

Immigrant Profiling by Local Law Enforcement

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The issue: Does the 287(g) program, which gives local and state police the authority to enforce federal immigration laws, lead to racial profiling and civil rights violations? Or is it a necessary tool to combat rampant illegal immigration?

- *Critics of local enforcement of immigration laws say:* The 287(g) program invests police officers with too much power and too little training, leading to widespread racial profiling and mistreatment of Hispanics, most of whom are legal U.S. residents or citizens. Racial profiling in immigration law enforcement perpetuates negative stereotypes of people of Latin American ancestry, and irreparably damages the relationship between immigrant communities and police departments.
- *Supporters of local enforcement of immigration laws say:* Federal immigration authorities do not have the personnel to enforce immigration laws adequately, and empowering local authorities can help curb the tide of illegal immigration. Serious crimes—including narcotics smuggling, human trafficking and gang violence—are closely related to illegal immigration, and 287(g) enables local police to remove dangerous immigrants, making immigrant communities and surrounding areas much safer. The program has not led to racial profiling or civil rights violations, contrary to a spate of highly exaggerated reports.



John Moore/Getty Images

Outside the Arizona state capitol building in Phoenix, protesters demonstrate against the new immigration law signed by Governor Jan Brewer (R) on April 23, 2010. Critics fear the law will cause local police officers to resort to racial profiling, especially of Hispanics, who would be discriminated against the way African Americans were during the days when Jim Crow segregation laws were in force across the U.S.

In October 2009, Immigration and Customs Enforcement (ICE) removed Joe Arpaio, the long-time sheriff of Maricopa County, Arizona, from participating in a federal program that granted local and state police the authority to enforce federal immigration laws. Under the program, called 287(g), Arpaio's police officers had conducted street sweeps and workplace raids to uncover and detain illegal immigrants living in his county. Those mass arrests led to accusations that Maricopa County police were engaging in rampant racial profiling and abuses of power while enforcing immigration laws. Despite being removed from the program, Arpaio continued to conduct immigration raids, which he said he was allowed to do under state law.

Local and state police officers tasked with enforcing immigration laws under Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act have been criticized for relying on racial profiling, mistreating Hispanic citizens and legal residents in the process. Racial profiling refers to the practice of singling out individuals, solely based on their race or ethnicity, for questioning, investigation, arrest or detainment. It has been widely condemned in criminal law enforcement, but has not specifically been prohibited in the enforcement of immigration law. Most observers admit that persons who appear to have Latin American ancestry are more likely to be stopped and questioned about their immigration status than people who appear to have Anglo-Saxon ancestry, because of the widespread perception that many illegal immigrants come from Mexico, or other Latin American countries. An estimated 12 million illegal immigrants—also referred to as undocumented immigrants and illegal aliens—live in the U.S. Under 287(g), police have identified more than 140,000 illegal immigrants, setting the stage for their deportation. [See [Criminal Profiling](#)]

According to a February 2009 report on the 287(g) program by the American Civil Liberties Union (ACLU) and the University of North Carolina at Chapel Hill, "Concerns mount daily that law enforcement officers equate Hispanic last names and appearances with criminality and use national origin and ethnicity without probable cause or reasonable suspicion to stop and detain residents." Supporters of the program, however, argue that it has allowed local and state police to help understaffed federal immigration agencies find and deport criminal immigrants, thus making communities safer. While some immigrant advocacy groups have demanded that the program be terminated, supporters of the strict enforcement of immigration laws have called for its expansion.

Maricopa County, which has made by far the most arrests under the program, has commanded much attention in the debate over the 287(g) program and racial profiling. In March 2009, the Justice Department launched an investigation of Arpaio—popularly known as "Sheriff Joe"—for possible abuses of power and civil rights violations under the program. Arpaio's deputies claim to have arrested tens of thousands of illegal immigrants, partially by conducting raids in neighborhoods and workplaces that are primarily Latino (a term that refers to people of Mexican, Central American and South American ancestry). The Maricopa police, and the 287(g) program in general, have provoked complaints from civil rights groups, but have been acclaimed by many local residents.

Should the U.S. government cancel the 287(g) program, because it encourages racial profiling and degrades Latinos? Or should 287(g) continue, because it helps enforce immigration laws and leads to the deportation of dangerous criminals?

Critics of 287(g) argue that by investing local and state police with the power to enforce immigration laws without adequate training or sufficient federal oversight, the program essentially encourages racial profiling and civil rights abuses. Critics say that when officers conduct immigration raids and street sweeps, and stop only Hispanic-looking people, they are reinforcing a false stereotype that most Latino immigrants are in the U.S. illegally, and perpetuating the notion that they should not enjoy the same rights as everyone else. Police officers under the program have abused their authority by detaining Hispanics for extremely minor, nonviolent crimes such as traffic violations, critics charge, instead of using their enforcement powers to pursue dangerous criminals. Furthermore, critics claim, even the legitimate exercise of such authority creates mistrust and tension between immigrant communities and police departments, hampering criminal investigations by creating situations in which immigrants are too afraid to talk to the police.

Supporters of the 287(g) program contend that it effectively fights illegal immigration, which, they believe, is rampant in the U.S., creating security problems and draining public resources. Advocates say that illegal immigration is connected to serious crimes, such as narcotics smuggling, human trafficking and gang activity. Empowering local authorities to enforce immigration laws provides federal immigration officers with powerful assistance in fighting the spread of those crimes. Furthermore, supporters point to escalating drug-related violence in Mexico, and say that unless U.S. immigration laws are strictly enforced, such violent crime could spill over the border. Supporters deny that officers in the program rely solely on racial profiling, and that their behavior creates tension between immigrant communities and the police.

[Supreme Court Approves Racial Profiling in Immigration Law Enforcement](#)

The relationship between immigration laws and racial profiling extends far back into U.S. history, and has been affected by occasional surges of nativism—the tendency to trumpet the virtues of well-established communities within a society while viewing immigrants as a threat. Nativism also perpetuates the fear that immigrants from markedly different cultures will refuse to assimilate into a country's culture and society. In 1882, for example, Congress passed legislation specifically excluding the Chinese from immigrating to the U.S. The legislation described Chinese immigrants as "foreigners of a different race" who "will not assimilate with us." [See [Issues and Controversies in American History: Chinese Exclusion Act](#)]

Hostile relations with other countries or regions, or disapproval of their political systems, have also historically encouraged the racial profiling and maltreatment of immigrants from those parts of the world. For example, when the U.S. was at war with Japan during World War II (1939–45), the government interned many Japanese Americans in special camps. [See [Issues and Controversies in American History: Japanese American Internment](#)]

Similarly, in the 1950s, authorities frequently interrogated immigrants with Eastern European ties, spurred by fears of communist infiltration from

countries in that region. In the last decade, advocacy groups for Arab Americans have complained of a spike in racial profiling of people of Middle Eastern descent since September 11, 2001, when Islamist terrorists attacked the U.S. [See [Update: Immigration](#)]

Nowadays, however, those most directly affected by racial profiling and the enforcement of immigration laws are members of Hispanic communities. As law clerk Kristin Connor writes in the *New York University Journal of Legislation and Public Policy*, "[T]he government's choices in how and where to enforce immigration laws primarily [target] immigrants from Latin and South America." About 90% of undocumented immigrants who are deported are Latin American, although Latinos constitute only about half of the undocumented immigrant population in the U.S.

Advocates of stricter immigration control often say that the influx of Latin American immigrants, many of whom are poor and unskilled, drains federal resources and threatens the jobs of American workers because immigrants are often willing to work longer hours for lower wages, and are less likely to unionize. Those skeptical of such claims note that undocumented laborers are not eligible for many federal services, such as food stamps. They also note that such workers contribute an estimated \$220 billion yearly to the U.S. gross domestic product (GDP, the total amount of goods and services produced in a country during a specific period of time).

The debate over racial profiling and the enforcement of immigration laws involves the Fourth Amendment, which protects individuals—including noncitizens—against "unreasonable searches and seizures," and places restrictions on when and how law enforcement officers can stop or question motorists or pedestrians. Any law enforcement agent, including immigration authorities or Border Patrol officers, must have "reasonable suspicion" to justify such stops, which are known as "investigatory stops," and cannot conduct them arbitrarily. In deciding Fourth Amendment cases, courts often strive to strike a balance between preserving public safety on one hand and protecting individuals from arbitrary police actions on the other. [See [Fourth Amendment](#)]

In the landmark 1975 case *United States v. Brignoni-Ponce*, the U.S. Supreme Court ruled that Border Patrol has the right to use a person's racial appearance as grounds for making an investigatory stop. The Court ruled, however, that a person's racial ancestry (in this case "apparent Mexican ancestry") cannot be the sole reason for such a stop, as that would violate the Fourth Amendment's constitutional protection against unreasonable searches and seizures. [See [Key Events in the History of Immigrant Profiling by Local Law Enforcement \(sidebar\)](#)]

The Court ruled in *Brignoni-Ponce* that the "likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor." Critics of the ruling note that the justices relied on the statistical claim that 85% of the undocumented immigrant population in the U.S. was of Mexican ancestry, although the actual number was probably closer to 50%. In subsequent rulings in similar cases, lower courts have noted other flaws in the *Brignoni-Ponce* decision. [See [Supreme Court Examines Racial Profiling in Immigration Enforcement \(sidebar\)](#)]

Yet racial profiling, while widely shunned in criminal law, continues to be deemed a legitimate approach to enforcing immigration law. Plaintiffs who challenge investigatory stops face an uphill battle if they want to prove racial discrimination. As Kevin Johnson, the dean of the School of Law at the University of California at Davis, writes, "Because race is a legally proper factor to consider in an immigration stop, establishing that race was the *exclusive* factor for the stop, which the law currently requires, is far from easy."

Immigrant Arrests by Offense Under 287(g) Program in Tulsa, Oklahoma, 2007–08	
Offense	Immigrants arrested
Breaking and entering	1
Murder	1
Trespassing	2
Fraud	9
Illegal presence	17
Sex crimes	29
Resisting arrest	32
Firearms	44
Larceny	76
Assault and battery	80
Alcohol offenses	100
Drug offenses	256
Unknown/not stated	367
Traffic violations	763

According to 2007–08 data from the Washington, D.C., think tank Center for Immigration Studies, under the 287(g) program, which empowers local police to enforce federal immigration laws, far more immigrants were arrested for traffic violations than for any other crime in the city of Tulsa, Oklahoma. According to the same report, more than 90% of those arrested were Mexican nationals, and most of the remaining detainees were from other Latin American countries. Supporters say that the program allows police departments to share information with the Department of Homeland Security, and thus track down and arrest illegal immigrants involved in organized crime, narcotics smuggling or other dangerous crimes. Critics of the 287(g) program say that police are harassing and arresting thousands of Hispanic residents for very minor offenses, such as traffic violations and drinking alcohol in public, when the program should instead be targeting serious crime.

Source: Center for Immigration Studies

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Bush Administration Expands 287(g), Obama Administration Retains It

In the last few decades, the U.S. immigrant population has grown larger than ever, has become more racially diverse and has expanded into regions of the country unaccustomed to immigrants from regions such as Latin America. According to the Police Foundation, a nonpartisan think tank based in Washington, D.C., "These demographic shifts have produced racial tensions, and given rise to contentious debate about the nation's immigration policies and practices, with longstanding resident communities demanding that government—federal, state, and local—more aggressively enforce immigration laws." The subsequent crackdown on undocumented immigrants, however, has led to charges of racial profiling.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act. The legislation included an initiative called the U.S. Immigration and Customs Enforcement's 287(g) program. The 287(g) initiative permitted local and state law enforcement agencies to enter into an agreement with the Department of Homeland Security (DHS), and undergo some immigration enforcement training, in order to help enforce immigration law. Although immigration has historically been considered a federal issue, some legal experts, including former Attorney General John Ashcroft, have argued that state and local police should also have the authority to enforce immigration laws.

After the September 11, 2001, terrorist attacks on the U.S., government and public interest in the enforcement of immigration laws increased. Accordingly, the 287(g) program expanded during the presidency of George W. Bush (R, 2001–09). As of March 2009, 67 local law enforcement agencies in 23 states were participants in the 287(g) program, with more than 40 agencies on the waiting list. Between 2006 and 2009, federal funding for the program increased to \$60 million, from \$5 million. In 2005, Bush also implemented a program known as "Operation Streamline," which mandated that every individual caught illegally crossing the U.S.–Mexico border be criminally prosecuted. [See [Operation Streamline \(sidebar\)](#)]

Despite the apparent popularity of the statute among local governments, Section 287(g) has raised concerns that empowering local police to enforce immigration laws, without sufficient training or federal oversight, leads to racial profiling and civil rights violations. According to a March 2009 Government Accountability Office (GAO) report, the majority of police officers interviewed reported that members of immigrant communities in their jurisdictions had expressed concern about racial profiling. The report also criticized 287(g) for failing to focus on the removal of illegal

immigrants engaged in serious criminal activity, and noted that many police departments were using their newfound authority to deport aliens for minor offenses, like driving above the speed limit or carrying an open container of alcohol, instead of using the program to target violent criminals, human traffickers, gang members and narcotics smugglers. The report urged federal authorities in the DHS to provide better oversight, and local authorities to keep better records, to make the program more effective.

Local police departments participating in the 287(g) program have been subject to lawsuits filed by plaintiffs who claimed they were stopped or questioned solely because of their Hispanic appearance. Although the program was not initially designed to authorize large-scale immigration raids, local police officers have used their authority to enter workplaces and to stop motorists and people on the street to question them about their immigration status, often turning over suspects to the Immigration and Naturalization Services (INS). Some observers in predominantly Hispanic communities have said that during such raids, officers will interrogate people whose appearance more closely matches their preconception of what Hispanic people look like, while giving lighter-skinned people a free pass.

President Obama (D), who pledged immigration reform during his 2008 presidential campaign, has retained the 287(g) program, angering many immigrant advocates. At the beginning of his presidency, however, the Department of Homeland Security (DHS) launched a comprehensive review of the program, and promised more federal oversight to discourage racial profiling. In August 2009, more than 500 immigrant advocate groups and civil rights organizations sent an open letter to Obama urging him to cancel the 287(g) program. The letter said that the program was to blame for racial profiling and "unconstitutional searches and seizures primarily in communities of color."

In October 2009, the Congressional Hispanic Caucus urged Obama to cancel 287(g). Later that month, the DHS announced that it had revised the program to concentrate on deporting illegal immigrants involved in serious or violent crimes rather than minor offenses, and would now require local police officers in the program to follow federal antidiscrimination guidelines. The announcement disappointed many immigrant advocates, who had hoped the administration would eliminate the program altogether. Reports that the detention centers housing immigrants arrested under the program were underfunded and overcrowded led to 287(g) being criticized even more harshly.

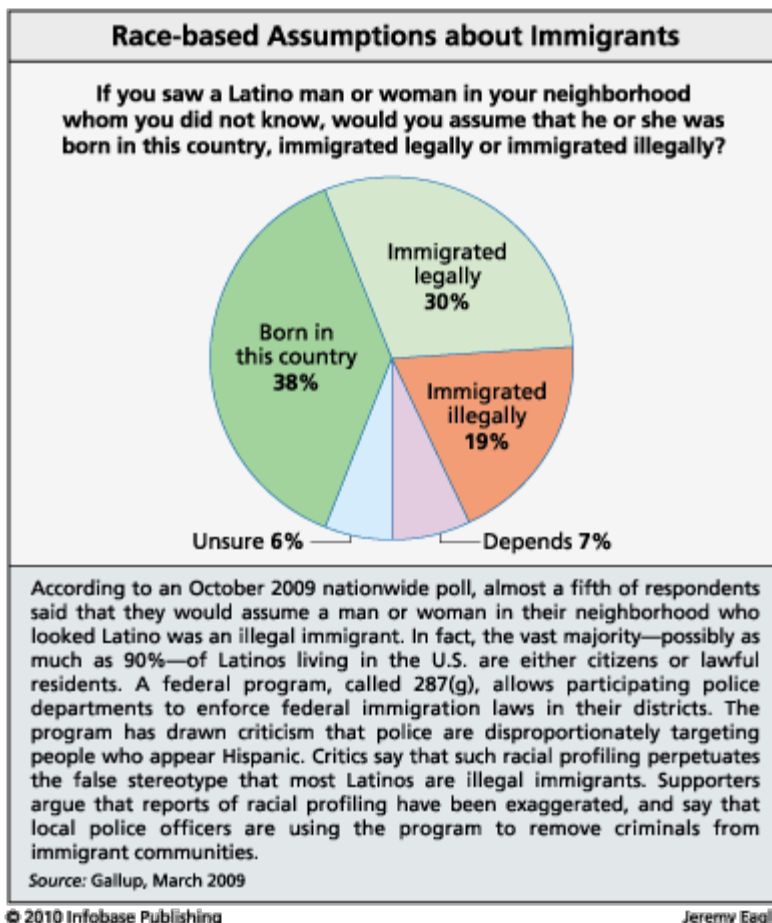
On March 21, 2010, an estimated 200,000 immigration reform activists demonstrated at the National Mall in Washington, D.C., urging the administration to address their concerns. Immigration law enforcement advocates, however, pointed to the threat of escalating drug violence in Mexico spilling over the border as a reason to clamp down on illegal immigration as much as possible. [See [U.S.-Mexico Relations](#); [U.S.-Mexico Border Enforcement](#)]

In a March 2010 report released by the DHS, the 287(g) program was criticized for inadequately training state and local police officers to enforce immigration laws properly while preserving immigrants' civil rights. At the time of the report, the number of county police forces still belonging to the program had dropped to about 60, and immigrant rights groups were increasingly clamoring for its termination.

As immigrant advocates continued to call for immigration reform, in April 2010, Arizona's legislature passed a bill considered the strictest immigration enforcement legislation in the U.S. The bill would require police to file criminal charges against immigrants for not carrying their immigration documents, and to detain anyone they suspected of having entered the country illegally. Critics, including some police officers, urged Arizona Governor Jan Brewer (R) to veto the bill, and some opponents said the legislation would lead to civil rights violations. On April 23, Obama criticized the proposed law, saying it threatened "to undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe." Despite those criticisms and protests against the bill, however, Brewer signed the proposal into law later that day.

287(g) Officers Use Racial Profiling, Harassment to Enforce Laws, Critics Say

Critics of the 287(g) program argue that empowering local and state police to enforce immigration laws often leads to civil rights violations and widespread racial profiling. Lawyer Carrie Arnold, writing in the *Arizona Law Review*, points to one 287(g) immigrant roundup operation in Arizona: "[I]t appears that many of the stops were conducted for the sole purpose of investigating citizenship based on skin color." According to Arnold, police stopped one Mexican woman three times in three days, demanding that she show them her immigration papers without ever explaining the legal basis for their demand. It is a violation of the Equal Protection Clause of the Fourteenth Amendment to impose such indignities on dark-skinned Latinos alone, while not questioning people of Caucasian ancestry, critics say.



Racial profiling in any context reinforces the false stereotype that people with Hispanic appearance are likely illegal immigrants, or criminals, or do not deserve the same civil rights as other groups in the U.S., critics maintain. According to Senator Charles Schumer (D, New York), "Latino Americans face a double whammy, first, of being profiled as law-breakers and, if that doesn't hold up, as illegal immigrants." Critics say the 287(g) program helps perpetuate the concept of Latinos as permanent outsiders.

According to critics, officers in the 287(g) program who lack sufficient training and sensitivity often stop all people who look Hispanic, humiliating and hindering U.S. citizens who happen to be Latino. Although federal immigration officials undergo five months of training, the typical training session for local and state officers usually lasts only five weeks, critics note. Connor writes, "Many Latinos who are U.S. citizens or who are in the country legally are routinely stopped and questioned about their citizenship, making them feel as though they do not have the right to be in their own community." Appearing to be Hispanic, critics say, especially in a predominantly Hispanic neighborhood, is hardly evidence of criminality and cannot be the sole reason for someone to be stopped and questioned.

Only about 10% of Latinos in the U.S. are undocumented, critics point out, a percentage comparable to that of other ethnic groups such as Asians or Middle Easterners. Opponents argue that because the majority of Latinos are in the U.S. legally, citizens and lawful residents largely bear the brunt of immigration enforcement. Officers acting under the 287(g) program often fail to realize that skin color is a poor indicator of citizenship, critics maintain. Johnson argues that the *Brignoni-Ponce* decision failed to appreciate that the vast majority of Hispanics in the U.S. were there legally, a fact that undermines the legitimacy of racial profiling in immigration law enforcement. He writes:

Could we imagine the Supreme Court stating that "the likelihood that any given person of [African American] ancestry is [a criminal] is high enough to make [African American] appearance a relevant factor" in a criminal stop? Such a clearly discriminatory statement would provoke justified outrage. Nevertheless, the use of race in immigration stops to this point has not been carefully scrutinized.

The 287(g) program leads to widespread mistrust of the police among immigrant groups, impeding future investigations because immigrants are less likely to talk to the police or report crimes, critics say. Critics refer to that as the "chilling effect." According to the *New York Times*:

Turning local cops into immigration enforcers makes racial profiling more likely while sending a chill through immigrant neighborhoods, where victims fear and avoid the police and crimes go unsolved for lack of witnesses. As a police chief...said: "How can you police a community that will not talk to you?"

Critics argue that the chilling effect creates a serious security threat for immigrant neighborhoods. According to the 2009 ACLU report, because undocumented immigrants are too scared to report crimes, "Immigrants are thus tacitly identified as fair game and are extremely vulnerable to crime because of the likelihood that they will not report crimes.... The consequence of participation in 287(g), therefore, is the increasing isolation and victimization of an already vulnerable segment of society." Because the chilling effect makes immigrants less likely to talk to the police and

identify gang members, 287(g), which is supposed to be a tool in combating organized crime and gang violence, actually ends up encouraging it, critics say.

Undocumented immigrants have constitutional and human rights, critics argue, which are often ignored by officers under the 287(g) program. Testimony submitted by various civil rights groups to a March 2009 congressional hearing on the program said that 287(g) has led to "rampant abuses of the authority granted to local law enforcement agencies" in the form of street sweeps, traffic checkpoints and workplace raids that specifically target Hispanics. According to the testimony, "Racial profiling is an insidious violation of civil and human rights that can affect people in both public and private places—in their homes or at work, or while driving, flying or walking." Critics also argue that when police pay attention to race, they often pay less attention to crimes actually being committed.

Indeed, the program has encouraged a preoccupation with race instead of a focus on serious crimes, leading to the widespread prosecution of Latinos for the most minor offenses, critics say. In one case that critics often point to, a pregnant Hispanic driver was pulled over in Nashville, Tennessee, and went into labor and gave birth while in police custody, having been detained on a minor civil immigration violation. According to the *New York Times*, 287(g) has set "loose an epidemic of misery, racial profiling and needless arrests. The intense campaign of raids and deportations has so clogged the immigration courts that the American Bar Association has proposed creating an independent court system." Instead of targeting gang members and serious criminals, critics argue, police officers have used 287(g) as an excuse to harass day laborers, gardeners and housekeepers who are merely trying to better their lives.

Some critics are concerned that, without due federal oversight, the federal funding that comes with the 287(g) program actually serves as an economic incentive for racial profiling. Other critics, however, note that the costs incurred under the program—including lawsuits against police for civil rights violations—may outweigh the benefits. According to the ACLU report, "The potential for racial profiling by law enforcement officers results in economic damage when residents who no longer want to live in a hostile county move, abandoning housing, and causing a loss of profits for local businesses and a decrease in taxpayers."

Police Need the Power to Remove Criminal Immigrants, Supporters Say

Supporters argue that Section 287(g) allows state and local police to remove dangerous illegal immigrants from local communities. At a March 2009 congressional hearing on the program, Representative Mark Souder (R, Indiana) testified that granting that authority to local police served as a powerful "deterrent for aliens to commit crimes and engage in gang activity in the community" and saved local governments "space and money" by allowing them to remove illegal immigrants from local prisons for transfer to federal custody.

Supporters argue that illegal immigration has many negative effects on the country's social and economic fabric, and immigration laws should therefore be enforced by any means possible. Some supporters contend that federal officials should not limit the program to targeting illegal aliens who commit only serious or violent crimes, but use it to remove all illegal immigrants from the country. Representative Lamar Smith (R, Texas), who co-wrote the legislation created 287(g), argues in the *Wall Street Journal*, "I can attest that it was created to let state and local law-enforcement officials help enforce all immigration laws, not a select few. It only makes sense to remove illegal immigrants from the streets before they commit more serious crimes." In any case, supporters say, many illegal immigrants arrested under the program have indeed had violent criminal records.

It is imperative to enforce immigration laws to protect public safety, supporters argue. Charles Jenkins, the sheriff of Frederick County, Maryland, testified that he signed up his department for the 287(g) program so that it could help investigate potential terrorist threats posed by illegal immigrants, and because "the enormous increase in crime throughout the United States...can be tied directly to the unchecked flow of illegal immigrants through our southern borders with Mexico." [See [Immigration Law and Terrorism](#)]

The ongoing drug war in Mexico, supporters argue, is another reason to encourage even greater federal-local cooperation in enforcing immigration laws. Supporters link illegal immigration to illegal narcotics smuggling, organized street crime and human trafficking. Jessica Vaughn, the director of policy studies at the Center for Immigration Studies (CIS), a Washington, D.C., think tank, and James Edwards, a fellow at CIS, write in the *Arizona Republic*, "State and local involvement in immigration law enforcement is essential these days...as Mexican drug cartels and other international crime syndicates extend their reach into American communities, and as illegal workers increasingly resort to identity fraud to stay employed in scarce jobs." [See [Mexican Drug Wars](#)]

Supporters contend that Immigration and Customs Enforcement (ICE), the government agency charged with enforcing immigration laws, lacks the manpower and resources to tackle the widespread illegal immigration problem in the U.S. by itself. The program thus extends ICE's reach by training police officers, advocates say. According to Richard Stana, the former director of Homeland Security and Justice Issues at the GAO, "[S]tate and local law enforcement officers play a critical role in protecting our homeland because, during the course of their daily duties, they may encounter foreign-national criminals and immigration violators who pose a threat to national security or public safety."

Advocates of the 287(g) program dispute the accusation that it encourages racial profiling. According to Jenkins, "This is not about profiling; this is not about discrimination.... There have been absolutely no complaints of profiling or discrimination based on ethnicity since the implementation of the program." Some supporters, however, go so far as to argue that because such a large percentage of illegal immigrants in the U.S. are from Latin American countries, using someone's Hispanic appearance to at least partially justify a stop makes sense.

Supporters also deny that the program has a "chilling effect" on immigrant communities. Jenkins told the congressional hearing, "The program has not harmed police-immigrant community relations, and has not created fear or distrust of law enforcement.... Any existing fear or distrust of law enforcement is generally cultural based, as most countries where immigrants originate from do have...corrupt and abusive law enforcement." Some

supporters have even argued that because local officers are more familiar with the communities they police, they are less likely than federal immigration officers to rely on racial profiling to enforce immigration laws.

Access to DHS records and warrants helps state and local police keep crime rates down, supporters argue. Vaughn and Edwards write, "[T]he ability to bring in gang members for questioning, or determine the identity and status of foreign criminal suspects before they flee, or discover warrants before offenders are released on bond is an enormous boost to local law-enforcement agencies." Supporters note that arrests made under Section 287(g) accounted for about 20% of all criminal illegal immigrant arrests in 2008, proof that the program is providing substantial aid to federal immigration authorities.

Canceling the 287(g) program would only benefit illegal immigrants who are engaged in criminal activities, supporters contend. In an opinion piece in the *Wall Street Journal*, Smith calls the new restrictions imposed on participants in the 287(g) program "the latest move...to handcuff local police and make it harder for them to find and deport illegal immigrants.... The DHS should do more, not less, to protect the lives and property of all Americans and make our communities safer." The broader public, supporters contend, has an important security interest in the strict enforcement of immigration laws.

Activists Urge Congress to Ban Profiling in Immigration Enforcement

The Obama administration has promised sweeping immigration reform, which many immigrant advocates hope will ease the path to citizenship for illegal workers already in the U.S. However, President Obama has yet to release a comprehensive proposal for immigration reform, drawing criticism from many corners. According to the *New York Times*, "The country needs to confront the issue, to lift the fear that pervades immigrant communities, to better harness the energy of immigrant workers, to protect American workers from off-the-books competition. What's been happening as the endless wait for reform drags on has been ugly."

Many critics have proposed that the INS adopt guidelines that specifically prohibit racial profiling by those tasked with enforcing immigration laws. While such rules would probably not end racial profiling in practice, they would at least represent a step forward, those critics argue. Other observers note that until Congress passes legislation prohibiting INS agents from taking race into consideration, however, plaintiffs in racial profiling cases still have to prove that racial appearance was the only factor in their being detained, or that the officer intended to discriminate on the basis of race. Many observers note that it is easy for police officers to generate a race-neutral reason for their actions after the fact. Connor writes:

If Congress were to ban immigration law enforcement officers' reliance on race by passing a bill like the End Racial Profiling Act—overturning Brignoni-Ponce—then the courts would have to enforce it. However, challenging courts to scrutinize an officer's reliance on race promotes a more honest conversation about stereotypes and racism. This inquiry...will, in the long run, serve the public interest more than deceptive neutrality ever could.

Discussion Questions & Activities

- 1) Why do you think the U.S. has immigration laws of any kind? What purpose does such legislation serve?
- 2) Do you think the 287(g) program perpetuates racial profiling against Latinos? Why or why not?
- 3) Do you think Congress should pass legislation to prohibit racial profiling in the enforcement of immigration laws? Why or why not?
- 4) In *United States v. Brignoni-Ponce*, the U.S. Supreme Court upheld the consideration of racial appearance when Border Patrol agents were determining whether to question a suspect's immigration status. What was the Court's reasoning in that decision? Would the same reasoning apply today?
- 5) Write a letter to your local representative expressing your opinion on the 287(g) program. Do you think the federal government should maintain it? Expand it? Terminate it? What are your reasons?

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Additional Sources

Additional information about immigrant profiling by local law enforcement can be found in the following sources:

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- Johnson, Kevin. *The Huddled Masses Myth: Immigration and Civil Rights*. Philadelphia, Pa.: Temple University Press, 2004.

Contact Information

Information on how to contact organizations that are either mentioned in the discussion of immigrant profiling by local law enforcement or can provide additional information on the subject is listed below:

Center for Immigration Studies
1522 K Street N.W., Suite 820
Washington, D.C. 20005
Telephone: (202) 466-8185
Internet: www.cis.org

Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, D.C. 20536
Telephone: (202) 732-4242
Internet: www.ice.gov

U.S. Citizenship & Immigration Services
111 Massachusetts Avenue N.W.
Washington, D.C. 20529
Telephone: (800) 375-5286
Internet: www.uscis.gov

Key Words and Points

For further information about the ongoing debate over immigrant profiling by local law enforcement, search for the following words and terms in electronic databases and other publications:

287(g)
Immigration reform
Racial profiling
Sheriff Joe Arpaio
United States v. Brignoni-Ponce

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<<http://www.2facts.com/article/i1500260>>.

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