

Congress of the United States
Washington, DC 20510

April 22, 2021

Submitted Via Electronic Mail

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
301 7th Street, SW, Mail Stop 0150
Washington, DC 20528

Dear Secretary Mayorkas:

We write to you to urge you to immediately terminate all existing 287(g) agreements. These agreements undermine public safety and result in the racial profiling and harassment of immigrant communities. In order for our immigration system to properly represent our American values, it is paramount that the Department of Homeland Security (DHS) implement critical changes in how it seeks to enforce federal immigration law.

In 1996, Congress passed and the President signed into law the Illegal Immigration Reform and Immigrant Responsibility Act, which under Section 287(g) authorized the Director of U.S. Immigration and Customs Enforcement (ICE) to “enter into agreements with state and local law enforcement agencies, that permit designated officers to perform limited immigration law enforcement functions.”¹ In other words, Section 287(g) allows certain deputized state and local law enforcement officers to function as federal immigration agents.

The 287(g) program has been flawed from the outset. As the Supreme Court has long recognized, “The authority to control immigration . . . is vested solely in the Federal Government.”² Ostensibly meant as a force multiplier, the 287(g) program subverts that authority and vests the enforcement of complex federal immigration law with state and local law enforcement. Even with the training of the deputized law enforcement, the clear import of the creation of Section 287(g) has been nothing short of problematic.

First and foremost, the 287(g) agreements clearly undermine public safety.³ Studies have shown how survivors of sexual assault, domestic violence, and human trafficking are fearful of coming

¹ U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, <https://www.ice.gov/identify-and-arrest/287g> (last visited Apr. 6, 2021).

² *Traux v. Raich*, 239 U.S. 33, 42 (1915).

³ See KATHRYN FINLEY, ACCESS TO JUSTICE IN A CLIMATE OF FEAR: NEW HURDLES AND BARRIERS FOR SURVIVORS OF HUMAN TRAFFICKING AND DOMESTIC VIOLENCE, CENTER FOR MIGRATION STUDIES (Jan. 29, 2019), https://cmsny.org/publications/finley-climate-of-fear/#_ftn8.

forward to report their crimes to law enforcement in jurisdictions where 287(g) agreements exist. Alarming, similar studies that have looked at localities that have adopted aggressive immigration control policies have found that they not only fail to lower crime rates, but also make community members feel less safe and undermine local economies.⁴

If that were not enough, it is also readily apparent that these agreements result in flagrant racial profiling and harassment of those in the immigrant community.⁵ Even the Department of Justice and DHS have recognized that 287(g) agreements have resulted in racial profiling and unconstitutional police practices.⁶ Yet, these agreements still exist.

Today, on April XX, 2021, we introduced the PROTECT Immigration Act, which would repeal Section 287(g) of the Immigration and Nationality Act once and for all. While it will take congressional action to repeal this provision of federal law, we strongly encourage DHS to terminate all existing 287(g) agreements immediately. This would represent a critical step in disentangling federal immigration enforcement from state and local law enforcement and improve the enforcement of our nation's federal immigration laws.

Sincerely,



Cory A. Booker
United States Senator



Mike Quigley
United States Representative



Pramila Jayapal
United States Representative

⁴ IMMIGRANTS' DEPORTATIONS, LOCAL CRIME, AND POLICE EFFECTIVENESS, IZA INSTITUTE OF LABOR ECONOMICS (June 2019), <http://ftp.iza.org/dp12413.pdf>.

⁵ See U.S. Dep't of Justice, Letter to Bill Montgomery, County Attorney, Maricopa County from Thomas E. Perez, Assistant Attorney General (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf.

⁶ *Id.*; U.S. Dep't of Homeland Security, Statement by Secretary Napolitano on DOJ's Findings on Discriminatory Policing in Maricopa Count (Dec. 15, 2011), <https://www.dhs.gov/news/2011/12/15/secretary-napolitano-doj-s-findings-discriminatory-policing-maricopa-county>.