



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

April 16, 2014

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 charges 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. We are requested to do this so that the Department of Homeland Security may 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 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 [Department of Homeland Security].

Here in Clackamas County it has been my policy to treat these requests as commands from the Department of Homeland Security that we hold in custody those people named in the immigration detainers. The fact that the detainers contain 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 people named in the detainers.

This past week, in a case involving my Office, and specifically the operation of the Clackamas County Jail, 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 Jail to hold the named person in custody.

As a result of Judge Stewart's decision, the Jail has already ceased to hold individuals in custody when the only authority for such custody is a request contained in an immigration detainer. Of course, should my office be informed by any other law enforcement agency that there is a sufficient legal basis for us to hold a person in custody, that there is probable cause for such a detention, we will hold such persons in custody.

Sincerely,

Craig Roberts
Clackamas County Sheriff