

February 21, 2023

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

Via email

Re: 7 Leading Immigrant Rights Groups Urge You to End ICE's 287(g) Program

Dear Secretary Mayorkas,

As a group of civil rights and immigrant justice organizations, we appreciated President Biden's campaign promise to roll back Immigration and Custom Enforcement's 287(g) program, which taps state and local law enforcement agencies to assist in deportation. For far too long, the program has served as a vehicle for racist, xenophobic law enforcement figures across the country to violate people's civil rights and harass communities of color. We write to express our serious concern that, over two years into this administration, DHS has failed to take any meaningful steps to fulfill the President's promise.

The Trump administration treated 287(g) as central to its drive to make the United States a hostile and dangerous place for immigrants—recruiting dozens of anti-immigrant sheriffs, and leaving the program five times bigger than when the Trump administration began. Yet the program remains almost entirely intact. As you begin to consider your legacy as Homeland Security secretary, we urge you to prioritize dismantling this dangerous program.

The 287(g) program empowers some of the most explicitly racist, xenophobic law enforcement officials in the country, many of whom lead agencies with disturbing patterns of racialized police violence and other civil rights violations.ⁱ These individuals are spreading lies and misinformation about immigrants, contributing to anti-immigrant hate and increasing the risk of violence in our communities.ⁱⁱ Through the 287(g) program, the federal government nevertheless rewards them with federal assistance and the delegation of federal authority to conduct immigration enforcement. For an administration that seeks trust and partnership with immigrant communities, this is untenable.

Sheriffs, police chiefs and prosecutors are some of the leading critics of the 287(g) program because it makes people less likely to seek urgently needed police protection, report serious crimes and serve as witnesses.ⁱⁱⁱ A group of 120 such law enforcement professionals wrote you in March 2021 urging that “the 287(g) program needs to end immediately in order to increase crime reporting and strengthen local law enforcement.”^{iv} As two former prosecutors and a chief of police recently explained: “We’ve seen how these agreements make victims reluctant to report crimes or assist investigators for fear of being detained and deported. Witnesses are silenced, domestic violence and sexual assaults go unreported, and crimes remain unsolved.”^v The 2015 report of the President’s Task Force on 21st Century Policing concluded that “whenever possible, state and local law enforcement should not be involved in immigration enforcement.”^{vi}

Although the 287(g) program is voluntary, states like Florida and Texas recently passed anti-immigrant laws requiring local police to participate in federal immigration enforcement. These laws “have caused local police agencies to adopt policies that in many cases contradict their public safety and community policing priorities.”^{vii} Years of evidence show that in addition to

diverting police resources, ICE collaboration programs like 287(g) do not decrease local crime rates.^{viii}

The “Warrant Service Officer” (WSO) model of a 287(g) agreement, which now accounts for more than half of the 287(g) program, was the Trump administration’s shameful attempt to circumvent both federal and state law. WSOs were intended to subvert state and local laws limiting local involvement in federal immigration enforcement. But the 287(g) statute is clear that any cooperation between federal immigration authorities and local law enforcement must respect state law, consistent with principles of federalism.

The Trump administration falsely promised that WSOs would decrease sheriffs’ legal liability—sending a dangerous signal and emboldening civil rights violations.^{ix} However, WSOs—just like other 287(g) agreements—still place sheriffs at risk of litigation for violations of constitutional rights. The WSO model requires just one day of training. There is serious risk that local officers will fail to understand the limits of their delegated authority, and view immigration enforcement as part of their obligations more broadly—leading them to make low-level, pretextual arrests of Black and Brown people with the goal of putting them in the deportation pipeline. At the same time, the Trump administration’s massive expansion of 287(g) compromised ICE’s ability to supervise participants and detect civil rights violations, according to the Government Accountability Office.^x

Ending 287(g) would attract broad support. More than 60 members of Congress have written you on two occasions, urging that the 287(g) program’s use of state and local law enforcement agency resources comes “at the expense of public safety for all and in particular for immigrant communities.”^{xi} Twenty-five faith groups have urged an end to the program, noting that these programs “have made our family members, congregants, and neighbors afraid of law enforcement.” Nearly 170 immigration and civil rights organizations sent you a letter one year ago reiterating similar points.^{xii}

Ending this program is essential to fulfilling President Biden’s vision for reform at DHS. As a candidate, President Biden recognized that efforts “to deputize state and local law enforcement” to perform the functions of ICE agents “undermine trust and cooperation between local law enforcement and the communities they are charged to protect.” He vowed to “end all the agreements entered into by the Trump Administration, and aggressively limit the use of 287(g) and similar programs that force local law enforcement to take on the role of immigration enforcement.”^{xiii} To date, DHS has terminated only two agreements.

The February 16, 2023 Executive Order (EO) on Further Advancing Racial Equity and Support for Underserved Communities, as well as its predecessor EO 13985, require DHS to consider “[w]hether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs.”^{xiv} We urge you to order a review, pursuant to the EOs, of ICE programs involving state and local law enforcement assistance—with a focus on 287(g) agreements, including WSOs.

Thank you for your time. We look forward to discussing these matters further with you.

American Civil Liberties Union
National Immigrant Justice Center
American Immigration Council
Immigrant Legal Resource Center

National Immigration Project (NIPNLG)
Southern Poverty Law Center
United We Dream

ⁱ A recent ACLU report found that at least 65% of 287(g) participating agencies have records of a pattern of racial profiling and other civil rights violations, including excessive use of force; and at least 77% of sheriffs and state department of corrections' commissioners are running detention facilities with serious and extensive records of inhumane conditions. ACLU, *License to Abuse: How ICE's 287(g) Program Empowers Racist Sheriffs and Civil*, 2022, <https://www.aclu.org/report/license-abuse-how-ices-287g-program-empowers-racist-sheriffs>.

ⁱⁱ See Daniel L. Byman, "How hateful rhetoric connects to real-world violence," Brookings, April 9, 2021, <https://www.brookings.edu/blog/order-from-chaos/2021/04/09/how-hateful-rhetoric-connects-to-real-world-violence/>.

ⁱⁱⁱ See, e.g., Nat'l Imm. Law Ctr., Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement (August 2013), <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement).

^{iv} Law Enforcement Action Partnership to Secretary Alejandro Mayorkas, "Strengthening Public Safety in Immigrant Communities," March 17, 2021, <https://lawenforcementactionpartnership.org/immigrant-trust/>.

^v Eli Savit, RaShall M. Brackney and Miriam Aroni Krinsky, "Get state, local law enforcement out of the immigration business," USA Today, May 3, 2021, <https://www.usatoday.com/story/opinion/policing/2021/05/03/get-state-local-law-enforcement-out-immigration-business/7293854002/>.

^{vi} Final Report of the President's Task Force on 21st Century Policing, Recommendation 1.9 and 1.91 Action Item, May 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

^{vii} Police Executive Research Forum, "Local Police Perspectives on State Immigration Policies," July 2014, https://www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/local%20police%20perspectives%20on%20state%20immigration%20policies.pdf.

^{viii} For a summary of studies concerning Secure Communities and crime rates, see Alex Nowrasteh, "Trump Executive Order Reestablishes 'Secure Communities,'" Jan. 25, 2017, <https://www.cato.org/blog/trump-executive-order-reestablishes-secure-communities>. See also Nick Miroff, "Study finds no crime increase in cities that adopted 'sanctuary' policies, despite Trump claims," Washington Post, Oct. 21, 2020, https://www.washingtonpost.com/national/sanctuary-city-study-immigration-crime/2020/10/21/5810d13a-12fa-11eb-82af-864652063d61_story.html.

^{ix} In ICE's press release announcing the WSO program, the National Sheriffs' Association executive director said it would "decrease sheriff's liability. ICE, "ICE launches program to strengthen immigration enforcement," May 5, 2019, <https://www.ice.gov/news/releases/ice-launches-program-strengthen-immigration-enforcement>.

^x See Government Accountability Office, *Immigration Enforcement: ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements*, GAO-21-186, <https://www.gao.gov/products/gao-21-186>.

^{xi} Rep. Jan Schakowsky et al. to Secretary Alejandro Mayorkas, "Re: Ending ICE Entanglement with State and Local Agencies in Federal Immigration Enforcement," February 11, 2021, <https://www.politico.com/f/?id=00000177-9662-d644-a377-fefb17880000>; Rep. Mike Quigley et al. to Secretary Alejandro Mayorkas, September 12, 2022, <https://quigley.house.gov/sites/quigley.house.gov/files/9.12.22%20-%20Follow%20Up%20Letter%20to%20DHS%20Secretary%20Mayorkas%20to%20End%20ICE%20Entanglement%20with%20Local%20Law%20Enforcement.pdf>.

^{xii} United We Dream et al. to Secretary Alejandro Mayorkas, "Re: Protecting Our Communities from DHS Collusion," March 29, 2022, <https://unitedwedream.org/actions/letter-to-secretary-alejandro-mayorkas/>.

^{xiii} The Biden Agenda for the Latino Community," Joe Biden for President, <https://joebiden.com/latino-agenda/>

^{xiv} Executive Order of February 16, 2023, "Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government"; Executive Order 13985 of January 20, 2021, 86 FR 7009.