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RE: OHIO Senate Bill 260

STATEMENT OF OPPOSITION

We write to express serious concerns over SB 260 which would allow a county sheriff, at the direction of the board of county commissions and upon request of federal immigration officials, to assist those federal officials in investigating, apprehending, and detaining aliens who violate criminal or civil provisions of federal immigration law and also "clarifies" that state and local employees may assist in such activities.

The bill is apparently in response to Opinion of the Attorney General of Ohio that while a county sheriff may enter into a written agreement with federal Immigration and Customs Enforcement (ICE) or Department of Homeland Security (DHS) regarding the enforcement of criminal provisions of federal immigration law, a county sheriff may not under Ohio law enter into such an agreement with regarding to enforcement of **civil** provisions of federal immigration law.¹ These written agreements authorized under 8 U.S.C. § 1357(g), commonly known as 287(g), are controversial mechanisms through which local governments seek authorization to enforce federal immigration laws.

Such a plan runs contrary to sound public policy. As cited in the Immigration Committee Recommendations of the Major Cities Chiefs in June, 2006, police agencies must "balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities."² That document carefully lays out the reasons local police agencies **should not** enforce federal immigration laws. The document recognizes that local police agencies must "balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities." It lists the following areas which should be taken into account:

1. Undermine Trust and Cooperation of Immigrant Communities.
2. Lack of Resources
3. Complexity of Federal Immigration Law
4. Lack of Local Authority and State Law Limitations of Authority
5. Risk of Civil Liability

The law enforcement partnership program does not offer additional resources for enforcement of federal immigration laws. While it does provide training, the complexity of immigration laws almost guarantees that your local officers will make mistakes. Civil aspects of immigration law enforcement are clearly different from what your patrol officers currently face.

More importantly, if county sheriffs take on federal immigration enforcement responsibilities you will ensure that immigrant communities will not call the county sheriff's office even if they are lawful permanent residents for fear that they and their families will be investigated. These same residents are the people you rely upon for cooperation in police investigations and could possibly alert the local police to a threat to homeland security. County sheriffs should be encouraging the respect and trust of all residents of their community. These same residents would be called upon for cooperation in a public health emergency and must be able to trust local authorities.

Of utmost concern to us is the fact that if a county sheriff is involved in enforcement of civil provisions of immigration laws, racial profiling will increase. County sheriffs working on a memorandum of agreement with the federal government will want to make arrests of "illegals" and will resort to questioning all Latinos in an effort to find those who are undocumented, following the stereotypes of undocumented as only Mexicans. The United States Department of Justice has explained that

¹ 2007 Op. Att'y Gen. No. 2007-029

² http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf

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racial profiling occurs when the use of race or ethnicity is a criterion in conducting stops, searches and other law enforcement investigative procedures. Law enforcement agencies receiving federal funds must comply with discrimination prohibitions pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et. seq.*

When weighing the factors involved, Ohio must understand that authorizing a local sheriff to enforce civil provisions of immigration laws will undermine trust and cooperation of immigrant communities; and create a risk of civil liability if mistakes are made applying federal immigration law that is very complex.

In a heartbreaking example of what can happen when local counties try to enforce immigration laws, a woman was held for four days in an isolated holding cell in a courthouse in Fayetteville, Arkansas with no food, water or toilet . A judge had ordered her to be held after pleading not guilty to selling pirated CDs because she was undocumented. She was to be held for transport to jail and somehow forgotten.³

MALDEF recently settled a case against the Sheriff's Department of Otero County, New Mexico arising out of alleged violations of the civil rights of community residents during immigration sweeps last year. While the Sheriff's Department denied any wrongdoing, it agreed to revise policies in order to provide more effective law enforcement and to focus its attention on persons suspected of committing crimes. The settlement included attorneys' fees and payment to the plaintiffs of monetary damages.

As a result of the settlement agreement, the Otero County Sheriff agreed that it would not stop, investigate, detain or question a person solely for the purpose of determining whether such a person is in the United States without authorization and proper documentation; that a person's presence in the United States without proper documentation or authority alone, is not a criminal violation, and that the Department would not use a pretext to ascertain information about an individual's civil immigration status; would not inquire into a person's immigration status when conducting a criminal investigation of a petty misdemeanor and can only inquire into a person's immigration status during a criminal investigation and under particular circumstances.⁴ The Department is not therefore to be involved in **civil** immigration laws but continues to cooperate and coordinate with federal, state, and other departments in enforcing criminal laws.

Ohio should heed the lessons of Otero County and ensure that county sheriffs do not get involved in civil immigration laws. The likelihood of racial profiling is substantial and threatens to create distrust, threatening community cooperation, information sharing and intelligence gathering that are critical components of effective law enforcement. Unfortunately, our country has a history that includes discrimination based on race and racial profiling. Passage of this bill will further that legacy.

Thank you,

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About MALDEF: *The Mexican American Legal Defense and Education Fund is a national civil rights organization dedicated to protecting the civil rights of Latinos in the United States through advocacy, litigation, and other activities for the past 40 years. Our office has been working with and on behalf of Latino communities throughout the Midwest since 1980.*

About LULAC: *The League of United Latin American Citizens, better know as LULAC (www.lulac.org), the oldest and largest Hispanic membership organization in the country, advances the economic conditions, educational attainment, political influence, health and civil rights of Hispanic Americans through community-based programs operating at more than 700 LULAC councils nationwide.*

³ See, <http://www.msnbc.msn.com/id/23578584>

⁴ See, http://www.lcsun-news.com/news/ci_8870920