



MALDEF

Mexican American Legal Defense and Educational Fund

February 9, 2009

Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

The undersigned organizations write to request that you direct the Civil Rights Division to initiate a federal investigation into Maricopa County Sheriff Joe Arpaio for potential civil rights violations, including recent actions that fly in the face of the Civil Rights of Institutionalized Persons Act (CRIPA). Sheriff Arpaio's actions in Maricopa County have triggered thousands of civil rights lawsuits, including one MALDEF filed in July 2008 for racially profiling Latino citizens and legal residents, in direct violation of the Fourth and Fourteenth Amendments to the U.S. Constitution, Title VI of the Civil Rights Act of 1962 and the Arizona Constitution.

Recently, Sheriff Arpaio staged a publicity stunt where he handcuffed and chained 220 undocumented inmates at the feet, and forced them to march down a public street to a segregated facility he calls "Tent City." While Arpaio claimed the move would save the state money, he couldn't provide any evidence to the media to support his claim. Worse yet, many of the individuals in Arpaio's custody are in pretrial detention and have not been convicted of any crime and are innocent until proven guilty.

In 2004, the U.S. Court of Appeals for the Ninth Circuit ruled against Arpaio, finding that his use of web cams was inhumane treatment of pre-trial detainees and a violation of the 14th Amendment's Due Process prohibition against the punishment of anyone "prior to an adjudication of guilt in that:

"Plaintiffs were certainly harmed by Sheriff Arpaio's actions. Having every moment of one's daily activities exposed to general and world-wide scrutiny would make anyone uncomfortable. Exposure to millions of complete strangers, not to mention friends, loved ones, co-workers and employers, as one is booked, fingerprinted, and generally processed as an arrestee, and as one sits, stands, or lies in a holding cell, constitutes a level of humiliation that almost anyone would regard as profoundly undesirable and strive to avoid... *Demery v. Arpaio*, 378 F.3d 1020 (9thCir. 2004)."

The Court's decision cited to a Supreme Court ruling that "[i]nmates . . . are not like animals in a zoo to be filmed and photographed at will by the public or by media reporters, however 'educational' the process may be for others." *Houchins v. KQED, Inc.*, 438 U.S. 1, 5 n.2 (1978).

It is important to note that the Department of Justice has acted before on Sheriff Arpaio's inhumane treatment of inmates in his Tent City jail. In 1997, the Department brought a CRIPA suit against Arpaio to stop the use of excessive force and improper mechanical restraints the inmates were subjected to. *United States v. County of Maricopa et. al.*, No. CIV 97-2273 PHX RGS (D.Ariz.).

Problems are back in Tent City. Earlier this year, the Arizona Court of Appeals affirmed a verdict for a prisoner who was severely beaten in the outdoor jail. The court affirmed the finding that Sheriff Arpaio was deliberately indifferent to the risk of attack in the tent unit and affirmed an award of punitive damages against him. Further, given the notorious poor status of detention centers, there is little hope that Tent City will be a place where detainees will be treated fairly and humanely.

Such egregious misconduct merits and requires the Justice Department to investigate the Maricopa County Sheriff's Office for violating inmates' federal rights under CRIPA, 42 U.S.C. § 1997, specifically:

- 1) The Eighth Amendment to the U.S. Constitution, which "imposes duties on [prison] officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, including mental health care, and must 'take reasonable measures to guarantee the safety of the inmates.'" *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)).
- 2) Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968. "No person in any State shall on the ground of race, color, religion, national origin, or sex . . . be subjected to discrimination . . . in connection with any programs or activity funded in whole or in part with funds made available under this chapter." 42 U.S.C. § 3789d(c)(1).
- 3) Title VI of the Civil Rights Act of 1964. "No person in the United States shall, on the ground of race, color, or national origin . . . be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.
- 4) The Fourteenth Amendment to the U.S. Constitution. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Latinos have come under attack in every facet of American society. Latinos have received the brunt of anti-immigrant hate speech in the nation's airwaves and been victims of vicious hate crimes because their attackers believed they "looked illegal." It is

imperative that the Department of Justice take action immediately against inhumane treatment that flies in the face of the protections afforded to all under the U.S. Constitution.

For additional information, please contact MALDEF Washington DC staff attorney John Amaya at 202-293-2828 or jamaya@maldef.org.

Sincerely,

American Immigration Law Foundation
American Immigration Lawyers Association
League of United Latin American Citizens
Mexican American Legal Defense and Educational Fund
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
National Immigration Forum
National Immigration Law Center

Cc: The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
The Honorable John Conyers, Chairman
The Honorable Lamar Smith, Ranking Member
The Honorable Robert Menendez
The Honorable Nydia Velázquez
The Honorable Raúl Grijalva
The Honorable Ed Pastor
The Honorable Harry Mitchell
The Honorable John Shadegg
The Honorable Jeff Flake
The Honorable Trent Franks