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500 12th St., SW  
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William P. Joyce, Field Office Director  
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U.S. Immigration and Customs Enforcement  
1250 Poydras St. Suite 325 New Orleans, LA 70113

Sheriff Jonathon W. Horton, Chief Deputy of Detention  
Chief Keith Peek, Chief of Corrections  
Captain Mike O'Bryant, Compliance Officer  
Etowah County Detention Center  
827 Forrest Ave. Gadsden, AL 35901

CC: Veronica Venture, Deputy Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security 245 Murray Lane, SW Building 410, Mail Stop #0190 Washington, DC 20528

December 2, 2019

**Re: Reinstatement of Etowah Visitation Project at Etowah County Detention Center After Unlawful Suspension**

Dear Director Albence, Director Joyce, Sheriff Horton, and Captain O'Bryant:

We are writing to express concern regarding the suspension of visits by the Etowah Visitation Project at the Etowah County Detention Center (ECDC) on November 5, 2019, following a peaceful protest on November 3, 2019 in front of ECDC.

Freedom for Immigrants, formerly known as Community Initiatives for Visiting Immigrants in Confinement (CIVIC), is a national 501(c)(3) non-profit organization. FFI is a national network of visitation programs in 69 immigration detention centers across the United States. Since November 2013, the Etowah Visitation Project has been a member of Freedom for Immigrants, and has worked to end the isolation of people at ECDC by enabling community volunteers to meet with people in detention and provide them much-needed contact. The Etowah Visitation Project also is organized to disseminate ideas through the permissible, non-violent exercise of the rights of free speech guaranteed to it by the First and Fourteenth Amendments to the United States Constitution.

**The Facts**

History of the Etowah Visitation Project: Since November 2013, the Etowah Visitation Project has operated with formal approval by the Etowah County Sheriff's Department and the ICE New Orleans Field Office. During this time, the Etowah Visitation Project has provided support to hundreds of men detained by ICE at ECDC. Like the 69 other visitation groups affiliated with Freedom for Immigrants around the country, the Etowah Visitation Project enables volunteers from local community groups, including faith-based groups and civic organizations, to visit with people in immigration detention who request the opportunity to meet.

According to the ECDC policies, a person in ICE detention at ECDC can only be visited by an appointment scheduled by the person in detention. This appointment must be communicated to the jail and to the family member or friend, which can be costly as it requires the person in detention to make a

phone call to the loved one to visit; domestic phone calls cost .21 per minutes, plus administrative fees for setting up and maintaining a phone account through NCIC Inmate Communication. Visits are then conducted only via video visitation.<sup>1</sup>

As ECDC operates one of the most restrictive visitation policies for detained immigrants in the country, EVP was provided by ECDC with the benefit of a more streamlined visitation process. An officer with the Compliance Division at the Etowah County Sheriff's Department sends the coordinator of the Etowah Visitation Project, Katherine Weathers, a list of people who have signed up in the detention center to visit with the program every three to four weeks. Ms. Weathers then pairs the list to her volunteers, which include members of the group Adelante Alabama, and someone from her team communicates that back to ECDC prior to the visits. Visits for no more than 20 minutes are then conducted on Sundays through Wednesdays via ECDC's video visitation system at the jail.

The Etowah Visitation Project provides individuals in detention—including those who suffer from extreme loneliness, isolation, and depression—an important connection to the outside world. This support is particularly crucial for those detained at ECDC, as the facility is located hours away from any major city and is far from most families, communities, and legal counsel.

2015 Visitation Suspension: In July 2015, Freedom for Immigrants filed a formal complaint with the Department of Homeland Security's Office of Civil Rights and Civil Liberties ("CRCL") on behalf of multiple detained immigrants alleging systemic abuses at ECDC. The complaint, based on first-hand accounts by 20 men formerly and then-currently detained at ECDC, raised several allegations of serious abuse suffered by detained immigrants at ECDC. The complaint alleged that ICE staff at ECDC engaged in a routine pattern of physical abuse, including beating and assaults, to coerce detained immigrants into signing removal documents. The complaint also described claims that ECDC and ICE staff violated medical and mental health care standards, had failed to appropriately respond to an extreme medical emergency, chronically understaffed the facility, failed to meet basic nutritional needs, and impermissibly held people in prolonged, indefinite detention. The filing of the complaint followed an organized Father's Day protest in front of ECDC on June 20, 2015, attended by staff and volunteers of Freedom for Immigrants and the Etowah Visitation Project.

Two weeks later, ICE and the Etowah County Sheriff's Department, which manages the detention facility, responded by suspending the Etowah Visitation Project. ICE and the Sheriff's Department relented later that year, but only after its actions had been the subject of protests, critical media coverage, and a demand letter. This pattern is playing out again.

2019 Visitation Suspension: On Sunday, November 3rd, a peaceful protest was conducted from around 1 – 2:15 p.m. in front of ECDC. The purpose was to highlight the fight to shut down ECDC as tied to a broader, national campaign to eradicate immigration detention. The protest was organized by Adelante Alabama and the Detention Watch Network, and attended by approximately 50-60 people from around the country, including staff members and volunteers with the Etowah Visitation Project and Freedom for Immigrants.

Prior to the November 3rd protest at ECDC, the Etowah Visitation Project team organized by a staff member of Adelante Alabama emailed an officer at ECDC on October 28th about scheduling visits for November 3rd with men who had requested visits from the Etowah Visitation Project. On October 29th, the Etowah Visitation Project provided said officer with a list of 19 people to be visited. The officer confirmed the visits via email. On November 3rd, the Etowah Visitation Project called the officer around 8:30 a.m. to confirm one extra visit, which was accepted. On the morning of November 3rd, the volunteers were allowed their visits between 10am and 12pm.

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<sup>1</sup> It should also be noted that ECDC's standard visitation policy contradicts the intention of ICE's Performance-Based National Detention Standards (PBNDS) 2011. The PBNDS 2011 states clearly: "Facilities are encouraged to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours." The PBNDS 2011 also states clearly: "Generally visits should be for the maximum period practicable but not less than one hour with special consideration given to family circumstances and individuals who have traveled long distances."

After the visits, the volunteers joined the protesters who started arriving by bus at 12 p.m. for lunch prior to the commencement of the protest.

On November 5, 2019, less than 48 hours after the peaceful protest, Katherine Weathers with the Etowah Visitation Project received a phone call from Captain Mike O'Bryant of ECDC. He informed her that the visitation program was suspended until further notice. As the reason for the suspension, he specifically cited the two large buses that arrived at ECDC on Sunday, November 3rd, for visitations and protests outside the jail. He said "it had gotten to be too much" and he wanted to "put the brakes on [the visitation program] for awhile." Ms. Weathers asked whether this suspension included suspending the Etowah Visitation Projects' annual practice of providing Christmas presents to the men inside, and Captain O'Bryant said it did.

After the phone call, Ms. Weathers followed up the phone call that same day with an email to Captain O'Bryant asking for a further meeting in the hopes of resolving the issue amicably. Captain O'Bryant responded promptly with an email that simply said: "Katherine, At this time I will say no, but maybe we can meet a few weeks down the road." On November 7th, Ms. Weathers sent another email explaining if the program is not restored promptly, it will disrupt relationships the program volunteers have formed with men inside who await their visits each week, and will negatively impact the Etowah Visitation Project's ability to effectively organize with enough time to provide Christmas packages for the immigrants detained. Ms. Weathers has not yet received a response.

In addition, since the suspension of the Etowah Visitation Project, at least one volunteer with the visitation program has tried to visit through the regular visitation policies for ECDC. This visit was denied by Captain O'Bryant, indicating that in addition to the suspension of the visitation program, individual community members also have been blacklisted from visiting at ECDC.

## **The Law**

The suspension of the Etowah Visitation Project in retaliation for its work raises serious First Amendment concerns. (U.S. Const., 1st and 14th Amends., and 42 U.S.C. § 1983). "Federal agencies, as well as municipal government[s] vested with state authority" have "no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015) (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). Government entities are constitutionally prohibited from "proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992) (multiple citations omitted).

For this reason, the First Amendment prohibits the retaliatory discipline, suspension, or termination of volunteers for public criticism of a government entity. See *Rodin v. City of Coral Springs, Florida*, 229 F. App'x. 849 (11th Cir. 2007) (per curiam) (finding city's retaliatory suspension of volunteer for speech criticizing agency in violation of First Amendment); *Mosley v. Bd. of Educ.*, 434 F.3d 527, 534-35 (7th Cir. 2006) (concluding that volunteer could bring First Amendment claims for retaliation due to protected speech); *Brown v. Disciplinary Comm. of Edgerton Volunteer Fire Dep't*, 97 F.3d 969 (7th Cir. 1996) (concluding that volunteers may sue for deprivation of First Amendment rights based on retaliation for criticism of government entity); *Hyland v. Wonder*, 972 F.2d 1129 (9th Cir. 1992) (finding First Amendment violation where agency obstructed volunteer's access to juvenile detainees in retaliation for public criticism).

The Etowah County Sheriff Department and ICE's retaliatory suspension of the Etowah Visitation Project at ECDC clearly violates the First Amendment's prohibitions against content and viewpoint discrimination. The timing of the Etowah County Sheriff's Department's suspension of the Etowah Visitation Project, their pattern and history of retaliation against the Etowah Visitation Project on the basis of its protected activity, and the explanations they offered for their decision, establish that the protected activity of the Etowah Visitation Project and its affiliated volunteers with Adelante Alabama was a substantial or motivating factor for Etowah County Sheriff's Department's retaliation.

The Etowah County Sheriff Department and ICE cannot escape First Amendment scrutiny by asserting that the visitation program they granted the Etowah Visitation Project in 2013 is a government benefit that they can revoke at their pleasure. The government “may not deny a benefit to a person on a basis that infringes his ... freedom of speech.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Even where a plaintiff does not have a legally recognizable interest in something, the government cannot revoke the permit for retaliatory reasons. *Id.*

In addition to violating the First Amendment, the Etowah County Sheriff Department’s suspension of the Etowah Visitation Project is in conflict with ICE detention standards. As ICE’s 2011 Performance-Based National Detention Standards (ICE Detention Standards) provide, people must be provided the opportunity to speak freely to the public; detention facilities may not “in any way retaliate against a detainee for lawful communication with a member of the media or a member of the public.” ICE Performance-Based National Detention Standards § 7.7.V.4 (2011, as modified by February 2013 errata). ICE Detention Standards further specify that “detainees shall be able to receive visits from legal representatives ... and others in the community.” Standards § 5.7.11.1. The suspension of the Etowah Visitation Project undermines public trust, transparency, and confidence in ICE and ECDC, while further isolating detained immigrants.

ECDC’s Policy and Procedure Manual itself provides that representatives of community service organizations, including civic, religious, cultural, therapeutic, and other groups” may visit detained immigrants. ECDC Policy & Procedures, Visitation § III.M. Notably, the Etowah Visitation Project has complied with guidelines required by ECDC for visitation of detained immigrants, including prior verification of the organization’s bona fide interests and qualifications for this kind of service.” *Id.* In fact, their visits on the day of the protest were approved in advance by the Etowah County Sheriff’s Department.

The suspension of the Etowah Visitation Project at ECDC violates the First Amendment’s prohibitions against discrimination for protected speech, and conflicts with both ICE’s and ECDC’s own standards. The project’s suspension, moreover, undermines trust and accountability of government institutions, dissuades public service by community organizations, and further isolates vulnerable people in immigration detention.

We hereby demand that the Etowah County Sheriff Department and ICE cease and desist from blocking the Etowah Visitation Project from future visits to ECDC. We thus request that the Etowah County Sheriff’s Department and ICE immediately reinstate the Etowah Visitation Project at ECDC, and provide written confirmation to Christina Fialho (CFialho@freedomforimmigrants.org) that visitor volunteers with the Etowah Visitation Project will be allowed to resume visitation immediately under the original program agreement with the Etowah County Sheriff Department and ICE.

If this action is not taken within 10 days from receipt of this letter, we will have no choice but to take appropriate legal action against you including but not limited to filing preliminary and permanent injunctions enjoining and restraining ICE and the Etowah County Sheriff’s Department from further interference with Freedom for Immigrants and the Etowah Visitation Project’s exercise of our rights to freedom of speech.

Sincerely,



Christina Fialho  
Co-Founder/Executive Director  
Freedom for Immigrants



Katherine Weathers  
Program Coordinator  
Etowah Visitation Project