

January 27, 2025

**Re: Participation in ICE's 287(g) Agreements**

Dear Sheriff,

We write today on behalf of the American Civil Liberties Union (ACLU) of Wyoming to share our perspective on developments in our state related to requests you may be receiving for your department to carry out immigration enforcement actions on behalf of the federal government. We wish to share relevant information with you regarding the risks inherent in undertaking such enforcement actions and we advise you not to enter into any agreements to provide those actions or services. In light of the flurry of public discourse on this topic, we feel it is critical to share factual, reliably-sourced information with you to ensure that you have the information you need to assess the risks such agreements carry regarding public safety, community relationships, financial costs, and potential legal liability.



P.O. Box 20706  
Cheyenne, WY 82003  
307-637-4565  
acluwy@aclu.org  
aclu-wy.org

The current Trump Administration has made clear its intent to scale up U.S. Immigration and Customs Enforcement (ICE) operations including mass deportations. ICE will attempt to enlist state and local law enforcement to augment this effort. We therefore anticipate requests for 287(g) or similar agreements, as well as participation in ICE detention contracts, to be made to state and local law enforcement agencies. These 287(g) agreements, named for a section of the Immigration and Nationality Act, delegate federal authority to carry out certain immigration enforcement activities to police officers and sheriffs' deputies.<sup>1</sup> They have a history of harming public safety, imposing serious financial burdens on localities, and leading to civil rights violations. Indeed, many sheriffs have chosen to end their 287(g) agreements for precisely these reasons.<sup>2</sup>

ICE may also request to contract with Wyoming county jails to serve as detention centers for immigrants facing civil immigration charges. Under federal law, ICE may detain people who are awaiting a decision on their civil immigration case in

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<sup>1</sup> Under the Warrant Service Officer program, local officers are purportedly authorized to serve and execute warrants of arrest for immigration violations and warrants of removal at the time of the individual's scheduled release from criminal custody "that execute the custodial transfer of the alien to ICE for removal purposes." *See* Warrant Service Officer Program, Model Memorandum of Agreement (Appendix). Other forms of 287(g) agreements are more expansive. They purportedly authorize local officers to interrogate individuals in their local jails and process them for removal by ICE, including by preparing charging documents to initiate immigration court proceedings; and prepare detainers, which request a local agency to notify ICE before an individual is released from custody and to hold the individual for up to 48 hours beyond their release date in order for ICE to take them into custody. *See generally* Albany Law School Government Law Center, "When Local Law-Enforcement Officers Become ICE Deputies: 287(g) Agreements" <https://bit.ly/2ZimrTY>.

<sup>2</sup> *See* Anneliese Hermann, Center for American Progress, "287(g) Agreements Harm Individuals, Families, and Communities, But They Aren't Always Permanent," April 4, 2018, <https://ampr.gs/2KKRk6>.

U.S. immigration court, or subject them to deportation (again, a civil matter). ICE detention is technically civil and “non-punitive” in nature, but it takes place in correctional settings. ICE contracts with state and local corrections facilities outline services that these agencies are required to provide to immigrants detained due to civil immigration matters, including unimpeded access to medical care, interpreters, legal counsel and legal research materials, religious observance, and more.

There has been discussion recently in the media about the consequences of interactions between federal immigration officials and Wyoming County Sheriffs. We write to warn you of the risks of engaging in 287(g) or ICE detention contracts, and urge you not to sign any such agreement.



P.O. Box 20706  
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307-637-4565  
acluwyo@aclu.org  
aclu-wy.org

### **1. Your Office Will Bear the Financial Costs**

Volunteering to perform the federal government’s job of enforcing civil immigration law would impose significant costs on your office that would ultimately be borne by your taxpayers. Under the governing federal statute, 8 U.S.C. § 1357(g)(1), ICE is prohibited from covering the costs of such agreements.<sup>3</sup> Indeed, under the terms of the standard Memorandum of Agreement for the Warrant Service Officer program, your office would be responsible for all salaries and benefits, including overtime, for officers designated under the agreement; travel, housing and a per diem for the training required under the agreement; and administrative costs. Your office is unlikely to be fully reimbursed for the cost of detaining people extra days for ICE.<sup>4</sup>

The costs are even greater for more expansive forms of 287(g) agreements. For example, in Harris County, Texas (Houston), the sheriff terminated his agreement due to at least \$675,000 in annual costs.<sup>5</sup> Prince William County, Virginia initially planned to divert nearly \$800,000 in “rainy day” funds to cover the cost of starting its 287(g) program, and projected costs of \$11.3 million over a five-year period.<sup>6</sup>

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<sup>3</sup> See 8 U.S.C. § 1357(g)(1) (authorizing the Attorney General to enter into written agreements “at the expense of the State or political subdivision”).

<sup>4</sup> States and localities may apply to the federal government’s State Criminal Alien Assistance Program (SCAAP), which provides payments for correctional officer salary costs associated with “incarcerating undocumented criminal aliens who have at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days.” However, the costs incurred by states and local jurisdictions go far beyond this. Moreover, the SCAAP program provides no reimbursement at all for detention that lasts less than four days, as ICE requests through immigration detainees. See Office of Justice Programs, Bureau of Justice Assistance, State Criminal Alien Assistance Program, [https://www.bja.gov/Funding/14SCAAP\\_Guidelines.pdf](https://www.bja.gov/Funding/14SCAAP_Guidelines.pdf).

<sup>5</sup> James Pinkerton and St. John Barned-Smith, “Sheriff cut ties with ICE program over immigrant detention,” Houston Chronicle, Feb. 21, 2017, <https://bit.ly/2IRZW00>.

<sup>6</sup> See The Commonwealth Institute, “Federal Responsibility, Local Costs: Immigration Enforcement in Virginia,” Sept. 26, 2018, <https://bit.ly/2R4jgfp>.

## 2. Participation Exposes You to Liability and the Risk of Costly Litigation

State and local officers or deputies who engage in actions pursuant to the Warrant Service Officer program or other 287(g) agreements are liable for constitutional and legal violations.

### *Fourth Amendment Violations*

Participation in a Warrant Service Officer program or another form of 287(g) agreement does not excuse you or your department from complying with the Fourth Amendment's probable cause requirement. Unlike judicial warrants, which are issued by a neutral magistrate, ICE warrants are administrative forms issued by non-judicial ICE officers based on a purported civil immigration violation. If an ICE administrative warrant is not supported by probable cause, it is a violation of the Fourth Amendment to detain someone under it for any period of time, and the sheriff or county can be held liable for that unconstitutional detention. Courts have held that local law enforcement can be sued for detaining a person based on an ICE administrative warrant.<sup>7</sup> And there are numerous examples of local governments paying upwards of \$50,000 in settlements for unlawfully jailing someone under an improper ICE detainer.<sup>8</sup>

### *Civil Rights Violations*

Participation in a 287(g) agreement or ICE detention contract exposes you to potential liability for civil rights violations. A 287(g) agreement or ICE detention contract binds the parties to abide by all local, state, and federal law, including regulation and guidance regarding non-discrimination.<sup>9</sup> This “requires that law enforcement officers investigate and interpret complex federal immigration laws—likely outside of their typical portfolio—[whereby] the risk of racial profiling and other constitutional acts increases.”<sup>10</sup> Despite the existence of a 287(g) agreement or detention contract, a city or county therefore remains

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<sup>7</sup> See, e.g., *Santos v. Frederick Cty. Bd. of Com'rs*, 725 F.3d 451, 463-65 (4th Cir. 2013) (deputies “violated Santos's rights under the Fourth Amendment when they seized her solely on the basis of the outstanding civil ICE warrant”); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1255-56 (E.D. Wash. 2017) (holding that an ICE administrative warrant did not provide any arrest authority to local officers), vacated as moot, 716 Fed. App'x 741 (9th Cir. 2018); *Figueroa-Zarceno v. City & Cnty. of San Francisco*, No. 17-cv-229 (N.D. Cal. settled 2017) (city pays \$190,000 settlement to person transferred to ICE based on administrative warrant).

<sup>8</sup> See ACLU, “Local jurisdictions remain legally vulnerable for honoring ICE detainees,” <https://bit.ly/2MDIJhT>.

<sup>9</sup> See 8 U.S.C. § 287(g)(1) (authorizing the Attorney General to enter into agreements for state and local officials to carry out functions “to the extent consistent with State and local law”); Model Memorandum of Agreement for Warrant Service Office Program, sec. IV(I) (Appendix).

<sup>10</sup> Kendra Sena, Albany Law School Government Law Center, “When Local Law-Enforcement Officers Become ICE Deputies: 287(g) Agreements,” Mar. 18, 2018, <https://bit.ly/4jr7p8C>.



P.O. Box 20706  
Cheyenne, WY 82003  
307-637-4565  
[acluwy@aclu.org](mailto:acluwy@aclu.org)  
[aclu-wy.org](http://aclu-wy.org)



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vulnerable to liability for money damages under 42 U.S.C. § 1983 for violations of constitutional rights that can be traced to the municipality’s actions, policy, custom, or failure to train or supervise.<sup>11</sup> A city or county also remains vulnerable to money damages claims under state tort law.<sup>12</sup> And deputized officers remain vulnerable to money damages claims against them individually under *Bivens v. Six Unknown Named Agents* for constitutional violations.<sup>13</sup>

Indeed, the history of 287(g) agreements provides ample reason to be concerned. Separate Department of Justice investigations of law enforcement practices arising from 287(g) programs in Maricopa County, Arizona and Alamance County, North Carolina found patterns of discrimination.<sup>14</sup> Because of these egregious violations, ICE reduced the number of agreements substantially and limited the remaining participating jurisdictions to immigration enforcement in jails, rather than in the field. However, even these jail-based 287(g) agreements can give rise to civil rights violations. They may task local law enforcement with conducting interviews of individuals arrested on state criminal charges regarding their immigration status, screening individuals in DHS databases, deciding whether to start deportation proceedings and detaining individuals for immigration purposes. Conducting these tasks and evaluating information can lead to biased policing and racial profiling, including during initial arrests by field officers who may not report to you if your jail serves multiple law enforcement agencies. Non-287(g) officers operating in the field may believe that a jail’s 287(g) agreement gives them an incentive to target individuals for arrest based on their perceived identity.

Even where local law enforcement rely on detainers and warrants of arrest issued by the Department of Homeland Security, they must make difficult judgments

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<sup>11</sup> See *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978); see 8 U.S.C. § 1357(g)(8) (addressing only the “liability, and immunity from suit, of the *officer or employee*,” not the municipality).

<sup>12</sup> Cf. *People ex rel. Wells v. DeMarco*, 88 N.Y.S.3d 518 (N.Y. App. Div. 2018) (finding that neither New York statutory nor common law authorize civil immigration arrests); *Lunn v. Commonwealth*, 477 Mass. 517, 530-31, (2017) (finding that law enforcement officers lacked authority to arrest or detain individuals under immigration detainers where state law did not expressly provide that authority); ACLU of Virginia, “Lawsuit seeks termination of Culpeper County’s Immigration Enforcement Agreement,” Nov. 26, 2018, <https://bit.ly/2I8ljgi> (lawsuit to prohibit unlawful use of local tax revenue by sheriff for purpose of enforcing federal civil immigration law under 287(g) agreement).

<sup>13</sup> *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); see also *Ortega-Melendres v. Arpaio*, 836 F.Supp. 2d 959, 990 (D. Ariz. 2011), *aff’d sub nom. Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) (noting that while state officers acting pursuant to a 287(g) agreement are “acting under color of Federal authority for purposes of determining liability,” that “does not give them an adequate defense to alleged Constitutional violations”).

<sup>14</sup> Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep’t of Justice, to Bill Montgomery, Cty. Attorney, Maricopa Cty., Ariz., (Dec. 15, 2011), <https://bit.ly/2la2OKj>; Dep’t of Justice, “Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff’s Office,” Sept. 18, 2012, <https://bit.ly/2F1UacC>.



P.O. Box 20706  
Cheyenne, WY 82003  
307-637-4565  
acluwyo@aclu.org  
aclu-wy.org

about countervailing information offered by the individual detained, such as documentation or assertion of citizenship or immigration status that would make their arrest or detention unlawful. Numerous studies have documented a troubling pattern of ICE issuing detainers for thousands of U.S. citizens.<sup>15</sup> In the illustrative case of Peter Sean Brown, a U.S. citizen who lives in the Florida Keys, ICE faxed a detainer to the Monroe County Sheriff’s office after Brown reported there for violating probation with a low-level marijuana-related offense. When Brown told jail officers that he was a U.S. citizen and offered to show his birth certificate, officers relied on ICE’s detainer to continue to hold him – exposing them to enormous financial liability.<sup>16</sup> As the CATO Institute notes, “local officials often have additional information that could make it unreasonable for them to detain that arrestee on suspicion that he or she is an illegal immigrant.”<sup>17</sup>

Civil rights violations by state and local law enforcement acting under a 287(g) agreement may violate Title VI of the Civil Rights Act of 1964 and its implementing regulations, which prohibit discrimination by agencies receiving federal funding.<sup>18</sup> They may also violate the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141), which authorizes the Department of Justice to file suit for declaratory and equitable relief against law enforcement agencies engaged in “patterns or practices” that violate the Constitution.<sup>19</sup>

### *Exposure to Liability*

The federal government will not fully protect you, your staff or municipality from potential lawsuits and the risk of incurring substantial money damages. Although the existence of a 287(g) agreement may change some of the dynamics of potential litigation, the bottom line remains the same: If you act as an arm of ICE, you expose your agency and officers to litigation and liability. It is true that section 287(g) of the Immigration and Nationality Act provides that law enforcement officials acting pursuant to a 287(g) agreement “shall be considered

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<sup>15</sup> See, e.g., ACLU of Florida, “Citizens On Hold: A Look at ICE’s Flawed Detainer System in Miami-Dade County,” Mar. 20, 2019, <https://bit.ly/2V250Vb>; TRAC Immigration, “Who Are the Targets of ICE Detainers,” Feb. 20, 2013, <https://trac.syr.edu/immigration/reports/310/>; Eyder Peralta, “You Say You’re An American, But What If You Had To Prove It Or Be Deported,” Dec. 22, 2016, <https://n.pr/2rOlqO8>; Christine Hauser, “U.S. Citizen Detained by ICE Is Awarded \$55,000 Settlement,” Oct. 29, 2018, <https://nyti.ms/2Of21W1>.

<sup>16</sup> See Spencer Amdur, ACLU, “Florida Sheriff Worked With ICE To Illegally Jail and Nearly Deport US Citizen,” Dec. 3, 2018, <https://bit.ly/2Kb6TOP>.

<sup>17</sup> David J. Bier, CATO Institute, “U.S. Citizens Targeted by ICE,” Aug. 29, 2018, <https://bit.ly/2IKnnKz>.

<sup>18</sup> 42 U.S.C. § 2000d et seq. Title VI of the Civil Rights Act of 1964. Title VI provides: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

<sup>19</sup> See, e.g., U.S. Dep’t of Justice, Civil Rights Division letter to Mr. Bill Montgomery, County Attorney, Maricopa County, Dec. 15, 2011, <https://bit.ly/2la2OKj>.



to be acting under color of Federal authority.”<sup>20</sup> But as discussed above, that provision does not immunize you from suit.

The model ICE memorandum of agreement also states that sheriff’s office personnel named as personal-capacity defendants in litigation may request representation by the U.S. Department of Justice. However, this is a far cry from a guarantee of legal representation. The model agreement emphasizes that this is solely “at the discretion of DOJ; it is not an entitlement.” The Justice Department often declines to represent even federal agents sued in their individual capacities. Finally, even if the Justice Department represents an individual, any resulting money damages judgment would be against the officer (not the Justice Department).



P.O. Box 20706  
Cheyenne, WY 82003  
307-637-4565  
acluwyo@aclu.org  
aclu-wy.org

### 3. Joining These Programs Will Harm Public Safety

Local law enforcement does not need to participate in enforcing federal immigration law. Already, whenever local law enforcement arrest and book an individual into jail, they submit her name and fingerprints to the FBI, which shares the information with ICE. By separately entering into the Warrant Service Officer program or other 287(g) agreements, you would be signing up to act as an arm of ICE. Although your responsibilities would vary based on the precise terms of the agreement you make with ICE, the end result would be the same: Your local community’s perception would be that your department is hand-in-glove with ICE, and that every one of your officers or deputies wears a second hat of immigration enforcement. That perception has been shown to undermine community-law enforcement trust, making many community members much less likely to call the police to provide tips, report crimes, and seek needed protection.<sup>21</sup>

The Major Cities Chiefs Association, a group of police chiefs from the 64 largest police departments in the United States and Canada, has noted that “[l]ocal agencies have a clear need to foster trust and cooperation with everyone in these communities.” It warns:

Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard-won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent

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<sup>20</sup> 8 U.S.C. § 287(g)(8).

<sup>21</sup> See, e.g., Nat’l Imm. Law Ctr., “Local Law Enforcement Leaders Oppose Mandates to Engage in Immigration Enforcement,” Aug. 2013, <https://bit.ly/2J929st> (dozens of law enforcement leaders criticizing police-ICE entanglement); Dep’t of Justice, “Final Report of the President’s Task Force on 21st Century Policing,” at 18 (May 2015), <https://bit.ly/42eNROG> (recommending that ICE not issue detainer requests to local jails); William J. Bratton, “The LAPD Fights Crime, Not Illegal Immigration,” L.A. Times, Oct. 27, 2009, <https://lat.ms/2LXm8IE>.

victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.<sup>22</sup>

In a recent study, a majority of prosecutors, judges, and police officers reported that ramped-up immigration enforcement makes it harder to protect local communities from crime.<sup>23</sup> Academic studies have confirmed that immigrants avoid state and local authorities who act as a pipeline to the deportation system.<sup>24</sup> An April 2018 study by the libertarian CATO Institute found that “287(g) failed to reduce crime while it increased the number of assaults against police officers.”<sup>25</sup>

### *Diverting Resources*

287(g) agreements divert limited police resources from addressing local safety needs. Sheriff Richard Wiles of El Paso, Texas stated: “[Local officers] belong in the neighborhoods of our communities providing crime prevention services and maintaining order...not pulled out of neighborhoods to handle a Federal responsibility.”<sup>26</sup> Likewise, Tom Manger, chief of police in Montgomery County, Maryland, and then-chairman of the Major Cities Chiefs’ Legislative Committee stated: “[M]ost jurisdictions are not taking the 287(g) training [because] local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security. Enforcing Federal law is an unfunded mandate that most agencies just cannot afford to do.”<sup>27</sup>

It is unwise to divert scarce law enforcement resources to subsidize the dragnet of federal immigration enforcement. While the Trump administration claims to

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<sup>22</sup> Major Cities Chiefs Association, “M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Police Agencies,” June 2006, pp. 5-6, <https://perma.cc/H5UG-VSA7>.

<sup>23</sup> Rafaela Rodrigues et al., Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims, May 3, 2018, <https://bit.ly/2jvGfAr>; see also ACLU, Freezing Out Justice (2018) <https://bit.ly/2I73kGP>.

<sup>24</sup> See, e.g., Marcella Alsan & Crystal S. Yang, Fear and the Safety Net: Evidence from Secure Communities, Harvard Law School, May 2018, <https://bit.ly/2kN47QJ>; Tom K. Wong, The Effects of Sanctuary Policies on Crime and the Economy, Center For American Progress, Jan. 26, 2017, <https://ampr.gs/2kxOcHX>.

<sup>25</sup> CATO At Liberty, “287(g) Does Not Fight Crime, but It Does Increase Assaults against Police Officers,” April 11, 2018, <https://bit.ly/2K8Qctq>; see also Andrew Forrester and Alex Nowrasteh, Cato Working Paper No. 52: “Do Immigration Enforcement Programs Reduce Crime? Evidence from the 287(g) Program in North Carolina,” April 11, 2018, <https://bit.ly/2I6FNWL>.

<sup>26</sup> Statement of Richard David Wiles, El Paso, TX, County Sheriff’s Office, House Homeland Security Committee Subcommittee on Border and Maritime Security, Border Security and Enforcement Hearing, “Department of Homeland Security’s Cooperation with State and Local Law Enforcement Stakeholders,” May 3, 2011, <https://bit.ly/2R2xYnD>.

<sup>27</sup> Statement of J. Thomas Manger, Chief, Montgomery County Police Dep’t, State of Maryland, House Homeland Security Committee Hearing, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law,” Mar. 4, 2009, <https://bit.ly/2ZiQnzG>.



P.O. Box 20706  
Cheyenne, WY 82003  
307-637-4565  
[acluwy@aclu.org](mailto:acluwy@aclu.org)  
[aclu-wy.org](http://aclu-wy.org)

target people with serious criminal records, DHS’s own data shows that these programs frequently target individuals charged with misdemeanors and traffic offenses.<sup>28</sup> Moreover, the Trump administration has expanded immigration “enforcement priorities” so broadly that in effect “all undocumented immigrants have become targets—even if they have lived in the United States for many years, have U.S. born children, and have never had a run-in with law enforcement.”<sup>29</sup>

#### 4. The Administration’s Deportation Practices Are Inhumane and Arbitrary



P.O. Box 20706  
Cheyenne, WY 82003  
307-637-4565  
acluwy@aclu.org  
aclu-wy.org

The Warrant Service Officer program and other forms of 287(g) agreements implicate your office in deportation practices that increasingly target immigrants with deeply rooted lives in the United States—people who have built families, careers, businesses, and communities in our country over many years, sometimes decades. Your office should not lend its resources to these efforts. They do nothing to improve public safety or protect your community, and they betray the best of this nation’s values.

After you and your legal counsel review this letter, we hope you will agree that your agency should not join the Warrant Service Officer program or any other form of 287(g) agreement. We therefore urge you to maintain any current policies to that effect, and to adopt new ones where necessary.

If you need additional information or would like to discuss this matter further, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Andrew Malone".

Andrew Malone  
Senior Staff Attorney  
ACLU WY  
[amalone@aclu.org](mailto:amalone@aclu.org)

A handwritten signature in black ink that reads "Antonio Serrano".

Antonio Serrano  
Advocacy Director  
ACLU WY  
[aserrano@aclu.org](mailto:aserrano@aclu.org)

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<sup>28</sup> Dep’t of Homeland Security, Office of Inspector General, “The Performance of 287(g) Agreements,” OIG-10-63, March 2010, [https://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-63\\_Mar10.pdf](https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf).

<sup>29</sup> American Immigration Council, “The End of Immigration Enforcement Priorities Under the Trump Administration,” March 7, 2018, <https://bit.ly/2Hoep7H>.