

EXPLORING COSTS AND CHALLENGES OF IMMIGRANT DETENTION AND 287(G) CONTRACTS IN THE SOUTHEASTERN UNITED STATES

Jonathan D. Craig-Mendes, JD, MBA, CHC®

TABLE OF CONTENTS

I. INTRODUCTION	104
II. HISTORY OF 287(G) AGREEMENTS AND TYPES OF 287(G) CONTRACTS IN USE TODAY	105
A. <i>Jail Enforcement Model (JEM) Contracts</i>	107
B. <i>Warrant Service Officer (WSO) Contracts</i>	109
III. INCENTIVES TO CONTRACT	110
A. <i>Federal Government Incentives to Contract Under INA § 287(g)</i>	110
B. <i>Local Law Enforcement Agency Incentives to Contract Under INA § 287(g)</i>	111
IV. FINANCIAL COSTS OF 287(G)	113
A. <i>Direct Costs</i>	113
B. <i>Indirect Costs</i>	118
V. OTHER COSTS OF 287(G)	123
A. <i>Economic Divestment</i>	123
B. <i>Outmigration</i>	126
C. <i>Limited Crime Reporting</i>	127
VI. REGARDING DETENTION CENTERS	128
A. <i>Contractual Frameworks</i>	128
B. <i>Associated Costs</i>	130
1. <i>Costs Incurred by ICE</i>	130
2. <i>Costs Incurred by the Local Community</i>	131
C. <i>Questionable Benefits</i>	134
VII. CONCLUSION	134
APPENDIX A: CONTRACTS BY COUNTY—TABLE	136
APPENDIX B: CONTRACTS BY COUNTY—MAPS	139

I. INTRODUCTION

Traditionally, the power to police immigration has rested exclusively with the United States federal government. This makes sense, given the international political ramifications that accompany immigration policy decisions. However, the practical reality of this federal policing scheme appears to have outpaced the ability of the government to successfully oversee immigration. In response to this “enforcement deficit,” the U.S. federal government began to contract with local and state-level law enforcement agencies in 1996.¹ The purpose of these contracts was to delegate federal immigration enforcement powers to state and local law enforcement agencies, thereby extending the federal government’s enforcement “reach.”²

These contracts are premised on section 287(g) of the Immigration and Nationality Act (“INA”)³ and are colloquially known as “287(g) agreements.” 287(g) agreements deputize local law enforcement with the authority to serve warrants (“Warrant Service Officer” contracts) or to oversee immigrant detainees (“Jail Enforcement Model” contracts).⁴ The 287(g) agreement model was sold to local law enforcement agencies as a means to support patriotic initiatives, to protect local communities, and to inspire further federal investment in a certain region (potentially via the development of a new immigration detention center).⁵ This article aims to show that the shared enforcement authority model of 287(g) agreements has not resulted in significant benefits to local law enforcement partners and may actually be causing harm to these agencies.

Over time, the involvement of local law enforcement in the policing of federal immigration policy has served to erode public trust in their hometown authorities. Noncitizens are left in a state of fear due to these 287(g) agreements, and the residents of the local jurisdiction are left footing the bill for their government’s eagerness to expand its power. 287(g) agreements have exposed local law enforcement agencies to liability for due process violations, caused costly and unavoidable officer overtime payment obligations for local governments, and eroded public trust in localities operating under said agreements.⁶ An open question remains as to if these enforcement agreements are truly financially tenable for local authorities considering the many costs the agreements represent. Even if 287(g) programs are not a balance sheet net negative for local municipalities and counties, there remain hidden costs that skew this balance negative when viewed holistically, such as the separation of mixed-status families, immigrant and immigrant ally economic divestment,

¹ See, e.g., Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) (codified as amended in scattered sections of the U.S. Code) [hereinafter “IIRIRA”].

² *National Map of 287(g) Agreements*, IMMIGRANT LEGAL RES. CTR. (June 15, 2023), <https://www.ilrc.org/resources/national-map-287g-agreements> [<https://perma.cc/5RYT-6XWS>].

³ Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.) [hereinafter INA].

⁴ National Map of 287(g) Agreements, *supra* note 2.

⁵ *Infra* Section III.

⁶ *Infra* Section IV, V.

and missed opportunity to learn crime-related information arising from a lack of trust in local law enforcement. This Article seeks to examine these very questions, and to determine, to the maximum extent possible, the true and complete cost of 287(g) agreements on local governments.

This Article is narrowly focused on the American southeast geographic area, which enables the analysis to be both relatively broad and sufficiently deep to contribute to immigration law practice. The analysis will first catalogue and compare the active 287(g) Warrant Service Officer agreements implemented at the time of writing within the states of Georgia, Louisiana, Florida, North Carolina, Mississippi, and Louisiana. Second, it will attempt to identify the direct, indirect, and nonmonetary costs associated with those agreements. Finally, it will extend this analysis to Jail Enforcement Model contracts within the states of Florida, Georgia, and Louisiana. By examining 287(g) agreement costs from the perspective of the host locality, this paper aims to address an underreported but necessary component of the dialogue surrounding these agreements. Ideally, where previous efforts at advocacy in this space have failed to inspire federal or local government action, this report's comparably more grassroots technique that approaches individual municipalities, counties, and states where they are will prove more fruitful.

II. HISTORY OF 287(G) AGREEMENTS AND TYPES OF 287(G) CONTRACTS IN USE TODAY

The delegation of immigration authority from the federal government to state and local law enforcement agencies arises out of an omnibus bill passed by the U.S. Congress on September 30th, 1996.⁷ Among other provisions, that bill created the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, known colloquially as “IIRIRA” (pronounced “Ira Ira”). IIRIRA functions as an extension⁸ of the INA of 1952.⁹ Among a litany of other changes, IIRIRA amended 8 U.S.C. § 1357 to allow the acting U.S. Attorney General to delegate federal immigration enforcement power to local governments by way of written contractual agreement.¹⁰ The relevant provision states:

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General

⁷ IIRIRA, *supra* note 1.

⁸ *The 287(g) Program: An Overview*, AM. IMMIGR. COUNCIL (July 8, 2021), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration> [https://perma.cc/6Q3N-5SXQ].

⁹ 8 U.S.C. § 1101.

¹⁰ 8 U.S.C. § 1357.

to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.¹¹

Contextualizing the genesis of the 287(g) framework is important. IIRIRA—a Democrat-supported bill signed into law by President Bill Clinton¹²—initiated the modern idea of so-called “crimmigration,” *i.e.*, the intersect of criminal and immigration law.¹³ Ironically, the subsequent increasing politicization of the immigration issue has significantly shifted the Democratic stance over the last 28 years, from a position of fairly hostile immigration policy to more modern, liberal avowal of immigrants’ inherent human rights regardless of legal immigration status.¹⁴ Modern political polarization of the immigration issue notwithstanding, the growing area of *crimmigration* jurisprudence itself evidences a need for more work to be done in this area. What began with IIRIRA has evolved into an extremely penal system in which immigrants are faced with a litany of barriers¹⁵ to gaining and/or retaining lawful immigration status. 287(g) is only one manifestation of the progeny of issues IIRIRA created.

Returning to the specific issue of 287(g) agreements, the program originally contemplated a wider range of possible contract formats with different levels of shared enforcement responsibility. Prior to a 2012 U.S. Immigration and Customs Enforcement (“ICE”) policy memo, “task-force”¹⁶ and “hybrid”¹⁷ model agreements proliferated.¹⁸ Following the 2012 memo, only “two types of 287(g) agreements are employed in the field”: “jail enforcement model” (“JEM”) contracts and “warrant service officer” (“WSO”) contracts.¹⁹ Of the 136 agreements under INA § 287(g) in effect as of March 2024, 75 of these

¹¹ *Id.* at § 1357(g)(1).

¹² Dara Lind, *The Disastrous, Forgotten 1996 Law that Created Today’s Immigration Problem*, Vox (Apr. 28, 2016 8:40 AM), <https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration> [https://perma.cc/CJ59-WVQ7].

¹³ Patrisia Macías-Rojas, *Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 6 J. ON MIGRATION & HUM. SEC. 1, 1 (2018).

¹⁴ See, e.g., Lind, *supra* note 12 (citing H.R. Res. 708, 114th Cong. (2016)).

¹⁵ For example, obtaining asylum status has become far more difficult under IIRIRA. See generally Elenor Acer & Olga Byrne, *How the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Has Undermined US Refugee Protection Obligations and Wasted Government Resources*, 5 J. ON MIGRATION & HUM. SEC. 356, 367 (2017).

¹⁶ *The 287(g) Program: An Overview*, *supra* note 8, at 3 (“Under the task force model, deputized officers who encountered alleged noncitizens during the course of daily activities could question and arrest individuals they believed had violated federal immigration laws.”) (emphasis removed).

¹⁷ *Id.* (“The hybrid model combined functions of the task force model and the jail enforcement model. Task force officers could initiate immigration processing and transfer individuals thought to be subject to removal to 287(g) jail officers who completed immigration screening and ICE paperwork requirements.”).

¹⁸ *Id.*

¹⁹ *Id.*

are WSO agreements.²⁰ Interestingly, while there are more WSO agreements in effect than JEM agreements (75 vs 61, respectively), WSO agreements are only in effect across 11 states, compared to 17 states employing JEM agreements in at least one jurisdiction therein.²¹

A. Jail Enforcement Model (JEM) Contracts

Jail Enforcement Model (JEM) 287(g) agreements are the more expansive of the two 287(g) contract formats in use today. While there is some variation as to the substance and terms of these agreements, they appear to uniformly include the following powers via a “Standard Operating Procedure” (“SOP”) Addendum to the framework “Memorandum of Agreement” (“MOA”) contract deputizing local law enforcement agencies with immigration authority under INA § 287(g):

- The power and authority to interrogate any person detained in the participating law enforcement agency’s detention center who the officer believes to be an alien about his or her right to be or remain in the United States, 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1), and to process for immigration violations any removable alien or those aliens who have been arrested for violating a Federal, State, or local offense;
- The power and authority to serve and execute warrants of arrest for immigration violations, 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3), on designated aliens in [local law enforcement agency’s] jail/correctional facilities at the time of the alien’s scheduled release from criminal custody in order to transfer custody of the alien to ICE;
 - Upon transfer of the alien’s custody to ICE, the alien will continue to be held in the [local law enforcement agency]’s jail/correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the [local law enforcement agency] will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the [local law enforcement agency]’s jail/correctional facility.

²⁰ *Id.*

²¹ *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGR. CUSTOMS & ENF’T <https://www.ice.gov/identify-and-arrest/287g> [<https://perma.cc/3NT2-6S3H>] (last visited Mar. 12, 2024).

- The power and authority to serve warrants of removal, 8 U.S.C. § 1357(a) and 8 C.F.R. §§ 24.1.2(b)(2), 287.5(e)(3), on designated aliens in [local law enforcement agency's] jail/correctional facilities at the time of the alien's scheduled release from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes;
 - Upon transfer of the alien's custody to ICE, the alien will continue to be held in the [local law enforcement agency]'s jail/correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the [local law enforcement agency] will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the [local law enforcement agency]'s jail/correctional facility.
- The power and authority to administer oaths and to take and consider evidence, 8 U.S.C. § 1357(b) and 8 C.F.R. § 287.5(a)(2), to complete required alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;
- The power and authority to prepare charging documents, 8 U.S.C. §§ 1225(b)(1), 1228, 1229, and 1231(a)(5); 8 C.F.R. §§ 235.3, 238.1, 239.1, and 241.8, including the preparation of a Notice to Appear or other charging document, as appropriate, for the signature of an ICE officer;
- The power and authority to detain and transport, 8 U.S.C. § 1357(g)(1) and 8 C.F.R. § 287.5(c)(6), arrested aliens subject to removal to ICE-approved detention facilities; and
- The power and authority to issue immigration detainers, 8 U.S.C. §§ 1226 and 1357, and 8 C.F.R. § 287.7, and I-213, Record of Deportable/Inadmissible Alien, for processing aliens.²²

In summary, these provisions grant the local law enforcement agencies with the power to detain suspected noncitizens for up to 48-hours beyond when they would otherwise be legally free from custody (*i.e.*, having posted bail/bond), to serve warrants of removal on detainees in local criminal custody, the power to interrogate the suspected noncitizen regarding their immigration

²² *Memorandum of Agreement 287(g) Jail Enforcement Model*, U.S. Immigr. Customs & Enf't 8-9 (Mar. 16, 2020), https://www.ice.gov/doclib/287gMOA/287gJEM_GeorgiaDOC_06-09-2020.pdf "[https://perma.cc/JR76-HW6C](emphasis retained).

status, and the power to begin the removal process by serving a federally-binding Notice to Appear on the noncitizen.

ICE states that the purpose of Jail Enforcement Model contracts is “to identify and process removable noncitizens—with criminal or pending criminal charges—who are arrested by state or local law enforcement agencies.”²³ JEM contracts are more expansive than WSO contracts in that JEM agreements afford officers the power to interrogate suspected non-citizens regarding their immigration status.²⁴ As will be discussed later, the power of the local law enforcement agency to maintain custody over an individual beyond constitutional limits creates a serious liability risk for the local agency. Most (if not all) 287(g) agreements indemnify the federal government for its delegation of this unconstitutional power. Instead, responsibility and culpability remain with the local law enforcement agency for as long as the noncitizen is held in local custody.

B. Warrant Service Officer (WSO) Contracts

The other form of 287(g) agreements in use today are Warrant Service Officer (WSO) contracts. WSO agreements are the more restrictive of the two 287(g) formats. Under a Warrant Service Officer contract, the local law enforcement agency is not empowered to interrogate suspected noncitizens concerning their immigration status. WSO agreements only provide the following enforcement powers:

- The power and authority to serve and execute warrants of arrest for immigration violations, 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3), on designated aliens in [agency]’s jail/correctional facilities at the time of the alien’s scheduled release from criminal custody in order to transfer custody of the alien to ICE; and
- The power and authority to serve warrants of removal, 8 U.S.C. § 1357(a) and 8 C.F.R. §§ 241.2(b)(2), 287.5(e)(3), on designated aliens in [agency]’s jail/correctional facilities at the time of the alien’s scheduled release from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes.²⁵

The authority granted to local law enforcement via a Warrant Service Officer contract is less expansive than a Jail Enforcement Model contract. Per ICE, “The Warrant Service Officer program allows ICE to train, certify and authorize state and local law enforcement officers to serve and execute administrative warrants on noncitizens in their agency’s jail.”²⁶

²³ *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 21.

²⁴ *The 287(g) Program: An Overview*, *supra* note 8.

²⁵ *Memorandum of Agreement*, U.S. Immigr. Customs & Enf’t 8 (June 3, 2019), https://www.ice.gov/doclib/287gMOA/287gWSO_BayCoFI2019-10-15.pdf [https://perma.cc/4CVK-9WGG].

²⁶ *Id.*

III. INCENTIVES TO CONTRACT

A. *Federal Government Incentives to Contract Under INA § 287(g)*

The chief, driving impetus for 287(g) agreements from the federal perspective is the prospect of extending immigration enforcement reach.²⁷ Because immigration law enforcement has become more politicized over time, federal government executive administrations and other political figures have campaigned on immigration law policy stances.²⁸ The 287(g) program allows for delivery on these campaign promises with less financial overhead on the part of the government than would otherwise be possible. This is because 287(g) agreements place the cost burden of this expanded enforcement on the shoulders of local law enforcement agencies.²⁹

The political impetus behind 287(g) is made explicitly clear in the diverging approaches to the issue of immigration enforcement between the Trump 2016-2020 and Biden 2020-2024 presidencies. In the former Trump presidency, the 287(g) (and related) programs quadrupled the number of local partners, “from about 35 in 2017 to more than 140 [in 2021].”³⁰ This number appears to have dwindled slightly under the Biden Administration (from over 140 in 2021 to 136 in March 2024).³¹ Republican-backed policy in this area is hallmarked by a penal, criminal framework to immigration law enforcement.³² Conversely, Democratic-supported policy approaches evidence a human rights focus.³³

A less direct result of these competing politicized approaches to immigration law reform is the emergence of “universal” vs “targeted” models of enforcement. Briefly, “universal” models of enforcement seek to “identify as many unauthorized immigrants as possible.”³⁴ “Targeted” models are “aimed

²⁷ *National Map of 287(g) Agreements*, *supra* note 2.

²⁸ For example, President Joseph R. Biden, Jr.’s shifting immigration policy stance over time. *See The State of Immigration 2024*, BOUNDLESS (Mar. 8, 2024), <https://www.boundless.com/blog/biden-immigration-tracker/>.

²⁹ The exact cost-share under 287(g) boilerplate contracts will be examined closely in a later section. *See infra* Part IV(A).

³⁰ Debbie Cenziper et al., *Under Trump, ICE aggressively recruited sheriffs as partners to question and detain undocumented immigrants*, WASH. POST (Nov. 23, 2021), <https://www.washingtonpost.com/investigations/interactive/2021/trump-ice-sheriffs-immigrants-287g/>.

³¹ For a critical examination of the Biden administration’s approach to 287(g), *see* Jon Feere, *Biden Admin Changes ICE’s 287(g) Webpage, Admits There’s a ‘Hold’ On the Program*, CTR. IMMIGR. STUDIES (Aug. 25, 2023), <https://cis.org/Feere/Biden-Admin-Changes-ICEs-287g-Webpage-Admits-Theres-Hold-Program>.

³² *See, e.g.*, Press Release, U.S. Senate Committee on the Judiciary, Senate Republicans Unveil Solutions For Southern Border Crisis (Nov. 6, 2023) <https://www.judiciary.senate.gov/press/rep/releases/senate-republicans-unveil-solutions-for-southern-border-crisis> [https://perma.cc/U575-A9DZ].

³³ *See, e.g.*, Press Release, Salud Carbajal, House of Representatives, New Democrat Coalition Immigration and Border Security Task Force Unveil Framework for Commonsense Immigration Reform, Calls on Republicans to Join Democrats in Tackling Border Security (Feb. 15, 2024) <https://carbajal.house.gov/news/documentsingle.aspx?DocumentID=1810> [https://perma.cc/YCK9-9AHT].

³⁴ RANDY CAPPS ET AL., *DELEGATION AND DIVERGENCE: 287(G) STATE AND LOCAL IMMIGRATION ENFORCEMENT 2* (2011), <https://www.migrationpolicy.org/sites/default/files/publications/287g-divergence.pdf> [https://perma.cc/S8W5-V42Q].

primarily at identifying serious criminal offenders.”³⁵ “Targeted” models focus “primarily, if not exclusively, on ICE’s top enforcement priorities: national security threats, serious or dangerous criminals (i.e., felons), and other threats to public safety, as well as noncitizens with existing orders of removal.”³⁶ A 2011 report by the Migration Policy Institute noted that the national approach across all 287(g) agreements active at that time skewed towards universal models of enforcement.³⁷ That report also noted that “universal” models tended to be concentrated in the southeastern United States,³⁸ a point of particular relevance for this geographically-limited analysis.

*B. Local Law Enforcement Agency Incentives to Contract
Under INA § 287(g)*

Some of the political impetus behind federal action under 287(g) may also be felt at the local level. It is likely that one primary driver for local law enforcement agencies to sign onto 287(g) derives from a shared anti-immigrant policy stance held by both ICE and the local agency.³⁹ A 2012 report in the *Journal of Ethnic and Migration Studies* identified that local jurisdiction participation in 287(g) could be correlated to the partisan composition of that jurisdiction’s populous.⁴⁰ However, due to the variety of jurisdictions subscribing to 287(g) agreements, local considerations weighing the benefit of 287(g) participation are premised on a variety of motivations.

Another notable driver of local law enforcement agency assent to 287(g) agreements arises from the unequal bargaining power between the U.S. government and the local agency. This inequality creates a secondary problem that also arises from the politicized nature of immigration law reform. As the U.S. federal government feels a need to address immigration problems via increased enforcement, that urgency flows also to the local law enforcement agency looking to enter into a 287(g) partnership. Concurrently, a local police head or sheriff (as elected officials themselves) may feel compelled by the citizens of the locality to sign onto 287(g) programs to address perceived immigration-related problems, such as changing demographics or rising rates of crime.⁴¹ The Migration Policy Institute noted in their 2011 report, *Delegation and Divergence*, that elected law enforcement officials generally supported 287(g) participation, whereas appointed law enforcement leadership did not.⁴² In these cases, “the impetus for signing 287(g) agreements

³⁵ *Id.* at 2.

³⁶ *Id.* at 5.

³⁷ *Id.* at 2.

³⁸ *Id.* at 10-11.

³⁹ NAUREEN SHAH ET AL., *License to Abuse: How ICE’s 287(g) Program Empowers Racist Sheriffs* (2022), <https://www.aclu.org/publications/license-abuse-how-ices-287g-program-empowers-racist-sheriffs> [<https://perma.cc/7NPU-2LQJ>].

⁴⁰ Tom K. Wong, *287(g) and the Politics of Interior Immigration Control in the United States: Explaining Local Cooperation with Federal Immigration Authorities*, 38 J. ETHNIC & MIGRATION STUDIES 737, 753 (2012).

⁴¹ See Randy Capps et al., *supra* note 34, at 26-27.

⁴² *Id.* at 26-27.

began with pressure from proponents of stricter immigration enforcement and elected officials (county commissioners and state legislators), rather than law enforcement agencies themselves.⁴³ The Migration Policy Institute report goes on to highlight that “the political pressures in favor of 287(g) were greatest in the jurisdictions that have adopted the most expansive programs” (read: universal).⁴⁴ Further, in all localities studied in the 2011 report:

... the public has exerted considerable pressure on state and/or local elected officials to respond to illegal immigration, and public perceptions linking unauthorized immigrants to crime are significant. In several of these jurisdictions, fatal traffic accidents and shootings of law enforcement officers involving unauthorized immigrants have dramatically increased the intensity of the issue.⁴⁵

The political pressure on local police to act in response to a perceived crime-related immigrant “problem” seems to follow some variation of the following rationale: that but-for the additional enforcement powers 287(g) agreements provide to the local law enforcement agency, the local agency would be unable to effectively police the immigrant population. This is because the local law enforcement agency could not curtail expanding immigrant populations in a way that would permanently prevent further crime. Deportation and removal, as the ultimate result of ICE involvement in a noncitizen’s case, may be advanced as a more accessible solution, where infrastructure supporting detention and removal has already been built up by the federal government.⁴⁶

The main power in question in 287(g) discussions is in granting local law enforcement the authority to issue “ICE detainers.” ICE detainers are formal documents “that [allow] a law enforcement agency to hold [a] person for up to 48 hours until he or she can be transferred into ICE custody for removal processing.”⁴⁷ A secondary power of relevance here is the authority to issue a Notice to Appear (NTA) to a noncitizen. An NTA is the document that formally begins the removal proceedings process.⁴⁸ Finally, whether 287(g) agreements are truly necessary for a local law enforcement agency to hold suspected noncitizens on ICE detainers beyond their constitutional maximum periods in holding remains in dispute.⁴⁹

⁴³ *Id.* at 27.

⁴⁴ *Id.* at 28.

⁴⁵ *Id.*

⁴⁶ NAT’L IMMIGR. L. CTR., HOW ICE USES LOCAL CRIMINAL JUSTICE SYSTEMS TO FUNNEL PEOPLE INTO THE DETENTION AND DEPORTATION SYSTEM 1 (2014), <https://www.nilc.org/wp-content/uploads/2015/11/state-local-enforcement-and-ice-2014-03-25.pdf> [<https://perma.cc/73TE-Y97D>].

⁴⁷ *Id.* at 13.

⁴⁸ *Id.*

⁴⁹ See Lena Graber et al., ENDING 287(G) A TOOLKIT FOR LOCAL ORGANIZERS 9 (Immigrant Legal Res. Ctr. ed., 2019), <https://www.ilrc.org/resources/ending-287g-toolkit-local-organizers> [<https://perma.cc/E74D-4XS6>] (last visited Mar. 12, 2024) (“ICE and some sheriffs argue that 287(g) gives the locality the legal authority that they otherwise lack to hold people on detainers, but this is in dispute.”). “Constitutional maximums” here mean the maximum amount of time the local law enforcement agency could lawfully hold the noncitizen absent the ICE detainer. In many cases, the authority to hold someone in custody lapses upon

IV. FINANCIAL COSTS OF 287(G)

A. *Direct Costs*

At the outset, there are diverging reimbursement schedules for costs incurred under the two forms of 287(g) agreements in use today: Warrant Service Officer (WSO) and Jail Enforcement Model (JEM) contracts do not result in the same costs to the parties involved. Given the more involved nature of JEM contracts, the costs associated with them are also higher. A typical boilerplate cost-share clause in a JEM contract reads as follows:

ICE is responsible for the installation and maintenance of the Information Technology (IT) infrastructure. The use of the IT infrastructure and the DHS/ICE IT security policies are defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE's Chief Information Security Officer and the [local law enforcement agency]'s Designated Accreditation Authority. The [local law enforcement agency] agrees that each of its sites using an ICE-provided network access or equipment will sign the ISA, which defines the OHS ICE 4300A Sensitive System Policy and Rules of Behavior for each user granted access to the DHS network and software applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

The [local law enforcement agency] is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material used in the execution of the [local law enforcement agency]'s mission. ICE will provide instructors and training materials. The [local law enforcement agency] is responsible for the salaries and benefits, including any overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating [local law enforcement agency] personnel while they are receiving training. ICE is responsible for the costs of the [local law enforcement agency] personnel's travel expenses while in a training status, as authorized by the Federal Travel Regulation and the ICE Travel Handbook. These expenses include housing, per diem and all transportation costs associated with getting to and from training. ICE is responsible for the salaries and benefits of all ICE personnel, including instructors and supervisors.

The [local law enforcement agency] is responsible for providing all administrative supplies (e.g. paper, printer toner) necessary for

the posting of bail and/or a court order of release. In the State of Georgia, an individual must be presented before a judge within 72 hours of arrest. Failing this, they must be released. *See, e.g.,* GA. CODE ANN. § 17-4-26 (West).

normal office operations. The [local law enforcement agency] is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints, etc.⁵⁰

The boilerplate “costs and expenditures” provision remains very similar in WSO agreements. The cost-share clause of a typical WSO agreement holds:

The [local law enforcement agency] is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material. ICE will provide instructors and training materials. The [local law enforcement agency] is responsible for the salaries and benefits, including any overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating [local law enforcement agency] personnel while they are receiving training. The [local law enforcement agency] will cover the costs of all [local law enforcement agency] personnel’s travel, housing, and per diem affiliated with the training required for participation in this MOA. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines the training provides a direct service for the Government and it is in the best interest of the Government, the Government may issue travel orders to selected personnel and reimburse travel, housing, and per diem expenses only. The [local law enforcement agency] remains responsible for paying salaries and benefits of the selected personnel.

The [local law enforcement agency] is responsible for providing all administrative supplies (e.g. printer toner) necessary for normal office operations. The [local law enforcement agency] is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints, etc.⁵¹

In cataloging the costs of each provision, it is plain to see that local agencies shoulder the financial burden of participation in the 287(g) program far more than the federal government. The following charts attempt to highlight the disparity:

⁵⁰ *Memorandum of Agreement 287(g) Jail Enforcement Model*, U.S. IMMIGR. CUSTOMS & ENF’T 3 (May 1, 2020), <https://www.ice.gov/doclib/287gMOA/287gBatonRougeLa2020-06-09.pdf> [<https://perma.cc/ZD8F-Q3T6>]. See *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 21.

⁵¹ *Memorandum of Agreement*, U.S. IMMIGR. CUSTOMS & ENF’T 3 (Apr. 22, 2019), https://www.ice.gov/doclib/287gMOA/287gWSO_PinellasCoFl2019-04-24.pdf [<https://perma.cc/3CGK-BPRR>]. See *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 21.

State and Local Government Cost Burden: JEM	Federal Government Cost Burden: JEM
Ongoing personnel expenses of local law enforcement agency, including, but not limited to: <ul style="list-style-type: none"> • officer salaries and benefits, • local transportation, and • official issue material used in the execution of the local law enforcement agency's mission. 	
Salaries and benefits, including any overtime, of all local law enforcement agency personnel while being trained and/or working on behalf of ICE	Salaries and benefits of ICE personnel, including 287(g) training instructors
Pay and overtime for local law enforcement officers who "pick up" additional shifts while other officers are away at training	
Administrative office supplies and space for officers to work	Training materials, handouts, etc.
Security equipment, such as handcuffs	
	Local law enforcement officer travel expenses while training with ICE (as per <i>Federal Travel Regulations</i> and the <i>ICE Travel Handbook</i>): <ul style="list-style-type: none"> • travel, • housing, and • <i>per diem</i>.
	Department of Homeland Security/ ICE Information Technology (IT) infrastructure installation and maintenance

State and Local Government Cost Burden: WSO	Federal Government Cost Burden: WSO
Ongoing personnel expenses of local law enforcement agency, including, but not limited to: <ul style="list-style-type: none"> • officer salaries and benefits, • local transportation, and • official issue material used in the execution of the local law enforcement agency's mission. 	

State and Local Government Cost Burden: WSO	Federal Government Cost Burden: WSO
Salaries and benefits, including any overtime, of all local law enforcement agency personnel while being trained and/or working on behalf of ICE	Salaries and benefits of ICE personnel, including 287(g) training instructors
Incidental expenditure related to local law enforcement officer training required for participation in 287(g) agreement: <ul style="list-style-type: none"> • travel, • housing, and • <i>per diem</i> 	ICE <i>may, but is not obliged to</i> , reimburse travel incidentals for local law enforcement officers under travel orders from the federal government. This includes: <ul style="list-style-type: none"> • travel, • housing, and • <i>per diem</i>
Administrative office supplies and space for officers to work	
Security equipment, such as handcuffs	

One of the most significant expenditures for the local law enforcement agency under both JEM and WSO contracts is officer overtime payment. The 287(g) program presupposes that officers will be given protected time to devote to their immigration enforcement responsibilities. However, this is often untenable for smaller counties. Even in larger areas, falling numbers of police recruits⁵² and middling perceptions of police^{53,54} result in fewer sworn officers to handle a normal workload, much less the added 287(g) responsibilities.⁵⁵ “Because of the logistics of processing arrestees through Secure Communities [immigration enforcement], police officers lose time that would otherwise be spent serving and protecting their communities.”⁵⁶

Often, overtime is the only tenable solution for communities operating under 287(g) agreements. This solution represents serious costs for the local law enforcement agency, however. Within the first three months of signing a 287(g) agreement, the Maricopa County Sheriff’s Office (MCSO)

⁵² Mitch Smith, *As Applications Fall, Police Departments Lure Recruits With Bonuses and Attention*, N.Y. TIMES (Dec. 25, 2022), <https://www.nytimes.com/2022/12/25/us/police-officer-recruits.html>.

⁵³ EMILY ELKINS, POLICING IN AMERICA: UNDERSTANDING PUBLIC ATTITUDES TOWARD THE POLICE. RESULTS FROM A NATIONAL SURVEY (CATO INSTITUTE, ED., 2016), <https://www.cato.org/sites/cato.org/files/survey-reports/pdf/policing-in-america-august-1-2017.pdf> [https://perma.cc/SSN8-DSPE] (last visited Mar. 12, 2024).

⁵⁴ Wesley Lowery *et al.*, *Public Perceptions of the Police*, COUNCIL ON CRIMINAL JUSTICE (Oct. 7, 2020), <https://counciloncj.org/public-perceptions-of-the-police/> [https://perma.cc/W5D5-6HX7].

⁵⁵ See generally MAI NGUYEN & HANNAH GILL, THE 287(G) PROGRAM: THE COSTS AND CONSEQUENCES OF LOCAL IMMIGRATION ENFORCEMENT IN NORTH CAROLINA COMMUNITIES (2010).

⁵⁶ DHS’s “Secure Communities”: No Rules of the Road, NAT’L IMMIGR. L. CTR. (Mar. 2011), <https://www.nilc.org/issues/immigration-enforcement/scomm-no-rules-of-road-2011-03-0/> [https://perma.cc/4YTD-ND5N] (last visited Mar. 12, 2024).

“experienced a \$1.3 million budget deficit due to overtime payments for extra work.”⁵⁷ Further, “there were 100 deputies trained through the 287(g) Program, and the extra work [under the 287(g) agreement] was in large part due to the shift in [officer’s] duties to immigration enforcement. In April 2007, 9,000 over-time hours during that one-month period were billed to MCSO at a cost of \$373,757.”⁵⁸

Finally, 287(g) agreements may represent a windfall for an individual official, such as an elected county sheriff, while ultimately costing the local government. This can happen when a condition for accepting a 287(g) agreement is that a subsequent Intergovernmental Support Agreement (IGSA) contract be filed. See also this work’s discussion of “pass-through” agreements, *infra*, Section VI(A). Specifically regarding IGSA contracts, they are the primary means by which federal immigration detention authority (specifically, the authority to house ICE detainees) is established for local law enforcement agencies. “IGSA (Intergovernmental Services Agreement) is a contract between ICE and a local jail. ICE pays the local jail to ‘rent beds,’ and keeps immigration detainees in those beds.”⁵⁹ IGSA contracts represent a profit-generating vehicle for local law enforcement, as they very explicitly establish quotas for bed occupancy. It contracts for a specific number of beds, regardless of demand:

- ICE pays between \$30-\$200 per bed per day (depending on the region) to the local jail to keep that bed available for ICE detainees. Some contracts are for only a few beds; others are for hundreds, and may amount to millions of dollars per year for the local jail.⁶⁰

An alternative means for local law enforcement to bring in federal funds is via the State Criminal Alien Assistance Program (SCAAP). The purpose of SCAAP is to provide funds to local law enforcement agencies as reimbursement for holding undocumented immigrants. “Only jail costs for undocumented immigrants, convicted of at least one felony or two misdemeanors and sentenced to jail or prison for at least four days, are eligible to be reimbursed under SCAAP.”⁶¹ By cooperating with ICE via an IGSA contract or participation in SCAAP, a local law enforcement official can generate funds specifically earmarked for law enforcement use, or, more insidiously, may receive kickbacks and preferential treatment by the federal government. While the local law enforcement agency may stand to benefit from these programs, the net cost to the local government across all 287(g) and related programs is likely to still be a net negative.⁶²

⁵⁷ Mai Nguyen and Hannah Gill, *supra* note 55, at 30-31.

⁵⁸ *Id.* at 31.

⁵⁹ Lena Graber et al., *supra* note 49, at 19.

⁶⁰ *Id.*

⁶¹ *Id.* at 20.

⁶² This follows from an understanding that monies directly paid to law enforcement agencies may only be internally accounted for, and thus not realized by the parent government.

B. Indirect Costs

The cost of housing noncitizens in local jails represents an important indirect cost for local law enforcement agencies operating under 287(g) agreements. While 287(g) agreements do provide for the local law enforcement agency's authority to issue and execute "ICE detainees," these agreements do not provide for a reimbursement scheme for the requisite 48-hour detention these detainees entail. Rather, as noted above, co-incident IGSA contracts are employed to afford local jails reimbursement for detaining individuals facing removal proceedings. Because the cost of housing noncitizens is not expressly considered in the 287(g) agreement framework, the cost can fairly be characterized as "indirect." The semantics of this classification notwithstanding, the 48-hour hold of noncitizens facing removal presents a cost in and of itself, and also exposes the local law enforcement agency to legal liability for the extended duration of custody.

One example of the direct costs of ICE detainees can be found in a 2012 study examining Los Angeles County's implementation of ICE detainees. It was found that ICE detainees cost LA County taxpayers upwards of \$26,000,000 per year on average.⁶³ While a large, metropolitan county like Los Angeles may be able to finance such overhead, it is unlikely that smaller localities could afford such expenditure, even as adjusted for a smaller population of detainees.

ICE detainees are described in 8 CFR § 287.7(a):

Detainers are issued pursuant to sections 236 and 287 of the [Immigration and Nationality Act, as amended by The Immigration Reform and Control Act of 1986] and this chapter 1. Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.⁶⁴

Procedurally and practically, the 48-hour "ICE detainer" functions as follows:

Local jails...bear the cost of housing arrestees who are held under immigration detainers rather than being released on bond.

⁶³ Judith A. Greene, *The Cost of Responding to Immigration Detainers in California: Preliminary Findings*, JUSTICE STRATEGIES (Aug. 22, 2012), <https://big.assets.huffingtonpost.com/Justicestrategies.pdf> [<https://perma.cc/7N69-KWT8>].

⁶⁴ 8 C.F.R. § 287.7(a).

A detainer is a request from ICE that the arresting agency notify ICE before its release of a noncitizen so that ICE can assume custody. The detainer provides the jail with the authority to hold a noncitizen for 48 hours if the person is not already subject to detention. For the 48-hour duration of the detainer, the local jail bears the cost of housing the arrestee. Then, when the ICE officer goes to the jail to evaluate whether the arrestee should be taken into ICE custody, the local jail bears the burden and cost of accommodating the ICE officers.⁶⁵

While ICE detainers represent costs in and of themselves, they also expose the local law enforcement agency to legal liability (and potential monetary damages) premised on a number of grounds. “The local jail—not ICE—is legally liable if the arrestee is held over the 48-hour period authorized under the detainer, or, as has occurred in several locations, if the detainer is mistakenly placed on a citizen.”⁶⁶ The following chart highlights a few examples of a growing body of case law confirming that ICE detainers represent a 4th Amendment seizure of the noncitizen, and thus are unconstitutional if the noncitizen was not subject to some other lawful basis of further detention:

Case ⁶⁷	Final Disposition
<p><i>Galarza v. Szalczyk</i>, 2012 WL 1080020 (Eastern District of Pennsylvania, 2012),</p> <ul style="list-style-type: none">• Reversed in part on appeal, 745 F.3d 634 (3rd Circuit, 2014).	<p>“The district court held that the plaintiff, a U.S. citizen, stated a viable Fourth Amendment claim against both ICE and local law enforcement officials where he was held for 3 days after posting bail based on an ICE detainer.” Both ICE and local law enforcement ordered to pay \$25,000 each.</p> <ul style="list-style-type: none">• On appeal, the Third Circuit held that ICE detainers are merely non-binding requests, not orders, and that Lehigh County could be held liable for its policy of detaining people on that basis.• The local law enforcement agency ultimately settled with the plaintiff for \$95,000.

⁶⁵ DHS’s “Secure Communities”: *No Rules of the Road*, *supra* note 56.
⁶⁶ *Id.*
⁶⁷ Cases and quotations in this table are sourced from *Recent ICE Detainer Cases*, ACLU (Jul. 27, 2015), <https://www.aclu.org/documents/recent-ice-detainer-cases> [<https://perma.cc/396R-VSY2>].

Case ⁶⁷	Final Disposition
<i>Miranda-Olivares v. Clackamas County</i> , 2014 WL 1414305 (District of Oregon, 2014).	Plaintiff awarded summary judgment against defendant local law enforcement agency. The District Court held: <ul style="list-style-type: none"> • “[T]here is no genuine dispute of material fact that the County maintains a custom or practice in violation of the Fourth Amendment to detain individuals over whom the County no longer has legal authority based only on an ICE detainer which provides no probable cause for detention.” • “The County settled with the plaintiff for \$30,100” in lieu of proceeding to trial.⁶⁸
<i>Uroza v. Salt Lake County</i> , 2013 WL 653968 (District of Utah, 2013)	Plaintiff sued both ICE and local county officials claiming 4 th Amendment violations for seizure after posting bail. <ul style="list-style-type: none"> • “In August 2014, the plaintiff settled his claims against Salt Lake County for \$75,000 in damages and attorney’s fees, along with policy changes.”
<i>Del Agua v. Jones</i> , No. 15-0185 (Eastern District of California, settled in 2015)	“The plaintiff, who was held in Sacramento County jail for three days on an ICE detainer, sued the Sheriff of Sacramento County for Fourth Amendment and state-law violations. The County settled with the plaintiff for \$25,000 on [] March 2015.”
<i>Valdez-Sandoval v. Walcher</i> , (District of Colorado, settled before lawsuit filed)	“The plaintiff, who was held in Arapahoe County jail for three days on an ICE detainer, notified the County of her intent to sue for violations of her Fourth Amendment rights. In June 2014, the Sheriff’s Office agreed to an out-of-court settlement of \$30,000 and announced that the County will no longer hold people on the basis of ICE detainers.” ⁶⁹

⁶⁸ See also Steve Mayes, *Woman at Center of Landmark Immigration Case Settles Suit that Changed Jail Holds in State, Nation*, THE OREGONIAN/OREGONLIVE (May 18, 2015), https://www.oregonlive.com/clackamascounty/2015/05/woman_at_center_of_landmark_im.html [https://perma.cc/5E59-PPRW].

⁶⁹ See also Press Release, *Colorado Sheriff to Pay \$30K to Woman Held on Immigration Detainer*, AM. C.L. UNION (Jun. 19, 2014), <https://www.aclu.org/press-releases/colorado-sheriff-pay-30k-woman-held-immigration-detainer> [https://perma.cc/ZS9T-3FL8].

Case ⁶⁷	Final Disposition
<i>Quezada v. Mink</i> , No. 10-0879 (District of Colorado, settled in 2011)	“The plaintiff, who was held in Jefferson County jail for several weeks on an ICE detainer, sued both ICE and local officials for Fourth Amendment violations. The case settled in May 2011 for \$40,000 from the local defendants, and \$50,000 from the United States.”
<i>Harvey v. City of New York</i> , No. 07-0343 (Eastern District of New York, settled in 2009)	“The plaintiff, who was held in New York City’s custody twice on ICE detainers, sued the City for Fourth Amendment violations. The case settled in June 2009 for \$145,000.”

Both WSO and JEM 287(g) agreements feature a boilerplate liability clause. That clause, framed as a memorandum of understanding, states that local law enforcement acting pursuant to their duties under 287(g) are “under color of Federal authority for purposes of determining liability and immunity from suit under Federal or State law. See 8 U.S.C. § 1357(g)(8).”⁷⁰ The cited U.S. Code provision holds:

8 U.S. Code § 1357 - Powers of immigration officers and employees

(g) Performance of immigration officer functions by State officers and employees

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.⁷¹

The point of divergence between these contractual protections and assertions and actual practice involves 1) the nature of ICE detainees, and 2) the tendency for immigration law enforcement to involve some form of racial profiling. Regarding detainees, first and foremost they are civil in nature because the immigration detention and removal system has been classified by the U.S. Supreme Court as a civil process.⁷² Additionally, ICE detainees are not mandatory, are not legal warrants, and “do not provide a lawful basis for

⁷⁰ *Memorandum of Agreement 287(g) Jail Enforcement Model*, U.S. Immigr. Customs & Enf’t 4-5 (May 4, 2020), https://www.ice.gov/doclib/287gMOA/287gJEM_WhitfieldCoGa2020-06-09.pdf [<https://perma.cc/AJ3T-X675>].

⁷¹ 8 U.S.C. § 1357(g)(8).

⁷² *See, e.g., Padilla v. Kentucky*, 559 U.S. 356 (2010). *See also* AM. IMMIGR. COUNCIL, *TWO SYSTEMS OF JUSTICE: HOW THE IMMIGRATION SYSTEM FALLS SHORT OF AMERICAN IDEALS OF JUSTICE* (2013) https://www.americanimmigrationcouncil.org/sites/default/files/research/aic_twosystemsofjustice.pdf [<https://perma.cc/Q8UW-9R2E>] (last visited Mar. 15, 2024).

arrest or detention.”⁷³ ICE detainers are issued by ICE officers and are not required to be premised on probable cause.⁷⁴ Rather, detainers merely evidence that ICE has opened an investigation into an individual’s immigration status.⁷⁵ Further, ICE detainers are not criminal detainers. “A criminal detainer can be issued only if there are charges pending in another jurisdiction against a person currently serving a criminal sentence, and they are subject to multiple procedural safeguards, including a requirement of court approval.”⁷⁶ Thus, ICE detainers lack the procedural protections necessary for criminal detainees and cannot function with a similar force of law.

A June 2006 report by the Major City Chiefs Immigration Committee highlights that, “[c]ivil detainers do not fall within the clear criminal enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainers.”⁷⁷ On this matter, the U.S. Supreme Court has opined that “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns.”⁷⁸ Given the breadth of case law affirming ICE detainers represent a practice contrary to the Fourth Amendment, local law enforcement agencies undertake participation in 287(g) and responding to such detainers at their own peril.

Regarding racial profiling, the practice has long been a troubling element of policing tactics.⁷⁹ “Even with proper training, law enforcement officers, as all humans, are susceptible to relying on racial or ethnic stereotypes.”⁸⁰ An example of discriminatory treatment by a local law enforcement agency operating under 287(g) is the Maricopa County Sheriff’s Office (MCSO).⁸¹

In 2011, the U.S. Department of Justice found that the MCSO engaged in discriminatory policing practices, leading the DHS to terminate the agreement.⁸² A federal court later ruled that Maricopa

⁷³ Immigrants’ Rights Project, *What ICE Isn’t Telling You About Detainers: A Fact Sheet for Local Law Enforcement Agencies*, ACLU (Oct. 2012), https://www.aclu.org/files/assets/issue_brief_-_what_ice_isnt_telling_you_about_detainers.pdf [https://perma.cc/UM3Q-ADH6] (last visited Mar. 13, 2024). See also Kendra Sena, *Explainer: When Local Law-Enforcement Officers Become ICE Deputies: 287(g) Agreements*, ALBANY L. SCH. GOV’T L. CTR. (Mar. 18, 2019), <https://www.albanylaw.edu/government-law-center/when-local-law-enforcement-officers-become-ice-deputies-287g-agreements> [https://perma.cc/W3M8-98NH].

⁷⁴ Immigrants’ Rights Project, *supra* note 73, at 1.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ CRAIG E. FERRELL ET AL., MAJOR CITY CHIEFS (M.C.C.) IMMIGRATION COMMITTEE RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES 8 (2006), https://www.houstontx.gov/police/pdfs/mcc_position.pdf [https://perma.cc/5GVA-HUVL].

⁷⁸ *Arizona v. United States*, 567 U.S. 387, 413 (2012) (citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) and *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)).

⁷⁹ See, e.g., *Racial Profiling*, NAT’L INST. OF JUST. <https://nij.ojp.gov/taxonomy/term/racial-profiling> [https://perma.cc/LN3L-5KR9] (last visited Nov. 11, 2024).

⁸⁰ Danyelle Solomon et al., *The Negative Consequences of Entangling Local Policing and Immigration Enforcement*, AMERICAN PROGRESS (Mar. 2017), <https://www.americanprogress.org/article/negative-consequences-entangling-local-policing-immigration-enforcement/> (last visited Mar. 13, 2024).

⁸¹ See *supra* Part IV for an analysis of the MCSO’s expenditures arising out of its 287(g) activities.

⁸² Press Release, U.S. D.H.S. Office of the Press Secretary, *Secretary Napolitano on DOJ’s Findings of Discriminatory Policing in Maricopa County* (Dec. 15, 2011), <https://www.dhs.gov>.

County engaged in unconstitutional racial profiling and pretextual stops.⁸³...[Ultimately] the MCSO's unlawful and discriminatory conduct was determined to have been intentional.⁸⁴

Ultimately, the risks associated with expanding law enforcement powers beyond the considerable authority already granted to local law enforcement can be a precursor to poor decision making by local authorities. Relevantly, federal immigration authorities at ICE, in spite of their flaws, are considerably more trained than local police. This remains true in spite of the training and education efforts undertaken by ICE to onboard new officers into the 287(g) program, and presents an ongoing problem facing the local community now subject to officers acting beyond the scope of their competence.

V. OTHER COSTS OF 287(G)

Beyond the cost of training local law enforcement in ICE policy and procedure, the cost of officer overtime payments, the cost of housing noncitizens in county jails, and the cost of court disputes and settlements over the constitutionality of police actions under ICE detainer requests, there remain a collection of “hidden” costs associated with 287(g) implementation in a local community. While these hidden costs are less obvious, they have an insidious negative effect on local communities. These hidden costs include noncitizen economic divestment from the local community, noncitizen outmigration, and limited crime reporting by noncitizens that makes it harder to fight crime in a given jurisdiction.

A. *Economic Divestment*

The chief cost to local communities arising but-for 287(g) agreement enforcement is economic divestment from the community by noncitizens. “A recent Center for American Progress report analyzed 40 jurisdictions with standing agreements and found that immigrant households in those localities generate nearly \$66 billion in spending power and contribute \$24 billion in tax revenue annually.”⁸⁵ One example from this report scrutinizes the aftermath following the enactment of the Legal Arizona Workers Act. That Act required the use of E-Verify⁸⁶ by employers and imposed penalties on employers who

gov/news/2011/12/15/secretary-napolitano-doj-finding-discriminatory-policing-maricopa-county [https://perma.cc/7PQ7-3E9M].

⁸³ *Melendres v. Arpaio*, 989 F. Supp. 2d 822 (D. Ariz. 2013), adhered to, No. CV-07-02513-PHX-GMS, 2013 WL 5498218 (D. Ariz. Oct. 2, 2013), aff'd in part, vacated in part, 784 F.3d 1254 (9th Cir. 2015), and aff'd, 784 F.3d 1254 (9th Cir. 2015).

⁸⁴ *Id.* at 902.

⁸⁵ Laura Muñoz Lopez, *How 287(g) Agreements Harm Public Safety*, CTR. FOR AM. PROGRESS (May 2018), <https://www.americanprogress.org/article/287g-agreements-harm-public-safety/> (last visited Mar. 13, 2024) (citing Nicole Prchal Svajlenka, *WHAT'S AT STAKE: IMMIGRANT IMPACTS IN 287(G) JURISDICTIONS 2* (CTR. FOR AM. PROGRESS ED., 2018) <https://www.americanprogress.org/article/whats-at-stake/> (last visited Mar. 13, 2024)).

⁸⁶ E-Verify is “authorized by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), [and] is a web-based system through which employers electronically

knowingly hired undocumented or otherwise ineligible workers. It reported that the Act “resulted in 17 percent of Latino immigrants leaving the state and a shift for those who remained from the formal economy to the underground economy.”⁸⁷ It was “found that the number of immigrants leaving Arizona was responsible for a 2 percent reduction in the state’s GDP each year from 2008 to 2015 as well as a lower employment rate.”⁸⁸

The Center for American Progress 2018 report also found that immigrants were more likely than U.S.-born individuals to own their own business,⁸⁹ with immigrants representing an outsized proportion of U.S. business owners when compared to their percentage of the total population.⁹⁰ Contrary to popular belief, “immigrant-owned businesses create millions of jobs for native-born workers.”⁹¹ The report analyzed 13 jurisdictions to determine the economic impact of immigrant communities and business owners in 287(g) jurisdictions to highlight the economic risk of these contracts:

In each of the 13 of the jurisdictions analyzed, immigrants own more than 1,000 businesses that could be threatened by 287(g) agreements. Foreign-born business owners represent more than one-third of the local-serving Main Street businesses in Prince William County, Virginia, Hudson County, New Jersey, Tarrant County, Texas, Knox County, Tennessee, and Las Vegas, Nevada.⁹²

In addition to the noncitizen role in the establishment of small businesses, these individuals also represent an important source of tax revenue for the local jurisdiction. Immigrants pay taxes,⁹³ and their contributions can make a sizeable impact on a local government’s overall budget. As immigrants elect to leave an area, they take with them their tax dollars to the new locale. The Center for American Progress report goes on to highlight:

confirm the employment eligibility of their employees.” *About E-Verify*, E-VERIFY.GOV <https://www.e-verify.gov/about-e-verify> [https://perma.cc/58VZ-GW43] (last visited Mar. 13, 2024).

⁸⁷ Nicole Prchal Svajlenka, *supra* note 85, at 14 (citing Magnus Lofstrom, Sarah Bohn, & Steven Raphael, LESSONS FROM THE 2007 LEGAL ARIZONA WORKERS ACT (Pub. Pol’y Inst. of Cal., ed., 2011) https://www.pplic.org/content/pubs/report/R_311MLR.pdf [https://perma.cc/C7MX-M7X9]).

⁸⁸ *Id.* (citing Bob Davis, *The thorny economics of illegal immigration*, THE WALL STREET JOURNAL (Feb. 9, 2016), <https://www.wsj.com/articles/the-thorny-economics-of-illegal-immigration-1454984443>).

⁸⁹ *Id.* (citing Dane Stangler & Jason Wiens, *The Economic Case for Welcoming Immigrant Entrepreneurs*, EWING MARION KAUFFMAN FOUNDATION (2015), <https://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/the-economic-case-for-welcoming-immigrant-entrepreneurs> [https://perma.cc/93DV-6TM5] (last visited Mar. 13, 2024)).

⁹⁰ *See generally* Jason Wiens and Chris Jackson, *Entrepreneurship*, NEW AMERICAN ECONOMY <https://www.newamericaneconomy.org/issues/entrepreneurship/> [https://perma.cc/NFU8-ZU7G] (last visited Mar. 13, 2024).

⁹¹ Nicole Prchal Svajlenka, *supra* note 85, at 15 (citing Jason Wiens & Chris Jackson, *supra* note 90).

⁹² *Id.* at 16.

⁹³ For a representative, data-driven array of research on this topic, *see Tax Contributions*, AM. IMMIGR. COUNCIL, <https://www.americanimmigrationcouncil.org/topics/tax-contributions> [https://perma.cc/858G-4VLA] (last visited Mar. 13, 2024). The American Immigration Council’s research into this topic spans a litany of jurisdictions, including Salem, MA, the State of Texas, Allen County, IN, the Rio Grande Valley, the State of Utah, and others.

Based on methodology developed by New American Economy, in these 40 jurisdictions, households with unauthorized adults have a collective \$14.7 billion in spending power.⁹⁴ In addition, they contribute \$3.1 billion in federal taxes and \$1.7 billion in state and local taxes annually.

At the even broader level of all households with a foreign-born adult, the 40 jurisdictions profiled here stand to lose \$65.9 billion in spending power. Collectively, immigrant households in these jurisdictions are responsible for \$17.3 billion in federal tax revenue and \$7.1 billion in state and local tax revenue annually. Jurisdictions with above average share of contributions compared to the United States at large include ... Gwinnett County, Georgia; Whitfield County, Georgia; Cobb County, Georgia; Collier County, Florida ...

Communities that have or pursue 287(g) agreements put these financial gains at risk. In one study, immigrant families' incomes fell by 70 percent after a parent was detained.⁹⁵ While this can be devastating to a family, the repercussions extend beyond the family unit. Researchers from the University of North Carolina found that, in the wake of a 287(g) agreement, business owners in Latino neighborhoods in a 287(g) jurisdiction noted declines in the number of Latino customers as well as their spending.^{96,97}

In sum, undocumented immigrants represent a pivotal component of the U.S. and local economies, generating a considerable amount of tax revenue (that, in many cases, they cannot benefit from via social welfare programs⁹⁸) and spending power. When immigrants lose their gainful employment, the tax revenue premised on that income also falls. In that way, divestment and falling tax income are intertwined. The loss of the undocumented immigrant economic contribution to localities presents a broad concern worthy of further study and additional governmental protection.

⁹⁴ NEW AMERICAN ECONOMY, POWER OF THE PURSE: HOW ASIAN AMERICANS AND PACIFIC ISLANDERS CONTRIBUTE TO THE U.S. ECONOMY (2017) <https://www.newamericaneconomy.org/wp-content/uploads/2017/10/NAE-AAPI-v14.pdf> [<https://perma.cc/F45D-XWVM>] (last visited Mar. 13, 2024).

⁹⁵ RANDY CAPPS ET AL., IMPLICATIONS OF IMMIGRATION ENFORCEMENT ACTIVITIES FOR THE WELL-BEING OF CHILDREN IN IMMIGRANT FAMILIES: A REVIEW OF THE LITERATURE (Urb. Inst. & Migration Pol'y Inst. eds., 2015) <https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families> (last visited Mar. 13, 2024).

⁹⁶ Mai Thi Nguyen & Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 URBAN STUDIES 302 (2016).

⁹⁷ Nicole Prchal Svajlenka, *supra* note 85, at 16 (internal citations retained).

⁹⁸ See generally TANYA BRODER & GABRIELLE LESSARD, OVERVIEW OF IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS (Nat'l Immigr. L. Ctr. ed., 2024), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>.

B. Outmigration

“Outmigration,” or “self-deportation,” frequently accompanies the implementation of a 287(g) agreement. Outmigration is an interesting issue, because it can be framed to advantage both sides of the immigration debate, as discussed in a 2011 report from the Migration Policy Institute.

Proponents of tougher immigration control see outmigration as evidence that programs support “attrition through enforcement”—the idea that unauthorized immigrants will leave the country voluntarily to avoid the threat of removal. And immigrant advocates see outmigration as evidence that programs have detrimental consequences for local economies, tax bases, and mixed-status families that include citizens as well as unauthorized immigrants.⁹⁹

For the same reasons as section V(A), *supra*, outmigration is a main driver of economic divestment, where the immigrant community deliberately relocates to a jurisdiction not participating in 287(g) to protect themselves from the threat of removal proceedings. In their 2011 report, the Migration Policy Institute found, via census and public school data, that short-term drops in Hispanic populations was co-incident with newly-signed 287(g) agreements, and that such drop was not experienced in neighboring counties.¹⁰⁰ Interestingly, the report did not note a similar correlation in jurisdictions with “targeted” enforcement models; namely, “Las Vegas, Los Angeles, [and] Colorado.”¹⁰¹ The outmigration problem therefore seems unique to jurisdictions which embrace a universal enforcement model. Further:

[Anecdotally,] [r]espondents in Cobb, Gwinnett, Frederick, and Prince William counties reported that significant numbers of Hispanic immigrants had moved to nearby counties or other states — though they did not report that many immigrants had left the United States altogether.

...

Based on American Community Survey (ACS) data, we found measurable Hispanic noncitizen population losses two to three years after 287(g) implementation in three of our study sites: Cobb, Frederick, and Prince William counties. When we compare these counties with neighboring ones, in all three cases the neighboring counties without 287(g) programs experienced either Hispanic noncitizen population gains or no significant changes.¹⁰²

⁹⁹ Randy Capps et al., *supra* note 34, at 38. See also Jessica M. Vaughan, *Attrition Through Enforcement*, CTR. FOR IMMIGR. STUDIES (Apr. 2006), <https://cis.org/Report/Attrition-Through-Enforcement> (last visited Mar. 13, 2024).

¹⁰⁰ Randy Capps et al., *supra* note 34, at 38.

¹⁰¹ *Id.* at 38–39.

¹⁰² *Id.*

C. Limited Crime Reporting

287(g) agreements have been shown to be co-incident with the erosion of public trust in local law enforcement. The most significant problem this presents is that a general public distrust of authority figures limits the crime-related information that the public is willing to provide to those authority figures. When populations are more fearful of police involvement, it is unlikely that individuals will willingly create a cause for police interaction, which could be triggered by reporting crime-related information. The reporter may potentially be asked to serve as a witness or provide a sworn statement pursuant to their crime-related tip. A report by the Center for American Progress explains:

A recent survey [at the] University of California, San Diego... examined behavioral change in the undocumented Mexican immigrant population based on whether individuals knew that local law enforcement worked with ICE. Respondents who were told that local law enforcement worked with ICE were 61 percent less likely to report crimes that they witnessed and 43 percent less likely to report being the victim of a crime than those who were told that local law enforcement was not working with ICE.¹⁰³...[Similarly,] a 2012 survey¹⁰⁴...found that 44 percent of Latinos—regardless of immigration status—were less likely to contact police officers if they were victims of a crime, as they feared that they would be asked about their own or other’s immigration status. When the 2012 survey looked solely at undocumented residents, the percentage increased to 70 percent.¹⁰⁵

In response to the damaging effects of 287(g) contracts on local communities, some local law enforcement agencies have opted to terminate their agreements. Either party can opt to terminate a 287(g) agreement at any time by providing 90-day notice to the other party,¹⁰⁶ and this provides an important vehicle for local agencies to bow out of the program. This is an important point to stress in advocacy initiatives.¹⁰⁷ In reporting on 287(g), the American Civil Liberties Union (ACLU) quoted Former Los Angeles Chief of Police

¹⁰³ Tom K. Wong, *Analysis: Sanctuary Cities Don’t ‘Breed Crime.’ They Encourage People to Report Crime.*, WASHINGTON POST (Dec. 7, 2021), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/04/24/sanctuary-cities-dont-breed-crime-they-encourage-people-to-report-crime/>.

¹⁰⁴ NIK THEODORE, *INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT* (2013) https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf [<https://perma.cc/2P45-3TXBJ>].

¹⁰⁵ Laura Muñoz Lopez, *supra* note 85 (internal citations retained).

¹⁰⁶ This is drawn from boilerplate language found in both WSO and JEM contracts. The 90-day requirement may or may not be present in a specific 287(g) contract. For examples, see *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 21.

¹⁰⁷ See generally Anneliese Hermann, *287(g) Agreements Harm Individuals, Families, and Communities, but They Aren’t Always Permanent*, CTR. FOR AM. PROGRESS (Apr. 4, 2018), <https://www.americanprogress.org/article/287g-agreements-harm-individuals-families-communities-arent-always-permanent/>.

William Bratton as stating “[c]riminals are the biggest beneficiaries when immigrants fear the police.”¹⁰⁸

VI. REGARDING DETENTION CENTERS

A. Contractual Frameworks

As mentioned previously, immigrant detention centers are established via Intergovernmental Service Agreements (IGSA’s).¹⁰⁹ However, that is not the only means of obtaining detention space for the federal government:

ICE has three ways of acquiring detention space—contracts with private detention companies, intergovernmental service agreements (IGSA) with state and local government entities, and through riders on Department of Justice U.S. Marshals Service contracts and agreements. Some facilities exclusively hold ICE detainees while others hold ICE detainees along with other confined populations. In fiscal year 2019, ICE had contracts and agreements with over 230 facilities to hold detainees for 72 hours or more.¹¹⁰

While IGSA’s and contracts with private detention companies are primary ways for the federal government to obtain detention space, these agreements do not paint a complete picture concerning the negotiation process around the creation of a detention center. First, there are multiple forms of IGSA’s: “Non-Dedicated” and “Dedicated” Intergovernmental Service Agreements. In “non-dedicated” IGSA’s, “[f]acilities owned by state or local governments, or private companies . . . contract to hold people for ICE as well as other agencies, either together or separately.”¹¹¹ In “dedicated” IGSA’s, “[f]acilities owned by state or local governments or private companies [operate] exclusively under an agreement with ICE to hold people in immigration proceedings.”¹¹²

In addition to IGSA’s, other contract formats may also be used. Family Residential Centers (FRC) may be used when “[f]acilities owned and operated by state or local governments [operate] under agreement[] with ICE [to] hold children and their families.”¹¹³ U.S. Marshals Service Intergovernmental Agreements (USMS IGA’s) operate as a rider supplementing a contract between ICE and the U.S. Marshals Service when the latter is requested to

¹⁰⁸ Lindsay Kee & ACLU of Tennessee, *The Consequences and Costs of a 287(g) Jail Agreement: One Tennessee County’s Story*, ACLU <https://www.aclu.org/news/immigrants-rights/consequences-and-costs-287g-jail-agreement> [<https://perma.cc/A2KL-3GAW>] (last visited Mar. 13, 2024).

¹⁰⁹ *Supra* Part IV.

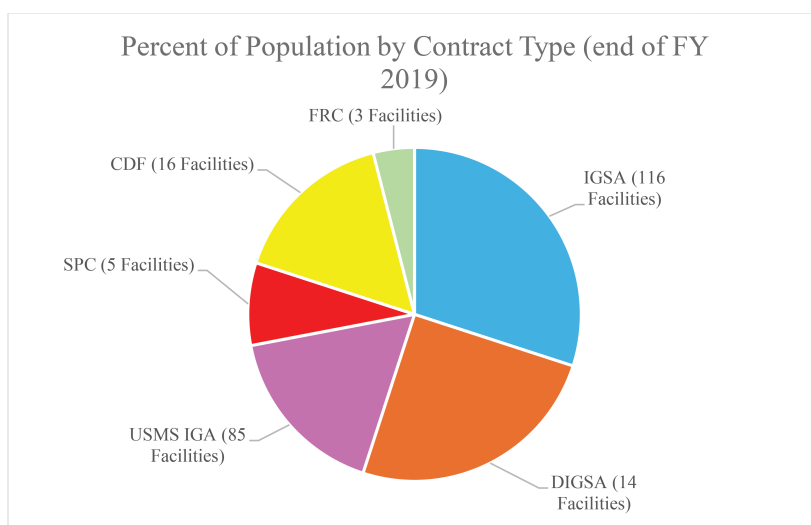
¹¹⁰ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, IMMIGRATION DETENTION: ACTIONS NEEDED TO IMPROVE PLANNING, DOCUMENTATION, AND OVERSIGHT OF DETENTION FACILITY CONTRACTS 1 (2021), <https://www.gao.gov/assets/d21149.pdf> [<https://perma.cc/DSF7-8DB2>].

¹¹¹ Jesse Franzblau, *Cut the Contracts: It’s Time to End ICE’s Corrupt Detention Management System*, Nat’l Immigrant Just. Ctr. (Mar. 16, 2021), <https://immigrantjustice.org/research-items/policy-brief-cut-contracts-its-time-end-ices-corrupt-detention-management-system> [<https://perma.cc/T996-BPAY>].

¹¹² *Id.*

¹¹³ *Id.*

detain an individual on behalf of ICE. Service Processing Centers (SPC) are “[f]acilities owned by ICE and generally operated by contracted detention staff. ICE contracts with private companies for services such as guards, food, and facility maintenance.”¹¹⁴ Finally, Contract Detention Facilities (CDF) are “[f]acilities owned and operated by private companies and contracted directly [with] ICE to exclusively hold people in ICE custody.”¹¹⁵ The following pie chart shows the approximate distribution of the various forms of contract by type for fiscal year 2019¹¹⁶:



One of the more insidious ways that governmental contract schemes may benefit local law enforcement is via “pass-through” agreements. These agreements:

[allow] local officials to act as middlemen¹¹⁷ for ICE and private companies. With these agreements, ICE contracts with local governments, side-stepping procurement laws that govern contracts with private companies. The counties or municipalities hosting the detention centers then contract directly with the same private companies that operate the facilities, receiving kick-back funds from the private operators. The most recent GAO findings¹¹⁸ assert that ICE uses IGSA intentionally to bypass procurement laws and open-government requirements.¹¹⁹

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Memorandum from John V. Kelly, Acting Inspector General to Thomas D. Homan, Acting Director, U.S. Immigr. and Customs Enf’t, Office of Inspector General (Feb. 21, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf> [<https://perma.cc/KQA5-RNX9>].

¹¹⁸ U.S. Government Accountability Office, *supra* note 110, at 30-38.

¹¹⁹ Jesse Franzblau, *supra* note 111.

B. Associated Costs

1. Costs Incurred by ICE

The direct costs associated with immigrant detention at formal detention centers is as follows:

Source ¹²⁰	Cost
FY 2023 current ICE detention funding	34,000 Average Daily Population (ADP) at a cost of \$2.9 billion
FY 2024 projected average daily cost of detaining an adult immigrant	\$164.65/day <ul style="list-style-type: none">• However, the cost varies depending on the type of facility, what medical is offered, and geographic location.
Average daily cost ¹²¹ of providing case management for individual family members by a community-based organization (2018 pilot)	\$14.05/day.
FY2023 ICE Alternatives to Detention (ATD) enrollment numbers	194,427 people.
Average daily cost ¹²² for participants enrolled in ICE’s Intensive Appearance Supervision Program (ISAP)	\$8.00/person.
Deaths at Adult Detention Centers	While no record exists concerning the exact costs borne by ICE following an inmate’s death in detention, potential costs might include direct costs such as investigator time + incidentals to look into the death, and the cost of morgue staff and body storage. Indirect costs might include lost earnings for the detention center the incarcerated individual represented (per-bed compensation).

¹²⁰ Unless otherwise indicated, data in this chart is sourced from *Featured Issue: Immigration Detention and Alternatives to Detention*, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, <https://www.aila.org/library/featured-issue-immigration-detention> [https://perma.cc/V3E9-E3GL] (last visited Mar. 13, 2024).

¹²¹ *The Real Alternatives to Detention*, AMERICAN IMMIGRATION LAWYERS ASSOCIATION, <https://www.aila.org/library/the-real-alternatives-to-detention> [https://perma.cc/SX7D-HS4W] (last visited Mar. 13, 2024).

¹²² *Alternatives to Detention*, U.S. D.H.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/features/atd> [https://perma.cc/ZL99-CP3G] (last visited Mar. 13, 2024).

The National Immigrant Justice Center noted in a 2021 policy brief that “ICE’s detention system incentivizes incarceration for maximum profits. Congress gave ICE nearly \$3 billion for fiscal year 2021 to maintain more than 200 immigrant detention centers. In this system, private prison companies grossly enrich themselves while local governments pad shrinking budgets.”¹²³ Further:

A number of ICE detention contracts include guaranteed minimums, or “bed quotas,”¹²⁴ which require ICE to pay contractors for a minimum¹²⁵ number of detention beds regardless of whether those beds are used. From fiscal years 2017 to 2019, ICE increased¹²⁶ its number of contracts and agreements with guaranteed minimums by about 38%. As of May 2020, the GAO found¹²⁷ ICE was paying around \$20.5 million a month in empty bed space.¹²⁸

Ultimately, the operation of an immigrant detention center is a less profitable endeavor without minimum-occupancy quotas. These quotas guarantee a minimum inflow of operating capital per bed, which particularly appeals to privately-operated detention centers seeking a net profit from their operations. From 2009 to 2017, the U.S. operated under a national quota, which demanded 34,000 immigrant detainees at any given time nationwide.¹²⁹ This practice was “removed during the funding negotiations of May 2017 after a long-fought campaign.”¹³⁰ Still, “an underlying network of local quotas remains written into detention contracts. These local quotas require ICE to pay for a minimum number of beds—that ICE is encouraged to fill and exceed—at key detention centers, most of which are involved with private prison corporations.”¹³¹ If nothing else, these quotas present a serious question regarding the morality of immigrant detention centers, where the profit an individual detainee represents overtakes the dignity and rights inherent in their personhood.

2. Costs Incurred by the Local Community¹³²

Immigrant detention centers are a financial and moral burden on the localities that support them, and the sum of these burdens outweighs the speculative

¹²³ Jesse Franzblau, *supra* note 111.

¹²⁴ *Detention Quotas*, DETENTION WATCH NETWORK <https://www.detentionwatchnetwork.org/issues/detention-quotas> [<https://perma.cc/2EZC-DHGM>] (last visited Mar. 13, 2024).

¹²⁵ *ICE Paid out \$500 Million for Empty Beds in FY 2020*, QUIXOTE CENTER (Oct. 1, 2020), <https://quixote.org/ice-paid-out-500-million-for-empty-beds-in-fy-2020> [<https://perma.cc/KTY4-ZMTZ>].

¹²⁶ U.S. Government Accountability Office, *supra* note 110 at 24.

¹²⁷ *Id.* at 25.

¹²⁸ Jesse Franzblau, *supra* note 111 (internal citations retained).

¹²⁹ *Detention Quotas*, *supra* note 124.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² For further analysis of the issues raised in this section, *see generally* Lucy Lansing, Economic Alternatives to Immigrant Detention Centers (Spring 2023) (unpublished) (prepared as part of coursework, for Professor Hallie Ludsin’s Human Rights Advocacy, Emory University School of Law).

benefit immigrant detention centers represent. A primary cost associated with long-term immigrant detention at a detention center stems from the lost productivity associated with the removal of detainees from the workforce.¹³³ A report by the University of California, Irvine Institute for Research on Labor and Employment analyzed the impact of long-term immigrant detention in Southern California. It found that:

Among the 562 long-term detainees who participated in the [study], approximately 90 percent were employed in the six months prior to detention. Assuming the same rate of pre-detention weekly earnings and average days detained as of the date of the survey (274 days), the collective lost wages for the sample due to detention is estimated to be nearly \$11.9 million (or \$43,357 per day).¹³⁴

The report goes on to highlight that “Sixty-nine percent of [survey] respondents have a U.S. Citizen or Lawful Permanent Resident spouse or child.”¹³⁵ Mixed-status families are integral members of their communities, and the long-term detention of a head of household or breadwinner affects both the family unit and the businesses the family supports. Furthermore, the report states:

[M]ore than nine out of ten (94%) [survey respondents] report being a source of financial and/or emotional support for their families prior to being detained. Eighty-five percent of respondents report that they considered their families a source of financial or emotional support for them.

...

[N]early two-thirds (64%) of respondents who considered themselves a source of financial support for families pre-detention reported that during their time in detention, their family was late paying rent, mortgage, or utility bills. This number reflects a sharp increase from the 16% percent of these respondents who reported being late on rent, mortgage or utilities in the six months prior to detention.¹³⁶

While costs borne by the families of detained individuals are important when considering the negative effects of immigrant detention facilities, these costs are not always localized to a specific community. Because immigration detention facilities operate in a federal network, detainees may be housed at a center far from their U.S. residence or family. Still, these costs are worth mentioning as far as they highlight one of many harms these centers cause.

¹³³ CAITLIN PATLER, THE ECONOMIC IMPACTS OF LONG-TERM IMMIGRATION DETENTION IN SOUTHERN CALIFORNIA 2 (Inst. for Rsch. on Lab and Emp. at UCLA ed., 2015), https://irle.ucla.edu/old/publications/documents/CaitlinPatlerReport_Full.pdf [<https://perma.cc/WH6A-QBRW>] (last visited Mar. 15, 2024).

¹³⁴ *Id.* at 2.

¹³⁵ *Id.* at 3.

¹³⁶ *Id.*

More particularized to the local community hosting the detention facility, the construction of such facility may instill fear among local residents of declining property values surrounding the facility.¹³⁷ This is derived from the stigma associated with detention facilities generally, namely that local towns who host such facilities become “prison towns” known primarily for their association to the detention center or correctional institution.¹³⁸

Quantitative data has shown that living near an immigrant detention center as a member of a targeted demographic (namely, undocumented Latinos) is detrimental to one’s health.¹³⁹ In a 2021 study, researchers found that such individuals residing near immigrant detention centers participated less in health promotion programs, experienced a lesser benefit from those programs if they did participate, and dropped out of such programs at a higher rate.¹⁴⁰ While that study explains its findings in light of a number of qualifiers, this data was nonetheless statistically significant and unexplainable without considering the proximity to detention center factor.

The final cost incurred by localities who host detention centers is non-monetary. Generally, detention centers represent a murky ethical problem that troubles those who must confront that problem daily by virtue of proximity. There is a common reticence among local community members that a detention center represents an institution that profits from human suffering.¹⁴¹

¹³⁷ At the least, this question lingers in the mind of potential home buyers. See *Would you have issues buying a property close to a prison facility?*, REDDIT (Oct. 15, 2021), www.reddit.com/r/RealEstate/comments/q8lmvv/would_you_have_issues_buying_a_property_close_to/ [https://perma.cc/8WFR-ACLM]. See also Steve McLinden, *Will a Nearby Prison Cut a Home’s Resale Value?*, FOX BUSINESS (last updated Mar. 5, 2016), <https://www.foxbusiness.com/features/will-a-nearby-prison-cut-a-homes-resale-value> [https://perma.cc/3L32-5LTL]. Quantitative research in this area paints a varied picture. A Dutch university student’s master’s thesis examined the question of property value when compared to the property’s proximity to a detention center and found a genuine statistical correlation. See Jurgen Jaakke, *The Effect of Prison Proximity on House Prices* (2019) (M.A. thesis, University of Groningen), https://frw.studenttheses.ub.rug.nl/1116/1/Thesis_-_Jurgen_Jaakke_-_23_ap_1.pdf [https://perma.cc/F743-7HZ8]. In the US context, studies have attempted to downplay the relationship between prisons and housing prices. See Kelly McGeever, *Correctional Facility Establishments and Neighborhood Housing Characteristics*, 62 SOCIOLOGICAL PERSPECTIVES 383 (2019), <https://doi-org.proxy.library.emory.edu/10.1177/0731121418800271> [https://perma.cc/BKM3-ZE9R] (last visited Mar. 15, 2024).

¹³⁸ Elvia Malagon, *A Tiny Illinois Town Has Become the Latest Battleground in the Effort to Build an Immigration Detention Center near Chicago*, CHICAGO TRIBUNE (Mar. 19, 2019), <https://www.chicagotribune.com/2019/03/19/a-tiny-illinois-town-has-become-the-latest-battleground-in-the-effort-to-build-an-immigration-detention-center-near-chicago/> [https://perma.cc/UW6F-5GPX]. See also Rebecca J. Stoltzfus, *Statement on the CoreCivic’s Proposed Local Immigration Detention Center*, GOSHEN COLLEGE (Jan. 18, 2018), <https://www.goshen.edu/news/2018/01/18/statement-proposed-local-immigration-detention-center/> [https://perma.cc/DA7R-FRV7]. See also Kate Linthicum, *Small Town with Several Detention Centers Debates If It Needs Another*, LOS ANGELES TIMES (Nov. 18, 2014), <https://www.latimes.com/local/california/la-me-adelanto-20141118-story.html> [https://perma.cc/P4MZ-K7K6].

¹³⁹ Maud Joachim-Célestin et al., *Living Near an Immigration Detention Center: Impact on Latinas’ Health*, 24 J IMMIGR. MINOR HEALTH 626 (2022), <https://doi.org/10.1007/s10903-021-01219-2> [https://perma.cc/F8MF-WDNN].

¹⁴⁰ *Id.*

¹⁴¹ Shaun Genter et al., *Prisons, Jobs and Privatization: The Impact of Prisons on Employment Growth in Rural US Counties, 1997-2004*, 42 SOC SCI RES 596, 598 (2013). See also, Becky Schlikerman, *Immigrant Lockup a Tough Sell*, CHICAGO TRIBUNE (Jan. 23, 2012), <https://www.chicagotribune.com/2012/01/23/immigrant-lockup-a-tough-sell-2/> [https://perma.cc/S9SE-LP68].

An individual interviewed by the Atlanta Journal Constitution concerning his views on a South Georgia detention center remarked “If you look at it from a Christian standpoint—I have always kind of had this mentality—I have never accepted the theory of making a profit on someone else’s downfall.”¹⁴² While detention centers may present an economic benefit insofar as they make purchases from local businesses, invest in local talent, or drive visitation to a local area (of families visiting detainees), these benefits cannot offset the substantial human cost associated with the privatized, corporate profit schemes that gain advantage through the institutionalization of noncitizens.

C. Questionable Benefits

Immigration detention centers are sold to local communities under the guise of revitalizing local economies, providing stable jobs, and inspiring travel to the area by detainee’s families. However, these promises often fail to materialize in practice.¹⁴³ One reason for this is the high standard required of employees working in ICE detention centers. This high standard often filters out individuals with imperfect records during the background screening process. Per the Georgia Budget and Policy Institute, “[a] 2018 CNN report found that prison jobs are often difficult to obtain due to background checks, and many available jobs end up going to those who live between one and two hours from the detention center.”¹⁴⁴

In addition to the challenges in securing work at detention centers, the work itself is not conducive to long-term economic growth for a region. “[P]rivate prisons rarely provide the long-term economic stability cities and counties seek. The jobs created by these facilities are often low-paying and unstable, failing to fuel sustainable economic growth.”¹⁴⁵ Regarding the public-private divide in immigrant detention work environments, “[p]rivate prisons have historically paid their officers less than public prisons.”¹⁴⁶

VII. CONCLUSION

The deeply institutionalized framework for criminal detention and warehousing of suspected and convicted criminals has yielded a system of

¹⁴² Jeremy Redmon & Lautaro Grinspan, *Closing an ICE Jail in South Georgia Would Cheer Activists but Harm a Rural Community’s Economy*, THE ATLANTA JOURNAL-CONSTITUTION (Sep. 23, 2021), <https://www.ajc.com/news/closing-an-ice-jail-in-south-georgia-would-cheer-activists-but-harm-a-rural-communitys-economy/Q3X45AORGFB07O3IT52KMOLRNU/> [<https://perma.cc/SHP8-79KZ>].

¹⁴³ CRYSTAL MUÑOZ, WELCOMED, YET NOT WELCOME: EXPLORING GEORGIA’S ROLE IN IMMIGRATION ENFORCEMENT AND DETENTION (Ga. Budget & Pol’y Inst. ed., 2023), <https://gbpi.org/welcomed-yet-not-welcome-exploring-georgias-role-in-immigration-enforcement-and-detention/> [<https://perma.cc/BKM3-ZE9R>].

¹⁴⁴ *Id.* at 12 (citing Catherine E. Shoichet, *Inside America’s Hidden Border*, CNN <https://www.cnn.com/interactive/2018/08/us/ice-detention-stewart-georgia/> [<https://perma.cc/ERZ6-4XCA>] (last visited Mar. 13, 2024)).

¹⁴⁵ *Id.* (citing Curtis R. Blakely & Vic W. Bumphus, *Private and Public Sector Prisons—A Comparison of Select Characteristics*, 68 FEDERAL PROBATION 27 (2004)).

¹⁴⁶ *Id.*

over-incarceration that pervades most (if not all) of the several U.S. states. This deterrent and retributive approach to government intervention appears to have seeped into the U.S.'s view towards immigrant detention. While courts have sidestepped the issue of due process by holding that immigration detention is a "civil" matter, the individuals subject to such detention experience a restriction on liberty that tends toward, if not outright mirrors, criminal incarceration. Both systems organize the methodical institutionalization of individuals in a way that undermines their inherent dignity and personhood.

287(g) has emboldened local police with the power to pretend to be federal officers. Yet, the standards of training these officers receive is not a matter of public record. What is a public record, however, is the well-documented history of rights abuses, racial profiling, quota-driven policing, and kickback arrangements that accompany the implementation of 287(g) in a local jurisdiction. It remains incumbent on advocacy groups to push back against these systems, if for no other reason than that our approach to handling the "least" of society reflects starkly on the type of world we have chosen to build.

APPENDIX A: CONTRACTS BY COUNTY—TABLE

State ¹⁴⁷	Local Law Enforcement Agency	Contract Type ¹⁴⁸	Date Signed (MM/DD/YYYY)
Alabama (AL)	Etowah County Sheriff's Office ¹⁴⁹	Jail Enforcement Model (JEM)	06/09/2020
Florida (FL)	Baker County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Bay County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Bradford County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Brevard County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Broward County Sheriff's Office	Warrant Service Officer (WSO)	09/09/2019
	Calhoun County Sheriff's Office	Warrant Service Officer (WSO)	09/09/2019
	Charlotte County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Clay County Sheriff's Office	Jail Enforcement Model (JEM)	03/11/2020
	Collier County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Columbia County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	DeSoto County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Flagler County Sheriff's Office	Warrant Service Officer (WSO)	09/09/2019
	Florida Department of Corrections	Jail Enforcement Model (JEM)	08/21/2020
	Franklin County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Hamilton County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Hendry County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Hernando County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Hernando County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Highlands County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Holmes County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Indian River County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Jacksonville Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Jefferson County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Lafayette County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Lake County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Leon County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019

¹⁴⁷ This appendix includes the effective 287(g) agreements in force as of March 15, 2024, as retrieved from the U.S. Immigration and Customs Enforcement website. The appendix limits its scope to the southeastern United States. See *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 21. If the link is broken, see Etowah County's 287(g) agreement at https://www.ice.gov/doclib/287gMOA/287gJEM_etowah-CoAL_06-09-2020.pdf.

¹⁴⁸ Shading of the cells denoting agreement type are for ease of readability. Pastel orange (may appear pink or salmon-colored) denotes Jail Enforcement Model contracts, and pastel green denotes Warrant Service Officer contracts.

¹⁴⁹ As this document is intended for digital distribution, live links are embedded in this table that direct to the relevant signed Memorandum of Agreement between ICE and the local law enforcement agency. All are accessed and working as of March 15, 2024.

State ¹⁴⁷	Local Law Enforcement Agency	Contract Type ¹⁴⁸	Date Signed (MM/DD/YYYY)
Florida (FL) (Continued)	Levy County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Liberty County Sheriff's Office	Warrant Service Officer (WSO)	09/09/2019
	Madison County Sheriff's Office	Warrant Service Officer (WSO)	09/09/2019
	Manatee County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Marion County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Martin County Sheriff's Office	Warrant Service Officer (WSO)	01/22/2020
	Monroe County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Nassau County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Okeechobee County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Osceola County Corrections Department	Warrant Service Officer (WSO)	10/15/2019
	Pinellas County Sheriff's Office	Warrant Service Officer (WSO)	04/24/2019
	Polk County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Putnam County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Santa Rosa County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Sarasota County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
	Seminole County Sheriff's Office	Warrant Service Officer (WSO)	09/04/2019
	St Johns County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Sumter County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Suwannee County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Taylor County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Wakulla County Sheriff's Office	Warrant Service Officer (WSO)	10/15/2019
	Walton County Sheriff's Office	Warrant Service Officer (WSO)	05/06/2019
Georgia (GA)	Floyd County Sheriff's Office	Jail Enforcement Model (JEM)	06/10/2020
	Georgia Department of Corrections	Jail Enforcement Model (JEM)	06/09/2020
	Hall County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Oconee County Sheriff's Office	Warrant Service Officer (WSO)	12/31/2019
	Polk County Sheriff's Office	Jail Enforcement Model (JEM)	07/02/2020
	Whitfield County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
Louisiana (LA)	East Baton Rouge Parish Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
North Carolina (NC)	Alamance County Sheriff's Office	Warrant Service Officer (WSO)	05/21/2020
	Albermarle District Jail	Warrant Service Officer (WSO)	03/19/2020
	Avery County Sheriff's Office	Warrant Service Officer (WSO)	07/23/2020
	Brunswick County Sheriff's Office	Warrant Service Officer (WSO)	07/23/2020
	Cabarrus County Sheriff's Office	Jail Enforcement Model (JEM)	03/11/2020
	Caldwell County Sheriff's Office	Warrant Service Officer (WSO)	03/19/2020

State ¹⁴⁷	Local Law Enforcement Agency	Contract Type ¹⁴⁸	Date Signed (MM/DD/YYYY)
North Carolina (NC) (Continued)	Cleveland County Sheriff's Office	Warrant Service Officer (WSO)	01/16/2020
	Duplin County Sheriff's Office	Warrant Service Officer (WSO)	06/25/2020
	Gaston County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Henderson County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Lincoln County Sheriff's Office	Warrant Service Officer (WSO)	06/05/2020
	Nash County Sheriff's Office	Warrant Service Officer (WSO)	01/29/2020
	Randolph County Sheriff's Office	Warrant Service Officer (WSO)	05/21/2020
	Rockingham County Sheriff's Office	Warrant Service Officer (WSO)	12/31/2019
	Yancey County Sheriff's Office	Warrant Service Officer (WSO)	07/20/2020
South Carolina (SC)	Horry County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Lexington County Sheriff's Office	Jail Enforcement Model (JEM)	06/08/2020
	York County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
Tennessee (TN)	Greene County Sheriff's Office	Jail Enforcement Model (JEM)	06/09/2020
	Knox County Sheriff's Office	Jail Enforcement Model (JEM)	06/08/2020

APPENDIX B: CONTRACTS BY COUNTY—MAPS¹⁵⁰

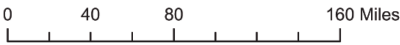
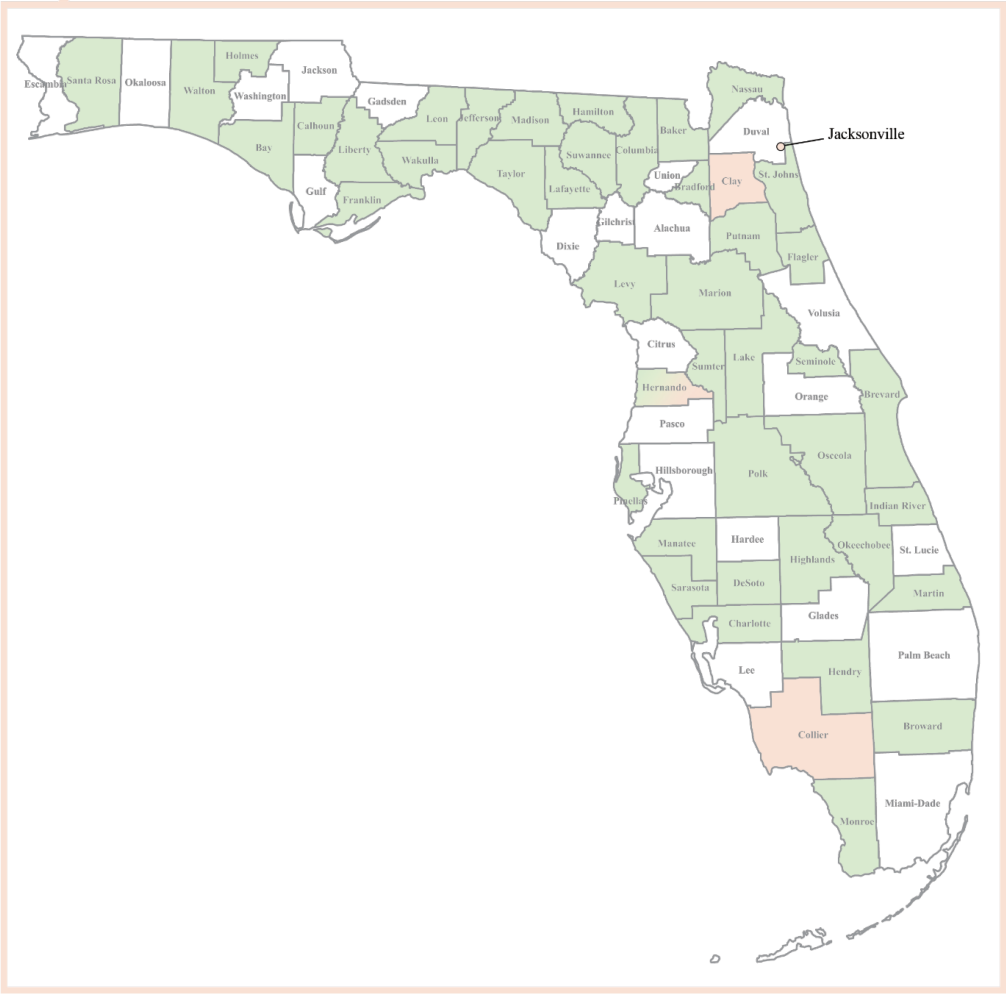
I. Alabama (AL)



¹⁵⁰ These maps denote counties/jurisdictions with active 287(g) contracts as of March 15, 2024. The colors coordinate to the chart in Appendix A. Pastel green = Warrant Service Officer agreement; Pastel orange (which may appear as a pink or salmon color) = Jail Enforcement Model agreement. A gradient (as in Henderson County, FL) indicates both agreements are operating in one jurisdiction. A box around a state denotes state-wide authority of an agency.

II. Florida (FL)

Florida Department of Corrections



III. Georgia (GA)

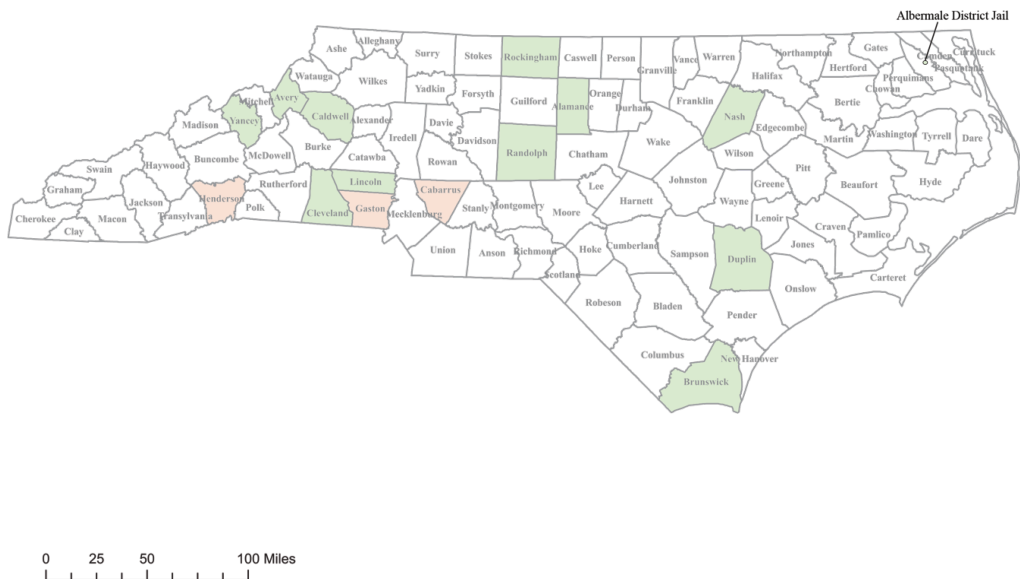
Georgia Department of Corrections



IV. Louisiana (LA)



V. North Carolina (NC)



VI. South Carolina (SC)



VII. Tennessee (TN)

