



April 26, 2016

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Re: Unsuitability of New Applicants for the 287(g) Immigration Enforcement Program

Dear Mr. Friedman:

On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the principles of liberty and equality set forth in the Constitution and in our nation's civil rights laws, and its more than a million members, activists, and supporters, we write to express our deep concerns about expanding the 287(g) program to six additional jurisdictions. This letter supplements and updates our December 14, 2012 letter to you, which raised concerns about three jurisdictions that were being considered for 287(g) agreements at the time,¹ including Oklahoma County, Oklahoma, one of the currently proposed jurisdictions.

The ACLU urges Immigration and Customs Enforcement (ICE) to terminate the 287(g) program in all 32 jurisdictions in 16 states that have existing agreements. This letter, however, raises specific concerns, including civil rights violations and bias based on immigration status, race, or ethnicity, about two of the proposed jurisdictions—Harford County, Maryland and Oklahoma County, Oklahoma. That we do not address here the four other jurisdictions currently under consideration² does not indicate our support for those applications, or the absence of jurisdiction-specific concerns.

We urge ICE to hold public meetings in any community before making a decision to approve an application. Moreover, along with leading law-enforcement voices,³ we object in principle to the entanglement of immigration enforcement

¹ Letter from American Civil Liberties Union to Bruce Friedman, Senior Policy Advisor, Office for Civil Rights and Civil Liberties, Department of Homeland Security (Dec. 14, 2012), <https://www.aclu.org/aclu-letter-dhs-crcl-opposing-new-287g-applications>.

² These jurisdictions are Plymouth County, Massachusetts; Essex County, Massachusetts; Loudon County, Virginia; Lexington County, South Carolina.

³ Statement of Chief J. Thomas Manger, Chairman of the Legislative Committee for the Major Cities Chiefs Association, "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law." House Committee on Homeland Security (Mar. 4, 2009), available at <https://www.gpo.gov/fdsys/pkg/CHRG-111hhrg49374/html/CHRG-111hhrg49374.htm>.

with state or local policing. Extending 287(g) agreements to these proposed jurisdictions will only intensify the program's record of abetting racial profiling –as seen starkly in the Department of Justice's findings regarding sometime 287(g) partners Maricopa County (AZ) and Alamance County (NC) – to the detriment of public safety and community trust in law enforcement.

Harford County, Maryland

Since 2012, the ACLU of Maryland's complaint line has received at least 21 credible complaints involving civil rights violations by members of the Harford County Sheriff's Office (HCSO) – a comparatively high number for actionable police misconduct complaints from a single jurisdiction. These complaints ranged from racial profiling to excessive force to pretextual traffic stops, and non-consensual searches that yielded no results. A few representative examples are:

- In 2015, HCSO deputies stopped a black male driver for a disabled taillight. The deputies were unaware that the driver was also a police officer with a different agency. Three Harford County deputies and a K-9 unit ultimately responded. The driver and vehicle were searched without consent under the pretext that the K-9 Unit signaled a "hit." The searches yielded nothing, and he was released. Believing he had been racially profiled, the victim filed a formal complaint with the Internal Affairs Division. After meeting with them, he concluded that the problem was not limited to the particular deputies who stopped him, but was rather endemic to the Sheriff's Office training protocols. He subsequently withdrew his complaint against the deputies, believing that a policy approach would be the best method to reform the problematic training program.
- In 2015, a visibly multi-racial youth was walking home from his girlfriend's home at night when a deputy from the HCSO spotted him from his cruiser. The deputy left his vehicle and began to follow him along his route, scaring the young man who was alone and unarmed. The deputy stopped and began to question him, eventually calling other deputies to the scene because the young man asserted his right to remain silent. The young man called his mother to ask her for a ride home. Upon her arrival, a deputy tackled the young man without reason, causing minor scratches. The young man and his mother awaited the arrival of emergency medical technicians, and returned home in the mother's vehicle after he received treatment. Minutes later, about seven Sheriff's deputies and a Sergeant arrived at her home and asked to speak with the young man. When he arrived at the door, he was arrested for obstruction of justice. The deputies made racially insensitive statements that revealed a lack of sufficient legal basis for approaching the young man. The family has feared continued harassment since his arrest.
- In 2013, a black woman was detained for 30 minutes during a traffic stop for a disabled taillight. Five marked HCSO vehicles responded, and searched her vehicle without consent, claiming a "hit" signal from a K-9 unit. The vehicle was damaged during the search. The driver called the Sheriff's Office to file a complaint against the deputies, but the Sheriff's Office never followed up with her.
- In 2012, after a woman won a federal civil suit against HCSO in 2011, resulting in \$82,000 in damages, Sheriff's deputies began to harass her family multiple times per week. The woman and her family had several negative encounters with deputies from unjustified traffic stops to unwarranted police presence near their home. She also faced

several minor criminal and traffic charges that she was required to defend against and that she believed were unfounded and retaliatory.

- In 2015, HSCO set up an unconstitutional drug checkpoint on the roadway, pulling motorists over as they were driving in order to search for and interdict drugs.⁴ The Supreme Court had long held that such checkpoints violate the Fourth Amendment rights of motorists, but this did not deter HSCO from setting one up.

These incidents provide examples of a troubling pattern of racially biased policing, pretextual stops, excessive use of force, retaliation against citizens who complain, and disregard for motorists' constitutional rights.

HCSO has also proven unwilling to be transparent about its dealings with immigrants. In 2013, the office refused to respond to a Maryland Public Information Act request concerning immigrants with ICE detainees (Form I-247) at the Harford County jail. The Sheriff's Office refused to release information at their disposal about the specifics, finding that the request was not in the public interest and asking a public interest organization to pay fees in order to access the information sought. Information obtained from other sources shows that most individuals held on an ICE detainer at the Harford County jail between 2010 and 2013 were arrested for traffic violations or minor misdemeanor offenses, and most were Hispanic or Latino – both troubling facts that reveal a pattern of biased policing and booking practices. But the Sheriff's Office was unwilling to be transparent about their practices. Because of these concerns about transparency and about police misconduct, we strongly urge ICE to reject Harford County's application.

Oklahoma County, Oklahoma

A history of increasingly inhumane conditions and the failure to build a satisfactory detention facility in Oklahoma County make that county unsuitable for a 287(g) agreement. In 2008, the Department of Justice released a scathing report on conditions at the Oklahoma County Jail, which suffers from both severe design and operational deficiencies and operates at nearly double its design capacity.⁵ This overcrowding continues to contribute to poor supervision and unconstitutional conditions. The report raised concerns about the frequency of grave violence and stabbings in the jail, and reported an "inordinately high number" of incidents involving the jail staff's use of force. These issues have yet to be fully addressed.

The jail also fails to provide adequate access to medical care – with dire results. In one particularly unconscionable incident, a pregnant detainee yelling for help was instead handcuffed to a handrail; she was later found "laying on the ground in bloody water," having been forced to deliver her own baby. The baby was pronounced dead. An investigation by the Oklahoma State Department of Health found that the death of at least seven men in custody was due to improper

⁴ Editorial, *Harford County 'heroin checkpoints' a dubious approach to abuse*, THE FREDERICK NEWS-POST (Dec. 1, 2015), http://www.fredericknewspost.com/opinion/editorial/harford-county-heroin-checkpoints-a-dubious-approach-to-drug-abuse/article_1b29d13b-2fef-56a9-a58b-69582fa24388.html

⁵ Letter from Grace Chung Becker, Acting Assistant Attorney General, to Oklahoma County Commissioners (July 31, 2008), http://www.justice.gov/crt/about/spl/documents/OKCounty_Jail_findlet_073108.pdf

medical care.⁶ The Department of Justice also reported on shockingly unsanitary conditions in all areas, from food preparation, to pest control and bathrooms. These problems continue to the present, and are in many cases getting worse rather than better.

Recent reports implicate Oklahoma County jail's guards in excessive use of force against detainees—sometimes with deadly consequences. One nurse who had formerly worked at the facility described witnessing a violent incident during which a guard dropped a handcuffed man “on his head from the doctor's table to the floor. His head cracked open and he was lying in a pool of blood. The officer picked him up like a UPS package and threw him in a cell. He died on the floor three days after.”⁷ In 2013, another individual died from internal bleeding six days after a jail supervisor broke his shoulder and elbow while subduing him.⁸ Recognizing the seriousness of the conditions, the U.S. Marshals and ICE transferred 160 federal inmates from the jail to other facilities.⁹

Despite these failures and continuing issues with overcrowding,¹⁰ the jail has historically detained undocumented persons for nearly twice as long as the national average.¹¹ In 2012, the jail claimed to have made significant changes, but even the Sheriff admitted that it will not be possible to resolve the jail's deficiencies without a major remodel of the jail or a completely new facility.¹² No such renovation or construction has occurred or is likely to occur in the near future. When a sewer line beneath the facility collapsed in 2014, forcing the facility's kitchen to shut down and stop serving hot meals, the Sheriff reiterated that the problems stemmed from the facility's positioning above a river bed.¹³ Moreover, in a state with the second-highest rate of residents with serious mental disabilities, both the Sheriff and mental-health experts have admitted that the facility is inadequately equipped to treat detainees with mental disabilities.¹⁴

The Department of Justice recently granted Oklahoma County two more years to address its numerous mistreatment issues and civil rights violations, following the Sheriff's failure to remedy them in the time originally agreed.¹⁵ In the interim, it would be dangerous to grant this

⁶ Tim Willert, *Oklahoma County jail inmate deaths attributed to inadequate medical care, records show*, NEWSOK (Mar. 25, 2013), <http://newsok.com/oklahoma-county-jail-inmate-deaths-attributed-to-inadequate-medical-care-records-show/article/3770946>.

⁷ Harrison Jacobs, *Nurse says she still 'has nightmares' about working at one of America's most notorious jails*, BUSINESS INSIDER (Sep. 27, 2015), <http://www.businessinsider.com/a-former-nurse-is-speaking-up-about-conditions-at-one-of-the-worst-jails-in-america-2015-9>.

⁸ Nolan Clay, *Oklahoma County inmate's jail death case will go to trial*, NEWSOK (Jan. 25, 2015), <http://newsok.com/oklahoma-county-inmates-jail-death-case-will-go-to-trial/article/5387549>.

⁹ John Estus & Bryan Dean, *Oklahoma Co. Sheriff Defends Jail's Conditions*, NEWSOK (Aug. 5, 2008), <http://newsok.com/oklahoma-co.-sheriff-defends-jails-conditions/article/3279092>.

¹⁰ Randy Ellis, *Multiple fees, fines and bail charges add to Oklahoma County jail overcrowding*, NEWSOK (Feb. 15, 2016), <http://newsok.com/article/5478819>.

¹¹ Vallery Brown, *Some Claim Oklahoma County Profited from Keeping Detainees Longer*, OKLAHOMAN (Feb. 8, 2010).

¹² Zeke Campfield, *Jail Tax to Go Before Oklahoma County Voters in March*, NEWSOK (Nov. 29, 2012), <http://newsok.com/jail-tax-to-go-before-oklahoma-county-voters-in-march/article/3732843>.

¹³ Ed Doney, *County officials scrambling for solutions, collapsed sewer lines force jail kitchen to close*, KFOR NEWSCHANNEL 4 (Aug. 7, 2014), <http://kfor.com/2014/08/07/county-officials-scrambling-for-solutions-collapsed-sewer-lines-force-jail-kitchen-to-close/>.

¹⁴ Jaelyn Cosgrove, *Oklahoma County jail not set up for mental health patients, experts say*, NEWSOK (Aug. 30, 2015), <http://newsok.com/article/5443353>.

¹⁵ Brian Hardzinski, *Justice Department Gives Oklahoma County Two More Years To Fix Jail*, KGOU (Jan. 20, 2016), <http://kgou.org/post/justice-department-gives-oklahoma-county-two-more-years-fix-jail#stream/0>.

troubled county the authority to enforce federal immigration law when the Sheriff's Office is unable or unwilling to comply with the law governing the operation of its own facilities.

We urge ICE to deny all 287(g) applications and terminate every existing agreement. Immigration enforcement is a federal responsibility and the 287(g) program harms community trust in police and all residents' right to unbiased law enforcement. The proposed jurisdictions discussed in this letter have records clearly demonstrating that they are unable to assume this responsibility in a manner that would avoid racial profiling, discriminatory enforcement, and constitutional violations. It is, moreover, ICE's obligation before approving any agreement to have open meetings in the communities that would be affected, to supplement reports such as those detailed here and to ensure that residents in affected communities have an opportunity to weigh in.

Please contact Joanne Lin, Legislative Counsel (202-675-2317 or jlin@aclu.org), or Chris Rickerd, Policy Counsel (202-675-2339 or crickerd@aclu.org), with any questions.

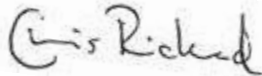
Yours sincerely,



Karin Johanson
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