



CIVIL RIGHTS DIVISION

Compliance with Immigration Detainers Issued by U.S. Immigration and Customs Enforcement

On August 14, 2014, the Office of the Attorney General advised Washington County Sheriff Douglas W. Mullendore that a policy of keeping individuals in custody for up to 48 hours past their State release date in response to ICE detainers without probable cause exposes local law enforcement to potential liability for unconstitutional detentions. Below are some essential points from the advice letter:

Receipt of an ICE immigration detainer:

- An immigration detainer, by itself, does not mandate or authorize the continued detention of a person beyond the time at which they would be released under State law.
- An immigration detainer likely does not provide a defense to any liability that might attach for an unconstitutional detention.
- Liability of local officials who act on an immigration detainer will depend on whether they have probable cause to believe that a person has committed a crime.

Compliance with an ICE immigration detainer is discretionary:

- Compliance with an immigration detainer is not mandatory. Therefore, a local official's reliance on them will not provide a blanket defense to liability for detaining a person beyond the point at which, under State law, he or she ought to have been released.

ICE Immigration Detainer Form I-247:

- A law enforcement officer may detain the subject of an immigration detainer if the information on the detainer form provides the officer with probable cause to believe that the person has committed a criminal violation of federal immigration law or some other crime.
- Form I-247 may provide probable cause for local officials to hold a detainee beyond their scheduled release date depending on which boxes are checked.
- Two boxes which likely provide sufficient probable cause are:
 - The detainee "has illegally re-entered the country after a previous removal or return", because illegal re-entry is a federal crime.
 - The detainee "has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud", because immigration fraud is a federal crime.
- Other boxes include within them criminal activity that could potentially qualify as a basis for further detention but, because they also include activity that would not qualify, the local official should contact ICE about both the existence of probable cause and the specific grounds for removal.