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November 7, 2017

United States Department of Homeland Security
ATTN: Scott L. Shuchart
Office for Civil Rights & Civil Liberties
Washington, DC 20528

RE: Alamance County North Carolina Proposed 287(g) Agreement

Dear Mr. Shuchart,

I am writing on behalf of the American Civil Liberties Union of North Carolina (“ACLU-NC”). ACLU-NC is dedicated to protecting and advancing the civil rights and civil liberties guaranteed by the U.S. and North Carolina Constitutions. Thank you for welcoming public comments on the suitability of jurisdictions to participate in the 287(g) program. The Alamance County North Carolina Sheriff’s Office (“ACSO”) has a long history of egregious civil rights violations, and we are deeply troubled that the Department of Homeland Security would consider renewing the jurisdiction’s participation in the 287(g) program.

Background on Discriminatory Policing at ACSO

Alamance County entered into a 287(g) agreement with U.S. Immigration and Customs Enforcement (“ICE”) in 2007. During the course of the program, ACSO accrued a troubling and extensively documented record of civil rights abuses, which resulted in a 2012 lawsuit from the U.S. government against Sheriff Terry S. Johnson.

In their [pre-suit finding](#), the Department of Justice (“DOJ”) found ACSO engaged in a pattern of discriminatory policing that targeted, stopped, detained, and arrested Latinos and that was violative of the 4th and 14th Amendments to the US Constitution. The discriminatory conduct documented by the DOJ was deeply rooted in an agency culture that emanated from Sheriff Johnson and involved the entire Sheriff’s Department for at least the period between 2007 and 2015. The Government charged that the ACSO disproportionately subjected Latinos to unreasonable searches, arrested them for minor infractions (instead of issuing warnings or citations), targeted them at vehicle checkpoints located in predominantly Latino neighborhoods,

used offensive epithets to refer to Latinos, tolerated activities of deputies that evidenced anti-Latino bias, automatically and selectively referred Latino arrestees to ICE investigators for deportation, and otherwise engaged in deficient policies, training, and oversight that facilitated discriminatory enforcement.

During the trial, the federal judge heard expert testimony that Latinos in Alamance County were seven times more likely to be stopped and cited than non-Latinos, even after controlling for traffic patterns and violation rates. The expert had never seen comparable racial profiling in the United States. Even the Sheriff's own expert found that Latinos made up 36.8 percent of all checkpoint stops over a five-year period despite comprising only 8.6 percent of the driving age population in Alamance County.

Additional evidence was presented at trial that Sheriff Johnson explicitly ordered officers to target Latinos with enforcement actions, made and tolerated derogatory comments and emails about Latinos, departed from the ACSO's own practices to advance a discriminatory purpose, failed to use standard practices typically employed by law enforcement agencies to prevent discrimination, and failed to meaningfully respond to allegations of discrimination or specific complaints about ACSO's traffic enforcement activities.

The lawsuit listed examples of Latino drivers being followed by Alamance deputies for long stretches of time and then pulled over for little or no reason. Witnesses testified about numerous incidents in which Sheriff Johnson and other ACSO employees used racial epithets and expressed extreme prejudice against Latino residents, such as Johnson allegedly ordering deputies to "bring me some Mexicans," "put heat on" predominantly Latino neighborhoods, and "go out there and get me some of those taco eaters." Sheriff's deputies were accused of sharing links to what the Associated Press described as "a bloody video game where players shoot people entering the country illegally, including children and pregnant women."

The claims in the lawsuit mirrored complaints that the ACLU-NC and other groups have received about Johnson, his deputies, and their treatment of Latinos for years. Despite a mountain of evidence about the Department's discriminatory practices, a federal judge ultimately dismissed the case against Sheriff Johnson but still admonished his office for some of its behavior, including the frequent use of anti-immigrant epithets and slurs during official department business.

Alamance's Discriminatory Use of 287(g)

In 2006, Sheriff Johnson sought an agreement with ICE allowing the ACSO to investigate immigration offenses pursuant to Section 287(g) of the Immigration and Nationality Act. According to trial records, shortly after Alamance gained 287(g) authority, Sheriff Johnson ordered patrol supervisors to "arrest Hispanics" at a supervisors' meeting and informed multiple

officers to arrest Latinos during vehicle checkpoints. Also around this time, the ACSO changed its booking procedures to require detention officers to book all individuals arrested and brought to the County Jail – even those arrested for traffic offenses.

There were problems with ACSO's implementation of the 287(g) agreement from the outset. The Memorandum of Agreement ("MOA") entered into in January 2007 did not authorize the Sheriff to enforce federal immigration laws outside the County Jail, and yet this is exactly what took place. For example, for approximately nine months in 2008, certain officials at ICE and the Alamance County Sheriff's Office incorrectly believed that the ACSO had authority to use one of its officers as a Task Force Officer to investigate the immigration status of individuals who had not even been arrested and booked into the County Jail. During the trial, evidence was presented that every person investigated during this period was Latino. This blurring of the lines between the Sheriff's office and federal immigration enforcement only stopped after a December 2008 ICE audit of Alamance's 287(g) program found that Alamance County Sheriff's officers were improperly exercising their authority outside of the Alamance County Jail. Similar violations continued to take place until September 2012 when ICE terminated its MOA with Alamance, thus stripping the Sheriff's office of any authority to investigate potential immigration violations by individuals detained in the County Jail.

Alamance's 4th Amendment Violations

Connected to this broader pattern of discriminating against Latinos in traffic enforcement, the DOJ alleged that the Alamance County Sheriff's Office violated the Fourth Amendment's prohibition on unreasonable seizures by erecting checkpoints for general law enforcement purposes. During the trial, multiple ACSO officers admitted to using checkpoints for drug interdiction, to identify gang members, and to deter crime generally – purposes the Supreme Court has flatly prohibited. Additional evidence was presented that many of these impermissible checkpoints occurred in and around predominantly Latino neighborhoods, evidenced by the "large disparity" in checkpoint stops between Latino and non-Latino drivers.

Conclusion

The Department of Homeland Security should never partner with jurisdictions that have records of abuse, constitutional violations, and anti-immigrant animus. Based on the egregious record of the Alamance County Sheriff's Office, the ACLU of North Carolina urges DHS to reject the ACSO's 287(g) application.

Sincerely,


Sarah M. Gillooly
Policy Director