

The Persistence of Racial Profiling in Gwinnett

Time for Accountability, Transparency, and an End to 287(g)



The Persistence of Racial Profiling in Gwinnett

Time for Accountability, Transparency, and an End to 287(g)

[November 16, 2009] was a great day for Gwinnett County citizens.

-Sheriff Butch Conway in reference to the day 287(g) officially began in Gwinnett County.

I would Rather Live in Honduras, if this is how I will be treated here.

-Lucy, a Gwinnett resident and U.S. citizen child of an American citizen mother and a Honduran father, upon observing the road blocks and hearing accounts of the police targeting Latinos after the implementation of 287(g).



Published March 2010, *on occasion of the International Day for the Elimination of Racial Discrimination*

This report is dedicated to the Trail of DREAMS walkers who visited Georgia and Gwinnett County in March 2010 and inspired us with their courage.

REPORT EDITOR AND HUMAN RIGHTS DOCUMENTATION PROJECT SUPERVISOR:

Azadeh Shahshahani

National Security/Immigrants' Rights Project Director, ACLU of Georgia

ACKNOWLEDEMENTS

The ACLU of Georgia would like to give thanks to the community advocates and attorneys who provided us with invaluable information and helped to arrange interviews with community members, thus making this project possible, including Adelina Nicholls, Xochitl Bervera, Mary Babington, Joe Rosen, and Alex Nguyen.

We would also like to thank Atlantans Building Leadership for Empowerment (ABLE) for co-hosting with us two anti-racial profiling forums in Gwinnett County on August 1, 2009, and December 5, 2009.

Special gratitude is owed to community members who generously provided us with their testimonies, often recounting painful episodes.

Finally, we would like to extend our gratitude to all the law students and volunteer attorneys who researched, interviewed, drafted, and participated in this human rights documentation project including Nandini Rao, Jack Morse, Melissa Haberlen, Brandy Blue, Maha Amircani, Serene Hawasli-Kashlan, Ali Sabetghadam, Leila Mehrizi, and Kerri-Ann Griggs.

PHOTOGRAPHY CREDITS

Front Cover: Press conference and visit of the Trail of DREAMS to the Gwinnett Sheriff, March 3, 2010, Lawrenceville, Georgia, courtesy of Carlos Roa/Trail of DREAMS

Page 3: Picture of the Gwinnett Sherriff's Office main entrance, courtesy of Maha Amircani

Back Cover: Press conference to announce introduction of the anti-racial profiling legislation, January 26, 2010, Atlanta, courtesy of PJ Edwards

THE AMERICAN CIVIL LIBERTIES UNION OF GEORGIA's mission is to advance the cause of civil liberties in Georgia, with emphasis on the rights of free speech, free press, free assembly, freedom of religion, due process of law and to take all legitimate action in the furtherance of such purposes without political partisanship.

THE ACLU OF GEORGIA NATIONAL SECURITY/IMMIGRANTS' RIGHTS PROJECT is aimed at bringing Georgia and its localities into compliance with international human rights and constitutional standards in treatment of refugee and immigrant communities, including immigrant detainees.

Juan is a forty-eight year old maintenance technician, who lives in Sugar Hill. He is a legal permanent resident, and is entitled to live and work in the U.S. Over the past year, the police in Gwinnett have stopped Juan twice without a legal basis for the stop.

The most recent stop occurred when Juan was leaving work and an officer from the Gwinnett Sheriff's Department asked him to pull his car aside. Although Juan asked him up to five times why he was pulled over, the officer never answered him. Rather, the officer demanded his driver's license and screamed at him for asking questions. Juan showed the officer a valid license and was eventually released without having been issued a citation. However, Juan still does not know why he was detained.

Juan now avoids certain areas of Sugar Hill to avoid harassment by the police.

Introduction

Juan's story is merely one example of the prevalence of racial profiling in Georgia and the United States, as documented by numerous reports on this problem.¹ About half of the states within the United States have enacted legislation to eradicate racial profiling within their boundaries.²

Georgia is among those states that have no laws to prohibit racial profiling, as the Georgia General Assembly has rejected repeated attempts to pass such a law. Accordingly, law enforcement personnel throughout Georgia may continue to stop individuals based solely on their race or ethnicity, often without any measure of accountability. This is of particular concern in Gwinnett County, where testimonies affirm that officers disproportionately target people of color for pretextual stops, investigations, and enforcement.

The incidents of racial profiling in Gwinnett County have been particularly exacerbated after the implementation of the 287(g) program, which allows local law enforcement to participate in enforcement of federal immigration laws.³ Both before and after the implementation of this program, the ACLU of Georgia received complaints from drivers, pedestrians, and Gwinnett community members showing that police officers are targeting immigrants and people of color for stops, searches, and interrogations.

¹ See, e.g., American Civil Liberties Union, Racial Profiling, <http://www.aclu.org/racial-justice/racial-profiling> (last visited Mar. 18, 2010).

² Data Collection Resource Center, Legislation and Litigation, <http://www.racialprofilinganalysis.neu.edu/legislation> (last visited Mar. 18, 2010).

³ U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g), Immigration and Nationality Act, http://www.ice.gov/partners/287g/Section287_g.htm

What is Racial Profiling?

"Racial Profiling" occurs when law enforcement officials target individuals for interrogation, searches, and detention based not on evidence of criminal activity, but on individuals' perceived or actual race, ethnicity, religion or national origin.⁴ Traditional forms of racial profiling in the United States involve the use of race to determine which drivers to stop for minor traffic violations (commonly referred to as "driving while black or brown"), or the use of race to determine which pedestrians to search for illegal contraband.⁵

After the terror attacks of September 11, 2001, new forms of racial profiling – codified in "anti-terror" government programs and laws – have primarily targeted Muslim, Arab and South Asian communities.⁶ Additionally, legislation aimed at curtailing unauthorized immigration has caused many officers to unlawfully detain Latinos and other minorities who fit the profile of an "illegal immigrant."⁷ This latter form of discrimination, which targets individuals based on their purported immigration status, is especially problematic in Gwinnett County after implementation of the 287(g) program.⁸

The 287(g) Program: Immigration Enforcement in the Hands of Local Officers

The 287(g) program, promulgated through section 287 of the Immigration and Nationality Act ("INA"), authorizes local law enforcement officers to perform immigration-related functions and enforce federal immigration laws, provided there is oversight, supervision, and training of the local officers.⁹ Such authority is granted through a Memorandum of Agreement ("MOA") between states and the Department of Homeland Security Immigration and Customs Enforcement ("ICE").¹⁰ As of March 2010, a total of sixty-six agreements have been signed in twenty-four states.¹¹

The stated purpose of the 287(g) program is to facilitate collaboration between local officers and ICE, so that the local officers have the "necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering."¹² On a broader scale, the

⁴ American Civil Liberties Union, *Racial Profiling: Definition*, <http://www.aclu.org/racial-justice/racial-profiling-definition/> (last visited Mar. 18, 2010).

⁵ *Id.*

⁶ American Civil Liberties Union and the Rights Working Group, THE PERSISTENCE OF RACIAL AND ETHNIC PROFILING IN THE UNITED STATES, A FOLLOW-UP REPORT TO THE U.N. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (August 2009), at 29, *available at* http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf [hereinafter 2009 ACLU Racial Profiling Report].

⁷ *Id.* at 24-25.

⁸ *See Id.*

⁹ U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g), Immigration and Nationality Act, http://www.ice.gov/pi/news/factsheets/section287_g.htm (last visited March 18, 2010). [hereinafter ICE 287(g) Program].

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

287(g) program is intended to protect national security and curtail illegal immigration.¹³ In order to pursue these goals, localities that sign on to the program receive increased resources and support from ICE.¹⁴

While the 287(g) program appears well intentioned, the program has proved problematic in practice. The fundamental problem with placing federal immigration enforcement in the hands of local law enforcement is that local officers are not adequately trained in immigration law and its enforcement.¹⁵ In fact, many officers are not trained at all. As such, local authorities, acting pursuant to 287(g), often identify potential immigration violators based solely on an individual's racial and ethnic status.¹⁶ ACLU testimony before Congress explains this troubling, yet persistent, phenomenon:

Because a person is not visibly identifiable as being undocumented, the basic problem with local police enforcing immigration law is that police officers who are often not adequately trained, and in some cases not trained at all, in federal immigration enforcement will improperly rely on race or ethnicity as a proxy for undocumented status. In 287(g) jurisdictions, for example, state or local police with minimal training in immigration law are put on the street with a mandate to arrest "illegal aliens." The predictable and inevitable result is that any person who looks or sounds "foreign" is more likely to be stopped by the police, and more likely to be arrested (rather than warned or cited or simply let go) when stopped.¹⁷

Statistics also verify the prevalence of racial profiling through the use of the 287 (g) program, and specifically indicate that race may be a guiding factor in determining where to implement 287(g). For example, ICE often implements 287(g) after a politician or sheriff from a jurisdiction proclaims an anti-immigrant agenda.¹⁸ In fact, eighty percent of 287(g) agreements have been signed with jurisdictions in the South, and eighty-seven percent of the states that have signed agreements have a higher rate of Latino population growth than the national average.¹⁹ Also, as a whole, Latinos have been singled out for immigration stops and inquiries

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 2009 ACLU Racial Profiling Report, *supra* note 6, at 25.

¹⁶ *Id.*

¹⁷ *Joint Hearing on the Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law & The Subcommittee on the Constitution, Civil Rights, and Civil Liberties U.S.H.R., 111th Cong.* (2009) (written statement of the American Civil Liberties Union (ACLU), available at <http://www.aclu.org/immigrants/gen/39242leg20090401.html>), cited in 2009 ACLU Racial Profiling Report, *supra* note 6, at 26.

¹⁸ Justice Strategies Report, at 18, available at <http://www.justicestrategies.org/2009/local-democracy-ice-why-state-and-local-governments-have-no-business-federal-immigration-law-en> (last visited Mar. 10, 2010).

¹⁹ *Id.*

by law enforcement, even though the majority of Latinos in the United States are legal U.S. citizens or permanent residents.²⁰

Such statistics demonstrate that certain minorities, and especially Latinos, are presumptively labeled as “illegal immigrants” by law enforcement agencies.²¹ South Asian Americans are also vulnerable to 287(g) profiling, through a combination of anti-immigrant concerns, employment abuse, and post 9-11 “anti-terror” profiling.²²

Given the prevalence of racial profiling, the 287(g) program has been widely criticized, as it has led to deep distrust between immigrant communities and local law enforcement.²³ Rather than confiding in police officers, one study demonstrates that Latino children, both immigrants and U.S. citizens, sometimes avoid coming into contact with all public officials because they fear that either they or their families will be targeted by law enforcement based on their actual or perceived immigration status.²⁴ Similarly, immigrant women might fear reporting domestic violence crimes to the police officers based on their purported immigration status.²⁵ As such, many police officers have criticized the program as having a “negative overall impact on public safety.”²⁶

Other criticisms of the 287(g) program are based on the fact that ICE has not adequately responded to complaints about the program.²⁷ Pursuant to a report by the U.S. Government Accountability Office (“GAO”), ICE lacks proper implementation mechanisms and internal controls, even though the program has been operating for over seven years.²⁸ The GAO report also laid out a number of other flaws in the program: the program objectives were not documented; there was inconsistent guidance on how to use the program and how ICE officials were to supervise local officers; and local agencies had neither created data to track their involvement in the program nor the officer’s performance measures.²⁹

²⁰ See 2009 ACLU Racial Profiling Report, *supra* note 6, at 25. See also AARON TERRAZAS & JEANNE BATALOVA, MIGRATION POLICY INSTITUTE, US IN FOCUS: THE MOST UP-TO-DATE FREQUENTLY REQUESTED STATISTICS ON IMMIGRANTS IN THE UNITED STATES (2008), available at <http://www.migrationinformation.org/files/reports/85.pdf> (last visited Mar. 22, 2010).

²¹ 2009 ACLU Racial Profiling Report, *supra* note 6, at 26.

²² *Id.*

²³ *Id.*

²⁴ Sarah Auerbach, *English Language Learners Feel Effects of Battle Over Illegal Immigration*, The ELL Outlook (Nov./Dec. 2007), available at http://www.coursecrafters.com/ELL-Outlook/2007/nov_dec/ELLOutlookITIArticle1.htm, cited in 2009 ACLU Racial Profiling Report, *supra* note 6, at 26.

²⁵ *Id.*

²⁶ ANITA KANSHU, POLICE FOUNDATION, THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES XII (2009), available at <http://policefoundation.org/indexStriking.html>, cited in 2009 ACLU Racial Profiling Report, *supra* note 6, at 26.

²⁷ *Id.* at 26-27.

²⁸ U.S. Government Accountability Office (GAO), REPORT TO CONGRESSIONAL REQUESTERS, GAO-09-109, IMMIGRATION ENFORCEMENT: BETTER CONTROLS NEEDED OVER PROGRAM AUTHORIZING STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS 10 (2009) (hereinafter GAO 287(g) Report), available at <http://www.gao.gov/new.items/d09109.pdf>, cited in 2009 ACLU Racial Profiling Report, *supra* note 6, at 26-27.

²⁹ GAO 287(g) Report at 10-19, cited in 2009 ACLU Racial Profiling Report, *supra* note 6, at 26.

287(g) – Extended to Gwinnett in July 2009

Despite these criticisms, on July 10, 2009, Department of Homeland Security Secretary Janet Napolitano approved Gwinnett County's application to participate in the 287(g) program, along with ten other U.S. jurisdictions.³⁰ On October 18, 2009, the Gwinnett County Sheriff and Board of Commissioners signed the MOA with ICE and sent in 18 deputies for four weeks of training.³¹ After the deputies returned from training, the 287(g) program officially began in Gwinnett County on November 16, 2009.³²

According to Gwinnett County Sheriff Butch Conway, November 16th was a "great day for Gwinnett County citizens."³³ Sheriff Conway promised the Gwinnett community members that the "deputies assigned to the program [would] be working 24/7 to identify criminal aliens and place detainers on them for ICE."³⁴ He also assured that "those inmates [would] then be turned over to ICE for deportation once their charges are adjudicated."³⁵ To affirm his conviction in the program, Sheriff Conway stated that the Sheriff's website would be updated once a month to state how many detainers were placed for the month and what crimes were involved.³⁶

Despite Sheriff Conway's statements, as of March 2010, the Gwinnett Sheriff's 287(g) website has not been updated to identify the number of detainers placed or the crimes involved in those detainers.³⁷ Rather, it appears that the website has not been updated since the day of the Sheriff's announcement.³⁸ Accordingly, the website does not have any data documenting the way in which the program is used to identify, detain, and potentially deport "illegal aliens" in Gwinnett.

The Sheriff's department failure to document 287(g) detentions and crimes represents the general lack of transparency in the 287(g) reporting procedures. As per the MOU between the Gwinnett County's Sheriff's Office (GCSO) and ICE, the GCSO is *not required* to provide any statistical data or arrest data, arising from stops and arrests, aside from what the officers enter into ENFORCE.³⁹ Moreover, because ENFORCE is a national database affiliated with the Department of Homeland Security, the GCSO can only enter data into the database and does not have the authority to pull any statistics from it.⁴⁰ As such, the GCSO does not possess a database for identifying stops and arrests made solely through use of the 287(g) program.

³⁰ Gwinnett County Sheriff's Website, 287(g) Update, [http://www.gwinnettcountysheriff.com/287\(g\)%20Update.htm](http://www.gwinnettcountysheriff.com/287(g)%20Update.htm) (last visited March 18, 2010).

³¹ *Id.*; Memorandum of Agreement between Gwinnett County Sheriff's Office and ICE, *available at* http://www.ice.gov/pi/news/factsheets/section287_g.htm [hereinafter MOU].

³² Gwinnett 287(g) Update, *supra* note 30.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Gwinnett County Sheriff's Website, Press Releases, http://www.gwinnettcountysheriff.com/dev/?page_id=29 (last visited Mar. 19, 2010).

³⁸ *Id.*

³⁹ MOU, *supra* note 31, ¶ XI, at 6.

⁴⁰ Interview with Gwinnett Sheriff Department, Gwinnett County Sheriff's Office (Mar. 17, 2010).

The lack of accountability also extends to GCSO officer conduct, as the program gives 287(g) trained officers wide discretion to question and detain all detainees who enter the jail, even for traffic and non-immigration related infractions. Pursuant to Official GCSO Policy, 287(g) trained officers must conduct an interview of every detainee who enters the Gwinnett County Jail to determine a detainee's legal status.⁴¹ Similarly, 287(g) trained GCSO officers have the discretion to interview all foreign-born detainees to determine if they are illegally residing in this country.⁴²

Therefore, even if a detainee is arrested for a basic traffic violation, such as failing to have the car lights on, that detainee may be interrogated about his or her immigration status and ultimately transferred to ICE custody. Although the officers are supposed to conduct these interviews "without prejudice or racial discrimination,"⁴³ it is difficult to determine how the officers choose which detainees to interview, and also, how they decide which detainees are foreign born. The discretion these rules give to the officers, coupled with the program's lack of oversight, easily allow for racial profiling.

Purpose of Report and Sources

Given the concerns about racial profiling and the 287(g) program as well as Gwinnett's large immigrant population, the primary purpose of this report is to document possible racial profiling in Gwinnett. Additionally, this report aims to demonstrate the impact of the 287(g) program and racial profiling on the Gwinnett immigrant community, especially on Latino immigrants.

Testimonies of community members provide the primary source for this report. Dozens of community members in Gwinnett County were interviewed for this report. The testimony of ten of them is featured here. With the exception of the testimony from Mary Babington, pseudonyms are used in this report in order to protect the privacy of the interviewees.

A secondary source of information for this report is records provided by the Gwinnett County Sheriff's Office per an ACLU of Georgia Open Records request as well as phone and in-person interviews with officers of the Gwinnett County Sheriff's Office, the Gwinnett County Police Department, and the Norcross, Lilburn, and Duluth Police Departments.

Testimonies and Stops in Gwinnett County

The ACLU of Georgia has received numerous complaints about pretextual stops of immigrants and people of color in Gwinnett County. For example, Latino drivers are routinely pulled over for reasons that are not clear and then are arrested or given a citation for a traffic violation, such as driving without a license. Other drivers who did not violate traffic laws were

⁴¹ Gwinnett County Sheriff's Department Jail Division, Policy Number 2.A., Chapter 2: Immigration (287G Program), § VI, ¶ C (c), on file with the American Civil Liberties Union of Georgia.

⁴² *Id.* at ¶ C (d).

⁴³ *Id.*

neither arrested nor ticketed; yet, they never received an explanation as to why they were stopped. Although complaints have come largely from Latino drivers, Gwinnett County also has large Asian and African immigrant populations, and it is likely that these communities are similarly victimized by this form of racial profiling.

After implementation of 287(g) in Gwinnett, the ACLU of Georgia has continued to receive complaints from Latino drivers and other immigrants who have been stopped or arrested by officers on improper grounds. Additionally, in some instances, a basic traffic stop or minor traffic violation has led to detention and removal. As such, many immigrants are scared to contact or interact with the police, as they fear that they will be deported or punished if they do so.

1. Pre-287(g) Stops in Gwinnett

a. Avoiding Driving Because of the Fear of the Police

Roberto is a 27-year-old immigrant who lives in Lawrenceville and works as a painter in Gwinnett County. He is undocumented, but has lived in the United States for over ten years. One evening, Roberto was on the job painting a church. He left around 9 P.M. with three of his co-workers and they all waited outside for their ride home. Shortly thereafter, two Gwinnett County police officers stopped the men and asked them what they were doing at the church.

Roberto did not know why they were stopped because they were not doing anything wrong. Roberto explained to the officers that he and his co-workers were just waiting for their ride. The officers told Roberto that the three Latino men standing near the church made them “suspicious that the three men were breaking into the church.” The officer then asked some more questions, including where he and his co-workers lived. Altogether, the stop lasted for 30 minutes and neither Roberto nor his co-workers received a citation.

After the stop, Roberto does not feel safe in his community because of police surveillance and harassment. Because of what happened that evening, Roberto no longer drives to work or to church.

b. Police Points a Gun for an Expired Tag?

Pedro is 42 years old and from Mexico, but lives in Duluth. He has two children and works at an auto body shop. He is undocumented and has been in the United States for more than 10 years. Pedro said he has heard of a lot of people who have been stopped in Duluth by law enforcement in Gwinnett County.

One night, Pedro was stopped in Duluth around 10 P.M. while driving home from work. He was stopped by an officer from the Gwinnett Sheriff’s Office for an expired plate, and received a ticket for this violation. Eventually, two officers became involved – one from the Gwinnett Sheriff’s office and one from the Norcross City Police. The officer who stopped Pedro did not ask him if he spoke English and Pedro did not understand some of the officer’s instructions and

questions in English. An officer asked Pedro for his driver's license which Pedro did not have because of his undocumented status. He also asked Pedro what country he was from. The officer then asked Pedro to get out of the car and searched the car without asking for Pedro's permission. The officer did not find any illegal items in the car. However, he arrested Pedro for driving without a license, and did not inform Pedro of his right to a lawyer or his right to contact his consular office about his arrest and detention.

Pedro does not feel like he was treated respectfully, as the officer was forceful and initially came up to the car with his gun pointed at him. The officer also kept the cuffs very tight on Pedro's wrist and refused to loosen them when Pedro asked that they be loosened. The entire stop lasted an hour and a half. Now, Pedro avoids areas in Beaver Ruin, Norcross, and Doraville because of police surveillance and harassment. He has also been reluctant to call the police due to his immigration status.

c. Stopped For Being Latino

Filiberto lives and works in Gwinnett County as a mechanic. He is an undocumented immigrant who has lived in the United States for sixteen years. One morning, while he was going to work, a Norcross City Police officer stopped him in a residential area. The officer did not inform Filiberto of the reason for the stop and Filiberto thinks that the reason he was stopped was because he was Latino. Filiberto even pressed the officer for the reason for the stop, but did not receive an answer.

The officer then asked Filiberto for his driver's license and his Alien Registration Card. The officer asked him what country he is from, what his immigration status was, and whether he had his immigration documents with him. Filiberto didn't have any documents to show the officer, so the officer asked him to get out of the car and searched the car without his permission. He found no illegal items in Filiberto's car. The traffic stop lasted around an hour and Filiberto received a ticket for not having a driver's license. The officer then arrested Filiberto without informing him of his right to an attorney or of his right to contact his consular office about his arrest. Filiberto's family had to pay a bond of \$800 for him to be released from the Gwinnett County Jail, where he stayed for about 6 hours.

This was a traumatic experience for Filiberto, but it was not the first. A few months earlier he was stopped and arrested for not having a driver's license, but he was detained for 45 days. Filiberto is frustrated that this keeps happening to him and that he is "stopped just because he is Latino." Filiberto does not feel safe in his community and he avoids several areas because of police surveillance or harassment. He has also avoided calling the police because of his immigration status.

d. Meeting Injustice on the Way to Church

Carlos is a fifty-year old factory worker, who is originally from Colombia, and who works in Lawrenceville. His original Visa expired, leaving him undocumented. Carlos lives with his wife

and two children in Gwinnett, where he also has many other family members. Carlos primarily speaks Spanish and has difficulty understanding English.

One evening, Carlos was on his way to a church meeting with his wife. Around 6:30 P.M., the Gwinnett County police asked Carlos to pull over, but did not explain why. The officer began to ask Carlos questions, but did not ask Carlos if he spoke English or if he needed an interpreter. As a result, Carlos could not understand the officer's questions which were in English.

The officer was able to communicate a little with Carlos, however, in Spanish, and Carlos understood that the officer was asking him for his immigration status and documents. Carlos tried to explain that he did not have any documents or a license because his Visa expired. The officer asked Carlos' wife for her immigration documents and status as well, but she did not have any.

Ultimately, Carlos received a ticket for not having a license, but was not arrested. Altogether, the stop lasted around forty minutes. However, Carlos still does not understand why he was pulled over, as the officer never explained that to him. Also, Carlos felt that the officer was completely disrespectful to Carlos, as he only asked him for his immigration papers and did so in a very rude manner. Carlos characterized this experience as "injustice."

Carlos now avoids certain areas in Gwinnett and does not feel safe because of this experience. He is concerned that the police can just "arrest you if you don't have your papers."

e. Facing Excessive Force

Mary Babington is a former resident of the City of Doraville in Gwinnett County who now lives in Atlanta. On the evening of Saturday, November 24, 2007, at around 10:16 P.M., Mary ran to her front door because she heard police sirens and noise outside. She opened her door and saw a Gwinnett City police officer approaching a white sedan. The officer had his gun drawn at the vehicle and was yelling "get out of the vehicle with your hands up." Mary went back inside, because she felt that this may be a dangerous situation.

She then watched and listened from the back door. The officers had one Latino man, in a white shirt, lying cuffed on the ground outside the car. They then forcefully pulled another Latino man, in a red shirt, out of the car and pushed him to the ground. Mary heard one officer boast to the other officer that he used pepper spray on both of them: "They wouldn't come out when I pulled my gun, so I sprayed the whole can of pepper spray. I emptied the whole can on them."

The man in the red shirt tried to roll to his side, as he was crying from the pepper spray and telling the officers that his eyes hurt. It was also very cold outside, and he asked for his shirt back because they were lying belly down on the ground and it had started to rain. The officer then kicked the man on his back, and yelled at him to not move. One officer also poured water all over the face of the man in the red shirt, while stating: "Dude, I emptied the can in his face. I love my job."

Mary realized that the officers had never told the men why they were stopped, and did not read them their Miranda rights prior to handcuffing them. The officers then administered a breathalyzer test to the men and gave the man in the red shirt a ticket for driving under the influence. The officers arrested both of the men and took them away in a police car.

Mary states that the Latino men were swerving and might have been drunk, but she does not understand why the officers used such force for a drunk driving charge. She believed that it was excessive and an abuse of power for the officers to use pepper spray and force these men to lie face down on the ground, without a shirt and in the rain, if they were non-violent. She also noted that the officers were verbally abusive to both men and was upset that the men were treated inhumanely by the officers.

2) Post-287(g) Stops and Arrests

a. Traffic Stop Leading to Detention and Deportation

Angelica is a twenty-eight year old woman who lives in Lawrenceville. Angelica is from Mexico and has been in the United States for almost ten years, but is currently undocumented. Angelica is a housekeeper and has three children who go to school in Gwinnett. Two of her children are U.S. citizens, while one of her children was born in Mexico. Angelica said that she has heard of a lot of people in her community who have been stopped by the Lawrenceville Police Department.

On February 21, 2010, Angelica was driving home from a party with her boyfriend and two kids. At around 2:30 A.M., the Lawrenceville City Police stopped her car on Johnson Road, in a largely residential area. The police stopped her for failing to dim her headlights. They also asked her for her license, which she did not have due to her undocumented status. The officers then gave her two tickets: one for failing to dim her headlights and the other for not having a license.

At this point, the officers asked Angelica to get out of the car and they arrested her. Once she arrived at the detention center, the officer began to ask her many questions and also asked her to sign many papers. She was not informed that many of the papers given to her were immigration related. She was also asked immigration related questions by an officer, but not told that he was an immigration officer until after she asked.

Angelica was not able to post bond because she had an immigration hold placed on her. She pled guilty to the charges against her, and is currently at the Gwinnett Detention Center, awaiting deportation.

Angelica said she has been scared to contact the police in the past, such as one instance where her car was broken into; instead she asked her friend to contact the police. Angelica also avoided certain areas of Gwinnett to avoid the police.

b. Moving out of Gwinnett

Maria's husband, Mario, also from Lawrenceville, has a similar story to Angelica. Mario is undocumented and has been in the country for over ten years. On February 27, 2010, Mario was returning from shopping with his family around 5 P.M. While driving, he accidentally drove too close to the car next to him and bumped the car. The woman who drove the other car called the police. Eventually, officers from the Gwinnett Sheriff's Department arrived at the scene and asked him for his license. He did not have a license and the officer arrested him and took him to the Gwinnett County Detention Center.

Within a few hours, his family came to post bond. However, just as Mario was about to leave, an officer came up to him and did not let him go. Rather, he placed Mario back in detention and ran an immigration check on him. Within two weeks, Mario was transferred to Stewart.

Mario's stepdaughter and the whole family is now wary of the police and of being in Gwinnett after seeing what happened to Mario and other members of their community. Maria also took the stepdaughter and her sister out of school in Gwinnett and moved the family to DeKalb. They do not go into Gwinnett unless they absolutely need to. Maria only drives when she goes to work, not otherwise.

c. Fear of the Police Facilitates Extortion

Anton is an undocumented immigrant who has lived in this country for over 10 years. One day, while driving in Gwinnett with his friend, Anton was rear-ended by another car. The woman who drove the other car came out of the car and was apologetic. She asked Anton not to call the police because she did not want her husband to find out that about the accident. Anton said that was fine and he was willing to resolve the dispute without the police.

The woman then asked Anton for his license, which he did not have because of his undocumented status. However, Anton did give her his insurance. At that point, the woman realized she had an advantage over Anton because he was unlicensed. She was no longer apologetic and threatened to call the police if Anton did not pay the deductible from her insurance. Anton did not understand what was going on because she was the one who rear-ended him and caused the accident. But, because Anton is undocumented, he did not want her to call the police. As a result, Anton agreed to pay the deductible on her insurance. Anton ended up paying her over \$500.

The next day, the woman tried to get even more money from Anton by calling his workplace. However, Anton's boss intervened and told the woman that what she had done was already wrong – as she essentially extorted John for money and took advantage of him because of his immigration status. The woman then left Anton alone.

After this incident, Anton has no desire to encounter the police or other citizens. He has lost faith in the system and has essentially moved to Athens to avoid another encounter of this nature.

d. *"I would rather live in Honduras, if this is how I will be treated here"*

Amy is an office assistant who works in Gwinnett. Amy is an American citizen, as are Ana and Lucy, her two children. Ana and Lucy's father is not a citizen and is from Honduras. Amy is very familiar with the 287(g) program because she lives in a predominantly Latino neighborhood and has heard of many people who have been stopped by officers after the program's implementation.

Every day, on her way to work, Amy passes the Pleasantdale exit on Interstate-85, which falls on the border of Gwinnett and DeKalb Counties. Starting in November of 2009, the same month when 287(g) was implemented in Gwinnett, Amy noticed that County Officers would wait on the cement ramp right off of the exit. As drivers, mostly Hispanic, approached the stop sign by the cement ramp, the officers would pull them over and ask them for identification. Amy said that this practice was happening very frequently during Thanksgiving and December. She still sees it happening at least once or twice a week. She was shocked to see this, as it was obvious to her that the officers were pulling these drivers aside merely because they were Latino.

Amy and her children witness the road block at the Pleasantdale exit, in addition to numerous road blocks in Gwinnett, on a daily basis. Her children, who go to a school that is 98% Latino, also hear stories about police targeting Latinos from their classmates.

Because of these road blocks and the stories, her youngest daughter Ana does not like the police and does not think that the police are there to help her. Her oldest daughter, Lucy, is similarly critical of the system and does not like what the police are doing. Even though Lucy is an American citizen, she said she would rather live in Honduras if this is the way that she will be treated.

Absence of Policies Mandating Collection of Stop and Search Data upon Traffic Stops

Aside from 287(g) stops, the GCSO does not have any policies mandating their office to document an individual's race or immigration status when they stop or detain an individual.⁴⁴ GCSO officers must only document an individual's race when they issue a citation or warning to that individual, or draft an official police report.⁴⁵ However, the officers are not required to document an individual's race for a stop that does not result in a citation.⁴⁶

Similarly, the Gwinnett, Lilburn, and Duluth City police officers are only required to document an individual's race if the police issue the individual a ticket, formally arrest the individual, or draft a police report.⁴⁷ The Norcross City Police Department's policy is more comprehensive, as they have an electronic ticketing system, which documents race for official

⁴⁴ Interview with Gwinnett Sheriff Department, *supra* note 40.

⁴⁵ *Id.*; Citation form for the Gwinnett Sheriff Department, on file with the American Civil Liberties Union of Georgia.

⁴⁶ Interview with Gwinnett Sheriff Department, *supra* note 40.

⁴⁷ Telephone Interview with Gwinnett Police Department (Feb. 26, 2010); Telephone Interview with Norcross Police Department (Mar. 9, 2010); Telephone Interview with Duluth Police Department (Mar. 8, 2010).

field interviews, warnings, citations, police reports, and any stop that results in documentation.⁴⁸ Norcross also has an official anti-racial profiling policy.⁴⁹ However, there is still the possibility that a Norcross officer may conduct a field interview which would not be documented.

This general lack of documentation amongst the Gwinnett city police departments is technically not illegal, as Georgia does not require these departments to document race for all investigatory stops. Yet, without such data, it is difficult to determine whether these officers are making stops and arrests based on a proper basis of reasonable suspicion or probable cause, or on the improper basis of race and ethnicity. Indeed, the testimonies in this report indicate that at least some police officers within Gwinnett have based their decision to stop, detain, or arrest an individual on race and ethnicity, in clear violation of the constitutional and international legal standards.⁵⁰

Similarly, while GCSO law enforcement officers are not required by law to document an individual's race for all stops, their failure to do so appears to preclude proper application of the MOA's mandate to abide by federal anti-discrimination laws. Paragraph XI of the MOA requires that all GCSO personnel who are involved in 287(g) be "bound by all Federal civil rights laws, regulations, guidance relating to non-discrimination."⁵¹ These laws and guidance include the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" and Title VI of the 1964 Civil Rights Act, "which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance."⁵²

Specifically, without proper documentation of the stops, detentions, and arrests conducted through use of 287(g), there is no way to ensure that GCSO officers are not engaging in discriminatory practices in violation of Paragraph XI of the MOA and federal civil rights law. Such action is also in violation of departmental policy for the GCSO, which prohibits officers from using race, color, ethnicity, age, gender, socio-economic status or sexual orientation as the primary factor in making an arrest without probable cause.⁵³ Similarly, officers may not use such factors in making an investigatory stop of a vehicle without reasonable and articulable suspicion.⁵⁴

Without proper documentation of investigatory stops, there are no meaningful checks in place to ensure that the GCSO officers do not abuse the 287(g) program by intimidating and racially profiling immigrant communities in Gwinnett County in order to identify and deport

⁴⁸ Telephone Interview with Norcross Police Department (Mar. 9, 2010). See also Gwinnett County Police Department, Open Records Request Response, February 24, 2010, on file with American Civil Liberties Union of Georgia.

⁴⁹ Norcross Police Department, Standard Operating Procedure, Policy Number A260, *Racial/Bias Base Profiling*, on file with the American Civil Liberties Union of Georgia.

⁵⁰ See *infra* "Obligations Under Domestic Law" and "Obligations Under International Law".

⁵¹ MOU, *supra* note 31, ¶ XI, at 6.

⁵² *Id.*

⁵³ Gwinnett County Sheriff's Department, Policy Manual, Chapter XXXVII, *Bias Based Profiling*, on file with the American Civil Liberties Union of Georgia.

⁵⁴ *Id.*

undocumented immigrants. There are no checks in place to ensure that Gwinnett officers are making stops based on a proper legal basis. This concern is especially prevalent in Gwinnett, as the county has a very large population of Latino immigrants as well as immigrants from other backgrounds who are susceptible to such profiling.

Obligations under Domestic Law—The Constitution of the United States

The Fourth Amendment

As a matter of federal constitutional law, racial profiling is “inconsistent with a fundamental tenet of Fourth Amendment doctrine.”⁵⁵ The Fourth Amendment of the U.S. Constitution guarantees all people the right to be free from unreasonable searches and seizures without probable cause.⁵⁶ The U.S. judiciary has interpreted this clause to require that “law enforcers . . . possess fact-based particularized suspicion before they search or seize a person or property.”⁵⁷ In other words, officers cannot stop or search an individual without possessing some facts that justify them in doing so.

As for pretextual stops, the police may conduct a brief investigatory stop of a pedestrian or motorist if the officer possesses reasonable suspicion, based on specific and articulable facts, that criminal or illegal activity might take place.⁵⁸ This suspicion must be based on specific facts known to the officer in light of the totality of the circumstances, and cannot stem from a mere hunch or subjective bias on the part of the officer.⁵⁹

If reasonable suspicion exists, an officer can stop a person, ask the person to identify him or herself, and ask what the person is doing.⁶⁰ This questioning might amount to probable cause, which means the facts and circumstances before the officer are sufficient enough “to warrant a man of prudence and caution in believing that the offense has been committed.”⁶¹ Probable cause is a higher standard than reasonable suspicion, as it indicates that a crime likely has occurred rather than might have occurred. Therefore, with probable cause, the officer can seize and arrest the individual.⁶² However, if after the stop, there is no information leading to probable cause, the officer must let the person go.⁶³

It is clear from these constitutional standards that an officer must possess at least some information indicating criminality or illegality in order to stop an individual, and even more information to make an arrest. Indeed, these standards explain exactly why racial profiling is problematic from a legal standpoint. Since “no logical relationship exists between [racial]

⁵⁵ Morgan Cloud, *Quakers, Slaves and the Founders: Profiling to Save the Union*, 73 Miss. L. J. 369, 369 (2003).

⁵⁶ U.S. CONST. amend. IV.

⁵⁷ Cloud, *supra* note 55, at 369.

⁵⁸ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁵⁹ *See Id.*

⁶⁰ *United States v. Sokolow*, 490 U.S. 1 (1989).

⁶¹ *Safford Unified School Dist. No. 1 v. Redding*, 129 S.Ct. 2633, 2639 (U.S. 2009).

⁶² *Id.*

⁶³ *Id.*

characteristics and the commission of crimes,”⁶⁴ officers who conduct stops or arrests based solely on an individual’s race or ethnicity have neither reasonable suspicion nor probable cause. Therefore, racial profiling is in clear violation of the Fourth Amendment’s requirement that officers possess at least some suspicion prior to stopping or detaining an individual.

The Fourteenth Amendment

The Fourteenth Amendment’s Equal Protection Clause requires that all people be treated equally under the law, providing that “no state shall deny to any person . . . equal protection of the laws.”⁶⁵ This equal treatment guaranteed under the Fourteenth Amendment extends to both citizens and non-citizens.

Federal courts have interpreted the Equal Protection clause to be a “direction that all persons similarly situated should be treated alike.”⁶⁶ The phrase “similarly situated” indicates that not every person must be treated alike, but rather that two persons in the exact same context must receive the same treatment under the law.⁶⁷ In this light, selective enforcement of the law against some persons and not others violates the Equal Protection Clause.⁶⁸

On pretextual stops and the use of racial profiling, courts have found that targeting of a criminal suspect “solely by reference to the subject’s race violates the [Fourteenth Amendment].”⁶⁹ Additionally, police officers who use impermissible racial classifications to decide whom to stop, detain, and search run afoul of the Equal Protection Clause.⁷⁰

This is because the decision to stop an individual in racial profiling cases is based on race and not on a proper basis under the Fourth Amendment. As such, the officers are enforcing the laws against people of color in a specific context, and not enforcing the law against Caucasians in the exact same context. Therefore, in the event that “law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more,” there is a violation of the Equal Protection Clause.⁷¹

Based on these Fourteenth and Fourth Amendment protections, the Justice Department has expressly prohibited racial profiling by law enforcement agents on the grounds that such profiling is “premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of any other race

⁶⁴ Cloud, *supra* note 55, at 370.

⁶⁵ U.S. CONST. art. XIV.

⁶⁶ Williams v. Hansen, 326 F.3d 569, 583 (4th Cir. 2003) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

⁶⁷ *See Id.*

⁶⁸ Whren v. United States, 517 U.S. 806, 813 (1996).

⁶⁹ Von Herbert v. City of St. Clair Shores, 61 Fed.Appx. 133, 148 (6th Cir. 2003) (Krupansky, Circuit Judge, dissenting) (citing *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)).

⁷⁰ Chavez v. Illinois State Police, 251 F.3d 612, 635 (7th Cir. 2001).

⁷¹ *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997).

or ethnicity.”⁷² The fact that the Justice Department has condemned racial profiling on Fourth and Fourteenth amendment grounds is a positive step in establishing that racial profiling is per se unconstitutional and must be eradicated.

Obligations under International Law

As a signatory to two treaties that prohibit racial discrimination – The International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – the United States and each state and locality within the United States have international obligations to eliminate racial profiling practices within their respective boundaries. Similarly, customary international law norms, which condemn racially discriminatory practices, are equally binding on the United States and further obligate each state to take action to combat racial profiling.

Treaties

According to the Supremacy Clause, found in Article VI of the U.S. Constitution, treaties made under the authority of the United States are recognized as the “Supreme Law of the Land” alongside the U.S. Constitution.⁷³ The Supremacy Clause also states that such treaties bind judges “in every state.”⁷⁴ As such, Gwinnett County, located within the state of Georgia, is obligated to adhere to provisions of treaties signed and ratified by the United States.

Currently, however, Gwinnett County’s racial profiling practices violate two treaties the United States has signed and ratified: the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

The International Covenant on Civil and Political Rights (ICCPR) protects conventional civil and political rights, including the right to life, liberty and security of person.⁷⁵ Article 26 of the ICCPR prohibits discrimination on the grounds of race, color, national origin, or other status.⁷⁶ Article 9 of the covenant forbids arbitrary arrest and detention.⁷⁷ The racial profiling carried out by Gwinnett County police violates both Articles 26 and 9 because it directly targets Latino and Latino-looking residents for unfounded stops and searches, which often result in arrests.

Additionally, ICCPR Article 2 requires that State Parties guarantee all covenant rights, “without distinction,” to all “individuals within its territory and subject to its jurisdiction.”⁷⁸

⁷² Civil Rights Division, U.S. Dept. of Justice, Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (June 2003), available at http://www.justice.gov/crt/split/documents/guidance_on_race.php

⁷³ U.S. CONST. art. VI.

⁷⁴ *Id.*

⁷⁵ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force*, March 23, 1976. The United States ratified the covenant on June 8, 1992.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

Thus, State Parties should not distinguish between anyone in their jurisdiction when ensuring rights enumerated in the ICCPR, including both citizens and residents that are non-citizens. Because 287(g) and related programs have resulted in the differing treatment of Caucasian residents versus Latinos and other people of color, as well as the differing treatment of citizens versus non-citizens during stops and searches, Article 2 is being violated. Moreover, Article 50 states that the ICCPR extends to all parts of the federal state signatories, without any limitations or exceptions.⁷⁹ As such, Gwinnett County, as a part of the United States, is bound by Article 26 of the ICCPR and prohibited from engaging in discrimination based on race, color, or national origin.

Like the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) prohibits discrimination. Article 2 of the treaty explicitly condemns racial discrimination and obligates parties to eliminate discrimination “in all its forms.”⁸⁰ Article 2 also mandates that parties take measures to ensure the development and protection of certain racial groups or individuals belonging to them, and specifies that all public authorities and institutions, both national and local, are to comply with this obligation.⁸¹ Therefore under CERD Article 2, the State of Georgia, Gwinnett County, and its police department all have a responsibility alongside the federal government to end discriminatory practices such as the racial profiling of people of color.

Furthermore, Article 2 requires that State Parties review and amend, rescind or nullify laws or regulations that either create or further racial discrimination.⁸² Because 287(g) has had the effect of furthering discrimination against Latinos in Gwinnett County, compliance with Article 2 would require its review and amendment, so that the resulting practice of racial profiling no longer occurs. In addition, Article 5 guarantees the right to equal treatment free from discrimination before tribunals and other judicial organs.⁸³

In ratifying the ICCPR and CERD, the United States has agreed to prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination and unwarranted detention. Gwinnett County and Georgia are violating these U.S. treaties by allowing local law enforcement to in effect stop individuals solely based on their race and ethnicity and disproportionately target people of color for investigations.

Customary International Law

Along with treaties, customary international law functions as a primary source of international law.⁸⁴ Customary international law refers to the law that emerges when countries generally and consistently follow a certain practice out of a sense of international legal

⁷⁹*Id.*

⁸⁰International Convention on the Elimination of all Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969. The United States ratified the convention on Oct. 21, 1994.

⁸¹*Id.*

⁸²*Id.*

⁸³*Id.*

⁸⁴BLACK’S LAW DICTIONARY 835 (8th ed. 2004).

obligation.⁸⁵ This law appears in sources such as policy statements, state documents, legislation, court decisions, and treaties.⁸⁶ Thus, though typically binding only on ratifying states, similar provisions contained within multiple treaties may come to reflect customary international law, which binds all states.

The United States has indicated that the ICCPR, in particular its prohibitions on non-discrimination, comprises customary international law.⁸⁷ In addition, there are numerous treaties and other international documents that prohibit discrimination, verifying that this act violates customary international law. Such sources include the Universal Declaration of Human Rights, which states in Article 7 that all people are equal before the law and are entitled to protection of the law without discrimination.⁸⁸ The United States has recognized that the Declaration's prohibitions on racial discrimination, like the ICCPR, have achieved the status of customary international law.⁸⁹

In addition, both the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man, as well as all other major regional human rights treaties, prohibit racial discrimination.⁹⁰ Further, key international human rights treaties with significant UN member state participation, such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Suppression and Punishment of the Crime of Apartheid, include provisions forbidding discrimination based on race or national origin.⁹¹

The number of international sources that prohibit discrimination strongly indicates that this prohibition has indeed become a part of customary international law, which binds the United States. Thus, Georgia and its counties, including Gwinnett, may not undertake or endorse actions, programs, or policies that violate these international laws banning racial discrimination. Because Gwinnett's law enforcement officers propagate racial profiling, Gwinnett is violating customary international law, just as it is violating treaties to which the United States is a party.

⁸⁵ Ryan Goodman & Derek Jinks, *Incomplete Internalization and Compliance with Human Rights Law*, 19 EUR. J. INT'L L. 725, 745 (2008).

⁸⁶ BLACK'S LAW DICTIONARY, *supra* note 85, at 109, 138.

⁸⁷ See Richard B. Lillich, *The Growing Importance of Customary International Human Rights Law*, 25 GA. J. INT'L & COMP. L. 1, 3 (1995/1996).

⁸⁸ Universal Declaration of Human Rights, arts. 2, 7, available at <http://www.un.org/en/documents/udhr>

⁸⁹ W. Kent Davis, *Answering Justice Ginsburg's Charge that the Constitution is 'Skimpy' in Comparison to our International Neighbors: A Comparison of Fundamental Rights in American and Foreign Law*, 39 S. TEX. L. REV. 951, 977 (1998).

⁹⁰ See American Convention on Human Rights, arts. 1, 24, 27, OAS Treaty Series 36, entered into force July 18, 1978. Signed by the United States June 1, 1977; American Declaration of the Rights and Duties of Man, art. 2, OAS Res. XXX, adopted by Ninth Int'l. Conf. of American States (1948); David Weissbrodt & Connie de la Vega, *International Human Rights Law: An Introduction*, University of Pennsylvania Press (2007) at 34.

⁹¹ See International Covenant on Economic, Social and Cultural Rights, art. 2., 990 U.N.T.S. 3, entered into force Jan. 3, 1976.; Convention on the Rights of the Child, art. 2., 1577 U.N.T.S. 3, entered into force Sept. 2, 1990.; International Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 U.N.T.S. 243, entered into force July 18, 1976.

Conclusions

Racial profiling by law enforcement was already prevalent in Gwinnett even prior to the implementation of 287(g), as the first set of testimonies above demonstrates. The second set of interviews shows that this form of racial profiling has continued after the program's implementation. Together, these interviews indicate that law enforcement in Gwinnett have abused their power, both given through 287(g) and generally, by engaging in racial profiling and human rights violations targeting the community. Given the testimonies detailing racial profiling practices in this report, it is clear that many Latino community members in Gwinnett have been stopped without probable cause or reasonable suspicion. As such, direct action is necessary to combat this troubling and unconstitutional practice. Perhaps the most effective method is through passage of the pending anti-racial profiling legislation, which would require training, oversight, as well as documentation of investigatory stops. Through this law, officers will be accountable for their actions and may be less inclined to engage in illegal racial profiling practices.

Moreover, the 287(g) agreement must end in Gwinnett. This program has merely exacerbated racial profiling concerns. For example, the roadblocks that target only Latino persons are a blatant form of profiling, which target motorists for no basis other than their race. In this manner, this practice violates the Fourth and Fourteenth Amendments, in addition to numerous international law standards. Not surprisingly, these roadblocks appear to have become more prevalent after 287(g) was implemented in Gwinnett.

The Need for Anti-Racial Profiling Legislation in Georgia

Since 2001, there have been numerous attempts to pass anti-racial profiling legislation in Georgia, all of which have been rejected by the Georgia General Assembly. This leaves Georgia without any uniform law prohibiting racial profiling by its law enforcement officers. Without such a law, Gwinnett county and city police officers are not mandated to train their officers regarding racial profiling. Nor are they required to document data for stopping of pedestrians and drivers which do not lead to a citation, arrest, or police report.

The fact that officers are not required to document this type of data is evidenced in the policies of the various police departments in Gwinnett. As indicated above, neither the Gwinnett Sherriff's Department nor the city police offices within Gwinnett require documentation of an individual's race during an investigatory stop. Such information is only required if there is an official citation, arrest, or police report issued.

Yet, even for arrests, there are deficiencies in the Gwinnett Sherriff's department documentation. Pursuant to OCGA § 42-4-7, the Gwinnett County Sherriff's' Department is required to maintain a comprehensive record of all arrestees, detailing their race, age, gender, and other characteristics.⁹² This information must be available by the Sheriff's Department to

⁹² OCGA § 42-4-7, Maintenance of Inmate Record by Sheriff (2009.)

the public.⁹³

Although this data was originally accessible to the public through a written docket book, the written log was replaced by a public computer, and the public record is now available on the internet.⁹⁴ As of March 2010, the information available on the website includes: admission date; release date; inmate's first, middle, and last names; offender ID and original offender ID; inmate's address; charge; bond amount and bond type; and picture.⁹⁵ The online data does not state an inmate's race.

The ACLU of Georgia filed a public records request with the Sheriff's Office and received a more comprehensive inmate database detailing more characteristics, including an inmate's race.⁹⁶ Yet, it is unclear as to why the Sheriff's Office failed to present the inmates' racial background on the Detention Center website, even though they acknowledge on the site that they are required to produce this information.

Given these deficiencies in proper documentation and the testimonies of racial profiling in this report, the need for Georgia to pass an anti-racial profiling law – which would require documentation and oversight – is clear. Currently, there are two anti-racial profiling bills pending before the 2010 Georgia Legislature, which would prohibit racial profiling by State police, county, or municipal police departments, or any other law enforcement agency.⁹⁷ They would also require annual training for law enforcement on racial profiling, as well as requiring law enforcement officers to track race, ethnicity, gender, and age of every person subject to a routine traffic stop.⁹⁸ Finally, the bills would require the attorney general to publish the reports to the public annually and establish procedures to investigate complaints.⁹⁹

Passage of this law would also put Georgia on par with the majority of the states in the United States, as twenty seven states have passed legislation that prohibits racial profiling and/or requires jurisdictions within the state to collect data on law enforcement stops and searches.¹⁰⁰ Most racial profiling legislation currently in effect requires law enforcement agencies to establish and adopt policies that prohibit the practice of racial profiling.¹⁰¹ Some

⁹³ *Id.*

⁹⁴ Gwinnett County Sheriff, Detention Center Data, available at <http://www.gwinnettcountysheriff.com/Docket%20Book.htm>.

⁹⁵ Gwinnett County Detention Center, Public Information – Docket Book.

⁹⁶ Gwinnett County Booking Data, on file with the American Civil Liberties Union of Georgia.

⁹⁷ Georgia General Assembly, HB 1009, available at http://www.legis.ga.gov/legis/2009_10/sum/hb1009.htm (last visited Mar. 22, 2010); Georgia General Assembly, SB 325, available at http://www.legis.state.ga.us/legis/2009_10/sum/sb325.htm (last visited Mar. 22, 2010). See also ACLU, Press Release, Senator Gloria Butler, Representative Pedro Marin, Representative Tyrone Brooks Introduce Anti-Racial Profiling Legislation in 2010 Session, available at: <http://www.aclu.org/racial-justice/senator-gloria-butler-representative-pedro-marin-representative-tyrone-brooks-introdu>

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Information in this section is based on findings printed in The American Civil Liberties Union and the Rights Working Group, *The Persistence of Racial and Ethnic Profiling in the United States*, June 30, 2009, at 34, available at http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf

¹⁰¹ *Id.* These states include: Arkansas, Colorado, Connecticut, Florida, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Washington, and West Virginia.

states have added express prohibitions of racial profiling into their state codes.¹⁰² Other forms of legislation require monitoring the prevalence of racial profiling and mandating the collection of demographic data at traffic stops.¹⁰³

Moreover, seven states have established oversight or advisory boards to study the data collected and make recommendations;¹⁰⁴ while six states require an annual evaluation of efforts to eliminate the practice of profiling.¹⁰⁵ Also, a few states have enacted actual procedures to enforce prohibitions of racial profiling. For example, five states mandate discipline of officers found to be engaging in racial profiling.¹⁰⁶ Also, New Jersey and Oklahoma have created criminal penalties for racial profiling.¹⁰⁷

Additionally, some states directly permit complaints against discriminatory officers, as ten states have established processes that allow individuals to register complaints of racial profiling.¹⁰⁸ Of the states that allow complaints, Kansas and Rhode Island also provide for a private cause of action.¹⁰⁹ In addition, Minnesota has established a grant program for installing video cameras on police vehicles and Texas is studying such a program's feasibility.¹¹⁰

Each of these laws indicate that state legislatures are taking the necessary steps to address racial profiling and effectively combat it. Georgia must follow suit by passing the pending legislation. Without such action, Georgia lacks the requisite enforcement and oversight to ensure that police officers are not engaging in racial profiling.

End 287 (g)

As in other jurisdictions, the 287(g) program has also been used as a tool to arrest Latino individuals who commit minor traffic violations. Once detained, the officials have the authority – through 287(g) – to interview these individuals about their immigration status and place them in ICE custody. This has resulted in detention and deportation of many Latino community members in Gwinnett, who received an unnecessarily harsh punishment for a minor infraction.

Because of the excessive power given to the officers through 287(g), families have been torn apart, and communities have learned through witnessing and hearing about illegal, abusive practices not to trust the police. Even citizens are scared to contact the police because they feel that the officers are focused on apprehending immigrants. The police only exacerbate

¹⁰² *Id.* These states include: Arkansas, California, Connecticut, Kansas, Kentucky, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, Texas, and West Virginia

¹⁰³ *Id.* These states are: California, Connecticut, Florida (seatbelt law only), Illinois, Louisiana (only those departments which do not adopt a written policy), Maryland, Missouri, Nebraska, North Carolina, Rhode Island, Tennessee (pilot program), Texas, Utah, and Washington.

¹⁰⁴ *Id.* These states include: Illinois, Kansas, Minnesota, Missouri, Nebraska, New Mexico, Rhode Island.

¹⁰⁵ *Id.* These states are: Arkansas, Florida, Kansas, Louisiana, Maryland, and Minnesota.

¹⁰⁶ *Id.* These states include: Arkansas, Kansas, New Mexico, Oklahoma, and West Virginia.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* These states are: Colorado, Kansas, Minnesota, Missouri, Nebraska, New Mexico, Oklahoma, Rhode Island, Washington, and West Virginia.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

the mistrust and apprehension of the immigrant community towards law enforcement by using scare tactics and practicing overt racial profiling and intimidation.

Only through a proactive approach – which pushes for legislation as well as an end to 287 (g) – can racial profiling practices be curtailed. Without this approach, Gwinnett police officers will have the discretion to continue to stop, detain, and interrogate individuals based on an individual's race or ethnicity, in violation of constitutional and international law.

Recommendations

- ICE should end the 287(g) agreement with the Gwinnett County Sheriff's Office. This program lacks the proper oversight mechanisms, and allows for abuse of power by officers who are trained to participate in the program.
- Similarly, the Gwinnett County Sheriff's Office should end the 287(g) agreement with ICE. Instead of making the community safer, this program has dramatically decreased community safety through diminishing trust between Gwinnett law enforcement and immigrant communities.
- The Gwinnett County Sheriff's Office should hold a community outreach meeting with Gwinnett community members, and field questions and concerns about the 287(g) program. Members of the Gwinnett community have requested this form of meeting, as they are entitled to pursuant to section VII of the MOA. However, they have yet to receive a response from the Sheriff's office.
- The Georgia General Assembly should pass the pending anti-racial profiling legislation. This will send a clear message to the public that racial profiling is unacceptable. It will also add a level of accountability and oversight to the policies in the Gwinnett police departments.
- The Gwinnett County Sheriff's Department, as well as the municipal police departments within Gwinnett, should document all investigatory stops that the officers make, even if these stops do not result in a citation, arrest, or police report. Without this information, it is difficult to tell which individuals are being stopped and why the officers chose to stop them.

