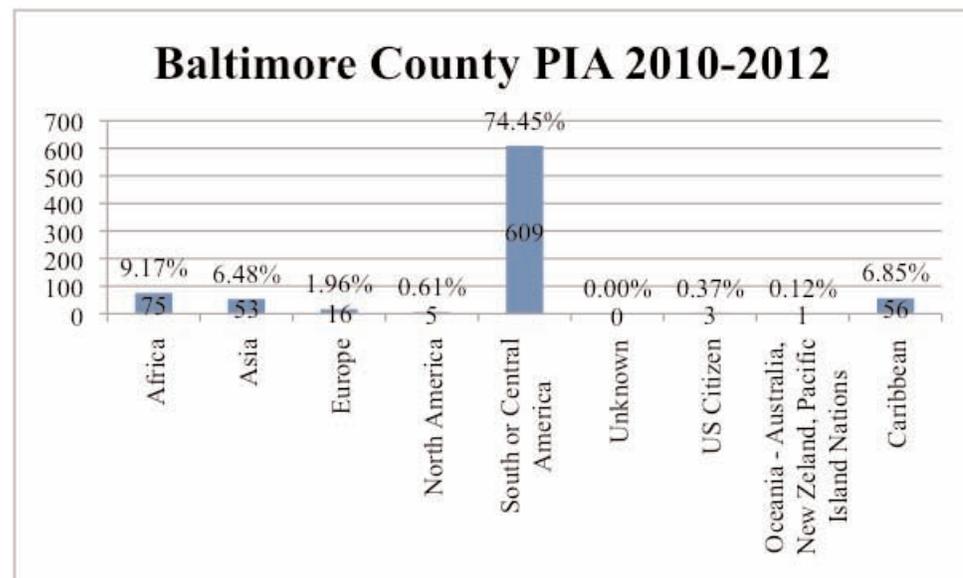


## BALTIMORE COUNTY MPIA Data

- Between 2010 and 2012, about 815 individuals were held on an immigration detainer.
- More than 36 percent were charged only with traffic or immigration offenses.
- More than 36 percent were charged only with misdemeanors.

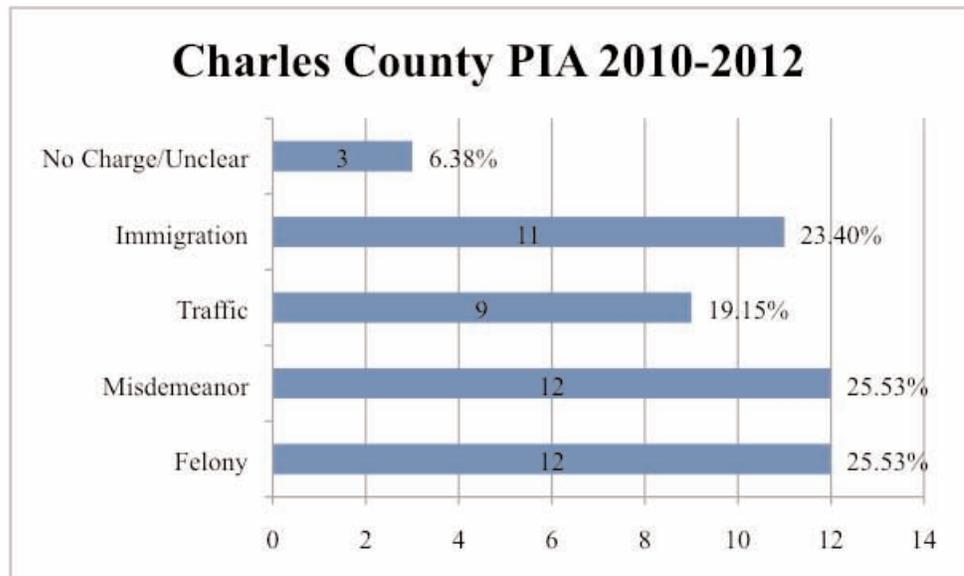


- Almost 75% were from Latin American countries.
- At least 3 were U.S. citizens.

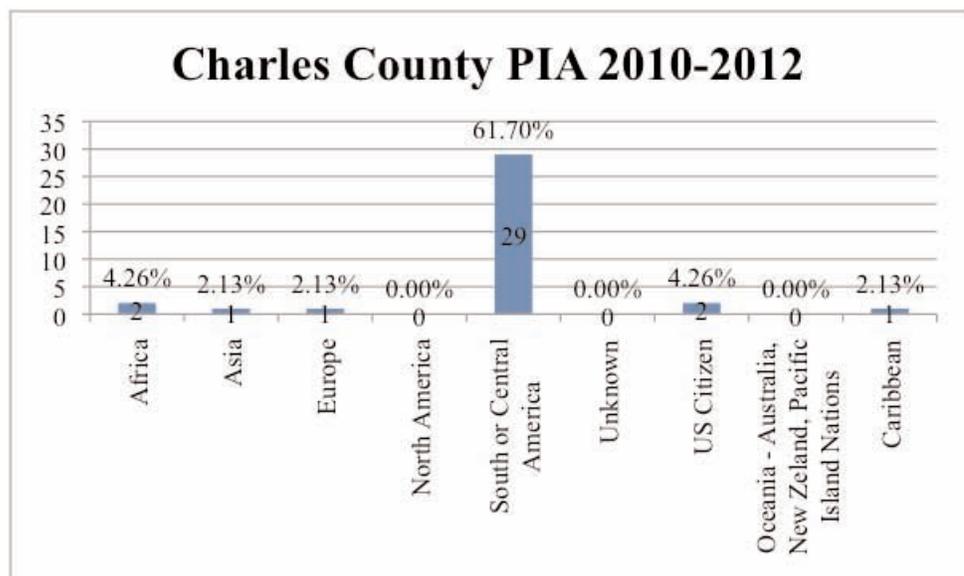


## CHARLES COUNTY MPIA Data

- Between 2010 and 2012, about 47 individuals were held on an immigration detainer.
- More than 42 percent were charged only with traffic or immigration offenses.
- More than 25 percent were charged only with misdemeanors.

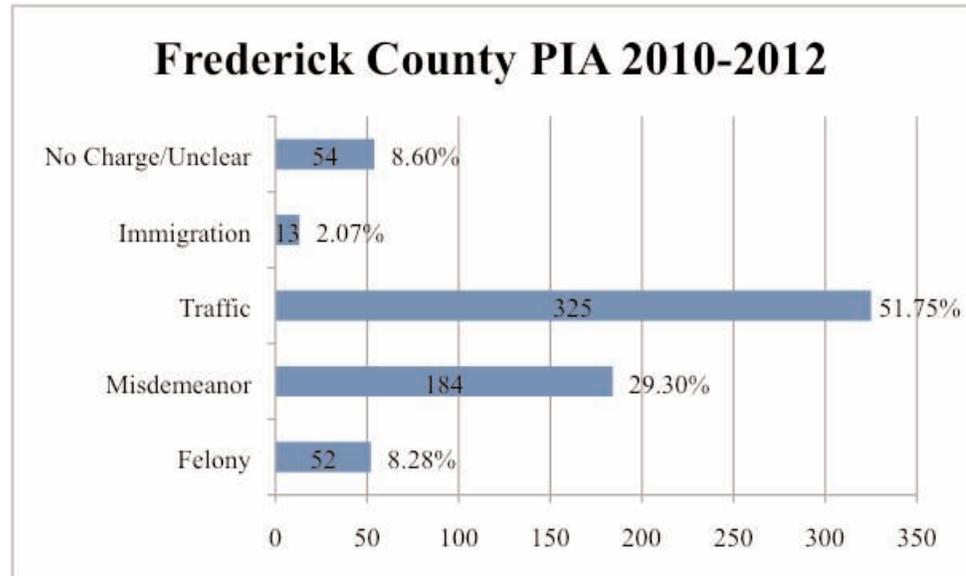


- Almost 62 percent were from Latin American countries.
- At least 2 were U.S. citizens.

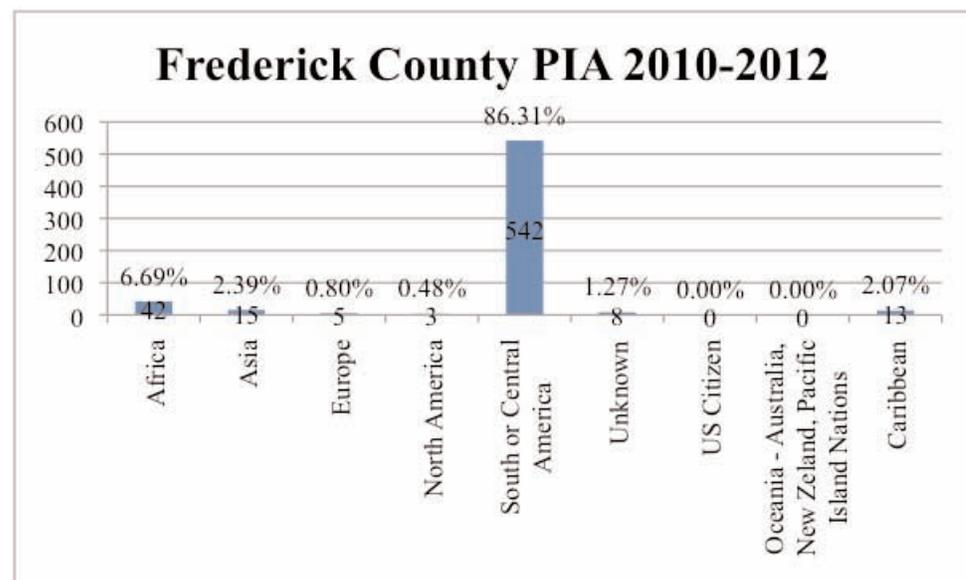


## FREDERICK COUNTY MPIA Data

- Between 2010 and 2012, about 628 individuals were held on an immigration detainer.
- Almost 54 percent were charged only with traffic or immigration offenses.
- More than 29 percent were charged only with misdemeanors.

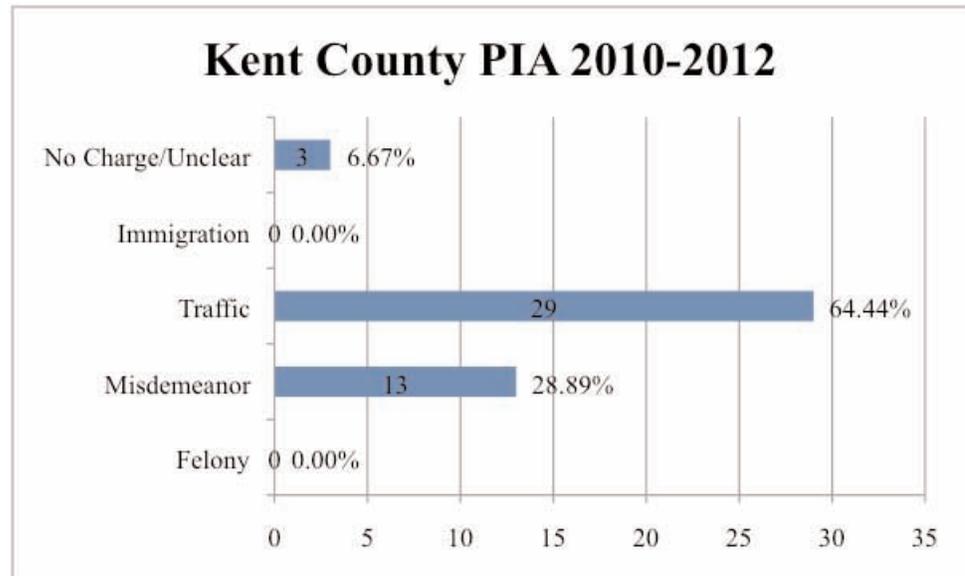


- More than 86 percent were from Latin American countries.

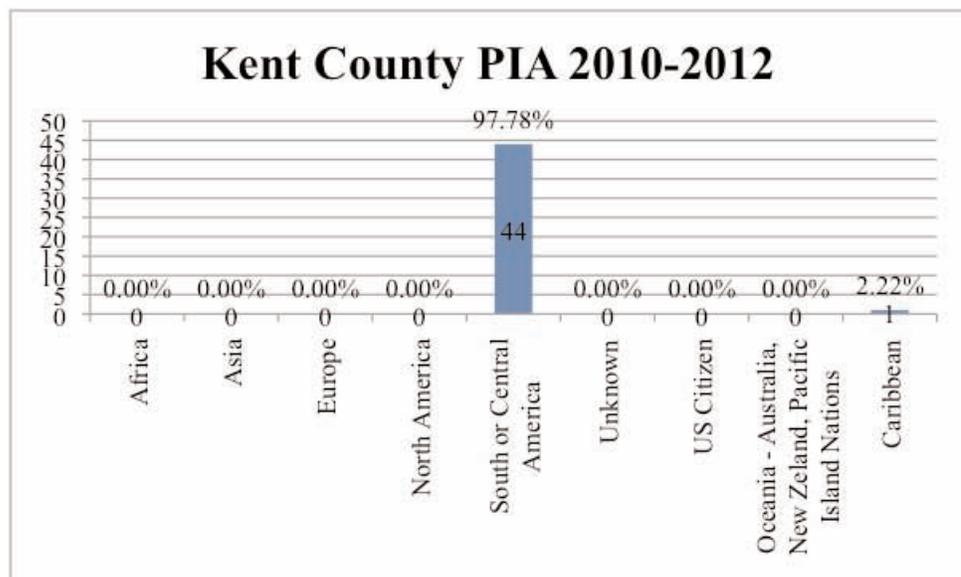


## KENT COUNTY MPIA Data

- Between 2010 and 2012, about 45 individuals were held on an immigration detainer.
- Almost 65 percent were charged only with traffic offenses.
- Almost 29 percent were charged only with misdemeanors.

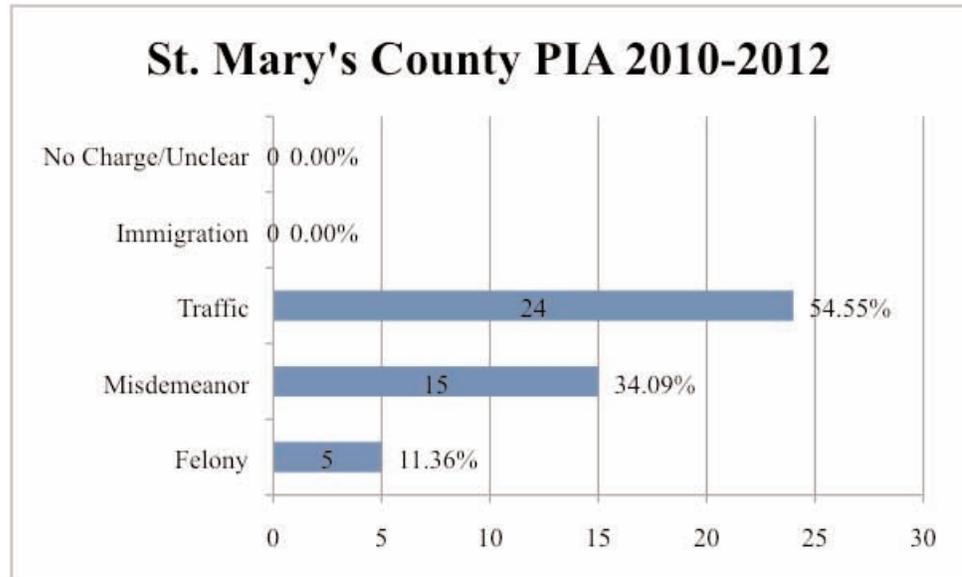


- Almost 98 percent were from Latin American countries.

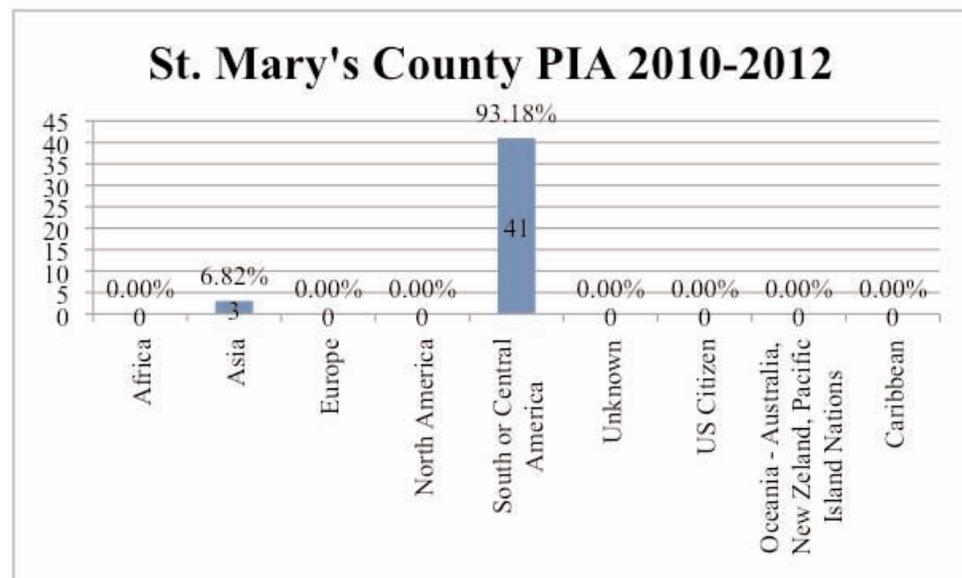


## ST. MARY'S COUNTY MPIA Data

- Between 2010 and 2012, about 44 individuals were held on an immigration detainer.
- Almost 55 percent were charged only with traffic offenses.
- More than 34 percent were charged only with misdemeanors.

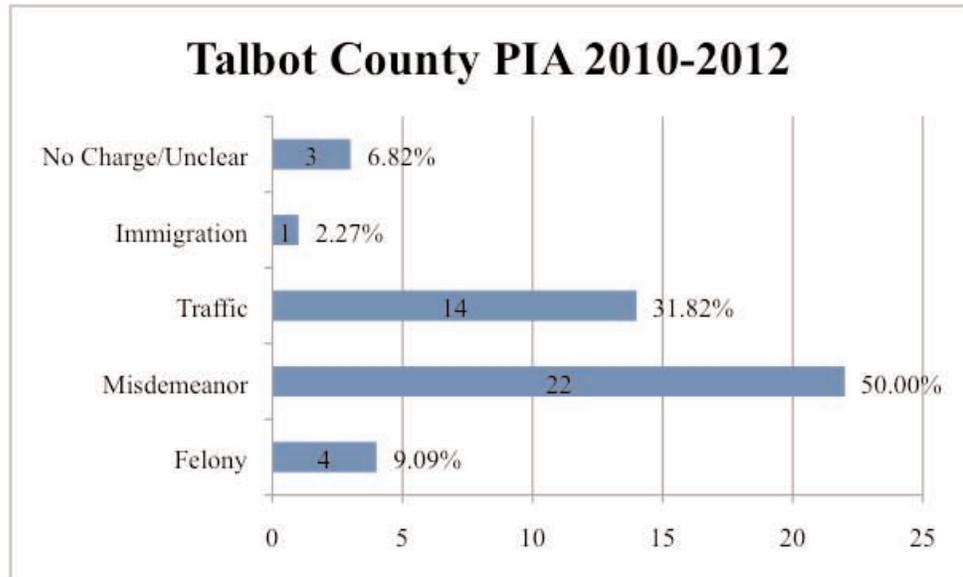


- More than 94 percent were from Latin American countries.

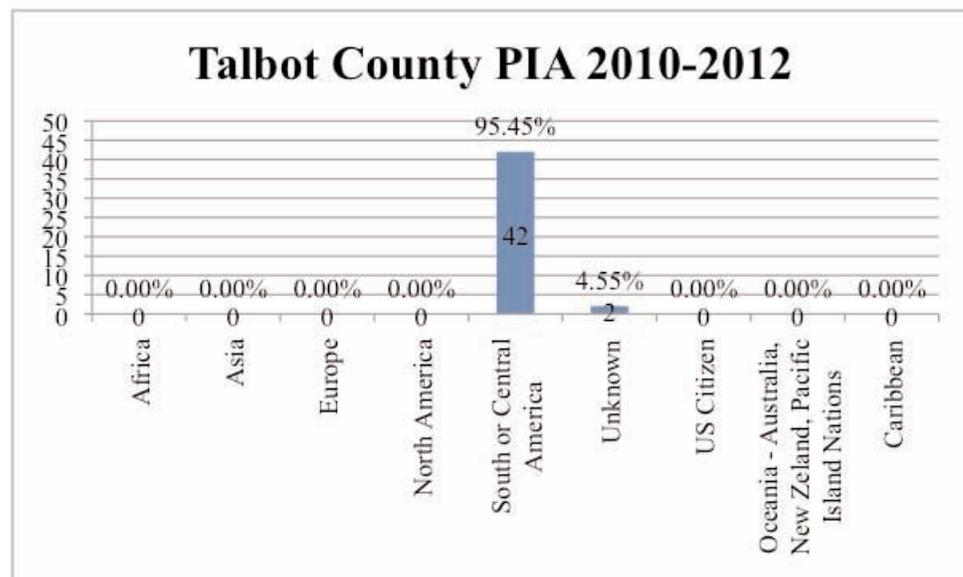


**TALBOT COUNTY  
MPIA Data**

- Between 2010 and 2012, about 44 individuals were held on an immigration detainer.
- More than 34 percent were charged only with traffic or immigration offenses.
- 50 percent were charged only with misdemeanors.

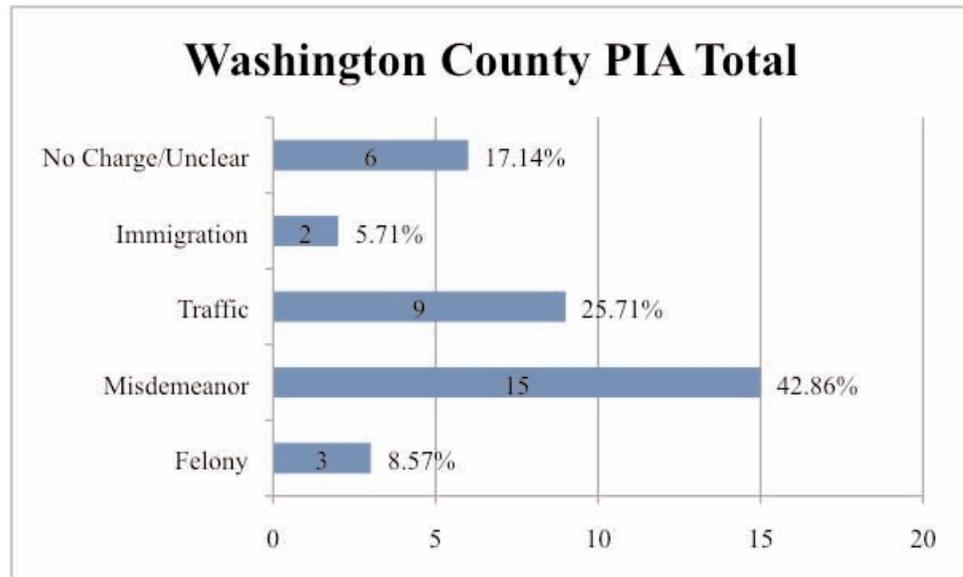


- More than 94 percent were from Latin American countries.

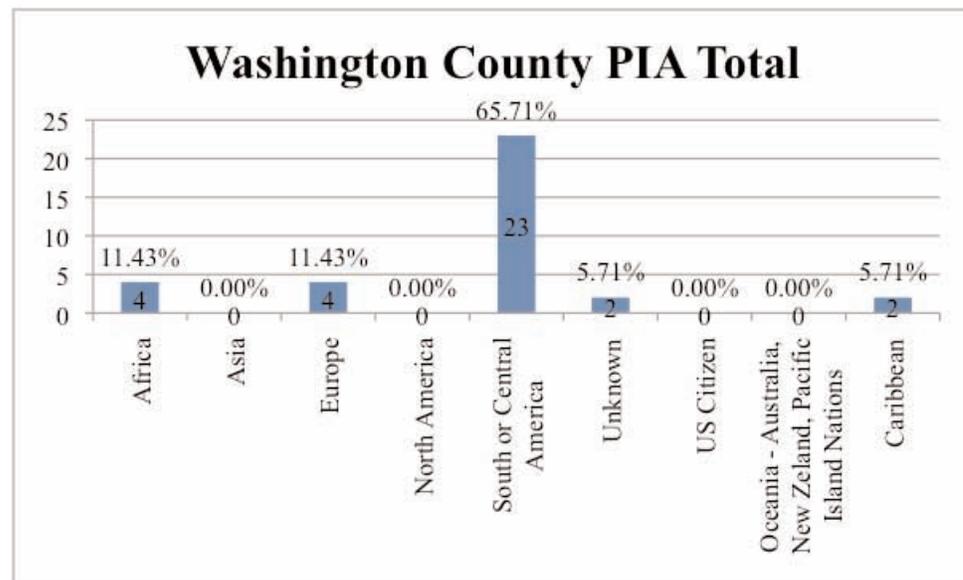


## WASHINGTON COUNTY MPIA Data

- Between 2010 and 2012, about 35 individuals were held on an immigration detainer.
- More than 31 percent were charged only with traffic or immigration offenses.
- Almost 43 percent were charged only with misdemeanors.

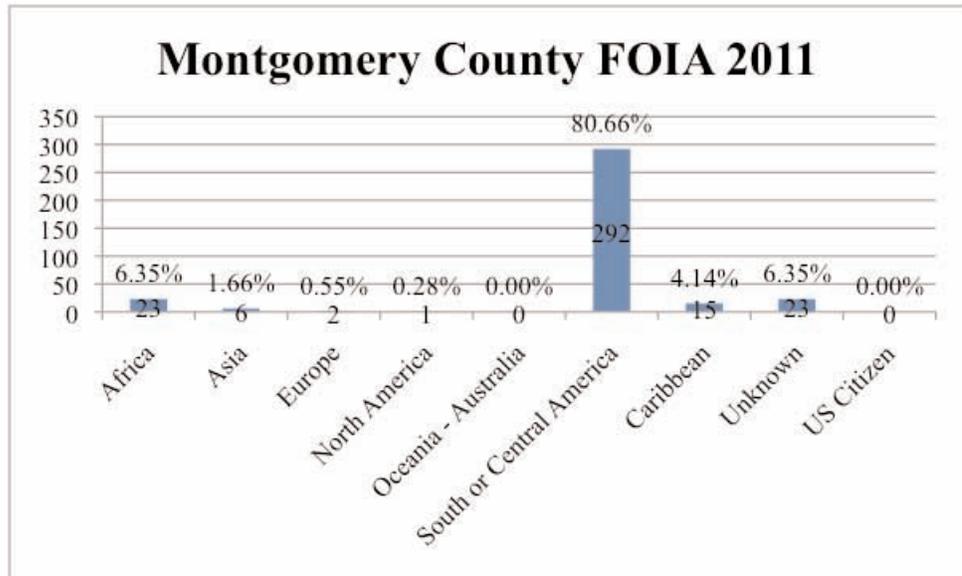


- Almost 66 percent were from Latin American countries.

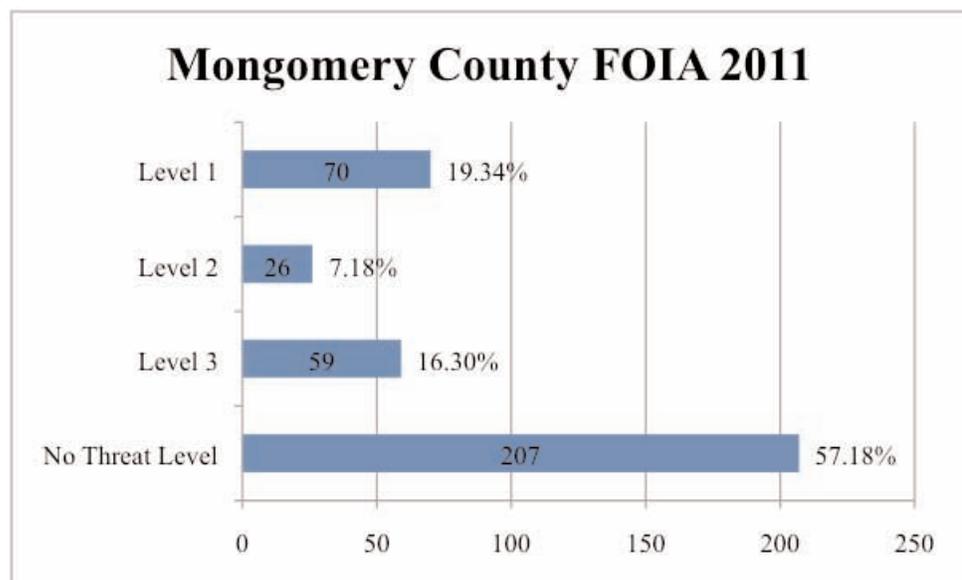


**MONTGOMERY COUNTY  
FOIA Data FY2011**

- In FY2011, about 362 individuals were held on an immigration detainer.
- Almost 85 percent were of Latin American or Caribbean origin.

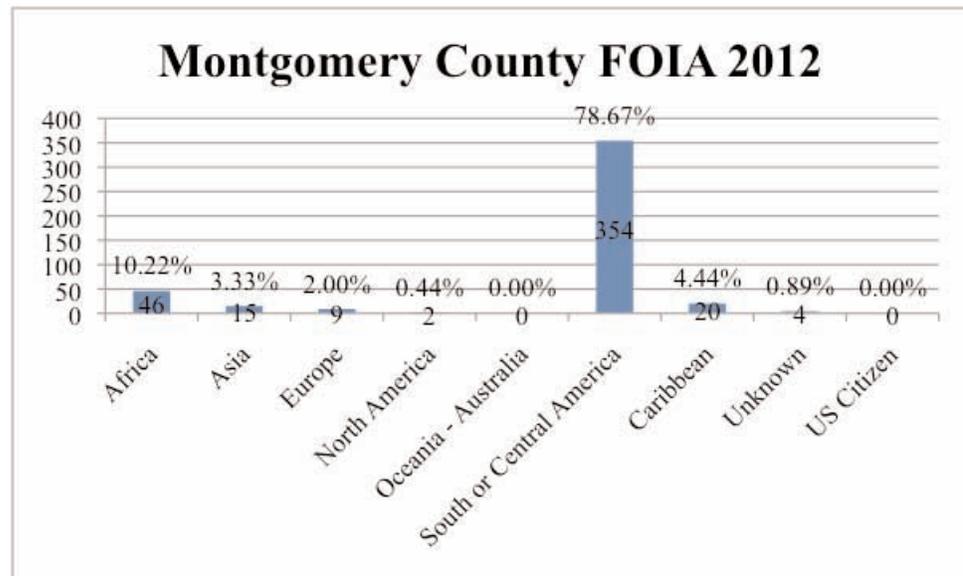


- More than 57 percent had no threat level indication.
- At least 24 percent were charged only with Level 2 or 3 offenses, which include traffic, minor misdemeanor, and immigration offenses.

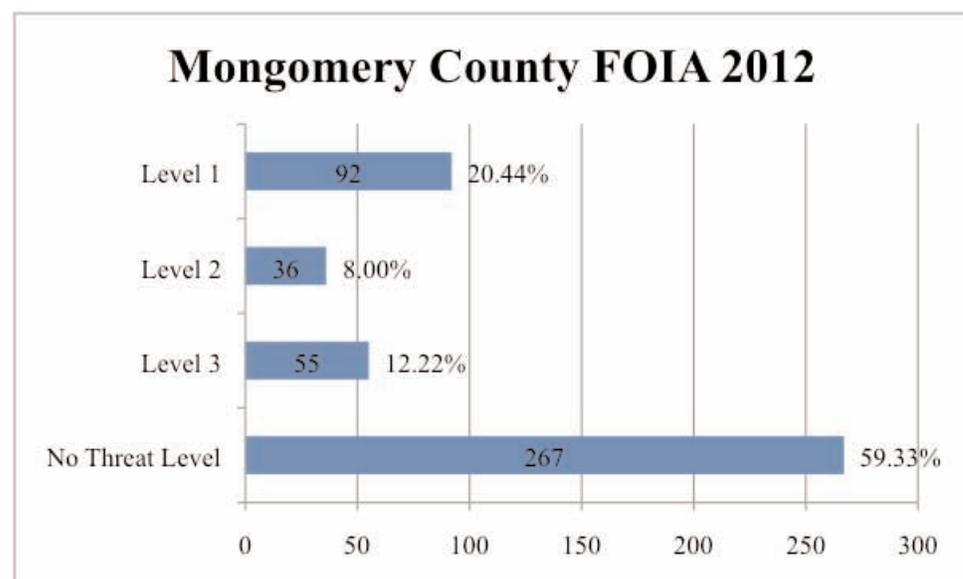


## MONTGOMERY COUNTY FOIA Data FY2012

- In FY2012, about 450 individuals were held on an immigration detainer.
- More than 80 percent were of Latin American or Caribbean origin.

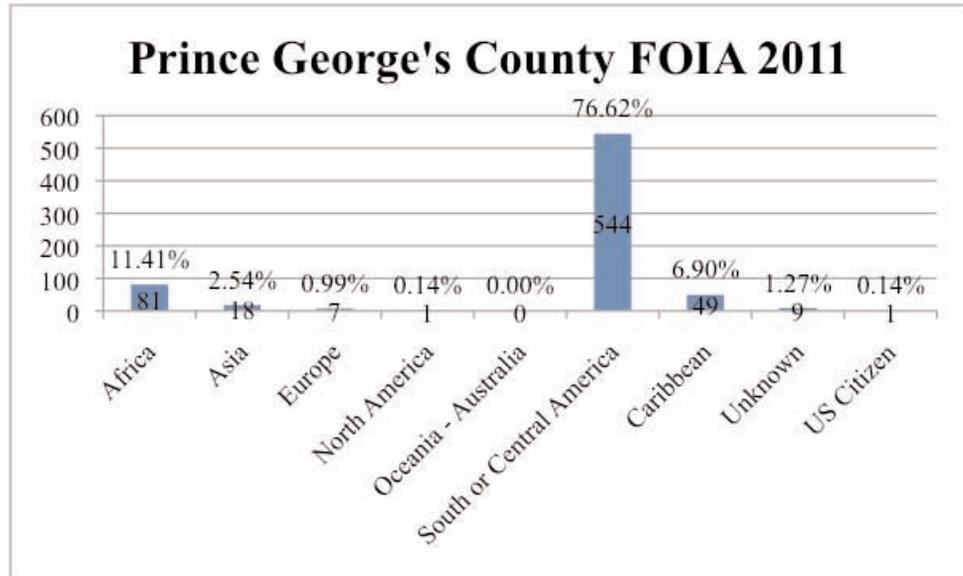


- More than 59 percent had no threat level indication.
- At least 20 percent were charged only with Level 2 or 3 offenses, which include traffic, minor misdemeanor, and immigration offenses.

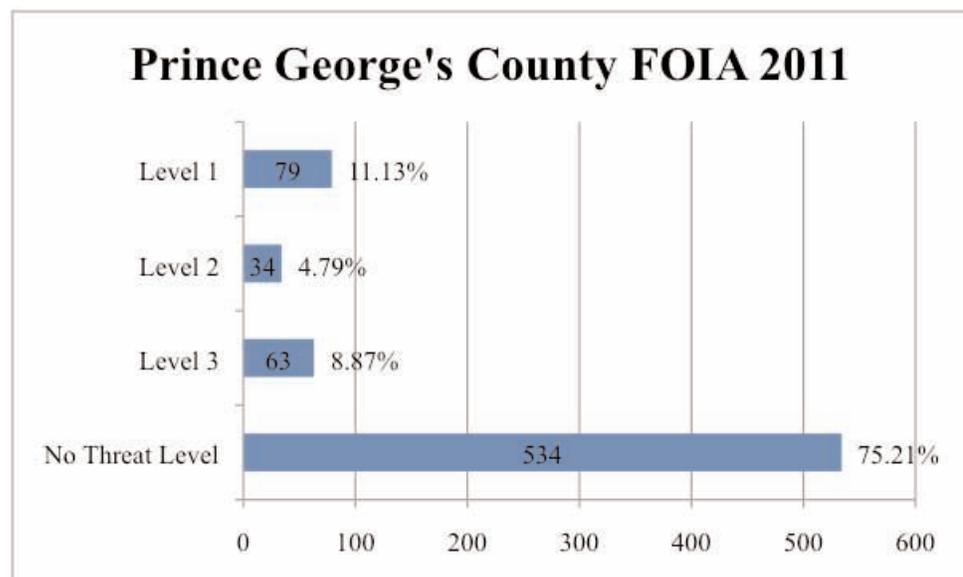


**PRINCE GEORGE'S COUNTY  
FOIA Data FY2011**

- In FY2011, about 710 individuals were held on an immigration detainer.
- More than 80 percent were of Latin American or Caribbean origin.

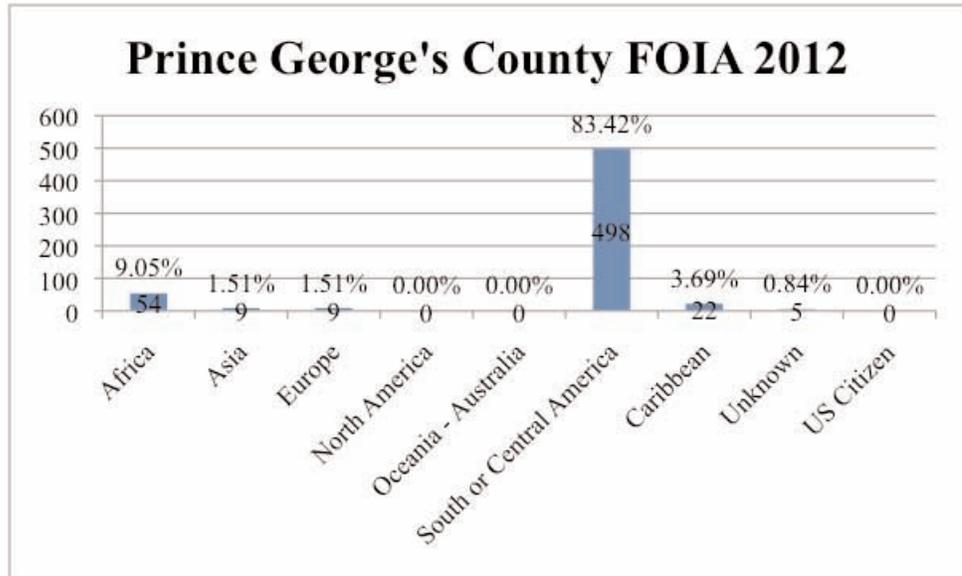


- More than 75 percent had no threat level indication.
- Almost 14 percent were charged only with Level 2 or 3 offenses, which include traffic, minor misdemeanor, and immigration offenses.

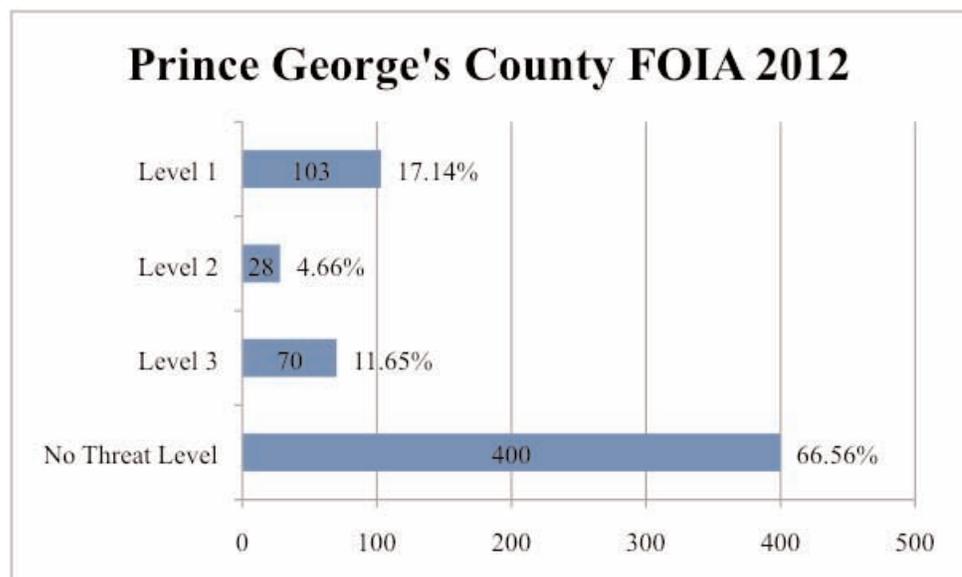


**PRINCE GEORGE'S COUNTY  
FOIA Data FY2012**

- In FY2012, about 597 individuals were held on an immigration detainer.
- More than 85 percent were of Latin American or Caribbean origin.



- More than 66 percent had no threat level indication.
- At least 16 percent were charged only with Level 2 or 3 offenses, which include traffic, minor misdemeanor, and immigration offenses.



## Appendix IV

### Law enforcement speak out in support of limited detainer policies

*“The ‘Secure’ Communities program has diminished trust in our immigrant communities of local law enforcement. This has resulted in less cooperation and conflict for immigrant victims and witnesses of crime.”*

*“It is my opinion that the ‘Secure’ communities program has reduced the number of victims and witnesses in immigrant communities and thus made our communities less safe.”*

*“The Trust Act will ease the unfair budgetary burden which the program places on local governments.”*

**William Lansdowne, Chief of Police, San Diego, CA:** <http://www.aclusandiego.org/site/wp-content/uploads/2013/08/Chief-Lansdowne-TRUST-Act-Support-letter.pdf>

*“[S-Comm has resulted in] documented and undocumented immigrants who are victims or witnesses to crime being fearful of cooperating with police, since any contact can potentially result in separation from their families and deportations.” For this reason, Chief Bejarano wrote a letter in support of the California TRUST Act.*

**David Bejarano, Chief of Police, Chula Vista, CA:** <http://www.aclusandiego.org/site/wp-content/uploads/2013/08/Chief-Bejarano-Support-Letter.pdf>

*“The excessively wide net cast by S-Comm undercuts community policing strategies and undermines the ability of local law enforcement to build trust with immigrant communities they serve.”*

**Manuel Rodriguez, Chief of Police, National City, CA:** <http://www.aclusandiego.org/site/wp-content/uploads/2013/08/Chief-Rodriguez-ACLU-The-TRUST-Act-AB-4-Support.pdf>

*“[A]fter the point that someone is arrested for a minor violation and detained because of their immigration status, the message has already been sent to the immigrant community that police are to be feared.”*

**Arturo Venegas, Jr., retired Police Chief, Sacramento, CA**

*“She was a victim of domestic violence, she was taken to jail and she ended up getting turned over to ICE. All because she sought help from the Escondido Police Department.”*

**Bill Flores, retired Assistant Sheriff, Escondido, CA** (about the negative impact of S-Comm and immigration detainers on domestic violence victims).

## Appendix V

### ICE admissions that immigration detainees are voluntary



#### **ACLU Fact Sheet:** **ICE Statements Acknowledging that ICE Detainers Are Requests**

##### **ICE detainer requests are just that—requests.**

Federal regulations provide that an ICE “detainer is a request[.]” 8 C.F.R. § 287.7(a) (emphasis added). *See also* 8 C.F.R. § 287.7(d) (titled “Temporary detention at Department request.”) (emphasis added).

When ICE sends a detainer request to a state or local law enforcement agency (LEA), it uses a form that mirrors this “request” language in the regulation. Form I-247 provides: “IT IS REQUESTED THAT YOU: Maintain custody of the subject for a period NOT TO EXCEED 48 HOURS[.]” [ICE Detainer Form I-247](#) (revised Dec. 2011) (emphasis added). Similarly, ICE’s own [website](#) states that “[a]n immigration detainer serves . . . to request that the LEA maintain custody of an alien.”

As [federal courts](#), [legal scholars](#), and [state and local government attorneys](#) have recognized, **LEAs are not legally required to comply with these detainer requests**. Nevertheless, many LEAs mistakenly believe that ICE detainers are mandatory. ICE has benefited from—and [purposely cultivated](#)—that confusion. In public, ICE generally tries to avoid taking a clear position on the voluntary nature of ICE detainers, saying only that detainers are “formal requests” with which ICE “[expect\[s\]](#)” or “[anticipates](#)” LEAs will comply.

Yet, when pressed, and in internal documents, **ICE and DHS officials have repeatedly acknowledged that ICE detainers are merely requests**. Here are just a few examples:

- Letter from David Venturella, ICE Assistant Director, to Miguel Márquez, County Counsel of Santa Clara County, California (undated, 2010), at <http://media.sjbee.org/files/2011/10/4-ICE-response-to-SCC.pdf> (see page 11) (in response to the County Counsel’s question whether detainers are “required . . . or . . . merely requests,” Venturella describes them as “a request”)
- ICE Q&A (Jan. 26, 2011), ICE FOIA 2674.017695, <http://altopolimigra.com/wp-content/uploads/2011/12/ICE-FOIA-2674.017695.pdf> ([Question:] “Is an ICE detainer a request or a requirement? Answer: It is a request. There is no penalty if they don’t comply.”)

- ICE Memo Re: Briefing of Congressional Hispanic Caucus staff (Oct. 2010), ICE FOIA 2674.020612, at <http://altopolimigra.com/wp-content/uploads/2011/12/ICE-FOIA-2674.020612.pdf> (“[Local law enforcement agencies] are not mandated to honor a detainer, and in some jurisdictions they do not.”)
- DHS Office of Civil Rights and Civil Liberties Briefing Video on “How to Respond to an Immigration Detainer” at 1:53 (2012) at [http://www.ice.gov/news/galleries/videos/immigration\\_detainers.htm](http://www.ice.gov/news/galleries/videos/immigration_detainers.htm) (“The immigration detainer is a formal request to temporarily detain . . . aliens . . .”)
- ICE Frequently Asked Questions, at <http://www.ice.gov/news/library/factsheets/detainer-faqs.htm> (describing detainers as a “request that the LEA maintain custody of an alien”)



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