

May 6, 2025

Dear Chief Marcus Whitney, Mayor Larry Dougherty, Sr., and Camden City Council Members,

According to Immigration and Customs Enforcement's (ICE) website, Camden city officials entered into the 287(g) agreement on April 29, 2025. While we are deeply concerned about the implications of this action, it was reassuring to hear Chief Whitney's declaration that you will be withdrawing from the program after community feedback. In light of the many risks of participating in the 287(g) program, it's vital that the withdrawal is done as expediently and completely as possible to limit community harm, as well as legal and financial repercussions.

The program, named for a section of the Immigration and Nationality Act, delegates federal authority to carry out certain immigration enforcement activities to police officers. It has a history of undermining trust in law enforcement, imposing serious financial burdens on municipalities, and making agencies vulnerable to costly lawsuits over civil rights violations. In fact, many law enforcement agencies have chosen to end their 287(g) participation or withdraw their application to the program for precisely these reasons.^[1]

1. Joining These Programs Would Harm Public Safety

Community trust is vital to achieving your mission. Unfortunately, studies show that many members of immigrant communities are afraid of interacting with police, even to report a serious crime or seek protection. According to one law enforcement study, "[a]s a result, perpetrators of crime often target immigrant communities, because they know that immigrants may be less likely to report crimes to police."² That undermines safety for all of us.

Participation in the 287(g) program would make those issues even worse. If immigrant communities were already wary of police, they will be doubly so if Camden Police Department does not follow through with withdrawing from the program and agrees to use local police to enforce immigration laws.

The Major Cities Chiefs Association, a group of police chiefs from the 64 largest police departments in the United States and Canada, has noted that "[l]ocal agencies have a clear need to foster trust and cooperation with



Delaware

100 W. 10th Street, Ste.706
Wilmington, DE, 19801
302-654-5326
www.aclu-de.org

Ariel Gruswitz
President

Mike Brickner
Executive Director

Dwayne Bensing
Legal Director

¹ See Anneliese Hermann, Center for American Progress, "287(g) Agreements Harm Individuals, Families, and Communities, But They Aren't Always Permanent," April 4, 2018, <https://ampr.gs/2KKRKk6>.

² Law Enforcement Immigration Task Force and Police Executive Research Forum, Building Trust with Immigrant Communities: Best Practices for Law Enforcement Agencies in Smaller Cities and Towns.
<https://www.policeforum.org/assets/BuildingTrustImmigrantCommunities.pdf>.

everyone in these communities.” It warns:

Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.³

In a recent study, a majority of prosecutors, judges, and police officers reported that ramped-up immigration enforcement makes it harder to protect local communities from crime.⁴ Academic studies have confirmed that immigrants avoid state and local authorities who act as a pipeline to the deportation system.⁵ An April 2018 study by the CATO Institute found that “287(g) failed to reduce crime while it increased the number of assaults against police officers.”⁶

2. Diverting Resources

Volunteering to perform the federal government’s job of enforcing civil immigration law would impose significant costs on your office that would ultimately be borne by your taxpayers. Under the governing federal statute, 8 U.S.C. § 1357(g)(1), ICE is prohibited from covering the costs of such agreements.⁷ Indeed, under the terms of the standard Memorandum of Agreement for the Task Force Model and other models, your office would be responsible for all salaries and benefits, including overtime, for officers designated under the agreement.

287(g) participation diverts limited police resources from addressing local safety needs. The towns of Winthrop and Monmouth, Maine recently explained this as part of their police departments’ decision to withdraw



³ Major Cities Chiefs Association, M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Police Agencies, June 2006, <https://bit.ly/2I55kPL>.

⁴ Rafaela Rodrigues et al., Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims, May 3, 2018, <https://bit.ly/2jvGfAr>; see also ACLU, Freezing Out Justice (2018) <https://bit.ly/2I73kGP>.

⁵ See, e.g., Marcella Alsan & Crystal S. Yang, Fear and the Safety Net: Evidence from Secure Communities, Harvard Law School, May 2018, <https://bit.ly/2kN47QJ>; Tom K. Wong, The Effects of Sanctuary Policies on Crime and the Economy, Center For American Progress, Jan. 26, 2017, <https://ampr.gs/2kxOchX>.

⁶ CATO At Liberty, “287(g) Does Not Fight Crime, but It Does Increase Assaults against Police Officers,” April 11, 2018, <https://bit.ly/2K8QCtq>; see also Andrew Forrester and Alex Nowrasteh, Cato Working Paper No. 52: “Do Immigration Enforcement Programs Reduce Crime? Evidence from the 287(g) Program in North Carolina,” April 11, 2018, <https://bit.ly/2I6FNWL>.

⁷ See 8 U.S.C. § 1357(g)(1) (authorizing the Attorney General to enter into written agreements “at the expense of the State or political subdivision”).

application to the 287(g) program:

“Under the program, ICE would not reimburse the Town for officers’ time and overtime as they carried out federal functions nor for the related use of local resources such as patrol vehicles. ICE reserves the right to assign/collocate officers with ICE agents to assist with criminal investigations. That could divert officers from their local duties.”⁸

Sheriff Richard Wiles of El Paso, Texas stated: “[Local officers] belong in the neighborhoods of our communities providing crime prevention services and maintaining order...not pulled out of neighborhoods to handle a Federal responsibility.”⁹ Likewise, Tom Manger, chief of police in Montgomery County, Maryland, and then-chairman of the Major Cities Chiefs’ Legislative Committee stated: “[M]ost jurisdictions are not taking the 287(g) training [because] local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security. Enforcing Federal law is an unfunded mandate that most agencies just cannot afford to do.”¹⁰

It is unwise to divert scarce law enforcement resources to subsidize dragnet federal immigration enforcement. While the Trump administration claims to target people with serious criminal records, it has failed to provide data to back up that characterization. In the meantime, we have seen scores of students, parents and their young children, and long-time residents who pose no public safety risk being arrested and, in many cases, swiftly deported.

3. Participation exposes you to the risk of costly litigation

State and local officers or deputies who engage in actions pursuant to the 287(g) program are liable for constitutional and legal violations.

Fourth Amendment Violations

Participation in the 287(g) program does not excuse you or your department from complying with the Fourth Amendment’s probable cause requirement. Unlike judicial warrants, which are issued by a neutral magistrate, ICE warrants are administrative forms issued by non-judicial ICE officers based on a purported civil immigration violation. If an ICE administrative warrant is not

⁸ Maine Wire, “Winthrop and Monmouth Back Out of ICE Partnership Program Citing Concerns About Legal Liability,” April 21, 2025, <https://www.themainewire.com/2025/04/winthrop-and-monmouth-back-out-of-ice-partnership-program-citing-concerns-about-legal-liability/>.

⁹ Statement of Richard David Wiles, El Paso, TX, County Sheriff’s Office, House Homeland

¹⁰ Statement of J. Thomas Manger, Chief, Montgomery County Police Dep’t, State of Maryland, House Homeland Security Committee Hearing, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law,” Mar. 4, 2009, <https://bit.ly/2ZiQnzG>.





supported by probable cause, it is a violation of the Fourth Amendment to detain someone for any period of time, and the law enforcement agency or council can be held liable for that unconstitutional detention. Courts have held that local law enforcement can be sued for detaining a person based on an ICE administrative warrant.¹¹ And there are numerous examples of local governments paying upwards of \$50,000 in settlements for unlawfully jailing someone under an improper ICE detainer.¹²

Civil Rights Violations

Additionally, you may face litigation related to civil rights violations arising from 287(g) program participation. Insofar as “the program requires that law enforcement officers investigate and interpret complex federal immigration laws—likely outside of their typical portfolio—the risk of racial profiling and other constitutional acts increases,” notes a study by Albany Law School’s Government Law Center.¹³ There is a serious risk that individual officers will commit civil rights violations.

Indeed, the history of 287(g), especially the newly revived Task Force Model of the program which your agency agreed to, provides ample reason to be concerned. Separate U.S. Department of Justice investigations of law enforcement practices arising from 287(g) programs in Maricopa County, Arizona and Alamance County, North Carolina found patterns of discrimination.¹⁴ Tasking local law enforcement with conducting interviews of individuals arrested on state criminal charges regarding their immigration status, screening individuals in DHS databases, deciding whether to start deportation proceedings and detaining individuals for immigration purposes will give rise to civil rights violations. Conducting these tasks will further lead to biased policing and racial profiling.

The 287(g) program tasks local law enforcement agents with making difficult

¹¹See, e.g., *Santos v. Frederick Cty. Bd. of Com’rs*, 725 F.3d 451, 463-65 (4th Cir. 2013) (deputies “violated Santos’s rights under the Fourth Amendment when they seized her solely on the basis of the outstanding civil ICE warrant”); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1255-56 (E.D. Wash. 2017) (holding that an ICE administrative warrant did not provide any arrest authority to local officers), vacated as moot, 716 Fed. App’x 741 (9th Cir. 2018); *Figueroa-Zarceno*, No. 17-cv-229 (N.D. Cal. settled 2017) (city pays \$190,000 settlement to person transferred to ICE based on administrative warrant).

¹² See ACLU, “Local jurisdictions remain legally vulnerable for honoring ICE detainers,” <https://bit.ly/2MDIJhT>.

¹³ Albany Law School Government Law Center, “When Local Law-Enforcement Officers Become ICE Deputies: 287(g) Agreements” <https://bit.ly/2ZimrTY>.

¹⁴ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep’t of Justice, to Bill Montgomery, Cty. Attorney, Maricopa Cty., Ariz., (Dec. 15, 2011), <https://bit.ly/2la2OKj>; Dep’t of Justice, “Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff’s Office,” Sept. 18, 2012, <https://bit.ly/2F1UacC>.



judgments about information offered by the individual detained, such as documentation or assertion of citizenship or immigration status that would make their arrest or detention unlawful. Numerous studies have documented a troubling pattern of ICE issuing detainers for thousands of U.S. citizens.¹⁵ In the illustrative case of Peter Sean Brown, a U.S. citizen who lives in the Florida Keys, ICE faxed a detainer to the Monroe County Sheriff's office after Brown reported there for violating probation with a low-level marijuana-related offense. When Brown told jail officers that he was a U.S. citizen and offered to show his birth certificate, officers relied on ICE's detainer to continue to hold him – exposing them to enormous financial liability.¹⁶ As the CATO Institute notes, "local officials often have additional information that could make it unreasonable for them to detain that arrestee on suspicion that he or she is an illegal immigrant."¹⁷

Civil rights violations by Camden Police Department acting under a 287(g) agreement may violate Title VI of the Civil Rights Act of 1964 and its implementing regulations, which prohibit discrimination by agencies receiving federal funding.¹⁸ They may also violate the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141), which authorizes the Department of Justice to file suit for declaratory and equitable relief against law enforcement agencies engaged in "patterns or practices" that violate the Constitution.¹⁹

Exposure to Liability

The federal government will not fully protect you, your staff or municipality from potential lawsuits and the risk of incurring substantial monetary damages. Although the existence of a 287(g) agreement may change some of the dynamics of potential litigation, the bottom line remains the same: If you act as an arm of ICE, you expose your agency and officers to litigation and liability.

¹⁵ See, e.g., ACLU of Florida, "Citizens On Hold: A Look at ICE's Flawed Detainer System in Miami-Dade County," Mar. 20, 2019, <https://bit.ly/2V250Vb>; TRAC Immigration, "Who Are the Targets of ICE Detainers," Feb. 20, 2013, <https://trac.syr.edu/immigration/reports/310/>; Eyder Peralta, "You Say You're An American, But What If You Had To Prove It Or Be Deported," Dec. 22, 2016, <https://n.pr/2rQlgQ8>; Christine Hauser, "U.S. Citizen Detained by ICE Is Awarded \$55,000 Settlement," Oct. 29, 2018, <https://nyti.ms/2Of21W1>.

¹⁶ See Spencer Amdur, ACLU, "Florida Sheriff Worked With ICE To Illegally Jail and Nearly Deport US Citizen," Dec. 3, 2018, <https://bit.ly/2Kb6T0P>

¹⁷ David J. Bier, CATO Institute, "U.S. Citizens Targeted by ICE," Aug. 29, 2018, <https://bit.ly/2IKnnKz>.

¹⁸ 42 U.S.C. § 2000d et seq. Title VI of the Civil Rights Act of 1964. Title VI provides: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

¹⁹ See, e.g., U.S. Dep't of Justice, Civil Rights Division letter to Mr. Bill Montgomery, County Attorney, Maricopa County, Dec. 15, 2011, <https://bit.ly/2la2OKj>.



It is true that section 287(g) of the Immigration and Nationality Act provides that law enforcement officials acting pursuant to a 287(g) agreement “shall be considered to be acting under color of Federal authority.”²⁰ But that provision does not immunize you from a lawsuit.

First, despite the existence of a 287(g) agreement, a city or county remains vulnerable to money damages claims under 8 U.S.C. § 1983 for violations of constitutional rights that can be traced to the municipality’s actions, policy, custom, or failure to train or supervise.²¹ Second, a city or county remains vulnerable to money damages claims under state tort law. Third, 287(g) deputized officers are bound by all federal civil rights laws, regulations and guidance regarding non-discrimination;²² 287(g) agreements do not authorize conduct that amounts to racial profiling or other constitutional violations.

The model ICE memorandum of agreement also states that law enforcement agency personnel named as personal-capacity defendants in litigation may request representation by the U.S. Department of Justice. However, this is a far cry from a guarantee of legal representation. The model agreement emphasizes that this is solely “at the discretion of DOJ; it is not an entitlement.” The Justice Department often declines to represent even federal agents sued in their individual capacities. Finally, even if the Justice Department represents an individual, any resulting money damages judgment would be against the officer (not the Justice Department).

3. The Administration’s Deportation Practices Are Inhumane and Arbitrary.

The 287(g) program implicates your office in deportation practices that target immigrants with deeply rooted lives in the United States—people who have built families, careers, businesses, and communities in our country over many years, sometimes decades. On his first day, President Trump eliminated ICE’s targeted enforcement priorities and instead instructed the agency to round up everyone who might be removable.²³

Your office should not lend its resources to these efforts. They do nothing to improve public safety or protect your community, and they betray the best of this nation’s values.

²⁰ 8 U.S.C. § 287(g)(8).

²¹ See *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978); see 8 U.S.C. § 1357(g)(8) (addressing only the “liability, and immunity from suit, of the officer or employee,” not the municipality).

²² See 8 U.S.C. § 287(g)(1) (authorizing the Attorney General to enter into agreements for state and local officials to carry out functions “to the extent consistent with State and local law”); Model Memorandum of Agreement for Warrant Service Office Program, sec. IV(I) (Appendix).

²³ Executive Order, “Protecting the American People Against Invasion” (Jan. 20, 2025) (rescinding prior ICE priorities, which had focused on people with criminal convictions, recent entrants, and national security concerns)

After you and your legal counsel review this letter, and in consideration of the risks that Camden Police Department would undoubtedly incur, we hope to see a full withdrawal process from the Task Force Model program or any other form of 287(g) agreement completed soon.

We would be pleased to discuss this and your path moving forward at your convenience.

Respectfully,



Javonne Rich
Policy and Advocacy Director
ACLU of Delaware



Delaware



Fleur McKendell
President
Delaware NAACP State Conference of Branches