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The 287(g) Program: State and Local Immigration Enforcement

Section 287(g) of the Immigration and Nationality Act (INA), codified in 8 U.S.C. §1357(g), permits the delegation of certain immigration enforcement functions to state and local law enforcement agencies. Agreements entered pursuant to INA §287(g) (commonly referred to as *§287(g) agreements*) enable specially trained state or local officers to perform specific functions relating to the investigation, apprehension, or detention of noncitizens during a predetermined time frame and under federal oversight by the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE).

Although §287(g) agreements were authorized as part of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (P.L. 104-208, Division C, IIRIRA), the first §287(g) agreement was implemented in 2002 after the law was given new urgency following the terrorist attacks on September 11, 2001. The number of state and local law enforcement agencies (LEAs) with §287(g) agreements increased to 72 in 2011 before declining to 35 by the end of the Obama Administration. In 2017, President Trump issued Executive Orders 13767 and 13768 directing executive agencies to encourage maximum participation of LEAs in the 287(g) program. During the Trump Administration, from January 2017 until September 2020, the number of LEAs with §287(g) agreements increased by more than 300%, from 35 to 150.

Memorandum of Agreement

To participate in the program, LEAs must contact their local ICE Enforcement and Removals Office (ERO) and apply. They are to be evaluated on their available resources, their record on civil rights and liberties, and their capacity to be a force multiplier (e.g., ICE reviews data to see the likelihood of the LEA encountering potentially removable individuals). They must sign a Memorandum of Agreement (MOA) that defines the scope and terms of the partnership, including training requirements, supervision requirements, delegation of authority, and duration of the agreement. The agreement can be terminated by either party at any time. After it expires, there is no legal obligation to renew it.

While each MOA is individually negotiated between ICE and the LEA, there has been an effort to standardize and improve these agreements. In 2009, ICE created a new MOA template and renegotiated all existing MOAs. In 2013 and 2016, the template was revised to increase oversight and better align with current ICE polices.

§287(g) Models

Currently there are two types or models of §287(g) agreements for which a locality can apply: the Jail Enforcement Model (JEM) and the Warrant Service Officer (WSO) model. These models have different resource and oversight requirements that help determine which model is the best fit for a specific locality.

The JEM, implemented in 2005, allows certain trained and authorized state and local law enforcement officers to perform specific immigration enforcement functions, as outlined in their MOA. These LEA-affiliated Designated Immigration Officers (DIOs) must complete a four-week training program in Charleston, SC, and a one-week refresher training every two years. After the four-week training, they are authorized to identify noncitizens already arrested and booked into the LEA facility who have criminal convictions or pending criminal charges. They are to identify these removable noncitizens by interviewing them and screening their biographic information against DHS databases. They can then issue detainers, serve warrants, and prepare documents for removal proceedings.

The WSO model, first implemented in 2019, is narrower in scope than the JEM. WSOs are limited to executing administrative warrants for civil immigration violations to designated noncitizens incarcerated in their LEA facility who have already been identified by ICE as being potentially removable. They do not interview individuals regarding their citizenship and removability. They undergo one day of training, either at a local site or online. The WSO program is suitable for jurisdictions that lack the budget or personnel needed to participate in the JEM program or whose ability to cooperate with ICE is limited by state or local policies.

Each model provides different benefits to ICE. JEM participants are seen as a force multiplier that taps into LEA personnel to increase ICE's ability to identify and process removable noncitizens. WSO participants reduce the time ICE deportation officers spend traveling to serve warrants by giving that authority to local officers.

There are two previously used but now discontinued models for the 287(g) program: the Task Force Model and the Hybrid Model. The Task Force Model allowed DIOs who encountered suspected noncitizens in the course of their daily activities to question and arrest individuals they believe violated immigration law. DIOs were able to issue ICE detainers, arrest warrants, and search warrants, as well as inquire into individuals' immigration status. The Hybrid Model combined the JEM and Task Force Models. The Obama Administration announced that it would discontinue the Task Force Model and, thus, the Hybrid Model; the last of these agreements expired on December 31, 2012.

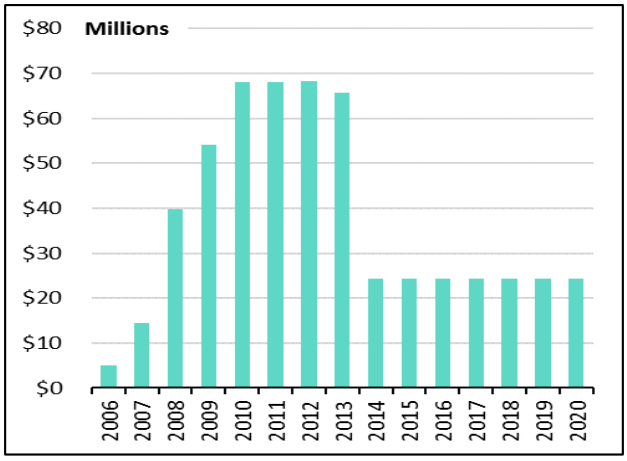
Funding

The 287(g) program is jointly funded by the federal government and participating state and local governments. Federal funds cover the cost of training LEA officers, IT infrastructure, program management, and oversight. **Figure**

1 shows federal funding appropriated for the 287(g) program, which decreased in FY2014 after the discontinuation of the Task Force and Hybrid Models in FY2013.

State and local governments pay for other expenses, such as officer salaries and overtime utilized during training and/or while performing duties under an MOA. Localities also pay for administrative supplies, security equipment, and training-related expenses. Some LEA expenses related to detention can possibly be reimbursed by the federal government through the State Criminal Alien Assistance Program (SCAAP). Some LEAs consider the 287(g) program to be too costly and do not participate, do not renew their agreements, or have terminated them early.

Figure 1. Appropriations for the 287(g) Program



Source: Department of Homeland Security, *287(g) End-of-Year Report*, June 24, 2020.

Notes: FY2006 was the first year this program received federal appropriations.

Agency Oversight

Oversight varies depending on the program model. The JEM model has three oversight mechanisms administered by ICE: field supervisors, biennial inspections, and complaint resolution. JEM participants are overseen by an ICE 287(g) program field supervisor that answers DIOs' questions and addresses related issues. Field supervisors monitor MOA compliance by conducting site visits, meeting with LEA management to discuss program operations, and tracking DIOs' training completion. They also review and sign certain documents, such as detainers, warrants of arrest, and warrants of removal. ICE's 287(g) Inspections Unit, within the Office of Professional Responsibility (OPR), is to conduct biennial inspections of JEM agency participants to ensure compliance with MOAs and ICE policies, and assess the field office's oversight and support of the LEA. Finally, ICE monitors participating LEAs through a complaint reporting and resolution process.

ICE can suspend a §287(g) agreement at any time due to the LEA's noncompliance with the MOA. ICE can also suspend or revoke the 287(g) authorization of an individual officer due to misconduct (whether or not it occurred during 287(g)-related duties), complaints against them, or not completing training requirements.

ICE has no formal oversight mechanism for WSO participants, including no policies for ICE field officers' supervision, no inspections, and no procedures to ensure MOA compliance. ICE field officers' primary form of WSO oversight is ensuring that warrants are signed.

Program Expansion

ICE sets an annual target number of LEAs to join the 287(g) program but does not strategically recruit based on the location or type of LEA. As the program is voluntary, the LEA decides whether to apply to the JEM or WSO model; ICE does not assess the number and mix of JEM and WSO participants that would be most helpful to them.

A 2021 GAO report concluded that ICE should recruit more strategically to better leverage its limited resources and maximize the program's benefits. A 2018 DHS Office of Inspector General report found that ICE approved new applicants without preparing for the increased need for program management staff, IT infrastructure installation, and monitoring of DIO training completion. This resulted in an increase in violations of MOAs and ICE policy, as reported in OPR inspections.

Racial Profiling and Community Policing

Past Department of Justice investigations determined that certain localities that had §287(g) agreements with ICE engaged in racial profiling, including conducting "sweeps" in Latino neighborhoods and unlawfully detaining and arresting Latinos. Those §287(g) agreements were subsequently terminated, which is in line with ICE's policy that "if any proof of racial profiling is uncovered, that specific officer or department will have their authority and/or agreement rescinded."

The Police Executive Research Forum, as well as the North Carolina School of Law in conjunction with the American Civil Liberties Union of North Carolina, have also conducted studies of the 287(g) program. They concluded that the program may threaten state and local law enforcement's relationship with immigrant communities. The Major Cities Chiefs Association 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." There may be a connection between this program and the rise in "sanctuary" jurisdictions (for more information, see CRS In Focus IF11438, *"Sanctuary" Jurisdictions: Policy Overview*).

Issues for Congress

The 287(g) program garners interest from supporters who want to sustain or expand the program and opponents who want to curtail or abolish it. Before the rapid growth of the §287(g) agreements starting in 2017, legislative proposals generally sought to bolster the program; however, given its expansion and the current concerns about law enforcement-community relations, some lawmakers have shown interest in bounding or even abolishing the program.

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