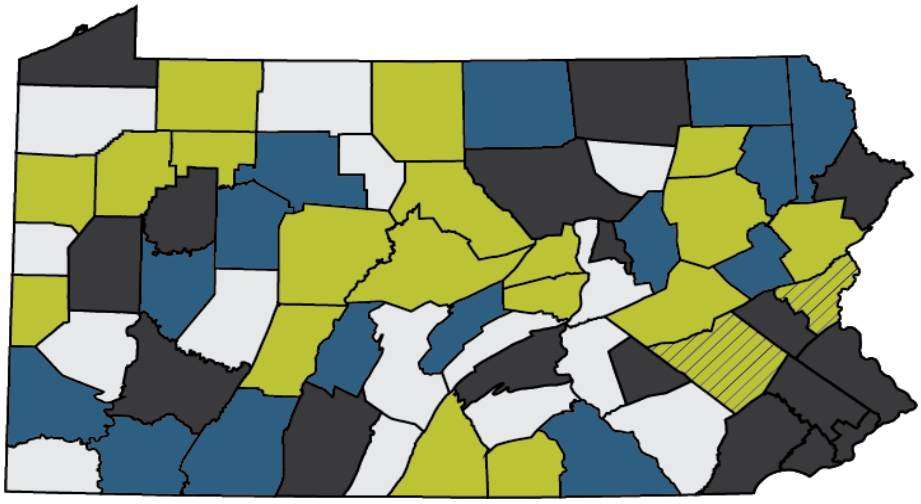
A Changing Landscape



Pennsylvania Counties Reevaluate Policies on Immigration Detainers

Stephen and Sandra SHELLER | CENTER *for* SOCIAL JUSTICE
Temple University Beasley School of Law

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The Social Justice Lawyering Clinic at the Stephen and Sandra Sheller Center for Social Justice is a student clinic at Temple University Beasley School of Law. Students at the clinic work first hand on social justice issues that directly impact local communities, through legal representation, community education, and policy advocacy.

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Executive Summary

This report, a review of counties' policies and practices with respect to Immigration and Customs Enforcement ("ICE") detainers,[1] indicates that Pennsylvania is significantly shifting away from honoring such requests from ICE. The review also revealed other questions, necessitating further inquiry, concerning ways in which Pennsylvania counties interact with ICE.

Recent court decisions have influenced how counties treat ICE detainers. In Pennsylvania, the Third Circuit Court of Appeals recently decided a case involving Ernesto Galarza, a U.S. citizen who was held erroneously for four days because of an ICE detainer.[2] The Third Circuit concluded that ICE detainers were merely requests rather than a command from the federal government.[3] Under certain circumstances, local law enforcement agencies can thus be held liable for choosing to imprison someone on the sole basis of this request from ICE. As a result of this decision, Lehigh County, Pennsylvania, changed its policy such that it no longer holds individuals based solely on an ICE detainer. Other federal courts have similarly ruled that an ICE detainer is not mandatory,[4] meaning that local authorities cannot use it as a defense for an otherwise unlawful detention.

What Are Immigration Detainers?

As part of the Department of Homeland Security, ICE is responsible for enforcing federal immigration laws.

ICE relies on cooperation with local law enforcement agencies for federal immigration enforcement. One of the ways ICE works with local law enforcement is by sending them an immigration detainer or "hold," also known as an ICE detainer. An ICE detainer is a form that requests a local law enforcement agency to hold an individual suspected of being present in violation of federal immigration laws for up to forty-eight hours after the individual would normally be released.

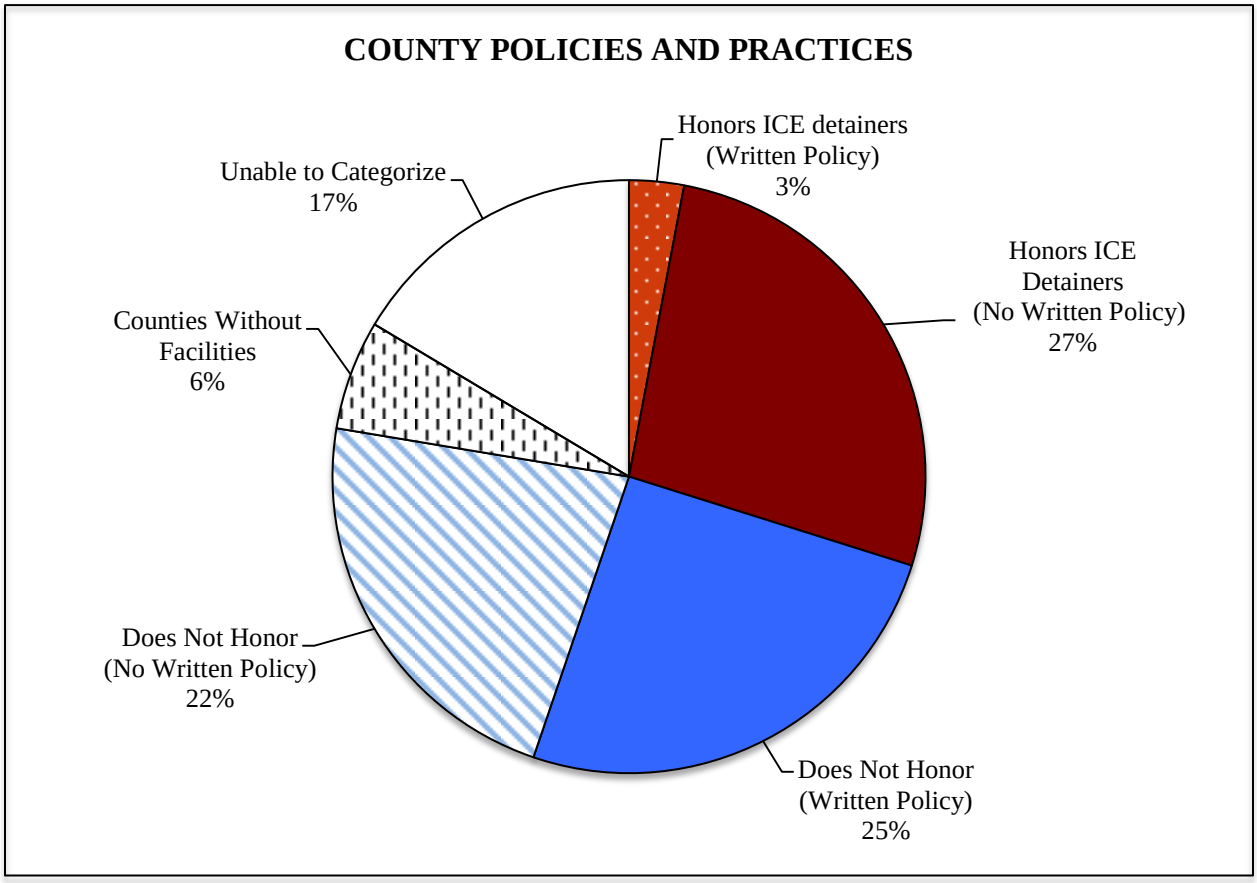
This extra time allows ICE to dispatch an agent to take custody of the individual for possible deportation. ICE is not required to obtain court approval prior to issuing a detainer. It may issue a detainer if it merely suspects that an individual is violating immigration laws.

Local communities are also organizing against ICE detainers. In Philadelphia, for example, a group of community-based organizations, the Philadelphia Family Unity Network (PFUN), campaigned to change the City's policy with respect to ICE detainers.[5] They met with city officials, presented their proposal, and organized city council support. Their work culminated in City Council hearings that brought out hundreds of supporters. On April 16, 2014, the Mayor of Philadelphia issued an Executive Order declaring that local law enforcement would no longer honor ICE detainers.[6]

These changes are not isolated to Pennsylvania.[7] State laws and policies in California,[8] Colorado,[9] Connecticut,[10] and Rhode Island[11] have been enacted to limit local law enforcement agencies' compliance with ICE detainers. City and county policies now similarly limit the reach

of ICE detainers in Arizona, D.C., Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Washington, and Wisconsin.[12]

This report is the first to provide a comprehensive picture of how the 67 counties in Pennsylvania are currently handling ICE detainers (Appendix A – Pennsylvania Counties Map). It is based on conversations with dozens of local officials and numerous requests under the Pennsylvania Right to Know Law. Overall, the Sheller Center found that the trend in counties in Pennsylvania is toward refusing to honor ICE detainers, often pursuant to a written policy. At the same time, there are a smaller number of counties that continue to honor ICE detainers, although a few of those counties' policies and practices are currently under review. A handful of counties reported no interactions with ICE or otherwise refused to provide us with information (Appendix B – At-A-Glance: Pennsylvania Counties & ICE Detainers).



The Sheller Center also found that a county's policy or practice of not honoring ICE detainers did not necessarily indicate how a county otherwise interacted with ICE. Some counties had written policies that prohibited holding individuals based on an ICE detainer but still promoted collaboration with ICE in other respects. Some did so by providing advance notification to ICE before the individual's release date or holding onto individuals for additional

hours for ICE to pick up while still "technically" releasing them on their release date. A few counties also regularly sent lists of incarcerated individuals to ICE or provided ICE with access to their facilities. In contrast, several counties moved away from such ICE collaboration by prohibiting any sort of cooperation with ICE for the "enforcement of civil immigration law." This report includes information from county officials about these various relationships with ICE because they are important to understanding local counties' approach to the overall issue of federal immigration enforcement.

This report also documents, to the extent ascertainable from responses from county officials and written policies, the motivations behind counties' policies and practices with respect to ICE detainers. Some officials reported that their counties changed their policies in response to the Third Circuit decision in *Galarza*. Other county officials stated that they believed that they were required to comply with federal law and appeared uninformed about the potential legal consequences of holding individuals based solely on an ICE detainer. A few counties had policies and practices related to ICE detainers that responded to concerns about the limitations of local county resources.

The Sheller Center concludes that continued education about the *Galarza* decision can help influence counties on the issue of ICE Detainers. While the movement towards refusing to honor ICE detainers continues, many counties will continue to collaborate informally with ICE. Such interactions suggest the importance of continued community involvement in shaping broader county policies and practices concerning federal immigration enforcement.

Recently, President Obama announced executive action on immigration reform, which includes modifying the priorities of enforcement.[13] His new Priority Enforcement Program includes limiting the use of ICE detainers to "special circumstances"[14] or issuing them only if supported by a final deportation order or probable cause of deportability.[15] Though this new policy still gives ICE discretion to issue detainers, they may be limited to certain situations that have yet to be defined. This new policy is also subject to political challenges including a potential reversal of policy from a new administration or Congress.[16] Given these uncertainties, there is no telling how many ICE detainers will be issued in the future. In short, ICE detainers remain relevant to the conversation about local governmental entities and their involvement in enforcing federal immigration law.

Methodology

Before this study, there was no statewide review of Pennsylvania counties' policies and practices relating to ICE detainers. In August 2014, the Sheller Center met with the ACLU-PA and PICC to provide assistance in determining what was happening at a county level with local law enforcement and ICE detainers. On August 13, 2014, the ACLU-PA and PICC, in coordination with Juntos, a local Latino rights organization, sent a letter and survey to county officials throughout Pennsylvania asking about their current policies and practices (Appendix C – Letter, Survey, & Sample Policy). In collaboration with these organizations, the Sheller Center contacted county officials throughout Pennsylvania to follow up on these requests for information.

This report is based on conversations with dozens of local officials. These officials include sheriffs, prison officials, records administrators, commissioners, district attorneys, solicitors, and others. As part of this research effort, the Sheller Center sent out numerous requests to counties under the Pennsylvania Right to Know Law, requesting their written policies regarding ICE detainers.

Out of sixty-three counties within Pennsylvania with correctional facilities, we obtained information about how fifty-one counties treat ICE detainers. We lack sufficient information to categorize how twelve counties treat ICE detainers.

There are a few caveats to the information worth noting. The Sheller Center based its report, in part, on information that was orally provided by county officials. It is possible that a particular county official may have been misinformed about the practices in her county. Further, a couple of counties provided information about written policies or practices that conflicted with reports we received about individual experiences on the ground. Finally, a number of counties reported that their current policies or practices were under review. This report captures the landscape as of the time of writing, and the information contained within may change in the coming months and years.

Findings on County Policies and Practices

Our research revealed that the counties in Pennsylvania vary widely in their policies and practices regarding ICE detainers. In this section, we detail our findings about how counties respond to ICE detainers. We categorized the information as follows: (1) counties that did not honor ICE detainers pursuant to a written policy or practice; (2) counties that honored ICE detainers pursuant to a written policy or practice; and (3) counties that could not be categorized by how they treat ICE detainers.

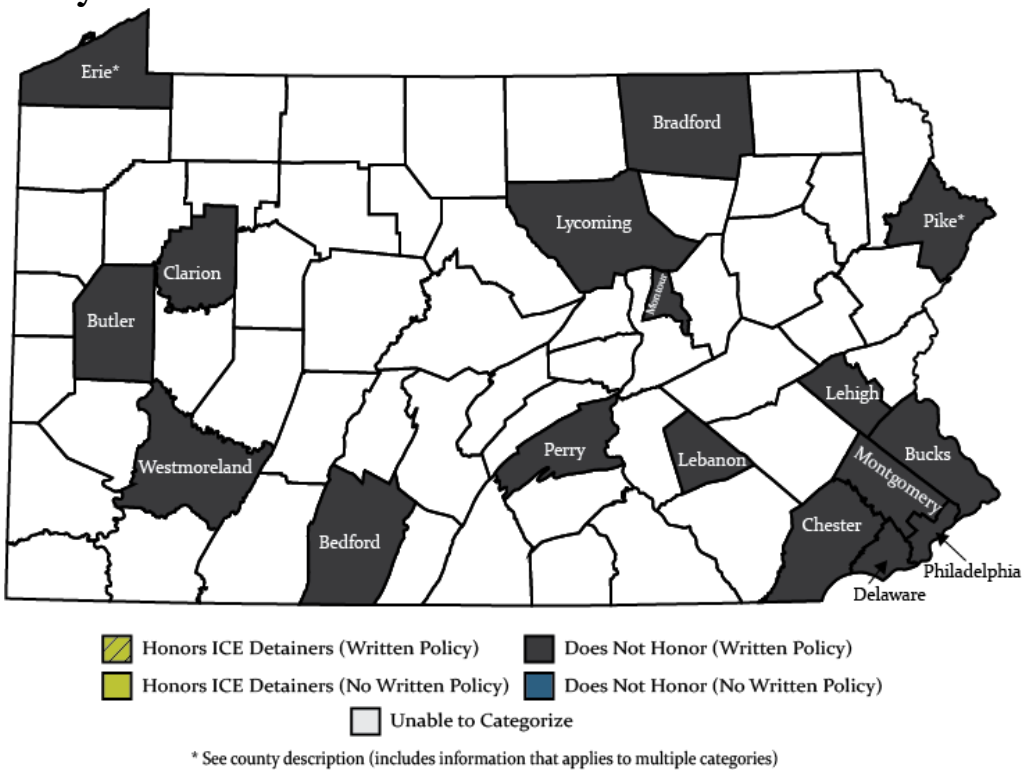
When categorizing counties as having a written policy, we considered anything in writing that specifically explained what local law enforcement does when it receives an ICE detainer to be a written policy. Some examples include email directives issued by county officials, interoffice memoranda sent between county officials, and formal prison or jail policies.

Apart from describing more fully each county's written policy or practice with respect to ICE detainers, we also note the source of the information and any other relevant information. Other relevant information may include a county's policy or practice for reporting suspected undocumented immigrants to ICE, ICE's presence and/or relationship with the county, and the county's possible motivations for honoring or not honoring ICE detainers. As a point of comparison, we include information about the number of ICE detainers issued to each county detention facility from October 2011 to August 2013.[17]

Finally, we describe the limited information we have on the remaining counties. A few counties did not have their own local county facilities and sent arrested individuals to nearby county facilities. Other counties failed to supply any meaningful information about their policies and practices with respect to ICE detainers.

An overall summary of these finding are contained in a Pennsylvania Counties Map (Appendix A) and an At-A-Glance Summary: Pennsylvania Counties (Appendix B).

County Does Not Honor ICE Detainers: Written Policy



BEDFORD COUNTY

WRITTEN POLICY:	Yes. Dated September 15, 2014, the policy states: "Because of Galarza v. Szalczk [sic]…the Bedford County Correctional Facility [(BCCF)] will no longer hold inmates solely on ICE detainers. If an ICE agent places a detainer on an inmate incarcerated in the BCCF the records officer is to contact ICE and inform them of a probable release date and that Bedford County will not hold them without a court order authorized by a judge."
PRACTICE:	Confirmed written policy. The facility tries to provide as much notice as possible to ICE regarding the probable release date.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	8 (issued from Oct. 2011–Aug. 2013)

BRADFORD COUNTY

WRITTEN POLICY:	Yes. Dated June 16, 2014, Bradford County Correctional Facility's policy states: "[W]e will no longer hold inmates solely for immigration and customs detainers. If an inmate has a detainer sent in from immigration and customs the intake officer is to call immigration and customs and ask for further information and paperwork. If immigration and customs has a criminal warrant or criminal conviction, request that they send the paperwork to us to legally hold the person. If nothing further exits [sic] and they just sent the detainer it is not to be granted, if the person is eligible for release they are to be released and not held solely for the detainer."
PRACTICE:	Confirmed written policy. The facility does not reach out to ICE itself.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	16 (issued from Oct. 2011–Aug. 2013)

BUCKS COUNTY

WRITTEN POLICY:	Yes. Effective April 15, 2014, Bucks County Department of Corrections' new policy states: "ICE detainers have no authority to commit, detain or retain an offender in custody within the Bucks County Dept. of Corrections. Bucks County Department of Corrections will not accept a new commitment solely on an ICE detainer. Records office staff will notify ICE via email of a pending release from custody (bail, parole, purge, etc.). The email should state the release is in progress. . . . An Ice [sic] detainer will not detain an inmate or delay a release from incarceration."
PRACTICE:	Confirmed written policy.
OTHER INFORMATION:	County official stated change in policy was to comply with "current case law changes."
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	227 (issued from Oct. 2011–Aug. 2013)

BUTLER COUNTY

WRITTEN POLICY:	Yes. Effective September 9, 2014, Butler County Prison's policy is "to not accept I.C.E. detainers as the sole holding or committing authority of any inmate(s)."
PRACTICE:	Confirmed written policy.
OTHER INFORMATION:	One county official stated that the policy changed to comply with *Galarza*. The policy also states: "[u]nless acting pursuant to a court order or a legitimate law enforcement purpose, that is unrelated to the enforcement of a civil immigration law, the Butler County Prison shall not permit I.C.E. agents access to prison facilities or to any person in custody for investigative interviews or other investigative purposes, or use on duty time or Butler County Prison resources responding to I.C.E. inquiries or communicating with I.C.E. regarding an inmate's custody status or release date."
SOURCE:	County Official
NO. OF DETAINERS:	8 (issued from Oct. 2011–Aug. 2013)

CHESTER COUNTY

WRITTEN POLICY:	Yes. Dated May 1, 2014, Chester County Prison (CCP) policy states it "will accept ICE detainers served by ICE agents on a suspected illegal alien" but "will not detain individuals or maintain continuing custody solely based on an ICE detainer." CCP will notify ICE that the subject is being processed for release. "If ICE agents do not respond to assume custody or contact cannot be made, then the subject is to be released from CCP custody."
PRACTICE:	Confirmed written policy.
OTHER INFORMATION:	CCP's policy states: "CCP will allow ICE agents access to daily population reports and other records for investigative purposes."
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	294 (issued from Oct. 2011–Aug. 2013)

CLARION COUNTY

WRITTEN POLICY:	Yes. Effective September 2, 1997, "Clarion County Corrections will not hold Immigration detainees based on ICE detainers only. Inmates must have a legal and authorized commitment paper work [sic]."
PRACTICE:	Clarion County's practice is to not hold individuals based solely on ICE detainers.
SOURCE:	Right to Know, Survey Response
NO. OF DETAINERS:	1 (issued from Oct. 2011–Aug. 2013)

DELAWARE COUNTY

WRITTEN POLICY:	Yes (see below).
PRACTICE:	A privately run company, Community Education Centers (CEC), is responsible for correctional services at the George W. Hill Correctional Facility in Delaware County. Dated August 5, 2014, CEC's policy is to not hold individuals based solely on ICE detainers. CEC was unwilling to turn over the policy because CEC considers it to be "proprietary information," but noted that arrangements can be made for "in person" review of the policy.
SOURCE:	Survey Response, County Official, Right to Know
NO. OF DETAINERS:	6 (issued from Oct. 2011–Aug. 2013)

ERIE COUNTY*

WRITTEN POLICY:	Yes. In a memo dated October 1, 2014, Erie County will not hold any individuals based on the standard I-247 ICE detainer form.
OTHER INFORMATION:	Erie County Jail has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings. Erie County Jail will send a list of currently held individuals upon request to ICE. Erie County also allows members of ICE to inspect the jail at any time and ride-along with local law enforcement. Most pick-ups for ICE in Erie County are made by Customs and Border Patrol (CBP) at a Border Patrol station within the county.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	12 (issued from Oct. 2011–Aug. 2013)
*NOTES:	Erie County's memo states that it will hold individuals if they receive from ICE an I-203 Order to Detain form along with the I-200 Warrant of Arrest.

LEBANON COUNTY

WRITTEN POLICY:	Yes. Dated August 28, 2008, Lebanon County Correctional Facility's policy states that the facility will no longer hold individuals based solely on ICE detainers.
PRACTICE:	No additional information available.
OTHER INFORMATION:	While the Lebanon County Correctional Facility does not honor ICE detainers, it has two clerks who report weekly to ICE about their newly incarcerated individuals. The facility also allows ICE access to their facility and their records.
SOURCE:	Right to Know
NO. OF DETAINERS:	17 (issued from Oct. 2011–Aug. 2013)

LEHIGH COUNTY

WRITTEN POLICY:	Yes. Dated April 14, 2014, Lehigh County's policy states: "Once the subject of the detainer is not otherwise detained, the Lehigh County Department of Corrections shall release the subject of the detainer from County custody, unless the Lehigh County Department of Corrections receives a judicially-issued detainer, warrant or order."
OTHER INFORMATION:	The county's new policy also states: "[t]o the extent practicable under the circumstances, the Lehigh County Department of Corrections shall advise the applicable federal agency of the date and time when the subject of the detainer shall not otherwise be detained, so as to permit the federal agency the opportunity to assume custody."
SOURCE:	County of Lehigh, Pennsylvania Resolution No. 2014-36
NO. OF DETAINERS:	119 (issued from Oct. 2011–Aug. 2013)

LYCOMING COUNTY

WRITTEN POLICY:	Yes. A memo from the prison, dated October 20, 2014, states that the Lycoming County prison will not hold individuals based on ICE detainers alone. It further states that if a person in their custody is scheduled for release, and ICE has issued a Detainer, they will notify ICE two hours prior to the inmates release, so that ICE will have a chance to pick up the individual prior to release.
OTHER INFORMATION:	When there are any questions regarding a prisoner's immigration status, the Prison calls a local ICE agent.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	4 (issued from Oct. 2011–Aug. 2013)

MONTGOMERY COUNTY

WRITTEN POLICY:	Yes. Dated April 28, 2014, Montgomery County Correctional Facility's policy states "it will not accept or hold anyone who has been brought into the facility on charges but who has satisfied the bail requirements on the charges. Importantly, MCCF will not hold the person for the up to 48hr period noted on 2010 ICE detainer request form despite the fact that the form indicates that MCCF can do so." The facility will not accept "anyone being brought to it solely on an ICE detainer or possible ICE detainer."
PRACTICE:	Confirmed written policy.
OTHER INFORMATION:	Drafted new policy in light of *Galarza*. A county official confirmed that the facility has daily contact with ICE. MCCF's policy further states: "…this policy is unrelated to 2012 Intergovernmental Service Agreement between the Department of Homeland Security, U.S. Immigrations and Custom Enforcement, Enforcement and Removal Operations and the Montgomery County Correctional Facility - wherein persons are being transported by Federally authorized and identified ICE/ERO personnel to assure attendance through the administrative hearing process." Non-U.S. citizens are further advised of their right to contact their consulate.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	406 (issued from Oct. 2011–Aug. 2013)

MONTOUR COUNTY

WRITTEN POLICY:	Yes. Dated October 16, 2014, Montour County Prison's policy states: "Montour County does not honor ICE detainers, as set forth by law."
PRACTICE:	No additional information available.
SOURCE:	Right to Know
NO. OF DETAINERS:	No data available

PERRY COUNTY

WRITTEN POLICY:	Yes. Dated October 22, 2014, Perry County Prison's policy states: "County officials shall not detain any individual at the request of U.S. Immigrations and Customs Enforcement (ICE) unless ICE first presents the county with a judicially issued warrant or order authorizing such detention. In particular, County officials shall not arrest, detain, or transport anyone solely on basis of an immigration detainer or an administrative warrant."
PRACTICE:	No additional information available.
OTHER INFORMATION:	Perry County Prison's policy also states, "[u]nless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no County official shall permit ICE agents access to County facilities or to any person in County custody."
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	No data available

PHILADELPHIA COUNTY

WRITTEN POLICY:	Yes. Dated April 16, 2014, Philadelphia City's policy states: "No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request . . . unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant."
OTHER INFORMATION:	The City's new policy also prohibits notifying ICE of an individual's pending release from City custody unless the same listed conditions are met.
SOURCE:	City of Philadelphia Mayor Nutter's Executive Order No. 1-14
NO. OF DETAINERS:	339 (issued from Oct. 2011–Aug. 2013)

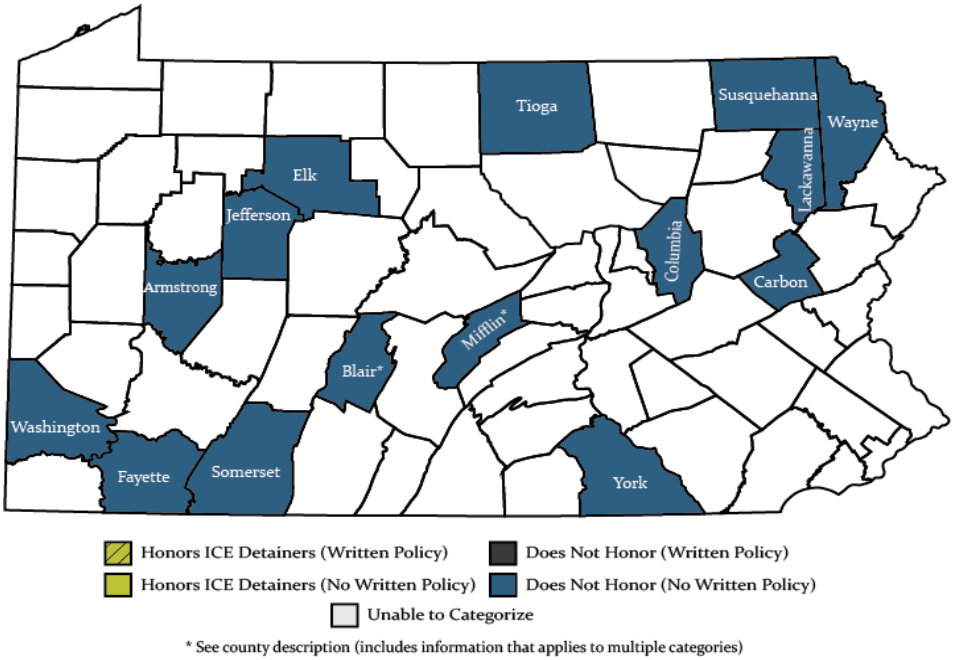
PIKE COUNTY*

WRITTEN POLICY:	Yes. Undated, Pike County Correctional Facility's Standard Operating Procedure states, "Immigration and Customs Enforcement detainers . . . are not acceptable commitment paperwork nor can they be placed as a valid hold."
PRACTICE:	See notes below.
OTHER INFORMATION:	Pike County Prison has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings. ICE also has an office in Pike County.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	14 (issued from Oct. 2011–Aug. 2013)
*NOTES:	According to one official, Pike County's practice is to hold individuals based solely on ICE detainers.

WESTMORELAND COUNTY

WRITTEN POLICY:	Yes. Dated September 2, 2014, the Deputy Warden of Security of Westmoreland County Prison issued a memorandum to all staff stating that ICE detainers will not be accepted unless accompanied by a judicially authorized warrant or court order. If ICE detainers do not meet these requirements, they are sent back to the ICE agent.
PRACTICE:	Confirmed written policy.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	20 (issued from Oct. 2011–Aug. 2013)

County Does Not Honor ICE Detainers: No Written Policy



ARMSTRONG COUNTY

WRITTEN POLICY:	None
PRACTICE:	Armstrong County Jail's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Armstrong County is currently drafting a policy regarding ICE detainers. One county official stated they no longer honor requests because they do not get paid and are at capacity.
SOURCE:	Right to Know, County Officials
NO. OF DETAINERS:	No data available

BLAIR COUNTY*

WRITTEN POLICY:	None
PRACTICE:	Blair County Prison's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	A county official stated the Blair County Prison's current practice of not honoring ICE detainers is because of the lack of space in the facility. The facility contacts ICE on a weekly basis regarding individuals processed into the facility who appear in the National Crime Information Center database.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	6 (issued from Oct. 2011–Aug. 2013)
*NOTES:	The same official, however, indicated that the facility will immediately notify ICE when they arrest an individual if they suspect that someone is an undocumented immigrant (e.g., "red flags" include not speaking English or being foreign born), and will hold such individuals for ICE to pick up, independent of its practice related to ICE detainers.

CARBON COUNTY

WRITTEN POLICY:	None
PRACTICE:	Carbon County Correctional Facility's practice is to not hold individuals based solely on ICE detainers. The facility will honor an ICE detainer that is signed by a federal judge.
OTHER INFORMATION:	Carbon County Correctional Facility is currently drafting a policy regarding ICE detainers reflecting their current practice to parallel Lehigh's new policy.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	3 (issued from Oct. 2011–Aug. 2013)

COLUMBIA COUNTY

WRITTEN POLICY:	None
PRACTICE:	Columbia County Prison's practice is to not hold individuals based solely on ICE detainers.
SOURCE:	Survey Response, County Official
NO. OF DETAINERS:	15 (issued from Oct. 2011–Aug. 2013)

ELK COUNTY

WRITTEN POLICY:	None
PRACTICE:	Elk County Jail's practice is to not hold individuals based solely on ICE detainers.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	No data available

FAYETTE COUNTY

WRITTEN POLICY:	None
PRACTICE:	Fayette County Prison's practice is to not hold individuals based on ICE detainers.
OTHER INFORMATION:	Fayette County Prison does not have sufficient space to house ICE detainees and does not house them for that reason.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	8 (issued from Oct. 2011–Aug. 2013)

JEFFERSON COUNTY

WRITTEN POLICY:	None
PRACTICE:	Jefferson County Jail's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Jefferson County Jail no longer honors ICE detainers because they were not paid for the time when they did hold individuals.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	3 (issued from Oct. 2011–Aug. 2013)

LACKAWANNA COUNTY

WRITTEN POLICY:	None
PRACTICE:	Lackawanna County Prison's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Lackawanna County Prison has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	116 (issued from Oct. 2011–Aug. 2013)

MIFFLIN COUNTY*

WRITTEN POLICY:	None
PRACTICE:	Mifflin County Correctional Facility's practice is to not hold individuals based solely on ICE detainers beyond their release date.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	4 (issued from Oct. 2011–Aug. 2013)
*NOTES:	The facility does, however, notify ICE of individuals that are scheduled for release, and may delay the release of individuals for a few hours if ICE states that agents are on their way. The facility will not hold individuals beyond midnight of the scheduled release date.

SOMERSET COUNTY

WRITTEN POLICY:	None
PRACTICE:	Somerset County's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Somerset County is currently drafting a policy regarding ICE detainers. A county official explained that this change was "statewide" and tied to litigation.
SOURCE:	County Official
NO. OF DETAINERS:	1 (issued from Oct. 2011–Aug. 2013)

SUSQUEHANNA COUNTY

WRITTEN POLICY:	None
PRACTICE:	Susquehanna County Jail's practice is to not hold individuals based solely on ICE detainers.
SOURCE:	County Official
NO. OF DETAINERS:	6 (issued from Oct. 2011–Aug. 2013)

TIOGA COUNTY

WRITTEN POLICY:	None
PRACTICE:	Tioga County Prison's practice is to not hold individuals based on ICE detainers (do not see ICE detainers in Tioga County).
SOURCE:	Survey Response, County Official
NO. OF DETAINERS:	No data available

WASHINGTON COUNTY

WRITTEN POLICY:	None
PRACTICE:	Washington County's practice is to not hold individuals based solely on ICE detainers. The County indicated, "[i]f . . . we received this detainer we would place it in our records and as a courtesy we would inform the Ice [sic] authorities that the individual was here before we released them."
OTHER INFORMATION:	Washington County is reviewing a draft ICE detainer policy.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	8 (issued from Oct. 2011–Aug. 2013)

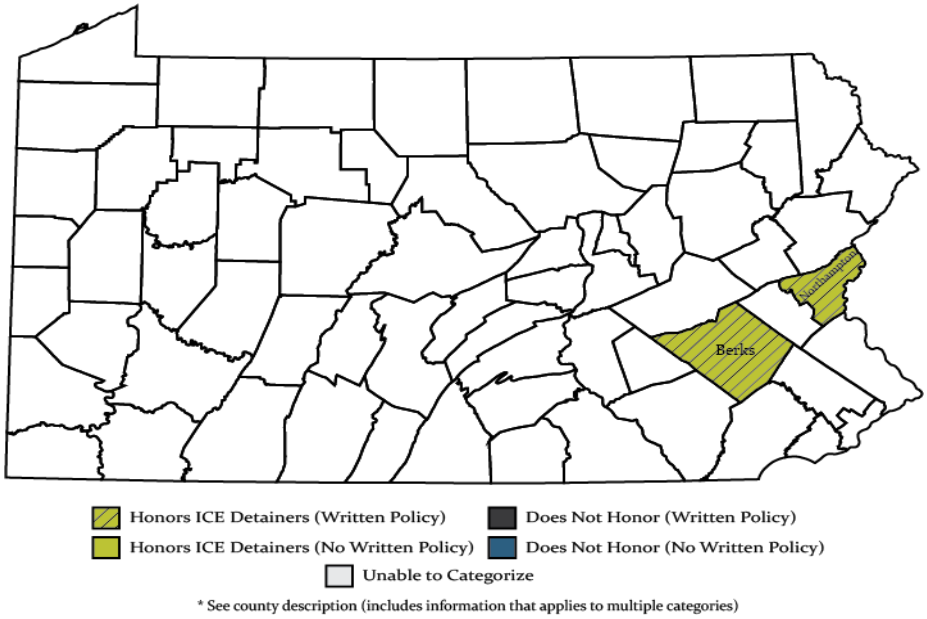
WAYNE COUNTY

WRITTEN POLICY:	None
PRACTICE:	Wayne County's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Wayne County is currently drafting a policy regarding ICE detainers.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	1 (issued from Oct. 2011–Aug. 2013)

YORK COUNTY

WRITTEN POLICY:	None
PRACTICE:	York County's practice is to not hold individuals based solely on ICE detainers.
OTHER INFORMATION:	York County Prison has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings. ICE has an office in York County Prison.
SOURCE:	Right to Know
NO. OF DETAINERS:	117 (issued from Oct. 2011–Aug. 2013)

County Honors ICE Detainers: Written Policy



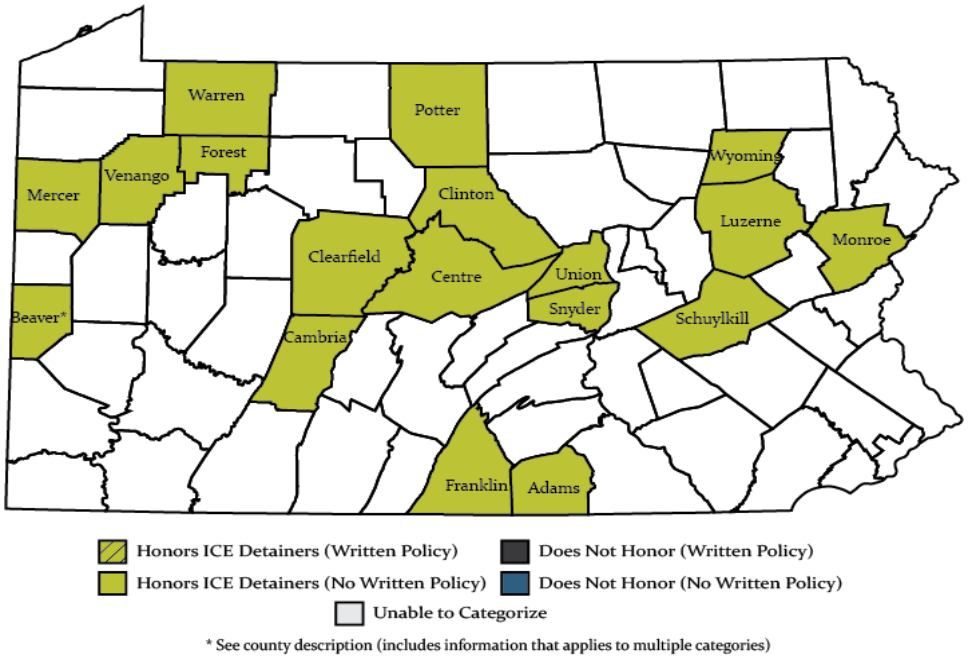
BERKS COUNTY

WRITTEN POLICY:	Yes. Dated May 9, 2014, an email directive from a Berks County Jail official states: "ICE Officers will no longer have two business days to transport an inmate once all open charges are discharged. They will only have 4 hours from the time you notify them that the inmate is turned over into their custody and ready for transport to pick them up."
PRACTICE:	No additional information available.
OTHER INFORMATION:	Under the current directive, a supervisor within the jail system receives notification every time an individual is turned over to ICE. Berks County Jail is currently drafting a more formal "procedure update" regarding ICE detainers. Berks County Jail has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	181 (issued from Oct. 2011–Aug. 2013)

NORTHAMPTON COUNTY

WRITTEN POLICY:	Yes. Dated June 30, 2014, the Northampton County Department of Corrections' policy provides that they will hold individuals based solely on an ICE detainer for up to 48 hours.
PRACTICE:	No additional information available.
OTHER INFORMATION:	County provides notice to the individual of the ICE detainer and the officer on duty "will ensure that the inmate will have access to the phones" to use the contact number on the detainer form. If the named individual claims the detainer is in error, the facility must follow a procedure to contact ICE to confirm the status of the individual and the detainer request. The policy also states that ICE obtains a list of "new inmates," determines who they want to "interview" in person, and "obtain[s] a new set of fingerprints."
SOURCE:	Right to Know
NO. OF DETAINERS:	No data available

County Honors ICE Detainers: No Written Policy



ADAMS COUNTY

WRITTEN POLICY:	None
PRACTICE:	Adams County Correctional Complex's practice is to hold individuals based solely on ICE detainers. The facility will hold an individual on an ICE detainer for up to forty-eight hours.
OTHER INFORMATION:	Each day, the facility sends a list to ICE of all individuals processed into the facility. Current ICE detainer practice is under review. At least one county official shared his understanding that the Third Circuit Court of Appeals ruling in *Galarza* indicates requests from ICE do not have the same force of law and impose no obligation to detain an individual.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	80 (issued from Oct. 2011–Aug. 2013)

BEAVER COUNTY*

WRITTEN POLICY:	None
PRACTICE:	Beaver County Jail's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Each day, the facility sends a list to ICE of individuals processed into the facility. The facility also contacts ICE regarding the release of any individual on which ICE places a detainer. One official stated that the facility was required to honor ICE detainers because they were mandatory. Beaver County Jail is currently drafting a policy regarding ICE detainers.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	No data available
*NOTES:	County officials gave conflicting information. Another official stated the county had no experience with ICE detainers.

CAMBRIA COUNTY

WRITTEN POLICY:	None
PRACTICE:	Cambria County Prison's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Cambria County Prison has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings. A county official described Cambria County Prison as a holding station or stopping point for daily ICE pickups.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	4 (issued from Oct. 2011–Aug. 2013)

CENTRE COUNTY

WRITTEN POLICY:	None
PRACTICE:	Centre County Correctional Facility's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Each week, the facility sends a list to ICE of all individuals processed into the facility who were born outside of the United States.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	17 (issued from Oct. 2011–Aug. 2013)

CLEARFIELD COUNTY

WRITTEN POLICY:	None
PRACTICE:	Clearfield County Jail's practice is to hold individuals based solely on ICE detainers until ICE "gets them."
OTHER INFORMATION:	Arresting officer or prison official will independently report suspected undocumented immigrants to ICE.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	6 (issued from Oct. 2011–Aug. 2013)

CLINTON COUNTY

WRITTEN POLICY:	None
PRACTICE:	Clinton County Correctional Facility's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	Clinton County Correctional Facility has a contract with ICE to hold individuals who are in federal custody pending immigration proceedings. This location is most often used as a transfer facility for individuals who have been detained by ICE in other counties. ICE is in this facility five days a week, eight hours per day. A county official, who was unsure of how the system exactly worked, mentioned that individuals within the facility without social security numbers come to the attention of "in house ICE personnel."
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	25 (issued from Oct. 2011–Aug. 2013)

FOREST COUNTY

WRITTEN POLICY:	None
PRACTICE:	Forest County Jail's practice is to hold individuals based solely on ICE detainers but cannot do so for more than forty-eight hours.
OTHER INFORMATION:	ICE can ride-along with local law enforcement.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	No data available

FRANKLIN COUNTY

WRITTEN POLICY:	None
PRACTICE:	Franklin County Jail's practice is to hold individuals based solely on ICE detainers. Franklin County Jail will hold someone between seventy-two hours and two weeks.
OTHER INFORMATION:	Each day, the facility sends a list to ICE of all individuals processed into the facility. ICE then either sends an ICE detainer for individuals or arranges a time to pick up the individuals without an ICE detainer. Fulton County sends individuals to Franklin County Jail.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	79 (issued from Oct. 2011–Aug. 2013)

LUZERNE COUNTY

WRITTEN POLICY:	None
PRACTICE:	Luzerne County Correctional Facility's practice is to hold individuals based solely on ICE detainers. The facility "follow[s] the instructions identified on the Department of Homeland Security's detainer that they receive regarding a particular individual."
SOURCE:	Right to Know
NO. OF DETAINERS:	97 (issued from Oct. 2011–Aug. 2013)

MERCER COUNTY

WRITTEN POLICY:	None
PRACTICE:	Mercer County Jail's practice is to hold individuals based solely on ICE detainers. When the County is ready to release an individual, it will hold that individual based on the ICE detainer for up to an additional forty-eight hours for ICE to pick up.
OTHER INFORMATION:	Once a week, the jail notifies ICE about individuals that have been taken into custody. When the jail takes in a person that has not been born in the United States, jail staff fills out a form and sends it to ICE.
SOURCE:	Right to Know
NO. OF DETAINERS:	5 (issued from Oct. 2011–Aug. 2013)

MONROE COUNTY

WRITTEN POLICY:	None
PRACTICE:	Monroe County Correctional Facility's practice is to hold individuals based solely on ICE detainers. A county official stated that when they receive a request they follow the instructions that are stated in the request.
OTHER INFORMATION:	A county official said they rarely ever get ICE detainers, so there was no reason to create a policy.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	49 (issued from Oct. 2011–Aug. 2013)

POTTER COUNTY

WRITTEN POLICY:	None
PRACTICE:	Potter County Jail's practice is to hold individuals based solely on ICE detainers, but this is done on a "case-by-case" basis.
OTHER INFORMATION:	An official explained that county officials had discussed ICE detainers with the Pennsylvania State Police and he seemed to suggest that the county's policy might change. The official also explained that ICE detainers are not issued frequently to Potter County Jail.
SOURCE:	County Official
NO. OF DETAINERS:	1 (issued from Oct. 2011–Aug. 2013)

SCHUYLKILL COUNTY

WRITTEN POLICY:	None
PRACTICE:	Schuylkill County Prison's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	A nonelected county official indicated that "we'd be out of a job if we didn't [honor ICE detainers]."
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	25 (issued from Oct. 2011–Aug. 2013)

SNYDER COUNTY

WRITTEN POLICY:	None
PRACTICE:	Snyder County Prison's practice is to hold individuals based solely on ICE detainers.
SOURCE:	Right to Know, County Official
NO. OF DETAINERS:	1 (issued from Oct. 2011–Aug. 2013)

UNION COUNTY

WRITTEN POLICY:	None
PRACTICE:	Union County Jail's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	The Jail does not have to hold individuals for a long time because ICE, which is close by, usually picks individuals up within half an hour of their formal release from jail and transports them to ICE detention at the Federal Correctional Institutiton Allenwood.
SOURCE:	County Official
NO. OF DETAINERS:	1 (issued from Oct. 2011–Aug. 2013)

VENANGO COUNTY

WRITTEN POLICY:	None
PRACTICE:	Venango County Prison's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	An official indicated that the Prison emails a list of their inmates to ICE on a daily basis.
SOURCE:	County Official
NO. OF DETAINERS:	No data available

WARREN COUNTY

WRITTEN POLICY:	None
PRACTICE:	Warren County Prison's practice is to hold individuals based solely on ICE detainers.
OTHER INFORMATION:	ICE agents pick up individuals detained in Warren County and take them to Erie County.
SOURCE:	County Official
NO. OF DETAINERS:	No data available

WYOMING COUNTY

WRITTEN POLICY:	None
PRACTICE:	Wyoming County's practice is to hold individuals based solely on ICE detainers.
SOURCE:	County Official
NO. OF DETAINERS:	4 (issued from Oct. 2011–Aug. 2013)

Unable to Categorize

The remaining counties cannot be categorized by how they treat ICE detainers. Four counties in Pennsylvania do not have their own local county facilities: Cameron, Fulton, Juniata, and Sullivan. These counties send arrested individuals to nearby county facilities. Apart from these counties, the remaining counties failed to supply sufficient information for several reasons. First, county officials sometimes refused to cooperate with our inquiries for information. Second, these counties also denied having written policies related to ICE detainers in response to our Right to Know requests. Finally, a few counties did not have any meaningful information about their policies and practices with respect to ICE detainers.

Counties Without Facilities			
Cameron	Fulton	Juniata	Sullivan

Counties That Have Supplied Insufficient Information			
Allegheny	Dauphin	Indiana	McKean
Crawford	Greene	Lancaster	Northumberland
Cumberland	Huntingdon	Lawrence	

As a point of comparison, when looking at the data of ICE detainers issued to these county facilities in Pennsylvania from October 2011 to August 2013, from highest to lowest were Allegheny (119), Dauphin (107), and Lancaster (66), Cumberland (35), Huntingdon (5), Lawrence (3), and Northumberland (2).[18] The remaining counties have no data available as to whether ICE detainers were issued to their county facilities during that time period.

Overall Observations

ICE Detainer Policies and Practices

The overall trend in Pennsylvania counties is towards refusing to honor ICE detainers. In 2014, fourteen counties created written policies requiring their officials to refuse to honor ICE detainers. A number of counties without written policies nonetheless reported not honoring ICE detainers and the drafting of written policies to codify that practice. Other counties with practices of honoring ICE detainers stated that their current practice is under review. Several county officials reported that the letter and accompanying information package sent by PICC, ACLU-PA, and JUNTOS prompted them to begin drafting ICE detainer policies. Most county officials who volunteered their motivation for changing their policy stated that the major impetus was the Third Circuit Court of Appeals' decision in *Galarza* and the resulting liability that Lehigh County faced in the case. A few counties we contacted had adopted policies and practices refusing to honor ICE detainers many years ago. They reported adopting such policies and practices because of the failure to receive reimbursement for holding individuals for ICE and the limited bed space at their facilities.

Bucks County

A county official indicated the county does not honor ICE detainers in order to comply with the Third Circuit's decision in *Galarza*. The official recognized that Lehigh County was subject to significant penalty as result of their actions and the case. The official also understood that an ICE detainer is considered a request under the Third Circuit ruling.

Armstrong County

A county official indicated the county jail does not honor ICE detainers because the federal government did not reimburse the county's costs at the desired rate. Furthermore, the official stated the facility typically operates at capacity, so space restricts the county's ability to hold additional individuals.

In those counties that honor ICE detainers, the motivations were less clear. Several counties explained that they believed they were following the law by complying with ICE detainers. It is unclear whether these counties were unaware of the Third Circuit Court of Appeals' decision in *Galarza*. Other counties reformulated their policies and practices to honor ICE detainers in light of *Galarza* in ways they perceived to reduce the likelihood of liability. Instead of refusing to honor ICE holds, Northampton County provided "safeguards" to ensure the basis for the detainer was correct. Berks County still held individuals pursuant to an ICE detainer for retrieval by ICE, but had reduced that holding time to four hours.

Given the diversity of population size and composition in Pennsylvania counties, it was unsurprising that several counties reported little or no experience with ICE detainers. For some counties, the absence of a county prison or jail made the issue moot. For other counties, small

numbers of local immigrants limited law enforcement agencies' interaction with and knowledge of the ICE detainer program. Due to their inexperience, these counties had little prior impetus to create an ICE detainer policy or practice.

Beyond the different understandings of ICE detainers by county officials across Pennsylvania, even within counties, the information we gathered from county officials was occasionally divergent at times. In these few instances, county officials sometimes reported practices that were inconsistent with written policies or with the reports of other officials within that county. Thus, policies and practices within a county were not necessarily uniformly implemented throughout the county, which suggests a need for counties to train personnel about their policies and practices regarding ICE detainers, especially if the policy or practice had been recently changed.

Collaboration with ICE

Detainers are part of a larger story in Pennsylvania about counties and their collaboration with ICE. Even among counties that had changed their policies or practices to not honor ICE detainers, a number continued to collaborate in ways that enabled ICE to assume custody of the individual named in the ICE detainer. Some counties did so by carving out a prohibition for ICE detainers to avoid legal liability while continuing other efforts to coordinate with ICE. Others actively communicated with ICE to provide information about the probable release date or provided as much advance notification as possible about the release of an individual so ICE may assume custody.

Bucks County

Bucks County prison officials will notify ICE via email about the pending release of any individual from custody.

In contrast, some counties that prohibited compliance with ICE detainers did not otherwise affirmatively seek to notify ICE of the release of individuals or appear to collaborate with ICE. A couple of counties took a more aggressive stand against collaboration with ICE. They refused ICE agents access to their facilities and limited cooperation of local personnel with ICE in providing information about individuals within their facilities.

Butler County

Butler County's written policy expressly prohibits ICE agents physical access to the prison or individuals in custody for investigative purposes. The policy also prohibits the use of county resources for communicating with ICE regarding inmates.

In collecting the information for this report, we also sometimes learned about how counties collaborated with ICE apart from their policies and practices relating to the ICE

detainer. As discussed above, a county's position to not honor ICE detainers did not necessarily mean that the county otherwise refused to collaborate with ICE. Apart from ICE detainers, counties explained the ways in which they collaborated with ICE to transfer custody of individuals suspected of being present in violation of federal immigration laws. Counties, for example, reported that they:

- Had regular informal contact with ICE
- Shared, on a regular basis, a list with ICE of individuals processed into the facility
- Authorized ICE to be regularly present in the facility
- Provided ICE with access to individuals in their facility
- Notified ICE about individuals they suspected of being foreign born
- Permitted ICE agents to ride-along with officers

It is unclear whether counties that currently honor ICE detainers, if convinced to revise their policies, would otherwise change the ways in which they collaborate with ICE to help identify and take custody of individuals.

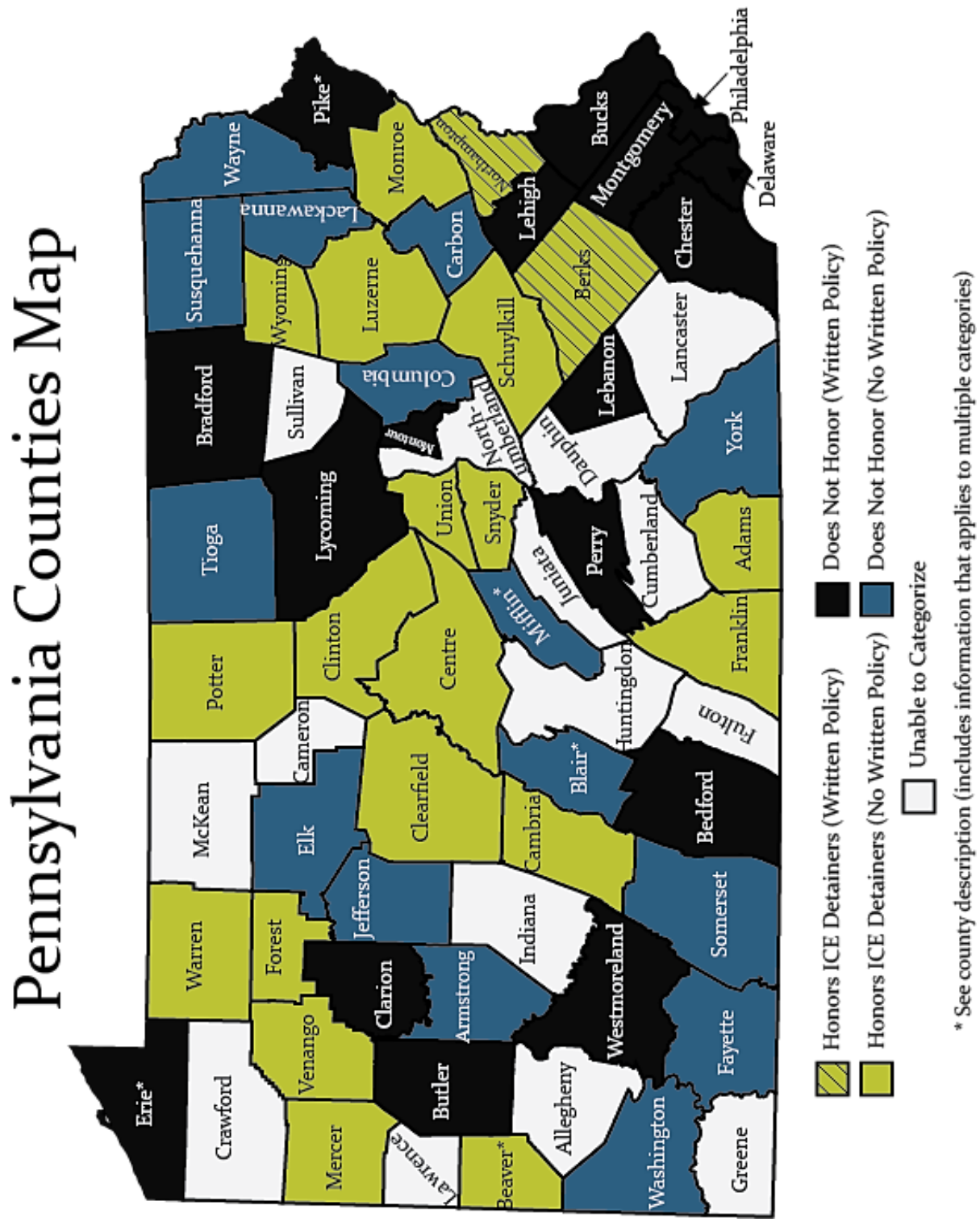
Conclusion

Pennsylvania counties are moving away from honoring ICE detainers, reflecting the larger national movement.[19] A number of counties that now refuse to honor ICE detainers reported that these changes were undertaken in order to comply with the Third Circuit Court of Appeals' decision in *Galarza* and to avoid the possibility of legal liability. Some counties reported that they were prompted by the information provided by PICC, ACLU-PA, and JUNTOS. The vast majority of counties that adopted written policies refusing to honor ICE detainers did so in 2014. Continued education about the impact of *Galarza*, therefore, could be significant to bringing about county changes to ICE detainer policies and practices

Changes in detainer policies, however, do not answer the question of how counties will collaborate with ICE in the future. Many counties that officially refuse to comply with ICE detainers nonetheless continue to cooperate with ICE to take custody of individuals. On the other hand, several counties that have changed their policy to not honor ICE detainers are now also refusing any kind of collaboration with ICE.

When counties review their ICE detainer policies and practices, it provides an opportunity for community members and policymakers to discuss the implications of broader policies and practices involving local interaction with ICE, including the limitations of local resources available for federal civil immigration enforcement. Community involvement will be essential, not only to educate counties that still honor ICE detainers about *Galarza* and the liability they could face, but also to shape the discussion about broader county policies and practices concerning ICE collaboration. Given the potentially changing national landscape on federal immigration enforcement, communities have a historic opportunity to help Pennsylvania counties understand the impacts of their current policies and practices.

Appendix A


Pennsylvania Counties Map
Erie*
Crawford
Warren
McKean
Potter
Tioga
Bradford
Susquehanna
Wayne
Pike*
Monroe
Lackawanna
Wyoming
Luzerne
Carbon
Northampton
Lehigh
Bucks
Montgomery
Philadelphia
Delaware
Chester
Berks
Lancaster
Lebanon
York
Adams
Franklin
Fulton
Bedford
Somerset
Fayette
Greene
Washington
Allegheny
Beaver*
Lawrence
Mercer
Venango
Forest
Clarion
Butler
Armstrong
Indiana
Jefferson
Elk
Cameron
Clinton
Centre
Clearfield
Cambria
Blair*
Huntingdon
Mifflin*
Juniata
Perry
Cumberland
Dauphin
Northumberland
Union
Snyder
Schuylkill
Columbia
Montour
Sullivan
Lycoming
Honors ICE Detainers (Written Policy)
Honors ICE Detainers (No Written Policy)
Does Not Honor (Written Policy)
Does Not Honor (No Written Policy)
Unable to Categorize
* See county description (includes information that applies to multiple categories)

Appendix B

At-A-Glance Summary: Pennsylvania Counties and ICE Detainers

Stephen and Sandra SHELLER CENTER for SOCIAL JUSTICE
Temple University Beasley School of Law

Does Not Honor ICE detainers – Written Policy				
Bedford	Chester	Lebanon	Montour	Westmoreland
Bradford	Clarion	Lehigh	Perry	
Bucks	Delaware	Lycoming	Philadelphia	
Butler	Erie*	Montgomery	Pike*	

Does Not Honor ICE detainers – No Written Policy				
Armstrong	Columbia	Jefferson	Somerset	Washington
Blair*	Elk	Lackawanna	Susquehanna	Wayne
Carbon	Fayette	Mifflin*	Tioga	York

Honors ICE detainers – Written Policy	
Berks	Northampton

Honors ICE detainers – No Written Policy				
Adams	Clearfield	Luzerne	Schuylkill	Warren
Beaver*	Clinton	Mercer	Snyder	Wyoming
Cambria	Forest	Monroe	Union	
Centre	Franklin	Potter	Venango	

Counties Without Facilities			
Cameron	Fulton	Juniata	Sullivan

Counties That Have Supplied Insufficient Information			
Allegheny	Dauphin	Huntingdon	Lawrence
Crawford	Greene	Indiana	McKean
Cumberland	Greene	Lancaster	Northumberland

*See county description (includes information that applies to multiple categories)

Appendix C

August 13, 2014

To: [County Executive/Manager]
[County Commissioner]
[County Council]
[County Sheriff]
CC: [County Solicitor]

Re: County Liability for Honoring ICE detainers

Dear [Name of County] County Officials,

We are writing to alert you to the March 3, 2014 decision of the U.S. Court of Appeals for the Third Circuit in *Galarza v. Szalczyk et al.*, No. 12-3991, 2014 WL 815127 (3d Cir. Mar. 4, 2014), in which the court ruled that when a local law enforcement agency imprisons someone on the sole basis of an ICE detainer request, it can be held liable for damages for constitutional violations. This ruling is binding law in Pennsylvania.

Since the *Galarza* decision, Philadelphia and Lehigh County have adopted policies prohibiting the imprisonment of anyone based solely on an ICE detainer request. **We ask that you fill out the attached survey on your county's current detainer policies and practices.** We have enclosed a self-addressed, stamped envelope for your convenience, and would appreciate your response by September 1.

If your county does not have a detainer policy consistent with current federal law, we urge you to adopt a policy prohibiting all County facilities from complying with any ICE detainer requests unless such detainers are accompanied by a judicial warrant backed by probable cause, as required by the Fourth Amendment. A model policy is enclosed for your review.

About Detainers

An ICE detainer (also known as an "ICE hold" or an "immigration hold") is a notice sent by ICE to a state or local law enforcement agency or detention facility to notify the agency that ICE is interested in a person in the agency's custody, and to request that the agency hold that person for up to 48 hours, excluding weekends and federal holidays, after the person is otherwise entitled to be released from the criminal justice system (for example, after posting

bail), giving ICE extra time to decide whether to take the person into federal custody for administrative proceedings in immigration court.

A detainer is not an arrest warrant. Unlike genuine criminal warrants, which are supported by a determination of probable cause, it is unclear what evidentiary standard ICE uses when deciding whether to issue a detainer. In addition, while warrants are issued by a judicial officer, ICE detainers are issued by ICE enforcement agents themselves, without any authorization or oversight by a judge or any other neutral decisionmaker. And there is no clear, expeditious method for challenging a detainer or getting the detainer lifted or cancelled once it has been issued. This lack of basic Fourth Amendment protections in the ICE detainer context explains why ICE has mistakenly issued detainers for so many U.S. citizens and non-removable immigrants.

Although ICE benefits from the misperception that ICE detainers are mandatory orders to detain someone, in fact, ICE detainers are non-binding requests. Federal agencies and courts, including ICE itself and the federal appeals court in Pennsylvania, have acknowledged that local law enforcement are never required to hold anyone based on an ICE detainer without an accompanying warrant or a court order.

Since ICE detainers are merely requests, state and local law enforcement agencies and detention facilities open themselves up to legal liability for making the decision to detain an individual—for any length of time—based solely on an ICE detainer request.

Galarza v. Szalczyk, et al.

The U.S. Court of Appeals for the Third Circuit recently held that local detention facilities can be held liable, right alongside ICE, for constitutional violations if a wrongfully detained person decides to sue. *See Galarza v. Szalczyk et al.*, No. 12-3991, 2014 WL 815127 (3d Cir. Mar. 4, 2014). This ruling arose out of a federal lawsuit filed in 2010 by the ACLU and ACLU of Pennsylvania on behalf of Ernesto Galarza, a New Jersey-born U.S. citizen of Puerto Rican descent who was held illegally for three days in the Lehigh County Prison pursuant to an ICE detainer. After Mr. Galarza was arrested (on charges of which he was later acquitted), Allentown police notified ICE of Mr. Galarza's arrest, believing, due to his ethnicity, that he might be an undocumented immigrant. ICE then issued a detainer asking Lehigh County Prison to continue holding Mr. Galarza after he posted bail so that ICE could investigate his immigration status. So when Mr. Galarza posted bail the day after his arrest, he was not released. Instead, he was held in prison for three additional days, without any explanation as to why he was still being detained or opportunity to demonstrate his citizenship, before being interviewed by ICE and released.

In October 2012, most of the defendants in the case paid Mr. Galarza to settle his claims. But the trial court dismissed Mr. Galarza's claims against Lehigh County, ruling that the County could not be held liable for violating his rights because it had no choice but to honor the ICE detainer. Mr. Galarza appealed the dismissal of the County, and won. On March 4, 2014, the U.S. Court of Appeals for the Third Circuit held that ICE detainers are merely requests to detain someone, and that because local agencies are not required to comply with ICE detainers, they may be held liable for their role in causing an unlawful detention when there is no

constitutionally valid basis for the detainer. Lehigh County subsequently settled with Mr. Galarza and passed a resolution prohibiting its facilities from honoring ICE detainers without a judicial warrant.

Many other localities around the country have been forced to expend resources defending civil rights litigation and pay financial settlements to people who were unlawfully held on ICE detainers. Allegheny County is currently defending a federal lawsuit filed by the ACLU of Pennsylvania on behalf of Angelica Davila, another U.S. citizen who was unlawfully imprisoned overnight by the Allegheny County Jail based on an ICE detainer request.[1]

Growing Trend of Refusing to Comply with ICE detainer Requests

In light of the many concerns raised by ICE detainer requests, scores of cities, counties, and states nationwide are choosing to preserve their own much-needed resources for local priorities by refusing to allow ICE to dictate who should be detained in local detention facilities. In a growing number of jurisdictions across the country, state or local laws direct law enforcement agencies not to respond to ICE's detainer requests, or to comply with detainer requests only in limited circumstances.

For example, after the *Galarza* decision, Lehigh County passed a binding resolution stating that "the Lehigh County Department of Corrections shall release the subject of a detainer from County custody, unless the Lehigh County Department of Corrections receives a judicially-issued detainer, warrant or order." County of Lehigh, Pennsylvania, Resolution No. 2014-36. Similarly, the San Miguel County Sheriff's Office in Colorado recently adopted a policy under which "ICE agents will be required to file an arrest warrant, singed by a U.S. Magistrate, with the Sheriff's office before the Sheriff will detain a federal prisoner." In Newark, New Jersey, a police department directive issued in 2013 simply directs all department personnel to decline ICE detainer requests.

Thank you in advance for your consideration of this important issue and your help in completing the enclosed survey and promptly returning it to us. We would be happy to provide you with additional information about this issue; please don't hesitate to contact us with any questions.

Sincerely,

Molly Tack-Hooper
Staff Attorney
ACLU of Pennsylvania
Mtack-hooper@aclupa.org
(215) 592-1513 x 113

Sundrop Carter
Organizing Director
Pennsylvania Immigration
& Citizenship Coalition (PICC)

Erika Almirón
Executive Director
JUNTOS

[1] *See Davila v. N. Reg'l Joint Police Bd.*, 2014 WL 3735631, *X (W.D. Pa. July 28, 2014) (reinstating constitutional claims against Allegheny County based on Third Circuit ruling in *Galarza*).

Additional Signatories include:

Peter Pedemonti
Executive Director
New Sanctuary Movement of Philadelphia

Salvador G. Sarmiento
National Campaign Coordinator
National Day Laborer Organizing Network

Enclosures: Survey, Sample Detainer Policy

Dear County Official,

As part of our public education efforts and advocacy on behalf of immigrants, we are collecting information about Pennsylvania counties' current policies regarding compliance with detainers issued by Immigration & Customs Enforcement (ICE).

We would appreciate it if you would **please complete the 3-question survey** on the back of this page regarding your county's current detainer policy or practice. You can return the survey to PICC by email, fax, or mail:

By Email: SundropCarter@paimmigrant.org

By Mail: PICC
2100 Arch Street, 4th Floor
Philadelphia, PA 19103

By Fax: (215) 832-0527

We would appreciate your survey response by **September 1, 2014**.

Please don't hesitate to contact us if you have any questions or if you would like more information about detainers, including copies of other counties' and municipalities' detainer policies. Thank you in advance for your assistance!

Sincerely,

Molly Tack-Hooper
Staff Attorney
ACLU of Pennsylvania
Mtack-hooper@aclupa.org
Tel.: (215) 592-1513 x 113
Fax: (215) 592-1343

Sundrop Carter
Organizing Director
Pennsylvania Immigration & Citizenship Coalition
SundropCarter@paimmigrant.org
Tel.: (215) 832-0616
Fax: (215) 832-0527

County: _____ Your Name: _____

Your Title: _____

1. Does your county currently have a written policy or law regarding ICE detainer requests?

☐ Yes . ☐ No. ☐ I'm not sure.

If yes, please send us a copy of the written policy or law.

2. Does your county currently hold people based on ICE detainer requests?

☐ No. Please note when this practice began:

_____

☐ Yes, always.

☐ Yes, but only in certain circumstances. Please describe the circumstances:

_____

_____

_____

_____

_____

_____

3. Does this policy or practice apply to every law enforcement agency and detention facility in your county? ☐ Yes. ☐ No. ☐ I'm not sure.

If certain agencies or facilities in the county are under separate control, please explain:

_____

_____

_____

End of survey. Thank you for your assistance!

ACLU of Pennsylvania Model Policy on Immigration Detainers
August 2014

WHEREAS 8 C.F.R. § 287.7 authorizes Immigration and Customs Enforcement Agency (ICE) agents to issue a detainer for the purpose of advising a local law enforcement agency that ICE is interested in a person in the custody of such agency, and to request that the agency hold that person for up to 48 hours, excluding weekends and federal holidays, after the person is otherwise entitled to be released from the criminal justice system;

WHEREAS, in *Galarza v. Szalczyk*, No. 12-3991, the U.S. Court of Appeals for the Third Circuit ruled that detainers issued under 8 C.F.R. § 287.7 are not mandatory orders, but merely non-binding requests;

WHEREAS the U.S. Constitution guarantees the right not to be imprisoned without probable cause and due process of law;

WHEREAS the constitutional protections against imprisonment without probable cause and due process of law and the ruling in *Galarza v. Szalczyk* concerning the permissive nature of detainers issued under 8 C.F.R. § 287.7 make no distinction based upon a person's criminal history or the criminal offense for which a person has been arrested or charged;

WHEREAS [*Your County*] respects the rule of law, as well as the civil rights and liberties of our residents;

WHEREAS [*Your County*] has a fiduciary responsibility to its constituents; and

WHEREAS the federal government does not reimburse local law enforcement agencies for the costs involved in complying with detainer requests issued pursuant to 8 C.F.R. § 287.7, such as detention costs or the costs of legal defense and legal liability arising from an erroneously-issued detainer;

BE IT NOW RESOLVED BY THE [*County policymaking body*] THAT:

The following is the policy of [*Your County*] with respect to immigration detainers:

1. The above clauses are incorporated herein and made a part hereof.

2. County officials shall not detain any individual at the request of U.S. Immigration and Customs Enforcement (ICE) unless ICE first presents the County with a judicially issued warrant or order authorizing such detention. In particular, County officials shall not arrest, detain, or transport anyone solely on the basis of an immigration detainer or an administrative immigration warrant.

3. Unless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no County official shall permit ICE agents access to County facilities or to any person in County custody for investigative interviews or other investigative purposes, or use on-duty time or County resources responding to ICE inquiries or communicating with ICE regarding an inmate's custody status or release date.

4. Any person who alleges a violation of this policy may file a written complaint for investigation with [*appropriate County office*].

ADOPTED BY THE [*County policymaking body*] on this ___ day of _____, 2014.

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[1] 8 C.F.R. § 287.7; *see also* ICE Detainers: Frequently Asked Questions, ICE (Dec. 28, 2011), ICE http://www.ice.gov/factsheets/detainer-faq; DEP'T OF HOMELAND SEC., IMMIGRATION DETAINER - NOTICE OF ACTION (2012), *available at* http://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf.
[2]Galarza v. Szalczyk, 745 F.3d 634, 635 (3d Cir. 2014).
[3]*Id.* at 645.
[4]*See, e.g.*, Moreno v. Napolitano, No. 11 C 5452, 2014 WL 4911938, at *6 (N.D. Ill. Sept. 30, 2014); Miranda-Olivares v. Clackamas County, No. 3:12–cv–02317–ST, 2014 WL 1414305, at *8 (D. Or. Apr. 11, 2014); *cf.* Buquer v. City of Indianapolis, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011).
[5] PFUN members include Juntos, One Love Movement, New Sanctuary Movement of Philadelphia (NSM), Pennsylvania Immigration and Citizenship Coalition (PICC), and Victim/Witness Services of South Philadelphia.
[6] Sean Collins Walsh, *Nutter Signs Order Limiting City Cooperation with ICE*, PHILLY.COM (Apr. 16, 2014, 12:29 PM), http://www.philly.com/philly/blogs/cityhall/Nutter-signs-order-limiting-city-cooperation-with-ICE.html.
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[8] 2013 Cal. Stat. 4650 (codified at CAL. GOV'T CODE §§ 7282–7282.5.
[9] Nancy Lofholm, *Colorado County Jails No Longer Holding Immigrants for ICE*, DENVER POST (Sept. 18, 2014, 3:46 PM), http://www.denverpost.com/news/ci_26561271/colorado-county-jails-no-longer-holding-immigrants-ice.
[10] Pub. Act No. 13-155, § 1 (Conn. 2013) (codified at CONN. GEN. STAT. § 54-192h).
[11] Michelle R. Smith, *Rhode Island Will Require Warrant for Detainers*, WASH. TIMES (July 17, 2014), http://www.washingtontimes.com/news/2014/jul/17/rhode-island-to-place-restrictions-on-detainers/?page=all.
[12] *See* CATHOLIC LEGAL IMMIGRATION NETWORK, *supra* note 7, for a list of cities and counties by state that have enacted such policies (including links to actual policies). *See also* Cristina Costantini & Elise Foley, *D.C. Passes Bill To Restrict Secure Communities Immigration Enforcement Program*, HUFFINGTON POST (July 10, 2012, 10:02 PM), http://www.huffingtonpost.com/2012/07/10/dc-immigration-law-secure-communities-ice_n_1663214.html (Washington D.C.); Caroline May, *22 Iowa County Jails to No Longer Honor ICE Detainers*, BREITBART (Aug. 18, 2014), http://www.breitbart.com/Big-Government/2014/08/18/22-Iowa-County-Jails-to-No-Longer-Honor-ICE-Detainers (Iowa); Mary Sanchez, *Jails Rightly Turn Away from Bad Policy on Immigration*, Kansas City Star (June 11, 2014, 8:00 PM), http://www.kansascity.com/opinion/opn-columns-blogs/mary-sanchez/article529324/Jails-rightly-turn-away-from-bad-policy-on-immigration.html (Kansas); John Fritze, *Montgomery Co. is Latest to Limit Immigration Detainers*, BALTIMORE SUN (Oct. 7, 2014, 2:57 PM), http://www.baltimoresun.com/news/maryland/politics/blog/bal-montgomery-co-is-latest-to-limit-immigration-detainers-20141007-story.html (Maryland); David Chanen, *Hennepin County No Longer Will Honor 'ICE Hold' Requests*, STAR TRIBUNE (June 11, 2014, 11:20 PM), http://www.startribune.com/local/minneapolis/262719361.html (Minnesota); Cody Winchester, *Douglas County No Longer Honoring ICE Detainer Requests*, OMAHA.COM (Oct. 2, 2014, 3:10 PM), http://www.omaha.com/news/crime/douglas-county-no-longer-honoring-ice-detainer-requests/article_f02f8daa-7275-5559-825e-40d733edc00a.html (Nebraska); *Counties in State Dropping Immigrant Jail Holds*, SEATTLE TIMES (April 30, 2014, 8:42 PM), http://seattletimes.com/html/localnews/2023499319_immigrationholdsxml.html (Washington).

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[15] *Id.*
[16] Robert Costa & Ed O'Keefe, *GOP Readies Obama Immigration Response: No Shutdown, But a Nod to Conservatives*, WASHINGTON POST (Dec. 2, 2014), http://www.washingtonpost.com/politics/gop-readies-obama-immigration-response-no-shutdown-but-a-nod-to-conservatives/2014/12/02/46e7c2ee-7a5b-11e4-b821-503cc7efed9e_story.html; *see also* David Montgomery & Julia Preston, *17 States Suing on Immigration*, N.Y. TIMES (Dec. 3, 2014), http://www.nytimes.com/2014/12/04/us/executive-action-on-immigration-prompts-texas-to-sue.html.
[17] This data was obtained from the Transactional Records Access Clearinghouse ("TRAC"). TRAC is an independent, nonpartisan research organization that provides statistics on U.S. federal immigration enforcement. *See About Us: Transactional Records Access Clearinghouse*, TRAC, http://trac.syr.edu/aboutTRACgeneral.html (last visited Feb. 12, 2015) (stating that TRAC is a "data gathering, data research and data distribution organization at Syracuse University"). The data was retrieved from this link: http://trac.syr.edu/immigration/reports/340/include/tableA2.html.
[18] *Id.*
[19] *See supra* notes 7–12 and accompanying text for a description of the states and localities that have changed their ICE detainer laws or policies.