

ACLU Kansas
Hot Topics Series

Local Police and 287(g) Agreements

287(g) Agreements

Across the country, legislators and policymakers have attempted to crack down on illegal immigration by contracting with local law enforcement to enforce immigration policy. But **being undocumented is not a crime**,¹ and local law enforcement have no obligation to help the federal government enforce immigration law.²

However, dozens of sheriff's offices across the country—including two in Kansas—spend local resources and collaborate with Immigration and Customs Enforcement (ICE) to identify, detain, and turn over noncitizens for deportation. One way ICE enlists local law enforcement is through the 287(g) program, a set of agreements that deputize local officers to perform immigration enforcement functions, primarily in jails. Since their inception, 287(g) agreements have given rise to racial profiling, civil rights violations, and breakdowns in community relations. Nevertheless, the Trump administration dramatically expanded the program, with no signs of a rollback under the Biden administration. As a result, 287(g) agreements continue to disrupt communities and fuel racism and xenophobia in Kansas and around the country.

How do 287(g) agreements work?

Under the 287(g) program, sheriff's deputies and other officers gain immigration enforcement authority with little vetting or training. Section 287(g) of the Immigration and Nationality Act allows state and local law enforcement, pursuant to a written agreement with ICE, to take on some of the functions of immigration officers, including "investigation, apprehension, or detention."⁶ Most participating agencies are county sheriff's offices, but some are police or corrections departments.⁷ As of March 2022, 142 agencies were participating in the program.⁸

The 287(g) program is just one of several ways local law enforcement works with ICE. The Criminal Alien Program allows ICE itself to screen people in the custody of local law enforcement.⁹ Secure Communities allows law enforcement to send fingerprints of people in custody to the Department of Homeland Security (DHS).¹⁰ ICE detainers allow ICE to ask local authorities to detain a person for up to 48 hours past their release date.¹¹ In many local communities, therefore, any encounter with law enforcement carries a risk of detention and deportation, even if an offense was minor.

Types of Agreements

There are two types of 287(g) agreements. First, there is the **jail enforcement model**. Under this model, local law enforcement can interview people in custody to determine their immigration status and detain them for ICE pick-up.¹² Officers go through a four-week training at the ICE academy in South Carolina.¹³ The second model is the **warrant service officer model**. This type of agreement was created under the Trump administration to circumvent state and local policy preventing law enforcement from

¹ AMERICAN IMMIGRATION COUNCIL, PROSECUTING PEOPLE COMING TO THE UNITED STATES 2 (Aug. 23, 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/prosecuting_people_for_coming_to_the_united_states.pdf. Illegal entry is a federal misdemeanor, while illegal *reentry* is a felony. *Id.*

² Immigration and Nationality Act § 287(g)(9)-(10), 8 U.S.C. § 1357 287(g)(9)-(10).

³ See AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM: AN OVERVIEW 5-8 (July 8, 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_287g_program_an_overview.pdf.

⁴ AMERICAN CIVIL LIBERTIES UNION, LICENSE TO ABUSE: HOW ICE'S 287(G) PROGRAM EMPOWERS RACIST SHERIFFS AND CIVIL RIGHTS VIOLATIONS 21 (2022).

⁵ *Id.* at 24.

⁶ Immigration and National Act § 287(g)(1), 8 U.S.C. § 1357 287(g)(1).

⁷ *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/identify-and-arrest/287g> (last updated March 4, 2022).

⁸ *Id.*

⁹ AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM, at 5.

¹⁰ *Id.*

¹¹ Backgrounder on ICE Detainer Requests, American Civil Liberties Union (Jan. 31, 2019), https://www.aclu.org/sites/default/files/field_document/aclu_backgrounder_on_detainers_1.31.19_-_public.pdf.

¹² AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM, at 2.

honoring ICE detainers.¹⁴ Under this model, officers cannot interrogate people in custody about their immigration status, but they can identify people as foreign-born during the booking process, refer them to ICE, and serve ICE warrants on people in custody.¹⁵ Officers can be deputized to act under the warrant service officer model after just eight hours of training on immigration law.¹⁶ One day of training allows officers to profoundly disrupt the lives of people living in their communities.

Expansion under Trump

287(g) agreements skyrocketed under the Trump administration, which directed ICE to sign up as many new agencies as it could.¹⁷ In addition, the administration removed automatic end dates for many agreements¹⁸ and prevented DHS from vetting the civil rights records of agencies applying to the program.¹⁹ The massive

expansion of the program was part of an agenda of cruelty. The administration also prioritized more people for deportation, expanded family separation, and punished sanctuary cities.²⁰ During his campaign, Joe Biden criticized the 287(g) program and promised to end the new agreements, but since taking office only one agreement has ended.²¹ Immigrants continue to face deportation if they are ensnared in the criminal legal system.

287(g) agreements in Kansas

In 2020, the Finney County and Jackson County Sheriff's Offices entered into 287(g) agreements with ICE.²² Both use the warrant service officer model, meaning designated officers are empowered to serve warrants of arrest or removal for immigration violations on people in custody²³ – with just one day of training.

Over the eight years, there was an active movement in Kansas to limit communications and cooperation between local law enforcement and ICE, as well as make municipal IDs available to make it easier for immigrants and others to access social services.²⁴ In February 2022, Wyandotte County passed a Safe and Welcoming ordinance, which allowed residents without a photo identification to obtain a municipal ID.²⁵ The ordinance also prohibited local law enforcement from working with ICE in most circumstances.²⁶ However, three months later, in clear retaliation for the Wyandotte community's solidarity and activism, the Kansas legislature enacted a law preventing municipalities from limiting law enforcement cooperation with federal immigration authorities and banning the use of municipal ID cards for state identification purposes.²⁷ Governor Laura Kelly signed this bill into law over the objection of multiple communities, including the team of

¹³ *Id.* at 3.

¹⁴ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, 287(G) WARRANT SERVICE OFFICER (WSO) MODEL (FEB. 2022), <https://www.ice.gov/doclib/about/offices/ero/pdf/WSOPromo.pdf>.

¹⁵ AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM, at 2.

¹⁶ *Id.* at 4.

¹⁷ David Nakamura, *Memos Signed by DHS Secretary Describe Sweeping New Guidelines for Deporting Illegal Immigrants*, WASH. POST (Feb. 18, 2017), https://www.washingtonpost.com/politics/memos-signed-by-dhs-secretary-describe-sweeping-new-guidelines-for-deporting-illegal-immigrants/2017/02/18/7538c072-f62c-11e6-8d72-263470bf0401_story.html.

¹⁸ AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM, at 2.

¹⁹ ACLU, LICENSE TO ABUSE, at 22.

²⁰ *Id.* at 21.

²¹ *Id.* at 24.

²² *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S.

IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/identify-and-arrest/287g> (last updated March 4, 2022).

²³ Memorandum of Agreement, U.S. Immigrations and Customs Enforcement and Finney County Sheriff's Office, App'x. A (Feb. 28, 2020), https://www.ice.gov/doclib/287gMOA/287gWSO_FinneyCoKS2020-03-17.pdf; Memorandum of Agreement, U.S. Immigrations and Customs Enforcement and Jackson County Sheriff's Office, App'x. A (May 28, 2020), https://www.ice.gov/doclib/287gMOA/287gWSO_JacksonCoKS_07-23-2020.pdf.

²⁴ See What is the Safe and Welcoming Ordinance? Safe & Welcoming Wyandotte, <https://www.wycoid.org/> (last visited June 3, 2022).

²⁵ KMBC, Wyandotte County Passes Safe and Welcoming City Act (Feb. 11, 2022), <https://www.kmbc.com/article/unified-government-of-wyandotte-county-passes-safe-and-welcoming-city-ordinance/39041550#>

²⁶ *Id.*

²⁷ Sarah Motter, *Governor Signs Bill to Ban Sanctuary Cities in Kansas*, 13 WIBW (Apr. 11, 2022), <https://www.wibw.com/2022/04/11/governor-signs-bill-ban-sanctuary-cities-kansas>.

advocates and activists that made the Wyandotte County ordinance a reality. This legislation means that cities and counties in Kansas have no local control over whether their own law enforcement agencies enter into 287(g) agreements or otherwise collaborate with ICE. With this legislation, communities lost an important means of protecting their own members.

Problems with the 287(g) Program

Racial profiling, xenophobia, and civil rights violations

Racism flourishes under 287(g) agreements. Agencies operating under the agreements are rife with racial profiling, and their leaders have a history of xenophobic rhetoric. Racial profiling occurs when police use a person's race or ethnicity as grounds to suspect them of a crime—or in this case, an immigration violation. A national study by the ACLU found that two-thirds

or more of the law enforcement agencies participating in the 287(g) program had histories of racial profiling, excessive force, or inhumane detention facilities.²⁸

287(g) agreements are meant to operate only in jails, so agencies get creative in taking people into custody. Some participating agencies use minor offenses—for example, a traffic violation—as pretext, or an excuse to arrest people, bring them to jail, and put them through immigration screening.²⁹ Black and Brown individuals are disproportionately subject to pretextual police stops and arrests, with officers using last names, appearance, or place of birth as motivation to stop a person.³⁰ For example, officers in Frederick County, Maryland stopped a woman, told her she had a burnt-out tail light, asked her if she was a citizen, told her she had an immigration problem, and then let her go only after they determined immigration officials were not available to take her into custody at that moment.³¹ After Davidson County, Tennessee joined the 287(g) program, “the

arrest rates for Latinx individuals driving without a license more than doubled.”³² 287(g) agreements are a vehicle of terror in immigrant communities, where any minor misstep—or, in the Maryland woman's case, no offense at all—can lead to deportation.

287(g) agreements, moreover, are part of some elected sheriffs' anti-immigrant agendas. The ACLU found that more than half of participating sheriffs had made anti-immigrant statements or promoted inhumane border policies.³³ Anti-immigrant rhetoric includes falsely casting immigrants as threats to public safety and the American way of life.³⁴ In its survey, the ACLU identified Finney County Sheriff Michael Warrant as having advocated for inhumane federal policies related to immigration detention.³⁵ Jackson County Sheriff Tim Morse also advocated for such policies and expressed anti-immigrant sentiment, and has a record of racial profiling, civil rights violations, and inhumane jail conditions.³⁶

²⁸ ACLU, LICENSE TO ABUSE, at 32-33. In the early 2010s, several studies found that 287(g) participants were racially profiling residents and violating their civil rights; those agreements were terminated as a result. Abigail F. Kolker, *The 287(g) Program: State and Local Immigration Enforcement*, CONGRESSIONAL RESEARCH SERVICE (Aug. 12, 2021).

²⁹ ACLU, LICENSE TO ABUSE, at 14.

³⁰ *Id.*

³¹ *Id.* at 4.

³² *Id.* at 14.

³³ ACLU, LICENSE TO ABUSE, at 26-28.

³⁴ *Id.* at 26.

³⁵ *Id.* at 45.

³⁶ *Id.*

Costs and Lack of Oversight

In addition to being racist, xenophobic, and cruel, 287(g) programs are often poorly run, costing taxpayers money and leading to significant opportunities for abuse. The Trump administration expanded the program without accounting for rising costs and created the warrant service officer model without a plan to track its effectiveness.³⁷ Nor does ICE track deportations due to 287(g) agreements, compliance or satisfaction with the program, or the resolution of complaints.³⁸ Participating agencies were initially required to hold “steering committee” meetings to track effectiveness, but the membership and agenda of the committees was never clear—and the meetings have long been optional.³⁹ Moreover, the program costs participating agencies millions⁴⁰ that could otherwise be spent in areas that do not actively terrorize immigrant communities.

Breakdown in community relations

287(g) agreements—which, on the ground, signify the constant possibility that a person could be stopped, arrested, and deported for little to no reason—cause immigrants to fear and avoid local law enforcement.⁴¹ This also deters community members from reporting crimes, seeking out victim support, and even going to the hospital for fear of encountering law enforcement.⁴² Agencies have reported that their relationships with Latino and immigrant communities have been damaged.⁴³ Entire communities suffer when their members are at risk of arrest or deportation for seeking out healthcare or other services. A city is hardly safer when an entire class of residents loses access to necessities of life. In these ways, 287(g) agreements are destructive for entire communities.

Ending 287g agreements

Section 287(g) agreements deputize local law enforcement officers to enforce federal immigration laws with inadequate training, little oversight, and few safeguards against racial profiling and civil rights violations. Kansas recently took away municipalities’ ability to curtail these programs, removing an important barrier to expanding the program at will. Ending 287(g) agreements in Kansas and around the country would make communities safer, supportive, and more welcoming.

³⁷ Department of Homeland Security Office of the Inspector General, *Lack of Planning Hinders Effective Oversight and Management of ICE’s Expanding 287(g) Program 1* (Sept. 19, 2018); Government Accountability Office, *Immigration Enforcement: ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements* (Jan. 2021).

³⁸ ACLU, LICENSE TO ABUSE, at 35.

³⁹ *Id.* at 36.

⁴⁰ AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM, at 6-7.

⁴¹ ACLU, LICENSE TO ABUSE, at 36.

⁴² *Id.* at 16.

⁴³ AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM, at 8.