



COBB COUNTY SHERIFF'S OFFICE

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NEIL WARREN
SHERIFF

LYNDA COKER
CHIEF DEPUTY

November 9, 2009

Mr. Shawn Harriman
287(g) National Program Manager
Office of State and Local Coordination
U.S. Immigration and Customs Enforcement
500 12th Street SW – Office 5024
Washington, DC 20024

Dear Mr. Harriman:

In early October of this year the American Civil Liberties Union (ACLU) published a report concerning the implementation of the Section 287(g) program in Cobb County, Georgia. Although the purpose of the ACLU report was to discourage the continuation of the 287(g) program in Cobb County, the parties have nevertheless entered into a new Memorandum of Agreement subsequent to the publication of that report.

Notwithstanding that a new MOA is now in place, I remain deeply concerned about the numerous misstatements of fact, unsubstantiated allegations and innuendos made by the ACLU. Following the publication of the ACLU report, my staff and I have thoroughly reviewed our policies and procedures in conjunction with the 287(g) program. Attached you will find my response to the ACLU's inaccurate and inflammatory accusations.

Please know that the Cobb County Sheriff's Office is proud to work in partnership with ICE and Homeland Security in an effort to enforce this nation's laws. My Office takes its 287(g) responsibilities seriously and will continue to work closely with our ICE colleagues to achieve our collective goals.

I look forward to our continued partnership and cooperative association.

Sincerely,
A handwritten signature in black ink that reads "Neil Warren".

Neil Warren

cc: Senator Saxby Chambliss
Senator Johnny Isakson
Congressman Phil Gingrey
Congressman Tom Price
Senator Doug Stoner

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cc: Senator Chip Rogers
Senator Judson Hill
Senator Steven Thompson
Senator John Wiles
Representative Judy Manning
Representative Don Wix
Representative Rich Golick
Representative Ed Setzler
Representative Earl Ehrhart
Representative Terry Johnson
Representative Pat Dooley
Representative Alisha Morgan
Representative Rob Teilhet
Representative Sharon Cooper
Representative Don Parson
Representative Bobby Franklin
Representative Sheila Jones
Representative Matt Dollar
Chairman Samuel Olens
Commissioner Helen Goreham
Commissioner Woody Thompson
Commissioner Tim Lee
Commissioner Bob Ott

**RESPONSE
OF THE
COBB COUNTY SHERIFF'S OFFICE
TO THE ACLU REPORT ON 287(g)**

INTRODUCTION

The American Civil Liberties Union Foundation of Georgia (ACLU) recently filed a report concerning the implementation of Section 287(g) of the Immigration and Nationality Act¹ [287 (g)] in Cobb County Georgia. The report is entitled Terror and Isolation in Cobb: How Unchecked Police Power under (sic) 287(g) Has Torn Families Apart and Threatened Public Safety (the ACLU Report). The ACLU Report was intended to persuade The Cobb County Sheriff's Office (CCSO) and/or the United States Immigration and Enforcement agency (ICE), a component of the Department of Homeland Security, to refrain from renewing their Memorandum of Agreement (MOA) under 287(g).² An obvious, but unstated, purpose of the ACLU Report is clearly an attempt by the ACLU to further its effort to insulate illegal aliens from applicable immigration laws.

Among other things, the ACLU Report alleges that the CCSO and other law enforcement agencies in Cobb County routinely engage in wide spread racial profiling and other abusive tactics and that this alleged conduct is the direct result of the implementation of the MOA under 287(g). In attempting to make its case, the ACLU Report is replete with incorrect and inflammatory statements that are not only offensive and insulting to the men and women of law enforcement in Cobb County, but also

¹ Title 8, Chapter 12, Subchapter II, Part IX, § 1357.

² A New MOA was signed by the CCSO on October 13, 2009.

counter-productive to the establishment and maintenance of good community relations of which the ACLU professes such a deep concern.

The ACLU Report falls woefully short of achieving its intended purpose. Instead, it repeatedly obfuscates the roles of the various law enforcement agencies in Cobb County and their relationship, if any, to the implementation of 287(g). Section 287(g), as implemented in Cobb County, is simply an administrative tool that makes additional resources available to ICE to assist that agency in identifying aliens that are in this country contrary to law and to begin processing them for deportation under other existing laws. According to its Report, the ACLU does not want ICE to have the resources it needs to fulfill its duties under the law. If the ACLU does not like existing immigration and deportation laws, it should focus its efforts on changing those laws rather than attempt to deny law enforcement agencies adequate resources to do their jobs.

HOW 287(g) WORKS IN COBB COUNTY

Section 287(g) provides in part:

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

By enacting the Immigration and Nationality Act, and specifically Section 287(g), Congress recognized that federal immigration authorities were overwhelmed by the tide of illegal aliens flowing into the United States and the risk this illegal entry posed if left

unchecked. The 287(g) program envisions a partnership between ICE and local law enforcement agencies and serves as a force multiplier in resources available to ICE in the performance of its immigration enforcement duties under existing law. The program requires that Sheriff's Office personnel performing ICE functions be specially trained to have knowledge of federal law relating to those functions and be certified by ICE to perform those duties.

The 287(g) program, as it is implemented in Cobb County, addresses only those individuals who come into jail custody charged with state or local offenses. Pursuant to the Vienna Convention, the Sheriff's Office is required to identify all foreign nationals in jail custody and provide them with the opportunity to contact their embassy. Depending upon the country, notification of the embassy is mandatory, regardless of the wishes of the arrestee. It makes no difference to the CCSO why the individuals were arrested and brought to the jail. Once they are in jail custody, the obligation to properly identify them begins.

The 287(g) program provides the Sheriff's Office with access to ICE databases and facilitates the accurate identification of foreign nationals. If an individual is determined by an ICE-certified deputy to be in the country illegally, the deputy completes the ICE paperwork and places a detainer on the individual. After there is a disposition of the state or local charges, ICE is notified and may take custody of that person. The final decision as to whether ICE will take custody of the inmate and institute deportation proceedings remains with ICE; and any decision to actually deport rests with federal immigration officials, not the Cobb County Sheriff's Office.

During the initial intake process and throughout the period of local incarceration, any inmate who cannot communicate effectively in English is provided with interpreter services. These services are available from a staff member who speaks their native language, a professional interpreter, the Central Interpreter Services provided by ICE or through the use of AT&T Language Line services.

Foreign nationals are verbally notified during the intake process of their right to contact their consulate. If the individual is from a country requiring consulate notification, facility staff makes such notification during the intake process. In either instance, a form is completed detailing when and by whom the notification is made and the inmate is asked to sign the form, evidencing the notification.

Foreign nationals coming into jail custody are screened by ICE trained staff to ascertain their immigration status. Those individuals determined to be in the United States illegally are processed for removal pursuant to the guidelines established by Immigration and Customs Enforcement. These guidelines permit, but do not require, a foreign national to consent to voluntary removal. No one is required to sign anything against his or her will.

When inmates have completed the booking process and are moved to general population, they are provided with an inmate handbook, which among other things, outlines the inmate grievance procedure. Additionally, inmates being processed for removal are provided with an ICE National Detainee Handbook that is printed both in English and Spanish. These handbooks explain the removal process and fully outline ICE complaint procedures. The complaint procedures are also posted in the dorms housing inmates with ICE detainees.

**THE ACLU REPORT FAILS TO ESTABLISH ANY
RELATIONSHIP BETWEEN THE 287(g) MOA AND ITS
ALLEGATIONS OF MISCONDUCT BY LAW
ENFORCEMENT AGENCIES IN COBB COUNTY**

The ACLU Report repeatedly infers that Cobb County has abused the authority granted to it under the terms of the MOA. The vague and unsubstantiated assertions made by the Report make numerous references to these alleged abuses by various law enforcement agencies in the County. The MOA is an agreement between the CCSO and ICE. It does not include participation by, or extend authority to, any other law enforcement entity in the county. The ACLU Report acknowledges this fact on pages five and six of the Report. Yet, it continuously confuses (whether on purpose or not) the roles of the several law enforcement agencies in Cobb County. For example, the ACLU Report suggests numerous times that the Cobb County Police Department (CCPD) abuses the authority granted under the MOA.³ This assertion by the ACLU is a blatant misstatement of the facts because, as the ACLU well knows, the MOA does not grant any authority to the CCPD and has no legal impact whatsoever on that agency's operations. The ACLU either does not understand the relationship between the various law enforcement agencies or is deliberately attempting to mislead readers about how the 287(g) program works in Cobb County. As previously explained, the 287(g) program does not come into play until after an individual is placed into jail custody. If racial profiling played a role in the arrest of an individual, – and there is no substantial evidence

³ “Cobb officers” have misused authority granted under the agreement, Report, p.7; “Cobb law enforcement and jail personnel” abuse power granted by the contract, Report, p. 7; “Cobb County law enforcement agents” are committing egregious Constitutional and human rights violations under the cloak of federal immigration law enforcement, Report, p. 7; “Local law enforcement” abuse the program by intimidating and racially profiling immigrant communities, Report, p. 7; “Police and Cobb jail personnel” have misused the program to arrest and deport members of the community, Report, p. 22. Moreover, the last reference is a blatant falsehood. Although some individuals may have been arrested for traffic violations, they were deported because they entered the country illegally, not because of the traffic citations. In addition, they were deported by ICE personnel, not Cobb County police or the Sheriff's Office.

that such has occurred – it would have happened during the arrest procedure by an agency that has no authority under 287(g). Moreover, the ICE-certified Sheriff's deputy performing 287(g) functions does not make arrests and therefore cannot be accused of racial profiling. Thus, to the extent there may have been any misconduct by any party, there has been no credible showing that it occurred because there was an agreement between ICE and the CCSO to determine the identity and legal status of an individual. None of the incidents referenced in the ACLU Report have anything whatsoever to do with the existence of the 287(g) program. Other than to simply state that the 287(g) program encourages bad acts by law enforcement, the ACLU has offered no data or other information that there is any kind of relationship between the existence of the 287(g) MOA and the acts of which it complains.

Indeed, the ACLU Report offers nothing, other than unsubstantiated anecdotal references, concerning racial profiling. In each of the ten examples cited in the Report (except one which was unknown) the ACLU gives specific reasons why the individual was stopped and/or arrested. The Report does not allege or even suggest the reasons for stopping or arresting the individuals were for something that did not occur or is otherwise incorrect. Nor does the ACLU deny the illegal status of any of the individuals that were held for further processing by ICE and ultimately deported. The Report only infers that the reasons the people were taken into custody in the first place were for traffic violations that were minor in nature.⁴ The Report does not mention the number of non-Latino people who were stopped and arrested or released for similar violations. These

⁴ The ACLU does not object that the individuals were deported because they had entered the country illegally. It objects to their deportation because their identity as an illegal alien was discovered because of a minor traffic offense. The ACLU argument seems to be that if someone is discovered to be in the country illegally pursuant to a minor traffic violation, his/her illegal status should be ignored and the laws providing for his/her deportation should be ignored as well.

unsubstantiated accusations hardly rise to the level of credible proof that Cobb residents who appear to be foreign born have been subjected to rampant racial profiling and are routinely picked up for non-existent violations.⁵ Thus, there is nothing in the ACLU Report from which one could reasonably conclude that systematic racial profiling is occurring in Cobb County.

Cobb County Sheriff Neil Warren has stated on several occasions that his office does not engage in racial profiling and that if there was any indication that anyone in his office was targeting any specific group of people that he would deal with it promptly and in a professional manner. To this date the CCSO has not had any formal complaints regarding racial profiling.⁶ G.B. Hatfield, Cobb County Police Chief, has made similar comments, expressing the impossibility of responding to accusations of racial profiling if those making the allegations do not cooperate by giving sufficient information to investigate the claim. If the ACLU or any other advocacy group or individual is serious about pursuing a claim concerning racial profiling or any other alleged misconduct involving law enforcement, it should bring all of its factual information and other data to the attention of the appropriate agency. Sheriff Warren and the other heads of law enforcement in Cobb County are eager to see that their services are provided to everyone in the county on a fair and equal basis. On the other hand, if the ACLU and others continue to make vague and unsupported accusations regarding racial profiling in an effort to prevent the enforcement of existing immigration laws, there is little that the

⁵ ACLU Report, p. 7.

⁶ The ACLU Report at page 7 asserts the complaint mechanisms provided in the MOA have not been publicized and community members are unaware that they can voice their concern with perceived objectionable treatment. The ACLU and other immigrant advocacy groups are well aware of these complaint mechanisms and are in as good a position, if not a better position, to publicize their existence. The ACLU and other immigrant advocacy organizations need to own up to their responsibility as advocates for the immigrant community instead of attempting to shed that responsibility onto someone else.

CCSO can do in the way of making a meaningful response. The CCSO is more than willing to discuss these matters with anyone concerned.

CONCLUSION

Section 287(g) does not require the deportation of anyone. It merely provides additional resources to ICE through agreements with State or local law enforcement agencies so that ICE can fulfill its duties under the law. It is clear that the ACLU is opposed to the implementation of Section 287(g) because it does not want ICE or the Department of Homeland Security to have sufficient resources to enforce existing immigration and deportation laws. Apparently the ACLU is unwilling to take a public stand urging the repeal of current deportation requirements, but will go so far as to advocate that those laws not be enforced by limiting the resources that are necessary to do the job. The ACLU Report contends there is an abuse of the authority granted to the CCSO under the MOA, but offers no specific examples of what authority is being abused or how it is allegedly being abused. The ACLU Report complains about racial profiling in Cobb County, but puts forth neither sufficient evidence to support an investigation of the existence of such profiling, nor evidence of any relationship between the alleged profiling and the implementation of the Section 287(g) MOA. As stated many times in the past, the CCSO does not engage in racial profiling. If the ACLU or anyone else has a specific complaint concerning racial profiling, they should bring it to the attention of the CCSO or other appropriate law enforcement agency and it will be acted upon. Overall, the contents of the ACLU Report totally lack any justification to refrain from implementing the provisions of the Section 287(g) program in Cobb County.