

Katherine Culliton-González
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Avenue, SE
Washington, DC 20528-0190

Via email

September 19, 2022

RE: Request for CRCL Participation in Review of Anticipated Applications to ICE’s 287(g) Program

Dear Ms. Culliton-González:



On behalf of the American Civil Liberties Union (“ACLU”) and the ACLU of Florida—including our 11 million supporters nationwide and more than 180,000 members in Florida—we write to request that the Office of Civil Rights and Civil Liberties (CRCL) establish a transparent and robust process for evaluating new applications from state and local law enforcement agencies to join Immigration Customs and Enforcement’s (ICE) 287(g) Program.

Our request is time-sensitive. We are concerned that 20 Florida law enforcement agencies will apply to join the 287(g) Program in the coming months, due to the passage of Florida Senate Bill 1808.¹ This measure, which is steeped in racial animus toward immigrant communities, compels local law enforcement agencies to “enter” into a 287(g) agreement by January 1, 2023 regardless of whether they desire to²—and despite legitimate local concerns over the significant costs of participating, higher public safety priorities, negative implications on community relationships and access to government services, as well as state and local threats to civil rights and civil liberties.³ We are concerned that without immediate action,

¹ Fla. CS/SB 1808 (2022), <http://laws.flrules.org/2022/193>.

² Last year, Judge Beth Bloom of the Southern District of Florida struck down provisions of Florida Senate Bill 168, a precursor to Florida Senate Bill 1808, which purported to prohibit local authorities from deciding for themselves whether or not to participate in the 287(g) Program. *City of South Miami v. Desantis*, 408 F. Supp. 3d 1266 (S.D. Fla. 2019). Judge Bloom found that those provisions were enacted to effectuate “racially discriminatory views” in violation of the U.S. Constitution. *Id.* at 1272.

³ Fla. CS/SB 1808 (2022) (“By January 1, 2023, each law enforcement agency operating a county detention facility must enter into a written agreement with the United States Immigration and Customs Enforcement to participate in the immigration program established under s. 287(g) of the Immigration and Nationality 285 Act, 8 U.S.C. s. 1357”).



DHS will not only allow the troubling 287(g) Program to continue, but support its significant expansion in Florida.

In April 2022, the ACLU published *License to Abuse: How ICE's 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations*, a report that reviews the civil rights record of all 142 agencies partnering with ICE through this program. Our report details numerous civil rights violations—beatings and killings at police hands, deaths in jail custody, and pretextual traffic stops to harass and unlawfully detain immigrant community members—committed by 287(g) Program partner agencies.⁴

In Florida, where one in five people was born abroad, but where state and local leaders have for the past few years aggressively peddled anti-immigrant narratives, adding new counties to this program risks further eroding individuals' civil liberties. As an example, in Marion County—a jurisdiction that participates in the Warrant Service Officer (WSO) program—the ACLU of Florida learned of frequent discriminatory referrals to ICE of U.S. citizens born abroad or perceived to be born abroad, resulting in people being held beyond their release eligibility, even when no detainer had been issued.⁵ Similarly, in Walton County, another WSO jurisdiction, the ACLU of Florida learned of multiple referrals of Puerto Rican U.S. citizens to ICE.⁶

These are just two examples of violations currently happening in places where local governments in Florida have contracted with ICE. The newly announced anti-immigrant “strike force”⁷ and other statewide initiatives are sure to worsen the selective arrest and targeting by state and local law enforcement of immigrants and perceived immigrants alike.

⁴ ACLU, *License to Abuse: How ICE's 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations* (2022), <https://www.aclu.org/report/license-abuse-how-ices-287g-program-empowers-racist-sheriffs?redirect=sheriffs-report>.

⁵ Marion County Sheriff's Office, 2020. Unpublished email communications between Marion County Sheriff's Office employees and a Deportation Officer of the United States Immigration and Customs Enforcement. Copies of records are available upon request.

⁶ Walton County Sheriff's Office, 2020. Unpublished email communications between Walton County Sheriff's Office employees and a Deportation Officer of the United States Immigration and Customs Enforcement. Copies of records are available upon request.

⁷ Ana Ceballos, “DeSantis touted action against undocumented migrants. Most arrests were legal residents,” Miami Herald, July 28, 2022, <https://amp.miamiherald.com/news/politics-government/state-politics/article263877522.html>.



CRCL has a critical role to play in reviewing applications to the 287(g) Program and ensuring that agencies with records of civil rights violations are not permitted to join it. We urge you to take steps to ensure that CRCL fulfills this vital mission, including the following:

1) Evaluate the Civil Rights Records of Applicants to the Warrant Service Officer Model of the 287(g) Program

According to the Government Accountability Office, CRCL is involved in reviewing Jail Enforcement Model applicants to the 287(g) Program in at least two ways: 1) it identifies allegations of civil rights violations and misconduct by the applicant agency for the 287(g) Program Advisory Board; and 2) it makes a recommendation to the ICE director regarding the application.⁸ However, it appears that CRCL does not have these roles with regard to the WSO program, a form of 287(g) agreement devised by the prior administration.⁹

It is critical that CRCL be involved in evaluating WSO applicants, like the two counties referenced above, notwithstanding this model's more limited delegation of federal authority. The WSO model requires only a single day of training for law enforcement partners, heightening the risk of civil liberties and other legal violations.¹⁰ Moreover, under the Trump administration, DHS devised the WSO model in an attempt to shield local officers from liability when they violate people's rights, and as a way to subvert state and local decisions not to participate in immigration enforcement.¹¹

Many law enforcement agencies that joined the WSO model during the Trump administration have records of civil rights violations. A prime example is Alamance County, North Carolina. The Obama administration terminated its contract following a damning Department of Justice civil rights investigation, but the Trump

⁸ See Government Accountability Office, *Immigration Enforcement: ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements*, GAO-21-186, at 19-20 (2021).

⁹ See ICE, "ICE launches program to strengthen immigration enforcement," May 5, 2019, <https://www.ice.gov/news/releases/ice-launches-program-strengthen-immigration-enforcement>; Government Accountability Office, *Immigration Enforcement: ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements*, GAO-21-186, at 8 (2021).

¹⁰ See ICE Fact Sheet, "287(g) Warrant Service Officer (WSO) Model," <https://www.ice.gov/doclib/about/offices/ero/pdf/WSOPromo.pdf>.

¹¹ ABA Journal, "ICE offers workaround to allow police in sanctuary cities to temporarily detain immigrants," May 10, 2019, <https://www.abajournal.com/news/article/ice-offers-workaround-to-allow-police-in-sanctuary-cities-to-temporarily-detain-immigrants>.



administration re-signed it to the WSO program in 2020.¹² This suggests there are serious consequences to CRCL failing to evaluate WSO applicants; applicants joined the 287(g) Program even though they would have failed a meaningful civil rights vetting.

2) Solicit Information from Local Communities

CRCL should publicly report new applications and solicit information regarding the civil rights record of applicants. This should include information about both the particular law enforcement entity, as well as relevant city or county officials more generally. CRCL should solicit this information by a) creating an online portal or inbox for submission of written comments by any person or group; and b) directing the CRCL Community Engagement Section to host in-person and virtual town hall-style forums in communities (without other components of DHS being present) specifically regarding the 287(g) Program. CRCL should clarify that any information regarding civil rights violations and misconduct is welcome, including conduct affecting non-immigrants, since it bears on the fitness and character of applicants.

3) Publicize Robust Standards for Evaluating Allegations of Civil Rights Violations

To build trust in the credibility of its processes, CRCL should publicly describe its criteria for evaluating the civil rights records of 287(g) applicants and its standards for determining whether to recommend the ICE director grant an application.

According to the Government Accountability Office, 287(g) Program Advisory Board members only voted against the granting of an application to the 287(g) Program seven times between 2015-2020.¹³ Yet a recent ACLU research report found that more than half of sheriffs currently in the program have records of a pattern of civil rights violations, and more than three-fourths have records of running detention sites with serious and extensive records of inhumane conditions.¹⁴ It is unclear what standard CRCL and the Program Advisory Board applied in evaluating these sheriffs' applications.

We urge CRCL to describe a robust standard. Doing so would be consistent with congressional appropriations guidance that CRCL

¹² Memorandum of Agreement Between Immigration and Customs Enforcement and Alamance County, NC Sheriff's Office, May 21, 2021, https://www.ice.gov/doclib/287gMOA/287gWSO_AlamanceCoNC_05-21-2020.pdf.

¹³ Government Accountability Office, *Immigration Enforcement: ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements*, GAO-21-186, at 19 n.41 (2021).

¹⁴ ACLU, *License to Abuse: How ICE's 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations* (2022).



“provide rigorous oversight of the 287(g) program.”¹⁵ It would also be consistent with ICE’s articulated position on civil rights violations. In an undated factsheet on reform of the 287g program, ICE states: “Racial profiling is simply not something that will be tolerated, and any indication of racial profiling will be treated with the utmost scrutiny and fully investigated. If any proof of racial profiling is uncovered, that specific officer or department will have their authority and/or agreement rescinded.”¹⁶

4) Evaluate Impacts on Community Access to Government Services and Public Safety

In addition to identifying civil rights violations, CRCL should also collect and solicit information regarding the potential impact of the 287(g) Program on local communities’ access to government services—including police services, judicial enforcement, city administrative services, education facilities and healthcare. We explain these impacts in general terms below, but urge you to seek and collect information specific to the localities under consideration for the 287(g) Program.

In parts of the country where the 287(g) Program is in operation, many immigrants and their families live in fear of encountering local law enforcement, since it may result in separation from their families and deportation. Numerous studies show that fear of racist and anti-immigrant law enforcement makes undocumented immigrants and their family members less likely to come forward as witnesses, provide tips, and seek protection.¹⁷ Research on the specific impact of 287(g) agreements finds these negative outcomes as well.¹⁸

¹⁵ Conference Report for FY2022 Consolidated Appropriations Act, H.R. 2471, H. Comm. Print 47-047/47-048 Legislative Text and Explanatory Statement Book 1 (Div A-F) <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47047/pdf/CPRT-117HPRT47047.pdf>; see also H. Rept. 117-396 (July 1, 2022),

<https://www.congress.gov/117/crpt/hrpt396/CRPT-117hrpt396.pdf>;

¹⁶ ICE, “Updated Facts on ICE’s 287(g) Program,”

<https://www.ice.gov/factsheets/287g-reform> (undated; last visited 8/7/2022).

¹⁷ See Reva Dhingra, Mitchell Kilborn, and Olivia Woldemikael, “When Local Police Cooperate With ICE, Latino Communities Under-report Crime. Here’s the Data,” Washington Post, February 5, 2021,

<https://www.washingtonpost.com/politics/2021/02/05/%20when-local-police-cooperate-with-ice-latino-communities-underreport-crime-heres-data/>.

¹⁸ Mai Thi Nguyen and Hannah Gill, “Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority,” *Urban Studies* 53, no. 2 (January 2015): 302–323,

<https://journals.sagepub.com/doi/10.1177/0042098014563029>; Nik Theodore and Robert Habans, “Policing Immigrant Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” *Journal of Ethnic and Migration Studies* 42, no. 6 (2016): 970–988, <https://www.tandfonline.com/doi/full/10.1080/1369183X.2015.1126090>.



In addition to affecting public safety, immigrants’ fear and distrust of has a chilling effect on their access to other services.¹⁹ In particular, there is evidence that suggests a direct link between the fear of being detained and willingness to access health services, whether because of concern of encountering law enforcement at a hospital or the fear of being stopped for a traffic violation on the way to seeking care.

It is not then surprising that research has indicated a direct link between 287(g) and similar policies and negative health outcomes among immigrant populations. For example, a rigorous examination of National Health Interview Survey data demonstrated a decrease in Latinx immigrants’ physical and mental health in areas with 287(g) agreements; after accounting for other factors, no such decrease was found for Latinx immigrants living in areas without 287(g) agreements, nor for white or Black individuals.²⁰ Burgeoning research exploring 287(g)’s impacts in North Carolina suggests that these programs may negatively affect the children of immigrants, such as their school attendance and birth weight.²¹

As long as the 287(g) Program continues to exist in some form—and notwithstanding any intentions of the current administration to the contrary—too many law enforcement officers are likely to continue exploiting it to engage in racial profiling and harassment. Florida authorities’ embrace and exploitation of this program remains in lock-step with the prior administration’s anti-immigrant agenda. We request that CRCL enhance its review of these new applications to at least stop agencies with records of civil rights violations from joining the program and to mitigate future unintended harms to immigrants in communities across Florida and other states.

¹⁹ Omar Martinez, “Immigration Policy and Access to Health Services,” *Journal of Immigrant and Minority Health* 16 (2014): 563–564, <https://link.springer.com/article/10.1007/s10903-013-9864-y>; Matthew Coleman, “The ‘Local’ Migration State: The Site-specific Devolution of Immigration Enforcement in the U.S. South,” *Law & Policy* 34, no. 2 (April 2012): 159–190, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9930.2011.00358.x>.

²⁰ Julia Shu-Huah Wang and Neeraj Kaushal, “Health and Mental Health Effects of Local Immigration Enforcement,” *International Migration Review* 53, no. 4 (October 2018): 970–1001, <https://www.nber.org/papers/w24487>.

²¹ Laura Bellows, “The Effect of Immigration Enforcement on School Engagement: Evidence from 287(g) Programs in North Carolina,” *EdWorkingPaper* 21-366, <https://journals.sagepub.com/doi/full/10.1177/23328584211039467>; Romina Tome, Marcos A. Rangel, Christina M. Gibson-Davis, and Laura Bellows, “Heightened Immigration Enforcement Impacts US Citizens’ Birth Outcomes: Evidence From Early ICE Interventions in North Carolina,” *PLoS ONE* 16(2) (February 3, 2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0245020>.

Thank you for your time and attention to this complaint. We look forward to your timely response.

Sincerely,

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