

December 11, 2012

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

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

Re: End the 287(g) Immigration Enforcement Program

Dear Secretary Napolitano and Director Morton:

We, the 162 undersigned faith, labor, immigration advocacy, human rights, and civil rights groups working with Latinos, Asian Americans, immigrant communities, and other communities of color, write to request that the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) agency terminate all existing 287(g) agreements and reject all pending applications. Specifically, we urge that ICE (i) terminate the program in all 21 states and 57 jurisdictions with existing 287(g) agreements on or before December 31, 2012, when most are scheduled to expire; and (ii) reject applications for new agreements including those of eleven jurisdictions known to be under review by ICE (five in Massachusetts; two in Tennessee; and one each in North Carolina, Oklahoma, South Carolina, and Virginia).¹

The 287(g) program deputizes state and local police to enforce federal immigration laws. State and local law enforcement agencies with 287(g) agreements act as decision makers about whom to detain for immigration purposes and which arrestees to interview and write up for deportation proceedings. The program's "task forces" use roving police officers as immigration agents, while "jail" models involve police officers acting as immigration agents to screen people arrested and booked. Jail agreements constitute more than 90% of 287(g) immigration enforcement.²

¹ These jurisdictions are: MA (Bristol County Sheriff's Office; Essex County Sheriff's Office; Middlesex County Sheriff's Office; Plymouth County Sheriff's Office; Worcester County Sheriff's Office); TN (Knox County Sheriff's Office; Rutherford County Sheriff's Office); NC (New Hanover County Sheriff's Office); OK (Oklahoma County Sheriff's Office); SC (Horry County Sheriff's Office); and VA (Rappahannock Regional Jail).

² 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>

The 287(g) agreements interfere with state and local police responsibilities by recklessly merging federal immigration enforcement and state criminal justice tasks. They have caused **damage to community trust in police, increased racial profiling, and wasted precious law enforcement resources** at all levels of government. ICE's disastrous 287(g) partnerships with Sheriff Joe Arpaio of Maricopa County, AZ, and Sheriff Terry Johnson of Alamance County, NC, were belatedly terminated after Department of Justice (DOJ) findings of discriminatory policing, but thousands of illegitimate 287(g) deportations had already taken place – and continue to occur. ICE must end this failed program.³

- I. Ending 287(g) will ensure that state and local police attention is 100% focused on public safety in their communities by leaving immigration enforcement to federal authorities where it belongs.

Agreements under the 287(g) program are the *only* aspect of federal immigration enforcement allowing state and local police to act as immigration agents, confusing the public about their police agencies' functions and priorities. The agreements introduce a persistent threat of immigration enforcement into community policing, the strategy that has helped violent crime decrease by 65% over the last twenty years.⁴ Law enforcement leaders like William Bratton, then-chief of the Los Angeles Police Department, refused to participate in the 287(g) program because “[m]y officers can’t prevent or solve crimes if victims or witnesses are unwilling to talk to us because of the fear of being deported. . . . Criminals are the biggest benef[iciaries] when immigrants fear the police.”⁵ The Police Executive Research Forum, the Police Foundation, and the Major Cities Chiefs Association (representing the 56 largest police departments in the United States) all support a firewall separating immigration enforcement and state or local criminal justice functions, directly contrary to the 287(g) program's blurring of roles.⁶

The 287(g) program deters immigrants, including domestic violence survivors, from reporting crimes and cooperating in criminal investigations and prosecutions. The federal government successfully argued in its litigation against Arizona's notorious anti-immigrant law that immigration enforcement is a federal matter.⁷ It should therefore be carried out *exclusively* by federal authorities, not by 287(g) deputies.

³ See <http://www.ice.gov/news/library/factsheets/287g.htm#signed-moa>

⁴ Pete Yost, “FBI says number of violent crimes reported to police fell last year.” Associated Press (Nov. 1, 2012).

⁵ William J. Bratton, “The LAPD fights crime, not illegal immigration.” L.A. Times (Oct. 27, 2009), available at <http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27>

⁶ Debra A. Hoffmaster et al., “Police and Immigration: How Chiefs Are Leading their Communities through the Challenges.” (Police Executive Research Forum, 2010), available at <http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>; Mary Malina (ed.), “The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties.” (Apr. 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.” (Mar. 2009), 4, available at <http://hsc.house.gov/SiteDocuments/20090304140934-99719.pdf>

⁷ See *Arizona v. United States*, 567 U.S. ____ (2012).

II. The 287(g) program unjustifiably targets communities with significant Latino populations: the examples of Maricopa County, AZ, and Alamance County, NC, show that discriminatory policing is exacerbated by 287(g) agreements.

Agreements under the 287(g) program disproportionately affect communities with fast-growing Latino populations: a large majority of these jurisdictions have Latino population growth rates higher than the national average.⁸ Ending the 287(g) program will ensure uniform immigration enforcement, and will help reduce the targeting of Latino communities.

The discriminatory policing harms of 287(g) are clear. In September 2012, DOJ concluded that the Alamance County, NC, Sheriff's Office – at the time one of ICE's 287(g) partners – lied to Latino detainees about non-existent federal requests for immigration detention, adding that "ACSO discriminates against Latinos in its jail booking and detention procedures."⁹ In December 2011, DOJ concluded that the Maricopa County, AZ, Sheriff's Office, then an ICE 287(g) partner, "engaged in a widespread pattern or practice of law enforcement and jail activities that discriminate against Latinos. This discrimination flows directly from a culture of bias and institutional deficiencies that result in the discriminatory treatment of Latinos."¹⁰ Investigations by the ACLU of Georgia in Cobb¹¹ and Gwinnett¹² counties, and by the University of North Carolina and the ACLU of North Carolina,¹³ also detail systemic discriminatory policing under 287(g).

Yet ICE maintains sixteen 287(g) agreements in states that have passed laws explicitly designed to interfere with federal immigration enforcement (one in Alabama; four in Arizona; five in Georgia; four in South Carolina with an additional agreement pending; and two in Utah). ICE continues to deputize 287(g) jurisdictions with proven track records of racial profiling and

⁸ 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>

⁹ U.S. DOJ, Civil Rights Division, 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>

¹⁰ U.S. DOJ, Civil Rights Division, Letter from Assistant Attorney General Thomas E. Perez to Maricopa County Attorney Bill Montgomery (Dec. 15, 2011), available at http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf

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*. (Oct. 2009), available at <http://www.acluga.org/racial%20profiling%20Cobb.pdf>

¹² 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>

¹³ 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

does not suspend cooperation even when a jurisdiction is under DOJ investigation for biased policing. The 287(g) program has a dismal record of abetting racial profiling. By ending all agreements, DHS would send a message that arm's-length oversight of immigration enforcement is no longer possible or acceptable. If immigration enforcement decisions are always made by federal officers directly accountable to DHS for their actions, there will be no future abuses of *federal* power through invidious targeting of Latinos and other immigrant communities of color by *local* sheriffs like Arpaio and Johnson.

III. ICE must terminate all 287(g) agreements because both jail and task force agreements are susceptible to racial profiling, fail to prioritize public safety threats, and waste money.

After multiple reports in 2010-2011 by DHS's Office of Inspector General sharply criticized the 287(g) program,¹⁴ DHS concluded that the "least productive" 287(g) task forces should be discontinued.¹⁵ But this partial rollback does not go far enough. There is no justification for continued spending of \$51 million annually on 287(g) agreements, which have cost more than \$300 million since 2006.¹⁶ DHS itself acknowledges that "[g]iven the nationwide deployment of the Secure Communities interoperability system by the end of FY2013, it will no longer be necessary to maintain the more costly and less effective 287(g) program."¹⁷ While replete with its own problems, Secure Communities does not deputize non-federal personnel.

¹⁴ DHS, Office of Inspector General, "The Performance of 287(g) Agreements." (Mar. 2010), available at http://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf; DHS, Office of Inspector General, The Performance of 287(g) Agreements: Report Update. (Sept. 2010), 4, available at http://www.oig.dhs.gov/assets/Mgmt/OIG_10-124_Sep10.pdf. For the OIG's September 2011 and September 2012 follow-up reports, see http://www.oig.dhs.gov/assets/mgmt/oig_11-119_sep11.pdf and http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-130_Sep12.pdf

¹⁵ DHS Congressional Budget Justification FY 2013, available at <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-congressional-budget-justification-fy2013.pdf>, pp. 1035, 1107 of pdf. In January 2009 the Government Accountability Office (GAO) concluded that 287(g) lacked key internal controls and performance objectives. In March 2009 the House Homeland Security Committee held an oversight hearing. In April 2009 two subcommittees of the House Judiciary Committee held an oversight hearing on the "Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws."

¹⁶ These costs do not include state and local expenses, as ICE does not pay the full costs associated with implementation of the 287(g) program, including overtime and financial liability arising from civil rights violations. A report found the total cost for the first year of operating the 287(g) program in Mecklenburg County, NC, to be \$5.3 million, and in Alamance County, NC, to be \$4.8 million. Mai Thi Nguyen and Hannah Gill, *The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities*. (University of North Carolina at Chapel Hill, 2010), 33, available at http://cgi.unc.edu/uploads/media_items/287g-report-final.original.pdf. The Brookings Institute found that Prince William County, VA, had to raise property taxes and raid a "rainy day" fund to finance its 287(g) program. The program cost \$6.4 million in its first year and was projected to cost \$26 million over five years. To cut costs, the county slashed \$3.1 million from its budget, money that was intended to buy video cameras for police cars to avert racial profiling. See *Prince William County Case Study: Immigrants, Politics, and Local Response in Suburban Washington*. (Feb. 25, 2009), available at <http://www.brookings.edu/research/reports/2009/02/25-immigration-singer>

¹⁷ DHS Congressional Budget Justification, *supra* note 15, at 1108.

DHS's plan to phase out task forces alone is plainly inadequate. Because "[t]he 287(g) jail model does not impose federal oversight on the officers who make the initial arrests," jail enforcement "opens the door to racial profiling and pretextual arrests."¹⁸ As Maricopa and Alamance Counties' practices make clear, jail agreements are plagued by the same problems as task forces; indeed, an in-depth study concluded that jail models failed to target serious offenders just as frequently as task forces (50% of the time).¹⁹ The 287(g) program's principal defect is inherent and common to both models: state and local police have no business acting as immigration agents, in task forces or jails.

We urge ICE to terminate all existing 287(g) agreements and to reject all pending applications. Immigration enforcement is a federal responsibility and the 287(g) program harms community trust in police and all residents' right to unbiased law enforcement. If you have any questions or require further information, please contact Rev. Noel Andersen, Grassroots Coordinator for Immigrants' Rights, Church World Service, at 202/481-6687, or Chris Rickerd, Policy Counsel, American Civil Liberties Union, at 202/675-2339.

Yours sincerely,

Adhikaar for Human Rights and Social Justice (Woodside, NY)
Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia (Philadelphia, PA)
Advocates for Basic Legal Equality (ABLE) (Toledo, OH)
Dianne Aid, TSSF, President of the Episcopal Network for Economic Justice
Allies of Knoxville's Immigrant Neighbors (AKIN) (Knoxville, TN)
American Civil Liberties Union
American Friends Service Committee (Philadelphia, PA)
American Immigration Lawyers Association
Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center
Amnesty International USA (New York, NY)
Arkansas Interfaith Alliance
Asian American Institute, member of Asian American Center for Advancing Justice (Chicago, IL)
Asian American Justice Center, member of Asian American Center for Advancing Justice (Washington, D.C.)
Asian Law Alliance (San Jose, CA)

¹⁸ Capps et al., *supra* note 2, at 36.

¹⁹ *Id.* at 22.

Asian Pacific American Labor Alliance, AFL-CIO & APALA Education Fund
(Washington, D.C.)
Athens Immigrant Rights Coalition (Athens, GA)
Baurkot & Baurkot Law Firm (New York, NY)
Bill of Rights Defense Committee
Black Alliance for Just Immigration (BAJI) (Oakland, CA)
Black Unity (Nashville, TN)
Blacks in Law Enforcement of America
Boston New Sanctuary Movement (BNSM) (Boston, MA)
CAAAY Organizing Asian Communities (New York, NY)
Capital Area Immigrants' Rights Coalition (Washington, D.C.)
Casa Esperanza (Bound Brook, NJ)
CATA – the Farmworker Support Committee (Glassboro, NJ)
Center for Constitutional Rights (New York, NY)
Center for Intercultural Organizing (Portland, OR)
Center for Participatory Change (Asheville, NC)
Centro Comunitario Mexicano DFW
ChangeLab (Seattle, WA)
Church World Service, Immigration and Refugee Program
Coalición de Derechos Humanos (Tucson, AZ)
Coalición de Líderes Latinos-CLILA (Dalton, GA)
Coalición de Organizaciones Latino-Americanas (North Carolina)
Coalition for Education About Immigration (CEI) (Nashville, TN)
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Conexión Américas (Nashville, TN)
Corso, Kennedy & Campbell, LLP (Gainesville, GA)
Daya Inc. (Houston, TX)
Dignity Campaign
Dominican Sisters of Houston (Houston, TX)
Dream Activist Georgia (Mableton, GA)
DRUM - Desis Rising Up & Moving (Queens, NY)
Equality Maryland (Baltimore, MD)
Families for Freedom (New York, NY)
Farmworker Association of Florida, Inc.
Filipino Advocates for Justice (Oakland, CA)
Franciscan Action Network
Friends Committee on National Legislation (Washington, D.C.)
Friends of Farmworkers, Inc. (Pennsylvania)
Gainesville (FL) Interfaith Alliance for Immigrant Justice
Gender Rights Advocacy Association of New Jersey

Georgia Peace & Justice Coalition
Good Shepherd UCC (Arizona)
Hispanic Community Dialogue of Virginia (Virginia Beach, VA)
Hispanic Women's Organization of Arkansas
Holy Spirit Missionary Sisters, USA-JPIC (Northfield, IL)
Hour Time Now For Black Unity (Los Angeles, CA)
Houston United/Unido (Houston, TX)
Illinois Coalition for Immigrant and Refugee Rights
Immigration Clinic, University of Maryland Carey School of Law (Baltimore, MD)
Immigration Clinic, University of Miami School of Law (Coral Gables, FL)
Immigration Equality
Interfaith Coalition on Immigration (ICOM, Mn)
Jews Against Islamophobia (New York, NY)
Jews For Racial and Economic Justice (JFREJ) (New York, NY)
Jobs with Justice and American Rights at Work
Justice Strategies
Lambda Legal
Lawrence Action Network for Diversity (LAND) (Lawrence, KS)
Legal Aid Justice Center (Virginia)
Local Outreach Task Force of the Congregational Church of San Mateo (San Mateo, CA)
Lowcountry Immigration Coalition (Hilton Head, SC)
Lutheran Immigration and Refugee Service
Maryland Network Against Domestic Violence
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA) (Boston, MA)
Massachusetts Jobs with Justice (Boston, MA)
Massachusetts Transgender Political Coalition (Boston, MA)
Mississippi Immigrants Rights Alliance (MIRA)
Muslim Consultative Network (New York, NY)
Muslim Legal Fund of America (MLFA)
Nashville For All of Us (Nashville, TN)
National Advocacy Center of the Sisters of the Good Shepherd
National Center for Transgender Equality
National Coalition for LGBT Health
National Coalition of Anti-Violence Programs
National Council of La Raza (NCLR)
National Day Laborer Organizing Network (Los Angeles, CA)
National Employment Law Project
National Gay and Lesbian Task Force
National Immigrant Justice Center (Chicago, IL)
National Immigration Forum

National Immigration Law Center
National Immigration Project of the National Lawyers Guild (Boston, MA)
National Immigration Reform Advocates (NIRA)
National Latina Institute for Reproductive Health
National Network for Immigrant and Refugee Rights (Oakland, CA)
NC Immigrant Rights Project (Durham, NC)
New Sanctuary Movement of Philadelphia (Philadelphia, PA)
North Carolina Justice Center (Raleigh, NC)
North Carolina Southerners On New Ground (SONG-NC)
Northern Manhattan Coalition for Immigrant Rights (New York, NY)
Olneyville Neighborhood Association (Providence, RI)
OneAmerica (Washington State)
Oregon New Sanctuary Movement
Pakistan Solidarity Network (New York, NY)
PEACEWORKERS (San Francisco, CA)
Pennsylvania Council of Churches
Political Asylum/Immigration Representation Project (Boston, MA)
Priority Africa Network (Oakland, CA)
Progressive Leadership Alliance of Nevada (Reno, NV)
Promise Arizona
Provincial Council of the Clerics of St. Viator (Viatorians)
Public Justice Center (Maryland)
Reformed Church of Highland Park NJ
Reston Interfaith (Reston, VA)
Rights Working Group
Sachs Law Group, LLC (Philadelphia PA)
Sakhi for South Asian Women (New York, NY)
September 11th Families for Peaceful Tomorrows
Services, Immigrant Rights and Education Network (SIREN) (San Jose, CA)
Silicon Valley Alliance for Immigration Reform (SVAIR) (San Jose, CA)
Sisters and Brothers of Immigrants of Chicago (Chicago, IL)
Sisters of Mercy of the Americas
Sisters of Mercy South Central Community (Belmont, NC)
Sisters of Mercy West Midwest Justice Team (Omaha, NE)
South Asian Americans Leading Together (SAALT)
South Asian Network (Artesia, CA)
Southeast Asia Resource Action Center (Washington, D.C.)
Southern Poverty Law Center (Montgomery, AL)
Streetwise and Safe (SAS) (New York, NY)
Sugar Law Center for Economic & Social Justice (Detroit, MI)

Sylvia Rivera Law Project (New York, NY)
Tennessee Immigrant and Refugee Rights Coalition (Nashville, TN)
Tennessee Justice for Our Neighbors (Nashville, TN)
The Church of Our Saviour/La Iglesia de Nuestro Salvador Episcopal (Cincinnati, Ohio)
The Office of Immigration Issues, Presbyterian Church (U.S.A.)
The Praxis Project (Washington, D.C.)
The Sikh Coalition
The Very Rev. Catherine M. Campbell, Vicar La Iglesia, Episcopal de San José and La Iglesia de Cristo Rey (Arlington, VA)
Transformative Justice Law Project of Illinois (Chicago, IL)
Transgender Law Center
UC Davis Martin Luther King, Jr. Hall Immigration Detention Project (Davis, CA)
Unitarian Universalist Association, Witness Ministries
Unitarian Universalist Service Committee (Cambridge, MA)
United Methodist Church, General Board of Church and Society National
United Methodist Women Immigrant/Civil Rights Initiative
Vermont Immigration and Asylum Advocates (Burlington, VT)
Virginia Coalition of Latino Organizations (VACOLAO)
Virginia Hispanic Chamber of Commerce
Virginia Interfaith Center for Public Policy (Richmond, VA)
Virginia New Majority (Alexandria, VA)
Virginia Organizing (Charlottesville, VA)
Virginia Organizing (Harrisonburg Chapter)
Washington Defender Association's Immigration Project (Seattle, WA)
Washtenaw Interfaith Coalition for Immigrant Rights (Washtenaw County, MI)
WeCount! (Homestead, FL)
Who Is My Neighbor? Inc. (Highland Park, NJ)
WIN - the Welcoming Immigrants Network (Dallas, TX)
Women's Refugee Commission (New York, NY)
Worker Justice Center of New York (Rochester, NY)

cc: Noah Kroloff, Chief of Staff, Office of the Secretary, DHS
John Sandweg, Senior Counselor to the Secretary, DHS
Kelly Ryan, Acting Deputy Assistant Secretary, Office of Policy, DHS
Tamara Kessler, Acting Officer, Office for Civil Rights and Civil Liberties, DHS
Andrew Lorenzen-Strait, Public Advocate, ICE
Juan Osuna, Director, Executive Office for Immigration Review, DOJ
Becky Monroe, Senior Counsel, Civil Rights Division, DOJ
Felicia Escobar, Senior Policy Director for Immigration, White House Domestic Policy Council

Tyler Moran, Deputy Policy Director for Immigration, White House Domestic
Policy Council