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May 2, 2012

Via U.S. Mail

Sheriff Lou Vallario
Garfield County Sheriff's Office
107 8th Street
Glenwood Springs, CO 81601

Dear Sheriff Vallario,

We are writing to inform you of a concerning practice in the Garfield County Sheriff's Department (GCSD) of which you may not be aware – employees of GCSD are perhaps unwittingly referring victims of domestic violence to United States Immigration and Customs Enforcement (ICE), sometimes resulting in those individuals being placed in deportation proceedings simply because they chose to report acts of domestic violence to law enforcement. Referrals to ICE under such circumstances are out of step with Colorado law. Of perhaps greater concern is that such a practice creates a strong and perverse disincentive for undocumented victims and witnesses of domestic violence to report the abuse to law enforcement. This, in turn, robs law enforcement of the ability to properly investigate and prosecute domestic violence and related crimes, creating a wide gap in the safety net of criminal justice prosecution. By this letter, the American Civil Liberties Union of Colorado (ACLU) and the Colorado Coalition Against Domestic Violence (CCADV) request that GCSD put an immediate end to this harmful practice, and we extend an offer to collaborate with GCSD to meet this goal.

As you are aware, enforcement of domestic violence laws relies heavily on self-reporting by victims. This is because domestic violence primarily occurs within the context of an intimate partner relationship. Unfortunately, domestic violence victims report their abusers far less often than victims of other (non-domestic) violence.¹ Further, undocumented immigrants, who are entitled to the same protection from illegal domestic violence as any other individual present within GCSD jurisdiction, are often even more hesitant to report for fear that interaction with the law enforcement will result in their arrest and ultimate deportation.²

As you likely know, victims of domestic violence are sometimes mistakenly arrested on domestic violence charges. There are many ways in which victims of domestic violence become

¹ U.S. Department of Justice, Bureau of Justice Statistics, "Criminal Victimization," 2003.

² Abusers often take advantage of this fear and use it as leverage to force the victim to keep quiet and stay in the relationship. Leslye Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 Am. U. J. Gender Soc. Pol'y & L. 95, 98-99 (2002). So while all victims of domestic violence have disincentives to report abuse, those who are undocumented immigrants may be among the least likely to report.

entangled with the criminal justice system. Often, abusers will report their victims to the police in an effort to further victimize them. Self-defending victims are sometimes arrested as the “primary aggressor,” though they are not the actual perpetrator or “predominant aggressor” in the relationship, or are caught up in dual arrests when law enforcement are unable to ascertain who the “predominant aggressor” is. Immigration and Customs Enforcement has repeatedly recognized the problem of victim arrests in domestic violence cases and found that victim arrests may “deter[] individuals from reporting crimes and from pursuing actions to protect their civil rights[.]” Memorandum from John Morton, Director, U.S. Immigration Customs and Enforcement, on Prosecutorial Discretion and Certain Victims (June 17, 2011).

We recognize that pursuant to Senate Bill 90 (SB-90), GCSD must notify ICE when it reasonably believes that certain arrestees are not legally present in the country. Colo. Rev. Stat. § 29-29-103(2)(a)(I). However, given the reality that domestic violence victims are sometimes arrested, automatic reporting of all apparently undocumented arrestees to ICE without exception will inevitably result in domestic violence victims being reported to ICE due to their contact with police.³ To avoid this result, SB-90 provides for sheriffs to refrain from reporting a domestic violence arrestee to ICE unless and until that individual is convicted. C.R.S. § 29-29-103(2)(a)(II) (an individual arrested for domestic violence is not to be reported to ICE “until such time as the arrestee is *convicted* of a domestic violence offense” (emphasis added)). The Colorado legislature took pains to carve out this exception to the arrestee reporting requirement in order to mitigate the repeatedly-expressed concern that SB-90 might deter undocumented victims of domestic violence from reporting and/or cooperating with the criminal justice system after a report due to fear of deportation as a consequence of doing so.⁴

Importantly, Colorado’s State Auditor has made clear its view that adherence to SB-90’s domestic violence exception is mandatory, stating that the exception “stipulates that illegal immigrants arrested for a suspected act of domestic violence are **not** to be reported to ICE until conviction.” Colorado Office of the State Auditor, *Implementation of Senate Bill 06-090 Performance Audit*, p. 5 (May 2009) (emphasis in original). Regardless of whether state law requires compliance with SB-90’s domestic violence exception, refraining from referring domestic violence victims to ICE is the right thing to do for victims, law enforcement, and the community at large.

Unfortunately, our investigation into this matter has revealed that GCSD employees often, if not always, automatically report domestic violence arrestees who they suspect may be undocumented to ICE, without waiting to see if the individual is convicted of that crime. The ACLU has interviewed and reviewed the records of undocumented women who were the victims of serious domestic violence, reported the crime to law enforcement, were arrested on domestic violence charges, and were booked into the Garfield County Jail. In each case, GCSD employees promptly reported the victims to ICE without waiting to see if the individuals were convicted of any of the charges against them. In fact, after referral to ICE, *all* charges against these victims were dismissed. Nonetheless, because of GCSD’s premature referral of these victims to ICE, each of them was placed in removal proceedings, sending a strong signal to the friends, family and community of those victims that deportation is a potential consequence of reporting domestic violence to law enforcement. This signal has the predictable effect of

³ *Hearing on SB06-090 Before the H. Comm. on State, Veterans, & Military Affairs*, Gen. Assem. Leg. Sess., (Colo. 2006) (April 4, 2006, Hearing, beginning at 46:39).

⁴ *Id.*

detering undocumented people from contacting the police to report crimes of domestic violence and diminishing the goodwill towards peace officers that undoubtedly GCSO wishes to foster with the substantial immigrant community in the Roaring Fork Valley. Further, as you likely know, when domestic violence occurs in a home, child abuse often also occurs in that home.⁵ Accordingly, when undocumented domestic victims do not report their abuser, law enforcement not only loses the opportunity to enforce laws against domestic violence, but also, potentially, the opportunity to put child abusers behind bars.

We are confident that GCSO can see eye to eye on this issue with the ACLU and CCADV – that we can all agree domestic violence victims should not fear that reporting domestic violence to law enforcement may lead to their deportation. We hope and believe that you will be amenable to ending this practice given that you have in the past made clear that GCSO seeks to protect, not to punish, victims of crime, including domestic violence victims. In particular, we understand that GCSO is the only law enforcement agency in your area that signs off on U-Visas for undocumented victims of crime. As you know, issuance of these visas encourages the reporting of crimes and cooperation in their prosecution by undocumented victims, thereby benefiting law enforcement and the safety of the community as a whole.

Importantly, we believe that GCSO can effectively and efficiently implement the domestic violence exception to SB-90. By way of example, attached hereto are the policies, procedures and forms utilized by the Summit County Sheriff's Department to ensure compliance with SB-90's domestic violence reporting exception. *See Attachment A*. Other counties have found alternative ways to comply with the exception. Through the course of our investigation of this matter, we came to speak with representatives from other counties, like GCSO, that were out of compliance with SB-90's domestic violence exception. We discussed why this exception is so essential for effective law enforcement and were gratified that several counties readily changed their policies to bring their county in compliance with the exception, thereby promoting trust between immigrant communities and law enforcement. For instance, attached you will find the recent directive issued by Mesa County Sheriff's Office bringing the county in-line with SB-90's domestic violence exception. *See Attachment B*. In sum, we are confident there are many ways to successfully implement the domestic violence reporting exception to SB-90, and we would be happy to work collaboratively with you to develop an effective system should you so desire.

We look forward to hearing back from you on this matter by **May 14, 2012**, to confirm that GCSO is ready to promptly institute policies and procedures to comply with the domestic violence exception of SB-90. Please do not hesitate to contact the ACLU to discuss this matter further.

⁵ DeGue, S., & DiLillo, D, *Is Animal Cruelty a "Red Flag" for Family Violence? Investigating Co-occurring Violence Toward Children, Partners and Pets*, Journal of Interpersonal Violence, 24(6), 1036-1056 (2009); Joy D. Osofsky, *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, 6 Clinical Child & Fam. Psych. Rev. 161, 166 (2003); Appel, A. E., & Holden, G. W., *Co-occurring Spouse and Child Abuse: Implications for CPS Practice*, APSAC Advisor, 11(1), 11-14 (1998).


Sincerely,



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Denise Washington
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Encl: Summit County Documents
Mesa County Directive