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DHS Documents: Local Police Not Required To Hold Undocumented Immigrants For U.S. Government



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WASHINGTON -- Local law enforcement agencies are not required to hold undocumented immigrants at the request of the federal government, according to internal Department of Homeland Security documents obtained by a coalition of groups critical of the Secure Communities enforcement program.

The documents could provide ammunition for jurisdictions that no longer want to participate in [Secure Communities](#), which allows federal immigration authorities to use fingerprints to scan those arrested by local law enforcement. They also support recent actions by Cook County, Ill., Santa Clara, Calif., and San Francisco, all of which decided this year to stop adhering to federal requests to hold undocumented immigrants who were either low-level offenders or were accused of felonies.

The National Day Laborer Organizing Network, Center for Constitutional Rights and Benjamin Cardozo School of Law received the documents after a Freedom of Information Act request and plan to release them this week. The three documents, from October 2010 and January 2011, clarify DHS policy on

detainers -- requests from federal immigration officials for police to hold those arrested, in some cases after being detected by enforcement programs.

"A detainer serves only to advise another law enforcement agency that ICE seeks an opportunity to interview and potentially assume custody of an alien presently in the custody of that agency," according to an undated document.

Another document, notes from a briefing to Congressional Hispanic Caucus staff in October 2010, says "local [law enforcements] are not mandated to honor a detainer, and in some jurisdictions they do not." The third document, a series of questions and answers emailed in January 2010, says ICE detainers are "a request," and "there is no penalty if they [local law enforcement] do not comply."

Nicole Navas, a spokeswoman for Immigration and Customs Enforcement, said "detainers are critical to ICE achieving its mission to identify and remove criminal aliens," and that they are important for community safety.

"ICE anticipates that law enforcement agencies will comply with the detainer though ICE has not sought to compel compliance through legal proceedings," she said in a statement. "Jurisdictions that ignore detainers bear the risk of possible public safety risks."

A few jurisdictions have already chosen not to comply, however. The Board of Commissioners in Cook County, Ill., which includes Chicago, [voted on Sept. 8](#) to free from jail undocumented immigrants charged with misdemeanors and felonies, even when federal agents request that they be held. The board said the issue was financial, despite the fact that it came on the heels of an attempt by the state of Illinois to end its ties to the Secure Communities enforcement program. Detainer requests cost the county about \$15 million each year, none of which is reimbursed, [county officials told the *Chicago Tribune*](#).

Law enforcement agencies are only asked to hold those arrested for 48 hours under detainers. But if suspected undocumented immigrants are in jail for longer than that, DHS can pick them up at any time.

Some undocumented immigrants choose to stay in jail rather than posting bond because they believe they will eventually be detained by Immigration and Customs Enforcement agents after leaving jail, said Fred Tsao, policy director for the Illinois Coalition for Immigrant and Refugee Rights.

Tsao said that supporters of the Cook County policy are stressing that public safety will not suffer if detainer requests are denied, because there are "significant backstops" to limit the release of those accused of serious crimes.

"ICE is still able to pick people up," he said. "ICE has their names and their addresses, and if ICE really wants them, they can pick them up themselves. They don't need any help from Cook County."

In Santa Clara, Calif., the Board of Supervisors voted on Oct. 18 on a similar policy to no longer honor detainers unless they are reimbursed for the cost by Immigration and Customs Enforcement. If reimbursed, they will only continue to detain people convicted of serious or violent felonies. Board of Supervisors President Dave Cortese [told the Los Angeles Times](#) that the board decided on the policy after appeals by local immigrants and advocacy groups, who said the Secure Communities program was hurting the local undocumented community.

"We're very discouraged that the issue keeps getting pushed down to our level, the county level, without any reform at the federal level," Cortese told the *Los Angeles Times*. "So our way of responding to that is, we're not cooperating. We're a big county. There's a couple big counties in the state...that can push back on these kind of issues."

San Francisco Sheriff Michael Hennessey, who has been critical of Secure Communities because he said it could hurt the relationship between law enforcement and the community, [announced on May 6](#) that the county would no longer hold undocumented immigrants charged with misdemeanors based on DHS requests.

Jessica Karp, a staff attorney for the National Day Laborer Organizing Network, said the documents provide additional clarity to law enforcement agencies and counties that do not want to aid in immigration enforcement.

"It's a good way to break the ties between local law enforcement and ICE," she said. "A lot of local law enforcement officials don't want to be a part of immigration enforcement. ... This is one way to opt-out" of the program.

UPDATE, Nov. 1, 9 a.m. -- DHS Spokeswoman Nicole Navas said ICE does not know when offenders are released, contradicting Fred Tsao's claim. She said that Cook County receives federal grants that help pay for detainers through a Department of Justice [State Criminal Alien Assistance Program](#), and that Cook County officials were wrong to say the policy costs them \$15 million per year.

CORRECTION: This article has been corrected to clarify the Santa Clara policy on detainers. A previous version said the policy is to no longer honor detainers for undocumented immigrants accused of misdemeanors, but in fact no detainers will be honored without a reimbursement for the cost. If the law enforcement agency is reimbursed, it will only hold violent offenders.