



February 7, 2017

Bruce Friedman
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Office for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC

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

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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 the 287(g) program generally, and the prospect of expanding the program to eight additional jurisdictions, more specifically.

The ACLU urges Immigration and Customs Enforcement (ICE) to terminate the 287(g) program in all 37 jurisdictions in 16 states that have existing agreements, because the costs of enmeshing local law enforcement agencies in the business of federal civil immigration enforcement outweigh the benefits. Leading law-enforcement voices¹ have concurred in our opposition to the entanglement of immigration enforcement with state or local policing. This letter, however, also raises specific concerns, including civil rights violations and bias based on immigration status, race, or ethnicity, about six of the proposed jurisdictions— East Baton Rouge, Louisiana; Nye County, Nevada; Cape May County, New Jersey; Victoria County, Texas; Smith County, Texas; and Waller County, Texas. These specific concerns further militate in favor of refraining from carrying out the proposed expansion.

We urge ICE to hold public meetings in communities where an application for the 287(g) program has been submitted, to better ensure that the views of the public are appropriately considered in the decision-making process. Such meetings would help to uncover the types of specific concerns raised below. Given the specific concerns raised below, we strongly believe that extending

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-111hrg49374/html/CHRG-111hrg49374.htm>.

287(g) agreements to these proposed jurisdictions runs the serious risk of further sully the program's record through abetting racial profiling and other abuses – as seen starkly in the Department of Justice's findings regarding 287(g) partners Maricopa County (AZ)² and Alamance County (NC)³ – to the detriment of public safety and community trust in law enforcement.

East Baton Rouge, Louisiana

New data released on the Baton Rouge Police Department highlights the disproportionate targeting of racial minorities in drug enforcement within the city. With drug usage even across racial groups in the city, large enforcement disparities in majority African-American neighborhoods are nevertheless occurring. When comparing the four zip codes of the city comprising the highest African-American population (90%) with those of majority white zip-codes, enforcement in the African-American communities is 513% higher than the white zip-codes, while drug usage is actually 0.6% lower.⁴ This disparate enforcement raises concerns regarding how East Baton Rouge would conduct enforcement in other areas, including immigration under the 287(g) program.

Nye County, Nevada

The following cases were filed against the Nye County Sheriff's Office and/or its officers in 2016 and demonstrate the police force's pattern of engaging in unconstitutional practices and general misconduct. These cases illustrate that a culture has developed within the Nye County Sheriff's Office that permits and encourages behavior that is not only unethical and unprofessional, but also unlawful.

Gulley v. Nye County⁵

Benjamin Gulley (a long-time Sheriff's Office volunteer) alleged that several Nye County officers engaged in a conspiracy to falsely arrest and detain both himself, and former Assistant Sheriff, Rick Marshall. Gulley, accompanied by Marshall, was pulled over in a traffic stop, without probable cause. Shortly thereafter, approximately half-a-dozen officers descended upon the scene, with their guns drawn, placing both Gulley and Marshall under arrest. The pair were accused of stealing and destroying negative political signs directed at Marshall's campaign for Nye County Sheriff. The plaintiff further alleged that during the investigation, Detective Boruchowitz intentionally disregarded exculpatory evidence, which proved that the plaintiff had not engaged in any conduct to warrant his arrest. The arrests appeared to be largely politically motivated, rather than carried out in the commission of official police duties aimed at protecting the community.

² 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.

³ 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>.

⁴ Together Baton Rouge, "Unequal Enforcement: How Policing of Drug Possession Differs by Neighborhood in Baton Rouge" (Jan. 31, 2017), *available at* https://d3n8a8pro7vhm.cloudfront.net/togetherbr/pages/237/attachments/original/1486008704/Together_BR_Unequal_policing_HD3_2-2017.pdf?1486008704.

⁵ *Gulley v. Nye County*, No. 2:16-CV-00853 (D. Nev. Jan. 4, 2017).

Nye County was a named party in the complaint, and was accused of creating an environment in which the following customs, policies, practices and/or procedures were allowed and encouraged within the police force:

- (1) Allowing officers to not obtain exculpatory evidence;
- (2) Allowing officers to not disclose exculpatory evidence;
- (3) Allowing officers to effectuate unlawful arrests;
- (4) Failing to use acceptable and generally accepted law enforcement procedures concerning the existence of probable cause;
- (5) Allowing and encouraging officers to “coach” witnesses and/or manufacture stories to bolster witnesses’ stories and/or obstruct or interfere with investigations; and
- (6) Failing to discipline poorly performing officers and officers who violate constitutional rights.

Detective Boruchowitz was temporarily placed on administrative leave following the arrest. The case was settled out of court.

*Gal v. Nye County*⁶

Another troubling incident involved the improper use of evidence. Detective Boruchowitz seized Jasan Gal’s laptop as part of a criminal investigation. A number of pornographic videos, including videos of Gal engaging in sexual relations with his then-girlfriend were contained on the laptop. Gal alleged that Boruchowitz called his girlfriend into the station under the guise of having her assist with the criminal investigation (she was asked to help identify people featured in videos on the laptop). Instead, upon her arrival at the station, Boruchowitz showed plaintiff’s girlfriend the pornographic video with her in it. He also showed other deputies, passing the video around for “comic relief.” Boruchowitz also allegedly played the pornography for supervisors and other department personnel, who were not a part of the criminal investigation, dubbing the viewings as “Boruchowitz matinees.” Boruchowitz was also accused of downloading the videos from the laptop onto his cellphone and calling the plaintiff’s girlfriend to tell her that he took pleasure in viewing the videos. The complaint further asserts that Nye County breached their duties by failing to exercise control over its personnel, and failing to maintain the integrity of States evidence. This case is currently still pending.

In addition to the cases discussed above, Nye County has developed a national reputation as a community that harbors racist attitudes and animosity towards immigrants. The *New York Times* published an article in 2006 detailing an ordinance that had passed in Pahrump, Nye County, titled the “English Language and Patriot Reaffirmation Ordinance.”⁷ The ordinance appears to have been directed at harassing and displaying hostility towards the town’s sizeable Latino

⁶ *Gal v. Nye County*, No. 2:16-CV-00868 (D. Nev. filed April 15, 2016).

⁷ Steve Friess, *Stars and Strife: Flag Rule Splits Town*, N.Y. TIMES (Dec. 18, 2006), available at <http://www.nytimes.com/2006/12/18/us/18english.html>.

population. The ordinance declared the official language of Pahrump to be English, denied unspecified town benefits to “undocumented foreign nationals,” and forbade the flying of any foreign flag without an accompanying American flag. According to the *New York Times*, the member of the town board who originally proposed the English Language and Patriot Act also proposed an ordinance that would have required “illegal foreign workers to register at the town hall, pay a \$200 fee and provide personal information, including a list of relatives living in the United States.”⁸ The proposed ordinance was defeated by a majority of the 5-person board.

In 2011, an elected Nye County official, Shirley Matson, sent an email to the Nye County Sheriff’s Office, questioning whether workers building a new jail in Pahrump were legally eligible to work in the United States. Matson wrote, “[m]y staff, me, taxpayers coming to our offices, other town and county employees can plainly see that the construction workers are all Mexican/Latino, non-English speaking and I’m getting complaints.”⁹

Further, Matson stood by previous statements she made concerning Mexicans/Latinos when questioned about them by the Las Vegas Review-Journal in 2011. Those statements included referring to undocumented immigrants as “dirty filthy Mexican/Latino illegals,” and as “locust crossing our great country and destroying everything in sight.” Matson also criticized federal law which gives citizenship to those born in the United States by stating “these young girls will spread their legs to anyone to get an anchor baby growing in their bellies so they can illegally cross the border and suck up the U.S. citizen tax base resource everywhere they go in the U.S.”¹⁰

The above accounts demonstrate that a culture of rights abuses, racism and anti-immigrant animus exists across Nye County. A 287(g) agreement would only serve to give unethical town and county officials a formal mechanism by which to harass minorities and promote racist attitudes.

Cape May County Sherriff’s Office, New Jersey

The Cape May County Sherriff’s Office has faced multiple lawsuits and complaints regarding conditions and treatment in their jail facilities.¹¹ Overcrowding is a major issue at the facility with multiple individuals forced into cells designed for 1 or 2 individuals, and no medical unit cells available.¹² Reports indicate mistreatment by placing individuals in cells that fall below the minimum required size of 70sq ft. for double cells, by placing individuals in cells half that size. Additionally individuals are being held in dayrooms approved for 11 inmates, but that currently

⁸ *Id.*

⁹ Doug McMurdo, *New accusations of racism leveled at Pahrump tax assessor*, LOS VEGAS REVIEW-JOURNAL (Mar. 17, 2017), available at <http://www.reviewjournal.com/news/nevada-and-west/new-accusations-racism-leveled-pahrump-tax-assessor>.

¹⁰ *Id.*

¹¹ *State v. Walker*, 2015 WL 3476572 (D.N.J. Jun. 3, 2015); *Peterson v. Cape May Correctional Center*, 2010 WL 3463313 (D.N.J. Aug. 26, 2010); *Chanoux v. Cape May County*, 2009 WL 4506577 (D.N.J. Dec. 3, 2009); *Johnson v. Harron*, No. 07-0023 (D.N.J. Nov. 13, 2008); *Aruanno v. Cape May County Jail*, 2007 WL 708987 (3d Cir. 2007); *Gilligan v. Cape May County Correctional*, 2005 WL 1637910 (D.N.J. Jul. 8, 2005); *Taylor v. Plousis*, 101 F.Supp.2d 255 (D.N.J. Jun. 20, 2000).

¹² Michelle Brunetti Post, *Cape May County to build new \$37 million jail*, PRESS OF ATLANTIC CITY (May 8, 2016), available at http://www.pressofatlanticcity.com/news/cape-may-county-to-build-new-million-jail/article_4c5f60f0-13da-11e6-9c77-3be1e16bd005.html.

hold 20. The County is currently facing a pending class action lawsuit relating to the conditions of confinement.¹³ Under these circumstances, it would be imprudent to plan for additional detention in Cape May County to further federal immigration enforcement.

Concerns over proper medical care and violation of federal regulations for health care have arisen, including the jail not providing space for private consultations.¹⁴ In 2003, the New Jersey Board of Medical Examiners revoked the license of a doctor treating patients at the county jail finding him “grossly negligent in treatment.” The doctor had considered prisoners “unworthy” of medical care, ignored prisoners that complained of chest pain resulting in the death of a prisoner, accused a prisoner of faking symptoms resulting in the individual dying of a brain tumor, and denying medication to pre-diagnosed conditions. These actions resulted in numerous settlements with detainees and their families.¹⁵

Abuse by facility staff is not an uncommon occurrence. In 2008, a jail guard was convicted of official misconduct and criminal sexual contact for having sexual relations with two prisoners. The victims testified that they did not scream for help because they were powerless over the guard.¹⁶

Victoria County, Texas

Various incidents in the past several years also highlight problematic practices utilized by the Victoria police force. In 2016, for example, the city of Victoria settled a discrimination lawsuit brought by Mariela Georgieva, an applicant for hire at the Victoria Police Department. According to Georgieva, during her application process, Victoria Police Officer Lea Drake-Hartman referred to her as a “gypsy.” Georgieva, who is of Bulgarian origin, also said Drake-Hartman asked her multiple times whether she thought her accent was difficult to understand. In addition to the \$10,000 settlement, the city provided Georgieva an apology from Drake-Hartman that expressed her regret for reporting “inaccuracies and improper conclusions” to the Victoria Police Department, after she conducted Georgieva’s background investigation.¹⁷

Two years prior, Victoria Police Officer Nathaniel Robinson wrestled 76-year-old Pete Vasquez to the ground and used his Taser on him twice following a traffic stop for expired vehicle registration.¹⁸ Vasquez was then taken to the hospital in handcuffs, but was never cited for a

¹³ *Welch v. Cape May County Corr. Center*, 2016 WL 1600213 (Apr. 21, 2016).

¹⁴ Al Campbell, *Construction Underway on New Jail; Officials Detail Reasons It’s Needed*, CAPE MAY COUNTY HERALD (Oct. 20, 2016), available at http://www.capemaycountyherald.com/news/government/article_4994d402-96c7-11e6-8d8b-0bc0bf3c3c11.html.

¹⁵ Lonnie Burton, *Sadistic New Jersey Prison Doctor’s License Revoked Amid Allegations of Neglect, Malpractice*, PRISON LEGAL NEWS (Aug. 15, 2003), available at <https://www.prisonlegalnews.org/news/2003/aug/15/sadistic-new-jersey-prison-doctors-license-revoked-amid-allegations-of-neglect-malpractice/>.

¹⁶ Gary Hunter, *Sexual Abuse by Prison and Jail Staff Proves Persistent, Pandemic*, PRISON LEGAL NEWS (May 15, 2009), available at <https://www.prisonlegalnews.org/news/2009/may/15/sexual-abuse-by-prison-and-jail-staff-proves-persistent-pandemic/>.

¹⁷ Karn Dhingra, *City settles with job applicant for \$10,000, apology*, VICTORIA ADVOCATE (Aug. 19, 2016), available at <https://www.victoriaadvocate.com/news/2016/aug/19/city-settles-with-job-applicant-for-10000-apology/>.

¹⁸ Jason Silverstein, *Texas police officer fired for dash cam video showing him using Taser on 76-year-old man twice*, N.Y. DAILY NEWS (Jan. 5, 2015), available at <http://www.nydailynews.com/news/national/texas-officer-fired-video-tasing-76-year-old-man-article-1.2066895>.

crime. Following an internal affairs investigation by the Victoria Police Department, it was determined that Robinson violated three different policies during the incident: "conduct and performance," "use of force," and "arrest without a warrant." Robinson was subsequently fired.¹⁹

Furthermore, an investigation into Texas Department of Safety stops from 2009 to 2014 showed that an officer, whose patrol area centered around Victoria, was more than *seven* times more likely to search African-American and Hispanic drivers than white motorists, even though he was only half as likely to find contraband on them—a dramatic outlier from policing across the rest of the state.²⁰

Smith County, Texas

In the past two years, Smith County Jail in Tyler, Texas has faced multiple allegations of misconduct. In 2016, an investigation of the jail revealed that staff falsified written records intended to confirm that all prisoners were accounted for and not in need of medical attention or other aid.²¹ During the investigation, numerous employees admitted falsifying the jail log records and said this had been going on for at least seven years. The investigation resulted in multiple staff members being demoted, put on administrative leave, or forced to resign.

A year prior, a notice of non-compliance was filed against the Smith County Jail on behalf of the Texas Commission on Jail Standards in connection to the death of Jasen Mosley, an inmate who hanged himself while in police custody. Brandon Wood, executive director of Texas Commission on Jail Standards, says the notice was filed because jail staff did not check on inmates in holding within 30 minutes, as they are required to do.²² Smith County later entered a settlement with Mosley's family for \$1.25 million.²³

Another family brought a lawsuit against Smith County, also in 2015, for the wrongful-death of Robert Reed Rowan²⁴. Due to prior medical conditions, Rowan had become dependent on daily antidepressant and anti-anxiety medications and had informed officials of his condition when first imprisoned. According to his family, however, Rowan was repeatedly denied medication despite withdrawal symptoms. The lawsuit alleges that the county is liable for inadequate medical care at its jail, that officials did not monitor Rowan's condition or have medically trained employees in the facility, did not advise personnel of his condition, or maintain proper

¹⁹ *Grand jury clears Victoria officer who used Taser on senior citizen*, KTRK-TV HOUSTON NEWS (Mar. 14, 2015), available at <http://abc13.com/news/grand-jury-clears-officer-who-used-taser-on-senior-citizen/557374/>.

²⁰ Eric Dexheimer, Jeremy Schwartz, and Christian McDonald, *Not so black and white*, AUSTIN AMERICAN-STATESMAN (Sept. 9, 2016), available at <http://specials.mystatesman.com/dps-stop-search-data/>.

²¹ Stephanie Frazier, *Smith Co. sheriff to discipline jailers for falsifying records*, WLOX (Sept. 5, 2014), available at <http://www.wlox.com/story/26461421/smith-co-sheriff-to-discipline-jailers-for-falsifying-records>; Kenneth Dean, *Jailers fired for allegedly falsifying records no-billed by grand jury*, TYLER MORNING TELEGRAPH (Jan. 26, 2015), available at <http://www.tylerpaper.com/TP-Breaking/212519/jail>.

²² Jeff Wright, *Non-compliance notice issued against Smith County jail following inmate death*, KLTv (June 2, 2015), available at <http://www.kltv.com/story/29222303/non-compliance-notice-issued-against-smith-county-jail-following-inmate-death>.

²³ Kenneth Dean, *Video released shows that Jasen Mosley suffered from depression*, TYLER MORNING TELEGRAPH (Sept. 23, 2015), available at <http://www.tylerpaper.com/TP-News+Local/224478/video-released-shows-that-jasen-mosley-suffered-from-depression>.

²⁴ Carol Ostrow, *Family sues Smith County over inmate's death*, SE TEXAS RECORD (Feb. 16, 2015), available at <http://setexasrecord.com/stories/510606838-family-sues-smith-county-over-inmate-s-death>.

records. It further alleges that officials exhibited deliberate indifference to other inmates' health needs, as well as Rowan's.²⁵

Waller County, Texas

The case of Sandra Bland, a black woman who was found dead in a Waller County jail cell, made national headlines in 2015. Bland, a 28-year-old from Chicago, was pulled over by state trooper Brian Encinia for failing to signal a turn. After the initial stop, the interaction between Bland and Encinia escalated rapidly, eventually resulting in Encinia pulling Bland from her car, threatening her with his Taser, and arresting her. Bland was found dead in her jail cell three days later. Authorities determined that her death was a suicide, but Bland's family and supporters dispute that she hanged herself.²⁶

The altercation that occurred at the time of Bland's arrest was caught on video by Encinia's dashcam. The video, in combination with Bland's subsequent and mysterious death, sparked a nationwide debate regarding police abuse of African Americans.²⁷

In December 2015, a county grand jury declined to issue an indictment in connection to Bland's death.²⁸ Reconvening the following month, the grand jury indicted Encinia on a perjury charge for saying in an affidavit that he removed Bland from her car so he could conduct a safer traffic investigation. The grand jury found that statement to be false, according to a special prosecutor.²⁹ Bland's family filed a federal wrongful death lawsuit, which was settled in September 2016 for \$1.9 million.³⁰

In addition to the Sandra Bland case, a number of government officials in Waller County have been accused of racial discrimination and animus, including Waller County Sherriff Glenn Smith. Sheriff Smith was suspended³¹ as chief of police of Hempstead, the county seat, for two weeks in 2007 and ordered to take anger-management classes after using profanity and pushing a

²⁵ David Yates, *Smith County seeks to dismiss suit over inmate's death*, SE TEXAS RECORD (June 12, 2015), available at <http://setexasrecord.com/stories/510607448-smith-county-seeks-to-dismiss-suit-over-inmate-rsquo-s-death>.

²⁶ ASSOCIATED PRESS, *Video rekindles debate about police treatment of blacks*, TOLEDO BLADE (July 23, 2015), available at <https://www.toledoblade.com/Police-Fire/2015/07/23/Video-rekindles-debate-about-police-treatment-of-blacks.html>.

²⁷ Debbie Nathan, *What Happened to Sandra Bland?* THE NATION (April 21, 2016), available at <https://www.thenation.com/article/what-happened-to-sandra-bland/>.

²⁸ Mitch Smith, *Grand Jury Declines to Indict Anyone in Death of Sandra Bland*, N.Y. TIMES (Dec. 21, 2015), available at <https://www.nytimes.com/2015/12/22/us/grand-jury-finds-no-felony-committed-by-jailers-in-death-of-sandra-bland.html?smid=pl-share>.

²⁹ Camila Domonoske, *Former Trooper Pleads Not Guilty to Perjury Over Arrest of Sandra Bland*, NPR (Mar. 23, 2016), available at <http://www.npr.org/sections/thetwo-way/2016/03/23/471551331/former-trooper-pleads-not-guilty-to-perjury-over-arrest-of-sandra-bland>.

³⁰ Carma Hassan, Holly Yan, and Max Blau, *Sandra Bland's family settles for \$1.9M in wrongful death suit*, CNN (Sept. 15, 2016), available at <http://www.cnn.com/2016/09/15/us/sandra-bland-wrongful-death-settlement/>.

³¹ Helen Eriksen, *Hempstead police chief accused of racism*, THE HOUSTON CHRONICAL (Feb. 20, 2007), available at <http://www.chron.com/news/houston-texas/article/Hempstead-police-chief-accused-of-racism-1806018.php>; Helen Eriksen, *Hempstead police chief disciplined in racially charged arrest*, THE HOUSTON CHRONICAL (Feb. 21, 2007), available at <http://www.chron.com/news/houston-texas/article/Hempstead-police-chief-disciplined-in-rationally-1794136.php>.

black man, Cory Labba,³² during an arrest.³³ In the same year (2007), he was fired after more complaints of racism came in, including accusations of humiliating strip-searches of young black people.³⁴ Smith denies any allegations of racism and says he was not accused of racism.³⁵

In light of these concerns, we urge DHS to deny all of the proposed 287(g) applications, and more broadly, we encourage DHS 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 clearly demonstrating that they are unable to assume this responsibility in a manner that would avoid constitutional and civil rights violations.

Please contact Ronald Newman (202-675-2335 or rnewman@aclu.org), with any questions.

Sincerely,



Ronald Newman
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Washington Legislative Office

³² Amanda Sakuma, *Racially fraught legacy where Sandra Bland died*, MSNBC (July 26, 2015), available at <http://www.msnbc.com/msnbc/racially-fraught-legacy-where-sandra-bland-died>.

³³ Henry Gass, *Sandra Bland's death tinged by Waller County's murky racial past*, THE CHRISTIAN SCIENCE MONITOR (July 27, 2015), available at <http://www.csmonitor.com/USA/USA-Update/2015/0727/Sandra-Bland-s-death-tinged-by-Waller-County-s-murky-racial-past-video>.

³⁴ Tom Dart, *The Texas County where Sandra Bland died: there's 'racism from cradle to grave*, THE GUARDIAN (July 17, 2015), available at <https://www.theguardian.com/us-news/2015/jul/17/sandra-bland-alleged-suicide-waller-county-texas-racism>; Helen Eriksen, *Hempstead police chief accused of racism*, THE HOUSTON CHRONICAL (Feb. 20, 2007), available at <http://www.chron.com/news/houston-texas/article/Hempstead-police-chief-accused-of-racism-1806018.php>.

³⁵ Meekospark, *Waller County Sheriff Attacks Racism Exclusive Interview GLENN SMITH Sandra Bland*, YOUTUBE (Aug. 14, 2015), available at <https://www.youtube.com/watch?v=IUig7UT5KYg>.