

May 10, 2010

Secretary Janet Napolitano  
Department of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Napolitano:

We write to express our deep concern with the Department of Homeland Security's continued cooperation with state and local law enforcement in Arizona pursuant to Section 287(g) of the Immigration and Nationality Act ("the 287(g) program") in the aftermath of Arizona's passage of Senate Bill 1070, and we ask that you immediately rescind all 287(g) program agreements in Arizona.

We are grateful that President Obama has spoken out to correctly call the Arizona law "misguided." However, more than words are required from the federal government at this time. As we explain below, the enforcement of Arizona's law fundamentally depends on the use of federal government resources for the implementation of its racial profiling regime. **Unless DHS terminates all 287(g) program agreements in Arizona, the federal government will be complicit in the racial profiling that lies at the heart of the Arizona law.** Such a result would place the DHS at odds with this Administration's stated views on SB1070, and at odds with basic American values of tolerance and non-discrimination.

As you know, pursuant to the 287(g) program, DHS currently has agreements with at least eight state and local law enforcement agencies in Arizona, including the Arizona State Police. *See, e.g.,* Memorandum of Agreement between DHS and the Arizona Dept. of Public Safety, attached as Exhibit A. These agreements allow state and local police officers who have been trained by the federal government to engage in immigration enforcement activities. Arizona's SB1070, as amended, repeatedly states that Arizona will rely on these same "law enforcement officer[s] ... authorized by the federal government to verify or ascertain an alien's immigration status" to implement the racially-based system of document checks required by the misguided Arizona law.

A review of DHS's 287(g) program agreements in Arizona makes clear that once SB1070 becomes effective, DHS will be complicit in the enforcement of Arizona's misguided law in the following ways:

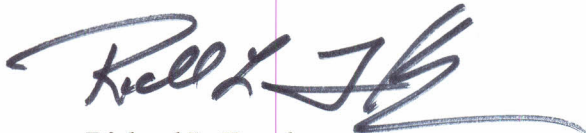
- **DHS will supervise the enforcement of SB1070 by Arizona police officers:** The 287(g) agreements provide that local police officers who engage in immigration enforcement activity are "supervised and directed by ICE supervisory officers or designated ICE team leaders." (Ex. A at 6)

- **DHS will provide the computers and software used by Arizona police to enforce SB1070:** The 287(g) agreements state that ICE will provide the computer hardware, software and technology used by state and local officers to check immigration status. (Ex. A at 5)
- **Arizona police officers will enjoy special federal protections if they are sued by individuals whose rights are violated during enforcement of SB1070:** The 287(g) agreements state that local officers “will be treated as Federal employees ... for purposes of the Federal Tort Claims Act” and “will enjoy the same defenses and immunities ... that are available to ICE officers from personal liability arising from tort lawsuits.” The agreements even state that the U.S. Department of Justice may defend local officers when they are sued for violating individuals’ rights while conducting immigration enforcement activities. (Ex. A at 7)
- **DHS will be complicit in racial profiling, even though federal guidelines prohibit the use of race in law enforcement decisions:** The 287(g) agreements require local officers who participate in the program to abide by the U.S. Department of Justice’s “Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies,” as well as the non-discrimination requirements that apply to recipients of federal funding under Title VI of the Civil Rights Act of 1964. (Ex. A at 8) The Justice Department’s Guidance states that in making routine law enforcement decisions “officers may not use race or ethnicity to any degree ... even where the use of race or ethnicity might otherwise be lawful.” Nevertheless, the Arizona law, even as amended, continues to permit local law enforcement officers to consider race and national origin as a basis for stopping Arizona residents—not to mention tourists, business travelers, and other visitors—and requiring them to show immigration documents.
- **DHS will be complicit in the undermining of federal immigration enforcement priorities:** The 287(g) agreements state that ICE “retains sole discretion in determining how it will manage its limited [immigration enforcement] resources” and that, consistent with this discretion, it will target aliens who have been convicted for serious criminal offenses such as “murder, manslaughter, rape, robbery, and kidnapping.” (Ex. A, at appendix D) SB 1070 will use up scarce federal enforcement resources to target individuals based on minor infractions of town or county ordinances—like an overgrown lawn or a fence in disrepair—in direct contradiction to federal policy.

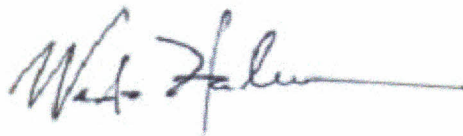
Fortunately, the 287(g) program agreements also allow ICE to terminate the contracts “at any time and for any reason,” leading to the “immediate revocation of all immigration enforcement authorizations delegated” to Arizona law enforcement officers under the 287(g) program. (Ex. A at 4) Indeed, ICE has recently stated that it will revoke 287(g) agreements where “any proof of racial profiling” by local law enforcement is discovered. *See* ICE, “Updated Facts on ICE’s 287(g) Program” (April 12, 2010).

We urgently request that you exercise your authority to immediately rescind all 287(g) program agreements in Arizona and, in this manner, avoid making the federal government complicit in the enforcement of Arizona's misguided law.

Sincerely,



Richard L. Trumka  
President  
AFL-CIO



Wade Henderson  
President & CEO  
The Leadership Conference  
on Civil and Human Rights

Attachment

cc: Senator Charles E. Schumer  
Senator Harry Reid  
Congresswoman Nancy Pelosi  
Congresswoman Zoe Lofgren