**STATE OF CONNECTICUT**
**JUDICIAL BRANCH**

**EXTERNAL AFFAIRS DIVISION**

*231 Capitol Avenue*
*Hartford, Connecticut 06106*
*(860) 757-2270 Fax (860) 757-2215*

**Testimony of Deborah J. Fuller**
**Judiciary Committee Public Hearing**
**March 22, 2013**

**H.B. 6659, An Act Concerning Civil Immigration Detainers**

Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee, thank you for the opportunity to testify, on behalf of the Judicial Branch, on **H.B. 6659,** ***An Act Concerning Civil Immigration Detainers***. The Judicial Branch is concerned that the requirements of this bill directly conflict with federal law and are, therefore, unenforceable.

Section 1(b) of the bill provides, in part, that "[a] law enforcement officer shall not give effect to a civil immigration detainer by...(2) Notifying federal immigration authorities of such individual's release...." However, 8 U.S.C. 1373 and 8 U.S.C. 1644 (copy attached) essentially bar a state from prohibiting or restricting a state government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the immigration status of an alien in the United States. These provisions were upheld in *City of New York v. U.S.*, 179 F.3d 29 (2nd Cir. 1999), a case in which the City of New York challenged the constitutionality of these laws, which conflicted with an executive order issued by the mayor that prohibited city "employees from voluntarily providing federal immigration authorities with information concerning the immigration status of any alien." 179 F.3d at 31.

Section 1(a) of the bill provides that "(1) 'Civil immigration detainer' means a detainer issued pursuant to 8 CFR 287.7." 8 CFR 287.7 (copy attached) provides in part that "[a]ny authorized immigration officer may at any time issue a Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency." Form I-247 (copy attached) is the Immigration Detainer form used by the Department of Homeland Security to request information from, among others, Judicial Marshal Services about the status of individuals in its custody.

Section 1(b)(3) of the bill may also be unenforceable. That section provides that a law enforcement officer, including judicial marshals, may not "[o]therwise expend… time or resources to facilitate the individual's transfer to United States Immigration and Customs Enforcement….." To the extent that expending time and using resources are integral to communicating with Homeland Security in response to a detainer, this subsection may also violate 8 U.S.C. 1373 and 8 U.S.C. 1644.

In conclusion, we are concerned that this bill would create an untenable conflict between federal and state laws directly impacting our operations.

Thank you for your consideration.

Go to 1st query term(s)

-CITE-

*8 USC* Sec. *1373* 01/03/2012 (112-90)

-EXPCITE-

TITLE 8 - ALIENS AND NATIONALITY

CHAPTER 12 - IMMIGRATION AND NATIONALITY

SUBCHAPTER II - IMMIGRATION

Part IX - Miscellaneous

-HEAD-

Sec. 1373. Communication between government agencies and the Immigration and Naturalization Service

-STATUTE-

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization

Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

-SOURCE-

(Pub. L. 104-208, div. C, title VI, Sec. 642, Sept. 30, 1996, 110 Stat. 3009-707.)

-COD-

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

-TRANS-

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

-CITE-

*8 USC* Sec. *1644* 01/03/2012 (112-90)

-EXPCITE-

TITLE 8 - ALIENS AND NATIONALITY

CHAPTER 14 - RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

SUBCHAPTER IV - GENERAL PROVISIONS

-HEAD-

Sec. 1644. Communication between State and local government agencies and Immigration and Naturalization Service

-STATUTE-

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

-SOURCE-

(Pub. L. 104-193, title IV, Sec. 434, Aug. 22, 1996, 110 Stat. 2275.)

-TRANS-

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

C

**Effective: November 28, 2011**

Code of Federal Regulations Currentness
Title 8. Aliens and Nationality
Chapter I. Department of Homeland Security (Refs & Annos)
Subchapter B. Immigration Regulations
Part 287. Field Officers; Powers and Duties (Refs & Annos)
**§ 287.7 Detainer provisions under section 287(d)(3) of the Act.**

(a) Detainers in general. Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form I–247, Immigration Detainer–Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) Authority to issue detainers. The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the USCIS.

(c) Availability of records. In order for the Department to accurately determine the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Department of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Department with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) Temporary detention at Department request. Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

© 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.

(e) Financial responsibility for detention. No detainer issued as a result of a determination made under this chapter I shall incur any fiscal obligation on the part of the Department, until actual assumption of custody by the Department, except as provided in paragraph (d) of this section.

[52 FR 16373, May 5, 1987; 53 FR 9283, March 22, 1988; 55 FR 43327, Oct. 29, 1990; 56 FR 33205, July 19, 1991; 59 FR 42418, Aug. 17, 1994; 62 FR 10392, March 6, 1997; 68 FR 35279, June 13, 2003; 76 FR 53797, Aug. 29, 2011]

SOURCE: 52 FR 16372, May 5, 1987; 53 FR 9283, March 22, 1988; 54 FR 39337, Sept. 26, 1989; 54 FR 48851, Nov. 28, 1989; 68 FR 10923, March 6, 2003; 68 FR 35275, June 13, 2003; 68 FR 35276, June 13, 2003, unless otherwise noted.

AUTHORITY: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of 2002, Pub.L. 107–296 (6 U.S.C. 1, et seq.); 8 CFR part 2.

8 C. F. R. § 287.7, 8 CFR § 287.7

Current through March 14, 2013; 78 FR 16391

© 2013 Thomson Reuters.
END OF DOCUMENT

© 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.

DEPARTMENT OF HOMELAND SECURITY

# IMMIGRATION DETAINER - NOTICE OF ACTION

| Subject ID:<br>Event #: | File No:<br>Date: |
|---|---|

| TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency) | FROM: (Department of Homeland Security Office Address) |
|---|---|

**MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS**

Name of Alien: _____

Date of Birth: _____ Nationality: _____ Sex: _____

**THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:**

☐ Determined that there is reason to believe the individual is an alien subject to removal from the United States. The individual (*check all that apply*):

- ☐ has a prior a felony conviction or has been charged with a felony offense;
- ☐ has three or more prior misdemeanor convictions;
- ☐ has a prior misdemeanor conviction or has been charged with a misdemeanor for an offense that involves violence, threats, or assaults; sexual abuse or exploitation; driving under the influence of alcohol or a controlled substance; unlawful flight from the scene of an accident; the unlawful possession or use of a firearm or other deadly weapon, the distribution or trafficking of a controlled substance; or other significant threat to public safety;
- ☐ has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;
- ☐ has illegally re-entered the country after a previous removal or return;
- ☐ has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud;
- ☐ otherwise poses a significant risk to national security, border security, or public safety; and/or
- ☐ other (specify): _____.

☐ Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (date).

☐ Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (date).

☐ Obtained an order of deportation or removal from the United States for this person.

***This action does not limit your discretion to make decisions related to this person's custody classification, work, quarter assignments, or other matters. DHS discourages dismissing criminal charges based on the existence of a detainer.***

**IT IS REQUESTED THAT YOU:**

☐ Maintain custody of the subject for a period **NOT TO EXCEED 48 HOURS**, excluding Saturdays, Sundays, and holidays, beyond the time when the subject would have otherwise been released from your custody to allow DHS to take custody of the subject. This request derives from federal regulation 8 C.F.R. § 287.7. For purposes of this immigration detainer, **you are not authorized to hold the subject beyond these 48 hours.** As early as possible prior to the time you otherwise would release the subject, please notify DHS by calling_____during business hours or_____after hours or in an emergency. If you cannot reach a DHS Official at these numbers, please contact the ICE Law Enforcement Support Center in Burlington, Vermont at: (802) 872-6020.

☐ Provide a copy to the subject of this detainer.

☐ Notify this office of the time of release at least 30 days prior to release or as far in advance as possible.

☐ Notify this office in the event of the inmate's death, hospitalization or transfer to another institution.

☐ Consider this request for a detainer operative only upon the subject's conviction.

☐ Cancel the detainer previously placed by this Office on _____ (date).

_____ (Name and title of Immigration Officer)

_____ (Signature of Immigration Officer)

**TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE SUBJECT OF THIS NOTICE:**

Please provide the information below, sign, and return to DHS using the envelope enclosed for your convenience or by faxing a copy to _____. You should maintain a copy for your own records so you may track the case and not hold the subject beyond the 48-hour period.

Local Booking/Inmate #: _____ Latest criminal charge/conviction: _____ (date) Estimated release: _____(date)

Last criminal charge/conviction: _____

**Notice:** Once in our custody, the subject of this detainer may be removed from the United States. If the individual may be the victim of a crime, or if you want this individual to remain in the United States for prosecution or other law enforcement purposes, including acting as a witness, please notify the ICE Law Enforcement Support Center at (802) 872-6020.

_____ (Name and title of Officer)

_____ (Signature of Officer)

## NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice from DHS informing law enforcement agencies that DHS intends to assume custody of you after you otherwise would be released from custody. DHS has requested that the law enforcement agency which is currently detaining you maintain custody of you for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) beyond the time when you would have been released by the state or local law enforcement authorities based on your criminal charges or convictions. **If DHS does not take you into custody during that additional 48 hour period, not counting weekends or holidays, you should contact your custodian** (the law enforcement agency or other entity that is holding you now) to inquire about your release from state or local custody. **If you have a complaint regarding this detainer or related to violations of civil rights or civil liberties connected to DHS activities, please contact the ICE Joint Intake Center at 1-877-2INTAKE (877-246-8253). If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

## NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) de EE. UU. ha emitido una orden de detención inmigratoria en su contra. Mediante esta orden, se notifica a los organismos policiales que el DHS pretende arrestarlo cuando usted cumpla su reclusión actual. El DHS ha solicitado que el organismo policial local o estatal a cargo de su actual detención lo mantenga en custodia por un período no mayor a 48 horas (excluyendo sábados, domingos y días festivos) tras el cese de su reclusión penal. **Si el DHS no procede con su arresto inmigratorio durante este período adicional de 48 horas, excluyendo los fines de semana o días festivos, usted debe comunicarse con la autoridad estatal o local que lo tiene detenido** (el organismo policial u otra entidad a cargo de su custodia actual) para obtener mayores detalles sobre el cese de su reclusión. **Si tiene alguna queja que se relacione con esta orden de detención o con posibles infracciones a los derechos o libertades civiles en conexión con las actividades del DHS, comuníquese con el Joint Intake Center (Centro de Admisión) del ICE (Servicio de Inmigración y Control de Aduanas) llamando al 1-877-2INTAKE (877-246-8253). Si usted cree que es ciudadano de los Estados Unidos o que ha sido víctima de un delito, infórmeselo al DHS llamando al Centro de Apoyo a los Organismos Policiales (Law Enforcement Support Center) del ICE, teléfono (855) 448-6903 (llamada gratuita).**

## Avis au détenu

Le département de la Sécurité Intérieure [Department of Homeland Security (DHS)] a émis, à votre encontre, un ordre d'incarcération pour des raisons d'immigration. Un ordre d'incarcération pour des raisons d'immigration est un avis du DHS informant les agences des forces de l'ordre que le DHS a l'intention de vous détenir après la date normale de votre remise en liberté. Le DHS a requis que l'agence des forces de l'ordre, qui vous détient actuellement, vous garde en détention pour une période maximum de 48 heures (excluant les samedis, dimanches et jours fériés) au-delà de la période à la fin de laquelle vous auriez été remis en liberté par les autorités policières de l'État ou locales en fonction des inculpations ou condamnations pénales à votre encontre. **Si le DHS ne vous détient pas durant cette période supplémentaire de 48 heures, sans compter les fins de semaines et les jours fériés, vous devez contacter votre gardien** (l'agence des forces de l'ordre qui vous détient actuellement) pour vous renseigner à propos de votre libération par l'État ou l'autorité locale. **Si vous avez une plainte à formuler au sujet de cet ordre d'incarcération ou en rapport avec des violations de vos droits civils liées à des activités du DHS, veuillez contacter le centre commun d'admissions du Service de l'Immigration et des Douanes [ICE - Immigration and Customs Enforcement] [ICE Joint Intake Center] au 1-877-2INTAKE (877-246-8253). Si vous croyez être un citoyen des États-Unis ou la victime d'un crime, veuillez en aviser le DHS en appelant le centre d'assistance des forces de l'ordre de l'ICE [ICE Law Enforcement Support Center] au numéro gratuit (855) 448-6903.**

## AVISO AO DETENTO

O Departamento de Segurança Nacional (DHS) emitiu uma ordem de custódia imigratória em seu nome. Este documento é um aviso enviado às agências de imposição da lei de que o DHS pretende assumir a custódia da sua pessoa, caso seja liberado. O DHS pediu que a agência de imposição da lei encarregada da sua atual detenção mantenha-o sob custódia durante, no máximo, 48 horas (excluindo-se sábados, domingos e feriados) após o período em que seria liberado pelas autoridades estaduais ou municipais de imposição da lei, de acordo com as respectivas acusações e penas criminais. **Se o DHS não assumir a sua custódia durante essas 48 horas adicionais, excluindo-se os fins de semana e feriados, você deverá entrar em contato com o seu custodiante** (a agência de imposição da lei ou qualquer outra entidade que esteja detendo-o no momento) para obter informações sobre sua liberação da custódia estadual ou municipal. **Caso você tenha alguma reclamação a fazer sobre esta ordem de custódia imigratória ou relacionada a violações dos seus direitos ou liberdades civis decorrente das atividades do DHS, entre em contato com o Centro de Entrada Conjunta da Agencia de Controle de Imigração e Alfândega (ICE) pelo telefone 1-877-246-8253. Se você acreditar que é um cidadão dos EUA ou está sendo vítima de um crime, informe o DHS ligando para o Centro de Apoio à Imposição da Lei do ICE pelo telefone de ligação gratuita (855) 448-6903**