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EXECUTIVE DIRECTOR

ROBERT O. MEITZ
PRESIDENT



February 9, 2009

VIA HAND DELIVERY AND MAIL
Maricopa County Board of Supervisors
301 W. Jefferson, 10th Floor
Phoenix, Arizona 85003

Dear Chairman Wilson,

The ACLU of Arizona has read that today's meeting of the Board of Supervisors will focus on the responsibility of Maricopa County for the actions of Sheriff Arpaio in transporting and housing persons confined in the County jails. This letter sets forth our concerns on this topic. An ACLU representative will attend the meeting and be available for discussion today and in the future.

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Sheriff Arpaio is the final decision maker for Maricopa County for jail operations. As such, the County is legally responsible for his actions in this area and liable for all resulting harm. The "decision to adopt a particular course of action by the government's authorized decision makers surely represents an act of official government policy." *Harper v. City of Los Angeles*, 533 F. 3d 1010, 1024-25 (9th Cir. 2008). There is no clearer case of county liability "than for the policies of a sheriff charged by law with responsibility for a county's jails." *Flanders v. Maricopa County*, 203 Ariz. 368, 378, 54 P.3d 837, 847 (Ct. App. 2002).

The legal responsibility of Maricopa County in the operation of its jails requires that this body take affirmative steps to influence the Sheriff's position when necessary, including exercise of its authority over the Sheriff's budget. Criticism of the Sheriff alone will not absolve the County of its responsibility; inhumane and illegal practices cannot be allowed to continue. However, at a minimum, the Board cannot encourage the Sheriff's harmful policies. For example, as stated in the Amended Complaint in the racial profiling litigation, "in the face of large scale criticisms" that his so-called crime sweeps target Latinos for minor traffic violations (and not serious crimes), the past Chair of this body publicly praised these operations as "good law enforcement."

After a costly and media-driven forced march in violation of legal norms prohibiting public humiliation of persons in government custody, Sheriff Arpaio has proceeded to house some 200 Latino inmates in Tent City. In the above *Flanders* case, the Arizona Appellate Court pointed out serious deficiencies in the conditions in Tent City. The Court noted that Sheriff Arpaio "had intentionally made conditions in the tents uncomfortable" and that they were "neither air-conditioned nor cooled by evaporation," despite four months of upwards of one-hundred degree temperatures in Phoenix. The Court concluded that Sheriff Arpaio was "deliberately indifferent" to the inmate's Eighth Amendment right to be free from cruel and unusual punishment. 205 Ariz. at 377, 54 P.3d at 846.

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Furthermore, federal judge Neil Wake recently found systemic inadequacies in the Sheriff's "hard" jails for all pretrial detainees. As this body knows, the Sheriff's failures to address these problems as the CEO of the County jails will now cost taxpayers millions of dollars, both to meet basic minimum standards in the jails and to pay litigation expenses. The conditions that were found to be unconstitutional in that litigation, in such areas as medical and mental health delivery, food service and nutrition and, for some inmates, temperatures above eighty-five degrees, are likely present—if not worse—in Tent City.

Finally, the Sheriff's present decision to house the inmates in a separate area in Tent City has been reviewed by County Attorney Thomas and determined to violate the Equal Protection Clause of the Fourteenth Amendment. Thomas is a staunch ally of the Sheriff, but reached this conclusion after being apprised of the relevant facts. His public statement puts this body on notice of serious constitutional problems. The County Attorney's finding is further credited by the implausible reasons offered for the move by the Sheriff in the media (e.g., enabling consular officials to locate a prisoner). Even where acts by officials have allegedly benign motives, the U.S. Supreme Court has not hesitated to look behind those stated reasons to find racial discrimination and apply "strict scrutiny" review, including in the criminal justice arena. See, e.g., *Batson v. Kentucky*, 476 U.S. 79, 100 (1986).

This legislative body must act to insure that persons incarcerated in Maricopa County are not denied basic constitutional rights. Fundamental fairness and respect for all communities require no less. The great dollar costs borne by taxpayers as a result of these harmful acts should give the Board of Supervisors additional reason to act without delay. The ACLU of Arizona is available to assist this critical effort.

Sincerely,



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Legal Director



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CC:

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