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**THE CITY OF KEY WEST**

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**MEMORANDUM**

To: Mayor and City Commissioners

From: Kendal Harden, Interim City Attorney

Date: June 29, 2025

RE: 287(g) Agreement and Impact of Failing to Ratify the 287(g) Agreement on the City of Key West

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**I. Introduction**

This memorandum addresses two primary issues: (1) the validity of the 287(g) agreement signed by Chief of Police Sean Brandenburg on March 4, 2025, and (2) the potential legal implications and impacts on the City of Key West following the failure to ratify the 287(g) agreement with the Federal Government, particularly in light of Florida's anti-sanctuary statute.

**II. 287(g) Agreement**

A 287(g) agreement is a formal agreement between a local law enforcement agency and U.S. Immigration and Customs Enforcement (ICE) under Section 287(g) of the Immigration and Nationality Act. It allows local officers to perform certain federal immigration enforcement functions, such as identifying and processing undocumented immigrants for removal, after receiving ICE training and supervision. Ultimately, it delegates specific federal immigration enforcement powers to local agencies, creating a partnership to assist with immigration law enforcement.

**III. Validity of the City of Key West's 287(g) Agreement**

The 287(g) agreement signed by Chief of Police Sean Brandenburg on March 4, 2025, calls into question the validity of the agreement and its binding effects on the City of Key West.

Under the City of Key West Charter, the authority to sign contracts that bind the city is vested in the City Manager, unless otherwise specified by ordinance, resolution, or the Charter. Under the City of Key West Charter, Section 4.01, the City Manager is designated as the chief executive and administrative officer of the city, responsible for the administration of all city functions and affairs placed in their charge by or under the Charter. The City Charter also states that the City Commission shall have all legislative power, which means the City Commission acts as the city's law-making body, and it has full authority to create local laws, policies, and rules. Without proper delegation of authority to the Chief of Police to execute the 287(g) agreement, the executed agreement may not be binding on the city.

In the case of *Ramsey v. City of Kissimmee*, the Supreme Court of Florida held that the plaintiffs, in dealing with the city, were bound to ascertain the nature and extent of the authority of the mayor-commissioner to sign the contract on behalf of the city. If the mayor-commissioner did not have the authority to sign, or if the contract was not ratified by the city commission, the contract would not be binding. *Ramsey v. City of Kissimmee*, 139 Fla. 107 (1939). This principle underscores the necessity for proper authorization and ratification by the governing body of the city.

Similarly, in *City of Homestead v. Raney Const., Inc.*, the court emphasized that the mayor must have authority granted by ordinance or resolution to execute contracts on behalf of the city. Without such authority, the contract would be void. *City of Homestead v. Raney Const., Inc.*, 357 So.2d 749 (1978).

The general rule is that officers of a municipality need express authority from the city commission to bind the municipality. Consequently, a contract signed by the chief of police or any other city employee without delegated authority is not binding on the City of Key West. Therefore, the 287(g) contract is likely void as it was not signed by a party with proper authority. It is important to note that a court would need to declare a contract void or unenforceable.

#### **IV. Legal Implications and Impacts of Failing to Ratify the 287(g) Agreement on the City of Key West**

Not ratifying the 287(g) agreement may result in potential legal implications and impacts on the City of Key West. The Attorney General filed a motion to dismiss in the case of *City of South Miami v. Ron Desantis* filed in Leon County, which sets forth the Governor and Attorney General's position on local governments that oppose the 287(g) agreement. Although the Attorney General emphasizes that a municipality does not adopt a sanctuary policy simply by failing to execute a 287(g) agreement, he does state that a municipality's failure to execute a 287(g) agreement can indeed reveal a sanctuary policy.

Florida's sanctuary-policies law prohibits municipalities from adopting policies that impede law enforcement from participating in federal immigration operations, including 287(g) agreements. Not ratifying the 287(g) agreement between the City of Key West and the Federal Government could have significant legal implications under Florida law, particularly in relation to Chapter 908.

Section 908.103 of Florida Statutes states that “[a] state entity, law enforcement agency, or local governmental entity may not adopt or have in effect a sanctuary policy.” Sanctuary policy is defined as:

a law, policy, practice, procedure, or custom adopted or allowed by a state entity or local governmental entity which prohibits or impedes a law enforcement agency from complying with 8 U.S.C. s. 1373 or which prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency so as to limit such law enforcement agency in, or prohibit the agency from:

- (a) Complying with an immigration detainer;
- (b) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate or detainee in the custody of the law enforcement agency;
- (c) Providing a federal immigration agency access to an inmate for interview;
- (d) Participating in any program or agreement authorized under s. 287 of the Immigration and Nationality Act, 8 U.S.C. s. 1357 as required by s. [908.11](#);
- (e) Providing a federal immigration agency with an inmate’s incarceration status or release date;
- (f) Providing information to a state entity on the immigration status of an inmate or detainee in the custody of the law enforcement agency;
- (g) Executing a lawful judicial warrant; or
- (h) Participating in a federal immigration operation with a federal immigration agency as permitted by federal and state law.

Fla. Stat. § 908.102(6).

Chapter 908 requires local governments to cooperate with federal immigration enforcement and prohibits the adoption of sanctuary policies. The failure to ratify the 287(g) agreement could be interpreted as a failure to comply with these requirements, specifically 908.102(6)(h), if it is accompanied by a policy or custom that impedes law enforcement from participating in federal immigration operations.

If the Commission’s failure to ratify the 287(g) agreement is perceived as a move towards adopting a sanctuary policy, the City of Key West could face legal challenges from the state. The Attorney General and the Governor have the authority to enforce Chapter 908 and could seek declaratory or injunctive relief against the city.

Without a 287(g) agreement, local law enforcement officers in Key West may be limited in their ability to participate in federal immigration operations. This could affect their capacity to perform certain functions, such as interrogating or detaining individuals for immigration violations, which are typically authorized under such agreements.

Failing to ratify the 287(g) agreement may also impact the city’s eligibility for state support and resources. Chapter 908 includes provisions for a Local Law Enforcement Immigration Grant

Program, which reimburses expenses related to 287(g) agreements. Without such an agreement, the City of Key West may not qualify for these funds.

## **V. Conclusion**

If the City Commission chooses not to ratify the 287(g) agreement, I suggest the resolution presented be amended to include the following language:

1. Add a section that states: “The Chief of Police did not have authority to execute the 287(g) agreement, and the City Commission considers the 287(g) agreement signed by the Chief of Police of the City of Key West, Sean Brandenburg on March 4, 2025, void and unenforceable. The City Manager is hereby directed to immediately suspend all activities, training and operations associated with the 287(g) agreement and cease the allocation of city resources.”
2. Add a section that states: “The City Manager, upon consent of the City Attorney, shall provide notice to ICE and any other relevant entities, that the City is suspending all involvement in the 287(g) related activities due to the current agreement being unenforceable and without legal effect.”
3. Add a section that states: “If the validity of the 287(g) agreement is challenged and deemed enforceable by a court of law, the City Commission terminates the 287(g) agreement executed by all parties on March 5, 2025.”

Please let me know if you have questions or would like to discuss this further.