

**COUNTY OF LEHIGH, PENNSYLVANIA  
RESOLUTION NO. 2014-36  
SPONSORED BY COMMISSIONERS JONES & OTT  
REQUESTED DATE: APRIL 24, 2014**

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**ADOPTING A RESOLUTION FOR THE COUNTY OF LEHIGH TO CLARIFY  
THE POLICY REGARDING DETAINERS ISSUED UNDER 8 C.F.R. §287.7**

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**WHEREAS**, 8 C.F.R. §287.7(a) authorizes certain federal officers, including immigration officers employed by the Immigration and Customs Enforcement Agency ("ICE"), to issue a detainer for the purpose of advising a local law enforcement agency of their intent to seek custody of a suspected alien currently in the custody of such agency, and describes the detainer as "a request that such agency advise [ICE], prior to release of the alien, in order for [ICE] to ... assume custody ... when gaining immediate physical custody is either impracticable or impossible"; and

**WHEREAS**, 8 C.F.R. §287.7(d) provides that when ICE issues "a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by [ICE]"; and

**WHEREAS**, detainers issued under 8 C.F.R. §287.7, unlike criminal detainers, are issued without judicial oversight, and are accompanied by neither a warrant, affidavit of probable cause nor a removal order; and

**WHEREAS**, in *Galarza v. Szalczyk*, No. 12-3991, the United States Court of Appeals for the Third Circuit ruled that 8 C.F.R. §287.7 authorizes "only permissive requests that local [law enforcement agencies] keep suspected aliens subject to deportation in custody," and therefore, local law enforcement officials are not required to comply with detainers issued under this regulatory provision; and

**WHEREAS**, the ruling in *Galarza v. Szalczyk* concerning the permissive nature of a detainer issued under 8 C.F.R. §287.7 makes no distinction based upon the suspected alien's criminal history or the underlying criminal offense; and

**WHEREAS**, the federal government does not reimburse local law enforcement agencies for the costs involved in complying with detainers issued under the authority of 8 C.F.R. §287.7, including, without limitation, the cost of detaining a suspected alien and the legal liability arising from an erroneously-issued detainer; and

**WHEREAS**, Lehigh County has a fiduciary responsibility to its constituents; and

**WHEREAS**, Lehigh County respects the rule of law, as well as the civil rights and liberty of our citizens.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA THAT,**

1. The above clauses are incorporated herein and made a part hereof by this reference.
2. The policy of the County of Lehigh regarding detainers issued under the authority of 8 C.F.R. §287.7 shall be as follows:
  - A. To the extent practicable under the circumstances, the Lehigh County Department of Corrections shall advise the applicable federal agency of the date and time when the subject of the detainer shall not otherwise be detained, so as to permit the federal agency the opportunity to assume custody.
  - B. Once the subject of the detainer is not otherwise detained, the Lehigh County Department of Corrections shall release the subject of the detainer from County custody, unless the Lehigh County Department of Corrections receives a judicially-issued detainer, warrant or order.
3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Resolution.
4. Any resolution or part of resolution conflicting with the provisions of this resolution is hereby repealed insofar as the same affects this resolution.
5. The County Executive shall distribute copies of this resolution to the proper officers and other personnel whose further action is required to achieve the purpose of this resolution.

**ADOPTED BY THE LEHIGH COUNTY BOARD OF COMMISSIONERS**

on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

**Commissioners**

**AYE**

**NAY**

Geoff Brace  
Thomas C. Creighton, III  
Percy H. Dougherty  
David S. Jones, Sr.  
Vic Mazziotti  
Brad Osborne  
Scott Ott  
Lisa Scheller  
Michael P. Schware

ATTEST: \_\_\_\_\_  
Clerk to the Board of Commissioners