



# Citizens on Hold: A Look at ICE's Flawed Detainer System in Miami-Dade County

Report By

**ACLU** Florida

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## RECOMMENDATIONS

- Floridians should oppose bills like Senate Bill 168, which aim to prohibit local law enforcement agencies from placing any limit on their compliance with detainers and would therefore amplify the consequences of ICE’s mistakes.
- State and local law enforcement agencies should avoid holding people based on ICE detainers, and should instead focus their limited resources on protecting public safety.
- If state and local law enforcement agencies choose to hold people on ICE detainers, they should require a judicial certification of probable cause, to safeguard against the unconscionable risk of error in ICE’s detainer and warrant practices.
- Before holding any person on an ICE detainer, state and local law enforcement agencies should give them an opportunity to contest the basis for the detainer, and the agencies should immediately investigate any indications that the person is not subject to removal.

## INTRODUCTION

The U.S. government enforces immigration law through an agency called Immigration and Customs Enforcement (ICE). Although ICE is one of the largest law enforcement agencies in the United States, in recent years it has relied heavily on state and local assistance to help carry out deportations. Each month, ICE sends local police thousands of detention requests, known as “detainers,” which ask police to extend a person’s detention in local jail in order to give ICE time to arrive at the jail and take custody.

This report surveys recent evidence that ICE may be regularly lodging detainers against U.S. citizens. U.S. citizens cannot be deported or detained to facilitate deportation. Yet in the last decade, ICE has erroneously issued a staggering number of detainers against

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U.S. citizens, asking sheriffs and police departments across the country to extend their jail time so that ICE can put them in immigration jail and eventually deport them. This disturbing pattern has been documented many times over.

The most recent information comes from Miami-Dade County, Florida. Miami’s records show that between February 2017 and February 2019, ICE sent the jail 420 detainer requests for people listed as U.S. citizens, only to later cancel 83 of those requests—evidently because the agency determined, after

the fact, that its targets were in fact U.S. citizens. The remaining individuals' detainers were not canceled, and so they continued to be held for ICE to deport them.

Miami's numbers are not unique. In Rhode Island, over a ten-year period, ICE issued 462 detainers for people listed as U.S. citizens. And in Travis County, Texas, over a similar period, ICE targeted up to 814 U.S. citizens with detainers. Numerous other studies have documented similar patterns. These studies are evidence that, nationwide, ICE has issued detainers against thousands of U.S. citizens over the last decade and a half.

These errors can have profound consequences, both for the people who are wrongly held and for the state and local agencies that hold them. As recent cases illustrate, U.S. citizens have been kept in jail away from their jobs and families, and they have faced the terror of being told they would soon be deported from their only home. Many have spent time in immigration jail, and some have even been deported. Local police and sheriffs, in turn, have faced immense litigation costs and damages liability to the U.S. citizens they have held for ICE.

In these ways, communities across the country have been deeply harmed by ICE's detainer system. As its problems have become clearer, many local jurisdictions have chosen to end or reduce their participation.

## **BACKGROUND ON IMMIGRATION DETAINERS**

An immigration detainer is a request from ICE that asks state and local

## **DETAINER REQUESTS IN MIAMI-DADE COUNTY**

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police to hold a person in jail after the person would otherwise be released, to give ICE time to arrive and take custody.<sup>1</sup> Detainers ask the local jail to extend the person's detention for up to 48 hours after the person's custody under state law ends—whether because the person has their state charges dropped, is released on their own recognizance, posts bond, is acquitted, or finishes serving a criminal sentence. ICE's detainers are voluntary requests, which means that local jails are free to decline them for any reason.<sup>2</sup>

The purpose of the detainer is to help ICE arrest and deport non-citizens on civil immigration charges. It targets noncitizens it finds in local jails, whether or not they receive a conviction or have any prior criminal record. In fact, one third of all detainers sent to Miami-Dade in the last two years were for individuals with no prior criminal offense. Once ICE picks the person up, ICE typically transports them to immigration jail, where it either initiates deportation proceedings or, in some cases, deports the person immediately.<sup>3</sup> Deportation proceedings can take a long time—sometimes multiple years—during which time some people are able to pay a bond and be released, but others must stay in detention.<sup>4</sup>

U.S. citizens are not supposed to be subject to this system—or any aspect of immigration enforcement. They have an absolute right not to be deported or held in immigration jail.<sup>5</sup> As a result, ICE should never be targeting U.S. citizens with immigration detainers—each time that happens is a major error. As dozens of lawsuits in the last several years demonstrate, these errors can subject local officials to serious financial liability for holding people without probable cause.<sup>6</sup>

## WIDESPREAD ERRORS BY ICE

In the last decade, a number of studies have examined how regularly ICE targets U.S. citizens with detainers. Lawsuits have produced further data, as state and local law enforcement agencies have produced records showing how many U.S. citizens ICE has asked them to hold. Together, these data points paint a disturbing picture of ICE’s detainer practices.

Miami recently produced its detainer data as part of a lawsuit brought by a U.S. citizen named Garland Creedle, who Miami held on an ICE detainer in 2017.<sup>7</sup> Miami’s data shows a remarkably high number of detainers issued in a short period of time for people that Miami identified as U.S. citizens. Between February 2017 and February 2019—less than two years—ICE sent 420 detainers for people who were listed as U.S. citizens in Miami’s records.<sup>8</sup> That’s nearly 4 detainers every single week, or 17 per month.

Miami’s records also show that ICE cancelled 83 of those detainers, apparently changing its mind and abandoning its plan to take custody.

These detainers had targeted apparent U.S. citizens—mostly Latino and African-American males—ranging in age from 19 to 60 and over.<sup>9</sup>

For purposes of this report, there was no practical or certain way to independently verify that every person Miami identified as a U.S. citizen was in fact a citizen.<sup>10</sup> But, according to the 2015 court testimony of an ICE Supervisory Detention and Deportation Officer, the main reason why ICE would cancel a detainer issued against a person who claims to be a U.S. citizen is that ICE determines the person is in fact a U.S. citizen.<sup>11</sup> Moreover, as recent lawsuits demonstrate (see below), ICE often fails to cancel detainers for U.S. citizens, including in Miami and other Florida counties.<sup>12</sup> This means the total number of U.S. citizens it has targeted in Miami likely exceeds the 83 detainers it canceled.<sup>13</sup>

Miami’s numbers likely reflect a larger national trend, because other jurisdictions have seen similar patterns. For instance, a recent report by the Cato Institute found that in Travis County, Texas, ICE issued detainers against 814 people listed as U.S. citizens from October 2005 to August 2017. The detainer practices in Travis County “impl[y] that ICE wrongfully targeted 3,506 U.S. citizens in Texas” during the same period, though because of the study’s conservative methodology, “these numbers likely underestimate the total number of U.S. citizens who were targeted by ICE.”<sup>14</sup> Applying the same cautious approach nationally, the Cato Institute estimates ICE “may have wrongfully targeted roughly 19,873 U.S. citizens nationwide with immigration detainers.”<sup>15</sup>

The same pattern emerged in a lawsuit in Rhode Island. Between 2003 and 2014, Rhode Island’s records show that ICE issued 462 detainers against people listed as U.S. citizens.<sup>16</sup> In fact, detainer errors were so prevalent that the plaintiff, Ada Morales, had been targeted by ICE detainers twice, even though she was a U.S. citizen.<sup>17</sup> In the wake of her lawsuit, Rhode Island announced it would stop holding people based on ICE detainers.

Other studies have documented equally disturbing numbers. According to a study at Syracuse University, ICE’s own data show that it issued detainers against 834 U.S. citizens between 2008 and 2012.<sup>18</sup> A 2016 report by National Public Radio similarly found that, according to ICE’s own data, “hundreds of American citizens each year find themselves” being held for or by ICE—well over a thousand between 2007 and 2015.<sup>19</sup> That study identified “dozens” of cases in which “Americans asserted their citizenship only to be sucked into a system they should have never been a part of,” spending weeks or months in immigration detention, and sometimes even getting deported, all despite being U.S. citizens.<sup>20</sup>

These figures are almost certainly dramatic undercounts, in light of data demonstrating dozens—if not hundreds—of detainers issued against U.S. citizens in a similar time frame in single cities or counties. But even the hundreds of such detainers ICE acknowledges indicate systemic problems in ICE’s detainers practices. Whatever the exact numbers, it is clear they are unacceptably high.

Miami’s data adds to the already-troubling pattern in the earlier studies, which mostly reported pre-2017 data.

## WIDESPREAD ERRORS

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**U.S. CITIZENS ARE NOT SUPPOSED TO BE SUBJECT TO THIS SYSTEM—OR ANY ASPECT OF IMMIGRATION ENFORCEMENT.**

PHOTO CREDIT

If Miami's experience is representative, ICE may now be targeting hundreds of U.S. citizens each year in states like Florida. While it is hard to know why ICE is making so many mistakes when it issues detainers, several possible reasons stand out. First, in February 2017, ICE removed any limits on agents' discretion when they issue detainers, and instead instructed agents to target as many people as possible.<sup>21</sup> Second, ICE's databases are notoriously unreliable, and are currently the subject of a lawsuit that is going to trial later this year.<sup>22</sup>

Finally, and perhaps most troubling, evidence has recently emerged that ICE agents across the country are regularly issuing administrative arrest warrants—which typically accompany detainers—without the supervisory review that is required by law.<sup>23</sup> As the ICE agents' union has explained, agents are either forging their supervisors' signatures or filling in pre-signed forms given by their supervisors.<sup>24</sup> These blatantly illegal detainer practices may explain some of ICE's mistakes, because they remove a safeguard whose main purpose is to protect U.S. citizens from wrongful detention by ICE.

## INDIVIDUAL CASES

Private citizens and local governments have borne the brunt of ICE's mistakes. While individual cases are too numerous to list, a small sample gives a sense of the profound impact each detainer can have.

In 2018, Monroe County, Florida held a U.S. citizen named Peter Sean Brown on an ICE detainer. Mr. Brown was born in Philadelphia and grew

up in New Jersey. And yet when he checked into the Monroe County jail for a probation violation, ICE sent a detainer asking Monroe County to hold him after he was due for release, so that he could be deported to Jamaica. Mr. Brown spent three weeks trying to convince the County and ICE to drop the detainer. He called ICE, but no one answered. He filed multiple written complaints. He was terrified that he would languish in ICE detention and then be deported from his only home, to a country he did not know. After he was finally released, he filed a lawsuit against Monroe County for jailing him at ICE's request. The case has proceeded to discovery.<sup>25</sup>

Earlier this year, Kent County, Michigan held a U.S. citizen named Jilmar Ramos-Gomez based on an ICE detainer. Mr. Ramos-Gomez is a decorated combat veteran who was born in Michigan and served as a marine in Afghanistan. That did not stop ICE from targeting him with a detainer so that it could arrest and deport him. ICE made a number of mistakes along the way. Its agents asked Kent County to hold Mr. Ramos-Gomez even though he had a U.S. passport, military ID, and Marine Corp tags in his possession when he was originally arrested. They issued a detainer even though his jail paperwork confirmed he was born in the United States. And they held him in immigration jail for three full days after arresting him. Once the facts came to light, Kent County announced it would no longer hold people for ICE.<sup>26</sup>

ICE's errors have also been costly for the police and sheriffs who agree to its requests. U.S. citizens and others wrongfully held on detainers have brought a number of lawsuits in recent years. Many have resulted in multi-year



## TROUBLING PRACTICES

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PHOTOCREDIT

Photo credit: ICE/Wikimedia

litigation against local governments, including landmark cases in Pennsylvania and Rhode Island.<sup>27</sup> And most have resulted in local governments paying five- and six-figure settlements to the people they hold on ICE detainers, including payments of \$255,000 by Los Angeles County, California, \$95,000 by Lehigh County, Pennsylvania, and \$190,000 by San Francisco.<sup>28</sup>

These cases continue today. In Florida, two U.S. citizens—Garland Creedle and Peter Sean Brown—have so far sued Miami-Dade County and Monroe County for holding them for ICE.<sup>29</sup> Both counties are currently paying for discovery, after a judge rejected Miami’s attempt to dismiss Mr. Creedle’s case.<sup>30</sup> By indiscriminately issuing detainers for U.S. citizens, ICE is ensuring that these civil rights violations will continue. And by signing up to help ICE, police and sheriffs are finding that they are the ones who must pay when ICE makes mistakes.

## **CONCLUSION**

ICE is routinely asking local jails to violate U.S. citizens’ rights—and has been for years. A long line of studies and jail records have documented persistent errors in ICE’s detainer system, which has targeted hundreds of U.S. citizens in recent years. The most recent detainer data from Miami confirms the trend—and may suggest things are getting worse. This disturbing pattern raises serious questions about whether states and localities should be arresting people for ICE.

# ENDNOTES

- 1 See DHS Form I-247A, available at <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>.
- 2 *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014).
- 3 Some individuals who ICE records show have already been deported are subject to immediate reinstatement of the prior removal orders. See 8 U.S.C. § 1231.
- 4 Some ICE detainees are eligible for bond, see 8 U.S.C. § 1226(a)(2), but others are subject to mandatory detention, see *id.* § 1226(c).
- 5 See *Lyttle v. United States*, 867 F. Supp. 2d 1256, 1283-84 (M.D. Ga. 2012) (“Any ICE officer . . . would know it is illegal and unconstitutional to deport, detain for deportation, or recommend deportation of a U.S. citizen.”); *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 67 (2001) (U.S. citizens have an “absolute right” to be in the United States).
- 6 Am. Civil Liberties Union, *Local Jurisdictions Remain Legally Vulnerable for Honoring ICE Detainers* (2018), <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018>.
- 7 *Creedle v. Gimenez*, No. 17-cv-22477 (S.D. Fla.).
- 8 The underlying data produced by Miami-Dade County as part of the Creedle litigation are on file with the American Civil Liberties Union of Florida.
- 9 Several had no prior criminal record. One individual, who had been arrested for panhandling, was seemingly targeted with detainers twice. A number were arrested on minor offenses or had their state charges ultimately dropped.
- 10 While evidence of U.S. citizenship can take various forms (for example, a U.S. passport, a U.S. birth certificate, a naturalization or citizenship certificate, or a foreign birth certificate coupled with similar evidence of one or both parents’ citizenship), many citizens might not possess or have ready access to these documents. Any person who claims to be a U.S. citizen but who federal agency officials refuse to recognize as a citizen is entitled to an opportunity to prove their case before a neutral magistrate in federal court. See 8 U.S.C. § 1503.
- 11 See Deposition of John Drane at 152-53, *Morales v. Chadbourne*, No. 12-301-M (D.R.I. deposed April 21, 2015), <https://object.cato.org/sites/cato.org/files/wp-content/uploads/johndranedepositionmorales.pdf>.
- 12 In fact, there is reason to believe that at least some individuals who Miami did not list as U.S. citizens were in fact U.S. citizens. Garland Creedle, for example, was listed as a citizen of Honduras.
- 13 Most of these detainers were cancelled more than 48 hours before their targets were actually released, which suggests they were not cancelled because ICE was simply unable to assume custody within the required time frame. See U.S. Immigration & Customs Enft, Policy Number 10074.2: Issuance of Immigration Detainers by Ice Immigration Officers 3 (2017), <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.
- 14 David Bier, Cato Institute, *U.S. Citizens Targeted by Immigration and Customs Enforcement in Texas* (Aug. 29, 2018), <https://www.cato.org/publications/immigration-research-policy-brief/us-citizens-targeted-ice-us-citizens-targeted>.
- 15 *Id.*
- 16 *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2016).
- 17 *Id.* at 212.
- 18 Syr. Univ., *Transactional Records Access Clearinghouse, Who Are the Targets of ICE Detainers?*, Feb. 20, 2013; Syr. Univ., *Transactional Records Access Clearinghouse, ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents*, Feb. 20, 2013.
- 19 Eyder Peralta, *You Say You’re an American, But What If You Had to Prove It or Be Deported?*, NPR, Dec. 22, 2016, <https://www.npr.org/sections/tetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported#text2>.
- 20 *Id.*
- 21 John Kelly, Dep’t of Homeland Sec., *Enforcement of the Immigration Laws to Serve the National Interest*, at 2, 4 (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf); Am. Immigration Council, *The End of Immigration Enforcement Priorities under the Trump Administration* (2018), <https://www.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration>; see also Hamed Aleaziz, *An ICE Memo Lays Out the Differences Between Trump and Obama on Immigration Enforcement*, BuzzFeed, Oct. 18, 2018, <https://www.buzzfeednews.com/article/hamedaleaziz/trump-ice-attorneys-foia-memo-discretion0>.

22 See *Gonzalez v. ICE*, No. 2:13-cv-4416, 2018 WL 914773, \*18-20 (C.D. Cal. Feb. 7, 2018).

23 Bob Ortega, ICE Supervisors Sometimes Skim Required Review of Detention Warrants, Emails Show, CNN (Mar. 13, 2019), <https://www.cnn.com/2019/03/13/us/ice-supervisors-dont-always-review-deportation-warrants-invs/index.html>.

24 *Id.*

25 See Complaint, *Brown v. Ramsay*, No. 18-cv-10279, Dkt. 1 (S.D. Fla. filed Dec. 3, 2018).

26 See Catherine E. Shoichet, This Veteran Ended Up in ICE Custody. He's a U.S. Citizen, CNN (Jan. 18, 2019), <https://www.cnn.com/2019/01/17/us/michigan-ice-detains-us-citizen-veteran/index.html>.

27 See *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (holding that local governments can be financially liable for holding people on ICE detainees); *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2016) (holding that ICE detainees require probable cause).

28 See Am. Civil Liberties Union, Local Jurisdictions Remain Legally Vulnerable for Honoring ICE Detainers (2018), <https://www.aclu.org/fact-sheet/recent-ice-detainer-damages-cases-2018>; Am. Civil Liberties Union of Southern Cal., Guadalupe Plascencia, a U.S. Citizen Unlawfully Detained by ICE, Wins Settlement (Oct. 26, 2018), <https://www.aclusocal.org/en/press-releases/guadalupe-plascencia-us-citizen-unlawfully-detained-ice-wins-settlement>.

29 *Creedle v. Gimenez*, No. 17-cv-22477 (S.D. Fla.); *Brown v. Ramsay*, No. 18-cv-10279 (S.D. Fla.).

30 *Creedle v. Gimenez*, 349 F. Supp. 3d 1276 (S.D. Fla. 2018).

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