

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Via email

June 15, 2023

RE: Implementation of Department of Justice racial profiling guidance and 287(g) agreements

Dear Secretary Mayorkas,

As you are aware, on May 25, the Department of Justice (DOJ) released its revised Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability. The new guidance aims to limit profiling by federal law enforcement based on various stereotypes, instead encouraging them to employ “fair and unbiased law enforcement practices.” To that end, the guidance “prohibits consideration of a person’s race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, or disability status unless specific conditions are present,” as well as “the use of generalized assumptions or stereotypes about individuals or groups bearing these characteristics as a basis for law enforcement decision-making.”

On the same day, you issued a policy statement affirming that the 2023 DOJ Guidance is the policy of DHS and directing the DHS Office for Civil Rights and Civil Liberties to lead a department effort to update DHS nondiscrimination policies by September 30, 2023.¹ As DHS develops these updates and follow-on accountability and training measures, we urge it to address Immigration and Customs and Enforcement’s 287(g) program, through which the federal government provides resources and delegates authority to allow local law enforcement to enforce civil immigration law. The history of this program shows that it has encouraged exactly the illicit forms of racial profiling and stereotyping that the DOJ guidance seeks to eliminate. In fact, a recent ACLU report found that at least 65% of 287(g) participating agencies have records of a pattern of racial profiling and other serious civil rights violations.² It is perhaps not surprising that the most vocal proponents of 287(g) agreements are state executives and sheriffs already known for explicitly anti-immigrant, racially charged rhetoric. In states like Texas and Florida, 287(g) agreements have become harmful tools of law enforcement regimes that intentionally target immigrants, as well as potent political symbols for rightwing ideologues seeking to provoke white supremacist sentiment and foment anti-immigrant animus.

¹ Memorandum for DHS Agency and Officer Leaders from DHS Secretary Alejandro N. Mayorkas, Policy Statement 500-02, May 25, 2023.

² *ACLU, License to Abuse: How ICE’s 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations*, 2022, <https://www.aclu.org/report/license-abuse-how-ices-287g-program-empowers-racist-sheriffs>.

Meanwhile, serious policymakers trying to improve public safety have almost uniformly rejected 287(g) agreements. As 120 law enforcement professionals expressed in a March 2021 letter demanding the immediate cessation of 287(g) agreements, these agreements do not reduce crime and do not keep anyone safe.³ On the contrary, knowing that local law enforcement collaborates with ICE reduces residents' willingness to report crime or assist with investigations, seriously hampering law enforcement's ability to perform their jobs. Law enforcement officials are not the only ones who recognize the fatal flaws in 287(g) agreements: 60 members of Congress, 25 faith groups, and over 170 immigration and civil rights organizations have all recently written to you expressing their staunch opposition to the program, based on their view that the agreements damage public safety for all. Even President Biden himself has recognized that 287(g) agreements "undermine trust and cooperation between local law enforcement and the communities they are charged to protect."

One of DOJ's stated primary objectives in issuing new anti-profiling guidance is to "strengthen trust in law enforcement agencies and foster collaborative efforts between law enforcement and communities to fight crime and keep the Nation safe." The new guidance is designed to assist in that objective to promote "fair and unbiased law enforcement practices." The Department's implementation *must* include the elimination of 287(g) agreements, which undermine trust, decrease legitimacy, and reduce law enforcement efficacy across the country.

We urge you to use the opportunity DOJ's new guidance presents and the mandate it imposes to reassess and rescind 287(g) agreements, a failed policy turned political pawn.

For questions or to discuss this letter further, please contact Sirine Shebaya at sirine@nipnl.org or at 202-656-4788.

Sincerely,

ACLU People Power Fairfax
African Communities Together (ACT)
American Civil Liberties Union (ACLU)
American Immigration Council
American-Arab Anti-Discrimination Committee (ADC)
Americans for Immigrant Justice

³ See Alex Nowrasteh, "Trump Executive Order Reestablishes 'Secure Communities,'" Jan. 25, 2017, <https://www.cato.org/blog/trump-executiveorder-reestablishes-secure-communities>. See also Nick Miroff, "Study finds no crime increase in cities that adopted 'sanctuary' policies, despite Trump claims," Washington Post, Oct. 21, 2020, https://www.washingtonpost.com/national/sanctuary-city-study-immigration-crime/2020/10/21/5810d13a-12fa11eb-82af-864652063d61_story.html.

Asian American Center of Frederick
Asian American Scholar Forum
Asian Americans Advancing Justice - AAJC
Asian Americans Advancing Justice-Atlanta
Asylum Seeker Advocacy Project (ASAP)
Athens Immigrant Rights Coalition
Bend the Arc: Jewish Action
Black Alliance for Just Immigration (BAJI)
Black and Brown United in Action
Black LGBTQIA+ Migrant Project (BLMP)
Border Network for Human Rights
Bridges Faith Initiative
Capital Area Immigrants' Rights (CAIR) Coalition
Carolina Migrant Network
Center for Victims of Torture
Centro de los Derechos del Migrante (CDM)
Coalición de Derechos Humanos
Coalition of Labor Union Women, AFL-CIO
Coalition on Human Needs
Colorado Immigrant Rights Coalition
Communities United for Status & Protection (CUSP)
Community Asylum Seekers Project
Community EsTr(El/La)
Connecticut Shoreline Indivisible
Diocesan Migrant and Refugee Services Inc
Edu-Futuro
El CENTRO de Igualdad y Derechos
El Refugio
Faith In Action
Families for Freedom
First Friends of New Jersey & New York
Frederick County Progressives
Freedom for Immigrants
Georgia Human Rights Clinic

Georgia Latino Alliance for Human Rights
Haitian Bridge Alliance
Houston Immigration Legal Services Collaborative
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Resource Center (ILRC)
Immigrant Defenders Law Center
Immigrant Justice Ministry of Cedar Lane Unitarian Universalist Congregation
Immigrant Legal Advocacy Project
Immigration Services and Legal Advocacy (ISLA)
Inter-Faith Committee on Latin America
Interfaith Welcome Coalition - San Antonio
Iowa Migrant Movement for Justice
Jewish Activists for Immigration Justice of Western MA
Justice for Migrant Women
Justice Strategies
Latin America Working Group
Legal Aid Justice Center
Latino Commission on AIDS
Mariposa Legal, program of Common Foundation
Maryland Legislative Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition
Migrant Equity Southeast
Minnesota Freedom Fund
MPower Change
National Council of Jewish Women
National Day Laborer Organizing Network (NDLON)
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project (NIPNLG)
National Network for Immigrant and Refugee Rights (NNIRR)
NETWORK Lobby for Catholic Social Justice
Never Again Action
New Sanctuary Coalition

New York Immigration Coalition
ORALE: Organizing Rooted in Abolition Liberation and Empowerment
Quixote Center
RAICES
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network
Ruiz Immigration Law, LLC
Sanctuary and Resistance to Injustice
Society of the flora, fauna & friend
Somos South Georgia
Southern Border Communities Coalition
Southern Poverty Law Center
Sur Legal Collaborative
The Resurrection Project
The Sikh Coalition
The Workers Circle
Transformations CDC
TransPowerinDiversity
U-Lead Athens
UndocuBlack Network
Unitarian Universalists for Social Justice
United Fort Worth
United We Dream
Washington Defender Association
Welcoming America
Westchester Jewish Coalition for Immigration
Wind of the Spirit Immigrant Resource Center
Women Watch Afrika, Inc.

Cc:

Shoba Sivaprasad Wadhia, Officer for Civil Rights and Civil Liberties
Tae Johnson, Acting Director of Immigration Customs and Enforcement