



## WALLA WALLA COUNTY SHERIFF'S OFFICE

### Special Order 2014-002

Effective Immediately

#### Background:

Around the country, law enforcement agencies routinely receive requests from Immigration and Customs Enforcement, an agency of the Department of Homeland Security, asking that a person currently held in custody on unrelated local charges also be held in custody for a period of not more than 48 hours, excluding weekends and holidays, beyond the time when the person would have otherwise been released. County Jails are requested to do this so that the Department of Homeland Security may respond and take custody of the person. The requests are routinely based on the fact that the Department of Homeland Security has begun an investigation to determine whether the person in custody is subject to removal from the United States. Although the immigration detainers state that local law enforcement is being "requested" to hold the person in custody, the detainers also state that:

This request flows from federal regulation 8 C.F.R. § 287.7, which provides that a law enforcement agency 'shall maintain custody of an alien' once a detainer has been issued by the Department [Department of Homeland Security].

Historically, Walla Walla County Jail has received and understood these detainers as commands from the Department of Homeland Security, pursuant to 8 C.F.R. § 287.7, that we hold in custody the person named in the detainer. The fact that the detainer contains both language of request and command has led to conflicting interpretations as to whether the immigration detainers provide legal authority for the continued custody of the person named in the detainer.

Recently, in a case involving the Clackamas County Sheriff's Office, *Miranda-Olivares v. Clackamas County, U.S. Magistrate Judge Stewart* clarified this issue. In her decision, Judge Stewart concluded that the immigration detainers are "requests" and that the detainers do not, without more, provide the necessary legal basis referred to as probable cause, for the County Jail to hold the named person in custody.

In another recent case, *Galarza v. Szalczyk* 2014 WL 815127 (C.A.3 (Pa.)), the Court stated, "In light of these principles, it is clear to us that reading § 287.7 to mean that a federal detainer filed with a state or local LEA is a command to detain an individual on behalf of the federal government, would violate the anti-commandeering doctrine of the Tenth Amendment. As in *New York* and *Printz*, immigration officials may not compel state and local agencies to expend funds and resources to effectuate a federal regulatory scheme. The District Court's interpretation of § 287.7 as compelling Lehigh County to detain prisoners for the federal government is contrary to the Federal Constitution and Supreme Court precedents."

#### Effective Immediately:

As a result of these decisions, the Walla Walla County Sheriff's Office shall cease to hold individuals in custody when the only authority for such custody is a request contained in a DHS ICE immigration detainer.

If Corrections Division personnel have independent information from any law enforcement agency that there is a sufficient legal basis for detention, such as probable cause or a confirmed warrant, the Walla Walla County Jail will hold such persons in custody as per established policy and procedure.

*\*Some of the language in this Special Order is adopted from Clackamas County Sheriff Craig Roberts' memo of April 16, 2014.*