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### **HB 1105: Georgia's Racial Profiling Bill**

This bill mandates local law enforcement to apply to enter into 287(g) contracts that deputize local law enforcement to enforce federal immigration law. This disastrous policy has resulted in racial profiling, terrorizing immigrant communities, and wasting local resources. This bill also mandates jails to hold individuals for ICE based on detainer requests that are error-prone and often found to be unconstitutional creating liability for all involved in its enforcement. This bill also amends the definition of “sanctuary policy” to prohibit policies that promote non-compliance with ICE detainer requests and requires DNA testing for anyone convicted of any crime, including misdemeanors, who is subject to an ICE detainer.

#### **1) Endangers our communities by forcing law enforcement to enter into 287(g) contracts with the Department of Homeland Security (DHS). This entanglement with DHS will increase racial profiling and targeting of communities of color.**

- HB 1105 forces law enforcement to apply to enter into contracts with federal immigration authorities through programs such as 287(g) which is a disastrous policy that deputizes local law enforcement to enforce federal immigration law.<sup>1</sup>
- Unfunded Mandate that Wastes Resources
  - According to a 2018 Georgia Budget and Policy Institute (GBPI) Report, the 287(g) program places a tremendous financial burden on Georgia's localities.<sup>2</sup> The report states that Gwinnett County's 287(g) program “costs local taxpayers **at least \$9.8 million over eight years from its inception in 2009 through 2016, an average of \$1.2 million a year.**” Almost all expenses from the 287(g) program are taken directly out of local budgets and tax dollars.<sup>3</sup> In fact, GBPI estimates that localities in Georgia with a 287(g) program recovered only 12% of the cost it took to implement the program.
- Increases Racial Profiling
  - These policies will increase racial profiling as they have in counties already collaborating with ICE. When Gwinnett county had 287(g), many Latinx community members reported being stopped by law enforcement without probable cause or reasonable suspicion.<sup>4</sup>
  - Reports show that 287(g) policies incentivize racial profiling by law enforcement “using traffic enforcement, patrols, and crime investigations to identify immigrants for deportation.” These “pretextual arrests for traffic and other minor offenses” are conducted to subject arrestees to immigration checks as part of the jail's booking process.<sup>5</sup>
  - According to a 2011 national study, it was common in Cobb and Gwinnett for “police officers to pull over immigrants for a broad variety of minor violations and then take them to county jails on charges of improper identification. In fact, almost 500 of the

<sup>1</sup> 50-36A-5; <https://projectsouth.org/wp-content/uploads/2021/10/2021-287g-fact-sheet.pdf>.

<sup>2</sup> <https://gbpi.org/voluntary-immigration-enforcement-a-costly-choice-for-georgia-communities/>.

<sup>3</sup> [https://www.ilrc.org/sites/default/files/resources/ilrc\\_287g\\_report\\_3p-ar\\_final-v2.pdf](https://www.ilrc.org/sites/default/files/resources/ilrc_287g_report_3p-ar_final-v2.pdf).

<sup>4</sup> [https://www.acluga.org/sites/default/files/gwinnett\\_racial\\_profiling\\_report\\_1.pdf](https://www.acluga.org/sites/default/files/gwinnett_racial_profiling_report_1.pdf).

<sup>5</sup> <https://www.aclu.org/publications/license-abuse-how-ices-287g-program-empowers-racist-sheriffs>.



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- noncitizens with ICE detainees placed by Gwinnett County’s 287(g) program in the first 14 months of operation had been charged only with driving without a license.”<sup>6</sup>
- o A 2012 Department of Justice Investigation found that in a county in North Carolina, which participated in the 287(g) program, local law enforcement targeted the Latinx community. Deputies were four to ten times more likely to stop Latinx drivers than non-Latinx drivers.<sup>7</sup>
  - o The United Nations Committee on the Elimination of Racial Discrimination has repeatedly called for the termination of “policies that indirectly promote racial profiling, such as the section 287 (g) programme.”<sup>8</sup>
  - Terrorizes Community Members
    - o A recent study examining how immigration policy enforcement affects mental health of Latinx youth in Gwinnett County found “Youth linked immigration enforcement policies like 287(g) to exclusionary systems that contributed to **fear, marginalization, and loss in their communities, bringing experiences of sadness, grief, isolation, hopelessness, and low self-worth.**”<sup>9</sup>
    - o The same report described the constant fear youth were in due to local law enforcement.
      - “Youth described how police surveilled their neighborhoods and schools and how local police and ICE targeted Latinx immigrants in their places of employment, grocery stores, and the roads they drive to go to work or go about everyday life. As a result, Latinx youth and families had to adapt their lives to not be targeted, causing ongoing fear and pressure. Youth dealt with many losses related to deportation and deportation fears.”
      - One youth described “[I]iving in fear of police and having to hide and give up on stuff because you don’t want to get people deported.” Another youth reported: “I can never feel safe in places that I am supposed to feel safe in.”
    - o Another study found a significant decrease in the weight and fetal development of babies born to Latina migrants following their county’s adoption of a 287(g) agreement, likely due to intense stress upon the pregnant mothers.<sup>10</sup>
    - o Other researchers observed that 287(g) agreements seem to increase the likelihood of babies born alarmingly prematurely in Hispanic families.<sup>11</sup>

<sup>6</sup> <https://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

<sup>7</sup> <https://www.justice.gov/opa/pr/justice-department-releases-investigative-findings-alamance-county-nc-sheriff-s-office>.

<sup>8</sup> <https://www.ohchr.org/en/documents/concluding-observations/cerdcusaco10-12-concluding-observations-combined-tenth-twelfth>.

<sup>9</sup> <https://journals.sagepub.com/doi/10.1177/10901981231193695?icid=int.sj-full-text.similar-articles.2> “I Can Never Feel Safe”: Latinx Youth Voices on Psychosocial Impacts of 287(g) in Georgia, *Health Education & Behavior* 2024, Vol. 51(1) 71–81 © 2023 Society for Public Health Education Article.

<sup>10</sup> <https://journals.sagepub.com/doi/epub/10.1177/01979183231191742>; Tome Romina, Rangel Marcos A., Gibson-Davis Christina M., Bellows Laura. 2021. “Heightened Immigration Enforcement Impacts US Citizens’ Birth Outcomes: Evidence from Early ICE Interventions in North Carolina.” *PLOS ONE* 16(2): e0245020.

<sup>11</sup> <https://journals.sagepub.com/doi/epub/10.1177/01979183231191742>; Stanhope Kaitlyn K., Hogue Carol R., Suglia Shakira F., Leon Juan S., Kramer Michael R. 2019. “Restrictive Sub-Federal Immigration Policy Climates and Very Preterm Birth Risk among US-Born and Foreign-Born Hispanic Mothers in the United States, 2005–2016.” *Health & Place* 60(102209): 1–9.



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- o Additionally, the adoption of 287(g) agreements has been linked to reduced school attendance rates among Hispanic children, including Hispanic children likely to come from U.S.-born households.<sup>12</sup>
- o A community member remarked that fellow migrants, even documented immigrants, refuse to engage with law enforcement even when in danger for fear of being taken into custody due to racial profiling.<sup>13</sup>

## 2) **Creates an unconstitutional and error-prone deportation pipeline using local law enforcement. This jeopardizes immigrant communities and creates liability.**

- This bill mandates law enforcement agencies to comply with and, in some cases, to hold individuals for 48 hours based on immigration detainer notices, often referred to as “ICE detainers,” from DHS or ICE. This bill also prohibits local officials from adopting policies that restrict compliance with ICE detainers.
  - o A) Some courts have held that complying with an ICE detainer is unconstitutional<sup>14</sup> because it would force local enforcement agencies to hold an individual in their custody beyond the time they otherwise would be held. This is done without a judicial warrant or probable cause, which is required by the Fourth amendment.
  - o B) ICE detainers are often error-prone.
    - According to NPR, between 2007 and 2016, 693 U.S. citizens were held in local jails on ICE detainers and another 818 US citizens were held in immigration detention centers. That indicates that over 1,500 individuals were wrongfully detained or incarcerated over this time.<sup>15</sup> According to Syracuse University, from 2008-2012, ICE’s own data indicates that they placed ICE detainers on 834 U.S. citizens and 28,489 Legal Permanent Residents.<sup>16</sup> This includes 11 U.S. citizens, 10 of whom had no criminal background, and 861 legal permanent residents based in Georgia.<sup>17</sup>
    - The ACLU of Northern California obtained ICE email records in 2022 showing that California Dept. of Corrections officers were aware that at least

<sup>12</sup> <https://journals.sagepub.com/doi/epub/10.1177/01979183231191742>; Bellows Laura. 2018. “Immigration Enforcement and Student Achievement: The Negative Spillover of Secure Communities.” Stanford Center for Education Policy and Analysis. <https://stanford.io/2RLa4wk..>

<sup>13</sup> <https://www.aclu.org/news/immigrants-rights/on-the-frontlines-of-the-fight-against-mass-deportation>.

<sup>14</sup> *Buquer v. City of Indianapolis*, No. 1:11-cv-00708, at \*35 (S.D. Ind. Mar. 28, 2013) (“[B]ecause [§ 20 of Indiana’s 2011 S.E.A. 590] authorizes state and local law enforcement officers to effect warrantless arrests for matters that are not crimes, it runs afoul of the Fourth Amendment, and thus, is unconstitutional on those grounds.”). Accord.; *Lopez-Aguilar v. Marion Cty. Sheriff’s Dep’t*, No. 1:16-cv-02457, 296 F. Supp. 3d 959, (S.D. Ind. Nov. 7, 2017) (“seizures by [local law enforcement] of any person based solely on detention requests from [ICE], in whatever form, or on removal orders from an immigration court, violate the Fourth Amendment, unless ICE supplies, or [local law enforcement] otherwise possess, probable cause to believe that the individual to be detained has committed a criminal offense”); *Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276, 1306-07 (S.D. Fla. Nov. 9, 2018) (finding that local officers violated plaintiff’s Fourth Amendment rights when they arrested him based on a detainer and without probable cause that he had committed a crime); *C.F.C. v. Miami-Dade Cty.*, 349 F. Supp. 3d 1236, 1263 (S.D. Fla. 2018) (same). But see *Tenorio-Serrano v. Driscoll*, 324 F. Supp. 3d 1053, 1066 (D. AZ 2018) (disagreeing that Fourth Amendment requires local officers to have probable cause of a crime, as opposed to removability). [https://www.ilrc.org/sites/default/files/resources/ice\\_detainers\\_ice\\_advisory.pdf](https://www.ilrc.org/sites/default/files/resources/ice_detainers_ice_advisory.pdf). See e.g., *Roy v. County of L.A.*, 2018 U.S. Dist. LEXIS 27268, *Morales v. Chadbourne*, 793 F.3d 208, 215 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*, No. 12-cv-02317, 2014 WL 1414305, at \*10 (D. Or. Apr. 11, 2014); *Buquer v. City of Indianapolis*, 2013 WL 1332158, at \*10 (S.D. Ind. 28, 2013).2 50-36A-6.

<sup>15</sup> <https://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported#text2>.

<sup>16</sup> <https://trac.syr.edu/immigration/reports/310/>.

<sup>17</sup> <https://trac.syr.edu/immigration/reports/311/>.



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some of the people they detained were U.S. citizens but nevertheless referred them to ICE.<sup>18</sup>

o C) ICE detainers are broadly administered

- A 2011 Migration Policy Institute report showed that about 67% of 2010 ICE detainers in Cobb County were placed on individuals for traffic violations or no violation at all.<sup>19</sup>
- The same study showed that 60% of ICE detainers in Gwinnett were placed on individuals with traffic violations and low-level crimes over the same timeframe.<sup>20</sup> In addition, the report found that Southeast localities with the 287(g) program including Cobb and Gwinnett counties had “relatively high shares of traffic offenders and low shares of Level 1 and 2 offenders<sup>21</sup> compared to the national average.”
- For the last fiscal years of available ICE disclosures, over 80% of ICE arrests in Cobb, Hall, Whitfield, and Gwinnett Counties were arrests of individuals with no violations or low-level violations.<sup>22</sup>

o C) ICE Detainers may create liability. Several U.S. citizens have filed lawsuits against entities such as ICE, sheriff’s offices, and state Departments of Corrections. These entities subjected them to illegal and unconstitutional detention based on faulty immigration detainers. Some of those localities have since ended their policy to hold individuals on the sole basis of an ICE detainer.<sup>23</sup> One city in Michigan was forced to pay a U.S. citizen \$190,000 after the city’s police department transferred him to ICE custody after he was to be released.<sup>24</sup> Localities in New Jersey were forced to pay \$150,000 in damages to a U.S. citizen for unlawfully detaining him on an ICE detainer.<sup>25</sup> One county in California was forced to pay \$35,000 to settle a lawsuit by a U.S. citizen for facilitating her transfer to ICE.<sup>26</sup>

- Despite the clear flaws of ICE detainers, this bill mandates that DNA samples be collected from individuals who are convicted of a felony or misdemeanor and subject to an ICE detainer. This provision is redundant and unnecessary since federal law already requires DNA-collection of non-U.S. persons who are detained under U.S. authority, such as by ICE.<sup>27</sup> Collection of DNA also adds unnecessary costs<sup>28</sup> while the bill contains no fiscal note.
  - o The bill does not specify how or in which database the DNA information will be stored or which agencies will be able to access the information. This is especially

<sup>18</sup><https://www.latimes.com/politics/story/2023-08-29/california-prisons-ice-records-us-citizens>; <https://reevesimmigration.com/aclu-says-records-prove-california-prisons-are-reporting-u-s-citizens-to-ice/>.

<sup>19</sup> <https://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

<sup>20</sup> <https://www.migrationpolicy.org/research/delegation-and-divergence-287g-state-and-local-immigration-enforcement>.

<sup>21</sup> According to the Migration Policy Institute Report, level 1 and 2 crimes are serious crimes while level 3 crimes are low level crimes.

<sup>22</sup> <https://trac.syr.edu/phptools/immigration/apprehend/>.

<sup>23</sup> <https://www.providencejournal.com/article/20140717/NEWS/307179982>;

<http://www.riaciu.org/news/archive-post/court-finds-immigration-officials-violated-constitution-in-detaining-u.s.-c>;

<https://www.cnn.com/2018/12/03/us/us-citizen-detained-ice/index.html>;

<https://www.cnn.com/2019/01/17/us/michigan-ice-detains-us-citizen-veteran/index.html>.

<sup>24</sup> <https://www.michiganradio.org/post/grand-rapids-pay-190000-marine-vet-who-faced-deportation-based-grpd-tip>.

<sup>25</sup> <https://www.aclu.org/cases/immigrants-rights/galarza-v-szalczyk>.

<sup>26</sup> <https://www.aclusocal.org/en/press-releases/guadalupe-plascencia-us-citizen-unlawfully-detained-ice-wins-settlement>.

<sup>27</sup> <https://www.federalregister.gov/documents/2020/03/09/2020-04256/dna-sample-collection-from-immigration-detainees>.

<sup>28</sup> <https://legiscan.com/TN/supplement/SB7087/id/390746>.



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concerning since DNA inherently contains sensitive personal data, such as health information, ancestry, and predictive data about predisposition to certain illnesses or behaviors.<sup>29</sup>

- This provision singles out immigrants convicted of misdemeanors— individuals convicted of the same misdemeanor who are not subject to an ICE detainer will not be required to undergo a DNA swab.
- The bill contains no provisions for later expungement of DNA information. This means individuals' DNA would be stored even if the detainer was mistaken or the individual is later released from ICE detention.

### 3) **Working with ICE does not make our communities safer; instead, it leaves communities vulnerable to crimes without being able to seek protection.**

- Immigrants who are survivors of domestic violence, sexual assault, and human trafficking will be deterred from accessing services, placing them at greater risk and undermining public safety.<sup>30</sup>
- Multiple reports have shown there is no relationship between immigration and crime. If anything, reports have shown immigrants are less likely to engage in criminal behavior.<sup>31</sup>
- In addition, a national study by the University of California, Davis, found that deportations do not reduce crime. The study indicated that there is no correlation between deportations and public safety; in particular, deportations had no effect on violent or property crimes.<sup>32</sup>
- A 2017 study, by Professor Tom Wong of the University of California at San Diego, found counties with policies protecting immigrants had lower crime rates.<sup>33</sup>
- Upon ending their 287(g) agreements, the sheriffs of Cobb and Gwinnett Counties reported enhanced relationships with their communities.<sup>34</sup>

### 5) **Advances anti-immigrant rhetoric by creating skewed public reports.**

- This bill mandates the Commissioner of Corrections and all Jailers to publish public reports on aggregate data that includes information like: immigration status, offenses, home countries of non-us Citizens, total number of non citizens in custody, separate category for US citizens who are dual citizens of another country, total number of people booked, total number of foreign born individuals, total number of inquiries made to ICE

<sup>29</sup><https://www.aclu.org/news/privacy-technology/proposal-expand-mandatory-dna-collection>.

<sup>30</sup> <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>.

<sup>31</sup><https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>; <https://www.cato.org/blog/new-research-illegal-immigration-on-crime-0>; <https://www.ojp.gov/library/publications/comparing-crime-rates-between-undocumented-immigrants-legal-immigrants-and> (“The study found that undocumented immigrants had substantially lower crime rates than native-born citizens and legal immigrants across a range of felony offenses. Relative to undocumented immigrants, U.S.-born citizens are over 2 times more likely to be arrested for violent crimes, 2.5 times more likely to be arrested for drug crimes, and over 4 times more likely to be arrested for property crimes.”)

<sup>32</sup> Anna Flagg, “Deportations Reduce Crime? That’s Not What the Evidence Shows,” N.Y. TIMES, Sept. 23, 2019, <https://www.nytimes.com/2019/09/23/upshot/deportations-crime-study.html>.

<sup>33</sup> Tom K. Wong, The Effects of Sanctuary Policies on Crime and the Economy, Jan. 26, 2017,

<https://www.nilc.org/issues/immigration-enforcement/sanctuary-policies-effects-crime-economy/>.

<sup>34</sup> <https://www.ajc.com/news/georgia-news/theres-less-fear-metro-atlanta-immigrants-feel-safer-with-new-sheriffs/I2A4UZJFYNHQDIGMIRCA5A5B5FI/>.



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or other federal agency inquiring about immigration status of individual in their custody and total number of their responses, and total number of immigration detainees used by ICE

- These numbers will be skewed to tell a false narrative about immigrants in carceral custody because they will include individuals in jails who have only been charged and not convicted of a crime.