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May 27, 2025

The Honorable Karen Lewis Young  
Maryland Senate  
302 James Senate Office Building  
Annapolis, Maryland 21401  
*Via email*

**RE: Limitations on 287(g) Agreements**

Dear Senator Lewis Young:

You have requested a letter of advice addressing whether limiting participation in the 287(g) program to only cases of felony crimes and violent misdemeanors is possible under federal and State law. In my view the answer is yes, such a State law would be permissible.

The “287(g) program” refers to a program under § 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g), that allows the U.S. Attorney General to enter into written agreements with states and local law enforcement agencies deputizing qualified agents to carry out federal immigration law enforcement functions under the supervision of U.S. Immigration and Customs Enforcement (“ICE”). The specifics of a 287(g) agreement, called a memorandum of agreement (“MOA”), are negotiated between the Department of Homeland Security and the state or local authorities. The 287(g) program is voluntary. *See* 8 U.S.C. § 1357(g)(9) (“Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.”). Once a local law enforcement agency enters into a 287(g) MOA, it may terminate it at any time.

It is my view that the General Assembly may lawfully limit the scope of existing or future 287(g) agreements by a statute that permits State or local law enforcement agencies to assist in federal immigration efforts under the 287(g) program only when a detained individual was arrested

for or convicted of felony crimes or violent misdemeanors. Counsel to the General Assembly Sandra Benson Brantley has previously advised that she believes the State can generally end or prohibit 287(g) agreements because nothing in federal or State law requires a sheriff to participate in a 287(g) program. *See* Letter to the Honorable Nicole A. Williams from Counsel to the General Assembly Sandra Benson Brantley (March 10, 2025). Notwithstanding the existence of the 287(g) program, the State retains control of State and local law enforcement, and 287(g) agreements must comply with applicable State law. *See* 8 U.S.C. § 1357(g)(1) (stating that 287(g) agreements can permit state and local officials to carry out an immigration officer function “to the extent consistent with State and local law”). Indeed, ICE’s sample “Memorandum of Agreement” for the “287(g) Jail Enforcement Model” states, “no participating LEA [law enforcement agency] personnel will be expected or required to violate or otherwise fail to maintain the LEA’s rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.”<sup>1</sup> Thus, although a 287(g) agreement may authorize law enforcement agents to exercise certain civil immigration law enforcement functions, those functions can only be exercised to the extent permitted by State law.<sup>2</sup>

Furthermore, in my view, the limitation you propose does not seem to be preempted by federal law because, by § 287(g)’s own terms, state or local participation is voluntary and subject to state law. *See City of El Cenizo, Texas v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018) (“Federal law does not suggest the intent—let alone a ‘clear and manifest’ one—to prevent states from regulating whether their localities cooperate in immigration enforcement. Section 1357 does not require cooperation at all.”); *Grewal*, 475 F. Supp. 3d at 383 (holding that the New Jersey Attorney General’s directive prohibiting local governments from entering 287(g) agreements was not preempted by federal law, explaining “that participation by local enforcement agencies is solely within the control of their creating state”). Some states have already enacted laws or policies prohibiting or limiting 287(g) agreements.<sup>3</sup> More generally speaking, several federal courts have acknowledged that states are not required to use their own resources to assist the federal government in immigration enforcement. *See, e.g., United States v. California*, 921 F.3d 865, 890-91 (9th Cir. 2019) (recognizing that “California has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal [immigration enforcement] efforts”); *City of El Cenizo*, 890 F.3d at 178 (“[T]he Tenth Amendment prevents Congress from compelling Texas municipalities to cooperate in immigration enforcement.”).

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<sup>1</sup> *See* Memorandum of Agreement, 287(g) Jail Enforcement Model at 4, (Feb. 15, 2025), [https://www.ice.gov/doclib/about/offices/ero/287g/JEM\\_MOA\\_Fillable.pdf](https://www.ice.gov/doclib/about/offices/ero/287g/JEM_MOA_Fillable.pdf).

<sup>2</sup> *See Cnty. of Ocean v. Grewal*, 475 F. Supp. 3d 355, 384 (D.N.J. 2020), *aff’d sub nom. Ocean Cnty. Bd. of Commissioners v. Att’y Gen. of State of New Jersey*, 8 F.4th 176 (3d Cir. 2021) (“While Congress has the exclusive province to regulate federal civil immigration law, the INA itself contemplates that States shall have the ability to determine the extent to which they participate in the enforcement of such laws.”).

<sup>3</sup> *See, e.g., Or. Rev. Stat. Ann.* § 181A.820; *see also* map at <https://www.ice.gov/identify-and-arrest/287g#:~:text=The%20Jail%20Enforcement%20Model%20is%20designed%20to,by%20state%20or%20local%20law%20enforcement%20agencies>. In 2011, the Migration Policy Institute found that some jurisdictions limit 287(g) program participation by targeting their 287(g) programs to identify individuals with serious criminal convictions. *See* <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>.

Thus, I believe it is permissible for the General Assembly to enact statutory limits on participation in the 287(g) program along the lines of what you stated. Ultimately, the specifics of a 287(g) MOA subject to such a State law would have to be negotiated with the federal government.

I hope this information is helpful. Please let me know if you have any further questions.

Sincerely,

A handwritten signature in cursive script that reads "Natalie Bilbrough".

Natalie R. Bilbrough  
Assistant Attorney General