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August 31, 2010

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

RE: Memorandum of Agreement (MOA) between the Virginia Department of State Police and the Department of Homeland Security under Section 287(g)

Dear Madam Secretary Napolitano:

Pending before your agency is a request from Robert E. McDonnell, Governor of the Commonwealth of Virginia seeking formal agreement to partner with the Virginia Department of State Police (VDSP) and the Department of Homeland Security to enter into a 287(g) agreement with U.S. Immigration and Customs Enforcement (ICE). Our organizations are deeply concerned because enforcement-only approaches have not been effective in fixing our broken immigration system. We are especially concerned about the implications for the minority and immigrant communities living in the Commonwealth of Virginia if such an agreement were to be approved, and we therefore write to urge you to reject this application.

Our opposition to the VDSP application is twofold. First, it is based upon the general concerns that our organizations, and similar civil rights groups nationwide, have raised for some time about the 287(g) program. Second, it is based on the number of laws that are already in place in our state which make this agreement redundant while opening the possibility for human bias via the application of discriminatory enforcement of traffic laws in the state based on the way people look or sound. One of those laws already in place implements the Secure Communities Program, a program plagued by problems such as racial profiling as discussed in the recent New York Times opinion piece "Immigration Bait and Switch."¹

The concern over racial profiling is very real. Currently, the Commonwealth of Virginia is one of the states that does not require the state police to collect demographic data at traffic stops. Without this vital information, it will not be possible to verify whether or not profiling is a key determinant in who is stopped and/or searched.

Because the Commonwealth of Virginia VA does not collect this type of demographic information, we strongly oppose DHS entering into a Memorandum of Agreement with the

¹ Immigration Bait and Switch, *New York Times*, available at http://www.nytimes.com/2010/08/18/opinion/18wed3.html?_r=1&scp=1&sq=immigration%20bait%20and%20switch%20&st=Search.

VDSP. Furthermore, we oppose such an agreement because the Commonwealth of Virginia has also failed to fully enact or follow the laws protecting racial and ethnic minorities currently on the books.

According to a study from Virginia Organizing (formerly the Virginia Organizing Project) (VO)² in 2002, the Virginia General Assembly passed legislation requiring that every law enforcement officer in the Commonwealth be trained to avoid bias-based policing, and that model policies be made available.

At that time, Virginia's major law enforcement agencies supported this legislation. But according to VO in a 2005 study by the Virginia Department of Criminal Justice Services (VDCJS), they found that:

- About 1 out of 5 departments still “did not provide in-service bias-based police training to officers.”
- Most management-level officers were not required to receive training on preventing bias-based policing by their subordinates.
- 72.5 percent of African-American law enforcement officers surveyed felt more bias-based policing training was needed than was provided.
- 30 percent of all officers surveyed did not even know if their departments had a policy on bias-based policing.
- The NAACP and other groups with decades of relevant experience have not been asked to help prevent biased policing.
- Few Virginia law enforcement departments make their bias-based policing policies and procedures known to the public; even their complaint processes are not publicized.
- Though the survey found 61.9 percent of Virginia citizens supported it, and many other states do it, law enforcement agencies in Virginia do not collect data by which to evaluate and improve their performance.

Research and testimony from the American Civil Liberties Union (ACLU) before Congress documented the ways in which 287(g) agreements in particular have facilitated racial profiling by encouraging police officers to stop anyone who looks “foreign.”³

² Source: http://virginia-organizing.org/campaign/racial_profiling_flyer_back.pdf

³ ACLU of North Carolina Legal Foundation and Immigration & Human Rights Policy Clinic, UNC at Chapel Hill, The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina (2009), available at http://www.acluofnorthcarolina.org/files/287gpolicyreview_0.pdf. “The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws,” ACLU Written Statement submitted to U.S. House Subcommittee on Immigration, Citizenship,

The Memorandum of Understanding under 287(g) is unnecessary in our Commonwealth. Virginia law already allows the state's law enforcement officers to arrest certain criminal violators of federal immigration law. The Commonwealth is one of two states that requires an immigration status inquiry of every person taken into custody for any criminal act and also has a presumption against bail for any person arrested for any crime who is determined to be in the country illegally (H 820 approved March 2008). As stated above, signing a state-level MOA would be a redundant and reckless step that erodes trust between law enforcement and Virginia's immigrant and minority communities at a time when that trust is urgently needed.

There are limited resources to implement the 287(g) agreement without proper training for law enforcement officers statewide and 287(g) MOAs usually lack measures to prevent racial profiling. Without proper oversight of 287(g) agreements it impacts negatively our community safety as a whole. It discourages undocumented immigrants from reporting crimes they witness; and diminishes the time and resources available for customary law enforcement duties.

We appreciate your efforts at trying to solve our broken immigration system. However, we firmly believe, and evidence shows, that taking an enforcement-only approach does not and will not solve the problem. Instead we hope you will do everything possible in your role as Secretary of Homeland Security to support efforts to fix our borders, and ensure that undocumented immigrants become legal, pay taxes and get in line behind everyone else. Simply pouring money into a broken immigration system has not and will not fix it. We must reform our broken system and finally fix this problem.

It is for all the reasons expressed above that we respectfully urge your agency to reject the application of the Virginia Department of State Police (VDSP) and the Department of Homeland Security to enter into a 287(g) agreement with ICE.

Thank you in advance for your consideration of our views. If you have any questions or would like more information, please feel free to contact Edgar Aranda-Yanoc, Chairman of VACOLAO at edgar@justice4all.org or (703)778-3450 or Jorge E. Figueredo, Director of Racial Justice and Immigrants' Rights at the ACLU of VA at jfigueredo@acluva.org or (703) 268-8479.

Sincerely,

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