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EXAMINING 287(G): THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT IN IMMIGRATION LAW

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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EXAMINING 287(G): THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT IN IMMIGRATION LAW

Wednesday, March 4, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC.

The committee met, pursuant to call, at 2:02 p.m., in Room 311, Cannon House Office Building, Hon. Bennie G. Thompson [Chairman of the committee] presiding.

Present: Representatives Thompson, Sanchez, DeFazio, Jackson Lee, Cuellar, Carney, Clarke, Richardson, Kirkpatrick, Luján, Cleaver, Green, Kilroy, Massa, Titus, Smith, Souder, Lundgren, Rogers, McCaul, Dent, Bilirakis, Broun, Olson, Cao, and Austria.

Also present: Representatives Bartlett and Edwards.

Chairman THOMPSON [presiding]. The Committee on Homeland Security will come to order. I would like to ask unanimous consent to allow Representative Edwards and Bartlett to sit in on the hearing for the purpose of introducing their respective witness.

Without objection.

The committee is meeting today to receive testimony on "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law." I want to thank the witnesses for appearing today to provide testimony on the 287(g) program, which has been around since 1996 but has experienced a remarkable surge in popularity in recent years.

According to Immigration and Customs Enforcement, the main goal of the program is to increase the safety and security of our communities by apprehending and removing undocumented criminal aliens who are involved in violent and serious crimes. According to ICE, the local sheriffs and police officers would work with ICE to identify, locate, and apprehend these dangerous people.

The 287(g) program, as intended, would achieve two parallel goals. No. 1, participating jurisdictions would have dangerous people removed from their communities. No. 2, the Federal Government would have a force multiplier to enhance efforts to remove dangerous aliens from the country.

In theory, it seems like a good idea and a good deal for everyone involved. In fact, many jurisdictions have bought into the promise of this program as evidenced by the surge in popularity over the last 2 years. Participation has grown from 29 programs in 2006 in 13 States to 67 programs in 23 States today. There is even a waiting list to join. Forty-two State and local law jurisdictions are on

the waiting list. As the popularity of this program has grown, so has funding. In the last 3 years, the 287(g) program's budget has increased from $5 million to nearly $60 million.

Like everyone else, I applaud the growth of successful programs. But the record is incomplete, at best, as to whether or not this program is a success. For instance, in 2008, it was credited with resulting in the removal of 29,000 people. Its budget for fiscal year 2008 was just under $40 million. To determine whether that was a prudent way to spend the taxpayers' money, we would need to know whether the people removed were dangerous aliens. Unfortunately, we do not know the critical piece of information.

We cannot answer this basic question because, as we will hear from the Government Accountability Office, ICE does not require that specific data be collected, does not require that specific information be reported and does not have any performance measures. Without objective data, we cannot evaluate the effectiveness of this program nor can we determine whether better results could be achieved by other means such as increasing the number of ICE agents.

While I do not know whether 287(g) is an effective program, I do know that it is a program that has been accused of racial profiling. That accusation should concern all of us. Effective law enforcement and discrimination cannot coexist. Our communities must be safe and our Nation must be secure. We will only achieve that goal by making sure that our efforts are strategic and tailored. Popularity cannot be a replacement for documented performance and constitutional principles.

I look forward to hearing testimony from our distinguished panel.

The Chair now recognizes our Ranking Member, Mr. Souder, sitting in for Mr. King, from Indiana, for an opening statement.

Mr. SOUDER. Thank you very much, Mr. Chairman.

This is an important hearing on a cornerstone Department of Homeland Security law enforcement information sharing program. While the 287(g) program was slow to start—the law was enacted in 1996, the first agreement signed in 2002 after the 9/11 terrorist attacks—a major vote did not occur until 2007. There are clear benefits for the jurisdictions who volunteer for this program. They get access to immigration status information, a direct link to ICE to identify and remove aliens in the custody of local law enforcement, deterrent for aliens to commit crimes and engage in gang activity in the community, the ability to remove aliens from jail, saving space and money.

Under this program, officers undergo federally sponsored training, receive equipment, and most importantly, have access to information. This allows them to accurately check the immigration status of the aliens they encounter during their day-to-day activity such as arresting an individual for narcotics violations, driving without a license or drunk driving, investigating a violent crime or booking an individual into a correctional facility. All of these things are in fact crimes in addition to the illegal status.

ICE depends on data provided by local law enforcement. Illegal immigration investigations are similar to counter-narcotics in that a significant amount of data is necessary to connect the dots and find systems of smuggling. For the entire Nation as well as for for-

eign assignments, ICE has 6,000 agents and 6,000 detention and removal officers. ICE resources are stretched thin. For ICE to tackle the large smuggling networks, they rely on partnerships with State and local law enforcement and correctional facilities—by the way, just like we do in narcotics and HIDAS.

ICE has 67 active agreements and 25 applications pending. Unfortunately, ICE has also denied many requests from jurisdictions wanting to participate in the 287(g) program. There is clearly interest among State and local law enforcement to—including in my own congressional district—to partner with ICE as a means to enhance community safety and bolster national security. My biggest frustration is that ICE, under both Republican and Democratic administrations, has not done enough to support the program.

In October 2007 after hearing from several sheriffs in my district about their concerns with illegal immigration, criminal aliens in particular, I organized an immigration law enforcement roundtable. The event was attended by ICE and 25 representatives from across Indiana and parts of western Ohio, including sheriffs, prosecutors, and jailors.

Allen County Sheriff Fries is from the largest county in my district—350,000 people. He has applied to participate in 287(g) and was told that ICE did not have the resources to support the request. Even if he did the training, they wouldn't have any DRO agents to remove people that were arrested.

At the time of the roundtable, most of the law enforcement jurisdictions present were encouraged that ICE had a person dedicated to transporting illegal aliens from their jails who had been arrested for other crimes to Federal detention facilities. Shortly after, however, this arrangement fell apart, as the individual assigned was involved in an accident, and his replacement was sent on another assignment.

It is my understanding that this situation still has not been corrected in Indiana. As recently as February 9, Sheriff Fries reported that there are at least 200 illegal aliens housed in my home county's jail for various crimes, costing the taxpayers $40 a day. Sheriff Fries would prefer to turn them over to ICE for removal from the country, but ICE cannot or will not provide anyone to transport them. He and the taxpayers of Indiana and other sheriffs from my district are ranging between frustrated to angry that the Federal Government refuses to execute their obligations and commitments to follow through on their part.

I am looking forward to this hearing from ICE about this situation and the future of the 287(g) program. I would like to especially thank Sheriff Jenkins from Frederick County, Maryland, for being here. I am interested in hearing about 287(g) and how it works in your jurisdiction. I also appreciate the work of GAO in producing a report on 287(g) and offering several common-sense suggestions that should improve the program management.

Thank you to the other witnesses as well, and I look forward to your testimony.

Thank you, Mr. Chairman.

[The statement of Hon. Souder follows:]

PREPARED STATEMENT OF THE HONORABLE MARK E. SOUDER

MARCH 4, 2009

Thank you, Mr. Chairman. This is an important hearing on a cornerstone DHS law enforcement information sharing program.

While the 287(g) program was slow to start—the law was enacted in 1996; the first agreement was signed in 2002 after the 9/11 terrorist attacks—major growth did not occur until 2007.

There are clear benefits for the jurisdictions who volunteer for this program:

- Access to immigration status information;
- Direct link to ICE to identify and remove aliens in the custody of local law enforcement;
- Deterrant for aliens to commit crimes and engage in gang activity in the community;
- Ability to remove aliens from jails—saving space and money.

Under this program, officers undergo Federally-sponsored training, receive equipment, and most importantly have access to information. This allows them to check the immigration status of aliens they encounter during their day-to-day activities, such as arresting an individual driving without a license or drunk driving, investigating a violent crime, and booking an individual into a correctional facility.

ICE depends on data provided by local law enforcement. Illegal immigration investigations are similar to counternarcotics in that a significant amount of data is necessary to connect the dots and find systems of smuggling. For the entire Nation, as well as foreign assignments, ICE has 6,000 agents and 6,000 detention officers. ICE resources are stretched thin. For ICE to tackle the large smuggling networks, they rely on partnerships with State and local law enforcement and correctional facilities.

ICE has 67 active agreements and 25 applications pending. Unfortunately, ICE has also denied many requests from jurisdictions wanting to participate in the 287(g) program. There is clearly interest among State and local law enforcement to, including in my own Congressional district—to partner with ICE as a means to enhance community safety and bolster national security.

My biggest frustration is that ICE—under both Republican and Democratic administrations—has not done enough to support the program. In October 2007, after hearing from several Sheriffs in my district about their concerns with illegal immigration, criminal aliens in particular, I organized an Immigration Law Enforcement Roundtable. The event was attended by ICE and 25 representatives from across Indiana and parts of Western Ohio, including sheriffs, prosecutors, and jailers.

One Sheriff from my District who wanted to participate in 287(g) was told ICE did not have the resources to support the request. At the time of the Roundtable, most of the law enforcement jurisdictions present were encouraged that ICE has a person dedicating to transporting illegal aliens from their jails to Federal detention facilities. Shortly after, however, this arrangement fell apart as the individual assigned was involved in an accident and his replacement was sent on another assignment. It is my understanding that this situation still has not been corrected.

As recently as February 9, a Sheriff reported that there are at least 200 illegal aliens housed in his county jail for various crimes, costing the taxpayers $40 per day. The Sheriff would prefer to turn them over to ICE for removal from this country, but ICE cannot or will not provide anyone to transport them.

I am looking forward to hearing from ICE about this situation and the future of the 287(g) program. I would like to especially thank Sheriff Jenkins from Frederick County, Maryland for being here; I am interested in hearing about how the 287(g) program works in your jurisdiction. I also appreciate the work of the GAO in producing a report on 287(g) and offering several common-sense suggestions that should improve the program management. Thank you to the other witnesses as well. I look forward to the testimony.

Thank you Mr. Chairman.

Chairman THOMPSON. Thank you very much, Mr. Ranking Member.

Other Members of the committee are reminded that, under committee rules, opening statements may be submitted for the record.

[The statements of Hons. Cleaver, Smith, and Bilirakis follow:]

PREPARED STATEMENT OF THE HONORABLE EMANUEL CLEAVER

MARCH 4, 2009

Chairman Thompson, Ranking Member King: I look forward to hearing testimony today about the 287(g) program. This section was added to the Immigration and Nationality Act by Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and allows the Federal Government through Immigration and Customs Enforcement to work with State and local authorities to carry out immigration enforcement. The objective of the 287(g) program is to address serious criminal activity committed by removable aliens.

I am concerned, however, with a number of the recent findings of the GAO report entitled "Immigration Enforcement: Controls over Program Authorizing State and Local Enforcement of Federal Immigrations Laws Should Be Strengthened." The report notes that ICE officials have not properly documented their program objectives in memorandums of agreement with local law enforcement agencies. This has resulted in agencies removing aliens for "minor offenses, such as speeding, carrying an open container, and urinating in public." I hardly believe that these minor offenses should be considered on par with the level of serious criminal activity that was intended with the enactment of this program.

I am further concerned that lack of ICE supervision and failure to provide clear objectives has given local law enforcement agents far too much leeway. I am troubled by reports in Arizona of raids by the county sheriff. I am even more troubled by the report of a Nashville woman, who while 9 months pregnant, was arrested on a minor traffic violation, and forced to give birth while in custody. While I am grateful for the community protection provided by local law enforcement officials, I am eager today to question these witnesses, and assess whether immigration enforcement is best left in the hands of ICE officials.

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH

MARCH 4, 2009

The 287(g) program was created in the "Illegal Immigration Control and Immigrant Responsibility Act of 1996," which I co-authored. That legislation has reduced illegal immigration and helped ensure the integrity of America's legal immigration system.

The 287(g) program allows DHS to enter into an agreement with a State or locality so that State and local law enforcement officers can assist in the investigation, apprehension and detention of illegal aliens. It is a voluntary program.

In recent years, the annual number of jurisdictions participating has risen dramatically—from one in 2002 to 67 currently. And DHS cannot keep up with the increased demand. In fiscal year 2007, ICE received 69 new applications. I understand that some of those applicants may not have been good candidates for the 287(g) program, but according to ICE, the vast majority were rejected because of limited funding.

The 287(g) program is effective because it allows State and local law enforcement officials to augment immigration enforcement. In September 2006, Corey Stewart, the Chairman of the Prince William County, VA Board of Supervisors testified, that the 287(g) agreement enabled his county in just 3 months to prevent 111 criminal aliens from returning to the streets of Prince William County. In the over 2 years since then, Prince William County has continued its success with the 287(g) program.

And there are stories like Prince William County's all over the country. According to ICE, "since January 2006, the 287(g) program is credited with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally." And more than 950 officers have been trained and certified through the program.

State and local law enforcement officials have the inherent authority to assist in the enforcement of immigration laws should they choose to do so.

When we wrote the bill that created section 287(g), our goal was to help local law enforcement officials reduce the crime committed by illegal immigrants. Law enforcement officials believe that this voluntary program works.

The Government Accountability Office has suggested some ways that ICE could improve the 287(g) program.

One issue the GAO addresses is that ICE states the purpose of the program is to "enhance the safety and security of communities by addressing serious criminal activity committed by removable aliens." This statement is being touted by those

who oppose the program as a reason to stop State and local law enforcement officers from arresting illegal immigrants who have committed minor offenses.

Let me assure you, as the co-author of the legislation enacting the 287(g) program, it was not our intent that the program would only be used to address "serious criminal activity." 287(g) was created to let State and local law enforcement officials help enforce all Federal immigration laws and to remove illegal immigrants from the streets.

State and local law enforcement agencies are successfully using 287(g) authority to make communities safer. Those who are serious about public safety should not only support the program, but also call for its expansion.

PREPARED STATEMENT OF THE HONORABLE GUS M. BILIRAKIS

I am keenly interested in ensuring that all homeland security programs in general, and this one in particular, are operating as efficiently and effectively as possible. I welcome the GAO's constructive comments and encourage Immigration and Customs Enforcement (ICE) to continue its efforts to strengthen management controls over the program.

I strongly support the 287(g) program and believe that it is an invaluable tool to help enhance our ability to deter illegal immigration and detect criminals and others who may wish to do us harm.

This program provides an additional tool to help local law enforcement protect their communities by identifying illegal aliens who commit crimes and ensuring they are removed from the country and not in a position to commit subsequent crimes in the future. I believe it would be short-sighted to allow current management challenges in the program to deter us from expanding and maximizing its immigration enforcement benefits.

Chairman THOMPSON. I now welcome our panel of witnesses. Our first witness, Mr. William Riley, is acting director of the Office of State and Local Coordination at Immigration and Customs Enforcement, which administers the 287(g) program.

Our second witness is Mr. Richard Stana, director of Homeland Security and Justice Issues at the Government Accountability Office. During his 33-year career at GAO, Mr. Stana has directed reviews on a wide variety of complex military and domestic issues.

I will yield to the gentleman from Maryland, Mr. Bartlett, to introduce our third witness.

Mr. BARTLETT. Thank you very much, Mr. Chairman, and thank you for the opportunity to come here to introduce Sheriff Chuck Jenkins. Not only is Chuck a long-time friend, he is a really great sheriff and a truly great American. He is also a pioneer. He is one of the first in the general region and the first and only law enforcement officer in Maryland cooperating with ICE to identify and deport illegal aliens who are also felons. Thank you very much for having him here as a witness.

Chairman THOMPSON. Thank you very much.

I will also yield to the young lady from Maryland to introduce the next witness.

Ms. Edwards.

Ms. EDWARDS. Thank you, Mr. Chairman, and it is my great pleasure to introduce to the committee today Chief J. Thomas Manger of the Montgomery County Police Department, which is one of the largest police departments in our State. One of the things that you will find about Chief Manger is he understands the important balance that needs to be struck in communities. You will hear his insight and innovation and the creativity with which he has led the Montgomery County Police Department as it takes on these important challenges of immigration in a very diverse community. So I

thank you for inviting him here today. I know that, as I have, you will have a lot to learn from Chief Manger. Thank you.

Chairman THOMPSON. Thank you. Thank both of you for your introductory remarks.

Our final witness is Mr. Chishti.

Director of Migration Policy Institute Office at New York University School of Law. His work focuses on U.S. immigration policy, the intersection of labor and immigration law, civil liberties and local and State enforcement of immigration laws.

Welcome to all our witnesses.

Without objection, the witnesses' full statement will be inserted in the record.

Mr. Riley, I now recognize you to summarize your statement for 5 minutes.

STATEMENT OF WILLIAM F. RILEY, ACTING DIRECTOR, OFFICE OF STATE AND LOCAL COORDINATION, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. RILEY. Thank you.

Chairman THOMPSON. Congressman Souder and distinguished Members of this committee, thank you for the opportunity to testify before you today about U.S. Immigration and Customs Enforcement management and oversight of the 287(g) delegation of authority program, which allows State and local law enforcement agencies to partner with ICE to enforce our Nation's immigration laws.

My name is William Riley, and for the past 5 months I have served as the acting executive director for the ICE Office of State and Local Coordination, which is responsible for the management and oversight of the 287(g) program. I am pleased to discuss with you today the partnerships ICE has in place with State and local law enforcement agencies through the 287(g) program and also to discuss the General Accountability Office's recommendations to improve management of the program.

As a result of community concern associated with illegal migration and the public safety threat posed by criminal aliens, there has been increased interest in the 287(g) program, and it has become one of the primary tools requested by State and local law enforcement agencies as they address their immigration enforcement concerns. A review of the current state of the 287(g) program reveals that, as of February 2009, almost 1,000 law enforcement officers have been trained pursuant to 67 signed memoranda of agreement in 23 States.

As of February 2009, ICE's 287(g) cross-designated partners have encountered over 90,000 aliens who were identified for removal from the United States. It should be noted that 90 percent or 60 of the 67 MOAs were signed in fiscal year 2007 and 2008. ICE looks forward to entering into additional agreements with our State and local partners and will focus future expansion on the jail enforcement model.

I would like to take this opportunity to discuss ICE's response to GAO's report, "Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws." First, let me note that ICE welcomed GAO's

review of the 287(g) program. Although still in its infancy, as ICE has expanded the program, it has not only seen an increase in public interest but increased scrutiny as well.

To ensure the program is operating in the most efficient manner, ICE developed a review of the draft copy of the GAO report that contains five recommendations. ICE concurs with all the recommendations and in some areas had already begun addressing the recommendations before the GAO study was completed.

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

Secretary Napolitano is looking for metrics of success, gaps in service and resources, partnerships with State and local governments and other Federal agencies, as well as other suggestions for reforms, restructuring and consolidation where needed. Included in that directive is a review of the current 287(g) program.

With that in mind, in a response to the GAO recommendations, ICE has begun the process of redrafting the template that is used to form 287(g) agreements. Once redrafted, the template will be submitted to DHS headquarters for comment and approval. Upon being approved, this template will incorporate many of the recommendations made by GAO.

For example, the MOAs will include the nature and extent of supervisory activities ICE officers are expected to carry out as part of their responsibilities in overseeing the implementation of the 287(g) program. The MOAs will outline how and under what circumstances 287(g) authority is to be used by State and local law enforcement officers and participating agencies.

Also to be incorporated in each MOA are ICE's detention priorities. These priorities ensure that ICE's finite detention space is used to detain aliens who pose the greatest risk to the public. Sunset dates will be incorporated into all MOAs to ensure regular review and modification as needed. ICE will also specify the program information and data that each agency is expected to collect regarding the implementation of the 287(g) program and how this information is to be reported.

The Office of State and Local Coordination is working to create system enhancements to ENFORCE, which is the DHS's primary administrative arrest booking case management system, that will allow ICE to classify the types of aliens 287(g)-trained officers are encountering and the severity of their crimes. This data will be used by ICE to evaluate whether or not our 287(g) partnerships function in accord using resources with ICE priorities and to ensure that the continuation of an agreement is in the best interest of ICE.

In closing, it is critically important to note, as pointed out in GAO's report, many benefits have been realized by the agencies participating in the 287(g) program. Program participants reported to GAO a reduction in crime, the removal of repeat offenders and other safety benefits.

I am proud of the partnerships ICE has formed with 287(g)-trained State and local law enforcement officers. These partnerships are essential to ICE in carrying out its mission of deterring criminal activity and threats to national security and public safety throughout the United States. While ICE has expanded the 287(g) program rapidly and its internal management controls can be improved, I believe that we have a strong framework in place to effectuate improvements, and I look forward to the challenges that lie ahead.

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

[The statement of Mr. Riley follows:]

PREPARED STATEMENT OF WILLIAM F. RILEY

MARCH 4, 2009

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

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

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

BACKGROUND AND RAPID GROWTH OF THE 287(g) PROGRAM

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), effective September 30, 1996, added Section 287(g) to the Immigration and Nationality Act (INA), which authorized the Attorney General, now the Secretary of Homeland Security, to designate State and local law enforcement officers to act as Federal immigration officers. Through Memoranda of Agreement (MOA), specially trained State and local law enforcement officers perform immigration enforcement duties only under the supervision of ICE agents and officers.

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

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

Agencies participating in the 287(g) Program's Jail Enforcement Officer (JEO) model partner with ICE in detention facilities under the supervision of the ICE Office of Detention and Removal Operation personnel. Cross-designated officers expand the reach of ICE's Criminal Alien Program (CAP). The intersection of the CAP and 287(g) programs further ICE's efforts to identify aliens charged with and/or convicted of crimes who are incarcerated within State and local facilities. Furthermore, the program helps to ensure that criminal aliens are not released into the community by assisting with the identification of removable aliens during the booking process and then assisting ICE with the processing of those identified aliens for removal.

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

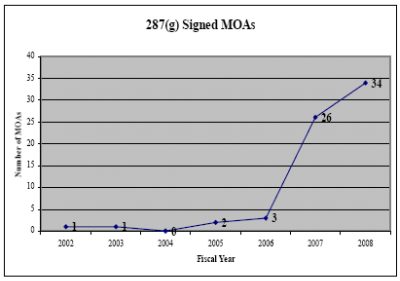
- On September 30, 2008, officers assigned to the Wake County (North Carolina) Sheriff's Office 287(g) Program identified, interviewed, and placed detainers on five individuals who were arrested and charged with murder and accessory after the fact to murder. It was determined that all five individuals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

To place the great strides ICE has made with the 287(g) Program in context, it is necessary to examine how the program began. The first 287(g) agreement was executed under the former Immigration and Naturalization Service (INS) in the aftermath of the 9/11 attacks. After Florida law enforcement officials became increasingly concerned about the number of terrorism-related investigations in Florida, many of which involved foreign nationals, Florida officials approached the former INS seeking participation in the 287(g) Program. Thus, the first 287(g) agreement was executed with the Florida Department of Law Enforcement (FDLE) in 2002, which resulted in the creation of seven Regional Domestic Security Task Forces that were established in the State of Florida. Thereafter, 35 officers assigned to these regional task forces participated in, and graduated from, the 287(g) training program. Since the inception of that agreement, ICE has trained and certified an additional 23 officers under the FDLE MOA.

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

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

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



As of February 2009, ICE's 287(g) cross-designated partners, operating under 67 MOAs, have encountered over 90,000 aliens who were screened for removability. We have seen positive results from the current 287(g) Program. For example, the 29 287(g) LEA partners selected for review during the GAO audit encountered 43,000 aliens. The work conducted by the same 29 participants during fiscal year 2008 resulted in 34,000 aliens being detained by ICE. Of the 34,000 detained, approxi-

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

mately 41 percent were placed in removal proceedings and approximately 44 percent agreed to voluntarily depart the United States.

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

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

ICE OVERSIGHT OF THE 287(g) PROGRAM

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

- Prior to attending training, all 287(g) candidates must complete a background questionnaire. The questionnaire requires the submission of fingerprints, a personal history questionnaire, and the candidate's disciplinary history. ICE's Office of Professional Responsibility conducts a background check and determines each officer's suitability to participate in the 287(g) Program.
- Officers cleared to participate in the 287(g) Program must complete a multi-week training program conducted by the ICE Office of Training and Development. To successfully complete the program, all officers must pass each examination with a minimum score of 70 percent. If an officer fails to attain a 70 percent rating on any examination, the officer is provided a single opportunity to review the curriculum and re-take a similar examination. Only one remediation examination is permitted during the entire course. Failure to achieve a 70 percent on any two examinations results in the automatic disqualification of the candidate.
- Upon successful completion of the training, officers are granted the authority to carry out immigration enforcement functions. 287(g) designated officers are only permitted to exercise immigration enforcement consistent with the parameters outlined in the Memorandum of Agreement (MOA) executed between ICE and the officer's LEA. Each MOA includes a section that requires that any immigration enforcement activities be supervised and directed by ICE supervisory agents and officers. Cross-designated officers are not authorized to perform immigration functions except when working under the supervision of ICE. If a State or local officer violates the MOA, ICE may suspend or terminate an individual officer's participation in the program. Additionally, at any time deemed necessary, ICE may suspend or terminate the MOA with the LEA.
- To ensure that the LEA and the supervising ICE component operate in compliance with the terms in the MOA, OSLC and Office of Professional Responsibility have developed a vigorous inspection program to audit 287(g) agreements. These inspections are conducted by the Office of Professional Responsibility, which provides OSLC and ICE senior management with an assessment regarding the performance of the MOA.
- To ensure cross-designated officers' training remains current, additional training is available to the officers through eight different courses available through ICE's on-line Virtual University. These courses were developed to ensure that State and local officers are informed of new developments in immigration law and policy.

COMMENTS ON GAO REPORT

I would like to take this opportunity to discuss ICE's response to the Government Accountability Office (GAO) report, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws.* First, let me note that ICE welcomed GAO's review of the 287(g) Program. Although still in its infancy, as ICE has expanded the program, it has not only seen

an increase in public interest, but increased scrutiny as well. To ensure the program is operating in the most efficient manner, ICE reviewed the draft copy of the report that contained five recommendations. ICE concurs with all of the recommendations and, in some areas, had already begun addressing the recommendations before the GAO study was completed.

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

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

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

Furthermore, all 287(g) partners are required to use the ENFORCE[2] system to ensure that ICE has all relevant data with which to monitor the operation of each 287(g) MOA. However, ICE recognizes that in its current state, ENFORCE has limited capabilities to capture the criminal history of each alien processed.

OSLC is working to create system enhancements to ENFORCE that will allow ICE to classify the types of aliens 287(g) trained officers are encountering. Specifically, ICE will require that the program participants populate mandatory ENFORCE data fields concerning the type of criminal activity the alien has engaged in. Violent crimes, crimes against property, narcotics violations, traffic driving under the influence (DUI) related violations and non-DUI related traffic violations will all be captured. Furthermore, there will be fields within ENFORCE concerning the severity of crimes broken down by felonies, misdemeanors or civil violations. This data will be used by ICE to evaluate whether or not our 287(g) partnerships function in accord using resources with ICE priorities and to ensure that the continuation of an agreement is in the best interest of ICE.

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

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

CONCLUSION

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

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

ATTACHMENT 1

State	MOA—Name	MOA—Type	Signed—Date
AL	AL State Police	Task Force	9/10/2003
AL	Etowah County Sheriff's Office	Detention	7/8/2008
AR	Benton County Sheriff's Office	Detention/Task Force.	9/26/2007
AR	City of Springdale Police Department	Task Force	9/26/2007
AR	Rogers Police Department	Task Force	9/25/2007
AR	Washington County Sheriff's Office AR	Detention/Task Force.	9/26/2007
AZ	AZ Department of Corrections	Detention	9/16/2005
AZ	AZ Department of Public Safety	Task Force	4/15/2007
AZ	City of Phoenix Police Department	Task Force	3/10/2008
AZ	Maricopa County Sheriff's Office	Detention/Task Force.	2/7/2007
AZ	Pima County Sheriff's Office	Detention/Task Force.	3/10/2008
AZ	Pinal County Sheriff's Office	Detention/Task Force.	3/10/2008
AZ	Yavapai County Sheriff's Office	Detention/Task Force.	3/10/2008
CA	Los Angeles County Sheriff's Office	Detention	2/1/2005
CA	Orange County Sheriff's Office	Detention	11/2/2006
CA	Riverside County Sheriff's Office	Detention	4/28/2006
CA	San Bernardino County Sheriff's Office.	Detention	10/19/2005
CO	CO Department of Public Safety	Task Force	3/29/2007
CO	El Paso County Sheriff's Office	Detention	5/17/2007
FL	Bay County Sheriff's Office	Task Force	6/15/2008
FL	Brevard County Sheriff's Office	Detention	8/13/2008
FL	Collier County Sheriff's Office	Detention/Task Force.	8/6/2007
FL	FL Department of Law Enforcement	Task Force	7/2/2002
FL	Jacksonville Sheriff's Office	Detention	7/8/2008
FL	Manatee County Sheriff's Office	Detention	7/8/2008
GA	Cobb County Sheriff's Office	Detention	2/13/2007
GA	GA Department of Public Safety	Task Force	7/27/2007
GA	Hall County Sheriff's Office	Detention/Task Force.	2/29/2008
GA	Whitfield County Sheriff's Office	Detention	2/4/2008
MA	Barnstable County Sheriff's Office	Detention	8/25/2007
MA	Framingham Police Department	Task Force	8/14/2007
MA	MA Department of Corrections	Detention	3/26/2007
MD	Frederick County Sheriff's Office	Detention/Task Force.	2/6/2008
MN	MN Department of Public Safety	Task Force	9/22/2008
MO	MO State Highway Patrol	Task Force	6/25/2008
NC	Alamance County Sheriff's Office	Detention	1/10/2007
NC	Cabarrus County Sheriff's Office	Detention	8/2/2007

State	MOA—Name	MOA—Type	Signed—Date
NC	Cumberland County Sheriff's Office	Detention	6/25/2008
NC	Durham Police Department	Task Force	2/1/2008
NC	Gaston County Sheriff's Office	Detention	2/22/2007
NC	Henderson County Sheriff's Office	Detention	6/25/2008
NC	Mecklenburg County Sheriff's Office	Detention	2/27/2006
NC	Wake County Sheriff's Office	Detention	6/25/2008
NH	Hudson City Police Department	Task Force	5/5/2007
NJ	Hudson County Department of Corrections.	Detention	8/11/2008
NM	NM Department of Corrections	Detention	9/17/2007
NV	Las Vegas Metropolitan Police Dept	Detention	9/8/2008
OH	Butler County Sheriff's Office	Detention/Task Force.	2/5/2008
OK	Tulsa County Sheriff's Office	Detention/Task Force.	8/6/2007
SC	Beaufort County Sheriff's Office	Task Force	6/25/2008
SC	York County Sheriff's Office	Detention	10/16/2007
TN	Davidson County Sheriff's Office	Detention	2/21/2007
TN	TN Department of Safety	Task Force	6/25/2008
TX	Carrollton Police Department	Detention	8/12/2008
TX	Farmers Branch Police Dept.	Task Force	7/8/2008
TX	Harris County Sheriff's Office	Detention	7/20/2008
UT	Washington County Sheriff's Office UT	Detention	9/22/2008
UT	Weber County Sheriff's Office	Detention	9/22/2008
VA	City of Manassas Police Department	Task Force	3/5/2008
VA	Herndon Police Department	Task Force	3/21/2007
VA	Loudoun County Sheriff's Office	Task Force	6/25/2008
VA	Manassas Park Police Department	Task Force	3/10/2008
VA	Prince William County Police Department.	Task Force	2/26/2008
VA	Prince William County Sheriff's Office	Task Force	2/26/2008
VA	Prince William-Manassas Adult Detention Center.	Detention	7/9/2007
VA	Rockingham County Sheriff's Office	Detention/Task Force.	4/25/2007
VA	Shenandoah County Sheriff's Office	Detention/Task Force.	5/10/2007

Chairman THOMPSON. Thank you very much for your testimony.

Mr. Stana, I now recognize you to summarize your statement for 5 minutes.

STATEMENT OF RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STANA. Okay, thank you, Chairman Thompson, Mr. Souder, Members of the committee.

As you know, section 287(g) of the INA authorizes ICE to enter into written agreements that allow State or local law enforcement agencies to perform at their own expense and under the supervision of ICE officers certain functions of an immigration officer, including searching selected Federal databases and conducting interviews to identify criminals who are in the country illegally. My prepared statement is based on our report that was released today on the management controls ICE has in place to govern the 287(g) program implementation and the resources, benefits, and concerns reported by participating agencies.

In sum, we found that ICE had some controls to govern the program, such as MOAs with participating agencies as well as background checks and training for officers participating in the pro-

gram. But the program lacked other key controls, which make it difficult for ICE to ensure that it is operating as intended. I would like to highlight four areas.

First, the program lacked 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 drug trafficking and violent crimes committed by removable aliens. However, ICE has not documented this objective in MOAs or key program materials. In absence of a clear objective, at least four of 29 program participants we reviewed used 287(g) authority to process individuals for minor crimes, such as speeding or carrying open containers of alcohol, which is contrary to what ICE said is the program objective.

Second, ICE has not consistently articulated in program-related documents how participating agencies are to use their 287(g) program authority. While all 29 MOAs we reviewed contain language that authorizes a State or local officer to interrogate any person believed to be an alien as to his right to remain in the country, none of them mentioned that ICE's position is that the 287(g) authority should be used in connection with an arrest. We found differing interpretations by participants about the scope of 287(g) authority, such as permitting officers to go to people's houses to question them about immigration status. Further, although processing 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 seven of the 29 MOAs we reviewed.

Third, although by law, State and local officials are to use 287(g) authority under the supervision of ICE officials, ICE has not described the nature and extent of supervision it is to exercise over participating agencies. This has led to wide variation in the nature and extent of ICE's activities. ICE officials in one location told us they provided no direct supervision. In another location, we were told they provided frontline support for the program. At two other locations, they described their supervisory activities as overseeing training and ensuring that computer systems are working properly. At another location, they described their supervisory activity as reviewing files for completeness and accuracy.

For their part, the majority of State and local officials we contacted said that ICE supervision was good. But others said they did not receive adequate or direct supervision or that ICE supervisors were either unresponsive or not available. ICE officials in headquarters noted that the level of ICE supervision provided to participating agencies has varied due to a shortage of supervisory resources.

Finally, ICE states in the MOAs signed 2007 or later that participating agencies are responsible for tracking and reporting data to ICE. But those MOAs did not define what data should be tracked or how it should be collected and reported. We found considerable confusion among participating jurisdictions regarding whether they had a data tracking and reporting requirement, what type of data should be tracked and reported and what format they should use in reporting data to ICE.

Turning now to program resources, in fiscal years 2006 through 2008, ICE received about $60 million to train, supervise, and equip

program participants. As of last month, ICE reported enrolling 67 agencies and training 951 State and local enforcement officers. They had 42 additional requests for participation, as has been mentioned. In six of the 42, their participation has been approved pending the approval of the MOA.

According to fiscal year 2008 data provided by ICE, for 25 of the 29 program performance participants we reviewed, about 43,000 aliens had been arrested pursuant to the program, and of those ICE detained about 34,000. Program benefits reported by participants include a reduction in crime, the removal of repeat offenders and other public safety improvements. However, over half the 29 agencies we contacted reported concerns from community members, including concerns that the use of program authority would lead to racial profiling and intimidation by law enforcement officials.

We made several recommendations to strengthen internal controls for the program to address the deficiencies we identified and to help ensure the program operates as intended. DHS and ICE concurred with each of our recommendations and reported plans and steps taken to address them.

In closing, the 287(g) program can be an important tool for ICE and participating jurisdictions to use to enforce our Nation's immigration laws. Controversy can arise when jurisdictions misunderstand the limits of their authority. ICE fails to provide appropriate guidance and supervision. This underscores the need for ICE to ensure that effective control mechanisms exist to govern the 287(g) program.

This concludes my oral statement, and I would be happy to answer any questions that Members may have.

[The statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA

MARCH 4, 2009

Mr. Chairman and Members of the committee: I am pleased to be here today to discuss the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement's (ICE) management of the 287(g) program. 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 that have committed crimes is unknown. Some crimes are serious and pose a threat to the security and safety of communities. ICE does not have the agents or the detention space that would be required to address all criminal activity committed by unauthorized aliens. Thus, State and local law enforcement officers play a critical role in protecting our homeland because, during the course of their 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.[2] This section authorizes the Federal Government to enter into agreements with State and local law enforcement agencies, and to train selected State and local officers to perform certain functions of an immigration officer—under the supervision of ICE officers—including searching selected Federal databases and conducting interviews to assist in the identification of those individuals in the country illegally.[3] The first

[1] Under 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 U.S. citizens.

[2] Pub. L. No. 104–208, div. C, § 133, 110 Stat. 3009–546, 3009–563 to 64.

[3] The change to the Immigration and Nationality Act is codified in 8 U.S.C. § 1357(g).

such agreement under the statute was signed in 2002, and as of February 2009, 67 State and local agencies were participating in this program.

My statement today is based on our January 30, 2009, report regarding the program including selected updates made in February 2009.[4] Like the report, this statement addresses: (1) The extent to which Immigration and Customs Enforcement 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 do this work, we interviewed officials from both ICE and participating agencies regarding program implementation, resources, and results. We also reviewed memorandums of agreement (MOA) between ICE and the 29 law enforcement agencies participating in the program as of September 1, 2007, that are intended to outline the activities, resources, authorities, and reports expected of each agency. We also compared the controls ICE designed to govern implementation of the 287(g) program 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] More detailed information on our scope and methodology appears in the January 30, 2009 report. In February 2009, we also obtained updated information from ICE regarding the number of law enforcement agencies participating in the 287(g) program as well as the number of additional law enforcement agencies being considered for participation in the program. We conducted our work in accordance with generally accepted government auditing standards.

In summary, ICE has designed some management controls, such as MOAs with participating agencies and background checks of officers applying to participate in the program, to govern 287(g) program implementation. However, the program lacks other key internal controls. Specifically, program objectives have not been documented in any program-related materials, guidance on how and when to use program authority is inconsistent, guidance on how ICE officials are to supervise officers from participating agencies has not been developed, data that participating agencies are to track and report to ICE has not been defined, and performance measures to track and evaluate progress toward meeting program objectives have not been developed. Taken together, the lack of internal controls makes it difficult for ICE to ensure that the program is operating as intended. ICE and participating agencies used program resources mainly for personnel, training, and equipment, and participating agencies reported activities and benefits, such as a reduction in crime and the removal of repeat offenders. However, officials from more than half of the 29 State and local law enforcement agencies we reviewed reported concerns members of their communities expressed about the use of 287(g) authority for minor violations and/or about racial profiling. We made several recommendations to strengthen internal controls for the 287(g) program to help ensure that the program operates as intended. DHS concurred with our recommendations and reported plans and steps taken to address them.

ICE LACKS KEY INTERNAL CONTROLS FOR IMPLEMENTATION OF THE 287(g) PROGRAM

ICE has designed some management controls to govern 287(g) program implementation, such as MOAs with participating agencies that identify the roles and responsibilities of each party, background checks of officers applying to participate in the program, and a 4-week training course with mandatory course examinations for participating officers. However, the program lacks several other key controls. For example:

- *Program Objectives*.—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 offenses, 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. While participating agencies are not prohibited from seeking

[4] GAO, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws,* GAO–09–109 (Washington, DC: January 2009).

[5] GAO, *Standards for Internal Control in the Federal Government,* GAO/AIMD–00–21.3.1 (Washington, DC: November 1999); and GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act,* GAO/GGD–96–118 (Washington, DC: June 1996). Additional program management standards we reviewed are reflected in the Project Management Institute's *The Standard for Program Management* (©2006).

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 that pose the greatest threat to the public until more alternative detention methods are available.

- *Use of Program Authority*.—ICE has not consistently articulated in program-related documents how participating agencies are to use their 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.[6] 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 29 participating agencies. A potential consequence of not having documented program objectives is misuse of authority. 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 enforcement activities undertaken by participating agencies are in accordance with ICE policies and program objectives.
- *Supervision of Participating Agencies*.—Although the law requires that State and local officials use 287(g) authority under the supervision of ICE officials, ICE has not described in internal or external guidance the nature and extent of supervision it is to exercise 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 29 participating agencies that had implemented the program and provided information to us on ICE supervision. 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 that computer systems are working properly. ICE officials at another field office described their supervisory activities as reviewing files for completeness and accuracy. Officials from 14 of the 23 agencies that had implemented the program were pleased with ICE's supervision of the 287(g) trained officers. Officials from another four law enforcement agencies characterized ICE's supervision as fair, adequate, or provided on an as-needed basis. Officials from three agencies said they did not receive direct ICE supervision or that supervision was not provided daily, which an official from one of these agencies 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. ICE officials in headquarters noted that the level of ICE supervision provided to participating agencies has varied due to a shortage of supervisory resources. 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 ICE's supervision would strengthen ICE's assurance that management's directives are being carried out.
- *Tracking and Reporting Data*.—MOAs that were signed before 2007 did not contain a requirement to track and report data on program implementation. For the MOAs signed in 2007 and after, ICE included a provision stating that participating agencies are responsible for tracking and reporting data to ICE. However, in these MOAs, ICE did not define what data should be tracked or how it should be collected and reported. Of the 29 jurisdictions we reviewed, 9 MOAs

[6] While 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.

were signed prior to 2007 and 20 were signed in 2007 or later. Regardless of when the MOAs were signed, our interviews with officials from the 29 participating jurisdictions indicated confusion regarding whether they had a data tracking and reporting requirement, what type of data should be tracked and reported, and what format they should use in reporting data to ICE. Internal control standards call for pertinent information to be recorded and communicated to management in a form and within a time frame that enables management 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.

- *Performance Measures*.—ICE has not developed performance measures for the 287(g) program to track and evaluate the progress toward attaining the program's objectives.[7] 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.[8] 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. 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. ICE officials also stated that developing 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, standard practices for program and project management call for specific desired outcomes or results to 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. 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

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 February 2009, ICE reported enrolling 67 agencies and training 951 State and local law enforcement officers. At that time, ICE had 42 additional requests for participation in the 287(g) program, and 6 of the 42 have been approved pending approval of an MOA. According to data provided by ICE for 25 of the 29 program participants we reviewed, during fiscal year 2008, about 43,000 aliens had been arrested pursuant to the program.[9] 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 of those detained (41 percent) in removal proceedings, and arranged for about 15,000 of those detained (44 percent) to be voluntarily removed.[10] 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

[7] In general, performance measures are indicators, statistics, or metrics used to gauge program performance.

[8] 8GAO/GGD–96–118.

[9] ICE 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. We used the data provided by ICE for illustrative purposes only and not to draw conclusions about the 287(g) program.

[10] A 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.

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.[11]

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 community members 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.

We made several recommendations to strengthen internal controls for the 287(g) program to help ensure the program operates as intended. Specifically, we recommended that 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 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; (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. DHS concurred with each of our recommendations and reported plans and steps taken to address them.

Mr. Chairman and Members of the committee, this concludes my statement. I would be pleased to respond to any questions you or other Members of the committee may have.

Chairman THOMPSON. Thank you very much.

Sheriff JENKINS. I now recognize you to summarize your statement for 5 minutes.

STATEMENT OF CHARLES A. JENKINS, SHERIFF, FREDERICK COUNTY, STATE OF MARYLAND

Sheriff JENKINS. Good afternoon, Mr. Chairman, distinguished committee Members. I am Charles A. Jenkins, sheriff, Frederick County, Maryland, your neighbor to the north.

I moved forward to the 287 program in 2007 for two reasons: No. 1, national security, specifically the identification of individuals encountered through arrest and investigations that may be a potential terrorist threat inside of our borders; No. 2, the enormous increase in crime throughout the United States, to include this region, which can be tied directly to the unchecked flow of illegal immigrants through our southern borders with Mexico.

The agreement for participation was signed in late 2007. ICE provided training for 26 Frederick County Sheriff's Office personnel: 16 correctional officers and 10 sworn law enforcement deputies. Frederick County currently participates in both arms of the 287 program. The detention center program was implemented on April 11, 2008, and the law enforcement task force program was implemented on August 1, 2008.

In Frederick County, everyone arrested by our agency and all other local and State agencies in the county are screened and identified through the detention program to determine their legal pres-

[11] Individuals 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 State prison are to be processed for removal at the end of their sentences.

ence, their alienage or legal status in the United States. Persons arrested, charged and convicted for violent and serious crimes, crimes of moral turpitude and serious arrestable driving offenses are not released back onto the streets of our community to commit even more serious crimes or to cause the horrific crashes and driving events that we have seen across our country.

Those identified as being in the United States illegally are prosecuted locally, serve time on the State/local charges as appropriate, then placed into the removal proceedings. The first arrest and detainer filed under 287(g) was arrested for driving intoxicated at two times the legal limit in his blood through a school zone during school hours. Since April 11, 2008—and these are some stats I think are very important—the following arrests reflect the effectiveness and significance of the 287 program in Frederick County, Maryland.

Frederick County has lodged detainers on 337 arrestees identified through the program with 309 of those placed into removal proceedings. The program has allowed us to identify and place into removal proceedings nine members of the notoriously violent gangs, MS–13 and 18th Street, originally out of El Salvador, now thriving on this side of the coast. Also among those arrested and identified were a Nicaraguan military-trained sniper and a Salvadorian guerilla trained in knife fighting.

Some of the most serious offenses in which criminal aliens have been arrested are attempted second-degree murder, second-degree rape, armed robbery, child abuse, burglary. Over the past 2 years, all of the largest multi-kilo narcotics investigations and seizures by our narcotics task force for both cocaine and marijuana have involved the arrest of illegal criminal aliens and the trafficking of those drugs in Frederick County. Several cases involve the drugs being brought directly from the border States.

I will strongly argue that national security is at risk by the increased organized street crimes we are seeing now in our communities. It is in this light that the argument is made—and I will make it—that national security and fighting that crime are one and the same.

Human trafficking is yet another element of the organized crime we are seeing. Immigrants themselves are victimized. The bleeding of our borders and the crime associated is in fact terrorism. It is also recognized that the face of terrorism has changed. It is no longer identified by one face, one profile, one country of origin, or one ethnic group.

Our law enforcement task force deputies work not as a separate unit but as criminal investigator, as narcotics investigators, patrol deputies, now trained in the investigation and identification of fraudulent documents, now able to identify criminal aliens. They work closely under the direct supervision of an ICE agent or supervisor. We have also worked on an ICE gang surge unit.

As far as the relationship, the working relationship between ICE and Frederick County has been outstanding from day 1. We work at the direction of ICE supervisors who have trusted our well-trained people to effectively run the program with direct supervision when needed and availability when we need them. This speaks well to the training program and the oversight. I would be

remiss if I said that at times ICE—their manpower is strained, they are understaffed, and they need additional manpower. As a sheriff and a participant in the program, I would fully support additional manpower and resources for the 287 program.

I educated the county about what we were going to do from the start. From the outset, I made the public aware of my intentions and the reasons why. It was well publicized in the local media. I have attended many organizational and community meetings where this program has been brought up and discussed at length. The facts were explained and the rumors were dispelled and the false information was set aside. Again, I listen to the citizens of Frederick County in moving forward with this program.

The negative criticism—yes. Overall, public support of and comment about this program has been overwhelmingly positive. Estimates of local public support in Frederick County are as high as 90 percent. There are opponents who have criticized our involvement in the program and have made false assertions and claims. CASA de Maryland, the ACLU, the local chapter of the NAACP have all voiced opposition, but they should be behind this. This is not about profiling; this is not about discrimination.

A couple of points: There have been absolutely no complaints of profiling or discrimination based on ethnicity since the implementation of the program. The program has not harmed police-immigrant community relations. The program has not been a huge additional cost to the citizens of Frederick County. I would argue that the cost of doing nothing is enormous. All other costs are paid for through the program funding. There has been no special immigration enforcement unit created in our office.

Chairman THOMPSON. Sheriff, we don't like to stop folk with badges on, because you might have a weapon too, but——

Sheriff JENKINS. Could I——

Chairman THOMPSON. If you could summarize——

Sheriff JENKINS. Okay, I will summarize in closing. In the 10 months since the 287 program was implemented, I can show you with statistics, with proof, that it has been an overwhelming success. We have been cited as a model agency in the program.

The citizens of this country are clearly frustrated. I would respectfully urge the committee to expand the resources and oversight for the program.

Mr. Chairman, committee Members, Americans are angered, they are tired, they are frustrated. We are dying on American soil. I urge you to listen to them. There is a role for local law enforcement in the enforcement of the immigration laws of America.

Thank you.

[The statement of Mr. Jenkins follows:]

PREPARED STATEMENT OF CHARLES A. JENKINS

INTRODUCTION

Frederick County, Maryland is located approximately 60 miles northwest of Washington, DC, with a population of approximately 230,000. Frederick County has a very strong agricultural industry base, also bio-science, and light manufacturing industry. The Frederick County Sheriff's Office is a full-service law enforcement agency with primary law enforcement responsibility outside of the municipalities, also responsible for the operations of the courthouse and adult detention center.

The city of Frederick is currently the second-largest city in the State of Maryland. As recent as late 2008, Frederick County has been identified as one of the top five counties in the United States in terms of seeing increases of immigrants moving into the community, a significant number here illegally.

Elected as Sheriff in November 2006, I had researched this program extensively and the reasons for seeking participation were two-fold:

(1) National security, specifically the identification of individuals encountered through arrests and investigations, which may be a potential terrorist threat inside of our borders.

(2) The enormous increase in crime throughout the United States, to include this region which can be tied directly to the unchecked flow of illegal immigrants through our southern borders with Mexico.

Federal, State, and local law enforcement agencies across the country know and have attributed much of the increase in violent crime and drug trafficking to the rapid growth of trans-national gangs and organized crime tied to drug cartels outside of our borders.

GENERAL OVERVIEW OF 287(g) PROGRAM IN FREDERICK COUNTY

With executive authority as Sheriff, my agency applied for participation the DHS/ICE 287(g) Delegation of Authority Program in early 2007. The agreement for participation was signed in late 2007. ICE provided training for 26 Frederick County Sheriff Office personnel, 16 Correctional Officers and 10 sworn law enforcement deputies. The 4 weeks of intensive training was conducted by ICE in February 2008, hosted at the Frederick County Law Enforcement Center.

Frederick County currently participates with both arms of the 287(g) Program, the detention center program and the law enforcement/task force program. The detention center program was implemented on April 11, 2008, and the law enforcement/task force program was implemented on August 1, 2008.

Through the 287(g) Program, Frederick County Sheriff's Deputies and Correctional Officers are authorized to act as immigration officers in the enforcement of the United States Immigration Laws, in effect a force multiplier for DHS/ICE. I view this as critical that State/local law enforcement participate with DHS/ICE in accomplishing the overall mission of enforcing the immigration laws in accordance existing Federal laws and the removal of criminal illegal aliens.

As a valuable tool to law enforcement in fighting crime, I would urge every law enforcement executive, both police chiefs and sheriffs, to request participation into the program. In Frederick County, everyone arrested by all other local and State agencies, are screened and identified through the detention program, to determine their legal presence or status in the United States.

Persons arrested, charged, and convicted for violent and serious crimes, crimes of moral turpitude, and serious driving offenses are not released back onto the streets of our community to commit even more serious crimes, or to cause the horrific crashes and driving events that have victimized our communities.

To dispute the detractors and arguments that many arrestees in driving offense arrests, are eventually identified, detained, and removed through the program, criminal background checks show criminal records of serious and violent crimes. Those identified as being in the United States illegally are prosecuted locally; serve time on the State/local charges as appropriate, then placed into removal proceedings. The first arrest and detainer filed under the 287(g) Program was arrested for driving intoxicated, through a school zone, during school hours of operation.

RESULTS OF THE PROGRAM/STATISTICS OF SIGNIFICANT INTEREST

Since April 11, 2008, the following statistics on arrest reflect the effectiveness and significance of the 287(g) Program in Frederick County, Maryland:

- Frederick County has lodged detainers on 337 arrestees identified through the program as being in the United States illegally, with 309 of those placed into removal proceedings.
- The program has allowed us to identify and place into removal proceedings 9 members of the notoriously violent gangs MS–13 and 18th Street, originally out of El Salvador, now thriving across the United States. Also, among those arrested and identified were a Nicaraguan military trained sniper and a Salvadorian guerilla fighter trained in knife fighting.
- Some of the most serious offenses in which criminal aliens have been arrested as offenders and identified include: Attempted 2nd Degree Murder, 2nd Degree Rape, Armed Robbery, 1st Degree Assault, Child Abuse, Burglary, and Possessing Counterfeit U.S. Currency.

- Over the past 2 years, all of the largest (multi-kilo) narcotics investigations and seizures by our Frederick County Narcotics Task Force, for both cocaine and marijuana, have involved the arrests of illegal criminal aliens and the trafficking of those illegal drugs in Frederick County. Several cases have involved drugs being trafficked directly from the southern Border States.

CRIME AND NATIONAL SECURITY

It can be strongly argued that national security is at risk by the increased organized street crimes we are seeing in our communities. It is in this light that the argument is made that national security and fighting that crime are one in the same, with the increases of violent crime spilling across our borders, controlled by the corruption and power of the Mexican drug cartels, driven by trans-national and organized street gangs. Human trafficking is yet another element of the organized crime we are seeing.

The bleeding of our borders and the crime associated is in fact terrorism. Terrorists and criminals are able to easily exploit our immigration system because of our vulnerable borders and by utilizing fraudulent identification. They seek to operate and remain in the United States under the radar of the Federal Government.

The 287(g) Program in this regard is a strong and effective tool in safeguarding our national security at our borders. It is also recognized that the face of terrorism has changed dramatically across the globe and that it can no longer be identified by just one face, one profile, country of origin, or ethnic group.

This valuable program can be of enormous assistance to local law enforcement in the identification of suspects who may be looking to target soft targets and critical infrastructure on our soil.

Our law enforcement/task force deputies work within the authority of the 287(g) Program as an extension of their routine law enforcement duties. Those deputies include criminal investigators, narcotics investigators, and patrol deputies, now trained in the investigation and identification of fraudulent documents, now able to identify criminal aliens in the process of investigating street crimes. They have worked under the direct supervision of ICE on a gang surge effort.

RELATIONSHIP WITH ICE

The working relationship between ICE and the Frederick County Sheriff's Office has been outstanding from day 1. We have worked at the direction of ICE supervisors who trust our well trained personnel to effectively run the program with direct supervision when needed, and constant availability and response to assist and answer questions. This speaks well to the training program.

ICE special agents, supervisors, extending to the director level in both the investigations side and detention programs have worked to assure that this program and our participation have been effective and seamless. I am fortunate to have an ICE Special Agent working in-house on a very routine basis.

I would be remiss if I did not acknowledge that at times, DHS/ICE is understaffed and in need of additional manpower.

Recognizing the magnitude of their mission in the 287(g) Immigration Enforcement Program, I would strongly encourage an expansion of the program and the appropriate increase in field agents and supervisory personnel to support the number of law enforcement agencies who want to participate.

As a Sheriff and as a participant in this program, I would fully support additional manpower and resources for the 287(g) Program, given that many agencies have shown the value and effectiveness of the program.

COMMUNITY EDUCATION ABOUT THE PROGRAM

In listening and hearing the frustrations and concerns of the citizens of Frederick County, I went forward in seeking this program. From the outset I made the public aware of my intentions to move the agency forward into this program. It was well-publicized in the local media, to include local radio, the newspapers, and local television when interested.

In addition, I have attended many organizational and community meetings where this program has been brought up and discussed at length, to explain the facts and value of the program and to dispel rumors and false information. Again, I listened to the citizens of this county in moving forward with participation in this program.

In educating the public the focus has been to make people aware that everyone taken into the detention center is screened, asked the same questions to determine legal status, and are processed in the identical manner.

DISPELLING THE NEGATIVE CRITICISM OF THE 287(g) PROGRAM

Overall, public support of and comment about this program has been overwhelmingly positive. It is very clear by way of phone calls, emails, letters, letters to the local paper, and radio call-ins, that the vast majority of the citizens of this county are in favor of this illegal immigration enforcement initiative. Estimates of local public support are as high as 90 percent.

Many residents of neighboring counties also voice their approval of this effort in Frederick County.

I have received many calls from naturalized citizens and legal immigrants who are offended at those who violate the laws entering this country illegally and have been given a free pass while breaking State and local laws, to remain in this country illegally.

There are detractors that have criticized our involvement in the program, and have made false assertions and claims of discrimination and profiling. CASA de Maryland, the ACLU, and the local chapter of the NAACP has voiced opposition, citing profiling, discrimination, and creating distrust within the local immigrant communities. Those same organizations and detractors also cited the exorbitant costs of the program to the citizens of this county. These claims have been proven to be false.

- There have been absolutely NO complaints of profiling or discrimination based on ethnicity since the implementation of the 287(g) Program.
- The program has NOT harmed police/immigrant community relations, and has not created fear or distrust of law enforcement. This is all rhetorical, with no real basis. Any existing fear or distrust of law enforcement is generally cultural based, as most countries where immigrants originate from do have corrupt governments, corrupt and abusive law enforcement, which is all they have been exposed to in their lives. This is simply not true.
- This program has NOT been a huge cost to the citizens of Frederick County. The training was hosted at no cost, other than the normal salaries of those FCSO deputies and officers attending. The database access, computers, hardware, IT lines, and other tie-in and technical expenses were paid for through ICE program funding, not local taxpayer dollars.
- Other program expenses such as travel, medical expenses for detainees, and detention housing expenses are covered by and reimbursement by DHS/ICE through program funding.
- There is NO special Immigration Enforcement Unit created in the FCSO as a result of this program. All of our enforcement efforts in the detention program and the law enforcement/task force program are an extension of the current duties of the personnel trained in the program.

CLOSING STATEMENT

In the almost 10 months since the 287(g) Program was implemented in Frederick County, the results have clearly shown it to be an overwhelming success. The Frederick County Sheriff's Office has been cited as a model agency in this partnership with DHS/ICE. Clearly, the program has become an effective tool in fighting crime, keeping criminal aliens from being set free on the streets of our communities, and being placed into removal proceedings and returned to their home countries.

Testifying here today, I strongly believe I am representing the voice of America. The citizens of United States clearly are frustrated with the problems associated with illegal immigration including the crime, national security risks, and the associated economic effects.

Detractors and opponents of the 287(g) Immigration Enforcement Program will say they want nothing done. With everything currently at stake, doing nothing is NOT an option. I would respectfully urge this committee to expand the resources for this program and to encourage law enforcement across the entire United States to participate in this partnership with DHS/ICE.

Chairman THOMPSON. Thank you.

For the membership of the committee, we will hear one other witness. We will recess at that point. We will have four votes, and we will reconvene right after those four votes.

Chief Manger for 5 minutes.

STATEMENT OF J. THOMAS MANGER, CHIEF, MONTGOMERY COUNTY POLICE DEPARTMENT, STATE OF MARYLAND

Chief MANGER. Mr. Chairman, distinguished Members of the committee, I am Tom Manger, chief of police of Montgomery County, Maryland, and chairman of the Major Cities Chiefs' Legislative Committee. The Major Cities Chiefs Association represents the 56 largest police departments in the United States.

Each one of these 56 police chiefs is dealing every day with the issues of undocumented residents and the crime committed by a fraction of these residents. Nowhere is this challenge more acute than in this country's largest urban settings. Local governments have, by necessity, had to react and respond to the growing number of challenges caused by an increasing population of undocumented residents.

Municipalities have chosen a range of approaches. Some are proud to be called sanctuary jurisdictions, where not only does local law enforcement not inquire about anyone's immigration status, some jurisdictions don't honor nor serve warrants from ICE. On the other end of the spectrum, some jurisdictions have adopted policies that prohibit government services going to undocumented individuals and have elected to participate in the Federal 287(g) training. Most jurisdictions have adopted policies somewhere between the two approaches I just described.

The overwhelming majority of major city police agencies have elected not to participate in 287(g) training. In fact, the last figures I have seen indicate that over 95 percent of police and sheriffs' departments in the United States have elected not to participate in the 287(g) training.

But I think it is important to make two points here. One, I am not trying to be critical of those agencies that do participate. It just would not work in most large, urban jurisdictions. We believe that there would be—we also believe that there should be strong cooperation and coordination with all of our Federal law enforcement partners, including ICE.

So why have the Nation's largest police agencies elected not to participate in 287(g)? First, it undermines the trust and cooperation with immigrant communities that are essential elements of community policing. We need to have strong policies that take into full account the realities of local law enforcement. One of those realities is that public safety increases when people have trust and confidence in their police department. Consequently, unreported crime goes down.

Another reality is that immigrants, both documented and undocumented, are more likely to be victims of crimes than are U.S. citizens. Delivering fair and consistent police service to all crime victims has to be a priority.

A second reason that most jurisdictions are not taking the 287(g) training is that local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security. Enforcing Federal law is an unfunded mandate that most agencies just cannot afford to do.

Third, immigration laws are very complex, and the training required to understand them would significantly detract from the core mission of the local police to create safe communities. Prior to

just a few years ago, enforcing immigration law was solely a Federal responsibility. It was a specialty, like the IRS and tax law. If the Federal Government comes to the conclusion someday that too many people are tax evaders, will the solution be to authorize local police to enforce tax laws? This is contrary to our mission.

That said, working cooperatively with our Federal partners is essential for public safety. Using the IRS again as an example, when we make a case against an individual as a major narcotics distributor, notifying and working closely with the IRS is the effective thing to do. In the same way, working closely with ICE on human trafficking cases, gang investigations, fraudulent document cases is a proven crime-fighting technique.

Montgomery County Corrections sends a list of all foreign-born inmates to ICE once a week. In addition, my police officers and detectives notify ICE on every violent crime arrest that we make. But the bottom line is this: Local law enforcement needs to work closely and effectively with our Federal partners, but we cannot do their job for them.

The Major Cities Chiefs have sent a clear and consistent message to each attorney general for the past 8 years. That message is: No. 1, secure our borders; it has to be a top priority. No. 2, remove civil immigration detainers from the NCIC database. In August 2003, Attorney General John Ashcroft put these civil warrants in a national database that had previously been for criminal warrants. Our current attorney general can remedy this with the stroke of a pen. No. 3, consulting and involving local police agencies when developing any immigration initiative is imperative if that initiative is to involve local law enforcement.

Thank you.

[The statement of Mr. Manger follows:]

PREPARED STATEMENT OF J. THOMAS MANGER

ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES

A. STATEMENT OF ISSUE

Illegal immigration is a problem that vases our Nation and society as a whole and one that must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the Nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement's unending efforts include providing additional training and equipment to officers, increasing communication and coordination with Federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports, and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The Federal Government and others have also called upon local police agencies to become involved in the enforcement of Federal immigration laws as part of the effort to protect the Nation. This issue has been a topic of great debate in the law enforcement community since September 11. The call for local enforcement of Federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with Federal law enforcement agencies to address crime in the United States, whether

committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have worked and continue to work daily with Federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence, which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of Federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [MCC] as a leader and representative of the local law enforcement community to develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of Federal immigration laws and to highlight steps that, if taken, might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that MCC be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS

The Federal Government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the Federal Government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The Federal Government has given Federal agencies such as Immigration and Customs Enforcement [ICE] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exist various immigration-status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

(1) Legal Immigrants are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the Federal Government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after their requests for asylum have been reviewed and granted.

(2) Nonimmigrant Visa Holders are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The United States has 25 types of nonimmigrant visas, including A1 visas for Ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the United States to work under NAFTA. Visa Holders are allowed to stay in the United States as long as they meet the terms of their status.

(3) Illegal Immigrants are citizens of other countries who have entered or remained in the United States without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some persons fall into illegal status simply by violating the terms of a legal entry document or visa.

(4) Absconders are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

C. CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

Local police agencies must balance any decision to enforce Federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: Limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

(1) Undermine Trust and Cooperation of Immigrant Communities

Major urban areas throughout the Nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50 percent–60 percent of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations that major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community-based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant—whether documents or undocumented—is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local police contacts in immigrant communities are important as well in the area of intelligence-gathering to prevent future terroristic attacks and to strengthen homeland security.

Immigration enforcement by local police would likely negatively affect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that he/she will be deported or subjected to an immigration-status investigation, then the individual will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration-enforcement action, the hard-won trust, communication, and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

(2) Lack of Resources

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, Federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the FBI, whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of Federal resources away from investigating white-collar crimes and bank robberies, areas traditionally handled by Federal agencies.

Enforcement of Federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8–12 million illegal immigrants currently living in the United States would be overwhelming. The Federal Government, which has primary authority to enforce immigration laws, has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than does the Federal Government, given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland-security duties and can not even begin to consider taking on the added burden of immigration

enforcement until Federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide adequate Federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend toward local police agencies being asked to enter other areas of Federal regulation or enforcement.

(3) Complexity of Federal Immigration Law

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The Federal Government and its designated agencies such as ICE and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these Federal agencies who have the authority to determine if a person will be criminally prosecuted for his/her violations of immigration laws or be dealt with through a civil-deportation process. Based on their authority, training, experience and resources available to them, these Federal agencies and the Federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of Federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly and whether the person is in fact in violation of the complex Federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill-equipped in terms of training, experience, and resources to delve into the complicated area of immigration enforcement.

(4) Lack of Local Authority and State Law Limitations of Authority

The Federal Government has clear authority over immigration and immigration enforcement. Federal law does not require the States or local police agencies to enforce immigration laws nor does it give the States or local agencies the clear authority to act in the area of immigration.

Laws in their respective States define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. Federal immigration laws, however, include both civil and criminal process to address immigration violations. It is within the authority of Federal agencies such as ICE and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition, State laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest, or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention, and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the Federal initiative of placing civil immigration detainer notices on the NCIC system. The NCIC system had previously been used only to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainers being placed on this system by Federal agencies notify local officers that the detainers are civil in nature by including a warning that local officers should not act upon the detainers unless permitted by the laws of their State. This initiative has created confusion due to the fact that these civil detainers do not fall within the clear criminal-enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainers.

(5) Risk of Civil Liability

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas, Police Department participated in an immigration raid with Federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to

be either citizens or legal immigrants with permission to be in the country. The Katy Police Department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex Federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce Federal immigration laws.

D. MCC'S NINE-POINT POSITION STATEMENT

Based upon a review, evaluation, and deliberation regarding the important and complex issue of local enforcement of Federal immigration laws, the members of MCC, who are the 56 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employ more than 1,000 law enforcement officers, hereby set forth our consensus-position statement, which is comprised of nine crucial components.

(1) Secure the Borders

Illegal immigration is a national issue and the Federal Government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the Federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies, and increases in the number of border-patrol agents. Only when the Federal Government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

(2) Enforce Laws Prohibiting the Hiring of Illegal Immigrants

The Federal Government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

(3) Consult and Involve Local Police Agencies in Decision-Making

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of Federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

(4) Completely Voluntary

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their work force, and define the duties of their employees to best serve and protect their communities should be left in the control of State and local governments. The decision to enter this area of enforcement should be left to the local government and not mandates or forced upon them by the Federal Government through the threat of sanctions or the withholding of existing police assistance funding.

(5) Incentive-Based Approach with Full Federal Funding

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive-based approach with full Federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs, and costs of housing, caring for, and transporting immigrants prior to their release to Federal authorities.

(6) No Reduction or Shifting of Current Assistance Funding

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current Federal funding or programs focused on assisting local police

agencies with local policing or homeland security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting Federal funding currently available for local policing and homeland security activities to any new immigration enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

(7) Clarification of Authority and Limitation of Liability

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear Federal legislation.

(8) Removal of Civil Immigration Detainers From the NCIC System

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, MCC strongly requests that the Federal agencies cease placing civil-immigration detainers on NCIC and remove any existing civil detainers currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainers on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainer.

MCC would encourage the Federal agencies to seek Federal criminal warrants for any person they have charged criminally with violations of immigration laws and to submit those criminal warrants on the NCIC system so the warrants can be acted upon by local police officers within their established criminal-enforcement authority and training.

(9) Commitment of Continued Enforcement Against Criminal Violators Regardless of Immigration Status

MCC member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants—documented and/or undocumented—who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.

Chairman THOMPSON. Thank you, Chief.

As previously indicated, we will recess. There are only three votes rather than four. Shortly after the three votes, we will reconvene.

[Recess.]

Chairman THOMPSON. We would like to reconvene our recessed meeting. We have one witness left to offer testimony.

Mr. Chishti, I now recognize you to summarize your statement for 5 minutes.

STATEMENT OF MUZAFFAR A. CHISHTI, DIRECTOR, NYU SCHOOL OF LAW OFFICE, MIGRATION POLICY INSTITUTE

Mr. CHISHTI. My written testimony has been submitted. I will just highlight three major areas that I have covered in the testimony. One is sort of the evolution of these agreements. The second is about their accountability and supervision. The third is what costs and public policy issues does this program raise.

The first point we understand from these memoranda of understanding—we have been studying them at MPI for the last few months—is their recent dramatic growth and their concentration. As we know, the 1996 law provided for the enactment of these

agreements. None were signed until 2002. At the start of 2007, there were eight agreements in effect. In 2007, however, 26 agreements were signed, and 28 more in the last year.

The program's growth, therefore, has not only been dramatic and recent, it has also been concentrated. Of the current 67 agreements under this program, 42 are in the South-Central region of the country. What is striking, Mr. Chairman, is the majority of these agreements—37 of them—are in the Southeast. There has been a rapid growth, we know, in that part of the country about recent immigrants and foreign-born population. We also know that a good chunk of that may be unauthorized. But we cannot ignore the fact also that this is a region of the country that comes with a troubled legacy of civil rights violation and racial profiling.

The second point I want to make is sort of remarkably—you know, evolution of the purposes of these programs. If you look at the legislative history of 287(g), the Congressman who introduced it on the floor of the House said that what he meant to be covered by these agreements were what we today would call a fugitive alien. In the Florida first agreement that was signed, it was supposed to cover terrorist suspects.

But beginning in 2005, you heard senior ICE officials coming before subcommittees of this committee assuring that these MOUs will be focused on issues of high criminal target and high criminal activity. In fact, if you look at all the ICE public material on this, it is targeted on criminal aliens.

But beginning in 2006, the focus of the program started shifting. No longer did these programs target criminal aliens, but rather at least some agencies were by this point seeking to apprehend as many unauthorized immigrants as possible. Thus the focus appears to have shifted from dangerousness of targeted immigrants to raw numbers.

The issues of supervision and guidance, I think, have been very well covered by the GAO report. They raise very serious concerns; I won't repeat them here.

The last point I want to make from the testimony that we offered is that there are obviously very important issues of cost and policy that these agreements raise. Mr. Chairman, we live in a world of limited resources. The core function of law enforcement agencies is to protect the public and keep the community safe. Deviation from that core function must be done for a compelling reason and be done with caution.

Focusing on terrorists, on dangerous fugitives, or serious criminals can be a high priority of local community; however, when that focus is lost and ordinary civil immigration violators become the target, there is a significant societal cost. The issues of ethnic profiling, the racial profiling, and the impact on community policing we heard so well today from Chief Manger, and therefore I won't repeat it.

But the last point on the cost I want to mention is immigration laws are complex and ever-changing, as the two police organizations, the MCC and IACP have mentioned, that they obviously come with significant costs of racial profiling and community policing. But the most important ultimately may be the Federal Government's ability to dictate and establish a coherent national immigra-

tion enforcement policy. Because of the need to respond to the demands of the applicants of the 287(g) program, ICE has lost a great deal of initiative as to where and when and how to deploy enforcement resources. So instead of these agreements advancing a coherent national immigration policy—are likely to advance the political mandates at the local level.

So for these reasons we are making a few recommendations. We are asking that the expansion of the program be put on hold to permit a thorough review of this program and its design. We would like this committee to hold hearings in those jurisdictions which have these programs and which chose not to have these programs.

We believe that if Congress chooses to continue this program, in the future you must articulate specific, meaningful programmatic objectives for this program. If the program has to be continued, the committee should examine clearly the possibility of limiting it to jail programs for serious criminal offenses. We should also suggest that Congress should make it clear that law enforcement agencies that—if they consistently exceed the authority of the MOAs, those MOAs should be terminated.

Thank you very much.

[The statement of Mr. Chishti follows:]

PREPARED STATEMENT OF MUZAFFAR A. CHISHTI

MARCH 4, 2009

Mister Chairman and distinguished Members of the committee: My name is Muzaffar Chishti, and I am the Director of the Migration Policy Institute's Office at New York University School of Law. Thank you for inviting me to testify before your committee on "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law."

INTRODUCTION

The Migration Policy Institute (MPI) is a non-partisan, non-profit think tank that studies migration and the management of migration systems worldwide, and one of its key areas of focus is U.S. immigration policy. Last month, MPI issued a report which called on the Federal Government to reassert its authority and willingness to enforce immigration law, while recognizing the discrete co-operative role that States and localities could play in important Federal enforcement efforts.[1] MPI also recently issued a report on the National Fugitive Operations Program,[2] another component of the interior enforcement strategy of U.S. Immigration and Customs Enforcement (ICE). In that report, we concluded that the fugitive operations program had strayed far from its initial mandate and ICE's core priorities, and issued a series of recommendations to restore integrity and bring efficacy to the program. We are currently engaged in an in-depth study of the 287(g) program; we have been studying the 67 Memoranda of Agreement (MOA) that the Federal Government has signed with various State and local government agencies for immigration-related enforcement. As part of that work, we are collecting data and will be doing site visits over the next several months in preparation for a comprehensive report expected to be released later this year. Among other things, we are seeking to understand the character, implementation, and impacts of the 287(g) agreements. The latter include their costs and benefits to national, State, and local law enforcement and to local communities. What follows are some preliminary conclusions based primarily on our examination of the MOAs themselves and publicly available data.

[1] Doris Meissner and Donald Kerwin, "DHS and Immigration: Taking Stock and Correcting Course," (Washington, DC: Migration Policy Institute, 2009), pg. 48–50, *http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf.*

[2] Margot Mendelson, Shayna Strom, and Michael Wishnie, "Collateral Damage: An Examination of ICE's Fugitive Operations Program," (Washington, DC: Migration Policy Institute, 2009), *http://www.migrationpolicy.org/pubs/NFOP_Feb09.pdf.*

I. TWO YEARS OF DRAMATIC, REGIONALIZED GROWTH

The 287(g) program was created as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. The first agreement under the provision was not signed until 2002 by the State of Florida. Growth in the program remained measured for the next 5 years, but the last 2 years have seen dramatic growth in the number of 287(g) agreements.

At the beginning of 2007, there were eight agreements in effect, including six "jailhouse" agreements whereby cross-deputized local incarceration officers perform immigration functions exclusively with respect to individuals already detained on State criminal charges. In 2007, however, 26 agreements were signed, and another 28 were added the following year. The agreements signed in 2007 and 2008 were not confined to the jails, but also included the Task Force model in which 287(g)-authorized officers perform immigration-related enforcement on the streets, and the "hybrid" model, which entails both the Task Force and jailhouse components. Jailhouse agreements comprise the majority of the 67 agreements currently in force. (Figure 1 in the Appendix section summarizes the growth of 287(g) agreements by year and type.)

While the 287(g) program encompasses law enforcement agencies at the State, county, and local levels, counties comprise approximately two-thirds of all program participants. The Task Force model is predominant in State and city law enforcement agencies, while nearly all of the counties have either the jail or hybrid model. (See Figure 2 for MOAs by jurisdiction and type.)

The 287(g) program's growth has been regionally concentrated. Of the 67 agreements, 42 are in the South, 17 are in the West, five in the Northeast and three in the Midwest. ICE has confirmed that there are approximately 80 applications pending to join the 287(g) program. About two-thirds of the pending applications are from jurisdictions in the South, according to ICE.

II. MISSION DRIFT: THE EVOLVING PURPOSE OF SECTION 287(g)

One critical threshold issue immediately apparent in our study of the 287(g) program is that its ostensible purpose has undergone a dramatic evolution from the time it was added to the Immigration and Nationality Act (INA) in 1996 to the present day. Initially conceived with a narrow mandate, the program has undergone at least two major transformations. The first, following the Sept. 11, 2001 attacks, sought to utilize the program as a tool to fight terrorism and promote public safety. The second transformation, which occurred around 2006, made the program a broader, more generalized immigration enforcement program. The program's rapid expansion has been accompanied by an apparent shift in mission. These changes suggest the need for closer supervision of on-going 287(g)-related operations, more extensive training of State and local law enforcement officers in the often complex arena of immigration law, and clear, publicly released guidelines for participating agencies.

1996: Legislative History

The primary legislative sponsor of the amendment that added the 287(g) program to the INA, Representative Tom Latham (R–IA), explained during the House floor debate that it was intended to "allow State and local law enforcement agencies to enter into voluntary agreements with the Justice Department to give them the authority to seek, apprehend and detain those illegal aliens who are subject to an order of deportation."[3] Thus, as initially conceived, the program was to focus on noncitizens to whom ICE now refers as "fugitive aliens" and who were previously referred to by the Immigration and Naturalization Service (INS) as "absconders."

1998: Salt Lake Debate

Although the first MOA was not signed until 2002, the Salt Lake City Council came close to enacting a 287(g) agreement just 2 years after IIRIRA's passage because of a shortage of INS officers in the area. As a result of the shortage, unauthorized immigrants subject to INS detainers were nonetheless released by local law enforcement because there were not sufficient Federal personnel to transport the indi-

[3] Floor statement of Rep. Tom Latham, (R–IA), 142 *Congressional Record*, H2475–01, *H2477, 1996.

viduals to a facility in Las Vegas or Denver, and the local police had neither the space to continue to hold them nor the authority to convey them across State lines.[4]

This scenario frustrated local law enforcement and led Salt Lake City and County to explore the possibility of signing a Memorandum of Understanding, or MOU as the agreements were then called, so that its officers could gain "the authority to . . . assist the INS in transporting that person across State lines to an INS holding facility in Denver or Las Vegas."[5] Both the County Commission and Sheriff emphasized that this was the sole purpose of seeking the MOU; as the latter put it, "I have no intention of cross-deputizing my deputies so they can enforce the INS laws. I have enough to do in Salt Lake County with the local laws. I have no intention of my people arresting people for illegal status."[6] Ultimately, however, Salt Lake did not pursue the MOA because of strong public concerns about the potential for racial profiling.[7]

2002–2005: Florida, Alabama and the Los Angeles County Sheriff's Department

The first 287(g) agreement was ultimately signed by the State of Florida in 2002. The officers trained under the new agreement were members of the Regional Domestic Security Task Forces created to address perceived shortcomings in the State's ability to combat terrorism after the Sept. 11 terrorist attacks.[8] In 2003, the State of Alabama entered an MOA to address particular problems it was experiencing with fraudulent documents being presented to secure drivers' licenses.[9]

In July 2005, when only three agreements were in force, a House Homeland Security Committee Subcommittee held a hearing on the 287(g) program. Paul M. Kilcoyne, Deputy Assistant Director of ICE's Office of Investigations, assured the subcommittee that the program would remain "focused on criminal organizations, those individuals who pose a threat to the border security," and not "the landscape architect that had the broken headlight."[10] At the time, a 287(g) agreement had recently been instituted in Los Angeles County, where custody assistants in the county jails were trained to check the immigration status of inmates after they had been convicted of a crime. Mr. Kilcoyne emphasized the importance of maintaining "a very focused approach" to the 287(g) program in order to make the best use of limited fiscal and managerial resources. For precisely this reason, the subcommittee was told that the 287(g) program would expand only into State and local jails.

2006: A Shift in Focus

By September 2006, the program had expanded into four additional jails, bringing to seven the total number of agreements. The focus of the program—or at least the manner in which it was being employed by some law enforcement agencies—had shifted further. No longer did 287(g) officers focus solely on targeting criminal aliens; rather, at least some law enforcement agencies were, by this point, seeking to apprehend as many unauthorized immigrants as possible on the belief that all unauthorized immigrants are more likely to commit crimes and in response to perceived fiscal burdens placed on public services by immigrants to new immigrant-receiving communities.[11]

The Special Agent in Charge of the Atlanta ICE Office of Investigations, Kenneth Smith, stated that while it could help identify criminal aliens, "the real beauty of the program" is that it guaranteed that every person who enters a jail that has an MOA is screened for civil immigration law violations.[12] Mr. Smith acknowledged

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[4] Statement of Aaron Kennard, Salt Lake County Sheriff, to the House Judiciary Committee, Subcommittee on Immigration and Claims, *Problems Related to Criminal Aliens in the State of Utah*, 105th Cong., 2d sess., July 27, 1998, pg. 14–15.

[5] Ibid., Statement of Mary Callaghan, Commissioner, Salt Lake County Commission, pg. 6.

[6] Ibid., Statement of Aaron Kennard, Salt Lake County Sheriff, pg. 15.

[7] Shawn Foster, "SLC Council Says No to Cross-Deputization," Salt Lake Tribune, September 2, 1998.

[8] Statement of Mark F. Dubina, Special Agent Supervisor, Tampa Bay Regional Operations Center, Florida Department of Law Enforcement, Regional Domestic Security Task Force Supervisor, before the House Committee on Homeland Security, Subcommittee on Management, Integration and Oversight, *The 287(g) Program: Ensuring the Integrity of America's Border Security System Through Federal-State Partnerships,* 109th Cong., 1st sess., July 27, 2005), pg. 17.

[9] Ibid., Statement of Major Charles E. Andrews, Chief, Administrative Division, Alabama Department of Public Safety, pg. 20.

[10] Ibid., Statement of Paul M. Kilcoyne, Deputy Assistant Director, Office of Investigations, ICE.

[11] Testimony of Jim Pendergraph, Sheriff of Mecklenburg County, North Carolina, before the House Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy and Human Resources, *Empowering Local Law Enforcement to Combat Illegal Immigration,* 109th Cong., 2nd sess., August 25, 2006.

[12] Ibid., Statement of Kenneth A. Smith, Special Agent in Charge, Atlanta, Georgia, Office of Investigations, ICE, pg. 35

that this "would not have necessarily a huge impact on the criminal system," but that "it certainly would on our detention and removal capabilities."[13] Mr. Smith speculated that the Mecklenburg County approach was a "model that . . . will be mirrored in jurisdictions around the country."[14]

At the time, Mecklenburg County was the only jurisdiction in North Carolina with an MOA, and its sheriff, Jim Pendergraph, reported that the agreement had permitted his officers to identify a large number of civil immigration law violators. ICE Detention and Removal Operations, the sheriff said, was "overwhelmed by the numbers we are generating for removal in Mecklenburg County alone,"[15] and "they've had to reassign ICE agents to deal with the numbers that we're seeing."[16] In so doing, he also foreshadowed significant problems relating to ICE supervision and the 287(g) program's interference with Federal immigration priority-setting and initiative. According to Sheriff Pendergraph, his office had generated so many removal cases for ICE that:

"They can't support many more because they are flooded with work. I don't know where the resources are going once they're appropriated in Washington but they're not getting to the local field offices because they can't handle what they have now. If more sheriffs in this State got on-board then there would be no ICE agents to deal with what they normally do."[17]

Since 2006, seven other North Carolina counties have signed MOAs—all of which use largely the same language as the Mecklenburg County MOA (there are reportedly an additional 16 jurisdictions in the State with applications pending). In fact, from the beginning of 2007 to the present day, all or virtually all of the 54 MOAs signed in this period seem to be based on the same template, and thus not designed to reflect the targeted needs or priorities of each participating agency.

ICE's Statements About the Program's Purpose

ICE's own 287(g) documents also suggest that the program has gone beyond its initial purpose, which ICE has consistently described as combating serious crime committed by immigrants. According to a 2007 ICE Fact Sheet, the program is aimed at "violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering."[18] The fact sheet went on to clarify that "[t]he 287 (g) programs is not designed to allow State and local agencies to perform random street operations. It is not designed to impact issues such as excessive occupancy and day laborer activities." This 2007 Fact Sheet was even used as evidence that a particular law enforcement agency had exceeded the authority conveyed by the MOA.[19] Later versions of the 287(g) Fact Sheet have not contained similar language concerning the objectives or limitations of the program.[20]

Arrest Statistics

According to ICE, law enforcement agencies participating in the 287(g) program were responsible for approximately 79,000 arrests of suspected immigration law violators from January 2006 through November 2008.[21] However, it is not known how many of those arrested posed national security or public safety threats because ICE has not set forth priority categories with respect to the 287(g) program and has not released any information to date beyond the raw number of arrests. The statistics, however, indicate that the program has departed from the earlier risk-based approach to immigration enforcement articulated by the Department of Homeland Security (DHS).

By way of illustration, under the first MOA signed, the State of Florida devoted 35 officers to high-value targets—in particular those who posed threats to national security. In the first 36 months that the MOA was in operation, those officers made approximately 165 arrests (i.e., fewer than five arrests a month, or slightly less than one arrest per seven deputized officers per month). The second MOA, through which

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[13] Ibid.
[14] Ibid., pg. 29.
[15] Ibid., pg. 49.
[16] Ibid., pg. 70.
[17] Ibid.
[18] Delegation of Immigration Authority, Section 287(g), Immigration and Nationality Act, September 6, 2007.
[19] E.g., Am. Compl. ¶¶22–23, *Melendres, et al.* v. *Arpaio, et al.*, No. 07–02513 (D. Ariz. filed July 16, 2008).
[20] E.g., Delegation of Immigration Authority, Section 287(g), Immigration and Nationality Act, August 18, 2008; "The ICE 287(g) Program: A Law Enforcement Partnership," (November 19, 2008); Section 287(g), Immigration and Nationality Act, "Frequently Asked Questions," (last modified February 20, 2009), *http://www.ice.gov/partners/287g/Section287g_faq.htm.*
[21] "The ICE 287(g) Program: A Law Enforcement Partnership," (November 19, 2008).

21 members of the Alabama State Police were trained, resulted in approximately 200 arrests in the first 21 months—fewer than 10 arrests a month, or about one arrest per two officers per month.[22] In contrast, in the last 3 years, each law enforcement agency has arrested, on average, roughly 100 immigrants a month, suggesting a shift in emphasis from high-priority targets to volume of arrests. Though the removal of unauthorized immigrants is clearly within ICE's mandate, there are less costly, less disruptive and more efficient ways of accomplishing that.

III. COSTS TO THE SYSTEM

It appears that the rapid expansion of the 287(g) program imposes considerable costs—both tangible and intangible—on the entire immigration enforcement system. I will focus here on four.

Subordination of Federal Immigration Enforcement Priorities

The 287(g) program threatens the ability of DHS and ICE to set a coherent immigration enforcement agenda at the national level. Because of the need to respond to the demands of the 287(g) program and its State and local partners, the Federal Government has lost initiative with respect to where, how, and when to deploy enforcement resources. Instead, operations have been initiated by 287(g) law enforcement agencies, most of which are led by elected sheriffs who may be using their MOAs for local purposes not necessarily consistent with the overall needs of the region or country. Even law enforcement agencies with the best intentions are primarily concerned with their own communities.

Under some circumstances, law enforcement agencies entering into 287(g) agreements can have an incentive to detain large numbers of immigrants. After the initial arrest and processing by the 287(g) partner, the Federal Government bears the full cost for virtually every other step in the enforcement process, including detention, prosecution, adjudication and removal. In fact, with regard to law enforcement agencies reimbursed by the Federal Government for holding immigration detainees through an Inter-Governmental Service Agreement (IGSA), there are strong financial incentives to make as many arrests as possible. For example, under the IGSA between ICE and the Frederick County, Maryland Sheriff's Office—which also has a 287(g) MOA—the county is reimbursed $83 a day for holding an immigration detainee. However, according to Frederick County Sheriff Charles Jenkins, it costs the county $7 a day to feed and house a detainee.[23] The difference between the reimbursement rate and the actual cost represents pure profit, and can be an incentive for over-enforcement—particularly in the current economic climate. At least 22 287(g) partners also have IGSAs providing reimbursement for housing immigration detainees.

Immigration enforcement priorities must be set at the Federal level. Only from a national perspective can all of the relevant factors and resource levels be taken into account. This permits a much more efficient allocation of resources on a system-wide basis and avoids expending a great deal of Federal resources on individuals who pose neither a threat to public safety nor national security. Although ICE has not released comprehensive arrest statistics on the 287(g) program, independent data obtained by journalists suggest that significant resources are expended to remove unauthorized immigrants who are guilty only of traffic violations. In Frederick County, Maryland, for example, more than half of the first 300 suspected immigration law violators charged under its MOA were arrested for driving without a license. Likewise, data from Gaston, North Carolina reveals that 95 percent of State charges filed against 287(g) arrestees were for misdemeanors; 60 percent were for traffic violations that were not DWIs.[24] In Mecklenburg County, 2,321 unauthorized immigrants were placed in removal proceedings in 2007. Data shows that fewer than 5 percent of the charges against these individuals were felonies.[25] By yielding such a high rate of relatively low-priority civil immigration arrests, MOAs compromise DHS' ability to set the immigration enforcement agenda.

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[22] Hearing, supra note 8, at 16.

[23] Nicholas C. Stern, "Sheriff Updates County on ICE Action," *Frederick News-Post,* October 17, 2008.

[24] Michael Barret, "Officers Decide When to Arrest, But for Immigrant Community Decision Can Lead to Deportation," *Gaston Gazette,* July 7, 2008; Aarti Shahani and Judith Green, *Local Democracy on ICE,* (New York: Justice Strategies, 2009), *http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf.*

[25] Lindsay Haddix, *Immigration and Crime in North Carolina: Beyond the Rhetoric,* (Chapel Hill, NC: Department of City and Regional Planning, UNC Chapel Hill, 2008).

Fiscal Costs

Although ICE has not publicly released information about the total fiscal cost of the 287(g) program, statements by agency administrators indicate it is substantial. Former ICE Assistant Secretary Julie Myers testified in July 2007 that it costs slightly more than $17.5 million in the first year of an MOA to implement the program.[26] This figure included "startup and first-year maintenance costs consisting of such items as detention, removal and bed space management, IT infrastructure and maintenance, [Office of Investigations]/[Detention and Removal Operations] personnel and support positions, training, transportation and other elements," and was based on a law enforcement agency with 20 trained officers that made 240 arrests in the first year. Assuming that this figure has remained fairly constant, the first year of the 67 MOAs currently in force would constitute an expenditure of more than $1.1 billion.

It is important to note that this $1.1 billion estimate includes only the front end of the removal process. This estimate does not include immigration court prosecution expenses such as the salaries for ICE attorneys, immigration judges and support personnel; maintenance and overhead expenses for their offices; etc.—as well as similar expenses for appeals to the Board of Immigration Appeals and U.S. Courts of Appeals.

The program's substantial apparent costs reinforce the need for it to advance DHS' overall enforcement priorities.

Community Impact

Given the complexity of immigration law and the apparent paucity of supervision and training offered to agents under the current 287(g) program, harmful errors and even racially motivated law enforcement tactics may be inevitable. Whereas regular ICE agents receive 5 months of training in the intricacies of immigration law, 287(g) officers receive 4 weeks of ICE training. Furthermore, because immigration enforcement is not the primary job of local law enforcement agents, they do not accumulate the experience and expertise of ICE agents. Noting that immigration law is intricate, voluminous, and distinct, the International Association of Chiefs of Police (IACP) has expressed concern that local law enforcement agents acting under 287(g) agreements will violate the unique standards and constitutional requirements surrounding immigration enforcement: "What constitutes 'probable cause' in immigration matters may not be easy to discern."[27] Indeed, evidence shows that 287(g)-authorized officers purporting to enforce immigration law have illegally detained and even deported U.S. citizens.[28]

Community Policing

The core functions of law enforcement officers are to protect the public and keep communities safe. By deputizing State and local law enforcement officials to enforce civil immigration law, the 287(g) program may detract from officers' ability to fulfill their core mission in addition to diverting scarce local law enforcement resources to general immigration enforcement.

In 2005, an IACP representative testified before this committee that local enforcement of civil immigration laws "would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations" and could thereby "diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve."[29] IACP and the Major Cities Chiefs (MCC) both have publicly expressed concern that 287(g) agreements weaken their capacity to police their communities.

Fear and distrust of law enforcement agencies have broad reverberations. Immigrant victims of crime are less likely to seek police assistance and therefore more vulnerable. Immigrant women facing domestic violence may not report or seek protection from abuse out of fear that they, their partners or their relatives will be deported. Likewise, witnesses to street crime and violence may not come forth with valuable evidence and testimony. With respect to national security and counterterrorism, DHS has long emphasized the necessity for all individuals to report information and intelligence to law enforcement agencies. The underlying message is clear:

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[26] Pre-hearing questionnaire by Julie Myers, DHS Assistant Secretary nominee, submitted to the Senate Committee on Homeland Security and Governmental Affairs, 110th Cong., 1st sess., July 26, 2007.

[27] International Association of Chiefs of Police, *Police Chiefs Guide to Immigration Issues,* July 2007, 13.

[28] Paloma Esquivel, "Suit Filed Over Disabled U.S. Citizen's Deportation Ordeal," *Los Angeles Times,* February 28, 2008.

[29] Hearing, supra note 8, at 11.

building safe communities requires that all residents feel safe turning to and cooperating with law enforcement.

Furthermore, as a recent MPI study of the National Fugitive Operations Program demonstrates,[30] failure to abide by strict priorities in immigration enforcement inevitably blurs the distinction between immigrants who are unlawfully present and those convicted of violent crimes. The 287(g) agreements, as they have been applied, potentially collapse the important distinction between civil immigration violations and criminal offenses by affecting all individuals, citizen or non-citizen, suspected of being unauthorized immigrants. In so doing, these agreements send a message to the public that immigrants are criminals—thus, reinforcing harmful stereotypes.

IV. THE LACK OF GUIDANCE, SUPERVISION AND ACCOUNTABILITY

The statutory authorization for the 287(g) program requires that:

"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, 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."[31]

Although the MOAs generally set forth the powers and authorities that may be wielded by the deputized officers, they are far from comprehensive; indeed, those written in the last 2 years seem to be mostly boilerplate. Of particular concern, the MOAs do not articulate any overall objectives for the program or provide guidance as to when the law enforcement agencies should exercise their immigration enforcement powers. These newer agreements simply state that the intent of the agreeing parties (ICE and the law enforcement agency) is either that the MOA will "enable [the law enforcement agency] to identify and process immigration violators" or "result in enhanced capacity to deal with immigration violators." Such vague statements of intent are less likely to constrain abuses and direct resources to high national enforcement priorities.

This absence of objectives and guidance has essentially authorized participating law enforcement agencies to employ their 287(g) authority as they wish. Inevitably, this has led to widely divergent applications of the newly acquired powers, as well as many of the highest-profile abuses of the program. The wide discretion afforded law enforcement agencies is accompanied by questionable and uneven supervision and insufficient accountability measures.

Lack of Guidance Regarding Immigration Enforcement Functions

While some of the MOAs state that the participating officers "will exercise their immigration-related authorities during the course of criminal investigations," the language offers little concrete direction. Nowhere do the MOAs prohibit the officers from using their authorities outside of criminal investigations or set forth consequences if they do. Thus, law enforcement agencies are basically free to use their 287(g) powers at their discretion, including during non-criminal investigations, such as routine traffic stops.

The jailhouse MOAs do little more to curb unbridled officer discretion. One reason is that the jail agreements are no longer confined to the post-conviction stage of criminal proceedings, as the first one was. Instead, the immigration functions are frequently, if not always, performed as to every inmate booked in the facility, including those detained on arrestable traffic offenses and even civil contempt, at the time of initial intake.

Inadequate Supervision

The requirement that ICE "supervise" participating law enforcement agencies is so vague as to render the statutory language virtually meaningless. To our knowledge, ICE has issued no guidelines, regulations, or protocols with respect to the nature of its supervision, how frequently it must take place or which ICE office must provide it. Because of the differentiated regional concentration for the 287(g) agreements, some regional ICE offices have a greater supervision responsibility than others. (See Figure 3 in the Appendix section.)

ICE and its partners have emphasized the importance of close supervision over participating 287(g) partners. Florida Task Force Supervisor Mark Dubina testified

[30] Mendelson, Strom and Wishnie, *Collateral Damage: An Examination of ICE's Fugitive Operations Program.*

[31] INA § 287(g)(5), 8 U.S.C. § 1357(g)(5). 32 Hearing, supra note 8, at 16.

to a subcommittee of this committee that "[i]n all cases, the ICE team leader to the [task force], the [State law enforcement] special agent supervisor and the local ICE immigration supervisor must agree on a decision to arrest or detain a person, pursuant to 287(g) authority."[32]

In practice, however, the boilerplate MOA states only that "activities conducted by the participating law enforcement agency personnel will be supervised and directed by ICE supervisory officers." In sharp contrast to Mr. Dubina's description of joint deliberation in advance of arrests, most MOAs require only that participating personnel "shall give notice to the ICE supervisory officer as soon as practicable after, and in all cases within 24 hours of, any detainer issued." Only five of the 67 MOAs set forth specific circumstances in which 287(g) partners must notify ICE of their actions. And, even then, the language is retrospective: law enforcement agencies, for example, are to contact ICE immediately in the event of "death or injury of an alien(s)."

Inadequate Accountability Measures

At a minimum, a program that does not constrain its State and local partners from deviating from their traditional role and shifts immigration enforcement authority away from Federal officials requires careful recordkeeping and close review. However, the 287(g) program entails few mechanisms for accountability, transparency or public scrutiny. Most MOAs do not contain requirements or guidelines about the nature of the data that law enforcement agencies should collect. Likewise, ICE has released no information about processes or protocols by which it audits or reviews its 287(g) partners and the data they collect.

Given the magnitude of the program's authority, one would expect strict and transparent procedures by which individuals can report inappropriate or problematic experiences with law enforcement agencies functioning in their immigration enforcement capacity. To the contrary, however, the complaint procedures set forth in MOAs are vague and boilerplate.

V. CONCLUSION AND RECOMMENDATIONS

We live in a world of choices, with limited law enforcement resources. In general, when law enforcement agencies go beyond their core mission, we must be sure of the purpose and objectives for the departure. Law enforcement agencies already face myriad competing pressures and priorities. They are over-stretched and under-funded: trends that will no doubt worsen under the current economic conditions. The 287(g) program necessarily requires officers to spend time on activities beyond their core functions. With this new responsibility come risks and costs for the participating law enforcement agencies, the Federal Government and communities across the country.

When conceived by Congress in 1996, the 287(g) program was to be narrowly aimed at training local and State law enforcement officers to arrest unauthorized immigrants already subject to outstanding warrants of deportation (i.e. "fugitive aliens"). Eight years later, the first 287(g) agreement, signed by the State of Florida, was not focused on fugitive aliens, but rather tailored to the counter-terrorism objectives of Florida's Regional Domestic Security Task Forces. Had the 287(g) program remained confined to either of these initial purposes—fugitive aliens, as envisioned by Congress, or counter-terrorism, as embodied in the first agreement with the State of Florida—perhaps it would be a success today and prove to be a good model for a force multiplier in Federal immigration enforcement.

But much has changed in the interim years. The program has grown to include nearly 1,000 officers at 67 law enforcement agencies in 23 States, with most of that expansion happening in just the last 2 years.

Because of the growth of the 287(g) program over a short period of time, its potential to distract from the Federal Government's important efforts to enact a coherent national immigration policy, and its potential costs to communities, we therefore make the following recommendations:

1. Expansion of the program should be put on hold to permit a thorough review and potential redesign.—Congress or DHS should impose a moratorium on new 287(g) agreements while a broad, in-depth, empirically based study is undertaken to evaluate cost effectiveness and community impact.

2. The committee should hold field hearings on the 287(g) program.—I would encourage the committee to consider today's hearing a starting point to further examination of the program by holding field hearings in communities that have MOAs as well as those that have chosen not to pursue an agreement.

[32] Hearing, supra note 8, at 16.

3. If Congress chooses to continue the 287(g) program, it should enumerate specific and meaningful programmatic objectives with clear reporting requirements.—The program would benefit from coherent, transparent objectives that fit logically into the overall DHS enforcement priorities. With respect to its fugitive operations, ICE has set forth priority categories in which individuals posing a threat to national security are specifically identified as most important. ICE should adopt a similar set of publicly articulated priorities for 287(g) operations. Local law enforcement agencies should be required to regularly report arrest data, with specific indication of the individuals' priority levels. As part of that process, 287(g)-authorized agencies should also record and report the violation for which each individual was arrested as well as the individual's race and country of origin.

4. If the 287(g) program is continued, the committee should examine whether it should be confined to the jailhouse model and whether only those convicted of serious crimes should be screened for civil immigration violations.

5. All existing agreements should be reviewed to determine how well they advance Federal objectives, how efficaciously they allocate resources, and whether they are sufficiently cost-effective.—Agreements that do not advance DHS' objectives or suffer from other problems of management or oversight should be modified or terminated.

6. Congress should make clear any law enforcement agency that consistently exceeds its authority shall have its MOA terminated.—All MOAs should also undergo a mandatory, periodic review to monitor compliance.

7. The basic MOA itself should ensure sufficient training and supervision by ICE and include clear reporting and accountability measures. Moreover, processes should be included that require law enforcement agencies to seek the input of affected communities.

VI. APPENDICES

FIGURE 1.—TYPES OF 287(g) MOAS SIGNED BY YEAR

Year	Jailhouse Agreements	Task Force Agreements	Hybrid Jailhouse/ Task Force Agreements	Total
2002	.....	1	.....	1
2003	.....	1	.....	1
2004	.....	.....	.....	0
2005	3	.....	.....	3
2006	3	.....	.....	3
2007	11	9	6	26
2008	14	13	6	28
TOTAL	31	24	12	67

FIGURE 2.—TYPES OF 287(g) MOAS BY JURISDICTION TYPE

Year	Jailhouse Agreements	Task Force Agreements	Hybrid Jailhouse/ Task Force Agreements	Total
STATE	4	8	0	12
COUNTY	25	6	12	43
CITY	2	10	0	12
TOTAL	31	24	12	67

FIGURE 3.—SUPERVISING ICE OFFICES AND SUPERVISED LAW ENFORCEMENT AGENCIES

Location of Supervising Office	Number of Agencies Supervised	Avg. Distance to Agency (Miles)
Atlanta, GA	13	219
New Orleans, LA	8	544
Phoenix, AZ	7	42
Fairfax, VA	7	25
Charlotte, NC	5	64
Los Angeles, CA	4	45
Miami, FL	4	313
Tampa, FL	4	194
Fort Smith, AR	4	70
Boston, MA	4	44
Dallas, TX	4	75

Chairman THOMPSON. Thank you for your testimony as well as each of you before our last witness.

I remind each Member that he or she will have 5 minutes to question the panel.

I will now recognize myself for questions.

Mr. Riley, you have heard Mr. Stana testify that ICE presently has no performance measures or program goals. Do you agree with that statement?

Mr. RILEY. Yes, that is an accurate statement.

Chairman THOMPSON. If that is correct, how do we determine success or failure within the 287(g) program?

Mr. RILEY. Right now, the Office of State and Local Coordination that I am overseeing recently finished a draft of a strategic plan that is currently being vetted through ICE right now. That strategic plan is going to have baseline performance measures for which ICE can then project the success of agreements that are currently in place and future agreements. I would also like to note that Secretary Napolitano on January 30 issued an action directive to ICE specifically for a full review of the 287(g) program, and part of that program is for us to start getting performance measures by which we can judge the success of all the agreements that we have in place.

Chairman THOMPSON. So let me be absolutely clear with the testimony. At this point, you have said that there are no real measurements in place, but you plan to do that.

Mr. RILEY. Right, the measures that we have tracked for the past few years, as I did testify, that 90 percent of the agreements we have in place were entered into in the past 3 years. The measures that we had been tracking were the number of State and local officers that have been trained, the number of individuals identified by 287(g)-trained officers that were identified for removal via the memoranda of agreement and the number of agreements that we have entered.

Chairman THOMPSON. Thank you.

Mr. Stana, did GAO make any suggestions as to how ICE could determine success or failure within the 287(g) program?

Mr. STANA. Not anything specific in the report, and this is because—first before you articulate what your performance measures

are, you have to articulate what the objective of the program was. Since there was some variation depending on which document you looked to as to what the intent of the program was, it is hard to create a measure.

But assuming that one measure might be to address serious crime by removable aliens, one measure might be, for example, the percentage of serious criminal activity reduction in a jurisdiction participating in 287(g) or if, say, 90 percent of the arrests under the program were for crimes that are considered serious criminal activity. Those might be two.

But again, the fundamental underpinning of having performance measures is to have a more wide-reaching control mechanism and a control structure that you are trying to measure success against. That is also something that ICE said they are going to be working on.

Chairman THOMPSON. Thank you.

Mr. Riley, can you provide this committee with the last 2 fiscal years' arrest statistics under the 287(g) program? After providing that information, can you provide us ICE's definition of serious crime?

Mr. RILEY. The statistics I will have to get back to the committee on. Serious crime—I don't know if we have a specific definition for that, but what I will say is that over the past few years, ICE has been enhancing its database systems, one of which is ENFORCE, which is DHS's administrative arrest booking system. Both Customs and Border Protection, USCIS, and ICE use this system.

What we plan to do is have a short-term fix in the next few months that will allow us to better track those types of data. Specifically we are going to be requiring that the State and local 287(g)-trained officers populate additional fields that are going to be added to ENFORCE, specifically that will track if the individual was charged with a felony, misdemeanor or non-driving——

Chairman THOMPSON. So we don't have a measurement or identifier for serious crime?

Mr. RILEY. ICE doesn't have a definition that I know of for serious crime. We have aggravated felon, felon, and misdemeanor.

Chairman THOMPSON. Mr. Stana, I guess what I am trying to figure out is if we have a memorandum of agreement between ICE and a unit of Government as an objective to stop and apprehend serious crime but we can't define what a serious crime is, how can we measure anything?

Mr. STANA. Well, that is a really good question. I think—DRO, the Detention Removal Office, does have definitions of serious crime, and they might list things such as drug traffickers or sex crimes, things like that. They put that information out to participating jurisdictions with the idea—and I think Mr. Souder alluded to this. ICE isn't going to come and pick up or doesn't have the space to deal with people who fall below a certain threshold.

It is not that they don't understand and aren't sensitive to the need to respond to other types of crime; it is just that there are not enough resources, and they try to—if you look at the statistics that ICE has, you will see that—I think it was about 43,000 people were arrested under this program, about 34,000 of which, and this is for the 29 jurisdictions we studied, were accepted by ICE, meaning

there were about 9,000 that they didn't take presumably because it was too low a threshold for them to take them.

Of the 34,000 that were taken, it is interesting to see how they were dealt with jurisdiction by jurisdiction. Some of the large feeder jurisdictions, one in particular, Maricopa County, about three-quarters were V.R.—voluntary removal—indicating it probably wasn't a serious crime that they were arrested for, but they were removed from the country nonetheless. I am not arguing that they shouldn't have been if they are out of status here, but I am concerned about the focus of the program.

Chairman THOMPSON. Thank you.

I yield to the Ranking Member for questions.

Mr. SOUDER. First, let me say to Mr. Stana, I appreciate your thoroughness, and we all agree pretty much on the recommendations that—I wanted to ask Mr. Riley, is anybody forced into this program who doesn't voluntarily want to join? Because if so they should resign so that I can have some of my sheriffs who want to voluntarily join.

Mr. RILEY. No, Congressman, it is a completely voluntary program.

Mr. SOUDER. Because there was some implication here that—for example, who are other people to decide whether an elected sheriff who is voluntarily joining the program is doing what he thinks reduces his law enforcement most—his problems? Because he is elected by the people; he is subject to reelection by the people. If he makes a decision the best way to reduce my crime is by *"X",* it is a tad arrogant of other people to decide that that should be otherwise. Now, if it is Federal money, there can be guidelines. But there was an implication here that one group has a better judgment as to what their pressure is than another group, and that should be up to elected officials.

I am also concerned—I was relieved to here that basically the big city police chiefs—I was disappointed to hear you get to selectively decide which laws of the United States you are going to enforce and which ones are unfunded mandates and not. I was relieved to hear that you still consider narcotics laws, which are Federal, an unfunded mandate on local police that will still be enforced by most jurisdictions.

Because in fact these things are partnerships. What is local crime is also Federal crime. It is often the Federal law to go across State lines, and I am a little nervous about this implication that, oh, well, we are going to pick and choose which Federal laws to enforce.

We are running into this in medicinal marijuana as well. We already had a civil war over whose jurisdiction supersedes. It is not a question of local authority to decide which laws they are going to enforce.

Also the 10-day or once a week that you fax to ICE—most people are released within 48 hours. We will lose most before they could do a background check. I just wanted to get those things on the record.

I have also some additional concerns about the ability of ICE—because really the No. 1 challenge here is they don't have enough money to do all the different missions. That is how you wind up

targeting. As Mr. Stana just referred, as I did earlier, when we had this meeting in Indiana, one of the prosecutors, ClaraMary Winebrenner from DeKalb County—she has got about 45,000 people—said, okay, you are saying you will only take him if I get a conviction, because most prosecutors are having to plea bargain because they have to make the same decisions too.

Most marijuana convictions in the United States for possession aren't for possession; it is that they are plea-bargaining through, making tradeoffs of where they do prosecution for dealing. You don't get a marijuana possession unless you have a plea bargain basically. But the same thing is true in many of the illegals that they have in the sense of they are showing up as misdemeanors because they are plea-bargaining them because they don't have time to go through all this process and that they were told by ICE that if they got the conviction for a felony they would be deported, but they are still there.

One of my direct questions related to my district to Mr. Riley is when will we have a DRO person in Indiana, where we have people who have been meth dealers, cocaine dealers, spouse abusers, that in Allen County I think they have 40-some felony in addition to others who have plea-bargain negotiated—when are we going to get somebody in Indiana to do the removal?

Mr. RILEY. I am going to have to take your question back to the operational components within ICE to address your concerns and get back to you on that.

Mr. SOUDER. All right, thank you, sir. Forgive me, but we have been frustrated. I have asked to insert into the record a three-page memo I got this morning from Sheriff Leatherman from Noble County, who has been raising this to me for 4 years. He has got 158 who had felony processes who weren't picked up in a county of 45,000 people. It has been very frustrating.

Now, the other thing I don't quite understand is that at the border, because you can't use ICE agents—we are having them do immigration issues. They are trained, a lot of them in narcotics and financial-type thing, and then we have DRO, but sometimes they are having to move agents over to do DRO work. Why isn't this contracted out with Wackenhut or people like that like it is done around the border? Because it is just a matter of taking people out. You don't need trained agents.

Mr. RILEY. I am going to have to consult with the Office of Detention and Removal to formulate an answer for you.

Mr. SOUDER. Because one of the frustrations here is that if we have cost pressures—and it would seem best to try to figure out a way once decisions are made that this person clearly has been convicted—they are out of status—because part of the problem with local police unless they get in this progress, they make judgments based on their driver's license but don't have any way to verify whether they are unless they get in this program, unless they have a fingerprint system. So it has been very frustrating, that in Indiana there is a lot of frustration with the process. So I yield back.

Chairman THOMPSON. Thank you very much. If the gentleman will provide minority or majority counsel a copy of the information, we will insert it after it is shared with everyone.

[The information follows:]

DOCUMENT SUBMITTED FOR THE RECORD BY THE HONORABLE MARK E. SOUDER

Some good #'s in here

Noble County Minority Statistics
And the
Impact on Local law Enforcement

The following minority statistics were obtained from the Celebrate Diversity Projects/Noble County Community Foundation using 2006 U.S. Census estimates:

Noble County Population:	47,918	
White Only:	42,315	(88%)
Non-white:	5,603	(12%)
Hispanic non-white:	4,738	(9.8% of total pop./85% of non-white pop.)

Noble County School Corporation Data:

School Corporation	Students Enrolled	# of Minority Students	Sub-group # of Hispanic
East Noble	3853	270	154
Central Noble	1387	55	14
West Noble	2631	1210	1079
Total	**7871**	**1535**	**1247**

% of students which are a minority: 19.5%

% of total students which are Hispanic/Latino: 15.8%

WN Spring 2008 52%

West Noble School Corporation is ranked 1st in Indiana for the highest percentage of Hispanic/Latino students compared to total school enrollment.

Utilizing school demographic data as representative of county demographics to evaluate census counts would indicate that census data may under represent the minority population in Noble County. (*Note: This is not a precise method of evaluation, but a means of estimating population demographics for Noble County.*)

Begin to see Gang issues 1-2 yrs Ago

If the student population demographics are reflective of overall community true demographics, then 19.5% (9,344) of Noble County population is minority and 15.8% (7,571) of Noble County population is Hispanic/Latino. (*Indicating that the 2006 Census estimates may underestimate the minority population by 7.5% overall, and the Hispanic/Latino population by 6%.*)

Impact on Local Law Enforcement

Noble County Sheriff's Department (Confinement Division) Statistics:

- Total inmate bed space available: 240
- Number of inmates housed daily: 194 (Three-year average)
- Number of inmates booked-in for incarceration yearly: 2,535 (Three-year average)
- Total number of book-ins which were Hispanic/Latinos: 468 (Three-year average)

Incarcerations of Hispanics/Latinos vs. Identification:

A huge problem facing jails is the inability to determine the true identity of the Hispanic/Latino being incarcerated. If the person is in possession of any identification, it is usually false. All book-ins are fingerprinted utilizing an AFIS fingerprint machine, which in minutes, will provide information on previous arrests by checking the name, date of birth (DOB), social security number (SSN), and fingerprints. Often matches will occur for two or three Hispanics using either the same name, DOB, SSN, or a combination of several identifiers. The fingerprints alone may indicate the person was previously arrested in another county or state using other identification. **Currently, technology is not available for local law enforcement to accurately determine the correct identity of the person in custody or if the person is foreign born.**

- **Example:** A female Hispanic booked-into the Noble County Jail on 8/19/2008, was fingerprinted and a match of the fingerprints indicated she had a previous arrest in another state using a slightly different name. However, the computer also indicated that **two male Hispanics** had been arrested in other states using the same DOB and SSN as the female.

Problems encountered by the courts and law enforcement upon release from jail:

When the Hispanic/Latino is released from custody, other identification is sometimes assumed. As a result, a compounding problem exists for the courts and law enforcement. Often, Failure to Appear or Probation Violation Warrants are issued and are extremely difficult to serve.

For the typical patrol officer who may have a Hispanic detained during a traffic or criminal investigation, and a computer check (IDACS/NCIC) reveals the existence of a warrant possibly matching the name, DOB, or SSN of the person detained; the fingerprints are the *only accurate* method of confirming if the person in custody is actually the same person originally charged in the warrant. Fingerprints will match, the name or other identification possibly will not! For Noble County law enforcement

agencies, this situation requires transporting the Hispanic/Latino to the jail for the purpose of fingerprint verification, and possible incarceration.

Noble County Outstanding Warrants as of 9/12/08: 1235

Number of warrants for Hispanic/Latino names: 493 (40% of total warrants)

- Felony charges: 158
- Misdemeanors: 262
- Civil: 73

Every law enforcement agency is facing similar issues when dealing with the foreign-born Hispanic/Latino population. The federal response to the local problem has been long on promises and short on delivery. The mere fact that Immigration and Customs Enforcement (ICE) is lacking the resources, manpower or desire to respond to the local jails to either interview or detain an illegal, is now a prevalent issue. Deportation is either ineffective or non-existent.

Federal, state, and local agencies collectively working together can make a difference. It is however, "our problem to deal with" until the federal government demonstrates a sincere effort and follow through to provide the assistance, resources or tools to make that difference.

Respectfully,

Gary D. Leatherman
Noble County Sheriff

COMMUNICATION!

During
• ~~Before~~ "Active" ICE Assistance – Noticed a Drop in Hispanic Arrests
• 287g Enforcement – County Jails would be overflowing
Incur Additional Costs for Housing/Medical Care

Chairman THOMPSON. The Chair now recognizes other Members for questions they may wish to ask the witnesses. In accordance with our committee rules, I will recognize Members who are present at the start of the hearing based on seniority on the committee, alternating between majority and minority. Those Members coming in later will be recognized in the order of their arrival.

The Chair now recognizes the gentlelady from California for 5 minutes.

Ms. SANCHEZ. Thank you, Mr. Chairman, and thank you for calling what I think is a very important hearing. Out in Orange County, California, we have some jurisdictions where my police chiefs don't want to do 287(g), and we have others where we have actually implemented the program. In my district in particular, which is a heavily immigrant district of all sorts of people from all different types of countries, for some of the reasons given in the testimony by Chief Manger, they don't want to have this program because they need the information from the community on real criminals and crimes going on in their district.

My concern, and it has been reiterated by the written testimony of Mr. Stana—and you have a lot of stamina, Mr. Stana, to be before our committee so often on so many of these issues; it is great—is that the objectives and the standards and the overall policies of the program are really not communicated effectively in the MOAs and in other program-related material.

So my question is to Mr. Riley. How do local officials know what the penalties for noncompliance will be if they are not really clearly communicated in the materials and information that are provided to them?

Mr. RILEY. All the agreements, I will start off, can be terminated by either party at any time. As far as the severity of it, ICE initiated a study last year, a review of all the existing memoranda of agreement by ICE's Office of Professional Responsibility.

Ms. SANCHEZ. Have any been terminated by ICE?

Mr. RILEY. No, they have not. OPR to date is projected to do 20 reviews this year and they completed four last year. The increase was based on an appropriation in the 2009, so we are projecting that within the next few years, all of the existing agreements will have been reviewed by the Office of Professional Responsibility.

Ms. SANCHEZ. But yet in reading the testimony of Mr. Stana or the report of Mr. Stana, it was really quite evident given all the different agencies he had spoken to, a majority of them didn't understand what the responsibilities were under the MOAs.

Mr. RILEY. I believe that is why Secretary Napolitano issued an action directive for a full review of the program. In addition to updating our template MOA that we will use for future agreements, which take into account a lot of the GAO recommendations and also other lessons that ICE has learned through the various different evolutions of the MOAs we have created over the past few years, we are also reviewing all existing MOAs, especially earlier ones to ensure that these directives and the priorities of the program are better spelled out.

Ms. SANCHEZ. What type of oversight do you think is really needed from ICE agents in order to have a good and effective program on the ground? I will ask that of the whole membership up there.

Mr. RILEY. I believe——

Ms. SANCHEZ. What type of supervision is required? Because in reading the report from Mr. Stana, I mean, supervision was all over the place. There were some ICE agents who thought all they had to do was keep the computer program going. There were others who never showed up and did any of that. There were others who thought 25 percent of the time should be toward it.

Mr. RILEY. Early on, a lot of the MOAs, and as GAO noted, did not specify the specific duties. ICE is working to fix those duties but still retain the flexibility because the agreements are unique in nature. Each one is different. Some range from programs that may only encounter a dozen apprehensions a month to some that encounter hundreds per month.

You know, to have an exact template with that is difficult because it does vary between the different programs. We are looking at instituting SOPs specifically formulated with the field office and in conjunction with ICE's review of the 287(g) program to specify exactly what we see as the supervisor needs for each of these individual programs. That is something we hope to achieve in the near future.

Sheriff JENKINS. Congressman, I would like to comment to that. I think a lot of this goes back to what I said in my statement about the intensive—the quality of the training, No. 1, the intensity of the training and the quality of the people that you put into the pro-

gram as an agency. What we found—that early on, yes, we needed constant supervision, constant oversight and as, you know, you learn as you go. It is like anything else. As we moved forward and that ICE felt comfortable in the way we were implementing the program and moving forward, the less we had the need for daily supervision.

So again, like I said before, they are there when we need them, but, you know, and again, every arrest we make, there is an agent who looks at the A-files, they inspect the paperwork, so it is a work in progress. But I think it goes back to the quality of the original oversight and the training.

Ms. SANCHEZ. Mr. Stana.

Mr. STANA. You know, this is a controversial and even a polarizing program, and so I think it requires sort of an extra measure of supervision. It starts with articulating what you want out of the program, collecting performance data, visiting the program periodically and sometimes unannounced to understand what is going on.

You know, about half of the jurisdictions told us they were just fine with the supervision. But when you peeled that back a little bit and asked them why they were fine with it, they would say because they leave me alone; they don't come around. I agree to some extent that this is a program that is a work in progress, and that might have been true for the first 10. But we are up to number 67 now. We ought to know now what we want out of these jurisdictions in this program.

This is a problem that needs to have—you know, the criminal alien problem needs to have some help and some resolution and some control. This population is like any other population; there are bad people in it, and we have to identify the bad people and we have to deal with them. But if we spend a lot of time on people who aren't bad, there are other programs to deal with that.

These are resources that we want to devote to the worst of the worst. That is what Assistant Secretary Myers said a year ago. That is what ICE's informal guidance says. But it is just not articulated and not understood by the program participants in all cases.

Ms. SANCHEZ. Mr. Chairman, I would just like to put on the record that it also is very dependent—and what the sheriff said about what type of person you put to do this type of program. For example, in one of the jurisdictions that I have without the program, I had a particular officer who was picking people up on normal traffic stops, putting them in his police car, driving them down about an hour and a half to the border, to the secondary border area we had, and dropping them off to INS agents. So this type of officer, I mean, obviously just doesn't want anybody that looks, in this particular case, Mexican, in my opinion, in my city.

So it is very important to understand who is going into the program, that we have MOAs that articulate what the program and what the objectives are and what the measurement is and that we have good oversight, as I think Mr. Stana said, if we are going to continue with these types of programs.

Sheriff JENKINS. Could I make a comment to Mr. Stana's comment? You know, when we talk about what is the worst of the worst. Well, is a person who is driving drunk through a school zone during the daytime with a violent criminal past any worse or less

a bad person than a drug dealer? How do you measure who are the worst of the worst?

Chairman THOMPSON. We will resolve that issue too. That is one of the issues for the program, and if you had an MOU that was definitive enough, a lot of those questions would not be left to the individual, but they would be quite specific. I think that is where this hearing is moving us.

Ms. SANCHEZ. Thank you, Mr. Chairman, for the time.

Chairman THOMPSON. Thank you very much.

The gentleman from Alabama, Mr. Rogers, is recognized for 5 minutes.

Mr. ROGERS. Thank you, Mr. Chairman.

Sheriff Jenkins, I think the answer to your question is it depends on if it is your kids in that schoolyard.

I want to ask Mr. Riley, this program—the Alabama Department of Public Safety has been involved since the beginning. It was one of, I believe, three States that had participation in the ICE program starting in 2003, and it has been incredibly popular. I get feedback regularly from State troopers about how much they appreciate it and how they want more access to it.

Can you, Mr. Riley, tell me a little bit about how you think this task force model works in Alabama and why we aren't hearing more of that kind of feedback from these other States?

Mr. RILEY. Yes, the Alabama model, as you said, was one of the first ones. It was the first model where it was the actual State patrol that was using it. Recently did a review of that MOA, and one of the findings that we found was that the troopers acknowledged that they wanted additional training on our ENFORCE database system, and we created a specialized training class specifically for the troopers. I believe we trained 15 of them to go back as a train-the-trainer to show them, you know, how the database system has changed since they went through. I think most of those troopers went through 4 or 5 years ago, and they hadn't had refresher training.

So that was an outtake of our review process, that that was a concern of OPR and a concern of the Alabama State Troopers, and we moved quickly to fix that. So I think it shows that is the kind of partnership we have, and I think it is a successful task force.

Mr. ROGERS. To my knowledge, there has not been one alleged incident of profiling by the Alabama State Troopers since 2003 when this program was initiated. Do you know anything different than that?

Mr. RILEY. I don't, and as part of the OPR's review of the MOAs, although ICE doesn't investigate civil rights violations, our Office of Professional Responsibility does check with the United States Attorney's Office, the local Federal Bureau of Investigation and also the agencies' internal affairs bureau to see if there were any allegations of racial profiling, and there weren't any reflected in that report.

Mr. ROGERS. Thank you, Mr. Riley.

Mr. Stana, do you know of anything different, anything contrary with regard to the Alabama Public Safety Department and the involvement with 287(g)—any complaints or profiling?

Mr. STANA. No, I don't. I will add that most of the organizations we spoke with were also positive about the program. It increased public safety. It dealt with recidivists. It performed a function that ICE didn't have the resources to perform.

The question isn't: "Was it popular?" The question is: "Is it being put to best use?" With regard to Alabama or any other jurisdiction, there is a complaint process in the MOA. It is a little hazy as to what it is supposed to be about. We didn't see any complaints in the files of any jurisdiction or in OPR about any jurisdiction that was filed. I don't quite know how to reconcile that with media reports about problems with these programs in certain jurisdictions. But we didn't find any in the ICE files.

Mr. ROGERS. In your audit, did you—when you talked about the question is whether or not they are being put to best use, did you find any concerns like that in the Alabama program——

Mr. STANA. We didn't look at any individual program, Alabama or otherwise, but, you know, there are always allegations in some jurisdictions that some people being deported weren't really serious criminals.

Mr. ROGERS. There are few programs that we put in place in Congress that I get as much positive feedback about as this 287(g) program, so it is very concerning to me when I hear you use words like controversial and polarizing to reference this program, because I don't see that in my world. Can you tell me why I am wrong?

Mr. STANA. I don't think it is a matter of right or wrong. I think it is a matter of perception that we are reflecting in our report. Of the 29 jurisdictions we looked at in detail that were in place as of October 1, 2007, about half of them made that observation that the Hispanic communities in their jurisdictions were a little wary of the program.

Now, some tried to overcome that wariness with public outreach, like the chief mentioned, trying to put some transparency to the program. We found one jurisdiction that found a woman who passed a bad check, found out her status, and she was out of status. Rather than deport her, they told her that that crime didn't rise to the level they were really looking at in this program, sent her back to the community with the message that we are after people who are serious criminals, so tell your friends and—well, not accomplices—tell your friends and associates that it is okay to report crimes to us; you are not in danger if you are not a serious criminal.

So I think it is a—you know, it is not disagreeing with you. It is a matter of how the program is being implemented and to what end.

Mr. ROGERS. Well, it is being implemented very well in Alabama, and I don't want anything that comes out of this hearing to disturb that.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you.

The Chair now recognizes the young lady from Texas for 5 minutes, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, for holding this hearing, and let me acknowledge each and every one

of the witnesses as patriots and individuals who love this country, and we respect that.

It is well to note that this Congress has a major responsibility, hopefully in the 111th Congress, to implement comprehensive immigration reform, which will then denote for all of us individuals who will either be able to access, if you will, legalization and others who are in fact bad actors. No one sitting on the Homeland Security Committee wants bad actors, potential terrorists, individuals who travel up the southern border or northern border that can integrate in our community and pose a serious threat.

At the same time, we recognize that crime is on the rise and resources are precious. My position is that we should have comprehensive immigration reform. Our resources for crime fighting should go to crime fighting. Those individuals who are comfortable with this particular program, let them continue under the present or lessened funding, because I have constituents in my community who are crying because of crime that has no label of whether or not it has been immigrant or nonimmigrant; it is crime.

That is what I see. Law enforcement on the local and State level is fighting the kind of crime that our neighbors are talking about that is not necessarily pointed to a traffic stopping of someone who happens to be non-status, possibly driving to their work.

Now, let me just say this. There are problems with people who are non-status and driving without a license who are engaged in criminal activity. Frankly I believe the normal law enforcement can be as helpful if we provide them with more funding like cops on the beat.

Let me acknowledge—I think it is Sheriff Jenkins—just to thank him for his work. This is not intended to indicate that the program in your community is not working or the program in Alabama is not working.

But let me speak to—I am in an awkward location here; I can't see the head of the national chiefs organization's name.

Chairman THOMPSON. Chief Manger.

Ms. JACKSON LEE. Yes, Chief, let me pose a question to you, because I think you have a reasonable approach to that, because I frankly am from one of the large cities. My understanding is do you let any immigrant that may be detained go without—it seems that you provide a weekly report or a monthly report of individuals that are detained or picked up. Is that not true?

Chief MANGER. That is true. Everyone we arrest we run a warrant check on so if there is any outstanding warrant from any organization, including ICE, we serve that warrant. Once a week, our corrections department sends a list of all foreign-born inmates to ICE.

Ms. JACKSON LEE. In doing so, you believe that you are covering the responsibility, frankly, that you don't represent yourself—I heard you say the word sanctuary; that has gotten to be an ugly word—but the point is you are engaged in law enforcement. If someone is in violation and if they happen to be out of status, you make sure that you follow through on providing the Federal Government with the information.

Chief MANGER. That is correct. We allow ICE to do their job, yes.

Ms. JACKSON LEE. You also have indicated something very important. In large cities with multiple multicultural communities, it is very difficult to extract information on violent crimes or human trafficking when there is this sense of intimidation. Is that not true?

Chief MANGER. That is true. In some of our most heavily populated immigrant communities, we know that there is a great deal of unreported crime that goes on, and in order to make those communities, those neighborhoods, safer, we need to have the trust and cooperation from the people that live there.

Ms. JACKSON LEE. So showing up at a laundry with a raid and you have your uniform on, that would spill through the community and keep you from finding the MS–13 or anyone else that you might try to find.

Chief MANGER. We believe that to be the case, yes, ma'am.

Ms. JACKSON LEE. Let me ask the gentleman—I can't see any names here, but this gentleman here. You have written in your testimony here—and I am sorry, what is the name? Mr. Chishti—because I can't see from over here in this location. But in any event, you have indicated that Federal authorities need to focus on their Federal authorities or organizing this particular program. Would you comment on that and comment on the potential for racial profiling?

Mr. Stana, in my last period I notice that your sentence says ICE lacks key internal controls for implementation of this program. I don't think we have answered that. That is true, and we need to improve that. I would like you to comment. Would you comment on why you think the Federal Government needs to be more involved?

Mr. CHISHTI. Thank you, well, this is a program written for the Federal Government. I mean, Congress wrote it so that enforcement mandate of the Federal Government could be helped by the assistance from local government. So it is intended to help improve the Federal enforcement immigration responsibility. Therefore, the agreements should be seen advancing that enforcement strategy.

I think what we have seen increasingly is that, when given the limited resources that the DHS has for its enforcement, then you are confronted with a number of applications coming in. You therefore have to decide how to spend the resources of enforcement, and if you spend them on 287(g)'s programs, which don't target criminal aliens but principally target regular, unauthorized workers—not that they should not be removed, but this is a very expensive program, targeted program.

If it targets those at the expense of going at high-interest immigrants who may be committing crimes, are of terrorist interest, then I think it deviates from the real mission of the Federal enforcement function of the Government. So it doesn't advance Federal enforcement policy actually; it advances the local political interest of the people who might be interested in applying for these.

Now, the racial profiling was important because the training that these local cops and State cops get is obviously very limited. It is about 4 to 5 weeks. As you know, Congress submits a very complex field of law which constantly changes. The immigration agents who do this on a day-to-day basis have months of training, years of experience.

So when you have to go on the beat and determining that someone is undocumented, and in the absence of very rigorous training, and if you have to make those decisions in a very short period of time, you are inevitably going to use race or ethnicity as a proxy for someone's illegal status. That is, I think, what the MCC and the police in the International Association of Chiefs of Police have consistently stated in their positions. It is that cost of doing racial profiling in their function of this new mandate that I think they have chosen not to do it.

Ms. JACKSON LEE. Thank you, Mr. Chishti and Mr. Manger.

I am sorry, Mr. Chairman, I didn't see their names, Chief Manger and Mr. Chishti. Maybe Mr. Stana might be able to answer the question later. I posed a question to him.

Chairman THOMPSON. That is good.

Ms. JACKSON LEE. Mr. Chairman.

Chairman THOMPSON. The gentlelady's time has expired.

I will now recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. Thank you very much, Mr. Chairman. Welcome to all the witnesses and thank you for all your service to our country and your local communities.

Mr. Riley, I have a few questions for you. Last year the Houston Chronicle reported that ICE was releasing criminal aliens and putting them back on the street. Specifically the Chronicle said that ICE officials didn't file paperwork to detain roughly 75 percent of more than 3,500 inmates who told jailors during the booking process that they were here in the United States illegally. Many of these illegal aliens were child molesters, rapists and drug dealers.

A bipartisan group of the Houston congressional delegation met with ICE officials after the story broke and were told that funding from the fiscal year 2009 Homeland Security appropriations bill had helped fix some of the programs that this article highlighted by having Harris County deputies train in 287(g). How have these deputies helped ICE stop this problem in Houston?

Mr. RILEY. 287(g)-trained deputies in Harris County. I will note that that is one of the largest programs we have now in terms of individuals identified for removal. That helped tremendously. They do the vast majority of the screening in Harris County and identify several hundred individuals per month alone just out of Harris County. To us it is definitely one of the successes of the program.

Mr. OLSON. Great, so it does work in a large jurisdiction, in Harris County being the third most populous county in our Nation. It can work there if applied properly and——

Mr. RILEY [continuing]. Well there.

Mr. OLSON. My other question for you is just regarding the backlog of funding. Is it deterring communities from entering the program at this time? I mean, can you——

Mr. RILEY. Backlog of——

Mr. OLSON. The backlog of funding for 287(g). Is that deterring communities from enrolling in the program?

Mr. RILEY. No, we currently have approximately 42 requests pending. The slow process of reviewing the agreements—the reason why there has been a significant delay in the past year is that we were looking at enhancing the program, looking at, you know,

working with GAO in their audit and also internally had been working on additional measures to enhance the program, building performance measures and identifying those agreements where we feel that ICE's priority is the best.

So going back to the program only really having expanded dramatically in the past 2 years, it is a growing process, and that is why we do have a backlog. But we haven't really seen much of a reduction. There has been a slight reduction in the number of requests, but we still have quite a few pending.

Mr. OLSON. Okay, great.

Thank you very much, Mr. Chairman. I yield back my time.

Chairman THOMPSON. Thank you very much.

Chair will now recognize Mr. Cuellar, the gentleman from Texas, for 5 minutes.

Mr. CUELLAR. Thank you, Mr. Chairman.

I would like to follow up on some of the questions the Chairman asked earlier today, more of a structural question I guess to Mr. Riley and Mr. Stana and anybody who wants to answer on that. If you know the answer, we can talk about this later.

What is the mission of the program, No. 1? What are the goal or goals of the program? What are the specific outputs, performance measures, efficiencies, that is how much—you know, for every individual they have, for every deputy or police, how much does it cost to have that? I am sure every MOA is going to be a little different. Do you have those answers or would you prefer if we get together later with Mr. Stana to work that out?

Mr. RILEY. I prefer later on because ICE is actually working with our, as I knew before—having a finalized, strategic plan, which will have our future performance measures and how we are going to extract them. So I think once that strategic plan is approved through ICE, it might be more productive time where we can sit down and look at those——

Mr. CUELLAR. Mr. Riley, believe it or not I am a supporter of the program if we have the right definitions as to what is a major offense, if we have the right performance measures, if we have the strategy, the right mission, the right goals on it. Because otherwise it is a good program—well, I don't want to be judgmental. But a program with good intentions might turn bad. I think for the local officials, I think having that is important. So I take it that you are trying to finalize it but there is no strategic plan in place right now.

Mr. RILEY. There is not.

Mr. CUELLAR. Okay.

Mr. RILEY. But we are, again, looking at our review process. One of the main areas of review is tying in, you know, the serious crime issue, looking at some of our other programs, such as Secure Communities and our Detention and Removal that have pre-existing definitions, tying ours to be similar so we have consistent definitions across our various programmatic areas. Once we have those, then bringing them back out to our partner agencies and showing them—these are ICE's priorities and this is where we want to work within the MAOs.

Mr. CUELLAR. Would the Executive branch have a problem sharing with the committee the strategic plan before you finalize it with your partners, local partners?

Mr. RILEY. I would have to review that through our legal advisor to come up with an answer for you on that, Congressman.

Mr. CUELLAR. Mr. Chairman, I would like to ask the committee to officially request the—Mr. Riley—and again, we want to—it is not us vs. them; that is the theme we have been using. We want to work with you and make this better, but I would like to see the strategic plan before it becomes finalized. You know, Mr. Chairman, because you can have a program with good intentions, but if you don't have the right strategy, the right goals, the right performance measures and what have, the outputs and the efficiencies, we might be talking about this a year from now on that. So I would like to at least have some sort of input, constructive input, on this.

Chairman THOMPSON. If the gentleman will yield, I think we will share with the Secretary the committee's interest in whatever plan, including all those items you have articulated just now. As well as, as you know, our oversight responsibility will allow us to at any point look at whatever the Department is doing.

Mr. CUELLAR. Yes, and just, Mr. Riley, just, again, in the past there has been an us versus them. I want to emphasize it is us together as a team and certainly want to work with you on that part.

Moving from that structural question, let me ask you a couple questions. Why is the Border Patrol, who has primary jurisdiction between the ports of entry and the first responders along with State and local, not part of this program? I know it is an ICE program, but any particular reason how they can get involved or whether they should get involved?

Mr. RILEY. I am not sure why they are not involved. I mean, they are another agency, and I guess when ICE was formed, the 287(g) program came with ICE when Border Patrol was shifted under Customs and Border Protection.

Mr. CUELLAR. Okay, because they do have the Sole Guardian Program, where they give money to the local folks, so—an issue that I think we will follow up a later time.

The other thing I have—what about the Criminal Alien Program? How does that work along with this program?

Mr. RILEY. The Criminal Alien Program is managed out of our Office of Detention and Removal, and it is one of many outreach programs with State and locals that ICE has under its ICE ACCESS umbrella. The Criminal Alien Program is ICE officers working in correctional facilities to identify the individuals that have been charged with crimes in the jails, lodging detainers on them, placing them into removal proceedings and attempting to ensure that they come into ICE custody prior to being released to the street.

Mr. CUELLAR. Okay, last question—I have got about 24 seconds left. I guess, Mr. Chishti, you mentioned this. I am from the Southwest, from the border, right at the border. Why aren't there many other programs, I mean other sheriffs' or police departments, on the border, the Southwest border part of this program? Since that is the entry into the United States, at least the southern entry?

Mr. RILEY. I will have to check to see if any have requested, but primarily it is a voluntary program so if a sheriff or chief or the political entity overseeing that department does not want it, it is not something we go out and recruit heavily for. We wait for the request to come in to us.

Mr. CUELLAR. I understand it is voluntary, but any—I mean, doesn't that get you to think why there is not any more from the border part of it?

Mr. RILEY. Yes, I don't have an answer for that.

Mr. CUELLAR. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Chair would ask unanimous consent to include in the record Mr. Souder's letter from Noble County, the letter from Congressman Ed Pastor, Leadership Conference on Civil Rights, Ms. Jackson Lee and the Immigrant Policy Center, without objection.*

Chairman THOMPSON. Chair now recognizes gentleman from Louisiana, Mr. Cao, for 5 minutes.

Mr. CAO. Thank you, Mr. Chairman, and thank you for the witnesses being here today.

Based on what I have heard from the panel, it seems to me that ICE does not really have the capacity to arrest and detain and eventually deport the number of illegal immigrants here in the United States. Is that correct?

Mr. RILEY. All individuals that may be subject to removal?

Mr. CAO. That is correct.

Mr. RILEY. Depending on those numbers, I doubt we would have that type of capacity.

Mr. CAO. Based on the numbers that were estimated, it is approximately 12 million illegal immigrants.

Mr. RILEY. I would have to extrapolate what the actual cost of all that is, but I have read studies where it would be in the multi, multibillions of dollars, which would far exceed the budget that we have.

Mr. CAO. Now, is there a more efficient and effective proposal out there to address the issue of illegal immigration that you know of?

Or can you propose a more—or maybe this question can be posted to Mr. Chishti or Mr. Stana, whether or not there is a more efficient, effective way to approach this problem that we have.

Mr. STANA. Well, there are a number of approaches that are already outlined. Of course, the Border Patrol has been plussed up to over 18,000 agents now. That is one. The Secure Border Initiative is another. Those are, you might say, the line of scrimmage.

In the interior, E-Verify would, you know, show some promise if we can, you know, work some of the bumps in the road out of it. But that needs some more debate I think. But that is really addressing the jobs magnet that brings most people in, but those are just a handful. There are many programs that address the problem, but those are just a couple.

Mr. CHISHTI. As you know, Congressman, there have been a number of proposals issued; our institute has issued a proposal itself. I mean, first of all you have to deal with the present 12 million people, and it is hard to see anything to do other than ac-

*The information referred to is included elsewhere in the hearing record.

knowledge their presence and find a way for them to come out of the shadows and become part of the mainstream society, in some form legalize them toward eventual citizenship.

But a second is that you have to recognize as to what causes undocumented population. Our analysis is that this—significantly the pro-factors, the demand and the labor market in the United States—and there are no legal channels for people to come which has been the outcome of our present immigration system, that our selection system now allows very few people to be able to come legally in our existing preference system, that we have expanded that system to allow people who now come illegally to come through legal channels.

We have improved enforcement, and I think most of it has to be done at the workplace in a very smart way than we have been able to do so far, which respects people's rights but at the same time gets us to the heart of why people come to the United States.

Mr. CAO. Now, the 287(g) program allows the Federal Government to pay State and local law enforcement agencies money for detaining these Federal "inmates." Is that correct?

Mr. RILEY. No, not exactly. Our Detention and Removal branch enters into intergovernmental service agreements to reimburse them for individuals that are being detained in the local jail. It is not specifically 287(g), but ICE uses a lot of State and local facilities that can meet our standards and enter into a contractual agreement with them, but it is not specifically—there is 287(g) detention bed money, but it is not an authorization that is within 287(g).

Mr. CAO. Now, does this lead to certain abuse where possibly law enforcement agencies would just arrest and detain people in order just to get reimbursements from Federal Government?

Mr. RILEY. We haven't seen that. It is a reimbursement for the costs that they have encountered and used to detain prisoners that have been put into removal proceedings.

Mr. CAO. Sheriff Jenkins.

Sheriff JENKINS. I will address that. The answer is no, because we are involved in actually the 287(g) and the IGSA agreement, in which we are reimbursed. However, the vast majority of our reimbursement are for detainees that are brought into our facility by ICE because we do have bed space available. So it does not encourage or it doesn't promote going out and profiling to fill bed space.

Mr. CHISHTI. But Congressman, I am sure GAO will study it sometime. There is clearly disparity between how much the localities get reimbursed for housing these undocumented immigrants and how much the cost to get them—to actually house them. So I think that is the next plus for a number of these local communities which choose to detain them.

Mr. CAO. Thank you very much.

Chairman THOMPSON. Thank you very much.

Sheriff, since you raised a question, for the record, how much does it cost you to keep a prisoner that Mr. Cao was talking about in your facility?

Sheriff JENKINS. Well, there is a couple ways of looking at it; let me explain. I think right now at the State level, it is looked at as the cost of detaining any prisoner, anyone incarcerated, is $90-

some a day, say low $90's. Now, yes, we do generate revenue off of the IGSA agreement.

Looking at the operation of the detention center as a constant expense operationally, the constant expense in staffing, we do have available bed space, so we do actually, if you will, profit from the housing of detainees through the IGSA. The actual cost over and above the operational cost of the jail is roughly about $7 a day per detainee for a small amount of medical services plus the meals. You know, in effect we are generating revenue off of that program.

Chairman THOMPSON. So it is costing you $7 per day for a person you detain and how much per day are you reimbursed?

Sheriff JENKINS. I think our rate currently—about $87 a day or $83 a day.

Chairman THOMPSON. Oh, okay.

Sheriff JENKINS. Yes, but——

Please understand, that is only because we do have available jail space, bed space in our jail. If we didn't have that, we couldn't do that. We don't create a problem of overcrowding because of the program.

Chairman THOMPSON. Okay, does that help you, Mr. Cao, in terms of numbers?

Mr. CAO. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you.

Will now recognize the gentleman from New Mexico for 5 minutes, Mr. Luján?

Mr. LUJÁN. Mr. Chairman, thank you very much.

Mr. RILEY. I want to go back to some of the questions in and around the performance measures. I just want to ask the question again. Has ICE developed performance measures? Because I am not sure if I have heard yes or no completely.

Mr. RILEY. For the 287(g) program, we have built performance measures into our strategic plan on the 287(g) program, they just have not been approved through ICE yet. So our goal is to not only have the strategic plan but also looking at the review of the program itself, tying future agreements better into ICE priorities and having them spelled out within the agreement. But we do have performance measures that are in draft form that we are trying to get completed.

Mr. LUJÁN. Mr. Riley, when were those developed?

Mr. RILEY. The strategic plan has been in development for approximately—at least the 5 months that I have been the acting director.

Mr. LUJÁN. And——

Mr. RILEY. It started prior to that so a little longer than 5 months.

Mr. LUJÁN. Mr. Riley, when was the first time that we entered into an agreement with a local law enforcement agency in this program?

Mr. RILEY. 2002.

Mr. LUJÁN. So between 2002 and 2009, the beginning of the year, there have been no performance measures put together to be able to measure the success or failure of this program?

Mr. RILEY. Other than any officers trained and individuals identified and agreements met, no, there haven't been.

Mr. LUJÁN. So when there is discussion of success in this program or failures of this program, there hasn't been anything identified that has been formalized yet to be able to measure that.

Mr. RILEY. No, I don't believe so.

Mr. LUJÁN. Mr. Chairman, one of the questions I have also in this area is currently, and I think this was touched upon—what is the process if someone who is not necessarily well-trained in enforcing immigration law violates what we hope are the parameters of 287(g), for example if someone was improperly detained?

Mr. RILEY. An individual officer's authority can be revoked. We have policy in place that discusses the suspension and or revocation of an individual officer's authority based on cause. The allegation is forwarded to ICE's OPR, the matter is reviewed, and the authorization can be pulled unilaterally.

In fact we recently had an instance where a 287(g) officer was charged with a serious off-duty crime, nothing to do with his duty, that the next day we revoked his authority and canceled his actions into our system. So there are policies in place to address the allegations and/or misconduct of 287(g) officers.

Mr. LUJÁN. Mr. Riley, are you aware of any comprehensive audits or reviews of all of those that have been detained back to 2002? Have they been reviewed to see if there were any that were detained that were not undocumented?

Mr. RILEY. As part of OPR's review of all the MOAs that is ongoing, they do spot checks on a certain percentage of alien trials that were created under the program. They review to ensure that the charging documents were prepared properly and also look to see if there were any complaints filed by any detainees against any 287(g) and/or ICE officers.

Mr. LUJÁN. Sheriff Jenkins, you made reference a little bit earlier that there was a certain number—it sounded like it was in the high 300's—of arrests, but only of which 307 or so were actually—there were violations there. Could you refresh my memory with those numbers?

Sheriff JENKINS. Yes, let me find that here. Bear with me for 1 second—337 persons who were brought in through central booking who had committed, again, some type of crime or an arrestable traffic offense, booked through our central processing and then were determined to be illegal status; 309 of those persons were placed into removal proceedings.

Mr. LUJÁN. Okay, Mr. Stana, one question that I have for you specifically is your report includes a trouble point that many agencies the GAO contacted noted concerns for community members that 287(g) could lead to racial profiling and intimidation. I come from a very diverse district in which this is something that we embrace and where we look forward to having strong relationships with our law enforcement, as the chief has described, where we are able to work closely with one another to go after and make sure that we are addressing those drug dealers and those that are committing serious crimes. What do you think of these concerns about intimidation and profiling that are being expressed, and how can we better work with our communities to address these specific concerns?

Mr. STANA. I would answer the question this way. There are fundamentally three different models that this program uses. One is the jail model, and that is when people come in and they are booked and then they check the status and most people, the vast majority of people have no problem with that. You have a felon or at least a very bad person who is arrested. They are brought before you; they did something wrong.

Then there is what used to be the patrol model, and I believe ICE has stopped that one. But the patrol model enabled officers to, in the course of their normal patrol duties, to identify people who are out of status, supposedly in the course of arrest action. But some allege that this is not being done in the course of arrest action, that there are people who are arrested for minor traffic violations, cracked windshield or something like that—this is the allegation—and they felt that there was profiling going on.

That model, I believe, is not in use anymore. It was now turned over into what is known as the task force model. These are supposed to be ICE-led task forces. I looked at the list and I don't know if all of them are ICE-led. But this is to provide another measure of control where ICE is a partner among other agencies to work on, say, a drug case or a trafficking, human-trafficking case or something like that. Haven't heard much noise about that one either.

It was the patrol model that seemed to generate the most concern. Now, the issue is people feeling that they are maybe committing a crime—a crime is sort of a loose term—but a relatively minor infraction but that the officers were just waiting for them. Some of the allegations we had heard were corn vendors on the street, and they were brought in on charges that they didn't comport with food and safety laws—or people with cracked taillights and someone who looks Hispanic. The people who raised the issues were people of Hispanic descent who happened to be U.S. citizens who were concerned about being pulled over too. So those were the kinds of complaints that we are, you know, we are aware of.

Now, this is a program that set a rather high bar of serious crime that is supposed to be the target here. If you want to lower that bar, that is within the, you know—Congress hasn't defined where the bar is, so ICE could reasonably define where that bar should be. If you want to lower it, that would be fine if they articulate that. But the cost is going to go up. The cost is going to go up in terms of detention space needed, officers needed to supervise and another cost very well may be what Chief Manger pointed out, a cost in are you going to get community cooperation in your pursuit to root out crime.

Mr. LUJÁN. Thank you, and, Mr. Chairman, I know my time is expired here. But I would just go on to say, Mr. Chairman, that I completely agree with Ms. Jackson Lee that the answer and the solution to many of these problems is comprehensive immigration reform. I hope that, as we are doing our jobs to make sure that we are protecting our Nation against crime, that we do not lose sight that we are talking about real lives and real people with everything that we do and that we keep that in the back of the mind when we are making decisions going forward.

Thank you very much, Mr. Chairman.

Chairman THOMPSON. Thank you. The gentleman's time has expired.

Now recognize the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

First of all, Mr. Stana, with the GAO, I want to thank you for your suggestions on how to improve the 287(g) program. I just want to emphasize something that you alluded to a while ago—and I say this because I was the House author of the 1996 immigration reform bill that included the 287(g) program—and that is that there is nothing in the legislation that limits the program to detaining those who have committed serious crimes. It sounds like to me you agree with that.

In fact, the goal was not that at all. The goal was to really enable those local law enforcement authorities who wanted to, to enforce the immigration laws in whatever way they thought best, and that might or might not include those who had committed serious crimes. Some people, I think, are under the mistaken impression that somehow that is required by the legislation, and as you pointed out, that is really a decision made by the Government and individual situations.

The other thing is I think clearly the program has been a success, in part because of the testimony of various law enforcement officials, like Sheriff Jenkins—and I have a question for you in just a minute—but also in part because of the dramatic increase in applications, so many applications by local law enforcement authorities, in fact, that the Federal Government can't even keep up with approving those agreements. So clearly there is an interest in the program, which I think is to be commended.

I also think, and I want to read here, and I don't know if Mr. Riley got to it in his oral testimony or not, and I apologize for not being here at that point. I was on the floor. I am a Member of another committee, Judiciary Committee. We had bills on the floor. So I may have missed it if you said it.

But I just want to make sure it is in the record, and this goes to the success of the program. It is critically important to note, as pointed out in GAO's report, many benefits have been realized by the agencies participating in the 287(g) program. Program participants reported to GAO a reduction in crime, the removal of repeat offenders and other safety benefits. The cost savings associated with crime reduction are not being easily quantified, but there has undoubtedly been a positive impact on many communities. These partnerships are essential to ICE carrying out its mission of deterring criminal alien activity and threats to national security and public safety throughout the United States.

That is a strong statement which I very much appreciated, but again I think it points to the success of the program. I would also say in fact that I consider 287(g) to really be a litmus test as to whether we are serious about enforcing immigration laws, whether we are serious about making our communities safer and whether we are serious about reducing illegal immigration. That is how important the program is.

Mr. Stana, a few minutes ago, you mentioned that we have 18,000 Border Patrol agents. Well, when you think that you have

to cover 24 hours a day, that means you divide by three of the 8-hour shifts; there is only 6,000 agents on duty at any one time. We have 4,000 miles of border north and south. That means we have only got three agents for every 2 miles of border. Believe me, that is not enough, and I don't know of anybody who thinks that that is enough, but that is why we need programs such as 287(g) to augment our efforts to try to secure the border.

Let me run through a couple of questions if I could. Sheriff Jenkins, I will begin with you. Thank you for being an example of how the program works. You suggest in your written testimony that we actually ought to expand the program. Is that correct?

Sheriff JENKINS. That is correct, sir.

Mr. SMITH. Why is that?

Sheriff JENKINS. Well, again, I say—you look at the needs of the agencies or the requests of the number of agencies that want to get on board, and again I think there is a true role for the need and involvement of local law enforcement. The reason I say this is because if the resources were available to ICE to provide all the oversight and supervision that was needed, I think the program would be even more successful.

Mr. SMITH. Okay, thank you, Sheriff Jenkins.

Chief Manger, let me just ask you a question based upon what I read in your testimony. You said local police agencies must balance any decision to enforce Federal immigration laws with their daily mission of protecting and serving diverse communities and so forth. I know you have—feel pros and cons about 287(g), but it sounds like to me from your written statement, at least, that you believe that it should be up to the local law enforcement authorities whether they participate or not. Is that accurate?

Chief MANGER. That is accurate, yes, sir.

Mr. SMITH. Okay, that is helpful because I think what we all want to do is try to improve the program. In my judgment, I think we ought to expand it. I agree with Sheriff Jenkins in that regard—and make it, you know, improve it to the point where more and more communities want to use it.

But the problem we have is that we need more personnel within the Department of Homeland Security so that we can get those agreements approved. I just think it is inexcusable to have local law enforcement authorities wanting to participate and not having the personnel in D.C. to approve those agreements. I hope we could rectify that.

Madam Chairman, I will yield back.

Ms. CLARKE [presiding]. Thank you very much.

I will now recognize myself for 5 minutes.

I wanted to thank Chairman Thompson and Mr. Souder for the opportunity to address our witnesses today.

As a New Yorker, I am acutely aware that we are in a post-9/11 world, and it is incredibly important that we protect our Nation from terrorist threats. In order to do so, it is important that we identify the bad actors, both documented and undocumented, residing within our borders. But unfortunately I think we are all stuck at a point where we recognize wherein our current immigration system is antiquated and is in urgent need of fundamental re-

form. I am particularly concerned about the lack of internal controls, oversight and accountability in the 287(g) program.

Let me just state that, as a second-generation American of immigrant parents and a representative of a congressional district with a substantial and diverse immigrant population, I am concerned about the potential this program poses for racial profiling and for the lack of trust and the hostility that it fosters between immigrant communities and law enforcement. As noted in both the testimonies of Chief J. Thomas Manger and MPI director, Mr. Chishti, even legal immigrants will cease to report crimes in a culture of fear and paranoia.

So that sort of brings me to you, Sheriff Jenkins. I kind of found it interesting that in your conversation here, you said that your department has found a way to make—what is it, $80 per detainee? Is that what your reimbursement is per detainee?

Sheriff JENKINS. Eighty-three dollars reimbursement.

Ms. CLARKE. Okay, and that could be quite profitable particularly if your jurisdiction has additional bed space, couldn't it?

Sheriff JENKINS. I think it is a good use of bed space.

Ms. CLARKE. Yes.

Sheriff JENKINS. Again, look at helping the overall mission of ICE.

Ms. CLARKE. Yes, okay. In terms of community policing, it is vital that every local police and sheriff's department have a strong relationship with the community. Victims of crime and witnesses should be able to come forward and talk to the police freely without fear of being arrested or deported. I am concerned that participation in this program may negatively impact this important relationship.

I wanted to ask if you believe that undocumented immigrants in your community who were victims of a crime or witness to a crime are reluctant to come forward because they fear of detention or deportation.

Sheriff JENKINS. The answer is no, not for that reason. I think you will find—and I am going to go back to my experiences in working crime and criminal investigation is that the reluctance is a cultural thing. It is not an issue that you can tie to the immigration enforcement. I mean, there is typically a mistrust of police, Government and law enforcement in most of the rest of the world. We know that. So I think in a lot of cases it is cultural. I could tell you——

Ms. CLARKE. Could you go a little bit more into detail about what you mean when you say it is cultural?

Sheriff JENKINS. Well, I mean, a lot of other countries in the world, let us face it, their police are corrupt. Their governments, in a lot of senses, are corrupt, and there is just a general mistrust of law enforcement, not necessarily in this country but other areas of the world, and not tied to one specific country. I mean, I think we know that. I mean, look at the law enforcement in South America, Central America. I mean, we all know what is going on below the borders.

I will be very frank with you, I mean, let us face it. A lot of other countries people cannot trust law enforcement. I don't think this program creates mistrust. We participate very strongly in commu-

nity policing. We reach out to the Latino communities, all the immigrant communities. I have had calls, I have had letters from immigrants who are in this country illegally who frankly they believe in this program.

Ms. CLARKE. Let me ask you something. If that is indeed your premise, then how do you become an effective crime fighter in an environment where we know that we would need the intelligence of individuals within our own community to avoid and avert really, really bad things from happening?

Sheriff JENKINS. We do and we——

Ms. CLARKE. So I am just asking you, I mean, just the two responses just don't jive.

Sheriff JENKINS. Okay.

Ms. CLARKE. You know, it—but they don't jive.

Sheriff JENKINS. There are mechanisms in this program to protect victims of crime. We make that very clear. I mean, just because you are a victim of a crime and you happen to be an immigrant doesn't mean we won't do everything absolutely within our power to protect you.

Ms. CLARKE. Yes, okay, well, Mr. Jenkins, my time is running out and I am going to just end with one more question for you. Have you participated in any outreach efforts specifically designed to inform the community about the 287(g) authority?

Sheriff JENKINS. Yes, I have.

Ms. CLARKE. Could you just give us a little bit more detail on that?

Sheriff JENKINS. I have made myself accessible to any community group.

Ms. CLARKE. No, I said outreach not——

Sheriff JENKINS. Outreach, yes, yes. I have, again, from the onset of this program, I have let the community know where we were going to go, the reasons we were getting involved in this program and have taken an active posture in getting out and letting the community know. All segments of the community know what this program is. I have been very transparent about it.

Ms. CLARKE. Okay, very well.

Let me now acknowledge Mr. Dent. I believe you are next to—Mr. McCaul, just going by the list here, sir.

Mr. MCCAUL. I thank the Chair.

Ms. CLARKE. You are acknowledged for 5 minutes.

Mr. MCCAUL. I thank the gentleman from Pennsylvania as well.

There is an old expression: If it is not broken, don't fix it. I think this has been a very successful program, and if anything we should look at expanding it in the Congress, not criticizing it.

You know, after 9/11 we all talked about working together—Federal, State and local. I think that applies to this issue as well. Our local law enforcement are the eyes and ears. We talked about the patrol model. That is the model that picked up Tim McVeigh on the streets with a routine traffic stop.

I think the American people are frustrated by the illegal immigration issue, but when they see illegal immigrants come into this country and commit crimes, they find that to be intolerable and unacceptable. They certainly do in my district. This program, in the Houston area, has been very successful. The only problem that I

have seen is that more local police departments want to participate in it that cannot qualify and that ICE does not have the resources that it needs to properly carry this out.

I met in the Houston area with ICE with our smaller local police departments, and the ICE official literally pointed at me, as a Member of Congress, and said—as the local law enforcement officers are saying, "We want to do this. We want to participate. We need ICE to help us detain more of these illegals committing crimes in the United States." The response from the ICE official was, he pointed at me and said, "Well, you are from the Congress. You need to help us." I think he is right.

I think that Congress needs to appropriate more money for this program to expand it. I think Congress needs to appropriate more money so that ICE can fully participate in this program, which I believe ICE cannot fully participate in this program given the limited resources available.

So with that question and given that this is a voluntary program—we are not forcing any local police department to do this—but given that, I will throw my first question to Mr. Riley at DHS, in terms of—does ICE have the resources to fully participate in this program?

Mr. RILEY. Currently with the workload we have, I believe we do. The Congress has been very generous in appropriating funds. The 287(g) program receives over $54 million this current year, and that is up from zero 5 years ago. The growth has been dramatic in the past 2 years, and we have signed on 60 MOAs just in the past 2 fiscal years, and we have more in the pipeline.

We started tracking the full cost expended upon the program as a result of GAO asking what the average cost per agreement was, and looking at that, and we have expanded that spreadsheet. GAO looked at 29; we have it expanded to all 67 now. So in the upcoming years we are going to be tracking what the full impact is as detention bed costs, space, personnel costs and things of that nature to get a better picture on what the average memorandum of agreement does cost.

Mr. MCCAUL. Well, then, I would—Mr. Stana, is that your experience as well with your report?

Mr. STANA. Well, the $60 million goes for computers and training mainly, some equipment, but not for people, not for bed space, not for ICE supervision. They are in short supply there. So to some extent, Mr. Riley is correct. On another plane, we might want to reexamine.

I think the question people normally ask GAO is: "How well did they spend what they got?", not: "Do they need more?" But, you know, the fact that Mr. Souder can't get in the program or his jurisdiction can't get in the program and others are waiting would suggest that maybe the resource question ought to be revisited.

Mr. MCCAUL. Well, and I agree with that.

Mr. RILEY. I would love to invite you down to my district and you can talk to several local police departments that want to be in this program but cannot. The director of ICE in the Harris County area who has been very, I think—I commend him for being honest with me and very straightforward that they do need more resources. I

think that is an issue that we in this Congress should be focused on. I think it is a successful program. I think it deserves expansion.

With that, I have 2 seconds left. I just want to ask Sheriff Jackson and Mr. Riley if—I would like to hear the successes of your model, Sheriff, and then also ask the question: Have there been any complaints filed regarding racial profiling both in Maryland and also, Mr. Riley, Nation-wide?

Sheriff JENKINS. The answer is no. I have had no complaints or investigation—no complaints of racial profiling or discrimination as a result of the program. It has been a very successful program. I don't quantify that with numbers. I look at how well we run the program in partnership with ICE.

Mr. MCCAUL. I commend you for that.

Mr. Riley, have you had any complaints regarding racial profiling pertaining to this program?

Mr. RILEY. ICE does take the allegations that are out there very seriously, and I believe we have built several measures into it. Although we don't audit the investigative agency for racial profiling, we do have a multilayered approach when looking at the issue. The way the agreements are established, there is a complaint process for any violation of the MOA, which is a complaint process through our Office of Professional Responsibility.

The officers that are recommended for the training, we do background checks on those officers and look at pending disciplinary actions. As well as within the training, there are components of the 287(g) training program that looks at racial profiling and civil rights issues. The officers are advised that now that they are Federal officers when exercising a 287(g) authority, that they are bound by the Department of Justice's civil rights policies and procedures on racial profiling and use of race in law enforcement activities.

Additionally, our OPR reviews, when they go out to the officers and review the MOAs, they do check with the racial civil rights entities, the U.S. Attorney's Office and the FBI to ascertain if there are any pending racial or civil rights issues——

Mr. MCCAUL. Are there? My question is: Have there been any filed?

Mr. RILEY. None of our OPR reports have reflected any——

Mr. MCCAUL. Thank you.

Mr. RILEY [continuing]. With them.

Ms. CLARKE. I now acknowledge the gentleman from Texas, Mr. Green, for short—for 5 minutes.

Mr. GREEN. For a short 5 minutes.

[Laughter.]

Thank you, Madam Chair.

Ms. CLARKE. The standard 5 minutes.

Mr. GREEN. Thank you very much. I want to thank the witnesses as well.

For edification purposes, permit me to share this with you. I have been in and out because we have another hearing in Financial Services, and it is quite important that I attend both of these hearings today. So I may have missed something that I will ask you to share, and I beg your indulgence because of my trying to split my time.

Let us start with some intelligence that I have received indicating that ICE officials reported to GAO that they are in the process of developing performance measures. Let us go to Mr. Stana. Is this true that ICE has been in touch with you and they are in the process of developing some performance standards?

Mr. STANA. That is correct. Mr. Riley and his people are developing a strategic plan; embedded in the strategic plan are performance measures. We have not seen them. The strategic plan is still in draft form and I am not sure exactly when it is going to come out, but we will be looking to that plan——

Mr. GREEN. Well, that is a good segue into my next question. Have you been given any time table as to when you can expect this performance plan, if you will, or measure?

Mr. STANA. Nothing specific.

Mr. GREEN. Perhaps I should move now to ICE then and ask you the follow-up question. Is there a time frame within which the performance measures will be accorded GAO?

Mr. RILEY. The plan is in final format and with our 287(g) review that we are conducting across the board. I don't have a time frame. I can check on the status of where the strategic plan is and the performance measures and get back to you on the time frame.

Mr. GREEN. Understanding that you do not have a time frame, is it fair to assume that it will be done within the next 6 months?

Mr. RILEY. I believe so with the review that is being conducted at the direction of Secretary Napolitano; I believe we will have it done in the next 6 months.

Mr. GREEN. Would it be done within the next 3 months?

Mr. RILEY. That I can't answer. I can get back to you on that when I have a chance to consult.

Mr. GREEN. So within about 3 to 6 months—given that not 3 but possibly 6? I ask because, having gone through this on many occasions now, I have learned that time frames are important, and if we are going to have an efficacious program, we do need these performance standards. The best way to get to them is to have some horizon that we are looking to. So I am going to not necessarily say that I will hold you to it, but I will at least expect to see something in about 6 months, so that we can get a better handle on what we are doing.

Next point is this: The MAOs generally do not provide details, according to my intelligence, as to what data should be collected or how the data should be collected and how the data should be reported to ICE. Is this true?

Mr. RILEY. That is correct.

Mr. GREEN. Given that some of this can become standard, why can we not standardize certain aspects of these MOAs so that we can have one that we can use generally speaking that we tweak for a given location? Is this possible?

Mr. RILEY. That is our goal, and that is what we are doing right now is we have a draft, a new draft. We have gone through several evolutions of MOAs, and they have been templates and standardized and we have added to them over the years. The current one that we are putting together takes into account many of the GAO recommendations plus other areas that we wish to improve internally with our current review.

One of the measures is the data collection—and, for the record, that we have data that we extract out of our database system that the State and locals are required to put in. It is not spelled out in the MOA, but it is a seamless mission where we give instructions on what fields need to be filled out so that we just pull the data out directly. Even that system itself, the ENFORCE system, is being enhanced so that the data collection will be better to focus on the individual——

Mr. GREEN. My time is about to expire, so forgive me for interrupting. But I do have one final question. This is rather general and it will help me with many hearings of this type. Was there anything that prevented you from visiting with GAO prior to the implementation of the program and ascertaining what type of acid tests might be best used given what your mission was? Is there anything that prohibits this?

Mr. RILEY. I am not sure if there is a prohibition from us consulting with GAO.

Mr. GREEN. I only ask because we find ourselves after the fact making these kinds of adjustments that in many circumstances are based upon what I have seen now—this is my observation. Based upon my observations, we could have prevented this hearing possibly by having had a meeting with someone in GAO and your organization. This doesn't just apply to you, so I am not finger-pointing. I am just trying to find a better way to do business and save money for the Government.

Mr. STANA. You know, Mr. Green, from time to time, other organizations do engage us. We call them constructive engagements. They ask our counsel on certain things they are thinking about doing. In this case, if Mr. Riley and his people would like us to have a look at what they have drafted and provide any insights, we would be welcome to do that, but we haven't been asked yet.

Mr. GREEN. Seems like a fairly reasonable thing to do.

I thank you, Madam Chair. By the way, you do look good in the seat.

[Laughter.]

Ms. CLARKE. Thank you very much.

I would now like to acknowledge the gentleman from Pennsylvania for 5 minutes.

Mr. DENT. Thank you, Madam Chair.

Ms. CLARKE. Mr. Dent.

Mr. DENT. Great to be here.

Mr. Riley, good to see you again.

Mr. RILEY. You too, Congressman.

Mr. DENT. How did you get this job, by the way, can I ask?

Mr. RILEY. All luck.

[Laughter.]

Mr. DENT. Why don't you tell them what you did before you were—when I used to run into you up in my——

Mr. RILEY. Prior to my assignment here as the acting director of the State and local law enforcement, I was an assistant special agent in charge with ICE's Office of Investigations in Philadelphia and worked with Congressman Dent on some significant community issues.

Mr. DENT. Interesting issues trying to help facilitate greater collaboration between my ICE and local law enforcement, if I recall.

Mr. RILEY. Very ironic.

Mr. DENT. Some interesting meetings. But it is great to see you again.

I have a lot of questions. But, one, I just want to say, Mr. Riley, and I would be remiss if I didn't ask you about a situation that just occurred in my district in the last few days. It was in, again, Northampton County where you had some experience. I had an individual enter the United States illegally and then got a green card when he married a U.S. citizen. The individual is now facing his sixth drunk driving charge—sixth.

I guess my question is what does it take to pull the guy's green card? He is operating under aliases, entered the country illegally—and send him packing. You know, I guess, you know, I mean, my constituents are asking. Does he have to kill somebody first before we get him out? Would there be any relevance for the 287(g) program in a case like this?

Mr. RILEY. If the individual has a green card, is a lawful permanent resident, only a deportable criminal offense would render him removable. It has been a few months since I have reviewed some notices to appear and understanding the Pennsylvania statute, but not knowing what the exact conviction is for and the severity of it, I would have to, you know, if you want to forward the information, I——

Mr. DENT. I will get it to you, but the individual was convicted of drunk driving in 1993, 1994, 1996 and 2007 twice, just got picked up for a 0.23 and, you know, this has been on-going. There are aliases, improper or false aliases and that sort of thing. So that has kind of come up and I just wanted to raise that with you and look forward to working with you on that particular situation.

I also wanted to mention, too, that—and I guess my next question is to Sheriff Jenkins. Can you tell me in this committee, you know, how many criminal aliens identified by your agency have been released and not deported because ICE has not had the resources to deport everybody?

Sheriff JENKINS. To my knowledge, none—I mean, again—I am sorry, sir—to my knowledge, none. Again, when you look at the numbers of persons we filed detainers on—337—the number that were placed into removal proceedings—again I go back to the program has worked well for us. We have never been in the situation where the person was removable that it has not occurred.

Mr. DENT. Okay, and, you know, we have a lot of situations, too, up where I live as you are well aware, Mr. Riley, but I just really would like to have further dialog with you on these issues because it is becoming a bigger issue. As you know, we have had some celebrated cases, which you have been familiar with.

I guess finally, too, I just wanted to say that we have a lot of people, too, in this country—I am not sure what you folks can do about this, but I know there are about 139,000 people, Mr. Riley, in the United States from about eight countries who are awaiting removal orders but cannot be repatriated. I don't know if you have any insight or thoughts on that particular issue. We have got legislation out here pending that would make it—we would like to hold

up visas from those countries where these individuals are from, places like India, China, Jamaica, Vietnam, Laos. I can go through the list of eight countries. I don't know if anybody wants to respond. I picked on Mr. Riley, but maybe somebody else has some insight.

Mr. STANA. Well, it has been several years, but we did some work on the Zabidas cases, which I think is what you are talking about, which was named after a Supreme Court decision.

Mr. DENT. Yes, we can't hold these people indefinitely——

Mr. STANA. Yes, and that is part of the problem. If I remember right, there needed to be more collaboration between States and Homeland Security and local jurisdictions to make sure that all the paperwork was right and all the appeals were exhausted, in concert with law but in an expeditious manner. But there are some—it is just a tough nut to crack. Laos—I can name the countries also—will not take them back. So they languish in the detention facility.

Mr. DENT. At this time, I have no further questions. I just——

Mr. SOUDER. Will the gentleman yield——

Mr. DENT. I will yield to Mr. Souder.

Mr. SOUDER. Sheriff Jenkins, does the Federal Government pay any of the salaries on your people who participate in 287(g)?

Sheriff JENKINS. No, sir, they do not.

Mr. SOUDER. I think it is really important to point out that when we are talking about control, that the salaries are paid just like in HIDA by the local law enforcement, and if we don't include local law enforcement in the decision of what they are allowed to do, we won't have a program, because the Federal Government is merely doing training. Anybody who is watching this today, listening to this, needs to understand Sheriff Jenkins is funding the program. The Federal Government only did the training.

Sheriff JENKINS. Correct, sir.

Mr. SOUDER. Thank you.

Ms. CLARKE. It think it is also important to note that it is a voluntary program.

The next person to give their questions at this time is the gentleman from Missouri, Mr. Cleaver.

Mr. CLEAVER. Thank you, Madam Chair.

I am apologetic as well. I am on the Financial Services Committee, and we are dealing with TARP, so we have been in and out. My colleague, Mr. Green, is accustomed to sitting by me in both committees. He will be lost without me so I will have to join him to create some comfort for him as soon as I can.

But this is a very important subject. I just want to say I think some highly publicized cases like those that Mr. Dent, my colleague, mentioned are the kinds of things that really will irritate the American public. I think we have got to clean up our laws and figure out ways to address some of these issues because those are the things that are lifted up to anger the American public.

But at the same time, I am also very concerned about xenophobia. I think in the aftermath of 9/11, there is a great deal of that. I think it would be very difficult for someone to dismiss the fact that that is the case. So I am concerned about that, and I know that, you know, the American public—Chief Jenkins, you

mentioned the fact that there was, you know, people, I guess, criticizing your program, 287(g) and your operation, but I do have to say that sometimes the public is wrong. You know, politicians aren't supposed to say that, but it is a fact.

I mean, as a little boy growing up in Texas, I can remember this Congress in these walls repeatedly refusing to pass a civil rights bill. The poll showed that they were doing what their constituents said. So I think we have to—I mean, we have to be really careful. I think we are the leaders who have to make sure that the xenophobia is not a part of what we push and fail from these hallowed walls.

But I would like to move to Chief Thomas. Do you believe that 287(g) creates tension between the police operation and immigrant community?

Chief MANGER. You know, it is going to be different from jurisdiction to jurisdiction and I can speak for Montgomery County, where I police. I can tell you with the number of immigrants that we have, with the number of undocumented immigrants that we have, it would pose a difficult issue for us if that segment of the community saw us as "the immigration police." Yes, it would be a problem.

Mr. CLEAVER. Do you think that would spill over into—I mean, I think, you know, for sure in Latin America and in other places around the world that there is a fear of police and of authority. I think minorities and certainly immigrants may have that same paranoia, and so—I think someone mentioned it earlier. I think the Chair mentioned that we need some cooperation to adequately fight crime from all segments of the population.

Mr. Chishti, do you believe that there is something we can do to tweak 287(g) that would make it workable but it not oppressive?

Mr. CHISHTI. I think so, Congressman. I mean, there are clearly four or five things that you can do. First of all, you can insist that these agreements have a clear, narrow objective, because the limited resources—they must be spent on high target-of-interest criminal aliens, I think. No. 2 is that I think they must have very strict supervision. Right now, the supervisory language in these agreements is so vague that they make the statutory language essentially meaningless.

They must also have very tight guidance as to when they are going to use the authority that they are given by the agreement. I think they should have very strict compliance procedures, and they should be monitored. Most importantly, we should have very important reporting requirements, which we don't have now.

We all talked about how many criminal aliens they are picking; we have no idea today how many criminal aliens have been picked as a result of these operations because the program doesn't allow them to keep numbers like that. Then we must have a—from the local community here. I think if the local community buys into the program, it will be a success. Without that, it won't be.

Mr. CLEAVER. Well, thank you, Madam Chair. I apologize I have to go. Mr. Green needs me.

[Laughter.]

Ms. CLARKE. Thank you. I now call upon the gentleman from Florida for 5 minutes.

Mr. BILIRAKIS. Thank you, Madam Chairwoman, I appreciate it very much.

I strongly support 287(g) and believe it is invaluable, too, to help enhance our ability to deter illegal immigration and detect criminals and others who may wish to do us harm. I believe it would be shortsighted to allow current management challenges in the program to deter us from expanding and maximizing its immigration enforcement benefits.

I have a question for Sheriff Jenkins. Do you believe, as Sheriff Bob White in my district does, that legal, law-abiding immigrants are actually more afraid of the criminal aliens in their communities than they are of local law enforcement and that because they lack confidence in the ability of local law enforcement to keep these people off the streets, they are hesitant to cooperate with and trust local authorities?

Sheriff JENKINS. Yes, I believe the local population—and I am speaking again for my jurisdiction.

Mr. BILIRAKIS. Yes.

Sheriff JENKINS. There is a fear among the resident community of the crime that is attributed to illegal aliens in this country. Now, I don't think that they are frustrated with the efforts of police or law enforcement. The problem is enormous. This problem is not isolated to one jurisdiction, one State. It is an enormous problem from coast to coast. So I think overall, I think people are frustrated by the fact we can't enforce the laws any more than what we do.

Mr. BILIRAKIS. Thank you.

I would like to yield 1 minute to Representative Dent.

Mr. DENT. Thank you.

Mr. Riley, just one other question I thought of as I was listening to the discussion. It is my understanding based on one of our last conversations that much of the resource allocation for removing people who are in this country illegally focuses in these areas: terrorists, human smugglers and criminals. Is that a fair assessment that they tend to get more attention in terms of your enforcement efforts at ICE?

Mr. RILEY. Within the Office of Investigations, they pursue those areas, but our Office of Detention and Removal, one of the top focuses is the criminal alien population.

Mr. DENT. Yes.

Mr. RILEY. The criminal aliens in all the areas that we target them, both in our gang efforts, in our CAP program and things like that in 287(g). I would say criminal aliens is one of the top priorities of ICE.

Mr. DENT. I yield back at this time.

Mr. CHISHTI. Congressman, if I could——

One of the problems with the present program is that it allows us no way of knowing whether those priorities are being met. We have no idea how many terrorists have been picked up as a result, how many criminal aliens, how many drug traffickers. What we know is a large number of people are being picked up. So we have gone from quality to quantity in this program, which ultimately is the problem in terms of its long-term objectives.

Mr. RILEY. Actually just to rebut that one issue that we do know that more than 90 percent of the individuals picked up in the

287(g) program were either picked up in a jail setting or had criminal histories. We are trying to tighten those numbers up because it may be higher and also so we can reflect what initial crimes they were charged with or convicted of. Our system doesn't allow us to do it now, but by and large the vast majority of the 287(g) arrests were encountered in jail settings.

Mr. BILIRAKIS. Thank you. I yield the balance of my time to Representative Souder.

Mr. SOUDER. One of the challenges here, as Mr. Smith said, who wrote the bill, and I was in negotiations in my first term because our class was so big in the negotiations on the final immigration bill—this Congress did not specify that this was just supposed to be high-risk people or people who were violent. That is not there. In talking to—it may be a logical—if we are going to have restricted funding and different targets, that may be a logical outgrowth, but it is not a failure of ICE nor was it the intent of Congress to do that.

It was part of an immigration bill, and 287(g) does not fund local law enforcement; 287(g) was to extend because we were not going to use ICE agents to do regular type of immigration work, and that the 287(g) was to extend and try to offer a program to people like Sheriff Jenkins who said, "Look, I will take my limited resources and put them into this program." We will to some degree be changing the intent.

Now, I talked to Assistant Secretary Myers in both categories. One is how do we, with limited funding, which I believe there should be more, target ICE, and do you do random investigations or you target bigger organizations? Then second, is there a goal that ideally we would pick up more high-risk people? Ideally we pick up that, but that is not the legislative purpose written or intent.

Now, I think that there are suggestions now that this is going to be a limited program. How do we best use the funds? How do we work that through if Congress doesn't pass more money? That is what we are debating here.

But there needs to be a clear understanding that if we narrow it, in fact people like Sheriff Jenkins may withdraw. It is their money. It is really important for a program like this to not just be Washington top down, which is what we have run into in narcotics, and we have had this back and forth, because if you want local law enforcement in, you have to let them participate in the decision that says if I am going to put my resources in, what do I think my problem is in my district.

In narcotics, they wouldn't do meth. They said, "Oh, well, we will do cocaine; we are not going to do meth." The sheriffs pulled out their funding. In this case, if they feel they have different types of crimes in their district, 287(g) was to allow some flexibility for illegal activity, not just the highest kind of violence.

Yield back the rest of Mr. Bilirakis'——

Ms. CLARKE. Well, I want to thank the witnesses for their valuable testimony and their time today and the Members for their questions. The Members of the committee may have additional questions for you, and we will ask you to respond expeditiously in writing to those questions.

Without objection, I have letters and statements from several organizations commenting on the 287(g) program. I offer them for the record. Hearing no objections, so ordered.

[The information referred to follows:]

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March 4, 2009

The Honorable Bennie Thompson
Chairman
Committee On Homeland Security
H2-176 Ford House Office Building
Washington, D.C. 20515-0001

Dear Mr. Chairman

It is with great pleasure that I learned of your subcommittee's March 4th hearing regarding the administration of the 287(g) program. As you know, a number of troublesome questions have been raised on the oversight of the program in Maricopa County, including disturbing charges of racial profiling and civil rights violations in addition to a questionable deviation away from the primary purpose for which the 287(g) program was created–the removal of unauthorized aliens who have committed serious crimes.

Attached are four questions related to the Memorandum of Agreement between Maricopa County, the Department of Homeland Security's U.S. Immigration and Customs Enforcement, and the Maricopa County Sheriff's Office that I am submitting for response by the Department. Please know how much I appreciate your consideration of the points each question raises. I believe these are critical to the examination of the roles state and local law enforcement are to assume when carrying out the 287(g) program as intended by Congress.

Thank you!

Sincerely,

Ed Pastor

Ed Pastor
Member of Congress

EP/ey

PRINTED ON RECYCLED PAPER

Questions for Department of Homeland Security and
U.S. Immigration and Customs Enforcement Representatives

Submitted by Rep. Ed Pastor

March 4, 2009

1. Section 12 of the Maricopa County Memorandum Of Agreement (MOA) with U.S. Immigration and Customs Enforcement on the 287(g) program places reporting requirements on the Maricopa County Sheriff's Office. Pursuant to that section of the agreement, has the Immigration and Customs Enforcement (ICE) requested data and statistical information on the "progress and success of the [Maricopa County] 287(g) program?"

2. Section 14 outlines a Complaint Procedure. This weekend, 5,000 people marched to complain about the program. What if anything has ICE done to monitor and respond to complaints about the Maricopa County Sheriff's use of the 287(g) program?

3. Section 16 mandates the formation and maintenance of a steering committee to "ensure compliance with the terms of the Memorandum of Agreement." Who is on that committee? Have they met? What did they meet about? Did ICE and Maricopa hold a review meeting within 9 months of the start of the program as mandated by the agreement?

4. Section 15 of the agreement binds Maricopa County Sheriff's Officers to US civil rights laws and specifically to the US Department of Justice "Guidance Regarding the Use of Race By Federal Law Enforcement Agencies." Given complaints from Phoenix Mayor Phil Gordon, from community members, and from media outlets that the 287(g) program is being used to racially profile Latino Immigrants, what steps has ICE taken to ensure compliance with this section of the MOA?

JOINT STATEMENT OF WADE HENDERSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, AND MARGARET HUANG, EXECUTIVE DIRECTOR, RIGHTS WORKING GROUP

MARCH 4, 2009

Chairman Thompson, Ranking Member King, and Members of the committee: We are Wade Henderson, president & CEO of the Leadership Conference on Civil Rights (LCCR), and Margaret Huang, executive director of the Rights Working Group. Thank you for the opportunity to submit testimony for the record regarding today's hearing on State/local enforcement of Federal immigration laws.

As the Nation's oldest, largest, and most diverse coalition of civil and human rights organizations, LCCR has long been concerned with the civil rights implications surrounding the use of Section 287(g) of the Immigration and Nationality Act ("287(g)"). LCCR was founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, and seeks to further the goal of equality under law through legislative advocacy and public education. LCCR consists of approximately 200 national organizations representing persons of color, women, children, organized labor, people with disabilities, older Americans, LGBT Americans, and major religious groups.

Formed in the aftermath of September 11, the Rights Working Group (RWG) is a national coalition of more than 250 organizations representing civil liberties, national security, immigrant rights and human rights advocates. RWG seeks to restore due process and human rights protections that have eroded since 9/11, ensuring that the rights of all people in the United States are respected regardless of citizenship or immigration status, race, national origin, religion, or ethnicity. RWG is particularly concerned about the impact of 287(g) agreements on the civil liberties and human rights of communities of color.

287(g) was passed in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), at a time when the Department of Justice recognized no inherent authority for State and local law enforcement to enforce Federal

immigration law. A 2002 opinion from the Department of Justice Office of Legal Counsel (OLC), however, reversed the earlier ruling and found that State and local police departments did have such an inherent authority. The use of Section 287(g), combined with the 2002 OLC opinion, has lead to rampant abuses of the authority granted to local law enforcement agencies.

An ICE fact sheet describing the 287(g) program states that it is:

"not designed to allow State and local agencies to perform random street operations. It is not designed to impact issues such as excessive occupancy and day laborer activities . . . it is designed to identify individuals for potential removal, who pose a threat to public safety, as a result of an arrest and/or conviction for State crimes. It does not impact traffic offenses such as driving without a license unless the offense leads to an arrest . . . Officers can only use their 287(g) authority when dealing with persons suspected of committing State crimes and whose identity is in question or are suspected of being an illegal alien."[1]

When one looks closely at the implementation of 287(g) agreements, a few things become clear. First, despite the rhetoric that these programs are not intended to be used for traffic stops or to disrupt day laborer sites, the facts argue otherwise. The agreements have been used to set up traffic checkpoints in areas heavily populated by Latinos and engage in "crime suppression sweeps" of day laborer sites. Arrest records in localities that have 287(g) agreements show that a majority of the arrests result from traffic stops, not incident to serious criminal activity. Second, because it is impossible to ascertain a person's legal status by his or her name, appearance, or way of speaking, 287(g) programs that focus on enforcing civil immigration law incentivize police to target members of the Latino community in a broad way, leading to racial profiling. Finally, the push to focus on civil immigration status has pulled limited law enforcement resources away from addressing criminal activity in their communities.

Local enforcement of civil immigration laws under 287(g) agreements is a civil and human rights issue, not just an immigration issue. Although the program is promoted as one that allows local and State police to identify serious criminals who are non-citizens and facilitate their deportation once their sentence is completed, the reality of that program has been rampant racial profiling that has affected undocumented immigrants, legal residents and citizens.

The reality is that police officers have interpreted this authority as allowing them to raid day laborer sites and use traffic stops to check people's immigration status. Citizens have been detained after traffic stops based on their name and accent, or even for listening to Spanish music while standing outside a family business. Painting the program with a veneer of immigration enforcement does not accurately relay the nature of the program, nor does it cure the underlying violations. A recent Justice Strategies report entitled "Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement" found that 287(g) agreements were being used in Maricopa County, AZ to do "crime suppressions sweeps" of day laborer sites.[2] A report by the North Carolina ACLU and the University of North Carolina Chapel Hill Immigration and Human Rights Policy Clinic studying the implementation of 287(g) agreements in North Carolina found that a majority of arrests in several counties came as a result of traffic stops, not criminal acts.[3]

Racial profiling is an insidious violation of civil and human rights that can affect people in both public and private places—in their homes or at work, or while driving, flying or walking. Racial profiling by law enforcement instills fear and distrust among members of targeted communities, making them less likely to cooperate with criminal investigations or to seek police protection when victimized. Multiple studies have shown that when police focus on race, even as one of several predictive factors, they tend to pay less attention to actual criminal behavior.

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[1] United States Immigration and Customs Enforcement, Delegation of Immigration Authority: Section 287(g) Immigration and Nationality Act, Sept. 5, 2007, available at *http://www.ice.gov/pi/news/factsheets/070906factsheet287gprogover.htm.*

[2] See generally Chapter "Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement," February 2009, *http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice-print.pdf.*

[3] "For example, during the month of May 2008, eighty-three percent of the immigrants arrested by Gaston County ICE authorized officers pursuant to the 287(g) program were charged with traffic violations. This pattern has continued as the program has been implemented throughout the State. The arrest data appears to indicate that Mecklenburg and Alamance Counties are typical in the targeting of Hispanics for traffic offenses for the purposes of a deportation policy." The Policies and Politics of Local Immigration Enforcement Laws, February 2009, Pg. 29, *http://acluofnc.org/files/287gpolicyreview__0.pdf.*

Racial profiling is defined as any use of race, religion, ethnicity, or national origin by law enforcement agents as a means of deciding who should be investigated, except where these characteristics are part of a specific suspect description. Under this definition, racial profiling doesn't only occur when race is the sole criterion used by a law enforcement agent in determining whom to investigate. Such a definition would be far too narrow.

Today, overt racism is roundly condemned whenever it comes to light, and it is rare for individuals to be targeted by law enforcement agents solely because of their race. However, race is often the decisive factor in guiding law enforcement decisions about whom to stop, search, or question. Selective enforcement based in part on race is no less pernicious or offensive to the principle of equal justice than is enforcement based solely on race. Indeed, because the first form of selective enforcement is more prevalent and more subtle than explicit racism, it may be more damaging to our constitutional fabric.

According to the U.S. Constitution, Federal laws and guidelines, and international treaties, every person has the fundamental right to equal protection under the law, regardless of race, ethnicity, religion, or national origin. Two of these sources are the 14th Amendment of the Constitution and the Department of Justice's "Guidance Regarding the Use of Race By Federal Law Enforcement Agencies." The Equal Protection clause of the Constitution reads in part " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The DOJ Guidance states unequivocally:

"In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful."[4]

Implementation of 287(g) programs by local law enforcement have run afoul of both of these provisions, and many more.

This is a dangerous trend that can inhibit effective law enforcement and ultimately can endanger the lives of all persons who depend on law enforcement for protection. When local law enforcement begins targeting people for their suspected immigration status and not criminal activity, the entire community suffers. Recommendations by the Major Cities Chiefs on local enforcement of Federal immigration law states in part:

"Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts."[5]

The use of 287(g) agreements to target people based on their race has led to civil rights violations beyond the initial racial profiling. For example, Juana Villegas was pulled over in Nashville, TN, while driving back from a doctor's appointment. She was 9 months pregnant and had her two other children in the car with her. Although the traffic violation would usually result in a citation, the police officer arrested her and took her to the police station on suspicion of being undocumented. Even though she was being held on a misdemeanor traffic violation and a civil immigration infraction, she was forced to give birth while shackled and in police cus-

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[4] Department of Justice "Guidance Regarding the Use of Race By Federal Law Enforcement Agencies," June 2003, *http://www.usdoj.gov/crt/split/documents/Kguidance_on_race.php*.

[5] Major Cities Chiefs Immigration Committee Recommendations: For Enforcement of Immigration Laws by Local Police Agencies, Adopted June, 2006 *http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf*.

tody, then separated from her newborn and not allowed to nurse or use a breast pump for the next 2 days.[6]

These violations are not limited to immigrant communities; they also affect U.S. citizens. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up being dumped in Mexico—a country where he had never lived—forced to eat out of trash cans and bathe in rivers for several months. His mother, also a U.S. citizen, took leave from her job to travel to Mexico to search for her son in jails and morgues. After he was located and allowed to reenter the United States, Mr. Guzman was so traumatized that he could not speak for some time. The illegal deportation of Mr. Guzman occurred pursuant to an INA § 287(g) MOA between Los Angeles County and ICE. Mr. Guzman and his mother have filed a lawsuit against ICE.[7]

In sum, the 287(g) agreements are not being implemented as advertised by ICE and, in fact, are violating the rights of both immigrants and U.S. citizens. The agreements have led to widespread profiling by local law enforcement, terrorized communities, and increased threats to public safety. LCCR and RWG strongly urge the Department of Homeland Security to:

- Mandate a thorough independent review of current agreements and similar programs during which time no new INA § 287(g) agreements should be entered into;
- Actively enforce anti-discrimination civil rights protections and implement policies and funding that support community policing and effective law enforcement;
- Re-assert Federal authority over national immigration laws and policies and reject the authority of States and localities to enforce these Federal responsibilities;
- Train State and local officials about their proper role in the enforcement of criminal laws related to immigration rather than civil immigration enforcement.

Thank you again for the opportunity to express our views regarding today's important hearing. We would be happy to answer any post-hearing follow-up questions you may have.

LETTER FROM HAROLD L. HURTT, CHIEF OF POLICE, HOUSTON, TEXAS, SUBMITTED BY THE HONORABLE SHEILA JACKSON LEE

MARCH 3, 2009.

The Honorable Sheila Jackson Lee,
U.S. House of Representatives, 2160 Rayburn Building, Washington, DC 20515.

DEAR REP. JACKSON LEE: I have been advised that on Wednesday, March 4, the House Committee on Homeland Security will be conducting a hearing on the topic of "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law." This is an important issue and I wanted to take a moment to provide you and the committee with my perspective this topic in advance of the committee hearing. As Police Chief of the City of Houston and a current member of the executive board and past president of Major Cities Chiefs, I have been involved in numerous discussions at both the national and local level on the topic of local law enforcement's involvement in the enforcement of Federal immigration laws. In 2006 while I was president of Major Cities Chiefs, the organization evaluated and adopted nine specific recommendations concerning this issue. I have attached a copy of the recommendations for your reference.

Illegal immigration is a problem that faces our Nation and society as a whole and one, which must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must first and foremost include the Federal Government taking the necessary steps to secure our borders to prevent illegal entry into the United States.

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[6] Tennessee Immigrant and Refugee Rights Coalition, "Immigrant Mother Suffers at Hands of Nashville Law Enforcement," July 14, 2008, available at *http://www.tnimmigrant.org/news.php?viewStory=153*; see also, "Immigrant, Pregnant, Is Jailed Under Pact," Julia Preston, New York Times, July 20, 2008, available at *http://www.nytimes.com/2008/07/20/us/20immig.html?_r=1.*

[7] Paloma Esquivel, "Suit Filed Over Disabled U.S. Citizen's Deportation Ordeal," Los Angles Times, February 28, 2008, available at *http://articles.latimes.com/2008/feb/28/local/me-guzman28.*

Secondly, Federal agencies such as Immigration and Customs Enforcement [ICE] and the Department of Justice who have the specific duty of enforcing immigration laws should be given adequate Federal resources to fulfill that duty.

Local enforcement of Federal immigration laws raises many daunting and complex legal, logistical, and resource issues for local law enforcement, especially agencies such as the Houston Police Department which serves a large and diverse community. Local law enforcement agencies must balance the call for us to enforce Federal immigration laws with our primary mission of protecting our diverse communities from crimes such as murders, sexual assaults, drug trafficking, gang violence, robberies, and burglaries which are committed by and victimize citizens, legal immigrants, and illegal immigrants. Like other major cities, the City of Houston's policies regarding enforcement of immigration laws takes into account our limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities within our jurisdictions.

The 287(g) programs appear more appropriate for law enforcement agencies which operate large jail facilities and in many jurisdictions it is often the county level agencies such as the county sheriff's department which operate these facilities. The City of Houston transfers the majority of its prisoners to the Harris County Sheriff's Department which is primarily responsible for incarcerating criminal defendants in Harris County, Texas where the city is located. The city's jail facilities serve mainly as temporary holding locations until prisoners can be transferred to the county jail. Because of our current high level of cooperation with ICE cited below and the fact that the 287(g) programs have been used primarily to train local jailers, the Houston Police Department has not chosen or seen the need to take part in the 287(g) training programs.

The Houston Police Department does and will continue to enforce against criminal violations occurring within our jurisdiction regardless of the perpetrator's immigration status. Due to the issues mentioned above, the police department does not engage in the direct enforcement of Federal immigration laws; however, where possible and reasonable, we cooperate with and provide assistance to ICE, which has the primary and specific duty to enforce Federal immigration laws. We have given ICE full access to our jail facilities to conduct immigration and citizenship investigations. In addition, the department has developed procedures to hold persons who are subject to an immigration detainer issued by ICE. The department conducts a computer check of all arrested persons to determine if they are subject to an ICE detainer. If an ICE detainer exists, the person is held pursuant to ICE's detention authority so that ICE can take custody of the person within a reasonable amount of time.

I would conclude with my sincere hope that the committee's hearings and work on immigration issues will move our country towards finding a comprehensive national response to the critical issue of illegal immigration. Thank you for your time and consideration.

Sincerely,

HAROLD L. HURTT,
Chief of Police.

STATEMENT OF THE IMMIGRATION POLICY CENTER, A DIVISION OF THE AMERICAN IMMIGRATION LAW FOUNDATION

SUMMARY OF RECENT PUBLICATIONS ON 287(g) MEMORANDA OF UNDERSTANDING

Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement, by Aarti Shahani and Judith Greene, Justice Strategies, February 2009.

- The report points out that while some localities have claimed to need a partnership with ICE because of rising crime rates, an analysis of the jurisdictions with 287(g) agreements and found that immigration rates are not associated with higher crime rates. According to Justice Strategies, 61 percent had a violent crime index lower than the national average, and 55 percent witnessed an overall decrease in violent crimes from 2000 to 2006. Furthermore, 61 percent had a property crime index lower than the national average, and 65 percent saw an overall decrease in property crimes from 2000 to 2006.
- Justice Strategies looked at the factors that 287(g) jurisdictions have in common and found that 87 percent of the jurisdictions with 287(g) agreements had a

rate of Latino population growth higher than the national average. Furthermore, 62 percent of the local ICE partners were county sheriff departments.

- According to Justice Strategies, there is very little ICE oversight of the 287(g) partnerships and ICE personnel do not lead or directly oversee 287(g) arrests. When faced with criticism that he had not followed the requirements of his MOA, Sheriff Joe Arpaio of Maricopa County, Arizona stated, "Do you think I'm going to report to the Federal Government? I don't report to them."

The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina, by the ACLU of North Carolina Legal Foundation and the Immigration and Human Rights Policy Clinic at the University of North Carolina at Chapel Hill, February 2009.

- The report found that, while the 287(g) partnership program with DHS was intended to target immigrants convicted of violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering, the Federal/local partnerships are actually being used to "purge towns and cities of 'unwelcome' immigrants."
- During May 2008, 83 percent of the immigrants arrested by officers deputized to perform immigration enforcement duties in Gaston County, NC were charged with traffic violations.
- The report pointed out that immigration is not associated with high crime rates. A 2008 comprehensive study of population growth and crime in North Carolina showed that between 1997 and 2006 the counties with the highest Hispanic population growth rates had the lowest violent and property crime rates.
- The authors state that 287(g)'s have "created a climate of racial profiling and community insecurity" in communities across North Carolina. Law enforcement officials have stated time and time again that trust with immigrant communities is crucial to preventing and investigating crimes and leads to safer communities. Anecdotal evidence from North Carolina points to undocumented residents being less likely to contact law enforcement to report crimes.

"Reasonable Doubt," the *East Valley Tribune,* July 2008.

- This series of articles found that immigration-enforcement activities have been expensive, resulting in few key arrests and drawing law enforcement personnel away from investigating non-immigration-related crimes. Highlights from the series include:
- The Sheriff's Office created a $1.3 million deficit in just 3 months, much of it due to overtime. In order to staff the immigration team, Sheriff Arpaio pulled deputies off patrol beats and used them to staff the human-smuggling unit. Tactics include racial profiling, sweeps of Hispanic neighborhoods, and stops for minor traffic offenses.
- While Sheriff Arpaio has diverted resources to immigration enforcement, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.
- Despite the time and energy spent on immigration enforcement, the *Tribune* found that MCSO has had little success building cases against violent immigrant offenders or those at the top of the smuggling rings. In 2006–2007, Maricopa County sheriff deputies arrested 578 illegal immigrants in the course of traffic stops, and of those, 498 faced a single charge of conspiracy to smuggle themselves.

Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office, by Clint Bolick, Goldwater Institute Scharf-Norton Center for Constitutional Litigation, December 2008.

- The report documents how the Maricopa County Sheriff's Office, under the leadership of Sheriff Arpaio, has failed to serve and protect his community. The Goldwater Institute found that, though the Maricopa County Sheriff's Office (MCSO) budget has increased at four times the rate of the county's population, violent crimes increased nearly 70 percent, and homicides increased 166 percent between 2004 and 2007.
- The Goldwater Institute also found that MCSO has refused to share crime statistics and other data, and in 2007, the county had to pay $38,000 in legal fees to a newspaper for withholding press releases. Despite reporting a high crime clearance rate, MCSO reported that relatively few of the cleared cases—18 percent—ended with an arrest. In contrast, in Phoenix, 78 percent of cleared cases ended with an arrest. A high number of those cases cleared without an arrest correlate to MCSO's use of an "exceptionally cleared" category. A case may be designated "exceptionally cleared" when a suspect is known and enough evidence exists to make an arrest, but circumstances beyond the control of law enforcement prevent an arrest. In some instances where cases were "exceptionally cleared" there is no evidence that an investigation took place at all.

JOINT STATEMENT OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION, THE NATIONAL IMMIGRATION FORUM, AND THE NATIONAL IMMIGRANT JUSTICE CENTER

STATE AND LOCAL ENFORCEMENT INCLUDING INA § 287(g) AND SECURE COMMUNITIES

A. ICE ACCESS AND INA § 287(g)

Through the INA 287(g) program and other ICE ACCESS programs, the Federal Government has shifted its responsibility for enforcement of civil immigration laws to State and local police and other State and local agencies. It has—without meaningful oversight or review or statutory authority in many cases—encouraged immigration enforcement at the local level that has resulted in racial and ethnic profiling and the detention of U.S. citizens and permanent residents.

The basic problem is this: in INA § 287(g) jurisdictions, State, or local police with minimal training (or, in the case of a "jail model," no training) in immigration law are put on the street with a mandate to arrest "illegal aliens." Local officials often make it a high political and policy priority that these arrests take place. Meanwhile, the Federal Government has not provided meaningful oversight. The predictable and inevitable result is that any person who looks or sounds "foreign" is more likely to be stopped by police, and more likely to be arrested (rather than warned, or cited, or simply let go) when stopped. Moreover, any other abuses that police commit when exercising INA § 287(g) authority are likely to go unreported and unpunished, given that many of the individuals they arrest are swiftly deported and have little access to counsel; that State or local officials may not exercise their ordinary oversight roles when their police are performing a "Federal" function; and that the Federal Government has not created effective oversight mechanisms. DHS should terminate INA § 287(g) Memoranda of Agreement (MOAs) with localities that have misused their limited authority. It should engage in meaningful oversight of the conduct of local law enforcement agencies both before and after an INA § 287(g) MOA is put in place.

INA § 287(g) Agreements Have Contributed to Pervasive Racial Profiling by Local Law Enforcement

In Maricopa County, Arizona Sheriff Arpaio and his deputies have engaged in a widespread pattern and practice of racial profiling in an illegal, improper, and unauthorized attempt to enforce Federal immigration laws against Latinos without regard for citizenship or valid immigration status. Claiming authority under the INA § 287(g) MOA, Arpaio and his deputies in September 2007 launched a series of massive so-called "crime suppression sweeps" by utilizing deputies and volunteer "posse" members. Together they have targeted Latinos for investigation of immigration status, using pretextual and unfounded stops, racially motivated questioning, searches and other mistreatment, and arrests that are often baseless. In 2008, several U.S. citizens sued Sheriff Arpaio and Maricopa County for racial profiling and other racially and ethnically discriminatory treatment.[1] One plaintiff, Manuel Nieto, a U.S. citizen, was grabbed and handcuffed by several Maricopa County deputies, his face pressed against his car and arms twisted behind his back. This took place in front of his family's auto repair business. Mr. Nieto's father ran out of the shop, told the deputies that he owned the shop, and that Mr. Nieto was his child and a U.S. citizen. The deputies then uncuffed Mr. Nieto and ran his identification through their computer system.

David and Jessica Rodriguez are two other plaintiffs in the same lawsuit who have sued Sheriff Arpaio and Maricopa County for racial profiling.[2] They were issued a traffic citation for failing to follow a road sign. The Rodriguezes were the only residents to receive a citation, even though deputies pulled over several other vehicles and gave oral warnings to the other drivers, all of which were Caucasian. In addition, the deputy demanded to see Mr. Rodriguez's Social Security card, which has no bearing on his driving, but did not request Social Security information of the other drivers.

In an example reported by the Tennessee Immigration and Refugee Coalition, a pregnant woman was detained after being stopped for a traffic violation.[3] On July

[1] See, Spencer S. Hsu, "Arizona Sheriff Accused of Racial Profiling," July 17, 2008, available at *http://www.washingtonpost.com/wp-dyn/content/article/2008/07/16/AR2008071602636.html.*

[2] Daniel Gonzalez, "U.S. Citizens Claim Profiling, Join Lawsuit Against Sheriff Arpaio," July 17, 2008, available at *http://www.azcentral.com/news/articles/2008/07/17/20080717profiling0717.html.*

[3] Tennessee Immigrant and Refugee Rights Coalition, "Immigrant Mother Suffers at Hands of Nashville Law Enforcement," July 14, 2008, available at *http://www.tnimmigrant.org/news.php?viewStory=153*; see also, "Immigrant, Pregnant, Is Jailed Under Pact," Julia Preston,

3, 2008, Juana Villegas was driving in Nashville when she was pulled over by a Berry Hill police officer for "careless driving." Mrs. Villegas, 9 months pregnant, was forced to wait in her hot car with her three children for over an hour. Eventually, the children were allowed to leave with a family member without Villegas's permission, and she was taken into custody. By the time Mrs. Villegas was released from the county jail 6 days later, she had gone through labor with a sheriff's officer standing guard in her hospital room, where one of her feet was cuffed to the bed most of the time. County officers barred her from seeing or speaking with her husband. Up until an hour before the actual birth, Mrs. Villegas's hand and foot remained shackled to the hospital bed. As she was taken back to the Davidson County jail, she was told that her baby would be given to her husband. Mrs. Villegas was never allowed to speak to her husband. On July 9, Mrs. Villegas appeared in court on the misdemeanor charge of driving without a license, and was sentenced to time served. She did not see her newborn again until the morning of July 10, after she was released from sheriff's custody on her own recognizance. On August 15, 2008, the "careless driving" charge against Juana Villegas was dismissed in Berry Hill Municipal Court. Mrs. Villegas is still being processed for deportation as a result of the INA § 287(g) program.

Legal service providers across the country report racial profiling cases in areas with INA § 287(g) programs. In York County, along the North Carolina and South Carolina border, deputies have abused the INA § 287(g) program to arrest Latinos for broken windshields or improper vehicle tags. Traffic offenses that ordinarily would lead to a citation and court summons are now resulting in criminal arrests. Only about 5 percent of the arrests of Latinos are for serious crimes. Since the implementation of the INA § 287(g) program in York County, relations between local law enforcement and the Latino communities have deteriorated, and the county jail population has exploded. Longtime residents of York County describe the situation as "out of control."

U.S. Citizens Have Been Illegally Detained, and In One Case Deported, Under the Auspices of INA § 287(g) Agreements

The practice of deputizing State and local police to enforce Federal immigration laws has proven to be highly ineffective and dangerous. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up being dumped in Mexico—a country where he had never lived—forced to eat out of trash cans and bathe in rivers for several months. His mother, also a U.S. citizen, took leave from her job to travel to Mexico to search for her son in jails and morgues. After he was located and allowed to reenter the United Statets, Mr. Guzman was so traumatized that he could not speak for some time. The illegal deportation of Mr. Guzman occurred pursuant to a INA § 287(g) MOA between Los Angeles County and ICE. Mr. Guzman and his mother have filed a lawsuit against ICE.[4]

In Alamance County, North Carolina, State troopers—who were not authorized under an INA § 287(g) MOA—stopped and boarded a bus destined for Mexico. Onboard were two bus drivers, one who spoke English and one who did not. The troopers refused to talk to the driver who spoke English. One of the troopers called the Alamance County Sheriff's Office and requested assistance from the INA § 287(g) officers. When the sheriff deputies arrived, they boarded the bus and asked everyone on board for "papers," including the U.S. citizen passengers. The deputies ordered that the bus driver pull off the highway to a local motel, where all the passengers including U.S. citizen children were detained in the motel lobby all day while deputies and later ICE agents questioned them. In the end, five passengers were arrested by ICE, and the rest of the passengers were allowed to continue their trip to Mexico, but not after losing the better part of a day of travel. It is important to note that the INA § 287(g) program in Alamance County is a jail model, not a task force or field model. But as illustrated in this case, the INA § 287(g) MOA—though designed to be limited to jails only—has negatively shaped the conduct of law enforcement in the field and on the roads, in this case involving both deputized sheriffs as well as undeputized State troopers.

New York Times, July 20, 2008, available at *http://www.nytimes.com/2008/07/20/us/20immig.html?_r=1.*

[4] Paloma Esquivel, "Suit Filed Over Disabled U.S. Citizen's Deportation Ordeal," Los Angles Times, February 28, 2008, available at *http://articles.latimes.com/2008/feb/28/local/me-guzman28.*

INA § 287(g) Agreements Undermine Community Policing and Public Safety

There are legitimate concerns that INA § 287(g) is not being used to keep communities safer by removing dangerous, violent criminals; rather people who do not pose a serious threat to public safety are being deported under the guise that they are dangerous criminals. In the absence of empirical evidence as to the number and types of crimes committed by undocumented immigrants before and after the implementation of INA § 287(g), it would be impossible to evaluate the program's appropriateness and effectiveness. Before making the decision to implement a program that has such large fiscal and social impacts, it would be wise to consider whether INA § 287(g) truly makes our communities safer and whether it comports with DHS's overall priorities in immigration enforcement.

The Major Cities Chiefs' Association, which represents large cities across the country, has expressed concern about entering into INA § 287(g) programs. The Association has stated that the programs work counter to community policing goals by undermining the trust and cooperation of immigrant communities, stress the cities' already reduced resources, and leave cities vulnerable to civil liability claims.[5]

INA § 287(g) programs impose additional costs on communities that are being severely affected by the downturn in the economy. While local authorities may apply for an INA § 287(g) MOA believing that it will bring additional fiscal resources to their community, in fact, by statute, it is an unfunded program that will likely add additional costs to a department's budget. For example, the Sheriff's Department of Morristown, New Jersey evaluated a proposed INA § 287(g) program and found that it would add an additional $1,331,876 to its budget. As a result of this cost, plus additional liability risks, the Sheriff's Department recommended that the county not go forward with the proposed application.[6]

Without adequate oversight, it is difficult to determine if this costly program is meeting its goals. ICE has not developed or instituted a standardized statistical report that delineates, for example, offenses and/or the disposition of cases involving non-citizens encountered through an INA § 287(g) jail enforcement model program. In April 2006, the Mecklenburg County Sheriff's Office in North Carolina took the initiative to develop its own tracking report to record the crimes for which non-citizens were arrested.[7] Other sheriffs in North Carolina use this template and modify it to fit their own needs. ICE requests that sheriffs in North Carolina send the reports to them. ICE's reliance on these non-uniform and voluntary reports highlights a lack of oversight in the current INA § 287(g) program.

INA § 287(g) Programs Target Individuals Who Do Not Pose a Risk to the Community

The INA § 287(g) program in Mecklenburg County has targeted individuals who are not serious criminals. Of the 2,321 undocumented immigrants in Mecklenburg County who were put into removal proceedings in 2007, fewer than 5 percent of the charges against them were felonies.[8] Over 16 percent of the total charges were traffic violations.

Similarly, in Alamance County, North Carolina of the 434 undocumented immigrants who were put into removal proceedings in 2007, less than 10 percent of the charges against them were felonies. Nearly 25 percent of the charges were traffic violations. In at least one case, the overzealous immigration enforcement by Alamance County deputies has resulted in the endangerment of children. On June 14, 2008, around 2 a.m. Maria Chavira Ventura was pulled over by Alamance County deputies on Interstate 85 near Burlington, North Carolina. In the vehicle were her three young children and an adult male who was a fellow church parishioner but unrelated to the family. The deputies arrested Ms. Ventura for driving without a license and false vehicle tags. When they took Ms. Ventura away, the deputies also took the car keys, leaving her three children with the adult male in the car. Shortly thereafter, he left, looking for help. Alone, frightened and crying, the children called their father in Baltimore (the family was en route to visit him). He immediately drove down to get them, but it took over 6 hours to drive from Baltimore to Burlington, North Carolina. During those 7 hours the children were stranded in

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[5] See Major City Chiefs' Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies, June 2006, available at *http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf.*

[6] "An Impact Review of the United States Bureau of Immigration and Customs Enforcement 287(g) Program Upon the County of Morris," Morris County Sheriff's Office, October 19, 2007.

[7] Presentation to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, North Carolina General Assembly, November 18, 2008, Illegal Immigration Project, North Carolina Sheriffs' Association.

[8] "Immigration and Crime in North Carolina: Beyond the Rhetoric," Lindsay Haddix, Department of City and Regional Planning, UNC Chapel Hill, Master's Project, Spring 2008.

the car on Interstate 85, with one water bottle to share. No deputy or law enforcement official returned to the car to check on them; nor did the deputies take the children's mobile telephone number to confirm they returned home safely.

In Wake County, North Carolina, a man was arrested during a traffic stop by local police, who were not authorized to act under the INA § 287(g) MOA. The MOA in Wake County covers the Sheriff's department. As the police arrested the man, they told his two young children that their father would be deported and they would never see him again. All of this was heard by the children's mother, who was on the mobile telephone, left on in "speaker phone" mode. The police officer picked up the telephone and told the mother that her children would be left in the car on the side of the road, waiting for her.

In Colorado, the Rocky Mountain Immigrant Advocacy Network (RMIAN) encountered a woman who was arrested by the Colorado State Patrol during a routine traffic stop. Because the Colorado State Patrol has entered into an INA § 287(g) agreement with ICE in Colorado, the woman was almost immediately deported to Mexico without the opportunity to speak to an attorney or learn about her legal rights. Unfortunately, because of the officer's likely unfamiliarity with immigration law, he did not explain to the woman that she might be eligible for relief from removal from the United States. Rather, the woman believed her only option was leaving the county as soon as possible, and believed the officer was doing her a favor by allowing her to sign a voluntary removal order rather than putting her into proceedings before an immigration judge. However, the woman had been the victim of severe domestic violence in the United States and had helped law enforcement in the prosecution of that criminal case, and thus was eligible for a U Visa. Nonetheless, she only learned about her rights and her eligibility after calling RMIAN from Mexico, subsequent to her deportation and separation from her family in the United States. This is but one example of individuals who have relief or may have relief being removed under an INA § 287(g) program.[9]

Return immigration enforcement responsibility to the Federal Government.—Without statutory authority for any program beyond the memoranda of understanding envisaged by INA § 287(g), DHS has marshaled an array of State and local immigration law enforcement programs collectively referred to as ICE ACCESS (ICE Agreements of Cooperation in Communities to Enhance Safety and Security). Involvement of State and local police in immigration enforcement under INA § 287(g) and other ICE ACCESS programs occurs without adequate oversight or review. These programs are not an effective, efficient way to enforce Federal immigration laws; do not respect the rights of citizens and immigrants; and undermine community policing and public safety.

Recommendations

- Mandate a thorough independent review of current agreements and similar programs during which time no new INA § 287(g) agreements or other ICE ACCESS agreements should be entered into.
- Actively enforce anti-discrimination civil rights protections and implement policies and funding that support community policing and effective law enforcement.
- Re-assert Federal authority over national immigration laws and policies and reject the authority of States and localities to adopt these Federal responsibilities by taking the specific steps outlined below.
- Train State and local officials about their proper role in the enforcement of criminal laws related to immigration rather than civil immigration enforcement.

Policy Recommendations: INA § 287(g)

- DOJ should rescind the 2002 Bush Administration Office of Legal Counsel opinion that reversed longstanding agency interpretation about the limits of State and local enforcement of civil immigration laws and issue a new opinion reaffirming that State and local police cannot enforce civil immigration laws except where there is specific statutory authorization for them to do so (e.g., 8 U.S.C. § 1103(a)(10), providing for certain enforcement upon certification of "an actual or imminent mass influx of aliens . . . ") The 2002 opinion is fundamentally flawed from a legal standpoint, and it complicates and obstructs Federal efforts to oversee and coordinate immigration enforcement and to effectuate a uniform national immigration enforcement policy.
- DHS Office of Policy should issue guidance to State and local law enforcement entities explicitly clarifying that their authority to engage in immigration enforcement is limited to narrow circumstances (i.e. where there is sufficient sus-

[9] Correspondence from the Rocky Mountain Immigrant Advocacy Network.

picion that an individual has committed a criminal immigration violation, such as illegally re-entering the United States as a previously deported felon, that would provide police with arrest authority, provided that any State-law limitations on authority are also satisfied) and that any decision to assist DHS or participate in immigration enforcement must be voluntary and must comport with State and/or local laws and policies.

- DHS should commission independent experts to undertake a comprehensive, detailed review and evaluation of existing INA § 287(g) agreements to determine whether and to what extent these programs:
  - Enhance public safety;
  - Undermine community policing efforts;
  - Increase racial profiling;
  - Result in the arrest, detention, or deportation of U.S. citizens or permanent residents;
  - Reduce individuals' likelihood of reporting crimes or serving as witnesses;
  - Reduce access to education, health, emergency/fire department, and other services by immigrants and members of their families and communities;
  - Exceed the limitations established in the MOU/MOA;
  - Are sufficiently supervised by ICE personnel;
  - Collect data necessary to enable proper oversight;
  - Are subject to sufficient community, municipal, State and Federal oversight;
  - Result in costs to the State/local participants;
  - Are cost-effective from the Federal Government's perspective; and
  - Undermine Federal prosecutorial discretion or the ability of DHS and ICE to effectively set priorities in immigration enforcement.
- DHS should require and fund meaningful training including on the complexity of immigration laws, limitations of State/local authority, ICE enforcement priorities, and problems with profiling, as a precondition to any officer's participation in ICE ACCESS, Secure Communities, CAP, or other programs envisioning state and local participation in immigration enforcement and to all officers operating in an INA § 287(g) jurisdiction, regardless of whether the particular officer is actually provided with authority under the MOA.
- DHS should stop entering civil immigration violations including records relating to so-called "absconders" and "NSEERS violators" into the NCIC database and remove those records that have previously been entered. FBI should mandate that all NCIC entries comply with the accuracy standards of the Privacy Act.

DHS Should Use the Following Operational Guidance for INA § 287(g) Programs

- DHS should not conduct joint operations with State or local entities that are credibly alleged to have engaged in profiling.
- DHS should consider the direct and indirect effects on public safety and community policing before requesting State or local participation in any enforcement operation.
- DHS should only issue immigration detainers to State and local agencies to retain custody of persons held on criminal charges where: (1) Interviewing and taking custody of the individual in question is impossible for ICE; (2) the individual's identity and removability are positively confirmed; (3) the individual would ordinarily be placed into removal proceedings if ICE exercised its prosecutorial discretion; and (4) the individual would actually be subject to continued detention if he had been apprehended and processed by ICE.
- DHS should issue guidance clarifying that an immigration detainer is not the equivalent of a criminal arrest warrant or criminal detainer and is simply a non-mandatory request that police maintain custody of an individual for a maximum of 48 hours to facilitate DHS picking that person up. Any detainer request should clarify that the institution is not authorized under any circumstance to detain the subject for a period exceeding 48 hours, excluding weekends and holidays.
- All INA § 287(g) MOUs must include:
  - Specific mandate;
  - Sunset provision;
  - On-going training requirement;
  - Specific circumstances under which officers can make arrests for immigration violations;
  - Means of information and referral for victims of domestic violence, crime victims and trafficking victims;
  - Systematic tracking and reporting requirements: how many arrests, how many criminal convictions, how many detained, how long it takes ICE to re-

spond, race/ethnicity of those arrested, number of complaints, number of U.S. citizens and permanent residents arrested or detained, countries of origin of those arrested/detained, training, all funding spent on execution of MOU;
- The establishment of a community advisory commission;
- Complaint and redress procedures;
- Public education and outreach campaign;
- Oversight;
- Specified ICE response time to requests for assistance for State and local officials;
- Prohibition on racial profiling;
- Penalties for noncompliance.

B. SECURE COMMUNITIES

The Secure Communities Program was created as part of the ICE ACCESS program to give ICE technological access to the 3,100 local jails throughout the United States to identify removable aliens. The Secure Communities Program was announced through ICE press releases, "fact sheets," and blog entries on the ICE web site, but no complete, coherent description of the program has been made available. No regulations have been issued for its operation, no guidance to State and local authorities has been made public, and no criteria for how ICE will exercise the authority granted to it under the program have been announced. To date, there is no system in place to track those individuals against whom detainers are issued, including the crimes for which identified non-citizens are arrested, the disposition of the underlying criminal case, and the nationality and ethnicity of identified non-citizens.

Under the Program, criminal arrestees' fingerprints are automatically checked against DHS databases as well as FBI criminal databases. ICE is automatically notified of a "hit." According to ICE, the program will allocate its resources against those convicted of crimes, in accordance with the following:
- *Level 1*.—Individuals who have been convicted of major drug offenses and violent offenses such as murder, manslaughter, rape, robbery, and kidnapping;
- *Level 2*.—Individuals who have been convicted of minor drug offenses and property offenses such as burglary, larceny, fraud, and money laundering; and
- *Level 3*.—Individuals who have been convicted of other offenses.[10]

DHS claimed that Secure Communities would be phased in, beginning with Level 1 criminal aliens. However, it is unclear how or if the prioritization is taking place. Statements by ICE officials raise questions about how the program is working in practice. Julie Myers, former Assistant Secretary for ICE stated that while the program focuses on those who have committed serious crimes, in cases involving less serious offenses ICE would consider its staffing levels and resources in deciding how to proceed.[11] Myers also stated that those who have not had contact with DHS may not be included in the database, making additional investigation necessary to determine if the person has permission to be in the United States.[12] It remains unclear whether this means that ICE will seek to hold these individuals in detention until their status can be determined.

ICE has not clearly stated what it will do when Level 2 or 3 aliens are identified. It is unclear whether ICE considers someone having entered without inspection (EWI) sufficient to be considered a "criminal" under this program or whether that EWI will generate a "hit" and/or a detainer under a Secure Communities program. It is also unclear whether ICE will consider the lawfulness of an arrest and whether it was made under purported (and disputed) "inherent authority" to arrest for civil immigration violations.

While Secure Communities is ostensibly directed at those convicted of crimes, the identification process is actually focused on those arrested for crimes, before they have been either tried or convicted. This creates an incentive for agents to arrest persons on pretextual grounds or to arrest persons who might otherwise have received a warning or a ticket. It also leads to individuals being held by ICE who have been arrested for minor crimes but not yet tried or convicted. Questions that have

[10] U.S. Immigration and Customs Enforcement, "Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens, Nov. 19, 2008, available at *http://www.ice.gov/pi/news/factsheets/secure_communities.htm.*

[11] Anabelle Garay, "Dallas County to Check Immigration Database," Associated Press, Nov. 12, 2008, available at *http://www.dallasnews.com/sharedcontent/APStories/stories/D94D2RS00.html.*

[12] Id.

been raised about collateral arrests in the context of Fugitive Operations have also been raised with regard to Secure Communities.[13]

Reports suggest that when ICE takes custody of arrested individuals, they are frequently prevented from exercising their right to go to criminal court and challenge their criminal charges. It may also mean that individuals who would otherwise be released are ineligible for release on bail. In addition to raising obvious due process problems, this causes courts to issue warrants of arrest or judgments of conviction. This in turn makes the individuals ineligible for future immigration benefits.

Individuals who have committed minor offenses may be held without bond in criminal custody because of ICE intervention through Secure Communities. For example, in North Carolina there are reports of no bond for minor traffic violations, as well as arrests without cause (which have included in North Carolina: failure to signal, failure to dim headlights, walking in a neighborhood at night without showing a driver's license to an officer, non-cooperation with an officer while riding a bicycle (refusing to show driver's license), fishing without a (fishing) license).

Jails routinely hold detainees well in excess of the 48 hours period permitted by regulation. In some counties, reports have indicated that non-citizens are held for weeks before ICE assumes custody. Detainers are being filed indiscriminately with no apparent attempt to distinguish serious criminal offenders from those who have committed minor offenses.

U.S. citizens are swept up in this broad net. Mr. O, a U.S. citizen from Colorado, is serving a criminal sentence at Bent County Correctional Facility in Colorado. He has an immigration detainer that is preventing his entry into a halfway house. Several years ago, Mr. O was placed into removal proceedings. The immigration judge terminated the proceedings at the request of the Government when it realized that Mr. O had derived citizenship from his American parents. Nonetheless, Mr. O has not been able to convince ICE to lift the immigration detainer despite being a U.S. citizen.[14]

Anecdotal evidence from advocates in locations with pilot programs suggests that Secure Communities does not require an MOU between ICE and the local jail, sheriff, or police department. As a result, the level of training or instruction provided to jail or law enforcement personnel remains murky. According to ICE's web site and fact sheet, the plan is to eventually install the system in all State and local detention facilities Nation-wide. It is unclear whether the program will be mandatory or optional for all law enforcement agencies.

It is unclear whether ICE requires the consent or participation of local officials in implementing Secure Communities programs. It may be possible that ICE can simply connect its IDENT system to the jail's fingerprinting system, and ICE therefore can automatically access information about anyone being fingerprinted, possibly without the approval of local officials. ICE would then determine whether it has the resources to issue a detainer and pick up the individual within the 48-hour time frame, leaving local authorities out of the process entirely. If this is the current structure of the program, Secure Communities raises serious questions about the relationship between Federal and local law enforcement agencies, and about a local community's ability to weigh in on important decisions affecting the community.

Because Secure Communities involves creating automatic data links between booking databases and immigration enforcement systems, it deprives police of the discretion to choose when to run ICE checks. This raises questions about local police authorities' ability to build strong, trusting relationships with their communities. For example, many police report that it is important to assure crime victims that they will not suffer immigration consequences if they call or talk to the police. But a Secure Communities jurisdiction may lose this flexibility with regard to ICE checks. Needlessly running names through the ICE databases will result in local law enforcement losing the trust of the immigrant community, a significant cost for police who depend upon the community to fight and solve crime.

The existence of various ICE programs in a State or locality also makes record-keeping difficult. If an inmate has a detainer, it is impossible to determine if the detainer is the result of a 287(g) agreement, Secure Communities, or if the individual simply confessed to an immigration status violation. This makes it extremely difficult to determine the effectiveness of any one program or initiative.

In sum, Secure Communities denies due process to those arrested by ICE. The program's description makes no mention of protection of civil rights, redress when an individual is wrongly identified, auditing or monitoring of its operation, measure-

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[13] Margot Mendelson, Shayna Strom, and Michael Wishnie, "Collateral Damage: An Examination of ICE's Fugitive Operations Program," Migration Policy Institute, February 2009, available at *http://www.migrationpolicy.org/pubs/NFOP_Feb09.pdf.*

[14] Correspondence from the Immigrant Defense Project, New York.

ment of racial or ethnic profiling, effect of detainers, or measurement of whether it in fact complies with the levels established for use of ICE resources.

There are also many reports from advocates across the country of inappropriate actions by State and local enforcement officials where it is unclear if the officials are working under the guise of Secure Communities or other ICE ACCESS programs. For example, in Washington State, public defenders report that ICE agents routinely peruse the jails to single out Latino males for interrogation.[15] It is common practice for ICE agents to simply place detainers on any defendant on the booking sheets provided by the jail without interviewing them. Since the majority of defendants arrested are for low-level misdemeanor offenses the majority of people being apprehended by ICE do not fit within the priorities of the Secured Communities initiative. In the municipality of Lynwood, Washington it is standard practice for individuals in traffic court to be interviewed by ICE officers. If believed to be undocumented, they are taken into ICE custody. Again, such tactics are akin to a fishing expedition and divert resources from more pressing law enforcement goals.[16]

Recommendations

- Given ICE's history of misdirecting its enforcement resources, and the lack of supervision and auditing of racial and ethnic profiling under 287(g) agreements, DHS should measure the impact of the program before expanding it further. No further expansion of the Secure Communities should take place until the program is thoroughly audited and clear guidelines are set forth.
- Secure Communities initiatives, including data processing initiatives, should ensure that in every instance the State, local, or tribal police retain the discretion to determine whether ICE should be sent an individual's data.
- All jurisdictions participating in Secure Communities should receive training and guidance prohibiting illegal racial or other profiling. The DHS Office for Civil Rights and Civil Liberties should oversee the development of this training, with periodic review from the Department of Justice. The DOJ has made eliminating racial profiling a priority, and their oversight of this program would be an asset.
- ICE should issue reports to Secure Communities partners and Congress on a regular basis with statistics on the crimes for which identified non-citizens are arrested, the disposition of the underlying criminal case, and the nationality and ethnicity of identified non-citizens.
- The program should be independently evaluated to determine if the enforcement criteria have been met, the effects on community policing and willingness of witnesses and victims to report crimes, and the extent of racial or ethnic profiling.
- All jurisdictions participating in Secure Communities should at the same time report periodically to ICE supervisors their arrest and identification statistics for oversight and management purposes. Any jurisdictions whose statistics indicate a racial profiling pattern should be suspended from the program.

Ms. CLARKE. There being no further business, the committee stands adjourned.

[Whereupon, at 5:01 p.m., the committee was adjourned.]

[15] Letter from Washington Defender Association's Immigration Project to Secretary Napolitano, February 16, 2009 regarding "Issues and Impacts of ICE Enforcement In Washington State Jail Facilities."

[16] Id.

APPENDIX

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR WILLIAM F. RILEY, ACTING EXECUTIVE DIRECTOR, OFFICE OF STATE AND LOCAL COORDINATION, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Question 1. During the hearing, the committee was reassured that a number of the issues raised in the GAO report (GAO, *Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws,* GAO–09–109, January 30, 2009) would be addressed in a strategic plan currently under development. Please outline the issues that will be addressed in the plan. What is the time frame for the plan? How will the modifications in the strategic plan be implemented?

Answer. In addition to revising the Memorandum of Agreement (MOA) to ensure that 287(g) agreements operate consistently with ICE priorities, ICE anticipates that the Strategic Plan for the Office of State and Local Coordination (OSLC) will be approved and published on or about September 4, 2009. The intent of the OSLC Strategic Plan is to better articulate OSLC's mission, objectives, goals and priorities while detailing the framework for management of OSLC programs such as the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS), of which the delegation of 287(g) immigration authority is a part.

Specifically, the OSLC Strategic Plan will establish a body of performance measures in support of improved management of ICE's 287(g) partnerships. The plan establishes performance targets and identifies metrics to support them. These metrics presently include the number of 287(g) partnerships, the number of partnerships terminated or suspended due to lack of activity, types and level of criminal activity being encountered by 287(g) partners, and the number of criminal prosecutions. To further support internal control, the plan synchronizes with Department of Homeland Security priorities and includes provisions for compliance monitoring in the form of one or two program reviews per month by the ICE Office of Professional Responsibility (ICE OPR). Control activities will also include weekly review of each partner's ENFORCE statistical data, which includes country of birth, gender, and age. The control activities and compliance monitoring set forth in the strategic plan will help further provide reasonable assurance of management control of the local application of 287(g) authority.

Question 2. Please provide the committee with arrest statistics made under the 287(g) program for fiscal year 2007 and fiscal year 2008 by jurisdiction and nature of crime.

Answer. OSLC tracks encounters and not arrests. The purpose for the use of encounter is that a 287(g) trained individual typically "encounters" a foreign national subsequent to another law enforcement activity.

During the time period covering the request, the primary interface used to collect data entered by field users was not designed to capture the "nature of crime". During the stated time period, ENFORCE, the primary data collection tool, relied and still relies heavily on user-provided information. This leads to data being entered in an inconsistent manner.

Prior to October 2008, OSLC relied on generic data pulls provided by DRO and/or OI. Since October 2008, OSLC has taken the lead in collecting and reporting its own statistical data. Since October 2008, changes/enhancements to ENFORCE have been requested and are being implemented to help track the nature of criminal activity under the 287(g) program. Previously this data was left to the user to input. Once the changes are in effect, the data entry fields will be mandatory and will require users to enter 287(g) driven information.

Attached is the weekly summary dated April 5, 2009 which identifies the number of encounters by jurisdiction.

State	287(g) Office	2006 Total	2007 Total	2008 Total	2009							2009 Total	Program Total
					Oct	Nov	Dec	Jan	Feb	Mar	Apr		
AL	.....	.....	.....	.....	.....	.....	.....	.....	1	1	.....	2	2
	AL State Police	.....	.....	.....	.....	.....	.....	.....	1	1	.....	2	2
AR	.....	.....	8	871	88	62	59	54	82	69	12	426	1,305
	Benton County Sheriff's Office.	.....	3	413	26	26	22	19	35	15	5	148	564
	City of Springdale Police Department.	.....	.....	140	28	11	8	18	20	23	2	110	250
	Rogers Police Department.	.....	2	103	12	6	12	5	13	15	2	65	170
	Washington County Sheriff's Office AR.	.....	3	215	22	19	17	12	14	16	3	103	321
AZ	.....	418	5,208	16,129	1,343	1,274	1,185	1,313	1,260	1,344	431	8,150	29,905
	AZ Department of Corrections.	418	1,913	2,485	275	234	244	326	274	346	149	1,848	6,664
	AZ Department of Public Safety.	.....	1	2	.....	.....	28	.....	.....	.....	.....	28	31
	Maricopa County Sheriff's Office.	.....	3,294	13,340	1,040	998	882	943	940	937	251	5,991	22,625
	Pinal County Sheriff's Office.	.....	.....	45	6	4	4	8	25	43	1	91	136
	Yavapai County Sheriff's Office.	.....	.....	257	22	38	27	36	21	18	30	192	449
CA	.....	5,219	12,147	11,589	1,113	931	900	1,079	987	1,204	469	6,683	35,638
	Los Angeles County Sheriff's Office.	3,650	4,544	3,854	442	409	329	442	378	423	224	2,647	14,695
	Orange County Sheriff's Office.	.....	3,558	4,168	307	254	253	254	254	396	122	1,840	9,566
	Riverside County Sheriff's Office.	338	2,116	1,545	163	91	106	175	159	193	49	936	4,935
	San Bernardino County Sheriff's Office.	1,231	1,929	2,022	201	177	212	208	196	192	74	1,260	6,442
CO	.....	.....	198	961	151	92	47	62	78	81	15	526	1,685
	CO Department of Public Safety.	.....	198	786	120	62	26	39	54	56	7	364	1,348
	El Paso County Sheriff's Office.	.....	.....	175	31	30	21	23	24	25	8	162	337

FL	.....	.....	21	832	158	165	178	178	220	217	81	1,197	2,050
	Bay County Sheriff's Office.	.....	.....	7	19	26	24	3	18	14	2	106	113
	Brevard County Sheriff's Office.	.....	.....	.....	.....	.....	.....	2	5	13	9	29	29
	Collier County Sheriff's Office.	.....	18	813	104	82	96	118	148	129	56	733	1,564
	FL Department of Law Enforcement.	.....	3	12	.....	.....	1	1	2	1	.....	5	20
	Jacksonville Sheriff's Office.	.....	.....	.....	31	49	43	51	41	52	9	276	276
	Manatee County Sheriff's Office.	.....	.....	.....	4	8	14	3	6	8	5	48	48
GA	.....	.....	128	4,732	347	343	319	355	291	338	125	2,118	6,978
	Cobb County Sheriff's Office.	.....	128	3,750	247	216	207	229	187	221	77	1,384	5,262
	GA Deptartment of Public Safety.	.....	.....	9	2	.....	3	2	2	.....	1	10	19
	Hall County Sheriff's Office.	.....	.....	873	79	100	76	94	56	75	35	515	1,388
	Whitfield County Sheriff's Office.	.....	.....	100	19	27	33	30	46	42	12	209	309
MA	.....	.....	.....	76	9	1	5	2	5	3	3	28	104
	MA Department of Corrections.	.....	.....	76	9	1	5	2	5	3	3	28	104
MD	.....	.....	.....	232	33	23	26	22	31	33	10	178	410
	Frederick County Sheriff's Office.	.....	.....	232	33	23	26	22	31	33	10	178	410
MO	.....	.....	.....	1	1	.....	.....	.....	.....	.....	.....	1	2
	MO State Highway Patrol.	.....	.....	1	1	.....	.....	.....	.....	.....	.....	1	2
NC	.....	518	2,695	4,064	549	539	500	509	486	568	234	3,385	10,662
	Alamance County Sheriff's Office.	.....	299	523	47	19	26	41	32	32	22	219	1,041
	Cabarrus County Sheriff's Office.	.....	.....	221	27	25	23	19	18	15	6	133	354
	Cumberland County Sheriff's Office.	.....	.....	27	1	1	10	5	9	11	7	44	71
	Durham Police Department.	.....	.....	33	2	.....	4	5	4	.....	.....	15	48

State	287(g) Office	2006 Total	2007 Total	2008 Total	2009							2009 Total	Program Total
					Oct	Nov	Dec	Jan	Feb	Mar	Apr		
	Gaston County Sheriff's Office.	.....	195	402	32	35	26	21	23	24	14	175	772
	Henderson County Sheriff's Office.	.....	.....	104	21	30	67	70	40	39	11	278	382
	Mecklenburg County Sheriff's Office.	518	2,201	2,213	189	209	170	176	183	236	110	1,273	6,205
	Wake County Sheriff's Office.	.....	.....	541	230	220	174	172	177	211	64	1,248	1,789
NH	.....	.....	.....	5	.....	.....	.....	.....	.....	.....	.....	.....	5
	Hudson City Police Department.	.....	.....	5	.....	.....	.....	.....	.....	.....	.....	.....	5
NJ	.....	.....	.....	.....	.....	.....	.....	.....	10	10	7	27	27
	Hudson County Department of Corrections.	.....	.....	.....	.....	.....	.....	.....	10	10	7	27	27
NM ...	.....	.....	.....	5	.....	.....	.....	.....	.....	.....	.....	.....	5
	NM Department of Corrections.	.....	.....	5	.....	.....	.....	.....	.....	.....	.....	.....	5
NV	.....	.....	.....	.....	10	130	139	230	236	251	82	1,078	1,078
	Las Vegas Metropolitan Police Dept.	.....	.....	.....	10	130	139	230	236	251	82	1,078	1,078
OH	.....	.....	.....	347	42	56	38	25	33	36	8	238	585
	Butler County Sheriff's Office.	.....	.....	347	42	56	38	25	33	36	8	238	585
OK	.....	.....	40	1,346	88	115	95	94	105	97	29	623	2,009
	Tulsa County Sheriff's Office.	.....	40	1,346	88	115	95	94	105	97	29	623	2,009
SC	.....	.....	.....	363	28	28	34	37	45	39	17	228	591
	Beaufort County Sheriff's Office.	.....	.....	11	5	4	4	6	10	11	7	47	58
	York County Sheriff's Office.	.....	.....	352	23	24	30	31	35	28	10	181	533
TN	.....	.....	1,739	2,650	191	219	190	204	174	210	77	1,265	5,654
	Davidson County Sheriff's Office.	.....	1,739	2,650	191	219	185	199	172	207	76	1,249	5,638

	TN Department of Safety.	.....	.....	.....	.....	.....	5	5	2	3	1	16	16
TX	.....	.....	.....	.....	.....	252	711	646	573	864	325	3,371	3,371
	Harris County Sheriff's Office.	.....	.....	.....	.....	252	711	646	573	864	325	3,371	3,371
UT	.....	.....	.....	.....	.....	17	33	7	18	10	2	87	87
	Washington County Sheriff's Office UT.	.....	.....	.....	.....	.....	2	1	4	.....	.....	7	7
	Weber County Sheriff's Office.	.....	.....	.....	.....	17	31	6	14	10	2	80	80
VA	.....	.....	158	1,224	111	112	108	108	115	100	26	680	2,062
	City of Manassas Police Department.	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	1
	Herndon Police Department.	.....	.....	72	13	3	9	5	5	2	2	39	111
	Loudoun County Sheriff's Office.	.....	.....	2	3	5	4	9	5	3	.....	29	31
	Prince William County Police Department.	.....	.....	30	5	11	8	8	5	3	.....	40	70
	Prince William County Sheriff's Office.	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	2
	Prince William-Manassas Adult Detention Center.	.....	114	929	81	83	74	75	91	88	24	516	1,559
	Rockingham County Sheriff's Office.	.....	32	163	9	10	12	11	7	4	.....	53	248
	Shenandoah County Sheriff's Office.	.....	12	25	.....	.....	1	.....	2	.....	.....	3	40
	Program Total	6,155	22,342	45,427	4,262	4,359	4,567	4,925	4,750	5,475	1,953	30,291	104,215

No. of States Reporting: 22.

No. of Offices Reporting: 58.

The above ICE enforcement data/statistics reflect a "snapshot" of the data in the respective ICE Law Enforcement System (LES) at the time the report was compiled by the Executive Information Reporting Section. ICE enforcement data within the ICE LES may be modified at any given time by authorized personnel owning the data, which may result in an increase or decrease of ICE data/statistics previously reported.

Question 3. According to statements made by Sheriff Jenkins, Frederick County, Maryland is currently reimbursed $83 per day for each detainee held in its jail through its intergovernmental service agreement (IGSA) with ICE. However, Sheriff Jenkins has stated the actual cost for the county to hold and detain persons average $7 per day. How does ICE determine IGSA reimbursement rates and how often are these rates evaluated?

Answer. Before ICE enters into an agreement with a county for detention space, a rate is negotiated with the county for the per diem costs of the detainee care and custody. Before negotiating a rate, the county must submit a Jail Services Cost Statement (JSCS). The JSCS outlines the facility's entire operational costs for the jail. ICE determines the reimbursement rate by examining the cost elements from individual documents in the JSCS as submitted by the county. Cost components are examined and analyzed to determine whether they are allowable, can be allocated, and are reasonable in accordance with Office of Management and Budget (OMB) Circular A–87. Items reimbursed under this agreement include personnel costs, personnel benefits, consultant costs, on-site medical care expenses, and other direct costs as well as indirect costs and depreciation based on the purchase price for the county's building. If a county provides transportation service, the county is reimbursed separately for this service. After examining actual costs of these components, a per diem rate is determined and negotiated with county officials.

In accordance with Article XII of the IGSA, Adjusting the Detainee Day Rate, ICE shall reevaluate/adjust the detainee rate every twelve (12) months after the agreement becomes effective. If ICE does not receive an official request for a detainee day rate adjustment with a new JSCS, the fixed detainee day rate as stated in the agreement will remain in place indefinitely.

In the last JSCS submitted by Frederick County to ICE, Frederick County proposed a per diem rate of $92.36. The JSCS supported rate is $83.00 per day. ICE will contact Frederick County to discuss the $7.00 figure you cite and determine whether a reevaluation is appropriate.

Question 4. Section 12 of the Maricopa County MOA places reporting requirements on the Maricopa County Sheriff Office. Pursuant to that section of the agreement, has ICE requested data and statistical information on the "progress and success of the [Maricopa County] 287(g) program?"

Answer. ICE frequently relies on ENFORCE, the administrative immigration booking system, to gather statistical information related to the 287(g) program. Agencies use ENFORCE when processing individuals who are subject to removal. Because ICE gathers information from ENFORCE on a real time basis, ICE has not frequently requested information directly from the Maricopa County Sheriff's Office. However, the ENFORCE system historically had limited data fields related primarily to processing an alien.

Based on an internal review and the recent GAO audit, ICE has requested several system changes to enable ICE to extract more detailed information from ENFORCE about the type and severity of the charges lodged against removable aliens identified by 287(g) officers. In addition, ICE is working to modify the MOA template to mandate the entry of certain mandatory data and ensure the partner agencies with 287(g) authority exercise that authority in accordance with ICE's priorities.

Question 5. Section 14 of the Maricopa County MOA outlines a Complaint Procedure. Earlier this month, 5,000 people marched to complain about the program. What has ICE done to monitor and respond to complaints about the Maricopa County Sheriff's use of the 287(g) program?

Answer. The Maricopa County Sheriff's Office (MCSO) MOA provides that complaints against MCSO personnel relating to their immigration enforcement should be reported to the ICE OPR and the MCSO's Internal Affairs Division. ICE OPR forwards complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and will refer all allegations of racial and ethnic profiling, police misconduct, race and national origin discrimination, and limited language access to the U.S. Department of Justice Civil Rights Division (DOJ CRT) and the DHS Office of Civil Rights and Civil Liberties.

Complaint reporting procedures are posted within all facilities under MCSO's jurisdiction in English and Spanish in order to ensure that individuals are aware of the availability of such procedures.

Additionally, ICE OPR created a 287(g) Inspection Group to conduct inspections of the 287(g) cross-designated State and local law enforcement agencies. These inspections are designed to determine if agencies are operating in compliance with MOA. In fiscal year 2008, ICE OPR inspected four 287(g) programs; and in fiscal year 2009, ICE OPR anticipates reviewing an additional 20 sites. OSLC reviews the ICE OPR audit report for any area identified as non-compliant with the MOA. The OSLC program will then consult with ICE Office of Investigation (ICE OI) and ICE

Office of Detention and Removal (DRO) to address issues identified in the ICE OPR reports. If any concerns with racial and ethnic profiling, police misconduct, race and national origin discrimination, and limited language access are raised as a result of an OPR review, OSLC will also consult with the DHS Office for Civil Rights and Civil Liberties and will refer all allegations to DOJ CRT.

In September 2008, the ICE Office of Personnel Responsibility (OPR) conducted an audit of the MCSO 287(g) Delegation of Authority Program. MCSO utilizes both the Jail Enforcement Officer (JEO) program in which officers working in a detention environment (jail) that are trained to identify foreign nationals amenable to removal proceedings, after they have been arrested or convicted of violating criminal laws and the Task Force Officer (TFO) model in which officers work in an investigative setting and are trained to identify foreign nationals amenable to removal proceedings during the course of their duties. The OPR audit included interviews with ICE management, employees, in addition to interviews with MSCO management and their employees. The overall findings of the ICE Office of Professional Responsibility (OPR) audit support that MSCO is in compliance with the MOA. Recommendations were made to improve effectiveness and efficiency of the MOA, which included the establishment of a standard operation procedure (SOP) within the MOA specific to both the JEO and TFO model and the establishment of a uniform requirement for collecting and reporting specific statistical data. ICE has begun to apply such recommendations to the MCSO and other Law Enforcement Agencies (LEAs), which have 287(g) agreements with ICE to improve efficiency, reduce complaints, and better monitor the existing MOA. Finally, pursuant to the Secretary of Homeland Security's action directives, ICE is currently re-drafting the standard MOA template to increase oversight and accountability. The revised MOA will also work to further ensure that 287(g) MOAs operate consistently with ICE arrest and detention priorities.

Question 6. Section 16 of the Maricopa County MOA mandates the formation and maintenance of a steering committee to "ensure compliance with the terms of the Memorandum of Agreement." Who is on that committee? Has it met? What has it met about? Did ICE and Maricopa hold a review meeting within 9 months of the start of the program as mandated by the agreement?

Answer. The Maricopa County MOA was signed on February 24, 2007. The first Steering Committee meeting was held on September 6, 2007, which was within the required 9-month guideline as outlined in the MOA. The second Steering Committee meeting was held on October 21, 2008. The next steering committee meeting is scheduled to be held in October 2009.

The September 6, 2007, meeting was held at the MCSO Executive Conference Room in Phoenix, Arizona. The Representatives from the following ICE offices were in attendance:

ICE

Special Agent in Charge, ICE OI, SAC Office Phoenix; Deputy Special Agent in Charge, ICE OI, SAC Office Phoenix; Group Supervisor ICE OI, SAC Office Phoenix; Chief Counsel, Phoenix Office of the Chief Counsel Office, ICE Office of the Principal Legal Advisor (OPLA); Assistant Field Office Director, ICE DRO, Phoenix; Assistant Field Office Director, ICE DRO, Phoenix; and Supervisory Deportation Officer, ICE DRO Phoenix.

MCSO officers were also present.

MCSO

Sheriff; Super Chief; Chief Deputy; Lieutenant; Lieutenant; Lieutenant; Joe Sousa.

The issues discussed included, but were not limited to, the following topics: background investigations/vetting; computer equipment for five additional sites; training completion; media coordination under the MOA; ICE Fusion Center; statistics; and MCSO 287(g) successes.

The October 21, 2008, meeting was held at MCSO in the Executive Conference Room in Phoenix, Arizona. ICE and MCSO representatives were in attendance.

ICE

Special Agent in Charge, ICE OI, SAC Office Phoenix; Assistant Special Agent in Charge, ICE OI, SAC Office Phoenix; Assistant Special Agent in Charge, ICE OI, SAC Office Phoenix; Deputy Field Office Director, DRO; Senior Attorney, Phoenix Office of the Chief Counsel Office, ICE, OPLA; Public Affairs Officer, ICE; Senior Special Agent, ICE OI, SAC Office Phoenix; Special Agent, ICE OI, SAC Office Phoenix; Special Agent, ICE OI, SAC Office Phoenix; Staff Assistant, ICE OI, SAC Office Phoenix.

MCSO

Chief; Captain; Captain; Lieutenant; Sergeant; Sergeant; Lieutenant.

A roundtable introduction of all members was initiated by SAC Matthew Allen. SAC Allen reiterated the reason behind the Steering Committee meetings. He explained that per the MOA, ICE is required to have these meetings at least once a year. Additionally, Chief Sheridan commented that MCSO has an excellent working relationship with ICE.

The issues discussed included, but were not limited to arrest statistics and progress of the program; future training; 287(g) Letters of Authorization and credentials; Virtual University recurring training; ICE OPR and MCSO Internal Affairs; 287(g) property inventory; and media relations.

Question 7. Section 15 of the Maricopa County agreement binds Maricopa County Sheriff's Officers to U.S. civil rights laws and specifically to the U.S. Department of Justice "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies." Given complaints from Phoenix Mayor Phil Gordon, from community members, and from media outlets that the 287(g) program is being used to racially profile Latinos, what steps has ICE taken to ensure compliance with this section of the MOA?

Answer. We understand that the Department of Justice has initiated an investigation of allegations of discriminatory police practices and unlawful searches and seizures by the Maricopa County Sheriff's Office (MCSO). DOJ will thus be in the best position to determine, following that investigation, whether the MCSO is in fact in compliance with applicable civil rights laws.

ICE provides a 4-week training program to LEAs who are authorized to receive training under the 287(g) MOA. The training is held at the Federal Law Enforcement Training Center (FLETC) Advanced Training Site in Charleston, SC, where certified instructors conduct the training. The 287(g) Training Program includes guidance, mandated by the DOJ, regarding the Use of Race by Federal Law Enforcement Agencies. An overview on civil rights is also part of the 287(g) Training Program and training program participants receive a 2-hour lesson on Alien Encounters. This lesson includes instruction on the levels of encounters, as well as the primary line of questioning to establish alienage and removability.

Racial profiling and civil rights issues are also covered in the "Use of Race" and "Officer Liability" courses as part of the 287(g) Training Program. These courses specifically cover racial profiling practices and the Constitutional concerns regarding the use of race in the conduct of law enforcement activities. These courses outline the necessity to establish or observe more than one articulable fact, not based on race, that leads the officers to believe that the subject(s) is/are in the United States illegally, and have no right to be in, remain or reside in, or transit through United States lawfully.

It should also be noted that ICE is currently in the process of incorporating a racial profiling training module into the Virtual University annual refresher training curriculum that will be mandatory for all 287(g) officers to take.

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON OF MISSISSIPPI FOR RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Question 1. According to your report, there seemed to be significant confusion among 287(g) program participants about what they could or could not do pursuant to their 287(g) authority. What should ICE do to ensure local agencies understand the limitations and scope of their 287(g) agreements? Does ICE review program participants to ensure they are acting within the scope of their authority pursuant to 287(g)?

Answer. Currently, the Memorandum of Agreement (MOA) between State and local 287(g) participants and Immigration Customs Enforcement (ICE) are broadly written and do not consistently communicate the objective of the 287(g) program or under what circumstances 287(g) authority is to be used. For example, ICE officials told us that the objective of the program is to enhance the security and safety of communities by addressing serious crime such as narcotics smuggling committed by removable aliens. However, ICE has not documented these objectives in program materials. We identified instances where participating agencies have used their 287(g) authority to process for removal aliens arrested for minor offenses. All of the MOA's we reviewed contained language that authorizes State or local officers to interrogate "any person" believed to be an alien as to his right to be or remain in the United States, but none specified when or how this authority was to be used. Some program participants we interviewed interpreted this as giving them broad powers to enforce immigration law. According to ICE officials and other ICE documents,

287(g) authority is to be used in connection with an arrest for a State offense; however, we noted that none of the MOAs state that any use of 287(g) authority should be preceded by an arrest. And while the processing of individuals for possible removal is to be done in connection with a conviction for a State or Federal felony offense, seven MOAs we examined were void of this language (these were earlier MOAs that have never been revised). We recommended that ICE document the objective of the 287(g) program for participants and clarify and document how and under what circumstances 287(g) authority is to be used by State and local law enforcement officers in participating agencies.

According to ICE, its Office of Professional Responsibility (OPR) has implemented a regular inspection process to assess local law enforcement agencies' compliance with the terms of the MOA. Currently, the OPR inspections are conducted using checklists developed primarily from information in the applicable MOA. According to OPR officials, it completes an inspection report after each inspection that will be used to address any deficiencies identified. At the time of our review, ICE had performed only a limited number of these inspections and none of the inspection reports had been finalized. As noted in our report, these inspections do not include performance assessments of the program. ICE has not yet developed performance measures from which to monitor how the program is being implemented. Performance measures are important to provide ICE with a basis for determining whether the program is achieving its intended results.

Question 2. According to your report, over half of the 29 agencies GAO contacted conveyed concerns from community members that use of 287(g) program authority would lead to racial profiling and intimidation by law enforcement officials. To what do you attribute this concern? Could ICE do more to ensure that profiling and intimidation will not occur under 287(g)? If so, what?

Answer. 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. As noted in our report, 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 fear and apprehension that law enforcement officers would engage in racial profiling. 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.

These concerns underscore the importance of ICE having management controls to help ensure that the program was operating as intended; however, we found that key controls were lacking. 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: (1) Documented this objective in 287(g)-related materials for participants; (2) clarified when the 287(g) authority is authorized for use by State and local law enforcement officers; (3) documented 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. 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. 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. 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.

We made recommendations for ICE to improve its management controls in these areas. Specifically, we recommended that ICE document the objective of the 287(g) program for participants, clarify when the 287(g) authority is authorized for use by State and local law enforcement officers, and 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 agen-

cies. One of these supervisory activities would be to ensure that State and local officers are exercising their 287(g) authority in full compliance with Federal law.

Another way to help address community concerns is through community outreach. Each of the MOAs we reviewed discusses engaging in community outreach with individuals and organizations expressing an interest in the 287(g) program. However, community outreach is not a requirement of the program, and the nature and extent of outreach is left to the discretion of the State or local agency. Nearly all of the 29 jurisdictions we reviewed told us they engaged in community outreach and that doing so helped address concerns about the 287(g) program.

Question 3. How are complaints about the 287(g) program processed at ICE? Do you believe there is sufficient transparency in the 287(g) program? ICE has stated there have been no complaints made related to the program. Yet, the media has highlighted various troubling accounts of program management. How would you explain this gap?

Answer. According to the MOAs, complaints involving participating State and local personnel with regard to 287(g) immigration enforcement actions will be accepted from any source (e.g., ICE, the State or local agency, personnel operating under 287(g) authority, and the public). The complaints can be reported to ICE Headquarters Office of Professional Responsibility (ICE OPR) or to the participating agency telephonically or by mail. Each MOA includes the office names, addresses, and telephone numbers for ICE OPR and the State or local agency where complaints can be reported.

The MOAs state that regardless of where the complaint is initially received, ICE OPR and the State or local agency are to coordinate complaint receipt and investigation. ICE OPR is to follow its established procedures relating to the review, reporting, and resolution of allegations of employee misconduct. In this regard, ICE OPR is to forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG), as appropriate, for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division. ICE OPR may also refer complaints it receives involving participating State and local personnel to the agency for resolution. For its part, the State or local agency is to follow its own applicable policies and procedures, personnel rules, State statutes, and any other operating guidelines, and is to inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

The MOAs state that complaint-reporting procedures shall be disseminated as appropriate by the participating agency within facilities under its jurisdiction in order to ensure that individuals are aware of the complaint procedures. We observed that the complaint procedures were posted at selected locations we visited, but we did not assess the public exposure to avenues for filing a complaint. The complaint-reporting procedures pertaining to the 287(g) program are not posted on the ICE web site.

In response to our inquiries, neither ICE OPR nor the 29 participating jurisdictions we reviewed told us they received any complaints of officer misconduct related to the 287(g) program. We do not know why the apparent discrepancy exists between media reports of program problems and the lack of formal complaints to ICE OPR or the participating State and local agencies.

Question 4. My understanding is that under 287(g), State and local law enforcement participants are "supervised" by an ICE agent. Based on your review, what does ICE's supervision consist of? Do you believe that supervision is adequate to ensure participants are abiding by the requirements of the program? If not, what more does ICE need to do?

Answer. 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. Based on our interviews with officials from the 29 participating jurisdictions we reviewed, there was wide variation in the type and amount of supervision provide by ICE. Some participants expressed satisfaction with the ICE supervision they received, while others expressed dissatisfaction. According to ICE officials, supervision of participating agencies varied due to shortages of supervisory resources. These officials said it has been necessary in many instances to shift local ICE resources from other programs 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. We recommended that ICE document 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 to ensure that this infor-

mation is communicated to both ICE officers and the State and local participating agencies.

Question 5. What efforts on the part of DHS, ICE, and State/local agencies are being undertaken to ensure that the training provided to State and local law enforcement agents is comparable to the complex and voluminous body of immigration law training ICE agents receive? How did the participants you interviewed for your report view their training? What kind of continuing education requirements exist for the officers? How does ICE monitor completion of "refresher" training?

Answer. State and local officers participating in the 287(g) program attend a mandatory 4-week training program at the Federal Law Enforcement Training Center. This program includes training in areas consistent with that given to ICE agent, although more condensed—immigration and criminal law, document examinations, cross-cultural communications and intercultural relations, alien status, ICE operations, statutory authority, removal charges, ICE use of force policy, and avoidance of racial profiling. In order to become certified to exercise certain authorities of an immigration officer, participants are required to pass written examinations which, according to ICE, are equivalent to those given to ICE officers. While we did not specifically evaluate training program content, officials from the 29 participating jurisdictions we reviewed consistently told us that the ICE prepared them to perform their 287(g) activities. The MOAs that we reviewed state that, approximately 1 year after participating agencies personnel are trained and certified, ICE will provide those personnel with additional updated training. However, at the time of our review, ICE had not yet established a continuing-education requirement or refresher training for 287(g) participants.

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