

The **Policies** and **Politics** of
**Local Immigration
Enforcement Laws**

287(g) Program in North Carolina



American Civil Liberties Union
of North Carolina Legal Foundation

Immigration & Human Rights Policy Clinic
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Executive Summary

In 1996, the US Congress amended the Immigration and Nationality Act (INA) to include section 287(g), authorizing the federal agency U.S. Immigration and Customs Enforcement (ICE) to enter into agreements with local law enforcement agencies, thereby deputizing officers to act as immigration officers in the course of their daily activities. These individual agreements are commonly known as Memoranda of Agreement or MOAs. It is estimated that over sixty law enforcement agencies have entered into such agreements, with eight MOAs currently in North Carolina.

The 287(g) program was originally intended to target and remove undocumented immigrants convicted of “violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering.” However, MOAs are in actuality being used to purge towns and cities of “unwelcome” immigrants and thereby having detrimental effects on North Carolina’s communities. Such effects include:

- The marginalization of an already vulnerable population, as 287(g) encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of citizens and isolation of the Hispanic community.
- A fear of law enforcement that causes immigrant communities to refrain from reporting crimes, thereby compromising public safety for immigrants and citizens alike.
- Economic devastation for already struggling municipalities, as immigrants are forced to flee communities, causing a loss of profits for local businesses and a decrease in tax revenues.
- Violations of basic American liberties and legal protections that threaten to diminish the civil rights of citizens and ease the way for future encroachments into basic fundamental freedoms.

The current implementation processes of 287(g) also present a number of legal issues which implicate many individual rights and threaten to compromise the rights of the community as a whole.

Lack of Compliance with Federal Law

287(g) programs raise significant concerns about the lack of compliance with federal law. Although deputized § 287(g) officers must comply with federal laws, standards, and guidelines when employing their immigration-enforcement functions, recent events coupled with the lack of transparency as to the implementation of the program suggest that law enforcement officers may be failing to comply with:

- Federal constitutional law by not complying with equal protection, as a result of racial profiling and harassment of foreign nationals.
- The Civil Rights Act of 1964 by discriminating against individuals based on their race, color, or ethnicity.
- Department of Justice Guidelines which were developed “for Federal officials to ensure an end to racial profiling in law enforcement.”
- Federal criminal procedure law by hurrying undocumented immigrants through the system.
- International treaty law by failing to communicate with consular officers from the detainees’ countries of origin in a timely matter, as required by Article 36 of the Vienna Convention on Consular Relations.

Wrongful Immigration Determination

Wrongful immigration determination is yet another legal concern that arises from the implementation of § 287(g) MOAs. Because immigration law is a complicated, ever-evolving, and specialized area of law and law enforcement, state and local officers

often lack the necessary expertise notwithstanding the § 287(g) training that they undergo. Consequently, American citizens and lawful permanent residents as well as undocumented immigrants who have legal claims to lawful status become vulnerable to wrongful detention and even wrongful deportation. Proven, documented cases of both have already occurred.

Violations of North Carolina Constitutional and Statutory Law

The current method of implementation of 287(g) agreements may also encourage violations of North Carolina state law. These violations are manifested through racial profiling. Racial profiling is prohibited by:

- The North Carolina State Constitution, which expressly prohibits “discrimination by the State because of race, color, religion, or national origin.”
- North Carolina statutory law, which requires data collection and analysis in traffic stops in order to prevent racial profiling and discrimination.

Deficient Compliance with the Terms of the MOAs

This policy brief also seeks to reveal those problems that exist within the four corners of the MOAs. It accomplishes this goal by evaluating a specific MOA between ICE and Alamance County Sheriff’s Office in North Carolina. While the MOA exists as a contract between the federal agency and the local law enforcement agency, the terms and conditions of the contract are often vague and confusing, with both parties often in noncompliance with the contract. Such concerns with regard to the MOA include:

- Complaint mechanisms. The 287(g) programs are required to offer a complaint mechanism for individuals who believe they have been aggrieved in the implementation of the program. However, because of (1) confusion caused by the complaint mechanism as described in the MOA, (2) the lack of notice and

information about the right to file a complaint, (3) insufficient guidelines regarding the complaint forwarding process, (4) conflicts of interest in reviewing a complaint, and (5) unclear complaint resolution procedures, this aspect of the MOA is elusive and ineffective.

- **Designation of functions.** Nowhere does the Alamance County MOA publicize the policies and procedures that must be followed in immigration enforcement.
- **Nomination of personnel.** While the MOA requires a background check and evaluation of Alamance County Sheriff's Office law enforcement who may be authorized to participate in the program, there is no indication as to how suitability is to be determined. Lack of transparency in the implementation of the program prevents assessment of suitability determinations.
- **Training of personnel.** Although it appears that there is a curriculum in place for the training of personnel, the length of the training appears to be too short given the complexities of the subject matter, and content of the curriculum is unclear. Lack of transparency in the implementation of the program prevents assessment of the training.
- **Certification and authorization.** While authorization of the MOA by ICE may be revoked at any time, the language indicating what merits such a revocation is unclear making oversight of and remedy for the program uncertain.
- **ICE supervision.** Although the MOA requires that there be ICE supervision before any local officer can perform an immigration function, there is no indication as to the nature or degree of the necessary supervision, nor is there any mechanism for review to ensure that the officers comply with immigration law and procedure.
- **Civil Rights standards and interpretation services.** In addition to the obligations set forth in federal civil right statutes and regulations, including the U.S. Department of Justice "Guidance Regarding the Use of Race by Federal Law Enforcement

Agencies,” the language in the MOA requires an interpreter for those who do not speak English. Yet how law enforcement should comply with this requirement is unclear. The MOA fails to establish the process by which an interpreter is obtained, the procedure through which law enforcement officers confirm that an interpreter is necessary, whether an interpreter must be requested before one must be provided, and how the affected individual will be informed of the right to an interpreter.

- **Required steering committee.** The MOA requires that ICE and the local Sheriff establish a steering committee. However, the existence, purpose, function, and the selection process of the steering committee are not sufficiently clear.
- **Community Outreach.** Although the MOA provides that the local agency will engage in community outreach programs with organizations interested in the MOA, there is a great deal of discretion left with the agency in determining with which organizations to work, thereby creating the opportunity to limit or deny participation from critics of the program.
- **Relations with the news media.** This provision of the MOA also allows too much discretion with the local agency creating the possibility that important information about the MOA will not be communicated to the public in order to enhance the program’s accountability and transparency.
- **Modification of the MOA.** While the MOA can be modified, there is no mention as to how these amendments will be communicated to the public or whether the amended document will be made publicly available.
- **Duration and termination of the MOA and liability disclaimers.** Although the MOA states that authorization of immigration enforcement can be revoked at any time, there is no requirement that the termination of the program be made public. Additionally, language in the agreement attempts to insulate ICE and the local agency from liability if they fail to comply with the requirements agreed upon in the MOA.

Proposals for Improvement

In addition to bringing to light the many issues presented by the 287(g) program and the way that the program is currently implemented, this policy brief sets forth a number of proposals that would, if implemented, help to resolve many of the current implementation problems. The recommendations include:

- Transparency in the implementation of the program
- Full conformity with the letter and the spirit of the law.
- Increased community participation in the program's implementation and/or oversight.
- Revision of all current 287(g) programs and implementation in all new 287(g) programs, to permit 287(g) processing only for those convicted of felonies.
- Amendments to the complaint mechanism in the MOA, including clarification of the process, providing notice of the right to file a complaint, enacting amendments to the guidelines regarding the complaint forwarding process, and changes to the method of complaint review.
- Ensuring the availability of the MOA and detailing the MOA purpose and policy.
- Improving personnel performance by outlining personnel designation and functions, providing guidelines for nomination of personnel, detailing and updating the training of personnel, continued certification and authorization of personnel through consistent complaint reports, and monitoring ICE supervision of personnel.
- Clarification of notice of the Civil Rights standards and provision of interpretation services.
- Detailing the steering committee's selection process that includes a broad range of community interests and setting forth the committee's required review of activities.
- Opening executive steering committee meeting to the public.

- Increasing information and participation for effective community outreach and input.
- Improving relations with the news media and other organizations.
- Updated officer training and MOA availability after modification as well as providing duration and termination of the MOA and avoiding impunity.

These proposals for improvement also include suggestions and examples of other complaint mechanisms that could be implemented in order to achieve greater effectiveness in ensuring compliance on the part of local law enforcement agencies with applicable law and MOAs.

Conclusion

Ultimately, by revealing the complexities of the 287(g) program and the difficulties in its implementation, this policy brief seeks to illustrate that the program is actually an ineffective means of immigration enforcement. It is too problematic, too costly, and too difficult to implement. The reliance on local law enforcement by the federal government for the enforcement of immigration laws is a strong indication of a systemic problem in the federal program, which points to the need for comprehensive immigration reform at the federal level that would allow local police and county sheriffs to return to their primary function of protecting their local communities from crime. Until this reform occurs, this paper reveals the deficiencies and illegalities of 287(g) agreements and encourages communities and lawmakers to implement change under the current system.



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