

**The Bill Blackwood  
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**Delegation of Immigration Authority, Section 287 (g)  
Immigration and Nationality Act**

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**A Leadership White Paper  
Submitted in Partial Fulfillment  
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## **ABSTRACT**

In order to combat crime in the most effective and efficient way, law enforcement must look at all criminal types in local jurisdictions. Criminal aliens pose a larger threat today in local communities not only in the crimes they commit but also in the cost of adjudication. Because of this, local law enforcement agencies should cooperate with ICE under Section 287 (g). Public safety is every agency's responsibility and local police must work with federal agencies to keep all citizens safe on a local and national level. Local agencies form task forces that involve several local departments as well as federal partners. This creates a force multiplier where several different departments are combining to form a force multiplier for the mission they are trying to accomplish. Although there could be some financial burden initially to the local agency, the cost to society both financially and criminally would outweigh any initial outlay by the local agency. Research has also shown that there are no major negative impacts on local communities because of this cooperation between local police and the federal immigration agencies (Center for Immigration Studies, 2013). By allowing the expansion of the 287 (g) program, this will assist both federal and local agencies in combatting the criminal and financial issues of the criminal alien.

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## INTRODUCTION

During his presidential campaigns in 2016, U.S president Donald Trump focused on empowering state and local law enforcement bodies to enforce immigration laws (Martin, 2016). According to President Trump, the local law enforcement agencies understood where violators of the immigration laws resided and as such, they would be more than glad to arrest them. However, the sentiments given by President Trump does not address for a long period, there has been a state of reluctance in regard to cooperation between these agencies and the federal immigration enforcement bodies. This long-lasting local stance is a reflection of the counterproductive nature of inefficient and poorly prioritized policies, as well as an indication of what needs to be implemented for sustainable and effective immigration law enforcement.

The Immigration and Customs Enforcement (ICE), an investigative body under the Department of Homeland Security (DHS), has been mandated with the duty to enforce the national immigration laws (U.S Immigration and Customs Enforcement, 2018). In its efforts to execute its mandate, ICE partners with other law enforcement agencies on national, state and local levels. The partnerships between ICE and other law enforcement agencies has largely been attributed to the 287(g) program (2017); a partnership initiative from ICE that allows them to enter into partnerships with state and local law enforcement entities under a drafted and signed Memorandum of Agreement (MOA). Through these MOAs, local and state agencies are allocated a certain degree of authority to enforce immigration laws within their jurisdictions (U.S. Immigration, 2018).

Since the 9/11 terror attacks on the United States, a significant amount of attention has been given to U.S. Immigration Policy (Rosenblum, 2011). Among other things, the initial response to the 9/11 terror attacks included a reorganization of certain federal departments and agencies. Among these was the creation of the Department of Homeland Security (DHS) under the provisions of the Homeland Security Act of 2002 (Rosenblum, 2011). In this move, some 22 federal agencies were brought together under the DHS, including the Immigration and Naturalization Service (INS) which was later divided into 3 parts. The Immigration and Customs Enforcement (ICE) emerged out of these changes within INS (Rosenblum, 2011). The post 9/11 response also expanded enforcement powers within the U.S. aimed at intercepting and obstructing terrorism under the now famous Patriot Act (Rosenblum, 2011). Beyond these initial changes, efforts towards any real comprehensive immigration reform, which actually appeared hopeful pre 9/11, seemed to be paralyzed as lawmakers within and between the major political parties couldn't reach consensus on the important issues of reformation (Rosenblum, 2011).

While ICE is currently running a series of enforcement partnerships with several local law enforcement entities, it is only 287(g) programs that allows the partnering agencies to directly enforce different immigration laws (2017). However, there have been varying opinions on how the program is implemented, the outcomes of the enforcements, its impact on the community, and its cost implications on American taxpayers. As such, this paper is concerned with establishing whether or not the local law enforcement bodies should establish agreements with ICE, with the goal of enforcing federal immigration laws. In doing so, local law enforcement agencies should

enter a Memorandum Of Agreement under 287(g) to enforce the Federal Law, Section 287(g) (2017).

Criminal aliens, non-citizens who commit crimes, pose a problem in the local communities both in the crimes they commit and the cost of adjudication. According to a report by the Federation for American Immigration Reform (FAIR) (2016), non-citizens who commit crimes represent a growing threat to national security and public safety. As of 2016 over 350,000 criminal aliens were incarcerated in our federal, state and local prisons. About 25% of the federal prison population and about 16% of the state and local prison population were comprised of criminal aliens (Federation for American Immigration Reform [FAIR], 2016). This percentage is higher than the 12.9% of the total population of foreign born residents (FAIR, 2016).

Many of the criminal aliens arrested and identified by the federal government as being deportable were released back into the local communities. A Congressional Research Service report that came out in August 2012 showed that between October 2008 and July 2011, 159,000 such criminal aliens were released back onto the streets. (Munro, 2012). In the same report, criminal aliens at the federal level alone represented an estimated 1.5 to 1.6 billion-dollar cost per year to the American taxpayer. The bill for administering justice in the federal, state and local governments combined came to 16.5 billion (Munro, 2012). While about one-fifth of the states shoulder a disproportionate share of criminal alien prisoners and associated costs the national average comes to about 5.4 percent (Munro, 2012). As such, our state and local law enforcement not only have an essential role, but also a stake in helping make sure that immigration laws are being efficiently and effectively enforced.

Since America attained its independence, the country's immigration laws have played a vital role in its history, and the country has long remained to possess one of the most dynamic and transparent immigration policies in the globe. (Center for Immigration Studies, 2013). Before the start of drastic transportation and communication technologies advancements, the country focused on encouraging open immigration with the aim of settling its massive bare land. After the end of the Civil War, a large number of states implemented immigration laws, and ultimately, in 1875, the United States Supreme Court mandated the federal government with the duty of enforcing and regulating immigration laws. In 1891, the Immigration Service was introduced to regulate immigration (Center for Immigration Studies, 2013).

During the early 1900's, a period known as the "Great Wave" experienced approximately 24 million immigrants entering into the United States. However, after the start of World War I, there was a significant decline in the number of immigrants from Europe. After World War I came to an end, the number of immigrants started to rise again, therefore, this regulated the United States Congress to introduce new immigration policies. Therefore, in 1921, the national-origins quota system was passed and later revised in the year 1924. With this new policy, immigration into the United States was limited to issuing all nationalities a quota based on their overall representation in numbers from the previous census. In 1921, Congress incepted the U.S Border Patrol and they operated under the Immigration Service (Center for Immigration Studies, 2013).

In the following 20 years, the number of net immigration in the United States had dropped below zero especially during the Depression. World War II made immigration lower together with the national-origin policy. In 1952, the United States Congress amassed all the previous immigration policies under the umbrella of the Immigration and Nationality Act of 1952. However, due to the Bracero Program which was signed between Mexico and America, the Agricultural sector in the United States continued to import labor, immigrants, from Mexico. Therefore, in 1965, Congress introduced the preference system, a new policy which was to replace the national origin system with the aim of recruiting skilled immigrants into the country while at the same time uniting the immigrant families. However, the new system still enforced limitations on the number of immigrant visas available annually, despite that Congress continued to admit refugees based on special legislation. The Refugee Act of 1980 changed this since it introduced a formal system that regulated the admission of refugees. In the following year, Congress enacted the Immigration Reform and Control Act which encompassed two main areas; enforcement and amnesty (Center for Immigration Studies, 2013).

In 1990, the number of available visas increased by 40%, accounting for an increase in immigration to 700,000, after the modification and expansion of the 1965 act. Due to this act, family reunification remained as the main entry path for immigrants, and as admission of immigrants from countries that were not well represented within the immigrant population. In order to implement this, the immigration service introduced the lottery system for countries that fell "under representation" (Center for Immigration Studies, 2013).



Additionally, in 1996, the United States Congress passed the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), this enhanced border controls by allowing the recruitment of more agents to work on border patrol, immigration and naturalization services. Through this Act, law enforcement bodies from the states and other local authorities were allowed to enforce the immigration laws (Center for Immigration Studies, 2013).

The 287(g) program is an integral part of the ICE's ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) initiative that mandates the law enforcement agencies from states and other localities to deal with particular issues in their jurisdiction (U.S Immigration and Customs Enforcement, 2018).

ACCESS was established by ICE as a way of incorporating massive interests from these law enforcement agencies who made requests for partnership with ICE. ("The 287(g) program: An overview," 2017). Section 287(g) program (2017) is aimed at training officers from these agencies to enforce immigration laws. Section 287(g) (2017) was developed to enhance the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and this gave the Director of ICE the authority to make written agreements with local law enforcement units, allowing the officers to enforce immigration laws with relevant functions and training through agents from ICE.

These agreements or Memorandum of Agreement (MOA) essentially deputize a limited number of state and local law enforcement officers as federal immigration agents. The MOAs are negotiable between the local authorities and the DHS under the supervision of ICE. The DHS is not obligated to renew the MOA when it expires and either party may terminate the agreement at any time. Originally the Task Force Model,

Jail Enforcement Model and Hybrid models made up the three types of agreements that existed under 287(g). The Task Force and Hybrid models were later discontinued as the 2008 Secure Communities began to grow. Going forward Jail Enforcement Model officers deputized under the MOA may interrogate suspected non-citizens who have been arrested and place detainers on those subject to removal (“The 287(g) program: An overview,” 2017).

Deputized officers must be U.S. citizens with at least one year of law enforcement experience. The deputized officer must also complete a four week Immigration Authority Delegation program in Charleston, South Carolina at the Federal Law Enforcement Training Center (FLETC). A refresher course is required every 2 years (“The 287(g) program: An overview,” 2017).

State and local governments have to pay the majority of the cost associated with the 287(g) program, including travel, overtime, and administrative supplies. ICE covers the cost of the training and may cover the purchase of software, hardware, and technology. Agencies are chosen for the program through an Internal Advisory Committee with recommendations from the ICE field office (“The 287(g) program: An overview,” 2017).

The MOAs between ICE and these local enforcement entities highlight the limitations as well as scope of delegated officers. Similarly, the MOA stipulates the structure of supervision for the delegated immigration officers. As such, ICE has the supervisory authority over all the designated officers whenever they perform their duties. It should be noted that, the MOA is only valid after it has been signed and approved by the Executive Associate Director for Enforcement and Removal

Operations, state governors, as well as senior political personnel or the person in charge of the enforcement agency. The federal laws in United States encourage the partnership and collaboration between federal law enforcement agencies and law enforcement agencies from the states in enforcing the immigration laws. In fact, the standard oath of office for these state and local police officers includes a pledge to protect and defend the Constitution of the United States and the constitutions of their respective states (“The 287(g) program: An overview,” 2017).

As has already been mentioned, Section 287(g) of the Immigration and Nationality Act (INA), the Secretary of the U.S. Department of Homeland Security has been authorized to establish MOAs with law enforcement agencies (2017). Out of these written agreements, the local law enforcement entities are allowed to receive training and functions that will allow them to enforce the immigration laws. The law, 287(g), was established with the aim of ensuring that both state and local officers work together while enforcing the federal immigration laws. Contrary to the popular misconception, the 8 U.S.C. § 1357(g) does not stipulate any condition for a signed MOA for these agencies to execute the law enforcement in matters related to immigration status (“The 287(g) program: An overview,” 2017).

Effectively, state and local law enforcement do not have to have permission to inquire with the federal government about the immigration status of any individual. Another example of the federal law encouraging cooperation between state and local law enforcement is found in 8 U.S.C. § 1373 which prohibits policies, or the creation thereof, from hindering or obstructing the requesting, maintaining, sending, or exchanging of information about the citizenship or immigration status (legal or illegal) of

any person. Additionally, apart from the 287(g) program, over the years, the federal government has established such partnerships between state and local authorities with itself included in other areas related to immigration. Such areas include the Criminal Alien program, Border and Enforcement Security Task Force, customs designation authority, Operation Community Shield among others (“The 287(g) program: An overview,” 2017).

The Supreme Court of the United States (SCOTUS) has also weighed in on the issue in *Arizona v U.S.* 2012 by upholding state legislation requiring officers, state and local, who have legally stopped an individual and has a reasonable suspicion that the individual is illegally in the country to make a reasonable attempt to determine the immigration status of that person (“The 287(g) program: An overview,” 2017).

## **POSITION**

America is one of the main targets for attacks from terrorist groups. Even with an effective border control system, there is still a need for stable and effective interior law enforcement system that will supplement the efforts of border security (FAIR, 2016). Without the support of the law enforcement units from the states, the efforts by the federal immigrations agents may easily be overstretched. As such, it is essential to work with local agencies since they may be vital in providing relevant intelligence for detection and removal of illegal immigrants in the country.

One famous and tragic example of a need to cooperate is the murder of Kate Steinle on Pier 14 in San Francisco in July of 2015. Kate’s shooting death was at the hands of an illegal alien who had been deported on 5 prior occasions, and who has 7 previous criminal convictions. Shortly before the murder, the suspect had been

incarcerated in the county jail on other charges and was under a detainer request by ICE. The Sheriff's Office failed to honor the detainer and the suspect was released back into the community. The Kate Steinle story is only one of many involving illegal aliens that could have been prevented with effective cooperation between ICE and local law enforcement (FAIR, 2016).

On the national security front, the 9/11 terror attacks were executed by immigration violators, and surprisingly, among the hijackers, two had been found to have violated traffic laws for speeding before the attack and had come into contact with local law enforcement officers (FAIR, 2016). In the event the local law enforcement officers had worked with the federal agencies regarding the attackers, the 9/11 attack may have been prevented all together. In the past, a majority of the terror attacks carried out in the United States involved more than one immigration violators. Therefore, the role of enforcing immigration laws cannot be left to a single agency or influenced by the foreign ties (FAIR, 2016).

Since taking office in 2017, President Trump issued an executive order directing the expansion of the 287(g) program. John Kelly, the former Secretary of Homeland Security described the program as a "highly successful force multiplier" (Pfeiffer, 2017). Since the executive order was issued, ICE's 287(g) program has increased in size significantly from 32 cooperating agencies in 16 states to 60 cooperating agencies in 18 states (Pfeiffer, 2017).

Following a period of idle use during the Obama administration, the ICE immigration enforcement programs are getting a kick start under the new executive

order. Texas makes up the largest portion of the new partnerships with ICE. Texas had eighteen departments join the program with 5 of those entering into 287(g) MOA's.

The contribution of law enforcement units through their partnership with the ICE law enforcement units can bring about a significant difference in enforcement of immigration laws. (Pfeiffer, 2017). According to Banks, Hendrix, Hickman, & Kyckelhaha, (2016), in a report to Bureau of Justice Statistics, sworn police officers in the United States totaled 750,340. The Bureau of Justice Statistics has not released a more recent report, however the National Law Enforcement Officers Memorial Fund Website (<http://nleomf.com>) estimates the number to be closer to 900,000. Whether the number is 750,000 or 900,000 local law enforcement officers countrywide, their inclusion in enforcing immigration laws is a representation of a force multiplier, which will in turn be a successful operation.

In 2015, it was estimated that ICE had approximately 20,000 officers and out of this number, only a small section of 6,000 officers were actively and directly engaged in enforcing the immigration laws in the country. (FAIR, 2016). Based on these estimations, the number of illegal immigrants in the country has outnumbered the ICE law enforcement officers by 2000 to 1. Therefore, a small portion of the 750,000+ law enforcement officers working in partnership with ICE immigration officials will allow them to work effectively as per the intentions of the Congress. In the absence of these partnerships, the ICE officers will have no significant impact in dealing with illegal immigrant population.

## COUNTER ARGUMENTS

While local jurisdictions receive financial assistance to facilitate the training of officers to be involved in enforcing immigration laws, the financial burden will remain massive to them. ICE is directly involved in funding the training of all delegated officers and in other occasions, the law enforcement entities receive financial assistance for detaining on behalf of ICE (“The 287(g) program: An overview,” 2017). Nonetheless, the agencies still take care of the majority of the costs such as salaries for the officers, transport and accommodation during program training, as well as overtime Solomon, Jawetz, & Malik, 2017). As such, critiques have argued the resources allocated to them should not be used in funding programs assigned to the federal agencies. Consequently, such a financial burden may reduce the resources allocated to the state and local agencies, subsequently affecting their efficiency in carrying out their responsibilities (CIS, 2013).

However, the cost of the partnership between these agencies and ICE cannot be compared to the financial implication illegal aliens have on American taxpayers. According to a report by Federation for American Immigration Reform (2017), it costs the American taxpayer approximately \$134.9 billion to take care of the cost caused by illegal immigrants. The report estimates that there are approximately 12.5 million illegal immigrants in the country plus their 4.2 million children (FAIR, 2017). In total, these figures translate to over \$8,000 for each illegal alien member of the family (FAIR, 2017).

In addition, the use of these agencies in enforcing immigration laws remains essential in giving necessary assistance to the federal government in enforcing immigration laws in the vast parts of the country. Moreover, their participation will

translate to a massive increase in the number of personnel and expertise required in enforcing the laws. In addition to this, the effort to curb illegal immigration through cooperating with Federal Immigration authorities is beneficial to the local agencies in keeping their communities safe.

A report by the Center for Immigration Studies (2013) finds that American Sheriffs' believe that cooperating with ICE has resulted in a significant reduction in cost to local criminal justice systems. Sheriffs who engage in the ICE programs are actually reporting a reduction in the average daily jail population because criminal aliens are being removed instead of released. Additionally, the National Sheriff's Association (NSA) took an official stand on the issue and support an expansion (Center for Immigration Studies, 2013) of the program allowing them to further assist in immigration enforcement. The 287(g) was among the ICE programs supported by the NSA (Center for Immigration Studies [CIS], 2013).

One argument against the partnership is that it will have a negative impact on the existing relationship between the local agencies and the various communities in their jurisdiction (CIS, 2013). For instance, potential victims or witnesses of immigration crimes may be hesitant in making reports of such violations due to the fear of how they may be treated by the immigration officers. This ties into the concern over the success of local community oriented policing initiatives which require cooperation between police and citizens to reduce crime and disorder. The situation may further deteriorate considering that the trust and relationship between local officers and immigrant population is tenuous in a majority of localities and as such, such a partnership may make things worse (CIS, 2013). However, a report by (CIS, 2013,) found, "no evidence



exists of a chilling effect from local police cooperation with ICE in federal or local government data or in independent academic research” (para. 14).

Data from the Bureau of Justice Statistics found no meaningful change in the reporting of crime among ethnic groups. In fact, Hispanics overall and specifically Hispanic females were more likely to report a crime. White females and non-Hispanic males were less likely to report a violent crime than Hispanic females. A similar study by the University of Virginia and the Police Executives Research Forum showed no decrease in crime reporting among Hispanics after police instituted a policy of screening offenders for immigration status and referring those in the country illegally to ICE for removal (CIS, 2013)

Further, an academic survey of immigrants on reporting crime showed that fear of deportation was not among the common reasons for not reporting. The language barriers topped the list at 47% followed by cultural differences at 22%, and finally at lack of understanding in the U.S. criminal justice system at 15% (CIS 2013). A 2009 Calls for Service study in Collier, Florida showed that crime reporting in immigrant communities were not affected after the agency entered into a 287(g) MOA with ICE that resulted in a significant increase in criminal alien removals. Data from the Boston, Massachusetts Police Department and Los Angeles, California Police Department showed similar results (CIS, 2013).

## **RECOMMENDATION**

The federal laws support, even encourages, cooperation between federal, state and local agencies in the furtherance of immigration enforcement. The resulting benefit to ICE in expanding their human capital is returned to our communities in terms of

public safety and counter terrorism with no apparent impact on community police relationships. Since the financial burden to state and local agencies forms the central argument against partnership with ICE, it would be appropriate for the Congress to increase financial allocations to these agencies. Federal grants specifically designed for the 287(g) program, could be issued to local agencies in locations where data showed it would be most effective. Further, reinstating the Task Force and Hybrid models along with specifically designed grants to address financial concerns associated with each model would bring about additional enforcement tools. Along with the increases in funding, ICE and the partnering agency should develop an accurate means by which to monitor the effectiveness of the program(s) at each location in order to increase/decrease funding or personnel, and/or withdraw from the program at a particular location based on raw data. Finally, local law enforcement entities should not neglect and ignore immigration violations harming their jurisdiction due to the fact that regulation and enforcement of immigration laws is the mandate of the federal agencies.

As a matter of fact, the United States Congress established the immigration laws with a close consideration of their functions and mandate. By understanding the impact and cost, criminal illegal aliens have on the state and local authorities, the leaders and officials within these jurisdictions should enter into MOAs with ICE. This paper has established that the state and local law enforcement agencies have been given significant authority to make arrests based on immigration violations on top of the other authorities delegated through Section 287 (g). Despite this, it seems the potential of the close partnership between federal agencies and the local law enforcement agencies

has not fully been realized and as such, more agencies should work towards establishing MOAs with ICE in enforcing immigration laws.

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