

The Potential Impact of 287(g) Agreements on Idaho Law Enforcement Agencies

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The Trump Administration has announced its intention to increase the use of local law enforcement agencies to investigate and detain individuals for violations of federal civil immigration laws. It seeks new agreements with local law enforcement so that state and local agents can serve as “force multipliers.”¹ The initiative, however, attempts to revive a program plagued with problems that undermine both federal immigration policy and the effectiveness of local law enforcement. For the past fifteen years, 287(g) agreements between local law enforcement agencies and Immigration and Customs Enforcement (ICE) have been criticized for (1) diverting local resources to federal programs, (2) undermining relationships between law enforcement and the communities they serve and protect, (3) increasing the risk of civil rights violations and associated liability, and (4) duplicating other federal programs that already identify deportable immigrants with criminal convictions.

Summary: Four Principal Reasons to Decline Entanglement with Federal Immigration Enforcement

1. **Local Priorities** – Local law enforcement has traditional priorities that include responding to emergencies, patrolling neighborhoods to prevent crime, facilitating prisoner court appearances and other court system functions, and many other duties. Time spent on federal immigration enforcement detracts from these core duties at local expense. Enforcing immigration law displaces efforts to solve serious crimes with time spent arresting community members who may have legal status or long-standing ties to the United States and pose no threat to public safety.
2. **Cost** – Immigration enforcement is expensive. The federal government does not reimburse the cost of most programs and practices, and local jurisdictions can incur millions of dollars in added expenses as a result. These costs come through additional detention expenses, overtime payments for personnel, and litigation costs.
3. **Community Relations** – To effectively protect public safety, local law enforcement needs trust and cooperation from local communities. Local residents serve as witnesses, report crime, and assist law enforcement in other ways. The foundation for this cooperation is undermined when local police come to be seen as an extension of the immigration system. Survivors of domestic violence refrain from reporting abuse. Individuals with key information about burglaries fail to call the police. Immigrant workers flee the community for more hospitable locales. These outcomes are not limited to the undocumented population. Because citizens and immigrants with legal status are victims of ICE’s mistakes, their view towards law enforcement deteriorates as well.²

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¹ U.S. Dep’t of Homeland Security, Office of Inspector General (OIG), *The Performance of 287(g) Agreements*, OIG-10-63 (March 2010) at 5.

² Data over a four year period revealed that ICE has placed detainers on 834 U.S. citizens and 28,489 legal permanent residents. Transactional Records Access Clearinghouse (TRAC), *ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents*, Feb. 20, 2013, <http://trac.syr.edu/immigration/reports/311/>. A federal court recently found that almost half of one ICE agent’s detainer requests were erroneous, and only two out of 77 resulted in an individual being taken into ICE custody. As the court held, “[w]here an individual’s liberty is at stake, a 50/50 success rate is not acceptable.” *Morales v. Chadbourne*, ___ F. Supp. 3d ___, No. 12-301-M-LDA, 2017 WL 354292, *8 (D.R.I. Jan. 24, 2017).

- 4. Liability** – Local jurisdictions that participate in immigration enforcement routinely end up in court and held liable for constitutional violations. Local police acting upon ICE detainer requests have faced liability for unlawful detentions in violation of the Fourth Amendment and Due Process Clause. They have also been sanctioned by courts for violating prohibitions against racial profiling, especially under 287(g) agreements.

Background

In 1996, Congress added provisions to § 287 of the Immigration and Nationality Act that allow the U.S. Attorney General to enter into written agreements with a State or its political subdivisions under which officers of the local agency can perform the functions of an immigration officer by investigating, arresting, and detaining noncitizens for violations of federal civil immigration law.³ Under this law, local law enforcement agents must be assessed for their qualifications; the agreements must conform to State and local law; and the immigration enforcement activities of local agents must come “at the expense of the State or political subdivision.”⁴ Notably, Congress also made clear that the federal government cannot require local entities to enforce federal immigration law.⁵

The delegation of immigration enforcement authority through 287(g) agreements take two basic forms. In the “jail model,” local incarceration officers are deputized to investigate, initiate immigration detainers, and begin removal proceedings for individuals already in criminal detention facilities. In the “task force model,” officers perform these same activities in the community.⁶

Throughout their decade-long history, 287(g) agreements have been the subject of scrutiny and challenge. The Department of Homeland Security’s (DHS) Office of Inspector General conducted an in-depth investigation of the program over the course of four years and identified a multitude of problems.⁷ The U.S. Government Accountability Office and Congressional Research Service have also reviewed the program.⁸ These offices, along with law enforcement agencies, public policy scholars, and nonprofit organizations, have documented persistent problems associated with the use of local resources, the impact on community relations, and the increased exposure to civil rights liability. These issues resulted in a sharp reduction in 287(g) agreements between 2013 and 2016.⁹ Because these pitfalls are engrained in the structure of 287(g) agreements, they remain unavoidable in agreements with the Trump

³ Illegal Immigration Reform and Responsibility Act of 1996 § 133 *codified at* 8 U.S.C. § 1357(g).

⁴ *Id.*; see also GAO Report, *Immigration Enforcement*, at 7.

⁵ 8 U.S.C. 1357(g)(10); *City and City of San Francisco v. Donald J. Trump, et al.*, No. 17-cv-00485-WHO, (N.D. Cal. Apr. 25, 2017) (granting injunction of Sec. 9(a) of Executive Order: “Enhancing Public Safety in the Interior of the United States”); *County of Santa Clara v. Donald J. Trump, et al.*, No. 17-cv-00574-WHO, (N.D. Cal. Apr. 25, 2017) (same).

⁶ The task force model was no longer used beginning in 2013. Congressional Research Service (CRS), *Interior Immigration Enforcement: Criminal Alien Programs*, R44627 (Sept. 8, 2016) at 13.

⁷ OIG, *The Performance of 287(g) Agreements*, (March 2010) (recommending 33 changes to the administration of the program); U.S. Dep’t of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements: Report Update*, OIG-10-124 (Sept. 2010) (recommending the need to take timely and appropriate actions to respond to prior recommendations and identifying 11 additional actions needed); U.S. Dep’t of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements: FY 2011 Update* OIG-11-119 (Sept. 2011); U.S. Dep’t of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements: FY 2012 Follow-Up* OIG-12-130 (Sept. 2012); U.S. Dep’t of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements: FY 2013 Update*, OIG-13-116 (Sept. 2013).

⁸ GAO, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, GAO-09-109 (Jan. 2009); CRS, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, RL32270 (Updated Aug. 14, 2006); CRS, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, R4057 (Dec. 20, 2012); CRS, *Interior Immigration Enforcement: Criminal Alien Programs*, R44627 (Sept. 8, 2016); CRS, *Sanctuary Jurisdictions and Criminal Aliens: In Brief*, R44118 (Jan. 10, 2017).

⁹ CRS, *Interior Immigration Enforcement: Criminal Alien Programs*, at 13, 20 (Sept. 8, 2016).

Administration. Consequently, local law enforcement agencies must be respond with caution to renewed federal efforts to move responsibility for federal immigration enforcement onto local law enforcement.

287(g) Agreements Divert Local Resources to Federal Initiatives

The 287(g) program is the most extensive form of local entanglement with federal immigration enforcement. The bulk of the cost of enforcing federal immigration laws by local officials is borne by the state and local jurisdictions. The Department of Homeland Security provides training, supervision, computers and other equipment, but participating state and local jurisdictions must finance officer salaries and benefits, office space, office supplies, and vehicles associated with all 287(g) operations, including during the five week mandatory training program.¹⁰ Additionally, local jurisdictions generally bear the cost of immigration-related detention until an individual is transferred to ICE custody. Consequently, DHS's Office of Inspector General estimated that ICE saves between about \$120,000 – \$250,000 per year for every local law enforcement agent covered by a 287(g) because these agents “perform similar functions” to ICE officers at local, rather than federal, expense.¹¹

The costs to local agencies can be substantial. For example, Prince William County, VA, spent \$5 million more than anticipated for the first year of its 287(g) program, forcing it to raise property taxes and cut police and fire safety budgets to compensate.¹² Alamance County, NC, with a population of barely 150,000, spent \$4.8 million for just its first full year of 287(g) operations.¹³ The resources invested for 287(g) agreements in these counties are by no means unique.¹⁴ The Sherriff for Harris County, Texas terminated its 287(g) agreement in February 2017 because it was costing \$675,000 in salaries and millions of dollars in overtime expenses and diverting those resources from public safety priorities.¹⁵

In Idaho, with its low tax rates and limited public expenditures, the resource requirements and budget overruns associated with 287(g) agreements could put local law enforcement priorities at risk. Agreements with ICE or Customs and Border Protection (CBP) would force Idaho cities and counties to choose between performing the tasks of federal agencies or safeguarding the communities they serve.

Further, the requirements within 287(g) agreements make clear that local jurisdictions “are bound by all Federal civil rights laws, regulations, and guidance relating to non-discrimination, including the U.S. Department of Justice ‘Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity,’ dated December 2014, and Title VI of the Civil Rights Act of 1964 . . . , which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving

¹⁰ GAO, *Immigration Enforcement*, at 5.

¹¹ OIG, *The Performance of 287(g) Agreements*, at 6.

¹² Aarti Shahani and Judith Greene, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (2009) available at <http://www.justicestrategies.org/publications/2009/local-democracy-ice-why-state-and-local-governments-have-no-business-federal-immig>.

¹³ American Immigration Council (AIC), *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement*, at 2 (Nov. 2012).

¹⁴ Migration Policy Institute (MPI), *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, at 28 (Jan. 2011); American Immigration Council (AIC), *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement*, at 2 (Nov. 2012) (describing the millions of dollars 287(g) jurisdictions have had to pay out for the program).

¹⁵ James Pinkerton and St. John Barned-Smith, Houston Chronicle, “Sheriff cuts ties with ICE program over immigrant detention” (Feb. 21, 2017) available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/Sheriff-cuts-ties-with-ICE-program-over-immigrant-10949617.php>

Federal financial assistance.”¹⁶ Relatedly, the agreements also require local agencies to provide qualified interpreters as needed.¹⁷ Interpretation services are already a costly challenge for many law enforcement agencies throughout Idaho. And the agreements require local agencies to invest in training and oversight to ensure compliance with the Department of Justice’s broad anti-discrimination standards while also assuming the risk of associated litigation.

287(g) Agreements Harm Community Relations and Drive Out Immigrant Workers

287(g) agreements make communities less safe. Although the purpose of 287(g) agreements has been described as “enhance[ing] the safety and security of communities by addressing serious criminal activity committed by removable aliens,”¹⁸ the most tangible effect of the program is a marked mistrust of police among the Latina/o community.¹⁹

The majority of unauthorized noncitizens in the United States have not been convicted of a crime.²⁰ Setting aside arrests for illegal entry, noncitizens accounted for only 5% of arrests for federal offenses in 2010.²¹ Among convictions of noncitizens for all federal offenses, only 0.4% are for violent crimes (versus 5% among citizens); 30.2% are for nonviolent crimes (versus 91.6% among citizens); and 69.4% are for immigration crimes (versus 3.4% among citizens).²² Further, the Congressional Research Service reports that “a body of evidence suggests that foreign born are less likely to commit crimes and less likely to be incarcerated than native born.”²³

Accordingly, from 2007 to 2011 half of all arrests through 287(g) programs were unassociated with criminal offenses.²⁴ One sheriff explained that the 287(g) agreement with his county had allowed his officers to identify large numbers of immigrants who had no criminal activity.²⁵ A highway patrol officer in another state transported an accident victim to a participating county jail solely to determine the victim’s immigration status, without filing any criminal charge. The victim was detained until a 287(g) officer could respond.²⁶ Similarly, some jurisdictions have used their 287(g) authority to arrest and detain immigrants in connection with only minor offenses and driving violations.²⁷

Law enforcement officials have thus expressed concern over the damage to trust in police among immigrant communities caused by this cooperation with ICE.²⁸ A study of Latina/o communities in four

¹⁶ DHS, 2016 Template for 287(g) Memorandum of Understanding, Sec. XIV, *available at* https://www.ice.gov/doclib/detention-reform/pdf/287g_moa.pdf.

¹⁷ *Id.* at Sec. XV.

¹⁸ GAO, *Immigration Enforcement*, at 4; *see also* Testimony of Paul M. Kilcoyne, Deputy Assistant Director of ICE’s Office of Investigations before the House Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight, 109th Cong., 1st sess., July 27, 2005, 26, 34.

¹⁹ MPI, *Delegation and Divergence*, 38–47.

²⁰ CRS, *Interior Immigration Enforcement* (2012) at 1.

²¹ *Id.* at 4.

²² *Id.* at 8.

²³ *Id.* at 9 (footnotes omitted).

²⁴ *Id.* at 32.

²⁵ MPI, *A Program in Flux*, at 7-8

²⁶ OIG, *The Performance of 287(g) Agreements*, at 26.

²⁷ GAO, *Immigration Enforcement*, at 4, 11; *see also* MPI, *A Program in Flux*, at 13 (describing the vast majority of immigration charges filed under 287(g) agreements in two counties were associated with traffic violations); DHS Secure Communities Task Force Report, at 21-24 (stating the “immigration enforcement against traffic offenders and others arrested only for minor offenses poses the greatest risk of undermining community policing”).

²⁸ MPI, *A Program in Flux*, at 8 (citing the International Association of Chiefs of Police (IACP), *Police Chiefs Guide to Immigration Issues* (2007) *available at*

major cities found that two out of three undocumented immigrants are less likely to report crimes to police, even when they are the victims, for fear that police will investigate their immigration status. Almost half of all Latina/os are less likely to report crimes or volunteer information to help police solve crimes if they believe police will question their immigration status, regardless of immigration status.²⁹ Because immigrants are already more likely to be victimized than the general population and more likely to be afraid to report crime to police, the use of local officers to enforce federal immigration law makes participating jurisdictions less safe.³⁰ In a study of seven jurisdictions with active 287(g) agreements, community members in every location reported a perception of racial profiling, which in turn is linked to declining support for law enforcement.³¹ Satisfaction with police among Hispanic communities dropped steeply with the introduction of 287(g) agreements.³²

In the present climate of heightened immigration enforcement, local law enforcement agencies are seeing new reductions in crime reporting and cooperation with local law enforcement in immigrant communities.³³ Victims of domestic violence have been particularly sensitive to cooperation with immigration officials.³⁴ A recent nationwide study of advocates for immigrant survivors of crime, 62% saw an increase in concern by victims over immigration enforcement if they reported their crimes, and 43% had to drop cases as a result of these concerns.³⁵ Agreements by Idaho cities and counties to enforce immigration law are therefore likely to prompt an immediate response from local residents that result in increased rates of crime generally and in particular, increased violence against their most vulnerable members—precisely the opposite outcome proponents of 287(g) agreements promise.

Local law enforcement cooperation with ICE also drives away Hispanic community members, including immigrant workers. In three counties with 287(g) agreements studied by the Migration Policy Institute, the Hispanic populations declined while the Hispanic populations of neighboring counties

<http://www.theiacp.org/portals/0/pdfs/publications/policechiefsguidetoimmigration.pdf>); see also Shahani and Greene, *Local Democracy on ICE*; CRS, *Sanctuary Jurisdictions and Criminal Aliens*, at 10 (citing Testimony of Richard David Wiles, El Paso, TX, County Sheriff's office before the House Homeland Security Committee, Subcommittee on Border and Maritime Security, "Border Security and Enforcement: Department of Homeland Security's Cooperation with State and Local Law Enforcement Stakeholders," (May 3, 2011)).

²⁹ Nik Theodore, Dep't of Urban Planning and Policy, Univ. of Ill. at Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5-6 (May 2013), available at

http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF; see also *id.* at 1 ("Survey results indicate that the greater involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.").

³⁰ MPI, *A Program in Flux*, at 8 (citing the International Association of Chiefs of Police, *Police Chiefs' Guide to Immigration Issues*); Chuck Wexler, "Critical Issues in Policing Series: Police Chiefs and Sheriffs Speak Out," *Police Executive Research Forum*, April 2008; National Community Advisory Commission, *Restoring Community: A National Community Advisory Report on ICE's Failed "Secure Communities" Program* (Aug. 2011); DHS Secure Communities Task Force at 24.

³¹ MPI, *Delegation and Divergence*, at 37.

³² *Id.*

³³ James Queally, LA Times, "Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says" Mar. 21, 2017 ("Los Angeles Police Chief Charlie Beck said Tuesday that reports of sexual assault and domestic violence made by the city's Latino residents have plummeted this year amid concerns that immigrants in the country illegally could risk deportation by interacting with police or testifying in court.") available at

<http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>

³⁴ Heidi Glenn, National Public Radio, "Fear of Deportation Spurs 4 Women to Drop Domestic Abuse Cases in Denver," March 21, 2017, available at <http://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>; Bipartisan letter signed by 32 congressional members: House Letter to DHS on Immigrant Victims of Crime, Apr. 28, 2017 available at <http://www.cnn.com/2017/04/28/politics/house-dhs-letter-immigrant-crime-victims-text>

³⁵ Tahirih Justice Center, *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors* (May 18, 2017) available at <http://www.tahirih.org/news/survey-reveals-impact-of-new-immigration-enforcement-policies-on-survivors-of-violence/>

without 287(g) agreements did not.³⁶ Additionally, where 287(g) jurisdictions employed roadblocks or enforced immigration law through traffic stops, community respondents in the study reported that immigrants went to public places less frequently, declined to report crimes or interact with the police, interacted less with schools and other institutions, and patronized businesses with less frequency.³⁷ Law enforcement officials in several of those jurisdictions confirmed the increased hesitation to report crimes and increased victimization of immigrant communities as a result of the 287(g)'s.³⁸ Not only does a community's trust in police suffer, but the ability to investigate threats to national security suffers as well if police face increased challenges in gathering intelligence from immigrant communities.³⁹

Of special concern to Idaho, the negative impact of 287(g) agreements on community relations is greater where there are also state or local immigration enforcement initiatives.⁴⁰ With the highly publicized introduction of House Bill 76, which would have forced local jurisdictions to engage in wide-ranging immigration enforcement actions or risk losing state funding, along with its replacement—House Bill 198—the impact of 287(g) agreements on immigrant communities in Idaho is likely to be particularly stark. As a result, agreements with ICE could face the same overwhelming opposition H.B. 76 did from Idaho's leading employers.⁴¹

287(g) Agreements Increase the Risk of Civil Rights Violations & Liability

Over half of the jurisdictions investigated as part of the GAO report relayed concerns that increased enforcement of immigration laws by local law enforcement would lead to racial profiling at worksites and in the community.⁴² One participating sheriff explained that he understood the agreement to provide authority for 287(g) designated officers to “go to people's homes and question individuals regarding their immigration status even if the individual is not suspected of criminal activity.”⁴³ While racial profiling as the result of 287(g) agreements can be difficult to study due to limitations in data collection,⁴⁴ the Department of Justice investigated Alamance County, NC, and Maricopa County, AZ, for engaging in racial profiling and unconstitutional searches and seizures when exercising their 287(g) authority. The Justice Department concluded that the Maricopa sheriff's office “poisoned the relationship between law enforcement and Latinos, hindering general law enforcement efforts within the Latino community.”⁴⁵ It also concluded that Alamance county sheriff deputies engaged in a pattern and practice of constitutional violations by unlawfully detaining and arresting Latinos.⁴⁶ Not only do these counties

³⁶ *Id.* at 38-43.

³⁷ *Id.* at 43.

³⁸ *Id.* at 44; *see also* International Association of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement*, at 5 available at <http://www.theiacp.org/portals/0/pdfs/publications/immigrationenforcementconf.pdf> (stating that “[w]ithout assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families”); Major Cities Chiefs Association, Immigration Committee, *Recommendations for Enforcement of Immigration Laws by Local Police Agencies* (Adopted by Major City Chiefs June 2006) at 6 available at https://www.majorcitieschiefs.com/pdf/MCC_Position_Statement.pdf (same).

³⁹ David A. Harris, “The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America,” *Rutgers Law Journal*, vol. 38, no. 1 (Fall 2006).

⁴⁰ MPI, *Delegation and Divergence*, at 45.

⁴¹ Harrison Barry, “Trump's Clumsy Sweep: Idaho Immigrants Caught in Political Divide,” *Boise Weekly* (Mar. 1, 2017) available at <http://www.boiseweekly.com/boise/trumps-clumsy-sweep-idaho-immigrants-caught-in-political-divide/Content?oid=4230756>.

⁴² GAO, *Immigration Enforcement*, at 23.

⁴³ GAO, *Immigration Enforcement*, at 11-12.

⁴⁴ MPI, *Delegation and Divergence*, at 37.

⁴⁵ AIC, *The 287(g) Program*, at 2.

⁴⁶ *Id.*

face deteriorating community relations, they incur additional costs related to civil rights investigations and litigation stemming from practices under their 287(g) program.⁴⁷

A study of the related Criminal Alien Program, in which ICE officials screen individuals detained in state and local facilities for immigration violations, found that police officers arrested Hispanics for minor offenses at much higher rates than blacks or whites so that they would be processed and screened for deportability.⁴⁸ Because 287(g) “jail model” agreements function similarly, they create the same incentives for disparate arrests rates based on race.⁴⁹ The Congressional Research Service, too, has long recognized these risks and the legal liability that ensues.⁵⁰ Insufficient supervision by DHS officers is a recurring criticism of the 287(g) program.⁵¹ So too is the limited training provided by ICE.⁵² As multiple jurisdictions with 287(g) agreements have already seen, both of these challenges increase the risk of erroneous arrest and detention along with the accompanying lawsuits those errors bring.⁵³ Consequently, Attorneys General for other states are highlighting these risks in their opinions against local enforcement of federal immigration law.⁵⁴

Idaho cities and counties risk liability associated with local enforcement of federal immigration law. History has shown that in other states 287(g) agreements increase the chance of civil rights violations and litigation, which Idaho agencies can choose not to repeat.

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The 287(g) program passes the risks and costs of immigration enforcement onto state and local jurisdictions with no appreciable benefit for local communities.⁵⁵ Instead, agreements divert scarce resources from core law enforcement functions, undermine trust and safety in local communities, encourage immigrants to flee to more welcoming locations, and create heightened risks of civil rights violations and liability. Idaho cities and counties can learn from the experience of other jurisdictions that have entered 287(g) agreements and simply opt out.

⁴⁷ See e.g., <http://www.npr.org/2014/08/15/340562910/n-c-sheriff-terry-johnson-on-trial-for-racial-profiling>; <http://www.citylab.com/crime/2016/01/immigration-policing-enforcement-287g-durham-alamance-north-carolina/423723/>

⁴⁸ Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program* (2009) available at https://www.law.berkeley.edu/files/policybrief_irving_0909_v9.pdf.

⁴⁹ MPI, *Delegation and Divergence*, at 37.

⁵⁰ CRS, *Enforcing Immigration Law* (2006), at 4, n.70 (discussing pretextual stops for the purpose of verifying immigration status and other allegations of abuse that have resulted in consent decrees to limit immigration enforcement); CRS, *Interior Immigration Enforcement* (2016) at 19 (citing a 2009 ACLU of Georgia report: *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) has Torn Apart Families and Threatened Public Safety*).

⁵¹ GAO, *Immigration Enforcement*, at 14-16; OIG, *The Performance of 287(g) Agreements* (March 2010), at 10-13 (describing significant shortcomings in supervision and guidance of 287(g) officers).

⁵² OIG, *The Performance of 287(g) Agreements* (March 2010), at 27-34 (listing major deficiencies).

⁵³ *Santos v. Frederick Cty Bd. of Comm’r*, 725 F. 3d 451 (4th Cir. 2013); *Albarran et al. v. Morton et al.*, 821 F. Supp. 2d 1327 (N.D. Georg. 2011); *Renteria-Villegas v. Metro. Gov’t of Nashville and Davidson Cty.*, 2011 WL 4048523. See also IACP, *Police Chiefs Guide to Immigration Enforcement*, at 13 (discussing the risk that 287(g) agreements could lead to violations of the constitutional standards that govern immigration enforcement); Paloma Esquivel, “Suit Filed over Disabled U.S. Citizen’s Deportation Ordeal,” *Los Angeles Times* (Feb. 28, 2008); OIG, *The Performance of 287(g) Agreements* (March 2010), at 23, 32 (listing four separate lawsuits filed against local agencies and DHS as a result of 287(g) agreements). (M.D. Tenn. Sept. 12, 2011); *Melendres v. Araïpo*, 598 F. Supp. 2d 1025 (D. Ariz. 2009);

⁵⁴ Maryland Attorney General Guidance Memorandum, *Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials*, at 4-6 (May 2017); Washington State Attorney General, *Guidance Concerning Immigration Enforcement*, 17-18 (April 2017)

⁵⁵ AIC, *The 287(g) Program*, at 4 (explaining that Davidson County, TN Sheriff stopped its 287(g) because it was not necessary in light of Secure Communities).