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CC: Megan H. Mack
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U.S. Department of Homeland Security
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August 25, 2015

Re: Unlawful Termination of Etowah Visitation Project at the Etowah County Detention Center

Dear Madam and Sirs:

We write to express our concern regarding the termination of visits by the Etowah Visitation Project at the Etowah County Detention Center (ECDC) on July 27, 2015. Since November 2013, the Etowah Visitation Project, an affiliate of Community Initiatives for Visiting Immigrants in Confinement (CIVIC), has worked to end the isolation of detainees at ECDC by enabling community volunteers to meet with detainees and provide them much-needed contact

with the outside world. The program's termination at ECDC, announced just days after CIVIC filed a complaint regarding alleged abusive conditions at ECDC with the Department of Homeland Security (DHS), is impermissible retaliation for CIVIC's First Amendment-protected expression. The program's termination also creates the clear appearance that the Etowah County Sheriff's Department and Immigration and Customs Enforcement (ICE) are attempting to silence critics and limit the public's awareness of alleged abusive conditions in immigration detention at ECDC.

Since November 2013, the Etowah Visitation Project has operated with formal approval by the Etowah County Sheriff's Department and the ICE New Orleans Field Office. During this time, the Etowah Visitation Project has provided support to dozens of men detained by ICE at ECDC. Like the forty other visitation groups affiliated with CIVIC around the country, the Etowah Visitation Project enables volunteers from local community groups, including faith-based groups and civic organizations, to visit with detainees who request the opportunity to meet. These visitations are conducted via ECDC's video visitation system on a monthly basis.

The Etowah Visitation Project provides individuals in detention—including those who suffer from extreme loneliness, isolation, and depression—an important connection to the outside world. This support is particularly crucial for those detained at ECDC, as the facility is located in a remote location often very far from detainees' families, communities, and legal counsel, and houses many individuals in prolonged detention because of the government's difficulty in facilitating removal.

On July 14, 2015, CIVIC filed a formal complaint with the Director of ICE, the Inspector General of DHS, and DHS's Officer for Civil Rights and Civil Liberties (hereinafter "DHS Complaint" or "complaint"). The complaint, based on first-hand accounts by former ECDC detainees, Mr. Sylvester Owino and Mr. Miguel Williamson, as well as eighteen current and former detainees,¹ raised several allegations of serious abuse suffered by immigrant detainees at ECDC. The complaint alleged that ICE staff at ECDC engaged in a routine pattern of physical abuse, including beating and assaults, to coerce detainees into signing removal documents. The complaint also described detainees' claims that ECDC and ICE staff violated medical and mental health care standards, had failed to appropriately respond to an extreme medical emergency, chronically understaffed the facility, failed to meet detainees' basic nutritional needs, and impermissibly held detainees in prolonged, indefinite detention. This complaint has attracted significant public interest; several media outlets have since covered the complaint brought by CIVIC and ECDC detainees.²

The filing of the complaint followed an organized Father's Day event in front of ECDC on June 20, 2015, attended by Mr. Owino and staff and volunteers of CIVIC and the Etowah

¹ Other detainees requested identification under pseudonym for protection in the complaint.

² See, e.g. Kate Linthicum, *Advocates Claim Detainees Were Abused at Alabama Immigrant Detention Center*, LA Times, Jul. 14, 2015, available at <http://www.latimes.com/local/lanow/la-na-etowah-immigrant-detention-20150714-story.html>; Alex Aubuchon, *Immigrant Inmate Treatment Complaint*, Alabama Public Radio, Jul. 20, 2015, available at <http://apr.org/post/immigrant-inmate-treatment-complaint-new-state-broadband-office>; Esther Yu-Hsi Lee, *Immigrants Face "Mental Torture" at Detention Center That Was Supposed to Be Shut Down*, Thinkprogress, Jul. 17, 2015, available at <http://thinkprogress.org/immigration/2015/07/17/3681581/etowah-civil-rights-complaint/>.

Visitation Project. Local community members held the event as an expression of sympathy and emotional support for men in detention and their families, and to raise public awareness about immigrant detention issues. Mr. Owino, who had been held in immigration detention for nine years and four months, including almost two years at ECDC before winning release on bond, spoke about his experience at the event. Event organizers were later informed by ECDC staff that day that Sheriff Entrekin was “very upset” that Mr. Owino had returned to the facility for the event.

On July 27, 2015, less than two weeks after the filing of the complaint with DHS, the Etowah County Sheriff’s Department informed Ms. Katherine Weathers, a volunteer with the Etowah Visitation Project, that it was “ending all ties” with the group. The next day, on July 28, 2015, Ms. Weathers emailed the Sheriff’s Department for further information, but did not receive a response. On August 3, 2015, Ms. Christina Mansfield, Co-Executive Director of CIVIC, sent an email inquiry to the ICE New Orleans Field Office about the termination of access. Ms. Mansfield also sent an email inquiry to Mr. Andrew Lorenzen-Strait, Deputy Assistant Director, Custody Programs and Community Outreach at DHS. On August 7, 2015, Mr. Brian Acuna, Assistant Field Office Director for the ICE New Orleans Field Office, stated that the agency would issue a formal response from its national office. On August 11, 2015, Mr. Richard Rocha, Communications Advisor for ICE provided an email reply, stating that detention visitation programs are “unique programs that are allowed pursuant to the approval and continued endorsement of the local detention center—which in this case is overseen by the Sheriff.” Mr. Rocha further noted that “if the Sheriff has decided to discontinue the program at this time, we fully respect his decision and defer to the Sheriff’s Department for additional information.”

On the following day, August 12, 2015, during a regularly-scheduled appointment, an ICE Deportation Officer informed Mr. Miguel Williamson, a former ECDC detainee named in the DHS Complaint, that ICE intended to place him back in immigration detention. Mr. Williamson, who suffered from a heart attack and kidney failure while detained by ICE, was released on April 15, 2015 after approximately 19 months of detention, and after ICE declined to show cause for his detention after he filed a motion for *habeas corpus*. The ICE officer stated that ICE had decided to re-detain Mr. Williamson because he had no current immigration appeal pending in the courts. Nothing, however, had changed in Mr. Williamson’s legal case, other than the filing of the DHS Complaint alleging abuse at ECDC. After Mr. Williamson filed an expedited motion for release the day he was re-detained, ICE decided to release him.

The termination of the Etowah Visitation Project at ECDC and threats to re-detain individuals named in the DHS Complaint are not isolated episodes of retaliation. The Etowah Visitation Project’s termination at ECDC takes place in a larger context of retaliation against visitation programs. In 2013, ICE suspended three visitation programs in Southern California after CIVIC and its members made blog posts and comments on Facebook voicing concern about the treatment of immigrant detainees by the agency.³ In early 2014, ICE terminated a CIVIC-affiliated visitation program at the Otay Detention Facility in San Diego, California, after the

³ Kate Linthicum, *U.S. Suspends Visitation Programs at 3 Immigrant Facilities in Southland*, L.A. Times, Aug. 20, 2013, available at <http://articles.latimes.com/2013/aug/20/local/la-me-immigrant-detention-20130820>.

program raised concerns about alleged sexual abuse in the facility.⁴ In late 2014, ICE also terminated visitation by the Friends of Broward County Detainees, a visitation program at the Broward Transitional Center in Pompano Beach, Florida, after the program's coordinator, Dr. Christine Ho, presented testimony on immigration detention at a Congressional Hearing hosted by U.S. Representatives Joe Garcia and Ted Deutch. In light of First Amendment concerns raised by legal advocates, all of these visitation programs have since been reinstated without need for further legal action.

The termination of the Etowah Visitation Project at ECDC in retaliation for CIVIC's complaint to DHS likewise raises serious First Amendment concerns. Federal agencies, as well as "municipal government[s] vested with state authority" have "no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). Government entities are constitutionally prohibited from "proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992) (multiple citations omitted).

For this reason, the First Amendment prohibits the retaliatory discipline, suspension, or termination of volunteers for public criticism of a government entity. See *Rodin v. City of Coral Springs, Florida*, 229 F. App'x. 849 (11th Cir. 2007) (per curiam) (finding city's retaliatory suspension of volunteer for speech criticizing agency in violation of First Amendment); *Mosley v. Bd. of Educ.*, 434 F.3d 527, 534-35 (7th Cir. 2006) (concluding that volunteer could bring First Amendment claims for retaliation due to protected speech); *Brown v. Disciplinary Comm. of Edgerton Volunteer Fire Dep't*, 97 F.3d 969 (7th Cir. 1996) (concluding that volunteers may sue for deprivation of First Amendment rights based on retaliation for criticism of government entity); *Hyland v. Wonder*, 972 F.2d 1129 (9th Cir. 1992) (finding First Amendment violation where agency obstructed volunteer's access to juvenile detainees in retaliation for public criticism). The Etowah County Sheriff Department and ICE's retaliatory termination of the Etowah Visitation Project at ECDC clearly violates the First Amendment's prohibitions against content and viewpoint discrimination.

It appears the termination of the Etowah Visitation Project was taken in retaliation for efforts to raise public awareness of alleged conditions at ECDC and to deter visitation of detainees by community organizations, in conflict with ICE detention standards. As ICE's 2011 Performance-Based National Detention Standards (ICE Detention Standards) provide, detainees must be provided the opportunity to speak freely to the public; detention facilities may not "in any way retaliate against a detainee for lawful communication with a member of the media or a member of the public." ICE Performance-Based National Detention Standards § 7.7.V.4 (2011, as modified by February 2013 errata). ICE Detention Standards further specify that "[d]etainees shall be able to receive visits from legal representatives . . . and others in the community." Standards § 5.7.II.1. The termination of the Etowah Visitation Project undermines public trust, transparency, and confidence in ICE and ECDC, while further isolating detainees.

⁴ Erika Eichelberger, *Watchdog: Feds Are Muzzling Us for Reporting Alleged Immigrant Detainee Sex Abuse*, Mother Jones Magazine, Mar. 19, 2014, available at <http://www.motherjones.com/politics/2014/03/ice-sexual-abuse-immigrant-detention-oversight>.

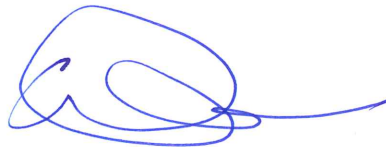
ECDC's Policy and Procedure Manual itself provides that "representatives of community service organizations, including civic, religious, cultural, therapeutic, and other groups" may visit detainees. ECDC Policy & Procedures, Visitation § III.M. Notably, the Etowah Visitation Project has complied with guidelines required by ECDC for visitation of detainees, including prior verification of "the organization's bona fide interests and qualifications for this kind of service." *Id.*

The termination of the Etowah Visitation Project at ECDC violates the First Amendment's prohibitions against discrimination for protected speech, and conflicts with ICE's own standards. The project's termination, moreover, undermines trust and accountability of government institutions, dissuades public service by community organizations, and further isolates vulnerable detainees. We thus request that the Etowah County Sheriff's Department and ICE immediately reinstate the Etowah Visitation Project at ECDC, and provide written confirmation that visitor volunteers with the Etowah Visitation Program will be allowed to resume visitation immediately. We further request written confirmation that ICE will clarify its policies to reflect that visitors nationwide cannot be denied access in retaliation for expression protected by the First Amendment. Please contact Eunice Cho at 404-521-6700 or at eunice.cho@splcenter.org with any questions.

Sincerely,



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Katherine Weathers
Program Coordinator
Etowah Visitation Program