



**The American Civil Liberties Union**

Written Statement  
For a Joint Hearing on

**The Public Safety and Civil Rights Implications of State and Local  
Enforcement of Federal Immigration Laws**

Submitted to the U.S. House of Representatives

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and  
International Law

and

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

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## **I. Introduction**

The American Civil Liberties Union (ACLU) commends both the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties for conducting a joint

program are pending approval.<sup>4</sup> ICE's budget for the program has increased as well, from \$5.4 million in 2007 to \$54.1 million in 2009.<sup>5</sup>

In addition to the 287(g) program, ICE has many other programs by which state and local authorities may investigate immigration law violations. State and local police, for example, may query into immigration status of individuals they arrest and book through ICE's Law Enforcement Support Center. ICE has Criminal Alien Program teams that respond to local law enforcement agencies' requests to determine alienage of individuals for crimes and other immigration violations. Secure Communities is a new program, created in 2008, that provides



The improper use of race or ethnicity in targeting suspects without reasonable suspicion or probable cause for stops, arrests and searches also violates the Fourth Amendment, which protects individuals from unreasonable searches and seizures.<sup>19</sup> Traffic stops are the most common reason for contact between police and the public.<sup>20</sup> An investigative stop of an automobile must be justified by some objective indication that the person is, or is about to be, engaged in criminal activity. In other words,

nearly 25 percent of the U.S. population by 2050<sup>27</sup>—Latinos have often been singled out as a group for immigration stops and inquiries by local law enforcement. Such race-based immigration enforcement imposes injustices on innocent racial and ethnic minorities, in particular reinforcing the harmful perception that Latinos—U.S. citizens and non-citizens alike—are presumed to be “illegal immigrants” and therefore not entitled to full and equal citizenship unless and until proven innocent or “legal.”

Because a person is not visibly identifiable as being undocumented, the basic problem with local police enforcing immigration law is that police officers who are often not adequately trained, and in some cases not trained at all, in federal immigration enforcement will improperly rely on race or ethnicity as a proxy for undocumented status. In 287(g) jurisdictions, for

researchers, who produced a resource guide on racial profiling data collection systems for the U.S. Department of Justice in November 2000, found that “in the high-discretion stop category,” such as traffic stops, racial profiling is a serious threat.<sup>29</sup> “These high-discretion stops invite both intentional and unintentional abuses. Police are just as subject to the racial and ethnic stereotypes they learn from our culture as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected.”<sup>30</sup>

#### **IV. Racial Profiling in Local Immigration Enforcement is a Real Phenomenon**

Existing data and other evidence suggests that

activity, sexual-related offenses, narcotics smuggling and money laundering,” and not “designed to allow state and local agencies to perform random street operations” or “impact issues such as excessive occupancy and day labor activities.”<sup>33</sup> Despite the program’s



Latino drivers were asked for permission to search their cars at a higher rate in 25 out of the 44 communities than white counterparts.<sup>42</sup>

### 3. Overt Hostility and Racism Against Latinos

This danger of racial profiling is further underscored by overt hostility and racism against Latinos in certain communities. Sheriff Steve Bizzell of Johnston County, North Carolina, a 287(g) applicant, has publicly acknowledged that “his goal is to reduce if not eliminate the immigrant population of Johnston County.”<sup>43</sup> He has described “Mexicans” as “trashy” people who “breed[] like rabbits” and “rape, rob and murder American citizens.”<sup>44</sup> In Alamance County, North Carolina, a 287(g) participant, Sheriff Terry Johnson has expressed similar views, assuming that all undocumented immigrants are Mexican and stating that “[Mexicans’] 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>45</sup>

### 4. Civil Rights Lawsuits Challenging Racial Profiling in Immigration Enforcement

Litigation brought by the ACLU and other groups, including the Mexican American Legal Defense and Educational Fund (MALDEF), confirms that racial profiling resulting from local enforcement of immigration laws is a serious problem. It is a problem that affects Latinos in both areas with emerging Latino populations



against him and without notice of his right to a hearing, to legal representation, or to be considered for release on bond.

*Latino Families Sue Southern New Mexico Otero County Sheriff's Office for Racial Profiling.*<sup>50</sup> The lawsuit charged sheriff's deputies with raiding the homes of Latino residents without search warrants, interrogating families without evidence of criminal activity, and targeting households on the basis of race and ethnicity. In one case, sheriff's deputies ousted a family from its home by banging loudly on the home's walls in the pre-dawn hours. Without a warrant, one deputy attempted to enter through an open bedroom window where the mother had been asleep, while another shouted from the front door. The case settled after the Sheriff's Department agreed to revise Operational Procedures to ensure that the rights of all Latinos living in the County would be protected and that they would not become the targets of immigration-related investigations and detentions without justification.<sup>51</sup> The County also agreed to pay the families monetary damages.

*Latino U.S. Citizen Unlawfully Deported to Mexico Sues Los Angeles County and ICE.* In the notorious case of Pedro Guzman, a Latino U.S. citizen born in California, Mr. Guzman was deported to Mexico because an employee of the Los Angeles County Sheriff's Office, despite documentation that Mr. Guzman was a US citizen, insisted that Mr. Guzman was a Mexican national. This story received broad national press attention, and Mr. Guzman's lawyers previously testified before Congress.<sup>52</sup> Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up being dumped in Mexico—a country where he had never lived—forced to eat out of trash cans and bathe in rivers for several months. His mother, also a U.S. citizen, took leave from her job to travel to Mexico to search for her son in jails and morgues. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. The illegal deportation of Mr. Guzman occurred pursuant to a 287(g) MOA between Los Angeles County and ICE. The ACLU of Southern California and law firm Morrison & Foerster LLP filed a civil suit last year against ICE on behalf of Mr. Guzman, alleging violation of his constitutional rights.<sup>53</sup>

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<sup>50</sup> The ACLU of New Mexico and Mexican American Legal Defense and Education Fund filed the lawsuit on behalf of five Latino families. See Daniel T. v. Board of Co. Commissioners for the County of Otero (D. NM Complaint filed Oct. 17, 2007), available at [http://www.aclu-nm.org/News\\_Events/news\\_10\\_17\\_07.html](http://www.aclu-nm.org/News_Events/news_10_17_07.html).

<sup>51</sup> Press Release,

## 5. Community Trust Broken As Result of Racial Profiling

In addition to being illegal and contrary to American values and human rights standards, racial profiling undermines the trust between the police and the communities they serve. Racial profiling sends the message that some citizens do not deserve equal protection under the law and creates fear in communities, rather than trust. Latino U.S. citizen children with parents who are either immigrants or citizens may fear coming in contact with police or any public officials, including school officials for fear that they or their parents or family members will be targeted by local enforcement because of their actual or perceived immigration status.<sup>54</sup> Thus, racial profiling deepens racial rifts, fueling the belief by people of color that law enforcement policies are unfair and justice is not blind. Respect and trust between law enforcement and communities of color are essential to successful police work.<sup>55</sup> It is for this reason that police organizations such as the International Association of Chiefs of Police have adopted resolutions condemning the practice of racial profiling.<sup>56</sup>

Indeed, without this necessary trust, local immigration enforcement also gives rise to abusive police practices against Latinos. Among recent examples of ineffective community policing and impact on children are the following:

*In Florida, Police Ignore Domestic Violence Victim and Arrest Sister Instead.*<sup>57</sup> In response to a 9-1-1 call placed as a result of a domestic assault, Tavares Police completely ignored the domestic violence call to which they were responding and instead immediately asked everyone inside the home for identification to prove their citizenship. The domestic violence victim had bruises on her neck and made several pleas to press charges against her boyfriend. But the Tavares Police officers, which are not authorized to enforce immigration law, refused to remove the assailant from the home and did not follow the procedures required by Florida law for assisting victims of domestic violence. Rather, they arrested the victim's sister, Rita Cote, a twenty-three-year-old mother of three, without charge, unjustly taking her away from her U.S. citizen husband and children over an outstanding deportation order. Local authorities then detained Mrs. Cote at Lake County Detention Center without charge and without review of her detention by a judicial officer for one week until ICE assumed custody.

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<sup>54</sup> See generally Sarah Auerbach,



## **V. ICE's Lack of Response to and Monitoring of Racial Profiling**

Despite the substantial evidence of discrimination against Latino immigrants and citizens by local police enforcement of immigration law, ICE has not responded to or monitored this serious problem. It is critical that ICE collect data on racial profiling and provide strong oversight of local police engaging in immigration enforcement. Without strong oversight, clear policies to ensure that stops and arrests are undertaken in a fair manner and without genuine consequences for individuals and agencies that engage in profiling, profiling is going to arise naturally and, importantly, without actual malice or racial animus on

way of knowing how many of these individuals, like U.S. citizen Pedro Guzman, may have been profiled and unlawfully deported.

Moreover, many victims of racial or ethnic profiling may not be aware that they were singled out because of their race or ethnicity, or they may be embarrassed or even ashamed to admit the same because they do not want to feel further humiliated if their complaints go unaddressed or unresolved. As one report, quoting a victim of racial profiling, explained: “It’s almost like somebody pulls your pants down around your ankles. You’re standing there nude, but you’ve got to act like there’s nothing happening.”<sup>64</sup> Victims of profiling “are left with ‘psychological scar tissue’ which can result in feelings of resentment, frustration, and outrage.”<sup>65</sup> Rather than rushing to the same agency responsible for their mistreatment to lodge complaints, victims of profiling may “question the very legitimacy” of the criminal justice system and instead go out of their way to avoid it.<sup>66</sup> Victims of profiling also may believe that complaining will be futile and unlikely to result in an effective remedy.

## **VI. ACLU Recommendations to Stop Race-Based Immigration Enforcement**

1. DHS should suspend the 287(g) program pending a comprehensive, detailed review of the 287(g) program. Review of the program shall include field hearings in those jurisdictions where 287(g) MOAs are in place. The 287(g) program review should be undertaken by independent experts charged with determining whether and to what extent these programs:

- Increase racial or ethnic profiling
- Enhance public safety
- Undermine community policing efforts
- Result in the arrest, detention, or deportation of U.S. citizens and legal permanent residents
- Reduce individuals’ likelihood of reporting crimes or serving as witnesses
- Reduce access to education, health, fire, and other services by immigrants and members of their families and communities
- Exceed the limitations established in the MOU/MOA
- Are sufficiently supervised by ICE personnel
- Collect data necessary to enable proper oversight
- Are subject to sufficient community, municipal, state and federal oversight
- Result in costs to the state/local participants
- Are cost-effective from the federal government’s perspective
- Undermine federal prosecutorial discretion or the ability of DHS to effectively set priorities in immigration enforcement

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<sup>64</sup> Mucchetti, *Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities*, 8 HARV. LATINO L. REV. 17 (2005).

<sup>65</sup> Id. (quoting David Harris) (citations omitted).

<sup>66</sup> Id. at 21 (noting that “legal and illegal immigrants may refrain from interacting with police since they fear being detained, interrogated or deported [and g]iven that these individuals generally live in ‘tightly knit communities,’ news of race-conscious police enforcement may spread fast and help foster a culture of fear and cynicism toward officers”).

2. ICE should require that all law enforcement agencies (“LEAs”) with 287(g) MOAs or MOUs or other agreements with ICE collect data on all contacts with the public. The data should include the following:

Date, time and location of the stop or contact

Length of the stop

Make and model of the vehicle and whether the motorist was local or from out-of-state

Race and ethnicity of the motorist

Reason for the stop

Result of the stop – i.e., whether a ticket was issued or an arrest was made, or



## **VII. Conclusion**

The enforcement of immigration laws by state and local law enforcement agencies, pursuant to the 287(g) program or other programs, raises serious concerns about racial and ethnic profiling against Latinos. The racial profiling of immigrant communities is not only illegal and ineffective, but also anathema to closely held American values of fairness and equality. Congress should act to rein in counter-productive and unlawful practices and suspend the 287(g) program.