

General Order 2014-01

Date: June 25th, 2014

To: All Personnel

From: Sheriff Tim Jantz

Subject: ICE Detainer/ICE I-200 Administrative Warrants

Due to recent case laws in the Federal Courts in Oregon and Pennsylvania, the Moffat County Sheriff's Office reviewed the subject of ICE (Immigration and Customs Enforcement) Detainers and Administrative Warrants. As part of the review process, we have read the documentation provided by the American Civil Liberties Union (ACLU), met with representatives of the Colorado Immigrants Rights Coalition (CIRC), consulted and met with Sheriff's from across the State, and also consulted with several Sheriff's Attorneys, including our own county attorney's office.

In summation, ICE detainers and ICE Administrative Warrants are not subject to judicial review which conflicts with Colorado State Law; specifically, CRS 16-3-102 and CRS 16-1-104 (18). We will therefore not be honoring such requests from ICE unless they are accompanied by a statement of probable cause and signed by a magistrate. Now with that being said, at this time the Moffat County Sheriff's Office is an ICE contracted holding facility, we currently hold ICE detainees that are brought in as IN CUSTODY of ICE and therefore does not violate the ICE detainer and Warrant rule at this time. The Moffat County Sheriff's Office has drafted this general order for protection of our personnel in the event that we have a circumstance that does not fall under the current IN CUSTODY rule of our contract; i.e. if ICE personnel would bring in an immigrant not in custody and asking to hold such detainee under an ICE detainer or ICE I-200 Administrative warrant. Even though such a request would be HIGHLY unlikely at this time, such an event may occur. Our detention personnel MUST verify that any detainee is in the custody of ICE personnel and we are holding under the current contractual requirement, if the contractual elements do not apply, we will NOT hold detainees with only a Detainer request or ICE I-200 Administrative Warrant. This general order does NOT apply to any legally arrested immigrant that is brought in under Colorado Criminal charges.

Background:

The initial problem with either an ICE -issued Detainer or an Administrative Warrant (I-200) being used to detain an individual locally is that neither of those documents contain or require statements of probable cause or a judicial finding of probable cause as is required by law enforcement in the State of Colorado. This requirement flows from the Fourth Amendment. The Fourth Amendment to the United States Constitution provides that the people shall "be secure in their...persons against unreasonable searches and seizures." It is enforceable against the states through the Fourteenth Amendment. The Fourth Amendment is designed "to prevent arbitrary and oppressive interference with the privacy and personal security of individuals." In line with the decisions from the United State Supreme Court, Colorado recognizes three categories of police-citizen encounters: 1) arrest, 2) Investigatory stops, and 3) consensual interview. Arrest and investigatory stops are considered to be seizures and thus give rise to protections contained in the Fourth Amendment. Arrests and seizures must therefore be justified by probable cause and reasonable suspicion respectively. Detaining someone in jail, beyond the time that their local charges have concluded or have bonded and ordered released from custody, is an arrest that requires a finding or statement of probable cause. C.R.S. 16-3-102 states Colorado's requirements for arrests by local law enforcement:

(1) A peace officer may arrest a person when:

- (a) He has a warrant commanding that such a person be arrested; or
- (b) Any crime has been or is being committed by such person in his presence; or
- (c) He has probable cause to believe that an offense was committed and has probable cause to believe that the offense was committed by the person being arrested.

A warrant "is a written order issued by a Judge of a court of record directed to any Peace Officer commanding the arrest of the person named or described in the order." C.R.S. 16-1-104 (18).

In issuing a warrant, Colorado law provides:

A court shall issue an arrest warrant only on affidavit sworn to or affirmed before the Judge or a notary public and relating facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the person without unnecessary delay before the nearest judge of a court of record. Once a person is brought before the judge, the Colorado rules of criminal procedure are applicable. C.R.S. 16-3-108.

These statutes set forth the way in which probable cause forms the basis for local law enforcement officer to arrest for a crime. Neither the ICE Detainer or I-200 satisfy the requirement of state and federal law. The analysis so far done by both the courts and legal counsel does not get to the question of whether, even with probable cause or a judicially reviewed warrant from ICE, such an arrest could be properly executed by a Colorado Peace Officer.

Directive:

Therefore effective immediately, the following general order applies to ALL personnel at the Moffat County Sheriff's Office:

1. MCSO **WILL NOT** hold or detain any person in Moffat County Jail solely on an ICE Detainer or an ICE Administrative warrant (I-2—form) We will only hold ICE ARRESTEES based on current contractual requirements; i.e. the subjects brought in by ICE personnel **MUST BE** in the **CUSTODY** of ICE and proper paperwork and booking requirements apply.
2. If an illegal Immigrant or undocumented person is brought into the Moffat County Jail on a legal warrant, local charges and probable cause affidavit, and once that person has completed their custody time, or posted bond, the inmate is free to leave. In the event that ICE wants the subject detained, ICE must arrest the inmate, once released then and only then may the inmate be booked back in as an ICE IN-CUSTODY hold under current contractual conditions.
3. MCSO **WILL** detain any person if we are presented with and Federal warrant that has met the legal standard of judicial review. In its simplest terms, a warrant that is signed by a federal magistrate or judge. US Marshall or other Federal warrants received through the NCIC are presumed to meet this legal threshold. Any ICE warrant received through NCIC must be located and confirmed to prior execution of the warrant.
4. MCSO **WILL** continue to cooperate with all Federal Law Enforcement agencies as long as those agencies requests are conforming to Colorado Law.