



December 8, 2016

The Honorable Jeh Johnson
Secretary, Department of Homeland Security
3801 Nebraska Ave NW
Washington, DC 20016

Re: Request to deny all pending 287(g) applications

Dear Secretary Johnson:

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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 urge you to deny the 287(g) applications submitted by Salem County, New Jersey and Oklahoma County, Oklahoma as well as all other pending 287(g) applications.

Along with leading law-enforcement voices,¹ we object in principle to the entanglement of immigration enforcement with state or local policing. Immigration enforcement is a federal government function and authority. The 287(g) program erodes community trust in local law enforcement and undermines public safety. Expanding 287(g) authority to additional localities will only exacerbate the program's record of abetting racial profiling—as shown in the Department of Justice's findings regarding former 287(g) partners Maricopa County (AZ) and Alamance County (NC)—to the detriment of public safety and community trust in law enforcement.^{2,3}

The ACLU urges the Department of Homeland Security (DHS) to terminate the 287(g) program in all 32 jurisdictions in 16 states that have existing agreements. This letter, however, raises specific concerns about two of the proposed jurisdictions—Salem County, New Jersey and Oklahoma County, Oklahoma. That we do not address here the other jurisdictions currently under consideration does not indicate our support for those applications, or the absence of jurisdiction-specific concerns.

Salem County, New Jersey

The ACLU of New Jersey has received five complaints since April 2014 regarding civil rights violations at the Salem County Correctional Facility (SCCF), four of which specifically involved assaults by correctional officers:

- 1) An individual with a seizure disorder claimed to have been beaten and to have seen a handicapped inmate seriously assaulted, both at the hands of corrections officers.
- 2) An individual claimed to be beaten in the shower by a corrections officer during his booking into the facility. He also alleged that he was strip-searched twice a day for twelve days.
- 3) An individual described violent behavior at the hands of the correctional officers “seemingly for sport.”
- 4) An individual claimed that her relative was held in solitary confinement without medical clearance after having his nose broken by a corrections officer. She alleged that he did not receive medical attention until he was transferred to another facility.
- 5) An individual alleged that he was handcuffed inside the facility for over eight hours.

In addition, the following allegations against SCCF and the Salem County Sheriff’s Office have been publicly reported over the past five years

- Terry J. Walker was arrested in Gloucester, NJ, and brought to be jailed in Salem County.^{4,5} He claims he was discriminated against as a bisexual African-American male.⁶ Mr. Walker states that on August 18, 2014 he was asked to strip search and was called a “faggot” while he was physically being forced to the ground.⁷ He alleges that he was repeatedly assaulted by multiple officers at the facility.⁸ He states that Officer Elbert B. Johnson, Jr. sexually assaulted and raped him.⁹ Mr. Walker also claims that he was retaliated against for filing a grievance.¹⁰ Officer Johnson was terminated as a result of an investigation following Mr. Walker’s grievance.¹¹ However, Mr. Walker was not provided medical or mental health services related to the trauma he experienced. The case has been held pending related criminal charges against Johnson for the sexual assault.¹²
- In April 2014, Russell Vanwyk was arrested and detained at SCCF, where he was brought to the infirmary and put in an anti-suicide gown.^{13,14} He alleges that he was “clotheslined” by an officer who subsequently knocked him over.¹⁵ He states that multiple officers punched, kicked, and strangled him.¹⁶ He claims that he was then pepper sprayed and handcuffed.¹⁷ During this altercation, Mr. Vanwyk’s gown came off of his body, leaving him naked.¹⁸ He was subsequently denied medical care by a nurse and left “in the hole” for three days.¹⁹ During that time he claims he vomited on the floor but received no medical assistance.²⁰ He was released on April 7, 2016, and brought to the hospital, where they noted signs of his injury including a concussion and severe bruising.²¹ He filed a case in the United States District Court for the District of New Jersey on March 3, 2016.²²
- On June 1, 2013, Leon Foreman claims to have been assaulted and beaten by approximately seven officers.²³ After the beating, he was brought to the hospital, where he alleges that two officers continued to beat him.²⁴ He claims to have head injuries and severe physical and emotional pain and suffering as a direct result of the assault.²⁵ This

case settled on or about April 22, 2016 and appears to have been finalized in early May 2016.²⁶

- Harold Jones, a diabetic and schizophrenic, claims that during a medical episode he was brought to SCCF.^{27,28} He claims his medical condition was misinterpreted by guards as resistance, leading multiple guards to allegedly assault him.²⁹ He was released and brought to a hospital where he was noted to be in an altered mental state.³⁰ He sustained fractured ribs and injured toes.³¹ A few parties were granted dismissal but the County of Salem and SCCF remained as parties.³² This case resulted in a settlement agreement for \$49,500.^{33,34}
- A case was brought against SCCF by an individual who practices Islam.³⁵ He claims to have been denied vegetarian meals, which he requests for religious reasons.³⁶ The case is still ongoing according to PACER records.
- A complaint alleging inadequate medical care at the jail was allowed to proceed against the nurse involved but not the facility or the county.³⁷ This case was later dismissed because of the Plaintiff's failure to prosecute.³⁸
- A corrections officer was caught stealing over \$300 from an inmate.³⁹
- A female corrections officer recently filed a complaint in the United States District Court for the District of New Jersey claiming wrongful termination, gender discrimination, disability discrimination, and retaliation for reporting the drug use of other correctional officers.⁴⁰

Currently the SCCF is under capacity and looking for ways to expand its facility. Reporting suggests that the Sheriff is looking for ways to expand the jail and increase capacity to attract more inmates. Salem County Sheriff Charles Miller explicitly said that the lost revenue from not housing the maximum available individuals from Gloucester County led the Sheriff's Office to consider expanding the jail to a 780-bed facility.⁴¹ He also specifically mentioned that they would like to obtain revenue from housing federal prisoners in this larger facility.⁴² His statement suggests that, without expansion, the facility would not be able to house any additional individuals. The jail expansion proposal has some opposition expressed via editorials and articles online from the summer of 2014 through 2015.⁴³

Oklahoma County, Oklahoma

In 2008 the Department of Justice ("DOJ") 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.⁴⁴ This overcrowding continues to contribute to poor supervision and unconstitutional conditions. The DOJ report raised concerns about the frequency of lethal 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 not yet been fully addressed.

The Oklahoma County Jail also has a record of failing 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 the deaths of at least seven men in custody were due to improper medical care.⁴⁵ DOJ also reported on shockingly unsanitary conditions in all areas, from food preparation, to pest control and bathrooms.

Recent reports implicate Oklahoma County jail 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.”⁴⁶ In 2013, another individual died from internal bleeding six days after a jail supervisor broke his shoulder and elbow while subduing him.⁴⁷

Despite these failures and continuing issues with overcrowding,⁴⁸ the jail has historically detained undocumented persons for nearly twice as long as the national average.⁴⁹ In 2012, the jail claimed to have made significant changes, but even the Sheriff admitted that it would not be possible to resolve the jail’s deficiencies without a major remodel of the jail or a completely new facility.⁵⁰ 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.⁵¹ 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.⁵²

In January 2016 the DOJ 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.⁵³

Moreover, a 2016 audit⁵⁴ of the Oklahoma County Sheriff’s Office in Oklahoma demonstrates the county’s unsuitability for a 287(g) agreement. The audit showed that:

- The sheriff’s office intentionally stopped paying Armor Correctional Health Services, Inc. for inmate healthcare, despite having signed a contract with the company in 2014. The Sheriff chose not to pay the contracts even though funds were available at the time payment was due;
- Previous fiscal years were paid with subsequent year funds, in violation of the law;
- The office spent approximately \$900,000 on Sheriff vehicles during a time when other financial obligations were not being met; and
- The office accepted a donation of the Sheriff’s personal vehicle, after a \$28,000 payment was made to his spouse’s trust.

Due to the results of the audit, Oklahoma County commissioners have voted to further investigate the Sheriff for misconduct, a process that is expected to take two to six months.⁵⁵

We urge DHS 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 constitutional and civil rights violations.

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

Sincerely,



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CC: Megan Mack, Officer for Civil Rights and Civil Liberties, Department of Homeland Security

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), <https://www.gpo.gov/fdsys/pkg/CHRG-111hhrg49374/html/CHRG-111hhrg49374.htm>.

² Letter from Thomas E. Perez, Assistant Attorney General, to Alamance County (Sept. 18, 2012), <https://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>.

³ Letter from Thomas E. Perez, Assistant Attorney General, to Maricopa County (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

⁴ Complaint & Jury Demand, *Walker v. County of Gloucester*, No. 1:15-cv-07073-RBK-AMD (D.N.J. Mar. 3, 2016).

⁵ Bill Gallo, Jr., *N.J. Inmate Claims He Was Sexually Assaulted by Male Corrections Officer*, NJ.COM (June 9, 2016), http://www.nj.com/salem/index.ssf/2015/09/bisexual_inmates_suit_sex_assault_by_male_officer.html.

⁶ Complaint & Jury Demand, *supra*, at 13.

⁷ *Id.* at 18.

⁸ *Id.* at 13.

⁹ *Id.* at 7.

¹⁰ *Id.* at 15.

¹¹ *Id.* at 7.

¹² *Walker v. County of Gloucester*, No. 15-7073-RBK-AMD, 2016 U.S. Dist. LEXIS 56393, *12 (D.N.J. Apr. 28, 2016).

¹³ Complaint & Demand for Jury Trial, *Vanwyk v. Salem County Corr. Facility*, No. 1:16cv1240 (D.N.J. Mar. 3 2016).

¹⁴ Don E. Woods, *Man Was Naked, Beaten in N.J. Jail, Lawsuit Claims*, NJ.COM (Mar. 15, 2016), http://www.nj.com/salem/index.ssf/2016/03/man_was_naked_beaten_in_nj_jail_lawsuit_claims.html.

¹⁵ Complaint & Demand for Jury Trial, *supra*, at 5.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ *Id.* at 8.

²² *Id.* at 1.

²³ Complaint, Demand for Jury Trial, Designation of Trial Counsel, Demand for Answers to Form C Interrogatories and Certification Pursuant to R.4:5-1 at 3, *Foreman v. County of Salem*, No. L-54-14 (N.J. Super. Ct. Law Div. Mar. 28, 2014).

²⁴ *Id.*

²⁵ *Id.* at 4.

²⁶ Confidential Settlement Agreement and General Release, *Foreman v. County of Salem*, at 11-12 (Apr. 22, 2016).

²⁷ *Jones v. County of Salem*, No. 15-3093-NLH-AMD, 2016 U.S. Dist. LEXIS 33362, *1 (D.N.J. Mar. 15, 2016).

²⁸ Complaint and Demand for Jury Trial, *Jones v. County of Salem*, No. 15-3093-NLH-AMD (D.N.J. Mar. 15, 2016).

²⁹ *Jones*, 2016 U.S. Dist. LEXIS 33362, at *2.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at *11.

³³ Release, *Jones v. County of Salem*, No. 15-3093-NLH-AMD (D.N.J. Mar. 15, 2016).

³⁴ Brittany M. Wehner, *Man Alleging He Was Beaten in County Jail Gets \$49K in Settlement, Court Says*, NJ.COM (June 24, 2016), http://www.nj.com/salem/index.ssf/2016/06/man_alleging_he_was_beaten_gets_49k_in_settlement.html.

³⁵ *Seagraves v. Treachler*, Civil Action No. 15-7801-JBS-AMD, 2016 U.S. Dist. LEXIS 40992, *3 (D.N.J. Mar. 29, 2016).

³⁶ *Id.* at *1-2.

³⁷ *Richmond v. Salem County Jail*, No. 12-5504-RBK-JS, 2013 U.S. Dist. LEXIS 169180 (D.N.J. Nov. 26, 2013).

³⁸ Order, *Richmond v. Jane Doe Nurse*, No. 12-5504-RBK-JS (D.N.J. May 14, 2014).

³⁹ Michael Williams, *Salem County Corrections Officer Charged with Stealing \$300 from Inmate*, NJ.COM (May 18, 2012), http://www.nj.com/salem/index.ssf/2012/05/post_64.html.

⁴⁰ Brittany M. Wehner, *Former N.J. Officer Sues Salem, Gloucester Counties, Claiming Discrimination, Retaliation*, NJ.COM (June 11, 2015), http://www.nj.com/salem/index.ssf/2015/06/salem_county_correctional_facility_sued_for_allege.html.

⁴¹ Alex Young, *Salem County Jail expansion proposes a 780-bed facility*, NJ.COM (July 27, 2014), http://www.nj.com/salem/index.ssf/2014/07/salem_county_jail_expansion_proposes_a_780-bed_facility.html.

⁴² *Id.*

⁴³ See, e.g., Margaret Maxwell-Mood, *Don't Stick Salem County Taxpayers with Bill for Unneeded Jail Expansion: Letter*, NJ.COM (Mar. 25, 2015), http://www.nj.com/opinion/index.ssf/2015/03/dont_stick_salem_county_taxpayers_with_bill_for_un.html; Charles M. Miller, *Why It Makes Sense to Expand Salem County's Jail: Opinion*, NJ.COM (Aug. 10, 2014),

http://www.nj.com/opinion/index.ssf/2014/08/why_it_makes_sense_to_expand_salem_countys_jail_opinion.html; Zachary Ahl, *Public Opinion Survey: Salem County Correctional Facility Expansion*, NEWS IF SALEM COUNTY (Aug. 9, 2014) <http://newsforsalemcounty.com/2014/08/public-opinion-survey-salem-county-correctional-facility-expansion/>; South Jersey Times Editorial Board, *Salem Jail Expansion Not Safe Bet Right Now: Editorial*, NJ.COM (July 29, 2014), http://www.nj.com/opinion/index.ssf/2014/07/salem_jail_expansion_not_safe_bet_right_now_editorial.html.

⁴⁴ 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.

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⁴⁶ 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>.

⁴⁷ 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>.

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⁴⁹ Vallery Brown, *Some Claim Oklahoma County Profited from Keeping Detainees Longer*, OKLAHOMAN (Feb. 8, 2010).

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⁵³ 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>.

⁵⁴ Gary A. Jones, Oklahoma State Auditor & Inspector, “Investigative Audit Report: Oklahoma County Sheriff’s Office” (Oct. 18, 2016), <https://www.sai.ok.gov/Search%20Reports/database/OkCoSheriffWebFinal.pdf>.

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