



## FUGITIVE INVESTIGATIONS

### *Criminal Investigations*

#### 9.1 DETAINERS

##### Detainers Based upon Warrants for Arrest And/or Escape Violations

- A. **Purpose:** This directive sets forth United States Marshals Service (USMS) policy concerning the filing and management of detainers based upon warrants for arrest and/or escape violations.
- B. **Authority:** The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC 561(g) and 28 CFR 0.111. The authority of the USMS to "execute all lawful writs, process, and orders issued under the authority of the United States" is set forth in 28 USC 566(c). See also the Interstate Agreement on Detainers, Pub.L. 91-538, §§ 1-9, Dec. 9, 1970, 84 Stat. 1397-1403 and 18 USC 751 (the Escape and Rescue statute).
- C. **Policy**
1. **When to File:** The USMS shall lodge detainers against prisoners in the custody of other Federal, state, or local law enforcement agencies or correctional institutions when:
    - a. There is an outstanding Federal warrant for arrest for the prisoner for which the USMS has primary apprehension responsibility pursuant to Department of Justice policy or applicable memoranda of understanding; or
    - b. The subject is an escaped Federal prisoner in the custody of state or local authorities; or
    - c. Other circumstances exist which necessitate the filing of a detainer to lawfully prevent the release of a prisoner, and to enable the lawful assumption of custody of the prisoner by the USMS.
  2. **When Not to File**
    - a. **State and Local Fugitives (Task Force Cases)**
      - (1) The USMS shall not file detainers for state or local fugitives under investigation by a fugitive task force. When task force investigations result in the location of a state or local fugitive in Federal, state, or local custody, the state or local agency with primary apprehension responsibility will be notified and requested to lodge a detainer, when appropriate.
      - (2) Districts shall not file detainers based solely upon violations of 18 USC 1073 (Unlawful Flight to Avoid Prosecution or Confinement (UFAP or UFAC)) unless a Supervisory Assistant U.S. Attorney certifies, in writing, that the case will be prosecuted in U.S. District Court. In lieu of filing a detainer based upon a UFAP or UFAC violation, the appropriate law enforcement authorities will file a detainer based upon the state or local charges underlying the UFAP or UFAC.
    - b. **Non-USMS Fugitives**
      - (1) The USMS is not required to file detainers, or assume custody of prisoners prior to a remand by a Federal court when the basis for the detainer is a Federal warrant for arrest for which another law enforcement agency has primary apprehension

responsibility. Responsibility for filing detainers rests with the agency with primary apprehension responsibility.

(2) Workload permitting, districts may at their own discretion, file detainers within their own district on behalf of other Federal agencies. However, districts opting to file detainers for other Federal agencies may not obligate other districts to do so on their behalf.

3. **Detainers Filed by the USMS with the USMS:** The USMS shall lodge detainers against prisoners in its own custody only under the following circumstances:

- a. **Charges in Multiple Districts:** A detainer should be filed and the concerned U.S. Attorney's Offices should be notified and asked to request that a writ of habeas corpus be issued for the prisoner when the subject of the detainer is in USMS custody for charges in one judicial district, and a Federal warrant for arrest is outstanding in another district in connection with a separate case; or
- b. **U.S. Parole Warrants:** The U.S. Parole Commission has requested that a detainer be filed based upon an outstanding Federal parole warrant and the subject of the detainer is in USMS custody in connection with an unresolved criminal case (prior to adjudication of guilt); or
- c. **Other Cases as Directed:** When otherwise directed by a Federal court or the USMS Investigative Operations Division.

4. **Interstate Agreement on Detainers Notice and Speedy Trial Provisions:** Detainers lodged against sentenced prisoners that are based upon pending criminal charges that have not yet been tried are subject to the notice and speedy trial provisions of the Interstate Agreement on Detainers (IADA, Pub.L. 91-538, §§ 1-9, Dec. 9, 1970, 84 Stat. 1397-1403). Failure to meet the requirements of the IADA can result in the dismissal of the pending criminal charges with prejudice. Accordingly, it is essential that the proper detainer forms and procedures be used.

5. **Special Circumstances**

- a. **Violations of Probation and Conditions of Supervised Release:** If a warrant for arrest is issued for a violation of probation or violation of conditions of supervised release, and the subject of the warrant is already in USMS custody in the same district in connection with a different case, execute the warrant and produce the subject for an initial appearance on the violation. Exercise care to ensure that if the subject is afforded bail on the violation, that he or she is not released from custody unless and until the bail conditions on the original case are also met.
- b. **Escape Cases Where No Warrant for Arrest is Outstanding:** For escape cases in which no prosecution is anticipated and a warrant for arrest is not issued (such as halfway house escapes), once the USMS assumes custody of the escapee, the district of arrest pending designation will hold the prisoner in custody. In the absence of a warrant for arrest, the authority to apprehend an escaped Federal prisoner stems from 18 USC 751 as well as the judgment & commitment, court order, or other order directing that the prisoner be remanded to the custody of the Attorney General. In the absence of a warrant for arrest, complaint, or indictment charging the escape, neither an initial appearance or removal hearing is required.

#### D. Procedures

1. **Tracking via the Warrant Information Network:** Track detainers based upon warrants for arrest or escape notices in the Warrant Information Network (WIN). Once a detainer is filed, suspend active cases in WIN. Close cases in WIN (usually by using the "detainer lodged/custody taken" code) once the USMS assumes custody of the prisoner based upon the detainer (or the process underlying the detainer).<sup>1</sup>
2. **Department of Homeland Security, Bureau of Immigration and Customs Enforcement Detainer Files:** Maintain USMS records of detainers based upon Federal warrants for arrest and escape notices in the same manner as district fugitive investigative files.
3. **Exhaustion of Detainer:** Do not file detainers, or allow detainers to remain on file, unless a lawful

basis exists for the USMS to assume custody of the subject of the detainer. Accordingly, once the warrant for arrest for the prisoner has been executed, or escape status of the prisoner has been terminated, lift the detainer. If a new basis for the lodging of a detainer exists (such as an order of detention, order setting conditions of release, or other court order), the appropriate office will file a new detainer.

4. **Purging of Detainer Files:** Review and update detainer files at least every 6 months.
5. **Place of Filing:** The USMS district in which the prisoner is in Federal, state, or local custody will file detainers. The originating district is responsible for tracking the detainer in WIN.
6. **Form of Detainer:** USMS personnel shall use the official USM-16 series of detainer forms or those generated by the Warrant Information Network (when they become available) in accordance with the procedures set forth below:
  - a. Use the USM-16A to file detainer lodged against unsentenced prisoners based upon a federal warrant.
  - b. Use the USM-16B to file detainers based upon Federal Judgment and Commitment orders and maintain separately from warrant detainers unless the detainer is lodged against an escaped Federal prisoner and no warrant for arrest has been issued for the escape.
  - c. Use the USM-16C to file detainers based upon warrants for arrest issued by the U.S. Parole Commission.
  - d. Use the USM-16D to file detainers based upon violations of probation and/or supervised release.
  - e. Use the USM-16E is used to file detainers against unsentenced prisoners who are brought into federal custody, but need to remain in custody pending further criminal proceedings.
  - f. Use the USM-17A, is to be used against a sentenced state prisoner who is the subject of a federal arrest warrant and who is required to be advised of his/her rights under the Interstate Agreement on Detainers Act. to the concerned U.S. Attorney's offices.
  - g. Use the USM-17B, is to be used against sentenced federal prisoners. Although the Interstate Agreement on Detainers Act does not apply to sentenced federal prisoners, these prisoners still need to be advised of their right to a speedy federal trial under 18 USC 3161.
7. **Notification of U.S. Attorney's Office, U.S. Parole Commission, or Other Concerned Agency:** Once a detainer based upon an untried offense is filed, notify the case Assistant U.S. Attorney of the place of confinement of the prisoner and the date the detainer was filed, and provide a copy of the detainer to him or her. Also notify the case agent (if the USMS is not the originating case agency). Notify and provide a copy of the detainer to the U.S. Parole Commission and/or probation officer for violations of parole. For violations of probation, notify the concerned U.S. Probation Officer. In escape cases, notify the Bureau of Prisons. In all cases, promptly notify the originating USMS office when the subject of a USMS detainer comes into USMS custody.

#### **E. Definitions**

1. **Detainer:** a written request from one law enforcement or correctional agency (the requesting agency) to another having custody of a prisoner (the holding agency), requesting the holding agency detain the prisoner for surrender to the requesting agency, upon the release of the prisoner by the holding agency.
2. **Certificate of Inmate Status:** a certificate of the appropriate official having custody of a prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner; (see Interstate Agreement on Detainers, Pub.L. 91-538, §§ 1-9, Dec. 9, 1970, 84 Stat. 1397-1403).

.....<sup>1</sup>Detainers based upon judgment & commitment orders (other than escapes), orders of detention, orders setting conditions of release, or other process which is not fugitive-related shall be tracked using the "detainer lodged" field of the Prisoner Tracking System (PTS).