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Devon Chaffee
Executive Director

September 25, 2018

VIA FIRST CLASS MAIL AND EMAIL (danburyclerk@comcast.net)

David Suckling
Chief of Police
Danbury Police Department
23 High St
Danbury, NH 03230

Re: Bashar Awawdeh. v. Town of Exeter, et al.

Dear Chief Suckling:

Today, the ACLU-NH filed a lawsuit against the Town of Exeter and several of its officers for, in violation of the Fourth Amendment and state law, seizing and detaining our client simply because they believed that he was unlawfully present in the United States. I am informing you of this lawsuit because your Department has prolonged the detention of at least one individual simply due to that person's suspected immigration status. This incident—which violated the Fourth Amendment and state law—is evidenced in the attached *Boakye* case.

It is well settled that a person's presence in the United States in violation of immigration laws, standing alone, is not a crime. The United States Supreme Court has explained that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States," and, thus, "[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent." *See Arizona v. United States*, 567 U.S. 387, 407 (2012). The federal administrative process for removing someone from the country "is a civil, not criminal, matter." *Id.* at 396.

Courts have repeatedly held that local law enforcement officers cannot seize and arrest—or prolong the detention of—individuals solely based on known or suspected civil immigration violations. *See, e.g., Santos v. Frederick County Bd. of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013) ("absent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law") (citing cases); *Carrero v. Farrelly*, 270 F. Supp. 3d 851, 872 (D. Md. 2017) ("Officer Farrelly's prolonged detention of Plaintiff after the initial stop also violated clearly established law. The facts alleged indicate that Officer Farrelly violated Plaintiff's Fourth Amendment rights by unreasonably prolonging the stop solely to investigate her immigration status."); *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012) ("[T]he Fourth Amendment does not permit a stop or detention based solely on unlawful presence.").

There is similarly no legal basis for the Danbury Police Department to prolong a person's detention due to an ICE detainer. *See Lunn v. Commonwealth*, 78 N.E.3d 1143, 1160 (Mass. 2017) (holding that Massachusetts court officers do not have the authority to arrest someone at the request of Federal immigration authorities pursuant to a civil immigration detainer—and hold them beyond the time that the



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individual would otherwise be entitled to be released from State custody—solely because the Federal authorities believe the person is subject to civil removal).

Following these legal principles is not only consistent with the law, but it also makes Danbury safer. When local police departments detain individuals simply due to their alleged undocumented status, they create an environment where these individuals—including victims of domestic violence—are afraid to call for help or report crimes. This problem is especially evident in the *Boakye* case where your department was arriving to address the public safety ramifications of a vehicle skidding off an icy road. The Danbury Police Department, of course, needs to be accessible to all members of the public, regardless of their legal status, who need law enforcement assistance, whether it be victims or people involved in car accidents.

We request that you end this practice immediately. Thank you for your careful review of this important issue.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Gilles Bissonnette". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gilles Bissonnette
ACLU-NH Legal Director
Gilles@aclu-nh.org

Enclosures

