



## IT IS TIME FOR COLORADO TO STOP HONORING IMMIGRATION DETAINERS\*

The ACLU of Colorado calls upon all Colorado sheriffs to promptly join the growing number of local law enforcement agencies that have chosen to stop imprisoning people based on immigration detainers.

### **What is an immigration detainer?**

Immigration detainers (also called “ICE detainers” or “ICE holds”) are routinely issued by federal Immigration and Customs Enforcement (“ICE”). They ask sheriffs to continue imprisoning a person for up to six days past the time when the person would otherwise be released, so that ICE can decide whether to take that person into federal custody for a possible immigration violation. Deportation proceedings are civil, not criminal, cases. Remaining in the United States in violation of federal immigration laws is not a crime.

### **Colorado Sheriffs Have No Lawful Authority to Hold Someone on an Immigration Detainer**

### **ICE detainers are requests; they are not commands that sheriffs must obey**

In the past, sheriffs may have believed that ICE detainers were a command from the federal government that sheriffs were required to obey. Recent court decisions and federal officials now agree that detainers are a mere request, not a command. Federal law does not (and cannot) require that a sheriff comply with the detainer’s request to hold persons beyond the time when they are otherwise eligible for release. Thus, when a Colorado sheriff honors an immigration detainer, the sheriff is making a choice, not discharging a mandatory duty.

### **ICE detainers are not warrants**

ICE detainers are not warrants. Unlike warrants, ICE detainers are not issued by a judge and are not supported by a judicial determination of probable cause. Indeed, ICE frequently issues immigration detainers without even probable cause to believe the subject is deportable. The fact that ICE has issued a detainer does not mean that the subject is actually a non-citizen subject to deportation. In fact, with disturbing regularity, ICE has been issuing detainers erroneously against United States citizens and legal residents who are not subject to deportation.

### **ICE detainers do not provide a lawful basis for sheriffs to detain a person**

By asking sheriffs to hold persons past their release date, an immigration detainer asks Colorado sheriffs to make a new arrest. Colorado law, however, does not authorize peace officers to make an arrest or otherwise deprive someone of liberty on the basis of an immigration detainer. Colorado peace officers derive their authority from statutes that expressly provide officers the authority to imprison

someone only when specified conditions are met. For example, peace officers can take persons into custody when there is probable cause to believe they have committed a crime. But remaining in the country in violation of federal immigration laws is a civil matter, not a crime. Colorado law does not authorize peace officers to imprison persons simply because they are suspected of a civil violation of federal immigration law. When sheriffs choose to honor ICE detainers, they also risk legal liability. Around the country, sheriffs are facing (and losing) lawsuits filed by prisoners who argue that extending their incarceration on the basis of an immigration detainer violated their constitutional rights. Three recent court decisions make clear that a sheriff violates the Fourth Amendment by holding a prisoner on the basis of an ICE detainer that is not supported by probable cause.

## Honoring ICE Detainers is Expensive and Unnecessarily Undermines Public Safety

### **Colorado taxpayers foot the bill for ICE detention**

Immigration detainers impose significant costs on taxpayers that are not reimbursed by the federal government. It is the taxpayer, not ICE, that must bear the costs of incarcerating people for up to six days on an ICE detainer. This cost is significant. Between October 2011 and August 2013, ICE issued over 8,700 detainers to Colorado jails, with almost every county jail in Colorado affected. A 2012 study estimated that Colorado is spending \$13 million per year detaining suspected immigration violators.

In addition, sheriffs who honor immigration detainers risk significant legal costs defending detainer-related lawsuits, which are becoming increasingly frequent, with increasing success for plaintiffs.

### **Honoring ICE detainers undermines public safety**

Enforcing immigration law is the responsibility of the federal government. When sheriffs choose to comply with ICE detainers, they risk undermining both public safety and community trust by transforming local law enforcement, in the eyes of the community, into proxy immigration enforcers. The public pronouncements of ICE promote a myth that the agency protects public safety by targeting only serious criminals for deportation. The reality is different. The vast majority of detainers are lodged against persons with no criminal conviction or only a minor conviction. In Colorado, 39% of immigration detainers are lodged against individuals with no criminal record.

Because the subjects of ICE detainers often have little or no criminal history, or came into contact with the police only because they were the victim of or witness to a crime, honoring ICE detainers sends out a strong signal to the immigrant community – that deportation is a potential consequence of any interaction, however innocent, with law enforcement. This signal has the predictable effect of deterring persons who have undocumented friends or relatives – including citizens and legal permanent residents as well as undocumented immigrants – from contacting law enforcement for any reason. By declining to comply with ICE detainer requests, sheriff's offices can maintain a clear distinction between local officers and federal immigration authorities, encourage people to report crimes and cooperate in community policing efforts, and increase the safety of the whole community.

\*For a detailed analysis of the legality and costs of Colorado sheriffs complying with ICE detainers, please view the ACLU of Colorado's April 29, 2014 letter to all Colorado sheriffs:

<http://aclu-co.org/wp-content/uploads/2014/05/ACLU-Letter-to-Colorado-Sheriffs.pdf>