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# AMIDST CONTROVERSY OVER FEDERAL 287(g) IMMIGRATION PROGRAM, ARIZONA APPROVES IMMIGRATION TRESPASSING CRIME UNDER NEW LAW

*by* CHRISTINA McMAHON

**I**n 2008, Velia Meraz and Manuel Nieto, Jr. were traveling to their Phoenix, Ariz. auto-repair store when four local law enforcement patrol cars blocked their path. Officers then surrounded Meraz and Nieto with weapons raised.<sup>1</sup>

The officers, who had been conducting an immigration sweep near the store, believed that Meraz and Nieto were undocumented aliens.<sup>2</sup>

Though Nieto, born and raised in Chicago, Ill., was not charged with any infraction, he was pulled from his car and pressed face first against the glass window.<sup>3</sup> The officers released Meraz and Nieto after running Nieto's drivers license through a computer to prove his U.S. citizenship.<sup>4</sup> However, Nieto claims the officers, operating under a federal 287(g) agreement authorizing local police agencies to enforce federal immigration law, were "overstepping the line."<sup>5</sup>

The 287(g) program, which is the section of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that authorizes it, provides for U.S. Immigration and Customs Enforcement (ICE) to train local police agencies in federal immigration enforcement.<sup>6</sup> The local agencies must sign an ICE-issued Memorandum of Agreement (MOA) to participate in the 287(g) program.<sup>7</sup>

The 287(g) program has increased dramatically since 2006, from eight participating agencies with a \$5 million federal budget to 67 participating agencies with a \$54 million budget in 2009.<sup>8</sup> Supporters claim there have been "phenomenal results . . . as a force multiplier for ICE" to target problems associated with illegal immigration, such as gangs, drugs and human smuggling.<sup>9</sup> However, opponents contend the agreements have led to racial profiling in some immigrant communities.<sup>10</sup>

Last year, the Department of Homeland Security (DHS) revised procedures following these claims of racial profiling and a U.S. Government Accountability Office (GAO) report citing a lack of program objectives and federal oversight.<sup>11</sup> DHS issued a revised MOA that all participating agencies needed to sign by Oct. 10, 2009.<sup>12</sup> Sixty-seven agencies signed the new MOA, which specifically asked participants to prioritize targeting undocumented aliens who have committed serious crimes, such as murder, rape or robbery, in an effort to minimize those detained for minor civil infractions.<sup>13</sup>

However, the Arizona state legislature recently passed a law that may obviate the need for 287(g) agreements entirely.<sup>14</sup> The new law, SB1070, broadens the state crime of trespassing to apply to all undocumented immigrants within the state.<sup>15</sup> Therefore, the law places all incidents of undocumented immigration

squarely within the state police power, allowing local law enforcement to pursue immigration violations without federal approval.<sup>16</sup>

#### ARIZONA: “GROUND ZERO” OF THE IMMIGRATION BATTLE

Maricopa County Sheriff Joe Arpaio, famous for conducting widespread sweeps of Hispanic neighborhoods under the pretext of looking for “criminal aliens” pursuant to 287(g) agreements, detained Meraz and Nieto.<sup>17</sup> Meraz and Nieto, however, are not alone. Since 2007, Arpaio has detained over 30,000 other undocumented immigrants, often for minor traffic violations.<sup>18</sup> Due to the number of undocumented immigrants apprehended last year, Maricopa County law enforcement needed to set up a separate “Tent City” outside of the local jail to support the overflow of immigrants detained.<sup>19</sup>

Maricopa County is not the only area taking an aggressive approach to local enforcement of federal immigration laws.<sup>20</sup> According to Joanne Lin, legislative counsel for the American Civil Liberties Union (ACLU), “Joe Arpaio might be the most extreme and obnoxious version of 287(g) run amok, but he is not aberrational. We have examples all across the country of local law enforcement using their authority under the program to harass U.S. citizens and people who look foreign.”<sup>21</sup>

ICE officials claim that the 287(g) program was intended to address “serious crime . . . committed by removable aliens.”<sup>22</sup> However, according to the GAO, several local agencies are using 287(g) to remove undocumented immigrants for violations of minor civil infractions, which is “contrary to the objective of the program.”<sup>23</sup>

Last October, following claims of racial profiling during immigration sweeps, DHS revoked a 287(g) agreement with Maricopa County that allowed 160 of Arpaio’s deputies to enforce federal immigration law.<sup>24</sup> Despite this attempt to deter the improper implementation of 287(g) agreements, Arpaio has chosen to ignore the DHS decision and has begun training all 881 of his deputies.<sup>25</sup> Arpaio claims the right to do so under the “inherent authority” of local police to stop and arrest people in order to enforce immigration law.<sup>26</sup>

Addressing Arpaio’s actions, Muzaffar Chishti, director of the Migration Policy Institute (MPI), states, “[T]hey claim they have the right on their own to hold

someone up without an ICE detainer. What will be challenged is that they can't just hold people on the basis of an immigration suspicion."<sup>27</sup>

The Arizona state legislature, however, supports Arpaio.<sup>28</sup> Recently, the legislature gave local law enforcement this power by making federal immigration violations a state crime.<sup>29</sup>

## IMMIGRATION BILL

On April 23, 2010, Gov. Jan Brewer signed into law SB1070, a sweeping immigration bill that creates a statewide obligation to enforce federal immigration law.<sup>30</sup> This law replaces the 287(g) agreements, in which city or county governments previously decided enforcement of federal immigration.<sup>31</sup> Moreover, the law makes Arizona the first state to enact a crime of "immigration trespassing."<sup>32</sup> Making immigration trespassing a crime means that an undocumented immigrant could be criminally punished for his or her mere presence in the state.<sup>33</sup> A House amendment to SB1070 replaced the term "immigration trespassing" with "willful failure to complete or carry an alien registration document."<sup>34</sup> However, this amendment did not alter the substance of the violation.<sup>35</sup>

Even citizens or legal immigrants who happen to leave their home without their documents could be arrested and detained under the law.<sup>36</sup> A first-offense violation of SB1070 is a misdemeanor punishable by up to six months in prison.<sup>37</sup> Subsequent violations are felonies punishable by one-and-a-half to three years imprisonment.<sup>38</sup> The law allows local agents to detain a person "where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States."<sup>39</sup>

Opponents criticize the law's failure to address what specifically will amount to reasonable suspicion.<sup>40</sup> Historically, only federal immigration officials had authority to detain a person solely for civil immigration violations based on "reasonable suspicion."<sup>41</sup> Under 287(g), local law enforcement may only detain for "probable cause."<sup>42</sup>

Opponents are particularly concerned about the trespassing provision, stating that it will increase racial profiling.<sup>43</sup> They argue that U.S. citizens and legal immigrants will be approached on the basis of their skin color.<sup>44</sup> "Bills like this

that cast a net so wide are guaranteed to trap U.S. citizens,” states Jennifer Allen, director of Border Action Network.<sup>45</sup> “It gives too much authority to poorly trained, unaccountable officers. Also, crimes are going unreported because people are becoming afraid that their immigration status will become the main issue, and they will be deported.”<sup>46</sup>

However, Jessica Vaughn, senior policy analyst at the Center for Immigration Studies, claims that this argument is “a complete myth not supported by any kind of [evidence] . . . Victims of crime simply are [not] going to be subject to removal orders.”<sup>47</sup>

Alternatively, SB1070 sponsor Republican Sen. Russell Pearce states that the trespassing provision will not be used on a wide scale, and local officers are not required to arrest all illegal immigrants under the law.<sup>48</sup> “[This bill] will take the political handcuffs off of law enforcement,” he states.<sup>49</sup>

Additionally, Sheriff Arpaio claims the two-hour training session that each deputy receives to enforce federal immigration law will now include information on how to identify undocumented immigrants and avoid racial profiling.<sup>50</sup> However, opponents argue that there is no way to target undocumented immigrants without racial profiling.<sup>51</sup> When asked, Gov. Jan Brewer admitted, “I do [not] know what an undocumented person looks like.”<sup>52</sup>

The passage of this bill has also returned attention to the Obama Administration’s promise to issue sweeping immigration reform.<sup>53</sup> Gov. Brewer claims that the law is necessary because the lack of federal immigration reform has forced the states to act in protection of their borders, stating, “We in Arizona have been more than patient waiting for Washington to act.”<sup>54</sup> Minutes before Gov. Brewer signed the bill into law, President Obama criticized it as “misguided” and urged that congressional failure to pass immigration reform quickly will “only open the door to irresponsibility by others.”<sup>55</sup> President Obama additionally warned that SB1070 could violate citizen’s civil rights, and urged the Justice Department to monitor the law’s implementation.<sup>56</sup>

Whether such measures will be sufficient to avoid racial profiling remains to be seen. However, with this unprecedented new immigration law, it seems that Arizona will have its hands full balancing new law enforcement freedoms with the civil rights of U.S. citizens and legal immigrants in the state.

## NOTES

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