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Lunch Keynote Address: 287(G) and Secured Communities: Some of the Dangers of Delegating Federal Powers

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**LUNCH KEYNOTE ADDRESS:
287(G) AND SECURED COMMUNITIES: SOME OF THE
DANGERS OF DELEGATING FEDERAL POWERS**

Elliot Ozment

MR. HOWELL: Our next speaker is Elliott Ozment. Elliott Ozment is the founder and managing attorney at Ozment Law. He graduated from Vanderbilt Law School in 1975. He's put together a successful career, countless awards, panels, and boards, including the 2012 Tennessee Bar Association's Public Service Harris A. Gilbert Pro Bono Award, and I believe that was given to him for his work in the now fairly infamous *Villegas* case. Mr. Ozment is a frequent speaker and lecturer and is presently working on a book on motions to suppress legally obtained evidence in immigration court. Today he will be speaking on Section 287(g) of the Immigration Nationality Act. Without further ado, Mr. Elliott Ozment.

ELLIOT OZMENT: Well, good afternoon, folks. I'm glad to be here in Knoxville today, and I appreciate the presence of each and every one of you. I want to start out by recognizing a man who has helped me more than any other person since I started the practice of immigration law, and that's Dan Kesselbrenner. I love that man; he knows it, and I could not do — our entire office could not do half of what we do if we had not had Dan's assistance through the years. You're very lucky to have him here in Knoxville at this conference, and I'm glad you invited him. His presence alone is worth whatever you paid to get into this thing, so I'm glad he's here, I'm glad you're listening to him, and have the privilege of hearing him.

Well, my topic today is 287(g). There are lots of ways that we could approach that topic, but I think what I'm going to do, to make this as interesting and as personal

as I can, is to tell you my story on how I connected up with 287(g) and what happened after that.

My story begins on October 6, 2006. I had gotten a call from Sheriff Daron Hall, the sheriff of Nashville, Davidson County, Tennessee, and he wanted to have lunch with me. And so he and my wife and I joined him for lunch at the Palm Restaurant. I think it's on Church Street in Nashville. I think that's the first and only time I've ever been there. We had a very pleasant lunch, and as we had lunch, he told me about his plans to bring the 287(g) program to Nashville, Tennessee.

Now, for those of you that might not know what that is, let me just take a brief moment to describe it generally. The 287(g) program, at one time at least, existed in about eighty-two or eighty-five different jurisdictions across the United States, and what it is is a contractual arrangement that was provided by Congress that enables ICE, Immigration and Customs Enforcement, which is the enforcement arm of the Department of Homeland Security, to contract with local law enforcement authorities.

There are two different types of 287(g) programs. One is called the Task Force Model. That's where you contract with the sheriff's office or the police department in a particular location. The other one is called the Jail Model. And that was the model that Sheriff Hall wanted to bring to Nashville. And what that contract provided for the sheriff to do was that, when somebody was arrested, he had the authority to have his deputies in his jail become 287(g) deputies, and what they could do is interview that person that was arrested soon after they were arrested and, through a series of interview questions, determine whether that person was legally present in the United States, whether that person had committed a serious enough crime to warrant issuing a notice to appear and to issue a detainer.

Now, a detainer has become very controversial lately. A detainer is a piece of paper that is signed that says that you are put on an ICE hold, is what it's commonly referred to as, and what that means is that, after you're finished in the local court, after your case is disposed of, if you have a detainer on you, then you can be kept for up to forty-eight hours after you are eligible for release. So if you were sentenced to time served and you come back to court, the jail keeps you for another forty-eight hours, if there is a hold on you, even though you've served your sentence or even if the charge has been dismissed; it doesn't matter. When you are brought back to the jail, you are not booked out at that point. If you have an ICE detainer on you, then you are kept for forty-eight hours.

Now, at that point, ICE can either come and get you or let you go. Now, in Nashville's program, they were never released because ICE was right there, and so they just bring a truck in about two or three times a week, load them up, and take them down to Alabama. And then from Alabama, they would take them on to Oakdale, Louisiana, which is a hellhole of a place. That's where all the ICE detainees wind up.

So what happens is that that program is designed or was designed by congressional statute to enable a more efficient performance of capturing dangerous criminal aliens. That's what its purpose was.

And so at the lunch at the Palm Restaurant, I asked Sheriff Hall how he intended to design the program, "who are you intending to go after with this program?" And the reason I asked that question is because, just before our lunch, Williamson County had arrested a person, a lady, for having no driver's license, and then ICE in that case, ICE issued the detainer because Williamson County did not have a 287(g) program. And ICE came and picked up this lady and put her in immigration court, and whatever

happened to her after that was up to the federal authorities. And all she had done was to drive without a license.

Now, those of you that know the background of driver's licenses here in Tennessee know that, in February of 2006, the State of Tennessee stopped giving any driving certificates or driving licenses to people who were undocumented. Now, we can debate the pros and cons of that. Remember that these people had already learned how to drive, they had had a driver's license, they knew how to drive, they were not a threat to the streets of the community, and yet the legislature decides, in its wisdom, to stop issuing driver's licenses to those people. That was in February of '06.

Now, a few months later, in October of '06, is when I was meeting with Sheriff Hall, and so I wanted to know, "What are you going to do with the 287(g) program? Are you going to go after those people?" He said, "Absolutely not." And my wife was there, and she has a steel-trapped mind; she remembered that. Usually that works to my disadvantage that she has a steel-trapped mind but not this time. She remembered every word the sheriff said. And so he said, "I want you to be on my Advisory Committee. We're just going to go after dangerous criminal aliens. That's all we're going to do. And I want you to be on my Advisory Committee."

Well, I'm as much in favor of getting rid of dangerous criminals, whether they're aliens or not, as anybody, as the sheriff. I don't want those people in the United States. Get them out of here. They give immigrants a bad name. Drug dealers, murderers, wife beaters, we don't want those people up here. And so given the sheriff's assurance that this is how the program was going to work, I decided to agree to serve on the sheriff's Advisory Committee.

Now, I didn't know Sheriff Hall all that well. He seemed like a nice enough guy to me. He was soft-spoken, very gentlemanly. I had no reason to doubt that he would keep his word. And so he brought the 287(g) program to Nashville, and it started operations I think in April 2007. This was just a few months after our lunch. And it wasn't too long until we began to see lots and lots of people being arrested for no driver's license and then being put into immigration court.

Now, in the sheriff's Advisory Committee meetings — I attended every one of them, and I sat there. And at the second meeting, I said, “Sheriff, we need to make some changes to this program because you are putting a detainer on each and every person that is arrested no matter how minor the charge, and that was not the intent of this program when it was created by Congress. And that's not what you are entitled to do under the contract that you signed with ICE.” And I said, “You should work with the Steering Committee to come up with some criteria to determine who is a dangerous criminal alien that should be detained and turned over to ICE. That's what you should do.” And he didn't respond at all. He just ignored my suggestion. I made it at the next meeting and the next meeting and the next meeting. Soon it became obvious to me that he was not going to keep his word.

Here is what he later bragged about in a four-color brochure that he made up to polish his political image. Let me read it to you. He cited a statistic that is very important. He said, “The percentage of foreign-born arrestees nearly doubled” — now, this is him bragging — “nearly doubled from 2001 to the inception of 287(g) in April 2007, when the number reached an all-time high of twelve percent.” Then he said in 2006 — this was the year before his 287(g) program started. Listen to how many were arrested and put in the immigration court. “In 2006, the federal government only identified 151 illegal aliens for removal.”

Now, that's back when ICE had control of who they put into immigration court. That was before Hall took control of the process. They had 151, and in the first year that Hall operated the program, they had something like 3,000. It was pathetic.

Now, the reason the feds only had 151 is because they only put aggravated felons into immigration court. They only went after dangerous criminal aliens.

Hall said in a newspaper article, "It is too late to deport an individual only after a serious crime has been committed." Did you hear that? We can't wait until these no-good immigrants commit a serious crime, we've got to get rid of them now before they do it.

Now, do you understand the significance of that statement? What Daron Hall was trying to do was to rewrite U.S. Immigration Policy. That was not the policy of ICE. That was not the policy of the Immigration Enforcement. And yet he thought that was a bad thing.

Let me quote you something from the OIG's office, Office of Inspector General. They issued a big report in March of 2010, and here's what they said in that report. It's a big, thick report. You can google it and get it. But here's what they said in one place: "According to ICE's July 2009 MOA template, the purpose of collaborations between ICE and LEAs" — that's Local Enforcement Authorities — "in the 287(g) program is to identify and process for removal criminal aliens who pose a threat to public safety or a danger to the community." That's what the inspector general said. That's the policy that was supposed to be supporting the 287(g) program. But Daron Hall didn't agree with that. Daron Hall decided, on his own account, to change U.S. Federal Immigration Policy in Nashville, Tennessee.

So you can imagine how outraged I was. The events that topped the list for why people were

arrested in Davidson County's 287(g) program every year was no driver's license. Just exactly what I had feared.

“No driver's license arrests for Hispanics increased from 23.6 percent pre-287(g) to 49.4 percent post-287(g) in 2007.”

Now, it was just not no driver's license. People were arrested and taken to jail for fishing without a license. The park patrol would arrest somebody, some poor Hispanic who was trying to catch a fish for dinner that night in a metro park to feed his children, and they threw him in jail. Hall put him into immigration court, and they would be deported. It happened over and over and over again. Trespassing, that was one of their favorites. That means they were not where they were supposed to be. They would be standing on a corner looking for work, and the police would come along and arrest them. They weren't hurting anybody. They were looking for work. It's been going on in Nashville for decades, but all of a sudden it became a deportable offense.

Well, let me tell you the case that took the cake, the thing that really enraged me. One day a woman came into the office, and she told me that her husband had been arrested and was in jail. Come to find out that what had happened was, early one morning he was sitting in a chair in a laundromat drinking a cup of hot chocolate. A metro cop came along and said, “What are you doing?” He said, “I'm sitting here drinking a cup of hot chocolate waiting for my boss to come and pick me up so I can go to work.” And then the cop said, “Let me see some ID.” And so this man took out his W-7 tax ID number card. He didn't have a social security card. He didn't have a driver's license. So he took out the only thing he had, which was a tax ID number so that he could file taxes on the money he was earning, and the cop took a look at it. This ignoramus cop didn't know what it was. He said, “I'm going to arrest you for criminal impersonation. This is a fake social security

card.” And so there it went, he took him in. This was the father of a nine-year-old, autistic, U.S. citizen boy. That's who he had at home.

And so they took him to jail, and they put him up before the judge in general sessions court in Nashville. And when he went into the court, the translator — this was going on a lot back then — a translator would come in and tell him, “Hey, listen, you need to plead guilty so you can get out of jail quicker. The judge will let you go if you just plead guilty. If you don't plead guilty, you're going to have to stay in here no telling how long.” Well, this man heard another man talk to him in Spanish and said, “He wouldn't lead me wrong.” And so this poor man pled guilty to criminal impersonation. Can you believe that? And then Hall slapped a detainer on him.

Well, this woman didn't have a nickel, but she said, “Can you please help?” And I said, “I will help.” So the first thing I did was to go into court and get his conviction set aside, and then I took his case. We ultimately got him a green card because he had been here ten years and he had an autistic, U.S. citizen son. And I got the immigration judge to give him a green card. It's called Cancellation of Removal. And he didn't have any criminal record other than this bogus criminal simulation charge. And I was so outraged by that that I wrote an op-ed in the *Tennessean*, and the *Tennessean* printed it of all things. And let me read you what I said at the tail end of that editorial.

I said, “Almost half of the approximately 4,000 287(g) detainees have been arrested for such minor infractions as no driver's license, fishing without a license, staying in a park after ten o'clock p.m., or now possession of an IRS card while drinking hot chocolate.” I told them the story earlier in the editorial. “Then held for civil immigration charges.” And then here's where I really started preaching. I said, “Business Leaders, 287(g)'s assault on the foreign-born will

make recruitment of new international business more difficult.” And the Nashville Chamber of Commerce was trying to get international companies to come to Nashville. “Religious Leaders, 287(g) is inflaming hatred and intolerance and destroying family values by splitting immigration families for as long as ten years.”

What would have happened with that ten-year-old if that father had not gotten a green card? What would have happened? Do you think Daron Hall cared? Not one whit.

“Civic Leaders, 287(g) is bringing international infamy and shame to the city of Nashville, which has now come to be identified around the world as a city whose jail denies basic human rights and has engaged in terrorizing pregnant women by shackling them during labor.” That was the *Juana Villegas* case that was still grabbing headlines on the front of the *New York Times*. This is what was happening. And then I said, “Nashville, we are better than this.”

Well, it wasn't long after that that I was fired from the sheriff's Advisory Counsel. Imagine that. And so he wrote me a hot letter, a two-letter. I felt obliged to write him a two-letter back. And I'm not going to read you the whole letter. I've got it here if you want to read it after the presentation. But let me just read part of it.

I said, “Sheriff, you have transformed the Federal 287(g) Program, designed and intended by Congress to catch dangerous criminal aliens in partnership with local law enforcement, into a ruthlessly efficient, local, ethnic cleansing machine designed to persecute the foreign-born and purge Nashville of brown-skinned people unwanted by the xenophobes and racists among us. This program is causing entire sections of Nashville, especially along Oliver Road (phonetically), to atrophy, and it will take decades to rebuild them. No enforcement action is more responsible for separating immigrants from

their children and U.S. citizen spouses than your 287(g) program. How you and others of your ilk that attend church on Sunday and espouse family values can then operate through the week in a mindless campaign to tear up families in the Buckle of the Bible Belt is beyond me. It is your stubborn refusal to honor your word and build a rational set of criteria for identifying dangerous criminal aliens that has now led this community to the *Juana Villegas* case. By your actions, you have brought international infamy and shame to the city of Nashville, which has now come to be identified around the world as a city whose jail denies basic human rights and has engaged in terrorizing pregnant women.” I hope he read the letter. I don't know whether he did or not.

Well, it was that night that I got down on my knees and I asked God's forgiveness for adding any credibility for enabling this sheriff to establish such a program, and I made a promise to him that I would try to destroy that program if I could. So I waited and I waited, and then in September of 2011, into my office walked a young man named Daniel Renteria. And Daniel was sitting out in my waiting room with a plastic bag, and so he came into my office. He paid the initial consult fee. I had never met the guy. He was a young man in his early 20s. No, he was 19. And I said, “Daniel, what have you got in your bag there?” And he pulled out this bloody shirt. I said, “What happened?” He said, “Well, I was in a little incident where persons in another car shot some bullets, and the police chased the car I was in and the other car. I got out of the car and ran, and they set some dogs loose, who mauled me.” I said, “Well, what happened after that?” He said, “I ran home, and they arrested me Sunday night.”

Now, let me read you the time line of what happened. Very interesting. He was booked into jail on 8/22/2010. This was shortly before he came to my office. It was 2010, not 2011. The ICE detainer

was placed on him at 5:57 p.m., about an hour after he was brought in. At 10:30 they conducted an interview. That's about five hours after he had been booked in. And they asked him, "Where were you born?" He said, "I was born in the United States." He couldn't speak English, but he said, "I was born in Portland, Oregon." They didn't believe him, and so they accused him of lying. Then they accused him of having a fake social security number. They said, "What is your social security number?" And he told them, and then they entered the correct social security number. Oh, that matches, okay. He also had a Tennessee ID card. Didn't have a driver's license, but he had an ID card.

Now, 9/3, September the 3rd — remember, he was arrested on August 22nd. He was kept in jail all this time on an ICE detainer, couldn't make bail. At that time they were denying bail to anybody that had a detainer on them. We have since changed that. We have gone to court and sued some sheriffs and now they know better, but back then you couldn't get bond in Sheriff Hall's jail. The charge was dismissed on 9/3/2010. I even forgot what they arrested him for, but it was dismissed. There was no criminal conviction. He had been arrested August 22nd, in jail all this time.

Now, that's when the court dismissed the charge, was one p.m. on that day. The ICE detainer was deactivated by Deputy Ford on 9/3 at 9:56 p.m., almost ten o'clock that night. They had kept him in jail all that time. They didn't believe he was a U.S. citizen. It took his sister to bring a U.S. passport to the jail and show them he's a U.S. citizen, and they still didn't turn him loose until ten o'clock that night. The ICE detainer was not deactivated until ten o'clock that night, and he still was not released for another three hours. It was 9/2/2010 at 12:48 a.m., forty-five minutes past midnight. And here he was sitting in my office, and he wanted to sue somebody. He

was mad. What he was mad about was getting mauled by those dogs, but I knew a dog-mauling case was going to be a thicket. I didn't want to get into that.

But I said, here's what we will do. You are a U.S. citizen. You see what had happened was, he was born in Portland, Oregon, and his Mexican parents decided that they didn't want to be in the U.S. anymore. And they went back to Mexico back when he was one year old. He grew up in Mexico, didn't know English, but he was a U.S. citizen. And so he came back about a year before he came to my office. And I said to him, "We're going to sue the sheriff." And so that's exactly what we did. *Renteria v. Metro Government*.

Now, here was our theory of the case: Our theory of the case was that Sheriff Hall did not have the authority to enter into that 287(g) agreement. He signed it, the feds signed it. But it was null and void because he didn't have the authority to sign that document because it gave him law enforcement authority that he did not have the right to have under the Metro Charter.

I had grown up in Nashville. I remember Judge Beverly Briley. He had more sense when he was drunk than most people do when they're sober. He was a brilliant man. And he set up Metro Government, and I remember when it was set up. All the law enforcement authority was given to the Metro Nashville Police Department, but they were stuck with the sheriff, what are we going to do with this sheriff because it was a constitutional office; they couldn't just eliminate it. And so they told the sheriff, "We're going to give you the authority to keep the jail." That's the only thing you can do, is keep the jail, but you cannot exercise law enforcement authority inside Davidson County. And Sheriff Hall had signed the 287(g) agreement that gave him all kinds of law enforcement authority, including signing the detainers to keep people in jail

beyond the time that they should have been released. So we took it to chancery court first. Metro insisted on naming the feds. After they came in as a defendant, they moved it to federal court. Fine with us. And then Judge Sharp referred it to the Tennessee Supreme Court, and there we were.

I had to make a choice, what was I going to do before the Tennessee Supreme Court. Well, I've argued before the supreme court before. Years back I was counsel in the case of *Clinton v. Cain-Sloan*. Those of you that are students here, go look it up when you leave here. That is the granddaddy of all retaliatory discharge common law in Tennessee. Some of you might have heard of the case. And the lawyer on the other side of that case was Bill Harbison, and at that time we were arguing in front of Bill Harbison's father, William Harbison, on the supreme court. I'll let you go and look up the outcome of the case. But that's when Bill Harbison and I began to know each other.

Now, this is the same Bill Harbison that was just elected as president of the Tennessee Bar Association just this year. And so we made the decision that we were going to ask Bill Harbison to argue this case before the Tennessee Supreme Court. We had Dan Kesselbrenner of the National Immigration Project helping us. And the reason we made that decision is because all the justices on the supreme court knew Bill Harbison, all of them. Some of them might have known me, but the difference is, Bill was famous and I was infamous. And so I thought they rather hear somebody famous than somebody infamous.

So we made the presentation. I think we were right on the law as it existed at that time. Bill Harbison did a wonderful job, a remarkable job. He's one of the greatest lawyers in this state. Then about two weeks before the supreme court came out with its decision, guess what happened? I opened up the *Tennessean*, and I fell back into

my chair in shock. Two things: Number one, Daron Hall announced, “I’m going to discontinue the 287(g) program.” This was after we had already argued the case to the Tennessee Supreme Court. And then Saul Solomon, Metro legal director, came out and said, “We’re going to amend the Metro Charter to make sure that there’s no more confusion about who can do what. We’re going to let the sheriff do a few law enforcement things, but he’s going to have to do it in collaboration with the police department.” And so they proposed the Metro Charter amendment that was adopted last November. Two weeks later, the Tennessee Supreme Court came out with its decision and ruled against us.

I still think we were right on the law, and the only way the supreme court was able to rule against us was, they rewrote the law that had been the law for fifty years in a case called *Metro v. Poe*, which said the sheriff cannot have any law enforcement authority interpreting the Metro Charter. Sheriff Robert Poe at the time. And that was their prerogative to do that.

And I sat there in my chair and reflected on it, and I said to myself, “Self, you lost the battle, but you won the war. There is no more 287(g) in Nashville.” One of the proudest achievements of my life. So that’s the story of 287(g) in Nashville, and that’s why I don’t recommend that any community bring 287(g) because you have some ambitious, local law enforcement officers that will use that program to demigod against immigrants and try to ride it to higher office.

Now, those of you that can, I want you to come to Nashville. When you drive by my office on Murfreesboro Road, in about three weeks you are going to see two big statues. Each one of them is fifteen-feet-high. One is going to be on the right side of the door, and the other one is going to be on the left side of the door. One of the statues is the Statue of Liberty holding up the torch, and the

other statue is Lady Justice holding out the scales. I had a person in my office one day ask me, “Why in the world are you doing this?” I said, I want to remind every person, whether they're an employee walking in our door or a client walking in our door, I want to remind every single person — or just driving by — that what is going on in this office is a fulfillment of our Pledge of Allegiance to the United States of America, Liberty. and Justice for All. So thank you. It's been a pleasure.