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Immigration holds and detention of immigrants at local jails

What's an immigration/ICE hold?

ICE holds (immigration holds) give local jails the authority to detain undocumented immigrants beyond their release date, pending transfer of custody to immigration officials. The placement of immigration holds on detainees at local jails is a widespread practice in New Mexico. In many cases, the holds are illegally placed by local law enforcement officials, judges, and jailers. As a result, undocumented immigrants are subject to lengthy and unauthorized detentions even though their criminal charges have been cleared.

Who can place an ICE hold on an immigrant in jail?

Only Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) officials can issue an immigration hold. Local or state police, sheriffs, tribal police, judges, or jailers cannot place ICE holds on individuals, although they may notify immigration officials if they suspect that a detainee is undocumented.

What procedures must be followed for ICE or CBP to place an immigration hold?

If ICE or CBP has reasonable grounds to believe that a detainee is deportable, they may issue an immigration hold. ICE **must** send the jail a signed form called an "I-247 Detainer" which requires further detention of the inmate in order to take custody of the inmate. The I-247 Detainer only authorizes local jails to hold the inmate for 48 hours beyond their release date (excluding weekends and holidays). If the 48 hours pass, and a transfer of custody from local jail officials to immigration officials has not occurred, then the person should be released—if he/she has been cleared of all other criminal charges.

What if a person still has not been cleared of criminal charges, but has posted bail?

The same procedures apply. If an ICE hold has been properly placed, and ICE hasn't taken custody of the person, the detainee should be released after 48 hours.

What happens when ICE/CBP has an agreement to house immigration detainees at a local jail?

In some cases, local governments have entered into contracts with the federal government agreeing to provide bed space at local jails to immigration detainees. An additional form must be used by ICE called the I-203 making the detainee a federal prisoner at the local facility. The federal government must then pay the local government for each day the detainee is housed at the local jail. In many cases, the proper paperwork is not filled out, and local governments end up footing the bill.

What can a person who is being detained illegally at a local jail do?

The person should make this information available to his attorney. Most criminal defense attorneys do not have this information.

What can the community do to ensure that detainees' rights are not violated?

Attempt to get a clear policy from local jail officials and local governments about immigration holds. Inform local jailers and local governments about unauthorized immigration holds—most local governments do not like paying for jailers' mistakes. Document abuses and file complaints with appropriate agencies. Find out what process has been established by your local government to complain about abuses at the local jail. You can also file complaints against local judges and police who have illegally placed immigration holds on detainees.