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

Dear Mr. Friedman:

On behalf of the American Civil Liberties Union (ACLU) 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 immediate prospect of expanding the program to eighteen additional jurisdictions.

The ACLU urges Immigration and Customs Enforcement (ICE) to terminate the 287(g) program in the approximately 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 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 agree with our opposition to the entanglement of immigration enforcement with local policing, and the 287(g) program's failed history is well documented, including by the DHS Inspector General.² This letter also raises civil rights concerns about nine of the proposed jurisdictions — Aransas, Brazoria, Chambers, DeWitt, Galveston, Matagorda,

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>.

Montgomery and Refugio, all counties in Texas, as well as Knox County, Tennessee. (In Montgomery County, TX, which according to DHS is up for imminent consideration, the sheriff's department stated that it has not applied.³) These specific infirmities in applicant jurisdictions weigh strongly against carrying out the proposed expansion.

We also append a letter from the ACLU of Virginia to the Sheriff of Fauquier County, VA, detailing concerns about that jurisdiction's application and apparent misunderstandings of their prospective 287(g) agreement. In Fauquier County, as elsewhere, taxpayers are often not given complete information about the financial and other drawbacks to 287(g) participation, which is a direct local subsidy of federal immigration-enforcement responsibilities. For example, Harris County Sheriff Ed Gonzalez estimated that the program cost his department \$675,000 annually before he recently rescinded its agreement.⁴

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 transparency the public's views are not appropriately considered in the decision-making process; nor will the types of specific concerns raised below be uncovered. Extending 287(g) agreements to these proposed jurisdictions runs the serious risk of further sully the program's record through promoting racial profiling and other abuses – as seen starkly in the Department of Justice's findings regarding former 287(g) partners Maricopa County (AZ)⁵ and Alamance County (NC).⁶ The bottom line is that 287(g) agreements cost localities money while damaging public safety and community trust in law enforcement.

1. Aransas County, Texas

The Aransas County Sheriff's Office has a record of abuse, with eight lawsuits filed against the office in recent years. These include cases involving claims of excessive force and First Amendment retaliation,⁷ excessive force in detention facilities resulting in an individual's arm being immobilized for three weeks,⁸ the county jail's refusal to replace an individual's glasses despite a claim that the person would be legally blind without them,⁹ and the jail's refusal to accept a habeas petition for mailing by a detainee.¹⁰

³ Lise Olsen, *18 Texas sheriffs step up to replace Harris County in Trump's deportation push*, HOUSTON CHRONICLE, Mar. 28, 2017, available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/18-Texas-sheriffs-step-up-to-replace-Harris-11028107.php>

⁴ James Pinkerton & St. John Barned-Smith, *Sheriff cuts ties with ICE program over immigrant detention*, HOUSTON CHRONICLE, Feb. 21, 2017, available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/Sheriff-cuts-ties-with-ICE-program-over-immigrant-10949617.php>.

⁵ 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.

⁶ 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>.

⁷ *Robles v. Aransas Cnty. Sheriff's Dep't*, No. 15-cv-0495 (S.D. Tex.).

⁸ *Edwards v. Tex. Bd. of Pardons & Paroles*, No. 15-cv-207, 2016 WL 67937 (S.D. Tex. Jan. 6, 2016).

⁹ *Kempainen v. Aransas Cnty. Detention Ctr.*, No. 08-cv-194, 2010 WL 4918958 (S.D. Tex. Nov. 23, 2010), aff'd by 460 F. App'x 411, cert. denied, 132 S. Ct. 2394 (2012) (Plaintiff's Eighth Amendment claim survived a motion

Claims of inadequate medical care also implicate the county jail. An individual had an abscess on his face develop while in custody and passed out from the pain when jailers and medical staff delayed the administration of antibiotics and other medication. The abscess ruptured, resulting in hospitalization and diagnosis of a dangerous MRSA infection. Upon his release from the hospital, medical staff at the jail failed to follow postoperative care instructions.¹¹ Another medical abuse case resulted in an inmate's foot being amputated after medical staff failed to provide antibiotics for a bone infection.¹²

2. Brazoria County, Texas

Brazoria County jail and the county sheriff have a concerning record of reported abuse and claims of failure to provide necessary monitoring and medical care. In February, a lawsuit was filed by the parents of a woman who committed suicide while being held in the county jail. The jail knew she had a history of attempting suicide, which she did previously while in their custody. Indeed, she was released on probation on condition that she take medication. When she was rearrested the jail confiscated her medication, resulting in near-immediate symptoms and an attempt to commit suicide. The jail placed her at the maximum level of suicide risk, but she was placed in a cell not outfitted for suicidal persons. Although other inmates heard the woman beg for her medication and for help, the jail staff did not respond and she hanged herself.¹³

Another person passed away as a result of diabetes complications that were left untreated. Although medical staff prescribed the individual insulin and repeatedly evaluated him, they consistently determined that he was healthy, even forty-five minutes before he died.¹⁴ A paraplegic individual, detained at the county jail for unpaid parking tickets, was denied a request for a catheter needed to urinate and forced to soil himself. When asked for help again, multiple jailers entered the individual's cell and moved him to a new cell where upon removing the individual's clothing the officers kneeled on his legs and twisted his limbs, breaking his right leg in the process. The officers then left the individual naked, injured, and lying in his own urine overnight.¹⁵

Multiple reports of sexual assault by county sheriff's deputies have been recorded. In two instances, women pulled over for speeding were subjected to sexually inappropriate searches and pat-downs. In one the woman immediately reported the incident and was contacted by the Sheriff's Office which informed her that the same deputy previously sexually assaulted another woman.¹⁶ Two other women were pulled over for speeding by local male law enforcement and ordered out of their vehicle after an alleged marijuana odor. The officer requested backup and a male sheriff's deputy arrived along with a female officer from the local department. While the

to dismiss, but the court granted summary judgment because the plaintiff failed to present any evidence of his eyesight without glasses).

¹⁰ McLeod v. Anderson, No. 08-mc-41, 2008 WL 3316606 (S.D. Tex. Aug. 7, 2008).

¹¹ Daniels v. Aransas Cnty., No. 08-cv-172, 2009 WL 385475 (S.D. Tex. Feb. 13, 2009).

¹² McLeod v. Anderson, No. 08-mc-41, 2008 WL 3316606 (S.D. Tex. Aug. 7, 2008).

¹³ Gray v. Brazoria Cnty., No. 16-cv-109, 2017 WL 713797 (S.D. Tex. Feb. 23, 2017).

¹⁴ McPeak-Torres v. Brazoria Cnty., No. 12-cv-75, 2015 WL 10550410 (S.D. Tex. Sept. 30, 2015).

¹⁵ Harkless v. Brazoria Cnty., No. 14-cv-329, 2016 WL 1702595 (S.D. Tex. Apr. 28, 2016).

¹⁶ Harrold v. Burrows, No. 13-cv-395, 2014 WL 1760911 (S.D. Tex. May 1, 2014).

two male officers watched, the female officer performed a digital vaginal and anal cavity search on each woman at the roadside using the same gloves used to search the vehicle. The county sheriff and local law enforcement settled the case.¹⁷

3. Chambers County, Texas

Even without 287(g) authority, Sheriff Brian Hawthorne has made alarming comments that cast doubt on his commitment to bias-free policing and on his understanding of immigration enforcement as a federal responsibility. For example, he stated that: "In my county, if you are arrested we question you, we determine what your status is, if you're an illegal immigrant we place a detainer and we turn you over to ICE."¹⁸

4. DeWitt County, Texas

In a recent lawsuit, a plaintiff alleged denial of medical care for an 8-inch cut, other injuries from walking around in brush, and panic attacks that he reported upon his admission to the DeWitt County Jail.¹⁹

5. Galveston County, Texas

There are serious and recurring problems at the Galveston County Jail and with police departments feeding into it. Consider the case of Jesse Jacobs. When Mr. Jacobs reported to Galveston County Jail in March 2015 to serve a sentence, he brought his prescription medications for severe panic disorder and anxiety, along with a letter from his doctor explaining that it was "imperative" he continue taking his medication. A medical technician accepted this information but gave contradictory answers about whether Mr. Jacobs would receive his medication. In fact, Galveston County Jail has a blanket policy prohibiting distribution of benzodiazepines, and the jail had been cited in the past for refusing to distribute prescribed medications.

The jail allegedly denied Mr. Jacobs his prescribed medication, without any mental health evaluation. He experienced severe withdrawal symptoms including a grand mal seizure on his fourth day in custody. Jail staff gave him water and Gatorade and moved him to an isolation cell. Jail staff finally notified medical personnel after the third seizure, but the doctor did not examine Mr. Jacobs and instead prescribed a medication sight unseen. Mr. Jacobs had an additional seizure, which went untreated, and he was discovered unresponsive, without a pulse, in a puddle of his own feces on his seventh day in custody. He died at a hospital the next day.

In this pending case, the court has permitted discovery limited to qualified immunity on Eighth Amendment and state law claims against the Sheriff.²⁰

¹⁷ Hamilton v. Kindred, 845 F.3d 659 (5th Cir. 2017).

¹⁸ Michael Barajas, *Stop Calling Houston a "Sanctuary City"*, HOUSTON PRESS, Mar. 18, 2015, available at <http://www.houstonpress.com/news/stop-calling-houston-a-sanctuary-city-6729418>.

¹⁹ Kelley v. DeWitt Cnty. Sheriff's Office, No. 15-cv-62, 2016 WL 2961099 (S.D. Tex. May 23, 2016).

²⁰ Jacobs v. Trochesset, No. 16-cv-65, 2016 WL 6493437, (S.D. Tex. Nov. 2, 2016); Jacobs v. Trochesset, No. 16-cv-65, 2016 WL 6518420 (S.D. Tex. Nov. 2, 2016).

In another pending action, a detained man had a minor verbal dispute with a guard at the Galveston County Jail. Two guards allegedly threw the plaintiff to the ground and kicked and punched him while he was shackled.²¹

Local police departments also have troubling records. In one recent case, the plaintiff was pulled over by Texas City police officers. He says he complied with an officer's request that he produce his license, but refused to roll his window down more than 1/3 of the way. The officer then ordered the plaintiff out of the vehicle, and she and her partner began to "pummeled" the plaintiff, dragging him to the ground and kneeling on his back. The officers then allegedly falsely arrested the plaintiff for resisting arrest.²²

In a second case, two Galveston police officers executing an arrest warrant against the plaintiff allegedly deliberately hit him with their car. After the plaintiff was cuffed face down on the ground, one officer said "remember me, motherfucker" and kned him in the side of the head.²³

Finally, the surrounding area around Galveston County has been the site of legal actions because of anti-immigrant animus. After a bench trial in 2013, a court assessing a League City police department special order aimed at day laborers concluded that it violated the First Amendment. Plaintiffs were an association of day laborers, almost all of whom were Latino men. A construction boom had brought many day laborers to League City. The most suitable way for day laborers to find work was to gather in public places and gesture to passing cars, which they did for years. The League City Police Department determined that gathering sites would be "shut down," and issued a special order requiring aggressive enforcement of the city's anti-solicitation ordinance against day laborers. The court found no evidence that non-Latino day laborers were treated differently than Latino day laborers, and no explicit statements of racial bias; however, groups other than day laborers were permitted to gather and solicit donations in public places, making the order unconstitutional.²⁴

6. Matagorda County, Texas

In 2011, an inmate in Matagorda County Jail, Andrew Mendoza, who had told arresting officers that he was suicidal, committed suicide. His mental health screening conducted at the jail on arrival in December 2010 showed that he was suffering from suicidal tendencies, had been previously diagnosed with suicidal tendencies, had attempted to commit suicide, and was in need of mental support services. He was booked into a regular jail cell and was not placed on suicide watch. In mid-January, he made suicidal statements to the guards and was moved to a protective cell for suicide watch. Sometime thereafter, he was taken off suicide watch and returned to a regular cell, where he committed suicide shortly thereafter.²⁵

7. Montgomery County, Texas (claims not to have applied for a 287(g) agreement)

²¹ Springer v. Unknown Rekoff, No. 14-cv-300, 2016 WL 5372526 (S.D. Tex. Sept. 26, 2016).

²² Reed v. City of Texas City, 161 F.Supp.3d 474 (S.D. Tex. 2015).

²³ Florence v. Garcia, No. 11-cv-134, 2014 WL 7405725 (S.D. Tex. Dec. 30, 2014).

²⁴ Jornaleros de las Palmas v. City of League City, 945 F. Supp. 2d 779 (S.D. Tex. 2013).

²⁵ Mendoza v. Texana Ctr., No. CIV.A. G-13-60, 2014 WL 357412, *1 (S.D. Tex. Jan. 31, 2014).

In 2012, the Southern District of Texas allowed allegations of excessive force and illegal detention against the County to proceed to discovery where Montgomery County Sheriff's deputies had been called to the plaintiff's home, executed a forcible takedown causing him injury, and delayed his transportation to the hospital.²⁶

In the Montgomery County Jail, there have been ten suicides since 2007.²⁷

8. Refugio County, Texas

In 2013, the Southern District of Texas allowed allegations of excessive force against two Refugio County corrections officers to proceed to discovery where the plaintiff alleged that they repeatedly slammed him into the holding cell's cement floor and walls and jerked his arm behind his back, breaking it.²⁸

In 2009, the Southern District of Texas allowed allegations of sex discrimination, sexual harassment, and unlawful retaliation against Refugio County to proceed to discovery where the plaintiff, a Sheriff's Deputy, alleged that females were treated less favorably than males, subjected to harassment (including requests for sexual favors, comments about female deputies' bodies, and sexual emails), and forced to resign due to a hostile work environment.²⁹

9. Knox County, Tennessee

The Knox County Sheriff's application for a 287(g) agreement was previously denied. He then stated intent, nevertheless, to enforce federal immigration law as he sees fit by holding individuals merely suspected to have violated federal immigration laws in his detention facility: "stack[ing] these violators like cordwood." This runs contrary not only to the Constitution, but also to the county's safety and security.³⁰

Since the initial denial of immigration authority to this Sheriff, detention conditions have only gotten worse. By the Sheriff's own admission, overcrowding at the county detention facility is at an all-time high, resulting in double-bunking of inmates and the lack of facilities to house people with mental disabilities.³¹

The Knox County Detention Facility has experienced multiple allegations of abuse. One such egregious case involved an individual with mental health needs and cerebral palsy who was tackled, had his head slammed against the concrete floor, and received a vicious blow to his testicles from detention facility staff. Following this assault he was placed in a "restraint chair" as punishment, preventing his legs, arms, and torso from moving. The use of such chairs is

²⁶ *Harvey v. Montgomery Cty., Tex.*, 881 F. Supp. 2d 785, 799 (S.D. Tex. 2012).

²⁷ <http://texasjusticeinitiative.org>

²⁸ *Huff v. Refugio Cty. Sheriff's Dep't*, No. 6:13-CV-00032, 2013 WL 5574901, *3 (S.D. Tex. Oct. 9, 2013).

²⁹ *Brown v. Refugio Cty.*, No. CIV.A V-09-49, 2009 WL 4231993, *2 (S.D. Tex. Nov. 19, 2009).

³⁰ Letter from ACLU of Tennessee to Sheriff Jimmy Jones, Knox County Sheriff's Office (Aug. 28, 2013).

³¹ WBIR Staff, *Jail Overcrowding at 'All-Time' High*, WBIR, September 30, 2015, available at <http://www.wbir.com/news/sheriff-jail-overcrowding-at-all-time-high/311586829>.

expressly prohibited by Knox County Detention Facility policies, but they had been used for many years and resulted in numerous lawsuits.³² The restraint chair was outside security camera view, contrary to another policy, and the individual was restrained in the chair for nearly forty-eight hours. Upon release he wasn't evaluated by medical staff.³³

Another man known by the Knox County Detention Facility to have bipolar disorder and a drug addiction was given a medical evaluation upon entering which noted the extent of his drug use and possibility of withdrawal. No follow-up evaluation occurred and no treatment was provided; the individual wasn't kept in the facility's medical unit. During a shift change, against policy, the individual was left unmonitored and later found hanging from his cell. After seven days he died in a hospital. No investigation to determine how this incident occurred was undertaken by the Knox County Sheriff's Office.³⁴

In 2016, Knox County settled a lawsuit based on inadequate medical care for a broken neck that went undiagnosed and untreated for nearly three months. This follows the county settling the videotaped beating of an inmate with a mental disability.³⁵ It would be shameful for DHS to partner with a jurisdiction like the Knox County Sheriff's Office given its record of abuse as well as its horrific jail conditions.

In light of these concerns, we urge DHS to deny all of 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 program is inherently flawed and, moreover, the nine proposed jurisdictions discussed in this letter have records demonstrating that they are unable to assume this responsibility without constitutional and civil rights violations.

Please contact Chris Rickerd, Policy Counsel, [REDACTED], with any questions.

Sincerely,



Chris Rickerd
Policy Counsel

³² Jamie Satterfield, *Lawsuit Alleges "Be Sweet" Chair is Back as Torture Tactic At Knox County Jail*, KNOXVILLE NEWS SENTINEL, (Sept. 24, 2015), available at <https://www.correctionsone.com/staff-misconduct/articles/9508016-Lawsuit-alleges-be-sweet-chair-is-back-as-torture-tactic-at-Knox-County-jail/>.

³³ *Simmons v. Knox County et al.*, Case No. 3:15-cv-00425 (E.D. Tn.).

³⁴ *Porter v. Knox County*, Case No. 3:17-cv-000144 (E.D. Tn.).

³⁵ Jamie Satterfield, *Knox Taxpayers Again Face Bill in Jail Civil Rights Litigation*, KNOXVILLE NEWS SENTINEL, (Mar. 18, 2016), <http://archive.knoxnews.com/news/crime-courts/knox-taxpayers-again-face-bill-in-jail-civil-rights-litigation-2e5958e2-cbcf-4445-e053-0100007f1080-372612341.html>.