

August 9, 2022

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
Washington, DC 20528

*Via email*

**Re: Terminating 287(g) Agreements**

Dear Secretary Mayorkas,



We appreciate your commitment to bringing fairness and humanity to our nation’s civil immigration enforcement system. We write today to ask that you direct Immigration and Customs Enforcement (ICE) to terminate its 287(g) program agreements with 54 law enforcement agencies identified in this letter; and order a DHS civil rights review of all other 287(g) agreements currently in operation.

The ACLU has long urged the government to entirely abandon the 287(g) program, which delegates federal immigration enforcement authorities to state and local law enforcement agencies through memoranda of agreements. In April 2022, we published *License to Abuse: How ICE's 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations*, a report that provides a comprehensive review of all 142 of the Biden administration’s 287(g) partners.

Since our report’s publication, ongoing litigation has stymied the administration’s most significant reform to civil immigration enforcement practices, your September 2021 Guidelines for the Enforcement of Civil Immigration Law. These Guidelines had operated as an important (although incomplete) check on immigration enforcement practices that, under prior administrations, kept millions of our immigrant neighbors, co-workers and loved ones under the cruel and constant threat of deportation away from their families and communities. With the Guidelines in continued limbo, now is a critical time for you to evaluate other significant ways to protect immigrant communities from indiscriminate arrests and deportations—including by addressing the 287(g) program, which for far too long has empowered racist sheriffs and emboldened racial profiling, causing pain and fear among immigrant communities around the country.

In this letter, we highlight reasons why major reform—including through the immediate termination of roughly a third of current 287(g) agreements—is warranted at this time.

*I. The Trump Administration’s Unprecedented Expansion of 287(G)*

We welcomed President Biden’s commitment, as a candidate, to “end all the [287(g)] agreements entered into by the Trump Administration.”<sup>i</sup> This



commitment was warranted by extraordinary changes to the program during the Trump administration. ICE recruited sheriffs to join the 287(g) program with blatantly xenophobic and racist messaging, leaving the 287(g) program five times bigger—with more than 140 law enforcement partners compared to the 34 that remained following reforms under the Obama administration.<sup>ii</sup> ICE also made it easier for abusive law enforcement agencies to join the 287(g) program and stay in it, removing expiration dates and other guardrails from 287(g) agreements,<sup>iii</sup> while at the same time dropping civil rights investigations into local law enforcement agencies and even publicly encouraging police brutality.<sup>iv</sup> The DHS Office of Civil Rights and Civil Liberties was removed from much of its role in vetting potential 287(g) partners' civil rights records.<sup>v</sup> Nearly all of the sheriffs recruited to the 287(g) program during this period remain part of it today.

## *II. 287(g) Partnerships' Inconsistency with this Administration's Civil Rights Agenda*

Many of the administration's 287(g) partners have shameful records that embody the civil and immigrant rights problems President Biden took office resolving to address. Our report details numerous examples—beatings and killings at police hands, deaths in jail custody, and pretextual traffic stops to harass and unlawfully detain immigrant community members—committed under the leadership of sheriffs whom the federal government is empowering and elevating, through 287(g)'s delegation of federal enforcement authorities and training. We found that at least 65% of 287(g) participating agencies have records of a pattern of racial profiling and other civil rights violations, including excessive use of force; and at least 77% of sheriffs and state department of corrections' commissioners are running detention facilities with serious and extensive records of inhumane conditions.

There are also myriad examples of the 287(g) program empowering sheriffs who traffic in xenophobic, anti-immigrant rhetoric—often riven with misinformation about immigrants and immigration. In many cases, 287(g) sheriffs are amplifying the racist rhetoric of national political figures regarding an immigrant "invasion," with white supremacist undercurrents to their warnings of the alleged "threat" posed to "citizens." This xenophobia harms public safety and contributes to the risk of racial profiling—and the administration should not validate it by empowering these sheriffs through the 287(g) program.

## *III. Next Steps*

To date, you have ordered ICE to terminate one 287(g) agreement, with a local law enforcement agency with a record of abusing individuals in its custody. We applaud this step, and urge you to build on it by abandoning the 287(g) program altogether. This remains a high priority not just for the ACLU, but for community advocates across the country.

Short of that, we urge you to immediately terminate the agreements we identify below; and order a review of every 287(g)-participating law enforcement agency's record to determine whether termination is appropriate—a step recommended by the DHS Office of Inspector General since at least 2010.<sup>vi</sup> If appropriately resourced, the DHS Office of Civil Rights and Civil Liberties could conduct this review, which should include an opportunity for stakeholders to contribute reports, comments and testimonials regarding each agency and impacted communities.

Thank you for your consideration of these issues. If you have any questions or need further detail, please contact ACLU senior legislative counsel Naureen Shah ([nshah@aclu.org](mailto:nshah@aclu.org)) and deputy director Brian Tashman ([btashman@aclu.org](mailto:btashman@aclu.org)).



Sincerely,

A handwritten signature in black ink, appearing to be "Kary Moss". The signature is stylized with a large initial "K" and a long horizontal stroke extending to the right.

Kary Moss  
ACLU Acting National Political Director

## Annex: Requested 287(g) Agreements to Terminate

The list below highlights 287(g) agreements where termination is counseled by the law enforcement agency's:



- **Record of a pattern of racial profiling and civil rights violations**, including disproportionate targeting of racial minorities, excessive use of force, and unlawful stops, searches, or arrests, all of which bear on whether it is an appropriate partner and whether participation in the 287(g) program is contributing to civil rights violations
- **Record of poor jail or prison conditions** and treatment of individuals in its custody, which may include myriad civil rights violations;
- **Anti-immigrant, xenophobic statements**, which create a climate of fear and mistrust for immigrant communities which the Biden administration should not abet;
- **Advocacy of inhumane immigration and border policies**, which includes participating in efforts to preserve the Trump administration's anti-immigrant, anti-human rights policies; and
- **Record of evading accountability to the public** by withholding information about the 287(g) program or the department's activities on immigration and other law enforcement activities, or refusing to participate in community meetings.

Please also see the [102-page supplement](#) to our [report](#) for a full description.

1. Etowah County, AL
2. Alaska Department of Corrections, AK
3. Arizona Department of Corrections, Rehabilitation and Reentry, AZ
4. La Paz County, AZ
5. Mesa Police Department, AZ
6. Pinal County, AZ
7. Florida Department of Corrections
8. Bay County, FL
9. Brevard County, FL
10. Charlotte County, FL
11. Collier County, FL
12. Columbia County, FL
13. Hendry County, FL
14. Hernando County, FL
15. Indian River County, FL
16. Jacksonville Sheriff's Office (Duval County), FL
17. Lake County, FL
18. Manatee County, FL



19. Marion County, FL
20. Martin County, FL
21. Monroe County, FL
22. Pasco County, FL
23. Pinellas County, FL
24. Polk County, FL
25. Santa Rosa County, FL
26. Georgia Department of Corrections
27. Hall County, GA
28. Jackson County, KS
29. East Baton Rouge Parish, LA
30. Massachusetts Department of Corrections
31. Barnstable County, MA
32. Cecil County, MD
33. Frederick County, MD
34. Alamance County, NC
35. Henderson County, NC
36. Randolph County, NC
37. Dakota County, NE
38. Rensselaer County Sheriff's Office, NY
39. Canadian County Sheriff's Office, OK
40. Okmulgee County Criminal Justice Authority, OK
41. Tulsa County, OK
42. Knox County, TN
43. Aransas County Sheriff's Office, TX
44. Galveston County Sheriff's Office, TX
45. Goliad County, TX
46. Jackson County Sheriff's Office, TX
47. Montgomery County, TX
48. Nueces County, TX
49. Smith County Sheriff's Office, TX
50. Tarrant County Sheriff's Office, TX
51. Waller County, TX
52. Walker County, TX
53. Culpeper County, VA
54. Waukesha County, WI

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<sup>i</sup> Joe Biden, "The Biden Agenda for the Latino Community," <https://joebiden.com/latino-agenda/>

<sup>ii</sup> See Huyen Pham, "287(g) Agreements in the Trump Era," July 2018, <https://scholarship.law.tamu.edu/facscholar/1299/>.

The number of immigrants deported through the program doubled in the first 16 months of the Trump administration, as compared to the final 16 months of the Obama administration. In 2018, DHS stopped releasing the program-specific data. See Immigration and Customs Enforcement Arrests: ICE Data Through May 2018, TRAC IMMIGRATION, SYRACUSE UNIV., <https://trac.syr.edu/phptools/immigration/arrest/> (click "By Fiscal Year" under "Graph Time



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Scale”; then select “All” under “State”; then select “All” under “County/Surrounding Area”; then

select “287(g) Program” under “Apprehension Method/Agency”).

<sup>iii</sup> “Changes to the 287(g) program,” Oct 20, 2020, Immigrant Legal Resource Center,

[https://www.ilrc.org/sites/default/files/resources/changes\\_to\\_287g\\_10.20.20.pdf](https://www.ilrc.org/sites/default/files/resources/changes_to_287g_10.20.20.pdf)

<sup>iv</sup> Barber, C. Ryan, “‘Diminished to the Point of Extinction’: Trump DOJ’s Retreat From Police Investigations Draws New Scrutiny”, *Law.com*, 8 June, 2020,

<https://www.law.com/nationallawjournal/2020/06/08/diminished-to-the-point-of-extinction-trump-dojs-retreat-from-police-investigations-draws-new-scrutiny/>;

Swanson, Kelly, “Trump tells cops they should rough people up more during arrests”, *Vox.com*, 28 July, 2017,

<https://www.vox.com/policy-and-politics/2017/7/28/16059536/trump-cops-speech-gang-violence-long-island>

<sup>v</sup> ICE researches whether there is “derogatory information” about a local law enforcement agency, providing it to the ICE director to review, for applicants to the Jail Enforcement model 287(g) program, but not the Warrant Service Officer program. 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).

<sup>vi</sup> See DHS Office of Inspector General, *The Performance of 287(g) Agreements*, OIG-10-63 at 15 (March 2010) (recommending DHS “[e]stablish and implement a comprehensive process for conducting periodic reviews, as well as reviews on an as-needed basis, to determine whether to modify, extend, or terminate 287(g) agreements”).