I. Issue
Denial of the rights under ICCPR Articles 2, 3, 9, 17, 26 of African Americans and people of Latino origin in the United States by Immigration and Customs Enforcement (ICE) in the Department of Homeland Security.

II. Introduction

1. The 2012 U.S. Census reports that there are 308,745,538 people living in the United States, of whom 42,020,743 are African Americans and 50,477,594 are Latinos. Together, these two racial groups comprise 92 million people – approximately 30% of the U.S. population.

2. The U.S. Report to the U.N. Human Rights Committee failed to mention that acts of racial discrimination were triggered by the manner in which the Immigration and Customs Enforcement (ICE) has implemented section 287(g) of the Immigration and Nationality Act (INA), thereby heavily targeting African Americans and people of Latino origin in the U.S. State authorities who enter into Memoranda of Agreements (MOAs) with the federal government under the ICE program extend their jurisdictions and powers in law and immigration enforcement. This marked a significant shift in responsibility from the federal government to state and local law enforcement of civil immigration laws. Instead of preventing racial discrimination as intended, the MOAs signed under 287(g) enable racially charged actions against minorities because there is a lack of federal oversight and funding of ICE.

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1 This report was prepared by Jonathan Trinh, earning his B.A. from the University of California, Berkeley, while as an intern at Meiklejohn Civil Liberties Institute in the fall of 2012, with additions by Lucy Rodriguez, Immigration Lawyer on the MCLI Board of Directors.


Since 2006, ICE has signed MOAs with 68 law enforcement agencies in 24 of the 50 states.  

III. Relevant Articles
1. This shadow report presents facts which should have been included in the U.S. Report concerning the failure of the U.S. Government to uphold its obligations under ICCPR Articles 2, 3, 9, 17.

IV. Articles 2 and 26
1. The stated aim of the federal Immigration and Customs Enforcement (ICE) Program was to eliminate racial and ethnic discrimination in the United States. It delegated federal jurisdiction in immigration policy to state and local law enforcement, but with no federal oversight powers to monitor the execution of the program’s goals. See U.S. Report Paragraph No. 600.
2. The ICE Program, under its 287(g) clause and MOAs, enables state and local law enforcement agencies to practice racial discrimination and target African American, Latino and other ethnic minority populations. Its basic premise violates the ICCPR by establishing one agency to deal with “immigrants”, who are people with human rights, and “customs,” which are inanimate products with no human rights. Since entering MOAs with the federal government, the traffic stop-and-frisking of ethnic minorities has disproportionately increased compared to whites. These delegations of federal powers occurred mainly in communities with dense Latino populations. 87% of jurisdictions were in communities with a Latino population greater than the national average. See U.S. Report Paragraph Nos. 138, 214, 199, and 600.
3. The stated purpose of 287(g) was to prosecute undocumented immigrants suspected of committing crimes. It was not instituted to permit state and local law enforcement to perform random search operations, such as “day laborer activities” or “traffic offences”. See U.S. Report Paragraph No. 214.
4. The U.S. government has failed to address the complaints directed at 287(g) and other ICE components. The U.S. Government Accountability Office reported that ICE did not have an adequate administrative structure to carry out its functions.
These failures include: The 287(g) program did not outline specific objectives, did not outline how and when 287(g) authority may be used, did not create oversight supervisions over participating state and local agencies, and did not develop a method to measure progress and efficiency of program objectives.
5. Racial profiling arbitrarily rests on the assumption than a particular race or ethnic group is more likely to be found guilty of contraband and illegal conduct than the general public. It is a false premise to use race as an indicator of criminality. See U.S. Report Paragraph No. 676. In New Jersey, the state attorney general issued a directive that limited highway patrol from investigating a driver’s legal status in the U.S. unless this indicated a legal offence had occurred.

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6 ICE Fact Sheet.
However, police ignored this directive and submitted over 10,000 Hispanic individuals they suspected to be undocumented following six-months of stop-and-frisking. Only 1,417 of the ten thousand were charged with immigration offenses by ICE and the federal government.  

6. In New York City, NYPD stopped and frisked over 680,000 individuals in 2011, (U.S. Report Paragraph No. 600), 87% of those individuals over the last decade were of African American or Latino decent. 9 out of 10 were found innocent of any wrongdoing. This data indicates that racial profiling is a disturbing trend that yields illegal immigration and drug crackdowns.

7. The U.S. Report did not report that the revised ICE and 287(g) program failed to improve the situation and improved ICE officer training and employing 19 full-time oversight positions at ICE has not remedied racial profiling at state and local enforcement agencies. From 2010 to 2012, the ICE 287(g) budget stagnated at $68 million while the number of arrests and detentions of African American and Latino origin persons increased.

8. NYPD officers were expected to stop and frisk more individuals each year. If officers fail to meet the sliding quota standard, they are subject to disciplinary action. The quota system provided incentives of promotion for officers, executives, and commanders. Therefore, stop and frisks was not a proactive tool to target criminals. It was a corrupted policy that punished state or local authorities who failed to meet the quota, regardless of the suspects’ actions. African American and Latino origin persons were more likely to be stopped because of this quota policy. U.S. Report Paragraph No. 600. In addition, the stagnant ICE program-funding did not change in relation to an increase of stops performed by state and local authorities.

V. Article 3
1. In 2008, racial profiling was tracked in Arizona. Data found that African American and Latino drivers were 2.5 times more likely than whites to be stopped and searched by Arizona’s highway patrol officers. These stops and frisks did not lead to the arrests of suspects. After the Department of Public Safety agreed to address the frequency of stops and searches, the agency itself published data that showed no improvement.

2. The ICE program lacked funding and oversight authority to administer the proper and effective implementation of its operations. Government entities, research institutions, and civil society found that the 287(g) program lacked transparency and oversight, which results in inconsistent use of authority and the racial profiling of ethnic minorities by state and local law enforcement agencies.

VI. Articles 9 and 17

9 ICE Fact Sheet.
11 ACLU Report, p. 41.
1. Neighborhood sweeps were also in violation of prohibitions against racial profiling. In April 2008, Maricopa County Sheriff Joe Arpaio of Arizona, who signed the most comprehensive MOA with the federal government, conducted a raid on a predominantly Latino community near Phoenix. Over 100 deputies stopped and aggressively searched for undocumented immigrants in residential and business areas, which led to the arrest and detention of many Latinos. After terrorizing the town for two days, the state and local force only found and deported nine undocumented immigrants.\(^{13}\) U.S. Report Paragraph Nos. 214 and 556.

VII. Recommended Questions
1. Based on the information in this report, the Human Rights Committee may conclude that the U.S. Immigration and Customs Enforcement and its manner of implementing MOAs under 287(g) are in violation of Articles 2, 3, 9, 17, and 26 of the ICCPR, and that the U.S. Government will not be in compliance with the Covenant until it closes ICE and establishes a new agency that deals only with human beings who have human rights. This new agency must have increased funding for oversight work in proportion to the increase of arrests, detentions, and deportations of more persons of African American and Latino origin in stop and frisks on streets, neighborhoods, or highways. The new agency must charge more state and local law authorities who fail to comply with new standards; address the inefficiency of stop and frisks in locating criminals and undocumented immigrants; revoke existing MOAs with jurisdictions who fail to properly utilize civil immigration powers as delegated under ICE and 287(g); and revoke existing MOAs where there are conflicts of interest including internal incentives for stop and frisking.

The Committee may provide in its Concluding Observations on the 2011 report of the U.S. that only with these changes will persons of Black or African American and Latino origin realize their equal protection under the ICCPR and U.S. Law.

2. The Committee may also decide to commend the jurisdictions that have voted not to work with ICE officials when they seek to make arrests in their jurisdictions because of the violations of human rights by ICE officials. See U.S. Report Paragraph Nos. 214 and 600.

3. The Committee may also want to commend the State Legislature of California for adopting ACR 129 in August 2010, which describes U.S. ratification of the ICCPR, ICAT and ICERD and requests the Attorney General of California: 1) to publicize the text of the three treaties to state, county, and city bodies, and 2) to prepare templates that can be used by local government officials to make the required reports to the UN Human Rights Committee and the UN Committee Against Torture and the UN Committee on Elimination of Racial Discrimination.\(^{14}\)

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\(^{13}\) ACLU Report, pp. 42-43.

\(^{14}\) ACR_129_bill_20120314_introduced.pdf