

# DRAFT ONLY FOR DISCUSSION AND COMMENT

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### Policy Number [TBD]: Detainers

**Issue Date:** [TBD]

**Effective Date:** [TBD]

**Superseded:** LESC LOP 005-09 September 23, 2009

**Federal Enterprise Architecture Number:** [TBD]

1. **Purpose/Background.** This directive establishes the policy of U.S. Immigration and Customs Enforcement (ICE) regarding the issuance of civil immigration detainers.
2. **Definitions.** The following definitions apply for purposes of this directive only.
  - 2.1. **A detainer** (Form I-247) is a notice that ICE issues to Federal, State, and local law enforcement agencies (LEAs) to inform the LEA that ICE intends to assume custody of an individual in the LEA's custody. An immigration detainer may serve three key functions—
    - notify and LEA that ICE intends to arrest or remove an alien in the LEA's custody once the alien is no longer subject to the LEA's detention;
    - request information from an LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA's custody; and
    - request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody.
  - 2.2. **An Immigration officer** includes an officer or an agent who is authorized to issue detainers pursuant to 8 C.F.R. § 287.7(b), or who a state, local, or tribal officer or agent who is delegated such authority pursuant to § 287(g) of the Immigration and Nationality Act.
  - 2.3. **Traffic-related misdemeanors** include any violation of local vehicle and traffic laws that are not considered felonies under that jurisdiction's law.
3. **Policy.**
  - 3.1. Only immigration officers may issue detainers.
  - 3.2. Immigration officers shall issue detainers only after an LEA has exercised its independent authority to arrest the alien for a criminal violation.
  - 3.3. As a general matter, immigration officers should not issue detainers against an alien charged only with a traffic-related misdemeanor unless or until the alien is convicted,

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unless—

- the alien has a prior criminal conviction;
- the alien previously has been excluded, deported, or removed from the United States or allowed to voluntarily return to his or her country of nationality;
- the alien is the subject of an outstanding immigration warrant or is the subject of a final order;
- the alien is part of an existing criminal investigation;
- an articulable reason exists to believe that the alien presents a danger to national security or a genuine risk to public safety; or
- the traffic-related misdemeanor involves driving under the influence of alcohol or drugs, physical injury to a person or property, or flight from the scene of an accident.

### 4. Procedures.

- 4.1. Immigration officers shall not issue a detainer unless an LEA has exercised its independent authority to arrest the alien. Immigration officers shall not issue detainers for aliens who have been temporarily detained by the LEA (i.e., roadside or *Terry* stops) but not arrested. This policy, however, does not preclude temporary detention of an alien by the LEA while ICE responds to the scene.
- 4.2. If an immigration officer has reason to believe that an individual in the custody of an LEA is subject to ICE detention for removal or removal proceedings, and issuance of the detainer otherwise comports with this policy and appears to advance the priorities of the agency, the immigration officer may issue a detainer (Form I-247) to the LEA.
- 4.3. If the alien is the subject of an administrative arrest warrant, warrant of removal, or removal order, the immigration officer who issues the detainer should attach the warrant or order to the detainer, unless impracticable.
- 4.4. Immigration officers are expected to make arrangements to assume custody of an alien who is the subject of a detainer in a timely manner and without unnecessary delay. Although a detainer serves to request that an LEA temporarily detain an alien for a period not to exceed 48 hours from the time the LEA otherwise would have released the alien (excluding Saturdays, Sundays, and holidays) to permit ICE to assume custody of the alien, immigration officers should avoid relying on that hold period. If at any time after a detainer is issued, ICE determines it will not assume custody of the alien, the detainer should be withdrawn or rescinded and the LEA notified.
- 4.5. ICE shall timely assume custody of the alien if ICE has opted to lodge a detainer against an alien in any of the following categories—
  - aliens who are subject to removal based upon certain criminal or security-related grounds set forth in INA § 236(c);
  - aliens who are within the “removal period,” as defined in INA § 241(a)(2); and

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- aliens who have been arrested for controlled substance offenses under INA § 287(d).
- 4.6. Immigration officers shall take particular care when issuing a detainer against a lawful permanent resident (LPR) as some grounds of removability hinge on a conviction, while others do not [eg. removability pursuant to INA § 237(a)(4) and INA § 237(a)(1)(E).] Although in certain instances ICE may hold LPRs for up to 48 hours to make charging determinations, immigration officers should exercise such authority judiciously and seek advice of counsel for guidance if the LPR has not been convicted of a crime.
- 4.7. Immigration officers should consult their supervisors or local chief counsel office with all inquiries, questions, or concerns regarding this policy.
5. **Authorities/References.**
- 5.1. INA §§ 103(a)(3), 236, 241, 287.
- 5.2. 8 C.F.R. §§ 236.1, 287.3, 287.5, 287.7, 287.8, 1236.1.
6. **Attachments.** None.
7. **No Private Right Statement.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.

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