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Hawai'i

P.O. Box 3410
Honolulu, HI 96801
(808) 522-5900
acluhawaii.org

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Dear Chief Raybuck, Mayor Kawakami, Chair Rapozo, and Council Members of Kaua'i County:

The ACLU of Hawai'i is deeply concerned with the actions of federal immigration officials in Hawai'i, and the potential expansion of this activity in the future. Immigrations and Custom Enforcement ("ICE") actions in Hawai'i have created a culture of fear in many residents, regardless of their citizenship status. Hawai'i's counties and local law enforcement should not join in these unconstitutional and overreaching government actions. We ask you to unequivocally stand with the people of Hawai'i and commit to not signing any 287(g) agreements with any entities within the Department of Homeland Security and to prevent state resources, such as personnel or facilities, from being used for immigration enforcement under any other agreements, like memoranda of understanding ("MOU"). Collaborating with federal immigration efforts is not the domain of the state or counties. MOUs, 287(g) agreements, and other forms of informal collaboration may all become weaponized against Hawai'i residents. They are inappropriate and imprudent uses of limited resources.

Clarity is necessary in the present moment, especially as our counties have provided conflicting information about their relationship with ICE. While some counties believe or claim they do not have MOUs with ICE, the police departments of Honolulu, Maui, Hawai'i Island, and Kaua'i **do** have MOUs with Homeland Security Investigations ("HSI"). HSI is a division of ICE and has been retooled by the current administration for immigration enforcement. The ACLU of Hawai'i is investigating concerns about how ICE warrants are executed, potential use of excessive force, and other violations of law.

The 287(g) program, named for a section of the Immigration and Nationality Act, delegates federal authority to carry out certain immigration enforcement activities to participating local law enforcement officers. The 287(g) program has a history of undermining trust in law enforcement, imposing serious financial burdens on municipalities, and making agencies vulnerable to costly lawsuits over civil rights violations. Many law enforcement agencies have elected to end their 287(g) participation or withdraw their application to the program for precisely these reasons.¹

¹ See Anneliese Hermann, Center for American Progress, "287(g) Agreements Harm Individuals, Families, and Communities, But They Aren't Always Permanent," April 4, 2018, <https://ampr.gs/2KKRk6>.

1) Joining a 287(g) Program or Otherwise Collaborating With ICE Threatens Public Safety

Community trust is vital to achieving the police department's mission to protect and serve the public. Research shows that many members of immigrant communities are already afraid of interacting with police, even to report a serious crime or seek protection. According to one law enforcement report, "perpetrators of crime often target immigrant communities, because they know that immigrants may be less likely to report crimes to police."² Broken trust undermines safety for all of us.

Participation in the 287(g) program would exacerbate these issues. Immigrant communities will feel unsafe reaching out to law enforcement if the Kaua'i Police Department enters the program or continues to formally or informally allow local police to be deputized to enforce immigration laws. This is confirmed by the extensive research on law enforcement and trust.

The Major Cities Chiefs Association, a group of police chiefs from the 64 largest police departments in the United States and Canada, has stated that they "do not support routine, civil immigration enforcement by local police officers. This position is firmly based on both established law and policy."³ The Association warns:

Enforcement of routine civil immigration by police would undermine the trust and cooperation with immigrant communities which are essential elements of community-oriented policing... Local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security... Immigration laws are very complex and the training required to understand them significantly detracts from the core mission of local police to create safe communities.

In a 2018 study, a majority of prosecutors, judges, and police officers surveyed noted that increased immigration enforcement makes it harder to protect local communities from crime.⁴ Other studies confirm that immigrants avoid state and local authorities who they fear might act as a pipeline to the deportation system.⁵ Research by the CATO Institute found that "287(g) failed to reduce crime while it increased the number of assaults against police officers."⁶

² Law Enforcement Immigration Task Force and Police Executive Research Forum, Building Trust with Immigrant Communities: Best Practices for Law Enforcement Agencies in Smaller Cities and Towns, <https://www.policeforum.org/assets/BuildingTrustImmigrantCommunities.pdf>.

³ Major Cities Chiefs Association, Revised Immigration Policy (2017), <https://majorcitieschiefs.com/wp-content/uploads/2024/11/Revised-2017-Immigration-Policy.pdf>

⁴ Rafaela Rodrigues et al., Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims, May 3, 2018, <https://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>; see also ACLU, Freezing Out Justice (2018) <https://www.aclu.org/publications/freezing-out-justice>.

⁵ See, e.g., Marcella Alsan & Crystal S. Yang, Fear and the Safety Net: Evidence from Secure Communities, June 2018, <https://www.nber.org/papers/w24731>; Tom K. Wong, The Effects of Sanctuary Policies on Crime and the Economy, Center For American Progress, Jan. 26, 2017, <https://ampr.gs/2kxOchX>.

⁶ CATO At Liberty, "287(g) Does Not Fight Crime, but It Does Increase Assaults against Police Officers," April 11, 2018, <https://www.cato.org/blog/287g-does-not-fight-crime-it-does-increase-assaults-against-police-officers>; see also Andrew Forrester and Alex Nowrasteh, Cato Working Paper No. 52: "Do Immigration Enforcement Programs Reduce Crime? Evidence from the 287(g) Program in North Carolina," April 11, 2018, <https://www.cato.org/sites/cato.org/files/pubs/pdf/working-paper-52-updated.pdf>.

2) Joining a 287(g) or Other Agreement Wastes Needed Resources

Volunteering to perform the federal government’s job of enforcing civil immigration law will impose significant costs on state and local offices. These costs will ultimately burden Hawai‘i taxpayers. Under the governing federal statute, 8 U.S.C. § 1357(g)(1), ICE is prohibited from covering the costs of such agreements.⁷ Indeed, under the terms of the standard Memorandum of Agreement for the 287(g) program, local government would remain responsible for all salaries and benefits, including overtime, for local officers designated to federal immigration enforcement.⁸ 287(g) participation diverts limited police resources from addressing local safety needs. In combination with the potentially illegal uses of force and unconstitutional targeting of individuals who are legally present in Hawai‘i,⁹ 287(g) programs and other agreements with ICE make us less safe.

Many other localities across the nation have realized the steep costs of agreeing to enforce federal immigration law. For example, the towns of Winthrop and Monmouth, Maine recently made this explicit as part of their police departments’ decision to withdraw application to the 287(g) program: “under the program, ICE would not reimburse the Town for officers’ time and overtime as they carried out federal functions nor for the related use of local resources such as patrol vehicles. ICE reserves the right to assign/collocate officers with ICE agents to assist with criminal investigations. That could divert officers from their local duties.”¹⁰ The sheriff’s office in El Paso, Texas stated: “[Local officers] belong in the neighborhoods of our communities providing crime prevention services and maintaining order...not pulled out of neighborhoods to handle a Federal responsibility.”¹¹ Likewise, the chief of police in Montgomery County, Maryland stated: “[M]ost jurisdictions are not taking the 287(g) training [because] local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security. Enforcing Federal law is an unfunded mandate that most agencies just cannot afford to do.”¹² While Hawai‘i police chiefs have indicated that they do not want to participate in federal immigration actions, the extent to which ICE agents are embedded in county departments remains unclear.¹³ Recent ICE raids have revealed varying degrees of cooperation from local law enforcement.

It is unwise to divert scarce law enforcement resources to subsidize federal immigration enforcement. While the Trump administration claims to target people with serious criminal

⁷ See 8 U.S.C. § 1357(g)(1) (authorizing the Attorney General to enter into written agreements “at the expense of the State or political subdivision”).

⁸ https://www.ice.gov/doclib/about/offices/ero/287g/TFM_MOA_fillable.pdf

⁹ <https://www.hawaiinewsnow.com/2025/05/08/teachers-philippines-reportedly-detained-during-immigration-raid/>

¹⁰ Maine Wire, “Winthrop and Monmouth Back Out of ICE Partnership Program Citing Concerns About Legal Liability,” April 21, 2025, <https://www.themainewire.com/2025/04/winthrop-and-monmouth-back-out-of-ice-partnership-program-citing-concerns-about-legal-liability/>

¹¹ Statement of Gomecindo Lopez, El Paso, TX, County Sheriff’s Office, House Homeland Security Committee Subcommittee on Border and Maritime Security, Border Security and Enforcement Hearing, “Department of Homeland Security’s Cooperation with State and Local Law Enforcement Stakeholders,” May 3, 2011, <https://www.govinfo.gov/content/pkg/CHRG-112hrg72230/pdf/CHRG-112hrg72230.pdf>.

¹² Statement of J. Thomas Manger, Chief, Montgomery County Police Dep’t, State of Maryland, House Homeland Security Committee Hearing, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law,” Mar. 4, 2009, <https://www.govinfo.gov/content/pkg/CHRG-111hrg49374/html/CHRG-111hrg49374.htm>.

¹³ <https://www.civilbeat.org/2025/04/hawaii-cops-said-they-dont-have-agreements-with-ice-they-do/>

records, it has failed to provide data to support that characterization. In fact, many high-profile actions of the administration have impacted individuals who are not criminals.¹⁴ The past months have seen scores of students, parents and their young children, and long-time residents who pose no public safety risk being arrested and, in many cases, swiftly deported.

3) Participation Exposes Counties to Increased Risk of Costly Litigation For Constitutional and Legal Violations

Exposure to Liability – Federal Constitutional Violations

Regardless of citizenship status, all people in the United States are entitled to due process protections.¹⁵ This has long been established under the 4th Amendment¹⁶, 5th Amendment¹⁷, 6th Amendment¹⁸, and 14th Amendment¹⁹, among others.²⁰ The actions threatened by the new administration pose a serious risk to the rights and liberties guaranteed under the Constitution.

State and local officers who engage in actions pursuant to the 287(g) program or other agreements with ICE are likely liable for constitutional and legal violations that result. This is because participation in such programs or memorandums of agreement is voluntary. The Tenth Amendment and separation of powers principles prohibit the federal government from “commandeering” state or local governments to enforce a federal regulatory program, like immigration.²¹ In 2018, the first Trump administration sued California, claiming that the state’s sanctuary laws limiting collaboration with immigration enforcement was illegal. The Ninth Circuit rejected those claims, explaining that States have “the right, pursuant to the anti-

¹⁴For example, see the case of Růmeysa Öztürk <https://www.aclu.org/cases/ozturk-v-trump>; see also Judge White of the US District Court of Northern California noting that the Trump administration likely acted in an arbitrary and capricious manner when terminating Student and Exchange Visitor Information System records <https://www.nbcnews.com/politics/immigration/judge-blocks-trump-revoking-international-students-legal-status-rcna208625>;

¹⁵ *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.”); *Yamataya v. Fisher* 189 U.S. 86 (1903)

¹⁶ *Cotzoyay v. Holder*, 725 F.3d 172, 181 (2d Cir. 2013) (“[I]t is uncontroversial that the Fourth Amendment applies to aliens and citizens alike.”); *Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (applying Fourth Amendment to immigration arrests); *Ortega v. ICE*, 737 F.3d 435, 439 (6th Cir. 2013) (“transfer[ring] [a prisoner] from home confinement to prison confinement” based on an ICE detainer “amounts to a sufficiently severe change in conditions to implicate due process.”)

¹⁷ *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.”)

¹⁸ *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Applying this reasoning to the Fifth and Sixth Amendments, it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments.”)

¹⁹ *Yick Wo v. Hopkins*, 118 U. S. 356, 369 (“The Fourteenth Amendment to the Constitution is not confined to the protection of citizens... these provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.”)

²⁰ E.g. court recognized First Amendment protections related to due process in *Bridges v. Wixon* 326 U.S. 135, 148-154 (1945) (“Freedom of speech and of press is accorded aliens residing in this country... Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.”)

²¹ See *Printz v. United States*, 521 U.S. 898, 923-24 (1997) <https://supreme.justia.com/cases/federal/us/521/898/>; *City of Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018); *City of Philadelphia v. Sessions* 16 F.3d.276 (2019).

commandeering rule, to refrain from assisting with federal efforts.”²² Thus, Hawai‘i is not required to collaborate with the federal government or assist its immigration enforcement operations.²³ Should Kaua‘i County choose to collaborate with ICE and HSI, it risks significant legal liability. This was the case in *Galarza v. Szalczyk*, where the 3rd Circuit held that immigration detainers did not compel Lehigh County to detain Mr. Galarza and therefore the county was subject to Fourth Amendment and procedural due process claims.

Section 287(g) of the Immigration and Nationality Act provides that law enforcement officials acting pursuant to a 287(g) agreement “shall be considered to be acting under color of Federal authority.”²⁴ However, that provision does not immunize local partners from a lawsuit. Multiple federal courts have found detention and treatment of individuals by local agencies acting on ICE detainers to be unconstitutional.²⁵

First, despite the existence of a 287(g) agreement, a city or county remains vulnerable to money damages claims under 8 U.S.C. § 1983 for violations of constitutional rights that can be traced to the municipality’s actions, policy, custom, or failure to train or supervise.²⁶ Second, a city or county remains vulnerable to money damages claims under state tort law. Third, 287(g) deputized officers are bound by all federal civil rights laws, regulations and guidance regarding non-discrimination.²⁷ These officers are also responsible for obeying Hawai‘i state law. 287(g) agreements do not authorize conduct that amounts to racial profiling or other constitutional violations.

The model ICE memorandum of agreement also does not guarantee legal representation by the U.S. Department of Justice for law enforcement personnel named as personal-capacity defendants in litigation. The model agreement emphasizes that representation is solely “at the discretion of DOJ; it is not an entitlement.” The Justice Department often declines to represent

²² See *United States v. California*, 921 F.3d 865, 888-91 (9th Cir. 2019).

²³ There is also no affirmative duty for state and local governments to collect or share information about non-citizen residents. For an overview, see *Oregon v. Trump*, 406 F. Supp. 3d 940, 971 (D. Or. 2019) (“Here, the Court agrees with Plaintiffs, as well as every other court to have considered the issue after *Murphy*, that Sections 1373 and 1644 violate the Tenth Amendment.”); See *City & Cty. of San Francisco*, 349 F. Supp. 3d at 949-53 (“I find that Section 1373 is unconstitutional.”); *City of Chicago*, 321 F. Supp. 3d at 866-73 (“Section 1373 is unconstitutional and cannot stand.”); *New York*, 343 F. Supp. 3d at 232-38 (“[Section] 1373 [], in so far as it applies to states and localities, is facially unconstitutional under the anticommandeering doctrine of the Tenth Amendment.”); see also *City of Philadelphia*, 309 F. Supp. 3d at 286-88 (denying the defendants’ motion to dismiss an as-applied Tenth Amendment challenge to Section 1373); *City of Philadelphia*, 280 F. Supp. 3d at 651 (observing “that the effect of Section 1373 compliance may be to thwart policymakers’ ability to extricate their state or municipality from involvement in a federal program”).

²⁴ 8 U.S.C. § 287(g)(8).

²⁵ *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452, Docket Entry 230 at 16-17 (N.D. Ill. Sept. 30, 2016); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) aff’d in part, dismissed in part, 793 F.3d 208, 215-216 (1st Cir. 2015); *Orellana v. Nobles County*, No. 0:15-cv-03852 (D. Minn. Jan. 6, 2017) settled, with payment to Orellana by the Nobles County Sheriff’s department.

²⁶ See *Monell v. Department of Social Services*, 436 U.S. 658, 690 (1978); see 8 U.S.C. § 1357(g)(8) (addressing only the “liability, and immunity from suit, of the officer or employee,” not the municipality).

²⁷ See 8 U.S.C. § 287(g)(1) (authorizing the Attorney General to enter into agreements for state and local officials to carry out functions “to the extent consistent with State and local law”); Model Memorandum of Agreement for Warrant Service Office Program, sec. IV(I) (Appendix).

even federal agents sued in their individual capacities. Finally, even if the Justice Department represents an individual, any resulting money damages judgment would be against the officer and or the county (not the Justice Department).

The federal government will not fully protect county officials and staff from potential lawsuits and the risk of incurring substantial monetary damages. Although the existence of a 287(g) agreement may change some of the dynamics of potential litigation, the bottom line remains the same: if local law enforcement agencies act as an arm of ICE, they expose the agency and its officers to litigation and liability.

Fourth Amendment Violations

Participation in the 287(g) program does not excuse Kaua‘i County police officers or the Kaua‘i County police department from complying with the Fourth Amendment’s probable cause requirement. All arrests, including immigration arrests, must be supported by probable cause. But unlike judicial warrants, ICE warrants are administrative forms issued by non-judicial ICE officers based on a purported civil immigration violation—meaning that there may or may not be probable cause supporting the warrant. Courts have held that local law enforcement can be sued for detaining a person based on an ICE administrative warrant when there was not probable cause for the arrest.²⁸ As the CATO Institute notes, “local officials often have additional information that could make it unreasonable for them to detain that arrestee on suspicion that he or she is an illegal immigrant.”²⁹

There is a troubling pattern of ICE issuing detainers for U.S. citizens.³⁰ There are numerous examples of local governments paying upwards of \$50,000 in settlements for unlawfully jailing someone under an improper ICE detainer.³¹ In the illustrative case of Peter Sean Brown, a U.S. citizen who lives in the Florida Keys, ICE faxed a detainer to the Monroe County Sheriff’s office after Brown reported there for violating probation with a low-level marijuana-related offense. Although Brown told jail officers that he was a U.S. citizen and offered to show his birth certificate, officers relied on ICE’s detainer to continue to hold him – exposing them to enormous financial liability.³² The risk of unlawful detention and subsequent liability is a real

²⁸ See, e.g., *Santos v. Frederick Cty. Bd. of Com’rs*, 725 F.3d 451, 463-65 (4th Cir. 2013) (deputies “violated Santos’s rights under the Fourth Amendment when they seized her solely on the basis of the outstanding civil ICE warrant”); *Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1255-56 (E.D. Wash. 2017) (holding that an ICE administrative warrant did not provide any arrest authority to local officers), vacated as moot, 716 Fed. App’x 741 (9th Cir. 2018); *Figueroa-Zarceno*, No. 17-cv-229 (N.D. Cal. settled 2017) (city pays \$190,000 settlement to person transferred to ICE based on administrative warrant).

²⁹ David J. Bier, CATO Institute, “U.S. Citizens Targeted by ICE,” Aug. 29, 2018, <https://www.cato.org/sites/cato.org/files/pubs/pdf/irpb-8.pdf>.

³⁰ See, e.g., ACLU of Florida, “Citizens On Hold: A Look at ICE’s Flawed Detainer System in Miami-Dade County,” Mar. 20, 2019, <https://www.acluf.org/en/press-releases/aclu-report-reveals-immigration-customs-enforcement-ice-may-have-targeted-dozens-if>; TRAC Immigration, “Who Are the Targets of ICE Detainers,” Feb. 20, 2013, <https://trac.syr.edu/immigration/reports/310/>; Eyder Peralta, “You Say You’re An American, But What If You Had To Prove It Or Be Deported,” Dec. 22, 2016, <https://n.pr/2rQlgQ8>.

³¹ See ACLU, “Local jurisdictions remain legally vulnerable for honoring ICE detainers,” https://www.aclu.org/sites/default/files/field_document/recent_ice_detainer_damages_cases_2018.pdf; Christine Hauser, “U.S. Citizen Detained by ICE Is Awarded \$55,000 Settlement,” Oct. 29, 2018, <https://nyti.ms/2Of21W1>.

³² See Spencer Amdur, ACLU, “Florida Sheriff Worked With ICE To Illegally Jail and Nearly Deport US Citizen,” Dec. 3, 2018, <https://bit.ly/2Kb6T0P>

possibility in Hawai‘i, as suggested by recent reports of enforcement actions in Hawai‘i that have impacted U.S. citizens.³³

Exposure to Liability – State Civil Rights Violations

Additionally, Kaua‘i County will be liable for any civil rights violations that arise out of 287(g) program participation. Indeed, the history of 287(g) enforcement provides ample reason to be concerned that individual officers will commit civil rights violations. For instance, separate U.S. Department of Justice investigations of law enforcement practices arising from 287(g) programs in Maricopa County, Arizona³⁴ and Alamance County, North Carolina³⁵ found patterns of discrimination. Tasking local law enforcement with interviewing arrestees about their immigration status, screening individuals in DHS databases, deciding whether to start deportation proceedings, and detaining individuals for immigration purposes creates a significant risk of biased policing, racial profiling, and civil rights violations.³⁶

The 287(g) program tasks local law enforcement agents with making difficult judgments about information offered by a detained individual, such as documentation or assertion of citizenship or immigration status that would make their arrest or detention unlawful.

Civil rights violations by Hawai‘i police departments acting under a 287(g) agreement may not only violate federal law (including Title VI of the Civil Rights Act of 1964³⁷ and its implementing regulations, which prohibit discrimination by agencies receiving federal funding), but could also violate state anti-discrimination law and the state constitution, which is frequently interpreted to provide broader civil rights protection than the federal constitution.³⁸

³³ <https://www.khon2.com/maui-news/maui-teacher-describes-moment-ice-agents-showed-up-at-kahului-home/?ipid=promo-link-block1>

³⁴ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep’t of Justice Civil Rights Division, to Bill Montgomery, Cty. Attorney, Maricopa Cty., Ariz., (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf; In *Melendres v. Arpaio*, the District Court in Arizona found the Maricopa County Sheriff’s Office violated the 4th and 14th Amendments by intentionally discriminating using race or Hispanic appearance as a factor in determining reasonable suspicion regarding immigration status).

³⁵ Dep’t of Justice, “Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff’s Office,” Sept. 18, 2012, <https://www.justice.gov/archives/opa/pr/justice-department-releases-investigative-findings-alamance-county-nc-sheriff-s-office>.

³⁶ The Government Law Center at Albany Law School noted that as “the [287(g)] program requires that law enforcement officers investigate and interpret complex federal immigration laws—likely outside of their typical portfolio—the risk of racial profiling and other constitutional acts increases.” Albany Law School Government Law Center, “When Local Law-Enforcement Officers Become ICE Deputies: 287(g) Agreements” <https://www.albanylaw.edu/government-law-center/when-local-law-enforcement-officers-become-ice-deputies-287g-agreements>.

³⁷ 42 U.S.C. § 2000d et seq. Title VI of the Civil Rights Act of 1964. Title VI provides: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

³⁸ *State v. Lopez*, 78 Hawai‘i 433, 445, 896 P.2d 889, 901 (1995) (“[I]t is well-established that as long as we afford defendants the minimum protection required by the federal constitution, we are free to provide broader protection under our state constitution.”); *State v. Curtis*, 139 Haw. 486, 497 (“Further, unlike the Fourth Amendment, article 1, section 7 recognizes a right ‘against unreasonable . . . invasions of privacy,’ which ‘protects people from unreasonable government intrusions into their legitimate expectations of privacy.’ *Navas*, 81 Hawai‘i at 122, 913 P.2d at 48. This provision was ‘designed to protect the individual from arbitrary, oppressive, and harassing conduct on the part of government officials.’ *Id.*”).

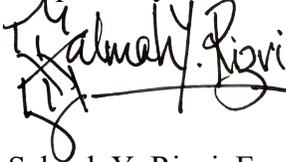
4) The Administration’s Deportation Practices Are Inhumane and Arbitrary.

The 287(g) program implicates local law enforcement offices in deportation practices that target immigrants with deeply rooted lives in the United States—people who have built families, careers, businesses, and communities in our country over many years, sometimes decades. On his first day, President Trump eliminated ICE’s targeted enforcement priorities and instead instructed the agency to round up everyone who might be removable.³⁹ Since then, the actions of ICE have sowed terror in Hawai‘i and caused serious harms to community members, regardless of their immigration status.⁴⁰ It has even stoked fear internationally, threatening Hawai‘i’s international students and its robust tourism industry.⁴¹ Kaua‘i County should not lend its resources to these efforts, which do nothing to improve public safety and betray the best of this nation’s values.

The actions of ICE, in Hawai‘i and across the United States, are also not in keeping with the aloha spirit.⁴² It is impossible to find ‘akahai (kindness to be expressed with tenderness), lōkahi (unity), ha‘aha‘a (humility), ‘olu‘olu (agreeability, to be expressed with pleasantness), or ahonui (patience to be expressed with perseverance) in broken down doors, deceptive practices, and the separation of families. The Hawai‘i Supreme Court has established that “[i]n Hawai‘i, the Aloha Spirit inspires constitutional interpretation.”⁴³ Kaua‘i County can demonstrate this aloha spirit by partnering with the people of Hawai‘i rather than with federal enforcement authorities.

In consideration of the risks that Hawai‘i counties and law enforcement would undoubtedly incur, we hope to see clear commitment to reject MOU agreements or any form of 287(g) agreement, including conduct in the absence of an agreement, that would use local personnel and resources for immigration enforcement purposes. We would be pleased to discuss this and your path moving forward at your convenience.

Respectfully,



Salmah Y. Rizvi, Esq.
Executive Director
American Civil Liberties Union of Hawai‘i (“ACLU-HI”)

³⁹ Executive Order, “Protecting the American People Against Invasion” (Jan. 20, 2025) (rescinding prior ICE priorities, which had focused on people with criminal convictions, recent entrants, and national security concerns)

⁴⁰ <https://www.hawaiinewsnow.com/2025/01/28/concern-grows-immigration-crackdown-begins-hawaii/>;
<https://www.hawaii-tribune-herald.com/2025/05/10/hawaii-news/ice-arrests-50-in-raids-across-3-hawaiian-islands/>;
<https://www.civilbeat.org/2025/05/ice-takes-aim-at-immigrant-kids-in-big-islands-coffee-belt/>;
<https://www.nytimes.com/2025/05/14/us/hawaii-kona-coffee-workers-immigrants-ice.html>

⁴¹ https://www.kitv.com/news/travel-fears-among-foreigners-in-hawaii-amid-immigration-crackdown/article_a929f0da-16c8-4a2a-acd9-cda8f950c240.html;
<https://www.hawaiinewsnow.com/2025/04/24/german-teens-denied-honolulu-airport-after-trying-enter-under-false-pretenses-officials-say/>

⁴² HRS §5-7.5

⁴³ *State v. Wilson*, 154 Haw. 8, 27, 543 P.3d 440, 459, cert. denied, 145 S. Ct. 18, 220 L. Ed. 2d 266 (2024)