

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	
	)	
COMMONWEALTH OF VIRGINIA,	)	Case No. 3:26-cv-545
Defendant	)	

**BRIEF OF AMICUS LEGAL AID JUSTICE CENTER IN SUPPORT OF THE
COMMONWEALTH’S OPPOSITION TO MOTION FOR PRELIMINARY
INJUNCTION**

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STATEMENT OF INTEREST

The Legal Aid Justice Center (LAJC) is a statewide nonprofit legal advocacy organization that has served low-income Virginians for nearly sixty years. Through offices across the Commonwealth, LAJC combines direct representation, impact litigation, policy advocacy, community organizing, and public education to address systemic barriers facing Virginia communities, including topics directly implicated by this litigation.

Since 1998, LAJC's Immigrant Justice Program has represented immigrants throughout Virginia in civil rights, detention, removal, and humanitarian immigration matters while advocating for policies that promote public safety, protect immigrant communities and ensure compliance with both Virginia and federal law. In addition to representing individual clients, LAJC works with state and local governments, community organizations, and advocates to promote a clear understanding of the legal boundaries governing participation in federal immigration enforcement. Because this case concerns the Commonwealth's authority to define the scope of its own law enforcement officers' participation in civil immigration enforcement, LAJC is uniquely positioned to provide insight as amicus in this matter.

Over the past several years, LAJC has developed substantial expertise regarding the legal and practical consequences that arise when the line between Virginia law enforcement authority and federal immigration enforcement is blurred. That expertise comes from direct representation of individuals affected by immigration enforcement; statewide community education and organizing; collaboration with local governments, advocates, and community organizations; impact litigation challenging unlawful immigration enforcement practices; and extensive factual investigation into cooperation between Virginia law enforcement agencies and U.S. Immigration and Customs Enforcement (ICE).

Most recently, LAJC has conducted one of the most comprehensive examinations of

immigration enforcement partnerships in Virginia. Since March 2025, LAJC has submitted well over one hundred requests under the Virginia Freedom of Information Act (VFOIA), reviewed thousands of pages of records concerning local cooperation with ICE, analyzed 287(g) contracts and related law enforcement policies, monitored the implementation of immigration enforcement practices across the Commonwealth, and documented the effects those practices have had on immigrant communities in Virginia.¹ Through this work, LAJC has developed a detailed understanding of how 287(g) contracts operate in practice, the respective roles of state and federal officials, and legal and practical consequences that follow when local officers engage in civil immigration enforcement. As such, LAJC's experience equips it to assist the Court in evaluating the practical and legal operation of 287(g) contracts.

During the 2026 General Assembly session, advocates from LAJC supported the passage of Va. Code § 15.2-1726.1 (then HB 1441 and SB 783). In doing so, LAJC worked with legislators and stakeholders to explain the operation of 287(g) contracts, provide research concerning their effects, and support legislation defining the scope of local law enforcement authority under Virginia law. LAJC's involvement in the development of this legislation provides additional perspective on the interests the General Assembly sought to protect through its enactment.

LAJC respectfully submits this brief to assist the Court by providing factual and legal context regarding the operation of 287(g) contracts in Virginia, the distinct legal authorities exercised by Virginia law enforcement officers and federal immigration officers, and Commonwealth's long-standing authority to define the powers and duties of its own political subdivisions and officers.

¹ The full results of LAJC's VFOIA requests are published as a publicly accessible resource library on LAJC's website. Legal Aid Justice Center, *Unmasking ICE*, <https://www.justice4all.org/what-we-do/immigration/icecontracts/>. We cite to excerpts of that public document library throughout this brief, assembled in an Appendix for the ease of the court.

LEGAL AND FACTUAL FRAMEWORK

A. The 287(g) program

Congress created the 287(g) program as a voluntary mechanism through which states and localities may choose to assist federal immigration enforcement. From its inception, however, Congress expressly recognized that any delegated authority may be exercised only “to the extent consistent with State and local law.” 8 U.S.C. § 1357(g)(1). Section 287 generally articulates the powers of federal immigration officers, which are fleshed out in more detail by regulation. *See* 8 U.S.C. § 1357; *see also, generally*, 8 C.F.R. part 287. Section 287(g), which has no corresponding regulation, provides federal authorization for ICE to contractually grant some of those immigration enforcement powers to specifically designated officers or employees of a state or subdivision of a state. 8 U.S.C. § 1357(g)(1). Accordingly, a 287(g) contract expands neither the powers of the state officers under state law nor the authority of the federal government to dictate how a state allocates its powers.

To operate under Section 287(g), a state or local agency must enter into a written agreement with DHS (on behalf of the Attorney General). 8 U.S.C. § 1357(g)(1). This initial contract is called a “Memorandum of Agreement” (MOA). *See* App. at 1-14 (sample MOA). After the MOA is signed, state or local officers must be nominated by their agency, perform training required by ICE, pass an examination and other credentialing requirements, and then be certified by ICE and given credentials. App. at 3-4.² The specific powers and duties that ICE can convey to credentialed

² Contrary to the United States’ assertion that § 287(g) sets forth “express terms imposed by Congress,” the statute itself provides few if any details on how powers are delegated, the nature of those powers, or other important aspects of the purported delegation, and ICE has not issued regulations on this topic. Instead, many of these details, even the specific types of 287(g) programs discussed throughout this brief, are sole creations of the language of the contracts themselves. The contract referenced here is typical of if not identical to all other Task Force Model contracts in force in Virginia since early 2025, but its language is not controlled by any act of Congress. The contract ostensibly could be modified at any time – by negotiation, or to the extent that its terms are or remain “consistent with State or local law.” 8 U.S.C. § 1357(g)(1).

287(g) officers are spelled out in written contracts. 8 U.S.C. § 1357(g)(5). Those powers vary depending on which of the three main types of 287(g) contracts are at issue. The first two types, Warrant Service Officer (WSO) and Jail Enforcement (JEM), involve immigration enforcement activity in connection with people who are in state and local prisons and jails. *See, e.g.*, App. at 15-29 and 30-29. The third type, the Task Force Model (TFM), is much more broad in both the powers it purports to convey, as well as where and when those powers may be exercised. *See, e.g.*, App. at 2-3 (Sec. V). TFM contracts permeate all contexts where law enforcement may operate, including but not limited to traffic stops, courthouse security, schools,³ behavioral health support programs,⁴ community corrections,⁵ and any other activity that Virginia law enforcement may otherwise conduct on the street and in the community.

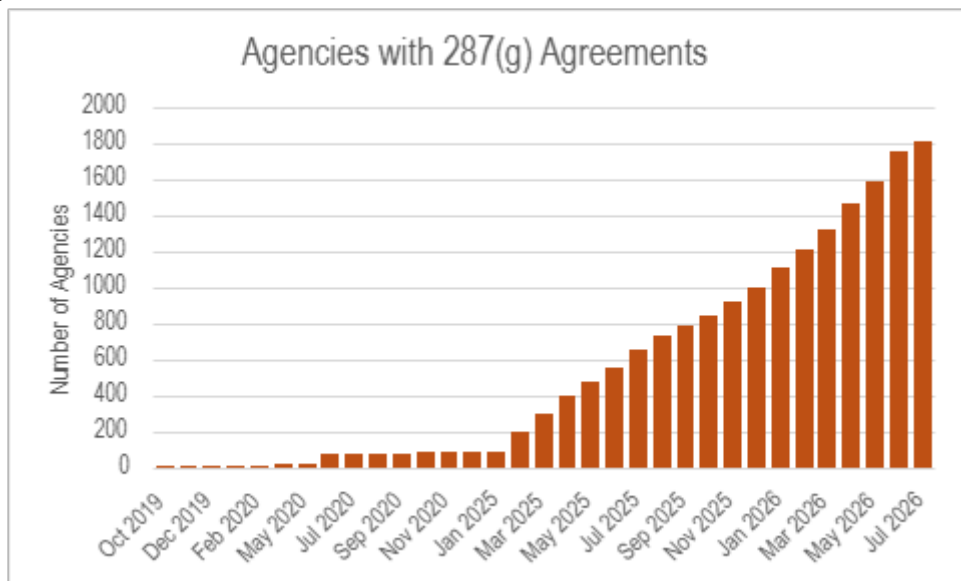
Although § 287(g) contracts are not new to Virginia, the recent dramatic expansion of the program is, especially with regard to TFM contracts. As of January 20, 2025, just 85 state and local agencies nationwide participated in the 287(g) program. U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act* (July 10, 2026), <https://perma.cc/N3YW-HKFR>. As of July 10, 2026, ICE reported that 1,812 state and local agencies have one or more active 287(g) contracts – an increase of more than

³ Washington and Buckingham Counties have both certified School Resource Officers under their 287(g) contracts, whose duties involve postings at public schools. App. at 40 and 42. Of note, Virginia has recently reaffirmed its clear state interest in preventing immigration enforcement actions on school grounds. Va. Code § 22.1-2.2 (2026) (*see* Va. Acts 2026, chs. 680, 681). Immigration enforcement activity in schools also implicates longstanding privacy protections, including the privacy of educational records under the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, and the confidentiality of juvenile law enforcement records. *See* Va. Code § 16.1-301.

⁴ Washington County has also certified a “behavioral health advocate” to make civil immigration arrests and conduct other civil immigration enforcement activity under its 287(g). App. at 40.

⁵ Although Governor Spanberger terminated the Virginia’s 287(g) contracts at the state level in early 2026, while the contract with VADOC was active, VADOC shared information with ICE about parolees, including but not their real-time locations via the “Shadowtrack” GPS tracking systems. App. at [6]. VADOC also shared information with ICE about not just removable noncitizens, but also any one who they classified as “foreign born,” which they acknowledged could include U.S. Citizens. App. at 190.

twelve-fold in less than two years. *Id.* Virginia mirrors this trend. While no Virginia agencies had active 287(g) contracts at the beginning of 2025, dozens of state and local law enforcement agencies now participate. This growth is a massive jump from that seen during the tail end of the first Trump administration, as exhibited in the chart below:



Modeled using data produced by ICE for years 2019-2020 and 2025-2026. “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act,” U.S. Immigration and Customs Enforcement (July 10, 2026 2:41PM), <https://perma.cc/N3YW-HKFR>. (This data does not reflect 287(g) contracts that predated 2019, as ICE has not included that data in its publications.)

As of February 2026, 77.2 million people, or 32% of the country live in jurisdictions engaged in 287(g) contracts. *Deputized for Disaster*, American Civil Liberties Union (Feb 26, 2026), <https://perma.cc/LWR9-PVLM>. Two states, Florida and Texas, account for over 38% of all 287(g) contracts in the United States, which is unsurprising as their respective legislatures have mandated participation in 287(g). *See* Fla. Stat. § 908.11; Tex. Gov. Code § 753.051(a). Like Virginia, legislatures in these states have exercised their authority to define on what terms their political subdivisions will participate in the voluntary 287(g) program.

Section 287(g) itself is explicit that immigration enforcement activities may be carried out “at the expense of the state[.]” 8 U.S.C. § 1357(g)(1). Notwithstanding this language, beginning in the Fall of 2025, money from the One Big Beautiful Bill Act that was set aside for immigration

enforcement began to be directly distributed to 287(g) TFM agencies. *See* One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72, § 100055 (2025) (establishing a grant program and appropriating \$3.5 Billion for state and local immigration enforcement reimbursement).⁶ Under this new influx of money, which is likely to be temporary based on the unchanged language about state expense in § 287(g) itself, each 287(g) TFM agency receives a one-time \$100,000 vehicle stipend, as well as training and equipment stipends. U.S. Department of Homeland Security, *DHS Announces New Reimbursement Opportunities for State and Local Law Enforcement Partnering with ICE to Arrest the Worst of the Worst Criminal Illegal Aliens* (Sept. 2, 2025), <https://perma.cc/Z8PF-E3C5>. In addition, starting on October 1, 2025, ICE created reimbursement opportunities for TFM officers' time spent on immigration activities, including 100% of normal salary and benefits and up to 25% of overtime, plus up to \$1,000 in performance bonuses. Many TFM agencies have now executed supplemental "service agreements" that provide a detailed process for personnel reimbursement and billing procedures. *See, e.g.*, App. at 43-55. Since the service agreements have become active, at least some Virginia TFM sheriffs have begun submitting reimbursement requests and work verifications to ICE. *See, e.g.*, App. at 56-81 and 131-141.

This substantial amount of money has three potential effects. First, it masks the amount of resources devoted to an activity that the federal statute says is typically conducted at state expense. ICE itself has declined to disclose the total amount of funding it has disbursed to 287(g) recipients, making it difficult to tell whether the current funding is at all sustainable. Meg Anderson, *ICE is*

⁶ Of course, even the grant funding of 287(g) under OBBBA does not and cannot cover legal fees and judgments when 287(g) contractors with limited training are sued. *See* OBBBA at § 100055 (not including legal defense costs and judgments as part of the list of items eligible for grant funding). This type of expense is not under the categories for funding under § 100055 of OBBBA. Additionally, contractual promises to pay such fees would likely violate the Anti-deficiency Act, which generally restricts promises to pay open-ended costs such as indemnification for judgments or legal fees. *See* 31 U.S.C. § 1341(a)(1)(A) ("an officer or employee of the United States Government... may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.")

giving local police big money to help with immigration enforcement, National Public Radio (May 5, 2026), <https://perma.cc/Z8PF-E3C5>. Second, it could create reliance on what may be one-time federal appropriations. Third, local sheriffs, who receive base salary reimbursements for themselves and the approved number of deputies from the State, may feel pressure to prioritize federal immigration work that brings in “extra money” at the expense of local community policing, which earns them no extra reimbursement.⁷ These reimbursement incentives fundamentally alter local law enforcement priorities by creating financial incentives to devote personnel to federal immigration enforcement. The General Assembly could reasonably conclude that statewide limits are necessary to preserve local policing priorities and protect the Commonwealth from assuming long-term obligations once temporary federal appropriations expire.

B. The history of § 287(g) in Virginia

Since the 287(g) program’s 1996 inception, Virginia has historically declined broad participation in 287(g), choosing instead to limit local participation in civil immigration enforcement. The Commonwealth's recent experience illustrates how quickly that landscape changed following Virginia Executive Order 47, discussed below. Prior to 2025, Virginia had few to no 287(g) contracts at any given time, none of which were TFM contracts. As of January 20, 2025, Virginia had none at all, as the few that had existed had been terminated. *See, e.g.,* Laura Wainman, *Prince William County Jail Board ends ICE agreement*, WUSA 9 (June 18, 2020),

⁷ In both its Complaint and again in its Memorandum in Support of Preliminary Injunction, the United States misstates the basic nature of how local law enforcement is funded in Virginia. They suggest that the only source of state funding to Virginia local law enforcement are the “599 grants” administered by the Virginia Department of Criminal Justice Services. ECF No. 1, pgs. 25-26; ECF No. 8, pgs. 23-24. However, 599 grants are merely supplemental funding issued to some but not all police departments in Virginia. 100% of the base salaries of all Virginia sheriffs, as constitutional officers, are appropriated by the General Assembly and paid out by the Commonwealth as reimbursements from Virginia’s Compensation Board. *See* Va. Code § 15.2-1636.8; Va. Code § 15.2-1636.13; *see also* Va. Const. Art. 7, §4 (providing that constitutional officers including sheriffs have their compensation “prescribed by general law or special act[.]” meaning legislation). This is also true for the majority of deputies, although some deputies with duties related to jail administration do not receive full salary reimbursement from the state.

<https://www.wusa9.com/article/news/local/virginia/prince-william-county-ends-immigration-agreement-with-ice/65-6e898d5e-b8f5-4685-8ce4-83cb080d398f> (also mentioning how the only other active 287(g) contract as of mid-2020 was in Culpeper, Virginia). Moreover, these contracts were more limited forms of § 287(g), focusing solely on people in county jails and not those conducting immigration enforcement in the community itself. *See, e.g.*, 287(g) Memorandum of Understanding with Culpeper County, <https://perma.cc/8YM6-W52L> (establishing a JEM rather than TFM); Felipe De La Hoz, *A Pro-ICE Bastion Ends Its Partnership With the Agency in Virginia*, *The Appeal* (Jun. 15, 2020), <https://perma.cc/EU74-UGEH> (explaining that Prince William County shifted to a detention oriented 287(g) contract after TFM was discontinued in 2016).

However, on February 27, 2025, former Governor Youngkin signed Executive Order 47, which directed the Department of Corrections (VADOC) and the Virginia State Police (VSP) to sign § 287(g) contracts and:

[i]nstruct[ed] the Secretary of Public Safety & Homeland Security to contact every Director, Sheriff, or other official in charge of a local or regional jail in the Commonwealth of Virginia and request a certification confirming their full cooperation with ICE in all Enforcement and Removal Operations and stating that they will cooperate with the Section 287(g) VSP Task Force.

Executive Order 47, *Keeping Virginians Safe From Dangerous Criminal Illegal Immigrants* (February 28, 2025) (Westlaw cite “2024 VA EO 47”). These personal contacts placed pressure on individual local jails and sheriffs.

In the months that followed, 25 local sheriffs, one police department and two regional jails signed 287(g) contracts. Legal Aid Justice Center, *Unmasking ICE*, <https://www.justice4all.org/what-we-do/immigration/icecontracts/>. As of December 29, 2025, at least 223 individual officers had been certified under the 287(g) program in Virginia. *Id.*

Some Virginia 287(g) partnerships have been more active than others. These partnerships

illustrate the strain 287(g) contracts may place on individuals and communities. For example, in late 2025 through early 2026, deputies in Franklin County conducted traffic stops resulting in dozens of civil immigration arrests and detention under its 287(g) contract. App. at 82-130; see also Laurence Hammack, *Franklin County sheriff's deputies often make immigration arrests for ICE*, Roanoke Times (April 5, 2026), <https://perma.cc/B4XK-WH89>. These arrests accounted for 8% of all arrests in Franklin County between September 24, 2025 and April 2, 2026. One of these arrestees was Agustin Ramirez Reyna, a man who was pulled over while driving with his family for having an expired registration sticker on his car. See *Ramirez Reyna v. Mullin*, 1:26-cv-01439, ECF No. 6 at 2 (E.D. Va. June 2, 2026). Mr. Ramirez Reyna had begun the process of adjusting status to be able to remain in the United States with his U.S. citizen spouse and had no criminal history. *Id.* ECF No. 1 at 7. Nevertheless, the encounter led to him being shackled in front of his family and imprisoned under difficult conditions until ordered released through federal habeas proceedings based on a finding that his detention was unlawful. *Id.*

As illustrated by Mr. Ramirez Reyna's arrest, the strain on resources from a single arrest likely extends beyond those enumerated in a single 287(g) contract. Specifically, though Mr. Ramirez Reyna was presumably arrested by a deputized 287(g) officer, two other officers were present during his arrest. App. at 119-121; Video of arrest available at <https://legallaidjusticecenter.sharepoint.com/:v:/s/PublicFacingWebsiteLibraries/IQAruGdjNZhWTafKxnIVT6lASzfRyHl5Ee2hKVwtxCapps?e=blr3kS>. It is unclear whether they were deputized, but there is no question that they were occupied by responding to Mr. Ramirez Reyna at the exclusion of other work. Another individual, who was working as a contractor making repairs to a home, was arrested the morning of December 27, 2025, after homeowners provided the wrong alarm code that triggered a police response. App at 110-112. Instead of a quick open-and-shut "false alarm" case,

that incident took over three hours of officer time. And a vehicle stop on October 2-3, 2025, resulting in multiple immigration arrests had dispatch report entries from seven users and took up more than nine hours of officers' time. App. at 119-121.

Greene County, Virginia entered into a 287(g) MOA for TFM enforcement in May 2025. As of November 2025, Greene County had certified five officers to perform civil immigration enforcement. App. at 43. Under the auspices of their 287(g) contract, the Greene County Sheriff's Office has conducted numerous joint traffic stops that have received significant local attention from the media and local residents. The Greene County Sheriff's Office has recently upped its enforcement efforts in several mass traffic stops, including a June 23rd operation detaining 49 individuals in a single day and stoking distrust and fear of the police in Greene County and surrounding communities. Nathan Alderman, *Greene County Sheriff's Office stages mass immigration detention in concert with federal officials*, C-VILLE (July 1, 2026), <https://perma.cc/JN69-ZQJA>.

C. Virginia law carefully limits the circumstances in which state and local officers may engage in civil immigration enforcement, and § 287(g) powers may only be exercised “to the extent consistent with State and local law.”

As the Virginia Attorney General has recognized:

the delegation of authority from the federal government to states and localities is contingent upon the specific limitations of a state's or locality's own laws and regulations. Thus, to enforce federal immigration laws or to legislate in areas where no federal regulations exist, federal approval coupled with state authorization is required.

The Honorable Kenneth Stolle, 2007 WL 3120673 (Va. Att'y Gen. Oct. 15, 2007). Unlike other states which have more fully embraced the offer of federal authority that 287(g) and other federal statutes provide, Virginia has only authorized a few narrowly proscribed powers and procedures,

all of which have been explicitly preserved by Va. Code § 15.2-1726.1.⁸

The narrow power of warrantless arrest of noncitizens laid out in Va. Code § 19.2-81.6, is an excellent illustration of two key concepts in the present case. Va. Code § 19.2-81.6 is Virginia’s legislative acceptance of the authority granted by 8 U.S.C. § 1252c to arrest and detain formerly deported noncitizens who were convicted of a prior felony, were deported or left after that conviction, and have now re-entered. However, Va. Code § 19.2-81.6 limits Virginia’s acceptance of the full scope of authority granted by 8 U.S.C. § 1252c by imposing four additional restrictions to the authority granted by the federal statute, to bring the practice in line with Virginia law and procedure. First, such arrests can only be made if officer is “acting upon reasonable suspicion that an individual has committed or is committing a crime.” Va. Code § 19.2-81.6. Second, just like any other person arrested without a warrant under Virginia law, the person must be brought “forthwith” to a magistrate. *Id.* Third, the magistrate must examine the arresting officer under oath and determine whether there is probable cause that the terms of Va. Code § 19.2-81.6 have been met. Va. Code § 19.2-82(B). Fourth, even if probable cause is so found, the person may only be detained for 72 hours. *Id.* In the more than 20 years since the passage of this statute, the federal government has never challenged Virginia’s ability to limit its voluntary collaboration with ICE in Va. Code § 19.2-81.6.

Many of the specific federal powers delegated by current 287(g) contracts go far beyond the narrow exceptions where Virginia has legislatively authorized state and local officials to exercise immigration enforcement authority. For example, again with respect to warrantless arrests, the

⁸ See Va. Code § 19.2-81.6 (allows warrantless arrest of noncitizens under narrow conditions); Va. Code § 19.2-83.2 (authorizing jail officers to ascertain and communicate citizenship status when taking custody of an inmate after arrest); Va. Code § 53.1-218 (same but post-commitment); Va. Code § 53.1-220.1 (transfer of custody to ICE and detention of a noncitizen convicted of certain serious felonies); Va. Code § 53.1-220.2 (jail officials have discretion to honor ICE detainers up to five days before the date the person would otherwise be released from custody).

TFM MOU provides that, in the context of civil immigration arrests, a 287(g) officer may “[a]rrest without warrant ... any [noncitizen] in the US, if the officer has reason to believe the [noncitizen] is in the US in violation of law and is likely to escape before a warrant can be obtained.” App. at 2; see also 8 C.F.R. § 287.3 (corresponding power exercised directly by ICE). However, Virginia’s criteria for when and how state and local law enforcement may make warrantless arrests is limited by statute. *See* Va. Code § 19.2-81 (warrantless arrest in general); Va. Code §§ 19.2-81.1 *et seq.* (warrantless arrest in specific situations). While expansive, this closed list of situations where warrantless arrest is allowed for Virginia law enforcement does not include civil arrests of any kind, with the limited and conditional exception of Va. Code § 19.2-81.6. In addition, even where warrantless arrests are allowed, Virginia law requires the oversight of a magistrate to ensure that the arrest was proper to continue detention. Va. Code § 19.2-82. The TFM MOA evades by omission, and deputized law enforcement fails to engage with, this required form of oversight. App. at 2-3 (no mention of magistrate supervision in boilerplate MOAs). Local Virginia law enforcement may not sign away the constraints imposed by the General Assembly by contract alone. *See* 8 U.S.C. § 1357(g)(1) (immigration enforcement can be carried out only “to the extent consistent with State and local law.”)

The current boilerplate TFM contract also purports to give powers to “[i]nterrogate any [noncitizen] or person believed to be a [noncitizen] as to his right to be or remain in the United States.” App. at 2. This power references a power exercised by ICE, further defined in regulations, which includes the power to “briefly detain” the subject of the inquiry. 8 C.F.R. § 287.8(b). This would exceed the authority allowed under Virginia law by virtue of its absence from the Code. *See also Arizona v. U.S.*, 567 U.S. 387, 413-414 (2012) (discussing how detention by state and local law enforcement solely on the basis of a suspected civil immigration violation may violate the

Fourth Amendment). In addition, Virginia law prohibits inquiring into the immigration status of victims of and witnesses to a crime, and their parents or guardians if the victim or witness is a minor. Va. Code § 19.2-11.02. The TFM’s more expansive power, as further defined by its counterpart wielded directly by ICE, exceeds what Virginia law has disallowed since 2020 to enhance public safety by protecting witnesses and victims. *Id.*⁹

In addition to exceeding the direct constraints Virginia places on its law enforcement officers, § 287(g) leads to other conflicts with existing Virginia laws. For example, as discussed in more detail in Section III-C of this brief, § 287(g)(7) and (8) purport to both provide federal immunity for 287(g) activities and yet subject state and local actors to liability under the Federal Tort Claims Act (FTCA), upending the State’s legislatively and judicially constructed rules of immunity and liability for its own officers.

LAJC has also seen 287(g) contracts used as justification by local law enforcement for refusal to follow their responsibilities under VFOIA. On many occasions, § 287(g) sheriffs have refused to comply with valid VFOIA requests, not by citing a valid exemption under Virginia law, or even federal law, but simply pointing to the following language in Section XIII of the 287(g) contract (“Release of Information to Third Parties”):

Information obtained or developed as a result of this MOA, including any documents created by the LEA that contain information developed or obtained as a result of this MOA, is under the control of ICE and shall not be disclosed unless: 1) permitted by applicable laws, regulations, or executive orders; and 2) the LEA has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE officer prior to releases to all other parties. LEA questions regarding the

⁹ Other powers that the TFM contract purports to convey to 287(g) officers that exceed Virginia law include but are not limited to are “[s]erv[ing] and execut[ing] warrants of arrest for immigration violations[.]” to the extent that these are administrative warrants that lack judicial oversight or otherwise do not comport with Va. Code § 19.2-71 *et seq.*

applicability of this section to requests for release of information shall be directed to an ICE officer.

Nothing herein limits LEA's compliance with state public records laws regarding those records that are solely state records and not ICE records.

App. at 6. In several separate interactions, 287(g) agencies argued that they had contracted out of their duty to follow VFOIA, a state law, and at least initially refused to provide any information other than the MOA itself. *See, e.g.*, App. at 142-165. On at least two occasions, LAJC prepared a state court VFOIA enforcement lawsuit before localities would provide documents not subject to VFOIA exemptions. App. at 166 and 177 (these petitions were never filed as the agencies ultimately complied with the request under the threat of litigation).

The argument that Virginia law enforcement may step outside its own state's laws by contract alone is not limited to advocacy groups like LAJC and other members of the general public. On at least one occasion, a Sheriff has refused to provide information to a County Supervisor in their shared jurisdiction. *Supervisor Briskman Condemns ICE Actions in Sterling, Loudoun County*, [Supervisor-Briskman-Press-Release---ICE-Actions-in-Sterling-and-287g](#) (June 16, 2025). There is no clear reason why this same interpretation of Section XIII or similar language could not be used to also deny information to the Commonwealth itself, which would be a fundamental violation of Virginia's sovereign authority.

Yet another conflict with existing Virginia law involves law enforcement access and use of protected driver and vehicle information held by the Virginia Department of Motor Vehicles (DMV), as defined by Va. Code § 46.2-208(A). Va. Code § 46.2-208(B)(9) provides that:

[the DMV] shall not disseminate to any federal, state, or local government entity, law-enforcement officer, or law-enforcement agency any privileged information for any purposes related to civil immigration enforcement unless (i) the subject of the information provides consent or (ii) the requesting agency presents a lawful judicial order, judicial subpoena, or judicial warrant.

In addition, the statute prohibits redissemination of protected information to third parties for

reasons other than the original purpose of the request. Va. Code § 46.2-208(E). For example, this would prohibit local law enforcement from using information gathered in the course of normal traffic stops or Greene County-style dragnet operations for immigration enforcement, even if initially acquired for a legitimate, non-immigration purpose.

Prior to the explosion in TFM contacts in Virginia, the prohibition under Va. Code § 46.2-208(B)(9) necessarily involved passing information from a state or local party to a federal party, since only federal actors could enforce immigration law. However, to the extent that local actors are themselves enforcing immigration law as part of their general policing duties, the prohibition now requires internal controls that were not previously necessary and do not currently exist, i.e. measures to prevent an officer from using information she has a right to access for legitimate local policing purposes for immigration enforcement purposes. *See, e.g.* App. at 187 (documents showing lack of any written policy to prevent internal use of DMV database access for civil immigration enforcement purposes, to the extent that such a policy could be effectively drafted).

ARGUMENT

Section 287(g) expressly contemplates that delegated federal immigration authority may be exercised only “... *to the extent consistent with State and local law.*” 8. U.S.C. § 1357(g)(1) (emphasis added). Virginia exercised precisely that authority when it enacted Va. Code § 15.2-1726.1. The statute neither regulates federal officers nor prohibits the federal government from enforcing federal immigration law. Rather, it establishes the terms under which Virginia’s own local and state officers and resources may voluntarily participate in federal immigration enforcement. Those legislative judgements reflect substantial state interests, including promoting effective and trustworthy policing, protecting the Commonwealth’s economic and fiscal interests, and limiting unnecessary exposure to legal liability.

As the Commonwealth has explained, Virginia local law enforcement has the authority to

contract with, or end contracts with, ICE and DHS to assist with immigration enforcement. Va. Code § 15.2-1726.1 recognizes that right and implements criteria with which 287(g) contracts must comport.¹⁰ Contrary to the United States’s contention that this law dictates “how Federal agents must operate” and presents “an obstacle to the accomplishment of a Federal objective,” Va. Code § 15.2-1726.1 controls only the actions of State and local law enforcement agencies. The contents of 287(g) contracts remain entirely within the control of the federal government, as does the decision to accept – or not accept – the nonnegotiable baseline terms the State has seen fit to impose by legislation. ECF No. 1, p.10,11. Under Va. Code § 15.2-1726.1, the United States is free to either accept the Commonwealth’s conditions or forgo the contracts that it repeatedly stresses are “voluntary.” *See* ECF No. 1, pg. 25 ¶ 80; ECF No. 9, pgs. 1, 4, 20, 23, 30. Virginia’s legislature passed Va. Code § 15.2-1726.1 for sound public policy reasons that serve to protect the people of the Commonwealth, ensure that Virginia law constraining the powers and creating duties for its own law enforcement are faithfully followed, and to protect the Commonwealth itself from liability.

The United States also contends that “states cannot pass laws that substantially impair contracts without a legitimate public purpose.” ECF No. 1 at 9 (citing *Balt. Teachers Union v. Mayor of Balt.*, 6 F.3d 1012, 1018-19 (4th Cir. 1993)). Va. Code § 15.2-1726.1 serves multiple legitimate purposes, all to the benefit of the Commonwealth. First, § 15.2-1726.1 benefits public safety and other important policy concerns by ensuring that all people may avail themselves of local law enforcement without fear of retaliation, thereby making communities safer. Second, §

¹⁰ The Contract Clause argument raised by the United States is difficult to understand on a fundamental level, given that the State is not regulating the contracts of *others*, but rather regulating contracts of a subdivision of *itself*. On a fundamental level, for a contract to exist, there must be a “meeting of the minds.” If a State cannot lay out its own take it or leave it terms for its own subdivisions, especially considering that “the duties and compensation” of constitutional officers like Virginia Sheriffs “shall be prescribed by general law or special act,” Va. Const. Art. 7, §4, then the 287(g) contracting process can no longer be considered truly voluntary.

15.2-1726.1 safeguards against significant negative economic effects, from increased childcare costs to decreased GDP and decreased population, by focusing immigration enforcement on criminal actors instead of those who contribute to Virginia's communities and economy. Finally, the § 15.2-1726.1 protects the Commonwealth, its agencies, and local law enforcement from increased legal liability by limiting 287(g) activities that would otherwise be actionable under both federal and state law.

A. Virginia enacted § 15.2-1726.1 to ensure that local participation in 287(g) remains consistent with existing Virginia law

One of the General Assembly's principal interests in enacting Va. Code § 15.2-1726.1 was preserving the effectiveness of local law enforcement. Public safety depends upon victims and witnesses reporting crimes, cooperating with investigations, and seeking protection from law enforcement. When local police become identified with civil immigration enforcement, those relationships deteriorate, making communities less safe for immigrants and non-immigrants alike.

During the 2026 General Assembly, LAJC and our partners educated legislators with numerous studies about the negative impacts unregulated ICE collaboration has on community policing efforts. These studies make clear that collaboration with ICE that is not properly balanced against other public safety concerns prevents immigrant victims of crimes from seeking assistance, prevents immigrants and citizens with information from reporting it to police, and makes jurisdictions less safe.

When local law enforcement collaborates with ICE absent the safeguards promoted by Va. Code § 15.2-1726.1, immigrants who are victims of crimes, regardless of their legal status, are less likely to report those crimes and seek assistance from law enforcement. This is especially true for immigrant victims of domestic violence, who are “less likely to report abuse when it happens, [and] are more likely to be victims of domestic abuse in the first place.” Rachel Gonzales Settlege,

Uniquely Unhelpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence, 68 RUTGERS L. REV. 1747, 1754 (Summer 2016). This reduced reporting can have devastating consequences; according to the Centers for Disease Control “[m]ore than half of female homicide victims were killed in connection with intimate partner violence—and in 10 percent of those cases, violence shortly before the killing might have provided an opportunity for intervention.” Camila Domonoske, *CDC: Half Of All Female Homicide Victims Are Killed By Intimate Partners*, National Public Radio (July 21, 2017), <https://perma.cc/32T4-PF68>.

The restrictions Va. Code § 15.2-1726.1 places on 287(g) operations can increase trust in local law enforcement and protect the victims of crimes. For example, subsection (C)(4)'s limitation on courthouse enforcement protects access to protective orders, criminal proceedings, and other judicial processes that depend upon victim participation. Similarly, subsection (C)(10)'s warrant requirement reassures residents that seeking emergency assistance in their homes will not expose them to warrantless civil immigration enforcement. These provisions strengthen local policing by empowering immigrants to seek aid from local law enforcement and allow officers to protect their communities.

National studies have also shown that unrestricted collaboration with ICE makes minority communities, regardless of immigration status, less likely to support local law enforcement in solving crimes. In a multi-state survey conducted in Cook County, Illinois, Harris County, Texas, Los Angeles, California, and Maricopa County, Arizona, Latinos, both immigrant and citizen, indicated that concerns about civil immigration enforcement deter them from providing information to the police. Specifically, 45 percent of Latinos, and 67 percent of undocumented Latinos, stated that they are less likely to volunteer information about a crime because they are afraid to be questioned about their immigration status. Nik Theodore, *Insecure Communities*

Latino Perceptions of Police Involvement in Immigrant Enforcement, 5-6, University of Illinois at Chicago (May 2013). Not only does this frustrate local police efforts, but it also negatively impacts valid immigration objectives focused on the removal of violent offenders whose crimes may otherwise go unreported.¹¹

The notion that freewheeling civil immigration enforcement by state and local actors may dampen reporting is not foreign to the justice system. Our current immigration regulations explicitly contemplate this fact, and created the U-visa to encourage undocumented immigrants to report crimes and cooperate with police, and to “help[] law enforcement agencies to better serve victims of crimes.” Victims of Criminal Activity: U Nonimmigrant Status, U.S. Citizenship and Immigration Services (July 9, 2026 1:16 PM) <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>. Virginia’s legislation works alongside federal regulations to further the important goal of keeping victims and Virginia communities safe.

These concerns illustrate why courts have long recognized that federal actions that interfere with the workings of state criminal systems create tension, sometimes irreconcilably, with the sovereign interests of states. *See Younger v. Harris*, 401 U.S. 37, 750 (1971) (“Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts.”) The baseline conditions under Va. Code § 15.2-1726.1 serve to balance permissible cooperation with federal immigration enforcement against these core sovereign functions of the Commonwealth.

¹¹ Contrary to the United States’s assertions in its Complaint (see e.g. ECF No. 1, 39, p.131), immigrants do not commit an outsized number of crimes; the crime rate among immigrants is the same, or lower, than that of citizens. See e.g. *Debunking the Myth of Immigrants and Crime*, Fact Sheet, American Immigration Council (Oct. 2024); Butcher, Kristin F. and Anne M. Piehl, *Why are Immigrants’ Incarceration Rates so Low? Evidence on Selective Immigration, Deterrence, and Deportation*.” NBER Working Paper No. 13229. Cambridge, Massachusetts: National Bureau of Economic Research (2007).

B. Va. Code § 15-2-1726.1 protects the financial and economic interests of the Commonwealth and its residents

Virginia has a substantial sovereign interest in protecting the stability of its workforce and economy, as immigrants account for an outsized share of the Commonwealth's recent population growth and labor force, making them integral to Virginia's economy. Unrestricted, large-scale civil immigration enforcement have an overwhelmingly negative impact on the Commonwealth and its residents. Virginia relies on immigrants, both documented and undocumented, to bolster the workforce, contribute state and local taxes, and raise the Commonwealth's gross domestic product. Mass departure of immigrants due to deportation or government threats creates additional strain on state programs, increases the cost of living, and may stymie Virginia's recent population growth.

In 2023 Virginia experienced its first positive population growth in ten years; more people moved to the Commonwealth than left, and most of them were immigrants. Yancey, Dwayne, "Virginia's population growth is driven mostly by immigration," Cardinal News (Dec. 23, 2024). In 2020, immigration accounted for only 12.3% of state population growth; in 2023, that percentage jumped to 73.3%. *Id.* Immigrants are driving population growth, which in turn fills gaps in the workforce and strengthens the state economy. The safeguards instituted by Va. Code § 15.2-1726.1 protect the immigrant population from overzealous enforcement policies and hostile municipal environments, thereby safeguarding Virginia's newfound population growth and economic opportunity.

Documented and undocumented immigrants contribute significantly to Virginia's workforce and tax revenue. 73% of immigrants participate in the workforce, as opposed to only 64% of non-immigrants. *Profile of immigrants in Virginia*, Vera Institute (March 2025). 53,400 Virginia immigrants are entrepreneurs. *Id.* In Virginia, immigrants account for 25% of all childcare workers. The Commonwealth Institute, *The Economic and Fiscal Impacts of Mass Deportation: What's at*

Risk in Virginia (June 24, 2025). With childcare costs at the forefront of nationwide economic conversations, large-scale deportation could decrease the number of childcare workers across the state, driving up the cost of the service for struggling Virginia families. When childcare facilities are understaffed or forced to close, and prices increase, more working women leave the workforce to care for their children at home, further damaging the economy. East, Chloe, “The labor market impact of deportations,” Brookings (September 2024). Immigrants also account for 25% of the food services and construction industries in Virginia. The Commonwealth Institute, “The Economic and Fiscal Impacts of Mass Deportation: What’s at Risk in Virginia” (June 24, 2025). In both of these industries, a smaller workforce drives up the cost of services, and increases the cost of living for Virginians. *Id.* When local law enforcement collaborates with federal immigration unrestrictedly, the workforce loses immigrant workers through deportation, but also through voluntary departures to friendlier states, and Virginians shoulder the consequences.

Immigrants also pay significant state and local taxes that benefit the Commonwealth at large. Contrary to popular narratives, undocumented immigrants in Virginia are overwhelmingly employed and pay taxes. According to the American Immigration Council, undocumented Virginians pay \$538 million each year in taxes, including \$189.7 million in state and local taxes. *Economic Cost of Virginia House Bill 2270 and Senate Bill 1156*, American Immigration Council (February 13, 2019). This report analyzed the potential impacts of expanded local participation in civil immigration enforcement on the Virginia economy, modeled on a similar immigrant exodus after crackdown in Arizona. The model predicted that if just 10% of undocumented Virginians leave or are forced to leave, the state would lose 15,965 employed workers, and another 8,298 jobs would be lost due to the downstream effects of fewer consumers and businesses. *Id.* This would cut more than \$1.4 billion in GDP for the state. *Id.* Va. Code § 15.2-1726.1 creates stopgaps to

encourage intentional, targeted immigration enforcement by local law enforcement, which mitigates the damaging impact that increased immigration enforcement through local officers could have on the Virginia economy.

In addition to the negative impact broad-strokes enforcement on the workforce and economy, the loss of immigrant parents creates additional strain on public services. In Virginia, one in four children has at least one immigrant parent. “Profile of immigrants in Virginia,” Vera Institute (March 2025). 89% of those children with an immigrant parent were born in the United States and are citizens. *Id.* When immigrant parents of minor children are removed, those children become dependent on the state to fill the gap their parents left. Unregulated local ICE cooperation puts more financial and logistical pressure on the state foster care system, SNAP, TANF, and Medicaid, stretching those resources to meet the increased need and stressing the Commonwealth’s social safety net.

The reasonable limitations Va. Code § 15.2-1726.1 places on local law enforcement’s 287(g) contracts focuses local and federal immigration enforcement on criminal actors, rather than the immigrants who contribute to Virginia’s communities and economy. By encouraging reasonable enforcement mechanisms, the law protects Virginia from the disastrous impacts of unregulated enforcement collaboration on state and local taxes, the Virginia workforce, and Virginia’s GDP.

C. Va. Code § 15.2-1726.1 protects the Commonwealth, its agencies, and local law enforcement from increased liability based on 287(g) contracts and activity

The protections offered by Va. Code § 15.2-1726.1 ensure that local law enforcement who do enter into 287(g) contracts do so in a manner that comports with local and Constitutional law, limiting the State’s risk of liability. For example, section (c)(2) requires that, if a locality enters into a 287(g) agreement, the contract must ensure that agents operating pursuant to the agreement do so in accordance with the laws of the Commonwealth. Section (c)(10) prevents potential Fourth

Amendment and tort violations committed through warrantless home invasion, and section (c)(11) requires that 287(g) agreements comply with Va. Code § 19.2-83.3 et seq. Through Va. Code § 15.2-1726.1, Virginia seeks to prevent state and local taxpayer funds from being unnecessarily siphoned from their intended, public purpose to compensate for judgments that, under the United States' interpretation of law, the Commonwealth would have limited to no ability to prevent or mitigate.

The potential for lawsuits and monetary damages against ICE is not an abstract one. In 2021, Carlos Rios, a United States Citizen detained by ICE for seven days, settled his claims against the United States, including ICE, for \$125,000. Matt Adams, "U.S. Government Agrees to \$125,000 Settlement for U.S. Citizen's 7-Day Detention at the Northwest Detention Center" Northwest Immigrant Rights Project, (September 21, 2021) <https://perma.cc/B2N6-MAN3>. In a class action lawsuit in the Central District of California, ICE agreed to pay \$675,000 in attorney's fees. *Gonzalez et al. v. Immigration and Customs Enforcement et al.*, Class Action Settlement Agreement and Release, No. CV 13-04416 AB, p. 26 (Nov. 25, 2024). These suits continue to be brought around the country; a Texas plaintiff just survived ICE's motion to dismiss her lawsuit seeking \$2 million in damages. *Moreno v. United States*, 826 F. Supp.3d 835 (W.D. Texas, March 25, 2026). If local law enforcement were implicated in these or similar suits, it could spell disaster for the agency, the locality, and its residents.

In § XIV of the MOA, "Liability and Responsibility[.]" the MOA states "the [Law Enforcement Agency] will be responsible and bear the costs of participating [Law Enforcement Agency] personnel regarding their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability." App. at 7-8. Through this clause, ICE shifts to the locality and the Commonwealth all responsibility for the lives and livelihoods of Virginia officers.

This opens up individual officers up to significant harm, such as medical debt and lawsuits, and subjects municipalities and the Commonwealth to potentially disastrous financial consequences in the form of worker's compensation claims, civil rights suits, and, in the worst possible case, wrongful death lawsuits.

Despite this broad waiver of liability, the United States claims that Section 287 purports to convey both federal immunity and liability under the Federal Tort Claims Act (FTCA) to Virginia and its law enforcement agencies. 8 U.S.C. § 1357(g)(7) & (g)(8). As an initial matter, this is yet another example of how the United States' interpretation of 8 U.S.C. § 1357 (g) would allow state and local law enforcement to step outside of their own state's laws by virtue of contract, irrespective of whether State law authorizes them to subject themselves to FTCA liability or not. As for immunity, a straightforward reading of 287(g)(7) suggests that a local sheriff may unilaterally, by contract, step outside of the rules of liability carefully constructed by the Virginia General Assembly and state case law. Like many other aspects of 287(g), this interpretation creates an irreconcilable encroachment on Virginia's sovereignty.

Irrespective of whether federal or state immunity rules apply, and irrespective of stipends and personnel reimbursements under the service agreements, any judgments arising out of 287(g) fall on Virginia and its law enforcement agencies and, by extension, the taxpayers they serve. Ultimately, the consequences of these judgments would adhere to the State itself, whether through compensating for local budget shortfalls or other increased demand to fund depleted local law enforcement budgets. This means that a taxpayer in Fairfax County, which is not likely to enter a 287(g) contract in the immediate future, may still have their tax dollars redirected to compensate for the financial vacuum created when inexperienced local law enforcement acting in a complicated area of law is sued and subjected to costly judgments and legal fees.

The Commonwealth also has a substantial interest in regulating the training standards associated with activities that expose its officers to liability. Current Task Force Model certification consists of approximately forty hours or less of webinar instruction followed by an examination requiring only a passing score of seventy percent. Meanwhile, the substantive training materials remain unavailable to the public despite repeated state and federal FOIA efforts. A federal FOIA enforcement lawsuit by American Oversight currently pending in the U.S. District Court for the District of Columbia, which sought 287(g) training materials from ICE, has so far not resulted in production of any training materials despite having been filed over a year ago. *American Oversight v. U.S. Customs and Immigration Enforcement*, 1:2025-cv-01987, ECF No. 18 (D.D.C. July 9, 2026) (status report showing that training materials have still not been provided by ICE over a year after suit was filed, although may be provided at the end of July, 2026). Virginia reasonably concluded that it should retain authority to limit participation in activities carrying substantial legal risk when the content and adequacy of the federal training cannot be independently evaluated.

So, while the United States asserts that “the only purpose behind the 287(g) Restriction is a disagreement with the Federal Government’s immigration policies[.]” nothing could be further from the truth. Setting aside the many other ways in which 287(g) encroaches on powers and interests central to the sovereignty of the Commonwealth, the United States demands that Virginia cede all control over its own exposure to judgments and legal defense costs – and get nothing in return. This stretches the characterization of § 287(g)(9) that these contracts are “voluntary” beyond all credulity, and creates irreconcilable tension with Virginia’s basic sovereign powers.

CONCLUSION

If 287(g) contracts are truly voluntary as the United States claims, then there must be a meeting of the minds. By enacting Va. Code § 15.2-1726.1, the Commonwealth exercised its own sovereign authority to establish non-negotiable baseline terms for such a meeting of the minds for

itself or any of its component subdivisions. All of these baseline terms are grounded in the legitimate interests of the Commonwealth, including public safety, economic stability, fiscal responsibility, and limiting legal liability, and to powers reserved to the Commonwealth under the Tenth Amendment. The United States has the freedom to either accept those terms or decline to do so to enter into these contracts in Virginia. What it may not do is insist that Virginia relinquish its authority to define the powers and duties of its own officers as the price of participating in a voluntary federal program.

Nothing in Va. Code § 15.2-1726.1 withdraws authority that Virginia officers previously possessed; rather, the statute provides the legislative authorization and limitations necessary for state and local participation in a federal program that Congress itself made contingent upon state law. The United States' contrary position would transform a voluntary cooperative program into a mechanism by which the federal government dictates the powers of state and local officials, contrary to both the text of 8 U.S.C. § 1357(g) and the constitutional principles of federalism embodied in the Tenth Amendment's anti-commandeering doctrine. This approach strains the meaning of the term "voluntary" beyond any reasonable interpretation, and amounts to a demand that the Commonwealth cede control over its own law enforcement to the federal government. Because § 287(g) contemplates voluntary contracts, Virginia's decision to define the scope of its own consent neither conflicts with federal law nor frustrates Congress's objectives.

For these reasons, Amicus Legal Aid Justice Center respectfully urges the Court to deny the United States' motion for a preliminary injunction.

Dated: July 15, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

DATED: July 15, 2026

/s/ Alex Kornya