



ICE asserts they have probable cause of removability, but many state laws require local law enforcement to have probable cause of a crime to arrest or detain someone, not of a civil immigration violation. Thus the detainer may not authorize detention in many states.

A detainer issued from the Pacific Enforcement Response Center (PERC), or any ICE office in the Central District of California, as well as [any other ICE office during PERC coverage](#), may not be based on the 3rd and 4th boxes below involving "biometric confirmation" or "statements made."

There is no review of probable cause by a judge or neutral magistrate as required by the 4th Amendment, either before issuing a detainer or after ICE takes custody.

ICE issues detainers based on:

1. Final order of removal
2. Pending removal proceedings.
3. Fingerprint checks matched against records in DHS databases. (Secure Communities)
4. Admissions of the person directly to immigration officials.

The form must be served on the immigrant for it to take effect. Proof of service needs to be returned to ICE.

Detainers request both notice of release and extra 48 hours detention.

The detainer should not affect bail or other custody decisions.

Foreign birth plus a lack of other information in DHS databases is not sufficient for probable cause.

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) _____

Name of Individual: _____
Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE INDIVIDUAL. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

- 1 A final order of removal against the individual;
- 2 The pendency of ongoing removal proceedings against the individual;
- 3 Biometric confirmation of the individual's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- 4 Statements made by the individual to an immigration officer and/or other reliable evidence that affirmatively indicate the individual either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE INDIVIDUAL TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

Upon completion of the proceeding or investigation for which the individual was transferred to your custody, DHS intends to resume custody of the individual to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Serve the individual** a copy of this form, and complete and return to ICE the service information at the bottom of this form. If the detainer is not served, the detainer is not valid and may not be relied upon to maintain custody of the individual.
- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the individual is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- **Maintain custody** of the individual for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The individual **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the individual's bail, rehabilitation, parole, release, diversion, custody classification, work quarter assignments, or other matters
- **Relay this detainer** to any other law enforcement agency to which you transfer custody of the individual.

_____ (Name of Immigration Officer)
_____ (Signature of Immigration Officer) (Sign in ink)

continued...

There is no clear process for the immigrant to contest the information or allegations on a detainer, but this phone number is available, including for calls from detention facilities.

...may be the victim of a crime or you want the individual to remain in the United States for a law enforcement
...Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other
...out this matter.

...THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE INDIVIDUAL WHO IS THE SUBJECT OF

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____ .

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the individual on _____, in the following manner:

in person by inmate mail delivery other (please specify): _____

(Name and title of Officer)

(Signature of Officer) (Sign in ink)

The detainer form provides dedicated space for the local agency to serve the detainer on the individual and to verify service. Without service, the detainer is not valid.

Individuals subject to invalid detainers should contest any prolonged detention, but also be wary of what actions ICE may take to arrest the person anyway.

If you see a detainer that violates the requirements described here, please alert class counsel at litigation@immigrantjustice.org or GonzalezSettlement@aclusocal.org. For more information on the case, see: https://immigrantjustice.org/court_cases/gonzalez-v-ice