

Memorandum



Date: July 15, 2013

To: Honorable Carlos A. Gimenez, Mayor
Miami-Dade County, Florida

From: R. A. Cuevas, Jr.
County Attorney

A handwritten signature in black ink, appearing to read "RAC", written over the printed name of the County Attorney.

Subject: Immigration and Customs Enforcement Detainer Policy and Miami-Dade Corrections and Rehabilitation Department

You have asked about immigration detainer requests issued by U.S. Immigration and Customs Enforcement ("ICE") to the Miami-Dade Corrections and Rehabilitation Department ("MDCR"). Specifically you ask what is "the legal requirement for MDCR to hold inmates, whose charges have been resolved, with an ICE immigration detainer for up to 48 hours." The current policy of MDCR is to hold in-custody inmates who have an immigration detainer placed by ICE. As explained below, it is my conclusion that compliance with ICE detainer requests is voluntary and not mandated by federal law or regulations.

ANALYSIS

ICE immigration detainer requests are issued pursuant to 8 CFR § 287.7. An immigration detainer pursuant to Section 287.7(d) is a "mechanism by which federal immigration authorities may *request* that another law enforcement agency temporarily detain an alien "in order to permit assumption of custody by the Department [of Homeland Security]." *United States v. Uribe-Rios*, 558 F.3d 347,359 fn. 1 (4th Cir. 2009) (citing 8 C.F.R. § 287.7(d)) (emphasis added). This detainer, or "hold request" is no more than a request from the Department of Homeland Security that a detainee be held for up to 48 hours. *See Buquer v. City of Indianapolis*, 2013 WL 1332158 at 3, (S.D. Indiana 2013) ("ICE may issue a detainer *requesting* that the law enforcement agency hold the individual for up to 48 hours beyond the time that the detainee would otherwise be released in order to allow ICE to assume custody, if it chooses to do so.") (emphasis added); *See also, Euroza v. Salt Lake County*, 2013 WL 653968 at 1 (C. D. Utah 2013) (finding that Form I-247 is a hold request that a detained continue to be detained pending an investigation.)

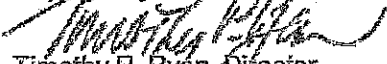
Memorandum



Date: April 9, 2013

To: Robert Cuevas
County Attorney

VIA: Genaro "Chip" Iglesias
Deputy Major/Chief of Staff

From: 
Timothy P. Ryan, Director
Miami-Dade Corrections and Rehabilitation Department

Subject: Immigration (ICE) Detainer Policy (re: MDCR Policy and Practice)

It is the current practice of the Miami-Dade Corrections and Rehabilitation Department (MDCR) to hold in-custody inmates who have an immigration detainer placed by US Immigration and Customs Enforcement (ICE). This means that whenever an inmate's local charges have been resolved (i.e., bails, released in court, etc.), MDCR notifies ICE that the inmate must be picked up no later than 48 hours, excluding weekends. If the inmate is not picked by ICE within the stipulated time frame, the inmate is released.

During a recent meeting with the Public Defender's Office, it has now come to our attention, due to a reinterpretation of the law, that the immigration detainer may not be a legal mandate but rather simply a request from ICE. Attached, for your convenience, is information provided during this meeting. Therefore, a legal opinion is requested as to the legal requirement for MDCR to hold inmates, whose charges have been resolved, with an ICE immigration detainer for up to 48 hours.

If you have any questions, or need further information, please feel free to contact Mr. Tyrone Williams, Senior Legal Advisor, at telephone 786.263.5939.

TPR/vms

Attachment

**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:

- Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):
 - has a prior a felony conviction or has been charged with a felony offense;
 - has three or more prior misdemeanor convictions;
 - has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
 - has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
 - has illegally re-entered the country after a previous removal or return;
 - has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
 - otherwise poses a significant risk to national security, border security, or public safety; and/or
 - other (specify): _____
- 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 derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, 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 DHS by calling _____ during business hours or _____ after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the 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 DHS 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/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____ (date)

Last criminal charge/conviction: _____

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)

Mr. Miguel Márquez

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- a) Can you provide information on the Statement of Intent referenced in the cover letter accompanying the 2009 MOA?

ICE does not require local jurisdictions to sign Statements of Intent or any other document to participate in Secure Communities. The reference to the Statement of Intent in the cover letter to the MOA was an oversight. The MOA signed by the state of California makes no mention of a Statement of Intent, and ICE has advised the California Department of Justice that it will not be utilizing Statements of Intent.

- b) Do you view the State of California as having the ability to exempt certain counties from the program under the 2009 MOA signed by ICE and the California Department of Justice?

ICE recognizes the California Department of Justice as the agency having the responsibility for the management and administration of the state's criminal data repositories, which includes development of and adherence to policies and procedures that govern their use and how information is shared with other state and federal agencies. Therefore, ICE defers to the California State Attorney General on how state, county, and local law enforcement agencies within the state of California will share biometric data under the MOA.

- c) Have you allowed other localities of law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?

The Washington, D.C. Metropolitan Police Department is the only jurisdiction to date that has terminated its signed Memorandum of Agreement. As referenced by your letter, activated jurisdictions do not have to receive the "match responses" and Secure Communities, in coordination with the state identification bureaus and the FBI's Criminal Justice Information Services (CJIS) Division, has accommodated jurisdictions that requested not to receive that information.

- d) What is the purpose of receiving the "match messages"? Do they require or authorize counties to take action with respect to arrested individuals?

The purpose of local law enforcement receiving a 'match message' is to provide any additional identity information about the subject, including aliases, from the DHS biometric database storing over 100 million records that may not have been available based only on a criminal history check. Additional identity information may further a law enforcement officer's open investigations and lead to improved officer safety. Receiving a 'match message' does not authorize or require any action by local law enforcement.

Mr. Miguel Márquez
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- ii. Allow ICE agents and officers access to detainees to conduct interviews and serve documents? If so, what is the legal basis for such a requirement?

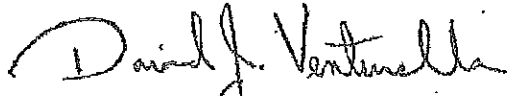
INA § 238, 8 U.S.C. 1228, provides for the availability of special removal proceedings at federal, state, and local correctional facilities for aliens convicted of certain criminal offenses. Such programs require ICE officers to conduct inmate interviews to determine alienage and any possibilities for relief or protection from removal. The statute does not require state or local jurisdictions to participate in such programs.

- iii. Assist ICE in acquiring information about detainees? If so, what is the legal basis for such a requirement?

Assisting ICE in acquiring detainee information is not a legal requirement.

Thank you again for your letter. If you have any additional questions, please feel free to contact me at (202) 732-3900.

Sincerely yours,



David Venturella
Assistant Director