

THE 287(G) PROGRAM:*A Flawed and Obsolete Method of Immigration Enforcement*

Under Section 287(g) of the Immigration and Nationality Act, the Department of Homeland Security (DHS) may deputize selected state and local law enforcement officers to perform the functions of federal immigration agents. Like employees of U.S. Immigration and Customs Enforcement (ICE), so-called “287(g) officers” have access to federal immigration databases, may interrogate and arrest noncitizens believed to have violated federal immigration laws, and may lodge “detainers” against alleged noncitizens held in state or local custody.

The program has attracted a wide range of critics since the first 287(g) agreement was signed more than ten years ago. Among other concerns, opponents say the program lacks proper federal oversight, diverts resources from the investigation of local crimes, and results in profiling of Latino residents—as was documented following the entry of a 287(g) agreement with Sheriff Joe Arpaio of Maricopa County, Arizona. Following the nationwide expansion of the Secure Communities program, which has its own drawbacks but is operated exclusively by federal authorities, critics have also asked whether the 287(g) program continues to serve any law enforcement benefit.

This fact sheet provides an overview of how the 287(g) program works, as well as arguments raised by its critics.

HOW THE 287(G) PROGRAM WORKS

- Before deputizing state or local officers to serve as federal immigration agents, DHS must enter a written “Memorandum of Agreement” (MOA) with the state or political subdivision (city, county, etc.) for which they work. After the agreement is signed, officers selected by the state or local agency receive four weeks of training on how to access immigration databases, complete immigration forms, and otherwise carry out the functions of federal immigration agents. As of October 2012, DHS had 287(g) agreements with 57 states and localities around the country.
- DHS currently operates two types of 287(g) agreements: “task force” models and “jail enforcement” models. Under the task force model, deputized officers may interrogate and arrest alleged noncitizens encountered in the field who they believe to have violated federal immigration laws. Under the jail enforcement model, deputized officers may interrogate alleged noncitizens who have been arrested on state or local charges, and may lodge immigration “detainers” on inmates thought to be subject to removal. As of October 2012, 17 agreements were task force models; 32 agreements were jail enforcement models; and eight agreements were joint models.
- After a 287(g) agreement expires, DHS is not legally obligated to renew it. Similarly, once a 287(g) agreement is entered, it may be terminated at any time by either party. All current 287(g) agreements are scheduled to expire on December 31, 2012.

PROBLEMS WITH THE 287(G) PROGRAM

◆ 287(G) AGREEMENTS HAVE RESULTED IN WIDESPREAD RACIAL PROFILING

- An [investigation](#) by the Department of Justice concluded that the Maricopa County (Ariz.) Sheriff's Office engaged in a pattern and practice of constitutional violations, including racial profiling of Latinos, after entering a 287(g) agreement. The investigation found that deputies of Sheriff Joe Arpaio routinely conducted "sweeps" in Latino neighborhoods, and that Latino drivers in certain parts of Maricopa County were up to nine times more likely to be stopped than non-Latino drivers. The investigation also found that by enforcing federal immigration law, the sheriff's office "poisoned the relationship between law enforcement and Latinos, hindering general law enforcement efforts within the Latino community."
- A separate Justice Department [investigation](#) concluded that the Alamance County (N.C.) Sheriff's Office engaged in a pattern and practice of constitutional violations by unlawfully detaining and arresting Latinos. The investigation found that sheriff's deputies set up checkpoints at entrances to Latino neighborhoods; that Latino drivers were up to ten times more likely to be stopped than non-Latino drivers; and that Latino drivers were often arrested for traffic violations for which non-Latino drivers received only citations.
- According to a report by the [ACLU of Georgia](#), racial profiling in Gwinnet County has been exacerbated by the 287(g) program. The ACLU received complaints from drivers, pedestrians, and Gwinnett community members showing that police officers are targeting immigrants and people of color for stops, searches, and interrogations.
- A report by [Justice Strategies](#) found that 87% of the jurisdictions with 287(g) agreements had a rate of Latino population growth higher than the national average.

◆ 287(G) AGREEMENTS DRAIN LOCAL COFFERS

- Aside from training deputized officers on the enforcement of federal immigration law, ICE does not pay for any costs associated with implementation of the program, including overtime and financial liability arising from civil rights violations.
- A report by the [University of North Carolina](#) at Chapel Hill and the North Carolina ACLU found the total cost for the first year of operating the 287(g) program in Mecklenburg County, N.C., to be \$5.5 million. Meanwhile, costs for the first full year of operation in Alamance County, N.C., were found to be \$4.8 million.
- A report by the [Brookings Institute](#) found that Prince William County, Va., had to raise property taxes and take from its "rainy day" fund to implement its 287(g) program. The report found the program cost \$6.4 million in its first year and would cost \$26 million over five years. To cut costs, the county slashed \$3.1 million from its budget—money that was intended to buy video cameras for police cars to protect against allegations of racial profiling.
- Before DHS revoked its 287(g) agreement with Maricopa County, Ariz., a [series of articles](#) in the *East Valley Tribune* found that Sheriff Joe Arpaio's office created a \$1.3 million deficit in just three months, much of it due to overtime.

- A jury in Davidson County, Tenn., [awarded](#) \$200,000 in legal damages to Juana Villegas, an undocumented immigrant from Mexico who was arrested by a 287(g) officer while she was pregnant and shackled at the hospital when she went into labor.

◆ **287(G) PARTNERSHIPS NET FEW VIOLENT CRIMINALS**

- The [report](#) from the University of North Carolina found that 287(g) agreements in the state were primarily used to target offenders who posed no threat to public safety or individuals with no criminal record. For example, 33% of individuals detained through the 287(g) program were charged with traffic violations, a figure that rose to 41% in Alamance County and 57% in Gaston County.
- In February 2008, a Hispanic [gunshot victim](#) in Alamance County, N.C., called 911 and was arrested and deported. The reason for the arrest? Providing the wrong address for the crime scene. In August 2008, five Hispanic men were arrested for [fishing without a license](#) by a wildlife officer and later processed for deportation.
- Despite the time and energy spent on immigration enforcement, the [East Valley Tribune](#) found that Sheriff Joe Arpaio has had little success building cases against violent immigrant offenders or those at the top of the smuggling rings. In 2006 and 2007, Maricopa County sheriff's deputies arrested 578 illegal immigrants in the course of traffic stops, and of those, 498 faced a single charge of conspiracy to smuggle themselves.

◆ **287(G) AGREEMENTS THREATEN COMMUNITY SAFETY AND HINDER COMMUNITY POLICING**

- The authors of the [North Carolina report](#) found that 287(g) agreements have “created a climate of racial profiling and community insecurity” in communities across North Carolina. Law enforcement officials have stated that trust with immigrant communities is crucial to preventing and investigating crimes and leads to safer communities. Anecdotal evidence from North Carolina points to undocumented residents being less likely to contact law enforcement to report crimes.
- While Sheriff Arpaio has diverted resources to immigration enforcement, [response times to 911 calls have increased](#), arrest rates have dropped, and thousands of felony warrants have not been served. A report published by the conservative [Goldwater Institute](#) found that, though the Maricopa County Sheriff's Office budget has increased at four times the rate of the county's population, violent crimes increased nearly 70%, and homicides increased 166% between 2004 and 2007.
- The International Association of Chiefs of Police ([IACP](#)), the nation's premier law enforcement association, has stated that “local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without 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.”
- The Major Cities Chiefs Association (MCCA), a group of police chiefs from the 64 largest police departments in the United States and Canada, similarly has [written](#): “without assurances that contact with the police would not result in purely civil immigration

enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear.”

◆ **287(G) AGREEMENTS LACK SUFFICIENT FEDERAL OVERSIGHT**

- Although federal law mandates that 287(g) officers be subject to the direction and supervision of federal officials, numerous investigations have found federal oversight to be insufficient and lax. A March 2010 [report](#) by the DHS Office of Inspector General (OIG) found that ICE and its local law enforcement partners had not complied with the terms of their 287(g) agreements; that the standards by which deputized officers are evaluated contradicted the stated objectives of the 287(g) program; that the program was poorly supervised by ICE; and that additional oversight was necessary.
- A January 2009 Government Accountability Office (GAO) [report](#) found that ICE has failed to articulate the 287(g) program’s objectives or how local partners are to use their 287(g) authority. While ICE officials have stated that the purpose of the program is to address serious crime, such as narcotics smuggling, ICE has never documented this objective or provided statistics to validate it. As a result, local police have used their 287(g) authority to detain immigrants for traffic violations and other minor crimes.
- While ICE has a statutory responsibility to supervise all 287(g) agreements, GAO found that ICE has not consistently supervised its partners. In a February 2009 [report](#), Justice Strategies also found that there is very little ICE oversight of 287(g) partnerships and that ICE personnel do not lead or directly oversee 287(g) arrests. When faced with criticism that he had not followed the requirements of his MOA, Sheriff Joe Arpaio of Maricopa County, Arizona asked, “Do you think I’m going to report to the federal government? I don’t report to them.”

◆ **287(G) AGREEMENTS ARE OBSOLETE**

- With the Secure Communities program in effect in virtually all U.S. jurisdictions, many have argued that 287(g) agreements no longer serve any plausible law enforcement benefit. Under the Secure Communities program, fingerprints of all state and local arrestees are routed to ICE officials, who can themselves determine whether to initiate removal proceedings. While Secure Communities also jeopardizes community policing and public safety, and fails to solve the problem of racial profiling by state and local police, all immigration enforcement decisions under Secure Communities are made by federal authorities.
- In its [budget justification](#) for fiscal 2013, DHS sought \$17 million *less* in funding for the 287(g) program, and said that in light of the expansion of Secure Communities, “it will no longer be necessary to maintain the more costly and less effective 287(g) program.”
- In August 2012, Sheriff Daron Hall of Davidson County, Tenn., opted to cease participation in the 287(g) program. In a [letter](#) to ICE Director John Morton, Hall noted that the existence of Secure Communities would ensure that known unauthorized immigrants would continue to be identified by the federal government.