

THE IMPACT OF SECTION 287(G) OF THE IMMIGRATION AND NATIONALITY ACT ON THE LATINO COMMUNITY

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I. INTRODUCTION

The recent signing of Arizona SB 1070 and subsequent reactions to the law have brought significant attention to the dangers of state-level immigration enforcement and the urgent need for comprehensive federal immigration reform. One antecedent of the law is the federal law known as section 287(g) of the Immigration and Nationality Act.

Enacted in 1996, 287(g) allows the federal government to enter into agreements with state and local law enforcement agencies, allowing them to deputize local officials to enforce federal immigration law. Intended to aid in the apprehension and removal of dangerous, criminal undocumented immigrants from the U.S., the program remained dormant for several years until gaining the interest of policymakers and political leaders after the September 11, 2001 attacks. While the goal of the program is to apprehend threatening criminals and potential terrorists, it has provided perilously unchecked authority to local law enforcement,

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entangled the broader immigrant community by leading to the arrests of nonviolent and nonthreatening immigrants, and exacerbated racial and ethnic targeting of Hispanics at the local level.

Elevated racial and ethnic profiling by law enforcement has created a threatening and insecure environment for all Latinos. For example, a 2008 Pew Hispanic Center survey of Latinos,* including U.S. citizens and immigrants alike, found that nearly one in ten Hispanic adults in the U.S. reported that they had been asked by police or other authorities about their immigration status in the past year. More importantly, the study found that 35% of native-born Hispanic citizens (who cannot be deported) worry a lot or some about deportation for themselves or their loved ones.¹

In January 2009, a blistering report from the Government Accountability Office (GAO) was released faulting the U.S. Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) for a lack of program oversight, among other things. Following the release of the GAO report, congressional hearings were held to examine the impact of the program. In October 2009, the Congressional Hispanic Caucus (CHC) called for the termination of the 287(g) program. Moreover, the only comprehensive immigration reform bill introduced in the 111th Congress would call for the elimination of the 287(g) program.

The Office of Inspector General (OIG) within DHS recently released a report with 33 recommendations for fixing the 287(g) program. However, despite the serious and numerous concerns presented by the GAO and OIG, the Obama administration continues to maintain and expand the 287(g) program.

This issue brief provides background on the 287(g) program and its evolution, offers a concrete example of its implementation in Tennessee, tells the story of how the program is adversely impacting the Latino community and undermining social cohesion, and provides recommendations for policy experts and the Obama administration.

II. BACKGROUND

Prior to the creation of the Immigration and Nationality Act (INA), federal immigration law was prescribed by a variety of statutes with little cohesion. In 1952, the INA codified and collected the nation's immigration laws, effectively reorganizing their structure. Over the years, the INA has been amended frequently and remains the backbone of immigration law today.²

The last major reform of federal immigration policy occurred in 1986 with the Immigration Reform and Control Act (IRCA). IRCA legalized millions of undocumented immigrants and set guidelines for hiring immigrant workers by establishing the I-9 eligibility verification process.³ In 1996, Congress passed the Illegal Immigration Reform and

* The terms "Latino" and "Hispanic" are used interchangeably by the U.S. Census Bureau and throughout this document to identify persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, and Spanish descent; they may be of any race.

Immigrant Responsibility Act (IIRIRA). The law greatly increased enforcement measures on the Mexican border, increased penalties for unlawful presence in the U.S., and strengthened the enforcement of employer sanctions through the I-9 process.⁴

Prior to 1996, the INA provided limited avenues for state enforcement of its civil and criminal provisions.⁵ Historically, states and localities have been permitted to enforce only the criminal aspects of immigration law (e.g., alien smuggling), whereas the enforcement of the civil provisions (e.g., illegal presence in the U.S.) has been viewed as a federal responsibility with states providing limited support.⁶ The justification for separating the enforcement of criminal and civil immigration violations rested largely on the notion that states needed a uniform immigration policy. However, the 1996 law leaned heavily on enforcement and pressure grew to involve state/local police in enforcement activities.

As a result, IIRIRA included section 287(g):

The Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States.⁷

This provision allows local police and other such agencies to enforce civil immigration law. In particular, the attorney general may deputize local officers to enforce federal law. Under the law, ICE and local law enforcement must enter into a written Memorandum of Agreement (MOA) that defines the scope and limitation of the authority to be delegated.⁸ Once local law enforcement has entered into an MOA with the federal government, the 287(g) program would allow state and local law enforcement agencies to cooperate in the arrests and detention of noncriminal and nonviolent offenders.⁹

Passed in 1996, the 287(g) program was largely ignored and not implemented until 2001. The events of September 11, 2001 resulted in greater political pressure on lawmakers and agencies to enforce federal immigration law. Many argued that the federal government alone could not effectively monitor the nation's immigrant population, particularly within the interior of the U.S.¹⁰ Accordingly, it was argued that state and local law enforcement agencies should contribute to the monitoring and enforcement of the law.¹¹ The March 2003 merger of the Immigration and Naturalization Service (INS) with the U.S. Customs Service into U.S. Immigration and Customs Enforcement within the Department of Homeland Security—along with a series of legal opinions issued by the Department of Justice in 2002—expedited the merger of state and local resources with federal immigration enforcement efforts.¹²

With continued calls for immigration enforcement, several years later the U.S. House of Representatives passed H.R. 4437, the “Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005.” Along with a number of other punitive measures, H.R. 4437 would have made being an undocumented immigrant in the U.S. or aiding an undocumented immigrant a felony. The bill sparked a national movement that reinvigorated the immigration policy debate.¹³ Millions of people marched in different cities across the country calling for a comprehensive approach to immigration reform that would include the legalization of undocumented immigrants.¹⁴ Although the Senate then passed immigration reform legislation in 2006, congressional leadership never brought the two bills to conference and they ultimately failed. In 2007, President George W. Bush tried again to push comprehensive immigration reform legislation forward, but by that time the debate in the U.S. Senate had hardened anti-immigrant sentiment and fueled more intense calls for immigration enforcement measures and “tougher” border security measures in place of comprehensive reform.

In response to the security-focused environment, ICE stepped up raids, conducted more I-9 audits, and took further measures to increase their presence at the U.S.-Mexican and U.S.-Canadian borders. In addition, state and local governments took it upon themselves to enforce federal immigration law by passing policies targeting immigrants and enrolled in cooperative programs with

ICE. In August 2007, ICE launched ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security), an initiative that brought together a series of programs with the goal of increasing state and local agency cooperation with federal agents in enforcing federal immigration law.¹⁵ Intended to increase interior enforcement, ACCESS houses a number of ICE efforts including Fugitive Operation Teams, Operation Predator, Operation Community Shield, the Criminal Alien Program, Secure Communities, and the 287(g) program.¹⁶

The 287(g) Program Comes to Life

It was not until after the September 11, 2001 terrorist attacks that the 287(g) program was entered into by any local agency. Although the 287(g) program was not initially designed to assist in the capture of terrorists, expansion of the program in the post 9/11 environment was made possible by reframing the program as an antiterrorism tool. The program was placed under the newly created U.S. Department of Homeland Security, which was “formed to unify the federal government’s capacity to deal with terrorist attacks, major disasters, and other emergencies.”¹⁷ Merging national antiterrorist security initiatives with immigration enforcement effectively conflated immigration and terrorism in the eyes of the media and the American public. Then and now, polls consistently show greater tolerance among the American public for racial profiling and civil liberties abuses when combating terrorism.

After ICE signed the first two 287(g) MOAs with the Florida Department of Law Enforcement and the Alabama State Police in 2002 and 2003 respectively, the program grew rapidly throughout the U.S. Six MOAs were signed between 2005 and 2006, 24 were signed in 2007, and 30 were signed in 2008.¹⁸

The 287(g) program enables the cross-designation between ICE and state and local patrol officers, detectives, investigators, and correctional officers, who, when working in conjunction with ICE, are given the latitude “to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering.”¹⁹ The stated goal of these partnerships is to facilitate the removal of undocumented aliens that commit major crimes²⁰ and act as a “force multiplier” for ICE’s limited resources, targeting “the most significant threats, vulnerabilities, and potential consequences.”²¹ ICE guidelines have also stressed that officers acting under 287(g) authority cannot “randomly ask for a person’s immigration status” and “may use their authority when dealing with someone suspected of a state crime that is more than a traffic offense.”²² These guidelines notwithstanding, implementation and administration of the program have been disastrous.

Section 287(g) Grows and Devolves

A recent OIG report found that in fiscal year 2008, deputized 287(g) officers identified and removed 33,831 individuals, or 9.5% of all ICE removals.²³ As of July 2010, approximately 71 287(g) agreements²⁴ had been signed.* The vast majority (61%) of these agreements are in southern states,²⁵ many of which have experienced a particularly rapid growth in new immigrant populations. States that lead in the number of signed agreements are Virginia, North Carolina, California, Arizona, Georgia, Florida, and Arkansas. While the agreements are often signed in response to a perceived increase in crime, the signing of these agreements actually correlates more readily to an increase in the immigrant population than it does to high or growing crime rates among residing undocumented immigrants. In fact, by August 2008 it was found that 61% of the jurisdictions in which the 287(g) program had been implemented actually had lower crime rates than the national average, while 87% of them had higher immigrant growth rates than the national average.²⁶ The mere presence and growth of a locality’s immigrant population underlies the expansion of the 287(g) program.

The 287(g) statute confers broad authority to state and local officers to interrogate any “person believed to be an alien as to his right to be or remain in the U.S.” and to arrest them without a warrant.²⁷ Participating state and local agencies have operationalized the 287(g) program in disparate ways, characterized primarily by the duties of officers that are

* As of August 2, 2010, 69 of these agreements were mutually signed and two agreements were pending “good faith” negotiations. See Appendix A for a full list of 287(g) agreements.

deputized. The first model, known as the Jail Enforcement Officers (JEO) model or “jail model,” exclusively trains police officers who work in jail and detention facilities to screen those arrested and place civil warrants on noncitizens who enter their facilities.²⁸ The second model, known as the Task Force Officers (TFO) model or “field model,” trains patrol officers who are mobile within the jurisdiction “to check the immigration status of individuals they encounter in the course of their routine law enforcement duties.”²⁹ Of the active MOAs, 31 are JEO, 24 are TFO, and 16 are a combination of the two models.³⁰

The program’s recent growth has occurred despite rising criticism, public concern, and scrutiny from the Government Accountability Office. In early 2009, a GAO report leveled a blistering criticism of the implementation of 287(g). The GAO found that ICE officials had not documented in program-related materials that the main objective of the 287(g) program was to enhance the safety and security of communities by addressing serious criminal activity committed by removable undocumented immigrants. Consistent with media and other reports, the GAO found that participating agencies were using the program to remove undocumented immigrants who had committed minor crimes (e.g., carrying an open container of alcohol) and some were misusing their authority altogether (e.g., questioning immigrants in their homes). The GAO also found that ICE did not consistently clarify the extent of supervision required over agencies and officers during implementation of the program. The study further revealed

that while tracking and reporting data were required under the program, ICE did not define what data should be tracked or how they should be collected and reported. The GAO report also included recommendations for improving oversight and accountability such as:

- Documentation of the objectives for the program
- Clarification of when 287(g) authority is authorized for use by state/local law enforcement
- Documentation of the expected supervisory relationship and oversight from ICE in MOAs
- Specification of required data collection
- Development of a performance management plan over the program

Latinos, Law Enforcement, and Discrimination

National polls and surveys since 2007 have revealed growing concern among Latinos about discrimination, deportation, and the role of law enforcement. More than half of all Latino adults in the U.S. are foreign-born. Not surprisingly, policies and programs that target immigrants or those perceived to be foreign-born have a proportionate influence on the experience as well as the views and attitudes of Latinos in the U.S.

The Pew Hispanic Center has conducted and published a number of revealing surveys since 2007. For example, in 2009, it found that

32% of Latinos reported that they, a family member, or a close friend experienced racial/ethnic discrimination within the previous five years.³¹

Moreover, the 2008 National Survey of Latinos found that 81% of Hispanics believed that enforcement of immigration laws should be left mainly to the federal authorities, while just 12% said that local police should take an active role. In the survey, 8% of native-born U.S. citizens and 10% of immigrants reported that in the past year the police or other authorities had stopped them and asked about their immigration status. It also found that 57% of Latinos worried a lot or some that they, a family member, or a close friend may be deported.³² These surveys have generally found wide disparities in experience and perceptions between Hispanics and Whites.

Unsurprisingly, Latinos have strong views about law enforcement. In a 2009 survey by the Pew Hispanic Center, only 45% of Latinos said that they had a great deal or fair amount of confidence that police officers in their communities would treat Latinos fairly. This is lower than the share of Whites (74%), who said that police officers in their communities treat Blacks and Whites equally.³³ In that survey, nearly half (47%) expressed just some or very little confidence that police will avoid using excessive force on suspects, and 50% of Hispanics have just some or very little confidence that police will treat Hispanics fairly.

The American public also appears to agree that discrimination against Hispanics is relatively high. In 2009, the Pew Research Center found that 23% of Americans said that Hispanics are discriminated against “a lot” in society today, a share higher than observed for any other group.³⁴

Perceptions of discrimination, targeting by police, and overall insecurity among Latinos have exacerbated efforts of foreign-born immigrants to integrate into society. Programs and policies that heighten these conditions should be examined and scrutinized carefully given the long-term implications for social cohesion.

III. CHALLENGES IN IMPLEMENTATION

Despite the 287(g) program’s intended goal of enhancing the safety and security of communities by addressing serious criminal activity committed by removable aliens, the evidence shows that in practice many have been touched by this law regardless of infraction, citizenship status, or nativity of the person (see Box 1). For a variety of reasons, no other community has been as affected by the implementation of this law and program more than the Latino community.

Misuse of 287(g) Authority

The federal government’s own studies confirm that of the many arrests under the 287(g) program, almost half identified in the OIG report were not aliens considered to pose the greatest risk to the public. While the 287(g) program is credited with identifying more

Box 1: Juana Villegas

In July 2008, Juana Villegas was pulled over by local police for a traffic violation. When Juana, nine months pregnant and three days from labor, could not produce a driver's license (a misdemeanor), she was arrested and taken into the Davidson County jail in Nashville, Tennessee and screened under the Davidson County Sheriff's Office's 287(g) agreement. Subsequently, an ICE hold was placed on Juana. Hours after Juana's water broke on the night of July 5, she was taken to Metro General Hospital and shackled to her hospital bed until the final stages of labor. After labor, Juana was returned to jail where she suffered two days of separation from her infant daughter, developing a breast infection while her infant developed jaundice. On August 15, 2008, Juana's "careless driving" violation was dismissed by the municipal court and her deportation case is still pending. Juana's case highlights the dangers present in the 287(g) program's broad and unreasonable grasp, which stems from a detrimental lack of accountability.

Source: Julia Preston, "Immigrant, Pregnant, Is Jailed Under Pact," *The New York Times*, July 20, 2008.

than 173,000 "potentially removable aliens" since January 2006—mostly in jails—who are suspected of being in the country illegally,³⁵ a number of academic and advocacy groups that have tracked 287(g)-related incidents show that the majority of those arrested and deported under 287(g) were not the violent criminals or terrorists that the program was intended to apprehend.³⁶ A majority of immigrants detained under 287(g) authority have been apprehended for minor offenses such as driving with a broken taillight, fishing without a permit, or "conspiracy to smuggle oneself."³⁷

Many sheriffs and local politicians have touted the number of apprehensions as a primary measure of the program's success. However, mounting evidence shows that Latinos are increasingly pulled over and interrogated for minor offenses as an excuse to check their immigration status. For example, a study conducted by the American Civil Liberties

Union of North Carolina found that 83% of those detained through the 287(g) program in Gaston County in May 2008 were charged for traffic violations.³⁸ In Maricopa County, Arizona, of the 578 undocumented immigrants arrested in 2006–2007, 498 were charged with paying for a smuggler.³⁹ Furthermore, although ICE created a series of tiered priorities (see Box 2), the majority of the MOAs reviewed by the GAO did not specify that the tiers of detained individuals should be tracked or reported. The OIG report found that in a review of arrest information for a sample of 280 aliens identified through the 287(g) program, only 9% fell under Level 1 requirements (i.e., being convicted of or arrested for a serious offense).⁴⁰

Perhaps no jurisdiction has shown greater misuse of the 287(g) program than Maricopa County, where Sheriff Joe Arpaio has effectively converted the police department into an immigration enforcement agency. More than 2,200 lawsuits have been filed

Box 2: ICE Risk-Based Tiers

To emphasize its priority for apprehending the most dangerous persons, ICE created a three-tiered “risk-based” approach intended to ensure that resources are being used appropriately to identify noncitizens who pose the greatest threat to the public:

- Level 1—Individuals convicted of “aggravated felonies,” as defined by the Immigration and Nationality Act,* or two or more crimes each punishable by more than one year of imprisonment, commonly referred to as “felonies”
- Level 2—Individuals convicted of any felony or three or more crimes each punishable by less than one year of imprisonment, commonly referred to as “misdemeanors”
- Level 3—Individuals convicted of crimes punishable by less than one year of imprisonment†

These tiers were outlined as priorities in a memo to ICE employees, but the most recent 287(g) MOA does not provide any mechanisms for ensuring that agencies faithfully comply. It only demands that agencies collect the data required under the ENFORCE database, which does not ask for ethnicity, eliminating the primary mechanism for proving and preventing racial profiling.

* The definition of “aggravated felony” includes serious, violent offenses and less serious, nonviolent offenses.

† Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers are directed to exercise particular discretion when dealing with minor traffic offenses, such as driving without a license.

Source: Letter from John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, to All ICE Employees, June 30, 2010, <http://www.rmlegal.com/documents/ICE-John-Morton-2010-Priority-Memo.pdf> (accessed August 10, 2010).

against Sheriff Arpaio’s broad use of the 287(g) program⁴¹ for “crime suppression/anti-illegal immigration” sweeps that have been conducted “without any evidence of criminal activity violating federal regulations intended to prevent racial profiling.”⁴² Among these lawsuits were a number of U.S. citizens who were targeted in his immigration enforcement efforts, including Manuel Nieto, a Hispanic U.S.-born citizen who was handcuffed and pressed against his car for no reason before the police checked his identification through their computer system.⁴³

Poor Federal Oversight

The government investigative reports revealed significant problems and gaps in oversight and management of the 287(g) program by ICE. For example, the GAO study revealed that ICE had failed to sufficiently describe the extent of their oversight and supervision over agencies and trained officers.⁴⁴ The OIG report found significant variance and inconsistencies across participating agencies with respect to check-ins, oversight, feedback, and evaluation of participating agencies and officers by ICE, with some agencies reporting no contact with ICE personnel.⁴⁵ Both studies found a number of ICE personnel who were not supervisors overseeing agency participants and minimal field inspections prior to 2009.

Moreover, data collection and reporting for participating 287(g) agencies has been unclear and unspecified, resulting in the absence of reliable performance measures or outcomes. While ICE has the authority to take action against local officers accused of violating MOAs, the OIG study found that ICE provided no guidance on how to handle, maintain, or use information regarding allegations and complaints and had no data on the investigations conducted with 287(g) authority. Furthermore, the process and content for periodic reviews of participating agencies remained unclear.

Not surprisingly, as the program grew between 2006 and 2009, evidence of improper use of authority with limited federal intervention significantly increased. In Maricopa County, controversial practices such as deputizing vigilantes and conducting “crime suppression sweeps” have led to “allegations of discriminatory practices and unconstitutional searches and seizures.”⁴⁶ These allegations have led to a Department of Justice investigation of the 287(g) program in Maricopa County.⁴⁷ Nonetheless, while reports of problems and abuses have persisted since 2007, very little was done by the federal government until 2009.⁴⁸

Weak Mechanisms for Public Oversight

Despite the deep concern expressed by the public about the dangers that might arise through the conflation of immigration and customs enforcement and local police, the program has few notable mechanisms for

public and community engagement. Initially, some MOAs required a steering committee to review and assess activities. While these committees could have included local community stakeholders, such participation was not a requirement. Furthermore, the government studies revealed vast inconsistencies in the implementation and use of steering committees among participating agencies. Oddly, rather than strengthening the steering committee requirement, ICE dropped it entirely from the MOAs in 2009. This occurred after a string of damaging stories emerged.

For example, the Burlington *Times-News* reported that in Alamance County, North Carolina, three children were stranded on the side of I-85 in the middle of the night after their mother, Maria Chavira Ventura, was detained under 287(g) for driving without a license.⁴⁹ The deputized officer left the children with a man the mother did not know or trust to care for her children. Fearing that ICE would come back for him, the man abandoned the children on the side of the road, where they remained for eight hours before their father arrived from Maryland to pick them up. The children, ages 14, ten, and six, were found by their father “scared, exhausted, hungry, and distraught over the loss of their mother.”⁵⁰ Although the officer claimed that the mother had approved of the children staying with the man, neither the mother nor the child he claimed translated the exchange attested to this fact.⁵¹

In Washington County, Arkansas, Adriana Torres-Flores was held without food, water, or bathroom facilities for four days and was forced to drink her own urine to survive after being detained under 287(g). The officer responsible for calling ICE forgot her in a cell after she had been arrested.⁵² While this is an example of neglect, a number of cases have arisen in which immigrants are held in detention beyond the maximum 48 hours that police are legally allowed to hold them under immigration detainers without transferring custody. In these cases, as with many other abuses under the program, those apprehended were put into deportation proceedings before they were able to file complaints of abuse.

Despite reported abuses and the GAO-documented community concerns of racial profiling and discrimination in most of the agencies reviewed, there remains no formal mechanism for public input or review in 287(g) areas. Moreover, ICE assessments, reviews, and recertifications of agencies have not taken into account issues of civil rights, civil liberties, public complaints, or other evidence of abuse of authority under 287(g) agreements.

Untrained and Inexperienced Officers and Supervisors

The 287(g) MOA provides deputized officers with the authority to interrogate in order to determine immigration status and the

ability to complete criminal alien processing and prepare immigration detainers.⁵³ While deputized officers receive some training, it is not extensive enough to cover the entirety of the complex immigration laws. Deputized officers are only required to undergo four to five weeks of training, with little follow-up training,* while their federal counterparts are trained for four to five months and receive follow-up training.⁵⁴ More problematic is the fact that OIG found that training programs for 287(g) officers did not fully prepare them for immigration enforcement duties. Additionally, the training does not include any language training or language competency requirement.⁵⁵ The problem of inadequately trained officers is further exacerbated by the well-documented fact that ICE supervisors of 287(g) participant agencies have not been found to have the appropriate level of knowledge, skill, or ability to supervise local officers enforcing federal immigration statutes. The OIG report revealed that officers themselves noted nonsupervisory ICE personnel as not having the technical knowledge, giving contradictory advice, and failing to obtain definitive guidance or instruction in cases.

Furthermore, a report by the Major Cities Chiefs Association, an organization of police chiefs from 63 of the largest urban areas in the U.S., stated that “based on their authority, training, experience and resources available to

* In 2007, ICE identified annual online refresher training modules for 287(g) officers. Despite an Office of State and Local Coordination directive to complete the online training annually, a review of the program by OIG found that, as of March 2009, 88% of active 287(g) officers who were vetted prior to 2008 had not completed all required refresher trainings and several ICE program supervisors in field offices were not aware of annual refresher training requirements.

them...federal agencies and the federal courts are in the best position to determine whether” an immigrant is “in violation of federal regulations.” It emphasized that it “would be very difficult if not almost impossible” for an average patrol officer to determine specific immigration status since officers are “ill equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.”⁵⁶

Nevertheless, as of August 2010, more than 1,190 officers have been trained and certified under the 287(g) program at the Federal Law Enforcement Training Center (FLETC) in Charleston, South Carolina.⁵⁷

Public Safety

In a survey of 54 police chiefs, deputies, and sheriffs conducted by the Police Foundation, only nine offices said that the 287(g) program helped fight crime.⁵⁸ The majority of law enforcement officials agreed that 287(g) agreements detract from more pressing and urgent police work, such as pursuing hardened criminals with arrest warrants. They also believed that these agreements often severely hinder the ability of police to earn the trust required to implement effective community policing strategies to fight criminal activity. According to the same study, many police are “concerned about the impact of local law enforcement of immigration law on already strained state and local resources, and particularly on the ability of local law enforcement to maintain its core mission of protecting communities and promoting public safety.”⁵⁹

According to Doris Meissner, former commissioner of the U.S. Immigration and Naturalization Service, there is a trade-off to the local enforcement of immigration law: “If the local police are doing federal law enforcement, other law enforcement responsibilities get a lower priority by default.”⁶⁰ In fact, a report issued by the Goldwater Institute, a conservative think tank, showed that the Maricopa County Sheriff’s Office has “diverted resources away from basic law-enforcement functions to highly publicized immigration sweeps, which are ineffective in policing illegal immigration and reducing crime generally.” This study found that as of September 2008, the sheriff’s office had 77,949 outstanding warrants, including a record high of 42,297 felony warrants.⁶¹

Immigration enforcement in Maricopa County has not only diverted the sheriff’s office away from combating serious crimes but also lowered response rates to requests from the public for assistance regarding serious crimes. A report by the *East Valley Tribune* found that deputies from the Maricopa County Sheriff’s Office were failing to meet the county’s standard for response times for life-threatening emergencies. In fact, two-thirds of patrol cars arrived late to the most serious calls for police assistance.⁶²

In addition to decreasing resources dedicated to apprehending truly dangerous criminals, the 287(g) program has also been found to jeopardize the ability of police to cooperate with residents in the investigation of serious crime. Community policing techniques, which

depend heavily on relationships of trust between police officers and the communities they serve, are employed by scores of police departments in this country as a way to successfully combat crime.⁶³ Most notably, individuals in immigrant communities are an important source of information in reporting crimes and serving as witnesses to crimes in their neighborhood. For this reason, police officials are often apprehensive about enforcing federal immigration law because it undermines their community-based strategies. On this issue, the Major Cities Chiefs Association advised that:

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities; and the clear need to foster the trust and cooperation from the public including members of immigrant communities.⁶⁴

Consequently, police have stated that their involvement in immigration enforcement would decrease “inclination to report crimes out of fear that officers with 287(g) authority would inquire about the crime victim’s immigration status.”⁶⁵ For example, according to the Police Foundation, one Midwestern police chief recounted how a witness who testified in a criminal case was found to be undocumented when the court

was conducting the routine background check. A few days after the witness testified, he was detained and put into deportation proceedings. Rumors of this event spread through the immigrant community and made them fearful of reporting crimes and working with police, undermining the ability of the police to rely on the community for assistance and effectively protect the broader community from dangerous crime.⁶⁶ Worse yet, fear of law enforcement can create a potential class of victims for criminals.

IV. DAVIDSON COUNTY, TENNESSEE: THE LATINO EXPERIENCE

Davidson County, Tennessee is reflective of the type of community and region prone to entering into a 287(g) agreement with DHS. In August 2008, the Police Foundation found that the 287(g) program was disproportionately located in emerging immigrant communities, with more than 60% of the programs being established in such areas. Davidson County has experienced growth in the number of immigrants residing and working in the county.

As in the case of many other 287(g) jurisdictions, the Davidson County Sheriff’s Office (DCSO) requested permission to enter into the 287(g) program after a series of high-profile cases relating to immigrants emerged. According to the sheriff’s own report, DCSO decided to apply for the 287(g) program after “six illegal immigrants were arrested and charged with [vehicular] homicide during a three-month period.”⁶⁷ Following these events, DCSO applied for 287(g), receiving approval in December 2006. In January

2007, DCSO became the tenth agency in the nation to sign an MOA with DHS. The MOA authorized nominated, trained, and certified DCSO personnel to perform certain immigration enforcement functions⁶⁸ at an estimated cost of \$683,000 per year to the county (see Box 3).⁶⁹ On April 16, 2007, after a five-week training program, 15 Davidson County deputies began screening arrestees.⁷⁰

In the months following the implementation of the DCSO 287(g) program, a variety of media reports highlighted the human toll that the program was taking. An article in *The Tennessean* reported the stories of Victor Delgado and Marcos Herrera, both arrested and deported after receiving minor traffic citations (for playing loud music and for speeding and not having a driver's license, respectively). After Delgado's arrest, his family was so fearful of being deported that they fled to Georgia, according to Delgado's uncle, Francisco Ramos. For Herrera's wife, a U.S. citizen, the deportation resulted in the loss of the primary breadwinner and father of her newborn child.⁷¹

The 287(g) program in Nashville has also been used to arrest immigrants who are not guilty of committing a crime. On January 27, 2008, Noe Lopez was arrested for fishing without a license along the Cumberland River in Davidson County and taken to the Davidson County jail, where he was screened under 287(g). Despite the fact that he was never found guilty of any crime, he was nonetheless deported. Similarly, on September 2, 2008,

Jose Estrada was standing outside the building where he worked, waiting for his boss to arrive, when he was approached by police and asked for identification. Even after Jose produced his Individual Taxpayer Identification card and his boss arrived to verify his identity, he was charged with possessing a fake Social Security card and transported to the Davidson County jail. Although the charge was dismissed in court and he posed no credible threat to the community, Jose was processed for deportation.⁷² This sent a clear message to the community that contrary to its stated purpose, 287(g) authority would not only be used to arrest hardened criminals and potential terrorists but also to arrest anyone who happens to cross an officer's path, regardless of whether or not they are guilty of a serious criminal act.

The Davidson County Sheriff's Office's 287(g) agreement is under the Jail Enforcement Officer model, which extends its power to jail centers but not patrol officers. Because of its parameters, it is believed that this model reduces the likelihood of racial profiling and abuse by deputized officers. In addition, DCSO requires an extra step, though not required of all JEOs, in which the officer must bring the defendant before a judicial magistrate that must validate the arrest. Despite these additional safeguards, the anecdotal evidence proves that 287(g) has nonetheless resulted in increased apprehension and deportation of immigrants, regardless of whether they were convicted of a serious crime.

Box 3: Financial Costs

When the 287(g) MOA was signed between ICE and the Davidson County Sheriff's Office in January 2007, the agreement authorized a maximum of 12 nominated, trained, and certified DCSO personnel to perform certain immigration functions* at an estimated cost of \$683,000 per year to the county.[†] In addition to paying for the cross-designated officer salaries,[‡] DCSO also experienced unreimbursed immigration detention costs, as they would bear the full cost of the first 48 hours of detention before ICE takes custody of the inmate.[§] According to the Intergovernmental Service Agreement between ICE and DCSO, the per diem detention cost per detainee is \$61.^{**} The Tennessee Immigrant and Refugee Rights Coalition (TIRRC) estimates that the total unreimbursed detention cost for the first two months of the program was \$366,000, since more than 3,000 immigrants were processed for deportation during this period. When combined with officer salaries, the preliminary costs of the Davidson County 287(g) program exceeded \$1 million.

Even though the detention policy changed in October 2008, when ICE agreed to start paying the per diem costs as soon as an inmate was eligible for release on a criminal charge, unreimbursed costs are still incurred when an inmate is held on a criminal offense and is unable to post bond because of the underlying ICE hold. For example, Juana Villegas gave birth while she was in custody for being charged with not having a driver's license (not while she was in ICE custody). However, if she had not been screened under 287(g) and had an ICE hold put on her, she would have likely posted the criminal bond and gone home. Because of 287(g) and the resulting ICE hold (although, again, she wasn't yet in ICE custody and therefore eligible for per diem reimbursement), she was detained until she could see the judge on the criminal charge. TIRRC estimates that Nashville taxpayers incur over \$400,000 a year in unreimbursed detention costs for individuals who might have otherwise been released awaiting their court hearing.^{††}

* Memorandum of Agreement, February 21, 2007, U.S. Immigration and Customs Enforcement and The Metropolitan Government of Nashville and Davidson County, <http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/davidsoncountysheriffsoffice.pdf> (accessed July 10, 2010).

† Susan Mattson, *Immigration Issues in Tennessee*. Offices of Research and Education Accountability, Tennessee Comptroller of the Treasury. Nashville, TN, 2007, <http://www.comptroller1.state.tn.us/repository/RE/immigration07.pdf> (accessed July 22, 2010).

‡ While DCSO was authorized to train 12 DCSO personnel, 15 officers were actually trained.

§ Stephen Fotopulos, Executive Director, Tennessee Immigrant and Refugee Rights Coalition, conversation with the author, January 23, 2010.

** U.S. Immigration and Customs Enforcement "Inter-Governmental Service Agreement Between the United States Department of Homeland Security U.S. Immigration and Customs Enforcement Office of Detention and Removal and Davidson County, Nashville TN." U.S. Department of Homeland Security. Washington, DC, 2007, <http://www.ice.gov/doclib/foia/isa/igsadavidsoncountyjail.pdf> (accessed August 9, 2010).

†† Assumptions: There have been an average of 2,500 287(g) detainees per year since inception of the program; approximately 50% are detained for minor driving offenses, spend approximately three days in jail awaiting a hearing, and cost \$61 per day for detention; and approximately 15% are detained for more serious but nonviolent offenses and would be eligible for bond, spend approximately eight days in jail awaiting a hearing, and cost \$61 per day for detention.

Furthermore, Davidson County's original 287(g) MOA stipulated that an advisory committee would be established "to review and assess the immigration enforcement activities conducted by the participating DCSO personnel and to ensure compliance with the terms of this MOA."⁷³ The advisory council, which met quarterly, consisted of immigration attorneys and advocates, civil rights groups, and representatives from the sheriff's office, police department, and public defender's office. In the purpose statement presented to the committee in January 2007, it was stated that the council was "to share concerns and input ideas for the implementation of the 287(g) Delegation of Authority program." Additionally, the council was encouraged "to carry factual information to the immigrant community and community at large" and "to bring forward specific complaints concerning individual cases once the program has been implemented." However, the statement made it clear that final decisions about the program rested "with the Sheriff's Office and the laws and policies governing the ICE agency."⁷⁴

Despite the original purpose given to the advisory council, the council had little impact on the policies and implementation of the Davidson County 287(g) program. For example, Elliot Ozment, an immigration attorney and original member of the advisory council, said that the sheriff "had our advice but it was not acted upon."⁷⁵ Before the program even went into effect, the consensus of community representatives on the advisory committee was that in order to meet the stated objectives of the program, 287(g) screening would need to be limited

to arrestees charged with felony offenses and other crimes that posed a serious threat to the community. This recommendation was also based on the representations made by Davidson County Sheriff Daron Hall in community forums that the enforcement focus of the program was not undocumented immigrants driving without a license. Several months after program implementation, committee members were presented with data demonstrating that over 80% of individuals processed under the program were charged with misdemeanor offenses, and once again contended that 287(g) was frustrating its own objectives and should have its screening process refined.⁷⁶ After Juana Villegas's story made national headlines, the committee again pushed the sheriff to use the program to "screen the more violent offenders, not immigrants arrested for traffic violations."⁷⁷ Over time, it became clear to many committee members that Sheriff Hall had never intended to take action on the substantive recommendations regarding program implementation. In June 2010, Sheriff Hall dismissed the committee with the intent to replace its members because he found it "difficult to work with advocates who joined the advisory committee knowing they didn't agree with the 287(g) program's existence."⁷⁸

Sheriff Hall determined unilaterally what types of activities would trigger 287(g) authority. For example, the Tennessee Immigrant and Refugee Rights Coalition reported that in the months immediately following the inception of the 287(g) program, Sheriff Hall indicated that being an undocumented immigrant

and driving with an expired driver's license represented a pattern of illegal behavior worthy of the heightened scrutiny under this program.⁷⁹ Additionally, in the first week of the program's operation, 81 immigrants were processed for removal, with some having been arrested for standing at a popular temporary worker site.⁸⁰

Since then, further data have shown that Latinos have been targeted by DCSO. According to a report by the Metro Government's Criminal Justice Planning Unit, the arrest rates for Hispanic defendants charged with driving without a license more than doubled after the implementation of 287(g).⁸¹ Moreover, from May 2006 to July 2007 the percentage of Hispanic defendants who were arrested for driving without a license increased by more than 20% (from 23.3% to 49.4%) while the number of non-Hispanic defendants declined by 25%.⁸² Additionally, Sheriff Hall's own *287(g) Two-Year Review* shows that the overwhelming majority of immigrants processed for deportation were from Latin America (98%). And while 5,333 immigrants had been apprehended and deported through the Davidson County 287(g) program, only 102 immigrants detained by the Davidson County 287(g) program were not Latin American.⁸³

It is also troublesome that the stated goal of the program is to remove violent, dangerous

criminals, yet its success is assessed by the number of individuals apprehended and deported, regardless of their threat to society or involvement in criminal or terrorist activity. For example, according to the sheriff's *287(g) Two-Year Review*, 85% of those processed through 287(g) were misdemeanor arrests.⁸⁴ Most significantly, while the program was touted as a success for apprehending more than 5,300 undocumented immigrants, Sheriff Hall's own report showed that only 1.3% of those apprehended were found to be gang members and *none* were suspected terrorists.⁸⁵ Furthermore, 60% of those processed for removal under 287(g) had not been previously arrested in Davidson County or anywhere else in the U.S. and therefore posed no reasonable threat to the community.⁸⁶

Community Safety and Views

Anecdotal evidence from Davidson County sheds light on the existing apprehension of immigrants and Latinos stemming from the 287(g) program. However, because community engagement and effective data collection have not been a formal part of the program, there was minimal input from the community about the program's implementation and design. In 2008, more than a year after the program began, NCLR partnered with TIRRC to examine its impact. A survey was designed to garner direct feedback from community members.* It compared the

* This survey was designed to add greater dimension to the examination of the program by assessing its effects on community relations with the police. It included 12 questions with a number of qualitative follow-up subsections that covered issues pertaining to personal and community perceptions of the police, immigration and law enforcement, and domestic violence. The survey concluded with 11 demographic questions. Over 100 surveys were completed, half by members of the Latino community and half by members of the Black community in Davidson County. Respondents were free to give as little or as much information as they deemed appropriate and could refuse to answer any question.

willingness and likelihood of Latinos and Blacks to approach the police in Davidson County. Results showed that while both communities have negative perceptions of the police, the Latino community expressed greater fear and unwillingness to contact the police in the case of an emergency. Furthermore, the survey indicated that much of the apprehension reported by Latino survey participants was related to immigration enforcement and fear of possible deportation.

The first major finding from the survey was that Blacks and Latinos expressed similar general sentiments and levels of comfort toward law enforcement. About two out of five members of each group (41% of Latinos and 38% of Blacks) reported that their community was “very uncomfortable” when interacting with the police. In terms of incidence, more than one-third of Latinos (35%) and nearly half of Blacks (49%) reported having known someone who had been a victim of a crime. Therefore, even though the Black community reportedly experienced higher victimization rates, both communities expressed similar levels of discomfort when interacting with the police.

While both communities expressed deep discomfort with interacting with the police generally, only 4% of Black respondents said that they knew of a crime that had not been reported to the police. In the Latino community, however, a substantial 42% said that they knew of a crime that had not been reported to the police. Perhaps the most significant finding was that when

asked whether they would report a crime in the future, more than half (54%) of the respondents in the Latino community said they would choose not to call the police, compared to 27% of Blacks. This shows a marked difference in the willingness to report crime despite a shared discomfort with the police.

The reasons given for Latinos and Blacks’ distrust of the police are worth noting. Half of Latino respondents who provided specific reasons for their discomfort said that it had to do with “fear” or being “afraid.” One-third of those who answered the question spoke explicitly to immigration issues. On the other hand, none of the respondents in the Black community mentioned either of these issues. In both groups, however, a small percentage spoke to concerns about racial profiling on the part of the police. Moreover, Latinos’ fear of immigration enforcement can be drawn from a clear proximity to enforcement activities, as 85% reported knowing someone who had been deported after being arrested, compared to only 8% of Blacks. The follow-up question revealed that for the Latino community, the majority of these arrests resulted from minor traffic infractions.

The survey demonstrates that perceptions of law enforcement in the Latino community are especially strained and undermine the community’s relationship with the police. In Davidson County, Latinos are less likely than Blacks to report a crime out of fear of police inquiry into their immigration status, which can be connected to the implementation of

the 287(g) program. Additionally, because Latino families can come from mixed-immigration-status families—U.S. citizens, legal residents, and/or undocumented immigrants living in the same household—fear of a loved one being detained means that more Latinos will be apprehensive about interacting with police regardless of their own immigration status, further harming community-police relations.

Despite these experiences, attitudes, and views, there is no evidence that ICE was aware of or considered any of these concerns in reviewing, reassessing, or recertifying Davidson County for a 287(g) MOA in 2009.

V. POLICY RECOMMENDATIONS

NCLR—along with many civil, immigrant, and human rights organizations—has consistently voiced concern about the outsourcing of immigration enforcement to local law enforcement. The government’s own studies document serious flaws and gaps in federal oversight and implementation of the law and program. The case study above paints a clear picture of discretion gone wrong, with its most acute impact felt on local Latino workers and families.

Both the GAO and OIG investigative reports helped to identify many ways the program can be improved and refined to mitigate the worst outcomes of the 287(g) program. Of those recommendations, the most essential are that ICE must:

Refocus agencies on the original intent and goal of the program: to arrest removable aliens convicted of serious crimes.

Clarifying the goal, requiring specific data collection, conducting regular annual assessments of participating jurisdictions, and ensuring that resources are focused on Level 1 criminals must be an immediate priority. ICE may be relying too heavily on its communications efforts to address this issue, and it must realize that it has a policy problem to remedy. Applicants for MOAs and those seeking to recertify their MOAs should be required to show and document high levels of *criminal* arrests and convictions of undocumented individuals in their jurisdictions. There are few other ways to ensure that jurisdictions are not simply applying for and gaining approval of agreements because they have a large number of foreign-born residents and workers—a structural problem exacerbating the targeting and profiling of Latinos throughout the U.S.

Make protecting civil rights and civil liberties a top priority in implementation of the program.

ICE can do much more to protect individuals from civil and human rights violations that occur at the hands of 287(g) designated officers. Issuing clear guidelines to agencies—including this priority—prominently in MOAs, requiring necessary data collection to enforce compliance, and

barring jurisdictions with a record or demonstrated evidence of violations from participation should all be implemented.

Formally empower community leaders and organizations to engage in program implementation and oversight. Currently, the 287(g) program provides no serious mechanisms for community and public engagement or oversight of its implementation. The steering committee requirement that has been dropped from the MOAs should be replaced by another advisory body with community voices that has the power to influence the recertification of MOAs.

In addition, policy and program recommendations from OIG addressing training and supervision of local law enforcement officers and language assistance requirements would significantly improve the program. However, the recently released OIG report noted a number of recommendations that ICE did not agree with, and those issues remain unresolved. The lack of resolution or significant program change to address serious problems in the 287(g) program suggests that either more is needed to achieve effective policy change on behalf of Latinos or necessary policy change is unachievable in the short term.

In the interim, the program continues to provide license to local law enforcement to target, profile, harass, and intimidate Latinos or those who are perceived to be in the country unlawfully. While the impact of

the law and program is felt most acutely in jurisdictions with MOAs, the law is having a profound effect on public views and attitudes nationwide. For example, the law is highlighting significant disparities between Latinos and non-Latinos with respect to views on immigration enforcement, confidence in police, and tolerance of racial and ethnic profiling, and it is reinforcing misperceptions of Latinos.

The 287(g) program undermines efforts to integrate immigrants into society and strengthen social cohesion among diverse U.S. populations. Accordingly, NCLR recommends that the Obama administration terminate the 287(g) program. The evidence supporting this decision is overwhelming. The program has been a failure and requires fundamental changes to effectively achieve its primary goal while mitigating its impact on Latinos. Experiences related to the 287(g) program suggest that:

Congress must require meaningful reporting and oversight for all ICE programs. The 287(g) program has served as a primary example of the problems that can arise from establishing ICE enforcement programs without clear legislative direction, congressional oversight, and strong civil rights and civil liberties safeguards. The government's own reports show that the program lacks the necessary controls to ensure that participants adhere to its intended goals and practices and prevent abuses. As a result, Congress now has a clear understanding of what happens when too much discretion is given

to federal agencies administering immigration enforcement and the serious and adverse implications it can have for Hispanic families. Congress must require enforcement programs to collect the necessary data on race and ethnicity, subject programs to frequent monitoring and evaluation, and include meaningful points of influence for community organizations and leaders to engage in implementation.

DHS and local police must protect victims and increase outreach to marginalized communities. The objective of local law enforcement has always been to serve, protect, and maintain the peace within the community. One of the most effective tools in meeting this objective is the implementation of community policing strategies. Local police must proactively work to strengthen relationships with marginalized communities to combat racial profiling and increase public safety through the creation of community outreach programs. Additionally, DHS and local police must ensure that victims of crime or violence, regardless of their immigration status, receive protection from—and not become targets of—their local police officers. To that end, Congress must allow local officers to recommend to ICE that victims of certain crimes be afforded visas for victim and witness protection. The U visa gives victims of certain crimes temporary legal status and work eligibility in the United States for up

to four years. T visas are available to individuals who are victims of “a severe form of trafficking in persons.”

Congress and the president must work to overhaul the immigration system. The 287(g) and other enforcement programs do not represent a rational policy response to the problems presented by the nation’s broken immigration system. On November 13, 2009, Secretary of Homeland Security Janet Napolitano declared in a speech at the Center for American Progress that the enforcement measures her agency has been carrying out “are not enough to create the system that we want or that we need.” She added that in order to “fix a broken system, Congress will have to act...DHS needs immigration reform.”⁸⁷ Without a comprehensive overhaul of the immigration system, the current patchwork of piecemeal measures will continue to introduce greater chaos into an already broken system and treat the symptoms of this problem rather than its root causes.

Congress needs to set a new course to guide national immigration policy into the future. This new course for immigration policy must include:

- Creating channels for the ten to 12 million undocumented people in our country to come forward, pass background checks, attain legal status, learn English, and assume the rights and responsibilities of citizenship

- Smart enforcement policies that uphold the Constitution and truly increase community and national security
- Legal channels to reunite families
- Decreasing visa backlogs
- Allowing future needed workers to come in with the essential rights and protections that safeguard the U.S. workforce

Any type of reform must also include proactive measures that advance the successful integration of new immigrants into the fabric of American society. Without a strong directive through federal immigration reform, the U.S. will continue to grapple with the inconsistent and ineffective patchwork of costly local immigration laws and the unintended consequences of such misguided policies.

VI. CONCLUSION

By 2030, more than one-third of all children in the U.S. will be Latino. Many will be the children of immigrants. The experiences of Latinos both native and foreign-born, their views, and their perspectives are influencing the next generation of Americans. Public policies and federal programs that result in discrimination, disparate treatment of segments of the population, and isolated communities are unacceptable. The government's own studies document its failure to focus on the narrow justification for the 287(g) program's existence—to target dangerous, criminal, removable undocumented immigrants. Congress and the White House are now fully aware that the authority delegated to states to enforce immigration laws has been predictably abused and the Latino community's concerns have been ignored.

Public opinion polls may support immigration enforcement by state and local police regardless of the impact on Latinos. Polls related to Arizona's SB 1070 suggest this much. But those taking the long view on this issue should realize how damaging these efforts are to our nation and hold the American public to a higher standard. Our nation would be best governed with one set of immigration laws. Yet without comprehensive immigration reform, the country's immigration system will remain a patchwork of policies, many of which have proven counterproductive and contradictory. Leaving such measures in place can only harm our well-being as a society and restrict our values as a nation.

APPENDIX A

Comprehensive List of 287(g) Agencies as of August 2, 2010

State	Law Enforcement Agency	287(g) Model	Date Signed
Alabama	Alabama Department of Public Safety	Task Force Officers (TFO)	9/10/2003
	Etowah County Sheriff's Office	Jail Enforcement Officers (JEO)	7/8/2008
Arizona	Arizona Department of Corrections	JEO	9/16/2005
	Arizona Department of Public Safety	JEO and TFO	4/15/2007
	City of Mesa Police Department	JEO and TFO	11/19/2009
	City of Phoenix Police Department	JEO and TFO	3/10/2008
	Florence Police Department	TFO	10/21/2009
	Maricopa County Sheriff's Office	JEO	2/7/2007
	Pima County Sheriff's Office	JEO and TFO	3/10/2008
	Pinal County Sheriff's Office	JEO and TFO	3/10/2008
	Yavapai County Sheriff's Office	JEO and TFO	3/10/2008
Arkansas	Benton County Sheriff's Office	JEO and TFO	9/26/2007
	City of Springdale Police Department	JEO and TFO	9/26/2007
	Rogers Police Department	TFO	9/25/2007
	Washington County Sheriff's Office	JEO and TFO	9/26/2007
California	Orange County Sheriff's Office	JEO	11/2/2006
	Riverside County Sheriff's Office	JEO	4/28/2010
	San Bernardino County Sheriff's Office	JEO	11/19/2005
	Los Angeles County Sheriff's Office	JEO	2/1/2005*
Colorado	Colorado Department of Public Safety	TFO	3/29/2007
	El Paso County Sheriff's Office	JEO	5/17/2007
Connecticut	City of Danbury Police Department	TFO	10/15/2009
Delaware†	Delaware Department of Corrections	JEO	10/15/2009
Florida	Bay County Sheriff's Office	TFO	6/15/2008
	Collier County Sheriff's Office	JEO and TFO	8/6/2007
	Florida Department of Law Enforcement	TFO	7/2/2002
	Jacksonville Sheriff's Office	JEO and TFO	7/8/2008
Georgia	Cobb County Sheriff's Office	JEO and TFO	2/13/2007
	Georgia Department of Public Safety	TFO	7/27/2007
	Gwinnett County Sheriff's Office	JEO	10/15/2009
	Hall County Sheriff's Office	JEO and TFO	2/29/2008
	Whitfield County Sheriff's Office	JEO	2/4/2008
Maryland	Frederick County Sheriff's Office	JEO and TFO	2/6/2008
Massachusetts	Massachusetts Department of Corrections	JEO	3/26/2007*
Minnesota	Minnesota Department of Public Safety	TFO	9/22/2008
Missouri	Missouri State Highway Patrol	TFO	6/25/2008

State	Law Enforcement Agency	287(g) Model	Date Signed
Nevada	Las Vegas Metropolitan Police Department	JEO	9/8/2008
New Hampshire	Hudson City Police Department	TFO	5/5/2007
New Jersey	Hudson County Department of Corrections	JEO and TFO	8/11/2008
	Monmouth County Sheriff's Office	JEO	10/15/2009
New Mexico	New Mexico Department of Corrections	JEO	9/17/2007
North Carolina	Alamance County Sheriff's Office	JEO	1/10/2007
	Cabarrus County Sheriff's Office	JEO	8/2/2007
	Durham Police Department	TFO	2/1/2008
	Gaston County Sheriff's Office	JEO	2/22/2007
	Guilford County Sheriff's Office	TFO	10/15/2009
	Henderson County Sheriff's Office	JEO	6/25/2008
	Mecklenburg County Sheriff's Office	JEO	2/27/2006
	Wake County Sheriff's Office	JEO	6/25/2008
Ohio	Butler County Sheriff's Office	JEO and TFO	2/5/2008
Oklahoma	Tulsa County Sheriff's Office	JEO and TFO	8/6/2007
Rhode Island	Rhode Island State Police	TFO	10/15/2009
South Carolina	Beaufort County Sheriff's Office	TFO	6/25/2008
	Charleston County Sheriff's Office	JEO	11/9/2009
	York County Sheriff's Office	JEO	10/16/2007
Tennessee	Davidson County Sheriff's Office	JEO	2/21/2007
	Tennessee Highway Patrol/Department of Safety	TFO	6/25/2008
Texas	Carrollton Police Department	JEO	8/12/2008
	Farmers Branch Police Department	TFO	7/8/2008
	Harris County Sheriff's Office	JEO	7/20/2008
Utah	Washington County Sheriff's Office	JEO	9/22/2008
	Weber County Sheriff's Office	JEO	9/22/2008
Virginia	Herndon Police Department	TFO	3/21/2007
	Loudoun County Sheriff's Office	TFO	6/25/2008
	Manassas Park Police Department	TFO	3/10/2008
	Manassas Police Department	TFO	3/5/2008
	Prince William County Police Department	TFO	2/26/2008
	Prince William County Sheriff's Office	TFO	2/26/2008
	Prince William-Manassas Regional Jail	JEO	7/9/2007
	Rockingham County Sheriff's Office	JEO and TFO	4/25/2007
Shenandoah County Sheriff's Office	JEO and TFO	5/10/2007	

* Active MOAs pending "good faith" negotiations as of August 2, 2010.

† Does not have 287(g)-trained officers.

Source: U.S. Immigration and Customs Enforcement, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," U.S. Department of Homeland Security, http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).

ENDNOTES

¹ Mark Hugo Lopez and Susan Minushkin, *2008 National Survey of Latinos: Hispanics See Their Situation in U.S. Deteriorating; Oppose Key Immigration Enforcement Measures* (Washington, DC: Pew Hispanic Center, 2008), <http://pewhispanic.org/reports/report.php?ReportID=93> (accessed July 10, 2010).

² U.S. Citizenship and Immigration Services, "Immigration and Nationality Act," U.S. Department of Homeland Security, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed August 4, 2010).

³ Form I-9, Employment Eligibility Verification, must be completed for each newly hired employee, including U.S. citizens, permanent residents, and temporary foreign workers, to demonstrate the employer's compliance with the law and the employee's work authorization. Through the Form I-9 verification process, employers ensure that employees possess proper authorization to work in the U.S. and that hiring practices do not unlawfully discriminate based on immigration status. U.S. Citizenship and Immigration Services, "I am an Employer: How do I... Complete Form I-9, Employer Eligibility Verification?" U.S. Department of Homeland Security, Washington, DC, August 2008, <http://www.uscis.gov/files/natedocuments/E3eng.pdf> (accessed July 10, 2010).

⁴ SalemImmigration.com, "Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)," <http://www.salemimmigration.com/content/view/121/75> (accessed July 10, 2010).

⁵ Lisa M. Seghetti, Stephen R. Vina, and Karma Ester, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*. Congressional Research Service. Washington, DC, 2006, <http://www.ilw.com/immigrationdaily/news/2005,1026-crs.pdf> (accessed July 10, 2010).

⁶ Ibid.

⁷ U.S. Code, Title VIII, § 1357(g), http://www.law.cornell.edu/uscode/8/usc_sec_08_00001357----000-.html (accessed July 10, 2010).

⁸ U.S. Immigration and Customs Enforcement, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," U.S. Department of Homeland Security, http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).

⁹ U.S. Immigration and Customs Enforcement, "Delegation of Immigration Authority," http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).

¹⁰ Lisa M. Seghetti, Stephen R. Vina, and Karma Ester, *Enforcing Immigration Law*.

¹¹ Ibid.

¹² Michele Waslin, *Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos*, Issue Brief 9 (Washington, DC: National Council of La Raza, 2003).

¹³ Jonathan Benjamin-Alvarado, Louis DeSipio, and Celeste Montoya, "Latino Mobilization in New Immigrant Destinations: The Anti-H.R. 4437 Protest in Nebraska's Cities," *Urban Affairs Review* 44 (2009): 718–735.

¹⁴ Woodrow Wilson Center for Scholars, "Immigrants' Rights Marches, Spring 2006" (Washington, DC: Woodrow Wilson Center for Scholars, 2006), <http://www.wilsoncenter.org/topics/docs/Database%20Immigrant%20Rights%20Marches.pdf> (accessed July 10, 2010).

¹⁵ U.S. Immigration and Customs Enforcement, "New ICE ACCESS program highlights various law enforcement partnerships: ICE and locals working together in different ways, for maximum effectiveness," news release, August 21, 2007, <http://www.ice.gov/pi/news/newsreleases/articles/070821dc.htm> (accessed July 10, 2010).

¹⁶ U.S. Immigration and Customs Enforcement, "ICE ACCESS," U.S. Department of Homeland Security, <http://www.ice.gov/partners/dro/iceaccess.htm> (accessed July 10, 2010).

¹⁷ U.S. Department of Homeland Security, *One Team, One Mission, Securing Our Homeland: U.S. Department of Homeland Security Strategic Plan: Fiscal Years 2008–2013*. U.S. Department of Homeland Security. Washington, DC, 2008, http://www.dhs.gov/xlibrary/assets/DHS_StratPlan_FINAL_spread.pdf (accessed July 10, 2010).

¹⁸ U.S. Immigration and Customs Enforcement, "Delegation of Immigration Authority," http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).

¹⁹ U.S. Immigration and Customs Enforcement, "Delegation of Immigration Authority," http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).

²⁰ Ibid.

²¹ U.S. Department of Homeland Security, *One Team, One Mission*.

- ²² U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” U.S. Department of Homeland Security, <http://www.ice.gov/pi/news/factsheets/070906factsheet287gprogover.htm> (accessed July 10, 2010).
- ²³ Office of the Inspector General, *The Performance of 287(g) Agreements*. U.S. Department of Homeland Security. Washington, DC, 2010, http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-63_Mar10.pdf (accessed July 10, 2010).
- ²⁴ U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority,” http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).
- ²⁵ NCLR calculation using U.S. Census Bureau, “Census Regions and Divisions of the United States,” http://www.census.gov/geo/www/us_regdiv.pdf (accessed July 10, 2010).
- ²⁶ Aarti Shahani and Judith Greene, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Brooklyn, NY: Justice Strategies, 2009), <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf> (accessed July 10, 2010).
- ²⁷ U.S. Code, Title VIII, § 1357(g).
- ²⁸ Aarti Shahani and Judith Greene, *Local Democracy on ICE*.
- ²⁹ Deborah M. Weissman, Rebecca C. Headen, and Katherine Lewis Parker, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina* (Raleigh, NC: American Civil Liberties Union of North Carolina, 2009), <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf> (accessed July 10, 2010).
- ³⁰ U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority,” http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).
- ³¹ Pew Hispanic Center, *Hispanics and Arizona’s New Immigration Law* (Washington, DC: Pew Hispanic Center, 2009), <http://pewhispanic.org/files/factsheets/68.pdf> (accessed July 10, 2010).
- ³² Mark Hugo Lopez and Susan Minushkin, *2008 National Survey of Latinos: Hispanics See Their Situation in U.S. Deteriorating*.
- ³³ Mark Hugo Lopez and Gretchen Livingston, *Hispanics and the Criminal Justice System: Low Confidence, High Exposure* (Washington, DC: Pew Hispanic Center, 2009), <http://pewhispanic.org/files/reports/106.pdf> (accessed July 10, 2010).
- ³⁴ Pew Hispanic Center, *Hispanics and Arizona’s New Immigration Law*.
- ³⁵ U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority,” http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).
- ³⁶ Deborah M. Weissman, Rebecca C. Headen, and Katherine Lewis Parker, *The Policies and Politics of Local Immigration Enforcement Laws*.
- ³⁷ Michael Kiefer, “Smuggled can be ‘conspirators,’” *The Arizona Republic*, September 30, 2005, <http://www.azcentral.com/arizonarepublic/local/articles/0930coyote30.html> (accessed July 10, 2010).
- ³⁸ Deborah M. Weissman, Rebecca C. Headen, and Katherine Lewis Parker, *The Policies and Politics of Local Immigration Enforcement Laws*.
- ³⁹ Ryan Gabrielson and Paul Giblyn, “REASONABLE DOUBT: At What Cost?” *East Valley Tribune*, July 9, 2008, <http://www.pulitzer.org/archives/8370> (accessed July 22, 2010).
- ⁴⁰ Office of the Inspector General, *The Performance of 287(g) Agreements*.
- ⁴¹ William Finnegan, “Sheriff Joe,” *The New Yorker*, July 20, 2009, http://www.newyorker.com/reporting/2009/07/20/090720fa_fact_finnegan (accessed July 10, 2010).
- ⁴² Ryan Gabrielson and Paul Giblyn, “REASONABLE DOUBT: At What Cost?”
- ⁴³ Daniel González, “U.S. Citizens Claim Profiling, Joint Lawsuit Against Sheriff Arpaio,” *The Arizona Republic*, July 17, 2008, <http://www.azcentral.com/news/articles/2008/07/17/20080717profiling0717.html> (accessed October, 2009).
- ⁴⁴ U.S. Government Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Law*. Washington, DC, January 2009, <http://www.gao.gov/new.items/d09109.pdf> (accessed July 10, 2010).
- ⁴⁵ Office of the Inspector General, *The Performance of 287(g) Agreements*.
- ⁴⁶ Aarti Shahani and Judith Greene, *Local Democracy on ICE*.
- ⁴⁷ Penny Starr, “Justice Department Investigates Arizona Sheriff for Enforcing Immigration Law,” *CNSNews.com*, March 12, 2009, <http://www.cnsnews.com/news/article/44899> (accessed July 10, 2010).

⁴⁸ On October 15, 2009, the Maricopa County Agreement with ICE was renewed. The new MOA limits Sheriff Arpaio's authority to the jail model, but Sheriff Arpaio has repeatedly said that he does not need to follow the authority of the federal government. Penny Starr, "Arizona Sheriff Vows to Enforce Immigration Law Whether 'Feds' Like it or Not," CNSNews.com, October 9, 2009, <http://www.cnsnews.com/news/article/55199> (accessed July 10, 2010).

⁴⁹ Times-News, "Mom Arrested by Alamance Deputies While Children Stranded on Interstate," *Times-News*, July 23, 2008, <http://www.thetimesnews.com/articles/alamance-15853-sheriff-county.html> (accessed July 10, 2010).

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Letter from John Trasviña, President and General Counsel, Mexican American Legal Defense and Educational Fund, to Attorney General Michael Mukasey, April 1, 2008, http://www.lcnj.org/287g/Mukasey_04-01-08.pdf (accessed July 22, 2010).

⁵³ Memorandum of Agreement, February 21, 2007, U.S. Immigration and Customs Enforcement and The Metropolitan Government of Nashville and Davidson County, <http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/davidsoncountysheriffsoffice.pdf> (accessed July 10, 2010).

⁵⁴ Carrie L. Arnold, "Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law," *Arizona Law Review* 49, no. 1 (Spring 2007): 113-142, <http://www.arizonalawreview.org/ALR2007/VOL491/ArnoldFINAL.pdf> (accessed July 10, 2010).

⁵⁵ Office of the Inspector General, *The Performance of 287(g) Agreements*.

⁵⁶ Craig E. Ferrell et al., *M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies* (Columbia, MD: Major Cities Chiefs Association, 2006), http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf (accessed July 10, 2010).

⁵⁷ U.S. Immigration and Customs Enforcement, "Delegation of Immigration Authority," http://www.ice.gov/pi/news/factsheets/section287_g.htm#note (accessed August 4, 2010).

⁵⁸ Anita Khashu, *The Role of Local Police: Striking a Balance between Immigration Enforcement and Civil Liberties* (Washington, DC: Police Foundation, 2009), <http://www.policefoundation.org/pdf/strikingabalance/Role%20of%20Local%20Police.pdf> (accessed July 10, 2010).

⁵⁹ Ibid.

⁶⁰ Ryan Gabrielson and Paul Giblin, "REASONABLE DOUBT."

⁶¹ Clint Bolick, *Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office*, Policy Report 229 (Phoenix: Goldwater Institute, 2008), <http://www.goldwaterinstitute.org/Common/Img/Mission%20Unaccomplished.pdf> (accessed July 10, 2010).

⁶² Ryan Gabrielson and Paul Giblin, "REASONABLE DOUBT."

⁶³ Angela Arboleda and Robin Toma, *Strengthening Relations between Local Police and Immigrant Communities: The Role for Human Rights Commissions*, Executive Session Papers: Human Rights Commissions and Criminal Justice 6 (Cambridge, MA: John F. Kennedy School of Government: 2008), http://www.hrcj.org/pdfs/police_and_immigration.pdf.

⁶⁴ Craig E. Ferrell, *Major Cities Chiefs Immigration Committee Recommendations*.

⁶⁵ U.S. Government Accountability Office, *Immigration Enforcement: Better Controls Needed*.

⁶⁶ Anita Khashu, *The Role of Local Police*.

⁶⁷ Davidson County Sheriff's Office, *287(g) Two-Year Review*, (Nashville: Davidson County Sheriff's Office, April 2009), [http://www.nashville-sheriff.net/pdf/287\(g\)review.pdf](http://www.nashville-sheriff.net/pdf/287(g)review.pdf) (accessed July 10, 2010).

⁶⁸ Memorandum of Agreement, February 21, 2007.

⁶⁹ Susan Mattson, *Immigration Issues in Tennessee*. Offices of Research and Education Accountability, Tennessee Comptroller of the Treasury. Nashville, 2007, <http://www.comptroller1.state.tn.us/repository/RE/immigration07.pdf> (accessed July 22, 2010).

⁷⁰ Davidson County Sheriff's Office, *287(g) Two-Year Review*.

⁷¹ Chris Echegaray and Janell Ross, "Minor Offenses Disrupt Lives," *The Tennessean*, April 27, 2008, <http://www.lcnj.org/287g/Minor%20offenses%20disrupt%20lives.pdf> (accessed July 10, 2010).

⁷² Tennessee Immigrant and Refugee Rights Coalition, "287(g) in Tennessee," <http://www.tnimmigrant.org/287g> (accessed July 29, 2010).

⁷³ Memorandum of Agreement, February 21, 2007.

⁷⁴ Davidson County Sheriff's Office, *287(g) Two-Year Review*.

⁷⁵ Chris Echegaray, “Sheriff Daron Hall Dismisses Advisers on Immigrant Committee,” *The Tennessean*, June 27, 2010, <http://www.tennessean.com/article/20100627/NEWS01/6270365/Sheriff-Daron-Hall-dismisses-advisers-on-immigrant-committee> (accessed July 25, 2010).

⁷⁶ Stephen Fotopulos, Executive Director, Tennessee Immigrant and Refugee Rights Coalition, conversation with the author, July 23, 2010.

⁷⁷ Chris Echegaray, “Sheriff Daron Hall Dismisses Advisers.”

⁷⁸ Ibid.

⁷⁹ Stephen Fotopulos, Executive Director, Tennessee Immigrant and Refugee Rights Coalition, conversation with the author, January 23, 2010.

⁸⁰ Ibid.

⁸¹ Davidson County Criminal Justice Planning Unit, “Arrests for No Drivers Licenses by Ethnicity and Race,” (Nashville: Davidson County Criminal Justice Planning Unit, July 2007), <http://tirrc.bondwaresite.com/photos/File350.pdf> (accessed July 25, 2010).

⁸² Ibid.

⁸³ Davidson County Sheriff’s Office, *287(g) Two-Year Review*.

⁸⁴ Ibid.

⁸⁵ NCLR calculation based on Davidson County Sheriff’s Office, *287(g) Two-Year Review*.

⁸⁶ Davidson County Sheriff’s Office, *287(g) Two-Year Review*.

⁸⁷ Janet Napolitano, “Prepared Remarks by Secretary Napolitano on Immigration Reform at the Center for American Progress,” U.S. Department of Homeland Security, http://www.dhs.gov/ynews/speeches/sp_1258123461050.shtm (accessed July 10, 2010).

