

September 13, 2021

Sheriff James M. Cummings
Barnstable County Sheriff's Office
6000 Sheriff's Place
Bourne, MA 02532
Email: bcso@bsheriff.net

RE: Terminating Barnstable County Sheriff's Office's 287(g) Agreement With ICE

Dear Sheriff Cummings:

As you are no doubt aware, the Barnstable County Sheriff's Office is now the last local sheriff's office in Massachusetts to maintain a 287(g) agreement with U.S. Immigration and Customs Enforcement (ICE). Because 287(g) agreements entangle localities with federal immigration enforcement in ways that are harmful as a policy matter, illegal, and a drain on state resources, we demand that you terminate your 287(g) agreement immediately.

Background

287(g) agreements purport to allow local sheriffs to engage in federal civil immigration enforcement activities, including arrest, interrogation, and transportation of immigrants. These agreements have long been maligned, locally and nationally, as a significant source of fear in immigrant communities, and as a waste of taxpayer funds.

As recently as March of this year, three Massachusetts sheriff's offices had operative 287(g) agreements with ICE: Bristol County, Plymouth County, and Barnstable County. As a result of lawsuits brought by our offices, Bristol County's and Plymouth County's agreements have now been terminated. At this point, Barnstable County stands alone in maintaining its illegal agreement.

Specifically, in *Savino v. Souza*, our organizations sued Bristol County in federal court due to that facility's egregious civil rights violations during the COVID-19 pandemic. *See Savino v. Souza*, 459 F. Supp. 3d 317 (D. Mass. 2020). As a result of federal court orders in our lawsuit, the population of the Bristol facility dropped from 148 when we filed suit in March 2020 to just seven when the case ended this spring. During the course of the litigation, Attorney General Maura Healey also documented civil rights abuses in the facility. Immediately after our litigation concluded, the Biden/Harris Administration shut down the immigration detention facility at Bristol altogether and terminated Bristol's 287(g) agreement. *See BOSTON GLOBE, Biden Administration terminates ICE contract with Bristol County Sheriff Thomas Hodgson*,

May 20, 2021, available at <https://www.bostonglobe.com/2021/05/20/metro/biden-administration-terminates-ice-contract-bristol-sheriff-thomas-hodgson/>

Similarly, in *Cofield et al. v. McDonald et al.*, our organizations sued Plymouth County over its 287(g) agreement, detailing how sheriffs in Massachusetts have no power to engage in federal civil immigration enforcement activities. In a ruling this summer, Plymouth County Judge Daniel J. O’Shea pointedly questioned the authority of Massachusetts sheriffs to enter into 287(g) agreements. Citing Supreme Judicial Court precedent that sharply limits the role of sheriffs in Massachusetts, the Court held that the Plymouth County Sheriff’s attempt to justify the legality of the agreements “does not effectively refute the petitioners’ assertion that the current statutory scheme outlining the defendants’ powers to arrest and detain neither explicitly nor implicitly includes the authority to enter into 287(g) agreements.” *Cofield et al. v. McDonald et al.*, Plymouth Sup. Ct. No. 2183CV0080 (July 29, 2021) at 7.

Following this ruling, the Plymouth County Sheriff late last week announced that he was voluntarily terminating Plymouth County’s 287(g) agreement. See WGBH, *Plymouth Sheriff Ends Contract To Share Immigrant Information With ICE*, Sept. 10, 2021, available at <https://www.wgbh.org/news/local-news/2021/09/10/plymouth-sheriff-ends-contract-to-share-immigrant-information-with-ice>.

Barnstable County’s 287(g) Agreement Is Both Poor Public Policy And Illegal

Barnstable County now stands as the lone remaining Massachusetts sheriff’s office that maintains a 287(g) agreement.

As noted above, 287(g) agreements entangle local entities in federal immigration enforcement in ways that are extremely harmful. As you know, by the terms of the agreement itself, the cost of carrying out Barnstable County’s 287(g) agreement is borne almost entirely by your office, with virtually no contribution from ICE. It is therefore a wasteful drain on the public fisc. Moreover, maintaining such an agreement instills fear in immigrant communities that your offices are supposed to protect, making victims and witnesses of crimes in Barnstable County less likely to come forward and thereby endangering all of the Commonwealth’s residents.

Barnstable County’s 287(g) agreement is illegal as well – for the exact same reasons that Judge O’Shea identified in calling into question Plymouth County’s agreement. Simply put, sheriffs in the Commonwealth have no power to enforce federal immigration law, nor do they have the power to enter into agreements that purport to authorize such activity. See *Souza v. Sheriff of Bristol Cty.*, 455 Mass. 573 (2010); *Lunn v. Commonwealth*, 477 Mass. 517 (2017); *Cofield et al. v. McDonald et al*, *supra*.

Conclusion

For all of these reasons, and on behalf of the immigrant communities, community organizations, and taxpayers we represent, we hereby demand that Barnstable County terminate its 287(g) agreement immediately. The Plymouth County Sheriff wisely saw the writing on the wall and acted voluntarily before being ordered to do so by a judge. We encourage you to do the same.

We ask that you please notify us within thirty (30) days whether you plan to comply with this demand. Concurrently with this letter, we are filing a public records request with your office, for further information on the full extent of taxpayer funds that are being illegally expended in service of your 287(g) agreement. Should you or your counsel wish to discuss this matter with us so that an amicable and expedited resolution can be reached, please contact Attorney Arielle Sharma at asharma@lawyersforcivilrights.org or at (774) 314-9639.

Sincerely,

/s/ Iván Espinoza-Madrigal/Oren Sellstrom
IVÁN ESPINOZA-MADRIGAL/OREN SELLSTROM
Executive Director/Litigation Director
Lawyers for Civil Rights

/s/ Oren Nimni
OREN NIMNI
Litigation Director
Rights Behind Bars

cc: Senator Elizabeth Warren
Senator Edward Markey
Attorney General Maura Healey
Congressman William Keating
State Senator Julian Cyr
State Senator Susan Moran
Representative Sarah Peake
Representative Timothy Whelan
Representative Kip Diggs
Representative Steven Xiarhos
Representative David Vieira
Representative Dylan Fernandes