U.S. Immigration and
Customs Enforcement

Furthering Public Safety and the Security of the Homeland

ENFORCEMENT AND REMOVAL OPERATIONS (ERO):

Priority Enforcement Program

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What is PEP?

- PEP builds upon enforcement priorities set forth in the November 20, 2014 Memorandum from DHS Secretary Jeh Johnson, entitled, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*.

- PEP begins at the state and local level when law enforcement officers book a person into custody and take their fingerprints, which are sent to the FBI for criminal background checks.

- The biometric data is sent by the FBI to U.S. Immigration and Customs Enforcement (ICE) to determine whether the individual is in the country illegally.

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How is PEP different from the detainer process under Secure Communities?

- Under prior policy, detainers could be issued when an immigration officer had reason to believe the individual was a removable alien and fell within one or more enumerated priorities, which included immigration-related categories and having been convicted ***or charged*** with certain crimes.

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How is PEP different from the detainer process under Secure Communities?

ICE may seek the transfer of any priority alien. However, under PEP, ICE may only seek the transfer of an alien in the custody of state or local law enforcement when the alien has been ***convicted*** of an offense listed in the following priorities:

- Priority 1(c), for which an element was active participation in a criminal street gang; or

- Priority 1(d), classified as a felony in the convicting jurisdiction, other than when an essential element was the aliens immigration status; or

- Priority 1(e), classified as an "aggravated felony" as defined in section 101(a)(43) of the Immigration and Nationality Act.

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How is PEP different from the detainer process under Secure Communities, continued

- Priority 2(a), classified as three or more misdemeanor offenses, other than minor traffic offenses or where the essential element was alien's immigration status; **or**

- Priority 2(b), classified as a "significant misdemeanor", such as domestic violence; sexual abuse; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or another conviction resulting in a sentence of 90 days or more time to be served in custody, not included suspended sentences; **or**

- When, in the judgment of an ICE Field Office Director, the alien otherwise poses a danger to national security.

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What forms will be used for notifications and transfers?

- DHS has replaced the now obsolete Form I-247 (Immigration Detainer – Notice of Action) with **new forms**:
- **Form I-247N** (Request for Voluntary Notification of Release of Suspected Priority Alien);
- **Form I-247D** (Immigration Detainer – Request for Voluntary Action); and

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What forms will an LEA receive pursuant to PEP?

- **Form I-247N** (Request for Voluntary Notification of Release of Suspected Priority Alien)
  - Requests that state or local law enforcement notify ICE of a pending release during the time that subject is otherwise in custody under state or local authority.
  - Does **not** request or authorize the state or local authority to hold an individual beyond the point at which he or she would otherwise be released.

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What forms will an LEA receive pursuant to PEP?

- **Form I-247D** (Immigration Detainer – Request for Voluntary Action)
  - Requests that state or local law enforcement voluntarily maintain custody of the subject for a period **not to exceed 48 hours** beyond the time when he or she would have otherwise been released from custody to allow ICE to assume custody.
  - There is no exception to the 48-hour period for Saturdays, Sundays, and holidays.
  - This request only takes effect if the LEA serves a copy of this form on the individual.

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Form I-247D

- Detainers may only be lodged where the subject:
  - (1) falls within Priority 1(a), (c), (d), or (e), or Priority 2(a) and (b); as previously described, **and**
  - (2) has a final order of removal or there is otherwise sufficient *probable cause* that he or she is a removable alien, such as:
    - Removal proceedings are already pending against the alien;
    - A biometric confirmation of the subject's identity and a records check of federal databases that indicate the subject lacks immigration status; and/or
    - Statements made voluntarily by the individual to an immigration officer and/or other reliable evidence that indicates the subject lacks immigration status.

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Requests for Voluntary Notification and Detainers are NOT:

- Requests, requirements, or mandates, that state or local law enforcement agencies arrest the subject.
- Authorization for a law enforcement agency to hold or continue to hold the subject at the expense of the federal government.
- Intended to impact the state or local agency's decisions with regard to the subject's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.