

August 28, 2013

Sheriff Jimmy Jones
Knox County Sheriff's Office
400 Main Street, Suite L165
Knoxville, TN 37902
VIA EMAIL AND FIRST CLASS MAIL

Dear Sheriff Jones:

On behalf of the American Civil Liberties Union of Tennessee (ACLU-TN) and the ACLU Immigrants' Rights Project, we write to express our grave concern over assertions made in your response to the federal government's denial of your application for a "287(g) agreement."

In your statements, you indicated that you will continue to enforce federal immigration laws as you see fit without any direction by the federal government and that you will hold those your Department suspects to have violated federal immigration laws until a federal agency responds. Acting upon these statements would violate well-established law and would subject the County, as well as you and your deputies personally, to liability for constitutional violations.

As an elected law enforcement official, your responsibility is to uphold the law and ensure safety and security for all individuals in your county. Your statements challenge that role.

The United States Supreme Court has specifically stated that state and local officers cannot "hold[] aliens in custody for possible unlawful presence without federal direction and supervision." *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012). In invalidating a state law that would have granted local officers the power to detain and hold individuals suspected of being removable, the Supreme Court emphasized that "[f]ederal law specifies limited circumstances in which state officers may perform the functions of an immigration officer."¹ *Id.* at 2506; *see also id.* at 2507 ("Congress has put in place a

¹ According to the Supreme Court, there are four narrow circumstances in which local officers may detain individuals for immigration purposes. *Id.* at 2056 (citing 8 U.S.C. § 1357(g) (authority pursuant to formal agreements with the Attorney General, such as a "287(g) agreement")); § 1103(a)(10) (authority may be extended in the event of an "imminent mass influx of aliens off the coast of the United States"); § 1252c (authority to arrest in specific circumstances after consultation with the Federal Government); § 1324(c) (authority to arrest for bringing in and harboring certain aliens)). Even in these limited circumstances, state and local officers are "subject to the Attorney General's direction and supervision." *Id.*

system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances.”). These “limited circumstances” do not include the independent immigration enforcement envisioned in your statement. Knox County Sheriff’s Department does not have the authority to independently enforce federal immigration law, and any “unilateral state action to detain” individuals on the basis of their immigration status taken by your Department would be unconstitutional. *Id.*

The Supreme Court cautions that allowing state and local officials to hold individuals on the basis of immigration status without federal direction and supervision would unconstitutionally interfere with a “principal feature of the removal system”: “the broad discretion exercised by immigration officials.” *Id.* at 2499. Such enforcement would inevitably lead to persons whom federal authorities would not seek to remove being detained by state and local officials. *Id.* at 2506 (“There are significant complexities involved in enforcing federal immigration law, including the determination whether a person is removable.”); *id.* (permitting unilateral detentions by local officers “would allow the State to achieve its own immigration policy” and the “result could be unnecessary harassment of some aliens (for instance, a veteran, college student, or someone assisting with a criminal investigation) whom federal officials determine should not be removed”).

Moreover, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.” *Id.* at 2505. Therefore, “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns” under the Fourth Amendment. *Id.* at 2509. Indeed, it has been long established in the Sixth Circuit (even prior to *Arizona*) that suspicion of unlawful immigration status is not a valid basis on which to continue custody because it is not a crime. *See United States v. Urrieta*, 520 F.3d 569, 578 (6th Cir. 2008) (“Under the Fourth Amendment, even the briefest of detentions is too long if the police lack a reasonable suspicion of specific *criminal* activity.” (emphasis added)).

Even in the situation where custody of an individual is initially based on a violation of state criminal law, it “is beyond dispute [that] when a prisoner’s sentence has expired, he is entitled to release.” *Shorts v. Bartholomew*, 255 Fed. App’x 46, 51-52 (6th Cir. 2007) (citing *Whirl v. Kern*, 407 F.2d 781, 791 (5th Cir.1969) (holding that “[t]here is no privilege in a jailer to keep a prisoner in jail beyond the period of his lawful sentence”). Courts have regularly found that such unlawfully prolonged detentions violate the Constitution. *See, e.g., Williams v. Davidson County Sheriff’s Office*, 2012 WL 4849897, at *5 (M.D. Tenn. Oct. 10, 2012) (finding that “[w]ith respect to the plaintiff’s claim that he was not released from jail until five days after his sentence expired, it is clear that the plaintiff states a claim for violation of his constitutional rights” and that plaintiff had stated a colorable claim against the sheriff in his official and individual capacities); *Herndon v. Shelby County*, No. 12–2087, 2013 WL 4048548, at *6-7 (W.D. Tenn. Aug. 6, 2013) (same); *Ringuette v. City of Fall River*, 906 F. Supp. 55, 57 (D. Mass. 1995) (holding that plaintiff’s placement into protective custody for second time, after he was eligible for release, constituted an unreasonable seizure in violation of the Fourth Amendment); *Berry v. Baca*, 379 F.3d 764, 766-67 (9th Cir. 2004) (reversing grant of summary judgment to county sheriff on Fourth Amendment claims where plaintiffs alleged they were detained for extended periods after the court authorized their release).

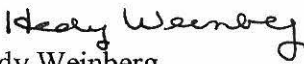
By holding individuals in custody without any lawful justification, your Department risks being subjected to monetary liability. Several lawsuits brought on behalf of individuals held unlawfully under the auspices of immigration enforcement have settled for large amounts. See *Mora v. Arpaio*, No. 09-1719-PHX-DGC (D. Ariz.) (Maricopa County Sheriff's Office settled the claims of two individuals unlawfully detained for three hours in order to investigate their immigration status for \$200,000); *Harvey v. City of New York*, No. 07-0343 (E.D.N.Y.) (plaintiff awarded \$145,000 in settlement from the City of New York for being held twice unlawfully for a total of more than 140 days); *Quezada v. Mink*, No. 10-00879 (D. Colo.) (plaintiff awarded \$40,000 from local sheriff for being held for 47 days after he was entitled to release and after and immigration detainer had expired).


The policy your statement envisions is both unconstitutional and unwise. Studies have shown that public safety suffers when local law enforcement officers behave as immigration agents by undermining the trust and cooperation of immigrant communities. See *Consequences & Costs: Lessons Learned from Davidson County, Tennessee's Jail Model 287(g) Program*, ACLU of TN, available at [http://www.aclu-tn.org/pdfs/287g\(F\).pdf](http://www.aclu-tn.org/pdfs/287g(F).pdf) (noting surveys in which "54 percent of Latino respondents said that they would choose not to call police regarding future crimes, citing fear, immigration issues and racial profiling as reasons" and "73 percent reported that Davidson County's 287(g) agreement increased their apprehension about cooperating with police"). By requiring your deputies to attempt to enforce immigration laws, you would be diverting your limited resources from your primary responsibility of providing protection and promoting public safety in Knox County.

As the elected Sheriff, you establish the policy and directives of your Department. We urge you to correct your statement both publicly to ensure public trust in your Department continues and internally to inform your Deputies of the limitations on their authority to hold individuals. "In a constitutional sense, how much more basic could it get – jails cannot confine people without authority to do so." *Armstrong v. Squadrino*, 152 F.3d 564, 578 (7th Cir. 1998).

Should you have any questions, please free to contact us at [REDACTED]

Sincerely,


Hedy Weinberg
Executive Director
ACLU of Tennessee


Andre Segura
Staff Attorney
ACLU Immigrants' Rights Project