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Department of Homeland Security
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Re: Unsuitability of 287(g) Immigration Enforcement Program Applicants

Dear Mr. Shuchart:

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 1.6 million members, activists, and supporters, we write to express our deep concerns about the 287(g) program generally, and the immediate prospect of expanding the program to 24 additional jurisdictions.

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The ACLU urges Immigration and Customs Enforcement (ICE) to reject the pending 287(g) applications and terminate the 287(g) program in the approximately 60 jurisdictions in 18 states that have existing agreements. The Trump administration has recklessly expanded the program to include jurisdictions volunteering to join Trump's deportation force. 287(g) has been expanded despite its troubled past, without transparency or oversight. The costs of enmeshing local law enforcement agencies in the business of federal civil immigration enforcement far outweigh the benefits. When the public isn't sure whether police are there to protect or deport them, crimes don't get reported and domestic violence survivors stay silent rather than calling 911.

Leading law-enforcement voices¹ concur in our opposition to the entanglement of immigration enforcement with state or local policing, and the 287(g) program's failed history is well documented, including by the DHS Inspector General.² This letter raises civil rights concerns about 14 of the proposed jurisdictions.

¹ 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>.

² See generally American Immigration Council, "The 287(g) Program: An Overview." (Mar. 15, 2017), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>.

Our coalition partners have submitted evidence about several of the remaining jurisdictions. These specific infirmities in applicant jurisdictions militate strongly against carrying out the proposed expansion.

We urge ICE to be more transparent about applications, which are not made public even in part, and to hold public meetings with state/local officials in communities where an application for the 287(g) program has been submitted. Without such fora the views of the public are not appropriately considered in the decision-making process; nor are the types of specific concerns raised below uncovered. Extending 287(g) agreements to these proposed jurisdictions runs the serious risk of further sullyng the program's record through abetting racial profiling and other abuses – as seen starkly in the Department of Justice's findings regarding former 287(g) partners Maricopa County (AZ)³ and current applicant Alamance County (NC).⁴ The bottom line is that 287(g) agreements damage public safety and community trust in law enforcement.

1. Hernando County, Florida

When the Hernando County Sheriff's Office (HCSO) took back operation of its jail from the private company Corrections Corporation of America in 2010, it inherited a decrepit and disorderly facility.⁵ But while efforts were made to bring needed repairs to buildings and appliances, the Sheriff also promised to toughen the life of inmates in other respects.⁶

In 2011, a Hernando County Detention Center inmate on suicide watch committed suicide after the deputy assigned to check on him every 15 minutes had neglected to observe him for an hour and 45 minutes.⁷ Again, in 2015, an inmate hanged himself in his cell in full view of a surveillance camera, but was not discovered until a deputy on a balcony looking through a window observed him.⁸ This was just one month after another

³ U.S. Dept. of Justice, Civil Rights Division. "United States' Investigation of the Maricopa County Sheriff's Office." (Dec. 15, 2011), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

⁴ U.S. Dept. of Justice, Civil Rights Division. "United States' Investigation of the Alamance County Sheriff's Office." (Sept. 18, 2012), available at <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>.

⁵ John Woodrow Cox and Barbara Behrendt, Hernando County's Takeover of Jail Brings Year of Sweeping Changes, TAMPA BAY TIMES, August 27, 2011, available at <http://www.tampabay.com/news/localgovernment/hernando-countys-takeover-of-jail-brings-year-of-sweeping-changes/1188387>.

⁶ Barbara Behrendt, Hernando County Sheriff Nugent Prepares to Take over Jail, TAMPA BAY TIMES, August 21, 2010, available at <http://www.tampabay.com/news/localgovernment/hernando-county-sheriff-nugent-prepares-to-take-over-jail/1116682> ("Nugent promised that the punishment aspect of incarceration will return under his leadership. There's a new sheriff in town," Nugent said. "It's not going to be a relaxed Club Med atmosphere.").

⁷ Tony Marrero, *Deputy's Negligence Indicated in Suicide at Hernando County Jail*, TAMPA BAY TIMES, June 20, 2012, available at <http://www.tampabay.com/news/publicsafety/deputys-negligence-indicated-in-suicide-at-hernando-county-jail/1236332>.

⁸ *Jail Responders Too Late to Save Suicidal Hernando Inmate*, TBO.COM, March 6, 2015, available at <http://www.tbo.com/hernando/jail-responders-too-late-to-save-suicidal-hernando-inmate-20150306>.

inmate had killed himself in circumstances that remain unknown, despite an ongoing investigation by HCSO. More recent inmate deaths are still under investigation.⁹

Complaints have been filed against HCSO and HCSO deputies for civil rights violations committed both in the field and in custody. Notably, in 2009, a county resident was tazed and severely beaten and injured by HCSO deputies who arrested him in his home following a noise complaint.¹⁰ While a jury found him not guilty of all charges entered in connection with the incident, the Eleventh Circuit recently concluded that the arresting deputy had entered his home unlawfully.¹¹ Another civil rights complaint (alleging cruel and unusual punishment) is currently pending against the Hernando County Sheriff in federal court.¹²

2. Dakota County, Nebraska

The Dakota County Sheriff's office has a history of sexual harassment as well as gender and racial discrimination. So prevalent were these issues that the County Board removed the Dakota County Sheriff's authority from 2007 to 2016.¹³ The newly elected Dakota County Sheriff has only a year of experience. Seven former corrections officers accused the former sheriff and chief deputy of sexual discrimination, including sexual harassment, gender discrimination and a hostile work environment.¹⁴ Moreover, some employees also claimed racial discrimination. Ultimately, the employees and the Dakota County Sheriff reached a settlement of \$575,000.¹⁵

Moreover, in 2017, the Dakota County Sheriff's Office has claimed to be financially struggling and the Dakota County Sheriff Chris Kleinberg is quoted as stating that "[f]unds [for the jail] have dropped as federal agents make fewer arrests for immigration

⁹ *Inmate Found Dead in Hernando County Jail*, WTSP, August 21, 2017, available at <http://www.wtsp.com/news/local/hernandocounty/inmate-found-dead-in-hernando-county-jail/466115348>; *Inmate Dies While in Custody in Hernando*, TAMPA BAY TIMES, Feb. 10, 2017, available at <http://www.tbo.com/hernando/jail-responders-too-late-to-save-suicidal-hernando-inmate-20150306>.

¹⁰ Peter Jamison, *Brooksville Man Injured in Arrest Sues Deputies for More than \$10 Million*, TAMPA BAY TIMES, Jan. 3, 2014, available at <http://www.tampabay.com/news/courts/civil/brooksville-man-injured-in-arrest-sues-deputies-for-more-than-10-million/2159403> ("George used his Taser against Bratt through the front door, the suit states, then burst inside and stumbled in the threshold, falling face-first on the tile floor . . . When other deputies arrived, Bratt was dragged outside in handcuffs, 'thrown on the front lawn' and 'asked if he liked beating up cops, or words to that effect,' the suit states. Van Tassel and Genovese beat him, and the 300-pound-plus Genovese 'proceeded to drive his knee into Mr. Bratt's face, shattering Mr. Bratt's orbital bone and causing Mr. Bratt's eye to fall into the cavity of his cheek,' according to the complaint.")

¹¹ *Bratt v. Genovese*, 660 Fed.Appx. 837 (11th Cir. 2016).

¹² *Thomas v. Derryberry*, No. 8:16-cv-3482 (M.D. Fla. 2017).

¹³ Nick Hytrek, *Dakota County Jail oversight returns to sheriff*, June 15, 2016

http://siouxcityjournal.com/news/local/dakota-county-jail-oversight-returns-to-sheriff/article_6d9db8f4-af40-5237-bbeb-a651d2e77bdb.html (last visited Nov. 8, 2017).

¹⁴ *Id.*

¹⁵ *Id.*

violations.”¹⁶ He has further explained that he recently “began housing ICE detainees in his 136-bed jail to increase revenue” as the county is “hurting for funds” and claims to have cells to be “leased to the feds.”¹⁷ This contention is worrisome considering the jail was noted to be “increasingly crowded” as recently as June of last year. The Dakota County Sheriff is inappropriately seeking to join the 287(g) program as a moneymaker.

3. Luna County, New Mexico

Luna County Detention Center (LCDC) has a long history of documented failures to adhere to DHS policies and standards. In 2008, the last publicly accessible audit of the facility’s compliance with ICE National Detention Standards, DHS contractor Creative Corrections identified significant deficiencies at LCDC relating to environmental health and safety and grievance procedures, including failure to provide a telephone number to DHS OIG.¹⁸

In April 2016, the ACLU of New Mexico filed a joint complaint with DHS OIG and ICE and CBP OPR offices documenting repeated failures to return personal belongings prior to repatriation.¹⁹ The complaint included multiple cases of individuals held at LCDC, including the case of Ms. Carreño Venegas, to whom federal agents failed to return roughly \$228.10 of the funds deposited in her LCDC commissary account. Failure by DHS to return critical personal belongings for individuals held in county jails violates DHS’s own local repatriation agreements, which direct component agencies to “take all feasible steps to ensure that property, valuables, and money retained, are available for return to the rightful owner at the time of initial release from DHS custody.”²⁰

4. Canadian County, Oklahoma

An excessive force suit was filed against the Sheriff after an officer directing traffic after an accident shot at a citizen who was driving past.²¹ The citizen clipped the officer in the knee while turning left at the intersection. The officer then shot at the vehicle, blowing

¹⁶ Molly Montag, *Official credited with reforming Dakota County Jail faces budget challenge*, June 1, 2013 http://siouxcityjournal.com/news/local/state-and-regional/official-credited-with-reforming-dakota-county-jail-faces-budget-challenge/article_f6e96f1a-d3ab-5666-a3a3-0ef11be35e4a.html

¹⁷ Paul Hammel, *Nebraska sheriff’s office looks to join Trump’s crackdown on illegal immigration*, OMAHA WORLD HERALD, Nov. 8, 2017 http://www.omaha.com/news/nebraska/dakota-county-sheriff-s-office-looks-to-join-trump-s/article_e194fe14-c43c-11e7-8b6e-7b50c6aab51c.html

¹⁸ ICE Detention Standards Compliance Review: Luna County Detention Center, FOIA Library (Feb. 21, 2008), available at: <https://www.ice.gov/doclib/foia/dfra-icedro/lunacountydetentioncenterdemingnm0214152008.pdf>.

¹⁹ Complaint and Request to Investigated CBP and ICE’s Mishandling of, Failure to Return, and Threats about Personal Belongings in the El Paso Sector, Administrative Complaint filed by ACLU et al., (April 6, 2016), available at: <https://www.aclu-nm.org/sites/default/files/wp-content/uploads/2016/04/2016-Administrative-Complaint-on-Personal-Belongings.pdf>.

²⁰ Updated U.S.-Mexico Local Repatriation Agreements: El Paso Repatriation Agreement, DHS.gov (Feb. 26, 2016), available at: <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>.

²¹ Andrew Knittle, *Settled lawsuit against Canadian County sheriff leaves questions unanswered*, Oct. 8, 2012, NEWSOK, available at <http://newsok.com/article/3716848>.

out the tires. The Sheriff's Department settled and no disciplinary action was taken against the officer.

The Canadian County Jail is overcrowded, underfunded, and in poor condition.²² Overflow detainees are sent to surrounding county facilities. Sheriff Chris West plans to use civil asset forfeiture funds to expand the jail.²³ A federal suit was filed in 2017 against the Canadian County Sheriff and others over lack of adequate care after a man was found unresponsive, injured, naked, and covered in feces on the floor of his jail cell.²⁴ The man was taken to the hospital and pronounced dead.²⁵ The case is still pending.

5. Okmulgee County, Oklahoma

Okmulgee County has historically had an overcrowded facility with poor conditions for detainees. In 2014, overcrowding and poor conditions caused a prison fight that resulted in over \$10,000 in damage at the Okmulgee County Criminal Justice Center.²⁶ According to Okmulgee County District Attorney Rob Barris, the overcrowding issue was so horrific that “[s]everal times, the jail inspector had indicated if the issue was not corrected, the county would face fines and other sanctions which could cost the taxpayers tens of thousands of dollars and possibly result in the closure of the jail or the release of numerous inmates from custody back into our communities. This situation, left unchecked, constituted a threat to public safety and represented a major financial burden for the County.”²⁷

To address the problems, Okmulgee voted to build a jail expansion, which was completed less than a year ago.

The impetus for the contract with ICE is that Okmulgee County recently lost a contract with the Oklahoma Department of Corrections to house state prisoners and scrambled to find replacement revenue. Okmulgee County recently entered an agreement with the City of Tulsa to house inmates in Tulsa Police custody while Tulsa builds a new city jail.²⁸ Even without the additional inmates from Tulsa or ICE detainees, Okmulgee County is still

²²Henry Dolive, *Canadian County jail addition nears completion in El Reno*, May 26, 2013, NEWSOK, available at <http://newsok.com/article/3835037>.

²³Christy Lewis, *Sheriff Plans Project To Improve Canadian County Jail*, Aug. 1, 2017, NEWS9, available at <http://www.news9.com/story/36027346/sheriff-plans-project-to-improve-canadian-county-jail>.

²⁴Grant Hermes, *Family Files Federal Suit Against Canadian County Jail, Sheriff, Health Provider*, Aug. 21, 2017, NEWS9, available at <http://www.news9.com/story/36178715/family-files-federal-suit-against-canadian-county-jail-sheriff-health-provider>.

²⁵*El Reno Man Found Dead In Canadian County Jail Cell*, June 7, 2016, NEWS9, available at <http://www.news9.com/story/32166200/el-reno-man-found-dead-in-canadian-county-jail-cell>.

²⁶Megan Farley, *Okmulgee County Jail Director Blames Overcrowding For Recent Riot*, NEWSON6, Sept. 22, 2014, available at <http://www.newson6.com/story/26599863/okmulgee-county-jail-director-blames-overcrowding-for-recent-riot>.

²⁷Patrick Ford, *ICE detainees now being held in Okmulgee County Jail*, Aug. 18, 2017, OKMULGEE TIMES, available at <https://www.yourokmulgee.com/articles/2017/08/18/ice-detainees-now-being-held-okmulgee-county-jail>.

²⁸Ryan Braschler, *Can the Okmulgee County Jail handle Tulsa overflow inmates?*, Aug. 17, 2017, 8ABCTULSA, available at <http://ktul.com/news/local/can-the-okmulgee-county-jail-handle-tulsa-overflow-inmates>.

overcrowded and cannot provide adequate conditions for detainees within its own jurisdiction. One former inmate recently spent 50 days sleeping on the concrete floor because Okmulgee County did not have any available mattresses due to overcrowding.²⁹ There are also reports of medical neglect. One person reported having a broken jaw for days without medical attention.³⁰

6. Alamance County, North Carolina

The Alamance County, North Carolina Sheriff's Office ("ACSO") has a long history of egregious civil rights violations, and we are deeply troubled that the Department of Homeland Security would consider reactivating the jurisdiction's participation in the 287(g) program after it was expelled.

Background on Discriminatory Policing at ACSO

Alamance County entered into a 287(g) agreement with ICE in 2007. During the course of the program, ACSO accrued a troubling and extensively documented record of civil rights abuses, which resulted in a 2012 lawsuit by the federal government against Sheriff Terry S. Johnson.

In their pre-suit finding, the Department of Justice ("DOJ") found ACSO engaged in a pattern of discriminatory policing that targeted, stopped, detained, and arrested Latinos and was violative of the Fourth and Fourteenth Amendments to the Constitution. The discriminatory conduct documented by DOJ was deeply rooted in an agency culture that emanated from Sheriff Johnson and involved the entire Sheriff's Department for at least the period between 2007 and 2015. The Government charged that ACSO disproportionately subjected Latinos to unreasonable searches, arrested them for minor infractions (instead of issuing warnings or citations), targeted them at vehicle checkpoints located in predominantly Latino neighborhoods, used offensive epithets to refer to Latinos, tolerated activities of deputies that evidenced anti-Latino bias, automatically and selectively referred Latino arrestees to ICE investigators for deportation, and otherwise engaged in deficient policies, training, and oversight that facilitated discriminatory enforcement.

During the trial, the federal judge heard expert testimony that Latinos in Alamance County were seven times more likely to be stopped and cited than non-Latinos, even after controlling for traffic patterns and violation rates. The expert had never seen comparable racial profiling in the United States. Even the Sheriff's own expert found that Latinos made up 36.8 percent of all checkpoint stops over a five-year period despite comprising only 8.6 percent of the driving-age population in Alamance County.

²⁹ David Norris, *Ex-Okmulgee County Jail inmate says facility isn't ready for Tulsa's inmates*, Aug. 17, 2017, 8ABCTULSA, available at <http://ktul.com/news/local/ex-okmulgee-county-jail-inmate-says-facility-insnt-ready-for-tulsas-inmates>.

³⁰ Ryan Braschler, *Can the Okmulgee County Jail handle Tulsa overflow inmates?*, Aug. 17, 2017, 8ABCTULSA, available at <http://ktul.com/news/local/can-the-okmulgee-county-jail-handle-tulsa-overflow-inmates>.

Additional evidence was presented at trial that Sheriff Johnson explicitly ordered officers to target Latinos with enforcement actions, made and tolerated derogatory comments and emails about Latinos, departed from the ACSO's own practices to advance a discriminatory purpose, failed to use standard practices typically employed by law enforcement agencies to prevent discrimination, and failed to meaningfully respond to allegations of discrimination or specific complaints about ACSO's traffic enforcement activities.

The lawsuit listed examples of Latino drivers being followed by Alamance deputies for long stretches of time and then pulled over for little or no reason. Witnesses testified about numerous incidents in which Sheriff Johnson and other ACSO employees used racial epithets and expressed extreme prejudice against Latino residents, such as Johnson allegedly ordering deputies to "bring me some Mexicans," "put heat on" predominantly Latino neighborhoods, and "*go out there and get me some of those taco eaters.*" Sheriff's deputies were accused of sharing links to what the Associated Press described as "a bloody video game where players shoot people entering the county illegally, including children and pregnant women."

The lawsuit's claims mirrored complaints that the ACLU-NC and other groups have received about Johnson, his deputies, and their treatment of Latinos for years. Despite a mountain of evidence about the Department's discriminatory practices, a federal judge ultimately dismissed the case against Sheriff Johnson but still admonished his office for some of its behavior, including the frequent use of anti-immigrant epithets and slurs during official department business. DOJ and ACSO entered into a settlement agreement.³¹

Alamance's Discriminatory Use of 287(g)

In 2006, Sheriff Johnson sought an agreement with ICE allowing the ACSO to investigate immigration offenses pursuant to Section 287(g). According to trial records, shortly after Alamance gained 287(g) authority, Sheriff Johnson ordered patrol supervisors to "arrest Hispanics" at a supervisors' meeting and informed multiple officers to arrest Latinos during vehicle checkpoints. Also around this time, the ACSO changed its booking procedures to require detention officers to book all individuals arrested and brought to the County Jail - even those arrested for traffic offenses.

There were problems with ACSO's implementation of the 287(g) agreement from the outset. The Memorandum of Agreement ("MOA") entered into in January 2007 did not authorize the Sheriff to enforce federal immigration laws outside the County Jail, and yet this is exactly what took place. For example, for approximately nine months in 2008, certain officials at ICE and the Alamance County Sheriff's Office incorrectly believed that the ACSO had authority to use one of its officers as a Task Force Officer to investigate the immigration status of individuals who had not even been arrested and booked into the County Jail.

³¹ <http://www.thetimesnews.com/news/20160818/what-doj-settlement-means-for-alamance-county>

During the trial, evidence was presented that every person investigated during this period was Latino. This blurring of the lines between the Sheriff's office and federal immigration enforcement only stopped after a December 2008 ICE audit of Alamance's 287(g) program found that ACSO deputies were improperly exercising their authority outside of the Alamance County Jail. Similar violations continued to take place until September 2012 when ICE terminated its MOA with Alamance, thus stripping the Sheriff's office of any authority to investigate potential immigration violations by individuals detained in the County Jail.

Alamance's Fourth Amendment Violations

Connected to this broader pattern of discriminating against Latinos in traffic enforcement, the DOJ alleged that ACSO violated the Fourth Amendment's prohibition on unreasonable seizures by erecting checkpoints for general law enforcement purposes. During the trial, multiple ACSO deputies admitted to using checkpoints for drug interdiction, to identify gang members, and to deter crime generally - purposes the Supreme Court has flatly prohibited. Additional evidence was presented that many of these impermissible checkpoints occurred in and around predominantly Latino neighborhoods, evidenced by the "large disparity" in checkpoint stops between Latino and non-Latino drivers.

7. Williamson County, Texas

Williamson County Sheriff Robert Chody has a colorful and somewhat checkered history in law enforcement. Chody resigned from the Austin Police Department after the Department settled a lawsuit alleging excessive force violations against then-officer Chody. From there he went on to serve as deputy constable and constable in neighboring Williamson County—cashing in \$51 million in lottery winnings along the way³²—before being elected sheriff. As Sheriff, Chody has publicly criticized NFL players for anthem protests, held a Police Lives Matter rally, and has affirmed his office's collaboration with federal immigration authorities.

Williamson County has a questionable record of police conduct. In 2006, the County was settled a lawsuit over failure to provide indigent defense, and last year eight female immigrants alleged they were sexually assaulted while detained in a private prison with which the County contracts.³³ Most recently, the County was named in a federal lawsuit after a sheriff's deputy was accused of forcing a woman to help a man urinate on the side of a building after he was handcuffed.³⁴

³² Adela Uchida, "WilCo Sheriff Candidate Opens up about controversial chapter in his life", CBS Austin, Feb. 26, 2016, <http://cbsaustin.com/news/local/wilco-sheriff-candidate-opens-up-about-controversial-chapter-in-his-life>

³³ See *Doe v. United States*, 831 F.3d 309 (5th Cir. 2016)

³⁴ Mark D. Wilson, "Lawsuit: Williamson Co. deputy made woman help handcuffed man urinate on wall", Statesman, Feb. 2, 2017. <http://www.statesman.com/news/breaking-news/lawsuit-williamson-deputy-made-woman-help-handcuffed-man-urinate-wall/zv7m8S2wgHuWYXIKCUqVIJ/>

8. Potter County, Texas

Potter County found itself in the center of a political firestorm in 2016, when authorities arrested two Sikh passengers on a Greyhound bus.³⁵ The two men – Mr. Daljeet Singh and Mr. Mohammed Chotri, asylum applicants from India and Pakistan respectively – were falsely accused of terrorism (a fellow passenger turned them in for not speaking English), harshly interrogated and arrested them at gunpoint and held them for nearly 30 hours.

Potter County was widely criticized for the incident, particularly after officials refused to require diversity and profiling training for its law enforcement officers by claiming that such training was “beyond its jurisdiction.”³⁶

Amarillo, which makes up a large portion of Potter County, has the most refugees per capita of any Texas city and also has two refugee resettlement programs.

9. Rockwall County, Texas

Rockwall County Sheriff Harold Eavenson is president of the National Sheriffs’ Association.³⁷ Eavenson affirms that the county has always worked with federal immigration officials, and that he has never hesitated to detain prisoners for a detailed background check. Once the county enters into a 287(g) agreement, “we have an ICE program in our jail,” he said. “We have that person trained and authorized.”

Eavenson is also on the record dismissing fears of racial profiling by claiming that window tint makes it “nearly impossible” for his deputies to determine the race of a driver before pulling him or her over.³⁸

10. Kendall County, Texas

The Kendall County Sheriff’s Office allegedly violated Lucas Lancaster’s civil rights, an autistic inmate alleging that he suffered discriminatory treatment because of his disability.³⁹ The case was settled in May 2011.⁴⁰

³⁵ See complaint sent to Sheriff Brian Thomas of Potter County, Jun. 1, 2016, <https://www.aclutx.org/en/press-releases/40-civil-rights-organizations-demand-accountability-texas-profiling-case>

³⁶ KFDA, “Civil Rights Activist address Potter County Policies”, News Channel 10, Jul. 18, 2016, <http://www.newschannel10.com/story/32118206/civil-rights-activists-address-potter-counties-policies>

³⁷ Rey Leszcynski, “Rockwall Sheriff defends his national association against claims it fuels anti-immigrant sentiment”, The Dallas Morning News, Aug. 4, 2017. <https://www.dallasnews.com/news/immigration/2017/08/04/rockwall-sheriff-defends-national-association-claims-fuels-anti-immigrant-sentiment>

³⁸ Jasmine C. Johnson, “Panel Discusses Senate Bill 4 Implementation” Rockwall County Herald Banner, Jun. 27, 2017. http://www.rockwallheraldbanner.com/news/local_news/panel-discusses-senate-bill-implementation/article_d7677966-56c4-11e7-a50e-373d7ec054bd.html

³⁹ See Plaintiff’s Original Complaint, *Lancaster v. Kendall County*, 2010 WL 3134671 (W.D.Tex.).

Carrie Warren brought suit against the Sheriff's Office for gender discrimination alleging that she was subjected to sexist behavior, including threats and comments.⁴¹ The jury found for defendants in April 2017, but Warren has filed an appeal.

Kendall County was among Texas localities that wanted to stop housing unaccompanied children during the 2014 humanitarian crisis. The county alleged they were concerned about the "costs and potential health threats" children would bring to their communities and passed a resolution asking for border security, and demanding that "no immigrant minors be placed in non-federal facilities in Kendall County unless agreements are struck in advance."⁴²

11. Nueces County, Texas

The Nueces County Sheriff, Jim Kaelin, is extremely opposed to enforcing immigration law. He agrees that deputies should be focused on violent crime rather than taking on the role of immigration agents.⁴³ However, Jim Kaelin has recently applied for 287(g) apparently because of decisions made by people "above his pay grade." He acknowledges that this kind of policy can lead to discrimination and abuse.⁴⁴

In a suit against multiple defendants, including the Nueces County's Sheriff's Office and the City of Corpus Christi, Sylvia Fuentes alleged that defendants were responsible for her husband Sam Toomey's suicide. She claimed that Corpus Christi failed to supervise officers properly and when they engaged in this malicious behavior they were not disciplined. The officers allegedly beat Toomey up several times, and even after he told the jail clerk that he was going to commit suicide, their failure to supervise him or give him adequate attention constituted gross negligence or deliberate indifference.

The Court of Appeals did not deny what happened to Toomey, but said there was no "official county policy" that was responsible.⁴⁵ These are the officials that would be in charge of implementing 287(g), and if they are willing to use excessive force without any accountability for their actions, they should not be trusted with enforcing immigration law.

⁴⁰ Zeke MacCormack, *Former Kendall County inmate drops suit*, San Antonio Express News, June 5, 2011, <http://www.mysanantonio.com/news/local/article/Former-Kendall-County-inmate-drops-suit-1410179.php>.

⁴¹ JVR No. 1706120014 *Warren v. Baird*

⁴² Zeke MacCormack, "Kendall County wants to be notified and reimbursed if undocumented migrants put there", San Antonio Express News, Aug. 11, 2014, <http://www.expressnews.com/news/local/article/Kendall-County-wants-to-be-notified-and-5681828.php>

⁴³ Beatriz Alvarado, *Kaelin: "I don't enforce immigration law"*, Corpus Christi Caller Times, Feb. 9, 2017, <http://www.caller.com/story/news/2017/02/08/sheriff-kaelin-lead-discussion-county-immigration-practices/97567978/>.

⁴⁴ Beatriz Alvarado, *ICE, local law enforcement partnerships spike in Texas*, Corpus Christi Caller Times, Aug. 5, 2017, <http://www.caller.com/story/news/local/2017/08/05/ice-local-law-enforcement-partnerships-spike-texas/531383001/>.

⁴⁵ *Fuentes v. Nueces Cty., Texas*, 689 F. App'x 775 (5th Cir. 2017).

12. Culpeper, Virginia

The Culpeper Sheriff, Scott Jenkins, has demonstrated a clear track record of ignoring the constitutional rights of the immigrants in his community. On numerous occasions he has deliberately ignored the law and held immigrants beyond their release date, without a criminal warrant, and often beyond the two-day holding period requested by ICE. Data from the Virginia Compensation Board, which tracks persons entering and exiting jails, demonstrates that Sheriff Jenkins routinely holds inmates with ICE detainees beyond their release dates. The appended spreadsheet, Culpeper 15-17v2.1, shows several instances of individuals being held on ICE detainees for sometimes up to 5 days beyond the date they are set to be released on state charges.

On one occasion, a relative of Ms. Cecilia C. (last name withheld) was held in the Culpeper jail 11 days past his time to be released. Sheriff Jenkins simply ignored the law and waited for ICE to take custody of the individual. So egregious was this case that, at a bond hearing, the local district court judge even questioned why he was still being jailed.

Sheriff Jenkins has made it clear that he is willing to routinely violate civil rights and impose his own unconstitutional justice on the immigrant community of Culpeper.

13. Milwaukee, Wisconsin

The Sheriff's Department's history of failure to comply with constitutional guarantees for the treatment of persons arrested and detained in Milwaukee County is well established. We oppose, along with all of Milwaukee County government, entering into an agreement which will add duties of federal immigration enforcement on an already under-resourced and poorly run jail.

The 287(g) application from the Milwaukee County Sheriff represents the singular action of the former Sheriff and does not reflect the desires of any other element of the Milwaukee County government. The application seeks to put in place a jail model agreement in a troubled jail where serious staffing shortages have resulted in years of ongoing civil rights violations and several recent deaths and injuries.

The application by a Sheriff who subsequently resigned

The application by the Milwaukee County Sheriff to participate in the 287(g) program was made by the Sheriff at that time, David A. Clarke. Sheriff Clarke has now resigned from his position, and that position is currently vacant awaiting an appointment by the Governor of the State of Wisconsin. The interim appointee will only serve through the end of 2018. Milwaukee County elections next year will choose a new Sheriff, and the relationship between the Sheriff and federal immigration authorities will certainly be a campaign issue. Currently the functions of Sheriff are performed by acting Sheriff Richard Schmidt who has failed to engage with the residents of Milwaukee County on whether or not his office should continue to pursue a 287(g) agreement with the federal government.

The opposition to the application by all of Milwaukee County government

By proposing to enter into a 287(g) agreement with ICE, the Milwaukee County Sheriff has placed himself in direct opposition to the democratically elected Board of Supervisors of Milwaukee County. The County Board adopted resolution 16-738 on February 2, 2017 which states in pertinent part:

BE IT FURTHER RESOLVED, that the County Board opposes the use of Section 287(g) Immigration and Nationality Act (INA) agreements, and urges the Office of the Sheriff to refuse to enter into Section 287(g) agreements with ICE.

The Milwaukee County Executive, Chris Abele, recently reaffirmed this position stating “Milwaukee County deserves better than this. We make America neither safe nor great by encouraging the public to believe that immigrants are the enemy. Simply put, the 287(g) program has been ineffective and expensive for the taxpayers.”⁴⁶

We believe it is inappropriate for the federal government to enter into an agreement with a county sheriff regarding immigration enforcement activities when the elected representatives of the citizens of that County have expressed their outright opposition to such an agreement.

The deeply troubled Milwaukee County Jail

The Sheriff has applied to enter into a jail model agreement. The jail the Sheriff supervises, however, has a long history of civil rights violations and failure to treat appropriately the persons held in custody there.

Since May 2001, the Jail has been operating under a consent decree entered in the Milwaukee County Circuit Court. *See Christensen v. Sullivan*, 746 N.W.2d 553, 2008 WI App 18, 307 Wis.2d 754 (Wis. App., 2008).

In 2006, Milwaukee County was found in contempt of court for more than 16,000 intentional violations of the consent decree over a 29 month period, regularly holding prisoners in a jail booking area for more than 30 hours, in unsanitary conditions, infested by bugs and without any place to lie down. The Milwaukee County Circuit Court judge in charge of the case found the number of violations to be “staggering.” *Id.*, 746 N.W.2d at 557.

Despite the finding of contempt against Milwaukee County and its jail, problems with the conditions of detention there persist. The same consent decree continues to govern the jail. According to a November 2016 report prepared by the monitor appointed under the consent decree, conditions at the jail continue to be plagued by understaffing, leading to harm to inmates. In particular the monitor noted that the jail had a 37% vacancy

⁴⁶ Theo Keith, *Gov. Walker urges Sheriff Clarke, Milwaukee Police to get on same page about immigration enforcement*, Mar. 9, 2017, FOX6, available at <http://fox6now.com/2017/03/09/gov-walker-urges-sheriff-clarke-mpd-to-get-on-same-page-regarding-immigration-enforcement/>.

rate in medical staff positions in the jail resulting in inadequate medical and mental health treatment of inmates. The monitor noted also a serious shortfall in the number of correctional officers in the jail, resulting in failure to monitor and identify medical and mental health crises which occur all too frequently in this troubled institution.

The resulting deaths and injuries in the Milwaukee County Jail

There have been at least 6 deaths since April 2016 in the Milwaukee County Jail and a history of troubling treatment of pregnant women in the jail.

The April 2016 death of 38-year-old detainee Terrill J. Thomas was ruled a homicide by the medical examiner's office in Milwaukee after he was found dead in his cell. Thomas died of "profound dehydration" and other factors. Other prisoners reportedly indicated that the water supply in Thomas' cell was shut off by jail staff for a week. In May of this year, an inquest jury impaneled by the District Attorney recommended criminal charges against seven jail employees in connection with Thomas' death.⁴⁷ A lawsuit filed by the Thomas family remains pending. *Estate of Thomas v. Milwaukee County*, U.S.D.C. (E.D. Wisc.), Case No. 2:17-cv-01128-PP.

The jail has also been strongly criticized for its treatment of pregnant inmates. A newborn died at the jail in July 2016 after Shadé Swayzer gave birth in her cell without security or medical staff noticing. Swayzer has filed a federal lawsuit against Milwaukee County. *See Estate of Laliah Swayzer et al v. Clarke et al.*, U.S.D.C. (E.D. Wisc.), Case no. 2:2016cv01703

Another former prisoner Melissa Hall, 27, alleges she was held by shackled while pregnant at the jail. Hall's suit, filed on March 14, 2017, has been granted class-action status when 40 other former prisoners joined, claiming they had also been shackled while pregnant. *See Hall v. County of Milwaukee*, U.S.D.C. (E.D. Wisc.), Case No. 2:17-cv-00379-LA.

Similar charges are alleged in a suit filed in August 2017 by a woman who gave birth in her cell at the Milwaukee County Jail. Rebecca Terry claimed in her complaint that she delivered her own baby without medical care on March 10, 2014, despite begging for help, then was shackled for a week after being taken to a hospital for postpartum treatment. *See Terry v. County of Milwaukee*, U.S.D.C. (E.D. Wisc.), Case No. 2:17-cv-01112-DEJ.

These cases follow a lawsuit filed in 2014 by a woman who alleged she was repeatedly raped by a guard and subsequently shackled at the jail during 21 hours of labor. Although sexual assault charges were dropped against the guard, Xavier D. Thicklen, he

⁴⁷ Linh Tran, *Criminal charges recommended in death of prisoner who had no water for a week*, CNN, May 2, 2017, <http://www.cnn.com/2017/05/01/us/wisconsin-inmate-death/index.html>

pleaded guilty to felony misconduct of a public figure and was fired. On June 7, 2017, a jury found against Milwaukee County and ordered it to pay \$6.7 million in damages.⁴⁸

Other recent deaths in the Milwaukee County jail include the death of Kristina Fiebrink, 38, who died on August 28, 2016 after she was not properly assessed or placed on a preventative heroin detoxification protocol following her arrest. In addition, 29-year-old Michael Madden died at the jail in October 2016 due to an undetermined cause, though a fellow prisoner claimed a guard let Madden, who had suffered a seizure, fall and strike his head.

A 51 year old inmate died on August 29, 2017 in the Milwaukee County jail clinic.⁴⁹

Most recently, a 35 year old inmate died in the mental health unit in the Milwaukee County Jail on October 27, 2017 according to press reports.⁵⁰

Entering into a 287(g) agreement with the federal government will only place greater stress and burdens on a troubled and dangerous county jail. The monitor under the *Christensen v. Sullivan* consent decree has already warned of the adverse consequences of current staffing shortages, and assigning deputies to additional responsibilities to enforce federal immigration laws within the jail will only exacerbate those problems. This agreement is opposed by all other elements of county government. There should be no expectation that the Milwaukee County Board or County Executive would add funds to the budget of the Sheriffs' Department to support additional work under a 287(g) agreement they oppose.

14. Waukesha County, Wisconsin

The application by the Waukesha County Sheriff represents a change of position from Sheriff Eric Severson's testimony before the US Senate in March of this year. When asked by Sen. Claire McCaskill (D-Mo.) if his Department was going to participate in the 287(g) program, he responded:

At this time, I don't have the resources to participate with that nor is our community structure such that I don't know if that is necessarily a high priority for us right now and again I am fortunate enough to report to you today that the instances of criminal activity of illegally present immigrants beyond their status is relatively uncommon in my County and generally in Wisconsin.

⁴⁸ Megan Cerullo, *Former Milwaukee inmate awarded \$6.7M after she was raped by jail guard, shackled during childbirth*, NY Daily News, June 8, 2017 <http://www.nydailynews.com/news/national/milwaukee-inmate-awarded-6-7m-guard-raped-article-1.3231540>

⁴⁹ Marti Mikklson, *Milwaukee County Inmate Dies at Jail Medical Clinic*, WUWM.com, August 30, 2017, <http://wuwm.com/post/milwaukee-county-inmate-dies-jail-medical-clinic>

⁵⁰ *Inmate dies at Milwaukee County Jail*, WISN.com, October 29, 2017, <http://www.wisn.com/article/inmate-dies-friday-at-milwaukee-county-jail/13114747>

A scant two and a half months later, however, the Sheriff submitted the present application to participate in the 287(g) program without any public input from the County's residents and without notifying them of his change of position. The public only became aware of the application after an open records request by the ACLU of Wisconsin. (The Sheriff now asserts that his Senate testimony was referring to task force model agreements, and that he reserves the right to change his mind and apply for a jail model agreement.)

This is not the first time the Waukesha County Sheriff has had a change of mind with respect to the 287(g) program. In 2007, the Department also applied to participate in the program, but shortly thereafter withdrew its application.

The civil rights record of the Sheriff's Department needs more scrutiny.

There have been recent reports of concern regarding a lack of respect for the civil rights of the residents of Waukesha County. A federal civil rights lawsuit filed in 2015 contained serious allegations regarding unlawful use of force, unlawful entry to a private residence, and unlawful searches by deputies of the Sheriff's Department.⁵¹ Recently, reports have circulated in social media regarding Waukesha Sheriff deputies harassing Latino attendees of a gun show in the county.⁵²

While the ACLU of Wisconsin has not separately investigated either of these incidents, the seriousness of the allegations merits further scrutiny before the federal government enters into any additional law enforcement relationships with the County.

Waukesha County Sheriff Eric Severson was not interested in a 287(g) agreement only eight months ago when he testified before Congress. His current application to participate in the program was hidden from public sight in his County after he gave that testimony. With potential questions about civil rights compliance lingering over this department, the application to participate in the 287(g) program should be rejected.

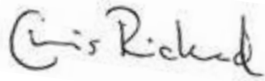
In light of these serious concerns, we urge DHS to deny the proposed 287(g) applications and to terminate all existing agreements. Immigration enforcement is a federal responsibility and the 287(g) program harms community trust in police and all residents' right to unbiased law enforcement. The proposed jurisdictions discussed in this letter have records demonstrating that they are unable to assume this responsibility without constitutional and civil rights violations, and the program as a whole is fraught with civil rights abuses.

Please contact Chris Rickerd, Policy Counsel, crickerd@aclu.org, with any questions.

⁵¹ *McDermott v. Waukesha County, et. al.*, case no. 2:15-CV-1341 (U.S. Dist. Ct., E.D. Wis.).

⁵² See *Waukesha County Sheriff Deputy J. Dunston Allegedly Profiled Latinos At Bob And Rocco's Gunshow*, Hispanic News Network, USA, April 23, 2016, available at <https://hispanicnewsnetwork.wordpress.com/2016/04/23/waukesha-county-sheriff-deputy-j-dunston-allegedly-profiled-latinos-at-bob-and-roccos-gunshow/>.

Sincerely,

A handwritten signature in black ink that reads "Chris Rickard". The signature is written in a cursive style with a large, looped "C" at the beginning.

Chris Rickard
Policy Counsel