

Congress of the United States

Washington, DC 20515

June 2014

The Honorable Jeh Johnson
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Johnson,

Communities across the country, along with our courts, have spoken loud and clear: The Department of Homeland Security's (DHS) current immigration detainer practices waste millions, make communities less safe by weakening trust with immigrant communities, and as recent court decisions have shown, cause widespread constitutional violations. Every day, DHS issues hundreds of detainers which result in the detention of community members that our courts have found to be unconstitutional, exposing states and localities to significant civil liability and causing significant harm and suffering in our communities. Given recent court decisions, as well as growing opposition by states and localities, we urge DHS to undertake a full review of the extent to which detainers have contributed to violations of the rights of members of our communities with the intention to implement enforceable structural changes that reduce and significantly reform the use of ICE detainers. Additionally, we urge DHS to halt the use of immigration detainers in their current form.

Over the last several years, the Department's use of immigration detainers has skyrocketed. In 2012, DHS issued over 270,000 immigration detainers, more than a three-fold increase from 2007.^[1] This surge has been due in significant part to the expansion of the Secure Communities, 287(g) programs and the Criminal Alien Programs. Through these programs, DHS targets individuals encountered by local police – regardless of whether they are ever even *convicted or charged* with a crime – and funnels them into the deportation pipeline without an independent finding of probable cause for an arrest. This dragnet approach has not only fueled racial profiling, it has also targeted thousands of individuals who would be eligible to seek lawful immigration status under the immigration reform proposals currently being contemplated by Congress.^[2]

In response to decisions by federal courts throughout the country and the negative impacts on their respective communities, jurisdictions in California, Colorado, Connecticut, the District of Columbia, Florida, Illinois, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin have passed laws or policies that limit compliance with U.S. Immigration and Customs Enforcement (ICE) detainers in some fashion.^[3] Numerous other localities are considering similar action. These reforms are the result of the enormous fiscal burden that detainers have placed on states and localities,^[4] as well as the experiences of law enforcement officials who have found that state and local entanglement with immigration enforcement

^[1] National Immigrant Justice Center Data, *available at* <https://immigrantjustice.org/ICEdetainerdata#.UzrTZvRDs1K>.

^[2] Based on a recent analysis, less than 14% of detainers issued in Fiscal Year 2012 and the first four months of Fiscal Year 2013 met the agency's stated goal of targeting individuals who pose a threat to national security or public safety. Transactional Records Clearinghouse, "Who are the Targets of ICE Detainers?" February 20, 2013, *available at* <http://trac.syr.edu/immigration/reports/330/>.

^[3] Immigrant Legal Resource Center, Immigration Detainer Map, *available at* <http://www.ilrc.org/enforcement>

^[4] Prior to passage of California's TRUST Act, which limited the extent to which California would detain individuals based solely on an ICE detainer, California spent an estimated \$65 million a year to detain immigrants for ICE. Justice Strategies, "The Cost of Responding to Immigration Detainers in California," (August 22, 2012), *available at* <http://big.assets.huffingtonpost.com/Justicestrategies.pdf>.

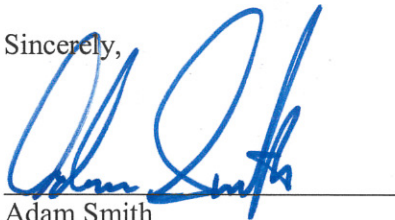
has resulted in widespread fear among immigrant communities and contributed to a significant erosion of the public trust necessary for them to do their job of keeping all communities safe.^[5]

Federal courts have consistently held that DHS's current detainer practices fail to meet constitutional standards. For example, courts have ruled that holding an individual under an immigration detainer is unconstitutional absent a judicial determination of probable cause.^[6] In other words: the Constitution simply does not permit state and local police to deprive someone of their liberty without at least a minimal showing that detention is warranted. Despite these rulings, DHS continues to issue detainers based on determinations by ICE officers – with scant information verification, no supervisory approval at DHS headquarters, and absent a constitutionally required judicial determination of probable cause.


Moreover, in April, a district court in Oregon found that the Clackamas County Sheriff's office violated the Fourth Amendment when they detained an individual based solely on an ICE detainer. Accordingly, the court held that Clackamas County was liable for damages stemming from these constitutional violations.^[7] This ruling comes on the heels of similar cases, which have also held that ICE officers and local officials can be held liable for constitutional violations caused by compliance with ICE detainers.^[8] Following the decision of several Oregon counties to no longer hold individuals based on ICE detainers, the president of the Oregon State Sheriff's Association said, "We will no longer violate anybody's constitutional rights, I can guarantee that."^[9] The fear of liability and being a party to constitutional violations has further persuaded over 50 sheriffs in Oregon, Washington, Colorado and California to discontinue compliance with ICE detainers immediately after the ruling.

Given these developments, we believe that it is neither fiscally responsible nor prudent for DHS to continue to use immigration detainers, and we urge the Department to undertake a full review of the detainer issuance process with the goal of reforming its practices and to discontinue the use of immigration detainers in their current form as part of the forthcoming immigration enforcement reforms.

Sincerely,



Adam Smith
MEMBER OF CONGRESS



Jared Polis
MEMBER OF CONGRESS

^[5] See William Bratton: Immigration reform vital to community safety, trust, Omaha World-Herald, Jan 28, 2011, <http://www.omaha.com/article/20110128/NEWS0802/701289984>; Letter from law enforcement to Speaker John Boehner and Democratic Leader Nancy Pelosi, Oct. 1, 2013, available at <http://www.nilc.org/nr100113.html>; See also Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), available at http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf; Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy FINAL REPORT 2010, available at <http://www.pwcgov.org/government/dept/police/Documents/13185.pdf>.

^[6] See *Miranda-Olivares v. Clackamas County*, -- F.Supp.2d --, No. 12-02317, 2014 WL 1414305, at *9, *10 (D. Or. Apr. 11, 2014).

^[7] *Miranda-Olivares v. Clackamas County*, -- F.Supp.2d --, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014).

^[8] See *Morales v. Chadbourne*, -- F.Supp.2d --, No. 12-301, 2014 WL 554478, at *5 (D.R.I. Feb. 12, 2014), *partial appeal docketed*, No. 14-1425 (1st Cir. 2014); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. Mar. 4, 2014).

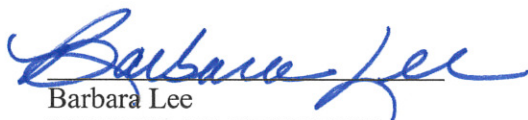
^[9] *New York Times*, "Sheriffs Limit Detention of Immigrants," (April 18, 2014), available at http://www.nytimes.com/2014/04/19/us/politics/sheriffs-limit-detention-of-immigrants.html?_r=0.



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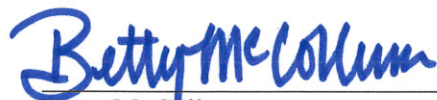
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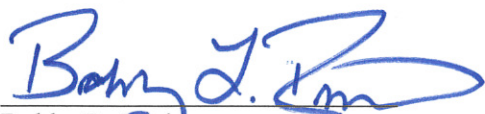
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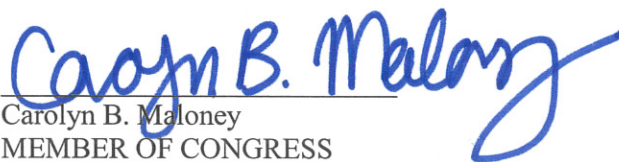
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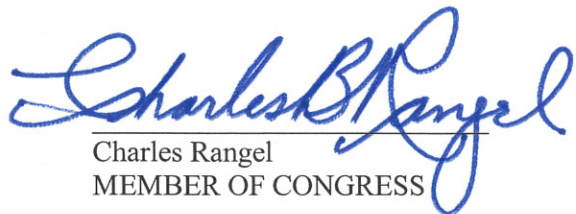
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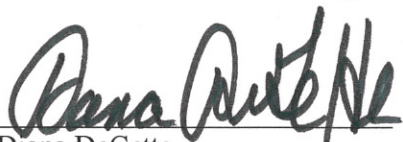
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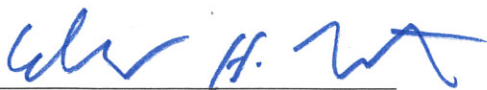
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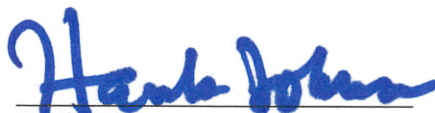
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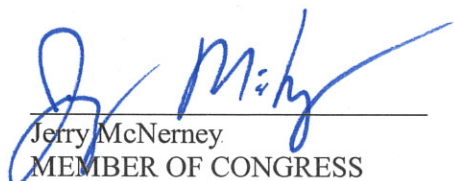
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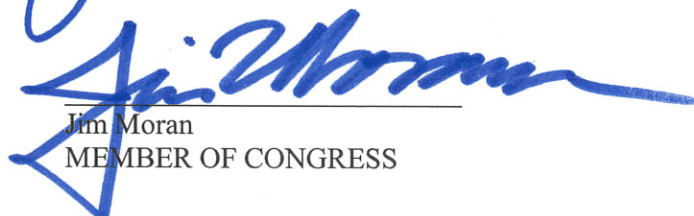
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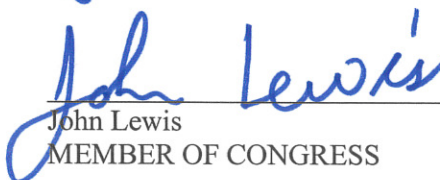
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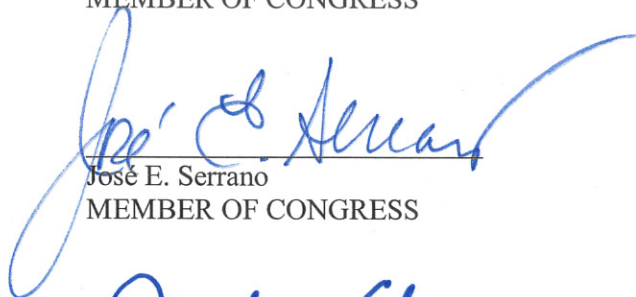
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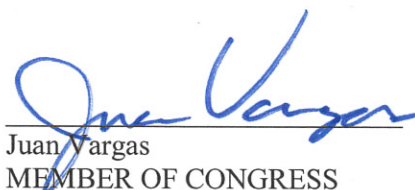
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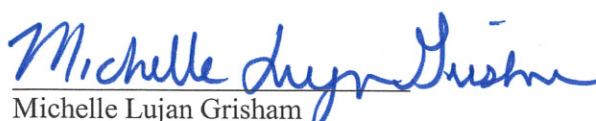
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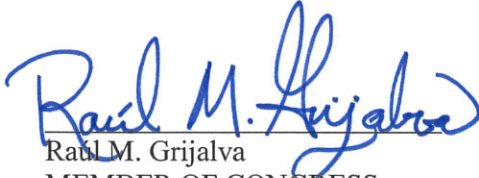
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