



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

**“Examining 287(g): The Role of State and
Local Law Enforcement in Immigration Law”**

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY

March 4, 2009 - 2:00 p.m.
311 Cannon House Office Building
Washington, D.C.

Chairman Thompson, Ranking Member King and distinguished members of the Committee. Thank you for the opportunity to testify before you today about U.S. Immigration and Customs Enforcement's (ICE) management and oversight of the 287(g) delegation of authority program, which allows State and local law enforcement agencies (LEA) to partner with ICE to enforce our nation's immigration laws.

ICE is the Department of Homeland Security's (DHS) largest investigative agency with responsibility for investigations having a nexus to the border and within the interior of the United States. I am pleased to discuss with you today the partnerships ICE has in place with State and local LEAs through the 287(g) delegation of authority program and the Government Accountability Office's (GAO) recommendations to improve management of the program.

ICE's homeland security mission readily acknowledges the critical role that State and local law enforcement have in our country's broad homeland security strategy. ICE's State and local partners are frequently our nation's first responders. They often encounter foreign-born criminals and immigration violators who threaten national security and public safety during the course of their daily duties. To ensure that foreign nationals cannot exploit any perceived vulnerability, ICE partners with State and local LEAs through a variety of arrangements, including the 287(g) Program, which increases the overall effectiveness of the entire law enforcement community's ability to protect our homeland.

BACKGROUND AND RAPID GROWTH OF THE 287(g) PROGRAM

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), effective September 30, 1996, added Section 287(g) to the Immigration and Nationality Act (INA), which authorized the Attorney General, now the Secretary of Homeland Security, to designate

State and local law enforcement officers to act as federal immigration officers. Through Memoranda of Agreement (MOA), specially trained State and local law enforcement officers perform immigration enforcement duties only under the supervision of ICE agents and officers.

These agreements allow ICE to utilize State and local officers as force multipliers in both task forces and detention facilities. Agencies participating under the Task Force Officer (TFO) model work under the supervision of the ICE Office of Investigations personnel. These TFOs focus on criminal activity involving gangs, identity and benefit fraud, human and narcotics smuggling and trafficking. TFOs assist ICE with both long-term investigations and large-scale enforcement activities. ICE's enforcement efforts have benefited greatly from the synergy created by the fusion of federal immigration authority with the State and local law enforcement authority vested in these cross-trained officers. For example:

- In Fiscal Year 2008, the Northwest Arkansas Immigration and Criminal Apprehension Task Force (ICAT), a 287(g) task force, participated in the investigation of the Acambaro Mexican Restaurant and Garcia's Distributor, Inc. This investigation that involved harboring of aliens resulted in the execution of six search warrants, four arrest warrants, and a seizure warrant for 15 bank accounts. These warrants led to the arrest of 19 foreign nationals and the seizure of nine vehicles and approximately \$114,000 in U.S. currency. In addition to the seizures, ICE filed verified complaints of forfeiture on 11 real properties in Northwest Arkansas valued at more than \$3.5 million.

Agencies participating in the 287(g) Program's Jail Enforcement Officer (JEO) model partner with ICE in detention facilities under the supervision of the ICE Office of Detention and Removal Operation personnel. Cross-designated officers expand the reach of ICE's

Criminal Alien Program (CAP). The intersection of the CAP and 287(g) programs further ICE's efforts to identify aliens charged with and/or convicted of crimes who are incarcerated within State and local facilities. Furthermore, the program helps to ensure that criminal aliens are not released into the community by assisting with the identification of removable aliens during the booking process and then assisting ICE with the processing of those identified aliens for removal.

The following exemplifies how these partnerships have expanded ICE's presence in State and local jails:

- On September 30, 2008, officers assigned to the Wake County (North Carolina) Sheriff's Office 287(g) Program identified, interviewed and placed detainers on five individuals who were arrested and charged with murder and accessory after the fact to murder. It was determined that all five individuals were illegally present in the United States, and are being held in connection with the murder of a 26 year old individual from Raleigh, North Carolina. The five individuals will be processed for removal proceedings and, upon completion of any criminal sentence served, they will be transferred to ICE for removal.

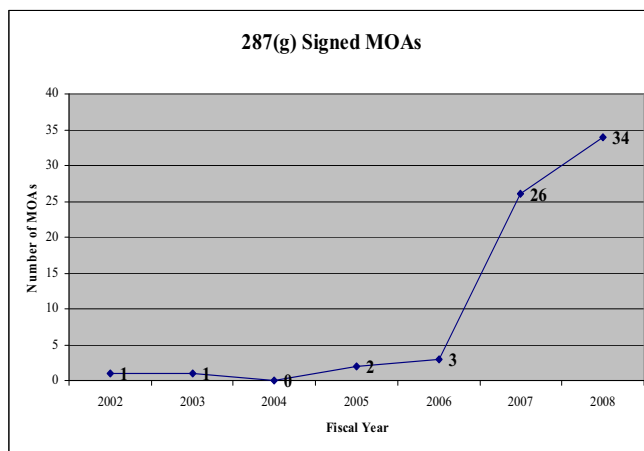
To place the great strides ICE has made with the 287(g) Program in context, it is necessary to examine how the program began. The first 287(g) agreement was executed under the former Immigration and Naturalization Service (INS) in the aftermath of the 9/11 attacks. After Florida law enforcement officials became increasingly concerned about the number of terrorism-related investigations in Florida, many of which involved foreign nationals, Florida officials approached the former INS seeking participation in the 287(g) Program. Thus, the first 287(g) agreement was executed with the Florida Department of Law Enforcement (FDLE)

in 2002, which resulted in the creation of seven Regional Domestic Security Task Forces that were established in the State of Florida. Thereafter, 35 officers assigned to these regional task forces participated in, and graduated from, the 287(g) training program. Since the inception of that agreement, ICE has trained and certified an additional 23 officers under the FDLE MOA.

As I noted earlier, ICE partnered with State and local law enforcement agencies to address the vulnerabilities discovered in the aftermath of the 9/11 attacks. However, our work is not done. To fulfill its homeland security and public safety mission, ICE has carefully expanded the 287(g) Program to increase ICE’s ability to identify and remove criminal aliens from the United States.

As a result of community concern associated with illegal migration and the public safety threat posed by criminal aliens, there has been increased interest in the 287(g) Program. A review of the current state of the 287(g) Program reveals that, as of February 2009, a total of 951 law enforcement officers have been trained pursuant to 67 signed MOA’s in 23 states.¹ As the below chart illustrates, ICE has seen a dramatic rise in 287(g) Program participation and interest during fiscal years 2007 and 2008.

Fiscal Year	MOAs
2002	1
2003	1
2004	0
2005	2
2006	3
2007	26
2008	34
Total	67



¹ Please see Attachment 1 for a list of all 67 agreements.

As of February 2009, ICE's 287(g) cross-designated partners, operating under 67 MOAs, have encountered over 90,000 aliens who were screened for removability. We have seen positive results from the current 287(g) Program. For example, the 29 287(g) LEA partners selected for review during the GAO audit encountered 43,000 aliens. The work conducted by the same 29 participants during Fiscal Year 2008 resulted in 34,000 aliens being detained by ICE. Of the 34,000 detained, approximately 41 percent were placed in removal proceedings and approximately 44 percent agreed to voluntarily depart the United States.

As ICE has expanded the 287(g) Program, it has become one of the primary tools requested by State and local LEAs as they address their immigration enforcement concerns. While ICE acknowledges the effectiveness of a multi-agency, multi-authority approach to protect public safety, ICE is not always in a position to grant all the requests for participation in the 287(g) Program. Further, careful study of the requirements of each LEA revealed that participation in the 287(g) Program was not always the best fit for every State and local LEA.

Accordingly, we created the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) umbrella program in fall 2007 to assist State and local LEAs that are not enrolled in the 287(g) Program. ICE ACCESS programs allow ICE personnel to collaborate with their local law enforcement peers to address specific local challenges and provide solutions and alternatives tailored to each community's needs. ICE ACCESS facilitates partnerships between ICE and State and local LEAs to target criminal aliens, document and immigration benefit fraud, human trafficking, fugitive aliens, narcotics smuggling and money laundering.

ICE OVERSIGHT OF THE 287(g) PROGRAM

The ICE Office of State and Local Coordination (OSLC) was established in December 2007, and is responsible for the management and oversight of the 287(g) Program. OSLC has implemented the following practices and procedures to ensure that ICE is adequately overseeing the program:

- ✓ Prior to attending training, all 287(g) candidates must complete a background questionnaire. The questionnaire requires the submission of fingerprints, a personal history questionnaire, and the candidate's disciplinary history. ICE's Office of Professional Responsibility conducts a background check and determines each officer's suitability to participate in the 287(g) Program.
- ✓ Officers cleared to participate in the 287(g) Program must complete a multi-week training program conducted by the ICE Office of Training and Development. To successfully complete the program, all officers must pass each examination with a minimum score of 70 percent. If an officer fails to attain a 70 percent rating on any examination, the officer is provided a single opportunity to review the curriculum and re-take a similar examination. Only one remediation examination is permitted during the entire course. Failure to achieve a 70 percent on any two examinations results in the automatic disqualification of the candidate.
- ✓ Upon successful completion of the training, officers are granted the authority to carry out immigration enforcement functions. 287(g) designated officers are only permitted to exercise immigration enforcement consistent with the parameters outlined in the Memorandum of Agreement (MOA) executed between ICE and the officer's LEA. Each MOA includes a section that requires that any immigration enforcement activities

be supervised and directed by ICE supervisory agents and officers. Cross-designated officers are not authorized to perform immigration functions except when working under the supervision of ICE. If a State or local officer violates the MOA, ICE may suspend or terminate an individual officer's participation in the program. Additionally, at any time deemed necessary, ICE may suspend or terminate the MOA with the LEA.

- ✓ To ensure that the LEA and the supervising ICE component operate in compliance with the terms in the MOA, OSLC and Office of Professional Responsibility have developed a vigorous inspection program to audit 287(g) agreements. These inspections are conducted by the Office of Professional Responsibility, which provides OSLC and ICE senior management with an assessment regarding the performance of the MOA.
- ✓ To ensure cross-designated officers' training remains current, additional training is available to the officers through eight different courses available through ICE's online Virtual University. These courses were developed to ensure that State and local officers are informed of new developments in immigration law and policy.

COMMENTS ON GAO REPORT

I would like to take this opportunity to discuss ICE's response to the Government Accountability Office (GAO) report, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*. First, let me note that ICE welcomed GAO's review of the 287(g) Program. Although still in its infancy, as ICE has expanded the program, it has not only seen an increase in public interest, but increased scrutiny as well. To ensure the program is operating in the most efficient manner, ICE reviewed the draft copy of the report that contained five recommendations. ICE concurs

with all of the recommendations and, in some areas, had already begun addressing the recommendations before the GAO study was completed.

Before addressing ICE's response to GAO's recommendations, I would like to point out that soon after her confirmation as Secretary of Homeland Security, Secretary Napolitano issued a wide-ranging action directive on immigration and border security. The directive requires specific Department offices and components to work together and with State and local partners to review and assess current plans and policies in this area.

Secretary Napolitano is looking for metrics of success, gaps in service and resources, partnerships with State and local governments and other federal agencies as well as other suggestions for reforms, restructuring and consolidation where needed. Included in that directive is a review of the current 287(g) Program. With that in mind and in response to the GAO recommendations, ICE has begun the process of redrafting the template that is used to form 287(g) agreements. Once redrafted, the template will be submitted to DHS headquarters for comment and approval. Upon being approved, this template will incorporate many of the recommendations made by GAO. For example:

1. The MOAs will include the nature and extent of supervisory activities ICE officers are expected to carry out as part of their responsibilities in overseeing the implementation of the 287(g) Program;
2. Communicating that information to both ICE officers and State and local participating agencies;
3. The MOAs will outline how and under what circumstances 287(g) authority is to be used by State and local law enforcement officers in participating agencies;

4. Also incorporated in each MOA are ICE's detention priorities. These priorities ensure that ICE's finite detention space is used to detain the aliens who pose the greatest risk to the public. Specifically, the following list reflects the categories of aliens that are a priority for detention, with the highest priority being Level 1 criminal aliens. The following priorities will be listed in all MOAs:
 - Level 1 – Individuals who have been convicted of major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping;
 - Level 2 – Individuals who have been convicted of minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud and money laundering; and
 - Level 3 – Individuals who have been convicted of other offenses.
5. "Sunset" dates will be incorporated into all MOAs to ensure regular review and modification as needed; and
6. ICE will also specify the program information or data that each agency is expected to collect regarding their implementation of the 287(g) Program and how this information is to be reported.

Furthermore, all 287(g) partners are required to use the ENFORCE² system to ensure that ICE has all relevant data with which to monitor the operation of each 287(g) MOA. However, ICE recognizes that in its current state, ENFORCE has limited capabilities to capture the criminal history of each alien processed.

OSLC is working to create system enhancements to ENFORCE that will allow ICE to classify the types of aliens 287(g) trained officers are encountering. Specifically, ICE will require that the program participants populate mandatory ENFORCE data fields concerning the type of criminal activity the alien has engaged in. Violent crimes, crimes

² ENFORCE is the primary administrative arrest and booking case management system for DHS.

against property, narcotics violations, traffic driving under the influence (DUI) related violations and non-DUI related traffic violations will all be captured. Furthermore, there will be fields within ENFORCE concerning the severity of crimes broken down by felonies, misdemeanors or civil violations. This data will be used by ICE to evaluate whether or not our 287(g) partnerships function in accord using resources with ICE priorities and to ensure that the continuation of an agreement is in the best interest of ICE.

Additionally, pursuant to the 2009 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, the DHS Office of Inspector General will be reviewing the 287(g) Program to ensure that none of the funds provided to the 287(g) Program are being used where the terms of the 287(g) agreements have been violated.

CONCLUSION

In closing, it is critically important to note, as pointed out in GAO's report, many benefits have been realized by the agencies participating in the 287(g) Program. Program participants reported to GAO a reduction in crime, the removal of repeat offenders and other safety benefits. The cost savings associated with crime reduction are not being easily quantified, but there has undoubtedly been a positive impact on many communities. I am proud of the partnerships ICE has formed with 287(g) trained State and local law enforcement officers. These partnerships are essential to ICE carrying out its mission of deterring criminal alien activity and threats to national security and public safety throughout the United States. While ICE has expanded the 287(g) Program rapidly and its internal management controls can be improved, I believe that we have a strong framework in place to effectuate improvements, and I look forward to the challenges that lay ahead.

Again, I thank the Committee for its support of ICE and our critical mission. I would be happy to answer any questions you might have at this time.

ATTACHMENT 1

State	MOA_Name	MOA_Type	Signed_Date
AL	AL State Police	Task Force	9/10/2003
AL	Etowah County Sheriff's Office	Detention	7/8/2008
AR	Benton County Sheriff's Office	Detention/Task Force	9/26/2007
AR	City of Springdale Police Department	Task Force	9/26/2007
AR	Rogers Police Department	Task Force	9/25/2007
AR	Washington County Sheriff's Office AR	Detention/Task Force	9/26/2007
AZ	AZ Department of Corrections	Detention	9/16/2005
AZ	AZ Department of Public Safety	Task Force	4/15/2007
AZ	City of Phoenix Police Department	Task Force	3/10/2008
AZ	Maricopa County Sheriff's Office	Detention/Task Force	2/7/2007
AZ	Pima County Sheriff's Office	Detention/Task Force	3/10/2008
AZ	Pinal County Sheriff's Office	Detention/Task Force	3/10/2008
AZ	Yavapai County Sheriff's Office	Detention/Task Force	3/10/2008
CA	Los Angeles County Sheriff's Office	Detention	2/1/2005
CA	Orange County Sheriff's Office	Detention	11/2/2006
CA	Riverside County Sheriff's Office	Detention	4/28/2006
CA	San Bernardino County Sheriff's Office	Detention	10/19/2005
CO	CO Department of Public Safety	Task Force	3/29/2007
CO	El Paso County Sheriff's Office	Detention	5/17/2007
FL	Bay County Sheriff's Office	Task Force	6/15/2008
FL	Brevard County Sheriff's Office	Detention	8/13/2008
FL	Collier County Sheriff's Office	Detention/Task Force	8/6/2007
FL	FL Department of Law Enforcement	Task Force	7/2/2002
FL	Jacksonville Sheriff's Office	Detention	7/8/2008
FL	Manatee County Sheriff's Office	Detention	7/8/2008
GA	Cobb County Sheriff's Office	Detention	2/13/2007
GA	GA Department of Public Safety	Task Force	7/27/2007
GA	Hall County Sheriff's Office	Detention/Task Force	2/29/2008
GA	Whitfield County Sheriff's Office	Detention	2/4/2008
MA	Barnstable County Sheriff's Office	Detention	8/25/2007
MA	Framingham Police Department	Task Force	8/14/2007
MA	MA Department of Corrections	Detention	3/26/2007
MD	Frederick County Sheriff's Office	Detention/Task Force	2/6/2008
MN	MN Department of Public Safety	Task Force	9/22/2008
MO	MO State Highway Patrol	Task Force	6/25/2008
NC	Alamance County Sheriff's Office	Detention	1/10/2007
NC	Cabarrus County Sheriff's Office	Detention	8/2/2007
NC	Cumberland County Sheriff's Office	Detention	6/25/2008
NC	Durham Police Department	Task Force	2/1/2008
NC	Gaston County Sheriff's Office	Detention	2/22/2007
NC	Henderson County Sheriff's Office	Detention	6/25/2008
NC	Mecklenburg County Sheriff's Office	Detention	2/27/2006
NC	Wake County Sheriff's Office	Detention	6/25/2008
NH	Hudson City Police Department	Task Force	5/5/2007
NJ	Hudson County Department of Corrections	Detention	8/11/2008
NM	NM Department of Corrections	Detention	9/17/2007
NV	Las Vegas Metropolitan Police Dept	Detention	9/8/2008
OH	Butler County Sheriff's Office	Detention/Task Force	2/5/2008
OK	Tulsa County Sheriff's Office	Detention/Task Force	8/6/2007

SC	Beaufort County Sheriff's Office	Task Force	6/25/2008
SC	York County Sheriff's Office	Detention	10/16/2007
TN	Davidson County Sheriff's Office	Detention	2/21/2007
TN	TN Department of Safety	Task Force	6/25/2008
TX	Carrollton Police Department	Detention	8/12/2008
TX	Farmers Branch Police Dept.	Task Force	7/8/2008
TX	Harris County Sheriff's Office	Detention	7/20/2008
UT	Washington County Sheriff's Office UT	Detention	9/22/2008
UT	Weber County Sheriff's Office	Detention	9/22/2008
VA	City of Manassas Police Department	Task Force	3/5/2008
VA	Herndon Police Department	Task Force	3/21/2007
VA	Loudoun County Sheriff's Office	Task Force	6/25/2008
VA	Manassas Park Police Department	Task Force	3/10/2008
VA	Prince William County Police Department	Task Force	2/26/2008
VA	Prince William County Sheriff's Office	Task Force	2/26/2008
VA	Prince William-Manassas Adult Detention Center	Detention	7/9/2007
VA	Rockingham County Sheriff's Office	Detention/Task Force	4/25/2007
VA	Shenandoah County Sheriff's Office	Detention/Task Force	5/10/2007