No. 12-3991

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ERNESTO GALARZA,
Plaintiff-Appellant,

v.

COUNTY OF LEHIGH,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania (No. 10-cv-06815)

BRIEF OF LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT AND IN SUPPORT OF REVERSAL

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STATEMENT OF *AMICI CURIAE*

Amici curiae are law professors and scholars who teach, research, and practice in the area of immigration and nationality law and criminal law. *Amici* offer this brief to share their view on whether immigration detainers issued by federal executive branch officials pursuant to federal regulation can operate as orders requiring state and local governments to prolong the detention of individuals who would otherwise be released from custody. No federal Court of Appeals has addressed this question. Because the answer depends upon constitutional doctrine with deep historical roots (involving both the Fourth and Tenth Amendments), historical practices and judicial decisions concerning immigration detainers, and an analysis of the statutory structure Congress has created for immigration enforcement, it is of great importance to scholars and practitioners alike.

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SUMMARY OF ARGUMENT

In holding that Lehigh County could not be held liable for its policy respecting immigration detainers, the district court determined that the federal immigration detainer regulation, 8 C.F.R. § 287.7,[1] *required* the County to detain Appellant Ernesto Galarza. The district court erred, because a regulation compelling state or local law enforcement agencies to detain individuals in their custody at the behest of federal officials would be unconstitutional and *ultra vires*. First, a federal law compelling state or local governments to participate in a federal enforcement scheme would violate the anti-commandeering principle articulated in *Printz v. United States*, 521 U.S. 898 (1997). Second, such an interpretation would contravene not only the strict limits Congress has set for state assistance in federal immigration enforcement, but also for the enforcement authority of *federal* immigration officials. Third, such an interpretation would suggest the regulation authorizes detention in some circumstances (such as Mr. Galarza's) without the support of probable cause and for more than 48 hours without an opportunity for a hearing before a neutral magistrate, in direct violation of the Fourth Amendment's prohibition on unreasonable seizures. For all these reasons, the district court's interpretation of the detainer regulation, as *requiring* a locality like Lehigh County

[1] 8 C.F.R. § 287.7 is reproduced at Appendix A2-A3.

to detain prisoners for the federal government, is inconsistent with federal constitutional and statutory law and must be corrected.

ARGUMENT

I. DETAINERS CANNOT BE ORDERS BECAUSE THEY WOULD VIOLATE THE PRINCIPLES OF DUAL SOVEREIGNTY AND ANTI-COMMANDEERING ENSHRINED IN THE TENTH AMENDMENT.

"It is incontestible that the Constitution established a system of 'dual sovereignty.'" *Printz v. United States*, 521 U.S. 898, 918 (1997) (citations omitted). Dual sovereignty is "reflected throughout the Constitution's text," wrote the *Printz* Court, and residual state sovereignty "was rendered express by the Tenth Amendment's assertion that '[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'" *Id.* at 919 (quoting U.S. CONST. amend. X).

The district court's holding that detainers are orders that state and local agencies are bound to follow violates this principle of dual sovereignty, as well as its corollary that the federal government cannot "commandeer" the government agencies of the states or their political subdivisions.

A. Dual sovereignty and Tenth Amendment anti-commandeering doctrine preclude the federal government from compelling state and local officials to detain prisoners.

Printz held "[t]he Federal Government may…[not] command the States' officers, or those of their political subdivisions, to administer or enforce a federal

regulatory program." 521 U.S. at 935. An immigration detainer *ordering* state and local officials to continue to hold an individual in their custody would violate this constitutional principle. "[S]uch commands are fundamentally incompatible with our constitutional system of dual sovereignty." *Id.*

At issue in *Printz* was a stopgap provision of the Brady Handgun Violence Prevention Act of 1993. The Act required state and local law enforcement officers in some circumstances to make "reasonable efforts" to determine whether a prospective purchaser was barred from purchasing a handgun. The *Printz* Court found Congress lacked the authority to impose this forced participation. The Court rejected the government's suggested distinction between "'making law' and merely 'enforcing' it, between 'policymaking' and mere 'implementation,'" and prohibited absolutely the reduction of states to "puppets of a ventriloquist Congress." *Id.* at 927-28.

Printz speaks directly to whether federal officials, including those responsible for immigration enforcement, can order state or local law enforcement agencies to undertake detention on behalf of the federal government. The Court noted that "[t]he power of the Federal Government would be augmented immeasurably if it were able to impress into its service – and at no cost to itself – the police officers of the fifty States," and cautioned that permitting the federal government to undertake such commandeering would invert political

accountability for the actions mandated by the federal government. *Id.* at 922, 930. Considering immigration detainers as binding commands to state and local officials to detain individuals in their custody would accomplish exactly what the Court held forbidden in *Printz.*

The extent of the federal intrusion into a state's sovereignty does not factor into the constitutional analysis because, the Court held, structural protections such as dual sovereignty are not subject to balancing. *Id.* at 931-32. But even if the degree of commandeering were relevant, detainers would require far more of state and local officials than the provision at issue in *Printz*. Whereas the Brady Act provision required no affirmative action by state and local officials beyond making "reasonable efforts" to determine the legality of a handgun sale, detainers would require state and local officials to jail their own residents on civil immigration grounds at the federal government's direct order. Such direct federal control over state officials far exceeds the regulatory regime *Printz* invalidated.

The historical precedents cited in *Printz* also reveal the impermissibility of detainers as commands and demonstrate a longstanding recognition that states control their own officers. Despite the obvious appeal a federal commandeering power would have had for a small and poor early national government, the Court noted that Congress carefully avoided encroaching on the states' control over their

own law enforcement officials and prisons, even while the federal government had few, if any, of its own:

> On September 23, 1789 – the day before its proposal of the Bill of Rights, the First Congress enacted a law aimed at obtaining state assistance of the most rudimentary and necessary sort for the enforcement of the new Government's laws: the holding of federal prisoners in state jails at federal expense. Significantly, the law issued not a command to the States' executive, but a recommendation to their legislatures. Congress "recommended to the legislatures of the several States to pass laws, making it expressly the duty of the keepers of their gaols, to receive and safe keep therein all prisoners committed under the authority of the United States," and offered to pay 50 cents per month for each prisoner. Moreover, when Georgia refused to comply with the request, Congress's only reaction was a law authorizing the marshal in any State that failed to comply with the Recommendation of September 23, 1789, to rent a temporary jail until provision for a permanent one could be made.

Id. at 909-10 (citations omitted). If immigration detainers *mandated* that state and local law enforcement agencies undertake detention on behalf of federal immigration authorities, they would be materially indistinguishable from a command that they house prisoners convicted of violating federal criminal offenses – a move the early Congress tellingly avoided.

The historical examples surveyed in *Printz* demonstrate that the anti-commandeering principle applies with equal force in the context of enforcing federal immigration law. In 1882, Congress enacted a law which "enlisted state officials 'to take charge of the local affairs of immigration in the ports within such State, and to provide for the support and relief of such immigrants therein landing as may fall into distress or need of public aid'; to inspect arriving immigrants and

exclude any person found to be a 'convict, lunatic, idiot,' or indigent; and to send convicts back to their country of origin 'without compensation.'" *Id.* at 916. Crucially, however, as the Court pointed out, "[t]he statute did not [] *mandate* those duties, but merely empowered the Secretary of the Treasury 'to *enter into contracts* with such State ... officers as *may be designated* for that purpose *by the governor* of any State.'" *Id.*

The hard and fast prohibition on the exercise of federal control over state officials derives not from a solicitousness of states as sovereign entities *per se*, but rather from an understanding that the Constitution preserved state sovereignty as a structural safeguard to protect the rights of the people. For the *Printz* court, "[t]he great innovation" of the constitutional protection of dual sovereignty "was that 'our citizens would have two political capacities, one state and one federal, each protected from incursion by the other' – 'a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.' The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens." 521 U.S. at 919 (quoting *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 838 (1995) (Kennedy, J., concurring)). The Court's uncompromising enforcement of the principle ensures that each sovereign's actions and policies

remain within their respective spheres of control, thereby preserving political accountability.

Detainers, if orders from the federal government to a state or local government, would sever the connection that the principle of dual sovereignty preserves between state agency and state action. The Constitution requires that when a state or locality jails one of its residents, it is the state or locality that has chosen to do so. As explained in *New York v. United States*, 505 U.S. 144 (1992):

> The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

Id. at 181 (quoting *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J., dissenting)). Here, these principles ensure that the federal government cannot require state and local governments to detain anyone at the federal government's bidding, no matter the reason. For the protection of individual liberty, and to ensure that state responsibility tracks state action, the immigration detainers the federal government issues to state and local law enforcement agencies cannot compel the participation of state or local officials.

B. Numerous state and local jurisdictions have recognized that immigration detainers cannot be mandatory.

A number of state and local governments have publicly recognized that the anti-commandeering principle embodied in the Tenth Amendment and dual sovereignty ensures that immigration detainers cannot be mandatory and create no obligation on the part of their officials to take any action. California's Attorney General Kamala D. Harris put it most succinctly: "If such detainers were mandatory, forced compliance would constitute the type of commandeering of state resources forbidden by the Tenth Amendment." Kamala D. Harris, Attorney General of California, Information Bulletin: Responsibilities of Local Law Enforcement Agencies under Secure Communities (Dec. 4, 2012) (citing *Printz*, 521 U.S. at 925; *New York*, 505 U.S. at 161). Immigration detainers are "not compulsory," Harris instructed. "[A]n agency must decide for itself whether to devote resources to holding suspected unlawfully present immigrants on behalf of the federal government. … Immigration detainer requests are not mandatory, and each agency may make its own decision about whether or not to honor an individual request." *Id.*

A number of localities, including Washington, D.C., New York City, and Chicago and surrounding Cook County, Illinois, and the State of Connecticut, have adopted laws or policies which recognize that they possess ultimate authority to decide how to respond to immigration detainers and which guide their officials on

how to decide whether or not to comply with a detainer. *See*, *e.g.*, Bd. of Supervisors of the Cnty. of Santa Clara, State of California, Board of Supervisors' Policy Manual § 3.54, Civil Immigration Detainer Requests (resolution adopting § 3.54 available at http://bit.ly/YiQ8y6); Cook County Ordinance § 46-37(a), available at http://bit.ly/15SWpFY; Chicago Municipal Code §§ 2-173-05, 2-173-042 (2012), available at http://bit.ly/ZQxQFD; N.Y. City Administrative Code § 9-131 (2011); Brent Begin, San Francisco County Jail Won't Hold Inmates for ICE, SF EXAMINER (May 5, 2011) (describing policy adopted by San Francisco Sheriff Michael Hennessey); City of Berkeley, California Council, Regular Meeting Annotated Agenda (Oct. 30, 2012), available at http://bit.ly/WOmMfO); D.C. Acts 19-442, Immigration Detainer Compliance Amendment Act of 2012, 59 D.C. Reg. 10153-55 (Aug. 24, 2012).

Explicit in the adoption of these measures has been the understanding that the federal government, because of dual sovereignty and anti-commandeering principles, cannot compel state or local officials to prolong the detention of a prisoner who would otherwise be released. *See* Santa Clara County Board of Supervisors, Resolution No. 2010-316 at 1 (enacted June 22, 2010) ("WHEREAS, consistent with the U.S. Constitution's prohibition on the federal commandeering of local resources, the Board of Supervisors has long opposed measures that would deputize local officials and divert County resources to fulfill the federal

government's role of enforcing civil immigration law …."); Cook County Ordinance § 46-37(a), (c) (stating that Cook County "shall decline ICE detainer requests unless there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainer shall be reimbursed," and noting there is "no legal authority upon which the federal government may compel an expenditure of County resources to comply with an ICE detainer"). The TRUST Act, passed by the California legislature but vetoed by Governor Jerry Brown, included a legislative finding that immigration detainers are "voluntary requests." *See* California TRUST Act, A.B. 1081, 2011-12 sess., § 1(a), available at http://bit.ly/XgpaXy.

The detainer policies of these jurisdictions reflect an understanding on the part of states and localities that they are ultimately responsible for those they detain in response to a detainer.

II. DETAINERS CANNOT BE ORDERS FOR PROLONGED DETENTION BECAUSE THEY WOULD CLASH WITH THE SYSTEM CONGRESS CREATED FOR IMMIGRATION ENFORCEMENT AND CONSTITUTE *ULTRA VIRES* ACTION BY THE EXECUTIVE BRANCH.

The *Printz* court decried the reduction of state law enforcement officials to the "puppets of a ventriloquist Congress." 521 U.S. at 928. Here, however, Congress has *not* required states and municipalities to detain people for civil immigration purposes. To the contrary, the statutory provisions Congress enacted governing the enforcement of immigration laws respect the sovereignty of non-

federal entities and do not authorize federal officials to require state or local participation in immigration enforcement. Moreover, Congress has carefully limited the scope of federal arrest and detention authority, and further limited non-federal participation in immigration arrests. The district court's holding that detainers are commands that a locality like Lehigh County must obey ignores the statutory system Congress created and sanctions *ultra vires* executive branch action.

A. Congress's immigration enforcement system reflects the anti-commandeering principle and does not authorize federal officials to command state or local officials to detain suspected immigration violators.

The system of immigration enforcement Congress created tracks its historical refusal to require state and local officials to participate in immigration enforcement. As a general matter, Congress has granted authority to federal officials to seek enforcement support from state and local officials only with their consent. The sole statutory provision governing immigration detainers is consistent with this overall scheme, as it references immigration detainers being issued upon the request of the law enforcement agency holding the prisoner. Furthermore, a proper understanding of the detainer statute demonstrates that it does not authorize prolonged detention by state or local officials on immigration grounds.

1. Congress has only authorized federal officials to enlist the support of state or local officials in immigration enforcement on a consensual basis.

As the Supreme Court recently recognized, Congress has permitted state and local immigration enforcement only in narrow circumstances. *Arizona v. United States*, 132 S. Ct. 2492, 2507 (2012); *see also* Section II.B.2, *infra* (discussing these limitations). In each case where Congress has authorized state and local participation in immigration enforcement, it has taken care to make any such cooperation entirely voluntary.

8 U.S.C. § 1357(g), for example, authorizes federal officials to enter into cooperative agreements with state and local law enforcement agencies, whereby state and local officials are essentially deputized to perform immigration enforcement functions. State-federal agreements made pursuant to this provision harken back to the immigration enforcement agreements discussed in *Printz*, as § 1357(g), like its 1882 predecessor statute, does not "*mandate* those duties, but merely empower[s] the Secretary … 'to *enter into contracts* with such State ... officers as *may be designated* for that purpose ....'" *Printz,* 521 U.S. at 916. *See* 8 U.S.C. § 1357(g)(9) ("Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into [such] an agreement").

Other sections of the INA that permit state and local detention of suspected immigration violators similarly permit but do not compel (and do not authorize federal officials to compel) state and local participation. *See*, *e.g.*, 8 U.S.C. §

1103(a)(10) (permitting the Attorney General to "*authorize* any State or local law enforcement officer, *with the consent* of the head of the department, agency, or establishment under whose jurisdiction the individual is serving" to perform the functions of an immigration officer) (emphasis added); 8 U.S.C. § 1324(c) (granting to state and local law enforcement officials "whose duty it is to enforce criminal laws" the "authority" to make certain immigration arrests, but not compelling the exercise of such authority). With respect to detention of prisoners in particular, the INA authorizes the Attorney General to enter into and make payments pursuant to *agreements* with non-federal agencies for detaining prisoners, 8 U.S.C. § 1103(a)(11), again harkening back to *Printz* and its observation that even in the nascent republic the federal government could not compel sub-federal agencies to house federal prisoners. 521 U.S. at 909-10; *see* Section I.A, *supra.*

2. Congress's only explicit mention of immigration detainers does not authorize federal officials to command state or local officials to detain suspected immigration violators.

Congress has explicitly mentioned immigration detainers in only one statute, 8 U.S.C. § 1357(d),[2] enacted as part of the Anti-Drug Abuse Act of 1986. Pub. L. No. 99-570, 100 Stat. 3207, § 1751(d). Consistent with historical detainer practices and with the overall structure of the INA, Congress in Section 1357(d)

[2] Section 1357(d) is reproduced at Appendix A1.

did *not* authorize federal officials to compel state and local participation in immigration enforcement.

a. Reflecting existing detainer practices at the time Congress enacted Section 1357(d), the word "detainer" as used in that statute means a request for notice of a prisoner's upcoming release, not a command (or even request) for prolonged detention by state and local officials.

When Congress enacted Section 1357(d) in 1986, it did so against a background of existing detainer practice. Federal immigration authorities had been issuing notices styled "detainers" since at least the 1950's. *See*, *e.g.*, *Slavik v. Miller*, 89 F. Supp. 575 (W.D. Pa. 1950). As both the federal executive and federal courts understood them, these detainers served only to request *notice* as to when the subject of the detainer would be released from the custody of the receiving institution. The detainers did not purport to authorize, require or request any additional detention by state and local officials beyond the point when the subject would be released from custody. Instead, they merely requested state and local officers to notify immigration authorities to allow *federal* officials to take the subject into *federal* custody.

The limited scope of detainers when Section 1357(d) was enacted was reflected in the language on Form I-247 used at the time, which noted that the form "is for notification purposes only." *See* Form I-247, March 1983 (Appendix A4). The form "requested that" the local jurisdiction (1) "Accept this notice as a detainer"; (2) "[C]omplete and sign…this form and return it to this office"; (3)

"Notify this office of the time of release" of the subject; and (4) "Notify this office in the event of death or transfer to another institution." *Id.*; *see also Vargas v. Swan*, 854 F.2d 1028, 1035 (7th Cir. 1988) (Appendix) (showing a completed copy of the Form I-247 detainer). Nowhere did the detainer purport to request or authorize prolonged detention by the jurisdiction receiving the detainer request. *See*, *e.g.*, *Prieto v. Gulch,* 913 F.2d 1159, 1164 (6th Cir. 1990) ("The detainer notice does not claim the right to take a petitioner into custody in the future nor does it ask the warden to hold a petitioner for that purpose."); *Dearmas v. INS,* No. 92-8615, 1993 WL 213031 (S.D.N.Y. June 15, 1993) (unpub.) ("The standard INS detainer notice … cannot be treated as a request to hold an inmate at the end of his sentence until the INS can take him into custody. Instead, the INS detainer … can only be viewed as a notification procedure which the INS utilizes to facilitate its deportation considerations ….").

The federal government endorsed this understanding in contemporary litigation, pointing to the "for notification purposes only" language on the Form I-247 to support its position that detainers merely functioned as "an internal administrative mechanism" which "merely serves to advise" the local law enforcement agency of its suspicion that the subject is deportable. *Vargas*, 854 F.2d at 1030-33 (7th Cir. 1988). In the executive's view, a detainer is merely a "comity-restrained notice document." *Id.*

Since Congress legislated against this background when it enacted Section 1357(d), the statute reflects nothing more than Congress's recognition of an existing administrative mechanism to request notification from criminal law enforcement agencies. The statute, in context, neither condones nor requires state or local officials to subject prisoners otherwise entitled to release to prolonged detention. The only detention Congress contemplated pursuant to a detainer, *see* 8 U.S.C. § 1357(d)(3) (discussing issuance of a "detainer *to detain* the alien") (emphasis added), is detention by *federal* officials. This is made clear in the statute itself. The sentence immediately following the reference to "detainer to detain" indicates that it is *federal* officials who take custody of the suspected immigration violator once the basis for local detention has ended. 8 U.S.C. § 1357(d)(3) ("If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.").

Moreover, the requirement that any detention caused by a detainer be detention by federal immigration officials is consistent with the historical practice at the time Section 1357(d) was enacted. The practice was not to require prolonged detention by state or local officials, but for those officials to immediately transfer custody to federal officials when the basis for state or local custody ended. *Slavik,* 89 F. Supp. at 576 ("A detainer has been lodged whereby

[the subject] will be delivered to the custody of the immigration authorities *at the time sentence is fulfilled in the state institution*.") (emphasis added); *Chung Young Chew v. Boyd*, 309 F.2d 857, 860 (9th Cir. 1962) ("[P]etitioner was released from the penitentiary and *was immediately taken into physical custody … by an employee of [INS]*.") (emphasis added); *Prieto*, 913 F.2d. at 1164 (noting that the detainer does not "ask" for prolonged detention by the warden). The available legislative history for Section 1357(d) bears this out. The sponsor of Section 1357(d) described the legislation as requiring that "[i]f the individual [named in a detainer] is determined to be an illegal alien *the INS* must take the necessary actions to detain the suspect and process the case." 132 Cong. Rec. H6716-03 (Sept. 11, 1986), 1986 WL 790075 (emphasis added).

Thus, Section 1357(d) is properly understood not as a command requiring state or local officials receiving an immigration detainer to prolong the detention of a prisoner who would otherwise be entitled to release. Instead, Section 1357 is consistent with historical detainer practices, recognizing the detainer as (1) requesting its recipient to notify federal immigration officials of the upcoming release of a prisoner; and (2) requiring immediate assumption of custody by *federal* immigration officials, not prolonged detention by state and local officials who would otherwise have no basis for detention.

b. Section 1357(d) was not meant to impose obligations on state and local officials, but rather to require *federal* officials to be prompt in responding to information provided by state and local agencies.

The federal government's litigation position has been that Section 1357(d) neither generated nor constrained detainer authority, but instead placed specific requirements on the *federal government* to respond promptly to information provided by state and local agencies in cases involving controlled substances. *See* Fed. Defendants' Mot. to Dismiss at 16, *Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma*, No. 08-4220 (N.D. Cal. Jan. 28, 2009), 2009 WL 3502742 ("[T]he scope of 8 C.F.R. § 287.7 reflects the Secretary's broad authority, and responsibility, to 'establish such regulations... and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter'") (quoting 8 U.S.C. § 1103(a)(3)). The only federal district court to consider the argument agreed with this interpretation. *See Comm. for Immigrant Rights of Sonoma Cnty. v. Cnty. of Sonoma*, 644 F. Supp. 2d 1177, 1199 (N.D. Cal. 2009).

Legislative history confirms this understanding of Section 1357(d). The bill's sponsor pointed to the fact that 325 of 724 cases referred to immigration officials by New York City officials during a one-month period were still awaiting initial action eight weeks later. The legislation was proposed to "require[] the INS to respond quickly to an inquiry by a local law enforcement agency and make a

determination as to the status of the suspect." 132 Cong. Rec. H6716-03 (Sept. 11, 1986), 1986 WL 790075.

Thus, Section 1357(d) did not create any new authority in the federal government or impose any new obligations on state and local officials. Instead, against the existing detainer practice described above, *see* Section II.A.2.a, *supra,* it simply prioritized controlled substance cases and imposed an obligation on *federal* officials to "determine promptly whether or not to issue a detainer" in such cases. Section 1357(d) cannot be read as authorizing the federal government to compel state and local officials to prolong the detention of prisoners otherwise entitled to release.

c. The Supreme Court has properly interpreted Section 1357(d) as a request for notice of a prisoner's upcoming release, not a command (or even request) for prolonged detention.

The Supreme Court's understanding of Section 1357(d) is in accordance with the historical practice and legislative intent discussed above. *See* Sections II.A.2.a, II.A.2.b, *supra.* In *Arizona v. United States,* 132 S. Ct. 2492 (2012), the Court considered the proper place of Section 1357(d) in the "system Congress created" for immigration enforcement. The United States pointed to the honoring of detainers by state and local officials as an example of "cooperative enforcement" with federal immigration officials, but tellingly pointed to the detainer *regulation,* not the statute. Brief for the United States at 54, *Arizona v.*

United States, 132 S.Ct. 2492 (2012) (No. 11-182), 2012 WL 939048 ("State and local officials (including in Arizona) have long made arrests at the request of federal immigration officials, and federal officials may place detainers on aliens who are wanted by DHS but who otherwise would be released from state or local custody.") (citing 8 CFR § 287.7). The Supreme Court, however, focusing on what Congress had enacted, looked to Section 1357(d) and described detainers under the statute as mere "requests for information about when an alien will be released from custody." 132 S. Ct. at 2507.

d. Conclusion – Section 1357(d) does not grant authority for federal officials to issue detainers commanding prolonged detention.

For all the above reasons, Section 1357(d) cannot be read as authorizing federal commandeering of state officials through the use of immigration detainers. History and Supreme Court interpretation demonstrate that Section 1357(d) did not alter existing detainer practices, by which a detainer merely requested notice of a prisoner's upcoming release, and did not authorize or envision prolonged detention by the agency receiving the detainer.

B. Construing a detainer as an order for prolonged detention would be inconsistent with Congress's immigration enforcement system because it would exceed the limits on arrest authority Congress placed on both federal and non-federal officials.

The federal government has disclaimed reliance on Section 1357(d) as a source of its detainer authority, relying instead on its "general authority to detain"

as justifying detainers. *See* Section II.A.2.b, *supra.*[3] Whatever its "general authority" may be, it is clear that it does not encompass a power to compel state and local officials to prolong the detention of prisoners who would otherwise be entitled to release. Not only has Congress only authorized federal officials to enlist the support of state or local officials in immigration enforcement on a consensual basis, *see* Section II.A.1, *supra,* it has placed narrow limits on the authority of both federal and non-federal officials to detain suspected immigration violators. Construing detainers as commands to state and local officials ignores these limits.

1. Detainers cannot be construed as commanding prolonged detention because they are not subject to the limits Congress placed on the arrest powers of federal immigration officials.

While federal immigration enforcement authorities rely on their "general authority" rather than Section 1357(d), to support the detainer regulation, *see* footnote 1, *supra,* the arrest authority of federal immigration officials is not a

[3] The first iteration of 8 C.F.R. § 287.7 explicitly grounded its authority in the detainer statute. *See* 52 Fed. Reg. 16370-01, 16373 (May 5, 1987) (stating the regulation was drafted "[i]n compl[iance] with the provisions of [Section 1357(d)(3)]"). But when the rule was issued in final form, specific reference to the detainer statute was abandoned. *See* 53 Fed. Reg. 9281-01, 9283 (Mar. 22, 1988). When commenters protested that the new detainer regulation's grant of authority swept well beyond the limited circumstances contemplated by the statute, the INS responded that such comments "overlooked the *general authority* of the Service to detain any individual subject to exclusion or deportation proceedings," and characterized the detainer statute as merely "plac[ing] special requirements on the Service regarding the detention of individuals arrested for controlled substance offenses, but … not delimit[ing] the general detainer authority of the Service." *See* 59 Fed. Reg. 42406, 42411 (Aug. 17, 1994).

"general authority" but a narrowly limited one. Detainers are issued in situations well beyond the narrow limits Congress has authorized federal officials to subject a suspected immigration violator to prolonged detention.

As the Supreme Court in *Arizona v. United States* noted, Congress authorizes federal immigration officials to make an arrest in the U.S. interior in only one of two circumstances: (1) pursuant to an immigration arrest warrant; or (2) when the person is "likely to escape before a warrant can be obtained" and there is "reason to believe" that he or she has violated federal immigration laws. *See* 8 U.S.C. §§ 1226(a), 1357(a)(2); *Arizona*, 132 S. Ct. at 2506-07 (describing the "federal statutory structure" for "when it is appropriate to arrest an alien during the removal process"). The "reason to believe" standard imports a probable cause requirement in order to satisfy the Fourth Amendment's prohibition against unreasonable seizures. *See Lee v. INS*, 590 F.2d 497, 500 (3d Cir. 1979).

The detainer regulation, however, requires none of these prerequisites be met before a detainer is issued to a criminal jurisdiction. Neither warrant, nor "reason to believe," nor likelihood of escape is required. 8 C.F.R. § 287.7. To the contrary, the regulation states that "[a]ny authorized immigration officer may *at any time* issue a Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency." 8 C.F.R. § 287.7(a)(emphasis added). The detainer lodged against Mr. Galarza in this case provides a perfect

example: (1) no immigration arrest warrant had been issued for his arrest, and (2) there was neither "reason to believe" that Mr. Galarza had violated federal immigration laws (and the face of the detainer did not allege that there was), nor was there a showing that Mr. Galarza was "likely to escape" before a warrant could be obtained.

For years detainers could – and would, as in Mr. Galarza's case – be issued for no reason other than immigration officials initiating an investigation into the targeted prisoner's status. *See* Form I-247 (March 1, 1983); Form I-247 (April 1997) (A5); Form I-247 (August 2010) (Appendix A6); Form I-247 (June 2011) (Appendix A7).[4] The detainer form itself did not purport to require more until the Department of Homeland Security issued new guidelines and a new form in

[4] Interim guidance issued in 2010 suggested that immigration officers could only issue a detainer if there was "reason to believe" the targeted prisoner was "subject to ICE detention for removal or removal proceedings." Dep't of Homeland Sec., Immigration and Customs Enforcement, Interim Policy Number 10074.1, effective August 2, 2010, available at https://www.aclunc.org/docs/legal/interim_detainer_policy.pdf. The detainer form used by federal immigration officials, however, continued to list "initiated an investigation" as a reason for issuance of the detainer, Form I-247 (June 2011) (Appendix A7); Form I-247 (December 2011) (Appendix A10) (all listing "Initiated an investigation" as one possible reason for issuance of the detainer), and it appears the practice of issuing investigatory detainers continued apace. A federal civil rights complaint filed in 2012 alleging detainer illegalities in Los Angeles estimated 78% of detainers issued to the Los Angeles County Sheriff's Department had the "[i]nitiated an investigation" box checked on the Form I-247 detainer. Complaint ¶¶ 25-26, *Roy v. Cnty. of Los Angeles*, No. 12-9012, (C.D. Cal., filed Oct. 19, 2012).

December 2012, requiring federal immigration officials have "reason to believe" the targeted prisoner had violated federal immigration law before issuing a detainer. *See* Form I-247 (December 2012); *see also* Memorandum from John Morton, Director, ICE, to all Field Office Directors, et al., Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local and Tribal Criminal Justice Systems (Dec. 21, 2012), available at https://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf.

Whether immigration officials will limit their use of detainers in the way they have recently announced, one thing is certain: The detainer regulation, if construed as compelling prolonged detention, authorizing detainers to be issued "at any time" and without limitation, far exceeds the arrest authority granted immigration officials by Congress. The regulation would be *ultra vires* if construed as compelling prolonged detention.

2. Detainers cannot be construed as commanding prolonged detention because they are not subject to the limits Congress placed on the immigration arrest powers of state and local officials.

The authority of state and local officials to make immigration arrests is, like the authority given federal officials, a narrowly limited one. Congress indicated that the federal government may not *require* local jurisdictions to engage in immigration enforcement, *see* Section II.A, *supra,* but even *voluntary* participation is strictly curtailed. Detainers cannot be considered commands for state and local

officers to subject suspected immigration violators to prolonged detention because detainers are issued in situations well beyond the narrow limits in which Congress has granted state and local officials such authority.

The Supreme Court in *Arizona v. United States* noted the limited circumstances in which state and local officials may make an immigration arrest. 132 S. Ct. at 2507 (citing 8 U.S.C. § 1357(g)(1); 8 U.S.C. § 1103(a)(10); 8 U.S.C. § 1324(c)). For example, 8 U.S.C. § 1357(g) allows federal officials to deputize state and local law enforcement officers to conduct immigration enforcement, but places a host of conditions on such cooperation. Among other things, the statute contemplates "a written agreement" between the state and the Attorney General and requires local officials to have knowledge of and receive training in federal immigration law before they can participate in immigration enforcement. *See* 8 U.S.C. § 1357(g)(2); *see also Arizona v. United States*, 132 S.Ct. at 2506-07. Detainers require neither an express agreement nor the rudimentary safeguards Congress required such agreements to contain.

Just as the detainer regulation fails to take into consideration the limits on *federal* officials' arrest power, *see* Section II.B.1, *supra,* it equally fails to take into account the limits Congress placed on state and local officials. Nothing in the Immigration and Nationality Act suggests that Congress conferred federal immigration enforcement officials with the authority to request, let alone order,

detention for 48 hours or more by a non-federal entity "at any time," 8 C.F.R. § 287.7(a), without any regard for the limits on state and local officials' power to make immigration arrests. The detainer regulation, if construed as compelling prolonged detention, far exceeds the arrest authority granted state and local officials by Congress. The regulation would be *ultra vires* if construed as compelling prolonged detention.

III. A DETAINER CANNOT CONSTITUTE AN ORDER FOR DETENTION WITHOUT RAISING SUBSTANTIAL FOURTH AMENDMENT CONCERNS.

The Fourth Amendment requires warrantless arrests to be supported by probable cause, and entitles the subject of a warrantless arrest to a probable cause hearing before a neutral magistrate within 48 hours, absent exceptional circumstances. U.S. CONST. amend. IV; *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56−57 (1991). The detainer regulation contains no probable cause requirement, allowing detainers to be issued "at any time," 8 C.F.R. § 287.7(a), and conflicts with the 48-hour hearing requirement by permitting prolonged custody beyond the 48 hour outer limit to "reasonable" detention, absent extraordinary circumstances, set by *Riverside*. 8 C.F.R. § 287.7(d).

It cannot be denied that prolonged detention beyond the termination of an otherwise lawful detention is the functional equivalent of a re-arrest, which triggers the Fourth Amendment's protections. The *Arizona* Court upheld Arizona's "show

me your papers" law only after noting "it is not clear ... that the verification process would result in prolonged detention." 132 S.Ct. at 2509. The *Arizona* majority indicated that a statute permitting officials to "[d]etain[] individuals solely to verify their immigration status would raise constitutional concerns." *Id.* (citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) and *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Two of the Justices who did not join the Court's opinion nonetheless recognized that prolonged detention of individuals beyond an otherwise lawful stop or arrest would implicate the Fourth Amendment. *See id.* at 2516 ("Of course, any investigatory detention…may become an 'unreasonable…seizur[e],' if it lasts too long.") (Scalia, J., concurring in part and dissenting in part) (quoting U.S. CONST. AMEND. IV); *id.* at 2529 ("the length and nature" of the additional detention "must remain within the limits set out in our Fourth Amendment cases. An investigative stop, if prolonged, can become an arrest and thus require probable cause") (Alito, J., concurring in part and dissenting in part).

Congress has similarly recognized that warrantless arrests of suspected immigration violators raise Fourth Amendment concerns and has required federal immigration officials to base warrantless arrests upon "reason to believe" an immigration violation has occurred – a standard the courts have equated with the Fourth Amendment's probable cause requirement. *See* Section II.B.1, *supra.* The

detainer regulation fails to recognize this limit and permits detainers to be issued "at any time" without a probable cause (or "reason to believe") determination. Construing detainers issued pursuant to the regulation as compulsory upon state and local officials receiving them raises substantial Fourth Amendment concerns because of this omission.

The regulation also raises Fourth Amendment concerns, if compulsory, by requiring prolonged warrantless detention in excess of that determined to be reasonable under the Fourth Amendment. The Court in *Riverside* was explicit in stating that weekends and holidays could not be excluded from the 48-hour calculation. *Id.* at 57-59. The detainer regulation, if construed as requiring state and local officials to prolong detention for up to "48 hours, *excluding Saturdays, Sundays, and holidays*", 8 C.F.R. § 287.7(d) (emphasis added), would compel unconstitutional action by requiring detention that violates the Fourth Amendment and *County of Riverside*. The federal government cannot compel unconstitutional action. *Cf. Saenz v. Roe*, 526 U.S. 489, 507 (1999) ("Congress may not authorize the States to violate the Fourteenth Amendment.").

Mr. Galarza's case exemplifies the Fourth Amendment concerns raised by construing the detainer regulation as mandatory. The detainer issued against Mr. Galarza neither alleged that probable cause existed to believe that Mr. Galarza had committed an immigration violation, nor did it suggest that a warrant had been

issued against him. Yet based on this paper, County officials refused to release Mr. Galarza and kept him in jail for three days, even after his bond was posted and a judge ordered his release. No hearing before a neutral magistrate was conducted. The district court held the detainer regulation required such unconstitutional action. In fact, a proper understanding of the regulation is that it is *not* mandatory, and *requires* nothing from state and local officials.

CONCLUSION

For the foregoing reasons, *amici* submit that detainers cannot operate to require state or local jurisdictions such as Lehigh County to prolong the detention of individuals in their custody. The district court's holding that detainers are obligatory orders was error and should be corrected.

Respectfully submitted on this 26th day of March, 2013,

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CERTIFICATIONS

1. Certification of Compliance with FRAP 29(c)(5)

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* certify that neither party's counsel authored this brief in whole or in part nor contributed money intended to fund preparing or submitting the brief, and that no person other than the *amici* contributed money to fund or submit this brief.

2. Certification of Bar Membership

I hereby certify that I, Christopher N. Lasch, am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

3. Certification of Service

I hereby certify that electronic copies of the foregoing *Brief of Law Professors as Amici Curiae in Support of Appellant and in Support of Reversal* were sent to all CM/ECF filing users through the CM/ECF system, and that no parties are non-filing users.

4. Certification of Compliance with Type-Volume Limitations

This brief complies with Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B), because it contains 6,727 words (excluding the table of contents, table of authorities, statement of interest of the *amici curiae,* and certifications of counsel), which is less than half of the type volume allotted for the appellant's brief.

5. Certification of Identical Electronic and Paper Brief

I hereby certify that the text in the electronic and paper versions of this brief filed with the Court is identical.

6. Certification of Virus Check

I hereby certify that a virus check of the electronic PDF version of the foregoing brief was performed using VIPRE Business anti-virus software (version 5.0.4464), and that the PDF file was found to be virus-free.

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March 26, 2013

APPENDIX

8 U.S.C. § 1357(d)

(d) Detainer of aliens for violation of controlled substances laws

In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)--

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien,

the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.

8 C.F.R. § 287.7

Detainer provisions under section 287(d)(3) of the Act.

(a) Detainers in general. Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form I–247, Immigration Detainer–Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. 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.

(b) Authority to issue detainers. The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;
(2) Special agents;
(3) Deportation officers;
(4) Immigration inspectors;
(5) Adjudications officers;
(6) Immigration enforcement agents;
(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
(8) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the USCIS.

(c) Availability of records. In order for the Department to accurately determine the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Department of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Department with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency 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.

(e) Financial responsibility for detention. No detainer issued as a result of a determination made under this chapter I shall incur any fiscal obligation on the part of the Department, until actual assumption of custody by the Department, except as provided in paragraph (d) of this section.

Form I-247 (March 1983)

U.S. Department of Justice
Immigration and Naturalization Service

Immigration Detainer - Notice of Action
By Immigration and Naturalization Service

File No.
Date

TO: (Name, title and institution)	FROM: (INS Office Address)

Name of Inmate		
Month, Day and Year of Birth	Sex	Nationality

YOU ARE ADVISED THAT THE ACTION NOTED BELOW HAS BEEN TAKEN BY THIS SERVICE CONCERNING THE ABOVE-NAMED INMATE OF YOUR INSTITUTION:

☐ Investigation has been initiated to determine whether this person is subject to deportation from the U.S.

☐ An Order to Show Cause in deportation proceedings, a copy of which is attached, was served on

_____ , 19__

☐ A warrant of arrest in deportation proceedings, a copy of which is attached, was served on

_____ , 19__

☐ Deportation from the United States has been ordered.

IT IS REQUESTED THAT YOU:

☐ Accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work and quarters assignments or other treatment which he would otherwise receive.

☐ Please complete and sign the bottom block of the duplicate of this form and return it to this office. ☐ A self-addressed franked envelope is enclosed for your convenience.

☐ Notify this office of the time of release at least 30 days prior to release or as much in advance as possible.

☐ Notify this office in the event of death or transfer to another institution.

_____ Signature

_____ Title

Receipt acknowledged

Probable date of release:

_____ Signature

_____ Title

Form I-247 (Rev. 3-1-83)N

GPO 897-907

Form I-247 (April 1997)

US. Department of Justice

Immigration and Naturalization Service

Immigration Detainer - Notice of Action

File No.
Date:

To: (Name and title of institution)	From: (INS office address)

Name of alien: _____

Date of birth: _____ Nationality: _____ Sex: _____

You are advised that the action noted below has been taken by the Immigration and Naturalization Service concerning the above-named inmate of your institution:

☐ Investigation has been initiated to determine whether this person is subject to removal from the United States.

☐ A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on _____ (Date).

☐ A warrant of arrest in removal proceedings, a copy of which is attached, was served on _____ (Date).

☐ Deportation or removal from the United States has been ordered.

It is requested that you:

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work and quarters assignments, or other treatment which he or she would otherwise receive.

☐ Federal regulations (8 CFR 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays) to provide adequate time for INS to assume custody of the alien. You may notify INS by calling _____ during business hours or _____ after hours in an emergency.

☐ Please complete and sign the bottom block of the duplicate of this form and return it to this office. ☐ A self-addressed stamped envelope is enclosed for your convenience. ☐ Please return a signed copy via facsimile to _____ (Area code and facsimile number).

Return fax to the attention of _____ (Name of INS officer handling case), at _____ (Area code and phone number).

☒ 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 or transfer to another institution.

☐ Please cancel the detainer previously placed by this Service on _____.

_____ (Signature of INS official) _____ (Title of INS official)

Receipt acknowledged:

Date of latest conviction: _____ Latest conviction charge: _____

Estimated release date: _____

Signature and title of official: _____

Form I-247 (Rev. 4-1-97)N

Form I-247 (August 2010)

U.S. Department of Homeland Security — Immigration Detainer - Notice of Action

File No:
Date:

TO: (Name and title of Institution) FROM: (Office Address)

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

You are advised that the action noted below has been taken by the U.S. Department of Homeland Security concerning the above-named inmate of your institution:

☐ Investigation has been initiated to determine whether this person is subject to removal from the United States.

☐ A Notice to Appear or other charging document initiating removal proceedings, a copy of which is attached, was served on _____ (Date).

☐ A warrant of arrest in removal proceedings, a copy of which is attached, was served on _____ (Date).

☐ Deportation or removal from the United States has been ordered.

It is requested that you:

Please accept this notice as a detainer. This is for notification purposes only and does not limit your discretion in any decision affecting the offender's classification, work, and quarters assignments, or other treatment which he or she would otherwise receive.

☐ Under Federal regulation 8 CFR § 287.7, DHS requests that you maintain custody of this individual for a period not to exceed 48 hours (excluding Saturdays, Sundays, and Federal holidays) to provide adequate time for DHS to assume custody of the alien. Please notify this Office at least 30 days prior to this inmate's release by calling _____ (Area code and phone number) during business hours or _____ (Area code and phone number) after hours in an emergency.

☐ Please complete and sign the bottom block of the duplicate of this form and return it to this office.

☐ A self-addressed stamped envelope is enclosed for your convenience.

☐ Please return a signed copy via facsimile to _____ (Area code and facsimile number)

Return fax to the attention of _____ (Name of officer handling case), at _____ (Area code and phone number).

☐ 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 or transfer to another institution.

☐ Please cancel the detainer previously placed by this Office on _____.

_____ (Signature of DHS Officer) _____ (Title of DHS Officer)

Receipt acknowledged:

Date of last conviction: _____ Latest conviction charge: _____

Estimated release date: _____

Signature and title of official: _____

DHS Form I-247 (08/10)

Form I-247 (June 2011)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

IMMIGRATION DETAINER - NOTICE OF ACTION

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:

☐ Initiated an investigation to determine whether this person is subject to removal from the United States.

☐ 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 and quarter assignments, or other matters.)

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 flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **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 the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (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 the Department 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 or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

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, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center at (802) 872-6020.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria 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 inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe contactarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia) 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, 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 cree que ha sido víctima de un delito, infórmeselo al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (802) 872-6020.**

Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre encontre, 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 encontre. **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, 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 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 (802) 872-6020.**

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, entre em contato com o Centro de Entrada Conjunta da Agencia de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone (802) 872-6020.**

THÔNG BÁO CHO NGƯỜI BỊ GIAM GIỮ

Bộ An Ninh Nội Địa (DHS) đã có thông báo giam giữ quý vị vì lý do di trú. Thông báo giam giữ vì lý do di trú là thông báo của DHS tới các cơ quan thi hành luật pháp về việc DHS có ý định giam giữ quý vị sau khi quý vị hết hạn tạm giam. DHS đã yêu cầu cơ quan thi hành luật pháp hiện đang giam giữ quý vị tiếp tục giam giữ quý vị trong không quá 48 giờ đồng hồ (trừ các ngày thứ Bảy, Chủ nhật và ngày lễ) sau thời gian lẽ ra quý vị đã được giới chức thi hành luật pháp của địa phương hoặc tiểu bang thả ra dựa trên bản án hoặc bản cáo trạng của quý vị. **Nếu DHS không tiếp nhận giam giữ quý vị trong thời gian 48 giờ đó, không tính các ngày cuối tuần hoặc ngày lễ, quý vị nên liên lạc với nơi giam giữ quý vị** (cơ quan thi hành luật pháp hoặc tổ chức khác hiện đang giam giữ quý vị) để hỏi xem bao giờ cơ quan địa phương hoặc tiểu bang ngừng giam giữ quý vị. **Nếu quý vị có khiếu nại về thông báo giam giữ này hoặc liên quan tới các trường hợp vi phạm dân quyền hay tự do dân quyền, 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 nạn nhân tội phạm, vui lòng báo cho DHS biết bằng cách gọi Trung Tâm Trợ Giúp Thi Hành Luật Pháp của cơ quan ICE tại số (802) 872-6020.**

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**（现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。该执法支援中心的电话号码是 (802) 872-6020。**

Form I-247 (December 2011)

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:

☐ Initiated an investigation to determine whether this person is subject to removal from the United States.

☐ 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 flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency "shall maintain custody of an alien" once a detainer has been issued by DHS. **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 the Department by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a Department Official at these numbers, please contact the Immigration and Customs Enforcement (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 the Department 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 or Inmate # _____ Date of latest criminal charge/conviction: _____

Last criminal charge/conviction: _____

Estimated release date: _____

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 inmigratoria 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 inmigratorio 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, infórmeselo 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 encontre, 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 encontre. **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 Agencia 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 tội phạm, vui lòng báo cho DHS biết bằng cách gọi ICE Law Enforcement Support Center tại số điện thoại miễn phí (855) 448-6903.**

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**（现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) 448-6903。**