A Path to Public Safety:

Background on § 287(g) Agreements

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Introduction

Congress created the 287(g) program in 1996 to increase federal immigration enforcement capacity. Voluntary agreements under Section 287(g) of the Immigration and Nationality Act (INA) enlist and authorize state and local law enforcement personnel to carry out immigration enforcement actions.

Under 287(g), a local jurisdiction may enter into a written agreement with the Department of Homeland Security (DHS) and then deputize select officers to investigate, arrest and detain noncitizens for violations of immigration law. Participating jurisdictions must send officers deputized under the program to a four-week Immigration Authority Delegation Program training that takes place in Charleston, South Carolina, and a one-week refresher training program that they must complete every two years.

The 287(g) program initially operated with three different models: the "task force model," the "jail model" and a hybrid model that combines elements of both. The jail model involves stationing local law enforcement officers in local detention centers and deputizing them to interrogate arrested and detained individuals who they believe may be noncitizens. The task force model, which the Obama administration discontinued (along with the hybrid model) in 2012, empowered local law enforcement officers to question and arrest individuals they encountered in the course of their routine enforcement activities and who they had reason to believe were in violation of federal immigration law.

In recent guidance, the Trump administration has called for the expansion of 287(g) programs, and some new jurisdictions have applied. In 2011, at its peak, the 287(g) program had as many as 70 active agreements with local law enforcement agencies. In July 2017, ICE reported that it had active 287(g) agreements with 59 law enforcement agencies in 18 states, up from 37 agreements in March 2017. All existing agreements are under the jail model," but the Trump administration is believed to be considering a return to the task force and hybrid models, in addition to seeking additional jail model agreements.

Benefits of the 287(g) Program

Supporters of the 287(g) program characterize it as a useful force multiplier that helps catch dangerous criminals and provides intensive, specialized training to designated local law enforcement personnel working under the program. According to Immigration and Customs Enforcement (ICE), "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."

Data show that over a nearly 10-year period between 2006 and 2015, more than 400,000 deportable persons were identified through the efforts of local law enforcement officials acting under the authority of 287(g) agreements.

Proponents tout the efficiency of the program, noting that it allows for the seamless transfer of deportable individuals held in criminal detention to ICE for removal proceedings. While only a handful of law enforcement agencies have 287(g) agreements, participating localities have advocated that the program increases community safety, allowing for the processing and deportation of detainees who have committed serious or violent crimes.

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Concerns with the 287(g) Program

Some critics have noted that the 287(g) program sweeps up mostly low-level offenders, as opposed to serious criminals. While impressive in terms of sheer numbers, studies have shown that more than half of the noncitizens identified via the 287(g) program were arrested for simple traffic violations or low-level misdemeanors — not the serious criminals the program purports to prioritize. A 2010 report by the DHS Office of the Inspector General found that in a sampling of 280 individuals at four program sites, only 9 percent fell within the serious-offender "Priority I" category, while 47 percent were in the lowest-priority category of those with low-level misdemeanors and traffic violations.

While ICE provides training for deputized law enforcement officers, state and local governments are responsible for covering the trainees' salaries, per diems, overtime, travel and administrative costs during the four-week training.

In addition, some jurisdictions found that the program's outcomes do not justify the costs of participation, both in terms of tax dollars and manpower. While ICE provides training for deputized law enforcement officers, state and local governments are responsible for covering the trainees' salaries, per diems, overtime, travel and administrative costs during the four-week training. In addition, jurisdictions are responsible for much of the increased cost of detention, costs that the federal government only partially reimburses through the State Criminal Alien Assistance Program (SCAAP). One county in Virginia reportedly has spent more than $6 million annually on the program for personnel and detention costs.

Citing salary costs of more than $675,000 for its participation in the 287(g) program, the Harris County (Texas) Sheriff's Office terminated its 287(g) agreement with ICE in February 2017. These cited costs were in addition to detention costs related to participation in the program.

Finally, critics of the 287(g) program have expressed concern that it can undermine public trust between immigrant communities and law enforcement. Others have raised questions about the adequacy of the training and oversight of the program. Such shortcomings have led to instances of discriminatory enforcement and Fourth Amendment violations.