

Local Police and Immigration Laws Workshop

ACLU of Georgia Annual Conference
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For more information and additional resources, visit: www.aclu.org/immigrants

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ACLU-IMMIGRANTS' RIGHTS PROJECT

How to Oppose § 287(g) Agreements in Your State or Locality

The mixing of state and local law enforcement of federal immigration laws should be opposed in general because entire communities will lose trust in law enforcement if they fear reporting a crime they have been a victim or a witness to, making everyone less safe. Local police should not be in the business of enforcing immigration laws because it can lead to selective enforcement based on what people look or sound like. Immigration enforcement should be left to the federal government because police cannot be expected to know which types of immigration documents are valid or to make accurate determination about immigration status. Immigration laws are extremely complex and police do not have the necessary training.

When a police department or city government decides to enter into a 287(g) agreement, the negotiation process can provide opportunities for advocates to work in coalition with allies to safeguard civil liberties and civil rights. 287(g) agreements vary considerably in scope and it is vital that advocates for civil liberties are involved in the negotiations.

First and foremost, early intervention and the organization of an effective coalition may enable advocates to derail or defeat an MOU altogether.

Advocacy Before a 287(g) or MOU Comes to Your City or State

- Examine the relationship between local advocates and local police departments or elected officials. If a good relationship exists, there may be an opportunity to communicate concerns about the impact that an MOU will have on immigrant members of the community and to develop policies and procedures that address these concerns. If advocates do not have a good relationship with the local law enforcement agency, then this is a good time to start developing one. Domestic violence or other victims of violence groups usually have good contacts with law enforcement and have proven to be great allies on this issue. The Orange County office of the ACLU of Southern California, for example, joined the Advisory Committee on Community Issues (with symbolic status) and asked the Sheriff if they could conduct Know Your Rights presentations to the Committee.

- Develop a broad coalition of partners and unlikely allies. The ACLU of North Carolina, for example, developed a state-wide coalition specifically on 287(g)s and it included religious leaders, social workers, Latino leaders and the local Bill of Rights Defense Committee. The Orange County office of the ACLU of Southern California had just opened its office when they had to face a 287(g) agreement in their county and they had no partners at the time. They knocked on a lot of doors and got themselves invited to a lot of meetings of local community groups and did Power Point presentations on the possible impacts of an MOU. Both the ACLU of North Carolina and Southern California, developed materials and messaging that reflected local concerns and sensibilities.
- The broad coalition of advocates in Los Angeles County engaged in an education campaign of county officials to point out the problems arising from local police enforcement of immigration laws. Advocacy letters and meetings with city and county officials pointing out the potential for mistakes being made by county sheriffs due to insufficient training, helped to limit the scope of the MOU. County officials also included a sunset provision by which time the MOU had to be re-evaluated.
- Document existing local enforcement practices towards the immigrant community. Whether the locality has entered into an MOU or not, the more information advocates have on police practices, the better. The ACLU of North Carolina has used some of these stories in their public education efforts and has been able to turn people around. Collect and document stories and how immigrants are reacting to reports of local immigration enforcement by police. Examine whether racial profiling is taking place.
- Conduct Know Your Rights Presentations so community members are well informed about their rights and be prepared for an encounter with police.

If the MOU is Approved

If local officials insist on entering into an MOU with ICE, advocates can work on trying to limit the scope of the MOU in order to minimize the damage to community safety and policing.

- Limit the MOU to focus on specific mandates, such as terrorism-related investigations and not broad enforcement of immigration laws.
- Limit when officers can check the immigration status of a person until after they have been convicted of a felony.
- Limit the types of authority that police officers have to enforce immigration law.
- Clarify when an immigration officer can make arrests for immigration violations.

- Push for inclusion of sunset provisions that allow for the program to expire and be evaluated before renewing.
- Limit the number of police officers to a small specialize taskforce that is well trained on immigration laws.
- Officers should go through sufficient training on immigration laws that allow them to make accurate determinations about a person's immigration status. Under an MOU officers must undergo a five-week training course and are then directed and supervised by an ICE officer.
- Include information and referrals for victims of domestic violence.
- Include complaints procedure with clear guidelines and names the authorities it has to be sent to.
- Include a mandate for outside monitoring that tracks and evaluates how police are implementing the MOU with a mechanism for community input.

Safeguards Against Racial Profiling/ Post-MOU Advocacy

Any MOU should include a provision prohibiting state law enforcement officers from considering race in establishing probable cause or reasonable suspicion. Furthermore, the MOU should contain provisions requiring the collection of statistics about the racial demographics of individuals stopped by police using 287(g) authority so that any racially disparate effects can be monitored.

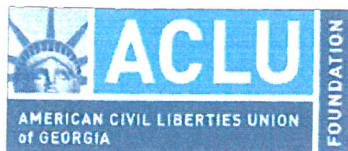
Advocates in several states and localities have developed hotlines for people to call and report incidents of racial profiling.

In some states, advocates are beginning to use the 287(g) complaint procedure as a tool for community education by publicizing it and letting people know how to get it and where to send it. They are also using it as a means to find out more about how the program is being conducted by filing FOIA requests.

Community Education

Even after an MOU has been passed, it is crucial for the immigrant community to receive information about their rights when encountering local enforcement officers. Advocates can engage in a campaign for community education to inform resident immigrants about the types of conduct that can attract the attention of police and/or get them arrested, such as driving without a license, speeding or driving while under the influence.

Always consider conducting these campaigns with the help of local ethnic print and electronic media. Immigrants get their information primarily from these sources, often in their native language, and already trust the source for information.



287(g) Fact Sheet

Background

287(g) Agreements (a.k.a. Memoranda of Understanding, MOUs, or Memoranda of Agreement, MOAs) are agreements between Immigration and Customs Enforcement (ICE) and a state, county, or city law enforcement agency which authorize a particular number of trained local law enforcement officers to perform certain functions of an immigration officer.

287(g) Agreements in Georgia

Three Sheriff Departments (**Cobb**, **Hall**, and **Whitfield**) entered into MOAs between February 2007 and February 2008. Additionally, the **Georgia Department of Public Safety** (including the State Patrol, the Georgia Bureau of Investigations, and the Georgia Department of Driver Licenses) has an MOA in effect with ICE. The **Gwinnett County** Board of Commissioners has authorized funding for an MOA, but as of September 2008, has not entered into one. They are expected to do so by October 2008.

287(g) Agreements provide for two types of local law enforcement deputization: Jail Enforcement Officers (JEOs) and Task Force Officers (TFOs). JEOs are officers assigned to jails, and TFOs are officers assigned to specific police task forces. Only officers who have undergone four weeks of ICE training have the authority to act under MOAs. These officers are subject to annual reviews.

287(g) Agreements County-by-County			
	Cobb	Whitfield	Hall
Authorized Detention Facility	No	Yes	Yes
Deputized Officers	12 JEOs	6 JEOs	Total of 9 JEOs and Anti-Gang Task Force officers (TFOs); TFOs are to "engage in law enforcement actions that are targeted against gang activity"
Common Powers	Interrogate anyone "believed to be an alien"; serve arrest warrants for immigration violations; take evidence and administer oaths; prepare charging documents; issue immigration detainers; transport arrested undocumented persons to ICE facilities		
Unique Powers	N/A		Officers may effect warrantless arrests for immigration-related offenses and felonies if there is a likelihood of escape before warrant could be obtained
Cost Burden	<u>Local</u> : Personnel salaries/benefits; transportation; interpreters in Whitfield and Hall <u>ICE</u> : Instructors; manuals; technology and tech support; interpreters in Cobb		
Complaint Procedure	Report to ICE Office of Professional Responsibility (877.246.8253); "It is expected that any complaint received will be resolved within 90 days"		

287(g) in Action in Cobb County

As the county with the earliest implemented MOA, most of the data about on-the-ground realities of 287(g) Agreements comes from Cobb. There, once a suspected undocumented person is taken into custody, an officer deputized as a JEO may inquire into immigration status. After payment of bond and/or fine for the arresting offense, JEO sometimes keeps the person in jail for up to 48 hours to inquire about immigration status and possibly place a hold. ICE then has 48 hours to pick up the detainee.

There is some question as to the legality of Cobb's practice of holding someone for 48 hours *after* the release date in order to investigate immigration status, in cases where there is no *existing* hold.

287(g) and Criminal Proceedings

Criminal proceedings may not be resolved before the detainee's immigration proceedings begin. If someone is released on bond and taken into ICE custody but receives a favorable immigration judgment, criminal prosecution may be resumed upon release from ICE detention.

IRP Talking Points

Local Police Enforcement of Immigration Laws

Several communities across the country are experimenting with using local police forces as immigration agents. In addition to being contrary to federal law, this endangers public safety.

General Statement

- Police should not be in the business of enforcing immigration laws. Enforcement of the nation's immigration laws should be left to the federal government and to the federal government alone.

Always describe how police enforcement of immigration laws endangers public safety for everyone.

- Immigrants' trust in local law enforcement is destroyed when police act as immigration agents. Without assurances that they will not be subject to an immigration investigation, detention, and possible deportation, many immigrants will not come forward with vital information about crimes.
- Everyone's safety, including U.S. citizens, is put in jeopardy when immigrants don't feel safe to come forward with critical information when crimes are committed against them, their families, or members of the larger community. Police depend on the cooperation and trust of immigrants, documented and undocumented, to ensure public safety.

Assert that local police enforcement of immigration laws will lead to widespread racial profiling.

- Local police enforcement of immigration law would give way to rampant racial profiling where people who look or sound foreign would be stopped or asked for proof of legal status. In this country, we value fairness and equality. There's nothing fair about police pulling people over for driving while brown or with an accent.
- Do we really want our police to be spending resources going after people because of what they look or sound like, instead of going after real criminals?

Assert that immigration enforcement is the responsibility of the federal government.

- Asking police to become experts in distinguishing valid forms of identification from invalid forms is an unrealistic expectation. Even immigration lawyers and federal agents can find it difficult to make determinations related to immigration status.

Point out that police resources are stretched thin already.

- Asking local and state law enforcement agencies to enforce federal immigration laws will strain their already overburdened resources and will require substantial resource commitments of time, training, and administrative costs that would further burden severely understaffed police departments. This is why many local police departments and sheriffs oppose immigration enforcement initiatives and have taken public positions against them.