

The Honorable Janet Napolitano
United States Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

John Morton
Director
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, D.C. 20536

September 26, 2012

Dear Secretary Napolitano and Director Morton:

The 73 undersigned organizations and individuals represent a broad spectrum of faith, labor, immigration advocacy, and civil rights groups working with Latinos, Asian Americans, immigrant communities, and other communities of color. We write to urge Immigration and Customs Enforcement (ICE) to terminate all of its existing 287(g) immigration enforcement Memoranda of Agreement (MOAs) with state and local law enforcement agencies (LEAs) and to reject all pending applications for new 287(g) agreements.

The 287(g) program has gained notoriety and been widely and uniformly criticized by government entities, research institutions, and advocacy organizations. 287(g) operations lack transparency and federal oversight, leaving the program susceptible to inefficiencies, insufficiently-monitored racial profiling, and pretextual arrests by offending LEAs. 287(g) “task force models” use roving police officers empowered to act as immigration agents, while “jail models” involve police officers screening people arrested and booked into jail. Jail models are responsible for more than 90% of 287(g) activity.¹

The immigration enforcement decision-making delegated by 287(g) agreements to state and local police is directly contrary to the Department of Homeland Security’s (DHS) assurance to Congress that “[o]nly federal DHS officers make immigration enforcement decisions,”² because state and local officers who have been delegated enforcement authority through 287(g) agreements regularly issue immigration detainers and make other enforcement decisions that initiate the removal process. Furthermore, 287(g) agreements damage communities’ trust in their LEAs by confusing the roles of federal ICE agents on the one hand and state and local police on

¹ Randy Capps et al., *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*. (Migration Policy Institute, 2011), 21, available at <http://www.migrationpolicy.org/pubs/287g-divergence.pdf>

² See DHS Congressional Budget Justification FY 2013, available at <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, p. 1092 of pdf.

the other.³ Just this month, for example, the Department of Justice (DOJ) concluded that the Alamance County, North Carolina Sheriff's Office – a 287(g) delegate – misled Latino detainees about the existence of federal requests for detention, adding that “ACSO discriminates against Latinos in its jail booking and detention procedures.”⁴ DHS must not extend the failed 287(g) program any longer.

The Inter-American Commission on Human Rights has emphasized that “287(g) agreements open up the possibility of racial profiling . . . ICE has failed to develop an oversight and accountability system to ensure that these local partners do not enforce immigration law in a discriminatory manner by resorting to racial profiling”⁵ 287(g) agreements disproportionately affect communities with fast-growing Latino populations: 87% of jurisdictions with 287(g) agreements had a Latino population growth rate higher than the national average.⁶

We welcome DHS's intention to terminate certain 287(g) agreements after three reports in 2010-2011 by DHS's Office of Inspector General (OIG) sharply criticized the program. DHS rightly concluded in its latest budget justification that the “least productive” 287(g) task forces should be discontinued.⁷ In June, DHS also ended six 287(g) task forces in Arizona following the U.S. Supreme Court's ruling on that state's “show me your papers” law, S.B. 1070. But the Department's partial rollback does not go far enough. There is no justification for ICE's plan to continue spending \$51 million on 287(g) agreements in FY2013. Even in more “productive” jurisdictions, the statutory provision authorizing 287(g) agreements specifically precludes their use as what ICE calls “force multiplication”⁸ by prohibiting acceptance of “a service under

³ See generally America's Voice, *Public Safety on ICE: How Do You Police a Community That Won't Talk to You?* (Aug. 2011), available at http://amvoice.3cdn.net/669182cf0231bbf4d6_kdm6bnsbj.pdf; Chief J. Thomas Manger, Chairman of the Legislative Committee for the Major Cities Chiefs Association, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law.” House Committee on Homeland Security (Mar. 4, 2009).

⁴ U.S. Department of Justice, Letter of Findings re: United States' Investigation of Alamance County Sheriff's Office (Sept. 18, 2012), available at <http://www.justice.gov/iso/opa/resources/171201291812462488198.pdf>

⁵ See Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process*. (Dec. 30, 2010), 66, 144, available at <http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf>. For detailed reports on racial profiling, see, e.g., American Civil Liberties Union of Georgia Legal Foundation, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)*. (Mar. 2010), available at <http://www.acluga.org/gwinnettracialreportfinal.pdf>; 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*. (Oct. 2009), available at <http://www.acluga.org/racial%20profiling%20Cobb.pdf>; American Civil Liberties Union of North Carolina Legal Foundation and Immigration & Human Rights Policy Clinic, University of North Carolina at Chapel Hill, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*. (Feb. 2009), available at http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf

⁶ See Justice Strategies, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*. (Feb. 2009), 16, available at <http://www.justicestrategies.org/sites/default/files/publications/JS-Democracy-On-Ice-print.pdf>

⁷ DHS Congressional Budget Justification, *supra*, at 1035, 1107.

⁸ *Id.* at 1080.

[287(g)] if the service will be used to displace any Federal employee.”⁹ Jail agreements are plagued by the same problems as task forces; for example, an in-depth study concluded that jail models failed to target serious offenders just as frequently as task forces (50% of the time).¹⁰

Ending 287(g) agreements is necessary to address the following serious deficiencies:

a. Unresolved and unimplemented OIG recommendations

In March 2010, the OIG’s initial 287(g) report recommended that ICE “[e]stablish collection and reporting standards that provide objective data to increase monitoring of methods participating jurisdictions use in carrying out 287(g) functions, and their effect on civil liberties. Collection and reporting requirements should include (1) the circumstances and basis for [task force] contacts with the public, (2) the race and ethnicity of those contacted, and (3) the prosecutorial and judicial disposition of 287(g) arrests.”¹¹ ICE declined to concur with the recommendation, preventing a proper assessment of civil rights and civil liberties violations occasioned by 287(g) agreements.

ICE has also failed to make 287(g) data on enforcement actions available despite promising stakeholders that it would provide data comparable to that regularly published for Secure Communities. The 287(g) MOAs specifically contemplate that agreements should not continue absent “a continued need for program services.”¹² By failing to publish transparent data for each jurisdiction, ICE prevents the public from judging whether taxpayer funds are being used wisely and accountably. Such opacity is particularly troubling given the OIG’s September 2010 conclusion that “there is no assurance that funds allocated to the 287(g) program were used as intended.”¹³

Some recommendations that the OIG considers to be resolved have not, in fact, been implemented by ICE even though ICE pledged to abide by them. For example, ICE agreed to the OIG’s recommendation that the agency “[r]equire 287(g) program sites to maintain steering committees with external stakeholders, with a focus on ensuring compliance with the

⁹ 8 U.S.C. § 1357(g)(6).

¹⁰ Capps et al., *supra*, at 22.

¹¹ DHS, Office of Inspector General, *The Performance of 287(g) Agreements*. (Mar. 2010), 27 [“OIG Mar. 2010 Report”], available at www.oig.dhs.gov/assets/mgmt/oig_10-63_mar10.pdf; see also GAO, “Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws.” (Jan. 30, 2009), available at <http://www.gao.gov/products/GAO-09-109>

¹² See ICE, Memorandum of Agreement Template, § XXI, “Duration and Termination of This MOA” (“Upon a good faith determination that the AGENCY is not fulfilling its duties, ICE shall notify the AGENCY, in writing, and inform the AGENCY that it has 90 days to demonstrate a continued need for 287(g) program services.”), available at http://www.ice.gov/doclib/detention-reform/pdf/287g_moa.pdf

¹³ DHS, Office of Inspector General, *The Performance of 287(g) Agreements: Report Update*. (Sept. 2010), 7-8 (emphasis added), available at www.oig.dhs.gov/assets/mgmt/oig_10-124_sep10.pdf

[memorandum of agreement (MOA)].”¹⁴ Thirty months later, steering committees have not been established in 287(g) jurisdictions. In consequence, no 287(g) MOA should be renewed prior to the promised establishment of a steering committee in the affected jurisdiction and input from that steering committee about compliance with the MOA, including recommended changes.

b. No functioning complaint procedure

ICE’s refusal to collect pertinent data and establish steering committees is compounded by DHS’s Office for Civil Rights and Civil Liberties’ (CRCL) failure to demonstrate an adequate ability to respond to complaints, be they individual or systemic, regarding 287(g) agreements. Whereas 287(g) MOAs provide a model timeframe of 90 days for resolution of a complaint,¹⁵ CRCL has been unable to resolve 287(g) complaints which have been pending for more than 18 months.

ICE, moreover, has not taken seriously Congressional appropriations language prohibiting the use of funds “to continue a delegation of law enforcement authority authorized under section 287(g) of the Immigration and Nationality Act if the Department of Homeland Security Inspector General determines that the terms of the agreement governing the delegation of authority have been violated.”¹⁶ The OIG reports on 287(g) are rife with examples of MOA violations, yet no termination of a 287(g) agreement by ICE for such violations has taken place except for the belated expulsions of the Maricopa County Sheriff’s Office (MCSO) in December 2011 and the Alamance County Sheriff’s Office in September 2012.

Troublingly, one of ICE’s proposed sites for a new 287(g) agreement is South Carolina, which last year passed a “show me your papers” law under the guise of “helping” federal immigration enforcement, a law which DOJ challenged as unconstitutional. Because “[t]he 287(g) jail model does not impose federal oversight on the officers who make the initial arrests,” ICE “opens the door to racial profiling and pretextual arrests.”¹⁷ ICE has continued seventeen 287(g) agreements in states which have passed laws explicitly designed to interfere with federal immigration enforcement (2 in Alabama; 4 in Arizona; 5 in Georgia; 4 in South Carolina; and 2 in Utah). ICE continues to partner with jurisdictions that have proven track records of racial profiling and does not suspend cooperation even when a jurisdiction is under investigation by DOJ.

c. Conflicts of interest when 287(g) officers issue immigration detainers following arrests made by their fellow officers

¹⁴ OIG Mar. 2010 Report, *supra*, at 16.

¹⁵ MOA Template, *supra*, App. B.

¹⁶ See, e.g., Department of Homeland Security Appropriations Act, 2010, Pub. L. 111-83, 123 Stat. 2142, 2149 (Oct. 28, 2009).

¹⁷ Capps et al., *supra*, at 36.

As noted, DHS has assured Congress that “[o]nly federal DHS officers make immigration enforcement decisions.”¹⁸ Yet, 287(g) agreements permit *state and local police* to make immigration enforcement decisions *based on their fellow officers’ arrests*. Indeed, the twin hats worn by LEA officers who have been delegated 287(g) authority may well have resulted in the same officer making both (i) initial arrests and (ii) immigration enforcement decisions regarding his or her own or close colleagues’ cases.

The implications of this conflict of interest are illustrated by what happened when ICE officers took over detainer issuance from MCSO 287(g) officers. According to the *Arizona Republic*, MCSO “books about 300 inmates into jail each day. Sheriff’s Detention Chief Mike Olson said the agency [in its 287(g) capacity] placed immigration-related detainees on about 15 inmates each day. The number of detainees placed on inmates has dropped since federal officials took over the program . . . [Sheriff] Arpaio said. [In the first week], he said, federal officials have placed immigration-related detainees on three inmates. An ICE official could neither confirm nor deny that total . . .”¹⁹ When federal officials took over MCSO’s detainer authority, therefore, many fewer immigration detainees were issued.

We are concerned that a significant number of 287(g) officers will feel pressure within their jurisdictions to uphold their colleagues’ arrest decisions and to attach immigration consequences to them. 287(g) agreements must therefore be terminated because state and local police should not be empowered to evaluate their colleagues’ arrests in this manner. ICE cannot engage in meaningful oversight because, for arrests, “[a]ccountability is far more difficult in jail models” than in task forces.²⁰ Aside from conflicts of interest, “[t]he arresting officers often have no formal relationship with ICE, little or no training in immigration law, and may not even work for an agency with a 287(g) agreement.”²¹ 287(g) MOAs are incompatible with objective immigration enforcement decisions and break DHS’s promise of federal exclusivity in this realm.

We urge ICE to terminate all existing 287(g) agreements and to reject all pending applications for new agreements. Immigration enforcement is a federal responsibility and the harms to community trust in police and to bias-free law enforcement caused by this federal/state collaboration are manifest. If you have any questions or require further information, please contact Karen Siciliano Lucas, Catholic Legal Immigration Network, Inc., at 202/635-7410.

¹⁸ DHS Congressional Budget Justification FY 2013, *supra*, at 1092 of pdf.

¹⁹ See J.J. Hensley and Daniel Gonzalez, “Maricopa County Sheriff’s officers turn in federal credentials,” *Arizona Republic* (Dec. 22, 2011), available at <http://www.azcentral.com/news/politics/articles/2011/12/21/20111221maricopa-county-sheriffs-officers-turn-federal-credentials.html>

²⁰ Capps et al., *supra*, at 37.

²¹ *Id.*

Yours sincerely,

Advocacy Committee for Justice and Peace of the Sisters of St. Francis of Philadelphia
(Philadelphia, PA)

Alice Gerdeman, CDP, Coordinator, Intercommunity Justice and Peace Center
(Cincinnati, OH)

American Civil Liberties Union

American Immigration Council

American Immigration Lawyers Association

Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center (Miami,
FL)

Asian American Justice Center, member of Asian American Center for Advancing Justice
(Washington, DC)

Asian Pacific American Labor Alliance, AFL-CIO

Boston New Sanctuary Movement (Boston, MA)

Caroline Correa, Community to Community Development C2C, Immigrant Solidarity
Committee

CASA de Maryland (Langley Park, MD)

Casa Esperanza (Plainfield, NJ)

Catholic Legal Immigration Network, Inc. (CLINIC) (Washington, DC)

Catholic Migrant Farmworker Network (Canton, OH)

Chicago New Sanctuary Coalition (Chicago, IL)

Church World Service, Immigration and Refugee Program

CLUE Santa Barbara (Santa Barbara, CA)

Colorado Jobs with Justice

Dominican Sisters of Houston (Houston, TX)

Episcopal Campus Ministry (Raleigh, NC)

The Episcopal Church

Families for Freedom (New York, NY)

Franciscan Action Network

Georgia Latino Alliance for Human Rights (Atlanta, GA)

Heartland Alliance's National Immigrant Justice Center (Chicago, IL)

Holy Spirit Missionary Sisters (Northfield, IL)

Immigration Legal Services of Catholic Charities of the Archdiocese of Washington
(Washington, DC)

Intercommunity Justice and Peace Center (Cincinnati, OH)

Interfaith Coalition for Immigrant Rights (CLUE-CA)

IRATE & First Friends (Elizabeth, NJ)

Jane Leatherman Van Praag, President, Wilco Justice Alliance (Bartlett, TX)

Jesuit Social Research Institute/Loyola University New Orleans (New Orleans, LA)

Justice Strategies (Brooklyn, NY)
The Latin America/Caribbean Committee of the Loretto Community (Littleton, CO)
Lutheran Immigration and Refugee Service (Washington, DC)
Massachusetts Immigrant and Refugee Advocacy Coalition (Boston, MA)
National Asian Pacific American Women's Forum (NAPAWF) (Washington, DC)
National Council of La Raza (NCLR)
National Day Laborer Organizing Network (NDLON) (Los Angeles, CA)
National Guestworker Alliance
National Immigration Forum
National Immigration Law Center (Los Angeles, CA)
National Immigration Project of the National Lawyers Guild (Boston, MA)
National Latina Institute for Reproductive Health (Washington, DC/New York, NY)
National Network for Immigrant and Refugee Rights (Oakland, CA)
NC Immigrant Rights Project (Durham, NC)
New Orleans Workers' Center for Racial Justice (New Orleans, LA)
New York Immigration Coalition (New York, NY)
OCA (Washington, DC)
Oregon New Sanctuary Movement (Portland, OR)
Patricia Jelly, Dominican Sisters of Hope Justice Promoter
Peace and Justice Committee - Sisters of Divine Providence (Melbourne, KY)
Progressive Leadership Alliance of Nevada (Reno, NV)
Project IRENE (Berwyn, IL)
Provincial Council of the Clerics of St. Viator (Viatorians)
Rabbi Jonathan Klein, Clergy and Laity United for Economic Justice, Los Angeles
The Reformed Church of Highland Park, NJ
Rev. Dr. Randy Mayer, Good Shepherd United Church of Christ (Sahuarita, AZ)
Rev. Stephen Copley, Arkansas Interfaith Alliance (Little Rock, AR)
Richard K. MacMaster, Gainesville Interfaith Alliance for Immigrant Justice
(Gainesville, FL)
Rights Working Group (Washington, DC)
Sisters of Mercy South Central Community (Belmont, NC)
South Asian Americans Leading Together (SAALT) (Takoma Park, MD)
Southeast Asia Resource Action Center (Washington, DC)
Southern Poverty Law Center (Montgomery, AL)
St. Charles Borromeo Catholic Church (Arlington, VA)
Stella Storch, OP, Congregation of Sisters of St. Agnes (Fond du Lac, WI)
Tennessee Immigrant and Refugee Rights Coalition
Ubuntu Immigration Project at Countryside Church UU (Palatine, IL)
United Methodist Church, General Board of Church and Society (Washington, DC)

Unity Temple Unitarian Universalist Congregation Social Mission Committee (Oak Park, IL)

Vermont Immigration and Asylum Advocates (Burlington, VT)

Who Is My Neighbor? Inc. (Highland Park, NJ)