

## SECURE COMMUNITIES DOCUMENTS INDEX OF RECORDS RELEASED July 6, 2012<sup>1</sup>

Pursuant to plaintiffs National Day Laborer Organizing Network, Center for Constitutional Rights, and the Cardozo Immigration Justice Clinic demand that ICE disclose information about agency “messaging” and already adopted agency policy, ICE recently re-released information in internal emails and other documents that it had previously withheld claiming FOIA Exemption 5.

### **ICE acknowledges that ICE Holds, also known as civil immigration detainees, are voluntary requests**

| #    | Document ID Number   | Date of Document | Notes   |
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| 1, 2 | <a href="#">0.7.98.142262</a> and<br><a href="#">0.7.98.142586</a> | 5/25/2011        | ICE emails discussing “what action will be taken if detainees are not honored.” An ICE official initially responds: “We have no guidance on this issue and the statutes / regulations provide no procedures to enforce detainees.” An ICE attorney with the Office of the Principal Legal Advisor later states: “A: The statutes/regulations provide no procedures to force an LEA to honor detainees. SC needs to look to OD for guidance on this issue.” ICE declines to characterize detainees as mandatory. |
| 3    | <a href="#">0.7.98.142330</a>                                      | 5/11/2011        | ICE emails about “detainer language.” An official circulates proposed language stating that detainees are mandatory, but Associate Deputy Director Beth Gibson rejects the language in favor of a different description characterizing detainees as a “request” to LEAs to maintain custody. Gibson instructs ICE officials to use the voluntary “request” language in the future.  |

<sup>1</sup> All documents referenced here were obtained through the *NDLON v. ICE*, 10-cv-3488 (SAS) lawsuit. To learn more, go to <http://ccrjustice.org/secure-communities> and <http://uncoverthetruth.org>

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| 4 | <a href="#">0.7.98.182948</a>   | 5/9/2011         | Emails between ICE and the Department of Justice Civil Division about scheduling a meeting to discuss the legal authority for “interoperability as a mandate” and immigration detainers. ICE describes detainers as voluntary “requests” used to (1) “advise” an LEA that ICE seeks custody of an individual; (2) “request” information from the LEA about the individual’s release before it occurs; and (3) “request” that LEA’s maintain custody for no more than 48 hours after the individual would otherwise be released.  |
| 5 | <a href="#">0.7.98.142374</a>   | 5/4/2011         | Draft email from ICE Principal Legal Advisor Peter Vincent to ICE Director John Morton on OPLA’s position regarding the legal authority for “interoperability as a mandate” and immigration detainers. Prompted by Morton’s direction to get the Department of Justice’s “[c]lear position on interoperability as a mandate and on detainers.” Detainers are described as voluntary “requests.”  |
| 6 | <a href="#">0.7.98.149478</a>   | 11/9/2010        | ICE emails about S-Comm talking points for ICE and DHS. One official discusses how S-Comm is not simply an information sharing program but also a detention and deportation program. “Our discussion was mainly centered around the difference between the front end participation in secure communities, i.e., the automated information sharing, and the back end participations, i.e., honoring detainers and cooperating in giving ICE access to the detainee. When we talked, you all made the point that while secure communities encompasses both the front and back end (identification and removal) one of the reasons the confusion has developed is that secure communities as a program office only really deals with the front end, and ERO deals with the back end.” |
| 7 | <a href="#">0.7.98.183092.8</a> | 8/2/2010         | ICE Interim Policy 10074.1: Detainers. Civil immigration detainers are described as voluntary “requests” that “may serve three key functions – notify an LEA that ICE intends to arrest or remove an alien in the LEA’s custody . . . request information from an LEA about an alien’s impending release so ICE may assume custody . . . ; and request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours....”  |

**The fiscal impact of ICE Holds is significant and largely borne by local jurisdictions**

| #  | Document ID Number            | Date of Document | Notes  |
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| 8  | <a href="#">0.7.98.135763</a> | 7/8/2011         | ICE emails about whether SCAAP money is available to reimburse LEAs for the cost of detaining individuals due to S-Comm. One official expresses concern about a proposed response to a media inquiry about the increased cost of detention: "Saying that SCAAP money is available for detainer cases is a little out of whack. I realize they are omnipotent, so it is hard to say anything. Will it cause problems, only if a Sheriff wants to know how he gets reimbursed and then learns we don't reimburse for those periods." The ICE Deputy Director of the Seattle Field Office responds: "SCAAP can apply to detainer cases if the alien has been detained for more than 4 days and has been convicted of a felony or 2 or more misdemeanors. So it's sort-of true... and that's good enuf!"   |
| 9  | <a href="#">0.7.98.144125</a> | 10/18/2010       | ICE emails about the rise in arrests and detention costs as a result of S-Comm activation in Montgomery County, Maryland, Baltimore County, and Baltimore City. A CAP official writes "this would double the bed space being proposed from 219 to roughly around 438."   |
| 10 | <a href="#">0.7.98.143600</a> | 9/9/2010         | ICE email about detainees and payment to jurisdictions for the cost of detention due to S-Comm. An official writes: "ICE has not taken the position in the past that a detainer entitles the local jurisdiction to payment. I thought ICE's position on detainees was that they are requests for a locality to continue to hold a detainee who is otherwise in the custody of the state or local authority. Detainers do not provide the state or local jurisdiction with additional authority, correct?" The official goes on to state that ICE does not pay jurisdictions to hold individuals pursuant to a detainer request, because the individual remains a detainee of the local jurisdiction. "Only detainees held by state or local jurisdictions for ICE pursuant to an IGSA are ICE detainees [thus potentially entitling the jurisdiction to payment for services rendered to ICE]." Email chain also shows that ICE will not indemnify localities for any liability incurred because of detainees under the Anti-Deficiency Act. |