



## The 287(g) Program: An Overview

The 287(g) program is named for Section 287(g) of the Immigration and Nationality Act (INA)<sup>1</sup> and became law as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA).<sup>2</sup> Through the 287(g) program, state and local police officers collaborate with the federal government to enforce federal immigration laws. In the past, the 287(g) program has been costly for localities, has not focused on serious criminals, and has harmed the relationship between police and local communities. This fact sheet provides an overview of how the 287(g) program works and discusses the many problems associated with its operation.

### How does the 287(g) program work?

Section [287\(g\) of the INA](#) allows the Department of Homeland Security (DHS) to enter into formal written agreements (Memoranda of Agreement or MOAs) with state or local police departments and deputize selected state and local law enforcement officers to perform the functions of federal immigration agents.<sup>3</sup> The MOAs are negotiated between DHS and the local authorities and include delegation of authority to a limited number of police officers. All of this must be done under the supervision of Immigration and Customs Enforcement (ICE). Deputized officers are required to abide by federal civil rights laws and regulations. In general, deputized officers are authorized to:

- interview individuals to ascertain their immigration status;
- check DHS databases for information on individuals;
- issue immigration detainers to hold individuals until ICE takes custody;
- enter data into ICE's database and case management system;
- issue a Notice to Appear (NTA), which is the official charging document that begins the removal process;
- make recommendations for voluntary departure in place of formal removal proceedings;
- make recommendations for detention and immigration bond; and
- transfer noncitizens into ICE custody.<sup>4</sup>

After a 287(g) agreement expires, DHS is not legally obligated to renew it. Similarly, once a 287(g) agreement is entered, it may be terminated at any time by either party.

## What types of 287(g) agreements exist?

Historically, there have been four types of 287(g) agreements: the “task force” model, “jail enforcement” model, “warrant service officer” model, and “hybrid” model.<sup>5</sup>

- Under the **task force model**, during the course of daily activities deputized officers who encounter alleged noncitizens may question and arrest individuals they believe have violated federal immigration laws.
- Under the **jail enforcement model**, deputized officers may interrogate suspected noncitizens who have been arrested on state or local charges and may place immigration detainers on those thought to be subject to removal.
- Under the **warrant service officer (WSO) model**, ICE trains, certifies, and authorizes selected state and local law enforcement officers to execute ICE administrative warrants. These officers are permitted to perform the limited arrest functions of an immigration officer within the law enforcement agency’s jails and/or correctional facilities.<sup>6</sup> Unlike the jail enforcement model, ICE does not authorize the local law enforcement officer to interrogate alleged noncitizens about their immigration status.
- The **hybrid model** combines elements of different models.

Currently, only two types of 287(g) agreements are employed in the field: the “jail enforcement” model and the “warrant service officer” model.<sup>7</sup>

In 2009, ICE renegotiated all existing MOAs using a new, standardized template.<sup>8</sup> In 2013, the MOA was revised again in order to increase federal oversight of state and local law enforcement and better align the program with its stated objectives and priorities.<sup>9</sup>

Due to mounting concern over the impact of the 287(g) program, and in response to the growth of the [Secure Communities](#) program,<sup>10</sup> the task force and hybrid models were discontinued. As of June 2020, there were 76 active jail enforcement model MOAs in 21 states and 65 warrant service officer model MOAs in nine states.<sup>11</sup>

Federal funding for the 287(g) program hit a high in Fiscal Years (FY) 2010–2013 (Table 1). Annual appropriations cover the cost of training 287(g) officers and fund the program’s management and oversight. Given the subsequent scaling back of the program, the request for appropriations decreased in FY2014.

**Table 1: Federal Funding for the 287(g) Program**

Fiscal Year	Appropriations (millions of dollars)
2006	\$5.0
2007	\$15.0
2008	\$42.1
2009	\$54.0
2010	\$68.0
2011	\$68.0
2012	\$68.0
2013	\$68.0
2014	\$24.3
2015	\$24.0
2016	\$24.0
2017	\$24.3
2018	\$24.3

**Sources:** William A. Kandel, *Interior Immigration Enforcement: Criminal Alien Programs* (Washington, DC: Congressional Research Service, 2016), 17, <https://fas.org/sgp/crs/homesecc/R44627.pdf>; U.S. Congress, *Congressional Record*, 115<sup>th</sup> Congress, 2<sup>nd</sup> session, 2018, vol. 164, pt. 508; U.S. Congress, House of Representatives, *Department of Homeland Security Appropriations Bill*, Report (to accompany H.R. 5634), 114<sup>th</sup> Congress, 2<sup>nd</sup> session, 2017, H. Rep. 114-668, 36, <https://www.congress.gov/114/crpt/hrpt668/CRPT-114hrpt668.pdf>.

### What training do deputized officers receive?

Deputized officers must be U.S. citizens and have a minimum of one year of law enforcement experience. Any officer deputized under the program must complete a four-week Immigration Authority Delegation Program at the Federal Law Enforcement Training Center (FLETC) ICE Academy (ICEA) in Charleston, South Carolina. The immigration law training teaches officers how to access immigration databases, complete immigration forms, and otherwise carry out the functions of federal immigration agents.<sup>12</sup> They also receive some training on civil rights, outreach and complaint procedures, and the limitations of 287(g) agreements, although there are concerns that these aspects of the training are not adequate.<sup>13</sup>

Additionally, deputized officers must receive a refresher training every two years. Because the task force model has not been used for several years, there is currently no task force training available.

Training for the WSO Model includes a one-day, 8-hour training by ICE-certified instructors.<sup>14</sup> To make it most convenient for the participating Law Enforcement Agency and to eliminate travel costs, the training can be done at a sheriff's office or online.<sup>15</sup>

## Are localities responsible for 287(g) program costs?

ICE covers the cost of training deputized officers, but state and local governments have to pay the majority of costs associated with a 287(g) program, including travel, housing, and per diem for officers during training; salaries; overtime; other personnel costs; and administrative supplies.<sup>16</sup> Subject to the availability of funds, ICE may cover the costs of purchasing and maintaining technology, hardware, and software associated with the program.<sup>17</sup> Some of the costs of detention may be reimbursed by the federal government through the State Criminal Alien Assistance Program (SCAAP). However, the federal government has never fully funded SCAAP, and reimbursements only cover a fraction of the costs incurred by states and localities.<sup>18</sup>

## How are jurisdictions chosen for the 287(g) program?

Interested law enforcement agencies can send their inquiry to ICE via email. ICE will then begin the process of evaluating the agency under its standards and will eventually determine whether to sign a 287(g) agreement with the law enforcement agency.

After growing concerns about how ICE vetted and chose local law enforcement agencies for participation in the 287(g) program, in 2009 ICE established an Internal Advisory Committee to review and assess ICE field office recommendations about pending 287(g) applications. The committee includes representatives from DHS' Office of Civil Rights and Civil Liberties (CRCL) and ICE's Office of Investigations, Office of Detention and Removal Operations, Office of Principle Legal Advisor, Office of Congressional Relations, and Office of Public Affairs.<sup>19</sup> The presence of CRCL is intended to ensure that DHS takes into account a local jurisdiction's civil rights and civil liberties history before signing a 287(g) MOA.

## How does the 287(g) program work in conjunction with other federal-local programs?

DHS maintains several different partnerships with state and local police agencies aimed at identifying deportable individuals. In addition to the 287(g) program, DHS administers the following programs:

- The [Criminal Alien Program \(CAP\)](#) is a program that gives ICE access to jails and prisons where ICE officers can screen and interview individuals in order to identify noncitizens for deportation.<sup>20</sup>
- [Secure Communities](#) is a program through which the fingerprints of all persons arrested by state or local police are submitted to DHS and checked against immigration databases. When ICE determines individuals are deportable, it can work with the state or local police agency to take custody of them or detain them without the help of the law enforcement agency.<sup>21</sup>

When a person is identified and taken into ICE custody, it can be difficult to determine which program was responsible. For example, when there is a Secure Communities "hit," a CAP officer may go to the prison or jail and conduct an interview with the individual to determine whether he or she is removable. Or if the jail has a 287(g) program, a deputized officer may perform the same function.

## Problems with the 287(g) Program

### 287(g) Partnerships Vary by Local Jurisdiction and May Net Few Violent Criminals

- The [Migration Policy Institute](#) (MPI) conducted a comprehensive analysis of the 287(g) program and found that it did not target serious criminal offenders. Half of all detainers issued through the program were on people who had committed misdemeanors and traffic offenses.<sup>22</sup>
- [MPI](#) found that some jurisdictions “target” their programs to identify serious criminal offenders. Other jurisdictions operate a “universal” model, designed to identify as many unauthorized immigrants as possible, regardless of criminal history. These universal models were concentrated in the Southeast of the United States.<sup>23</sup>
- [MPI](#) also found that the 287(g) program can be a tool for localities pursuing anti-immigrant agendas. Sheriffs, who are generally elected officials, can use the program to meet political goals and respond to community pressure to “crack down” on immigration. In southeastern states, where the “universal” model is prevalent, the immigrant population grew rapidly in the 1990s and 2000s, causing backlash and putting pressure on elected officials to reduce unauthorized immigration.<sup>24</sup>
- Studies from the University of North Carolina at Chapel Hill found that 287(g) agreements in the state were primarily used to target offenders who posed no threat to public safety or individuals with no criminal record.<sup>25</sup> In that state, a large share of individuals arrested by 287(g) officers in Gaston, Mecklenburg, and Alamance counties were arrested for traffic violations, such as driving without a license and speeding.<sup>26</sup> Overall, 33 percent of individuals detained through the 287(g) program were charged with traffic violations; in Gaston County the figure rose to 57 percent.<sup>27</sup>
- The availability of resources and detention space also determines how the 287(g) program is utilized. A large detention capacity allows for more resources to be spent on individuals who are not high-priority criminals.<sup>28</sup>

### 287(g) Agreements Have Resulted in Widespread Racial Profiling

- An [investigation](#) by the Department of Justice concluded that the Maricopa County Sheriff’s Office in Arizona engaged in a pattern and practice of constitutional violations, including racial profiling of Latinos, after entering a 287(g) agreement. For example, the investigation found that deputies of Sheriff Joe Arpaio routinely conducted “sweeps” in Latino neighborhoods, and that Latino drivers in certain parts of Maricopa County were up to nine times more likely to be stopped than non-Latino drivers.<sup>29</sup>
- A separate Justice Department [investigation](#) concluded that the Alamance County Sheriff’s Office in North Carolina engaged in a pattern and practice of constitutional violations by unlawfully detaining and arresting Latinos. The investigation found that the sheriff’s deputies set up checkpoints at entrances to Latino neighborhoods; that Latino drivers were up to ten times more likely to be stopped than non-Latino drivers;

and that Latino drivers were often arrested for traffic violations for which non-Latino drivers received only citations.<sup>30</sup>

## 287(g) Agreements Can Be Expensive for Localities

- In February 2017, Sheriff Ed Gonzalez announced that Harris County, Texas, would terminate its 287(g) agreement, saying that the decision was a resource allocation issue. The sheriff said he would put the \$675,000 the county spent on the program toward improving clearance rates of major crimes and other priorities.<sup>31</sup>
- Waukesha County, Wisconsin, Sheriff Eric Severson testified at a February 2017 Senate hearing that he did not have the resources for 287(g). When Senator Claire McCaskill asked him whether he planned to apply for the 287(g) program, Sheriff Severson replied:

*At this time, I don't have the resources to participate with that nor is our community structure such that I don't know if that is necessarily a high priority for us right now and again I am fortunate enough to report to you today that the instances of criminal activity of illegally present immigrants beyond their status is relatively uncommon in my County and generally in Wisconsin, it is less common than some other communities.<sup>32</sup>*

- A report by the [University of North Carolina](#) at Chapel Hill found that the first year of operating the 287(g) program in Mecklenburg County, North Carolina, cost a total of \$5.3 million. Meanwhile, the first full year of operation in the state's Alamance County cost \$4.8 million.<sup>33</sup>
- A study by the [Brookings Institution](#) found that Prince William County, Virginia, had to raise property taxes and take money from its "rainy day" fund to implement its 287(g) program. The report found the program cost \$6.4 million in its first year and would cost \$26 million over five years. To cut costs, the county slashed \$3.1 million from its budget—money that was intended to buy video cameras for police cars to protect against allegations of racial profiling.<sup>34</sup>
- Before DHS revoked its 287(g) agreement with Maricopa County, Arizona, Sheriff Joe Arpaio's office created a \$1.3 million deficit in just three months, much of it due to overtime.<sup>35</sup>

## ICE Does Not Provide Sufficient Guidance, Direction, or Supervision

- A March 2010 [report](#) by the DHS Office of Inspector General (OIG) found that ICE and its local law enforcement partners had not complied with the terms of their 287(g) agreements; that the standards by which deputized officers were evaluated contradicted the stated objectives of the 287(g) program; that the program was poorly supervised by ICE; and that additional oversight was necessary.<sup>36</sup>
- A January 2009 Government Accountability Office (GAO) [report](#) found that ICE had failed to articulate the 287(g) program's objectives and had not consistently communicated to local partners how to use their 287(g) authority. While ICE officials stated that the purpose of the program is to address serious crime, such

as narcotics smuggling, ICE has never documented this objective. As a result, local police have used their 287(g) authority to detain and deport immigrants for traffic violations and other minor crimes.<sup>37</sup>

- According to the DHS OIG, ICE did not plan adequately before approving new 287(g) participants. In September 2018, the OIG [reported](#) that law enforcement trainings were inefficient and that ICE was not monitoring officers through the completion of the required training. Although the participating local enforcement agencies were expected to function under ICE supervision, the program managers were stretched thin while assigned to oversee several jurisdictions spread over thousands of miles. This poor planning hindered ICE's ability to adequately manage, oversee, and educate participating agencies in enforcing immigration laws correctly.<sup>38</sup>

### 287(g) Agreements Threaten Community Safety and Hinder Community Policing

- The [Police Executive Research Forum](#) interviewed Maricopa County law enforcement executives who stated that by enforcing federal immigration law, the sheriff's office damaged the relationship between law enforcement and the Latino community.<sup>39</sup>
- A [study](#) by the University of North Carolina School of Law and the American Civil Liberties Union of North Carolina (ACLU-NC) found that "287(g) encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of local residents and the isolation of an increasingly marginalized community."<sup>40</sup>
- The [International Association of Chiefs of Police](#) (IACP), the nation's premier law enforcement association, has stated:

*Local police agencies depend on the cooperation of immigrants, legal and [otherwise], in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.*<sup>41</sup>

- The [Major Cities Chiefs Association](#) (MCCA), a group of police chiefs from the 64 largest police departments in the United States and Canada, found that "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."<sup>42</sup>

## Endnotes

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5. *Ibid.*, 14-15.
6. U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.”
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8. U.S. Department of Homeland Security, Office of the Inspector General, *The Performance of 287(g) Agreements*, OIG-10-63 (Washington, DC, 2010), 63, [https://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-63\\_Mar10.pdf](https://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf).
9. U.S. Immigration and Customs Enforcement, “Updated Facts on ICE’s 287(g) Program,” last accessed July 1, 2020, <https://www.ice.gov/factsheets/287g-reform>.
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11. U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.” See Antonio Olivo, “Large Virginia County Ends Immigration Enforcement Agreement,” *Washington Post*, June 18, 2020, [https://www.washingtonpost.com/local/virginia-politics/prince-william-county-ends-controversial-immigration-enforcement-agreement/2020/06/17/5331c34c-b0ce-11ea-856d-5054296735e5\\_story.html](https://www.washingtonpost.com/local/virginia-politics/prince-william-county-ends-controversial-immigration-enforcement-agreement/2020/06/17/5331c34c-b0ce-11ea-856d-5054296735e5_story.html) detailing the Prince William County’s decision to forgo renewal of an MOA that was set to expire on June 30, 2020.
12. *Ibid.* See also U.S. Immigration and Customs Enforcement, “Memorandum of Agreement,” § VII: Training of Personnel, last accessed July 1, 2020, [https://www.ice.gov/doclib/detention-reform/pdf/287g\\_moa.pdf](https://www.ice.gov/doclib/detention-reform/pdf/287g_moa.pdf).
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14. U.S. Immigration and Customs Enforcement, “Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.”
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17. *Ibid.*
18. National Conference of State Legislatures, “The State Criminal Alien Assistance Program (SCAAP),” April 13, 2013, <http://www.ncsl.org/research/immigration/state-criminal-alien-assistance-program.aspx>.
19. DHS OIG, *The Performance of 287(g) Agreements*, 53.
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22. Randy Capps, et al., *Delegation and Divergence*, 18.
23. *Ibid.*, 5, 10, 23-25.
24. *Ibid.*, 23-25.
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28. Randy Capps, et al., *Delegation and Divergence*, 30.
29. Letter from Thomas E. Perez, Asst. U.S. Attorney General, to Bill Montgomery, Maricopa County Attorney, Re: United States' Investigation of the Maricopa County Sheriff's Office, December 15, 2011, [http://www.justice.gov/crt/about/spl/documents/mcso\\_findletter\\_12-15-11.pdf](http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf).
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