



December 14, 2012

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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 half a million members, we write to express our deep concerns about expanding the 287(g) program to nine additional jurisdictions.

The ACLU urges Immigration and Customs Enforcement (ICE) to terminate the 287(g) program in all 21 states and 57 jurisdictions that have existing agreements. This letter, however, raises specific concerns about the proposed jurisdictions, including civil rights violations and bias based on immigration status, race, or ethnicity. 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.

Rutherford County, Tennessee

History shows that 287(g) agreements embolden biased law enforcement in areas where there is preexisting animus. In Rutherford County, the atmosphere of bias and injustice is pervasive. In but one example, the Sheriff's office staff received "training" from an individual who publicly stated that local mosques have no right to exist and that the Muslim community has no First Amendment rights.<sup>1</sup> Soon

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<sup>1</sup> Bob Smietana & Tony Gonzalez, *Sheriff Hires Mosque Foe to Lead Terrorism Training*, THE TENNESSEAN (Feb. 15, 2012), available at <http://usatoday30.usatoday.com/news/nation/story/2012-02-15/terrorism-training-tennessee/53102430/1>.

after that incident came to light, the Department of Justice brought suit against the county for its refusal to permit a mosque to open in the city of Murfreesboro.<sup>2</sup> Granting local officials the authority to act as immigration agents would only further erode the county's tenuous relationship with the local Muslim community.

The hostile atmosphere in Rutherford County is not aimed exclusively at Muslim residents, but extends throughout the immigrant community as well. In a show of anti-immigrant sentiment, a state representative from Rutherford County announced plans immediately following the Supreme Court's decision on Arizona's SB 1070 to introduce similar legislation in Tennessee. Rather than urging a productive partnership with the U.S. government to address unauthorized immigration, this legislator has criticized the federal government as "uncooperative" in enforcing its own laws,<sup>3</sup> arguing that it is "not capable of producing a solution to the illegal immigration problem in this country."<sup>4</sup> Rutherford County clearly favors an aggressive policing approach – an approach that is all the more worrisome given the county's flawed record of immigration enforcement.<sup>5</sup>

The residents of Rutherford County have good reason to distrust local law enforcement. Although the county may refuse to respond to the community's many allegations of constitutional abuses, the complaints have not gone unnoticed by the Department of Justice.<sup>6</sup> These alleged violations are not insubstantial; in one highly publicized incident, the family of a former inmate claimed that he died as a result of the jail's deliberate indifference to the inmate's medical needs after sheriff's deputies "beat him, sprayed him with pepper spray, put a spit hood on him and applied pressure to his jugular vein while he was shackled hand and foot to a chair."<sup>7</sup>

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<sup>2</sup> Press Release, U.S. Dep't. of Justice, Justice Department Files Lawsuit Requiring Rutherford County, Tenn., to Allow Mosque to Open in City of Murfreesboro (July 18, 2012), <http://www.justice.gov/opa/pr/2012/July/12-crt-883.html>.

<sup>3</sup> Sam Stockard, *Carr to Push Immigration Plan*, DAILY NEWS JOURNAL (Jun 28, 2012).

<sup>4</sup> *Carr Responds to Federal Suit Against Arizona*, DAILY NEWS JOURNAL (July 8, 2010).

<sup>5</sup> See, e.g., *United States v. Urrieta*, 520 F.3d 569, 578 (6th Cir. 2008) (finding Rutherford County sheriff's deputy unlawfully detained person based on "impermissible, ill-defined hunch that [the individual], as a presumptively undocumented immigrant from Mexico, was likely to be transporting drugs"); *Ramos-Macario v. Jones*, No. 3:10-00813, 2011 WL 831678 (M.D.Tenn. 2011) (mem.) (denying defendants' request for summary judgment of claims relating to multiple instances in which inmates were unlawfully detained after expiration of ICE detainers, because County failed to provide details of supposed review of detainer practices).

<sup>6</sup> Editorial, *People Take Opportunity to Speak Out*, DAILY NEWS JOURNAL (Nov. 22, 2009) (reporting on the absence of local officials and attendance by a Department of Justice representative at a forum expressing outrage about law enforcement abuse).

<sup>7</sup> Liz Potocsnak, *That's a Natural Death? Family Asks*, COURTHOUSE NEWS SERVICE (Nov. 24, 2010), <http://www.courthousenews.com/2010/11/24/32105.htm>; *Reed v. Speck*, No. 3:09-cv-01223, 2012 WL 112195 (M.D.Tenn. Jan. 12, 2012), *appeal docketed*, No. 12-5172 (6th Cir. Feb. 22, 2012).

Moreover, the jail itself is dangerously understaffed.<sup>8</sup> A 287(g) agreement would only exacerbate the County's culture of bias and institutional deficiencies.

### Oklahoma County, Oklahoma

The history of grossly inadequate conditions and lack of a suitable facility in Oklahoma County make that county unsuitable for a 287(g) agreement. In 2008, the Department of Justice released a scathing report of conditions at the jail, in part because the jail was operating at nearly double its capacity.<sup>9</sup> This overcrowding contributed 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. The jail also failed 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, later found "laying on the ground in bloody water," having been forced to deliver her own baby. The baby was later pronounced dead. The Department of Justice also reported on shockingly unsanitary conditions in all areas, from food preparation, to pest control and bathrooms. The report described drinking faucets consisting of a small basin above the toilet, requiring a thirsty detainee to "cup his hand under the faucet and lap water from his hands close above the filth of the toilet bowl." Recognizing the seriousness of the conditions, the U.S. Marshals and ICE transferred 160 federal inmates from the jail to other facilities.<sup>10</sup>

Despite these failures and overcrowding, the jail has historically detained undocumented persons for nearly twice as long as the national average.<sup>11</sup> Most recently, the jail claims to have made significant changes, but even the Sheriff admits that it will not be possible to resolve the jail's deficiencies without a major remodel of the jail or a completely new facility.<sup>12</sup> In the interim, it would be dangerous to grant this troubled Sheriff's Office the authority to enforce federal immigration law.

### Bristol County, Massachusetts

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<sup>8</sup> Marie Kempf, *Reports: Rutherford County Jail "Grossly Understaffed,"* THE MURFREESBORO POST (Sept. 16, 2012), <http://www.murfreesboropost.com/reports-rutherford-county-jail-grossly-understaffed-cms-32599> (citing independent audits by the University of Tennessee Institute for Public Service and National Institute of Corrections).

<sup>9</sup> 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](http://www.justice.gov/crt/about/spl/documents/OKCounty_Jail_findlet_073108.pdf).

<sup>10</sup> 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>.

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

<sup>12</sup> 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>.

In recent days, a number of Massachusetts sheriffs' departments have decided against pursuing new 287(g) agreements.<sup>13</sup> It appears, however, that the Bristol County Sheriff continues to persist in its application. Granting the Bristol County Sheriff's Office the power to enforce federal law would likely give rise to Governor Patrick's warning that such authority carries "a serious risk of ethnic profiling and . . . fracturing incredibly important relationships in communities that are important for law enforcement."<sup>14</sup> This threat of biased enforcement is particularly acute in Bristol County, where the Sheriff has likened immigrants to terrorists<sup>15</sup> and has a record of stubborn enforcement of harsh jail conditions (including the introduction of chain gangs), notwithstanding court admonishments. For example, a judge ordered the Sheriff in 2004 to end immediately a jail policy that left inmates without access to toilet facilities.<sup>16</sup> Most recently, the Massachusetts Supreme Judicial Court found that the Sheriff acted outside his authority by enforcing a series of inmate fees, including a daily "pay to stay" fee and costs for medical care.<sup>17</sup>

Further, Bristol County houses its ICE detainees in conditions that raise constitutional concerns. These individuals lack a private place to meet with attorneys, and have little or no access to a library with current materials on immigration law or general legal information.<sup>18</sup> Reports show that the jail has also failed to make arrangements for those who have dietary needs due to medical conditions or religion,<sup>19</sup> and that medical care is lacking.<sup>20</sup> In one instance, an individual was denied his schizophrenia medication, and subsequently placed in segregation for 20 days for using obscenities and having an unlocked door while off the medication.<sup>21</sup> And despite the many problems within the jail, the Bristol County Sheriff insists on wasting county

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<sup>13</sup> Laura Krantz, *Middlesex Sheriff on the Fence on ICE Partnership*, METROWEST DAILY NEWS (Dec. 11, 2012), <http://www.metrowestdailynews.com/news/x719504243/Middlesex-sheriff-on-the-fence-on-ICE-partnership>.

<sup>14</sup> Maria Sacchetti & Noah Bierman, *US Overrules Patrick on Immigration*, BOSTON GLOBE (June 7, 2011) (explaining his 2011 rejection of the Secure Communities program).

<sup>15</sup> Bob Salsberg, *Mass. GOP Sheriffs Criticize Gov on Immigration*, ASSOCIATED PRESS (Sept. 28, 2011), [http://www.boston.com/news/local/massachusetts/articles/2011/09/28/mass\\_sheriffs\\_call\\_for\\_illegal\\_migration\\_focus/](http://www.boston.com/news/local/massachusetts/articles/2011/09/28/mass_sheriffs_call_for_illegal_migration_focus/).

<sup>16</sup> *Sheriff Must Improve Access to Toilets*, ASSOCIATED PRESS (Sept. 16, 2004).

<sup>17</sup> *Souza v. Sheriff of Bristol County*, 455 Mass. 573 (2010).

<sup>18</sup> LAURA RÓTOLO, AM. CIVIL LIBERTIES UNION OF MASS., *DETENTION AND DEPORTATION IN THE AGE OF ICE 35* (2008), [http://www.aclum.org/sites/all/files/education/aclu\\_ice\\_detention\\_report.pdf](http://www.aclum.org/sites/all/files/education/aclu_ice_detention_report.pdf).

<sup>19</sup> *Id.* at 44.

<sup>20</sup> *Id.* at 49 ("immigrants detained at . . . Bristol reported waiting several weeks between the time they asked to see a doctor and the time they were called by the medical staff.").

<sup>21</sup> *Id.* at 55.

dollars defending litigation brought by corrections officers who were suspended for union activities.<sup>22</sup>

These instances of misconduct by the Sheriff's Office, paired with the severe overcrowding at the jail,<sup>23</sup> make Bristol County an alarming and entirely unsuitable candidate for a 287(g) agreement.

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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 records of the proposed jurisdictions clearly demonstrate that they are unable to assume this responsibility in a manner that would avoid racial profiling, discriminatory enforcement, and constitutional violations.

Please contact Chris Rickerd, Policy Counsel, with any questions at (202) 675-2339 or [crickerd@dcaclu.org](mailto:crickerd@dcaclu.org).

Yours sincerely,



Laura W. Murphy  
Director, Washington Legislative Office



Chris Rickerd  
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cc: John Sandweg, Senior Counselor to the Secretary, DHS  
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Andrew Lorenzen-Strait, Public Advocate, ICE  
Felicia Escobar, Senior Policy Director for Immigration, White House Domestic Policy Council  
Tyler Moran, Deputy Policy Director for Immigration, White House Domestic Policy Council

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<sup>22</sup> Bruce Mohl, *The Maverick*, COMMONWEALTH (Winter 2009), [http://www.commonwealthmagazine.org/fileadmin/CommonWealth/Winter\\_2009/sheriffs.pdf](http://www.commonwealthmagazine.org/fileadmin/CommonWealth/Winter_2009/sheriffs.pdf) (reporting on the wasteful expense of upwards of \$800,000 on litigation and appeals to the U.S. Supreme Court, which refused to hear the sheriff's appeal).

<sup>23</sup> Mass. Dep't of Corr., QUARTERLY REPORT ON THE STATUS OF PRISON OVERCROWDING: THIRD QUARTER 4 (2012) (the jail is currently operating at 269% capacity).