

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**  
University of North Carolina at Chapel Hill

February 2009



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## TABLE OF ABBREVIATIONS

<b>CAP</b>	Criminal Alien Program
<b>DHS</b>	Department of Homeland Security
<b>DHS OIG</b>	Department of Homeland Security Office of Inspector General
<b>DOJ</b>	Department of Justice
<b>DOJ CRD</b>	Department of Justice Civil Rights Division
<b>ERPA</b>	End of Profiling Act
<b>ICE</b>	U.S. Immigration and Customs Enforcement
<b>ICE OPR</b>	U.S. Immigration and Customs Enforcement Office of Professional Responsibility
<b>INA</b>	Immigration and Nationality Act
<b>JEO</b>	Jail Enforcement Officer
<b>LEA</b>	Local Law Enforcement Agency
<b>MOA</b>	Memoranda of Agreement/Memoranda of Understanding
<b>NCSA</b>	North Carolina Sheriffs' Association
<b>ACSO</b>	Alamance County Sheriff's Office
<b>TFO</b>	Task Force Officer





## 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.

## I. Why a Policy Review?: Introduction and Purpose

The purpose of this policy review is to raise public concern about a recent and growing phenomenon particularly in the State of North Carolina: local enforcement of immigration laws under the Immigration and Nationality Act § 287(g). This policy brief endeavors to raise substantive issues and promote further dialogue about the changing demographics in North Carolina, the failed immigration reform at the national level, and the way in which our state has responded. More specifically, this policy brief focuses on the implementation of the § 287(g) program in accordance with the Immigration and Nationality Act, and the impact on our communities when local law enforcement agencies undertake immigration enforcement duties.

Immigration is a complex area of law inherently within the domain of the federal government under the U.S. Constitution. Until recently, immigration laws have been traditionally enforced by federal immigration officers. Passed in 1996, § 287(g) of the Immigration and Nationality Act as amended by the Department of Homeland Security (DHS), empowers U.S. Immigration and Customs Enforcement (ICE) to enter into agreements with state and local police enforcement agencies to execute immigration monitoring and enforcement functions.<sup>1</sup> These agreements are known as Memoranda of Understanding, now more commonly referred to as Memoranda of Agreement (MOA). These memoranda, for the first time, formally “deputize” state and local law enforcement officers to enforce certain immigration laws.

At the time of the writing of this policy brief, it is estimated that over sixty law enforcement agencies throughout the nation have entered into such agreements and have begun enforcing immigration laws at an unprecedented rate. With eight agencies

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<sup>1</sup> 8 U.S.C. § 1357(g) (2008).

currently signed on, North Carolina has the second largest number of § 287(g) programs in the nation.<sup>2</sup> Thus far, however, these agencies have functioned under the MOAs with little transparency or oversight and there has been little, if any, accountability as to the implementation of the program. Furthermore, since the implementation of § 287(g), Hispanic-appearing residents in particular have reported discriminatory abuses related to the program's implementation. These abuses include harassment of legal residents and citizens and subsequent alienation of ethnic communities from police authority and protection.

Much of the immigration controversy that underlies § 287(g) and other anti-immigration initiatives is driven by fear and prejudice – often inserted for the purpose of stifling debate. Instead of fear and prejudice, this policy review endeavors to approach the topic with qualitative and quantitative data as well as a review of the legal and policy questions raised by implementation of the program.

As a result of concerns about the program, an interdisciplinary research group convened over the past year at the University of North Carolina at Chapel Hill to study the impact of the § 287(g) program. This group included faculty, law students, and graduate students from the Institute of the Study of the Americas, the Departments of Sociology, Anthropology, City and Regional Planning, and the School of Law, as well as faculty from the Business School at Elon College. Our findings suggest that the § 287(g) program functions as a deportation program largely unrelated to crime or national security. Section 287(g) has been implemented without proper concern for due process and legal protections and without concern for the negative consequences occurring among communities throughout North Carolina.

**Much of the immigration controversy that underlies § 287(g) and other anti-**

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<sup>2</sup> United States Immigration and Customs Enforcement, Partners, available at [http://www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm) [hereinafter *ICE Partners Website*]. By early November 2008, sixty-three municipalities had entered into MOAs and approximately eighty agency requests for § 287(g) MOAs were pending. Virginia currently has nine agencies under 287(g) agreements. *Id.*

immigration initiatives is driven by fear and prejudice – often inserted for the purpose of stifling debate. Instead of fear and prejudice, this policy review endeavors to approach the topic with qualitative and quantitative data as well as a review of the legal and policy questions raised by implementation of the program. The authors of this policy brief urge the state’s political representatives, as well as local and regional community leaders, to consider the social and legal ramifications of the program’s wide-spread implementation. North Carolina is a front-runner in utilizing § 287(g), but the state has not undertaken a comprehensive analysis of the program in order to consider the program’s impact on the state economy, the social networks of non-citizens and their families, and, as illustrated in this policy review, the legal questions raised by the program.

## II. Overview of the INA § 287(g) Program

### A. Sources of Law

#### 1. The Immigration and Nationality Act, Section 287(g)

In 1996, the US Congress amended the Immigration and Nationality Act (INA) to authorize the federal government to enter into agreements with local law enforcement agencies and to deputize local law enforcement officers to act as immigration officers in the course of their daily activities. Section 287(g) authorizes the Attorney General to “enter into a written agreement with a state, or any political subdivision of a state, [to determine qualified officers] to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States . . . .”<sup>3</sup> The statute also provides that immigration enforcement activities must be carried out at the expense of the state or political subdivision and to the extent consistent with state and local law.<sup>4</sup>

Historically, there was a clear division between the enforcement of civil immigration laws and the enforcement of criminal immigration laws.<sup>5</sup> Civil violations of the INA include unlawful presence, working without proper employment authorization, and visa-overstays.<sup>6</sup> On the other hand, criminal immigration law covers offenses such as human trafficking,<sup>7</sup> the harboring of undocumented aliens,<sup>8</sup> and the reentry of aliens who were previously deported or excluded.<sup>9</sup> Federal authorities have long held exclusive jurisdiction over the ability to regulate civil immigration laws while federal, state, and

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3 8 U.S.C.S. § 1357(g) (2008).

4 *Id.*

5 Dep't of Justice, Office of Legal Counsel, “*Assistance by State and Local Police in Apprehending Illegal Aliens*,” 1996 OLC Lexis 76 (1996), available at <http://www.usdoj.gov/olc/immstopo1a.htm>.

6 Alison Siskin, Congressional Research Service, Immigration Related Detention: Current Legislative Issues, Order Code RL32369, at p. 6 (Apr. 28, 2004), available at <http://www.au.af.mil/au/awc/awcgate/crs/rl32369.pdf>.

7 *Id.*

8 8 U.S.C.S. § 1324(a) (2008).

9 8 U.S.C.S. § 1326 (2008).

local authorities have had concurrent jurisdiction for the purpose of enforcing criminal immigration laws.<sup>10</sup> The written agreements under § 287(g) effectively erase that line, enabling local law enforcement officers to enforce civil immigration law for the first time in history.

During the first five years after the passage of the federal statute authorizing § 287(g) agreements, states expressed little interest in entering into MOAs. Following the attacks of September 11, 2001, the Attorney General began to encourage State and local law enforcement to enter into § 287(g) MOAs in order to assist with counter-terrorism efforts.<sup>11</sup> At the same time, local officials became increasingly frustrated with the failure of the federal government to enact comprehensive immigration reforms. This led some cities and municipalities to enact local legislation in an attempt to address what they perceived to be the growing problem of illegal immigrants in their communities. Some of these local ordinances attempted to restrict or bar access to housing and employment to undocumented immigrants. Many of these ordinances, such as the ones in Hazelton, PA, were found to be unconstitutional, leaving local authorities to seek other solutions.<sup>12</sup>

There are currently a total of sixty-three active § 287(g) MOAs in twenty states, with 840 officers trained and certified.<sup>13</sup> ICE reports that there were eighty pending requests for agency approvals.<sup>14</sup> Interest in § 287(g) MOAs appears to be higher in North

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10 *Id.*

11 Blas Nuñez-Neto, Michael J. Garcia & Karma Ester, Congressional Research Service, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, 2007, at 17.

12 *Lozano v. City of Hazelton*, 496 F. Supp. 2d 477, 533 (2007).; The ordinances in *Lozano* interfered with federal law and were declared unconstitutional. These ordinances included the prohibition of employment and harboring of undocumented aliens and the requirement of a permit to occupy an apartment, whereby the apartment dweller had to prove his citizenship or lawful immigration status. The court permanently enjoined the city from enforcing the ordinances. The case is currently on appeal. *Id.* North Carolina municipalities have similarly attempted to establish ordinances targeted immigrant and Hispanic communities. See Mai Nguyen, *Immigration Ordinances in North Carolina* (on file with authors); See also Kristin Collins, *Beaufort County Wants to Stem Migrant Influx*, NEWS & OBSERVER, May 25, 2008, available at <http://www.newsobserver.com/politics/story/1084641.html>.

13 ICE Partners Website, *supra* note 2.

14 This was the number last reported on the ICE Partners Website as of June 25, 2008. *Id.*

Carolina than any other State.<sup>15</sup> There are currently eight active MOAs in the North Carolina; agreements have been signed by Alamance, Cabarrus, Gaston, Mecklenburg, Wake, Cumberland, and Henderson Counties, and the Durham Police Department,<sup>16</sup> As last reported by ICE, at least twenty additional North Carolina law enforcement agencies have requested § 287(g) partnerships.<sup>17</sup>

In addition to various MOA agreements, in 2007, North Carolina passed N.C. Gen. Stat. § 162-62, a statute that requires any county or local jail to verify the immigration status of persons who are detained in North Carolina facilities and who are detained on felony or impaired driving charges. Furthermore, the North Carolina State legislature approved nearly \$2 million for the expansion of § 287(g) to other counties over a two-year period.<sup>18</sup> In 2007, \$750,000 was appropriated to the North Carolina Sheriffs' Association (NCSA) Illegal Immigration Project for technical assistance and training associated with immigration enforcement.<sup>19</sup> The NCSA has used the money to become more involved with the ICE ACCESS program, which includes § 287(g). The grant has been used for travel reimbursement and salary costs for officers attending § 287(g) training<sup>20</sup> but otherwise provides no language or standards that regulate or provide for oversight or monitoring as to how the money should be spent or how agencies are accountable for the expenditure of

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15 United States Immigration and Customs Enforcement, *ICE and North Carolina Sheriffs Working Together to Form Statewide Partnership*, Oct. 15, 2007, available at <http://www.ice.gov/pi/news/newsreleases/articles/071015carolinabeach.htm> [hereinafter *ICE Press Release*].; See also Michael Pearson, *County Commission: Screening of Foreign Citizens Approved*, ATLANTA JOURNAL AND CONSTITUTION, Apr. 2, 2008, available at <http://www.ajc.com/search/content/metro/gwinnett/stories/2008/04/02/immigration0402.html> (North Carolina is also considered a model for § 287(g) programs in other states. The Chair of the County Commission of Gwinnett County, Georgia, visited North Carolina while deciding whether to enter into an MOA.)

16 ICE Press Release, *supra* note 15.

17 *Id.*

18 North Carolina General Assembly, House Bill 1950, *Sheriffs Immigration Enforcement Agmt./Funds*, 2007-2008 Session.

19 North Carolina General Assembly, House Bill 1473, *2007 Appropriations Act, 2007-2008 Session*; See also *Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, 2007*, at I-15.

20 *Id.*



these funds.<sup>21</sup>

The lack of requirements as to how the money should be spent was a departure from general procedures where legislative allocations are passed through the Governor's Crime Commission (GCC). Such allocations are ordinarily subject to grant guidelines established by the GCC, with recommendations from experts and stakeholders in the community. In this instance, the NCSA received the initial \$750,000 allocation without being subject to the GCC's review or any regular process, other than periodic reporting to the North Carolina General Assembly. Consequently, there was a lack of sufficient accountability as to the use of these funds.<sup>22</sup>

A resolution adopted by the NCSA Executive Committee and sent to the North Carolina House of Representatives perpetuates many myths and misinformation about immigrant populations; indeed it is a document which a proper immigration enforcement training program should discourage.

This year, \$600,000 has been appropriated to the GCC to contract with the NCSA for technical assistance and training associated with immigration enforcement.<sup>23</sup> There will be conditions on reporting of spending — an expected improvement from the circumstances in 2007.<sup>24</sup> However, legislative accountability in connection with the funding of the § 287(g) still must be strengthened.

Furthermore, the designation of NCSA as the agency responsible for administering the funds poses an additional cause for concern. A resolution adopted by the NCSA Executive Committee and sent to the North Carolina House of Representatives perpetuates

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21 American Civil Liberties Union of North Carolina, Letter to the Members of the Joint Legislative Crime Control and Juvenile Justice Oversight Committee, Mar. 11, 2008, [hereinafter *ACLU Letter*].

22 NC House Bill 1473 and July 27, 2007 Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets.

23 North Carolina General Assembly, House Bill 2436, *Modify Appropriations Act of 2007*, 2007-2008 Session; See also *Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets*, 2008, at I-12.

24 *ACLU Letter*, *supra* note 21.

many myths and misinformation about immigrant populations; indeed it is a document which a proper immigration enforcement training program should discourage.<sup>25</sup> The resolution claims that there is “reliable documented evidence” that terrorist groups are entering the US through the southern border, that the influx of “illegal aliens” drains the resources of the State, and that “illegal aliens” don’t pay taxes. All these claims are disputable at best and have largely been proven to be inaccurate. The resolution also refers to undocumented immigrants as “illegal alien invaders.”<sup>26</sup> And perhaps most notably, the resolution advocates not only for the reduction of illegal immigration but also for the reduction of legal immigration as well.<sup>27</sup> Since the NCSA functions as an advisor to sheriffs in counties considering implementation of § 287(g) MOAs, the content of the resolution indicates the need for additional or other oversight as to the use of funds and implementation of the program.

## 2. Memoranda of Agreement

The MOAs function as binding contracts between the DHS and local law enforcement agencies (LEAs). Pursuant to § 287(g), the MOAs require ICE to provide training to designated LEA employees who will be deputized to carry out certain immigration enforcement duties. The MOA also sets forth supervision requirements, guidance with regard to civil rights standards, interpreter issues, complaint mechanisms, and the establishment of a steering committee, as well as other guidance pertaining to communication with the communities affected by these agreements. As noted below in Section IV.D., there are concerns about the ambiguous terms of the MOA, as well as lack of compliance with the terms that do exist.

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25 See January 2007 Resolution by the North Carolina Sheriffs’ Association regarding Immigration (on file with authors.)

26 *Id.* at Resolution # 8

27 *Id.* at Resolution # 7.

There are concerns about the ambiguous terms of the MOA, as well as lack of compliance with the terms that do exist.

There are two basic types of MOA which contain different training requirements. The programs are referred to in some ICE publications as “Field Level” and “Correction Personnel” programs;<sup>28</sup> ICE refers to the officers as “Task Force Officers” (TFOs) and “Jail Enforcement Officers” (JEOs).<sup>29</sup> Under the correction model, § 287(g)-trained corrections officers are authorized to check the immigration status of any individual who is processed into a corrections facility after arrest and is suspected of being in the country illegally. In the field-level model, LEA officers are empowered to check the immigration status of individuals they encounter in the course of their routine law enforcement duties. For example, under the MOA with the Durham, N.C. Police Department, a designated officer is authorized to interrogate any person believed to be an alien as to his right to be or remain in the United States, arrest without warrant any alien that the officer believes is in the United States in violation of the law and is likely to escape before a warrant can be obtained, serve warrants of arrest for immigration violations, issue immigration detainers, and detain and transport arrested aliens to ICE-approved detention centers.<sup>30</sup>

As explained below, however, the line between the two models is often blurred. In counties that have entered into correction model MOAs, evidence suggests that individuals are often arrested under circumstances where they otherwise may not have been, merely for the purpose of having their immigration status checked by 287(g)-deputized officers. For example, a study of arrest data in Davidson County, Tennessee, a County that has entered into a “correction model” MOA, demonstrates that the arrest rates for Hispanic

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28 United States Immigration and Customs Enforcement, *Delegation of Immigration Authority: Section 287(g) Immigration and Nationality Act*, Sept. 5, 2007, available at <http://www.ice.gov/pi/news/factsheets/070906factsheet287gprover.htm>, [hereinafter *Delegation of Immigration Authority*].

29 ICE Partners Website, *supra* note 2.

30 Durham Police Dept. Memorandum of Agreement (on file with authors).

defendants driving without a license more than doubled after the implementation of the § 287(g) program.<sup>31</sup> The two most likely explanations for this statistic are: officers may have stopped more Hispanic drivers and therefore found more instances of driving without a license, or officers have arrested more Hispanic drivers, based on driving without a license or other traffic violations, in order to allow the correction officers to check their status.

Similarly, as noted below, North Carolina data for Mecklenburg and Alamance Counties show that the overwhelming number of individuals who are stopped by § 287(g) officers are arrested for traffic offenses.<sup>32</sup> Because the REAL ID Act, passed in 2005, requires individuals to prove citizenship or legal status in order to acquire a driver's license, a number of undocumented immigrants are unable to get driver's licenses and are therefore arrested for driving without a license.<sup>33</sup> Further, the North Carolina General Assembly revised N.C. Gen. Stat. § 20-7(b1) in 2006, to require possession of a social security number in order to obtain a driver's license.<sup>34</sup>

North Carolina data for Mecklenburg and Alamance Counties show that the overwhelming number of individuals who are stopped by § 287(g) officers are arrested for traffic offenses.

As noted above, under the § 287(g) statute, MOAs are required to explicitly state the type of training the officers will receive, the structure of officer supervision, and the

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31 Arrests for No Drivers License By Ethnicity and Race, Tennessee Immigrant and Refugee Rights Coalition Report in Conjunction with Criminal Justice Planning, July 31, 2007 (on file with authors).

32 Matt Tomsic, *Many Latinos Deported, Not For Felonies But for Minor Offenses*, THE INDEPENDENT, Dec. 24, 2008 (noting that traffic offenses, not including DWIs, make up the largest percentage of initial charges against Latinos in Mecklenber, Gaston, and Alamance counties), available at <http://www.indyweek.com/gyrobase/Content?oid=oid%3A272683>. Mai Nguyen and Hannah Gill, *Preliminary Data Analysis: NC Court and U.S. Census Bureua Statsitcis for No Operators License Charges Against Latinos/Hispanics in Mecklenburg and Alamance County* (demonstrated a significantly disperate increase in the number of Hispanic drivers cited from July 2005 and December 2007) (on file with the authors).

33 Department of Homeland Security, REAL ID, June 20, 2008, available at [http://www.dhs.gov/xprevprot/programs/gc\\_1200062053842.shtm](http://www.dhs.gov/xprevprot/programs/gc_1200062053842.shtm).

34 See Senate Bill 602 (2005).

procedure for handling complaints.<sup>35</sup> These guidelines, however, are quite vague. In addition, there is no provision in the statute that sets forth the person or entity authorized to sign an MOA on behalf of the local authority. ICE publications, however, state that the signatory can be the governor, head of the local law enforcement agency or “a senior political entity.”<sup>36</sup>

The requirements for the officers participating in the program appear to be minimal. The officer must be a U.S. citizen, must be able to pass a background check, have a minimum of two years experience in his or her current position, and have no pending disciplinary action.<sup>37</sup> He or she must also successfully complete the § 287(g) training program which is evaluated on a pass/fail basis, requiring trainees to achieve at least 70% in all courses.<sup>38</sup> According to ICE, attendees receive training in immigration and naturalization law, removal charges, statutory authority, racial profiling, cultural awareness, criminal law, and alien processing.<sup>39</sup> However, a concern that has been raised about the 287(g) program is that the ICE training course for 287(g) officers typically takes 4-5 weeks, while federal immigration officers are trained for 4-5 months.<sup>40</sup>

The questionable nature and purpose of the § 287(g) program is evidenced in part by the rhetoric used to convince communities of its necessity. Neither ICE nor local law enforcement agencies have emphasized the need for assistance in enforcing civil immigration law; instead the agreements are promoted as an important way to guarantee that “criminal aliens incarcerated within federal, State and local facilities are not released into the community upon completion of their sentences.”<sup>41</sup> ICE states that the § 287(g) program is designed to remove those undocumented immigrants convicted of “violent

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35 28 C.F.R. § 65.84 (2003).

36 Delegation of Immigration Authority, *supra* note 28.

37 *Id.*

38 *Id.*

39 *Id.*

40 Carrie L. Arnold, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113, 129 (Spring 2007).

41 ICE Partner’s Website, *supra* note 2.

crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering.”<sup>42</sup>

ICE promotes § 287(g) agreements as a “force multiplier” for the Criminal Alien Program (CAP) with a heavy focus on national security and crime prevention. The explanation of the § 287(g) program on the website begins in this way:

Terrorism and criminal activity are most effectively combated through a multi-agency/multi-authority approach that encompasses the skills and expertise of federal, State and local resources. State and local law enforcement agencies play a critical role in protecting our national security in part because the vast majority of criminals are taken into custody under their jurisdiction.<sup>43</sup>

The same language is also used in the introduction to the promotional brochure for the § 287(g) program.<sup>44</sup> Additionally, as recently as June 2008, the United States House of Representatives House Oversight Committee described ICE’s methodology as one designed “to find the most violent and dangerous criminals in an effort to ensure that those who are the greatest threat to society are the first priority for removal.”<sup>45</sup> Nonetheless, the program has been used indiscriminately to find, arrest, detain, and remove immigrants who do not fit the profile of the program.

The questionable nature and purpose of the § 287(g) program is evidenced by the rhetoric used to convince communities of its necessity. Neither ICE nor local law enforcement agencies have emphasized the need for assistance in enforcing civil immigration law; instead the agreements are promoted as an important way to guarantee that “criminal aliens incarcerated within federal, State and local facilities are not released into the community upon completion of their sentences.”

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42 *Id.*

43 *Id.*

44 Delegation of Immigration Authority, *supra* note 28.

45 H.R. 2638, 110th Cong. (2007).

### III. Actual Consequences of INA § 287(g)

#### A. The Universal Effect of § 287(g): Marginalized Communities

Section 287(g) deputizes local law enforcement officers to perform immigration functions in the course of their normal duties.<sup>46</sup> These functions include investigating the status of suspected undocumented residents who are stopped or detained for reasons other than their status.<sup>47</sup> Thus, § 287(g) applies only to undocumented residents lawfully stopped or detained.<sup>48</sup> However, as data analyses and qualitative evidence suggests, the program's application and implementation deviate from the legal requirements.<sup>49</sup> Section 287(g) is utilized not as a tool to aid law enforcement, but instead as a localized immigration weapon and tool for intimidation and isolation of foreign nationals and Hispanic residents and citizens<sup>50</sup>

The participation of individual states and counties in § 287(g) often follows a well-publicized community tragic event which the media and public opinion link to lax immigration enforcement.<sup>51</sup> In entering into an MOA, a contracting municipality or

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46 *Forcing Our Blues in Grey Areas: Local Police and Federal Immigration Enforcement, A Legal Guide for Advocates*, APPLESEED 7, available at <http://www.appleseednetwork.org/Publications/ReportsToolkits/ForcingOurBluesintoGrayAreas/tabid/97/Default.aspx> [hereinafter *Forcing Our Blues*].

47 *Id.*

48 *Id.*

49 See *supra* note 32.

50 FIRE Coalition Interview with Sheriff Terry Johnson, conducted by FIRE Coalition National Director, Jeff Lewis, Dec. 2007, available at <http://www.truveo.com/FIRE-Coalition-Interviews-Sheriff-Terry-Johnson-1/id/2953567179>; Sheriff Johnson of Alamance County readily acknowledges identification and mass deportation, or purging, of undocumented residents as the primary motivator for its passage. Upon being asked in an interview with the FIRE Coalition on how he got involved in 287(g), Sheriff Johnson responded:

I have been Sheriff of Alamance County for four and a half years now...and being a resident of Alamance County, I've seen a massive change in the population the County which is automatically overburdening the taxpayers. And I began to notice...that a large amount of our population...was in fact foreign born, illegal, criminal immigrants who had come to settle in Alamance County . . . and that our services that we were...supposed to be providing to our taxpaying citizens were being cut short simply because we had to be responding to a lot of criminal, illegal immigrants here in Alamance County.

51 For example, consider that Florida was the first state to enter into such agreements, motivated in part due to the fact that the 9-11 terrorists passed through and were trained in, their state. One example is the recent and grisly murder of a ten-year old

sheriff's department invariably issues a statement asserting that § 287(g) only applies to the violent repeat offender.<sup>52</sup> For example, one district attorney in North Carolina stated: "It's not a broad sweeping net that's going to cast about to get everybody who may have a [sic] questionable status immigration wise. It's trying to get to the problem of illegal immigrants who commit crimes."<sup>53</sup> Similarly, prior to finalizing an agreement with ICE, local law enforcement officials routinely assert that the MOA will not affect general relations with the Hispanic and immigrant community, assuring that nothing would happen unless these individuals were arrested for the commission of a crime.<sup>54</sup> Wake County Sheriff Donnie Harrison recently said: "You hate to make guarantees on anything, but there's not going to be any profiling."<sup>55</sup>

Unfortunately, undocumented residence itself is increasingly identified as the predicate crime meriting police attention and resources.<sup>56</sup> Section 287(g) is consequently utilized to purge a town of an "unwelcome" immigrant presence. In the first seven months since implementation of its MOA, Mecklenburg County processed over one thousand undocumented residents for deportation.<sup>57</sup> Alamance County, although operating with a smaller population and fewer enforcement resources, boasts of deporting over four hundred individuals over the first nine months of participation in the program.<sup>58</sup>

#### **Instead of focusing on those people who commit the violent crimes as stated by**

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child in Morristown New Jersey by an undocumented immigrant which encouraged the mayor of the town to enter into an MOA with the Department of Homeland Security.

52 Kareem Fahim, *Should Immigration Be a Police Issue?*, N.Y. TIMES, Apr. 29, 2007.

53 John Harbin, *Henderson County Gets OK for Illegal Immigration Program*, BLUERIDGENOW.COM TIMES-NEWS ONLINE, Feb. 21, 2008, available at <http://www.blueridgenow.com/article/20080221/NEWS/802210334>.

54 Fahim, *supra* note 52.

55 Sergio Quintana, *Latino Groups Concerned 287(g) Encourages Racial Profiling*, NBC-17, Raleigh, NC, Jun. 5, 2008, available at, <http://www.nbc17.com/midatlantic/ncn/news.apx.-content-articles-NCN-2008-06-05-0028.html>.

56 For example, see note 50; Sheriff Johnson's interview identifies undocumented immigrants as "foreign born, illegal, criminal immigrants." *Id.*

57 "Program Helping Rid Mecklenburg County Jail of Illegal Immigrants" WSOCTV, Nov. 27, 2006, available at <http://www.wsocvtv.com/news/10405433/detail.html>.

58 See *supra* note 50. "[S]ince that time there have been over 400 individuals who have been deported . . . and removed from the United States." *Id.*



ICE, local law enforcement officers seem to be targeting drivers of a particular race or national origin and stopping them for traffic violations. For example, during the month of May 2008, eighty-three percent of the immigrants arrested by Gaston County ICE-authorized officers pursuant to the 287(g) program were charged with traffic violations.<sup>59</sup> This pattern has continued as the program has been implemented throughout the state. The arrest data appears to indicate that Mecklenburg and Alamance Counties are typical in the targeting of Hispanics for traffic offenses for the purposes of a deportation policy.<sup>60</sup>

§ 287(g) encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of local residents and the isolation of an increasingly marginalized community.

The aggressive allocation of police resources has serious implications for the larger community. Indeed, § 287(g) must be understood to have a universal impact on the community. First, as described below, § 287(g) encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of local residents and the isolation of an increasingly marginalized community. Alamance County Sheriff Terry Johnson made this sweeping characterization of all Mexicans in a recent statement: “Their values are a lot different – their morals – than what we have here. In Mexico, there’s nothing wrong with having sex with a 12-, 13-year-old girl . . . . They do a lot of drinking down in Mexico.”<sup>61</sup> North Carolina State Trooper C.J. Carroll stated that “Mexicans drink a lot because they grew up where the water isn’t good.”<sup>62</sup> Johnson County Sheriff Steve Bizzell, who was president of the NCSA from in July 2007 until he was named the association’s chairman in July 2008, described an incident of drunk driving that resulted

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59       ACLU Letter, *supra* note 21. Out of thirty-five people, twenty-one were arrested on a traffic stop, eight due to DUIs. Thirty-two were charged with misdemeanors; only one was charged with a felony. *Id*

60       *Id.*

61       Kristin Collins, *Sheriffs Help Feds Deport Illegal Aliens*, NEWS & OBSERVER, Apr. 22, 2007, available at <http://www.newsobserver.com/102/story/566759.html>.

62       State of North Carolina v. Juan Villeda, 165 N.C. App. 431, 504-05 (2004).

in the death of a young boy by saying that the child paid the “ultimate price for *another drunk Mexican* [emphasis added].”<sup>63</sup>

Recently, Bizzell further vocalized his hostility toward immigrants. He stated that they are “breeding like rabbits,” and that they “‘rape, rob and murder’ American citizens.”<sup>64</sup> He classified “Mexicans” as “trashy” and said that he thinks “all they do is work and make love.” Additionally, Bizzell announced his resentment toward civil rights advances that have helped the immigrant population in Johnston County. In the article, he reminisced about the “Johnston County of his youth” when immigrants “were all in a group, down a path somewhere in a camp,” even though living that way “was bad for them as human beings.”

Sheriff Bizzell claimed to be fulfilling the requests of Johnston County residents. He maintained that everywhere he goes, “people say, ‘Sheriff, what are we going to do about all these Mexicans?’” He acknowledged that his goal is to reduce if not eliminate the immigrant population of Johnston County. Through 287(g) agreements, deputies and officers across the state, who may be led by men like Sheriff Johnson, or influenced by Sheriff Bizzell who have held a leadership position with the NCSA that has championed the § 287(g) program, have the resources and virtually unfettered authority to act on the discriminatory sentiment that they have espoused. Such a situation cultivates the illegal activity of racial profiling.

Racial profiling is not only legally impermissible, but because it is based on stereotypes and wrongful assumptions about the propensity of certain groups to commit

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63 Sarah Ovaska, *Deportation Fear Fuels Flight*, NEWS & OBSERVER, Jun. 12, 2008, available at [http://www.newsobserver.com/news/immigration/story/1105229.html#ML\\_Comments\\_Link](http://www.newsobserver.com/news/immigration/story/1105229.html#ML_Comments_Link).

64 Kristin Collins, *Tolerance Wears Thin*, NEWS & OBSERVER, Sept. 4, 2008, available at <http://www.newsobserver.com/news/immigration/story/1209646.html>.

crimes, it is also immoral and ineffective.<sup>65</sup> As our courts have noted, assumptions based on race “perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.”<sup>66</sup> The societal and human costs as a result of such profiling are enormous.

Racial profiling diminishes trust and reduces the opportunities to develop social capital and human bonds that make for strong communities.<sup>67</sup> Ethnic minorities, who have been subjected to harassment and law enforcement targeting, experience a deep sense of injustice, often resulting in distrust and cynicism towards state and local institutions.<sup>68</sup> For example, one woman living in Johnston County, who is a legal permanent resident and has three citizen children, says that “many Hispanics feel as if law officers are looking for excuses to deport them.”<sup>69</sup> This distrust may result in reluctance on the part of the community, including citizens, to otherwise participate in the building of social and economic relationships that make our neighborhoods vibrant and healthy.

While the Hispanic community is most directly implicated, the implementation of § 287(g) renders negative consequences for the security and integrity of the community as a whole. The aggressive use of local police to enforce immigration law often means that vulnerable populations are less willing to interact with the police, either in reporting

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65 For a more detailed discussion of the racial profiling in the legal context, see the section entitled “Lack of Compliance with Federal Constitutional Law: Equal Protection Violations through Racial Profiling” below. See also Reginald T. Shuford, *Any Way You Slice It: Why Racial Profiling is Wrong*, 18 ST. LOUIS UNIV. PUBLIC LAW REV. 371, 372 (1999); Guidance Regarding the Use of Race by Law Enforcement Agencies, U.S. Dep’t of Just. Civil Rights Division, June 2003, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.htm](http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm), [hereinafter *DOJ Guidelines*].

66 *Id.* See also *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000), (“Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone.”).

67 David A. Harris, *Driving While Black: Racial Profiling On Our Nation's Highway*, ACLU Special Report (1999), available at <http://www.aclu.org/racialjustice/racialprofiling/15912pub19990607.html>. *Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001*, Leadership Conference on Civil Rights Education Fund, available at [http://www.civilrights.org/publications/reports/racial\\_profiling/racial\\_profiling\\_report.pdf](http://www.civilrights.org/publications/reports/racial_profiling/racial_profiling_report.pdf).

68 David A. Harris, *The Stories, the Statistics, and the Law: Why ‘Driving While Black’ Matters*, 84 MINN. L. REV. 265 (1999).

69 Collins, *supra* note 64.

crimes or in offering information, both detrimental to the safety of all members of the community. Section 287(g) thus must be understood as having a universal impact.

### B. Chilling Effect: The Danger of Immigrants' Fear of Reporting Crime and Diminished Local Law Enforcement Capability

Since September 11, 2001, both the U.S. government and the public have increasingly, although perhaps erroneously, linked immigration with national security.

Participation in the § 287(g) program appears to present an attractive bargain for many police and sheriff's departments. Public perception links a growing crime rate to a greater immigrant presence. However the incidence of criminal activity conducted by foreign-born residents is actually lower than that of natural-born citizens.<sup>70</sup> Since September 11, 2001, both the U.S. government and the public have increasingly, although perhaps erroneously, linked immigration with national security.

In fact, incarceration rates among young men have been lowest for immigrants over the past three decades.<sup>71</sup> As the undocumented immigrant population has doubled its size since 1994, the violent crime rate in the United States has declined 34.2 percent and property crime has fallen 26.4 percent."<sup>72</sup> A comprehensive study of population growth and crime between 1997 and 2006 in all counties in North Carolina demonstrates that the counties with the highest Hispanic population growth rate have the lowest violent and property crime rates.<sup>73</sup> The same study showed a positive correlation between

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70 Lindsay Haddix, *Immigration and Crime in North Carolina: Beyond the Rhetoric*, Dept. of City and Reg. Planning, UNC Chapel Hill, Master's Project, Spring 2008.

71 *Id.* at 19.

72 Rubén G. Rumbaut, Walter A. Ewing, *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates Among Native and Foreign-born Men*, Immigration Policy Center, Spring 2007.

73 Haddix, *supra* note 70, at 11. Hispanics comprise about seventy-eight percent of the undocumented population in the United States according to a March 2005 study by the Pew Hispanic Center. *Id.*

*total population* growth and increased crime rates. In other words, counties with high growth rates find increased crime rates, but counties with high growth rates of *Hispanic populations*, find decreased or steady crime rates.<sup>74</sup> Although studies dispel myths about crime rates and immigration, responding to faulty public opinions and misperception is politically advantageous for the agencies that take part in §287(g) programs.

In fact, § 287(g) has received a tepid response from law enforcement groups nationally<sup>75</sup> as some of the most ardent critics of § 287(g) are its potential enforcers.<sup>76</sup> The International Association of Chiefs of Police, the trade association representing Police Chiefs in Washington, D.C., through its official publications, identifies the ways in which the program is harmful to the mission of local law enforcement:

There are a number of compelling reasons why local law enforcement executives should resist the temptation to make state and local police agencies the frontline enforcers of federal immigration laws. These reasons take into the account the primary responsibility of local law enforcement, which is to fight crime at the local level. They also reflect the reality that immigrants both legal and undocumented have become a large part of our communities.<sup>77</sup>

Participation in § 287(g) and performance of immigration functions in tandem with police enforcement threatens this mission.<sup>78</sup> Law enforcement relies on the cooperation of residents in preventing, solving, and prosecuting crimes.<sup>79</sup> Without assurance that they will not be “punished” or subjected to immigration investigation and deportation for calling attention to themselves, studies find that “many immigrants with critical information would not come forward, even when heinous crimes are committed

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74 *Id.*

75 Fahim, *supra* note 52.

76 *Forcing Our Blues*, *supra* note 46.

77 Craig E. Ferrell Jr., *Immigration Enforcement, Is It a Local Issue?*, 71 THE POLICE CHIEF 2, Feb. 2004, available at [http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=224&issue\\_id=22004](http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=224&issue_id=22004).

78 *Id.*

79 *Id.*

against them or their families.”<sup>80</sup> As many families are comprised of both documented and undocumented immigrants as well as citizens, this direct “chilling effect” impacts the entire immigrant community, driving a “potential wedge between police and . . . the community . . . .”<sup>81</sup> In the Association’s 2007 publication, *Police Chiefs’ Guide to Immigration Issues*, the Association emphasized that “working with these communities is critical in preventing and investigating crimes.” and noted that an open relationship with a vulnerable immigrant community is increasingly difficult as:

Ethnic minorities are often afraid of the perceived potential for racial profiling and prejudice towards them by the police and the communities they reside in. This dynamic results in fear and distrust in the immigrant community and a general lack of cooperation with law enforcement.<sup>82</sup>

The consequence of this “general lack of cooperation with law enforcement” is reduced security. Undocumented residents are increasingly discouraged from reporting crimes, which in turn seriously undermines the overall security of their communities.<sup>83</sup> Immigrants are thus tacitly identified as “fair game” and are “extremely vulnerable to crime” because of the likelihood that they will not report crimes.<sup>84</sup> Immigrant communities are particularly vulnerable given the fact that immigrants less frequently have the ability to bank and therefore often carry cash on hand.<sup>85</sup> The Association’s *Guide* identifies the immigrant population as one particularly vulnerable to crime and particularly important as a resource in crime prevention and prosecution:

Many immigrant crimes are not reported . . . . Criminals tend to operate

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80 *Id.*  
81 *Id.*  
82 International Association of Chiefs of Police, *Police Chiefs’ Guide to Immigration Issues*, July 2007, at 21, available at <http://www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.  
83 *Id.* at 28.  
84 *Id.*  
85 *Id.* at 33. “[B]ecause of the general distrust of banking and government institutions, including police. Immigrants tend to have and carry large sums of cash and valuables making them vulnerable to crime and extortion.” *Id.*

in language environments they know and understand, which complicates criminal detection by law enforcement and increases the potential for retaliation by a perpetrator should a victim come forward to report a crime.<sup>86</sup>

The consequence of participation in § 287(g), therefore, is the increasing isolation and victimization of an already vulnerable segment of society.<sup>87</sup> This leads to decreased security for the Hispanic community specifically and for the entire community as a whole. Anecdotal evidence collected in Alamance County correlates with this phenomenon: undocumented residents report being increasingly unwilling to contact law enforcement to report crimes or otherwise come forward to aid the police department.<sup>88</sup> Reports of a decrease in crime following the passage of an MOA are therefore misleading. A decrease in crime may be explained by the fact that fewer crimes may be reported, as a significant portion of the population is no longer willing to contact the police out of fear of deportation. Consequently, participation in § 287(g) may be marked by an initial decrease in reported crime, but more importantly, it may also be characterized by an increase in actual crime and a reduction in actual security.<sup>89</sup>

Section 287(g) significantly undermines security in another way. With an immigrant community increasingly isolated from legitimate police enforcement and ostracized from society generally, community members may turn to other avenues to ensure their personal security. Anti-immigrant feelings, isolation from police, and greater crime rates within an immigrant community may encourage gang development.<sup>90</sup> Section 287(g), frequently cited as an important tool in combating gang violence and activity, may instead be considered as a possible important catalyst in its spread.

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86 *Id.* at 28.

87 Hannah Gill, Institute for the Study of the Americas, *Broken Promises: 287(g) in Alamance County*, Community Impacts of Local Policy Responses to Undocumented Immigration: A Community Conference, Apr. 6, 2008.

88 *Id.*

89 *Id.*

90 *Id.*

### C. Economic Impact

The average cost to the federal government for one § 287(g) agreement is \$17 million per year.<sup>91</sup> The states and local agencies that enter into these agreements also spend a great deal of money on the program. At first glance, § 287(g) appears to provide a financial incentive for sheriff's departments and selected communities by funneling federal resources for the local detainment of deportees.<sup>92</sup> A participating department receives an average of \$66 for every bed filled by an undocumented resident in a detention center an attractive resource.<sup>93</sup> However, at the same time, the program exacts a serious economic cost on the community.<sup>94</sup>

There is concern that federal resources allocated to local law enforcement agencies operating under § 287(g) may provide economic incentive to engage in racial profiling. With the increase in pretextual stops of Hispanic-appearing individuals, there is an increased opportunity for officers to inquire about an individual's documentation and subsequently, an increased chance of receiving funds for detaining deportable immigrants. This financial incentive may give the appearance that local law enforcement officers have been transformed into bounty hunters.

In reality, however, these MOAs may be a drain on the resources of the counties and states that enter into them. Except for the expenses of training and providing access to computers, it appears that all other expenses in connection with the program (outside of those counties that obtain additional funding for housing arrestees in immigration

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91 Minutes of meeting between American Immigration Lawyers Association Immigration & Customs Enforcement, 12/12/2007 (on file with the authors).

92 Robert Boyer, *Dole Wants to Make Alamance County Regional Immigration Hub*, TIMES NEWS, Sept. 11, 2007, available at <http://www.thetimesnews.com/onset?id=5695&template=article.html>; Alamance County constitutes one example. Senator Dole recently reported a desire to make Alamance County jail a "hub" for deportation detainment in the Southeast. This would involve allocation of six million dollars to the County. *Id.* Kristin Collins, *Sheriffs Help Feds Deport Illegal Aliens*, NEWS & OBSERVER, April 22, 2007, available at <http://www.newsobserver.com/news/immigration/story/566759.html>, [hereinafter *Sheriffs Help Feds*].

93 *Id.*

94 Gill, *supra* note 87.



detention facilities) are borne by the localities themselves. Indeed, Gaston County officials have noted that the 287(g) program is a drain on their resources.<sup>95</sup> Because deputies “often have to pull themselves away from other work to fulfill their ICE duties,” Gaston County Sheriff Alan Cloninger said that the County will have to hire an additional three officers to work at the County Jail.<sup>96</sup> The positions will cost local taxpayers \$175,000 in the first year and will increase by over \$8,000 for each year following.<sup>97</sup> Wake County expects to spend \$539,341 per year on its 287(g) program, plus a one-time start-up cost of \$89,975.<sup>98</sup>

There is concern that federal resources allocated to local law enforcement agencies operating under § 287(g) may provide economic incentive to engage in racial profiling. In reality, however, these MOAs may be a drain on the resources of the counties and states that enter into them.

Even counties that do receive additional funding for housing arrestees in immigration detention facilities can feel the economic strain of entering into the MOAs. Although there have been no completed studies of economic costs borne by North Carolina localities, one can look to the example of Prince William County, Virginia which has adopted a 287(g) program and for which such analysis has been completed. In Prince William County, the county jail is paying out more than it receives in compensated as a result of the 287(g) agreement.<sup>99</sup> This is because many suspects detained on state and local charges who would normally be released on bond, are denied this option when also

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<sup>95</sup> Michael Barrett, *Gaston County Expanding Its Illegal Immigration Program*, GASTON GAZETTE, Mar. 28, 2008, available at [http://www.gastongazette.com/news/county\\_18741\\_\\_\\_article.html/cloninger\\_program.html](http://www.gastongazette.com/news/county_18741___article.html/cloninger_program.html).

<sup>96</sup> *Id.*

<sup>97</sup> Michael Barrett, *New ICE Jail Positions Could Cost More Than \$210,000 by 2013*, GASTON GAZETTE, Apr. 6, 2008, available at [http://www.gastongazette.com/news/county\\_19075\\_\\_\\_article.html/new\\_three.html](http://www.gastongazette.com/news/county_19075___article.html/new_three.html).

<sup>98</sup> *Partnership Between US Immigration and Customs Enforcement Agency and the Wake County Sheriff's Office*, Nov. 5, 2007, available at <http://www.wakegov.com/agendas/2007/november5/07/cover.htm>.

<sup>99</sup> Nick Miroff, *Detainee Program Strains Virginia Jail*, THE WASHINGTON POST, Apr. 8, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/07/AR2008040702470.html>.

suspected of an immigration violation. Although the terms of the MOA require ICE to remove these suspects within seventy-two hours of their release from state or county custody, their removal from local facilities in fact is taking much longer. As a consequence, people who are originally detained for “traffic violations or other minor offenses might wait weeks for federal removal,” with the county jail picking up the extra cost.<sup>100</sup> The already overcrowded jail is forced to send inmates elsewhere in the state, costing the jail over \$220,000 a month in transportation and processing costs. Thus, 287(g) agreements may increase costs to taxpayers, even with ICE’s economic incentives.

The financial incentive for law enforcement agencies is also nominal compared to the serious economic cost suffered by a community under a § 287(g) program. The potential for racial profiling by law enforcement officers results in economic damage when residents who no longer want to live in a hostile county move, abandoning housing, and causing a loss of profits for local businesses and a decrease in taxpayers. A 2006 study reported that North Carolina’s Hispanic population contributes \$9.2 billion annually to the state’s economy.<sup>101</sup> This number is expected to increase to \$18 billion by 2009.<sup>102</sup> Immigrant labor is fundamental to economic growth of a community.

The narrative that depicts undocumented immigrants as individuals who drain public resources without contributing to the community through taxes or economic development is contested if not untrue.<sup>103</sup> A 2002 study demonstrated that immigrant households and businesses contribute over \$162 billion in direct taxes annually.<sup>104</sup> They

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100 *Id.*

101 John D. Kasarda and James H. Johnson, Jr., *The Economic Impact of the Hispanic Population on the State of North Carolina*, Kenan-Flagler Business School, University of North Carolina at Chapel Hill, Jan. 2006.

102 *Id.*

103 FIRE Interview, *supra* note 50. This perception is demonstrated in Sheriff Johnson’s description of the problem encountered in Alamance County which motivated him to seek an MOA with ICE. *Id.*

104 American Immigration Law Foundation, *Immigrant Workers: Making Valuable Contributions to Our Communities and Our Economy*, Spring 2002 available at [http://www.seiu.org/issues/immigration/immigration\\_facts.cfm](http://www.seiu.org/issues/immigration/immigration_facts.cfm).

will also contribute almost \$500 billion to Social Security between 1998 and 2022.<sup>105</sup> The perception of immigrant workers “free-riding” on the public is therefore inaccurate. In addition, immigrant labor is fundamental to economic growth. Undocumented immigrants alone contribute \$300 billion annually to the United States GNP.<sup>106</sup> This vital contribution was recognized by then Federal Reserve Chairman, Alan Greenspan, in his testimony before Congress as he identified immigrant labor as a “viable solution” to the threat of a labor shortage and discussed the implications for continued economic growth. At a recent conference on this topic at the University of North Carolina, Brian Nienhaus of the Elon School of Business identified this contribution by linking a growing immigrant presence with increased economic prosperity as reflected in increased housing and commercial property values.<sup>107</sup>

There is also a risk of high litigation costs associated with wrongful convictions, racial profiling, and other consequences of 287(g) programs. Indeed, in this more aggressive enforcement environment, ICE is not exempt from responsibility for wrongful detention which may result in costly litigation.<sup>108</sup> Additional studies are necessary to demonstrate the costs associated with the § 287(g) program and the economic consequences suffered by counties whose law enforcement agencies enter into these agreements. But one thing is clear: the economic costs to communities and governments have not been fully considered in weighting the disadvantages of the § 287(g) program.

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105 *Id.*

106 *Id.*

107 Brian Nienhaus, Elon University School of Business, *Immigrants, Real Estate and the Economy in Alamance County*, Community Impacts of Local Policy Responses to Undocumented Immigration, Apr. 6, 2008.

108 This is demonstrated by the litigation following the disastrous raids of Willmar, Minnesota in 2007 and Georgia in 2006. The Hutto Detention Center settlement, reached in the fall of 2007, also illustrates the expense attached to such liability and emphasizes that ICE itself is not immune to wrongful execution of duties or the liability that follows. Additional lawsuits have been filed related to detention of immigrants. See *Lawsuit: Ice Drugging Detainees Set for Deportation* Oct. 7, 2007, at <http://www.detentionwatchnetwork.org/node/416>; *CCA Immigration Detention: Immigration Agency, Contractors Accused of Mistreating Detainees*, May 5, 2008 available at [http://realcostofprisons.org/blog/archives/2008/05/cca\\_immigrant\\_d.html](http://realcostofprisons.org/blog/archives/2008/05/cca_immigrant_d.html).

Anti-immigrant laws like § 287(g) are often passed with the idea that “it won’t affect me.” Regardless of one’s personal stance on this issue, history demonstrates that there is a very thin line dividing anti-immigrant laws from those that diminish the civil rights and due process protections of citizens.

#### D. The Encroachment on American Liberties

Anti-immigrant laws like § 287(g) are often passed with the idea that “it won’t affect me.” A voting citizen may justify the passage of a law that condones mistreatment of non-citizens, but would consider the same law a violation of civil rights if applied to a citizen. Some people believe that non-citizens do not merit the same rights and treatments as citizens. Regardless of one’s personal stance on this issue, history demonstrates that there is a very thin line dividing anti-immigrant laws from those that diminish the civil rights and due process protections of citizens. Today’s anti-immigrant law paves the way for future encroachments on American liberties.

The most commonly referenced example of this ‘slippery slope’ is the Japanese internment camps during World War II. After the bombing of Pearl Harbor, U.S. authorities arrested and detained approximately 110,000 persons of Japanese heritage, about 70,000 of whom were U.S. citizens. Thousands of people were forced to leave their homes indefinitely, interned without constitutional protections. The federal government has since issued a formal apology and made reparations for those interned, yet the anti-immigrant Enemy Alien Act of 1798, which was used to justify this government action, remains valid law today.<sup>109</sup> More importantly, the Enemy Alien Act was created to apply *only* to citizens of foreign nations with which the United States is at war. The application of this law to U.S. citizens was beyond the scope of its enactment. Over time, the Enemy Alien Act thus brought about the conflagration between immigration and race, and an

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<sup>109</sup> 50 U.S.C §§21-24

anti-immigrant law became an anti-citizen law.<sup>110</sup>

Section 287(g) programs affect citizens and documented residents in other ways, as well. Citizens and documented residents must deal with frequent roadblocks and increased numbers of detention centers. For example Alamance County has repeatedly set up a roadblock near a Latino market. “Immigration roadblocks” have also been reported in Mecklenburg County and other parts of Alamance County. Three weekends in a row, a roadblock was set up at both entrances to a church in Mt. Olive, North Carolina.<sup>111</sup>

Mecklenburg and Gaston Counties have been discussing another partnership with ICE: the building of a new immigration detention center in one of the counties. Although the detention center might bring about 300 jobs to the area, it would also bring “unwanted attention” to the area.<sup>112</sup> The proposed 1500-bed facility may be, like many other immigration detention centers, an “environment of overcrowding, sexual assault, lawsuits, public protests and even death.”<sup>113</sup>

Once again, Prince William County, Virginia offers an example of how American liberties are affected through a 287(g) agreement. Because the county jail holds immigration suspects for ICE for weeks at a time before they are removed to detention facilities, the jail is overcrowded and forced to juggle its inmates between other jails throughout the state.<sup>114</sup> No answers are provided to lawyers and family members who seek information about when or to which facility their clients and loved ones may be transferred.<sup>115</sup> The 287(g) program negatively affects citizens and their families, as well as undocumented immigrants who retain certain rights under the Constitution regardless of

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110 David Cole, *Enemy Aliens* 54 Stan. L. Rev. 953, 993 (2002).

111 Elizabeth DeOrnellas, *Immigrants Feel the ‘Shadow of Fear,’* THE DAILY TAR HEEL, Oct. 30, 2007.

112 Lisa Zagaroli, *Illegal Immigrant Detention Center: Boost in Jobs vs. Trouble Moving In* (Charlotte Observer), DETENTION WATCH NETWORK, Jan. 28, 2008.

113 *Id.*

114 Nick Miroff, *Detainee Program Strains Virginia Jail*, THE WASHINGTON POST, Apr. 8, 2008, at <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/07/AR2008040702470.html>.

115 *Id.*

**their status. Detention conditions and interference with attorney-client relationships are likely to produce costly litigation for counties that enter into these agreements.**

The detention and deportation of community members implicates many individual rights and threatens to compromise the rights of the community as a whole. Racial profiling and harassment of foreign nationals are some of the most pernicious consequences reported as resulting from agreements between federal immigration authorities and state and local police authorized to enforce immigration laws.

## IV. Legal Issues

Section 287(g) presents pressing legal concerns. The detention and deportation of community members implicates many individual rights and threatens to compromise the rights of the community as a whole. The legal concerns include, but are not limited to: (1) lack of compliance with federal law and guidelines including wrongful immigration determinations, (2) lack of compliance with North Carolina law, (3) problems with the contractual provisions of the MOA in application. The following section evaluates these topics in greater detail.

### A. Lack of Compliance with Federal Law

INA § 287(g) requires that any officers certified under the program “shall have knowledge of and adhere to Federal law relating to the function.” As such, deputized § 287(g) officers must comply with federal laws, standards, and guidelines when employing their immigration-enforcement functions. At this point, the public has no way of knowing whether the program as implemented and supervised ensures such compliance. The following section reviews just some of the concerns related to § 287(g) compliance with federal constitutional, statutory and case law, and guidelines.

#### 1. Lack of Compliance with Federal Law:

##### Equal Protection Violations through Racial Profiling

Racial profiling and harassment of foreign nationals are some of the most pernicious onsequences reported as resulting from agreements between federal immigration authorities and state and local police authorized to enforce immigration laws. These harmful practices occur notwithstanding the obligations of deputized § 287(g) officers to comply with federal laws, standards, and guidelines when engaged in immigration-enforcement functions—laws that include the prohibition of racial profiling.

Anecdotal evidence and other data suggest that § 287(g)-deputized law enforcement officers in some North Carolina counties are violating legal standards and engaging in racial profiling by stopping motorists in the community who appear to be Hispanic/Latino. Alamance and Mecklenburg County residents have raised concerns that under the guise of “pretextual” vehicle stops, law enforcement officers appear to be hunting for minor traffic offenses by Hispanic-appearing individuals. Concerns mount daily that law enforcement officers equate Hispanic last names and appearances with criminality and use national origin and ethnicity without probable cause or reasonable suspicion to stop and detain residents.

*a. Federal Constitutional Violations:*

*Racial Profiling of Hispanic-Appearing Individuals*

The Equal Protection Clause of the Fourteenth Amendment extends its protection to all persons within the jurisdiction of the United States and prohibits law enforcement from stopping, detaining, or seizing individuals based on racial characteristics.<sup>116</sup> The term “racial profiling” refers to the practice by law enforcement agents of “relying, to any degree, on race, ethnicity, religion, or national origin in selecting which individuals to subject to routine or spontaneous investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the investigatory procedure.”<sup>117</sup>

Most 287(g) programs in North Carolina are detention model programs, meaning that 287(g)-trained officers are not authorized to check the immigration of individuals

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<sup>116</sup> *United States v. Brignoni -Ponce*, 422 U.S. 873, 884, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (noting that “the Constitution prohibits selective enforcement of the law based on considerations such as race”). See also *Melendres v. Arpaio*, No. CV 07-02513-PHX-MHM (D. Ariz.) (class action in early stages of litigation challenging Maricopa County, AZ Sheriff's Office's implementation of 287(g) program and alleging “a widespread pattern or practice of racial profiling and other racially and ethnically discriminatory treatment in an illegal, improper and unauthorized attempt to ‘enforce’ federal immigration laws against large numbers of Latino persons in Maricopa County without regard for actual citizenship or immigration status”).

<sup>117</sup> Black's Law Dictionary 1286 (8th ed. 2004).



unless they have been arrested on other charges and are detained in the jail facilities.<sup>118</sup> As such, the general rule applies regarding the prohibition against law enforcement stopping, detaining, or seizing individuals based on racial characteristics.<sup>119</sup> Nevertheless, residents in local communities where § 287 programs are in effect have expressed concerns that some § 287(g) officers are violating legal standards and engaging in racial profiling by stopping motorists who appear to be Hispanic/Latino.<sup>120</sup> Local residents and advocacy groups have raised concerns that under the guise of pretextual vehicle stops and license and DWI checkpoints, law enforcement officers appear to be targeting Hispanic-appearing individuals for minor traffic offenses.

*b. Illegality of Pre-Textual Stops Based on Race*

Pre-textual stops occur when an officer stops a vehicle for a traffic violation as a pretext for “initiating contact and future investigation.”<sup>121</sup> It is true that the police may briefly detain and search an individual (known as a “Terry Stop”) based on “reasonable suspicion” that a “crime” has been committed.<sup>122</sup> Terry Stops may be considered to be

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118 The only current field level MOA in North Carolina is that of the City of Durham, in which a designated officer is authorized to interrogate any person believed to be an alien as to his right to be or remain in the United States, arrest without warrant any alien that the officer believes is in the United States in violation of the law and is likely to escape before a warrant can be obtained, serve warrants of arrest for immigration violations, issue immigration detainers, and detain and transport arrested aliens to ICE-approved detention centers.

119 In contrast, immigration officers are permitted to consider an individual's race or ethnic appearance as one specific articulable fact that could be combined with reasonable inferences to create a reasonable suspicion that a person may be in the country illegally. However, race may not be the only factor considered. *Brignoni -Ponce*, 422 U.S. at 886-87.

120 The ACLU of North Carolina and other local organizations are receiving complaints that “license check” roadblocks and checkpoints have been set up by sheriff's deputies in areas frequented by the Latino community. Buncombe County Sheriff Van Duncan has also acknowledged statistics that demonstrate that a significant number of people seized by §287(g) officers have been picked up for non-alcohol related motor vehicle or traffic offenses. Robert Mccarson, *Buncombe Sheriff Questions Appropriateness of Federal-local Immigration Program*, LA VOZ INDEPENDIENTE, Oct. 17, 2008, available at <http://www.lavozindependiente.com/news.php?nid=519>.

121 Carrie L. Arnold, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113, 119 (2007).

122 *Terry v. Ohio*, 392 U.S. 1, 29-30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968).

limited or less intrusive searches, but their consequences are anything but limited. Law enforcement officers, in reliance on the lower threshold of suspicion required in Terry stops, often justify stopping and detaining immigrants for minor traffic matters as a pretext for other purposes, namely to remove the immigrant from the United States. For example, § 287(g)-deputized law enforcement officers may stop a car on the pretext that a rear brake light is broken. At that point, the officer is free to check the immigration status of any individual in the car.<sup>123</sup> Further, it is important to remember that even in a detention model jurisdiction, a non-287(g) trained officer has the discretion to arrest individuals for certain traffic offenses, such as driving without a license<sup>124</sup> and speeding in excess of fifteen (15) miles per hour.<sup>125</sup> In fact, the majority of individuals arrested by § 287(g) officers in Gaston, Mecklenburg, and Alamance Counties were arrested for traffic offenses.<sup>126</sup> In addition, anecdotal evidence suggests that some Hispanic-appearing individuals are stopped, at times while on foot or in public places, and are otherwise mistreated, notwithstanding a lack of any individualized suspicion or any evidence of criminal activity, including traffic infractions.

The nature of vehicle codes, traffic laws, and equipment violations make traffic stops particularly susceptible to misuse for purposes unrelated to law enforcement. Enforcement of traffic offenses allows for a high degree of police discretion; officers may be motivated by prejudices relating to race and ethnicity in their determination of targeted individuals.<sup>127</sup> In these cases, a person is stopped not because of a violation, but rather because of his or her membership in a perceived racial or ethnic group.<sup>128</sup> This

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123 But note that under a detention model, no officers should be asking immigration-related questions of anyone on the street or anywhere else outside of the jail, including drivers and passengers.

124 N.C. Gen. Stat. § 20-28 (2008).

125 N.C. Gen. Stat. § 20-16.1 (2008).

126 See *supra* note 32.

127 David A. Harris, *When Success Breeds Attack: The Coming Backlash Against Racial Profiling Studies*, 6 MICH. J. RACE & LAW 237 (2001).

128 David A. Harris, *The Stories, the Statistics, and the Law: Why 'Driving While Black' Matters*, 84 MINN. L. REV. 265 (1999).

phenomenon has been demonstrated in studies in other parts of the United States; data shows that in some localities, police officers conduct discretionary searches of minority drivers twice as often as white drivers.<sup>129</sup>

Some Hispanic-appearing individuals are stopped, at times while on foot or in public places, and are otherwise mistreated, notwithstanding a lack of any individualized suspicion or any evidence of criminal activity, including traffic infractions.

The End of Profiling Act (ERPA), based on an Amnesty International report on racial profiling, was introduced to Congress in 2004 by Representatives Conyers (D-MI) and Shays (R-CT) and co-sponsored by 107 other members of Congress.<sup>130</sup> Had it passed, ERPA would have established that racial profiling causes a disparate impact on racial, ethnic, or religious minorities. To address these consequences, the law would prohibit any law enforcement agent or agency from engaging in racial profiling.<sup>131</sup> It would have expressly prohibited all pretextual stops and required officers to further refine or articulate the basis of their suspicion when stopping a suspect.<sup>132</sup> Although ERPA was not passed, it demonstrates a national concern and continued organizational support for the termination of racial profiling. ERPA reiterates the holding of the Supreme Court in *U.S. v. Brignoni-Ponce*, which declared that “articulable facts” must exist before officers on roving patrols may stop vehicles and ask the occupants about their immigration status.<sup>133</sup>

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129 *The Persistence of Racial Profiling in Rhode Island: A Call for Action*, ACLU, (2007), available at <http://www.aclu.org/pdfs/racialjustice/riracialprofilingreport.pdf>.

130 *Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States*, Amnesty International USA 28 (2004).

131 End Racial Profiling Act of 2004, S. 2132--108th Congress (2004) available at <http://www.govtrack.us/congress/bill.xpd?tab=summary&bill=s108-2132>.

132 *Id.* at § 501(6).

133 *Brigoni-Ponce*, 422 U.S. at 884.

c. *Lack of Compliance with the Civil Rights Act of 1964*

Title VI of the Civil Rights Act of 1964 states that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits, or be subjected to discrimination under any program or activity receiving federal financial assistance.”<sup>134</sup> Section 287(g)-participating agencies receive financial assistance from the federal government and are therefore required to abide by the provisions in the Civil Rights Act of 1964. These agencies must not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin . . . ”<sup>135</sup> Section 287(g) agencies that racially profile are certainly discriminating against individuals based on their race, color, or ethnicity, and are therefore violating federal law.

d. *Lack of Compliance with Department of Justice Guidance*

In a February 2001 Address to a Joint Session of Congress, President George W. Bush “declared that racial profiling is ‘wrong and we will end it in America.’”<sup>136</sup> President Bush ordered the Attorney General to “review the use of race by Federal law enforcement authorities as a factor in conducting stops, searches, and other investigative procedures”<sup>137</sup> In response, the Attorney General directed the Department of Justice Civil Rights Division (DOJ CRD) to “develop guidance for Federal officials to ensure an end to racial profiling in law enforcement.”<sup>138</sup> The *Introduction and Executive Summary* of the DOJ guidance that resulted provides:

**The use of race as the basis for law enforcement decision-making clearly has a terrible cost, both to the individuals who suffer invidious discrimination**

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134 42 U.S.C. § 2000d (1964).  
135 34 C.F.R. Part 100 (2000).  
136 DOJ Guidelines, *supra* note 65.  
137 *Id.*  
138 *Id.*

and to the nation, whose goal of “liberty and justice for all” recedes with every act of such discrimination. For this reason, the Department of Justice guidelines impose more restrictions on the consideration of race and ethnicity in Federal law enforcement than the Constitution requires.<sup>139</sup>

The DOJ guidelines specify that:

- In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.
- In conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. This standard applies even where the use of race or ethnicity might otherwise be lawful.
- In investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the Nation’s borders, Federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States.<sup>140</sup>

Since under the program, county law enforcement officers are enforcing federal immigration laws, the MOA requires them to comply with federal laws, court decisions,

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139 *Id.*

140 *Id.*

and guidelines with regard to use of race in traffic stops and other police procedures.

## 2. Wrongful Application of Federal Immigration Laws

Immigration law is a complicated, ever-evolving, and specialized area of law and law enforcement.<sup>141</sup> It is an area in which state and local officers currently lack the training, tools, and expertise, notwithstanding any § 287(g) training programs in which they may participate.<sup>142</sup> The challenges inherent in allowing local law enforcement officers to undertake immigration enforcement, an area outside of their expertise, was recognized in a recent article published by the International Association of Police Chiefs:

Addressing immigration violations such as illegal entry or remaining in the country without legal sanction would require specialized knowledge of the suspect's status and visa history and the complex civil and criminal aspects of the federal immigration law and their administration. This is different from identifying someone suspected of the type of criminal behavior that local officers are trained to detect. Whether or not a person is in fact remaining in the country in violation of federal civil regulations or criminal provisions is a determination best left to these agencies and the courts designed specifically to apply these laws and make such determinations after appropriate hearings and procedures. The local patrol officer is not in the best position to make these complex legal determinations.<sup>143</sup>

When local enforcement takes the lead in immigration enforcement, the result may be confusion and lack of coordination between agencies, and costly mistakes. As the article's author reported, "[w]hen local police have waded into immigration enforcement, it has often come with disastrous and expensive consequences."<sup>144</sup> For example, in 1994, police raids in Katy, Texas, resulted in the detention of eighty U.S. citizens and legal residents.<sup>145</sup> Those raids occurred at a time of more relaxed immigration enforcement; the dangers of wrongful detention are greatly increased in today's anti-immigrant climate.

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141 Ferrell, *supra* note 77.

142 *Id.*

143 *Id.*

144 *Id.*

145 *Id.*

Harrowing tales of U.S. citizens being wrongfully detained or removed as illegal aliens have been surfacing. The Los Angeles Daily Journal reported on a dozen of such errors. Law enforcement experts predict future similar incidents as more databases are created to “fight illegal immigration.” North Carolina is not immune from these errors.

As examples from around the country demonstrate, today’s blurred lines between immigration law enforcement and local law enforcement have even resulted in detention and deportations of U.S. citizens. In May 2007, Pedro Guzman, a developmentally disabled United States citizen from California, was serving a sentence for trespassing. Under a § 287(g) agreement, Guzman was mistakenly identified as a Mexican national and transferred to an ICE detention center from which he was later deported.<sup>146</sup> The Los Angeles Times editorial board commented on the situation by writing, “Guzman’s trespass has earned him a sentence of banishment and disappearance, a fate common in third-rate dictatorships but abhorred in civilized nations.”<sup>147</sup>

Similarly, Alicia Rodriguez, a U.S. citizen born in Texas, was detained when police identified her as an undocumented alien who had been previously deported. Although Rodriguez’s sister showed authorities Alicia Rodriguez’s birth certificate, Rodriguez remained in detention overnight until officers discovered that she had a driver’s license and social security number. Authorities say that fingerprints which would have proven that Rodriguez was not the undocumented immigrant were overlooked.

Other harrowing tales of U.S. citizens being wrongfully detained or removed as illegal aliens have been surfacing. The Los Angeles Daily Journal reported on a dozen of

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<sup>146</sup> Guzman was missing in Tijuana for three months before his family located him. It appears that the deportation was further confused by his developmental disability. Guzman signed a voluntary departure. Daniel Hernandez, *Pedro Guzman's Return*, LA WEEKLY NEWS, Aug 7, 2007, available at <http://www.laweekly.com/news/news/pedro-guzmans-return/16956/>.

<sup>147</sup> Opinion L.A., *ACLU: Pedro Guzman Going Back to Cali*, LOS ANGELES TIMES, Aug. 7, 2007, available at <http://opinion.latimes.com/opinionla/2007/08/aclu-pedro-guzm.html>.

such errors.<sup>148</sup> Law enforcement experts predict future similar incidents as more databases are created to “fight illegal immigration.”<sup>149</sup>

North Carolina is not immune from these abhorrent errors. At a conference in June 2008 in Charlotte, NC about the consequences of the 287(g) program, an immigration attorney told the story of a U.S. citizen client whom authorities were attempting to deport. In December 2008, another U.S. citizen born in Fletcher, NC was reported to have been arrested and processed under § 287(g) for possible removal.<sup>150</sup> Other North Carolina attorneys have shared concerns with regard to at least two other clients.<sup>151</sup>

Furthermore, a recent Government Accountability Office survey determined that ICE does not have adequate means to keep local officers updated on the changing nature of immigration law:

**ICE does not have a mechanism to ensure the timely dissemination of legal developments to help ensure that officers make decisions in line with the more recent interpretation of immigration law. As a result, ICE officers are at risk of taking actions that do not support operational objectives and making removal decisions that do not reflect the most recent legal developments.**<sup>152</sup>

Integrating immigration enforcement into the duties of local enforcement officers dangerously complicates and burdens their mission, thereby exposing them to increased liability notwithstanding efforts to limit that exposure.<sup>153</sup>

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148 Sandra Hernandez, *Detainee Tries to Prove He Is A U.S. Citizen*, LOS ANGELES DAILY J. Nov. 4, 2008 at p.1

149 Patrick McGee, *Texan is Jailed as Illegal Immigrant*, FORT WORTH STAR-TELEGRAM, AUG. 30, 2007.

150 Information on file with authors.

151 Communication on file with the authors.

152 United States Government Accountability Office, *Report to Congressional Requesters, Immigration Enforcement: ICE Could Improve Controls to Help Guide Alien Removal Decision Making*, October 2007.

153 Some MOAs set forth ability for ICE-authorized SO personnel to request representation by the DOJ for legal claims arising out of their duty as federal actors. Mecklenburg County's MOA is an example of this.



### 3. Lack of Compliance with other Federal Laws.

#### *a. Federal Criminal Procedure Law*

Section 287(g) officers are required to comply with federal law governing criminal procedure, which includes the requirement that officers disclose potential witness impeachment information, including, in some circumstances, officers' personnel files.<sup>154</sup> With regard to the implementation of § 287(g), it appears that undocumented immigrants are hurried through the system, encouraged, if not coerced, to sign voluntary departure agreements, and rarely have an opportunity to obtain exculpatory information, particularly related to officer misconduct and racial profiling.

#### *b. Lack of Compliance with Treaty Law*

Under Article 36 of the Vienna Convention on Consular Relations, to which the United States is a signatory, any U.S. officer who arrests or detains a foreign national shall, if requested by the national and without delay, inform the national's consular post of the person's arrest or detention.<sup>155</sup> As a treaty with federal legal significance, a § 287(g)-deputized officer is required to comply with its provisions.<sup>156</sup>

U.S. officers must forward any communication with the applicable consular office in a timely manner, if requested by the person arrested or detained.<sup>157</sup> U.S. authorities

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<sup>154</sup> *Giglio v. United States*, 405 U.S. 150, 155, 92 S.Ct. 763, 766 (1972); *United States v. Henthorn*, 931 F.2d 29, 31 (9th Cir. 1991).

<sup>155</sup> Vienna Convention of Consular Relations, Art. 36(1)(b), Apr. 24, 1963, [1970] 21 U.S.T. 77, 101, T.I.A.S. No. 6820.

<sup>156</sup> *Medellin v. Dretke*, 544 U.S. 660, 667 125 S.Ct. 2088, 161 L.Ed.2d 982 (2005) (Ginsburg, J., concurring) (noting that petitioner, a Mexican national, was not informed of rights accorded him under the Vienna Convention on Consular Relations, Apr. 24, 1963, [1970] 21 U.S.T. 77, 100-101, T.I.A.S. No. 6820, which called for prompt notice of arrest to the Mexican consul and the opportunity for petitioner to seek consular advice and assistance); see also generally L. Henkin, *Foreign Affairs and the United States Constitution* 206-209 (2d ed. 1996) ("A treaty . . . is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute.").

<sup>157</sup> *Medellin*, 544 U.S. at 667.

must also inform arrested or detained nationals of this right to contact his or her consular office without delay.<sup>158</sup> Further, consular officers have the right to visit nationals in prison or place of detention and can arrange legal counsel for the national.<sup>159</sup>

However, concerns have arisen that a foreign national arrested under § 287(g) who is put into removal proceedings may not always be informed of the right to contact his or her consular office. The U.S. Department of State notes that foreign nationals must be notified of this right when arrested or detained.<sup>160</sup> This is true whether the arrest is based on state charges or federal charges. Detailed instructions, forms, training and outreach materials, and foreign language translations of consular notification statements are available on the State Department website.<sup>161</sup> The § 287(g) MOAs generally do not mention protocol for informing subjects of their right to contact their consular office. Without a detailed description of information covered in training, it is likely that many foreign nationals will not be informed of this right when arrested under § 287(g). Indeed, anecdotal evidence suggests that detained individuals are not being afforded their rights under the Vienna Convention.

## B. Lack of Compliance with North Carolina Law

### 1. Violation of North Carolina Constitution

Racial profiling that occurs as a consequence of 287(g) agreements not only violates the Equal Protection Clause of the United States Constitution, it violates the North Carolina Constitution as well. Article 1, Section 19 of the N.C. Constitution provides that “No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”<sup>162</sup>

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158 *Id.*

159 *Id.*

160 United States Dept. of State, Consular Notification and Access, available at [http://www.travel.State.gov/law/consular/consular\\_753.html](http://www.travel.State.gov/law/consular/consular_753.html).

161 *Id.*

162 N.C. CONST. art. 1, § 19.

## 2. Violation of North Carolina Case Law

The North Carolina Supreme Court, like the United States Supreme Court, subjects government activity that discriminates against a class of people based on race or national origin to the highest level of scrutiny which can only be legitimated after demonstrating that there are no other means to accomplish a compelling government interest.<sup>163</sup> Under 287(g), police who target Hispanics through racial profiling are denying those individuals equal protection of the law. The all too common refrain of racially hostile comments about Hispanic immigrants made by various law enforcement agencies as noted throughout this policy brief cannot be justified, nor has there been or can there be evidence of a compelling governmental interest for such inflammatory statements. These racially hostile remarks correlate with disproportionate routine traffic stops of Hispanic-appearing individuals for no reason or for pretextual reasons. There is no compelling government interest for such racially motivated stops, particularly given ICE's own rationale for the program which was established to target terrorists and violence criminals.<sup>164</sup> This behavior violates not only the Equal Protection Clause of the United States Constitution, but also the North Carolina Constitution.

In *State v. Villeda* the trial court dismissed charges against a Hispanic defendant who demonstrated that his arrest was “motivated ‘in part by [his] race or national origin’” in violation of Article 1, Section 19 of the N.C. Constitution.<sup>165</sup> Not unlike the circumstances in many of the counties where 287(g) agreements have been entered into, the arresting state trooper made several discriminatory remarks. The court considered the state trooper's discriminatory assertion that, “[e]veryone knows that a Hispanic male buying liquor on a Friday or a Saturday night is probably already drunk,” as well as his admission to patrolling

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<sup>163</sup> In re Declaratory Ruling by North Carolina Com'r of Ins. Regarding 11 N.C.A.C. 12.0319, 134 N.C.App. 22 (1999).

<sup>164</sup> ICE Partners Website, *supra* note 2.

<sup>165</sup> *State v. Villeda*, 165 N.C.App. 431, 435, 599 S.E.2d 62, 65, (2004).

a specific area “for the purpose of looking for Hispanic males.”<sup>166</sup> These remarks were indicative of a practice of racial profiling: the trooper’s citation history showed that 71% of his citations were made against Hispanics in an area where Hispanics made up only 32% of the total population. The N.C. Court of Appeals affirmed the trial court’s decision to dismiss the charges against the defendant.<sup>167</sup>

### 3. Violation of North Carolina Statutory Law

The North Carolina General Assembly has acted to eliminate racial profiling throughout the state by passing legislation that requires the collection, correlation, and maintenance of information on traffic law enforcement.<sup>168</sup> The statute requires the North Carolina Attorney General to establish within the Department of Justice a Division of Criminal Statistics. This division is mandated to collect and maintain data related to racial profiling including the race and ethnicity of individuals stopped by law enforcement and then correlate and analyze the data. Traffic Stop Reports, which contain the data, are then published on the State Bureau of Investigation website.<sup>169</sup> The statute not only requires that the information be gathered, but that it be analyzed and disclosed, thus serving as a method for discouraging racial profiling among law enforcement officers.

North Carolina’s data collection statute has been enacted for the purpose of curbing racial profiling. The state’s reputation has benefited as a result. For example, through funding from the U.S. Department of Justice, Bureau of Justice Assistance, Northwestern University created an online Racial Profiling Data Collection Resource Center.<sup>170</sup> The

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166 *Id.* at 433.

167 *Id.* at 439; see also *State v. Ivey*, 360 N.C. 562, 564, 633 S.E.2d 459, 461 (2006), *abrogated on other grds* (noting that “this Court will not tolerate discriminatory application of the law based upon a citizen’s race”).

168 N.C. GEN. STAT. §114-10 (2001).

169 North Carolina State Bureau of Investigation, <http://trafficstops.ncsbi.gov/> (last visited Nov. 3, 2008.).

170 U.S. Department of Justice, Office of Justice Programs. *Bureau of Justice Statistics Fact Sheet: Traffic Stop Data Collection Police for State Police, 2004*, <http://www.ojp.usdoj.gov/bjs/pub/pdf/tsdcp04.pdf> (last visited Nov. 3, 2008)

website classifies North Carolina as a “jurisdiction collecting” data, and lists one of the benefits of this action as sending “a strong message that . . . racial profiling is inconsistent with effective policing and equal protection.”<sup>171</sup>

But circumstances today suggest that the website’s characterization of North Carolina’s concern with racial profiling may be misleading. Hispanic/Latinos in North Carolina are subjected to racially motivated and improper stops, detentions, and arrest under the current implementation of the 287(g) program, contrary to North Carolina’s statutory law and agency regulations. More notably, the racial profiling that occurs under the 287(g) program deprives them of equal protection under the law as guaranteed by the U.S. and N.C. Constitutions. This is inconsistent with a state that wants to disavow and end racial profiling.

#### 4. Violation of State Agency Regulations

North Carolina state agencies have joined with the courts and the North Carolina General Assembly in denouncing racial profiling. In the *Villeda* matter, for example, the state trooper’s questionable citation history triggered his investigation by Internal Affairs, indicating that racial profiling not only violates the law, but ought not be tolerated by state agency regulations.<sup>172</sup>

#### C. Problems within the Four Corners of the MOA

A review of the 287(g) agreements reveal a number of problems related to compliance and oversight. The concerns with the failure of local law enforcement agencies to strictly meet the guidelines set forth in federal law and within the MOAs themselves are widespread. The House Appropriations Committee has expressed

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<sup>171</sup> Data Collection Resource Center, [www.racialprofilinganalysis.neu.edu](http://www.racialprofilinganalysis.neu.edu) (last visited Nov. 3, 2008).

<sup>172</sup> *Villeda*, 165 N.C. App. at 433-34.

concern about how the MOAs are being implemented and controlled.<sup>173</sup> In June 2008 the Committee stated in a report that it “is concerned that ICE has not established adequate oversight of State and local law enforcement agencies that are delegated authority to enforce Federal immigration laws.”<sup>174</sup> According to the Committee, the “lawsuits that have been filed accusing some of ICE’s State and local partners of not following the procedures outlined in the Memoranda of Agreement” are the cause of its concern.<sup>175</sup>

### 1. Problems with Complaint Mechanisms

The MOAs are contracts between local law enforcement agencies and ICE. These documents set out authority and obligations with regard to local enforcement of immigration and, as noted above, contain a number of requirements that govern the implementation of the program. The terms appear to be unnecessarily vague and confusing, and without requisite standards, measures of accountability or adequate protection for the rights of persons present in the United States. Moreover, notwithstanding the binding effect of the terms of the agreement, there are a number of provisions in the MOAs for which there appears to be a lack of compliance. Perhaps most notable is the requirement that § 287(g) programs offer a complaint mechanism for individuals who believe they have been aggrieved in the implementation of the program. However, other terms regarding community oversight also appear to be ignored. The steering committee is an important source of oversight mandated in the MOA, but its specific role is unclear and there is often no compliance with the MOA in creating such a committee in the first place. The following is an analysis of the Alamance MOA, which would also apply to any similarly drafted agreements.

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173 H.R. 2638, 110th Cong. (2007).

174 House Report 110-62, Department of Homeland Security Appropriations Bill, 2009.

175 *Id.*

*a. Confusing Dual Complaint Process*

Within the Alamance County MOA, there are essentially two different complaint mechanisms: 1) a complaint mechanism dealing with Alamance County Sheriff's Office (ACSO) personnel who may exercise immigration authority, but who are neither designated, nor certified under the MOA; and 2) a complaint mechanism that deals with ACSO personnel who have been designated and certified under the MOA. This dual approach raises important questions which need clarification. If the officer against whom a complaint is filed is not designated and certified under the MOA, the basis for the exercise of immigration authority by ACSO personnel is not clear and thus the complaint process is not straightforward.

Complaints filed against non-certified ACSO personnel are handled according to ACSO policies and procedures and are monitored by a steering committee established by the ICE Assistant Secretary and the Sheriff.<sup>176</sup> If, however, the complaint pertains to the enforcement of criminal law (a law enforcement officer's authority regardless of ICE designation or certification), the complaint process would fall under the authority of the ACSO. The roles and responsibilities of the ACSO, ICE, and the steering committee are muddled and unclear. For more information on the steering committee, see "Required Steering Committee" in section IV(D)(2)(h).

*b. Lack of Notice and Information about Right to File a Complaint*

Section XII and Appendix B of the Alamance County MOA relates to the mechanism that governs complaints filed against officers who are designated and certified under the MOA. While minimal information on how and where to file a complaint is included in the appendix, it is unlikely that the public will have access to

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<sup>176</sup> The steering committee also lacks transparency. For a more detailed explanation, see "Required Steering Committee" in section IV(D)(2)(h) below.

the information, especially if the ACSO is reluctant to release the MOA to the public or otherwise fails to provide meaningful and adequate notice of the process. The ACLU of North Carolina waited five full months before the ACSO responded to a public records request for the MOA appendices and ICE reports. While the ACSO now posts its MOA on its website in English, it does not appear that ACSO has any established complaint mechanism associated with its 287(g) program.<sup>177</sup> The MOA and all reports should be posted and available to the public, in both English and Spanish, without the need for a public records request. The public's lack of accessibility to the MOA and its appendices will likely lead to the under-utilization of the complaint process simply because the public will not know that a right and procedure to file a claim exists.

*c. Insufficient Guidelines Regarding the Complaint Forwarding Process*

In addition to the lack of notice and information about the right to file a complaint, the complaint process in the Alamance County MOA lacks transparency in a number of other respects. Under the complaint mechanism, there is limited information about the procedure for reviewing complaints. According to the terms of the MOA, the ICE Office of Professional Responsibility (ICE OPR) will forward the received complaint to the DHS Office of the Inspector General (DHS OIG) as appropriate for review. The DHS OIG notifies the Department of Justice Civil Rights Division as necessary. However, there are no guidelines in the documents that allocate responsibility for determining the circumstances under which a complaint will be forwarded to DHS OIG and DOJ CRD. The MOA provides no direction for individual or supervisory responsibility for any part of the process, nor does it set forth a means to track the process of the complaint.

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<sup>177</sup> See *Answers to the Public Comments on the 287(g) Program from the September 15, 2008, Commissioners Meeting*, (hereinafter *Answers to the Public Comments* available at [http://www.alamance-nc.com/Alamance-NC/Departments/Commissioners/Answers+to+287\(g\)+Program+Questions.htm](http://www.alamance-nc.com/Alamance-NC/Departments/Commissioners/Answers+to+287(g)+Program+Questions.htm) (last accessed December 16, 2008)



*d. Conflict of Interest in Reviewing Complaints*

The process for review of complaints suggests that the MOA creates a conflict of interest in the review process. Under the scheme identified in the MOA, it appears that ICE polices itself and all officers who are deputized in accordance with the MOA. All complaints (written or oral) directly reported to the ACSO which involve activities connected to immigration enforcement activities by MOA-authorized ACSO personnel will be further reported to the ICE OPR. ICE OPR will verify the officer's status under the MOA. In addition, any and all other complaints received by any ICE entity will be reported to ICE OPR according to the existing policies and procedures.

Because the existing policies and procedures are unclear, it is not known whether they are reviewed by anyone outside of ICE with the possible exception of the ACSO. Mention is made as to the possibility of forming guidelines for immigration enforcement complaints against ICE officers in 8 C.F.R. §287.10. The relevant section reads: "Alleged violations of the standards for enforcement activities established in accordance with the provisions of § 287.8 shall be investigated expeditiously consistent with the policies and procedures of the DHS and pursuant to any guidelines issued by the Secretary."<sup>178</sup> Rather than clarifying which procedures will apply, repeated reference is made to existing procedures. Clarification of these procedures is necessary to assure that those who wish to invoke the procedure have a basic understanding of the process to which they are submitting themselves and by which they can hold the monitoring entity responsible.

ICE will also report the complaint to the ACSO. No outside entity is involved in the review of the complaint; instead, it appears that the review is left up to the very entity that implements the program without any independent oversight or review. For example, according to the Alamance County MOA, the ACSO and ICE OPR will coordinate appropriate investigative jurisdiction which may include initiation of a joint

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<sup>178</sup> 8 C.F.R. § 287.10 (2008).

investigation to resolve the issue(s). Unfortunately, this section does nothing to clarify what an “appropriate investigative jurisdiction” might be or how it may be determined. There is also a lack of information regarding the joint investigation. What does such an investigation consist of and how is it shared? There is no guidance about lines of responsibility and supervisory authority.

When ICE OPR receives a complaint, it will make an initial determination regarding DHS investigative jurisdiction given the nature of the complaint and then refer the complaint to the appropriate office for action as soon as possible. Questions arise as to when DHS has jurisdiction and precisely which office is able to handle the complaint. In sum, the lack of apparent independent or impartial adjudication of complaints undermines the integrity of complaint process. Without some guarantee of impartiality, those whose rights may have been violated in the context of the MOA may be deterred from seeking relief.

*e. Unclear Complaint Resolution Procedures*

The MOA states that ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. Again, the existing allegation criteria and reporting requirements are not detailed and no reference is given as to where to locate those requirements. Are these criteria and requirements available to the public or anyone outside of ICE? How can individuals be apprised of the requisite contents of a complaint so they can submit relevant facts and circumstances which would best assure the consideration of their grievance?

According to the MOA, any complaint received will be resolved within ninety days; however, allowance for an extended time-frame is made based on the nature and complexity of the substance of the complaint. No explanation or parameters are otherwise provided as to what circumstances might constitute a complaint that would fall into the

category for extended resolution times. The lack of criteria is exacerbated by the fact that ICE has the unilateral right to increase this time-frame while at the same time, it is the only agency that oversees the complaint process, the purpose of which is to investigate law enforcement officers acting under its designation and authority. Not only is this a conflict of interest, but it makes the established time-frame meaningless as there is no person or entity that will be able to discern whether ICE is in fact adhering to its own policies.

In addition, there is no indication that the complainant will be informed of the progress and/or resolution of the investigation at any time, or has any other means by which to track the complaint. This is particularly important for those individuals whose deportation is summarily processed and have limited means to address their grievances if they must do so from outside of the United States. The related and larger question remains: whether *all* of the complaints are in fact investigated as there is no check in place to ensure resolution of any given complaint.

2. Problems with Other Portions of the Alamance County MOA  
and Others Similarly Drafted
  - a. General Information

Most people remain unaware of the content of the MOA, which guidelines need to be followed by authorized agents, and the procedures under which to file a complaint. This is the most pressing and far-reaching transparency issue in regard to the MOA. In addition to this over-arching issue, there are problems with individual sections of the Alamance County MOA as is set forth in greater detail below.

*b. Designation of Functions*<sup>179</sup>

**In the absence of any contrary agreement, the policies and procedures that must**

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<sup>179</sup> Alamance County Memorandum of Understanding, at 2, available in Appendix below, [hereinafter AC MOA].

be followed by local law enforcement agency (LEA) personnel in exercising immigration functions are those of DHS. The Alamance County MOA, however, does not specify what these policies and procedures are or where they can be found. As a result, it is impossible to access those policies and procedures, which in turn makes it is impossible to determine whether ACSO personnel conform to those policies and procedures. Oversight by independent parties as well as an opportunity for individuals aggrieved by implementation of the MOA is virtually impossible.

*c. Nomination of Personnel*<sup>180</sup>

The MOA requires a background check and an evaluation in order to determine the suitability for all ACSO personnel who are to take part in immigration enforcement. However, there is no indication of how suitability is to be determined. The only clear factor in determining suitability seems to be that the ACSO candidate shall not be married or otherwise related to or associate with a person who is illegally present in the United States. It is unclear what other disqualifications exist; this makes it impossible to tell whether guidelines are being violated.

The “nomination of personnel” section notes that a future expansion of the program is possible. The original MOA envisions that the Sheriff will initially nominate ten detention officers, thirteen sworn Deputy Sheriffs, and two Supervisory Deputy Sheriff candidates for ICE training and certification. If additional ACSO personnel are nominated to ICE, the MOA does not require the parties to enter into a new written agreement; an oral agreement between the parties will be sufficient. The problem with this approach is that once oral agreements are entered into, it may no longer be possible to monitor the expansion of the program.

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180 *Id.* at 3.

*d. Training of Personnel*<sup>181</sup>

The training section of the MOA requires clarification. It states that ACSO personnel are to be provided with “adequate” training by ICE, which includes completion of an ICE-designated curriculum and competency testing. While there appears to be a curriculum in place, the content of this curriculum is unclear. A list of topics to be covered in the training is provided, but the extent or method of coverage is not divulged. This lack of information results in the inability to offer an independent judgment as to the adequacy of the training or to know whether deputized officers have received the required training.

The MOA further requires that the accepted personnel receive specific training with regard to their obligations under federal law and the Vienna Convention on Consular Relations. A discussion on the compliance with federal laws is provided in the section IV(A) entitled “Lack of Compliance with Federal Law” above. Again, there is no way to ascertain whether ACSO personnel have received the required training on these topics or to determine whether they are complying with these laws during the enforcement of immigration laws.

Section 287(g)(2) states that an MOA “shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal law.” Similar language is in fact included in the MOA; however, there is no federal statutory or regulatory language that describes adequate training in the context in the MOA.

*e. Certification and Authorization*<sup>182</sup>

According to the Alamance County MOA, authorization may be revoked by ICE or the ACSO at any point. Complaints against an officer are one of the considerations used in

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181 *Id.* at 4.

182 *Id.*

determining whether an officer's authorization should be revoked. The MOA states that the ACSO has to inform ICE of any complaint filed against participating ACSO personnel. There is an exception to this requirement when a complaint results in discipline of a *de minimis* nature. This language is problematic because "*de minimis*" is not defined and is therefore open to interpretation. Furthermore, this exception may serve as an incentive to limit the disciplining of officers to a *de minimis* level in order to avoid reporting requirements. A further issue is that of oversight. There is no information setting forth the mechanism for control and oversight of the reporting process. There is no way to ensure that complaints are reported to ICE or that they are in fact handled appropriately.

*f. ICE Supervision*<sup>183</sup>

According to the MOA, ACSO personnel cannot perform any immigration functions under the MOA unless he or she is supervised by ICE. There is no indication as to the nature or degree of the supervision provided. Due to the lack of outside monitoring, it is difficult to ascertain whether there is, in fact, adequate supervision. ICE monitors its own supervision of LEA personnel, with the exception of monitoring by the required steering committee. For a discussion on the steering committee, please see the section entitled "Required Steering Committee" in section IV(D)(2)(h) below.

In addition to supervision, the actions of participating ACSO personnel are to be reviewed by ICE on a regular basis to ensure that ACSO personnel comply with immigration law and procedure and to assess the need for additional training or guidance. It is nearly impossible for the public to know how this review is supposed to be performed and whether it is in fact occurring. Although the Freedom of Information Act (FOIA) provides any person the right to access federal agency records or information,<sup>184</sup> this information

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183 *Id.* at 7.

184 U.S. Department of Justice, *Freedom of Information Act (FOIA)*, available at <http://www.usdoj.gov/oip/index.html>.

is only accessible after a formal request is made, and often after considerable delay. The FOIA excludes the right of access to certain information, such as documents pertaining to national security, but seemingly would allow for the public to access information about how ICE operates as a whole.<sup>185</sup> Training manuals and information about supervision can be requested through a written FOIA request. As a matter of public policy, however, these materials should be readily available to the public.

*g. Civil Rights Standards and Provision of Interpretation Services*<sup>186</sup>

For a discussion of the LEA personnel's duty to follow federal civil right statutes and regulations, including the U.S. Department of Justice "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," please see section IV(A)(1).

In unclear language, this section of the Alamance County MOA requires an interpreter for subjects who do not speak English. The MOA states that "[p]articipating . . . [AC]SO Personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by . . . [AC]SO as needed." The MOA language does not clearly establish the process by which an interpreter is obtained, whether an officer has to ask if the subject would like to have an interpreter present, whether an interpreter has to be provided only if the subject requests one, and how an affected individual would be apprised of her rights to an interpreter.

*h. Required Steering Committee*<sup>187</sup>

The MOA requires that the ICE Assistant Secretary and the head of the local LEA establish a steering committee. The purpose of the steering committee is not sufficiently

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185 22 C.F.R. 171 (2008).

186 See e.g., Section XI of the Alamance County MOA.

187 See e.g., Section XIII of the Alamance County MOA.

clear; however, its function relates, among other things to the monitoring of the number and type of complaints filed against ACSO personnel who may exercise immigration authority, but who are not designated and certified under this MOA. Overall, the function of the steering committee is to assess the immigration enforcement authority exercised locally and ensure compliance with the terms of this MOA. The committee's specific function, however, is not stated in the context of the complaint mechanism. There is no indication as to the exact purpose served by monitoring the type and number of complaints received, nor is there indication as to how these complaints are monitored.

The MOA does not specify who is to be appointed to this steering committee or how the integrity of the committee is to be assured. Furthermore, there are no guidelines or criteria that set forth committee members' qualifications, length of term, or other factors relating to the establishment of the committee.

An initial meeting of the steering committee is required no later than nine months after certification of the initial participating ACSO personnel. ACSO has been reluctant to commit to establishing a steering committee at all, much less one that holds meetings that are open to the public and that includes a community member.<sup>188</sup> Consequently, there is no way of determining whether such a meeting has taken place, whether there were findings by the committee, and the substance of these findings, if made.

Illustrative of the transparency problems surrounding steering committees, a spokesperson for the North Carolina Sheriffs Association recently informed the Joint Legislative Oversight Committee that the meetings of the "Executive Steering Committee" established by ICE and the NCSA are not open to the public. However, this interpretation is flawed. The NCSA and the 287(g) counties receive state taxpayer money from the NCSA to support their 287(g) programs. Thus, it appears that these committees should

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<sup>188</sup> See Answers to Public Comments, *supra* note 177. Additionally, even though ACSO has stated that community members would be included "[i]f the Commissioners chose to form a [steering] committee, on December 1, 2008, Sheriff Terry Johnson advised a group of local residents that community members would not be included in any such committee.



be considered to be “public bodies,” thereby rendering all steering committee meetings subject to North Carolina’s Open Meetings Law.<sup>189</sup>

*i. Community Outreach*<sup>190</sup>

The MOA provides that the ACSO will, at its discretion, engage in community outreach with organizations interested in the MOA. ICE may be brought in to participate in community outreach at the request of the ACSO. This section gives the ACSO significant leeway to engage in discourse only with organizations that are favorably disposed toward the MOA program, while at the same time limiting communication with critics of the program. Because community outreach is discretionary, it is unlikely that critics of the program will be able to engage the ACSO in constructive discourse about the program.

*j. Relations with the News Media*<sup>191</sup>

The section of the MOA addressing relations with the news media continues with an approach that grants too much discretion to the ACSO. The ACSO, *may in its discretion*, as “part of its commitment to the communities it serves . . . communicate the intent, focus, and purpose of this agreement to the media, organizations and groups expressing interest in the law enforcement activities to be engaged in under this MOA.”<sup>192</sup> Because of such vague wording, there is little guarantee that the ACSO will engage in regular communication with the media. It is also likely that important information about the MOA will not be communicated to the public in order to enhance the program’s accountability and transparency

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<sup>189</sup> *News & Observer Pub. Co. v. Wake County Hosp. Sys., Inc.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981); see also Craig D. Feiser, *Protecting the Public's Right to Know: The Debate Over Privatization and Access to Government Information Under State Law*, 27 FLA. ST. U. L. REV. 825, 837 (Summer 2000).

<sup>190</sup> See e.g., Section XIV of the Alamance County MOA.

<sup>191</sup> See e.g., Section XV Alamance County MOA.

<sup>192</sup> *Id.*

*k. Modification of the MOA*<sup>193</sup>

Modifications to the MOA must be proposed in writing and approved by the signatories. No mention, however, is made as to how amendments will be communicated to the public or whether an amended document will be made available. ICE is responsible for ensuring that participating ACSO personnel are “fully and timely” apprised of such changes and receive appropriate training in a timely manner. It is unclear what constitutes timely notification or adequate and timely training. This allows ICE to determine what the terms “timely” and “adequate” mean in this context.

*l. Duration and Termination of this MOA and Liability Disclaimers*<sup>194</sup>

At any time, the MOA can be terminated or suspended by ICE or the ACSO. There is no requirement of notice of such suspension or termination to the public. Furthermore, the MOA states generally that the agreement does not give rise to any “rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.”<sup>195</sup> This language is problematic because it attempts to insulate ICE and the ACSO from liability should they fail to comply with the requirements agreed upon in this document. The agencies therefore operate in a vacuum that leaves aggrieved persons no recourse in contravention of basic principles of fairness.

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193 See e.g., Section XVI Alamance County MOA.

194 See e.g., Section XVII Alamance County MOA .

195 *Id.* at 9.

## V. PROPOSALS FOR IMPROVEMENT

### A. Good Governance, Transparency, and Conformity with the Law

The system of checks and balances is one of the most fundamental characteristics of the American system of government. The framers of the U.S. Constitution intended checks and balances not only to be the backbone of the U.S. federal and state government structure, but also the intrinsic underpinning of society. James Madison advocated such a philosophy in *Federalist Paper Number 51*, where he stated, “this policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public.”<sup>196</sup>

The § 287(g) Program has been demonstrated to lack transparency, with no provision for community input in the creation or implementation of the MOA. Virtually no protection mechanisms are embedded within the program to counterbalance the power it grants to contracted enforcement authorities.

The primary concern with the § 287(g) program is precisely this lack of opposite and rival interest within the system. Rather, § 287(g) has been demonstrated to lack transparency, with no provision for community input in the creation or implementation of the MOA. Further, virtually no protection mechanisms are embedded within the program to counterbalance the power it grants to contracted enforcement authorities.

Section 287(g) MOAs are often created without community notification or opportunity for public comment. Affected constituent groups rarely have the opportunity to discuss or debate the program with their elected officials before its implementation. Further, under the broad powers given to county sheriffs pursuant to North Carolina law, sheriff departments appear, in many cases, to be able to negotiate MOAs virtually on their own without approval from the County Board of Commissioners except for matters

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<sup>196</sup> James Madison, *The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*, THE FEDERALIST No. 51, at 319, (Clinton Rossiter ed., 1961).

related to the MOA budget. As a result, contracts for the program have been negotiated without the protections inherent in and necessary to the democratic process.

As previously mentioned, agencies implementing §287(g) appear to make little or no effort to institute or publicize the complaint mechanism – the primary check available to individuals that is required by federal regulation. Furthermore, although the MOAs call for a steering committee, such a committee will only be effective if it provides for representation of individuals from a broad range of backgrounds and interests in the community. Regardless of its title or form, some type of formal public body must evaluate the program regularly in meetings open to the public and should regularly publish its reports to the community.

The following recommendations would provide additional protections for basic rights in the implementation of § 287(g):

- 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.
- MOAs should require contracting LEAs to engage in community outreach to provide information on the function and process of the program. At the moment, such outreach is only voluntary and rarely utilized.
- All contracting parties should be required to post the MOA and its appendices on its website in both English and Spanish.
- MOAs must be required to provide for a date of termination with opportunity for extension and renegotiation of terms.
- Agencies applying to sign or extend §287(g) agreements should be required to hold a public meeting, open to all interested members of the community, before signing.
- Contracting jurisdictions must enforce a working complaint mechanism as required by federal regulations and adequately publicize this mechanism in both English and Spanish.

## B. Applicability of All New 287(g) Programs to Convicted Felons Only

As set forth in this brief, Federal, state and local lawmakers, as well as sheriffs, tout the benefits of the 287(g) program in taking “hardened criminals” off the street in North Carolina.<sup>197</sup> Similarly, ICE states that § 287(g) MOAs provide “local and state officers” with the “necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering; and increased resources and support in more remote geographical locations.”<sup>198</sup> However, the data from the 287(g) programs currently operating in North Carolina demonstrate that an undocumented individual can be – and frequently is – processed under the 287(g) program after being arrested for traffic offenses such as driving without a license. A requirement that all current and new 287(g) programs permit processing only for those individuals convicted of felonies would further the original intent of the statute.

## C. Increased Community Participation

From a governance perspective, a key issue with the MOAs relates to the lack of transparency with regard to the process to establish the program. Typically made at the initiative of a public representative and approved by special committee, these contracts are not subjected to the same scrutiny, transparency, or level of participation. In

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<sup>197</sup> For instance, in Senator Elizabeth Dole's first television advertisement in her 2008 senate campaign, sheriffs from around the state extol the virtues of the 287(g) program. In the advertisement, Davidson County Sheriff David Grice states that the program is focused on “illegal immigrants who are repeatedly committing crimes.” Similarly, Davie County Sheriff Andy Stokes states in the advertisement that the program is designed to apprehend “the ones who are tough. Hardened criminals.” See ElizabethDole.org, *Senator Elizabeth Dole's Campaign Releases Its First Television Advertisement*, available at <http://www.elizabethdole.org/docs/articles/SENATOR-ELIZABETH-DOLES-CAMPAIGN-RELEASES-ITS-FIRST-TELEVISION-ADVERTISEMENT.html>. See also Michael Biesecker, *Wake Jail to Look for Illegal Aliens*, NEWS & OBSERVER, Nov. 6, 2007, available at [http://www.newsobserver.com/news/crime\\_safety/story/762094.html](http://www.newsobserver.com/news/crime_safety/story/762094.html) (Wake County Sheriff Donnie Harrison describing 287(g) program as focusing on “getting the bad guys” out of the local immigrant community).

<sup>198</sup> ICE Partners Website, *supra* note 2.

approving, renewing, and modifying MOAs, contracting entities should follow existing open governance ordinances and principles, inviting community input and feedback for each step. Meaningful community input requires incorporating the insights of immigrant community action groups, which may significantly minimize both the excesses of §287(g) agreements as well as reduce community estrangement that otherwise may result from the implementation of the program.

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#### D. Amendments to the Complaint Mechanism in the MOA

There are several amendments and revisions which would improve the existing complaint mechanism within the four corners of the MOA. The following are suggestions that would improve the existing mechanism:

1. Revising the Complaint Mechanism

- a. *Clarification Regarding Dual Complaint Processes*

The language of the MOA must be clarified in order to explain the dual approach that currently exists in the complaint mechanism. Language must be added to explain the circumstances under which some LEA personnel who are not designated and certified under an MOA may exercise immigration authority. As suggested above, there are essentially two possibilities for this. Either the officers are only enforcing *criminal* immigration law violations (outside of the scope of the MOA), or they are enforcing immigration laws without the necessary authority pursuant to § 287(g) of the Immigration and Nationality Act. If the exercise of immigration authority is limited to criminal law,

the officer is acting within his duties under North Carolina State law, and should therefore be subject to the complaint mechanism employed within the respective LEA. ICE should be able to review these complaints as part of a supplementary process to the LEA review; however, this review should be outside of §287(g) MOA procedures. However, those who enforce immigration laws without §287(g) authority present a significant problem that should give rise to complaints against such officers. These complaints should be handled by an independent, outside agency to avoid conflict of interest issues and to ensure that any arrests made by those officers are invalidated as made without lawful authority.

*b. Providing Notice and Information about  
the Right to File a Complaint*

Complaint reporting procedures should be made available to the public in both English and Spanish, by publication in the LEA and ICE offices, at all local law enforcement offices, at the N.C. Sheriffs' Association office, at jails and detention centers used by the LEA and ICE, and other offices and agencies identified as sites that would enhance efforts to disseminate the information. The information should also be made available online and should be easily accessible by members of the public via phone or mail from all agencies that implement the 287(g) program or otherwise provide guidance and oversight functions. This would, at the very least, ensure that the public is made aware of their right to complain and provided information about the filing process.

Further, a standard complaint form should be available to the public to give guidance in formulating and submitting the complaint. At this point, no such form appears to exist. Such postings of rights to the public are not without precedent and have been successfully implemented in a number of other fields (*e.g.* filing complaints regarding worker's rights, citizen police review boards, nursing home and other health care facilities).

Entrust the complaint procedures to an independent agency.

*c. Amendments to the Guidelines Regarding  
the Complaint Forwarding Process*

As noted above, the ICE OPR will forward the received complaint to DHS OIG as appropriate for review and to ensure notification as necessary to the Department of Justice Civil Rights Division. This provision should either provide reference to the criteria and procedures that apply in this forwarding process, or these procedures should be included in the MOA itself.

To make this process more transparent, there should also be authority outside of ICE to ascertain how to determine appropriateness with regard to the processing and evaluation of complaints and to establish guidelines to be followed in making that determination. The same is true as to the existing LEA and ICE OPR complaint procedures relating to the reporting and resolution of the complaints which are referenced in the MOA. It is not sufficient for the MOA to simply point out that such determinations will be made. The forwarding criteria should be known and accessible to the public in order to provide checks and balances and accountability in the complaint process.

2. Changes to the Method of Complaint Review

*a. Avoiding a Conflict of Interest by Requiring Independent Review*

The Complaint review process should be completely restructured as it is fraught with conflicts of interest. ICE is currently policing itself and all deputized officers. An impartial outside entity should be established to conduct the review of the complaint. One potential way to resolve this problem is by entrusting a properly established steering committee (see section V(D)(9)) with oversight functions regarding the complaint process.



The steering committee would ensure that the process is carried out in a timely and adequate manner, but the actual complaint review would be entrusted to an independent agency as suggested below (see section V(F)(4)). This change would ensure the integrity of the complaint process and that appropriate action will be taken to resolve the issue. For this to work properly, however, the steering committee would have to be appointed through a process outside of the complete control of the LEA and ICE, much in the way that civilian police review boards in major cities across the United States are established.

Amendments are also necessary to establish criteria for determining “appropriate investigative jurisdiction.” Details about the joint investigation arrangement between LEA and ICE OPR are also required. At a minimum, explanation is needed as to each agency’s responsibility, including which agency will make the final determination regarding a particular complaint. Other questions about the joint investigation include:

- If both ICE OPR and the LEA provide a full review, what will happen if the agencies reach different conclusions?
- If mediation is required for resolution, what will the mediation consist of, and what entity will provide mediation services? Is there an alternative to mediation?
- How will independent oversight of a joint investigation be provided?

In addition, the ICE OPR process by which a determination is made as to whether DHS has investigative jurisdiction should be made transparent. If such procedures do not currently exist, they must be implemented and clearly identified in the MOA. Finally, as suggested throughout all of the recommended changes, a review by an independent entity is necessary in order to avoid the conflicts of interest.

#### *b. Detailing Complaint Resolution Procedures*

As with the complaint review procedure, the complaint resolution procedure must be detailed or otherwise specifically referenced to give outside entities the ability to assess

whether the procedure is adequate and whether it is being followed.

As noted above, a major deficiency with the complaint resolution process relates to the lack of information provided to the complainant regarding investigation and resolution. Currently, the requirement is that a complaint be resolved within ninety days, subject to exceptions. The nature of exceptions warranting an extended time-frame must be specifically stated to provide better oversight and accountability of the resolution procedure as relates to timeliness and due process. The best way to resolve the inherent conflict of interest would be to entrust an independent agency with the review and resolution of the complaints to ensure that complaints are processed and investigated in a timely manner.

It is also important that the complainant be periodically apprised of the progress of his or her complaint and have the ability to track his or her complaint (see section V(F)(2)). Receipt of the complaint should be acknowledged in writing to the complainant within ten days of receipt of the complaint. In this letter, the individual should be informed that, barring exceptional circumstances, his or her complaint should be investigated and resolved within ninety days of receipt of the complaint. After the initial ninety-day time period has lapsed, the complaining party should be informed of the resolution of the complaint in writing. If it becomes clear that an extended timeframe is required to satisfactorily resolve the complaint, written notice of the duration of that timeframe should be provided to the complaining party as soon as possible. If additional time is necessary, the complainant should receive updates on the resolution of his or her complaint periodically (e.g. every ninety days) until the complaint is resolved. The complainant should be afforded an opportunity to update the complaint during this period as necessary.

*c. Creation of New and More Comprehensive Complaint Mechanism*

While the preceding suggestions would certainly improve the current complaint mechanism in place under the Alamance County MOA, more sweeping changes may be

necessary for Alamance County and other participating entities. A proposal for a new model complaint mechanism is therefore attached to this document as Appendix A. This model may be especially useful for communities considering a § 287(g) agreement. In addition, other model complaints from other agencies that publish their complaint forms to facilitate their use and processing are attached as Appendix B, Exhibits A-K. North Carolina LEAs should adopt the proposed model and include a process that allows the complainant to track the progress of the complaint to disposition.

#### E. Amendments to Other Portions of the MOA

##### 1. Ensuring Availability of the MOA

In order to increase the transparency of the MOA, the document should be made available to the public. A public announcement could be made when the MOA is entered into, along with distribution of information on how to obtain the document. As discussed above, the MOA should be made available in electronic format online. Announcements should be placed in all agencies implementing or otherwise related to the 287(g) program, setting forth how the public might obtain copies of the MOA.

##### 2. Detailing MOA Purpose and Policy

The MOA outlines the purpose of the agreement and sets forth how SO personnel will be nominated, trained, authorized and supervised in their performance of immigration functions. In order to make this information meaningful, especially for accountability purposes, the MOA should deliver specific information on the above mentioned factors, including the duration of ICE supervision and other specifics about mandatory training.

Moreover, the purpose of the MOA should be rewritten to comport with true intent of the 287(g) program, that is, the removal of terrorists, repeat violent offenders and serious criminals. The MOA should make clear in the purpose and policy section that the

program is not designed to allow local law enforcement to perform random stops or street operations, or to randomly stop individuals to ascertain their immigration status. (It goes without saying that local law enforcements should then change their practices in order to comply with the true purpose of these programs.) As DHS has stated in its previous fact sheet about the program, it is a program meant for individuals who are suspected of a state crime more serious than a traffic offense. The purpose and policy should be unequivocal so as to provide guidance and set clear standards to local law enforcement.

### 3. Outlining Personnel Designation and Functions

The policies and procedures applicable to LEA personnel in their enforcement of immigration laws have to be publicly available to ensure sufficient oversight. The policies and procedures should therefore be outlined in the MOA or, at the very least, reference should be made to the exact location where personnel policies and procedures can be accessed by the public. This will increase the transparency of the process and introduce a means for necessary checks and balances.

### 4. Providing Guidelines for Nomination of Personnel

In order to ensure that individuals selected to act under the MOA will carry out their immigration enforcement functions in an impartial manner, further clarification on the determination of candidate suitability is necessary. Selection guidelines should be included in the MOA or otherwise published and referenced in the agreement.

Whenever the § 287(g) program is to be expanded, a public announcement including the proposed changes should be made. A written amendment should be added to the existing MOA and then made available to the public according to the same process as the original MOA.

## 5. Detailing and Updating Training of Personnel

Training procedures should be made available to ensure that proper oversight can be provided. Training curriculum should be included in the MOA or be otherwise made available and referenced in the MOA. Such transparency would ensure that there is compliance with training requirements and also ensure that the training is adequate. Training should include education regarding the population likely to be encountered during immigration enforcement and should include challenges associated with interacting with such populations, particularly language differences and vulnerabilities to due process violations. The importance of adhering to civil rights and due process of law guarantees and protections should be stressed during training.

Firm guidelines for updated training should be established to avoid postponement of necessary training. A provision suspending LEA personnel who have not received updated training within a set time frame (e.g. fifteen months after the original training and certification) would help ensure that updated training is carried out in a timely manner. To ensure that personnel remain competent in the laws and regulations to which they must adhere, regular testing should be implemented as a requisite for SO personnel to remain certified under the MOA. This ensures that LEA personnel will remain competent in the laws that they are enforcing as well as the laws and guidelines that govern their behavior.

## 6. Continued Certification and Authorization of Personnel through Consistent Complaint Reports

Clear guidelines must direct the process by which complaints are reported to ICE. In no way should the reporting requirement depend on the actual complaint penalty. An independent complaint mechanism should be implemented to ensure that all complaints are handled with the required attention and that all complaints are recorded, regardless of how the complaints are subsequently adjudicated.

## 7. Monitoring ICE Supervision of Personnel

The role of ICE in supervising LEA personnel is important for identifying the need for further training and guidance. This supervision aids in monitoring compliance of SO personnel with immigration law and procedure, but outside supervision is also necessary. Independent review of the § 287(g) program would ensure that all entities involved carry out their responsibilities in a professional and informed manner. With outside monitoring, both ICE and LEA personnel would be supervised to ensure that both law enforcement agencies comply with the requirements under the MOA.

## 8. Clarification and Notice of the Civil Rights Standards and Provision of Interpretation Services

The rights of limited or non-English-proficient individuals under the MOA need to be clearly articulated. The potential danger to a subject due to language barriers is incalculable. In order to provide a subject with a fair interview, the officer in contact with the individual should affirmatively and immediately inquire as to whether an interpreter is desired to aid in the conversation. Firm guidelines regarding interpreter access and services must be established and communicated to the person prior to questioning. These guidelines should be included in the MOA and made accessible to the public to ensure that the public is aware of this important right.

Racial profiling, discriminatory stops and treatment of any kind must be prohibited through clear instructions about compliance with constitutional, statutory, and regulatory standards. Clear standards and instruction must be provided. Officers who commit civil rights violations should be removed from the program.

## 9. Detailing the Steering Committee's Required Review of Activities

Clear guidelines setting forth the steering committee's function with regard to

the complaint mechanism must be formulated, implemented, and made available to the public to increase the transparency of the process and decrease the conflict of interest inherent in the current model. Clarification is required as to who may be appointed to this steering committee, the committee members' required qualifications, and the term of membership.

The steering committee's findings should be made public. The results of the reviews should be made available online or in print and the public should be informed of the availability of these reports. This could be accomplished by including information of these reports in the MOA and making the MOA available to the public.

#### 10. Executive Steering Committee Meetings Should Be Open to the Public

As noted herein, a spokesperson for the North Carolina Sheriffs Association recently informed the Joint Legislative Oversight Committee that the meetings of the "Executive Steering Committee" established by ICE and the NCSA are not open to the public. Aside from the legal argument that such meetings may be subject to North Carolina's Open Meetings Law,<sup>199</sup> it is important that individuals from the North Carolina Governor's Crime Commission and/or from the North Carolina Governor's Advisory Council on Hispanic/Latino Affairs, as well as members of the community in general, be included at these meetings. Participation in Executive Steering Committees by these individuals would ensure transparency and accountability in the implementation of 287(g) programs around the state.

#### 11. Increasing Information and Participation for Effective Community Outreach and Input

Community outreach is only effective if all members of the community are informed about §287(g). Outreach should include dissemination of information about the program

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<sup>199</sup> See *supra* note 189.

in general and should direct the public to the agency and individual where their questions can be answered and their concerns addressed. Section 287(g) critics and opponents, as well as supporters and the general public should have a voice in the implementation of the program through community input.

#### 12. Improving Relations with the News Media and Other Organizations

The LEA should be required to share information on the intent, focus, and purpose of the MOA with the public in general and should be open to discourse with organizations that who have concerns about the program's negative consequences.

Community outreach is only effective if all members of the community are informed about §287(g). Outreach should include dissemination of information about the program in general and should direct the public to the agency and individual where their questions can be answered and their concerns addressed.

#### 13. Updated Officer Training and MOA Availability after Modification

ICE should be required to inform LEA personnel of MOA modifications and amendments within two weeks of amendment approval. Officers must be provided updated training within one to two months of the approved changes. This would ensure that SO personnel are promptly trained and have continuing knowledge of the latest law and policy. As mentioned previously, there must be further clarification as to what constitutes adequate training.

Amendments and modification to an existing MOA must be made available to the public. The public may be informed of amendments by the same means as the original MOA (e.g., public announcement, publication).



## 14. Providing Notice of Duration and Termination of the MOA; Avoid Impunity

Notice of any termination or suspension of the MOA should be given to the public. The public must be provided with the means to challenge behavior of the parties to the agreement in court to ensure that they have recourse against any grievances experienced.

### **F. Amplification of Federal Regulations to Address § 287(g) MOAs**

In order to avoid abuse of § 287(g), federal regulations should be implemented that clearly govern § 287(g) and the MOAs that it authorizes. Federal regulations should specifically outline all of the requirements that relate to the purpose and function of the program from “adequate training” to civil rights standards. Federal regulations must establish specific and measureable standards by which oversight and accountability can be maintained.

### **G. Other Models of Complaint Mechanisms**

#### 1. Overview

To combat the deficiencies in the § 287(g) MOA complaint resolution process discussed previously, sweeping changes are necessary. In order to determine how best to protect individuals who may have their rights violated by law enforcement officers operating under a § 287(g) MOA, it is helpful to analyze and compare various complaint mechanisms that have been utilized throughout the country in other similar settings. These mechanisms appear in agencies and organizations which include Civilian Review Boards, County Sheriff Departments, Nursing Home Complaint Units, Medical Review Boards, and HIPAA Review Boards. Best practices may be identified by investigating samples representative of different regions and major cities within the United States, as well as a model complaint mechanism that can be effectively used to combat violations pertaining to INA § 287(g) violations.

The formation of a complaint mechanism specifically for §287(g) violations is critical. Because of the vulnerable nature of immigrant communities, misconduct may run just as rampant here – if not more so – than in other avenues of police abuses. Currently, there are complaint mechanisms available for nursing home members, prisoners, immigrants in DHS/USCIS proceedings, students and teachers on university campuses, and employees of major (and even some minor) corporations. Often created for vulnerable populations that are either targeted by authority figures or subject to abuse by such authority figures, a complaint mechanism is especially needed for this group of targeted individuals.

In §287(g) enforcement situations, law enforcement officers are frequently working with a non-English speaking population who often lack the benefit of education and may not be familiar with their rights. Due to a lack of uniform training procedure, racial sensitivity education, and other pertinent and specialized information about immigrant issues, a formal complaint procedure is critical and must be established for the already-ambiguous INA § 287(g) law.

The following suggestions are based on evaluation of best practices.

## 2. Making the Complaint Form Accessible

It is crucial that those who are aggrieved by the conduct of law enforcement officers acting pursuant to the authority of an MOA have information about how to access the complaint mechanism, including information on how to locate the actual form that must be submitted. An examination of various complaint mechanisms reveal that a number of agencies design their websites in such a manner that makes it easy for individuals to locate and complete complaint forms; these websites may serve as models for §287(g) programs. Thus, best practices borrowed from the realms of Civilian Review Boards, Nursing Home Complaint Units, and HIPAA and Police Departments' complaint mechanisms indicate

that the actual process of locating the complaint form and providing instruction on how to file a complaint should be transparent, clear, and readily available on the website of all agencies that have or relate to 287(g) programs. In addition to filing a complaint on the internet, there should also be a process for persons wishing to file complaints to do so over the phone and by mail. Providing multiple user-friendly methods for filing ensures that individuals across the entire vulnerable population are able to voice complaints with ease.

Complaints should also have tracking numbers or other means for individuals to check on the status of pending complaints.

### 3. Uniform Statute of Limitations

Most complaint mechanisms allow an individual to file a complaint for up to one year after an alleged incident. This is not only a fair way of limiting complaints so that allegations can be investigated before a claim is stale, but also the most uniform way of doing so. In some jurisdictions, Civilian Review Boards have different statutes of limitations for different alleged crimes and complaints; however, this may lead to confusion and missed deadlines by complainants. Therefore, it is better to have one statute of limitations, minimally set at one year from the time of the incident, for all reported situations.

### 4. Authorized Complainants

It should be noted that in some jurisdictions, Civilian Review Boards allow family members or witnesses, in addition to the actual victim, to submit a complaint. Similarly, Nursing Home Complaint Unit Review Boards and HIPAA Review Boards also allow family members and witnesses to submit a complaint on behalf of the actual victim who has been violated. This practice of allowing family members and witnesses to file complaints on behalf of the actual victim is necessary for cases where individuals who

have claims against deputized officers under §287(g) may be unable to file for themselves because of language difficulties or because they are detained or removed.

## 5. Establishing a Review Board

Establishing and defining the purpose of a Review Board for § 287(g) is essential. Review Boards should oversee and advise agencies signing MOAs, implement disciplinary action against local police officers and ICE agents abusing individuals' rights, and monitor compliance with the terms of the MOA. The Review Board should serve as a channel for individuals whose rights have been violated by the implementation of INA § 287(g) to complain and seek justice.

In designing a Review Board for § 287(g) programs, it is helpful to look at the purpose of other Review Boards' designed for vulnerable populations and understand how they present their purpose to the necessary individuals:

### *a. Civilian Review Boards (Law Enforcement)*

The Civilian Review Board is a permanent, independent agency which is authorized to process complaints lodged by members of the public alleging various abuses by a law enforcement agency. A Review Board oversees and advises law enforcement regarding citizen complaints, makes recommendations for departmental policies and practices, and makes suggestions for disciplinary action to the Police Commissioner or Sheriff. Research shows that some Review Boards, for example, those in New York, encourage the filing of a complaint regardless of the availability of evidence.

### *b. Nursing Home Complaint Units*

The Nursing Home Complaint Units are government-funded agencies, typically within the Division of Health Service Regulation within the state. The purpose of the

Division of Health Service Regulation is to provide for the health, safety and well-being of individuals through effective regulatory and remedial activities including appropriate consultation and training opportunities and by improving access to health care delivery systems through the rational allocation of needed facilities and services. The Complaint Unit is available to patients, residents, and consumers by health care facilities, agencies, and homes, licensed within the state by the Division of Health Service Regulation (DHSR). An individual can file a complaint against a nursing home if they have suffered abuse or neglect. "Abuse," according to N.C. Gen. Stat. § 131D-2, means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or administrative staff. "Neglect," on the other hand, means the failure to provide the services necessary to maintain a resident's physical or mental health.

*c. Residential Facilities*

A facility of Residential Mental Health Facilities, Adult Care Homes, and Nursing Homes are required to display information for contacting the Complaint Intake Unit in order to be in compliance with N.C. Gen. Stat § 122C-25(d) (Residential Mental Health Facilities), N.C. Gen. Stat. § 131D-2(j) (Adult Care Homes), and Fed. Reg. § 483.10(b)(7). A poster may be used to display the required contact information in a public place in the facility.

*d. Suggestions for a § 287(g) Review Board*

The following proposals pertain specifically to the establishment and purposes outlined above for the INA § 287(g) Review Board:

- A Review Board should provide guidance to the public about the right to complain about various actions and offenses that may be committed by the law enforcement agency. In order to provide specific guidance, the Review Board should identify in

broad terms the types of crimes or offensive conduct by law enforcement that would give rise to a complaint, such as abusive language, harassment, excessive force, criminal conduct, discrimination and racial targeting, neglect, misappropriation of resident's property and documents during the course of a stop or arrest, or in the facility, and non-compliance with provisions of the law and other requirements pertaining to law enforcement.

- The mission statement and purpose of the Review Board should be carefully defined. Detail the pledges that the Review Board promises to the public; i.e., to encourage the use of complaints when an individual feels he or she has been a victim of misconduct, neglect or harassment, to encourage all parties in the complaint to come forward, to make objective determinations on the merits of each case, to be fully independent from any influence by the entity or staff against whom the complaint is made, to examine each case carefully and fully investigate all claims, to report to the entity and its official head patterns or abuse and misconduct, to make recommendations and disciplinary rulings, etc.
- The independent nature of the Review Board and its monitoring activities should be clearly articulated. Review Boards which gain the trust of the community will advertise the importance of making a complaint, stress that each complaint will be taken seriously, and assure the public that meaningful rectification and/or discipline will follow after verification of the alleged incident. Individuals should be encouraged to file complaints on the basis of their own verified testimony, even if other evidence is unavailable to them at the time of filing. A Review Board should create a record and have authority to suggest and oversee changes to current police practices that may be unlawful or otherwise detrimental to establishing trusting relationships that help build law abiding communities. The filing of a complaint with a Review Board should result in a “permanent, official record that will remain

on the officer's history." Such complaint, when founded, should be the foundation for discipline against misconduct, prevent other citizens from having similar experiences, and influence changing police policy.

- Review Boards should maintain public information sites that include a section on recent updates, decisions, and relevant news. This would serve as a means to keep the public informed and present an open and transparent Board and Complaint Unit that individuals trust.

## 6. Composition of the Review Boards

The composition of the Review Board for § 287(g) should be modeled after Civilian Review Boards. There are many ways to select members for the Civilian Review Boards, but the most efficient groups seem to have a balance of appointed and elected members, as well as a balance between mayor-appointed members, police-appointed members, city council-appointed members and publicly-elected members. While Boards have ranged from as few as seven members to as many as twenty-five members, it seems that a smaller, well-balanced board is most effective. For example, a twelve person board, made up of an equal number of members appointed by the local executive, (e.g., Mayor), the City Council or County Commission, the local law enforcement agency, and elected by the public would offer a fair and balanced board to oversee all complaints filed. This board would also be large enough to handle multiple complaints, but not too large that it would be cumbersome and inefficient. A Board of about twelve to fifteen members also ensures that three-person investigatory teams can be comprised to review a complaint before it is presented to the full Board. Smaller teams are only needed if the Board cannot handle the massive complaint load on a case-by-case basis. In such a situation, smaller teams from the Board can review a complaint to determine its merits before involving the entire Board and its resources.

The duration of each member's term of appointment or election should also be determined. A review of best practices of other Review Boards suggests that three years is an appropriate term of service. Similarly, implementing mechanisms should set forth where and when the Board meets; such meetings should be open to the public.

#### 7. Protecting the Complainant

Once an individual files a complaint with the Review Board, it is essential that the complainant not be re-victimized. Although the accused may receive notice that there is a complaint filed against them, the actual complaint form does not need to be forwarded to the accused police officer or ICE agent before the situation has been investigated. From a policy standpoint, this would hinder an investigation of the incident and deter individuals from filling out a complaint form. For example, Act C-25 Part VI *Complaint about or by Military Police* of the House of Commons in the United Kingdom stands as support for the proposition that the complaint need not be sent to the accused in all circumstances. Section 250.37 of that Act states that no report shall be sent to the person who is the subject of a complaint if sending the report might adversely affect or hinder any investigation. After the initial investigation has commenced, the accused then has a chance to view the formal complaint, voice his or her concerns, and defend him or herself against the charges.

#### 8. Model Complaint Mechanism and Review Process

Based upon the many different processes and procedures for various Civilian Review Boards and Nursing Home Review Boards, the following proposals serve as elements for a template for a model complaint mechanism pursuant to INA § 287(g):



### *a. Filing the Complaint*

The complaint form should be easily accessible and straightforward. A tracking number should be listed on each complaint form. A tracking form should also be attached to the complaint form itself to record the dates and board members who review the complaint form. Once a complaint is filed, the Board's screening panel should review the complaint and make an initial decision as to whether it sets forth a sufficient basis of alleged misconduct and whether the Board has legal jurisdiction. If the panel finds that there is either no legal jurisdiction or that there is an insufficient basis to find misconduct, the complaint is dismissed by the Board. If the panel finds that the complaint sets forth a sufficient basis to find misconduct, the complaint is immediately forwarded to the Board investigator for a full investigation.

### *b. Investigation*

Within three days of a complaint being submitted, the Board investigator – an independently hired investigator – will contact the complainant and set up an interview. During this period, the investigator researches all information pertaining to the complaint, including the time, date, and location of the incident, the names and descriptions of the police officers, potential witnesses, and any paperwork or photographs related to the event. After speaking to the complainant, the investigator will contact the witnesses that a complainant provided, visit the site of the incident, and try to locate other possible witnesses who might be able to provide information helpful to a successful investigation (for example, storekeepers and neighborhood residents). Occasionally after information is uncovered in the course of the investigation, the complainant may need to be interviewed a second time. Investigators are required to interview witnesses and subject police officers as soon as possible after identifying them and interviewing the complainant. The investigation itself should be completed within one month from the time of the alleged complaint.

*c. Board Review of Investigation*

When the investigation is complete, it is forwarded to the Board. The Board has subpoena power, which means that it is able to obtain records from commercial establishments and medical facilities. It can also obtain all relevant documentary evidence from the police department, some of it immediately through on-site databases and some of it through document requests. At this hearing, the Board will hear evidence in support of the complainant and may subpoena witnesses to attend. The proceedings at this hearing are confidential by law until the Board's decision is made public.

*d. Board Vote after Presentation of Case*

A panel of three members of the Board will read the case, review all of the evidence, and then present the case to the full Board to vote on the disposition of every allegation raised by the complaint. The Board may dismiss the complaint if it determines that no misconduct, abuse, neglect, or other violation occurred. If any allegations are substantiated, the case will be forwarded to the police commissioner, who has the final say in disciplinary matters for civilian review boards. Then, the Board may recommend that specific discipline be taken against the officer involved and offending practices be changed.

*e. Appropriate Discipline upon a Finding of Misconduct, Abuse, or Neglect*

Depending on the findings of the investigation and the Board review, appropriate discipline is administered to the officer involved in a substantiated complaint. Discipline may include training, verbal counseling, written admonishment, suspension, or termination of employment. If the Board finds that misconduct likely occurred, it must inform the head of the law enforcement agency and the local executive and legislative branch. The Board will also make recommendations of discipline, training, systemic

changes, and changes in policy or procedure to prevent future occurrences of similar misconduct between the community and police. In determining discipline, components of disciplinary philosophy include: employee motivation (Was the employee operating in the public interest?); the degree of harm (What are the costs, financial and otherwise, to the department and community?); employee experience (How long has this employee been working? Was this an unfamiliar assignment?); intentional/unintentional errors (What was the employee's intent?); and an employee's past record (Has there been previous disciplinary action?).

*f. Notification/Appeal*

The complainant is notified of the Investigation and Review Board findings. If the complainant is unsatisfied with the findings of the Board, there is a contact list for other resources including the Mayor or other town, city or county executive's office, the District Attorney, the FBI, and Town or City Council or County Commission. The entire process, from complaint to disciplinary action, should be completed within three months.

An ideal complaint mechanism and review board is a critical part of transparency, oversight, and public awareness. Through the use of an effective complaint mechanism, the public not only has the ability to file complaints pertaining to police abuse, it has the ability to have input and a voice in the community. A review board can be used to keep the public informed by posting updates and any relevant decisions that it adjudicates, as well as pertinent information that can aid in watchdogging and general oversight by community members affected by local policies.

Attached in Appendix B as Exhibits A-H are copies of model complaints that may serve as examples for use in drafting a meaningful complaint mechanism for use in the implementation and execution of the § 287(g) program.

## H. Data Collection

As discussed throughout this paper, §287(g) has a multitude of unintended consequences which negatively impact a community's security and economic stability. Identified as a means of reducing crime and "regaining" control of a community, §287(g) frequently has the very opposite effect, exacting a great cost on society. Former Mayor of Farmer's Branch, Texas, Dave Blair, identified this problem when he observed impact of a similar immigration ordinance: "It's not because I'm in favor of illegal immigration. That is not the question here. The question is what . . . [it] is doing . . . and it's doing very little, but the damage is very, very great."<sup>200</sup> For this reason, data collection is paramount so that the costs and the benefits may be fairly and accurately assessed.

Using local law enforcement to aggressively enforce federal immigration laws undermines the ability of law enforcement offices to execute their primary function: protecting the security of its citizens. Additionally, given the heterogeneous makeup of the immigrant community and immigrant households, systemic deportations undermine the stability of households, placing an additional strain on state and local welfare resources. In once recent report, researchers attributed an increase in murder rates to the siphoning off of resources from local law enforcement agencies for the Department of Homeland Security which includes immigration enforcement functions.<sup>201</sup> The consequences in both instances, while intuitive, are not well-recognized or documented. Instead, given the frequently hostile environment, these negative consequences (for example, reliance on public assistance when undocumented parents are deported, increasing gang presence, reduction in crimes reported and prosecuted) are erroneously and dismissively attributed to the immigrant community itself.

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<sup>200</sup> Anabelle Garay, *Cities Spend Big Money Defending Immigration-related Ordinances*, ASSOCIATED PRESS, May 3, 2007, available at [http://www.brownsvilleherald.com/articles/city/76085/article.html/ordinance\\_costs.html](http://www.brownsvilleherald.com/articles/city/76085/article.html/ordinance_costs.html).

<sup>201</sup> Erik Eckhom, *Murders by Black Teenagers Rise, Bucking a Trend*, N.Y. TIMES, Dec. 29, 2008 at A12.

There must, therefore, be a broad and systemic analysis on the impact of § 287(g). The analysis requires a permanent system to evaluate its impact and an expansive approach which incorporates various resources to determine the full impact (for example, evaluating school drop out rates as an indirect product of this aggressive program). This may be accomplished through:

- Development and implementation of an effective complaint mechanism.
- Community action, including administration of surveys and the collection of anecdotal evidence.
- Inclusive scholarship assessing the direct and indirect financial impact of this isolation on public resources and the local economy.

#### I. Elimination of the 287(g) Program

Ultimately, the most obvious and effective way to eliminate the problems associated with 287(g) implementation is to eliminate the 287(g) program altogether. The program, as illustrated through this policy paper, is too problematic, too costly, and too difficult to properly operate. The existence of such a program, one where a federal agency abdicates authority to inadequately trained, less knowledgeable agents, indicates fundamental issues with the current federal immigration law enforcement scheme.

In “Making the Case for Comprehensive Immigration Reform: Resource Guide,” the American Immigration Lawyers Association (AILA) outlines an effective approach to immigration reform.<sup>202</sup> Comprehensive reform is necessary because the current immigration system’s problems are all interrelated.”<sup>203</sup> Specifically, the guide points out that the “tough enforcement-focused strategy,” of which 287(g) is a part, has failed.<sup>204</sup>

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<sup>202</sup> American Immigration Lawyers Association, *Making the Case for Comprehensive Immigration Reform: Resource Guide*, (2008), <http://www.aila.org/content/fileviewer.aspx?docid=21713&linkid=157219>.

<sup>203</sup> *Id.* at 8.

<sup>204</sup> *Id.* at 6.

AILA notes that the new immigration laws “must simultaneously create legal avenues for people to enter the U.S.; allow people already here to earn the opportunity to adjust their status; address the multi-year backlogs in family and employment-based immigration; and create and implement a smart border security and enforcement regime that respects core principles of due process.”<sup>205</sup> These suggestions would allow for a fix of the systemic problems. The 287(g) program could then be eliminated as the urgent problems that flow from a broken system would dissipate.

Ultimately, the most obvious and effective way to eliminate the problems associated with 287(g) implementation is to eliminate the 287(g) program altogether. The program, as illustrated through this policy paper, is too problematic, too costly, and too difficult to properly operate.

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205 *Id.* at 8.

## VI. Conclusion

James Madison predicted unchecked power to develop into inevitable tyranny under any context, but especially in the context of government. As he stated, “If men were angels, no government would be necessary.”<sup>206</sup> He also recognized tyranny not only in government, but among sectors of society, requiring a check on the stronger sects over the weak: “In a society under the forms of which the stronger faction can readily unite and oppress the weaker,” he stated, “anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger. . . .”<sup>207</sup>

The current legislation on § 287(g) and its implementation creates the precise situation against which Madison warned. As illustrated in this policy analysis, § 287(g) creates a powerful immigration enforcement program, not counterbalanced by any effective oversight, public transparency, or voting power by those it affects the most. It is a situation worthy of concern to both non-citizens and citizens alike. As Madison acknowledged, imbalance of power infiltrates every sector of society and must be counterbalanced regardless of who it appears to most affect, because in the end, it affects us all.

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206 Madison, *supra* note 190, at 319.

207 *Id.* at 321.





## **TABLE OF APPENDICES**

### **APPENDIX A**

- Exhibit 1. Sample North Carolina 287(g) Complaint Form
- Exhibit 2. Sample North Carolina 287(g) Complaint Instruction Sheet

### **APPENDIX B**

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- Exhibit 4. North Carolina Department of Health and Human Services: Health Information Privacy Complaint Form
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- Exhibit 9. New York City Civilian Review Board: Complaint Form
- Exhibit 10. Las Vegas Metropolitan Police Department Citizen Review Board: Complaint Form
- Exhibit 11. San Diego Citizens' Review Board on Police Practices: Complaint Form





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**COMPLAINANT INFORMATION** (If you would like to give your contact information, please do so. You do not have to list your contact information if you do not want to. If you do not want to list your contact information, please call ACLU-NC at (919) 834-3390 for assistance.)

**COMPLAINANT NAME** \_\_\_\_\_

**DATE OF BIRTH** \_\_\_ / \_\_\_ / \_\_\_

**ADDRESS** \_\_\_\_\_

**HOME PHONE** (\_\_\_\_) \_\_\_\_\_ **WORK/CELL PHONE** (\_\_\_\_) \_\_\_\_\_

**CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **ZIP** \_\_\_\_\_

Check here if additional documents are attached

## Appendix A - Exhibit 2: Sample North Carolina 287(g)

### Complaint Instruction Document

#### 287(g) LAW ENFORCEMENT: HOW TO FILE A COMPLAINT

*Can I file a complaint?*

**Yes.** If you have been stopped and questioned by state or local law enforcement and in the course of the stop you were questioned about your immigration status and you believe you were wrongfully stopped, racially profiled, or otherwise treated unfairly, you may file a complaint.

*What should I include in the complaint?*

Be sure to include details about the incident (date, time, location) and explain what happened that you think was unfair. Even if you do not know exactly what was unfair, but you felt that you were treated poorly during the stop, please include that in the complaint. It is not your responsibility to identify the officer(s) who stopped you, but if you do have that information (name, badge number, description, etc), also include that in the complaint. If you can give your contact information, please do so. If you do not want to give your contact information, please call the American Civil Liberties Union of NC (ACLU-NC) at (919) 834-3390, and they will assist you. A sample complaint form is attached and you may use that form if you wish. Be sure to keep a copy of the complaint for your records.

*Where do I send the complaint?*

**(1) Please send one copy of the complaint to Immigration and Customs Enforcement (ICE), and one copy to the North Carolina Sheriff's Association: *[Insert appropriate state agency in place of NC Sheriff's Association]***

U.S. Department of Homeland Security  
U.S. Immigration & Customs Enforcement  
Office of Professional Responsibility  
425 I Street, N.W. Room 3260  
Washington, D.C. 20536

North Carolina Sheriff's Association  
P.O. Box 20049  
Raleigh, NC 27619

**(2) You should also send a copy of the complaint to the local law enforcement agency that stopped or questioned you. [*The 287(g) participating agency addresses can be listed here*]**

*Can I call someone to complain?*

Yes. You can call the Immigration and Customs Enforcement Office of Professional Responsibility (ICE OPR) toll-free at (877) 246-8253 or the Office of the Special Agent in charge of the ICE OPR at (954) 327-4100. Be sure to write down the time and date that you called and to whom you spoke.

*When will my complaint be resolved?*

**Most complaints are resolved within 90-days of receipt of the complaint. Sometimes if the complaint is complex, it may take longer.**

*Will I be notified of an outcome?*

You should be notified of an outcome after the 90-day period. If you have not been contacted by someone about your complaint by that time, please call [*a number provided by DHS/ICE and the local 287(g) program for tracking complaints*].

*Who can I contact if I have questions?*

**[Include a number provided by DHS/ICE and the local 287(g) program for tracking complaints.]**

## IMPORTANT PHONE NUMBERS

**Mexican Consulate in Raleigh:** (919) 754-0046 or (919)754-0730 or (919) 754-0150

**Honduran Consulate in Atlanta:** (770) 645-8881 or (770) 645-8879

**Salvadoran Consulate in Virginia:** (703) 490-4300

**Guatemalan Consulate in Atlanta:** (404) 320-8804

## KNOW YOUR RIGHTS: INFORMATION FOR NON-CITIZENS

*Q: What can I do if law enforcement officers want to question me?*

**A:** You have the same right to be silent that U.S. citizens have, so the general rule is that you do not have to answer any questions that a law enforcement officer asks you. However, there are exceptions to this at ports of entry, such as airports and borders.

*Q: Do I have to answer questions about whether I am a U.S. citizen, where I was born, where I live, where I am from, or other questions about my immigration status?*

**A:** You do not have to answer any of the above questions if you do not want to answer them. But do not falsely claim U.S. citizenship. It is almost always a good idea to speak with a lawyer before you answer questions about your immigration status. Immigration law is very complicated, and you could have a problem without realizing it. A lawyer can help protect your rights, advise you, and help you avoid a problem. Always remember that even if you have answered some questions, you can still decide you do not want to answer any more questions.

If you are a non-immigrant who is already in the U.S. (a non-citizen who is authorized to be in the U.S. for a particular reason or activity, usually for a limited period of time, such as a person with a tourist, student, or work visa), you may be

required to provide information related to your immigration status. However, even if you are a nonimmigrant, you can still say that you would like to have your lawyer with you before you answer questions, and you have the right to stay silent if you answer to a question could be used against you in a criminal case.

*Q: Do I have to show officers my immigration documents?*

**A: The law requires non-citizens who are 18 or older and who have been issued valid U.S. immigration documents to carry those documents with them at all times. Failure to carry these documents can be a misdemeanor crime.**

**If you have your valid U.S. immigration documents and you are asked for them, it is usually a good idea to show them to the officer because it is possible that you will be arrested if you do not do so. If you are arrested because you do not have your U.S. immigration documents with you, but you have them elsewhere, ask a friend or family member (preferably one who has a valid immigration status), to bring them to you.**

**It is never a good idea to show an officer fake immigration documents or pretend that someone else's immigration documents are yours. If you are undocumented and therefore do not have valid U.S. immigration documents, you can decide not to answer questions about your citizenship or immigration status or whether you have documents. If you tell an immigration officer that you are not a U.S. citizen and you then cannot produce valid U.S. immigration documents, there is a very good chance you will be arrested.**

*Q: What should I do if immigration officers arrest me?*

**A: Assert your rights. You do not have to answer questions. You can tell the officer you want to speak with a lawyer. You do not have to sign anything giving up your rights, and you should never sign anything without reading, understanding and knowing the consequences of signing it. If you do sign a waiver, immigration agents could try to**



**deport you before you see a lawyer or judge.**

*Q: Do I have the right to talk to a lawyer before answering any law enforcement officers' questions or signing any immigration papers?*

**A: Yes. You have the right to call a lawyer or your family if you are detained, and you have the right to be visited by a lawyer in detention. You have the right to have your attorney with you at any hearing before an immigration judge. You do not have the right to a government-appointed attorney for immigration proceedings, but immigration officials must give you a list of free or low-cost legal service providers. You have the right to hire your own immigration attorney.**

*For more information, or for a "Know Your Rights" brochure, contact ACLU-NC at (919) 834-3390.*



**Appendix B - Exhibit 1:  
Alamance County Memoranda of Understanding with Appendices**

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**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Alamance County, North Carolina (County), and the Sheriff's Office of Alamance County, North Carolina (ACSO) to create a project under which ICE authorizes nominated, trained, and certified personnel in the ACSO to perform certain immigration enforcement functions as specified herein. The ACSO represents the County in the implementation and administration of this MOU. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in the County.

**I. PURPOSE**

The purpose of this MOU is to set forth the terms and conditions for this agreement to authorize selected ACSO personnel to perform certain functions of an immigration officer within the County, and how participating ACSO personnel will be nominated, trained, authorized and supervised in performing the immigration enforcement functions specified in this MOU. (Hereafter, ACSO personnel who are nominated, trained, authorized, certified and supervised in accordance with the terms of this MOU may from time to time be referred to as Participating ACSO Personnel.)

Notwithstanding any term or condition of this MOU to the contrary, nothing herein shall otherwise limit the jurisdiction, powers or rights (including without limitation, the right to run for elected positions or accept appointed positions) normally possessed by employees of the ACSO or the County; or the jurisdiction, powers and rights of Participating ACSO Personnel in their capacity as employees of ACSO. The exercise of immigration enforcement authority granted under this MOU to Participating ACSO Personnel shall occur only as provided in this MOU and shall be limited to activities in the County.

**II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. & 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State to enable qualified personnel to perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

**III. POLICY**

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This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the Participating ACSO Personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that Participating ACSO Personnel shall be subject to ICE supervision while performing immigration related duties pursuant to this MOU. ACSO retains supervision of all other aspects of the employment of and performance of duties by Participating ACSO Personnel.

Before Participating (ACSO) Personnel will be authorized to perform immigration officer functions granted under this MOU, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this MOU. Only Participating ACSO Personnel have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

The ICE and ACSO points of contact for purposes of this MOU are identified in Appendix A.

#### IV. DESIGNATION OF FUNCTIONS

For the purpose of this MOU, the functions that may be performed by Participating ACSO Personnel with their associated authorities are indicated below:

AUTHORITY	FUNCTIONS
.. The power to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA & 287(a)(1) And 8 C.F.R. 287.5(a)(1).	.. Interrogate in order to determine probable cause for an immigration violation.
.. The power and authority to administer oaths and to take and consider evidence. INA & 287(b) and 8 C.F.R. 287.5(a)(2).	.. Complete required criminal alien processing, to include fingerprinting, photographing, and interviewing for ICE supervisor review.
	.. Prepare affidavits and take sworn statements.
.. The power to issue detainers. 8 C.F.R. 287.7.	.. Prepare immigration detainers for aliens in categories established by ICE supervisors.

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## AUTHORITY

.. The authority to prepare charging documents. INA & 239;8 C.F.R.239.1; INA & 238.8; 8 C.F.R. 238.1; INA 241(a)(5); 8 C.F.R. 241.8; INA & 235(b)(1); 8 C.F.R. 235.3.

.. Transportation of aliens. INA & 236.

## FUNCTIONS

.. Prepare, as needed, a Notice to Appear (NTA) or other removal charging document, as appropriate, including Notice of Intent to Administratively Remove, Notice of Intent to Reinstate Removal, or Notice of Intent to Expediently Remove for signature of ICE officer For aliens in categories established By ICE supervisors.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the Participating ACSO Personnel in exercising these authorities shall be DHS policies and procedures. However, when engaged in immigration enforcement activities, no Participating ACSO Personnel will be expected or required to violate or otherwise fail to maintain ACSO standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or ACSO rules, orders, standards, or policies.

## V. NOMINATION OF PERSONNEL

The Sheriff of ACSO will initially nominate ten (10) Detention officers thirteen (13) sworn Deputy Sheriffs and two (2) Supervisory Deputy Sheriff candidates to ICE for initial training and certification under this MOU. All ACSO candidates and supervisors will be operationally assigned by ACSO to carry out the duties contemplated by the parties, with the principal places of assignment being the Central Jail Facility.

For each candidate nominated, ICE may request any information necessary for a background check and evaluation for suitability to participate in the enforcement of immigration authorities under this MOU. All candidates must be United States citizens. All candidates shall either be competent English/Spanish bilingual speakers or have readily available interpreter services provided by ACSO. All candidates will have at least two years' work experience for ACSO. No candidate will be married to a person illegally present within the United States or knowingly have family or any other associations which could adversely impact their ability to perform ICE functions under this MOU. All candidates must be approved by ICE and must be able to qualify for appropriate security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of Participating ACSO Personnel or scheduling

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of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOU.

ACSO will endeavor not to reassign approved candidates from their primary place of duty for a period of at least two years following training and certification of approved candidates as outlined in this MOU. Further, to the extent possible and practicable, ACSO will give ICE sixty (60) days notice of its intent to reassign any approved candidate.

#### VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated ACSO personnel tailored to the designated immigration functions and types of cases typically encountered by ACSO. Training of such ACSO personnel will be at a mutually designated site in Charlotte, North Carolina, utilizing ICE designated curriculum and competency testing. Training will include but not necessarily be limited to, presentations on this agreement and elements of this MOU, the scope of immigration officer authority, cross-cultural issues, the ICE Use Of Force Policy, civil rights law, the Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability, and other relevant issues. ICE will provide all training materials. ACSO is responsible for the salaries and benefits for any of its personnel being trained or performing duties under this MOU. ACSO will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this agreement.

All nominated and accepted personnel will receive specific training regarding their obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the Participating ACSO Personnel are trained and certified, unless any party terminates this MOU pursuant to Section XVII below, ICE will provide such personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions. Local training on relevant administrative, legal and operational issues will be provided on an ongoing and timely basis by ICE supervisors.

#### VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Atlanta, Georgia, the names of those ACSO personnel who successfully complete training and pass all required testing. Upon receipt of the ICE Training Division certification, the Special Agent in Charge, Atlanta, Georgia, will provide to the Participating ACSO Personnel a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of

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the authorization. ICE will also provide a copy of the authorization to ACSO. The activities of all Participating ACSO Personnel with regard to ICE functions will be evaluated by the ICE Immigration Enforcement Agents as addressed in Section IX below.

Authorization of any Participating ACSO Personnel to act pursuant to the MOU may be revoked at any time by ICE or ACSO. Such revocation will require immediate notification by the revoking party to ICE or ACSO, as the situation requires. The Sheriff of ACSO or his Deputy Chief and the ICE Special Agent in Charge in Atlanta, Georgia or the Assistant Special Agent in Charge in Charlotte, North Carolina will be responsible for notification of the appropriate personnel in their respective agencies. If one of the Participating ACSO Personnel is the subject of a complaint of any sort that may result in that individual receiving employer discipline of anything other than of a *de minimus* nature or becoming the subject of a criminal investigation, ACSO shall, to the extent allowed by state law, immediately notify ICE of the complaint. The resolution of the complaint shall be promptly reported to ICE. Complaints regarding exercise of immigration enforcement authority by any Participating ACSO Personnel shall be handled in accordance with Section XII below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.

#### VIII. COSTS AND EXPENDITURES

Except as specifically provided otherwise herein, Participating ACSO Personnel will carry out ICE functions designated in this MOU as delegated to ACSO at ACSO expense, including salaries and benefits. Any movement and detention of ACSO inmates, who also happen to be aliens, will be for ACSO's own purposes and at ACSO expense. However, after ACSO determination that any individual has been released to ICE custody, ICE shall bear all expenses and costs associated with the movement and detention by ACSO of any such individual. Such costs and expenses shall be reimbursed to ACSO at the federal rate and in a timely manner.

#### IX. ICE SUPERVISION

Immigration enforcement activities of the Participating ACSO Personnel will be supervised and directed by ICE in Raleigh and/or Charlotte, North Carolina. Participating ACSO Personnel cannot perform any immigration officer functions pursuant to the authorities granted under this MOU except when working under the supervision of ICE. Participating ACSO Personnel shall give notice to the ICE as soon as practicable after, and in all cases within 24 hours, of any detainer issued under the authorities set forth in this MOU. The actions of Participating ACSO Personnel will be reviewed by ICE on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for any individual.

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For the purposes of this MOU, ICE will provide supervision of Participating ACSO Personnel only as to immigration enforcement functions. ACSO retains supervision of all other aspects of the employment of and performance of duties by Participating ACSO Personnel or any ACSO personnel in the process of training hereunder.

If a conflict arises between an order or direction provided by ICE and ACSO rules, standards, orders or policies, the conflict shall be promptly reported to the Assistant Special Agent in Charge, Charlotte, and the Sheriff of ACSO or his designee as soon as circumstances safely allow the concern to be raised. The Assistant Special Agent in Charge and the Sheriff of ACSO or his designee shall attempt to resolve the conflict.

#### X. LIABILITY AND RESPONSIBILITY

ACSO will bear its own costs and be responsible for any liability created as a result of any act or action of its personnel, or damage to its property or resources, which occur outside the scope of this agreement.

Participating ACSO Personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. & 2671-2680, and worker's compensation claims, 5 U.S.C. & 8101 et seq. when performing a function as authorized by this MOU. 8 U.S.C. & 1357(g)(7). Participating ACSO Personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with the MOU. 8 U.S.C. & 1357(G)(8). ICE will not be responsible for any intentional misconduct on the part of any Participating ACSO Personnel.

Participating ACSO Personnel who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the Office of the Chief Counsel, at 77 Forsythe Street, Room 385, Atlanta, Georgia, 30303. Any request for representation must clearly be marked on each written communication that the information is "Subject to Attorney-Client Privilege." The Chief Counsel will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit to the ICE Office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and a statement of the views of ICE with respect to whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

ACSO agrees to cooperate with any federal investigation related to this MOU to the full extent of its available powers. It is understood that information provided by an ACSO personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal



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proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493. 87 S.Ct. 616, 17 L.Ed.2d 526 (1967).

The Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150. 92 S.Ct. 763. 31 L.Ed.2d 104 (1972), relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. See also *United States v. Henthorn*, 931 F.2d 29 (9<sup>th</sup> Cir. 1991). As the activities of Participating ACSO Personnel under this MOU are undertaken under federal authority, to the extent Participating ACSO Personnel are performing services hereunder, unless specifically provided otherwise herein, Participating ACSO Personnel will comply with federal standards and guidelines relating to such cases or any subsequent cases that establish federal standards adopted by ICE and provided to ACSO.

#### XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES

Pursuant to this MOU, Participating ACSO Personnel will perform certain federal immigration enforcement functions. While doing so, unless specifically provided otherwise herein, Participating ACSO Personnel are bound by all federal civil rights statutes and regulations, as well as policy directives, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating ACSO Personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by ACSO as needed.

#### XII. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by Participating ACSO Personnel or for activities undertaken under the authority of this MOU is included at Appendix B.

#### XIII. REQUIRED REVIEW OF ACTIVITIES

The ICE Assistant Secretary and the Sheriff of ACSO shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in Raleigh and/or Charlotte, North Carolina at locations to be agreed upon by the parties. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable and available, statistical information on increased immigration enforcement activity in

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the County. An initial review meeting will be held no later than nine months after certification of the initial class of Participating ACSO Personnel under Section VII., above.

#### XIV. COMMUNITY OUTREACH

ACSO will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE may participate in such outreach upon ACSO request.

#### XV. RELATIONS WITH THE NEWS MEDIA

As part of its commitment to the communities it serves, ACSO may at any time and in its discretion, communicate the intent, focus, and purpose of this agreement to the media, organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU.

The parties hereto agree that ACSO and ICE will coordinate any release of information to the media regarding specific actions taken by any party under this MOU. The points of contact for ICE and ACSO for this purpose can be found at Appendix C. Both ICE and ACSO recognize the need to respond to media requests in a timely manner.

#### XVI. MODIFICATION OF THIS MOU

Any modifications to this MOU must be proposed in writing and approved by the signatories. However, modification or amendment of any statute, regulation, case, act or any other authority cited herein shall be deemed to be automatically updated to include any such modification or amendment. ICE shall be responsible for ensuring that Participating ACSO Personnel are fully and timely apprised of such modifications or amendments and receive appropriate and timely training if necessitated by such modifications and amendments.

#### XVII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until terminated by any party hereto. Any party to this MOU, upon sixty (60) days prior written notice to the other parties, may terminate it at any time. Such notice shall be delivered personally or by certified or registered mail.

In the event of an unforeseen emergency or other exigent circumstances, ICE or ACSO may, upon written notice to the other, temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. ICE and the ACSO must agree in writing to begin activities under this MOU after such suspension. Notice of termination or suspension by ICE shall be given to the Sheriff

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or ACSO. Notice of termination or suspension by ACSO shall be given to the ICE Assistant Special Agent in Charge in Charlotte, North Carolina.

Except for the rights of Participating ACSO Personnel as described herein, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOU, each party represents it is fully authorized to enter into this agreement and accepts the terms, responsibilities, obligations and limitations of the Agreement, and agrees to be bound thereto to the fullest extent allowed by law.

\_\_\_\_\_  
Julie L. Myers  
Assistant Security  
U.S. Immigration and Customs  
Enforcement

\_\_\_\_\_  
Larry Sharpe, Chairman of the  
Board of Commissioners, Alamance  
County, North Carolina

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Terry S. Johnson, Sheriff  
Alamance County, North Carolina  
Date: \_\_\_\_\_

**APPENDIX A**

**POINTS OF CONTACT FOR MOU IMPLEMENTATION**

As called for in Section III of the MOU, the ICE and ACSO points of contact for purposes of implementation of this MOU are:

**For the County:** Terry S. Johnson  
Alamance County Sheriff's Office  
109 S. Maple Street  
Graham, North Carolina 27253  
336-570-6311

**For ICE:** Jeffrey S. Jordan  
Assistant Special Agent in Charge  
3700 Arco Corporate Drive  
Suite 300  
Charlotte, North Carolina 28271  
704-679-6140

## APPENDIX B

### COMPLAINT PROCEDURE

This MOU is a joint agreement between DHS/ICE, the County and the ACSO, in which selected ACSO personnel are authorized to perform immigration enforcement duties in specific situations under federal authority. As such, the training, supervision, and performance of certain ACSO personnel pursuant to the MOU, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOU have agreed to follow.

The MOU sets forth the process for designation, training and certification of designated ACSO personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of ACSO and be handled in accordance with ACSO policies and procedures. ACSO will also handle complaints filed against ACSO personnel who may exercise immigration authority, but who are not designated and certified under this MOU. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOU.

In order to simplify the process for the public, complaints against participating ACSO personnel relating to their immigration enforcement actions can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (ICE OPR) and the ACSO of Professional Standards will coordinate complaint receipt and investigation. The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRD). It is contemplated by the parties that ACSO's existing complaint processes for Participating ACSO personnel will be utilized to the extent they do not conflict with this agreement.

The ICE OPR will coordinate complaints related to participating ACSO personnel with the ACSO OPC as detailed below. Should circumstances warrant investigation of a complaint by the DHS IOG or the DOJ CRD, this will not preclude the DHS OIG, DOJ CRD or ICE OPR from conducting the investigation in coordination with ACSO Professional Standard.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the ACSO will follow applicable ACSO policies and procedures, personnel rules, North Carolina statutes and any other guidelines established for operation of the ACSO.

## **I. Complaint Reporting Procedures**

### **A. Dissemination of Complaint Reporting Procedures**

Complaint reporting procedures shall be disseminated as appropriate by ACSO within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

### **B. Acceptance of Complaints**

Complaints will be accepted from any source (e.g., ICE, ACSO, personnel operating under the authority of this MOU, and the public).

### **C. Reporting Mechanisms**

Complaints can be reported to federal authorities as follows:

1. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D. C. at the toll-free number 1-877-246-8253, or telephonically to the Office of the Special Agent in charge of the ICE OPR office in Plantation, Florida at 954-327-4100; or,
2. Via mail as follows:

U. S. Department of Homeland Security  
U. S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I Street, NW  
Room 3260  
Washington, D. C. 20536

U. S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I Street, NW  
Room 3260  
Washington, D. C. 20536

Complaints can also be referred to and accepted by any of the following at ACSO:

1. The Sheriff of Alamance County  
Alamance County Sheriff's Office  
109. S. Maple Street  
Graham, North Carolina 27253

2. Alamance County Sheriff's Office  
Office of Professional Standards  
109 S. Maple Street  
Graham, North Carolina 27253  
Phone: 336-570-6311

#### D. Review of Complaints

1. All complaints (written or oral) directly reported to ACSO, which involve activities connected to immigration enforcement activities by ACSO authorized under this MOU, will be reported to the ICE OPR. The ICE OPR will verify participating ACSO personnel status under the MOU with the assistance of the Assistant Special Agent in Charge of the ICE Office of Investigations in Charlotte, North Carolina.
2. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures and shall also be reported to ACSO Professional Standards Agent in charge of the ICE Office in Charlotte, North Carolina.

For both of the above, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to the ICE OPR will be shared with the Sheriff of ACSO or his designee, anytime the complaint involves ACSO personnel. Both offices will then coordinate appropriate investigative jurisdiction which may include initiation of a joint investigation to resolve the issue(s).

## II. Complaint Resolution Procedures

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRT. Complaints will be resolved using the existing procedures, supplemented as follows:

### A. Referral of Complaints to ACSO

The ICE OPR will refer complaints, as appropriate, involving ACSO personnel to the ACSO for resolution. The ACSO will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

### B. Interim Action Pending Complaint Resolution

Whenever any participating ACSO personnel are under investigation and subject to interrogation by ACSO for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of all applicable ACSO manuals or Orders of Policy and Procedures shall be honored and shall be deemed controlling. If appropriate, an individual may be removed from participation in the activities covered under the MOU pending resolution of an inquiry.

C. Time Parameters for Resolution of Complaints

It is expected that any complaint received will be resolved within ninety (90) days; however, this will depend upon the nature and complexity of the substance of the complaint.

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the ACSO Professional Standards to ensure notification as appropriate to the subject(s) of a complaint, regarding the resolution of the complaint.



**APPENDIX C**

**PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XV of the MOU, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOU. The points of contact for coordinating such activities are:

**FOR ACSO:**

Sheriff Terry S. Johnson  
Alamance County Sheriff's Office  
109 S. Maple Street  
Graham, North Carolina 27253  
Phone: 336-570-6311 or 336-570-6363

**FOR ICE:**

Public Affairs Officer  
Office of Public Affairs and Internal Communication  
U. S. Department of Homeland Security  
U. S. Immigration and Customs Enforcement  
425 I Street, NW, Room 7232  
Washington, D. C. 20536  
Phone: 202-514-2648











**Appendix C - Exhibit 3:  
North Carolina Division of Health Service Regulation:  
Nursing Home Complaint Form**

**NORTH CAROLINA MEDICAL BOARD**

PO Box 20007, Raleigh, NC 27619  
Telephone (919) 326-1109, Extension 236 or 232 or 261  
(800) 253-9653, Extension 236 or 232 or 261  
E-mail [complaints@ncmedboard.org](mailto:complaints@ncmedboard.org)

**COMPLAINT FORM (Internet)**

The North Carolina Medical Board is responsible for the licensing and discipline of **physicians, physician assistants and nurse practitioners** (referred to as licensees in this form). If the Board finds a licensee has violated the North Carolina Medical Practice Act, it can take disciplinary action following due process and the opportunity for a public hearing. **The Board does not have any authority over fee disputes, disability ratings and certain other matters outside its jurisdiction.**

- 1) Complete the requested information below. **If you have a complaint relating to more than one licensee you will need to complete a separate form for each licensee.**
- 2) Complete the medical record authorization form so necessary records can be requested if applicable to your complaint.
- 3) **A copy of this complaint will be forwarded to the licensee identified below for his/her review and response to the Board.**

**INFORMATION ABOUT YOU**

Your **FULL** Name: \_\_\_\_\_  
( Mr Mrs Ms )

Your Address: \_\_\_\_\_

Your **Daytime Phone#** \_\_\_\_\_

Patient's **FULL** Name: \_\_\_\_\_  
(if different from above)

**INFORMATION ABOUT THE LICENSEE**

(The Board has no authority over hospitals and other types of healthcare providers, i.e., nurses, dentists, etc.)

Licensee's **FULL** Name: \_\_\_\_\_  
(MD, DO, PA or FNP)

Licensee's Address: \_\_\_\_\_

Licensee's Telephone #: \_\_\_\_\_





**Appendix C - Exhibit 4:  
North Carolina Medical Board: Physician, Physician's Assistant  
and Nurse Practitioner Complaint Form**

**NORTH CAROLINA MEDICAL BOARD**

PO Box 20007 Raleigh, NC 27619  
Telephone (919) 326-1109, Extension 236, 232 or 261  
(800) 253-9653, Extension 236, 232 or 261  
E-mail [complaints@ncmedboard.org](mailto:complaints@ncmedboard.org)

**MEDICAL RECORD RELEASE AUTHORIZATION**

*You must complete each section where there is an arrow ► symbol*

NAME OF **LICENSEE** or **PRACTICE** THAT IS TO RELEASE INFORMATION TO THE BOARD:



NAME OF AGENCY TO WHOM THE INFORMATION IS TO BE RELEASED:

**North Carolina Medical Board**  
**PO Box 20007**  
**Raleigh, NC 27619**

I hereby request and authorize the licensee or practice noted above to release a copy of the my/the patient's medical records for the purpose of reviewing my complaint. This information should include but is not limited to: patient histories, discharge summaries, operative notes, office notes, examination and test results and any reports or information prepared by other persons that may be in your possession.

I understand that this authorization is voluntary. I understand that the agency receiving the information is not a health plan or health care provider and that the released information may no longer be protected by federal privacy regulations. I understand that I may revoke this authorization at any time by notifying the *providing* organization, except to the extent that action has already been taken to comply with it. This consent will automatically expire within one year from the date of signature.



**Print FULL Name of Patient**



***Patient's Date of Birth***



**Signature of Patient or Legally Responsible Person**



**Today's Date**



**North Carolina Department of Health and Human Services  
Division of Health Service Regulation • Complaint Intake Unit**

Tel 800-624-3004/919-855-4500 • Fax 919-715-7724

2711 Mail Service Center • Raleigh, North Carolina 27699-2711

Michael F. Easley, Governor

Carmen Hooker Odom, Secretary

Rita C. Horton, Branch Manager

If you have any questions about this form, call DHSR (toll-free) at:  
1 800 624 3004

Date:

Facility/Agency Name: *Facility/Agency Information*

Street Address:		City:	
State:	Zip:		

Name of Resident/Patient/Client:		D.O.B.	Room Number	Male	Female
				<input type="checkbox"/>	<input type="checkbox"/>
Date of Admission:	Date of Discharge:	Current Location:			

Name:		Relationship to Resident/Patient:		
Work Phone:	Home Phone:	Cell Phone:		
Street Address:		City:		
State:	Zip:	Email:		

*Other Information*

How often do you visit?

Do you attend care plan meetings?	If admitted to the hospital, is the resident returning to facility?



Location: 1205 Umstead Drive • Dorothea Dix Hospital Campus • Raleigh, N.C. 27603  
An Equal Opportunity / Affirmative Action Employer





**North Carolina Department of Health and Human Services  
Division of Health Service Regulation • Complaint Intake Unit**

Tel 800-624-3004/919-855-4500 • Fax 919-715-7724

2711 Mail Service Center • Raleigh, North Carolina 27699-2711

Michael F. Easley, Governor

Carmen Hooker Odom, Secretary

Rita C. Horton, Branch Manager

Page 1



Location: 1205 Umstead Drive • Dorothea Dix Hospital Campus • Raleigh, N.C. 27603  
An Equal Opportunity / Affirmative Action Employer



*If we cannot reach you directly, is there someone we can contact to help us reach you?*

First Name:		Last Name:	
Home Phone:	Work Phone:	Cell Phone:	
Street Address:			City :
State:	Zip:	Email:	

*Description of Complaint*

Please provide as much description about your complaint as possible. Please answer as many questions below as possible.  
You may attach other notes to describe your complaint.

What happened? How did it happen? When did it happen? Where did it happen? Who was involved? Were there any witnesses? Has this happened before? When? How often? Was the incident reported to the staff? Who was told about this? When were they told? What did they do about it? Is anything being done to prevent it from happening again? Has the resident/patient/client experienced any negative outcome? What? How has the negative outcome affected the resident/patient/client's functioning?

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Please return form to:

Division of Health Service Regulation  
Complaint Intake Unit  
2711 Mail Service Center  
Raleigh, NC 27699  
Or:  
Intake@ncmail.net  
Page 2

**Appendix C - Exhibit 5:  
Department of Health and Human Services Office for Civil Rights:  
Health Information Privacy Complaint Form**



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)

Form Approved: OMB No. 0990-0269  
See OMB Statement on Reverse.



**HEALTH INFORMATION PRIVACY COMPLAINT**

If you have questions about this form, call OCR (toll-free) at:  
1-800-368-1019 (any language) or 1-800-537-7697 (TDD)

YOUR FIRST NAME		YOUR LAST NAME	
HOME PHONE (     )		WORK PHONE (     )	
STREET ADDRESS			CITY
STATE	ZIP	E-MAIL ADDRESS (If available)	

**Are you filing this complaint for someone else?**     Yes     No

If Yes, whose health information privacy rights do you believe were violated?

FIRST NAME	LAST NAME
------------	-----------

**Who (or what agency or organization, e.g., provider, health plan) do you believe violated your (or someone else's) health information privacy rights or committed another violation of the Privacy Rule?**  
PERSON/AGENCY/ORGANIZATION

STREET ADDRESS		CITY
STATE	ZIP	PHONE (     )

**When do you believe that the violation of health information privacy rights occurred?**  
LIST DATE(S)

**Describe briefly what happened. How and why do you believe your (or someone else's) health information privacy rights were violated, or the privacy rule otherwise was violated? Please be as specific as possible. (Attach additional pages as needed)**

**Please sign and date this complaint.**

SIGNATURE	DATE
-----------	------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of the Privacy Rule issued pursuant to the Health Insurance Portability and Accountability Act of 1996. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible health information privacy violations, for internal systems operations, or for routine uses, which include disclosure of information outside the Department for purposes associated with health information privacy compliance and as permitted by law. It is illegal for a covered entity to intimidate, threaten, coerce, discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under the Privacy Rule. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to our web site at: [www.hhs.gov/ocr/privacy/howtofile.html](http://www.hhs.gov/ocr/privacy/howtofile.html). To mail a complaint see reverse page for OCR Regional addresses.

**(The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.)**

**Do you need special accommodations for us to communicate with you about this complaint (check all that apply)?**

Braille     Large Print     Cassette tape     Computer diskette     Electronic mail     TDD

Sign language interpreter (specify language): \_\_\_\_\_

Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

**If we cannot reach you directly, is there someone we can contact to help us reach you?**

FIRST NAME		LAST NAME	
HOME PHONE (     )		WORK PHONE (     )	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

**Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed.)**

PERSON / AGENCY / ORGANIZATION / COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

**To help us better serve the public, please provide the following information for the person you believe had their health information privacy rights violated (you or the person on whose behalf you are filing).**

ETHNICITY (select one)      RACE (select one or more)

Hispanic or Latino       American Indian or Alaska Native       Asian       Native Hawaiian or Other Pacific Islander

Not Hispanic or Latino       Black or African American       White       Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English)      HOW DID YOU LEARN ABOUT THE OFFICE FOR CIVIL RIGHTS?

**To mail a complaint, please type or print, and return completed complaint to the OCR Regional Address based on the region where the alleged discrimination took place.**

<p align="center"><b>Region I - CT, ME, MA, NH, RI, VT</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services JFK Federal Building - Room 1875 Boston, MA 02203 (617) 565-1340; (617) 565-1343 (TDD) (617) 565-3809 FAX</p>	<p align="center"><b>Region V - IL, IN, MI, MN, OH, WI</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 233 N. Michigan Ave. - Suite 240 Chicago, IL 60601 (312) 886-2359; (312) 353-5693 (TDD) (312) 886-1807 FAX</p>	<p align="center"><b>Region IX - AZ, CA, HI, NV, AS, GU, The U.S. Affiliated Pacific Island Jurisdictions</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 50 United Nations Plaza - Room 322 San Francisco, CA 94102 (415) 437-8310; (415) 437-8311 (TDD) (415) 437-8329 FAX</p>
<p align="center"><b>Region II - NJ, NY, PR, VI</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 26 Federal Plaza - Suite 3313 New York, NY 10278 (212) 264-3313; (212) 264-2355 (TDD) (212) 264-3039 FAX</p>	<p align="center"><b>Region VI - AR, LA, NM, OK, TX</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 1301 Young Street - Suite 1169 Dallas, TX 75202 (214) 767-4056; (214) 767-8940 (TDD) (214) 767-0432 FAX</p>	
<p align="center"><b>Region III - DE, DC, MD, PA, VA, WV</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 150 S. Independence Mall West - Suite 372 Philadelphia, PA 19106-3499 (215) 861-4441; (215) 861-4440 (TDD) (215) 861-4431 FAX</p>	<p align="center"><b>Region VII - IA, KS, MO, NE</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 601 East 12th Street - Room 248 Kansas City, MO 64106 (816) 426-7278; (816) 426-7065 (TDD) (816) 426-3686 FAX</p>	<p align="center"><b>Region X - AK, ID, OR, WA</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 2201 Sixth Avenue - Mail Stop RX-11 Seattle, WA 98121 (206) 615-2290; (206) 615-2296 (TDD) (206) 615-2297 FAX</p>
<p align="center"><b>Region IV - AL, FL, GA, KY, MS, NC, SC, TN</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 61 Forsyth Street, SW. - Suite 3B70 Atlanta, GA 30323 (404) 562-7886; (404) 331-2867 (TDD) (404) 562-7881 FAX</p>	<p align="center"><b>Region VIII - CO, MT, ND, SD, UT, WY</b></p> <p>Office for Civil Rights Department of Health &amp; Human Services 1961 Stout Street - Room 1426 Denver, CO 80294 (303) 844-2024; (303) 844-3439 (TDD) (303) 844-2025 FAX</p>	


**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201.


HHS-700 (4/03) (BACK)

# Appendix C - Exhibit 6: New York City Civilian Review Board: Complaint Form

NYC Civilian Complaint Review Board - Complaint Form



always open



## New York City Civilian Complaint Review Board

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[Agency Structure](#)

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[New Developments](#)

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**CCRB Quick Links**

[History of the CCRB](#)

[Who Can File a Complaint](#)

[Why File a Complaint](#)

[How to File a Complaint](#)

[The Investigative Process](#)

[Mediation](#)

[Case Profiles](#)

[File a Complaint Online](#)

[Substantiated Cases](#)

[Police Discipline Process](#)

[CCRB Performance](#)

[Reports & Statistics](#)

[Public Meeting Schedule](#)

[Community Outreach](#)

[FAQs](#)

[Diversity](#)

[Employment Opportunities](#)

### Online Complaint Form

If you wish to file a complaint against a member of the New York City Police Department through our website, please complete the form below. Please fill in as much information as possible, including your contact information. (Refer to our "[How to File a Complaint](#)" page for other ways to file a complaint.)

**COMPLAINANT Information**

First Name:  Last Name:

Address:

City:  State:  Zip:

Date of Birth: Month:  Date:  Year:

Home Phone:

Business Phone:

Cellular Phone:

E-mail address:

Sex: M  F  Race:

Did you witness the incident complained of: Yes  No

If you are filing a complaint on behalf of someone else, what is your relationship, if any to the person(s):

Parent  Spouse  Relative  Guardian  Child  Friend  Other

Please provide as much of the following information as you can about the person(s) on whose behalf the complaint is filed and any witness(es) to the incident:

---

**VICTIM/WITNESS Information**

**Victim/Witness A**

Is this person a:  Victim  Witness

<https://www.nyc.gov/html/ccrb/html/complaint.html> (1 of 5) [11/13/2008 2:47:53 PM]

First Name:  Last Name:

Address:

City:  State:  Zip:

Date of Birth: Month:  Date:  Year:

Home Phone:

Business Phone:

Cellular Phone:

E-mail address:

Sex: M  F  Race:

**Victim/Witness B**

Is this person a:  Victim  Witness

First Name:  Last Name:

Address:

City:  State:  Zip:

Date of Birth: Month:  Date:  Year:

Home Phone:

Business Phone:

Cellular Phone:

E-mail address:

Sex: M  F  Race:

List any additional witnesses, along with their contact information, in your description of the incident.

---

**INCIDENT Information**



Date of Incident: Month:  Date:  Year:

Time of Incident:  :  AM

Location of Incident:

Borough

**Please provide a detailed description of the police officer(s):**

**OFFICER 1:**

Rank:  First Name:  Last Name:

Is this officer a  Subject Officer  Witness Officer

Sex:  Race:

Precinct/Command:  Shield #:

Plainclothes/In Uniform?  On Foot/In Car?

Patrol Car #:  License Plate #:  Car Marked/Unmarked?

Physical Description (eye color, hair color, approx. height & build, age, etc):

Please describe the role of this officer in the incident:

**OFFICER 2:**

Rank:  First Name:  Last Name:

Is this officer a  Subject Officer  Witness Officer

Sex:  Race:

Precinct/Command:  Shield #:

Sex:  Race:

Precinct/Command:  Shield #:

Plainclothes/In Uniform?  On Foot/In Car?

Patrol Car #:  License Plate #:  Car Marked/Unmarked?

Physical Description (eye color, hair color, approx. height & build, age, etc):

Please describe the role of this officer in the incident:

---

**Description of the Incident:**

Please enter as much detail as possible.

I have read the foregoing complaint and the contents thereof are true to the best of my knowledge:

True  False

**Please note: This online complaint form is hosted on a secure server.**

Appendix C - Exhibit 7:  
Las Vegas Metropolitan Police Department  
Citizen Review Board: Complaint Form

**Las Vegas Metropolitan Police Department  
Citizen Review Board**

**COMPLAINT**

Name of Complainant \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_  
(Street and Apt. #, if any)  
\_\_\_\_\_  
(City) (State) (zip code) (Social Security Number) (Date of birth)

**Complaint information: Location of incident \_\_\_\_\_**  
**Date of incident \_\_\_\_\_ Time of incident \_\_\_\_\_**  
**Name & P# of officer(s) \_\_\_\_\_**  
**you are alleging engaged in misconduct (the Board may only investigate**  
**conduct of officer(s) specifically named).**

***Statement of Complaint***

Please state in exact detail what occurred, names of all witnesses and police officers who observed the incident, name(s) of officers who engaged in alleged misconduct and what misconduct occurred, what injuries, if any, you suffered and all other facts related to the incident. Do not include unsubstantiated information, such as gossip or rumor. Attach any reports or documentation, such as photographs, medical or police reports, etc. which relate to the incident. Add additional pages, as needed, on 8" and 1/2" white paper.

I HEREBY REQUEST the Board investigate the conduct alleged in this complaint and take appropriate action, as authorized by law. I am the complainant in this complaint, and have prepared, read and fully understand all matters set forth in this complaint. I acknowledge that these proceedings are confidential as provided by law and certify that to the best of my knowledge the statements made herein are true.

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
CRB Staff only  
Date Received \_\_\_\_\_ Case No. \_\_\_\_\_ Status \_\_\_\_\_  
Type complaint \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING COMPLAINT FORM

Please fill out this form completely and describe in detail the incident that led to this complaint. Please be as clear and as specific as you can be and include as much information as possible. If you do not know the name(s) or badge number(s) of the officer(s) involved, please try and describe the individual to the best of your ability. If you need more space, please attach additional sheets as needed. Please type or print neatly using an ink pen. You may mail or hand deliver the complaint forms to the:

**Citizen Review Board  
310 S. Third Street, Suite 319  
Las Vegas, NV 89155**

*Please be sure to return both your complaint form and the preliminary questionnaire.* If you have any further questions or need help, you may contact our office **Monday through Friday between 8:00 a.m. to 12 p.m. and 1:00 to 5:00 p.m.** at **455-6322**. Should you move or change phone numbers, please let the review board know so that we may be able to contact you when necessary.

### PRELIMINARY QUESTIONNAIRE TO BE ANSWERED BY COMPLAINANT.

1. Is the officer whose conduct you are reporting employed as a police officer with the Las Vegas Metropolitan Police Department? \_\_\_\_\_
2. Is the conduct of said officer(s) the subject of an ongoing criminal investigation or prosecution, including appeal or forms of judicial review? \_\_\_\_\_
3. Has a complaint or claim been filed with the police department relating to this incident? If yes, please attach copies of complaint or claim. \_\_\_\_\_
4. Is the conduct of said officer(s) the subject of an ongoing internal investigation by the police department? If yes, the Citizen Review Board must wait for their investigation to be concluded prior to reviewing the case. \_\_\_\_\_
5. Has this conduct of the officer(s) previously been reviewed by the screening panel or the hearing panel of the Citizen Review Board? If yes, the Review Board may not review the same incident or conduct again. \_\_\_\_\_
6. Is this a request to review the findings of the completed internal investigation by LVMPD? If yes, please attach their findings. \_\_\_\_\_

# Appendix C - Exhibit 7: San Diego Citizens' Review Board on Police Practices: Complaint Form



City of San Diego  
Office of Ethics and Integrity  
Citizens' Review Board on Police Practices

**OFFICE USE ONLY**  
Received: \_\_\_\_\_  
To IA: \_\_\_\_\_

## Complaint Form

**INSTRUCTIONS FOR COMPLETING COMPLAINT FORM:**

Please describe the incident that led to this complaint, telling what happened from beginning to end. Be as clear and specific as you can be. What aspect(s) of the incident was improper (your specific complaint). How could it be resolved to your satisfaction?

COMPLAINANT NAME \_\_\_\_\_ HOME PHONE ( ) \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ BUS. PHONE ( ) \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ DOB \_\_\_\_\_

INCIDENT LOCATION:  
 \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

SDPD PERSONNEL INVOLVED:

NAME _____	BADGE # _____	ID # _____	DIVISION _____
NAME _____	BADGE # _____	ID # _____	DIVISION _____
NAME _____	BADGE # _____	ID # _____	DIVISION _____
NAME _____	BADGE # _____	ID # _____	DIVISION _____

WITNESS (ES):

NAME _____	HOME PHONE ( ) _____	BUS. PHONE ( ) _____
ADDRESS _____		DOB _____
NAME _____	HOME PHONE ( ) _____	BUS. PHONE ( ) _____
ADDRESS _____		DOB _____
NAME _____	HOME PHONE ( ) _____	BUS. PHONE ( ) _____
ADDRESS _____		DOB _____

INCIDENT DESCRIPTION/COMPLAINT:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Send complaint to: Executive Director, Citizens' Review Board on Police Practices, 1200 Third Avenue, Suite 916, San Diego, California 92101. For more information, please call (619) 236-6296. Fax: (619) 236-6423**

**(USE BACK OF FORM IF MORE SPACE IS NEEDED)**







American Civil Liberties Union  
of North Carolina  
Legal Foundation  
P.O. Box 28004,  
Raleigh, NC 27611  
Phone: (919) 834-3390  
[www.acluofnorthcarolina.org](http://www.acluofnorthcarolina.org)



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SCHOOL OF LAW

Immigration & Human Rights Policy Clinic  
University of North Carolina at Chapel Hill  
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