



July 22, 2009

Sheriff Douglas Gillespie
Las Vegas Metropolitan Police Department
3141 Sunrise Avenue
Las Vegas, Nevada 89101

Dear Sheriff Gillespie:

The ACLU of Nevada is writing to express its concerns about the 287(g) program. Despite the fact that Immigration and Customs Enforcement (“ICE”) has issued a new Memorandum of Agreement (“MOA”) purporting to alleviate concerns with 287(g), the changes that have been made are troubling to the ACLU of Nevada. They do not eliminate our prior concerns with the program, and instead may lead to more misuse of the program. The ACLU urges Metro not to re-sign the MOA with ICE. Rather, Metro should take this opportunity to walk away from 287(g) so that it can more effectively serve all members of the local community and do what it does best – enforce local laws.

First and foremost, immigration enforcement is a federal issue. Metro should not be taking on the responsibilities of the federal government, especially when these responsibilities carry with them expenses that Metro must pay. These concerns are especially heightened given the economic crisis. Under the old MOA, Metro has already spent money to obtain training for its officers to participate in 287(g). In addition, the new MOA explicitly states that Metro will also be responsible for facility upgrades and any installation and recurring costs that are incurred in order to use ICE equipment. (Section X of new MOA.) It is especially risky for Metro to expend these resources because ICE can cancel the program at a moment’s notice. (Section XXII of new MOA.) Metro should not be using its funds to support a federal immigration program but should be using its resources to enforce local laws.

Second, participating in the 287(g) program hinders Metro’s ability to effectively serve and protect the Las Vegas community. The program diverts attention from serious crimes committed by both undocumented and documented people. Even more importantly, though, the program makes immigrant communities more hesitant to reach out to Metro to report crimes or serve as witnesses. In a recent community meeting about the 287(g) program, which Metro officers attended, community leaders testified that they and their neighbors have become afraid of the police and have stopped contacting Metro for assistance. Instead of increasing safety in the community, the program has only heightened fear of the police and made it more difficult for Metro to do its job.

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Third, the ACLU of Nevada is concerned about the possibility of racial profiling occurring because of the 287(g) program. While the ACLU understands that Metro's version of the 287(g) program is a jail-based one, it believes that the concern is still valid under the new MOA. Although Metro has stated that its official policy prohibits police on the street from asking people about their immigration status, officers who attended the community meeting stated that they have the right to ask people about their immigration status and Social Security numbers. This practice is disconcerting and opens the door to discriminatory behavior. That door is further opened by the new MOA, which provides a catchall provision allowing ICE to assume custody of anyone arrested on a case-by-case basis. (Section III of new MOA.) The combination of Metro's practice and the 287(g) program has led to problems, some of which were revealed at the community meeting. For example, an immigration attorney spoke of two clients who were arrested for jaywalking and not having a light on the back of a bicycle. Both were then questioned about their immigration status and had their information handed over to ICE.

The new MOA is also troubling because it includes a termination clause whereby ICE can decide to discontinue an agreement with an agency if it determines that that agency no longer needs the program. (Section XXII of new MOA.) The ACLU of Nevada is concerned that this addition will put pressure on Metro to make sure its arrest and detention numbers demonstrate its continued need for the 287(g) program. Rather than subjecting itself to such control by the federal government, Metro should take the opportunity to back out of the 287(g) program completely.

Fourth, the ACLU of Nevada has serious reservations about the reduction of transparency and accountability under the new MOA. Though both the old and new MOAs provide a complaint mechanism, the ACLU questions the wisdom of placing the burden of reporting abuses on individuals who have been detained under the 287(g) program. It is especially unlikely that these individuals will be able to complain if they have been deported. Moreover, the new MOA has less stringent tracking and reporting requirements than the old MOA, further reducing transparency. (Section XII of new MOA.) Metro has boasted that it is one of the most transparent law enforcement agencies in the country. The new MOA will do nothing to protect that reputation; rather, it will jeopardize it by not requiring rigorous oversight.

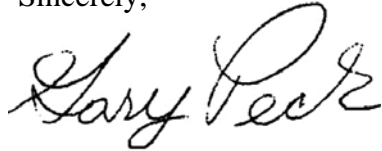
The new MOA also jeopardizes Metro's relationship with the public by withholding all 287(g) related materials from public scrutiny. (Section XIX of new MOA.) If Metro signs the new MOA, it will give ICE the unilateral power to decide what information can be released to the public. It is extremely disturbing to the ACLU that the federal government is asking Metro to do its work and then claiming that Metro's records are controlled by the federal government.

Based on these serious concerns, the community's objections, as well as the negative interactions with Metro that have occurred under the 287(g) program, the ACLU of Nevada strongly recommends that Metro reject 287(g) and focus on

building relationships with all members of the community in order to improve the safety of all Las Vegans.

As ever, please feel free to contact the ACLU of Nevada if you would like to discuss 287(g) and these issues. We would welcome the opportunity.

Sincerely,

A handwritten signature in black ink that reads "Gary Peck". The signature is written in a cursive style with a large, prominent initial "G".

Gary Peck
Executive Director
ACLU of Nevada

cc: Oscar Goodman, Mayor of Las Vegas
Las Vegas City Council
Clark County Board of Commissioners
Vivek Malhotra, Immigrants' Rights Project of the ACLU