

Executive Summary of Jan Johnson Aug. 9, 2107 Portland City Council Public Comment

I. Jan Johnson, Portland voter and member of one of Portland's People Power grassroots mobilizing groups.

a. People Power volunteers and other allies from all around the City stand.

b. Why the City, as well as the County, should adopt the ACLU 9 model rules and policies.

II. Current toothless, feel-good sanctuary resolution fails to provide real protections for immigrant neighbors.

a. Meeting deportation agenda halfway City normalizes fear.

b. When immigrants fear reporting crimes or showing up as witnesses, that fear creates lack of access to justice for all.

III. Current policy invites legal liability for the City.

a. Lack of explicit policy on judicial warrants.

b. Packets contain more on the famous Clackamas County violation of woman's Fourth Amendment rights by holding her with just an ICE detainer.

c. TriMet transit police – overseen by Portland Police -- operate a "jail."

IV. Our goal: every city, county and state adopt the ACLU 9. In writing.

V. It takes less time to deal with us than to keep batting us away.

a. Thank you for your time. We are not going away.

b. We will see you again August 23, if not sooner.

Full Written Public Comment Jan Johnson Aug. 9, 2017 Portland City Council

My name is Jan Johnson. I am a Portland voter and a member of one of Portland's People Power grassroots mobilizing groups.

Could all the People Power volunteers from all around the City who are here today stand.

We are here today to explain the following why it is in the best interest of the *City*, in addition to the County, to adopt the ACLU 9 model law enforcement policies and rules

Reason No. 1: If we meet the Trump deportation agenda even halfway, we normalize fear.

I come before you today adorned in my white privilege because those without papers cannot safely come here themselves. More and more of those detained and deported have no criminal records. They are caught up in sweeps that split families and send people sometimes back to countries where they are vulnerable to violence. Our People Power colleagues in Hillsboro spend much of their time delivering food and diapers to families of farmworkers too afraid to leave their homes even to get groceries. The City's failure to do more than adopt vague sanctuary philosophies without true legal protections normalizes this terror.

Reason No. 2: Arresting immigrants indiscriminately – parents, business owners, valued members of our community – hurts our community.

When people who are in this country without legal status feel unsafe, they don't report crimes or show up as witnesses in court. That creates a *lack of access to justice for all of us*. When my People Power colleague and I met with Judge Nan Waller – the presiding judge in the courthouse that serves the City of Portland as well as many other jurisdictions -- she talked about her own stalled efforts to get courthouses declared "sensitive" areas but even existing so-called "sensitive" areas such as schools are not necessarily honored in this period of ICE overreach. Oregon's legislature passed a law that helps – some. Now we look to the City to do its part. You will find in your packets a list of the various touchpoints the City has with immigrants and refugees.

Reason No. 3: Under Portland's current policy of not being explicit in requiring ICE to present judicial warrants, the City could be sued, as Clackamas County was.

I direct your attention to your packets where you will see detailed explanations of each of the ACLU 9, including commentary, on the document labeled "ACLU 9, City response, ACLU response." The judicial warrant conversation is listed first. Your packet also contains stories about the 2014 Clackamas County lawsuit.

We thank the City Attorney's office for receiving training from Catholic Charities some of whom, Tracy Reeves tells us will be volunteering to represent folks with administrative U Visa applications.

We appreciate that the City is also participating as an amicus in several matters challenging the President's actions on immigration matters in a case against President Trump and the United States Department of Justice (along with co-plaintiff the City of Seattle) challenging the President's actions or threatened actions against sanctuary cities.

We are grateful that starting last month, the Gateway Center for women facing intimate partner violence started bringing immigration lawyers to its Wednesday legal clinics. The Gateway Center's Scott MacNeill tells us that all the immigration appointments were booked – entirely on word-of-mouth advertising.

However, I cannot thank you for your sanctuary resolution. The problem with well-meaning but toothless resolutions is that they don't provide real protections for those who need it and, worse, can give liberals a smug sense of accomplishment where there is none.

Mayor Wheeler's staff told my fellow People Power volunteer in an email in your packets that – quote -- *"it is not contemplated that any formal action to adopt the 9 Point Plan will be taken at this time."* The email cites other drags on staff time.

I do not mean to belittle those other issues but such an attitude brings to mind the words of Dr. Martin Luther King Junior's Letter from a Birmingham Jail critiquing those who wanted to "wait until a more convenient season" and Dr. King's reminder to those white clergymen then and all of us now that a "shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will." He makes clear that progress never rolled in "on wheels of inevitability" but only through the untiring efforts of people.

We all know that time is the ally of social stagnation.

Other cities nationwide and even our own county are not stonewalling. The Multnomah County Sheriff incorporated the ACLU 9 into its new policy, posted on May 1 and included in your packets. The Multnomah County Commission has asked People Power to share best practices in use elsewhere in the country so they can make their own good policy better.

In contrast, if you look closely at that "ACLU 9, City response, ACLU response" document, it appears the City might be adhering to 3-5 of the 9 in practice and has put none of them in writing yet.

We have been trying to engage the mayor's office on this topic since March 12, the day after the ACLU gathered some 200,000 People Power volunteers in living rooms all across the country, assigning us the task of getting **all** our cities, counties and states nationwide to adopt the ACLU 9.

Within weeks of the Freedom Cities campaign launch, we had a face-to-face meeting with a county commissioner, followed by in-person meetings, phone calls and emails with multiple staffers for every county commissioner, the County Attorney's office. We had an in-person meeting with the Multnomah County Circuit Court's presiding judge herself along with her staff.

From the mayor's office, we hear a *monologue* of how well the City thinks it is doing on this matter, in spite of evidence to the contrary. We want a *dialog*.

Please notice how many of us there are here today. Remember there are many more of us. Like Ghandi's shock troops in his Salt March, we have numbers enough that we can keep coming and calling and writing and more. A genuine problem exists and formal channels attempting to negotiate have been met with stonewalling.

We have a simple goal: to make every city, county and state adopt the ACLU 9. In writing. You will find that it takes less time to deal with us than to keep batting us away. We are not going away.

Thank you for your time today. We will see you again August 23, if not sooner.

Jan Johnson
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Portland, OR 97212
503-282-2463
Janjohnson6@earthlink.net

Packet contents:

ACLU 9, City response, ACLU response

Multnomah County Sheriff's Policy, posted May 1, 2017

Barbara Buono email to People Power's Doug Holmgren

Touchpoints where the City encounters immigrants

Stories on Clackamas County legal liability over failure to require judicial warrants

Jan Johnson Aug. 9, 2017 written public comment to Portland City Council

Executive Summary of Jan Johnson Aug. 9, 2017 public comment to Portland City Council

Where the City of Portland meets immigrants

CITY BUREAUS WITH DIRECT CONTACTS WITH IMMIGRANTS

- 1) Portland Parks and Recreation
 - a) Community centers, summer camps, summer free for all
 - b) Senior recreation
 - c) Parks for New Portlanders
- 2) Bureau of Development Services
 - a) Permits, inspections
 - b) Small business liaison
- 3) Portland Housing Bureau
 - a) Resources for renters
 - b) Down payment assistance referrals
- 4) Neighborhood Involvement
 - a) New Portlanders Program
 - b) Community and Neighborhood Involvement Center
- 5) Police Bureau
 - a) Reporting suspicious behaviors and filing complaints
 - b) Investigation of suspected crimes
 - c) Transit policing and oversight of other agencies through intergovernmental agreement with TriMet
 - d) TriMet jail
- 6) Office of Revenue
 - a) Art and Business tax payments
- 7) Auditor's Office and Office of the Portland Ombudsman
- 8) Fire and Rescue
 - a) Medical and other emergencies, fire response
- 9) Bureau of Emergency Communications
 - a) 911 calls

CITY INTERSECTIONS WITH OTHER ORGANIZATIONS SERVING IMMIGRANTS

1. TriMet
2. Metro – Portland Zoo, Portland Expo, Non-City Parks
3. Portland School District
4. Court appearances

Jan Johnson

From: Doug Holmgren <holmgren.doug@gmail.com>
Sent: Saturday, August 5, 2017 11:41 AM
To: Jan Johnson
Subject: Email from Buono

Jan,
Here is the email chain with Barbara Buono.

Doug

----- Forwarded message -----

From: **Buono, Barbara** <Barbara.Buono@portlandoregon.gov>
Date: Fri, Jun 30, 2017 at 10:25 AM
Subject: RE: ACLU 9 Point Plan
To: Doug Holmgren <holmgren.doug@gmail.com>

Dear Doug,

You are certainly not pestering me in the least! Good to hear from you and I applaud your commitment to our beloved city. I am leading the search for chief of police as well as the DOJ Mediation regarding the Settlement Agreement so the past six weeks have been devoted to ensuring both progress smoothly.

You may recall my last email detailed how the city is currently adhering to the vast majority of the nine ACLU points, while the remainder are subject to federal law taking precedence. Finally as previously discussed, Directive #9 will also be reflected pursuant to modification of Police Directive 810.0 which is nearing the end of the formal review period. Therefore it is not contemplated that any formal action to adopt the 9 Point Plan will be taken at this time.

With kind regards,

Barbara

BARBARA BUONO | Senior Advisor

OFFICE OF THE MAYOR

1221 SW 4th Avenue, Suite 340

Portland, Oregon 97204

(503) 823-1122

From: Doug Holmgren [mailto:holmgren.doug@gmail.com]
Sent: Thursday, June 29, 2017 4:09 PM
To: Buono, Barbara <Barbara.Buono@portlandoregon.gov>
Subject: Re: ACLU 9 Point Plan

Hi Barbara,

I don't mean to pester you but am wondering if anything has come of our request that Mayor Wheeler bring the ACLU Freedom City model before City Council for discussion. I know everyone is busy with many important problems, however we believe this issue is and remains urgent (particularly given recent efforts underway to overturn Oregon law limiting local enforcement involvement with federal immigration authorities).

Best regards,

Doug Holmgren

SW Portland PeoplePower

On Sun, Jun 4, 2017 at 8:47 PM, Doug Holmgren <holmgren.doug@gmail.com> wrote:

Dear Barbara,

You'll recall that in early April you generously met with a group of citizens concerned about City practices and rules for dealing with non-U.S. persons. At that meeting, we presented to you a Freedom Cities model developed by the ACLU. You subsequently forwarded to us a response by City legal staff on each of the 9 points of the Freedom City model.

After several weeks of deliberation in consultation with the ACLU, our group believes it is important that the Freedom City model be considered by the City Council in a formal fashion. Our understanding is that for this to take place, a member of the Council must bring the matter before the Council. Therefore we are approaching individual members of the Council with this request. Because we had already established a communication channel with you, I am writing you today to request that you discuss this request with Mayor Wheeler to see if he would be willing to bring the Freedom City to the Council for consideration and ultimately formal adoption. (Please feel free to suggest any other avenue we should pursue in this quest.)

Accordingly, I am attaching two documents to this email. One is a letter from our group, summarizing the request I have outlined above. The 2nd document is a compilation of the Freedom City Nine Points which includes the responses from City legal staff we received from you as well as additional response from the ACLU/PeoplePower organization.

Thank you in advance for considering this request and advancing it as you see fit within City Hall. We would welcome the opportunity to meet again with you and/or Mayor Wheeler to discuss this further.

Sincerely,

Doug Holmgren

(representing SW Portland PeoplePower of Multnomah Village & Garden Home)

On Tue, Apr 18, 2017 at 10:54 AM, Buono, Barbara <Barbara.Buono@portlandoregon.gov> wrote:

Dear Doug,

As promised I am forwarding a point by point analysis of the document we discussed. You will note that I have also included for your reference, Resolution 37277, that was recently passed by council and explicitly addresses many of the items of concern. You will note where some of the points are currently the practice of Portland Police and the City of Portland. The analysis also point out that Directive 810.10, that I brought to your attention during our meeting, is currently in the review and public comment process.

Best regards,

Barbara

BARBARA BUONO | Senior Advisor

OFFICE OF THE MAYOR

1221 SW 4th Avenue, Suite 340

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Multnomah County Sheriff's Policy

610.00 – Enforcement of Immigration and Customs Enforcement (ICE) Detainers

Refer:

- 32 U.C.T. 3227, 1963 Vienna Convention on Consular Relations
- 8 U.S.C. 1373, Communication between government agencies and the Immigration and Naturalization Service
- Miranda-Olivares v. Clackamas County, 2014 U.S. Dist. LEXIS 50340, 2014 WL 1414305 (D. Or. Apr. 11, 2014)
- Governor's Executive Order 17-4, Renewing Oregon's Commitment to Protecting its Immigrant, Refugee, and Religious-Minority Residents
- ORS § 181A.820, Enforcement of Federal Immigration Laws
- National Crime Information Center (NCIC)
- Law Enforcement Database System (LEDS)
- Multnomah County Resolution 2016-132, Declaring Sanctuary County

Definitions:

- Immigration and Customs Enforcement (ICE) Detainers – A tool used by Department of Homeland Security (DHS)'s Bureau of Immigration and Customs Enforcement (ICE) officials to alert law enforcement agencies that a potentially removable individual is housed in that law enforcement agency's jail or prison. An ICE detainer is an official request from ICE to a state or local public safety entity, for the state or local public safety entity to notify ICE prior to releasing an individual from custody, so that ICE may arrange to take over custody.

Policy:

1. The Multnomah County Sheriff's Office (MCSO) primary mission is public safety. It is vital to this mission that community members feel comfortable interacting with members, reporting crimes, entering court, and generally participating as witnesses or victims in our criminal justice system, without fear of local law enforcement enforcing federal immigration law.
2. The Multnomah County Sheriff's Office (MCSO) values the work of the United States Department of Homeland Security (DHS), as a public safety partner. DHS missions include preventing terrorism, enhancing security, securing cyberspace, and ensuring disaster resilience. However, because of state law, MCSO must draw a bright line with regard to the work of the Bureau of Immigration and Customs Enforcement (ICE), a subset of DHS, and the responsibilities of MCSO. MCSO's mission does not encompass the enforcement of federal immigration law. MCSO generally has no enforcement authority or active role in regards to federal immigration law.
3. In all of its public safety roles – patrol, investigations, and operations of jail facilities – the Multnomah County Sheriff's Office (MCSO) follows state and federal law. As a result, MCSO does not use agency monies, equipment or personnel to enforce federal immigration law, nor does MCSO hold people in custody pursuant to Immigration and Customs Enforcement (ICE) detainers. The exchange of immigration or citizenship status information if requested by ICE officials, consistent with 8. U.S.C. 1373, is distinct from the enforcement of federal immigration law and therefore permissible.
4. The Multnomah County Sheriff's Office (MCSO) obligation to enforce judicial arrest warrants for criminal activity that are reflected in the National Crime Information Center (NCIC), is distinct and separate from the enforcement of federal immigration law. Because MCSO lacks authority, members do not enforce Immigration and Customs Enforcement (ICE) administrative arrest warrants.

5. The Multnomah County Sheriff's Office (MCSO) ability to apply for intergovernmental monies relating to the enforcement of criminal activity, is distinct and separate from the enforcement of federal immigration law.

Procedure:

1. Immigration Status Inquiries in the Field:
 - 1.1. Multnomah County Sheriff's Office (MCSO) members assigned to the Law Enforcement Division, will not inquire into a person's immigration status for the purpose of enforcing federal immigration law.
2. Country of Birth Inquiries in Jail Facilities:
 - 2.1. Multnomah County Sheriff's Office (MCSO) members assigned to the Corrections Division, will inquire into a person's country of birth during booking and classification processing, before reporting the self-identified country of birth to the Records Unit. MCSO is obligated to inquire per the Law Enforcement Database System (LEDS) and National Crime Information Center (NCIC) requirements.
 - 2.2. During the booking process, members will ask the adult in custody to self-identify their country of birth. This information will be forwarded to the Classifications Unit.
 - 2.3. During classification assessments, members will ask the adult in custody to confirm the self-identified country of birth, reported during the booking process. This information will be forwarded to the Records Unit.
3. Consulate Notification:
 - 3.1. The Records Unit, will review the self-identified country of birth information upon receipt from the Classifications Unit.
 - 3.2. If the self-identified country of birth is outside of the United States, and a mandatory reporting country under federal law, the Records Unit, is required to notify the specified-country's consular representative in the United States, of the arrest or detention. Adults in custody are informed of: this requirement; that the consulate may call or visit; that the consulate may be able to help with legal counsel, family contacts and more; but that the adult in custody is not required to accept consulate assistance.
 - 3.3. If the self-identified country of birth is outside of the United States, and a non-mandatory reporting country under federal law, the Records Unit, is not required to notify the specified-country's consular representative in the United States, of the arrest or detention. Adults in custody are informed of: the option to direct the Records Unit to notify their consulate at any time; that upon notification the consulate may call or visit; that the consulate may be able to help with legal counsel, family contacts and more; but that the adult in custody is not required to accept consulate assistance.
4. Immigration and Customs Enforcement (ICE) Inquiries:
 - 4.1. Should the Bureau of Immigration and Customs Enforcement (ICE) contact the Multnomah County Sheriff's Office (MCSO), seeking information about particular adults in custody, members are directed to do as follows:
 - 4.1.1. Should ICE request information from MCSO, members shall route the request to the Records Unit Manager, who will provide no greater information than is available to the public.
 - 4.1.2. When ICE is present at a Multnomah County facility, ICE will be provided no greater access than is available to the public.

History:

- Originating Policy/Procedure: 5/1/2017
 - This Policy and Procedure supersedes all prior MCSO policy and procedure relating to the enforcement of Immigration and Customs Enforcement (ICE) Detainers.
- Next Review Date: 5/1/2019
- Review By: Executive Office

ACLU 9, City response, ACLU response

Notes:

Blue text is from Portland Legal via Barbara Buono, Apr 18th in response to our Apr 3rd meeting.

Red text is from Ronald Newman, ACLU attorney, May 19th

#1) The Judicial Warrant Rule: City officials shall require a judicial warrant prior to detaining an individual or in any manner prolonging the detention of an individual at the request of U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP).

There are two kinds of warrants that might be presented by an ICE agent.

The less common is a signed criminal search warrant. The more common type of warrant is called an “administrative warrant.” The ICE agents will likely refer to the document as this, or sometimes “administrative removal warrant,” but it will include any document titled “Immigration Warrant of Arrest,” “Order to Detain,” “Notice of Custody Determination,” “Notice to Appear,” “Removal Order,” or “Warrant of Removal.” If presented with any type of warrant from an ICE officer, City official will seek advice from the City Attorney’s Office to determine what type of warrant is at issue.

On Rule #1, yes, there are two types of warrants, and our model rules advise that only those signed by a judge be used as a basis for extended detention of a person. The so-called “administrative warrants” have been found to not satisfy the Fourth Amendment of the Constitution. There are likely people in Portland’s government that understand this rule, because Clackamas County was a place famously sued for detaining someone w/o a judge-signed warrant.

#2) No Facilitation Rule: City officials shall not arrest, detain, or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE or CBP, without a judicial warrant.

This is already the practice of the Portland Police Bureau and the City of Portland.

While having good practice is obviously better than having bad practice, if these rules are merely “practice,” *they are more subject to change by future leaders*. PeoplePower believes it is imperative to shepherd these practices into formal rules – in a resolution or in the city code. That would make the “practice” more permanent, and result in an achievement that all of us could still see the fruits of 5, 10, 15 years from now.

#3) Defined Access/Interview Rule: Unless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no City official shall permit ICE or CBP agents access to City facilities or any person in City custody for investigative interviews or other investigative purposes.

This is already the practice of the Portland Police Bureau and the City of Portland.

See #2) response

#4) Clear Identification Rule: To the extent ICE or CBP has been granted access to City facilities, individuals with whom ICE or CBP engages will be notified that they are speaking with ICE or CBP, and ICE or CBP agents shall be required to wear duty jackets and make their badges visible at all times while in City facilities.

The City of Portland cannot require federal agents to dress in a particular manner. City officials will request that ICE or CBP officers clearly identify themselves to anyone to whom the City grants ICE or CBP access.

On Rule #4, we believe that while Portland cannot tell federal agents what to wear, they can condition access to detention facilities on proper attire by federal agents. That said, ultimately, we simply want to ensure that immigrants are clearly informed that they are talking to federal immigration agents, so they know they can exercise their rights to remain silent and to seek an attorney. Another effective option would be a rule like the following from California: In advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean.

#5) Don't Ask Rule: City officials shall not inquire into the immigration or citizenship status of an individual, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, or where required by state or federal law to verify eligibility for a benefit, service, or license conditioned on verification of certain status.

This is already the practice of the Portland Police Bureau and the City of Portland.

See #2) response

#6) Privacy Protection Rule: No City official shall voluntarily release personally identifiable data or information to ICE or CBP regarding an inmate's custody status, release date or home address, or information that may be used to ascertain an individual's religion, ethnicity or race, unless for a law enforcement purpose unrelated to the enforcement of a civil immigration law.

Relevant federal law states:

Under 8 U.S.C. § 1373 and 8 U.S.C. § 1644, Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

On Rule #6, we understand that federal law requires the sharing of "citizenship and immigration status" information, as noted in the rule the Portland authorities have cited. Federal law does **not** require the sharing of other information, such as "custody status, release date or home address" as included in Rule #6.

#7) Discriminatory Surveillance Prohibition Rule: No City agency or official may engage in any surveillance that is based, to any extent or degree, upon a person or group's actual or perceived religion, ethnicity, race, national origin, or immigration status, except where doing so is based on a reliable, specific description of a suspect and adheres to appropriate Constitutional standards.

This is already the practice of the Portland Police Bureau and the City of Portland.

See #2) response

Help our friends, families and neighbors get redress when abuses and mistakes occur:

#8) Redress Rule: Any person who alleges a violation of this policy may file a written complaint for investigation with [the City's Independent Police Review or Internal Affairs of the Portland Police Bureau](#).

Help ensure our friends, families, and neighbors are protected from discrimination:

#9) Fair and Impartial Policing Rule: No City official shall interrogate, arrest, detain or take other law enforcement action against an individual based upon that individual's perceived race, national origin, religion, language, or immigration status, unless such personal characteristics have been included in timely, relevant, credible information from a reliable source, linking a specific individual to a particular criminal event/activity.

The Portland Police Bureau's Directive on Arrest of Foreign Nationals, 810.10, is currently under universal review and is in the process of being amended to reflect the values articulated in Resolution 37277 Declaring the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City for all. This resolution was unanimously passed by the Portland City Council on March 14, 2017.

Question: what changes have been suggested or adopted into directive 810.10 since the City Council's review in March?

<http://crimmigration.com/2014/04/17/oregon-federal-court-detainer-led-to-fourth-amendment-violation/>

Fourth Amendment violation Clackamas County ICE detainer

A federal magistrate judge in Oregon concluded that county officials violated a woman's Fourth Amendment rights when they kept her in custody solely on the basis of an immigration detainer. *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, slip op. (D. Or. April 11, 2014) (Stewart, Magistrate Judge).

This case involved a woman who was arrested for violating a restraining order. Though county jail officials did not ask her about her immigration status, they somehow learned that she was born outside the United States. Pursuant to a jail policy, they then notified ICE. The next morning ICE issued an immigration detainer. *Id.* at 2. As is standard these days, the detainer (Form I-247) asked that jail officials "MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS." The form added that DHS "had 'initiated an investigation to determine whether [Miranda-Olivares] is subject to removal from the United States.'" *Id.* at 3.

The same day that the jail received ICE's detainer, a judge granted Miranda-Olivares bail. Jail officials, however, repeatedly told Miranda-Olivares and her sister "that she would not be released if she posted bail because of the Jail policy relating to ICE detainees." *Id.* at 4. Consequently, Miranda-Olivares did not post bail despite a willingness to do so. Instead, she remained in jail awaiting adjudication of her criminal case. Eventually she pled guilty and was sentenced to 48 hours in jail with credit for time served. Even then, however, she was not released. Due to the immigration detainer, county jail officials kept her confined for an additional 19 hours. *Id.* at 3-4. She was finally released roughly two weeks after being granted bail.

County officials claimed they had no choice in the matter. Immigration detainees, they argued, are mandatory. *Id.* 5. The court disagreed. Relying in large part on the Third Circuit's decision in *Galarza v. Szalczyk*, No. 12-3991, slip op. (3d Cir. March 4, 2014), holding that detainees are merely requests, the court concluded that detainees are not mandatory. To interpret the detainer regulation, 8 C.F.R. § 287.7, as mandatory, the court explained, would come perilously close to violating the Tenth Amendment. As the court put it, "a conclusion that Congress intended detainees as orders for municipalities to enforce a federal regulatory scheme on behalf of INS would raise potential violations of the anti-commandering principle." *Id.* at 11. (The court repeatedly references the INS even though it hasn't existed since 2003.)

Furthermore, the court concluded that the only reasonable interpretation of the regulation's text is that detainees are requests. *Id.* at 10. Subsection (a), as the court pointed out, explains that "[t]he detainer is a request" and subsection (d), though it uses the word "shall" does so only with reference to the maximum amount of time that a local law enforcement agency may hold someone pursuant to a detainer ("such an agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays"). *Id.* at 10 (discussing 8 C.F.R. § 287.7).

Having concluded that detainees are requests, the court added that the county might be liable for any unlawful detention that resulted from its decision to keep Miranda-Olivares confined. Though it rejected her Fourteenth Amendment substantive due process claim and state law false imprisonment claim, it was convinced by Miranda-Olivares' Fourth Amendment claim.

Miranda-Olivares argued that the county violated her Fourth Amendment right to be free from unreasonable seizure by "refusing to release her during the two weeks when she could have posted

bail and by continuing to incarcerate her for 19 hours after her release from the state charges.” *Id.* 15. The court largely agreed. The county was authorized to hold Miranda-Olivares while her criminal proceedings were ongoing, but it was not allowed to go beyond the limits on that confinement. It did so, the court concluded, by failing to abide by the judge’s bail decision and continuing to incarcerate Miranda-Olivares for 19 hours after the conclusion of her criminal sentence. *Id.* 17-18. Because the county engaged in these “new” Fourth Amendment seizures without probable cause that she was engaged in criminal activity (aside from the restraining order violation), it violated the Fourth Amendment. The mere existence of the detainer, the court explained, was not sufficient basis for the jail to reasonably conclude that it had probable cause to detain Miranda-Olivares. *Id.* at 19. The court therefore granted summary judgment in Miranda-Olivares’ favor on the Fourth Amendment claim. Potential damages will be decided at a later date.

The court’s analysis closely tracks arguments that my colleague at the University of Denver Christopher Lasch has made about the Fourth and Tenth Amendments. In Federal Immigration Detainers After Arizona v. United States, Lasch noted the probable cause problems inherent in confinement based on an immigration detainer that states little more than that DHS has “initiated an investigation” of an arrestee’s immigration status. 46 Loyola of Los Angeles Law Review 629, 698 (2013). He then explains that any interpretation of the detainer regulation as mandating compliance by local law enforcement officials would clash with the Tenth Amendment’s anti-commandeering principle and the Supreme Court’s leading case on congressional attempts to enlist local police officials to help enforce federal law, Printz v. United States, 521 U.S. 898 (1997). Lasch, *supra*, at 699-700.

Interestingly, it suggested that the county engaged in false imprisonment under Oregon state tort law, but ultimately concluded that state law immunizes public entities such as the county jail from false imprisonment performed without malice or bad faith. Because here “[t]here is no contention or evidence that the County was acting in bad faith or with malice,” the court granted summary judgment in the county’s favor on this claim. *Id.* at 20.

[Updated (April 29, 2014): The Sheriff of San Miguel County in Colorado *announced today that it will no longer enforce immigration detainers*. The Sheriff’s Office press release in which this policy change was announced explained that the change comes as a result of the Third Circuit’s decision in *Galarza*.]

The Sheriff of Boulder County made a similar announcement in an email to the Associated Press.

By GOSIA WOZNIACKA, Associated Press

PORTLAND, Ore. (AP) — A federal judge in Oregon has found that an immigrant woman's constitutional rights were violated when she was held in jail without probable cause at the request of U.S. immigration authorities, one of several recent federal court decisions to scrutinize the practice of keeping people in jail after they're eligible for release so that they can be considered for deportation.

The rulings make it clear that local officials are not required to honor immigration authorities' requests that someone in custody continue to be held even though their original charges were resolved or they are eligible for bail, and that local jurisdictions may be held liable for doing so.

The rulings have spurred several jurisdictions — from multiple Oregon counties to the city of Philadelphia — to announce they will no longer honor requests for such holds. Previously, some counties and states had already limited use of the practice, arguing it is expensive, erodes immigrants' trust in law enforcement, and drags people with minor infractions such as traffic violations into deportation.

"This will undoubtedly improve the relationship between each of these offices and the immigrant and refugee communities," said Carmen Madrid, an organizer with the Portland-based nonprofit Center for Intercultural Organizing.

The decisions come as immigration reform has stalled and the Obama administration is being criticized for deporting mostly people who have not committed a serious crime — despite its stance to focus on dangerous criminals.

Requests that an immigrant be held are sent to local law enforcement by the U.S. Immigration and Customs Enforcement, or ICE. The agency knows who is being booked into local jails because of an information-sharing partnership between ICE, the Federal Bureau of Investigation and local jurisdictions.

The notices request that the person be jailed for an extra two days, excluding weekends and holidays, so that ICE can initiate an investigation and take the person into custody.

But immigrant rights advocates say ICE has made mistakes in the past, incarcerating U.S. citizens, people who have not committed any crimes, or those arrested on misdemeanors.

"They do it in a dragnet manner without first doing the investigation upfront, sometimes before a local district attorney has even signed off on the charges. So it results in the unjust incarceration of a lot of people who are not deportable at all, or who are not found guilty in the criminal process," said Kate Desormeau, an attorney with the American Civil Liberties Union.

In recent years, California, Connecticut and more than a dozen jurisdictions around the country have stopped or limited their compliance with the so-called immigration detainer requests. Lawmakers in Massachusetts and Maryland are considering similar legislation. On Wednesday, the mayor of Philadelphia signed an executive order limiting the use of such holds.

ICE has said that the requests are optional. The detainers generally are not accompanied with a warrant.

But many local law enforcement agencies say they have treated them as orders because the requests cite federal regulation, which states that a law enforcement agency "shall maintain custody of an alien" once a detainer request has been issued.

"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," Clackamas County Sheriff Craig Roberts wrote in a letter announcing the suspension in the use of detainers.

Roberts changed his policy after a U.S. District Court judge last Friday found the detainers are "requests" that do not provide the necessary legal basis for the jail to hold a person in custody after charges are resolved — and consequently, that in March 2012, the county violated Maria Miranda-Olivares' rights under the 4th Amendment by prolonging her incarceration without probable cause.

The woman, who was found guilty of contempt of court and sentenced to 48 hours in jail, was incarcerated for more than two weeks due to the ICE hold, even though she was eligible for pre-trial release upon posting bail and after her release from state charges. A hearing will determine how much the county must pay Miranda-Olivares in damages.

The ruling has led sheriffs in Oregon's Multnomah, Washington, Marion and Deschutes counties to suspend the use of immigration holds. The regional jail that serves Hood River, Wasco, Gilliam, and Sherman counties will also no longer comply with ICE detainer requests.

The Clackamas County case follows a similar case in Philadelphia, where the 3rd U.S. Circuit Court of Appeals ruled last month that state and local law enforcement authorities are not required to comply with requests from ICE to hold people on detainers without probable cause. The ruling, which involved a U.S. citizen, also recognized that states and localities may share liability when they participate in such detentions.

And in another case in Rhode Island involving a naturalized U.S. citizen, the district court issued a decision reaffirming that detainers don't justify warrantless imprisonment and allowed the immigrant's lawsuit against federal and state defendants to proceed.

"These rulings have dispelled any lingering uncertainty on whether localities can say no to ICE detainers," Desormeau said. "So jurisdictions that have been sitting on the sidelines may now act to limit their use. Otherwise, they're inviting legal liability."

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1

Parsons, Susan

Subject: speaking about Freedom Cities at the City Council Meeting in August

From: Jan Johnson [mailto:janjohnson6@earthlink.net]

Sent: Saturday, June 03, 2017 7:35 AM

To: Parsons, Susan <Susan.Parsons@portlandoregon.gov>

Subject: RE: speaking about Freedom Cities at the City Council Meeting in August

Hello Ms. Parsons,

I would like to speak about Freedom Cities at the City Council meeting in August. Thank you.

Jan Johnson
2034 NE 40th Ave., #401
Portland, OR 97212
503-282-2463

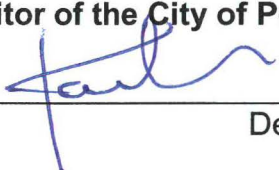
Request of Jan Johnson to address Council regarding Freedom
Cities (Communication)

AUG 09 2017

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Filed AUG 01 2017

MARY HULL CABALLERO
Auditor of the City of Portland

By  Deputy

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Eudaly		
Wheeler		