

**REPLY TO U.S. RESPONSE TO SPECIFIC RECOMMENDATIONS IDENTIFIED BY THE CERD:
THE RISE OF RACIAL PROFILING, DISCRIMINATION AND ABUSE IN IMMIGRANT COMMUNITIES
AS A RESULT OF LOCAL ENFORCEMENT OF IMMIGRATION LAWS**

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On behalf of:
National Day Labor Organizing Network

Arizona
Respect/Respeto
Somos America

Florida
Farmworker Association of Florida
Central Florida Jobs with Justice
Farmworker Self-Help
Florida Immigrant Coalition
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North Carolina
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As the Committee undertakes its review of the U.S. response to the Periodic Review of U.S. compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, we ask the Committee to urge the United States to take affirmative measures to combat the racial profiling and discrimination experienced within immigrant communities across the United States at the hands of local law enforcement officials seeking to execute federal laws regulating immigrant detention and removal. Specifically, we call upon the Committee to take into consideration the dramatic rise in violations of the ICERD's guarantees against discrimination on account of race, national origin and ethnicity directly attributable to the 287(g) agreements entered into between the U.S. Department of Homeland Security and local law enforcement officials. In light of the rise in abuses carried out in communities where 287(g) agreements are in effect, we request the CERD to urge the United States to rescind its 287(g) agreements. We further request that the CERD call upon the United States collect and investigate data related to the race, nationality and ethnicity of individuals targeted by local law officials for detention and removal, and in furtherance of its human rights obligations under the ICERD, revisit all agreements and practices that arm local law enforcement with the authority and information to engage in federal immigration enforcement activities resulting in racial profiling and discriminatory and abusive treatment.

BACKGROUND

Section 287(g) of the Immigration and Nationality Act authorizes the Department of Homeland Security through the Immigration and Customs Enforcement Unit (“ICE”) to enter into written agreements under which state or local law enforcement agencies can perform certain functions of an immigration officer, with ICE training and under ICE supervision.¹ The program has grown enormously, from an unused provision that garnered little attention and use when it was introduced through legislation in 1996, to a \$54.1 million dollar program with some 672 participating state and local law enforcement agencies. Since January 2006, the Department of Homeland Security, of which ICE is a subagency, has credited the 287(g) program with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally. More than 950 officers have been trained and certified through the program under 67 active agreements.

While ICE describes the program’s objectives to address serious criminal activity, both the U.S. Government Accountability Office (GAO) and reports by advocacy organizations have roundly criticized it because: in practice it has often focused on routine enforcement of immigration laws and petty crime; and, in its implementation, the program has simply landed many people in jail, resulting not in criminal prosecutions for serious crime, but only in deportation. The GAO has found that the program lacks standards, training and oversight. As this report will show, human rights and civil rights violations, especially those related to racial profiling, are commonplace wherever it has been implemented.³

As part of the CERD’s review of U.S. compliance under the ICERD, U.S. based international human rights, civil rights and immigrant rights groups collaborated in the presentation of a Shadow Report regarding rights violations throughout the United States resulting from U.S. state and federal immigration enforcement. As participants of the U.S. Human Rights Network’s Working Group on (im)migration, we were among the nearly thirty organizations and individuals joining the more than 120 organizations and representatives from civil society collaborating on the U.S. Human Rights Network Shadow report submitted to the CERD in December 2007, and attended the US government review in Geneva in February 2008. In section IV.B of that report, we addressed the discriminatory impact of U.S. immigration Enforcement on the Rights of Immigrants, examining both pervasive rights violations on the border between the United States and Mexico and internally within the United States including increased worksite enforcement, home raids, and community enforcement and racial profiling. As we explained in our report:

69. Local law enforcement has increasingly entered into Memoranda of Understanding with the Department of Homeland Security wherein local law enforcement receive money and training to enforce the nation’s immigration laws. Immigrant rights

¹ The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g).

² U.S. Immigration and Customs Enforcement, The ICE 287(g) Program: A Law Enforcement Partnership, Nov. 19, 2008. Available at http://www.ice.gov/pi/news/factsheets/section287_g.htm

³ United States Government Accountability Office, Report to Congressional Requesters, Immigration Enforcement, Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws, January 2009.

advocates, local officials, social service providers and others historically argued that this delegation of authority could discourage the immigrant community from assisting law enforcement in community policing efforts. In addition, if local authorities begin to enforce immigration laws, the most vulnerable members of the immigrant community, including victims of domestic violence, trafficking, and other crimes, may be further isolated by their abusers (who often use immigration status to manipulate their victims) or simply by their own fear of arrest and deportation. Such fears are not unfounded.

Since the CERD's Periodic Review of the United States in Geneva in February 2008, those fears have been realized time and again in communities throughout the United States as we have witnessed a rise in the 287(g) and other collaborative agreements between the U.S. Department of Homeland Security and county law enforcement agencies, and a rise in abuses of that authority that continue unabated without reprimand or other forms of accountability.

287(g) AND INTERNATIONAL HUMAN RIGHTS LAW

The international community has stated clearly that all individuals, regardless of their migration status, are entitled to fundamental due process. Furthermore, while States have the sovereign right to make determinations as to whom it will allow within its borders and to whom it will grant legal status and certain benefits, States must take all necessary measures to ensure that it does not discriminate based on nationality, race or language in enforcing its immigration laws.

Specifically, in its 2004 General Report, the CERD called upon States to:

7. Ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens;

* * * *

19. Ensure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards; [and]

* * * *

21. Combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights;⁴

With regard to U.S. policies and practices, the international community has voiced concern about the U.S. operation of its detention and deportation policies and practices. In Concluding Observations after its 2006 Periodic Review of U.S. compliance with the ICCPR, the UN Human Rights Committee requested "concrete measures adopted to ensure that only agents who have received adequate training on immigration issues enforce immigration laws."

⁴ United Nations, Report of the Committee on the Elimination of Racial Discrimination, General Recommendations (2004).

In 2008, the CERD voiced a more pointed concern about racial profiling and police brutality against immigrants. While the Concluding Observation and Recommendation specifically addressed the NSEERS program, both have equal applicability to the enactment and implementation of 287(g) agreements.

14. The Committee notes with concern that despite the measures adopted at the federal and state levels to combat racial profiling – including the elaboration by the Civil Rights Division of the U.S. Department of Justice of the *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* – such practice continues to be widespread. In particular, the Committee is deeply concerned about the increase in racial profiling against Arabs, Muslims and South Asians in the wake of the 9/11 attack, as well as about the development of the National Entry and Exit Registration System (NEERS) for nationals of 25 countries, all located in the Middle East, South Asia or North Africa. (Articles 2 and 5 (b))

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its efforts to combat racial profiling at the federal and state levels, *inter alia* by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation. The Committee also draws the attention of the State party to its general recommendation no. 30 (2004) on discrimination against non-citizens, according to which measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and urges the State party, in accordance with article 2, paragraph 1 (c), of the Convention, to put an end to the National Entry and Exit Registration System (NEERS) and to eliminate other forms of racial profiling against Arabs, Muslims and South Asians.⁵

The CERD also voiced concern about racial discrimination in the administration and functioning of the criminal justice system⁶ and excessive force and brutality by law enforcement officials,

⁵ United Nations, Report of the Committee on the Elimination of Racial Discrimination for the United States (2008)

⁶ *Id.*, Concluding Observation 20 and Recommendation:

The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the State party, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings. (Article 5 (a))

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, according to which stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, may be regarded as factual indicators of racial discrimination, the Committee recommends that the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.

including toward Latino and African-American persons and undocumented migrants at the U.S.-Mexico border.⁷

While the U.S. Response, submitted in January 2009, emphasized efforts the federal government is taking to investigate claims of racial profiling, and in particular the training provided through the Department of Homeland Security, it fails to adequately address racial profiling and discrimination occurring at the hands of state and county police, and makes no reference to the role that ICE's delegation of its immigration enforcement authorities has had in creating a culture of profiling, discrimination and fear within immigrant communities.

EGREGIOUS VIOLATIONS OF ICERD UNDER 287(g)

Maricopa County, AZ

Nowhere have the racial profiling effects of the 287(g) program been more acute than in Maricopa County, AZ. Sheriff Joe Arpaio of Maricopa County is one of the country's main proponents of 287(g). Under his watch, 160 deputies have been trained by ICE.⁸ Together with 3000 volunteer "posse" members, they have engaged in what they call "crime suppression sweeps," house to house raids in Latino and Native American neighborhoods.⁹ In October of 2007, these sweeps began in front of a local furniture store where day laborers gather to seek work in odd jobs such as landscaping, construction, and moving.¹⁰

The Sheriff's actions raise grave questions about racial profiling. An investigative series by a local newspaper found that in 97% of the car stops made by the department in 2006 and 2007, supposedly for suspected smuggling, deputies made no arrests and wrote no tickets for violations of state law.¹¹ Instead, car stops were based on such petty offenses as broken

⁷ Id., Concluding Observation and Recommendation 25:

While recognizing the efforts made by the State party to combat the pervasive phenomenon of police brutality, the Committee remains concerned about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border. The Committee also notes with concern that despite the efforts made by the State party to prosecute law enforcement officials for criminal misconduct, impunity of police officers responsible for abuses allegedly remains a widespread problem. (Articles 5 (b) and 6)

The Committee recommends that the State party increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, *inter alia* by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee further requests the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

⁸ Id., at 37.

⁹ Id., at 39-41.

¹⁰ Andrew Stelzer, *The Selma of Immigration Rights*, IN THESE TIMES, November 2008, at www.inthesetimes.com/article/continued/3973/the_selma_of_immigration_rights/.

¹¹ Ryan Gabrielson and Paul Giblin, *Reasonable Doubt, Part III*, EAST VALLEY TRIBUNE, July 11, 2008, at http://www.eastvalleytribune.com/page/reasonable_doubt.

windshields, broken taillights, unsafe lane changes or obscured license plates.¹² A more recent review of raids conducted in 2008 found that even where the “crime suppression sweeps” took place in white neighborhoods, most of those arrested were Latino.¹³

In June, 2008, 30 Maricopa County Sheriff’s deputies, and 30 posse members served search warrants at 2 a.m. at Mesa City Hall and at Mesa Public Library, arresting a number of janitors. In that same month, a landscaper named Pedro Marquina reported being stopped and arrested by the Sheriff’s deputies, only being released when he could prove citizenship.¹⁴ In August of 2008, the sheriff arrested some 12 Latino corn vendors, one of whom reports he was arrested for refusing to answer questions about his immigration status.¹⁵ In some cases, deputies making routine car stops have been hooded.¹⁶ In a recent case caught on video, a deputy separated a mother from her two young children, who are then presented with a stuffed toy. The mother was stopped, according to the children and their aunt, for a broken taillight.¹⁷

Early in his career, the Sheriff made headlines by marching jail inmates, clad in nothing but pink boxers and flip flops, through town on their way to a tent city jail, where he boasted of feeding them green bologna. More recently, on February 4, 2009, the Sheriff paraded 200 inmates, nearly all people of color accused of immigration violations, through the city streets. The men were dressed in old-fashioned black and white striped jailhouse clothing, shackled by their feet, and marched to the tent city.¹⁸ In the middle of June 2009, after an inmate died, apparently of heat stroke, after spending four hours in 108 degree weather at a state-run outdoor holding cell, the State of Arizona abandoned the practice of holding inmates in non-shaded outdoor cages.¹⁹

Sheriff Arpaio has, however, continued to hold inmates in tent jails. In a video made by journalists in June 2008, he bragged that the temperatures in these tents were up to 148 degrees Fahrenheit.²⁰ The Sheriff’s lack of concern about the health and safety of inmates raises serious concerns. Under his watch, more than 60 people have died in custody since

¹² Id.

¹³ Daniel Gonzalez, *Crime-sweep records raise suspicions of racial profiling*, THE ARIZONA REPUBLIC, October 5, 2008.

¹⁴ Id.

¹⁵ *Sheriff Arpaio targets food vendors, undocumented immigrants*, ABC15.com August 1, 2008, at <http://www.abc15.com/news/local/story/Sheriff-Arpaio-targets-food-vendors-undocumented/ZPzDJRPd1kKqyFOyNlvRyA.csp>.

¹⁶ A summary of interviews with a number of persons who claim they are victims of racial profiling is available on videotape gathered by activists in Phoenix. http://www.youtube.com/watch?v=cFybwY-vtaE&feature=channel_page.

¹⁷ Aarti Shahani and Judith Greene, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*, A Justice Strategies Report, February 2009, at 36. available at <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>

¹⁸ Democracy on ICE, 36-37. Video footage available at http://puenteaz.org/sheriff_arpaio_humiliating_treatment_undocumented_inmates_arizona.html.

¹⁹ Jonathan Cooper, *Inmate’s heat-related death in Arizona leads to a ban on outdoor holding cells*, THE ASSOCIATED PRESS, June 12, 2009, at <http://www.newser.com/article/d98pc1a02/inmates-heat-related-death-in-arizona-leads-to-a-ban-on-the-use-of-outdoor-holding-cells.html>.

²⁰ <http://www.azfamily.com/video/3tvextra-index.html?nvid=257907&shu=1>.

2004,²¹ and the people of Maricopa County have paid \$43 million in settlement of a lawsuit over jail conditions.²²

Apart from the methods of incarceration, serious questions have been raised about abuse suffered by inmates at the hands of sheriff's deputies. In October of 2008, Alma Chacon was arrested by a Maricopa County Sheriff while driving along a county road. She believes that she was arrested as a result of a racial profiling incident. According to Ms. Chacon, the officer offered no reason for the arrest, but told her that she had an outstanding warrant for having an expired license tag. Ms. Chacon was nine months' pregnant at the time, and she began having labor pains that evening. She was transferred to the hospital, but the sheriff's deputy insisted that she remain chained to the bed by one hand and one foot, and it was in that position that she gave birth to a baby girl. Ms. Chacon was released on her own recognizance, acquired an attorney through Respect/Respeto a local watch dog group, and is fighting deportation.²³

Maria Martinez was holding a Garage Sale in front of her house when Phoenix Police arrested her for "identity Theft." Ms. Martinez had shown them an expired California Driver License and a Mexican Consular Card.²⁴ By the time the ordeal was over, she had a broken arm while in the custody of Sheriff Arpaio's 287(g) trained officers.

Finally, the Sheriff's associations with racist hate groups have been documented by local media that have reported Sheriff has appeared in the past at nativist events, accepted awards from groups such as the Minuteman Civil Defense Corps, welcomed at least one nativist leader into his immigration sweep headquarters, and spoken at nativist meetings frequented by neo-Nazis.²⁵ Community leaders, including Phoenix Mayor Phil Gordon, have asked that the Sheriff distance himself from white supremacist groups.²⁶ In the most recent instance, the Sheriff was captured on film greeting white supremacist counter-demonstrators, and posing for photos with them at a rally on May 2, 2009.²⁷ Among the nativist demonstrators was J.T. Ready, waving a

²¹ Mary K. Reinhart, *Special Report: Health & Death Behind Bars*, EAST VALLEY TRIBUNE, May 3, 2008. Available at <http://www.eastvalleytribune.com/story/115427>.

²² Democracy on ICE, 2 and 37.

²³ Declaration of Alma Chacon (on file with authors).

²⁴ Stephen Lemons, *Joe Arpaio's Guards Break Woman's Arm (Allegedly), ICE Releases Her on Own Recognizance*, PHOENIX NEW TIMES, March 12, 2009, at http://blogs.phoenixnewtimes.com/bastard/2009/03/joe_arpaio_s_goons_break_womans.php. Stephen Lemons, *The ICE Docs that Cost a Mother of Three a Broken Arm*, March 18, 2009, at http://blogs.phoenixnewtimes.com/bastard/2009/03/the_ice_docs_that_cost_a_mothe.php.

²⁵ Stephen Lemons, *Neo-Nazis and Extreme Right-Wingers Love Joe Arpaio, and There's Evidence that the MCSO Keeps Them Close*, PHOENIX NEW TIMES, May 12, 2009 at <http://www.phoenixnewtimes.com/2009-05-14/news/neo-nazis-and-extreme-right-wingers-love-joe-arpaio-and-there-s-evidence-that-the-mcso-keeps-them-close/1>.

²⁶ Mike Sunnucks, *Gordon, Arpaio spar over neo-Nazi allegations*, PHOENIX BUSINESS JOURNAL, June 11, 2009, at <http://phoenix.bizjournals.com/phoenix/stories/2009/06/08/daily54.html>.

²⁷ *Joe Arpaio and Neo Nazi friendship exposed*, at <http://www.youtube.com/watch?v=YWVn4-lOuwM>. In this and other footage, the marchers are giving the Nazi salute, and shouting "Seig Heil." Arizona TV Channel 12, "Climate of Hate," at <http://www.azcentral.com/video/?type=mavenfull&id=news&videoID=1114112231>.

huge Confederate flag and wiping imaginary "Mexcrement," as he called it, onto a real Mexican tricolor on the ground, according to news reports.²⁸

The United States government has not been completely unresponsive in the face of myriad allegations of serious racial profiling. The Sheriff is currently being investigated by several different law enforcement agencies. These include the Federal Bureau of Investigation (FBI), whose work appears to be focused on allegations of abuse of power, based on deteriorating relationships between the Sheriff and the Mayor, the Board of Supervisors, and Judges of the Superior Court.²⁹ In addition, four Congressmembers, John Conyers, Zoe Lofgren, Jerrold Nadler and Bobby Scott, have urged Homeland Security Secretary Napolitano to review and possibly terminate Maricopa County's 287(g) agreements.³⁰ Finally, officials from the Justice Department's Civil Rights Division recently notified Sheriff Arpaio that they had begun an investigation, which will focus on whether deputies are engaging in "patterns or practices of discriminatory police practices and unconstitutional searches and seizures."³¹

The Secretary of Homeland Security has the discretionary ability to administratively sign or revoke individual 287 (g) agreements, but has been unwilling to do so, even in the face of reams of evidence gathered by groups in Phoenix. Assistant Secretary for Homeland Security in Charge of ICE John Morton has visited Arizona twice in the month of June and written and video evidence has been presented to him. Yet, Sheriff Arpaio, during a televised debate, referred to a meeting he had with Assistant Secretary Morton as one in which he was told "there was no problem," and no timetable has been announced for completion of the investigation.³²

North Carolina

The 287(g) abuses are not unique to border states and border communities. As of February 2009, the state of North Carolina has the second largest number of § 287(g) programs in the United States, with eight local law enforcement agencies operating under memoranda of agreement with ICE.³³ North Carolina officials have emphasized the stated purpose of these state-federal partnerships is violent crime prevention—to improve the capabilities of local law enforcement to identify and deport undocumented immigrants who commit violent crimes. However, statistical and anecdotal evidence strongly suggests that, in several North Carolina

²⁸ *Id.*

²⁹ Yvonne Wingett and JJ Hensley, Sources: FBI asking questions on Arpaio, *The Arizona Republic*, May 22, 2009.

³⁰ Amy Goodman, *Arizona Sheriff Faces Civil Rights Probe, Allegations of Undermining Law Enforcement with Controversial Focus on Immigration*, Democracy Now! February 18, 2009 at: http://www.democracynow.org/2009/2/18/arizona_sherriff_faces_civil_rights_probe. See also, Daniel Gonzalez, Arpaio to be Investigated over alleged violations, *The Arizona Republic*, March 11, 2009, at <http://www.azcentral.com/arizonarepublic/news/articles/2009/03/11/20090311investigation0311.html>.

³¹ Daniel Gonzalez, Arpaio to be Investigated over alleged violations, *The Arizona Republic*, March 11, 2009, at <http://www.azcentral.com/arizonarepublic/news/articles/2009/03/11/20090311investigation0311.html>.

³² Lou Dobbs Tonight, *Policing or Profiling: Debating Immigration Reform*, June 19, 2009, at <http://www.cnn.com/video/#/video/bestoftv/2009/06/19/ldt.racial.profiling.cnn?iref=videosearch>.

³³ *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*, UNC School of Law Immigration & Human Rights Policy Clinic, February 2009, at 55, at <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>.

counties, § 287(g) enforcement is being used to implement massive increases in deportation and to justify racial profiling and discrimination in which law-abiding residents who appear Hispanic are disproportionately targeted by law enforcement. Rather than crime, the primary targets of these policies often seem to be immigrants themselves. As in Arizona, state and local officials operate under minimal federal oversight.³⁴

A case in point is Alamance County, North Carolina, where Sheriff Terry Johnson has aggressively augmented the 287(g) program because “it rids the county of illegal immigrants,” who he contends “sponge public resources and are more prone to commit crimes than legal residents.”³⁵ Alamance County Court statistics, however, do not show a disproportionate level of crime committed by Hispanic residents.³⁶ Yet Sherriff Johnson makes no secret of the stereotypical views he holds toward immigrants: “Their values are a lot different—their morals—than what we have,” said Johnson, in reference to Hispanic immigrants during an interview with local news, “In Mexico, there’s nothing wrong with having sex with a 12-, 13-year-old girl . . . They do a lot of drinking down in Mexico.”³⁷ Nor are such statements isolated— a variety of disturbing anecdotal evidence has depicted local law enforcement publicly expressing discriminatory attitudes toward Hispanic arrestees and admitting that Hispanic individuals are targeted based on their ethnicity, with some officers confessing that they patrol certain areas “for the purpose of looking for Hispanic males.”³⁸

In the first nine months of Sherriff Johnson’s MOA implementation, Alamance County deported over four hundred individuals while nearby Mecklenburg County processed for deportation over one thousand undocumented residents in seven months.³⁹ Just like in Maricopa County, Arizona, many of these deportations are prompted by minor offenses such as routine traffic infractions. In Alamance, eighty percent of reported 287(g) arrestees were charged with misdemeanors, forty-five percent with traffic violations not involving driving while impaired.⁴⁰

In neighboring Gaston County, ninety-five percent of state charges filed against 287(g) arrestees were for misdemeanors; sixty percent were for traffic violations not related to impaired driving.⁴¹ In May 2008 alone, eighty-three percent of immigrants arrested by ICE-authorized 287(g) officers in Gaston were charged with traffic violations.⁴² In North Carolina counties that

³⁴ *Id.*, at 20-22.

³⁵ Kristin Collins, “Sheriffs Help Feds Deport Illegal Aliens,” *News & Observer*, Apr. 22, 2007, at <http://www.newsobserver.com/102/story/566759.html>

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Policies and Politics of Local Immigration Enforcement*, UNC School of Law Immigration & Human Rights Policy Clinic, at 55, *see also*, *State v. Villeda*, 165 N.C.App. 431, 435 (2004) (affirming trial court’s dismissal of charges against a Hispanic defendant who showed his arrest was “motivated in part by [his] race or national origin,” and describing multiple discriminatory statements made on the record by the arresting officer).

³⁹ *Id.*, at 28

⁴⁰ Aarti Shahani and Judith Greene, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*, A Justice Strategies Report, February 2009, at 17. available at <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>

⁴¹ *Id.*, at 2.

⁴² *Policies and Politics of Local Immigration Enforcement*, *supra*, at 29

utilize §287(g) enforcement, an “overwhelming number” of individuals detained by officers are arrested for traffic offenses.⁴³

Furthermore, statistical evidence suggests that these vehicle stops are not the result of race or ethnicity-neutral law enforcement policies. In Sherriff Thomson’s Alamance County, for example, Hispanic residents make up only eleven percent of the local population, yet accounted for nearly twenty-six percent of those stopped for traffic violations during the first year of 287(g) enforcement.⁴⁴ In the same year, 2007, non-Hispanic whites—who constitute over sixty-eight percent of the county’s population—accounted for only forty-seven percent of traffic stops.⁴⁵ Data from 2006 to 2008 suggests a persistent trend in which Hispanics were stopped at a disproportionately greater rate than non-Hispanic whites. Racial profiling under 287(g) programs is real.

Racial profiling by law-enforcement officials and pretextual traffic stops also create a strong impression among immigrant communities that they are being targeted for their physical appearance and many believe “officers are looking for excuses to deport them.”⁴⁶ Members of these communities are left afraid or unwilling to report crimes to law enforcement. This leaves minority communities more vulnerable to crime and less protected by the law, while evidence shows “criminals are aware of that fear and often prey upon it.”⁴⁷

Recognizing the rights violations associated with 287(g) agreements, Orange County, North Carolina drafted a resolution against joining the ICE 287(g) programs on grounds that “Jurisdictions that have entered into these memoranda of agreement have experienced increased violence against Latino/ Hispanic communities and increased incidents of reported racial profiling against people of color communities.”⁴⁸ Unfortunately, in communities throughout the United States, the 287(g) agreements remain in effect, and the resulting racial profiling and discriminatory treatment against immigrant communities (including citizens and legal permanent residents) continues unabated.

Lake County, FL

Racial profiling, discrimination and rights violations experienced by immigrant communities at the hands of local law enforcement is not limited to those counties with whom the Department of Homeland Security has entered into a 287(g) agreement. For example, in communities in Florida, county law official are independently undertaking the enforcement of immigration laws. In Lake County, which has applied for but has yet been granted a 287(g) agreement, Sheriff Borders ran for office and was elected on an anti-immigrant platform. In the past year, both citizens and non-citizens have been stopped, arrested and detained because of his and his

⁴³ *Id.*, at 24.

⁴⁴ Robert Boyer, “Hispanic and Black Drivers Stopped More Frequently, Study Shows,” *Burlington Times News*, April 19, 2009. available at <http://www.thetimesnews.com/news/stopped-24334-black-study.html>

⁴⁵ *Id.*

⁴⁶ *Policies and Politics of Local Immigration Enforcement, supra*, at 31

⁴⁷ Michael Barrett, “Study Finds Serious Flaws in Immigration Enforcement Program.” *Gaston Gazette*, February 19, 2009. available at <http://www.gastongazette.com/news/program-30763-law-county.html>

⁴⁸ Shahani and Greene, *Local Democracy on ICE*, at 14

officers' aggressive enforcement tactics. According to local community members and advocates, many families have been compelled to move away from Lake County as a result.

In a particularly egregious example of misdirected law enforcement, Rita Cote, a young mother of three U.S. citizen children and the wife of a U.S. citizen, was arrested in front of her young children, detained for more than a week while waiting for Border Patrol agents to take her into custody and put her into removal proceedings. Police arrived on Mrs. Cote's house after someone had called 911 because her sister's boyfriend, who was living with her sister in a rented room in their house, had grabbed her sister by the neck and tried to choke her after she had asked him to leave. Mrs. Cote helped to serve as an interpreter between her sister and the police. After telling her sister that she needed to go to the police to pursue a domestic violence complaint, the police proceeded to ask everyone present for identification and then ran Mrs. Cote's name through an immigration database which revealed Mrs. Cote had purportedly entered the country illegally at the age of just 15. Her husband learned of the arrest after their 7 year old son called him at work, crying hysterically that the police were taking his mother away.⁴⁹

Additional testimonies provided by the Farmworker Association of Florida from Lake County raise legitimate concerns that racial profiling has increased as local law officials seek to identify persons they believe to not have legal status. The following are just a small sampling of stories from the Latino population in the county.

I, Jose C, legal resident of the United States, declare the following:

My brother Juan J was riding with me on the company I worked for truck. I was traveling by the Tradeport Drive at Orlando, Florida. The Immigration patrol in a jeep with green stripes followed me, 5 minutes later, turned left. I parked close to two buildings where I was going to work. The policeman stopped also and asked me if I was driving the truck and if it was mine or I worked for the company. I answered that I worked for the company. Then he asked my brother for his legal documents, my brother told him that he had left them at the house. The policeman told him that he was lying and that lying was a mayor felony and arrested him.... My brother tried to call from his cellular, but was disconnected and I didn't hear from him.⁵⁰

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I, Cindy L, US Citizen, born in Eustis, Florida declare: The incident occurred last year on Hwy 19, Eustis Florida. I was going to work, Eustis, Florida Dollar General Store. I stopped on a crossroad of four roads, I saw a policeman who was stopped on the opposite side, he saw me, and instead of going straight, He turned and followed me up to the back of the store "Save A Lot." Before I got to my job, the policeman asked me for my driver's license and car registration, I asked him why he stopped me, He thought for a while and told me, "Because you went over the yellow line." I told him no, that he had followed me from Lakeview and he answered "so." Then he checked my license for 10 minutes then told me, "I am going to give you a warning." I was very upset because I know that on Lake County the police are stopping people just for their skin color.

⁴⁹ *Waiting for Mommy*, Orlando Sun Sentinel, Feb. 25, 2009, p. B1&B5.

⁵⁰ Declaration of Jose C, (on file with Farmworker Association of Florida and authors).

The second time they stopped me. I lived at Palmetto area in Eustis, FL. It was this year on January, 2009. He stopped me at Eustis, also. The policeman was stationed at "My Young son Chinese Store" I had my car lights in high beam. He followed me and asked if I knew why he had stopped me and that if my driver license was legal. I answered "yes" He told me let me check and came back and let me go.⁵¹

* * * * *

My name is Hugo M, native of Mexico, residence at ____, Lake County, Florida. The incident occurred on March 14, 2009 at 10:56 AM. I was leaving my house by Niles St., I entered around and enter the gas station. I noticed that a police man also entered from the opposite side and parked at the convenience store. As I parked to get the gas for my car, I notice that the pump was at the other side, changed and parked correctly, I entered the store to pay, when I exit the store and was getting gas for my car, the policeman parked behind my car and asked for my driver license, he did not tell me why he was doing so, only asked me to show him my license and immediately for my ID. The mistake I committed was that I showed him the Mexican license. He checked the information on his computer and told me I owed an infraction for a seat belt I answered him that I had paid that on the last day to pay it. Then he checked the license information and all was right, but the seat belt infraction, and again I told him that I paid it a year and a half ago or two. He told me that he should take me to jail, I asked why, he answered because I had no license, he then asked me, "Tell me why I should not take you to jail" I answered that because I had not done nothing wrong, then he told me he was going to give me a ticket and I answered him OK. He asked me to sign and I showed him my passport. What else could I do? Then I noticed that the information that he wrote was not correct that my license was not suspended since 8/30/2006.⁵²

CONCLUSION

These testimonies and the stories of abuse from Arizona, North Carolina and across the United States reveal the harm caused by arming local law enforcement with the authority to investigate and detain an individual on the basis of immigration law, resulting in violations of the United States' clear obligations under Article 2 of the ICERD "to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation," and under Article 5, guaranteeing "everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law," and particularly in the guarantee of the right to equal treatment before the judicial systems, the right to security, and the other civil rights.

We therefore urge the CERD to call upon the United States to take all affirmative measures to combat racial profiling, discrimination and abuse committed by local law enforcement under the color of law, through the rescission of 287(g) agreements, a full investigation into the impact that all cooperative agreements between local law enforcement and the Department of Homeland Security have on immigrant communities, and other affirmative measures necessary to ensure that the rights provided for under ICERD are enjoyed by all people in the United States without discrimination.

⁵¹ Declaration of Cindy L, (on file with Farmworker Association of Florida and authors).

⁵² Declaration of Hugo M, (on file with Farmworker Association of Florida and authors).