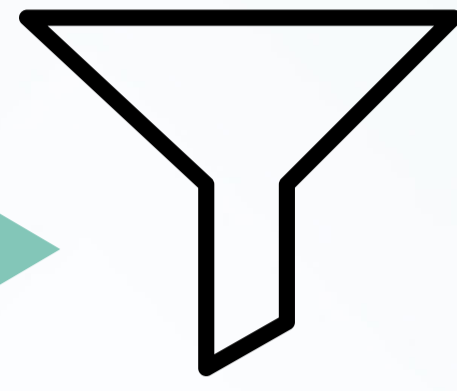
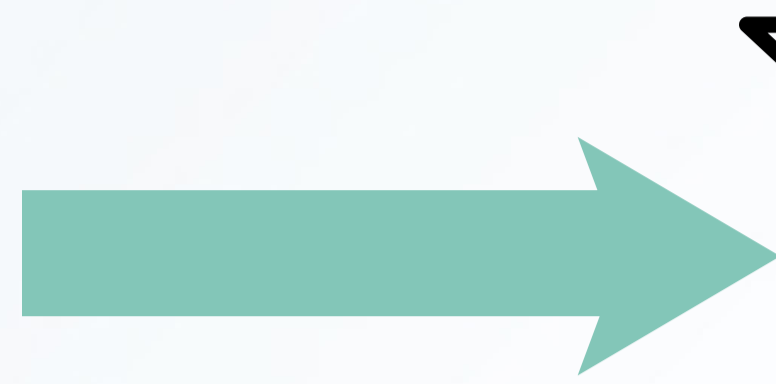
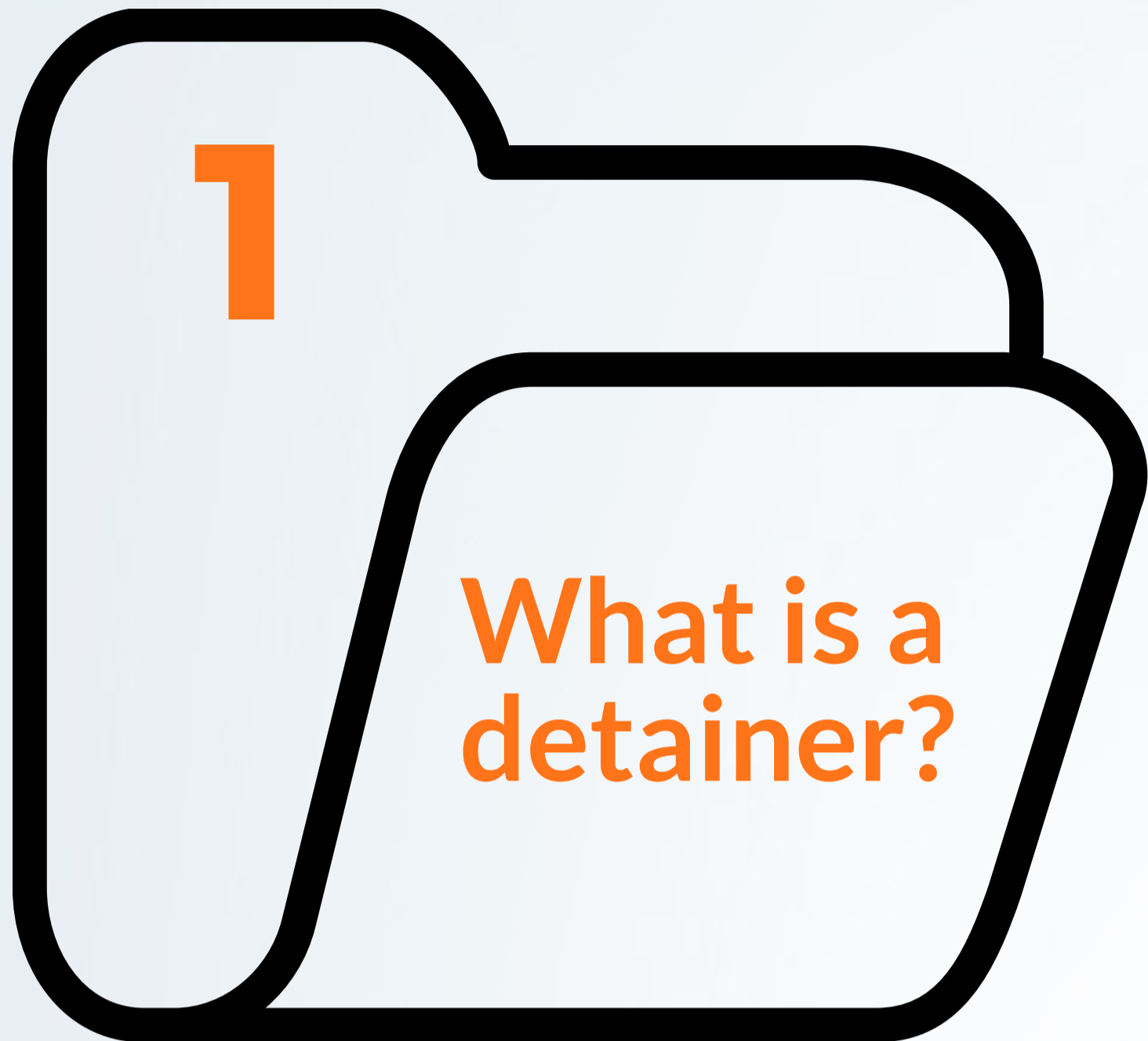
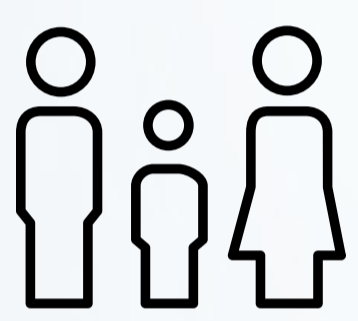
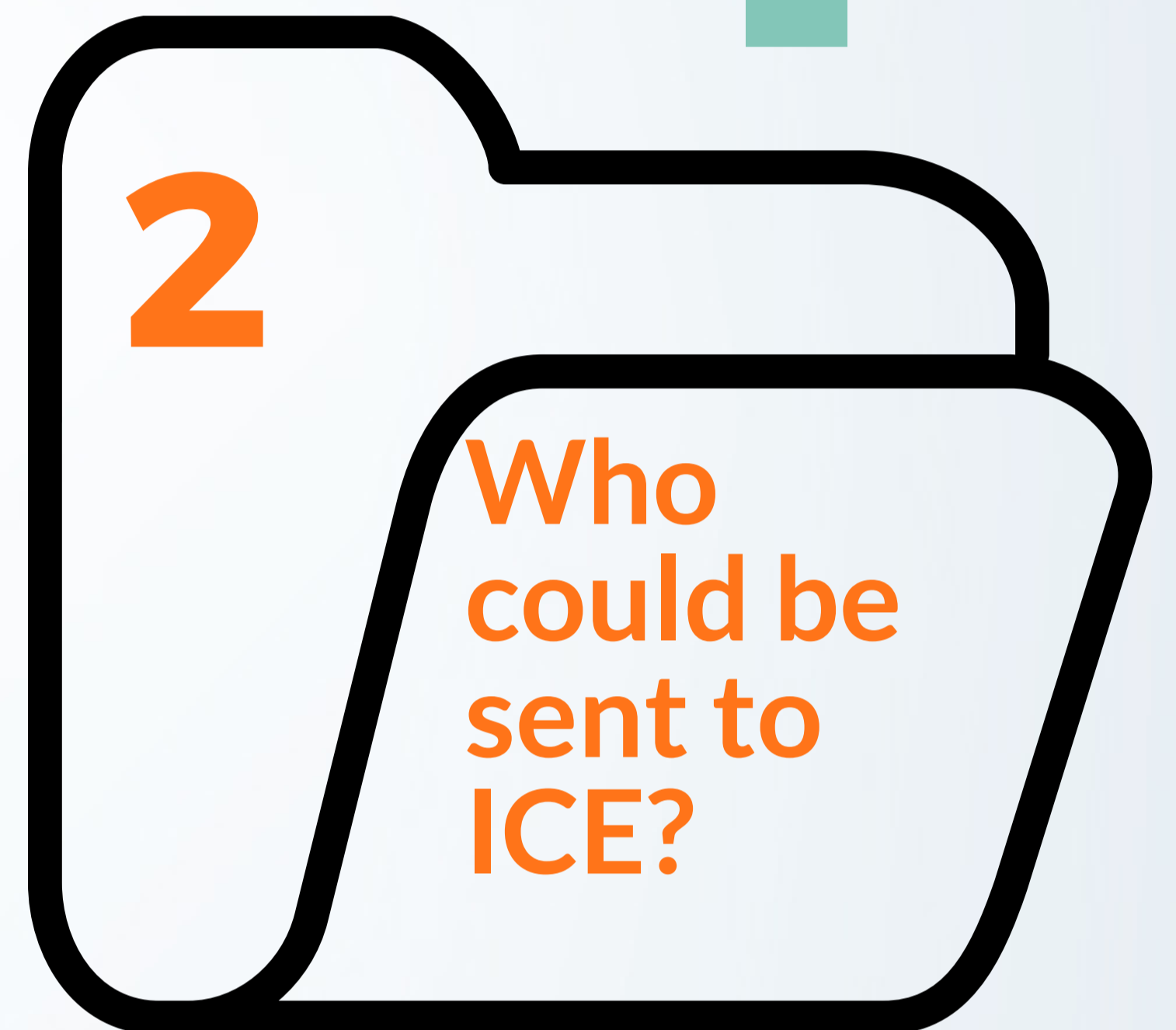




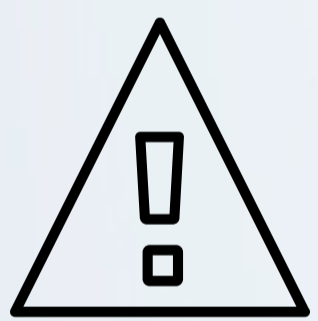
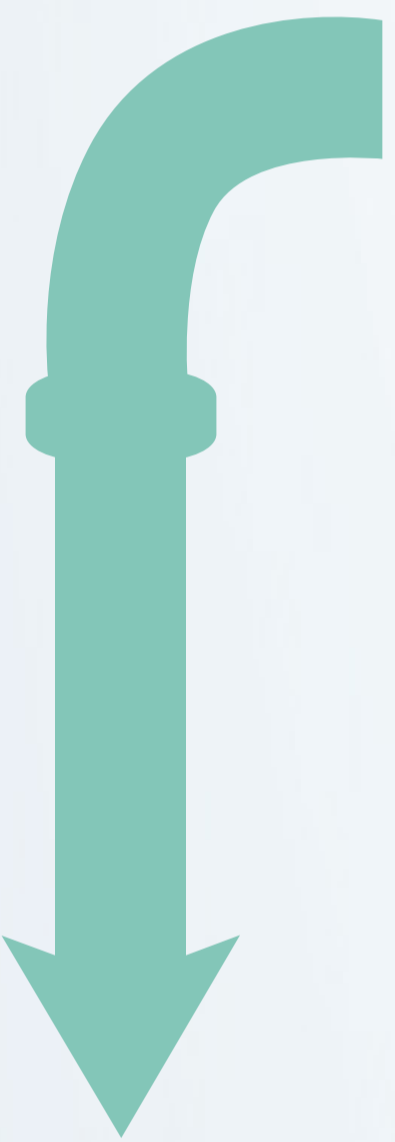
Detainers



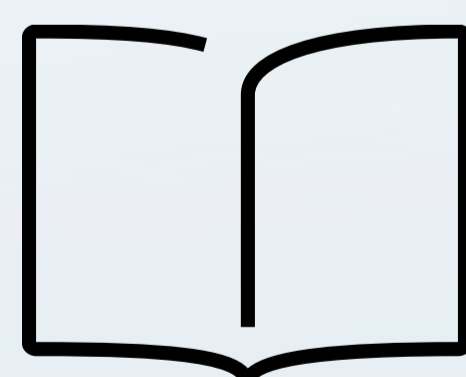
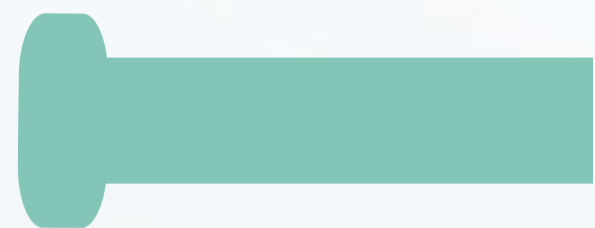
Detainers are an ICE tool used to link our local police and jails to ICE detention centers.



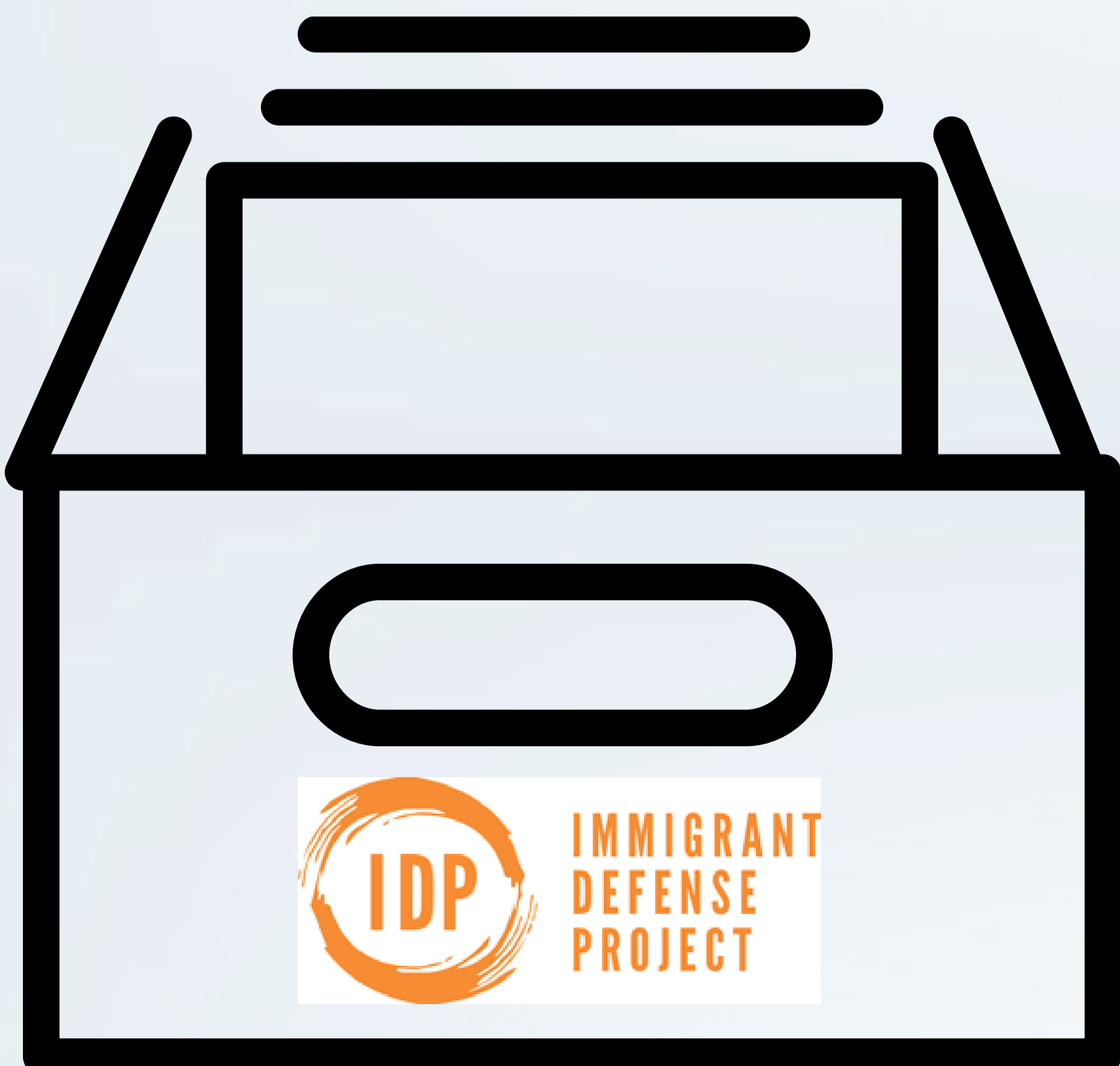
NYC law protects some immigrants.



But some remain at risk of being transferred to ICE detention centers



Learn who is at risk and how to help IDP break the pipeline for good.

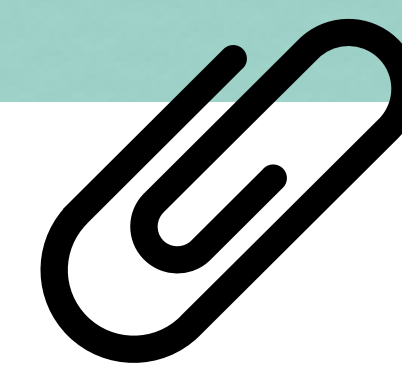


A Resource for Attorneys and Advocates in NYC

Detainers 101



What is a detainer?

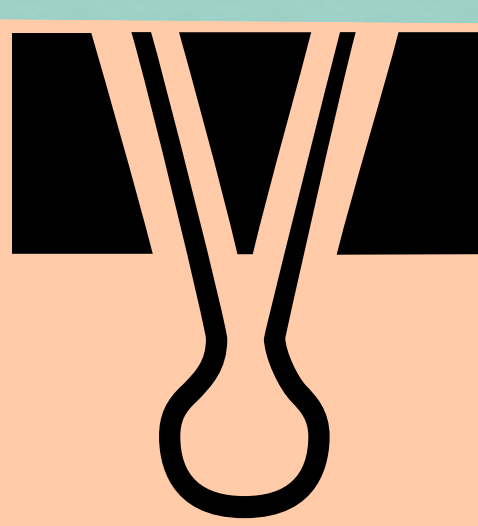


Detainers are forms that ICE issues to law enforcement agencies to ask that certain actions be taken with respect to people in local custody. Detainers are also called “ICE holds” or “immigration holds.” ICE places detainers on people in local jails so that ICE agents can come to the local jail to arrest and detain immigrants at the point they are released on their local criminal case.

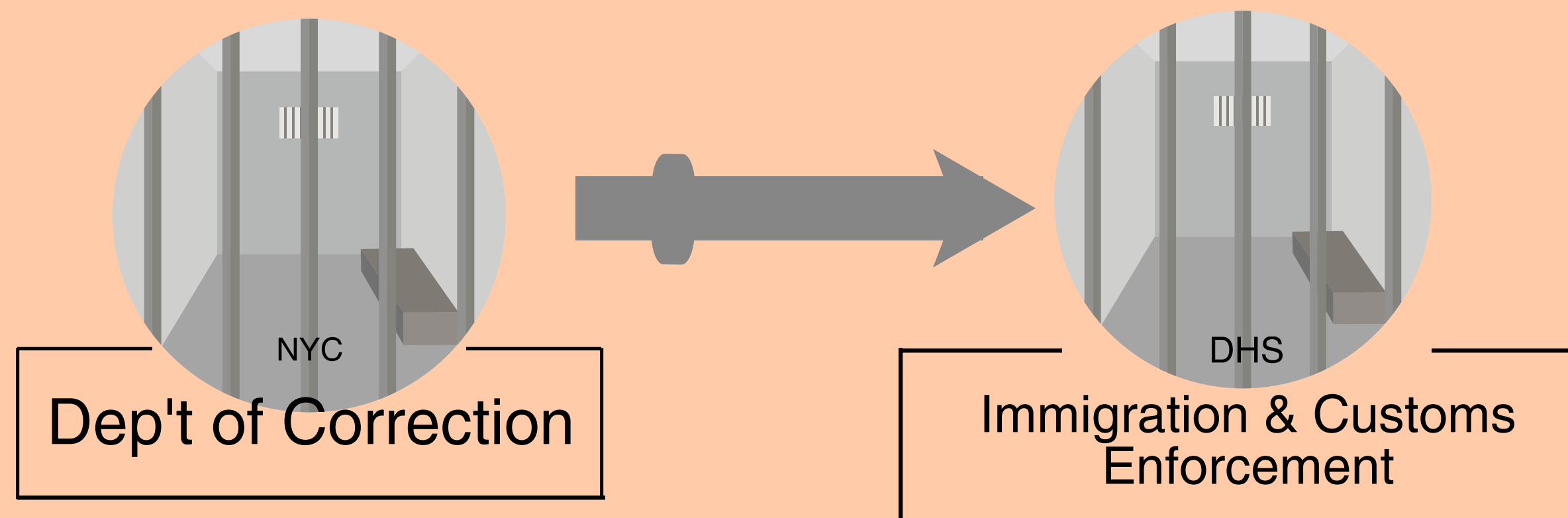
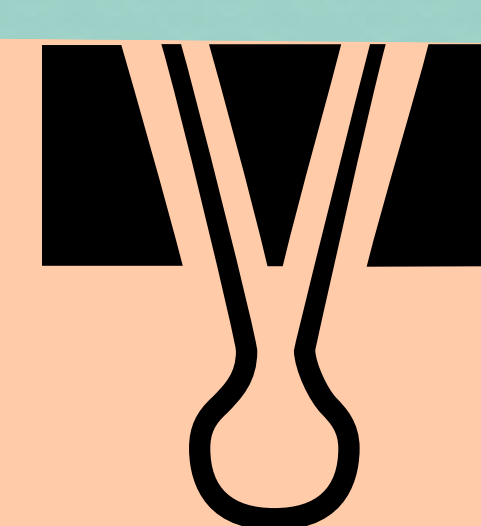


Who is subject to a detainer?

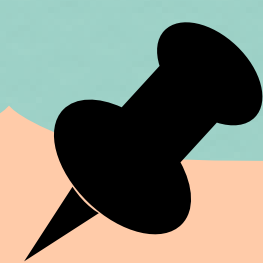
Anyone who ICE believes is removable from the U.S. This includes undocumented people, people with lawful status who have certain convictions, and people ICE believes have violated the terms of their immigration status.



What do detainers do?



When local jails and law enforcement cooperate with ICE detainers they make it easier for ICE to arrest people. When a city agency honors a detainer they agree to transfer an individual into ICE custody once their city custody period is over. This might be because the person paid bail, finished a sentence, or was ordered released from custody by a judge. If a detainer is honored, instead of being released, the person is transferred to ICE custody.



Does NYC have to comply with detainers?

No. Detainers are requests and actions taken in response to a detainer are voluntary. Across the country, including in NYC, judges have ruled that holding people in jail for extra time based solely on a detainer request violates the Constitution.



What happens to people transferred to ICE custody?

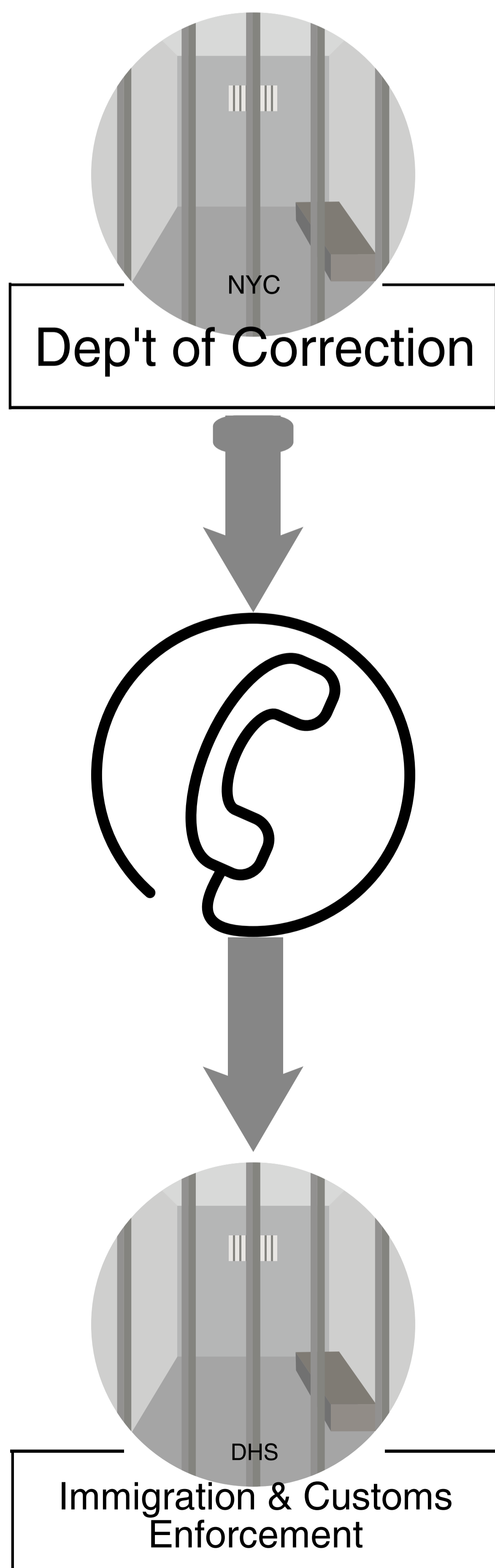
ICE takes custody of people they want to deport. Once ICE has an immigrant in custody they determine whether that person is entitled to see an Immigration Judge to try to remain in the U.S. or if the person can be deported without seeing a judge. ICE also determines whether they want to keep the person in an immigration jail or whether the person can be released to go home.

PRACTICE ALERT FOR DEFENSE ATTORNEYS

Advising Your Immigrant Client about the Risk of Being Transferred to Immigration Custody

Print this practice alert:
bit.ly/DetainersAlert

IDP has received reports about clients transferred from NYC DOC custody to ICE custody. Defense attorneys should be vigilant about the risk their clients will be transferred to ICE custody.



1

Does NYC have a detainer law that limits city cooperation with ICE?

Yes! The NYC detainer law is still in effect. DOC and NYPD must comply with city laws about holding individuals for extra time and providing information about individuals in response to ICE requests.

2

Are immigrants in DOC custody at risk of being transferred to ICE?

Most of your clients will not be at risk of being transferred to ICE custody. But because DOC is communicating with ICE in some circumstances, clients with certain convictions in the last five years and clients who are on the terrorist watch list are at risk of being transferred to immigration custody.

3

Who is at risk of being transferred to ICE?

DOC practice is to provide information to ICE about clients convicted of one of the felonies listed in the detainer law and people on the terrorist watch list. The information that DOC provides is used to facilitate a transfer from DOC custody to ICE custody.

4

How should I change my practice to best protect and advise my immigrant clients?

Consult with an immigration specialist familiar with the NYC detainer law as soon as possible about your immigrant clients in DOC custody. Immigration status is sensitive and you should ensure your steps to investigate do not bring your client to the attention of immigration.

5

What information do I need to consult with an immigration specialist?

- Your client's complete criminal history, including out of state convictions.
- A copy of the any hold paperwork (like a detainer or "request for notification") if you or your client were provided with it.
- Information about your client's immigration history.

6

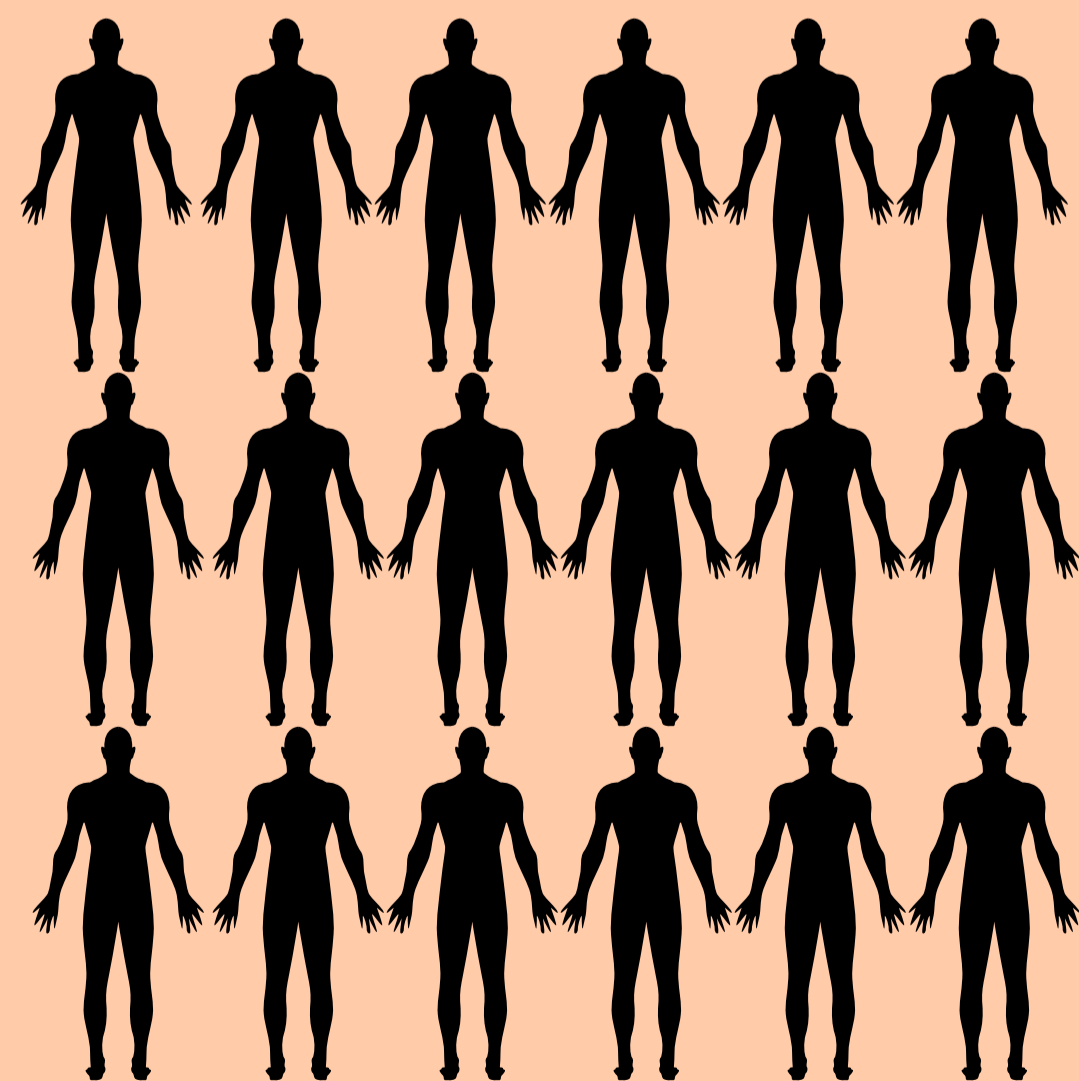
What should I advise my client while I'm investigating?

Because DOC is communicating with ICE, some people are at risk of being transferred to ICE custody if they pay bail, complete a sentence, or are ordered released from custody. You should explain the risk that your client may not get to go home as expected because DOC is facilitating the transfer of certain immigrants to immigration detention centers.

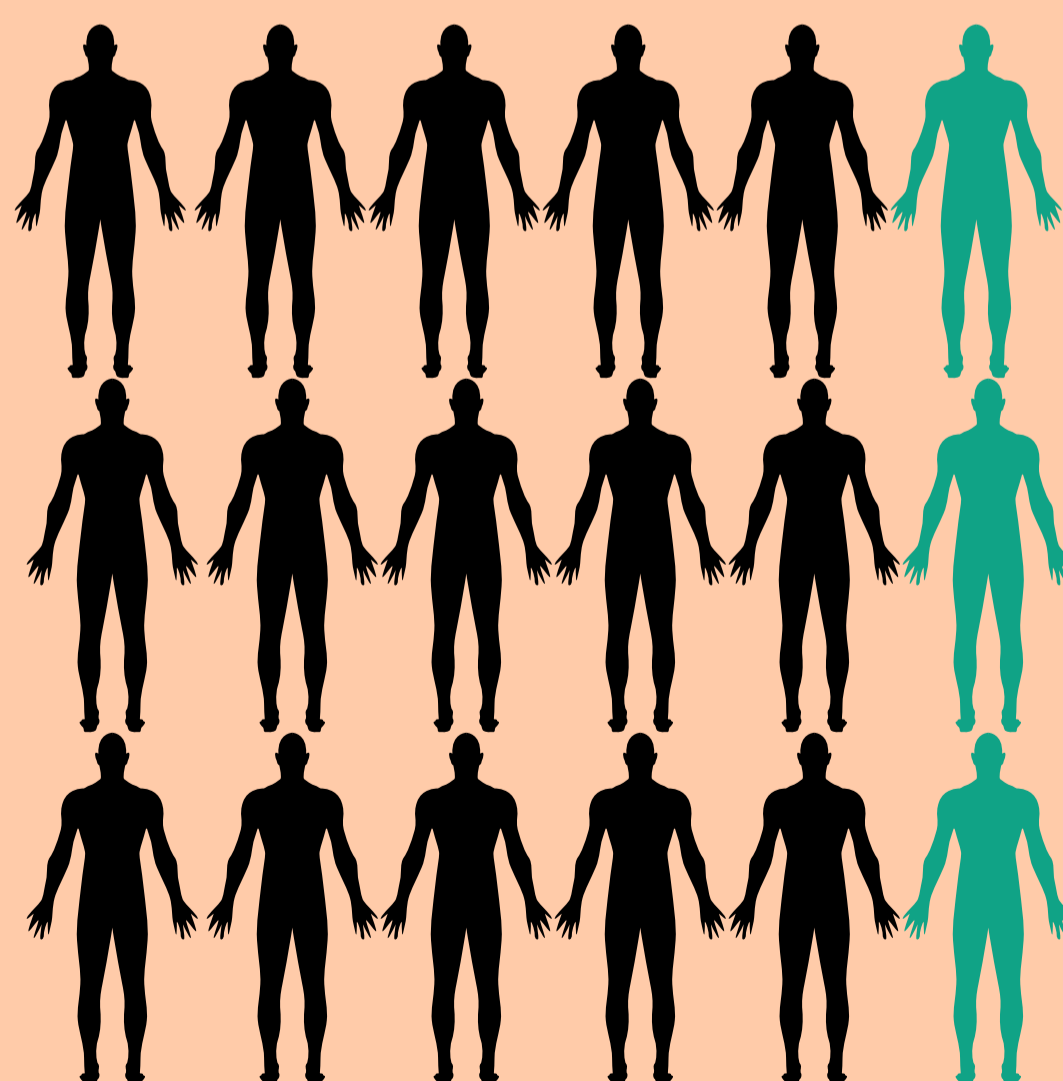
Who could be sent to ICE in NYC?

The NYC detainer law limits the circumstances under which DOC or NYPD can communicate with ICE or hold people beyond the time they would otherwise be released. But some people remain at risk.

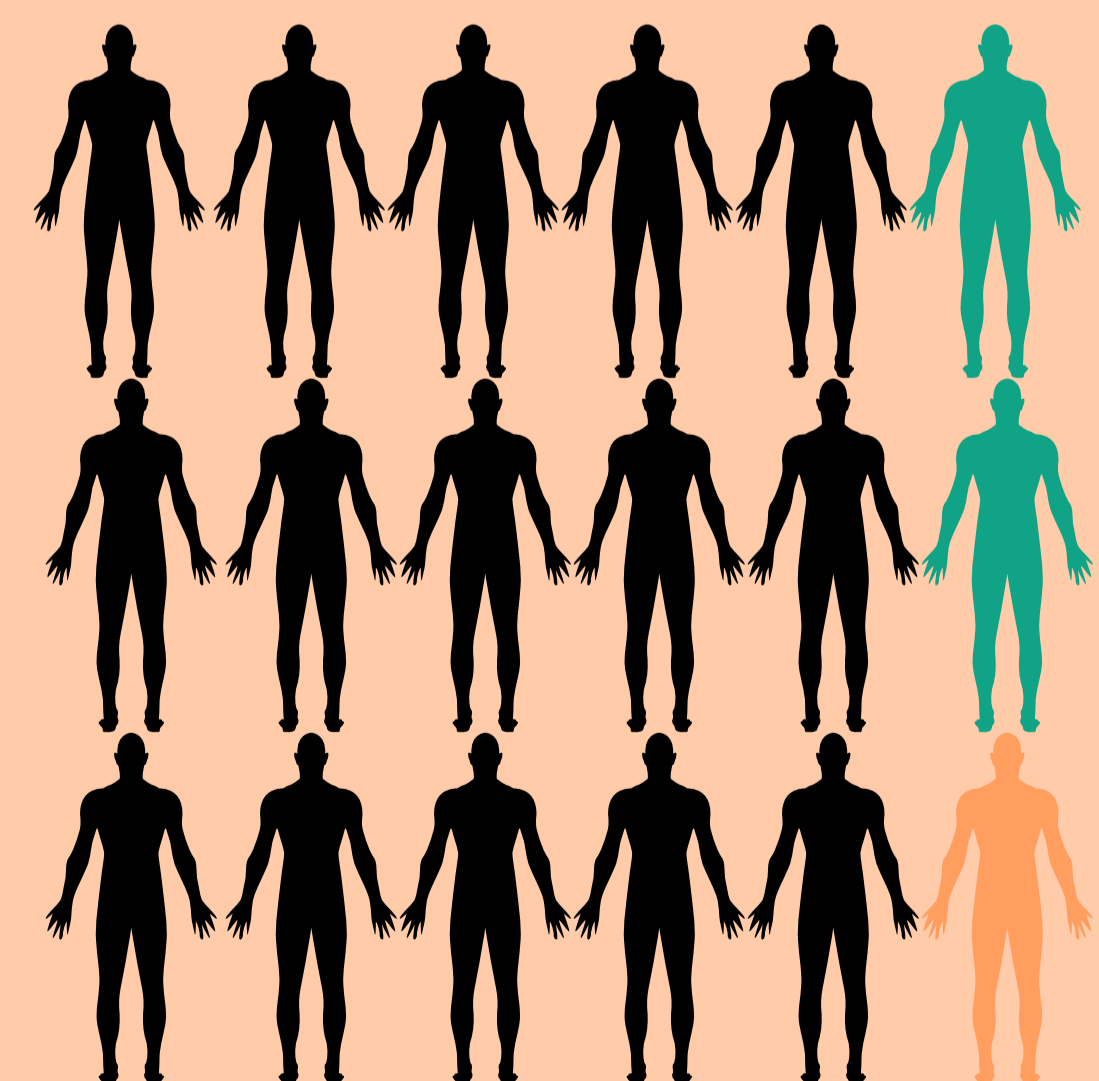
ICE will place detainers on lots of people they identify as removable from the U.S.



DOC will communicate with ICE about some clients (those at risk for transfer)



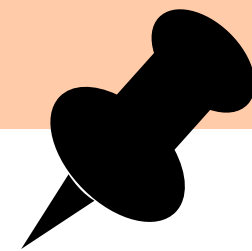
DOC may hold people for additional time only if the client is at risk of transfer and ICE has a warrant



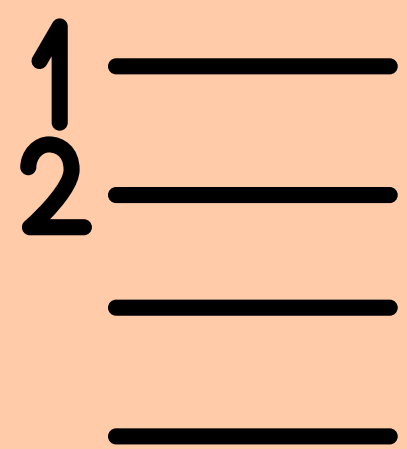


Which clients are at risk under NYC's law?

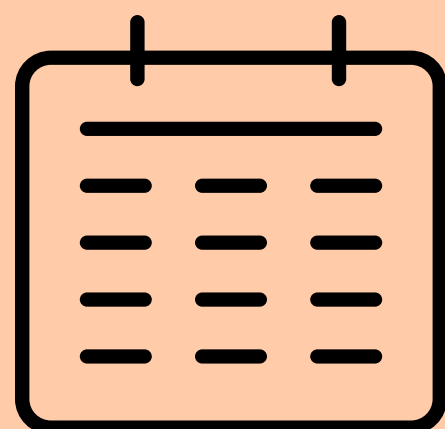
NYPD and DOC will not honor detainers or communicate with ICE about clients unless they are deemed a significant, current danger.



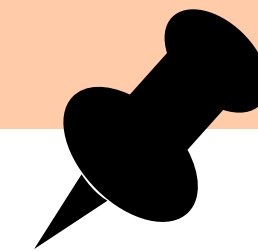
Clients with certain felony convictions deemed "violent or serious" within 5 years of the instant arrest



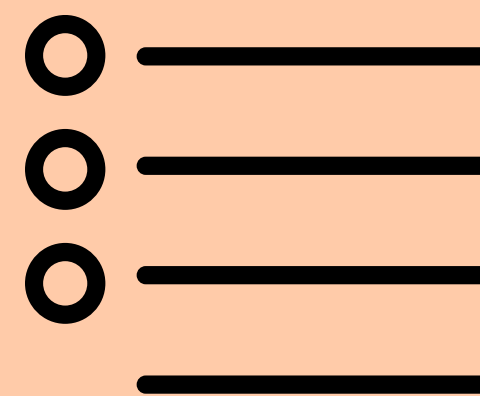
1 The NYC detainer law contains a list of felony convictions considered "violent or serious." This list is unique and does not match the list of violent offenses in the penal law.



2 When calculating the five year time period, exclude time incarcerated based on violent or serious crime conviction.



Clients who are a possible match on the terrorist watch list



The terrorist watch list or "Terrorist Screening Database" is a secret list shared only with law enforcement. It includes, but is not limited to, people on the no-fly list.



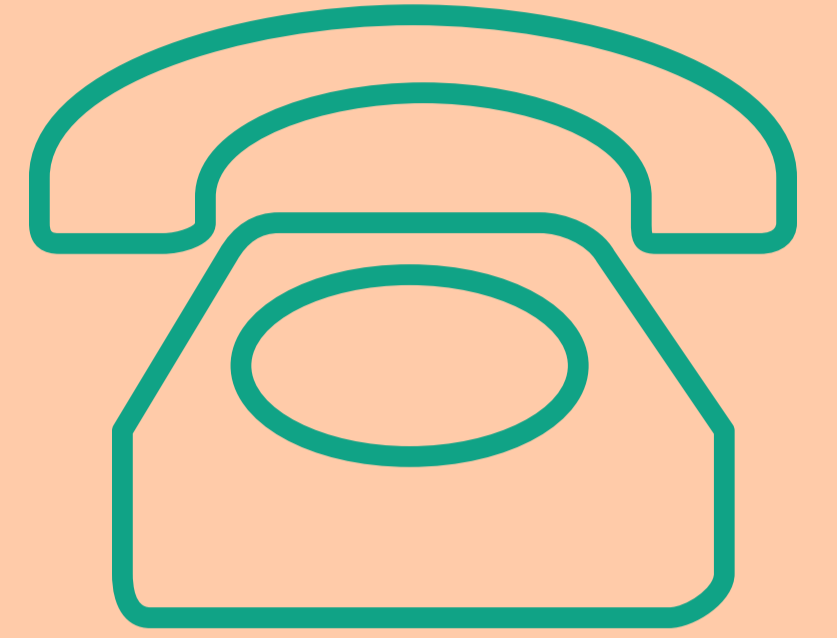
IDP's practice advisory provides more detail about these provisions, including the list of offenses deemed "violent or serious."

bit.ly/detaineradvisory

Clients at risk under NYC's law may be transferred to immigration detention based on communications between DOC and ICE

DOC currently shares information with ICE about individuals who have a felony conviction listed in the law within the last five years or who are a possible match in the terrorist watch list.

When DOC shares information, like a client's release date, ICE may choose to make an arrest. Your client could be arrested by ICE at the moment he or she is being released from DOC custody, effectively transferring clients from DOC custody to ICE custody.

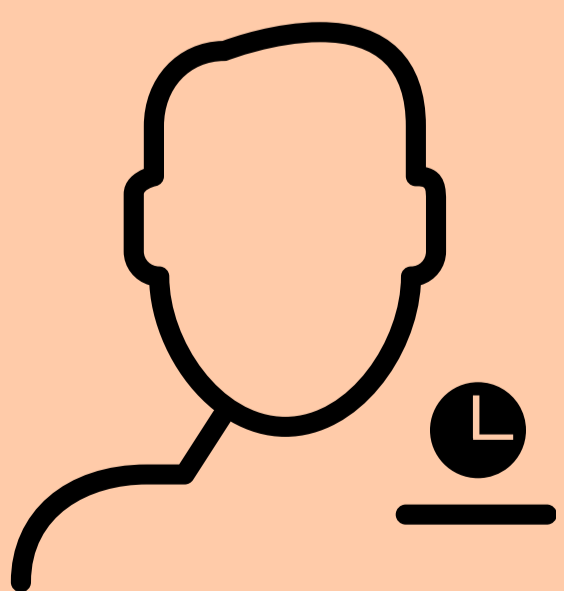


But in NYC, clients cannot be held in DOC custody beyond the time they should have been released based on a detainer alone, ICE must provide a judicial warrant



ICE may attach an administrative ICE warrant to detainer paperwork. This is not enough to satisfy the requirements under NYC law. Administrative warrants may be signed by a DHS employee. In order to satisfy the warrant requirement under NYC law, ICE must provide a warrant signed by an Article III or magistrate judge.

DOC may delay release to take a reasonable amount of time to check relevant databases if considering honoring a detainer



NYC law allows for a reasonable delay to check appropriate databases when releasing an individual for whom DOC is considering honoring a detainer.

Why is DOC communicating with ICE?

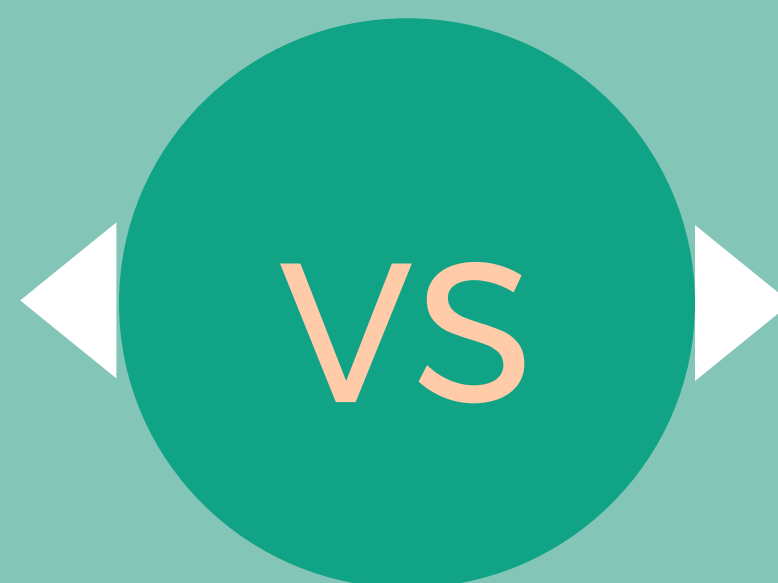
New York City's detainer law was created to protect immigrant New Yorkers from being transferred to ICE custody and stop the use of our city resources to fuel the mass deportation machine. However, DOC does have a theory for why they can communicate with ICE even without a warrant.

1 A request for notification is different than a civil immigration detainer

2 DOC employees may communicate with ICE about anyone "convicted of a violent of serious crime"

3 DOC may notify ICE about the date and time of release of anyone "convicted of a violent or serious crime" in response to a request for notification





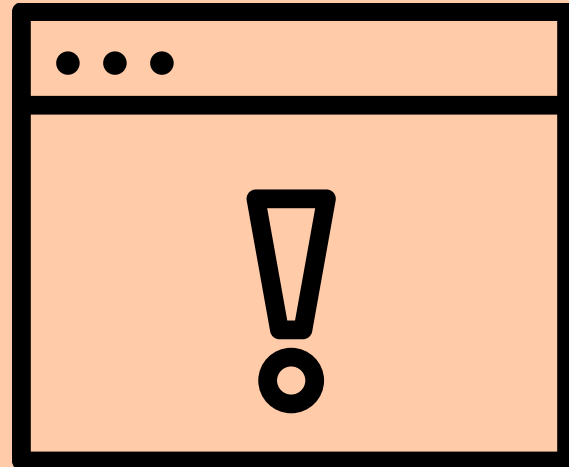
ICE form I-247N is titled "Request for Voluntary Notification of Release of Suspected Priority Alien"

ICE form I-247A is titled "Notice of Action - Immigration Detainer"

The form requests that DOC call ICE in advance of releasing a person to let ICE know the date and time the person will be released. ICE can then come to the jail and arrest the immigrant at the time they are supposed to be being released.

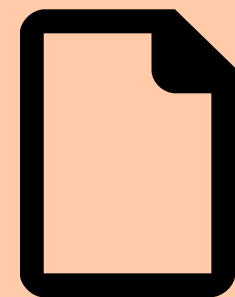
The form requests that DOC call ICE in advance of releasing a person to let ICE know the date and time the person will be released. ICE also requests that DOC hold the individual for up to 48 hours beyond the time he or she should have been released, to give ICE time to get to the jail.

Monitor DOC Implementation: Share your stories

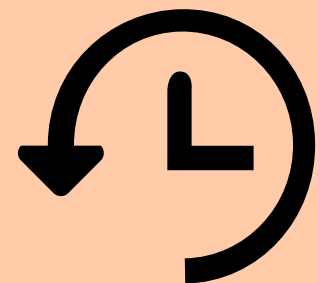


IDP is collecting your stories and information about how DOC is implementing the DOC law. You can fill out our online form to help break the pipeline between DOC and ICE.

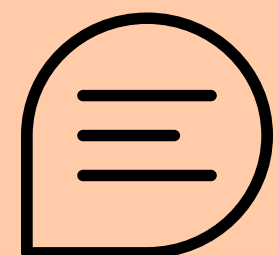
bit.ly/NYCdetainer



Did you have a client with a detainer? What kind of detainer was issued? If your client had one of the convictions on the list, was he or she transferred to ICE or released?









Did your client suffer a long delay in being released from DOC custody as a result of having a detainer?



Did a DOC employee talk to you about the detainer law? Did they talk with you about their internal process for deciding if someone would be held for additional time on a detainer? Did they tell you about their communications with ICE?

HELPFUL RESOURCES

-  New York City New Detainer Discretion Law Chart and Practice Advisory
-  Explanation of DOC interpretation of NYC Detainer Law
-  Full Text of the NYC Detainer Law as applied to DOC (Admin 9-131)
-  Sample form I-247N
-  Sample form I-247A
-  Form for reporting DOC implementation actions

