

October 25, 2023

Secretary Alejandro Mayorkas  
U.S. Department of Homeland Security  
2707 Martin Luther King, Jr. Avenue, SE  
Mail Stop #0190  
Washington, DC 20528-0190

Re: The 287(g) Immigration Enforcement Program Should Not Be Expanded to New Hampshire

Dear Secretary Mayorkas:

On behalf of a coalition of New Hampshire-based civil and immigrants' rights organizations, we write to express our deep concerns about the 287(g) program and the March 13, 2023 request of New Hampshire Governor Chris Sununu to expand that program to New Hampshire law enforcement agencies.

The undersigned urge the Department of Homeland Security to deny Governor Sununu's request to expand the 287(g) program to New Hampshire for two reasons:

First, Governor Sununu's March 13, 2023 letter to Secretary Alejandro Mayorkas requesting that ICE enter into a Section 287(g) agreement with New Hampshire law enforcement agencies is premised on the assertion that there is a "crisis" along the New Hampshire-Canada border. There is no data to support such an assertion.

Allegations of an increase in unauthorized crossings along the New Hampshire-Canada border have come from both Governor Sununu and New Hampshire Department of Safety Commissioner Robert Quinn. Governor Sununu stated in his March 13 letter that there is an "alarming rise in border crossings," and his proposed state budget requested over \$1.4 million for the creation of a Northern Border Alliance Program to "establish a task force of state, county, and local law enforcement officers to patrol the roads, highways, and state forest land along the border to detect and deter illegal activity and to prevent any further escalation of the humanitarian crisis facing our borders."<sup>1</sup> (This program was authorized and funded in the final approved budget<sup>2</sup> and, on October 19, 2023, Governor Sununu and New Hampshire Attorney General Formella announced the creation of a Northern Border Alliance Task Force to implement the program.<sup>3</sup>)

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<sup>1</sup> Letter from Governor Chris Sununu to Secretary Alejandro Mayorkas, March 13, 2023.

<sup>2</sup> New Hampshire General Court, HB 2, (2023), available at [https://www.gencourt.state.nh.us/bill\\_status/billinfo.aspx?id=1081&inflect=2](https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1081&inflect=2)

<sup>3</sup> New Hampshire Department of Justice, Law Enforcement Memorandum, Northern Border Alliance Task Force, Oct. 19, 2023, available at <https://www.doj.nh.gov/news/2023/documents/20231019-ag-le-memo-re-northern-border-alliance-task-force.pdf>.

In addition, in Commissioner Quinn's March 28, 2023 testimony before the U.S. House of Representatives Committee on Homeland Security Subcommittee on Oversight, Investigations, and Accountability, he stated that New Hampshire has "seen an increase in crossings." He noted, however, that the increase in New Hampshire has not been as significant as along Canada's border with Vermont.<sup>4</sup> As reported in the *Boston Globe*, Commissioner Quinn also appeared on Fox News on March 27, 2023 and told viewers that New Hampshire had seen a "slight increase" in illegal crossings.<sup>5</sup>

We have seen no evidence to support any of these statements concerning New Hampshire's border. Governor Sununu and Commissioner Quinn have been unable to produce any documentary evidence indicating that such a "slight increase" in unauthorized crossings has occurred at the New Hampshire-Canada border from October 2022 to January 2023.<sup>6</sup> The American Civil Liberties Union of New Hampshire (ACLU-NH) submitted state public records requests to Governor Sununu and the New Hampshire Department of Safety seeking data around any unauthorized crossings along the New Hampshire-Canada border during this four-month time period. Both entities responded that they did not have any responsive documents.<sup>7</sup>

After Commissioner Quinn's public statements, the *Boston Globe* and the ACLU-NH also inquired about the data supporting Commissioner's statement that there has been a "slight increase" in illegal crossings at the New Hampshire-Canada border. The spokesperson for the New Hampshire Department of Safety indicated that a federal Customs and Border Protection (CBP) supervisor provided this information to the New Hampshire Information and Analysis Center. The Department of Safety later added in a communication with the ACLU-NH that "Commissioner Quinn's 'slight increase' comment was not based on any written/electronic document and was the product of only verbal communication from CBP." However, CBP has since refused to produce any documentation supporting any "slight increase" claim it may have communicated to the New Hampshire Department of Safety, which has led to recent FOIA litigation initiated by the ACLU-NH.<sup>8</sup> In fact, New Hampshire television station *WMUR* has reported that no crossing was "recorded in New Hampshire" between October 2022 and January 2023, which further undermines this assertion.<sup>9</sup>

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<sup>4</sup> Testimony of Robert L. Quinn, Commissioner, Department of Safety, State of New Hampshire, Subcommittee on Oversight, Investigations, and Accountability hearing: "Biden's Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border", Mar. 28, 2023, available at <https://homeland.house.gov/media/2023/03/3.28.23-Witness-Testimony.pdf>.

<sup>5</sup> Amanda Gokee, "Sununu's proposal to increase border patrol under fire," *Boston Globe* (Mar. 31, 2023), <https://www.bostonglobe.com/2023/03/31/metro/sununus-proposal-increase-border-patrol-under-fire/>.

<sup>6</sup> Amanda Gokee, "Sununu's proposal to increase border patrol under fire," *Boston Globe* (Mar. 31, 2023), <https://www.bostonglobe.com/2023/03/31/metro/sununus-proposal-increase-border-patrol-under-fire/>.

<sup>7</sup> New Hampshire Right to Know request responses from Governor Sununu and the Department of Safety on file with the ACLU of New Hampshire.

<sup>8</sup> <https://www.aclu-nh.org/en/cases/aclu-new-hampshire-v-us-customs-and-border-protection-0>.

<sup>9</sup> Marissa Tansino, "New Hampshire governor budgets nearly \$1.5 million in funding for northern border safety," *WMUR* (Mar. 10, 2023), <https://www.wmur.com/article/new-hampshire-governor-budget-northern-border-safety-323/43266455#>

It seems, given state officials' lack of actual documentary evidence supporting their assertions, that these public statements were principally based on January 25, 2023 and February 13, 2023 press releases issued by CBP claiming significant increases in the number of Swanton Sector apprehensions from October 1, 2022 to January 31, 2023.<sup>10</sup> However, these statistics are not specific to New Hampshire, but rather cover the entire Swanton Sector. The New Hampshire-Canada border only constitutes about 58 of the 295 miles of Canadian border in the Swanton Sector.

The only recent publicly-known arrests involving unauthorized crossings at the New Hampshire-Canada border occurred since June, long after the claims made by Governor Sununu and Commissioner Quinn. In June, CBP agents arrested a group of individuals near Pittsburg, New Hampshire. This seizure was executed by federal agents after they were alerted by Canadian authorities.<sup>11</sup> It does not appear that local law enforcement was involved. As part of her comments around the arrest, U.S. Attorney for the District of New Hampshire Jane Young noted that this was the first arrest on smuggling related charges in at least the last 14 months.<sup>12</sup> A second seizure took place on September 3, 2023 as reported by the U.S. Department of Justice, which was also conducted by federal agents (U.S. Border Patrol), but where the crossing occurred in Vermont.<sup>13</sup>

Second, even if additional cases of unauthorized crossings along the New Hampshire-Canada border have occurred (and, again, there is no evidence supporting this), the costs of enmeshing local law enforcement agencies in the business of federal civil immigration enforcement far outweigh the benefits. Many immigrants fear interacting with law enforcement when they perceive a risk of being separated from their families and deported.<sup>14</sup> When the public isn't sure whether police are there to protect or deport them, crimes don't get reported and domestic violence survivors stay silent rather than calling 911.

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<sup>10</sup> CBP, "Increased Illicit Border Crossings Carry Higher Risk in Winter Months" (Jan. 25, 2023), <https://www.cbp.gov/newsroom/local-media-release/increased-illicit-border-crossings-carry-higher-risk-winter-months>; CBP, "Border Patrol's Swanton Sector Apprehensions & Encounters Reach Historic Highs" (Feb. 13, 2023), <https://www.cbp.gov/newsroom/local-media-release/border-patrol-s-swanton-sector-apprehensions-encounters-reach-historic>.

<sup>11</sup> Todd Bookman, "Man arrested for allegedly helping to smuggle nine people across Canadian border in Pittsburg, NH," NHPR (July 7, 2023), <https://www.nhpr.org/nh-news/2023-07-07/man-arrested-for-allegedly-helping-to-smuggle-nine-people-across-us-canadian-border-in-pittsburg-nh>.

<sup>12</sup> Amanda Gokee, "Sununu's proposal to increase border patrol under fire," *Boston Globe* (Mar. 31, 2023), <https://www.bostonglobe.com/2023/03/31/metro/sununus-proposal-increase-border-patrol-under-fire/>.

<sup>13</sup> Press Release, Mexican National Charged With Human Smuggling and Illegal Reentry, U.S. Dept. of Justice, Sept. 7, 2023, available at <https://www.justice.gov/usao-nh/pr/mexican-national-charged-human-smuggling-and-illegal-reentry>.

<sup>14</sup> See Nik Theodore, *Insecure Communities: Latino perceptions of police involvement in immigration enforcement* (Univ. of Ill. 2013), available at [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF) (last visited July 13, 2023).

Leading law enforcement voices<sup>15</sup> agree with our opposition to the entanglement of immigration enforcement with local policing, and the 287(g) program's failed history is well documented, including by the DHS Inspector General.<sup>16</sup> This letter also raises civil rights concerns about proposed jurisdictions in New Hampshire which would participate in this program, including the New Hampshire State Police (which is a division of the New Hampshire Department of Safety). The New Hampshire Department of Safety is charged with overseeing the state's new Northern Border Alliance Program.<sup>17</sup>

As detailed below, our coalition has submitted evidence about jurisdictions that fall under Governor Sununu's request. These specific infirmities in applicant jurisdictions militate strongly against carrying out the proposed expansion.

We also urge Immigration and Customs Enforcement (i) to be more transparent about applications (which are not made public, even in part) and (ii) to hold public meetings with state/local officials in communities where an application for the 287(g) program has been submitted. Without such transparency, the public's views are not appropriately considered in the decision-making process, nor will the types of specific concerns raised below be uncovered. Extending 287(g) agreements to these proposed jurisdictions also runs the serious risk of further sully the program's record by collaborating with at least one law enforcement agency that, as explained below, aggressively promotes pretextual policing that, according to one terminated trooper, encourages some troopers to "push the envelope," thereby leading to civil rights concerns. The bottom line is that 287(g) agreements cost localities money while damaging public safety and community trust in law enforcement.

We are particularly concerned because the State Police, the state's largest law enforcement agency, has a history of engaging in pretextual police stops where questions of racial bias have been raised.<sup>18</sup> While limited data is available on the racial demographics of those stopped by the

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<sup>15</sup> Statement of Chief J. Thomas Manger, Chairman of the Legislative Committee for the Major Cities Chiefs Association, "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law." House Committee on Homeland Security (Mar. 4, 2009), available at <https://www.gpo.gov/fdsys/pkg/CHRG-111hrg49374/html/CHRG-111hrg49374.htm>.

<sup>16</sup> See generally American Immigration Council, "The 287(g) Program: An Overview." (Mar. 15, 2017) ("A March 2010 report by the DHS Office of Inspector General (OIG) found that ICE and its local law enforcement partners had not complied with the terms of their 287(g) agreements; that the standards by which deputized officers were evaluated contradicted the stated objectives of the 287(g) program; that the program was poorly supervised by ICE; and that additional oversight was necessary."), <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>.

<sup>17</sup> Northern Border Alliance Program, which will be administered by the Department of Safety and which will be focused on the "reduction of the instance of crimes" and "illicit activity" occurring within 25 air miles from the Canadian border. See, New Hampshire General Court, HB 2, (2023), available at [https://www.gencourt.state.nh.us/bill\\_status/billinfo.aspx?id=1081&inflect=2](https://www.gencourt.state.nh.us/bill_status/billinfo.aspx?id=1081&inflect=2)

<sup>18</sup> Paul Cuno-Booth, "Pretextual stops disproportionately affect minorities," *Granite State News Collaborative* (May 22, 2022) ("State Police don't collect comprehensive data on stops and searches, but the limited data suggests the Mobile Enforcement Team has disproportionately stopped Black and Latino drivers for certain minor infractions used as pretexts. In addition, questions about racial bias have been raised in individual court cases."), [https://www.eagletribune.com/news/new\\_hampshire/pretextual-stops-disproportionately-affect-minorities/article\\_ef3ca47a-d866-11ec-9312-eb7241f62428.html](https://www.eagletribune.com/news/new_hampshire/pretextual-stops-disproportionately-affect-minorities/article_ef3ca47a-d866-11ec-9312-eb7241f62428.html).

State Police, what we do know should be sufficient to show why the Department of Homeland Security should not enter into a 287(g) agreement with the State Police. As the *Granite State News Collaborative* found last year in a review of State Police cases, “court records suggest the defendants in those cases [that have been dropped since 2016] are often people of color. In a previous review of drug cases from 2018 to 2020, the *Collaborative* found at least 18 clear examples of pretextual stops by state troopers, mostly [Mobile Enforcement Team] members, in Rockingham County. More than half involved an out-of-state vehicle with at least one Black or Latino occupant.”<sup>19</sup> Equally concerning are the documented “indicators” of crime that the State Police have used to pursue a vehicle in anticipation of a pretextual stop. These “indicators” include driving the speed limit, driving with hands at 10 and 2, driving a rental car, staying in a lane and not passing, smoking a cigarette, reclining in the front seat, not looking at a parked police cruiser when passing it, and wearing a hoodie with the hood up.<sup>20</sup>

Among the most concerning divisions of the State Police is its Mobile Enforcement Team (MET), which was formed in 2015 ostensibly to intercept drugs on New Hampshire highways. The MET has a documented history of having engaged in numerous illegal stops and searches.<sup>21</sup> These details have come to light because of reporting indicating that around at least 17 vehicle stops by the unit between late 2016 and early 2020 were thrown out by judges or prosecutors. In addition, despite making up just 2 and 4.6 percent of the New Hampshire population respectively,<sup>22</sup> Black and Brown occupants were involved in over 50 percent of the 17 illegal stops and seizures.<sup>23</sup> Writing in 2019 about the MET’s “extraordinary policy” around stops, New Hampshire Superior Court Judge Andrew Schulman said the MET has a policy of “what amounts to rolling spot checks based on hunches.”<sup>24</sup> One terminated MET trooper even

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<sup>19</sup> Paul Cuno-Booth, “Lawsuit alleges N.H. state trooper profiled Latino driver in 2019 traffic stop,” *NHPR* (Oct. 21, 2022), <https://www.nhpr.org/nh-news/2022-10-21/lawsuit-alleges-nh-state-trooper-profiled-latino-driver-in-2019-traffic-stop>.

<sup>20</sup> See Paul Cuno-Booth, “Lawsuit alleges N.H. state trooper profiled Latino driver in 2019 traffic stop,” *NHPR* (Oct. 21, 2022), <https://www.nhpr.org/nh-news/2022-10-21/lawsuit-alleges-nh-state-trooper-profiled-latino-driver-in-2019-traffic-stop>; see also Paul Cuno-Booth, “‘Push the Envelope’: Unit at center of police-transparency case has history of illegal stops and searches,” *Granite State News Collaborative* (Feb. 18, 2023), [https://www.sentinel-source.com/state\\_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article\\_9bec7903-1c64-532f-bb28-8ba434c55432.html](https://www.sentinel-source.com/state_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article_9bec7903-1c64-532f-bb28-8ba434c55432.html).

<sup>21</sup> Paul Cuno-Booth, “‘Push the Envelope’: Unit at center of police-transparency case has history of illegal stops and searches,” *Granite State News Collaborative* (Feb. 18, 2023), [https://www.sentinel-source.com/state\\_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article\\_9bec7903-1c64-532f-bb28-8ba434c55432.html](https://www.sentinel-source.com/state_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article_9bec7903-1c64-532f-bb28-8ba434c55432.html).

<sup>22</sup> See, US Census, Quick Facts, New Hampshire, available at <https://www.census.gov/quickfacts/NH>.

<sup>23</sup> Paul Cuno-Booth, “‘Push the Envelope’: Unit at center of police-transparency case has history of illegal stops and searches,” *Granite State News Collaborative* (Feb. 18, 2023), [https://www.sentinel-source.com/state\\_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article\\_9bec7903-1c64-532f-bb28-8ba434c55432.html](https://www.sentinel-source.com/state_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article_9bec7903-1c64-532f-bb28-8ba434c55432.html).

<sup>24</sup> Paul Cuno-Booth, “Lawsuit alleges N.H. state trooper profiled Latino driver in 2019 traffic stop,” *NHPR* (Oct. 21, 2022), <https://www.nhpr.org/nh-news/2022-10-21/lawsuit-alleges-nh-state-trooper-profiled-latino-driver-in-2019-traffic-stop>.



acknowledged that he was encouraged “to push the envelope and get drug seizures.”<sup>25</sup> While the State Police does have a Fair and Impartial Policing policy—a policy that was created in February 2019 with the support of many of the signatories below—these incidents give us grave concern about how the State Police will operate if given the expanded powers it is requesting.

In addition, while the state lacks comprehensive data around racial disparities in stops, a review of arrest data available in the Federal Bureau of Investigation’s Uniform Crime Reports data sets clearly show at the macro level that racial disparities in arrests exist across New Hampshire policing. In 2022, Black people were 3.04 times more likely to be arrested when compared with white people,<sup>26</sup> and 3.49 times more likely to be arrested for a drug offense when compared with white people.<sup>27</sup> And, this is not just a recent trend. Despite making up 2 percent of New Hampshire’s population,<sup>28</sup> Black people comprised 6 percent of all drug arrests in the past 5 years<sup>29</sup> and 6 percent over the past 10 years.<sup>30</sup>

In light of these concerns, we urge DHS to deny the proposed 287(g) request from Governor Sununu. Immigration enforcement is a federal responsibility and the 287(g) program harms community trust in police. The program is inherently flawed and, moreover, Governor Sununu’s assertions of an increase in unauthorized crossings is unsupported by evidence.

Sincerely,

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<sup>25</sup> Paul Cuno-Booth, “‘Push the Envelope’: Unit at center of police-transparency case has history of illegal stops and searches,” *Granite State News Collaborative* (Feb. 18, 2023), [https://www.sentinelsource.com/state\\_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article\\_9bec7903-1c64-532f-bb28-8ba434c55432.html](https://www.sentinelsource.com/state_news/push-the-envelope-unit-at-center-of-police-transparency-case-has-history-of-illegal-stops/article_9bec7903-1c64-532f-bb28-8ba434c55432.html).

<sup>26</sup> New Hampshire arrested 33,589 white people and 2,211 Black people in 2022. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire, 2022, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. According to the April 1, 2020 U.S. Census estimate for New Hampshire there were 1,395,231 total people, of which 92.60 percent were white and 2.00 percent were Black. This translates to 1,291,983 white people and 27,904 Black people. See, U.S. Census Bureau, QuickFacts, New Hampshire, Manchester, *available at* <https://www.census.gov/quickfacts/fact/table/manchestercitynewhampshire,concordcitynewhampshire/PST045221>.

<sup>27</sup> New Hampshire arrested 3,051 white people and 230 Black people for all drug offenses in 2022. See, Federal Bureau of Investigation, Crime Data Explorer, Arrests in New Hampshire by Offense, Drug Abuse Violations - Grand Total, 2022, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>. According to the April 1, 2020 U.S. Census estimate for New Hampshire there were 1,395,231 total people, of which 92.60 percent were white and 2.00 percent were Black. This translates to 1,291,983 white people and 27,904 Black people. See, U.S. Census Bureau, QuickFacts, New Hampshire, Manchester, *available at* <https://www.census.gov/quickfacts/fact/table/manchestercitynewhampshire,concordcitynewhampshire/PST045221>.

<sup>28</sup> U.S. Census Bureau, QuickFacts, New Hampshire, *available at* <https://www.census.gov/quickfacts/NH>.

<sup>29</sup> Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, Drug Abuse Violations - Grand Total, past 5 years, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

<sup>30</sup> Federal Bureau of Investigation, Crime Data Explorer, New Hampshire, Drug Abuse Violations - Grand Total, past 10 years, *available at* <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/arrest>.

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