

January 2009

IMMIGRATION ENFORCEMENT

Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws



GAO

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Highlights of [GAO-09-109](#), a report to congressional requesters

Why GAO Did This Study

Section 287(g) of the Immigration and Nationality Act, as amended, authorizes the federal government to enter into agreements with state and local law enforcement agencies to train officers to assist in identifying those individuals who are in the country illegally. U.S. Immigration and Customs Enforcement (ICE) is responsible for supervising state and local officers under this program. GAO was asked to review this program. This report reviews (1) the extent to which ICE has designed controls to govern 287(g) program implementation; and (2) how program resources are being used and the activities, benefits, and concerns reported by participating agencies. GAO reviewed memorandums of agreement (MOA) between ICE and the 29 program participants as of September 1, 2007. GAO compared controls ICE designed to govern the 287(g) program with criteria in GAO's *Standards for Internal Control in the Federal Government*. GAO interviewed officials from both ICE and participating agencies on program implementation, resources, and results.

What GAO Recommends

Among other things, GAO recommends that the Assistant Secretary for ICE document the program objective, document and communicate supervisory activities, and specify data each agency is to collect and report. DHS and ICE agreed with our recommendations.

To view the full product, including the scope and methodology, click on [GAO-09-109](#). For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

IMMIGRATION ENFORCEMENT


Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws

What GAO Found

ICE has designed some management controls to govern 287(g) program implementation, such as MOAs and background checks of state and local officers, but the program lacks other controls, which makes it difficult for ICE to ensure that the program is operating as intended. First, the program lacks documented program objectives to help ensure that participants work toward a consistent purpose. ICE officials stated that the objective of the program is to address serious crime, such as narcotics smuggling committed by removable aliens; however, ICE has not documented this objective in program materials. As a result, of 29 program participants reviewed by GAO, 4 used 287(g) authority to process individuals for minor crimes, such as speeding, contrary to the objective of the program. Second, ICE has not described the nature and extent of its supervision over participating agencies' implementation of the program, which has led to wide variation in the perception of the nature and extent of supervisory responsibility among ICE field officials and officials from the participating agencies. ICE is statutorily required to supervise agencies participating in the 287(g) program, and internal control standards require an agency's organizational structure to clearly define key areas of authority and responsibility. Defining the nature and extent of the agency's supervision over this large and growing program would strengthen ICE's assurance that management's directives are being carried out. Finally, while ICE states in its MOAs that participating agencies are responsible for tracking and reporting data to ICE, in 20 of 29 MOAs GAO reviewed, ICE did not define what data should be tracked or how it should be collected and reported. Communicating to participating agencies what data is to be collected and how it should be gathered and reported would help ensure that ICE management has the information needed to determine whether the program is achieving its objective.

ICE and program participants use resources for personnel, training, and equipment, and participants report activities, benefits, and concerns regarding the program. In fiscal years 2006–2008, ICE received about \$60 million to train, supervise, and equip program participants. As of October 2008, ICE reported enrolling 67 agencies and training 951 state and local law enforcement officers. According to data provided by ICE for 25 of the 29 program participants reviewed by GAO, during fiscal year 2008, about 43,000 aliens had been arrested pursuant to the program, and of those, ICE detained about 34,000. About 41 percent of those detained were placed in removal proceedings, and an additional 44 percent agreed to be voluntarily removed. The remaining 15 percent of those detained by ICE were given a humanitarian release, sent to federal or state prison, or released due to the minor nature of their crime and federal detention space limitations. Program participants report a reduction in crime, the removal of repeat offenders, and other public safety benefits. However, over half of the 29 agencies GAO contacted reported concerns from community members that use of program authority would lead to racial profiling and intimidation by law enforcement officials.

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United States Government Accountability Office
Washington, DC 20548

January 30, 2009

Congressional Requesters

Recent reports indicate that the total population of unauthorized aliens residing in the United States is about 12 million.¹ Some of these aliens have committed one or more crimes, although the exact number of aliens who have committed crimes is unknown. As of June 30, 2007—the most recent data available—about 31,000 of the approximately 199,000 convicted felons in federal prisons, about 56,000 of the approximately 1,400,000 convicted felons in state prisons, and about 39,000 of the approximately 504,000 inmates held in local jails, were aliens.² Removing those aliens who have committed serious crimes is of particular concern for the safety of our nation’s communities. The Department of Homeland Security’s (DHS) U.S. Immigration and Customs Enforcement (ICE) is responsible for the enforcement of immigration laws within the interior of the United States, including the identification, apprehension, detention, and removal of removable aliens who committed crimes. ICE does not have the agents or the detention space that would be required to address all criminal activities. According to DHS, criminal activity is most effectively combated through a multiagency/multiauthority approach that utilizes federal, state, and local resources, skills, and expertise. State and local law enforcement officers play a critical role in protecting our homeland because, during the course of daily duties, they may encounter foreign-national criminals and immigration violators who pose a threat to national security or public safety.

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act was enacted and added section 287(g) to the Immigration and Nationality Act (INA).³ This section authorizes the federal government to enter into agreements with state and local law enforcement agencies; to train selected state and local officers to perform certain functions of an immigration officer, including searching selected federal

¹Under section 101(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(3), the term “alien” means any person not a citizen or national of the United States. It does not include foreign nationals who have become naturalized U.S. citizens.

²U.S. Department of Justice, Office of Justice Programs, *Bureau of Justice Statistics Bulletin*, June 2008. The data for local jails is based on 2,416 reporting jurisdictions.

³Pub. L. No. 104-208, div. C, §133, 110 Stat. 3009–546, 3009-563 to 64.

databases and conducting interviews to assist in the identification of those individuals in the country illegally; and to carry out these activities under the supervision of ICE officers.⁴ ICE is responsible for managing the implementation of 287(g). The first such agreement under the statute was signed in 2002, and as of October 2008, participation in this program had increased to 67 state and local agencies. Most of these state and local law enforcement agencies joined the program after 2007.

The enforcement of immigration law by state and local officials has raised concerns among some community and immigrants' rights groups about the proper role of such law enforcement officials. Groups are also concerned that such activities could lead to apprehension in immigrant communities and less inclination to report crimes out of fear that officers with 287(g) authority would inquire about crime victims' immigration status. Groups said that these concerns may reduce the effectiveness of the program and other law enforcement initiatives, which they believe were intended to target serious criminal activity.

Given the growing interest of individual state and local entities in participating in the 287(g) program, and congressional interest in assisting state and local communities in addressing border security and immigration enforcement issues, you requested that we review the 287(g) program. This report addresses (1) the extent to which ICE has designed controls to govern 287(g) program implementation and (2) how program resources are being used and the activities, benefits, and concerns reported by participating agencies.

To accomplish our objectives, we collected and analyzed information from ICE and participating law enforcement agencies on the priorities, objectives, and guidance for implementing the 287(g) program. To better understand the parameters of the 287(g) program as agreed to by both ICE and the participating agency, we reviewed program-related documents, including program case files, the 287(g) brochure, training materials, certain ICE position descriptions, and the memorandums of agreement (MOA) between ICE and the 29 law enforcement agencies participating in the program as of September 1, 2007. We also examined the controls ICE designed to govern implementation of the 287(g) program by requesting information on ICE's management policies and practices as they relate to

⁴The change to the Immigration and Nationality Act is codified in 8 U.S.C. §1357(g). The complete text of 8 U.S.C. § 1357(g) appears in appendix I.

the 287(g) program and comparing these controls with criteria in GAO's Standards for Internal Control in the Federal Government, the Government Performance and Results Act (GPRA) and the Project Management Institute's Standard for Program Management.⁵ We visited nine participating agencies to observe how they are implementing the program. We selected these agencies based on the type of enforcement authority granted by ICE and length of time they have participated in the program, among other characteristics. Although we are not able to generalize the information gathered from these visits to all other participating law enforcement agencies, the visits provided us with a variety of examples of how the program is being implemented. We also interviewed officials from both ICE and the participating law enforcement agencies to obtain their perspectives on the activities, benefits, and concerns generated from the 287(g) program as well as the resources used to implement the program, including equipment, training, and assignment of supervisory ICE staff.⁶ In addition, we examined budget and appropriations documentation from the program's inception to the fiscal year 2009 budget request for the 287(g) program and inquired about future funding requirements for this program from agency officials. More detailed information on our scope and methodology appears in appendix III.

We conducted this performance audit from September 2007 through January 2009 in accordance with generally accepted government auditing

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999). These standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982 (FMFIA), provide the overall framework for establishing and maintaining internal control in the federal government. Also pursuant to FMFIA, the Office of Management and Budget issued Circular A-123, revised December 21, 2004, to provide the specific requirements for assessing the reporting on internal controls. Internal control standards and the definition of internal control in Circular A-123 are based on GAO's *Standards for Internal Control in the Federal Government*. GPRA is the primary legislative framework through which agencies are required to set strategic goals, measure performance, and report on the degree to which goals were met. GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996). Additional program management standards we reviewed are reflected in the Project Management Institute's *The Standard for Program Management* © (2006).

⁶We contacted 29 state and local law enforcement agencies with regard to their implementation of the 287(g) program between October 2007 and February 2008. However, for purposes of reporting the results of our structured interviews, only 23 of the 29 initial participating law enforcement agencies we contacted had been in the program long enough to report on their implementation experiences. The structured interview tool used to collect information from the law enforcement agencies we reviewed appears in appendix II.

standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

ICE has designed some management controls to govern 287(g) program implementation, such as Memorandums of Agreement with participating agencies and background checks of officers applying to participate in the program, but the program lacks other controls. First, while ICE officials have stated that the main objective of the 287(g) program is to enhance the safety and security of communities by addressing serious criminal activity committed by removable aliens, they have not documented this objective in program-related materials consistent with internal control standards. As a result, some participating agencies are using their 287(g) authority to process for removal aliens who have committed minor crimes, such as carrying an open container of alcohol. While participating agencies are not prohibited from seeking the assistance of ICE for aliens arrested for minor offenses, if all the participating agencies sought assistance to remove aliens for such minor offenses, ICE would not have detention space to detain all of the aliens referred to them. ICE's Office of Detention and Removal strategic plan calls for using the limited detention bed space available for those aliens who pose the greatest threat to the public, until more alternative detention methods are available. Second, ICE has not consistently articulated in program-related documents how participating agencies are to use their 287(g) authority. For instance, although the processing of individuals for possible removal is to be conducted in connection with a conviction of a state or federal felony offense, this issue is not mentioned in 7 of the 29 MOAs we reviewed. Internal control standards state that government programs should ensure that significant events are authorized and executed only by persons acting within the scope of their authority. Defining and consistently communicating how this authority is to be used would help ICE ensure that immigration activities undertaken by participating agencies are in accordance with ICE policies and program objectives. Third, ICE has not described the nature and extent of the agency's supervision over participating agencies' implementation of the program. This has led to wide variation in the perception of the nature and extent of supervisory responsibility among ICE field officials and officials from 23 of the participating agencies that provided information on ICE supervision. Internal control standards require an agency's organizational structure to define key areas of authority and responsibility. Given the rapid growth of the program,

defining the nature and extent of the agency's supervision over this large and growing program would strengthen ICE's assurance that management's directives are being carried out. Finally, while the MOAs state that participating agencies are responsible for tracking and reporting data to ICE, in 20 of 29 MOAs we reviewed, ICE did not define what data should be tracked or how it should be collected and reported. Internal control standards call for pertinent information to be recorded and communicated to management in a form and within a time frame that enables them to carry out internal control and other responsibilities. Communicating to participating agencies what data is to be collected and how it should be gathered and reported would help ensure that ICE management has the information needed to determine whether the program is achieving its objectives.

ICE and participating agencies used program resources mainly for personnel, training, and equipment, and participating agencies reported activities, benefits, and concerns stemming from the program. For fiscal years 2006 through 2008, ICE received about \$60 million to provide training, supervision, computers, and other equipment for participating agencies. State and local participants provided officers, office space, and other expenses not reimbursed by ICE, such as office supplies and vehicles. ICE and state and local participating agencies cite a range of benefits associated with the 287(g) partnership. For example, **as of October 2008, ICE reported enrolling 67 agencies and training 951 state and local law enforcement officers.** According to data provided by ICE for 25 of the 29 program participants reviewed by GAO, during fiscal year 2008, about 43,000 aliens had been arrested pursuant to the program.⁷ Based on the data provided, individual agency participant results ranged from about 13,000 arrests in one location, to no arrests in two locations. Of those 43,000 aliens arrested pursuant to the 287(g) authority, ICE detained about 34,000, placed about 14,000 (41 percent) in removal proceedings, and arranged for about 15,000 (44 percent) to be voluntarily removed.⁸ The remaining 5,000 (15 percent) arrested aliens detained by ICE were either given a humanitarian release, sent to a federal or state prison to serve a

⁷ICE provided data for 25 of the 29 participating agencies we reviewed. ICE also provided data for four other participating agencies, but we do not report them as they were not within the scope of our review.

⁸A voluntary removal (called "voluntary departure") occurs when an alien is allowed to depart the country at his or her own expense (escorted by ICE) in lieu of formal removal proceedings or prior to completion of such proceedings.

sentence for a felony offense, or not taken into ICE custody given the minor nature of the underlying offense and limited availability of the federal government's detention space.⁹ Participating agencies cited benefits of the program including a reduction in crime and the removal of repeat offenders. However, more than half of the 29 state and local law enforcement agencies we reviewed reported concerns members of their communities expressed about the 287(g) program, including concerns that law enforcement officers in the 287(g) program would be deporting removable aliens pursuant to minor traffic violations (e.g., speeding) and concerns about racial profiling.

To help ensure that ICE program managers for the 287(g) program achieve the results intended by implementing this program, **we are recommending** that the Assistant Secretary for ICE (1) document the objective of the 287(g) program for participants, (2) clarify when the 287(g) authority is authorized for use by state and local law enforcement officers, (3) document in MOAs 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 and communicate that information to both ICE officers and state and local participating agencies, (4) 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, and (5) establish a plan, including a time frame, for the development of performance measures for the 287(g) program. We provided a draft of this report to DHS for review and comment. DHS provided written comments on January 28, 2009, which are presented in appendix V. In commenting on the draft report, DHS stated that it agreed with our recommendations and identified actions planned or underway to implement the recommendations. ICE also



⁹Individuals arrested on administrative charges who may be sole caregivers or who have other humanitarian concerns, including those with serious medical conditions that require special attention, pregnant women, nursing mothers, parents who are the sole caretakers of minor children or disabled or seriously ill relatives, and parents who are needed to support their spouses in caring for sick or special needs children or relatives, may be released by ICE. As appropriate, if ICE is provided with new information regarding a humanitarian condition after an arrestee has been processed and detained, ICE may consider the possibility of release on humanitarian grounds based on such information. In general, aliens given a humanitarian release or not taken into custody due to limited detention space receive a notice to appear in immigration court at a later date for removal proceedings. Removable aliens serving a sentence in federal and state prison are to be processed for removal at the end of their sentences.

provided us with technical comments, which we considered and incorporated in the report where appropriate.

Background

Section 287(g) of the INA, as amended, authorizes ICE to enter into written agreements under which state or local law enforcement agencies may perform, at their own expense and under the supervision of ICE officers, certain functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States.

The statute also provides that such an agreement is not required for state and local officers to communicate with ICE regarding the immigration status of an individual or otherwise to cooperate with ICE in the identification and removal of aliens not lawfully present in the United States. Thus, 287(g) agreements go beyond state and local officers' existing ability to obtain immigration status information from ICE and to alert ICE to any removable aliens they identify. Under these agreements, state and local officers are to have direct access to ICE databases and act in the stead of ICE agents by processing aliens for removal. They are authorized to initiate removal proceedings by preparing a notice to appear in immigration court and transporting aliens to ICE-approved detention facilities for further proceedings.

Section 287(g) and its legislative history do not detail the exact responsibilities to be carried out, the circumstances under which officers are to exercise 287(g) authority, or which removable aliens should be prioritized for removal, thus giving ICE the discretion to establish enforcement priorities for the program. The statute does, however, contain a number of detailed requirements or controls for the program.¹⁰ It requires that

- a written agreement be developed to govern the delegation of immigration enforcement functions (e.g., MOA),
- ICE determine that any officer performing such a function is qualified to do so (e.g., background security check),
- the officer have knowledge of, and adhere to, federal law relating to immigration (e.g., training),
- officers performing immigration functions have received adequate training regarding enforcement of federal immigration laws (e.g., written certification of training provided upon passing examinations),

¹⁰8 U.S.C. § 1357(g); see appendix I.

-
- any officer performing such a function be subject to the direction and supervision of ICE, with the supervising office to be specified in the written agreement, and
 - specific powers and duties to be exercised or performed by state or local officers be set forth in the written agreement.

Currently, the 287(g) program is the responsibility of ICE's Office of State and Local Coordination (OSLC). The OSLC is responsible for providing information about ICE programs, initiatives, and authorities available to state and local law enforcement agencies. In August 2007, OSLC organized its various programs to partner with state and local law enforcement agencies as Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS). ACCESS offers state and local law enforcement agencies the opportunity to participate in 1 or more of 13 programs, including the Border Enforcement Security Task Forces, the Criminal Alien Program, and the 287(g) program. More detailed descriptions of the ACCESS programs appear in appendix IV. Under ACCESS, OSLC officials are to work with state and local applicants to help determine which assistance program would best meet their needs. For example, before approving an applicant for 287(g) program participation, OSLC officials are to assess first whether ICE has the resources to support the applicant, such as available detention space and transportation assets based on what historical patterns indicate will be the approximate number of removable aliens apprehended per year by the applying law enforcement agency. Based on an overall assessment of these and other factors, such as the type of agreement requested, availability of training, congressional interest, and proximity to other 287(g) programs, ICE may suggest that one or more of the other assistance programs under ACCESS would be more appropriate.

Within the 287(g) program, ICE has developed three models for state and local law enforcement participation. One model, referred to as the "jail model," allows for correctional officers working in state prisons or local jails to screen those arrested or convicted of crimes by accessing federal databases to ascertain a person's immigration status. Another option, referred to as the "task force model," allows law enforcement officers participating in criminal task forces such as drug or gang task forces to screen arrested individuals using federal databases to assess their immigration status. ICE has approved some local law enforcement agencies to concurrently implement both models, an arrangement referred to as the "joint model."

The 287(g) program has grown rapidly in recent years as more state and local communities seek to address criminal activity by those in the country illegally with specialized training and tools provided by ICE. From its initiation 287(g) authority was viewed by members of Congress as an opportunity to provide ICE with more resources—in the form of state and local law enforcement officers—to assist ICE in the enforcement of immigration laws. In 2005, the conference committee report for DHS's appropriation encouraged ICE to be more proactive in encouraging state and local governments to participate in the program.¹¹ Beginning in fiscal year 2006, DHS appropriations acts expressly provided funds for the 287(g) program, and accompanying committee reports provided guidance on program implementation. In fiscal year 2006, the DHS Appropriations Act provided \$5.0 million to facilitate 287(g) agreements, and the accompanying conference report noted full support for the program, describing it as a powerful force multiplier to better enforce immigration laws and, consequently, to better secure the homeland.¹² In fiscal year 2007, ICE received \$5.4 million for the 287(g) program in its regular appropriation and allocated \$10.1 million in supplemental funding towards the program.¹³ In fiscal year 2008, ICE received \$39.7 million for the program, and has received \$54.1 million for fiscal year 2009 to support the program. Accompanying committee reports have emphasized that ICE should perform close monitoring of compliance with 287(g) agreements, extensive training prior to delegation of limited immigration enforcement functions, direct supervision of delegated officers by ICE, and enrollment of correctional facilities in the program to identify more removable aliens.

Participating state and local law enforcement agencies in the 287(g) program may apply for financial assistance to cover some costs associated with the program either directly from ICE or through grants provided by the Department of Justice (DOJ). For example, for agencies with contractual reimbursement agreements, ICE can reimburse law enforcement agencies for (1) detention of incarcerated aliens in local

¹¹H.R. Conf. Rep. No. 109-241, at 48 (2005).

¹²Department of Homeland Security Appropriations Act, 2006, Pub. L. No. 109-90, 119 Stat. 2064, 2068 (2005); H.R. Conf. Rep. No. 109-241, at 48 (2005).

¹³Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, 120 Stat. 1355, 1361 (2006). In fiscal year 2006, a supplemental appropriation provided \$50.0 million in 2-year funding for immigration enforcement training, information technologies, and additional detention beds. The 287(g) program was allotted \$10.1 million from this supplemental funding.

facilities who are awaiting processing by ICE upon completion of their sentences and (2) transportation of incarcerated aliens, upon completion of their sentences, from a jurisdiction's facilities to a facility or location designated by ICE. In addition, state and local law enforcement agencies may apply for grants from the DOJ's State Criminal Alien Assistance Program (SCAAP) for a portion of the costs of incarcerating certain removable aliens convicted of a felony or two or more misdemeanors.¹⁴

ICE Lacks Key Internal Controls for the Implementation of the 287(g) Program

The 287(g) program lacks several management controls that limit ICE's ability to effectively manage the program. First, ICE has not documented the program's objectives in program-related materials. Second, program-related documents, including the MOA, lack specificity as to how and under what circumstances participating agencies are to use 287(g) authority, or how ICE will supervise the activities of participating agencies. Third, ICE has not defined what program information should be tracked or ensured that program information is being consistently collected and communicated, which would help ensure that management directives are followed. And finally, ICE has not developed performance measures to assess the effectiveness of the 287(g) program and whether it is achieving its intended results.



ICE Has Not Documented the 287(g) Program Objective in Program-Related Documents

According to ICE senior program officials, the **main** objective of the 287(g) program is to enhance the safety and security of communities by addressing serious criminal activity such as violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering committed by removable aliens. However, program-related documents, including the MOAs and program case files for the initial 29 participating agencies, the 287(g) brochure, training materials provided to state and local officers, and a "frequently asked questions" document do not identify this as the objective

¹⁴Authorized in 1994 by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20301, 108 Stat. 1796, 1823-24, and administered by the Bureau of Justice Assistance, the SCAAP grant program reimburses states and localities that incur correctional officer salary costs for incarcerating undocumented criminals (as defined by statute) who: (1) have at least one felony or two misdemeanor convictions for violations of state or local law, and (2) are incarcerated for at least 4 consecutive days.

of the 287(g) program.¹⁵ Internal controls also call for agencies to establish clear, consistent objectives. In addition, GPRRA requires agencies to consult with stakeholders to clarify their missions and reach agreement on their goals. Successful organizations we have studied in prior work involve stakeholders in program planning efforts, which can help create a basic understanding among the stakeholders of the competing demands that confront most agencies, the limited resources available to them, and how those demands and resources require careful and continuous balancing.¹⁶

The statute that established the 287(g) program and associated legislative history do not set enforcement priorities for the program, which leaves the responsibility to ICE. Therefore, ICE has the discretion to define the 287(g) program objectives in any manner that is reasonable. Although ICE has prioritized its immigration enforcement efforts to focus on serious criminal activity because of limited personnel and detention space, ICE officials told us they did not document the stated 287(g) program objectives as such because a situation could arise where detention space might be available to accommodate removable aliens arrested for minor offenses. We identified cases where participating agencies have used their 287(g) authority to process for removal aliens arrested for minor offenses. For example, of the 29 participating agencies we reviewed, 4 agencies told us they used 287(g) authorities to process for removal those aliens the officers stopped for minor violations such as speeding, carrying an open container of alcohol, and urinating in public. None of these crimes fall into the category of serious criminal activity that ICE officials described to us as the type of crime the 287(g) program is expected to pursue. Due to the rapid growth of the 287(g) program, an unmanageable number of aliens could be referred to ICE if all the participating agencies sought assistance to remove aliens for such minor offenses. Another potential consequence of not having documented program objectives is misuse of authority. The sheriff from a participating agency said that his understanding of the 287(g) authority was that 287(g)-trained officers could go to people's homes and question individuals regarding their immigration status even if

¹⁵In some portions of the ICE Web site, there is discussion about the 287(g) program as a tool to pursue investigations related to aliens involved with violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering.

¹⁶[GAO/GGD-96-118](#).

the individual is not suspected of criminal activity.¹⁷ Although it does not appear that any officers used the authority in this manner, it is illustrative of the lack of clarity regarding program objectives and the use of 287(g) authority by participating agencies.

While agencies participating in the 287(g) program are not prohibited from seeking the assistance of ICE for aliens arrested for minor offenses, detention space is routinely very limited and it is important for ICE to use these and other 287(g) resources in a manner that will most effectively achieve the objective of the program—to process for removal those aliens who pose the greatest threat to public safety. According to ICE’s Office of Detention and Removal (DRO) strategic plan, until more alternative detention methods are available, it is important that their limited detention bed space is available for those aliens posing greater threats to the public. ICE’s former Assistant Secretary made this point in her congressional testimony in February 2008, stating that given the rapid growth of the program in the last 2 years, it is important to ensure that ICE’s bed space for the 287(g) program is used for the highest priority aliens.¹⁸ This may not be achieved if ICE does not document and communicate to participating agencies its program objective of focusing limited enforcement and detention resources on serious and/or violent offenders.

Program-Related Documents Lack Detail Regarding Program Implementation and ICE Supervision Activities

ICE has not consistently articulated in program-related documents, such as MOAs, brochures and training materials, how participating agencies are to use their 287(g) authority, nor has it described the nature and extent of ICE supervision over these agencies’ implementation of the program. Internal control standards state that government programs should establish control activities to help ensure management’s directives are carried out. According to ICE officials, they use various controls to govern the 287(g) program, including conducting background checks on officers working for state and local law enforcement agencies that apply to participate in the 287(g) program, facilitating a training program with mandatory examinations to prepare law enforcement officers to carry out

¹⁷However, this officer’s agency established its own criteria about whom to detain, limiting it to those who have committed a violent offense or crimes such as drug activity and driving-under-the-influence violations, to prevent serious overcrowding in their jail.

¹⁸Julie Myers, Assistant Secretary, Immigration and Customs Enforcement, Department of Homeland Security in testimony to House Appropriations Subcommittee on Homeland Security, February 26, 2008.

Use of 287(g) Authority Is Not Consistently Communicated to Program Participants

287(g) program activities, and documenting agreements reached on program operations in the MOA.

ICE has not consistently communicated, through its MOAs with participating agencies, how and under what circumstances 287(g) authority is to be used.¹⁹ Internal control standards state that government programs should establish control activities, including ensuring that significant events are authorized and executed only by persons acting within the scope of their authority.²⁰ For the 287(g) program, ICE officials identified the MOA as a key control document signed by both ICE and participating agency officials. The MOA is designed to help ensure that management's directives for the program are carried out by program participants. However, the MOAs we reviewed were not consistent with statements by ICE officials regarding the use of 287(g) authority. For example, according to ICE officials and other ICE documentation, 287(g) authority is to be used in connection with an arrest for a state offense; however, the signed agreement that lays out the 287(g) authority for participating agencies does not address when the authority is to be used. While all 29 MOAs we reviewed contained language that authorizes a state or local officer to interrogate any person believed to be an alien as to his right to be or remain in the United States, none of them mentioned that an arrest should precede use of 287(g) program authority.²¹ Furthermore, the processing of individuals for possible removal is to be in connection with a conviction of a state or federal felony offense. However, this circumstance is not mentioned in 7 of the 29 MOAs we reviewed, resulting in implementation guidance that is not consistent across the initial 29 participating agencies.²² Due to the rapid expansion of the 287(g) program

¹⁹Section 287(g) and its legislative history do not specify the exact enforcement responsibilities authorized or the circumstances under which they are to be exercised, giving ICE the discretion to make reasonable determinations regarding these aspects of program implementation.

²⁰[GAO/AIMD-00-21.3.1.](#)

²¹While law enforcement officers without 287(g) designation are not prohibited from contacting ICE to get information on the immigration status and identity of aliens suspected, arrested, or convicted of criminal activity, the statutory authority of an ICE officer to interrogate individuals as to their immigration status is one of the federal immigration enforcement functions specifically delegated to state and local officers who are certified to perform this function under the 287(g) program.

²²The seven MOAs that did not specify that the 287(g) authorities be carried out to process individuals convicted of a felony offense were signed prior to 2007, and as of October 2008, they had not been amended to reflect the change found in the 2007 MOAs.

Program-Related Documents
Do Not Define Nature and
Extent of ICE Supervision

in the last 2 years, it is important that ICE consistently communicate to participating agencies how this authority is to be used to help ensure that state and local law enforcement agents are not using their 287(g) authority in a manner not intended by ICE.

ICE has also not defined in its program-related documents the responsibilities required of ICE agents directing and supervising local officers under the 287(g) program. Internal control standards state that a good internal control environment requires that an agency's organizational structure define key areas of authority and responsibility. The statute that established the program specifically requires ICE to direct and supervise the activities of the state and local officers who participate in the 287(g) program. The statute and associated legislative history, however, do not define the terms of direction and supervision, which leaves the responsibility for defining them to ICE. Although ICE has the discretion to define these terms in any manner that it deems reasonable, it has not defined them in program documents.

In our analysis of the 29 MOAs, we found little detail regarding the nature and extent of supervisory activities to be performed by ICE working with state and local law enforcement officers. For example, the MOAs state that participating officers will be supervised and directed by ICE regarding their immigration enforcement functions. The MOAs also state that participating officers cannot perform any immigration officer functions except when being supervised by ICE, and that those actions will be reviewed by ICE supervisory officers on an ongoing basis to ensure compliance and to determine if additional training is needed. The MOAs further state that the participating state or local agency retains supervisory responsibilities over all other aspects of the officers' employment. However, details regarding the nature and extent of supervision, such as whether supervision is to be provided remotely or directly, the frequency of interaction, and whether reviews are conducted as written assessments or through oral feedback, are not described in the MOAs or in any documentation provided to us by ICE.

In response to our inquiry, ICE officials did not provide a clear definition of the nature and extent of ICE supervision to be provided to participating agencies. These officials also cited a shortage of supervisory resources. The Assistant Director for the Office of State and Local Coordination that manages the 287(g) program said the ICE officer who supervises the activities of a participating agency's officers is responsible for conducting general tasks, such as reviewing and providing oversight over the information added to immigration files; however, he also said the ICE

official responsible for supervising the activities of a participating agency's officers may not have a supervisory designation within ICE. He added that documentation of an ICE 287(g) supervisor's responsibilities may be included in the position description of a Supervisory Detention and Deportation Officer. We examined seven position descriptions provided by ICE, including this position. Some of the activities described in this position description address such issues as level of supervision or direction and expectations setting for subordinates. For example, the position description for a Supervisory Detention and Deportation Officer establishes guidelines and performance expectations that are clearly communicated, observes workers' performance and conducts work performance critiques, provides informal feedback, assigns work based on priorities or the capabilities of the employee, prepares schedules for completion of work, gives advice and instruction to employees, and identifies developmental and training needs, in addition to other duties. However, because supervision activities specific to the 287(g) program (or more generally, state and local law enforcement officers carrying out immigration enforcement activities) were not contained in the description, it is unclear the extent to which the supervisory activities enumerated in those position descriptions would apply to the supervision of state and local officers in the 287(g) program.²³

Further, ICE officials in headquarters noted that the level of ICE supervision provided to participating agencies has varied due to a shortage of supervisory resources. The officials said it has been necessary in many instances for ICE to shift local resources or to utilize new supervisory officers to provide the required oversight and to manage the additional workload that has resulted from the 287(g) program. For example, agents from ICE's Office of Investigations (OI) and DRO have been detailed to the 287(g) program to fulfill the requirement within section 287(g) of the INA, which mandates that ICE supervise officers performing functions under each 287(g) agreement. Officials explained that these detailees have been taken away from their permanent positions, which affects ICE's ability to address other criminal activity. ICE officials noted that the small number of detailed agents does not have a significant impact on ICE's overall ability to supervise the 287(g) program in the field.

²³ Additionally, a senior ICE officer commented that, unlike position descriptions, an employee's work performance plan contains the specific duties of an ICE officer and describes the supervisory activities; however, such a work performance plan for a 287(g) supervisory officer was not provided by ICE.

In addition to the views by ICE officers in headquarters, we asked ICE field officials about 287(g) supervision. There was wide variation in the perceptions of what supervisory activities are to be performed. For example, one ICE official said ICE provides no direct supervision over the local law enforcement officers in the 287(g) program in their area of responsibility. Conversely, another ICE official characterized ICE supervisors as providing frontline support for the 287(g) program. ICE officials at two additional offices described their supervisory activities as overseeing training and ensuring the computer systems are working properly. Officials at another field office described their supervisory activities as reviewing files for completeness and accuracy.

We also asked state and local officers about ICE supervision related to this program. Officials from 14 of the 23 agencies that had implemented the program gave positive responses when asked to evaluate ICE's supervision of their 287(g)-trained officers. Another four law enforcement agencies characterized ICE's supervision as fair, adequate, or provided on an as-needed basis. Three agencies said they did not receive direct ICE supervision or that supervision was not provided daily, which one agency felt was necessary to assist with the constant changes in requirements for processing of paperwork. Officials from two law enforcement agencies said ICE supervisors were either unresponsive or not available. One of these officials noted that it was difficult to establish a relationship with the relevant managers at the local ICE office because there was constant turnover in the ICE agents responsible for overseeing the 287(g) program. Given the rapid growth of the program and ICE's limited supervisory resources, defining supervision activities would improve ICE's ability to ensure management directives are carried out appropriately.

ICE Has Not Ensured Information Regarding the 287(g) Program Is Obtained and Communicated

Collection and Reporting Requirements Are Not Defined

While ICE states in its MOAs that participating agencies are responsible for tracking and reporting data, the MOA did not provide details as to what data needs to be collected or in what manner data should be collected and reported. For example, in 20 of the 29 MOAs we reviewed, ICE generally required participating agencies to track data, but the MOA did not define

what data should be tracked, or how data should be collected and reported to ICE.

Specifically, the reporting requirements section in 20 of the MOAs states:

The LEA [law enforcement agency] will be responsible for tracking and maintaining accurate data and statistical information for their 287(g) program, including any specific tracking data requested by ICE. Upon ICE's request, such data and information shall be provided to ICE for comparison and verification with ICE's own data and statistical information, as well as for ICE's statistical reporting requirements and to help ICE assess the progress and success of the LEA's 287(g) program.

Furthermore, results of our structured interview with 29 program participants indicated confusion regarding reporting requirements. For example, of the 20 law enforcement agencies we reviewed whose MOA contained a reporting requirement:

- 7 agencies told us they had a reporting requirement and reported data to ICE;
- 3 agencies told us they had a requirement, but were not sure what specific data was to be reported;
- 3 agencies told us they were not required to report any data;
- 2 agencies told us that while ICE did not require them to report data, they submitted data to ICE on their activities anyway; and
- 5 agencies did not respond directly regarding a reporting requirement.

Of the nine program participants we interviewed without a reporting requirement in the MOA:

- 5 agencies told us they reported data to ICE;
- 2 agencies told us they were not required to report data to ICE, but did so anyway;
- 1 agency told us they do not report data to ICE; and
- 1 agency did not know if they were required to report data to ICE.

According to internal control standards, pertinent information should be recorded and communicated to management and others within the entity that need it in a form and within a time frame that enables them to carry out internal control and other responsibilities. Consistent with these standards, agencies are to ensure that information relative to factors vital to a program meeting its goals is identified and regularly reported to management. For example, collecting information such as the type of

crime for which an alien is detained could help ICE determine whether participating agencies are processing for removal those aliens who have committed serious crimes, as its objective states. Without clearly communicating to participating agencies guidance on what data is to be collected and how it should be gathered and reported, ICE management may not have the information it needs to ensure the program is achieving its objective.

Performance Measures to Fully Evaluate the 287(g) Program Are Lacking

While ICE has defined the objective of the 287(g) program—to enhance the safety and security of communities by addressing serious criminal activity by removable aliens—the agency has not developed performance measures for the 287(g) program to track the progress toward attaining that objective.²⁴ GPRA requires that agencies clearly define their missions, measure their performance against the goals they have set, and report on how well they are doing in attaining those goals.²⁵ Measuring performance allows organizations to track the progress they are making toward their goals and gives managers critical information on which to base decisions for improving their programs. Our previous work has shown that agencies successful in evaluating performance had measures that demonstrated results, covered multiple priorities, provided useful information for decision making, and successfully addressed important and varied aspects of program performance.²⁶ Internal controls also call for agencies to establish performance measures and indicators. ICE officials stated that they are in the process of developing performance measures, but have not provided any documentation or a time frame for when they expect to complete the development of these measures. In accordance with standard practices for program and project management, specific desired outcomes or results should be conceptualized and defined in the planning process as part of a road map, along with the appropriate projects needed to achieve those results, and milestones.²⁷

²⁴In general, performance measures are indicators, statistics, or metrics used to gauge program performance.

²⁵GAO/GGD-96-118.

²⁶GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143 (Washington, D.C.: November 22, 2002).

²⁷The Project Management Institute, *The Standard for Program Management* © (2006).

ICE officials told us that, although they have not yet developed performance measures, in an effort to monitor how the program is being implemented, they are beginning to conduct compliance inspections based on information provided in the MOA in locations where the 287(g) program has been implemented. ICE's Office of Professional Responsibility (OPR) was recently directed to conduct field inspections of all participating 287(g) program agencies. OPR officials state that the inspections are based on a checklist drawn from participating agencies' MOAs as well as interviews with state and local law enforcement agencies and ICE officials who are responsible for overseeing these agencies. OPR's checklists include items such as the review of the arrest and prosecution history of undocumented criminals, relevant immigration files, and ICE's Enforcement Case Tracking System (ENFORCE) entries, as well as review of any complaints by those detained pursuant to the 287(g) program directed towards ICE, state and local law enforcement officers. OPR officials use this checklist to confirm whether the items agreed to in the MOA have been carried out. As discussed earlier in this report, the 29 MOAs we reviewed did not contain certain internal controls to govern program implementation consistent with federal internal control standards. According to OPR officials, they have completed six compliance inspections, and have a seventh inspection underway. In addition, OPR officials told us that they are planning to complete compliance inspections for the rest of the initial 29 program participants within the next 2 years. Although ICE has initiated compliance inspections for the 287(g) program, ICE officials stated that the compliance inspections do not include performance assessments of the program.

ICE officials stated that developing performance measures for the program will be difficult because each state and local partnership agreement is unique, making it challenging to develop measures that would be applicable for all participating agencies. Nonetheless, these measures are important to provide ICE with a basis for determining whether the program is achieving its intended results. Without a plan for the development of performance measures, including milestones for their completion, ICE lacks a roadmap for how this project will be achieved.

Program Resources Are Used for Training, Supervision, and Equipment; Benefits and Concerns Are Reported by ICE and Participating Agencies

Program Resources Are Used for Training, Supervision, and Equipment

ICE and participating agencies used program resources mainly for personnel, training, and equipment. From fiscal years 2006 through 2008, ICE received approximately \$60 million to provide 287(g) resources for 67 participating agencies nationwide as follows:

- *Training.* Once officers working for state and local law enforcement participating agencies pass a background investigation performed by ICE, they are also required to attend a 4-week course and pass mandatory examinations to be certified. Training is focused on immigration and nationality law, and includes modules on identifying fraudulent documents, understanding removal charges, cross-cultural communications, and alien processing (e.g., accessing federal databases). Of the 27 participating agencies that had received training at the time of our interviews 20 said the training prepared them to perform their 287(g) activities; four of these agencies also reported that their participation in the program was delayed due to problems with scheduling training. ICE provided information reflecting an average training cost per student of \$2,622 using the on-site training facility—the Federal Law Enforcement Training Center—and \$4,840 using off-site facilities. These average costs include travel, lodging, books, meals, and miscellaneous expenses. As of October 2008, ICE had trained and certified 951 state or local officers in the 287(g) program.²⁸

²⁸According to ICE officials, a total of 994 state and local officers started 287(g) training: 13 failed the mandatory examinations, 30 officers removed themselves from the training, and 951 were certified for the 287(g) program.

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- *Equipment.* ICE is to provide the equipment necessary to link participating state and local law enforcement agencies with ICE to assist these agencies in performing their immigration enforcement activities. ICE estimates that, on average, for each participating agency it spends \$37,000 for equipment set-up and installation, and about \$43,000 for equipment hardware. These costs include installation of a secure transmission line, which connects the participating agency to ICE databases, one or more workstations, one or more machines that capture and transmit fingerprints electronically, and personnel labor and support costs. In addition, it spends on average about \$107,000 annually for recurring equipment operations and maintenance costs for each participating agency.
 - *Supervision.* ICE is to provide supervision to state and local law enforcement agencies participating in the 287(g) program. However, as mentioned earlier in this report, ICE has not identified what responsibilities are required of ICE agents directing and supervising local officers under the 287(g) program, and comments about program supervision from ICE officers at headquarters and in field offices, as well as officers from participating agencies, differ widely. Therefore, we are unable to provide more detail as to this 287(g) resource provided by ICE.

In addition to the resources provided by ICE, state and local law enforcement agencies also provide resources to implement the 287(g) program. For example, state and local law enforcement agencies provide officers, space for equipment, and funding for any other expenses not specifically covered by ICE, such as office supplies and vehicles. Of the 29 state and local participating agencies we interviewed, 11 were able to provide estimates for some of their costs associated with participating in the 287(g) program; however, the data they provided was not consistent. Therefore, it was not feasible to total these costs. Those law enforcement agencies able to identify costs may be able to recover some of these expenses through an intergovernmental service agreement, or through DOJ's SCAAP grant process. When we asked state and local law enforcement participating agencies whether they received federal reimbursement from any source for costs associated with the 287(g) program (e.g., detention or transportation), 18 of the 29 reported that they

did not.²⁹ Six participating state and local agencies said they received SCAAP funding for some of these costs, and another five said they received federal reimbursements for some costs related to detention, transportation, and hospitalization.

The rapid growth of the 287(g) program has presented resource challenges that ICE has begun to address. For example, 11 of the 29 participating agencies we contacted told us of equipment-related problems. Specifically, two of these agencies did not have equipment to carry out the 287(g) program for several months after their staff had received training on how to use it, and they had concerns that refresher training would be needed, while another agency received more equipment than it needed. ICE has worked with participating agencies to address the problems with program equipment distribution. ICE headquarters and field staff also told us that their resources to supervise activities of program participants are being stretched to their maximum capacities to manage the increased growth of the program. To address these issues, ICE has detailed agents from OI and DRO to meet supervisory and other program requirements. ICE is also considering other ways to address the challenges presented by program growth. As discussed earlier in this report, the 287(g) program is 1 of 13 ICE programs to partner with state and local law enforcement agencies under ACCESS. ICE officials are working with state and local participants and applicants to help determine whether a different ACCESS program would better meet their needs, and as a result, ICE has reduced the backlog of applications to the 287(g) program from approximately 80 applications to 29 as of October 2008.

Program Activities Are Reported by ICE and Participating Agencies Reported Benefits and Concerns

Both ICE and state and local law enforcement agencies participating in the 287(g) program have reported activities, benefits, and concerns associated with the program. As of October 2008, ICE reported that 67 state and local law enforcement agencies had enrolled in the 287(g) program, and that about 25 state and local jurisdiction program applications were pending. In addition, ICE reported that 951 state and local officers received training in immigration law and enforcement functions and were certified to use 287(g) authority. ICE's data show that for 25 of the 29 participating agencies we reviewed in fiscal year 2008 that about 43,000 aliens had been

²⁹The question was not limited to possible reimbursements from DHS/ICE. GAO also did not independently verify whether these law enforcement agencies met criteria for federal reimbursement agreements.

arrested under the 287(g) program authority, with individual agency participant arrests ranging from about 13,000 in one location to no arrests in two locations. Of those 43,000 aliens arrested by program participants pursuant to the 287(g) authority, ICE detained about 34,000 and placed about 14,000 (41 percent) of those detained in removal proceedings, and arranged for about 15,000 (44 percent) to be voluntarily removed. The remaining 5,000 (15 percent) arrested aliens detained by ICE were either given a humanitarian release, sent to a federal or state prison to serve a sentence for a felony offense, or not taken into ICE custody given the minor nature of the underlying offense and limited availability of detention space.

State and local law enforcement agencies we interviewed have reported specific benefits of the 287(g) program, including the reduction of crime/making the community safer, identifying/removing repeat offenders, improving the quality of life for the community, and giving law enforcement officers a sense of accomplishment related to immigration enforcement. On the other hand, more than half of the 29 state and local law enforcement agencies we interviewed reported concerns that some members of their communities expressed about the 287(g) program, including concerns that law enforcement officers in the 287(g) program would be deporting removable aliens because of minor traffic violations (e.g., speeding); fear and apprehension in the Hispanic community about possible deportation; and concerns that officers would be performing increased enforcement of immigration laws at worksites and would engage in racial profiling. To help mitigate these fears and concerns, 27 of the 29 law enforcement agencies we reviewed reported that they had conducted outreach in their communities regarding the program (e.g., newspaper articles, press releases, TV and radio spots, speaking engagements, and public meetings).

Conclusions

Removing aliens who have committed violent crimes is of great importance to the safety of the community at large. Through the 287(g) program and its partnerships with state and local agencies, ICE has an opportunity to identify and train additional law enforcement resources that could help it meet this challenge. However, the lack of internal controls governing the program limits ICE's ability to take full advantage of this additional resource. For example, without documenting that the objective of the program is to remove aliens who have committed serious crimes or pose a threat to public safety, participating agencies may further burden limited detention resources by continuing to seek ICE assistance for aliens detained for minor crimes. According to ICE, it is important to

ensure that their limited detention bed space is available for those aliens posing the greatest threat to the public. Moreover, without consistently communicating to participating agencies how and under what circumstances 287(g) authority is to be used, participating agencies may use this authority in a manner that is not intended by ICE. Additionally, given the rapid growth of the program, the lack of defined supervision activities could hamper ICE's ability to ensure management directives are being carried out appropriately. Furthermore, without guidance for what data participating agencies are to collect and how this information is to be gathered and reported, ICE may not have the information it needs to help ensure participating agencies are adhering to program objectives. Finally, performance measures are important to provide ICE with a basis for determining whether the program is achieving its intended results. While it is encouraging that ICE is working to develop these measures, without establishing a plan, including a time frame for development, ICE lacks a roadmap for how it will achieve this goal.

Recommendations for Executive Action

To help ensure that the ICE 287(g) program achieves the results intended, we are recommending that the Assistant Secretary for ICE take the following five actions:

- Document the objective of the 287(g) program for participants,
- Clarify how and under what circumstances 287(g) authority is to be used by state and local law enforcement officers in participating agencies,
- Document in MOAs 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 and communicate that information to both ICE officers and state and local participating agencies,
- 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, and
- Establish a plan, including a time frame, for the development of performance measures for the 287(g) program.

Agency Comments

We provided a draft of this report to DHS for review and comment. DHS provided written comments on January 28, 2009, which are presented in appendix V. In commenting on the draft report, DHS stated that it agreed

with our recommendations and identified actions planned or underway to implement the recommendations.

ICE also provided us with technical comments, which we considered and incorporated in the report where appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Homeland Security, the Secretary of State, the Attorney General, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff has any questions about this report, please contact me at (202) 512-8777 or at stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are acknowledged in appendix VI.



Richard M. Stana, Director
Homeland Security and Justice Issues

List of Congressional Requesters

The Honorable Joseph I. Lieberman
Chairman

The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

The Honorable Christopher P. Carney
The Honorable Mike Rogers
The Honorable Mark E. Souder
House of Representatives

Appendix I: Statutory Provision Governing the 287(g) Program

8 U.S.C. § 1357(g)

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of title 31, the Attorney General¹ may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be,

¹Under the Homeland Security Act of 2002, this and other immigration enforcement functions of the Attorney General were transferred to the Department of Homeland Security upon its creation in March 2003 and were delegated to ICE pursuant to the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified. See 6 U.S.C. § 251; Reorganization Plan Modification for the Department of Homeland Security, H. Doc. 108-32, at 3 (Feb. 4, 2003).

exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State —

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

Appendix II: Structured Interview Questions for All 29 Participants of the 287(g) Program



United States Government Accountability Office
Washington, DC 20548

Review of Immigration and Customs Enforcement's 287(g) Delegation of Authority Program

The United States Government Accountability Office (GAO), an independent, nonpartisan agency of Congress, is reviewing the U.S. Immigration and Customs Enforcement's (ICE) 287(g) Delegation of Authority Program. GAO is undertaking this work in response to a request from the U.S. Congress. The questions below are designed to identify how this program is meeting its intended objectives, and to provide a better understanding of the role of the participants and their views about the program.

As a participant in the 287 (g) program, your feedback is an important source of information. ICE provided us your name as the local point of contact. GAO appreciates your agreeing to address the questions below during the teleconference. We anticipate that a discussion of these issues may take between 60-90 minutes.

Questions for 287(g) Participating Jurisdictions

I. Purpose

- a. What motivated your jurisdiction to participate in the 287(g) Program?
- b. In deciding to participate in the 287(g) program, was your primary interest in immigration enforcement, anti-terrorism activities, public safety or other issues?
- c. When you first considered joining the 287(g) program, what did you think it would allow state and local law enforcement to do?
- d. Is there a difference between what you initially thought and what the agreement as implemented is?
- e. How long did it take you to negotiate your MOA? What do you consider the starting point? When did you actually start implementing the Agreement? That is on what date did your trained officers actually begin to exercise 287(g) authority?
- f. What factors, if any, delayed your participation in the 287(g) Program?
- g. Did ICE suggest or mention any other ICE partnerships at the time you discussed your eligibility and participation in the 287(g) program?

II. Statutory or Legal Authorities

- a. Besides Section 287(g) of the Immigration and Nationality Act (INA) and your Memorandum of Agreement (MOA) with ICE, are there any other statutory or legal authorities at the state or local level that govern your ability to enforce immigration laws?
- b. Is there any requirement on the state or local level that you participate in the 287(g) program?

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United States Government Accountability Office
Washington, DC 20548

III. Program Statistics

- a. Will you please provide us with documentation on immigration enforcement statistics in your jurisdiction?
- b. How do you assess the benefit of this program to your jurisdiction?
- c. Does ICE require you to report data from your immigration related law enforcement activities? Please describe.

IV. Immigration Enforcement Activities Covered Under the Agreement

- a. Why did you choose the (Task Force Officer (TFO)/Jail Enforcement Officer (JEO)/Mix) model for your 287(g) Agreement?
- b. Can you please describe what tasks participating officers carry out – please differentiate if your model includes both task force and jails.
- c. Have the activities designated in the MOA met your needs in carrying out your duties under 287(g)?
- d. What activities currently covered by your MOA do you feel may be unnecessary or haven't you used? Why or why not?
- e. Are you the individual who is in charge of this program for the participating jurisdiction? Are you the person who selected and supervises the officers who have 287(g) authority?

V. 287(g) Participants

- a. How many candidates were initially nominated to participate in the 287(g) program?
 - i. How many candidates were approved or not approved by Fiscal Year (October 1 through September 30)?
- b. How many participants are currently carrying out functions outlined in the 287(g) Agreement?
- c. What is the size of your law enforcement agency? What is the size of the pool of individuals who would be eligible to carry out 287(g) responsibilities?
- d. How does the certification renewal process work?
 - i. Is it automatically renewed?
 - ii. Is renewal conditional on additional training?
 - iii. How long is the subsequent certification good for?
- e. Have any certified participants at any time had their authorization revoked? Why?

VI. Training

- a. Did participating officers think the training provided by ICE prepared them to take the exam?
- b. Where did the initial training take place?
- c. In the year or years following the initial training, did ICE provide additional training and guidance?
 - i. When did this follow up training occur (date)?

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Washington, DC 20548

- d. How was this training administered? (classroom, teleconference, written guidance, computer)
- e. Did the instructor who provided the initial training provide any additional training?
- f. Has the training been sufficient for the activities participants carry out?
- g. Have you received any training on a local basis from ICE supervisors?

VII. Supervision and Steering Committee Review of the 287(g) Program

- a. How many ICE officers do you interact with related to your 287(g) activities, and where are they located? We are interested in the location you call for Detention as well as Office of Investigations assistance.
- b. How would you evaluate ICE's supervision of your participating officers?
- c. According to the MOA, ICE provides ongoing reviews of participating officers. What does it entail?
- d. Since your participation in the 287(g) program, has ICE's response to your calls for assistance changed? If so, are you getting more, less, or the same level of support from ICE?
- e. The 287(g) MOA mentions a Steering Committee.
 - i. Who sits on the committee?
 - ii. What kind of oversight activities does the committee conduct, if any?
 - iii. What authority do the committee and its committee membership have?
 - iv. Do participating officers have an opportunity to meet with the committee about their activities?
- f. Have you made modifications to your 287(g) agreement? Have you made any modifications based on Steering Committee reviews?
- g. How often does the Steering Committee meet?

VIII. Costs and Expenditures

- a. What costs does your jurisdiction incur as a result of its participation in the 287(g) program? Is there any additional cost to participating in the 287(g) Program for your jurisdiction (annually by fiscal year)?
 - i. What are the elements you consider as part of this cost?
- b. Have costs increased or decreased since the Agreement went into effect?
- c. Do you receive any federal reimbursement for costs associated with the 287(g) Program?
- d. Do you receive any state or local reimbursement for costs associated with the 287(g) Program?
- e. Have you entered into any Inter-Governmental Service Agreements with ICE as a result of your participation in the 287(g) Program?
- f. Has ICE provided any equipment to your jurisdiction for the 287(g) Program? If yes, please specify.
 - i. Does the equipment/technology/material provided by ICE allow you to carry out your agreed upon activities?
 - ii. Who provided/installed the equipment?
 - iii. Who do you call for technical support?

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Appendix II: Structured Interview Questions
for All 29 Participants of the 287(g) Program



United States Government Accountability Office
Washington, DC 20548

- iv. Did ICE specify what equipment was necessary or did the jurisdiction provide a list of necessary equipment/technology/material in order to carry out its activities under the agreement?
- g. What additional support has ICE provided for the 287(g) Program?
- h. Has ICE's support satisfied the jurisdiction's needs for the 287(g) Program?
- i. Has your participation in the 287(g) program generated any cost savings? If so, in what particular areas are you seeing cost savings?

IX. Complaint Procedures

- a. How do you track complaints related to this program? (specific complaints about the implementation of the program by officers)
- b. Can you provide statistics on the number and type of complaints you have received?
- c. Does ICE require you to report complaints related to the 287(g) Program?

X. Community Outreach

- a. How do you inform the community about your participation in the 287(g) Program?
- b. If requested, has ICE assisted you in community outreach?
- c. Has the community raised any questions about the 287(g) program and your law enforcement activities? Have you received any general complaints from the community about your participation in the 287(g) Program?

XI. Other ICE Partnerships

- a. Does your jurisdiction participate in any other partnerships with ICE outside of the 287(g) program?
 - i. Border Enforcement Security Task Forces
 - ii. Criminal Alien Program
 - iii. Customs Cross Designation
 - iv. Document and Benefit Fraud Task Forces
 - v. Equitable Sharing/Joint Operations
 - vi. Fugitive Operation Teams
 - vii. Intellectual Property Rights Coordination Center
 - viii. Law Enforcement Support Center
 - ix. Operation Community Shield
 - x. Operation Firewall
 - xi. Operation Predator

Document #: GAOHQ 2147417

Appendix III: Objectives, Scope, and Methodology

Objectives

This report addresses (1) the extent to which ICE has designed controls to govern 287(g) program implementation and (2) how program resources are being used and the program activities, benefits, and concerns reported by participating agencies.

Scope and Methodology

To address our objectives, we contacted and obtained information from key people and organizations associated with the arrest, detention, and removal of aliens, and U.S. Immigration and Customs Enforcement's (ICE) 287(g) program, including the following:

- ICE headquarters officials from the following offices: Office of Investigations, Office of the Principal Legal Advisor, Office of Detention and Removal, Office of the Chief Financial Officer/Budget Office, Office of State and Local Coordination, and Office of Professional Responsibility.
- ICE officials from ICE Field Offices in Phoenix, Arizona, and in the California offices of Los Angeles, Santa Ana, Riverside, and San Bernardino in conjunction with our site visits to state and local law enforcement agencies in these areas.
- Officials from all 29 state and local law enforcement agencies that had entered into agreements with ICE as of September 1, 2007, listed below. Six of these agencies reported that they had not yet begun implementing the program. Our analysis includes information from these six agencies as appropriate.¹ We conducted structured interviews with officials from these organizations from October 2007 through February 2008. By interviewing officials from all participating agencies, we were able to obtain information and perspectives from participating agencies that had been involved in the program for the longest period of time as well as from those agencies that had just started participating to learn how law enforcement agencies get their program implemented.

¹Law enforcement agencies that could not provide complete information during our structured interviews because they had not implemented or had little experience with the 287(g) program included: Georgia Department of Public Safety, Massachusetts Department of Corrections, El Paso County Sheriff's Office (Colorado), Cabarrus County Sheriff's Office (North Carolina), Barnstable County Sheriff's Office (Massachusetts), and the New Mexico Department of Corrections.

State and local law enforcement agencies that had entered into agreements with ICE as of September 1, 2007:

Alabama Department of Public Safety;

Arizona Department of Corrections;

Arizona Department of Public Safety;

Maricopa County Sheriff's Office (Arizona);

Los Angeles County Sheriff's Office (California)

Orange County Sheriff's Office (California);

Riverside County Sheriff's Office (California);

San Bernardino County Sheriff's Office (California);

Colorado Department of Public Safety/State Patrol;

El Paso County Sheriff's Office (Colorado);

Collier County Sheriff's Office (Florida);

Florida Department of Law Enforcement;

Cobb County Sheriff's Office (Georgia);

Georgia Department of Public Safety;

Barnstable County Sheriff's Office (Massachusetts);

Framingham Police Department (Massachusetts);

Massachusetts Department of Corrections;

Alamance County Sheriff's Office (North Carolina);

Cabarrus County Sheriff's Office (North Carolina);

Gaston County Sheriff's Office (North Carolina);

Mecklenburg County Sheriff's Office (North Carolina);
Hudson Police Department (New Hampshire)
New Mexico Department of Corrections;
Tulsa County Sheriff's Office (Oklahoma);
Davidson County Sheriff's Office (Tennessee);
Herndon Police Department (Virginia);
Prince William-Manassas Adult Detention Center (Virginia);
Rockingham County Sheriff's Office (Virginia); and
Shenandoah County Sheriff's Office (Virginia).

We also conducted site visits with nine state and local law enforcement agencies that entered into an agreement with ICE as of September 1, 2007, and had begun implementing the program. These sites were selected to represent variation in length of partnership with ICE, type of model (e.g., jail, task force, or joint), geographic location, size of jurisdiction, and proximity to ICE Special-Agent-in-Charge or regional office. The offices from which we interviewed officials about their participation in the 287(g) program, include Rockingham County Sheriff's Office, Shenandoah County Sheriff's Office, Los Angeles County Sheriff's Office, Orange County Sheriff's Office, San Bernardino County Sheriff's Office, Riverside County Sheriff's Office, Arizona Department of Corrections, Maricopa County Sheriff's Office (including the Enforcement Support, Human Smuggling Unit), and Arizona Department of Public Safety (including the Gang Enforcement Bureau and the Criminal Investigations Division). Although we are not able to generalize the information gathered from these visits to all other participating law enforcement agencies, they provided us with a variety of examples related to program implementation.

To determine what the 287(g) program's objectives are and to what extent ICE has designed controls to govern implementation, we collected and analyzed information regarding the program's objective and obtained information from both ICE and the participating law enforcement agencies we interviewed and visited to determine if ICE objectives for the program were clearly articulated to law enforcement agencies. We reviewed available program-related documents, including program case files for the

initial 29 participating agencies, the 287(g) brochure, training materials provided to state and local officers to become certified in the program, and a “frequently asked questions” document on the program. In addition, we analyzed the MOAs of each state and local agency participating in the 287(g) program as of September 1, 2007. Specifically, we examined sections of the MOAs related to program authority, designation of enforcement functions, and ICE supervision responsibilities, among other areas of these written agreements. We completed a content analysis of responses to structured interviews that were conducted with key officials from each of the participating law enforcement agencies in this review and from information gathered from site visits. Our content analysis consisted of reviewing the responses to the structured interview questions and identifying and grouping responses by theme or characterization. These themes were then coded and tallied. For some questions, participating agencies gave multiple responses or characterizations, therefore responses are not always mutually exclusive. Selection of themes and coding of responses were conducted separately by two analysts; any discrepancies were resolved. We also compared controls ICE told us they designed to govern implementation of the 287(g) program, including conducting background checks, providing formal training with qualifying exams for the applicants’ officers, and agreeing with state and local agencies to MOAs, with criteria in GAO’s Standards for Internal Control in the Federal Government, the Government Performance and Results Act (GPRA) and standard practices for program management.² To corroborate the information we received from the law enforcement agencies through both the structured interviews and site visits, we interviewed officials from ICE both at headquarters and in the field, and examined documentation on guidance given to both ICE and state and local participants about the implementation of the program, as well as reviewed all 29 case files

²GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999). These standards, issued pursuant to the requirements of the Federal Managers’ Financial Integrity Act of 1982 (FMFIA), provide the overall framework for establishing and maintaining internal control in the federal government. Also pursuant to FMFIA, the Office of Management and Budget issued Circular A-123, revised December 21, 2004, to provide the specific requirements for assessing the reporting on internal controls. Internal control standards and the definition of internal control in Circular A-123 are based on GAO’s *Standards for Internal Control in the Federal Government*. GPRA is the primary legislative framework through which agencies will be required to set strategic goals, measure performance, and report on the degree to which goals were met. GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996). Additional program management standards we reviewed are reflected in the Project Management Institute’s *The Standard for Program Management* © (2006).

created and maintained by ICE on program participants. We identified for what purposes ICE relies on data collected from law enforcement agencies, and how data reliability checks are performed for data collection associated with the 287(g) program. We interviewed ICE officials and participating law enforcement agencies to determine what guidance ICE has provided to law enforcement agencies on how data are collected, stored, and reported to ICE. We interviewed officials and examined documentation from ICE to determine the measures established to monitor performance and improvements made to the program. We reviewed reports that use data from ICE's Enforcement Case Tracking System or the ENFORCE database, which automates the processes associated with the identification, apprehension, and deportation of removable aliens. During our review, we learned that some data regarding the 287(g) program may not have been included in ENFORCE, and therefore, we are unsure of the completeness of the information relevant to this program in this database. We used this data to a limited extent in our Objective II discussion related to activities, benefits, and concerns of the 287(g) program. The data used was for illustrative purposes only and not used to draw conclusions about the program.

To determine what resources ICE and participating law enforcement agencies provide to the program including the equipment and training for program participants, and the assignment of ICE supervisory staff for this program, we examined ICE's budget for the 287(g) program, including how ICE calculates the funding requirements for each additional agreement. We also interviewed officials from the participating law enforcement agencies, analyzed information collected from these agencies to determine what resources they reported using to implement the program and the activities, benefits, and concerns they reported associated with the program. In addition, we examined budget and appropriations documentation from the program's inception to the fiscal year 2009 budget request for the 287(g) program. We collected and analyzed information on the activities reported by ICE stemming from the program. Through our structured interviews, we gathered and analyzed the participating state and local agencies views on the activities, benefits, and concerns related to the program. We did not conduct a fiscal examination of the cost of detention facilities, nor review the budgetary effect on law enforcement agencies implementing the 287(g) program.

Appendix IV: Copy of ICE Pamphlet on ACCESS Programs

ICE Agreements of Cooperation in Communities to Enhance Safety and Security

ICE ACCESS

| Fact Sheet |

ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities. ICE developed the ACCESS program in response to the widespread interest from local law enforcement agencies who have requested ICE assistance through the 287(g) program. This program cross-designates local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act.

The 287(g) program is only one component under the ICE ACCESS umbrella of services and programs offered for assistance to local law enforcement officers.

ICE agents and officers will meet with agencies requesting ICE ACCESS assistance to assess local needs and to draft appropriate plans of action. Based upon these assessments, ICE and local agencies will determine which type of partnership is most beneficial and sustainable before entering into an official agreement.

Law enforcement agencies interested in reviewing the enforcement programs under the ICE ACCESS program are encouraged to call their local ICE office or visit www.ice.gov for more information.

ICE ACCESS Support and Programs

Asset Forfeiture. Criminal organizations that conduct cross-border crimes earn illicit proceeds that sustain their criminal activity and fund other criminal endeavors. Asset forfeiture laws allow ICE agents to seize and forfeit these illicit proceeds and other criminally derived assets. ICE uses asset forfeiture to disrupt and dismantle these organizations across all ICE investigative areas, such as money laundering, bulk cash smuggling, worksite enforcement and alien and drug smuggling investigations. The proceeds of these forfeitures are deposited into the Treasury Forfeiture

Fund and are returned to member agencies to pay for a variety of important law enforcement operations.

Border Enforcement Security Task Forces (BEST). The concept of the Border Enforcement Security Task Forces (BEST) is that DHS law enforcement agencies, working cooperatively with other law enforcement entities, develop a comprehensive approach to identify, disrupt and dismantle criminal organizations posing significant threats to border security. BEST forces are currently located in Arizona, California and Texas.

Criminal Alien Program (CAP). The Criminal Alien Program (CAP) focuses on identifying criminal aliens who are incarcerated within federal, state and local facilities, thereby ensuring that they are not released into the community by securing a final order of removal prior to the termination of their sentence.

Customs Cross-designation (Title 19). Title 19 United States Code 1401 (I) allows for federal, state, local and foreign law enforcement officers who participate primarily on ICE task force operations to be cross-designated as "customs officers" and be granted the authority to enforce U.S. customs law. These cross-designated task force officers supplement ICE's investigative mission of combating narcotics smuggling; money laundering; human smuggling and trafficking; and fraud related activities to disrupt and dismantle criminal organizations threatening U.S. borders.

Document and Benefit Fraud Task Forces. ICE created Document and Benefit Fraud Task Forces (DBFTFs) to target, dismantle and seize illicit proceeds of the criminal organizations that threaten national security and public safety by exploiting the immigration process through fraud. The DBFTFs provide an effective platform from which to launch anti-fraud initiatives using existing manpower and authorities. Through DBFTFs, ICE partners with other federal agencies, state and local law enforcement



ment. These task forces focus their efforts on detecting, deterring and disrupting both benefit fraud and document fraud. DBFTFs are located in Atlanta, Boston, Dallas, Denver, Detroit, Los Angeles, New York, Newark, Philadelphia, St. Paul, Washington, D.C., Baltimore, Chicago, Miami, Phoenix, San Francisco and Tampa.

Equitable Sharing/Joint Operations. Asset forfeiture has been, and remains, a highly effective tool for taking the profit out of crime. State, local and foreign law enforcement support of federal investigative and prosecutorial initiatives is essential; and the sharing program has proved invaluable in fostering enhanced cooperation among the law enforcement agencies. In fiscal year 2006 (FY06), ICE coordinated payments of \$5.65 million in overtime costs for state and local police officers working alongside ICE agents throughout the U.S., and provided \$43.46 million in direct payments of equitable sharing of forfeited assets to 362 state and local agencies, four federal agencies and one foreign government. These payments allow agencies to cooperatively combat crimes in their jurisdictions through joint operations with ICE and have increased goodwill and partnership with these agencies.

Fugitive Operation Teams (FOTs). The primary mission of FOTs is to identify, locate, apprehend, process and remove fugitive aliens from the United States with the highest priority placed on those fugitives who have been convicted of crimes. Further, the FOTs goal is to eliminate the backlog of fugitives and ensure that the number of aliens deported equals the number of final orders of removal issued by the immigration courts in any given year. ICE relies on the assistance of all federal, state and local law enforcement agencies in this endeavor.

Immigration Cross-designation (Title 8)—287g Program. The 287(g) program cross-designates local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act. To date, more than 60 municipal, county and state agencies nationwide have requested 287(g) memorandums of agreement with ICE and more than 400 local and state officers have been trained under the program.

IPR Center. The ICE-led National Intellectual Property Rights Coordination Center (IPR Center) is the government's central point of contact in the fight against violations of intellectual property rights and the flow of counterfeit goods into the U.S. Commerce. The Center operates as a multi-agency facility responsible for coordinating a unified response regarding IPR enforcement issues. Core staffing is provided by investigative and intelligence personnel from ICE. Particular emphasis is given to protecting the public health and safety of con-

sumers, investigating major criminal organizations engaged in transnational intellectual property crimes, and pursuing the illegal proceeds derived from the manufacture and sale of counterfeit merchandise.

Law Enforcement Support Center (LESC). The mission of the Law Enforcement Support Center (LESC) is to protect the U.S. and its people by providing timely accurate information and assistance to the federal, state and local law enforcement community. The LESOC serves as a national enforcement operations center by providing immigration status and identity information on aliens suspected, arrested or convicted of criminal activity. The LESOC operates 24 hours a day, 7 days a week assisting law enforcement agencies with information gathered from 8 DHS databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III) and other state criminal history indices.

Operation Community Shield. In February 2005, ICE launched Operation Community Shield, a national law enforcement initiative that brings all of ICE's law enforcement powers to bear in the fight against violent gangs that threatening the public safety of our communities. Operation Community Shield is part of a comprehensive approach of working with our law enforcement partners at the federal, state and local level to combat transnational gangs. Under this initiative, ICE is using its broad authorities, both criminal and administrative, against gangs and gang members. This authority includes conducting investigations involving narcotics and human smuggling, money laundering and racketeering violations.

Operation Firewall. The smuggling of bulk currency out of the U.S. has become a preferred method of moving illicit proceeds across our borders. To combat the increasing use of Bulk Cash Smuggling (BCS) by criminal organizations, the ICE Financial, Narcotics and Public Safety Division and the CBP Office of Field Operations, Tactical Operations Division, developed a joint strategic BCS initiative referred to as Operation Firewall, which began in August 2005, and has expanded through FY06 and FY07. Operation Firewall has resulted in the seizure of more than \$80 million in U.S. currency and negotiable instruments of suspected narcotics and other criminal proceeds.

Operation Predator. Operation Predator is a program designed to identify, investigate and, as appropriate, administratively deport child predators. ICE routinely coordinates and integrates investigative efforts with foreign law enforcement, in order to identify, arrest and prosecute the those involved in international pedophilic groups or who derive proceeds from commercial child exploitation ventures.

Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

January 28, 2009

Mr. Richard M. Stana
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Stana:

RE: Draft Report GAO-09-109, Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws (GAO Job Code 440641)

The Department of Homeland Security (Department) appreciates the opportunity to review and comment on the draft report referenced above. The report contains five recommendations. The Department, specifically U.S. Immigration and Customs Enforcement (ICE), agrees with the recommendations. ICE has made a number of improvements that promote or otherwise reinforce the maintenance of internal management control. Actions taken and planned are included in the responses.

While internal management controls can be improved, the program itself is working. For example, 43,000 aliens arrested by 25 participants in the 287(g) program during fiscal year 2008 resulted in 34,000 aliens being detained by ICE. Of the 34,000 detained, approximately 41% were placed in removal proceedings, approximately 44% agreed to voluntary removal, and the remaining approximately 15% were either given a humanitarian release, sent to a federal or state prison to serve a sentence for a felony conviction, or not taken into ICE custody due to the minor nature of the underlying offense and limited federal government detention space. As noted by the U.S. Government Accountability Office (GAO), participating agencies cited benefits of the program that included reduction in crime and removal of repeat offenders. Public safety and the quality of community life have improved as a result. The dollar savings associated with crime reduction may not be easily quantified but there has been a positive impact. Further, as of October 2008, about 25 state and local applications were pending in addition to the 67 state and local law enforcement agencies enrolled in the 287(g) program. The expanding interest reflects community concerns associated with criminal illegal migration. Additional resources will help make this program more effective.

GAO recommended that the Assistant Secretary for ICE take the following five actions to help ensure that the ICE 287(g) program achieves the results intended.

Recommendation 1: Document the objective of the 287(g) program for participants.

www.dhs.gov

Response:

ICE completed strategic planning exercises in October 2008 and has drafted a proposed Office of State and Local Coordination (OSLC) Strategic Plan. Once published, the plan will align the strategic objectives of the application of 287(g) authority at all levels and be consistent with the Secretary's strategic goals. To ensure the strategic objectives are consistently promulgated to participating state and local jurisdictions, ICE will develop and implement an accompanying strategic communications plan. The communications plan shall include the tools, tactics and information needed to facilitate state and local understanding of the overall ICE strategy.

Recommendation 2: Clarify how and under what circumstances 287(g) authority is to be used by state and local law enforcement officers in participating agencies.

Response:

While the Memoranda of Agreement (MOA) delineate the provision of 287(g) authorities, guidance for the specific application of those authorities must be tailored from jurisdiction to jurisdiction. Clarifying specific uses of 287(g) authority will be accomplished by OSLC developing a standard national-level template of procedures and requirements that may be enhanced at the field level to address regional and local law enforcement needs and circumstances of the jurisdiction. These will form the Standard Operating Procedures (SOP). The template will outline the basic requirements necessary to ensure the delegated authorities are clear, that the right training is provided, and that necessary supervision is committed. ICE intends or anticipates that all new MOAs will require the execution of accompanying SOP within 90 days from the date the MOA is signed. The SOPs are to be tailored to the local jurisdiction, and necessarily include all the minimum procedures and requirements mandated in the standard template.

In addition, clarifying how such authority may be utilized in specific situations is best effected through ICE's mandatory 287(g) training program. ICE continues to provide and refine this training in order to ensure officers understand how to properly apply 287(g) authority consistent with federal law and the specific provisions of the governing MOA. Through this training, 287(g) candidates obtain a working knowledge of the specific circumstances under which officers are authorized to exercise the delegated authority in their jurisdiction. Further, the previously mentioned communications plan will reinforce this training and promote greater awareness within local jurisdictions of the proper application of 287(g) authority while encouraging use that supports strategic law enforcement efforts.

ICE also will continue to mandate that only ICE personnel are authorized to sign charging documents. ICE officials have never granted any jurisdiction the authority to perform this task.

Recommendation 3: Document in MOAs 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 and communicate that information to both ICE officers and state and local participating agencies.

Response:

ICE concurs that 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 should be documented and communicated to both ICE officers and state and local participating agencies. As stated above, OSLC is developing a standard template of procedures and requirements. This template will also detail the mandatory required supervisory activities which will be augmented and tailored by the local ICE office to fit the specific needs of the local jurisdiction. The resulting supervisory activity requirements will be memorialized in the SOPs which, as stated above, are to be agreed upon at the field level and incorporated by reference in the MOA. The development and issuance of the SOP between ICE field personnel and state and local police officers will ensure that all understand the role of ICE field personnel in overseeing the proper application of 287(g) authority. The SOP will also provide the flexibility necessary for the day-to-day details of supervision consistent with the obligations circumscribed generally within the MOA and by OSLC, and permits the flexibility necessary to suit the varying circumstances of each area.

Additionally, as referenced in the draft report, ICE has implemented a regular inspection process conducted by the ICE Office of Professional Responsibility (OPR) that is aimed at assessing a local law enforcement agency's compliance with the terms of the applicable MOA. OPR completes an inspection report after each inspection that will be used to address any control deficiencies identified.

Finally, it is important to note that ICE's authority to operationally supervise individual police officers does not extend beyond actions undertaken using delegated Title 8 authority for a specific immigration-related purpose, and for which ICE has provided training. Neither does ICE displace the law enforcement agency's obligation to supervise and maintain control of its officers at all times.

Recommendation 4: 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.

Response:

ICE has determined that each MOA jurisdiction shall use ICE's ENFORCE system consistently with all ICE personnel authorized to arrest and process persons suspected of violating immigration law. Participating state and local law enforcement agency jurisdictions will be notified of any changes to ENFORCE to ensure that data reporting remains consistent and accurate. Upon approval of proposed performance measures as noted in the proposed OSLC Strategic Plan, ICE will be better postured to distill essential statistics which will further the approved performance goals of the program. As outlined above, a standard template of procedures and requirements will be drafted and disseminated which will specify sustainable reporting requirements for each jurisdiction. Administration of these core reporting requirements will be addressed in the SOPs accompanying the MOA.

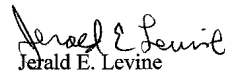
Recommendation 5: Establish a plan, including a time frame, for the development of performance measures for the 287(g) program.

Response:

With the completion of strategic planning exercises in October 2008, ICE defined high-level performance measures for OSLC to gauge its progress toward achieving its performance goals. These measures will be incorporated into ICE's overall performance management program.

Details of the corrective management action noted in this response will be reported through an ICE Mission Action Plan within 60 days of GAO publishing its final report. Suggested technical corrections to improve the usefulness of the report have been provided verbally and under separate cover.

Sincerely,



Jerald E. Levine
Director
Departmental GAO/OIG Liaison Office

MMcP

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Richard M. Stana, (202) 512-8777 or stanar@gao.gov

Staff Acknowledgments

In addition to the contact named above, Bill Crocker, Assistant Director, and Lori Kmetz, Analyst-in-Charge, managed this assignment. Susanna Kuebler, Carolyn Garvey, and Orlando Copeland made significant contributions to the work. Michele Fejfar assisted with design, methodology, and data analysis. Katherine Davis, Linda Miller, Adam Vogt and Peter Anderson provided assistance in report preparation, and Frances Cook provided legal support.

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