JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Eleventh Congress

February 12, 2009

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Janet Napolitano
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

Dear Attorney General Holder and Secretary Napolitano:

We write today concerning allegations of misconduct on the part of Maricopa County, Arizona, Sheriff Joe Arpaio that we believe merit federal investigation and action.

In recent months, Arpaio has evinced a blatant disregard for the rights of Hispanic residents of the Phoenix area. Last summer, apparently overreaching his authority under 287(g) agreements with the Department of Homeland Security, Arpaio ordered his deputies to scour Latino neighborhoods in his jurisdiction to search out undocumented immigrants. Reports from the affected communities indicate that accepted notions of probable cause have been replaced by an analysis based solely on (in the words of columnist Ruben Navarette) their "brown skin and Spanish accents." As a result, members of the Latino community – whether they are U.S. citizens or foreign-born, whether they are legal immigrants or undocumented – feel under siege.

Most recently, on February 4, after making sure to alert the media, Arpaio reportedly paraded approximately 200 suspected illegal immigrants in shackles to a segregated area of his "tent city" county facility, where they will supposedly remain until they are adjudicated and have served any sentences they face for local violations. The *New York Times* described this conduct as "ritual humiliation." The men who Arpaio is displaying like trophies are reportedly in pretrial detention, not having been convicted of any crime.

Through the years, Arpaio's actions have triggered numerous civil rights lawsuits, including federal action in the 1990s and a recent lawsuit by the Mexican American Legal Defense and Education Fund for racial profiling of Latino citizens and legal residents. However, his repeated course of conduct, which values publicity opportunities over the civil rights of residents of Arizona, is too disturbing to leave enforcement of the civil rights laws to private litigants. There are several tools at the federal government's disposal to address these allegations, and we urge their prompt consideration and application.

For instance, Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141), prohibits a "pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" and authorizes the Attorney General to bring civil actions to prevent such practices. The Civil Rights of Institutionalized Persons Act, or "CRIPA", (42 U.S.C. § 1997) authorizes the Attorney General to conduct investigations and litigation relating to conditions of confinement in state or locally operated institutions to determine whether there is a pattern or practice of violations of residents' federal rights.

Section 242 of Title 18 of the U.S. Code prohibits anyone from acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Prior Administrations have undertaken a police misconduct initiative within the Civil Rights Division to coordinate enforcement of these civil and criminal civil rights statutes, and we hope that such cooperation will once again be a hallmark of the Department's civil rights enforcement efforts in the coming years.

Mr. Attorney General, we request that you direct the Special Litigation and Criminal Sections of the Civil Rights Division to undertake a federal investigation into the actions of the Maricopa County Sheriff's Office, under the authority of 42 U.S.C. §14141, the Civil Rights of Institutionalized Persons Act (CRIPA), 18 U.S.C. §242, and any other applicable federal statutes or Constitutional provisions.

Madam Secretary, we request that you review Maricopa County's agreements with the Department of Homeland Security under Section 287(g) of the Immigration and Nationality Act and take such action as necessary to ensure that the Maricopa County Sheriff's Office conforms to the terms of that agreement and that such agreement is not used to justify the racial profiling of any resident of Arizona. We urge that such agreement be terminated if the situation cannot be remedied. We further request that you immediately provide to the Committee a copy of any agreement between the Department of Homeland Security and the County, whether under Section 287(g) or any other provision of law, such as intergovernmental service agreements to house apprehended immigrants.

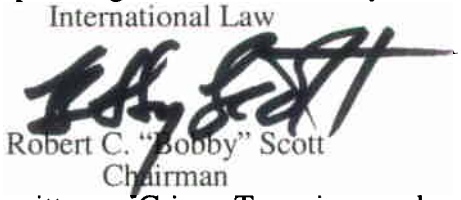
Please keep us informed regarding any developments in response to this request. Specifically, we would like to know what actions your Departments will take to ensure that Hispanic residents of Maricopa County are not subjected to racial profiling, unequal treatment at the hands of Sheriff's Department personnel, or violations of generally accepted standards of confinement. Responses and questions should be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). We thank you in advance for your cooperation in this important matter.

Sincerely,

John Conyers, Jr.
Chairman
Committee on the Judiciary

Zoe Lofgren
Chairwoman, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties



Robert C. "Bobby" Scott
Chairman
Subcommittee on Crime, Terrorism, and Homeland Security

cc: Honorable Lamar S. Smith
Honorable Howard Coble
Honorable James F. Sensenbrenner, Jr.
Honorable Louie Gohmert