

Thursday, March 17, 2016

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Nebraska Avenue Complex
3801 Nebraska Avenue, NW
Washington, DC 20528

Ms. Sarah Saldaña
Director
U.S. Immigration and Customs Enforcement Agency
500 12th Street, SW
Washington, DC 20536

Dear Secretary Johnson and Director Saldaña:

The undersigned organizations write to urge the Department of Homeland Security (DHS) and its agency Immigration and Customs Enforcement (ICE) to terminate all of its existing 287(g) Memoranda of Agreement (MOAs) with state and local law enforcement agencies and to reject all pending applications for new 287(g) agreements.

Since the 287(g) program began, it has resulted in hundreds of thousands of deportations by deputizing state and local police to enforce federal immigration laws and allowing them to decide whom to detain for immigration purposes and put into deportation proceedings.¹ The 287(g) program has led to widespread instances of racial profiling, police abuse, and is shrouded with poor transparency that undermines public safety. Numerous civil rights organizations, and the Congressional Hispanic Caucus, have sharply criticized the 287(g) agreements for leading to pre-textual traffic stops, racially motivated questioning, and unconstitutional searches and seizures primarily in communities of color.²

Moreover, the last two years have seen a national crisis in policing, with increased awareness of the excessive force and brutality too common to local law enforcement agents. There is widespread evidence of racial profiling and an unacceptable lack of accountability for police even apart of involvement in 287(g). In addition, studies have revealed that citizenship has a dramatic disparate impact on treatment within the criminal justice system, with harsher punishments and higher conviction rates for non-citizens, irrespective of all other factors.³ DHS's 287(g) program simply makes all those dynamics worse and undermines community policing.

¹ Randy Capps et al., "Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement" (Washington: Migration Policy Institute, 2011), available at <http://www.migrationpolicy.org/pubs/287g-divergence.pdf>

² Stephen Lemons, "Congressional Hispanic Caucus Asks Barack Obama to Terminate 287(G) Program," Phoenix New Times, September 30, 2009, available at <http://www.phoenixnewtimes.com/blogs/congressional-hispanic-caucus-asks-barack-obama-to-terminate-287-g-program-6502298>.

Mariaelena Hincapie, et al., "Letter to President Obama Regarding 287(g) Program," (2010), available at http://acluaz.org/sites/default/files/documents/LETTER_TO_PRESIDENT_20090825133229.pdf

³ Michael T. Light, Michael Massoglia, and Ryan D. King, "Citizenship and Punishment: The Salience of National Membership in U.S. Criminal Courts" (American Sociological Review, Vol. 79(5) 827–849, 2014), available at <http://www.asanet.org/journals/ASR/Oct14ASRFeature.pdf>,

All told, the agreements lead to civil rights violations and racial profiling, lack meaningful federal oversight and complaints procedures and breed mistrust between immigrant communities and local law enforcement - it is time for DHS and ICE to end this failed program.

1. The 287(g) program leads to civil rights violations and racial profiling.

The 287(g) agreements encourage, or at the very least tolerate, racial profiling and baseless stereotyping, resulting in the harassment of citizens and isolation of immigrant, especially Latino, communities. Currently, agreements under the 287(g) program disproportionately affect communities with fast-growing Latino populations. The Inter-American Commission on Human Rights has emphasized that “287(g) agreements open up the possibility of racial profiling.”⁴

Investigations by the American Civil Liberties Union of Georgia (ACLU of Georgia) in Cobb and Gwinnett counties found systemic discriminatory policing under 287(g).⁵ In several cases, Latino residents were pulled over by police officers with little justification while driving and as a consequence immigration enforcement actions were taken against them.⁶ These examples add to the concerns that law enforcement officers equate Latino names and appearances with criminality and use national origin and ethnicity without probable cause or reasonable suspicion to stop and detain residents.

Additionally in a 2011 investigation, the Department of Justice (DOJ) concluded that the Arizona Maricopa County Sheriff’s Office (MCSO) engaged in a pattern and practice of constitutional violations, including racial profiling of Latinos, after entering a 287(g) agreement with your agency.⁷ Specifically, the DOJ found that, “actions of [the MCSO] deputies, supervisory staff, and command staff, engages in racial profiling of Latinos; unlawfully stops, detains, and arrests Latinos; and unlawfully retaliates against individuals who complain about or criticize MCSO’s policies or practices.”⁸

2. Lack of meaningful federal oversight and no functioning complaint procedure.

In 2010, DHS’s own Office of Inspector General (OIG) outlined the issues ICE faces in establishing collection and reporting standards to provide objective data to increase monitoring of jurisdictions participating in 287(g) and its effects on civil liberties.⁹ Although it has been 6 years, ICE has still failed to agree with the recommendation and has continued to prevent a proper assessment of civil rights and civil liberties violations occasioned by 287(g) agreements.¹⁰

⁴ Inter-American Commission on Human Rights, “Report on Immigration in the United States: Detention and Due Process,” (2010), 66, 144, available at <http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf>.

⁵ American Civil Liberties Union of Georgia Legal Foundation, “Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety.”

⁶ Eddy Arias, “Immigrant’s nightmare began with traffic stop,” Houston Chronicle, December 22, 2015, available at <http://www.houstonchronicle.com/opinion/outlook/article/Immigrant-s-nightmare-began-with-traffic-stop-6716258.php>.

⁷ Department of Justice, Civil Rights Division, “United States’ Investigation of the Maricopa County Sheriffs Office” (2011), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

⁸ Ibid.

⁹ Department of Homeland Security, Office of Inspector General, “The Performance of 287(g) Agreements.” (2012), available at http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-130_Sep12.pdf.

¹⁰ Ibid.

The lack of transparent data on 287(g) enforcement actions creates a situation where the public cannot judge the full extent to which this program is leading to civil liberties violations.¹¹ Indeed, the jail models of 287(g) agreements do not impose any federal oversight on the officers who make the initial arrests, where violations may occur. Nor do the supervisory ICE agents make it clear that state and local police have no business acting as immigration agents in the field.¹²

Although a 287(g) program complaint procedure exists, it has proven to be ineffective and DHS's Office for Civil Rights and Civil Liberties' (CRCL) has failed to demonstrate an adequate ability to respond to complaints, be they individual or systemic, within the model timeframe of 90 days stipulated by MOAs.¹³

Examples of MOA violations are abundant in OIG reports, but little action has been taken by ICE to address the situation.¹⁴ It was not until 2011, when ICE finally expelled the Maricopa County Sheriff's Office from the program, after years of complaints and a lawsuit by the Department of Justice, that any meaningful action was taken in a jurisdiction with such high-profile violations.¹⁵ Even more concerning to this situation is the continuing 287(g) agreements that ICE currently operates in states that have passed laws explicitly designed to involve local law enforcement agencies with federal immigration enforcement.¹⁶

3. The 287(g) program undermines community policing by breeding mistrust between immigrant communities and local law enforcement.

The 287(g) program allows state and local police and sheriffs to act as immigration agents, confusing the public about local police agencies' functions and priorities. Various studies have shown the negative impact on crime reporting stemming from programs that delegate immigration enforcement to local law enforcement.¹⁷ The Migration Policy Institute examined the effects of the 287(g) program in several communities, and found that law enforcement officials and community residents both say that immigrants are less likely to report crimes in jurisdictions operating 287(g) agreements.¹⁸

Additionally, the Final Report of the President's Task Force on 21st Century Policing, the Police Executive Research Forum, the Police Foundation, and the Major Cities Chiefs Association all support a firewall separating immigration enforcement and state or local criminal justice functions.¹⁹ Indeed, 287(g)

¹¹ American Civil Liberties Union of Georgia Legal Foundation, "Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety" (2009), available at <http://www.acluga.org/racial%20profiling%20Cobb.pdf>.

¹² Randy Capps et al., "Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement."

¹³ Department of Homeland Security, Office of Inspector General, "The Performance of 287(g) Agreements."

¹⁴ Ibid.

¹⁵ Department of Justice, Civil Rights Division, "Letter from Assistant Attorney General Thomas E. Perez to Maricopa County Attorney Bill Montgomery," (2011) available at http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf.

¹⁶ Department of Homeland Security, Immigration and Customs Enforcement, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," available at <https://www.ice.gov/factsheets/287g#signedMOA> (last accessed March 2016).

¹⁷ America's Voice, "Public Safety on ICE: How Do You Police a Community That Won't Talk to You?" (2011), available at http://amvoice.3cdn.net/669182cf0231bbf4d6_kdm6bnsbj.pdf.

¹⁸ Randy Capps et al., "Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement."

¹⁹ President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing," (2015) available at http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Debra A. Hoffmaster et al., "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges," (Police Executive Research Forum, 2010), available at

agreements directly impede the central responsibility of local law enforcement, as reported by the head of the Cobb County Police Neighborhood Crime Prevention Unit when he told the ACLU of Georgia that after 287(g), “no one would come to the (neighborhood crime watch) meetings any longer if the police were present.”²⁰

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The 287(g) program harms community trust in police and all residents’ right to unbiased law enforcement. It also creates the atmosphere that leads to civil rights violations and racial profiling that primarily affect communities of color and immigrants. We urge DHS and ICE to terminate all existing 287(g) agreements and to reject all pending applications immediately. **We look forward to speaking with you about this matter. Please contact Zenen Jaimes Perez with the United We Dream Network at (512) 914-5905 or zenen@unitedwedream.org for more information or to discuss.**

Yours sincerely,

American Civil Liberties Union
Arkansas Coalition for DREAM
Asociación de Mexicanos en Carolina del Norte, Inc. (AMEXCAN)
Asian Pacific American Labor Alliance & Institute for Asian Pacific American Leadership & Advancement
Campaign for Southern Equality
Capital Area Immigrants' Rights Coalition
Central American Resource Center (CARECEN) DC
Centro Legal de la Raza
CHOICES Memphis Center for Reproductive Health
Church Council of Greater Seattle
Cleveland Jobs with Justice
Coalicion de Derechos Humanos
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Colorado Immigrant Rights Coalition (CIRC)
Connecticut Students for a Dream
Detention Watch Network
El Centro Hispano, Inc.
Faith Action International House
Families for Freedom
Georgia Detention Watch
Georgia Latino Alliance for Human Rights
Grassroots Leadership
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)

<http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>; Mary Malina, “The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties,” (2009), available at <http://www.policefoundation.org/strikingabalance/strikingabalance.html>; Chief J. Thomas Manger, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law,” (2009) available at <http://hsc.house.gov/SiteDocuments/20090304140934-99719.pdf>.

²⁰ American Civil Liberties Union of Georgia Legal Foundation, “Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety.”

Immigrant Legal Resource Center (ILRC)
Lambda Legal
Latin America Working Group
Latino Commission on AIDS
Latino LinQ
League of United Latin American Citizens
Live Oak Unitarian Universalist Church
Louisiana Latino Health Coalition
Mississippi Immigrants' Rights Alliance
Migrant Justice/Justicia Migrante (VT)
National Center for Transgender Equality
National Council of La Raza
National Day Laborer Organizing Network
National Domestic Workers Alliance
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Justice for Our Neighbors
National LGBTQ Task Force
National Network for Immigrant and Refugee Rights
New Jersey Advocates for Immigrant Detainees
North Texas Dream Team
Oakhurst Presbyterian Church
People Acting in Community Together (PACT)
Plumbers and Fitters Local 393
Political Latino/as United for Movement and Action in Society
Project South: Institute for the Elimination of Poverty and Genocide
Racial Justice Action Center
RAIN
Reformed Church of Highland Park
SEIU 32BJ
Services, Immigrant Rights, and Education Network (SIREN)
Silicon Valley De-Bug
Sisters of Mercy Social Justice Ministries & Initiatives
Southeast Asia Resource Action Center (SEARAC)
Southeast Immigrant Rights Network (SEIRN)
Transgender Law Center
TransLatina Coalition
United We Dream
United We Dream - Houston
University Leadership Initiative
Wake Forest School of Medicine
We Belong Together
WeCount!
Youth Empowerment Alliance