



Northern
California

March 12, 2018

Via First-Class U.S. Mail & E-mail

Sheriff David Livingston
Captain Kristi Butterfield
Contra Costa County Office of the Sheriff
651 Pine Street
Martinez, CA 94553

David Jennings, Field Office Director
Richard Chang, Assistant Field Office Director
San Francisco Enforcement and Removal Operations Field Office
U.S. Immigration and Customs Enforcement
630 Sansome Street, Rm 590
San Francisco, CA, 94111

Re: Termination of CIVIC Visitation Program at West County Detention Facility

Dear Sheriff Livingston, Captain Butterfield, Field Office Director Jennings, and Assistant Field Office Director Chang:

The American Civil Liberties Union Foundation of Northern California, along with the undersigned organizations, writes to express our deep concerns regarding the termination on March 6, 2018 of the visitation program operated by Community Initiatives for Visiting Immigrants in Confinement (“CIVIC”) for people held in immigration detention at the West County Detention Facility (“WCDF”). In addition, we are troubled by the termination on February 15, 2018 of CIVIC’s free and unmonitored telephone extension at WCDF through the Immigration and Customs Enforcement (“ICE”) pro bono extension platform.

The actions of the Contra Costa County Sheriff’s Office’s (“CCCSO”) and ICE appear to be retaliation for CIVIC volunteers having spoken to reporters and published concerns about the mistreatment of detainees at WCDF, an exercise of their First-Amendment-protected right of free expression. Government entities are constitutionally prohibited from punishing a person for the content of her speech, even if that punishment takes the form of revoking a freely-given privilege or benefit. *See, e.g., Hyland v. Wonder*, 972 F.2d 1129, 1134-35 (9th Cir. 1992). In fact, courts have held that government entities may violate the First Amendment

American Civil Liberties Union Foundation of Northern California

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when, in response to criticism, they terminate volunteer positions or obstruct volunteer access to inmates in correctional facilities. *See id.* at 1135-36 (holding termination of government volunteer position actionable under the First Amendment, in part because volunteer work “provides an individual the satisfaction of making a contribution, or giving something back, to society”); *McCollum v. California*, No. C04-03339 CRB, 2006 U.S. Dist. LEXIS 58026, at *22-*23 (N.D. Cal. Aug. 8, 2006) (holding plaintiff had stated First Amendment retaliation claim by alleging that correctional facility had punished his speech by hindering his ability to visit inmates as volunteer chaplain). *See also Mosely v. Bd. of Educ.*, 434 F.3d 527, 535 (7th Cir. 2006) (holding that retaliatory acts against volunteer were actionable because “she cannot be muzzled or denied the benefit of participating in public school governance because she engaged in constitutionally protected activity”).

CIVIC’s visitation programs at WCDF and at other immigration detention facilities nationwide have enabled local community members and people in immigration detention to engage in visits that are crucial to supporting immigrants’ well-being while in detention. Since 2011, CCCSO and ICE’s Enforcement and Removal Operations (ERO) San Francisco Field Office have worked in tandem with CIVIC to facilitate the visitation program at WCDF. The program is staffed by people from local faith-based communities, universities, nonprofit organizations, and other interested individuals. CCCSO has provided CIVIC volunteers with space in the WCDF visitation room to meet and talk with people in immigration detention every Friday. Alongside the visitation program, ICE has facilitated contact between people held in immigration detention and CIVIC staff and volunteers by providing CIVIC with a free and unmonitored phone extension through its pro bono telephone platform.

As legal service providers, community groups and advocates who have regular contact with people in immigration detention at WCDF and other immigration detention facilities, we have seen firsthand the benefits that CIVIC’s visitation programs provide. Many immigrants detained at WCDF, especially people who are transferred there upon requesting asylum at U.S. land borders or airports, are unable to contact people on the outside when they arrive at the facility. Others are incarcerated far from their loved ones or cannot communicate with them due to the exorbitantly expensive phone call costs charged by Global Tel Link, the inmate telecommunications contractor at WCDF. As a result of their profound seclusion from the outside world, people in immigration detention at WCDF struggle to connect with family, friends, and support systems that are necessary to their emotional well-being. They also need help obtaining support, including evidence, documents, entry into rehabilitation programs, and sponsors for their release and immigration cases. CIVIC volunteers assist them with these crucial tasks that are difficult to accomplish while in detention and help to alleviate sensations of isolation and powerlessness.

ICE has recognized the unique and beneficial role played by visitation programs offering support to people in immigration detention. ICE has granted access to visitation programs at over 40 detention centers across the country. Most recently, in March 2017, Acting ICE Director Thomas Homan responded to a civil rights complaint filed by CIVIC regarding visitation access restrictions and denials with the following statement: “ICE appreciates the work of CIVIC and other community-based visitation programs operating around the country. It is our strong desire to continue to facilitate the work of CIVIC in the area of visitation.”

Despite many years of a successful visitation program at WCDF, it has recently encountered a series of access restrictions and denials:

- On February 15, 2018, the telephone extension granted to CIVIC on the ICE pro bono system was terminated with no advance warning or subsequent explanation.
- On February 20, 2018, CCCSO suspended the clearance of Rebecca Merton, CIVIC visitation program coordinator, to visit people in immigration detention. CCCSO stated, without explanation, that Ms. Merton violated CCCSO policies and procedures in her interactions with detainees. CCCSO did not respond to Ms. Merton’s inquiries regarding the details of these alleged violations. Ms. Merton has been unable to visit people in immigration detention at WCDF since that time.
- On March 5, 2018, Captain Kristi Butterfield of WCDF sent an email to Ms. Merton stating, “[e]ffectively immediately, all privileges for CIVIC and its’ volunteers will be revoked.” According to the email, the termination of the visitation program occurred because “through emails, phone calls, *radio and newspaper interviews*” of volunteers many of CCCSO’s policies and procedures had been violated. (Emphasis added.) Captain Butterfield sent an email the following day to all CIVIC volunteers identical in all respects, except with a sentence providing the volunteers with an opportunity to contest the decision by email.

The timing of the decision to terminate the CIVIC visitation program at WCDF raises serious concerns that the termination was motivated by the First Amendment-protected activity of volunteers, rather than by alleged violations of CCCSO policies and procedures. CIVIC has been engaged in the same types of visitation activities for several years with few, if any, problems. But in November 2017, CIVIC volunteers publicly expressed their concerns about degrading conditions and systemic abuses suffered by people held at WCDF. For example, a San Francisco Chronicle article about the suffering experienced by people at WCDF

was published after the author visited WCDF and spoke to people detained there.¹ This article quoted a CIVIC volunteer who confirmed accounts of women being held in their cells at WCDF for up to 23 hours each day, often without being able to access bathrooms. Subsequent articles in November 2017 and January 2018 also quoted CIVIC volunteers, Ms. Merton, and other community members providing their knowledge of improper treatment by CCCSO Deputies of people held by WCDF—including denial of bathroom access, restriction on hygiene items, and inadequate medical care—and their ongoing concerns over such treatment.²

Also in November and December 2017, CIVIC published a letter and petition on its immigration detention blog IMM-PRINT that was written and signed by twenty-seven women detained at WCDF.³ In it, the women demanded humane conditions. CIVIC has also published accounts by its volunteers about detainee experiences at WCDF. The concerns raised and expressed to the public by CIVIC volunteers led to calls for official investigation of WCDF by State Senator Nancy Skinner, U.S. Congressman Mark DeSaulnier, and U.S. Senator Dianne Feinstein.⁴

Moreover, the purported policy violations cited by CCCSO as the basis for the program termination are mainly longstanding practices of CIVIC volunteers that CCCSO has long been aware of. Using CIVIC's standard practices to justify the termination, on the heels of the volunteers' First Amendment-protected activity, raises a strong inference that the reasons given are pretextual. Though Captain Butterfield notified Ms. Merton of the program termination on Monday, March 5, it was only on Thursday, March 7, after sustained public attention over the program termination, that CCCSO provided details of the alleged policy and procedure violations. Citing a "investigation," CCCSO alleged that CIVIC volunteers violated policies by providing their personal phone numbers and address to people detained in WCDF, relaying messages to family and friends of those people, receiving phone calls and mail from them, and depositing funds into commissary accounts. Several of the policies cited are specific to employees and do not seem applicable to the stated and known purpose of CIVIC's visitation program. Moreover, CCCSO has long been aware of contact by phone and mail between people in immigration detention at WCDF and CIVIC volunteers, as they screen and monitor detainee

¹ See Otis R. Taylor Jr., "Deportation Chosen Over Richmond Jail; Complaints Under Investigation," S.F. Chronicle, Nov. 2, 2017, <http://bit.ly/2tqC8gW>.

² See Otis R. Taylor Jr., "Calls to Investigate ICE Jail in Richmond," S.F. Chronicle, Nov. 8, 2017, <http://bit.ly/2G7s1QO>; Otis R. Taylor Jr., "Conditions Worsen for Some ICE Detainees at Richmond Jail," S.F. Chronicle, Nov. 10, 2017, <http://bit.ly/2IdQHb3>; Otis R. Taylor Jr., "Mistreatment at the Richmond Jail? There Is None, Sherriff Says," S.F. Chronicle, Jan. 4, 2018, <http://bit.ly/2p0uCUF>.

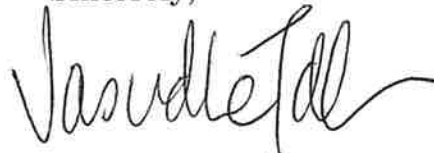
³ "We Are Being Treated Differently. We Only Want To Be Treated with Respect," Imm Print, Nov. 9, 2017, <http://bit.ly/2huQxDF>; "Por eso hoy levanto la voz junto con mis compañeras / Today I raise my voice with my compañeras," Imm Print, Nov. 30, 2017, <http://bit.ly/2p3LIRk>; "CIVIC Spotlight: West County Detention Facility Visitation Group," Imm Print, Dec. 16, 2017, <http://bit.ly/2p2JEcr>.

⁴ Otis R. Taylor Jr., "Immigrant Complaints of East Bay Jail Conditions Prompt Call for U.S. Probe," S.F. Chronicle, Nov. 28, 2017, <http://bit.ly/2G7SrSA>.

mail and phone calls. Indeed, ICE facilitated phone contact between detainees and CIVIC volunteers by providing a pro bono phone extension for this purpose. Finally, CCCSO has provided no details on “contraband” that CIVIC volunteers allegedly sent to detainees.

The past cooperation of ICE and CCCSO with CIVIC has enriched the lives not only of the people detained at WCDF but also of the volunteers who meet with them. The recent actions by ICE and CCCSO have disserved CIVIC, its volunteers, and many people in WCDF that rely upon their support. We urge the Contra Costa County Sheriff’s Office and ICE to immediately reinstate the CIVIC visitation program at WCDF as well as CIVIC’s free and unmonitored telephone extension through the ICE pro bono extension platform.

Sincerely,



Julia Harumi Mass
Senior Staff Attorney

Vasudha Talla
Staff Attorney

ACLU Foundation of Northern
California

On behalf of:

Adjunct Justice
Alameda Labor Council, AFL-CIO
Bend the Arc Jewish Action
Beyt Tikkun Synagogue-without-walls
Block-by-Block Organizing Network
California Sanctuary Campaign
California Coalition for Women Prisoners
California Immigrant Policy Center (CIPC)
California Immigrant Youth Justice Alliance (CIYJA)
California Nurses Association
Clergy and Laity United for Economic Justice (CLUE)
Community Clinic Consortium
Contra Costa Immigrant Rights Alliance (CCIRA)
Contra Costa Progressives

Council on American-Islamic Relations, San Francisco Bay Area Office
Courageous Resistance El Sobrante /Richmond
Creating Freedom Movements: more justice, more joy
Democratic Socialists of America Burlingame Chapter
Detention Watch Network (DWN)
Disability Studies Program, University of California, Berkeley
Dolores Street Community Services
East Bay Alliance for a Sustainable Economy (EBASE)
East County for Immigrant Rights and Education (ECFIRE)
Ecumenical Peace Institute/Clergy and Laity Concerned
El Cerrito Progressives
End Solitary Santa Cruz County
Faith Alliance for a Moral Economy (FAME)
Faith In Action Bay Area, PICO CA
First Friends of NJ & NY
Friends of Broward Detainees
Friends of Miami-Dade Detainees
Iglesia Luterana Santa Maria y Santa Marta
Immigrant Legal Resource Center (ILRC)
Indivisible 4 Immigration
Indivisible East Bay
Interfaith Movement for Human Integrity
Jeff Adachi, Public Defender of San Francisco
Jewish Family & Community Services East Bay
Jewish Voice for Peace – Bay Area
JeWitch Collective
Kehilla Community Synagogue
Kern Welcoming and Extending Solidarity to Immigrants (KWESI)
La Raza Centro Legal
Lamorinda Sanctuary
Las Cruces CIVIC
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Media Alliance
Migrant Rights Collective
Mill Valley Community Action Network
Mobilize the Immigrant Vote
Monument Impact
Mt. Diablo Peace and Justice Center
Mt. Diablo Unitarian Universalist Church Social Justice Council
Multifaith Immigration Coalition for Action (MICA)
National Immigrant Justice Center (NIJC)
National Lawyers Guild (NLG), Sacramento Chapter
Network of Spiritual Progressives
New Hampshire Immigrant Visitation Program

NorCal Resist
Oakland Community Organizations (OCO)
Oakland Privacy
Organizing For Action (OFA) Contra Costa
Pangea Legal Services
Priority Africa Network
Pueblo Sin Fronteras
Queer Detainee Empowerment Project (QDEP)
Reuniting Families Contra Costa
Riverside Sojourners Detention Visitation Program
Root & Rebound
San Francisco Peninsula People Power
San Francisco Zen Center
Sanctuary Santa Cruz
Santa Cruz Community Coalition to Overcome Racism (SCCCCOR)
Services, Immigrant Rights, and Education Network (SIREN)
Shomeret Shalom Global Congregation
Showing Up for Racial Justice (SURJ) Marin
Sisters of Mercy Solidarity Committee
Sisters of Mercy of the Americas – Institute Justice Team
Sisters of Mercy West Midwest Community
Sleepy Hollow Presbyterian Church
Society for Immigrant and Refugee Rights (SIRR) at Columbia Law School
Solidarity Action Minyan of Congregation Chochmat HaLev
Street Level Health Project/Proyecto de Salud para Todos
Together We Will Contra Costa Community Action Group
Unitarian Universalist Church of Palo Alto Action Council
Unitarian Universalist Fellowship of Redwood City (UUFRC) Social Action
Committee.
Wellstone Democratic Renewal Club
World Institute on Disability
YVote