

DELEGATION AND DIVERGENCE:

A Study of 287(g) State and Local Immigration Enforcement



By Randy Capps
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Table of Contents

Executive Summary	1
I. Introduction	5
II. Summary of Research Questions and Methodology	7
III. History and Overview of the Program	8
A. Brief History of the 287(g) Program	9
1. 2002-2005: Florida, Alabama, and the Los Angeles County Sheriff’s Department Sign Targeted Agreements	9
2. 2006-2008: The Universal Model of Enforcement Emerges in the Southeast	10
3. 2009-2010: The Obama Administration Issues a New Standardized Agreement	11
B. Overview of the 287(g) Program as It Currently Operates	12
1. Jail Enforcement Model	14
2. Task Force Model	15
3. Hybrid Model	15
C. The 287(g) Program Compared to Other ICE Partnerships	17
IV. Study Findings	18
A. 287(g) Program Outcomes	18
B. Program Goals and Motivations	25
C. Program Implementation	28
D. Program Accountability	32
E. Immigrant Community Impacts and Perceptions	38
V. Conclusions and Recommendations	47
A. Lessons for Secure Communities	49
B. Recommendations	50
VI. Appendices	52
Appendix 1. Research Questions and Methodology	52
Appendix 2. Active 287(g) Memoranda of Agreement, August 2010	54
Appendix 3. Basic Elements of 287(g) Versus Other ICE Partnerships with State and Local Law Enforcement	56

Appendix 4. State and Local Immigration Enforcement Legislation
in the Seven Study Sites.....56

Appendix 5. Level of Most Serious Offense for Immigrants Processed,
All Active 287(g) Jurisdictions, FY 201058

Glossary60

Works Cited63

About the Authors67



Executive Summary

The 1996 federal statute that permits the federal government to delegate immigration enforcement powers to state and local officers — Section 287(g) of the Immigration and Nationality Act (INA) — has surged into public consciousness in recent years. Now operating in 72 jurisdictions, the 287(g) program authorizes state and local officers to screen people for immigration status, issue detainers to hold them on immigration violations until the federal government takes custody, and generate the charges that begin the process of their removal from the United States.

US Immigration and Customs Enforcement (ICE) operates several different enforcement partnerships with state and local law enforcement agencies, but 287(g) is the only program that enables state and local agents to directly enforce federal immigration law.

This report assesses the implementation, enforcement outcomes, costs, and community impacts of the 287(g) program. It comes approximately eight years after the federal government signed the first agreement with the State of Florida, and one year after the Obama administration announced changes to the program ostensibly designed to focus it on the identification and removal of serious criminals and other public safety threats.

Our findings are based on two sources: data obtained from ICE for fiscal year (FY) 2010 that describe the offenses committed by those identified and detained through the 287(g) program, and site visits to seven 287(g) jurisdictions in the spring and summer of 2010 (see Table 1). During these visits, we conducted extensive interviews with 287(g) program officers in participating state and local law enforcement agencies, their supervisors in local ICE offices, state and local elected officials, program critics and proponents, foreign-country consular officials, community and religious leaders, immigration lawyers, business owners, educators, and health and social service providers.

In evaluating the findings from our study, we focused on the following central question:

Should the 287(g) program focus primarily or exclusively on identifying and removing people the federal government has identified as its top enforcement priorities, namely those who represent security threats, have committed serious crimes, or have accumulated multiple immigration law violations? Or should the program remove as many unauthorized immigrants as possible, even if they do not fit one of these priorities?

Public statements by the Obama administration and ICE formal documents related to the program support both conceptions. The new template ICE issued for the program in 2009 and enforcement guidelines published by the agency in 2010 emphasize that the program should focus first and foremost on immigrants who have committed felonies and other serious crimes; yet, the template and guidelines also contemplate use of the program to apprehend unauthorized immigrants generally, where resources permit. Public statements by the Secretary of Homeland Security and the Assistant Secretary for Immigration and Customs Enforcement have emphasized the program's focus on "dangerous criminals" but also highlighted its usefulness in identifying and removing large numbers of unauthorized immigrants.

The 287(g) program includes three different models: (1) the jail model, in which officials screen for immigration status and issue detainers when booking arrestees into jails on criminal (i.e. nonimmigration) charges; (2) the task force model, in which state and local officials screen for status and issue detainers in the field during policing operations; and (3) the hybrid model, in which jurisdictions maintain both jail and task force authority.

Our data cover all jurisdictions participating in the program, and we conducted our site work at four jail models, one task force site, one hybrid site, and one site where a jail model and three small task forces operate together.

**Table 1. The 287(g) Models and Dates of Agreement for the Seven Study Sites**

Jurisdiction	Model	Date Original Agreement Signed
Frederick County Sheriff's Office (MD)	Hybrid	February 2008
Prince William County Police Department and Prince William-Manassas Adult Detention Center (VA)	Separate Task Force and Jail	February 2008 July 2007
Cobb County Sheriff's Office (GA)	Jail	February 2007
Gwinnett County Sheriff's Office (GA)	Jail	October 2009
Las Vegas Metropolitan Police Department (NV)	Jail	September 2008
Los Angeles County Sheriff's Office (CA)	Jail	February 2005
Colorado Department of Public Safety	Task Force	March 2007

Source: US Immigration and Customs Enforcement (ICE), Office of State and Local Coordination (OSLC).

Our findings include:

- At the national level, the program is not targeted primarily or even mostly toward serious offenders.** Nationally, about half of program activity (defined by the number of immigration detainers issued) involves people who have committed felonies and other crimes that ICE deems to be serious (Priority Level 1 and 2 in ICE's terminology). The other half of detainers issued are on people who have committed misdemeanors (usually considered Level 3) and traffic offenses.
- Some jurisdictions operate "targeted" models, aimed primarily at identifying serious criminal offenders, while others pursue "universal" models, designed to identify as many unauthorized immigrants as possible.** In FY 2010, Las Vegas operated the most targeted program among our sites: officers placed 70 percent of detainers on Level 1 or 2 offenders. By contrast, Cobb County (GA) and Frederick County (MD) placed about 80 percent of their detainers on Level 3 or traffic offenders, and officers there placed detainers universally (i.e., on every unauthorized immigrant booked into jail or encountered during policing operations).
- Contrary to public perception, 287(g) is almost entirely a jail program.** In the first ten months of FY 2010, jail models accounted for 90 percent of detainers issued, while hybrid models accounted for 8 percent and task force models just 2 percent.
- Jurisdictions with jail models are not substantially more likely to operate targeted programs than jurisdictions with task forces.** Except for Colorado, which apprehends a large number of recent border crossers who are in transit on the state's highways, task forces issued about half of their detainers on Level 1 and 2 offenders — a similar proportion to jail models.
- Universal models are concentrated in the Southeast.** The ten sites with the largest share of detainers placed on traffic violators are all located in the Southeast. Mecklenburg County (NC) initiated the first universal program in 2006, and our Southeastern study jurisdictions have followed Mecklenburg's model.
- The 287(g) jail model does not impose federal oversight on officers who make the initial arrests.** Under the jail model, 287(g) officers screen for immigration status and place detainers after people have been booked into jail. Initial arrests are generally made by police officers working for agencies without 287(g) agreements and who lack federal oversight and training in immigration laws. The lack of federal control over arresting officers opens the door to racial profiling and pretextual arrests, especially in jurisdictions that place immigration detainers universally.



- ***The formal program changes issued by the Department of Homeland Security (DHS) in 2009 have not substantially affected implementation.*** Despite reduced program activity (from 60,000 detainees in FY 2009 to 48,000 in FY 2010), we found no evidence that the revised template and the new 287(g) agreements the Obama administration required participating jurisdictions to sign in 2009 have had any substantial effect on 287(g) priority setting, program operations, outcomes, or community impacts.
- ***State and local officials operate 287(g) programs according to priorities shaped largely by political pressures.*** In many communities in the Southeast and Southwest, the immigrant population grew rapidly during the 1990s and 2000s, leading to a public backlash and putting pressure on sheriffs and other elected officials to pursue a set of enforcement strategies. These strategies include pursuing a 287(g) program alongside adoption of state and local laws that directly target unauthorized immigrants, such as Arizona’s Senate Bill 1070 and laws in Georgia imposing mandatory jail time for driving without a license.
- ***ICE closely supervises 287(g) officers in our study sites, but allows state and local agencies to set enforcement priorities.*** ICE supervisors sign off on virtually all detainees issued by 287(g) officers, regardless of whether the detainees apply to large numbers of Level 3 and traffic offenders.
- ***Resources drive 287(g) program goals and implementation in many jurisdictions.*** In all sites operating universal models, 287(g) officers and ICE supervisors report that ample ICE detention capacity, in tandem with the increase in personnel resulting from the training of state and local officials (the “force multiplier” effect), allows officials to place detainees on as many Level 3 and traffic offenders as they encounter.
- ***Universal enforcement gives rise to substantial negative community impacts and downstream federal detention and removal costs.*** Our study respondents reported impacts on immigrants similar to those cited in reviews by others of the 287(g) program, including avoidance of public places, changes in driving behavior, fear and mistrust of authorities, and reluctance to report crimes. Respondents also reported racial profiling, but we did not investigate these claims due to data limitations. Downstream federal detention costs can be significant in universal enforcement jurisdictions, with ICE detainees averaging 81 days in detention at a cost of \$60 per day in Georgia, for example.
- ***Some immigrants have left jurisdictions with controversial 287(g) programs.*** Frederick County experienced a 61 percent drop in its Hispanic noncitizen population after it adopted the 287(g) program, and Prince William County (VA) witnessed a 23 percent decline, while neighboring counties — especially Montgomery County (MD) and Fairfax County (VA) — experienced an increase. The population drop in Cobb County was only 5 percent, and it is too early to observe population changes in Gwinnett County (GA), which implemented its 287(g) program in late 2009. Public school enrollment data show drops followed by rebounds in Hispanic student populations in Frederick, Cobb, and Prince William counties.
- ***Some jurisdictions have targeted their enforcement and conducted outreach to explain its scope, thereby muting community criticism.*** Prince William County implemented its 287(g) program in a relatively targeted fashion and modified its ordinance from a requirement that police screen the immigration status of everyone encountered to a screening requirement after booking into jail. The police department issued bilingual brochures and conducted hundreds of briefings explaining the 287(g) program, restoring the Hispanic community’s trust in the police department to levels near those documented before the program and the initial local ordinance were implemented.



In sum, the statutory language of section 287(g), the Obama administration's statements and guidelines, and ICE's implementation practices allow jurisdictions to operate the 287(g) program in fundamentally different ways across the country. We find that the 287(g) program has had more significant negative impacts on immigrant communities in jurisdictions where a universal model is used and traffic offenders comprise a large share of persons channeled through the program than in targeted jurisdictions.

We therefore recommend that ICE take additional steps to ensure that the 287(g) program functions consistently across jurisdictions according to the targeted enforcement model promoted in the 2009 revised template and in public statements by DHS and ICE leadership — and that the agency reconfirm that the program is intended to target primarily serious criminals or people who have prior criminal convictions, represent a threat to national security, or have prior removal orders. To achieve this goal, ICE should:

1. Ensure that state and local 287(g) officers place detainers on noncitizens only after they have been convicted for Level 1 and 2 offenses, unless they have committed prior immigration violations.
2. Work with the US Department of Justice to investigate accusations of racial and ethnic profiling in 287(g) jurisdictions, including in law enforcement agencies that arrest those booked into 287(g) jails but do not themselves have agreements.
3. Discontinue 287(g) agreements with jurisdictions that operate universal models and do not focus on serious criminals, as well as with jurisdictions where evidence of racial profiling or other civil-rights violations emerges.
4. Limit new agreements to jurisdictions that can demonstrate no prior history of racial profiling by police as well as an intent and likelihood to operate the program in a targeted fashion.
5. Conduct a comparative cost-benefit analysis of the 287(g) program versus Secure Communities and other interior enforcement strategies, one that includes downstream detention, adjudication, and removal costs, as well as community impacts.
6. Create a real dialogue between ICE field offices and local communities by engaging in direct outreach, holding regular meetings with key constituencies, and establishing meaningful steering committees.

Our findings and recommendations also apply to the Secure Communities program, which ICE plans to expand to every state prison and local jail by 2013. Through Secure Communities, ICE officers remotely screen immigration status by checking inmates' fingerprints against federal databases. Like the 287(g) jail model, Secure Communities authorizes screening after inmates are booked into jail and lacks federal oversight or training of arresting officers. Unless ICE takes steps to ensure that it is a targeted program, Secure Communities may replicate many of the controversies and negative community impacts we observed in universal enforcement 287(g) jurisdictions.

More generally, our study highlights the absence of a clear and comprehensive interior immigration enforcement strategy, even as interior enforcement has become an increasingly important component of US immigration policy in the post-9/11 period. Does the Obama administration support universal immigration enforcement and the goal of attrition through enforcement, or does it favor targeted enforcement focusing on high-priority cases and reserving resources for other activities? With Congress unlikely to pass a substantial legalization bill in the foreseeable future, ICE's enforcement partnerships with state and local jurisdictions will form the primary federal policy toward the unauthorized population and will have a tremendous impact on the integration of immigrants and their families. As a result, these programs must be defined and implemented pursuant to clearly considered and articulated goals and policies.



I. Introduction

A provision of the Immigration and Nationality Act (INA) enacted in 1996 that delegates immigration enforcement powers to state and local officials — section 287(g)— has surged into public consciousness in recent years as many jurisdictions have entered into 287(g) partnerships with the federal government. Section 287(g) allows state and local partners to perform certain immigration policing functions and requires participating law enforcement officers to receive training from US Immigration and Customs Enforcement (ICE). As implemented today, these functions include screening people for immigration status who have been arrested; issuing ICE detainers, which permit state and local officials to hold potentially removable immigrants¹ for up to 48 hours before transferring them into ICE custody; and issuing ICE charging documents to initiate the formal removal process.²

The 287(g) program is one piece of a large federal immigration enforcement apparatus that raises a key policy question: how should the federal government set enforcement priorities and exercise discretion in enforcing immigration laws within the nation's borders? The federal government must set immigration enforcement priorities not only to allocate resources toward the removal of persons who represent a danger to society, but also because many more unauthorized immigrants reside in the United States (approximately 11 million³) than the government has the capacity to remove.

Articulating priorities within the context of 287(g) has been particularly difficult because the program permits such a central role for state and local authorities in immigration enforcement. While ICE has many partnerships with state and local agencies, only the 287(g) program allows state and local officers to directly perform specific immigration functions in place of ICE officers.

In practice, the ways in which officials set enforcement priorities and exercise their discretion within the 287(g) program depend on how ICE answers an overarching question about the program's goals:

Should the 287(g) program focus primarily or exclusively on identifying and removing people the federal government has identified as its top enforcement priorities, namely those who represent security threats, have committed serious crimes, or have accumulated multiple immigration law violations? Or should the program remove as many unauthorized immigrants as possible, even if they do not fit one of these priorities?

This study shows that the answers ICE and its local partners have given to this question fall along a continuum between “targeted” models and “universal” models.

We define targeted models as those focusing primarily, if not exclusively, on ICE's top enforcement priorities: national security threats, serious or dangerous criminals (i.e., felons), and other threats to public safety, as well as noncitizens with existing orders of removal. By contrast, universal enforcement casts a wide net to identify and apprehend as many unauthorized immigrants as possible, resources permitting, regardless of whether those immigrants have committed a serious criminal or immigration violation in addition to being unauthorized.

1 Throughout the report, we use the term “potentially removable immigrant” to refer to any person who may be a noncitizen subject to formal removal (i.e., deportation) from the United States. The term does not refer to “immigrant” in the legal sense of that term (i.e., persons admitted for lawful permanent residence). Potentially removable immigrants may include people who entered without inspection or overstayed a temporary visa (i.e., unauthorized immigrants) as well as lawful permanent residents who have committed certain crimes that make them subject to removal. In some cases, usually during a formal removal procedure, potentially removable immigrants may be found to have a right to remain in the United States or to be eligible for some form of relief from removal.

2 Since 1996, the term “removal” has applied to deportations as well as exclusions at the border.

3 Michael Hofer, Nancy Rytina, and Bryan C. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009* (Washington, DC: Office of Immigration Statistics, Department of Homeland Security, 2010), www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2009.pdf.



Proponents of the targeted enforcement model argue that ICE can advance security goals by devoting enforcement resources primarily to ICE's top priorities, thereby removing significant public safety threats while limiting the destabilizing effects of enforcement on immigrant communities, which include legal immigrants and US citizens.

Supporters of the universal enforcement model argue that removing as many unauthorized immigrants as possible yields public safety benefits by reducing crime they attribute to illegal immigration and risks such as unlicensed drivers. They maintain that the universal model produces these benefits not only by removing significant numbers of unauthorized immigrants, but also by heightening the threat of enforcement, which potentially encourages outmigration (or "self-deportation") and thus advances a strategy of "attrition through enforcement."⁴

The Obama administration has established a somewhat ambiguous position with respect to both the proper scope of the 287(g) program and that of interior enforcement more generally. On the one hand, the administration has articulated a set of graduated enforcement priorities that clearly target noncitizens who have committed serious crimes or pose security threats and that deemphasize enforcement against traffic offenders.⁵ In congressional testimony and press releases, Homeland Security Secretary Janet Napolitano and Assistant Secretary for Immigration and Customs Enforcement John Morton have repeatedly stressed that the purpose of 287(g) and other federal-local partnerships is to focus on "dangerous criminals" and those posing a "threat to the public safety."⁶

On the other hand, the Obama administration has removed nearly 400,000 noncitizens annually — a record number. While the share of those removed with criminal convictions has been increasing (representing half of all removals in fiscal 2010), most of those removed do not have serious criminal records — and therefore do not meet the administration's announced criteria as high priorities for enforcement.⁷ In addition, the enforcement guidelines issued by the administration, including for the 287(g) program, make clear that the priority articulation is not intended to discourage apprehension and removal of unauthorized immigrants in general. Administration officials frequently describe immigration enforcement priorities as a function of scarce resources, implying that enforcement should extend to lower-priority cases where resources permit and as long as such efforts do not impede the removal of more serious offenders.⁸

4 For more on the attrition strategy, see Jessica Vaughn, *Attrition through Enforcement: A Cost-Effective Strategy to Shrink the Illegal Population* (Washington, DC: Center for Immigration Studies, 2006), www.cis.org/Enforcement-IllegalPopulation.

5 Recent enforcement guidelines and proposed guidelines from US Immigration and Customs Enforcement (ICE) discourage the placement of detainees on traffic violators in all enforcement contexts, not just the 287(g) program. See ICE, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" Policy Number 10072.1 (Memorandum from John Morton, Assistant Secretary for Immigration and Customs Enforcement, to all ICE employees, June 30, 2010), www.ice.gov/doclib/detention-reform/pdf/civil_enforcement_priorities.pdf; ICE, "Draft Policy Guidelines: Detainers (Superseding LESC LOP 005-09)" (Washington, DC: ICE, August 1, 2010). Note, however, that the latter guidelines are under review, and have not been adopted at this time.

6 For instance, in congressional testimony during budget hearings, Assistant Secretary for Immigration and Customs Enforcement John Morton stated with regard to the new 2009 287(g) template: "The new MOA [Memorandum of Agreement] requires that our partners align local operations with key enforcement priorities — the arrest and detention of criminal aliens who pose the greatest threat to the public safety or danger to the community." See Testimony of Assistant Secretary John T. Morton before the House Committee on Homeland Security, Subcommittee on Border, Maritime, and Global Counterterrorism, *FY 2010 Budget for Immigration and Customs Enforcement, Customs and Border Protection, and the U.S. Coast Guard*, 111th Congress, 1st sess., June 11, 2009, www.dhs.gov/ynews/testimony/testimony_1254256650427.shtm. Homeland Security Secretary Janet Napolitano echoed this message in a press release announcing the 2009 template: "This new agreement supports local efforts to protect public safety by giving law enforcement the tools to identify and remove dangerous criminal aliens." See Department of Homeland Security (DHS), "Secretary Napolitano Announces New Agreement for State and Local Immigration Enforcement Partnerships & Adds 11 New Agreements" (Press Release, July 10, 2009), www.dhs.gov/ynews/releases/pr_1247246453625.shtm.

7 Thirty-five percent of immigrants removed by ICE in fiscal year (FY) 2009 had criminal convictions (136,343 of 389,834), as did 50 percent of removals in FY 2010 (195,772 of 392,862). In FY 2010, 23 percent (45,545) of the criminal convictions were for Level 3 (misdemeanor) offenses, and some of the criminal offenses were for immigration-related crimes such as illegal reentry. See ICE, "ICE Total Removals," www.ice.gov/doclib/about/offices/ero/pdf/ero-removals.pdf.

8 For example, ICE's primary memorandum articulating its enforcement priorities observes that ICE "only has resources to remove approximately 400,000 aliens per year," and argues that "[i]n light of the large number of administrative violations



The ambiguity is not surprising. The Obama administration has based its interior enforcement work heavily on the assumption that Congress would eventually enact comprehensive immigration reform that would include regularizing the status of many unauthorized immigrants. Regularization would allow those without serious criminal offenses to stay in the country legally and make broad enforcement activities against this group unnecessary. But as the prospects for legalization have diminished, the need for a clearly articulated interior enforcement policy becomes increasingly pressing, as does a clear-eyed assessment of the costs and benefits of various enforcement models.

Policy coherence may well be elusive, for precisely the same reason that comprehensive immigration reform has been: public consensus does not exist on the underlying issue of how best to address the presence of the large unauthorized population in the United States. Indeed, the presence of both targeted and universal programs in different 287(g) jurisdictions highlights the diversity of views on the subject. The 287(g) program is ultimately a small program within the larger enforcement structure, accounting for about 10 percent of removable immigrants located in FY 2009 (60,000 of 613,000). But the program has been one of the most important sources of removals from the interior of the United States in recent years,⁹ and it has become a focal point for debates about interior enforcement and the wisdom and legality of state and local involvement in immigration policing.

Many of the lessons we draw from our analysis of the 287(g) program are applicable to the larger and fast-growing Secure Communities program, as well as other ICE interior enforcement activities. Thus, this research should contribute to a much-needed debate about the proper scope of interior enforcement policy at this time.

II. Summary of Research Questions and Methodology

We gathered information from two sources. First, we analyzed data provided by ICE describing the persons processed through the program in all participating jurisdictions. Second, we conducted interviews in seven active jurisdictions: Cobb County (GA), Frederick County (MD), Gwinnett County (GA), Los Angeles County (CA), Prince William County (VA), Las Vegas (NV), and the state of Colorado.

In selecting sites, we included jurisdictions that had implemented each of the 287(g) program models: (1) the jail model, where immigration status screening occurs only in jails; (2) the task force model, where 287(g) officers screen for status during enforcement operations; and (3) the hybrid model, where 287(g) officers have authority to screen in both jail and task force settings. Our criteria also included diversity in program duration, size, and geographic location (see Appendix I for a detailed explanation of the methodology and survey questions and Table 2 for the study site program models and level of activity).

At each site, we spoke with the full range of respondents, including ICE officials, state or local police and detention officers, elected officials, community leaders, attorneys, and/or immigrant service providers. We investigated five central questions, which are reflected in the five sections of the report that describe our findings:

- In practice, do 287(g) program outcomes reflect a targeted or universal approach to immigration enforcement?

the agency is charged with addressing and the limited enforcement personnel, detention space, and removal resources the agency has available, ICE must prioritize the use of its ... resources to ... promote the agency's highest enforcement priorities." See ICE, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens."

9 In FY 2009, ICE's Office of Investigations and its Detention and Removal Operations together identified just under 57,000 removable immigrants, excluding those identified through the 287(g) program; see DHS, *Yearbook of Immigration Statistics* Table 35 (Washington, DC: DHS, 2010), www.dhs.gov/files/statistics/publications/yearbook.shtm.



- What are the goals of the program, as expressed by ICE and participating state and local agencies, and how do they differ among 287(g) jurisdictions?
- How has the 287(g) program been implemented, and what explains differences in implementation practices across jurisdictions?
- How is ICE engaging in program oversight and supervision? Is supervision effective in helping ICE ensure the program meets federal goals?

What have been the impacts of 287(g) agreements on immigrants, their families, and communities? We did not investigate allegations of racial profiling by the police that are widely made in some 287(g) jurisdictions. That is because we focused on the process of screening for immigration status and the issuance of detainers, both of which generally occur after initial arrests made by non-287(g) officers — especially in the jail models which account for the bulk of program activity. As a result, we were unable to collect data on policing activities that could be analyzed for evidence of racial profiling. Moreover, some jurisdictions we studied do not collect racial or ethnic data on traffic stops and other policing activities.

Table 2. Study Sites’ 287(g) Models and Number of ICE Detainers, FY 2010

Jurisdiction	Model	2010 287(g) Detainers Issued*
Frederick County Sheriff’s Office (MD)	Hybrid	198
Prince William County Police Department and Prince William-Manassas Adult Detention Center (VA)	Separate Task Force and Jail	17 829
Cobb County Sheriff’s Office (GA)	Jail	1,622
Gwinnett County Sheriff’s Office (GA)	Jail	1,964
Las Vegas Metropolitan Police Department (NV)	Jail	1,413
Los Angeles County Sheriff’s Office (CA)	Jail	2,874
Colorado Department of Public Safety	Task Force	397
All Seven Study Sites		9,314
All Jurisdictions Nationally		39,772

* ICE detainers issued by 287(g) officers for the first ten months of FY 2010 (between October 1, 2009 and August 2, 2010).
Source: ICE, OSLC.

III. History and Overview of the Program

Congress enacted Section 287(g) of the INA in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).¹⁰ Its proponents argued that it would provide the federal government with a “force multiplier” by permitting specially trained state and local law enforcement to assist in immigration enforcement. The language of Section 287(g) provides limited guidance on the intended scope of the program, leaving much to ICE and its local partners to work out in practice.

Section 287(g) authorizes the Attorney General (now the Secretary of Homeland Security, with the move of immigration enforcement from the Justice Department to the Department of Homeland Security) to enter into written agreements with state and local officials authorizing the latter to “perform the function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers)” at the expense of the state or locality.¹¹ The statute makes clear that state and local officials must

¹⁰ Public Law 104-208.

¹¹ Immigration and Nationality Act (INA) §287(g), 8 U.S.C. § 1357(g)(1)(2000).



possess knowledge of federal law, receive training in federal enforcement,¹² and be supervised and directed by federal officials.¹³ The statute also places state and local enforcement through the program “under color of Federal authority for purposes of determining liability, and immunity from suit.”¹⁴

Taken together, these elements treat local law enforcement agents as federal officers when they are engaged in immigration enforcement activities. But the statute also leaves open the specific powers and duties of state and local 287(g) officers, to be delineated in written agreements with the local partners.¹⁵ The statutory language is thus consistent with both the universal and targeted models identified in this report.

A. Brief History of the 287(g) Program

Formal negotiations for a 287(g) agreement occurred in only one jurisdiction during the 1990s: Salt Lake City, Utah. Salt Lake ultimately opted not to sign an agreement because of strong public concerns about racial profiling.¹⁶ The federal government signed its first agreement in 2002, and 65 of the 72 currently active agreements were signed after 2006. The program has evolved in three main phases:

I. 2002-2005: Florida, Alabama, and the Los Angeles County Sheriff’s Department Sign Targeted Agreements

The first agreement was with the State of Florida in 2002. 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 9/11.¹⁷ In 2003, the State of Alabama entered into an agreement to address problems it was experiencing with fraudulent documents being presented to obtain drivers’ licenses.¹⁸

In July 2005, a House Homeland Security subcommittee held a hearing on the program. Paul M. Kilcoyne, deputy assistant director of ICE’s Office of Investigations, stated 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.”¹⁹ 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. Kilcoyne emphasized the importance of maintaining “a very focused approach” to the 287(g) program in order to

12 INA §287(g), 8 U.S.C. § 1357(g)(2)(2000).

13 INA §287(g), 8 U.S.C. § 1357(g)(3)(2000).

14 INA §287(g), 8 U.S.C. § 1357(g)(8)(2000).

15 INA §287(g), 8 U.S.C. § 1357(g)(5)(2000).

16 Testimony of Mary Callaghan, Commissioner, Salt Lake County Commission, before the House Judiciary Committee, Subcommittee on Immigration and Claims, *Problems Related to Criminal Aliens in the State of Utah*, 105th Cong., 2nd sess., July 27, 1998, 6; Testimony of Aaron Kennard, Sheriff, Salt Lake County, before the House Judiciary Committee, Subcommittee on Immigration and Claims, *Problems Related to Criminal Aliens in the State of Utah*, 105th Cong., 2nd sess., July 27, 1998; Shawn Foster, “SLC Council Says No to Cross-Deputization,” *Salt Lake Tribune*, September 2, 1998.

17 Testimony of Mark F. Dubina, Special Agent Supervisor, Tampa Bay Regional Operations Center, Florida Department of Law Enforcement, Regional Domestic Security Task Force, 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, 17, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:28332.pdf.

18 Testimony of Major Charles E. Andrews, Chief, Administrative Division, Alabama Department of Public Safety, 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, 20, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:28332.pdf.

19 Testimony of Paul M. Kilcoyne, Deputy Assistant Director, Office of Investigations, ICE, 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, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:28332.pdf.



make the best use of limited fiscal and managerial resources.

2. 2006-2008: The Universal Model of Enforcement Emerges in the Southeast

By September 2006, the 287(g) program had expanded into four additional jails, bringing the total number of agreements to seven.²⁰ In some jurisdictions the focus of the program began to expand beyond dangerous criminals and security threats. This change in program focus was clearest in Mecklenburg County, NC, which initiated a 287(g) program in February 2006 with the goal of apprehending as many unauthorized immigrants as possible, on the belief that unauthorized immigrants were more likely to commit crimes and in response to perceived fiscal burdens arising from immigrants' use of public services.²¹ Sheriff Jim Pendergraph described the county's agreement as permitting his officers to identify a large number of civil immigration law violators. According to the sheriff, ICE was "overwhelmed by the numbers we are generating for removal in Mecklenburg County alone,"²² and "they've had to reassign ICE agents to deal with the numbers that we're seeing."²³

Kenneth Smith, special agent in charge in the Atlanta ICE office, cited Mecklenburg County as a model and predicted that the county's approach would be "mirrored in jurisdictions around the country."²⁴ He observed that, while 287(g) could help identify criminal aliens, "the real beauty of the program" was that it guaranteed that every person who entered a jail with a 287(g) agreement was screened for civil immigration law violations.²⁵ Smith stated that this "would not have necessarily a huge impact on the criminal system," but that "it certainly would on our detention and removal capabilities."²⁶

The Mecklenburg approach heavily shaped the program's development in the Southeast, in no small part because Pendergraph became the head of ICE's Office of State and Local Coordination (OSLC). In 2007, ICE signed 27 new agreements, followed by another 28 in 2008 (see Appendix 2 for a list of all active jurisdictions, their dates of agreement, and program model). From the beginning of 2007 to the middle of 2009, all the new jail agreements tracked the language used in Mecklenburg County.

The universal approach set in motion by Mecklenburg County was not consistent with ICE's public documents describing the program in 2007. According to a 2007 ICE fact sheet, for example, the program was described as being aimed at "violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering."²⁷ The fact sheet went on to clarify that "[t]he 287(g) program 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."²⁸

20 The seven 287(g) jurisdictions active before September 2009 included three Southern California counties (Los Angeles, Riverside, and San Bernadino); Mecklenburg County, NC; and the states of Alabama and Florida. Alabama has since discontinued its program. See Appendix 2 for a full list of active agreements along with the dates they were signed and the type of model.

21 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, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:36029.pdf.

22 Ibid, 49.

23 Ibid, 70.

24 Ibid, 29.

25 Testimony of Kenneth A. Smith, Special Agent in Charge, Atlanta, Georgia, Office of Investigations, ICE, 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, 35, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:36029.pdf.

26 Ibid.

27 ICE, "Delegation of Immigration Authority, Section 287(g), Immigration and Nationality Act" (fact sheet, September 6, 2007). ICE regularly updates the fact sheet, and this older version is no longer available on the web.

28 Ibid.



By 2008, ICE's 287(g) fact sheet no longer contained this limiting language.²⁹ The omission of limitations on universal enforcement suggests that ICE had moved away from its original focus on the removal of serious criminals, both in practice and in its public statements.

3. 2009-2010: The Obama Administration Issues a New Standardized Agreement

As the 287(g) program grew in size, many immigrant-rights advocates and some law enforcement agencies began raising broad concerns about the program and in some cases calling for its termination.³⁰ Following a consultative process that included a cross-section of senior law enforcement officials, the Police Foundation in an April 2009 report concluded that the “costs of participating in the 287(g) program outweigh the benefits.”³¹ The Police Foundation recommended that if a state or local law enforcement agency chooses to participate, it should be focused on “serious criminal offenders” using the jail program.³²

In January 2009, the US Government Accountability Office (GAO) released a report evaluating the 29 existing programs. GAO investigators concluded that the program lacked certain controls, such as documented program objectives, an articulation of how local officials were to use their authority, clear and consistent mechanisms of supervision, and protocols identifying the types of data local officials must collect and report to ICE.³³ In GAO's estimation, the absence of such controls made it difficult for ICE to determine whether the 287(g) program advanced the agency's enforcement objectives or served the program's intended purpose.³⁴

In July 2009, Secretary Napolitano announced that ICE would sign 11 new agreements, signaling the new administration's intention to continue the program. However, Napolitano also announced that the program would be governed by a new standardized agreement (or template), designed to provide closer federal oversight and focus the program on the detention and removal of “dangerous” criminals.³⁵ As a result, participating jurisdictions entered into negotiations with ICE and were required to sign the new agreement.

Under the new template, agencies signing the Memoranda of Understanding (MOAs) are required to prioritize resources in the following order:

- **Level 1 offenders:** Aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping.
- **Level 2 offenders:** Aliens who have been convicted of or arrested for minor drug offenses

29 ICE, “Delegation of Immigration Authority, Section 287(g), Immigration and Nationality Act” (fact sheet, August 18, 2008), <http://cdpsweb.state.co.us/immigration/Meetings/October21/10-21-08%20287%20Delegation%20of%20Authority.pdf>.

30 National Immigration Law Center (NILC), “Letter to President Obama Regarding 287(g) Program,” August 25, 2009, www.nilc.org/immlawpolicy/LocalLaw/287g-Letter-2009-08-25.pdf; American Civil Liberties Union (ACLU) and Immigration and Human Rights Policy Clinic (IHPRC), *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina* (Chapel Hill, NC: University of North Carolina, IHPRC, 2009), www.law.unc.edu/documents/cliclinalprograms/287gpolicyreview.pdf; International Association of Chiefs of Police (IACP), *Police Chiefs Guide to Immigration Issues* (Alexandria, VA: IACP, 2007), www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf; Aarti Shahani and Judith Greene, *Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Brooklyn, NY: Justice Strategies, 2009), 18-19, www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf.

31 Kashu, Anita, *The Role of Police: Striking a Balance between Immigration Enforcement and Civil Liberties* (Washington, DC: Police Foundation, 2009), xii, www.policefoundation.org/strikingabalance/strikingabalance.html.

32 Ibid.

33 US Government Accountability Office (GAO), *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (Washington, DC: GAO, 2009), 4-5, www.gao.gov/products/GAO-09-109.

34 Ibid.

35 DHS, “Secretary Napolitano Announces New Agreement for State and Local Immigration Enforcement Partnerships & Adds 11 New Agreements.”



and/or mainly property offenses such as burglary, larceny, fraud, and money laundering.

- **Level 3 offenders:** Aliens who have been convicted of or arrested for other offenses, including misdemeanors and civil offenses.³⁶

The 2009 template required that the 287(g) program target resources toward removing offenders in this order of priority and that policing operations and individual arrests in the field be preapproved by ICE supervisors. It established new data collection requirements and ordered annual formal reviews of each program.³⁷ At the same time, the template also stated that, resources permitting, jurisdictions could continue to focus operations on less serious criminals as well as noncriminals with immigration violations.

By October 2010, almost all of the past participating law enforcement agencies had successfully renegotiated their agreements, except for Alabama, Massachusetts, and a few other small programs.³⁸ Some programs ended due to low levels of program activity, and some for other reasons. For example, ICE failed to renew the task force agreement for Maricopa County, Arizona whose sheriff, Joe Arpaio, had achieved national notoriety for conducting broad sweeps of Latino neighborhoods and arresting a large number of unauthorized immigrants who had committed no serious criminal violations.³⁹ But ICE allowed Maricopa County to retain its 287(g) jail enforcement program, revealing its ambiguity about forcing jurisdictions to adopt more targeted approaches.

In principle, the 2009 template's emphasis on prioritizing the identification and removal of dangerous criminals reflected an intention to bring the 287(g) program into closer alignment with ICE national priorities. ICE also issued agency-wide enforcement guidelines in June 2010, based on a revised three-tier hierarchy of priorities.⁴⁰ But like the 2009 template, the agency-wide enforcement memo also permits enforcement against less serious criminals and noncriminals: "Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States."⁴¹ Thus the 2010 memo maintains the ambiguity surrounding ICE's interior enforcement priorities.

B. Overview of the 287(g) Program as It Currently Operates

The 287(g) program allows state and local law enforcement officers to detain potentially removable immigrants who are arrested for nonimmigration offenses and to begin the process of transfer to ICE custody and formal removal from the United States.

Before they can begin exercising their duties, state and local officers receive four weeks of formal training at the Federal Law Enforcement Training Center (FLETC), the same facility that ICE officers attend during their initial training. Formal training includes discussion of terms of the agreement, the scope of state and local officers' immigration authority, relevant immigration and civil-rights

36 Cristina Rodríguez, Muzaffar Chishti, Randy Capps, and Laura St. John, *A Program in Flux: New Priorities and Implementation Challenges for 287(g)* (Washington, DC: Migration Policy Institute, 2010), www.migrationpolicy.org/pubs/287g-March2010.pdf.

37 Ibid.

38 Los Angeles County signed its renegotiated agreement in October 2010. For more on the Los Angeles agreement, see the findings section of this report, Section IV, Study Findings. Also see ICE, "Delegation of Immigration Authority, Section 287(g), Immigration and Nationality Act" (fact sheet, accessed October 29, 2010), www.ice.gov/news/library/factsheets/287g.htm.

39 Randal C. Archibold, "Immigration Hard-Liner Has His Wings Clipped," *New York Times*, October 6, 2009, www.nytimes.com/2009/10/07/us/07arizona.html?_r=1&hpw.

40 In this memo, Level 1 offenders are those convicted of aggravated felonies or two or more felonies that do not qualify as aggravated felonies; Level 2 offenders are convicted of felonies or three or more misdemeanors; and Level 3 offenders are convicted of misdemeanors — crimes punishable by less than one year. Civil violations are not included among these three priorities. See ICE, "Civil Immigration Enforcement."

41 Ibid.



laws and policies, ICE's use of force policy, US Department of Justice "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," "cross-cultural" issues, public outreach and complaint procedures, liability issues, and the obligations under federal law and the Vienna Convention on Consular Relations to properly notify consular officials when a foreign national has been detained.⁴² 287(g) officers must pass the same exam as entry-level ICE officers, with one opportunity to retake the exam if they fail.⁴³ ICE provides the formal training sessions at FLETC along with refresher training, which primarily occurs on the Internet, at federal expense.

A federal review of 287(g) officer training suggested that the training is adequate to perform most of the functions of entry-level ICE officers, but that 287(g) officer training on civil-rights law, the terms and limitations of 287(g) agreements, and outreach and complaint procedures, is limited. In particular, 287(g) officers receive 20 fewer hours of instruction on civil-rights law, including concerns about racial profiling, than do ICE officers.⁴⁴

As of October 2010, over 1,200 state and local officers had been trained for the 287(g) program.⁴⁵ Per-officer training costs were estimated at \$2,600 for onsite training and \$4,800 for offsite training in 2009.⁴⁶

In general, the program allows 287(g) officers to perform the following tasks (see Figure 1):

- **Check DHS databases for immigration status information.** 287(g) officers can check a number of DHS databases for information about prior removals, Border Patrol apprehensions, violations of immigration law, and other encounters with immigration authorities.
- **Interview immigrants to ascertain their status.** 287(g) officers are formally trained to make inquiries into a person's immigration status. They generally ask a series of questions such as where the individual was born, where and when he or she first entered the United States, and whether he or she entered with or without authorization.
- **Enter data into ENFORCE.** A large part of the 287(g) screening process is automated through ENFORCE, ICE's database and case management system that collects and stores information on noncitizens encountered, detained, and removed through ICE's various enforcement programs. 287(g) officers must enter details about how the individual was initially arrested, the criminal offense(s) he or she was charged with, any prior immigration and criminal violation history, country of origin, immigration history, and other information.
- **Issue ICE detainers.** Once a 287(g) officer determines that an individual is removable, the officer uses the ENFORCE case management system to generate the paperwork that creates a detainer. An ICE detainer is a formal document that allows a law enforcement agency to hold the person for up to 48 hours until he or she can be transferred into ICE custody for removal processing. Issuing detainers is one of the unique powers of state and local officers with 287(g) designation, although ICE supervisors must sign each detainer.
- **Place immigration charges.** 287(g) officers may use the ENFORCE case management system to issue a Notice to Appear (NTA), the official charging document that initiates formal removal proceedings and a hearing before an immigration judge to adjudicate the immigration charges. This gives 287(g) officers a second power that is unique among state and local officers: the power to charge noncitizens with immigration offenses, such as entering the country illegally, overstaying a valid visa, or otherwise violating the terms of their admission.

42 DHS Office of Inspector General (OIG), *The Performance of 287(g) Agreements* OIG-10-63 (Washington, DC; OIG, DHS, 2010), 27-28, <http://trac.syr.edu/immigration/library/P4485.pdf>.

43 Ibid.

44 Ibid.

45 ICE, "Delegation of Immigration Authority," October 2010.

46 GAO, *Immigration Enforcement: Better Controls Needed*, 20.



- **Make recommendations for voluntary departure in place of formal removal proceedings.** Based on the severity of an individual’s immigration and/or criminal history, 287(g) officers may recommend that a removable immigrant who has not committed an aggravated felony or terrorism-related offense be permitted to voluntarily depart the United States. People who are allowed to depart voluntarily avoid the long wait (often in detention) for an immigration hearing on their case and are not subject to the same barriers to future legal immigration as are immigrants who are formally removed.⁴⁷ ICE supervisors and immigration judges make the final determination regarding the grant of voluntary departure in these cases.
- **Make recommendations for detention and immigration bond.** In some jurisdictions we visited, 287(g) officers also make recommendations about whether people should be held in ICE detention while their removal cases are pending or placed on ICE’s nondetained docket, which may allow them to be released on bond or supervised release during this period. Not all removable immigrants are eligible for release, and ICE supervisors and immigration judges make the final determinations in these cases as well.
- **Transfer noncitizens into ICE custody.** Immigrants in state or local custody generally but not always complete the sentences for the charges on which they were arrested. After they complete their sentences or in some cases post bond on the criminal charges, 287(g) officers hold inmates for up to 48 hours on immigration charges, and then transfer them into ICE custody.

Once in ICE custody, people may contest their removability by seeking relief from an immigration judge, whose decision is subject to appeal to the Bureau of Immigration Appeals and the US Court of Appeals. But few immigrants who are removable on the basis of having committed a crime (as is the case with many immigrants identified through 287(g) programs) succeed in contesting removability, and those who have been convicted of aggravated felonies (i.e., those committing Level 1 offenses) are categorically ineligible for relief from removal. Immigrants who have agreed to depart voluntarily waive their right to a hearing before an immigration judge.

The following procedures are used by 287(g) officers in the three different versions of the program: jail enforcement, task force, and hybrid.

I. Jail Enforcement Model

In the jail model, 287(g) officers conduct inquiries about an inmate’s immigration status, communicate with ICE about immigrants in their custody, issue ICE detainers, and transfer inmates to ICE custody — all within the walls of their local detention facility (see Figure 1). The process begins when an officer in the field — who generally does not have specialized ICE training or 287(g) authority and who may not even work for a 287(g) law enforcement agency — arrests an individual for a criminal or nonimmigration civil offense.⁴⁸ The first official inquiry into immigration status under the auspices of the 287(g) program occurs when the individual is booked into the local jail.

When booked into any jail, inmates are generally asked to state their place of birth and nationality. In a 287(g) facility, any inmate who indicates that he or she is foreign born, or whom officers believe may be foreign born, is screened by 287(g) officers using the process described above. Most jail models conduct this screening during the regular booking process, at the time an inmate enters the correctional facility. The exception is the Los Angeles County Jail, where the procedure is to screen

47 Immigrants who are formally removed from the United States typically are ineligible to receive a visa for future legal immigration for a period of ten years, or 20 years if they have been previously removed.

48 In many parts of the country, local police departments conduct patrols and other operations in the field, while sheriff’s offices or other entities serve warrants and hold inmates in detention. Sheriffs are generally elected, while police chiefs are appointed by local elected officials. Among our study sites, patrols and other field operations are separated from jailing functions in Prince William County, VA; Cobb and Gwinnett counties, GA; and in Los Angeles. In other jurisdictions, the same agencies conduct patrols, make arrests, and house inmates; this is the case in Frederick County, MD, and Las Vegas.



inmates for immigration status and removability only after conviction for a criminal offense.

2. Task Force Model

Under the task force model, 287(g) officers have authority to inquire into immigration status and issue ICE detainers in the field, whereas jail officers' powers are limited to detention facilities. Task force officers also have the power to issue arrest warrants for immigration violations and execute search warrants, powers that do not extend to jail enforcement officers. Task force officers complete their screening of immigration status, enter the data into ENFORCE, and issue ICE detainers at police stations, where they have access to the same databases as 287(g) jail enforcement officers.

Some 287(g) jurisdictions have task forces that focus on particular crimes, and officers primarily inquire into the immigration status of persons encountered during the course of operations targeting such crimes. The Colorado Department of Public Safety's Immigration Enforcement Unit (IEU), for instance, focuses on smuggling and human-trafficking operations along the state's major highways. Other jurisdictions have 287(g) officers who can be called into the field during routine policing operations — such as traffic stops — to question the immigration status of persons in police custody. Two of the jurisdictions we studied followed this approach: the Frederick County Sheriff's Office and the Colorado IEU.⁴⁹

Still other agencies, such as the Prince William County Police Department, have task forces that conduct joint policing operations with ICE and other federal agencies. In contrast with Colorado and Frederick County, 287(g) officers in these jurisdictions only ask about immigration status during operations approved by ICE in advance.

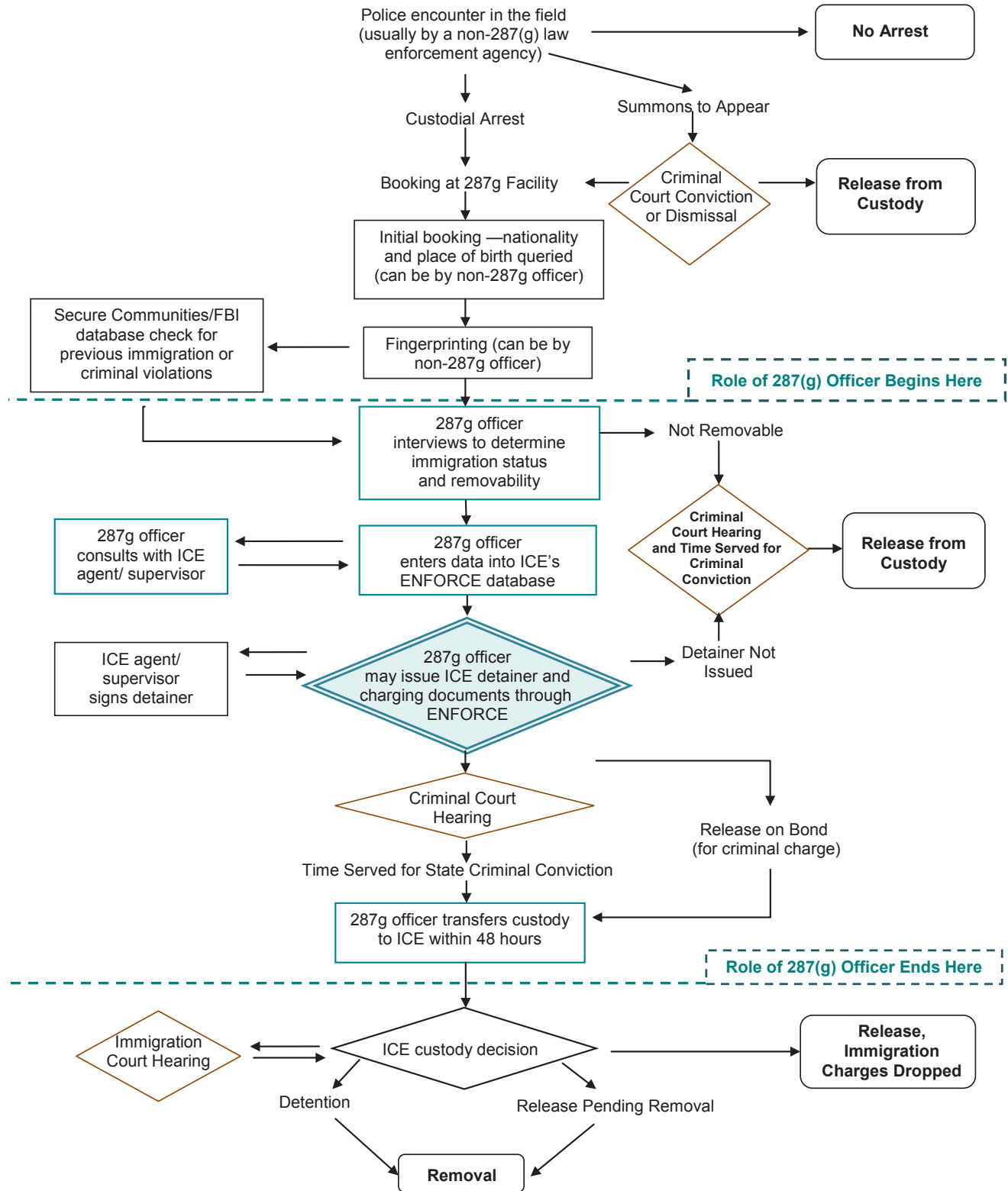
3. Hybrid Model

Hybrid models include jurisdictions which operate 287(g) jail and task force programs alongside each other. In the one hybrid program we examined, the Frederick County program, the jail and task force models had separate supervisors within the sheriff's department and at ICE, but worked closely together. In Frederick County, task force officers may initiate immigration processing, but they usually transfer people they suspect of being potentially removable immigrants to 287(g) jail officers who complete the immigration screening and ICE paperwork requirements.

⁴⁹ Although the Colorado Department of Public Safety's Immigration Enforcement Unit (IEU) focuses primarily on smuggling operations, Colorado state law requires all law enforcement officers in the state to notify ICE whenever they arrest someone whom they have probable cause to believe is unauthorized; state troopers comply with this law by notifying the IEU rather than their local ICE field offices.



Figure 1. Flow through a Typical 287(g) Jail Model





C. *The 287(g) Program Compared to Other ICE Partnerships*

The 287(g) program is one of several programs in which ICE and state and local law enforcement agencies collaborate, and one of three major partnerships focused on immigration enforcement. The others — Secure Communities and the Criminal Alien Program (CAP) — are also designed to identify potentially removable immigrants who have been arrested for criminal violations and eventually transfer them to ICE custody, though they differ in the details of how enforcement responsibilities and funding sources are divided between ICE and state or local officials.⁵⁰ Cooperation also occurs outside of these programs:

- Under Secure Communities, when arrestees are booked into state or local jails and their fingerprint data are sent to the FBI for criminal background checks, their fingerprints also are transmitted electronically to ICE's Law Enforcement Support Center (LESC). ICE officers at the LESL check the fingerprints against data in several immigration databases and then notify ICE officers in local field offices if the person appears to be removable. Local ICE officers make decisions about whom to pursue on immigration charges.
- Under the Criminal Alien Program, ICE officers are stationed in the state prison or local jail, where they conduct immigration screening. CAP officers also issue detainers and NTAs.
- In jurisdictions without formal ICE partnerships, any state or local law enforcement officials may contact ICE to request assistance if they suspect an arrestee is potentially removable. In these cases, ICE field offices respond on an ad hoc basis, depending on their own resource availability, and on the urgency of the request for assistance.

The 287(g) program has several unique features relative to these other forms of federal-local cooperation with respect to who makes arrests, who screens for immigration status and in what settings, how people are screened for immigration status, and how the program is funded (see Appendix 3).

The 287(g) task force model is the only case in which state or local police officers may arrest people on the basis of suspected immigration violations. In the other settings, including in 287(g) jail models, people are arrested during the course of regular law enforcement operations and initial contact is with a law enforcement officer who generally does not have training in immigration law and procedures. In the 287(g) jail model and all non-287(g) settings, immigrants are usually screened for legal status after they are arrested and booked into jail for a criminal violation.

The 287(g) program — whether in jail or task force settings — is the only ICE partnership in which state and local officers conduct immigration status screening. Absent 287(g) officers, state and local law enforcement agencies must rely on ICE to conduct immigration status screening remotely (via Secure Communities), by a co-located ICE officer (in CAP), or in response to case-by-case requests for assistance (where no formal partnership exists).⁵¹

The 287(g) program is also the only partnership that authorizes state and local officers to hold people on immigration charges by issuing detainers and to initiate the removal process by issuing an NTA. In CAP, Secure Communities, and other partnerships, only ICE officers can initiate the removal process and prepare formal charging documents.

Finally, with respect to funding, 287(g) is the only immigration enforcement partnership in which state and local agencies cover at least some of the costs of immigration screening, i.e., the salaries of 287(g) officers (see below). As a result, where jurisdictions decide to invest their own resources in it, the program

⁵⁰ These programs all fall under ICE's Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) initiative; see ICE descriptions for all ACCESS programs at "ICE ACCESS," accessed November 20, 2010, www.ice.gov/access.

⁵¹ Secure Communities provides state prisons and local jails with data concerning the previous immigration statuses and violations of their inmates. Secure Communities does not, however, provide any information on immigrants who have entered the United States illegally and have not had contact with any federal authorities. In-person screening of immigration status, whether by 287(g) officers or ICE officers, is the only mechanism to identify unauthorized immigrants who have not yet come into contact with immigration authorities.



also has the greatest capacity to expand local immigration screening and to identify potentially removable immigrants.

IV. Study Findings

A. 287(g) Program Outcomes

The 287(g) program currently accounts for only about 10 percent of all people identified by DHS for potential removal on immigration charges, but the program has resulted in a substantial number of removals since its inception. Between October 2005 and October 2010, 287(g) officers identified and screened 186,000 noncitizens for potential removal, with more than 100,000 of these identified within the past two years.⁵² In FY 2009, 287(g) officers issued ICE detainers on 60,000 noncitizens, and in FY 2010 that number dropped by about 20 percent to 48,000.⁵³ The total number of noncitizens formally removed or voluntarily departing via the 287(g) program dropped 37 percent from 43,000 in FY 2009 to 27,000 in FY 2010. The 20 percent drop in detainers reflects a drop in overall program activity and may also reflect some targeting in the overall program. But the removal numbers have a significant time lag, as it can take two years or more to complete the removal process, particularly for people with minor violations who are released from immigration detention. Because of this time lag, the number of removals in any given year reflects program activity during the current year as well as the previous two years.

FINDING 1 Some Jurisdictions Place Detainers Mostly on Serious Criminals, While Others Focus on People with Minor Criminal Offenses and Traffic Violations

A central focus of our study is the degree to which the 287(g) program operates in a targeted or universal fashion. The main indicator we used to address this question is the share of people going through the program who have committed serious criminal offenses, defined as Level 1 or 2 in ICE's prioritization system, as laid out in the 2009 template for 287(g) agreements.⁵⁴ We also consider the share committing immigration violations that are among ICE's stated priorities — such as those with prior removal orders or those who have recently crossed the border illegally.

In the first ten months of FY 2010,⁵⁵ about half of the detainers issued by 287(g) officers (19,700) were placed on people with Level 1 or 2 offenses — i.e., mostly felonies (see Appendix 5 and Figure 2). The other half were placed on noncitizens who committed Level 3 crimes (mostly misdemeanors), traffic

52 Data for FY 2006 through FY 2010, and for October 2010. Federal fiscal years run from October 1 of the previous year through September 30. For example, FY 2011 began on October 1, 2010. See ICE, "287(g) Identified Aliens for Removal," table accessed December 15, 2010, www.ice.gov/doclib/foia/reports/287g-masterstats2010oct31.pdf.

53 Ibid.

54 According to our interviews with ICE and with state and local law enforcement agencies, the priority level was coded for the most serious offense an immigrant had committed at any point in time. In the 2009 287(g) template's coding system, which was in use at the time data for our study were collected (during FY 2010), some Level 1 and 2 offenses included crimes that would not be considered felonies in most states. ICE's data track traffic violations in a separate category, regardless of the severity of the offense. ICE considers most traffic violations to be similar in severity to Level 3 offenses, though some more serious traffic violations such as DUI or vehicular manslaughter may be Level 1 or 2 violations. ICE revised its coding system in June 2010 to make Level 1 offenses congruent with aggravated felonies, Level 2 offenses with other felonies or multiple misdemeanors, and Level 3 offenses with misdemeanors; the agency's data collection only reflects these new codes beginning in October 2010, and they are not reflected in our data. Despite the changes in and some controversy over exactly who is included in each group, we follow the intent of ICE's stated priorities by considering Level 1 and 2 offenders to be "serious criminals" and Level 3 and traffic offenders to not be serious criminals.

55 Throughout the report, except where noted, 287(g) program statistics are for the first ten months of FY 2010 — from October 1, 2009, through August 2, 2010 — and were provided by ICE's Office of State and Local Coordination (OSLC).

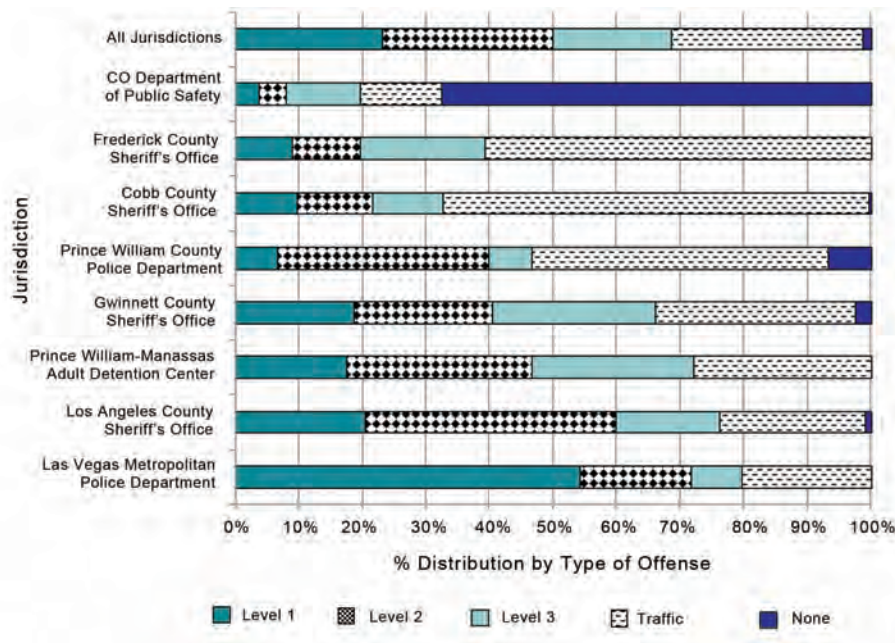


offenses (e.g., driving under the influence or driving without a license), or only immigration-related — not criminal — offenses.

Only a small minority of potentially removable immigrants identified through the 287(g) program have previous immigration violations in addition to unauthorized status. During the first ten months of FY 2010, only 15 percent of ICE detainers were placed on people with prior final removal orders and who had failed to depart. About 16 percent of Level 1 or 2 offenders had prior removal orders, along with 15 percent of Level 2 offenders and 13 percent of those with traffic violations. The fact that only half of detainers were placed on Level 1 or 2 offenders and that fewer than one in five had previous immigration violations indicates that the program is not entirely targeted toward the most serious criminals or other high-priority cases.

We found substantial variation in the degree to which the seven jurisdictions studied target their 287(g) programs toward serious criminals. In Las Vegas, more than half of all detainers in FY 2010 were placed on Level 1 offenders versus 10 percent or less in Colorado, Prince William County, Frederick County, and Cobb County (see Figure 2 and Appendix 5).⁵⁶ The share with Level 1 or 2 offenses ranged from over 70 percent in Las Vegas to under 10 percent in Colorado. In Colorado, 68 percent of ICE detainers (286) were placed on noncitizens with no criminal violations at all; ICE and Colorado task force officials explained that noncriminals with detainers are typically passengers in smuggling or human-trafficking cases. Because they are generally recent border crossers, ICE considers smuggled passengers a top priority for enforcement. Traffic offenders comprised more than 60 percent of detainers in Cobb and Frederick counties versus just 20 percent in Las Vegas and 13 percent in Colorado.

Figure 2. Distribution of Offenses by Seriousness for Noncitizens with ICE Detainers by Study Site, FY 2010



Notes: Includes detainers issued by 287(g) officers between October 1, 2009 and August 2, 2010. Excludes small numbers of offenses coded as “drugs,” “civil,” “other criminal,” or “no data.”

Source: ENFORCE data from ICE OSLC, Oct. 1, 2009 through August 2, 2010.

⁵⁶ Las Vegas placed detainers on 766 Level 1 offenders, and Los Angeles placed detainers on 583 Level 1 offenders. The numbers of Level 1 offenders with detainers were just 163 in Prince William County (including jail and task force models), 160 in Cobb County, 18 in Frederick County, and 15 in Colorado. Maricopa and Harris counties — the two largest jurisdictions in overall volume — also placed the most detainers on Level 1 offenders.



The distribution of seriousness of offenses described in Figure 2 is determined largely by the degree to which 287(g) officers are selective in placing detainees on noncitizens. In some jurisdictions, 287(g) officers place ICE detainees on nearly 100 percent of the potentially removable immigrants they encounter. Since most have not committed Level 1 or Level 2 crimes, this universal enforcement model naturally results in a high proportion of detainees being issued on people who have committed Level 3 offenses, traffic violations, or solely immigration violations. Conversely, in targeted enforcement jurisdictions, detainees are usually reserved for the most serious criminal aliens and others identified as top enforcement priorities, resulting in a higher proportion of Level 1 and Level 2 offenders being processed through these programs. As the data above indicate, our sites fall along a continuum in terms of their targeting of Level 1 and 2 offenders, but in practice there is a bright line between the jurisdictions that process virtually all removable immigrants encountered and those that are more selective.

287(g) programs in three of our study sites — Frederick, Cobb, and Gwinnett counties — follow the universal enforcement model, placing detainees on virtually every potentially removable immigrant they encounter. In all three counties this occurs when arrestees are booked into jail, though in Frederick County immigration screening sometimes begins when potentially removable immigrants are encountered by 287(g) officers on patrol.

The other four sites in our study all take more targeted approaches to enforcement and issue detainees more selectively. The Las Vegas Metropolitan Police Department, for example, placed immigration detainees on just over 2,722 inmates through May 2010, but officers chose not to refer to ICE more than 2,300 unauthorized inmates, because they had no prior criminal history or had been booked on only minor charges.⁵⁷

The Los Angeles County Sheriff's Office is unique among our study sites — and perhaps unique among all 287(g) jurisdictions nationally — in that officers there do not screen at booking (as shown in Figure 1), but instead screen for immigration status after conviction. This decision resulted from a compromise between 287(g) proponents and more skeptical decisionmakers. Study respondents also reported that Los Angeles County focuses primarily on people convicted of Level 1, 2, and 3 offenses rather than traffic offenses. Nonetheless, Los Angeles County placed 40 percent of its detainees on Level 3 or traffic offenders in FY 2010, compared to less than 28 percent in Las Vegas (see Figure 2). And the total number of detainees on Level 3 and traffic offenders in FY 2010 (1,115) is among the highest in the nation (see Appendix 5), although this high number is partially a function of the large population size of the jurisdiction.

The Prince William County-Manassas jail was the only 287(g) facility we visited where resource constraints were explicitly identified as an important factor determining which inmates receive ICE detainees.⁵⁸ Officers there place priority on processing Level 1 and 2 offenders; they only place detainees on Level 3 or traffic offenders when resources permit. This resulted in the county falling in the middle of the targeting spectrum among our study sites, with almost half of detainees placed on Level 1 or 2 offenders, near the national average (see Figure 2). Prince William County may soon begin issuing detainees more liberally, however, as ICE recently opened a new, large detention facility in nearby Farmville, VA.

Colorado's IEU task force also focuses its enforcement efforts on specific immigration crimes — immigrant-smuggling and human-trafficking operations, as required by state law — based on

57 Lynnette Curtis, "Sheriff Says Pact Makes Arizona Law Unnecessary," *Las Vegas Review Journal*, May 9, 2010.

58 Prince William County has four separate agencies with 287(g) agreements. The Prince William County Police Department has a task force that focuses on joint operations with ICE and other federal authorities; while the county's task force yielded a relatively low share of Level 1 and 2 offenders (40 percent), the total number of detainees placed during the first ten months of 2010 was just 17. Two cities in Prince William County (Manassas and Manassas Park) have small task forces, including one or two officers on patrol at any given time, who bring any immigrants they encounter to the Prince William County jail (the fourth 287g agency in the county) for screening.



intelligence it gathers and ICE-provided information. ICE supervisors and 287(g) officers reported that task force policy is to inquire about immigration status and initiate ICE detainers only in smuggling and human-trafficking cases or when state troopers (including troopers unaffiliated with the 287(g) program) arrest a person they suspect of being unauthorized.⁵⁹

Universal versus targeted placement of detainers is the single most important procedural difference among the 287(g) jurisdictions included in our study. While all the jurisdictions in our study make Level 1 and Level 2 offenders their top enforcement priorities, Level 3 and traffic offenders make up a relatively high share of program activity in jurisdictions that place detainers on all unauthorized immigrants they encounter. The 287(g) program has allowed these jurisdictions to identify and initiate removal proceedings for relatively large numbers of unauthorized immigrants with Level 3 and traffic violations that would likely have remained in the community if not for the program.

The variation in severity of offenses across 287(g) jurisdictions raises questions about the uniformity of federal immigration enforcement and federal enforcement priorities. The fact that highly targeted and universal models operate side by side confirms that ICE tolerates a high degree of variation in program outcomes. This variation is at odds with the Obama administration's public statements about the purposes of the program. Moreover, as we show below, the detention, adjudication, and removal of so many low-level offenders creates downstream costs for ICE and other federal agencies, as well as significant public controversies and immigrant community impacts.

FINDING 2 Jail Models Account for 98 Percent of 287(g) Detainers

ICE data show that jail models process far more people for removal than 287(g) task forces. In the first ten months of FY 2010, the 19 pure jail models in the 287(g) program together accounted for 90 percent of program activity (37,578 of 39,772 detainers), while the program's 14 hybrid (jail and task force) models accounted for 8 percent (3,176 detainers). The 19 pure task forces were responsible for just 2 percent (831 detainers). The largest-volume task force — Colorado's IEU — accounted for almost half (397) of these detainers, while the other 18 task forces each accounted for fewer than 100.

In general, jail models handle much higher volumes due to the efficiency of screening in jail settings: jail enforcement officers spend virtually all of their time screening for immigration status and issuing ICE detainers, while task force officers spend substantial amounts of time performing policing activities unrelated to immigration. While public controversy has focused on patrols and "sweeps" by 287(g) officers operating in the field, in reality almost all 287(g) activity occurs within the walls of detention facilities. Moreover, most of the initial arrests that lead to jail screening occur outside the purview of the 287(g) program and are the result of enforcement actions carried out by non-287(g) officers.

FINDING 3 A Handful of Large Jurisdictions Dominate the Program

In FY 2010, 12 jurisdictions accounted for 79 percent of program activity (31,566 detainers). Eleven of these were in large urban or suburban counties (including parts of the Los Angeles, Houston, Atlanta, Phoenix, Las Vegas, and Nashville metropolitan areas), and one was a statewide jail model (Arizona). The two top jurisdictions — Maricopa County (Phoenix) and Harris County (Houston) — together accounted for 28 percent (11,266) of all ICE detainers issued (see Table 3). All of the top 12 jurisdictions were jail models.

⁵⁹ Colorado's SB 90 requires law enforcement officers in the state to report suspected unauthorized immigrants to ICE; state troopers make these reports to the IEU task force rather than an ICE field office. See Appendix 3 for details.



At the other end of the spectrum, 14 jurisdictions issued fewer than ten detainees and 33 issued fewer than 100. Task force models were relatively inactive compared to the jail models, as eight task forces issued fewer than ten ICE detainees; some task forces were not included in the data, suggesting they issued no detainees at all.⁶⁰ Only one hybrid and one jail model accounted for fewer than 20 ICE detainees.

Table 3. Top Twelve 287(g) Jurisdictions by Number of ICE Detainers Issued, FY 2010

Jurisdiction	Model	FY 2010 287(g) Detainers Issued	Share of Total Detainers Issued
Maricopa County Sheriff's Office (AZ)	Jail	6,359	16%
Harris County Sheriff's Office (TX)	Jail	4,907	12%
San Bernardino County Sheriff's Office (CA)	Jail	3,342	8%
Los Angeles County Sheriff's Office (CA)	Jail	2,874	7%
Arizona Department of Corrections	Jail	2,611	7%
Gwinnett County Sheriff's Office (GA)	Jail	1,964	5%
Orange County Sheriff's Office (CA)	Jail	1,941	5%
Mecklenburg County Sheriff's Office (NC)	Jail	1,723	4%
Cobb County Sheriff's Office (GA)	Jail	1,622	4%
Wake County Sheriff's Office (NC)	Jail	1,437	4%
Las Vegas Metropolitan Police Department (NV)	Jail	1,413	4%
Davidson County Sheriff's Office (TN)	Jail	1,373	3%
All jurisdictions nationally		39,772	100%

Note: Includes detainees issued by 287(g) officers between October 1, 2009 and August 2, 2010.

Source: ENFORCE data from ICE OSLC, Oct. 1, 2009 through August 2, 2010

FINDING 4 Jail Models Are Not Substantially More Targeted than Task Force Models

The degree to which 287(g) programs are targeted or universal is not primarily explained by differences among jail, task force, and hybrid models. In the aggregate, task forces were less likely to place ICE detainees on Level 1 or 2 offenders than jail models (29 versus 51 percent; see Figure 3) or hybrid models (42 percent). Most of the difference between task force and jail models is accounted for by the high number of detainees placed on smuggling passengers without criminal offenses in Colorado.⁶¹ If Colorado were excluded from the task force jurisdictions, 49 percent of detainees issued by task forces would be for Level 1 or 2 offenders, virtually the same proportion as for jail models. Almost one-third of detainees issued by jail and hybrid 287(g) officers were placed on immigrants with traffic violations, while almost 40 percent of those issued by task forces were placed on immigrants with no criminal violations at all — again, mostly smuggling passengers in Colorado.

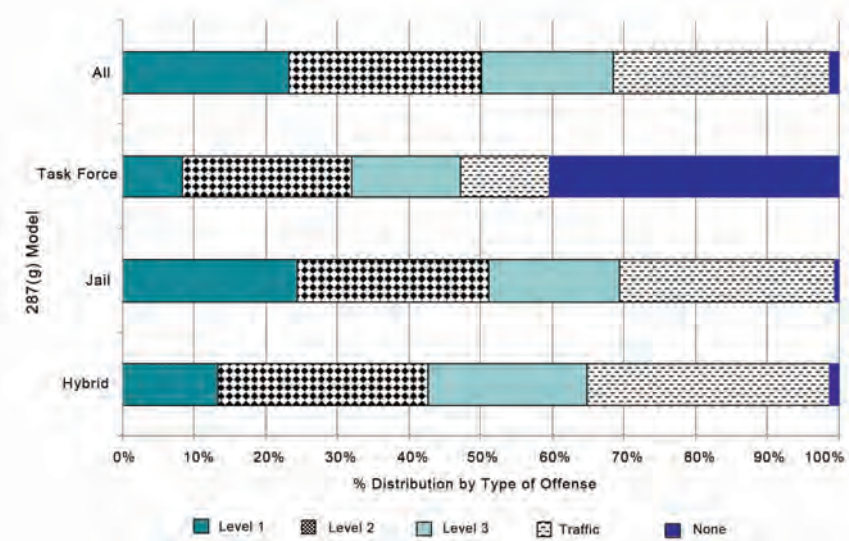
But the much higher volume of jail models means that together they account for the vast majority of detainees placed on Level 3 offenders (6,458 of 7,276 — or 89 percent) and traffic offenders (10,712 of 11,878 — or 90 percent). Except for the smuggling passengers in Colorado, task forces place a very small number of low-level offenders in removal proceedings.

⁶⁰ For instance, the task forces in Manassas and Manassas Park do not issue detainees; they send the potentially removable immigrants they have screened for legal status to the Prince William County Adult Detention Center, where 287(g) jail enforcement officers issue detainees.

⁶¹ Colorado's IEU issued 397 ICE detainees in the first ten months of FY 2010, including 268 on individuals facing no criminal charges, typically because they were passengers in a smuggling case or apprehended at a smuggling drop house. Arrests of immigrants without criminal charges are common in Colorado because of the state's focus on smuggling operations.



Figure 3. Distribution of Offenses by Seriousness for Noncitizens with ICE Detainers, by 287(g) Model, FY 2010



Notes: Includes detainers issued by 287(g) officers between October 1, 2009 and August 2, 2010. Excludes small numbers of offenses coded as “drugs,” “civil,” “other criminal,” or “no data.”
Source: ENFORCE data from ICE OSLC, Oct. 1, 2009 through August 2, 2010.

FINDING 5 The Universal Enforcement Model Is Concentrated in the Southeast

The jurisdictions issuing the highest shares of detainers on Level 1 and 2 offenders have diverse characteristics in terms of their location, size, and type of model. But the jurisdictions processing the highest shares of traffic violators (i.e., the universal enforcement jurisdictions) all operate large-scale jail models in Southeastern counties (see Figure 4).⁶² Cobb, Mecklenburg, and Davidson counties also are among the ten largest 287(g) jurisdictions by volume (see Table 3). Together these ten counties accounted for about one-third of all detainers (3,927 of 11,878) placed on people with only traffic violations, even though they have much smaller total population sizes than the largest jurisdictions of Los Angeles and Houston.⁶³

All of these Southeastern jurisdictions have deployed the 287(g) program with similar results: a high number of ICE detainers resulting from a focus on traffic offenders. This regional pattern reflects common political pressures that stem from rapid demographic change. North Carolina, Georgia, Tennessee, and South Carolina ranked first, second, fifth and sixth, respectively, in the growth rates of their foreign-born populations from 1990 to 2009.⁶⁴ Rapid growth has provoked a public reaction against the perceived costs of immigrants in these states. Highly politicized debates about immigration — at least in our study jurisdictions — have put pressure on the sheriffs and other elected officials to participate in the 287(g) program and otherwise support measures to reduce unauthorized populations.

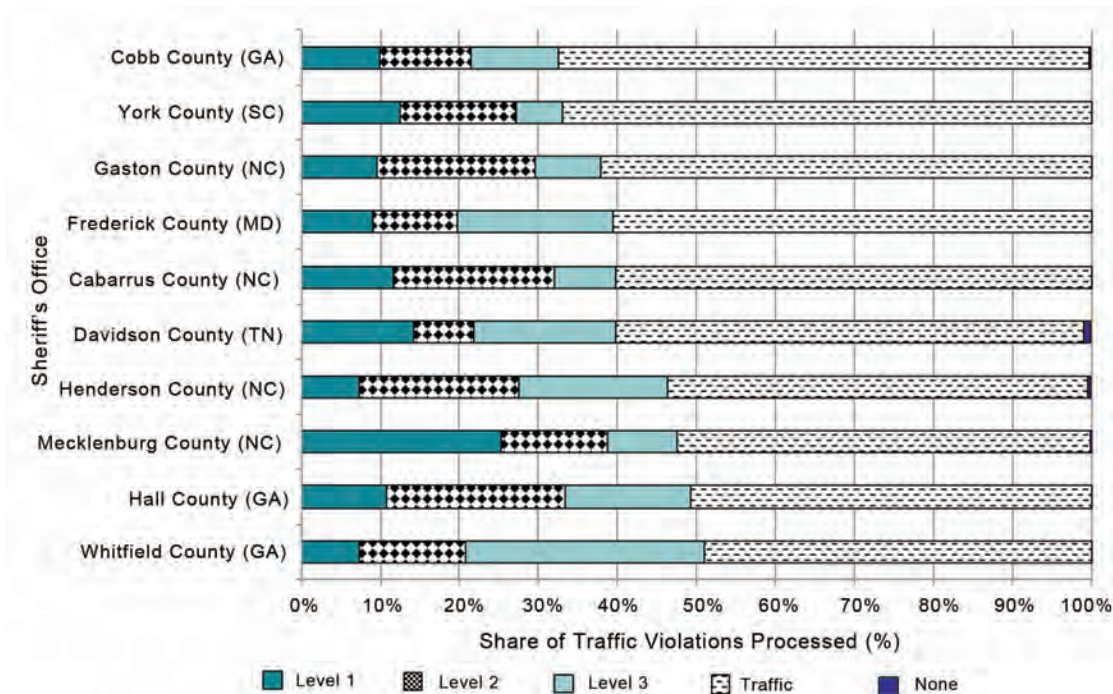
⁶² Two other 287(g) jurisdictions — Washington County, Utah and the State of Alabama — also placed a high share of detainers on traffic violators, but they only processed one and two noncitizens, respectively, in FY 2010.

⁶³ Maricopa County, Arizona, placed the largest number of detainers on traffic violators (2,061), followed by Harris County, Texas (1,468), and Cobb County, Georgia (1,088). Both Maricopa and Harris counties are much larger jurisdictions in total population size than Cobb County. The program has been more controversial in Maricopa County than Harris County because of the community-wide immigration sweeps by Maricopa County Sheriff Joe Arpaio.

⁶⁴ Migration Policy Institute (MPI) Data Hub, “States Ranked by Percent Change in the Foreign-Born Population: 1990, 2000, and 2009,” accessed December 15, 2010, www.migrationinformation.org/datahub/files/MPIDataHub_ACS_2009-PercentChangeForeignBorn.xlsx.



Figure 4. Distribution of Offenses by Seriousness for Noncitizens with ICE Detainers for the Ten Jurisdictions with Highest Shares of Traffic Offenders, FY 2010



Notes: Includes detainers issued by 287(g) officers between October 1, 2009 and August 2, 2010. Excludes small numbers of offenses coded as “drugs,” “civil,” “other criminal,” or “no data.”

Source: ENFORCE data from ICE OSLC, Oct. 1, 2009 through August 2, 2010.

There also appears to have been considerable information-sharing among law enforcement officials across the region, as officials from all of our Southeastern study sites had visited the Mecklenburg County 287(g) program and modeled their own programs on it. Virtually all 54 agreements signed between early 2007 and May 2009 tracked the language used in Mecklenburg County’s 287(g) agreement; most of these were implemented in the Southeast, and many were signed at a time when former Mecklenburg County Sheriff Pendergraph was administering the 287(g) program as the head of OSLC. Furthermore, the Georgia, North Carolina, South Carolina, and Tennessee programs are all overseen by ICE’s Atlanta regional office.

Our study sites reflect this regional pattern, as the Southeastern sites of Cobb, Gwinnett, Prince William, and Frederick counties show relatively high shares of traffic offenders and low shares of Level 1 and 2 offenders compared to the national average. But we also note substantial variation within these Southeastern sites, as Cobb and Frederick counties show a much greater proportion of traffic violators than either Gwinnett or Prince William counties.⁶⁵

⁶⁵ The Gwinnett County program was new in fall 2009, and we were told that over time the share of traffic violators has increased, while the share of Level 1 and 2 offenders has declined. It was noted that when the program was initiated, a very high percentage of detainers were placed on high-level offenders identified during a sweep of the jail. During our spring 2010 visit, we observed a small group of immigrants being prepared for transfer into ICE custody, and all but one had been charged with drunk driving or driving without a license. The Gwinnett County Sheriff’s Department website provides a breakdown of offenses for the total number of immigrants with detainers placed through the 287(g) program since its inception. As of December 15, 2010, 42 percent of ICE detainers (1,335 of 3,203) were placed on people with only traffic offenses, and 15 percent (487 detainers) were on people with only driver’s license violations. See Gwinnett County Sheriff’s Department (GCSD), “Gwinnett County Sheriff’s Department 287g,” (Lawrenceville, GA: GCSD, accessed December 15, 2010), www.gwinnettcountysheriff.com/asp/287g_1_dates.asp.



B. Program Goals and Motivations

ICE and the state and local partner agencies studied here uniformly see the program as mutually beneficial, but we noted significant variations in goals and motivations among our study sites. Some goals are more in line with ICE's stated focus on dangerous criminals, while others are more in line with a strategy of attrition of the unauthorized population.

FINDING 6 Program Goals Differ across Jurisdictions, but ICE Supervisors and Partner Agencies Agree within Jurisdictions

We asked ICE 287(g) program managers, supervisors, and other staff about their goals and priorities. Their responses fall into two different interpretations corresponding with more targeted versus universal visions of the program.

In jurisdictions practicing targeted enforcement, both ICE officers and local law enforcement agencies described civil immigration enforcement as an important but secondary priority, which should not distract them from their primary missions of criminal and counterterrorism investigations and public safety. From this viewpoint, ICE's task force supervisors prefer that 287(g) officers assist ICE and other federal agencies with investigations into gangs, drug operations, smuggling operations, and other high-priority law enforcement targets, rather than more generally identifying unauthorized immigrants for detention and removal. Some jail model ICE supervisors suggested that 287(g) jail screening should support civil immigration enforcement but that detainees should only be placed on high-priority offenders — those who have committed serious crimes or have previous violations.

Law enforcement agencies echoed the sentiments of ICE supervisors in the jurisdictions that operate targeted programs. In Prince William County, for instance, 287(g) officers reported that they feel pressure to conform with national program goals since they are located so close to ICE's headquarters.⁶⁶ As a consequence, ICE supervisors and 287(g) officers have steered the Prince William County task force and jail programs toward Level 1 and 2 offenders and away from traffic violators, and the Prince William County Police Department has emphasized that "Enforcement action by the Criminal Alien Unit will address serious CRIMINAL activity (emphasis in original)."⁶⁷ The police department does not ask immigrants about their status during traffic stops or other routine policing operations, and the department issued only 17 detainees in the first ten months of 2010 (see Table 3).⁶⁸

Similarly, managers and 287(g) officers in the Clark County Correctional Facility in Las Vegas emphasized to us that their focus is on Level 1 and 2 offenders. Las Vegas Sheriff Douglas Gillespie has maintained a consistent and public position that his aim in signing the 287(g) agreement is to identify and remove serious offenders. He expressed that stance when signing the initial agreement, as well as during the 2009 renegotiation process.⁶⁹

In Colorado, the program is targeted toward smuggling operations. There, 287(g) officers and ICE officials both argued that the state's task force promotes public safety by discouraging smugglers from driving vehicles overloaded with unauthorized immigrants on mountain roads, including under dangerous winter driving conditions.

⁶⁶ Prince William County is a suburb of Washington, DC, where ICE's headquarters is located.

⁶⁷ Prince William County Police Department (PWCPD), "Local Enforcement Response to Illegal Immigration," (Prince William, VA: PWCPD, June 18, 2008), www.pwcgov.org/docLibrary/PDF/007819.pdf.

⁶⁸ Two smaller task forces — operated by the police departments of Manassas and Manassas Park — respond to routine policing operations in their jurisdictions, but refer all individuals to the Prince William County-Manassas jail for screening. The small numbers of immigrants identified by Manassas and Manassas Park 287(g) officers are included in the total for Prince William County Adult Detention Center (see Table 3).

⁶⁹ Alan Maimon, "Las Vegas Police: Pact Sought on Policing Immigrants," *Las Vegas Review Journal*, November 29, 2007; Lynnette Curtis, "Valley Immigration Divide Wide," *Las Vegas Review Journal*, August 28, 2009; Curtis, "Sheriff Says Pact Makes Arizona Law Unnecessary."



In contrast, ICE supervisors in jurisdictions practicing a more universal approach to enforcement reported that ICE and the 287(g) jurisdictions together have sufficient resources to detain and remove all unauthorized immigrants identified by 287(g) officers, regardless of the severity of the criminal offenses. They also argued that unauthorized immigrants committing traffic violations represent a public safety threat significant enough to warrant removal. From this perspective, a core advantage of the program is to expand ICE's enforcement capacity beyond the focus on serious offenders to encompass broader enforcement goals.

Sheriffs and other elected officials in Frederick, Cobb, and Gwinnett counties also expressed their motivations broadly as improving public safety and reducing illegal immigration, often conflating the two. Frederick County Sheriff Charles Jenkins testified before the US House Committee on Homeland Security that the 287(g) program is important to fight "the enormous increase in crime in the United States ... which can be tied directly to the unchecked flow of illegal immigrants through our southern border with Mexico."⁷⁰

The Cobb County Sheriff's Office website states, "Immigration is a federal issue. However, when illegal immigrants come into our community and commit a crime, it becomes a local issue ... If someone is here illegally and commits a crime, whether a misdemeanor or a felony, they should be subject to deportation."⁷¹ Gwinnett County Sheriff Butch Conway has stated that arresting unlicensed drivers is an important function of the 287(g) program as such drivers pose an imminent danger: "Those people that haven't shown a proficiency in driving, I think they are dangerous out on the road."⁷² Referring to the public's perception of immigrants, he also stated: "People ... complain about the quality of life in their subdivision. They are concerned with how their property values have been lowered by what they believe to be illegal aliens not keeping up their properties, having too many vehicles parked in yards and too many people living in a house. Illegal aliens have different cultures that don't quite blend with what they're used to."⁷³

In sum, local ICE supervisors and 287(g) officers agree in all of the jurisdictions we visited. Both ICE supervisors and state and local enforcement officials view the program as a tool for broad immigration enforcement in the three universal enforcement jurisdictions in our study; in the other jurisdictions, they agree on operating a more targeted program.

FINDING 7 State and Local Program Goals Often Derive from Political Pressures

Some divergence in how 287(g) stakeholders define program goals is inevitable because ICE and local law enforcement agencies face different pressures from jurisdiction to jurisdiction. In general, ICE must weigh civil immigration enforcement against its other enforcement goals and allocate resources nationally. 287(g) partner agencies answer to state and local constituencies, some of which may desire enforcement that reaches beyond serious offenders.

Any delegation partnership, therefore, will and should reflect some variation in goals and priorities, as the program must at some level be responsive to state and local concerns in order to function effectively — though the difficult question will always be how much variation to allow.

⁷⁰ Testimony of Charles A. Jenkins, Sheriff, Frederick County, MD, before the US House Committee on Homeland Security, *Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law*, 111th Cong., 1st sess., March 4, 2009.

⁷¹ Cobb County Sheriff's Office, "Immigration and Customs Enforcement Frequently Asked Questions," accessed August 6, 2010. An updated version, revised in December 2010, is available at <http://mail.cobbsheriff.org/news/12-13-10%20%20287%28g%29%20Frequently%20Asked%20Questions%20and%20Stats.htm>.

⁷² Andria Simmons, "Is sheriff a hero or racial profiler: Some praise efforts in Cobb County, others say the wrong people are being targeted, arrested," *Atlanta Journal Constitution*, October 12, 2009.

⁷³ Andria Simmons, "New alliance may 'cut the crime rate'; Gwinnett sheriff talks about jail screenings: 287(g) program aims to filter out illegal immigrant inmates," *Atlanta Journal Constitution*, November 16, 2009.



State and local jurisdictions elect to sign 287(g) agreements for a variety of reasons, and these reasons usually reflect state or local political pressures. In all of our study sites, sheriffs and other elected officials promoted 287(g) participation. Appointed law enforcement officers generally did not. In about half of the sites (Cobb, Gwinnett, and Prince William counties, plus the state of Colorado), the impetus for signing 287(g) agreements began with pressure from proponents of stricter immigration enforcement and elected officials (county commissioners and state legislators), rather than law enforcement agencies themselves.

In Georgia, for example, an immigration-control group lobbied for state legislation, including two bills that eventually passed: legislation encouraging counties to adopt 287(g) programs and a measure requiring jail time for driving without a license (see Appendix 4). The group also pressured Cobb County elected officials, including the sheriff, to sign a 287(g) agreement and adopt other immigration-control legislation. After Cobb County signed the first agreement in Georgia, the leader of the group held a rally to thank Sheriff Neil Warren and told reporters, “He is the only sheriff in Georgia who has taken advantage of a federal tool to expand his existing authority to help enforce immigration law.”⁷⁴

Later, the group lobbied Gwinnett County’s sheriff and other elected officials to follow Cobb County’s lead and implement the 287(g) program there. Immigration enforcement was an important part of the 2008 election for county commissioner in Gwinnett County, with the challenger promoting 287(g) participation first and then the incumbent adopting the same position before winning reelection. The 287(g) program was also an issue in Sheriff Conway’s successful reelection campaign.

Proponents of stricter immigration rules and enforcement also featured prominently in the 2007 election for the Prince William County Board of Supervisors. A local blogger formed a group to lobby the county to adopt immigration-control measures.⁷⁵ The debate over an ordinance to require county police to check the immigration status of anyone they encountered and had “probable cause” to believe was unauthorized took place in summer and fall 2007, during the election campaign. The chair of the Board of Supervisors campaigned primarily on immigration enforcement and in support of the ordinance, and was reelected. The immigration-control group mobilized dozens of speakers at Board of Supervisors’ meetings, hundreds of protestors at public events, and thousands of e-mails to supervisors in support of the ordinance as well as 287(g) participation.

Immigration control generally, and participation in the 287(g) program in particular, have also been highly political issues in Frederick County. The County Commission considered a number of controversial immigration-control measures during 2005 and 2006, including proposals to require the school board to provide a count of unauthorized students and to call a state constitutional convention to consider measures to combat illegal immigration. Sheriff Jenkins ran on an immigration-control platform, including a promise to pursue a 287(g) agreement if elected, and the county’s enrollment in the program became an issue in his successful 2010 reelection campaign.

Colorado’s 287(g) program was initiated in response to state legislation. The state’s agreement was signed in 2006, following passage of SB 225, which required the Colorado State Patrol to establish a special division to address human smuggling and human trafficking on the state’s highways (see Appendix 4). SB 225 followed up on legislation passed earlier that year, SB 90, requiring all law enforcement officers in the state to report suspected unauthorized immigrants to ICE when arresting them for criminal offenses. In the context of SB 90 and restrictions on noncitizens’ eligibility for state benefits, the law requiring the Colorado State Patrol to sign a 287(g) agreement was relatively uncontroversial at the time, according to the immigrant advocates and lawmakers we interviewed.

⁷⁴ Steve Visser, “Sheriff’s immigration stance wins fans, foes,” *Atlanta Journal Constitution*, December 8, 2007.

⁷⁵ Audrey Singer, Jill H. Wilson, and Brooke DeRenzis, *Immigrants, Politics, and Local Response in Suburban Washington* (Washington, DC; Brookings Institution, 2009), www.brookings.edu/~media/Files/rc/reports/2009/0225_immigration_singer.pdf.



Las Vegas and Los Angeles — where the programs have been targeted narrowly on serious criminals — were the only two study sites where political considerations were not the primary motivation for sheriffs to enter into 287(g) agreements. In Las Vegas, Sheriff Douglas Gillespie sought access to ICE’s databases for his own law enforcement objectives. The databases enable his deputies to determine the identity of inmates in his facilities, and the sheriff says that his concern is with identifying and removing persons with criminal histories, not civil immigration violations.⁷⁶ The sheriff learned about 287(g) at a conference organized by the Police Executive Research Forum and was persuaded by the presentations of sheriffs from Mecklenburg County and Collier County, FL — both of which already had 287(g) agreements — that the program would benefit his community.

In Los Angeles, Sheriff Leroy Baca and a county supervisor began pressing for a 287(g) agreement immediately after September 11, 2001. From its inception, the program’s focus has been on people who have committed serious criminal violations. Though the majority of the Board of Supervisors initially resisted adopting the agreement, they reached a compromise by stipulating that the program would involve screening noncitizens only after they have been convicted, underscoring the program’s focus on persons with criminal records.

Across our study sites, the political pressures in favor of 287(g) were greatest in the jurisdictions that have adopted the most expansive programs: Cobb and Gwinnett counties, Frederick County, Prince William County, and the State of Colorado. In all of these places, the public has exerted considerable pressure on state and/or local elected officials to respond to illegal immigration, and public perceptions linking unauthorized immigrants to crime are significant. In several of these jurisdictions, fatal traffic accidents and shootings of law enforcement officers involving unauthorized immigrants have dramatically increased the intensity of the issue.

The universal enforcement programs we visited operate in environments where immigration has been especially controversial and where there have been public clashes over 287(g) and other enforcement strategies. However, all of the 287(g) programs represent a response to state and local political pressures, rather than to an ICE requests for assistance to advance national enforcement priorities.

C. Program Implementation

Law enforcement agencies generally exercise considerable discretion in how they use their own enforcement resources. In contrast with other partnership programs, which are directly under ICE control, the 287(g) program gives participating state and local agencies substantial flexibility in how they implement the program. While ICE has identified enforcement priorities in the 2009 revisions to the 287(g) agreements and in other documents, substantial flexibility remains in how to interpret these priorities. As a result, there is substantial variation in how the program has been implemented across our study sites.

FINDING 8 The Program Supplements Federal Enforcement Resources But Also Imposes Substantial Supervision and Downstream Detention Costs

State and local governments pay the salaries of 287(g) officers, saving the federal government money it might otherwise spend to hire a similar number of ICE officers. In large jurisdictions, these salary costs can be substantial: Gwinnett County authorized \$1.2 million for 18 officers during its first year in the program; Prince William County spends approximately \$1.3 million annually for 11 positions; and the Las Vegas Metropolitan Police Department similarly spends about \$1.3 million annually on personnel costs for its 12 287(g) officers. These are among the largest programs in the volume of detainers issued as well as the numbers of officers deployed; smaller programs undoubtedly cost state and local partner agencies substantially less.

⁷⁶ Curtis, “Sheriff Says Pact Makes Arizona Law Unnecessary.”

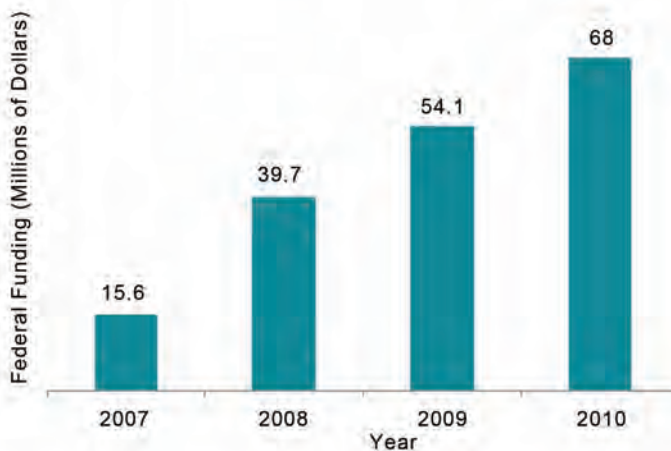


Federal funds pay for the training of 287(g) officers,⁷⁷ their supervision, computer equipment, and for access to the various databases they employ. Indeed, congressional appropriations for the 287(g) program have risen dramatically, from \$16 million in FY 2007 to \$68 million in FY 2010 (see Figure 5).

Appropriations for the 287(g) program do not include ICE's downstream costs for detaining and removing people or the costs of the immigration courts required to process them. The large and increasing volume of cases coming into the immigration court system has resulted in extensive backlogs that can be costly both for the federal government and for immigrants awaiting adjudication of their cases. Syracuse University's Transactional Records Access Clearinghouse (TRAC) has used federal records to calculate that there were 261,083 immigration cases pending at the end of September 2010, and on average these cases have been waiting 456 days — or about 15 months — to be adjudicated.⁷⁸

Many of the cases in the backlog are people who have been released on bond pending the outcome of their immigration cases, but some continued to be detained for long periods. In the Atlanta region, for example, the average length of stay for inmates at the Lumpkin, GA, detention facility is 81 days, at an average cost of \$60 per day to the federal taxpayer.⁷⁹ This amounts to an average cost of \$4,800 per inmate held at Lumpkin. The more than 3,500 detainees placed through the 287(g) programs in Cobb and Gwinnett counties in FY 2010 have resulted in downstream federal detention costs in the millions of dollars. A large majority of these detainees were placed on Level 3 and traffic offenders, raising the question of the value to the federal government in realizing its enforcement goals for these substantial expenditures.

Figure 5. Federal Funding for the 287(g) Program, FY 2007-2010



Source: ICE, OSLC.

When local jurisdictions pursue immigration enforcement against lower-priority cases, they also shift detention cost burdens from states and localities to the federal government. In Gwinnett County, Sheriff Conway has publicized a significant decline in the overall jail population and especially in foreign-born inmates since the 287(g) program began. He tied the decrease in prisoners to a potential drop in the overall unauthorized immigrant population in the county, arguing such a decline offered proof that the program is working.⁸⁰ The sheriff also stated that the declining jail population is an important source of

77 Over 1,200 state and local officers had been trained under the 287(g) program as of December 2010. See ICE, "Delegation of Immigration Authority," December 2010.

78 Transactional Records Access Clearinghouse (TRAC), "As FY 2010 Ends, Immigration Case Backlog Still Growing," (Syracuse, NY: TRAC, October 21, 2010), <http://trac.syr.edu/immigration/reports/242/>.

79 Jeremy Redmon, "Fix Sought for Immigration Backlog," *Atlanta Journal Constitution*, December 12, 2010, www.ajc.com/news/fix-sought-for-immigration-774133.html.

80 Andria Simmons, "Gwinnett jail reports drop in foreign-born inmates; Sheriff's office says push to identify offenders in U.S."



savings: “It’s just as well we get rid of them as try them (for charges) and spend money on them.”⁸¹

Even though states and localities pay 287(g) salaries, ICE provides substantial federal resources for 287(g) operations and associated expenses. We were unable to conduct a thorough accounting of how much ICE spends to support state and local partner agencies in identifying and removing Level 3 and traffic offenders, but given that half of all detainees are placed on these groups, it is likely to be a large share of total spending.

FINDING 9 **Staffing and Detention Resource Availability Influences Program Implementation**

ICE officials, local law enforcement officials, and local elected leaders all described the 287(g) program as an important force multiplier that enhances ICE’s ability to pursue its enforcement priorities. But in practice, local staffing and detention resources substantially influence the scope of enforcement. The presence of 287(g) officers can create incentives to broaden the range of unauthorized immigrants who get placed in removal proceedings.

Both 287(g) officers and ICE supervisors in several study sites reported that the program has allowed them to process far more potentially removable immigrants than they otherwise could. In some jurisdictions prior to the 287(g) program, ICE only screened and detained the more serious criminals because of staffing limitations. But with the program in place, 287(g) staff have the capacity to screen and place detainees on everyone they encounter. Thus, one of the major benefits of the program from the state and local perspective is that it allows jurisdictions to expand enforcement to include Level 3 and traffic violators.

We also found that the easiest cases for the state and local 287(g) officers to process in ICE’s ENFORCE database and case management system are those who crossed the border illegally but were never caught and who later committed traffic offenses. Officers reported it takes less than an hour for an experienced 287(g) officer to screen and place a detainer on border crossers with traffic violations, and these cases are so straightforward that ICE supervisors rarely need to intervene. On the other hand, people with more complex and longer criminal or immigration histories can take several hours to process, and ICE supervisors are often involved more directly in these cases. Thus, it is possible to process a higher volume of traffic offenders than Level 1 and 2 offenders, given a similar level of resources.

Detention space is another factor that affects whether jurisdictions place detainees universally or in a more targeted fashion. For instance, Cobb County initially confronted a shortage of detention space that caused a significant number of people to be held on ICE detainees past the legal maximum of 48 hours, resulting in threat of lawsuits.⁸² ICE subsequently obtained additional detention space in Georgia and by the time of our visit in 2010, Cobb County had entered into an intergovernmental service agreement (IGSA) that allowed the sheriff’s office to hold potentially removable immigrants for up to 72 hours on immigration charges. People were not being held beyond this period.⁸³

The Frederick County Sheriff’s Office also has an IGSA under which the county jail holds prisoners as ICE detainees (beyond 72 hours in many cases), with ICE reimbursing the county for detention

illegally is working” *Atlanta Journal Constitution*, December 31, 2009.

81 Simmons, “New alliance may ‘cut the crime rate’;” Rhonda Cook, “Deportation program to get more oversight; Cobb certified; The feds plan to tighten up a program that lets local law enforcement work with them on illegal immigration” *Atlanta Journal Constitution*, March 16, 2009.

82 In 2007, lawyers filed a handful of habeas corpus briefs to release immigrants from Cobb County custody after the 48-hour period expired, and the sheriff’s office was getting several calls a day about immigrants in custody.

83 The legal maximum for facilities without an Inter-Governmental Service Agreement (IGSA) is 48 hours. Facilities must meet certain federal detention standards — such as no more than two inmates per cell — in order to be approved for an IGSA. The federal government reimburses facilities with IGSA for the cost of housing federal inmates.



costs.⁸⁴ In all three study sites where detainees are placed universally — Cobb, Gwinnett, and Frederick counties — ICE supervisors and 287(g) officers cited ample detention space as a factor allowing them to place detainees on virtually all removable immigrants they encounter, regardless of the nature of their offenses.

In Prince William County, however, there continue to be detention resource constraints. Like Cobb County, the Prince William-Manassas jail held some immigrants beyond the maximum period allowed during the first few months of its program. Staffing and detention constraints led the jail to focus on the most serious criminals, and this policy was still in effect at the time of our visit in spring 2010, though since that time a new ICE detention facility has opened in nearby Farmville. Officers reported that ICE sometimes has sufficient detention resources to allow 287(g) officers to place detainees on Level 3 and traffic offenders, but at other times there are only sufficient resources to transfer Level 1 and 2 offenders into ICE custody. As a result in Prince William County, there has been an ongoing dialogue between the 287(g) officers and ICE about how to prioritize cases, given detention resources.

FINDING 10 When Detainers Are Placed Before Conviction, Some Noncitizens May Not Complete the Criminal Justice Process

In all the jail models we visited except Los Angeles County, 287(g) officers begin the process of screening for immigration status at booking. In theory, inmates are screened at booking and then proceed through the entirety of the criminal justice process — including trial and serving a sentence — before they are transferred into ICE custody (see Figure 1). In practice, however, detainees are issued before conviction in many criminal cases, and people may be transferred into ICE custody before conviction, or even in cases where conviction never occurs.

Officers we spoke with in the study sites generally reported that inmates completed their sentences before being transferred to ICE custody. But in two of our sites, some people posted bond in connection with criminal charges, only to be transferred directly into ICE custody instead of being released.

In Cobb County, community respondents reported that people have been unable to appear for their county court dates because they were in ICE detention or had already been removed, thus forfeiting their bond. Respondents alleged that the county has obtained significant revenue from bond forfeiture in this fashion, mostly from noncitizens with traffic and other minor violations.

In Prince William County, some people are also transferred into ICE custody after posting bond. Pursuant to arrangements made with the county, however, local ICE officers bring individuals in their custody back to the county facility for criminal trial and to complete the criminal justice process. These individuals do not forfeit their bonds. Some individuals released on bond by Prince William County, however, have been removed before their county court dates.

In Gwinnett County, by contrast, many potentially removable immigrants who commit traffic violations are not immediately arrested and brought to jail for screening. Instead, officers from the various police departments in Gwinnett County frequently issue a summons to appear in court at a later date and then release the traffic violators from their custody. People with traffic violations are not screened for immigration status until after they appear for their court date and if they are convicted and booked into the county jail.⁸⁵

In Colorado, the task force's focus on smuggling operations means that the majority of its detainees are placed on people who were passengers in smugglers' vehicles but who did not commit criminal violations. One respondent reported, however, that passengers are often removed before they can testify against the smugglers — undercutting prosecutions under the state's anti-smuggling law. Law enforcement officials confirmed that the state has pursued few smuggling or trafficking cases since the law's passage.

⁸⁴ Frederick County's IGSA allows the agency to hold inmates indefinitely on immigration charges.

⁸⁵ Individuals convicted of driving without a license must serve jail time in Georgia, as codified in SB 350 (see Appendix 4).



Screening and placing detainees on potentially removable immigrants at booking instead of after conviction, or when no conviction occurs at all, can have adverse consequences from a criminal justice point of view because it can short-circuit the criminal justice process. Placing detainees at booking can prevent people from having their day in court, undermine the presumption of innocence, and generate incentives for law enforcement officers to arrest people based on evidence that might not result in conviction. In some jurisdictions, removing people before conviction has also resulted in the forfeiture of bonds and the removal of potentially valuable witnesses in smuggling and human-trafficking cases. Some of the witnesses in these cases may actually be victims of trafficking or other crimes, and hence eligible for U or T visas.⁸⁶ But if they are removed before smuggling or trafficking cases go to trial, they may not receive the visas to which they are entitled under US immigration law.

Most importantly, detaining and removing people who have not yet been convicted of their crimes contravenes the central intent of the 2009 revisions to the 287(g) program — that it should focus on serious criminals — as well as explicit language in the 2009 template signed by each participating agency that criminal charges should be pursued to completion before noncitizens are removed.

D. Program Accountability

FINDING 11 The 2009 Changes to the Program Have Not Substantially Affected Its Implementation

In summer 2009, ICE announced that the 287(g) program would be revamped and that all participating jurisdictions would need to sign new agreements delineating a standardized set of priorities and procedures. Most partner agencies signed revised agreements by October 1, 2009, the beginning of FY 2010.

By the time we completed our fieldwork in July 2010, all but eight of the jurisdictions that had joined 287(g) before mid-2009 had signed revised agreements; six jurisdictions had dropped out (see below) and two — the State of Massachusetts and Los Angeles County — were still in negotiations with ICE over terms of their revised agreements. Los Angeles County signed a renegotiated agreement in October 2010, but only after it was allowed to retain its practice of post-conviction screening.

ICE issued a revised template for 287(g) agreements in part as a response to criticisms from GAO and others about the lack of program standardization.⁸⁷ An earlier MPI analysis of the 2009 revised template demonstrated that it contains the following important elements:⁸⁸

- A clear articulation of ICE enforcement priorities (Levels 1, 2, and 3), and a strong emphasis on devoting 287(g) program resources to identify, detain, and remove immigrants matching these priorities.
- Greater ICE supervision and control over task force operations, through requirements that task forces seek ICE approval before launching any operations or placing detainees on any noncitizens encountered with immigration, but not criminal, violations.
- An expectation that participating agencies follow up on criminal charges through conviction and pay incarceration costs after conviction.
- Increased ICE supervisory responsibilities, including requirements that ICE update 287(g) officers on new and evolving policies for processing noncitizens, review the files on noncitizens receiving detainees, and provide guidance on preparing cases for federal prosecution.

86 U visas provide a path to lawful permanent residency for immigrants who are victims of serious crimes and cooperate with authorities in the prosecution of the perpetrators of these crimes. Similarly T visas provide a path to residency for immigrants who are victims and cooperate in prosecutions against human traffickers.

87 GAO, *Immigration Enforcement: Better Controls Needed*.

88 Rodríguez et al., *A Program in Flux*.



- Requirements that partner agencies notify ICE about detainers within 24 hours and report all claims of US citizenship.
- Provisions for data collection and quality review, including requirements that partner agencies provide all the data specified in ENFORCE, and that ICE audit entries in ENFORCE on a regular basis.
- Prohibitions against publicizing any data or information about the 287(g) program without prior ICE approval.
- Provisions for a formal review of each agreement three years after it is signed, and for termination of any agreement 90 days after ICE makes a determination that the partner agency is not fulfilling the terms of the agreement, and notifies the agency of this determination.

Taken together, these terms assert greater federal control over the program and create the framework for greater consistency in program implementation and outcomes.

One of our central research tasks was to review the extent to which the provisions of the revised template have been implemented, and effects of the new provisions on the program in our study sites. During the year after the revised template was implemented, the number of people identified and processed by the 287(g) program declined significantly, with the number of detainers dropping 20 percent (from 60,000 to 48,000) between FY 2009 and FY 2010.⁸⁹ This drop in program activity may indicate some narrowing of the program since the revised template was issued in 2009; but it is not possible to assess the degree to which the reduction reflects a greater focus on Level 1 and Level 2 offenders because no reliable data are available for 2009 on severity of offenses committed.

Nonetheless, during our visits in spring and summer 2010, about six months after the 287(g) program template was revised, none of our respondents reported significant changes in their screening practices or how they place detainers as a result of program revisions. In universal enforcement jurisdictions (Cobb, Gwinnett, and Frederick counties), standard operating procedures remained the same before and after the revised agreement.⁹⁰ In the more targeted enforcement jurisdictions, these practices were also in place before and after the revised agreement. Thus, our review of study sites, approximately six months after issuance of the revised template, suggested the new agreements had not significantly affected implementation of ICE's national priorities.

The revised template also did not significantly change federal supervision in any of our sites.⁹¹ None of the jurisdictions visited reported significant changes in ICE supervisory staffing levels or tasks. The revised template imposed a new requirement that 287(g) task force officers obtain permission from ICE supervisors before questioning or taking into custody an individual based on immigration charges alone. But all the task forces we visited reported that their standard procedure already had been to ask for preapproval of task force operations from ICE supervisors prior to the revised agreement, based on their close working relationship with ICE.

The negotiation of the program revisions has had a significant impact on the final agreement in one of our study sites. The revised Los Angeles County agreement was still under negotiation at the time of our interviews in July 2010. Los Angeles County objected to some of the standardized provisions of the revised template, including the requirements to screen for immigration status at booking and to

⁸⁹ The number of removals resulting from the 287(g) program also dropped 37 percent during this period (from 43,000 to 27,000); but the drop in removals is not a valid indicator of short-term program changes, because it takes up to two years for many removal cases to be adjudicated, so that removals in FY 2009 reflect program activity during FY 2007 to 2009, and removals in FY 2010 reflect activity from FY 2008 through 2010.

⁹⁰ Gwinnett County's 287(g) agreement was not signed until October 2009, after the revised agreement went into effect.

⁹¹ In one jurisdiction, an ICE supervisor had faced uncooperative 287(g) officers prior to the revised agreement, but reported that the revised agreement had clarified the lines of authority sufficiently to resolve these issues; this was not, however, one of our study sites, and we did not make further inquiries on this topic.



focus on Level 1 and 2 offenders (as the county sends most of its Level 1 offenders to the state prison system).

In October 2010, Los Angeles County supervisors unanimously approved the revised agreement, despite vocal opposition by various community groups and public controversy over the program's continuation there. The county's final agreement reflects ICE priorities of Level 1 and 2 offenders. More importantly, ICE has implicitly agreed to allow Los Angeles to continue screening inmates for immigration status and placing detainees after conviction, as insisted upon by the sheriff and county supervisors. The outcome of the protracted negotiations in Los Angeles County shows that ICE is willing to allow some flexibility in the content of 287(g) agreements, but intends to maintain the program's focus on Level 1 and 2 offenders.

Of the six jurisdictions that dropped out of the program during renegotiations, five were very small programs and were terminated because of lack of program activity. The sixth jurisdiction was the Maricopa County Sheriff's Office in Arizona. There, ICE terminated its task force but not its jail enforcement authority.

Maricopa County's task force had attracted considerable media attention for conducting large "crime suppression" sweeps of Hispanic neighborhoods and arresting large numbers of immigrants without a criminal violation. The sheriff's office also was (and remains) the target of several lawsuits and an inquiry by the US Department of Justice into alleged civil-rights abuses. No other 287(g) program has received as much criticism or media attention as Maricopa County.⁹² Yet the program essentially remains in operation today, with the screening for immigration status and placement of detainees occurring in the county jail, based on street operations conducted by non-287(g) officers.

The termination of Maricopa County's task force agreement and the protracted negotiations over the Los Angeles County jail agreement demonstrate that ICE has used the revision process to exert influence over program direction and goals in two of the largest sites nationally. Yet the continuation of Maricopa County's jail agreement and the final result of the Los Angeles negotiations — that the 287(g) program there can retain its post-conviction processing — also demonstrate the limits of federal influence over the programs. More importantly, the lack of evidence that the revised template had any substantive impact on program operation in our other six study sites strongly suggests that the revisions have not resulted in across-the-board efforts to redirect the program toward targeted enforcement focused on serious criminals.

FINDING 12 ICE Closely Supervises 287(g) Officers But Supports State and Local Priorities

Some past reviews of the 287(g) program have highlighted weak federal supervision and oversight.⁹³ Poor coordination between ICE supervisors and 287(g) officers could result in inefficient screening of immigration status, wrongful detention of US citizens or legal immigrants, or holding individuals past the 48-hour legal limit for ICE detainees. In contrast, we observed close supervision of 287(g) officers in all of our sites. But with ICE supervisors and state and local law enforcement personnel closely aligned in how they understand the program, ICE oversight does not appear to significantly affect program implementation on the ground.

ICE plays a direct oversight role in each of the jurisdictions visited, with slightly different arrangements in each case reflecting the different demands of the task force and jail models. For instance, in Prince William County, where the police department's task force focuses on major investigations, all

92 The DHS OIG report is highly critical of the 287(g) program for weak supervision, abuses of authority, and lack of focus on serious criminals. The report focuses on Maricopa County as well as Prince William County and four programs in Northwest Arkansas: the Rogers and Springdale police departments and Benton and Washington County sheriff's offices. See OIG, *The Performance of 287(g) Agreements*.

93 GAO, *Immigration Enforcement: Better Controls Needed*; OIG, *The Performance of 287(g) Agreements*.



operations are preapproved by federal supervisors. ICE and other federal officers often take part in the task force investigations, and ICE has an investigations agent co-located at the task force's office. In Colorado, where 287(g) officers also conduct immigration status checks in the course of normal state patrol duties, ICE supervisors do not approve each task force arrest, but officers consult with supervisors by phone prior to placing detainees on individuals, and they send supervisors plans in advance of major anti-smuggling operations.

Frederick County's task force is less targeted still, and 287(g) officers screen for immigration status (with detainees being issued at the jail) when they or other county officers suspect an immigration violation during the course of their normal policing activities. Frederick County's operations are routine and so are not preapproved by ICE supervisors, but supervisors are on call to provide assistance.

Each of the 287(g) jail models we visited has an ICE detention officer stationed at the facility on most working days and an ICE officer available on evenings and weekends by phone.⁹⁴ A supervisory detention and deportation officer is also available to answer questions, though more than one 287(g) jurisdiction may share the same supervisory officer. For more routine cases, such as those with traffic violations and no prior criminal record, the process of screening for immigration status and issuing a detainer through ENFORCE is relatively easy, and so in these cases 287(g) officers have little reason to contact ICE supervisors. But 287(g) officers consult with ICE supervisors for more complex immigration cases, such as those involving previous immigration violations, reinstatement of prior removal orders, and especially, claims of US citizenship. The most complex cases are forwarded up the chain of command to legal counsels in regional ICE offices. ICE detention officers sign all detainees, and supervisors review the detainees as well.

In sum, the 287(g) program is closely supervised in all of our study sites. Supervisors and 287(g) officers function together smoothly and have worked out most of the difficulties that plagued programs in their early periods of implementation, such as poor coordination that resulted in the holding of detainees past the 48-hour legal maximum. But we found no evidence that ICE supervisors overrule state and local officers' decisions regarding who receives immigration detainees, even when detainees are placed on groups such as traffic violators and other people who are low enforcement priorities for ICE.

FINDING 13 The ENFORCE System Has the Capability to Support Data Collection and Improve Program Monitoring Capacity

ENFORCE, the ICE case management system and database, is a tool that, if properly employed, can facilitate close supervision and evaluation of whether program implementation matches national priorities, and whether or not the program is being misused.

One of the central tasks of 287(g) officers, particularly in jail settings, is to enter data into ENFORCE, which includes information on all apprehensions, detentions, and removals. The 287(g) officers we spoke with were concerned about the quality of the data they enter into ENFORCE and worried that any mistakes they made might generate system errors. All had received substantial refresher training and told us that they frequently receive messages about database updates. In fact, frequent changes to and additional requests for information in ENFORCE were one of their frustrations. At the same time, 287(g) officers recognized the need to enter information correctly into ENFORCE, because ICE detainees, NTAs, and other critical documents are processed through the system.

ICE supervisors can use ENFORCE in a number of ways to monitor compliance with ICE policies and procedures, though the system has not yet been utilized to its full potential. In particular, ENFORCE can be useful to:

⁹⁴ County jails generally book inmates 24 hours per day, seven days per week, though we were told that peak traffic times were during working hours on work days.



- **Monitor 287(g) jurisdictions' compliance with ICE's priorities for identifying, detaining, and removing serious criminals.** Officers enter detailed criminal and immigration histories into ENFORCE, identifying the most serious crime that an individual has committed and assigning priority levels accordingly. Thus, in FY 2010, more than 99 percent of cases were coded for their most serious offense, with categories defined as Levels 1, 2, and 3; traffic offenses; or no criminal charges. This data field only became mandatory in August 2009, however, so there are no consistent data prior to that time on the seriousness of offenses committed by noncitizens with detainers.
- **Collecting data on the initial encounters that result in identification of removable immigrants.** ENFORCE includes a text field for details about the initial encounter between the arresting officer and the potentially removable immigrant. Though the arresting officer might not be employed by the agency with the 287(g) agreement, this field can be used to track the types of encounters that result in arrest and detention in 287(g) facilities. We found mixed evidence that 287(g) officers were entering full descriptions of the arrest circumstances in this encounter field, however, and no evidence that ENFORCE was coding the information in a meaningful way or that ICE supervisors were using the data to monitor enforcement. If properly and uniformly coded, the encounter field could be used to obtain data on arrest patterns in jurisdictions where there are allegations of racial profiling by arresting officers — whether or not they are 287(g) officers.
- **Monitoring the quality of charging documents produced by 287(g) officers.** ENFORCE records all the data used to generate NTAs and other charging documents. ICE supervisors can use the system to check for errors and for patterns of errors by individual officers or groups of officers. We did not assess the degree to which ICE has used ENFORCE to catch errors in charging documents, nor the frequency of such errors.
- **Ensuring consistency in decisions regarding which individuals are granted voluntary departure or are released with an immigration bond or under conditions of supervision before removal.** The 287(g) officers in some of our sites have considerable leeway in recommending voluntary departure for people who had committed less serious offenses, and for making recommendations about whether people facing removal proceedings are detained or potentially released from ICE custody before their removal (i.e., whether they are placed on the detained or nondetained docket). We found that ICE supervisors generally follow the recommendations of 287(g) officers, who conduct in-depth interviews with individuals before placing detainers on them. ENFORCE allows ICE to track which individuals are granted voluntary departure or humanitarian release, and under what circumstances. This tracking is significant given the growing size of the non-detained caseload.

FINDING 14 Arrests by Non-287(g) Officers Limit the Jail Model's Accountability

The task force model has been especially controversial because task force officers may conduct immigration enforcement activities during the course of their regular police work. Thus, task forces raise the prospect of proactive civil immigration enforcement by local law enforcement officers, including traffic stops and other operations targeting immigrant populations.

Yet ICE has greater authority to hold 287(g) task forces accountable than jail models. Task forces involve a discrete number of trained and approved law enforcement officers. As a result, ICE supervisors can follow individuals processed through task force models from start to finish; the same 287(g) officer who makes the arrest is likely to manage the case until the individual is transferred to ICE custody. Task force officers also must contact ICE supervisors any time they screen for immigration status, and must seek approval prior to arresting any unauthorized immigrants without a criminal



violation.⁹⁵ In addition, under the terms of the revised 2009 template, task forces must submit an operations plan for ICE approval prior to initiating any targeted task force enforcement activities, though in practice, the Colorado and Frederick County task forces conduct some immigration enforcement in the course of their normal law enforcement activities.

Accountability is far more difficult in jail models because the only officers with ICE training and subject to ICE oversight are the 287(g) officers conducting immigration status screening and placing ICE detainers on people when they are booked into jail. The arresting officers often have no formal relationship with ICE, little or no training in immigration law, and may not even work for an agency with a 287(g) agreement. The Frederick County jail's 287(g) program, for example, takes arrestees from nine separate law enforcement agencies in the county. Similarly, the Los Angeles County Jail processes arrestees from the Los Angeles County Police Department and a large number of smaller agencies. In these cases, ICE supervisors have no control over — and often little information about — the circumstances surrounding the initial encounter and arrest of people before they go through the 287(g) jail screening process.

This context of diffuse authority also limits 287(g) program accountability to the public. For instance, in response to allegations of racial profiling and abuse of authority by 287(g) officers in Gwinnett County, the sheriff's office replied that it cannot be held responsible: "We are not on the street looking for anyone related to 287(g) and no one is ever asked their status on the street. This agency has never given a mandate to its deputies to arrest illegal aliens and they would have no way of knowing if they were illegal or not in the field."⁹⁶

Once potentially removable immigrants are booked into jail, 287(g) officers and ICE supervisors have strong incentives to issue ICE detainers to avoid the risk that they could be released back into the local community and commit serious crimes. Yet in the jail model, the circumstances of arrest are outside of ICE's control. Thus if ICE does not exercise discretion during jail screening to target the program effectively toward serious criminals, the agency may continue receiving large numbers of Level 3 and traffic offenders, and face substantial pressure to remove them.

For the same reasons, the jail model also raises concerns that law enforcement officers may misuse the 287(g) program, especially in jurisdictions which operate universal enforcement models. In these jurisdictions, officers may conduct pretextual stops or engage in racial profiling with the expectation that arrestees will be screened for immigration status and possibly placed in removal proceedings. Community respondents in every 287(g) site we visited believed that some law enforcement officers illegally target suspected unauthorized immigrants in these ways, although they could not prove that racial profiling had occurred. Profiling by the police is notoriously difficult to quantify, often due to lack of data.⁹⁷ Some jurisdictions we visited — particularly those in Georgia and Maryland — do not collect data on the racial and ethnic composition of persons encountered by the police, complicating any potential analysis of racial profiling. On the other hand, the perception of racial profiling — even when it cannot be documented — has been linked to declining support for law enforcement authorities.⁹⁸

95 Rodríguez et al, *A Program in Flux*.

96 Gwinnett County Sheriff Butch Conway, "Sheriff Conway's Rebuttal to ACLU on Racial Profiling" (Lawrenceville, GA: Gwinnett County Sheriff's Department, accessed August 30, 2010), www.gwinnettcountysheriff.com/index.php/287g/sheriff-conways-rebuttal.

97 For reviews of the methodological difficulties in collecting and analyzing data on alleged racial profiling, see Amy Farrell and Jack McDevitt, "Identifying and Measuring Racial Profiling by the Police," *Sociology Compass* 4, no. 1(2010), 77-88, <http://onlinelibrary.wiley.com/doi/10.1111/j.1751-9020.2009.00261.x/pdf>; Greg Ridgeway, *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices* (Santa Monica, CA: Rand Corporation, 2007), www.rand.org/pubs/technical_reports/TR534.html; and Wesley Skogan and Kathleen Frydl, eds., *Fairness and Effectiveness in Policing: The Evidence* (Washington, DC: The National Academies Press, 2004), http://books.nap.edu/openbook.php?record_id=10419&page=R1#.

98 Tom R. Tyler and Cheryl Wakslak, "Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority," *Criminology* 42, no. 2 (2004): 253-281, <http://web.missouri.edu/~jlfm89/Profiling%20and%20Police%20Legitimacy.pdf>.



E. Immigrant Community Impacts and Perceptions

Across all the study sites, immigrant- and civil-rights groups, service providers, elected officials, and other community respondents expressed concern about the impact of immigration enforcement activities on local immigrant communities. They expressed concerns that enforcement efforts lead to racial profiling by police and instill fear and distrust of police sufficient to cause immigrants to withdraw from public places. Respondents did not always link these concerns closely to the 287(g) program. In fact, in some of our study sites, key stakeholders are more concerned about immigration enforcement in general — namely ICE worksite and home raids along with state and local ordinances — than about the 287(g) program itself.

But in several sites, our respondents believe that 287(g) program activities affect the community in distinct and adverse ways, including by causing declines in Latino immigrant populations, avoiding public places by these populations, changes in driving behavior, fear and mistrust of the police and other authorities, and reduced crime reporting. In general, community respondents we interviewed echoed concerns raised in the media and in reports published before we conducted our fieldwork.⁹⁹ The evidence of these impacts is largely anecdotal, and some of the purported impacts are difficult to substantiate. But on balance our research confirmed that, at a minimum, strong public perceptions exist in some jurisdictions that the 287(g) program imposes significant costs on immigrant communities.

FINDING 15 Three Study Counties Experienced Short-Term Drops in Hispanic Noncitizen Populations While Neighboring Counties Experienced No Such Declines

Both sides of the immigration debate claim that 287(g) programs drive large numbers of immigrants out of the community. Proponents of tougher immigration control see outmigration as evidence that programs support “attrition through enforcement”— the idea that unauthorized immigrants will leave the country voluntarily to avoid the threat of removal.¹⁰⁰ And immigrant advocates see outmigration as evidence that programs have detrimental consequences for local economies, tax bases, and mixed-status families that include citizens as well as unauthorized immigrants.

Respondents in Cobb, Gwinnett, Frederick, and Prince William counties reported that significant numbers of Hispanic immigrants had moved to nearby counties or other states — though they did not report that many immigrants had left the United States altogether. We were told that people left for a variety of reasons, including immigration enforcement activities as well as changes in economic conditions and the presence of family members or friends in other locations.

We also analyzed US Census Bureau and public school enrollment data for these four jurisdictions, and found evidence that each of them experienced short-term drops in their Hispanic immigrant populations while neighboring counties did not experience declines and in some cases saw immigrant population growth. These data are consistent with anecdotal reports of short-term outmigration from 287(g) jurisdictions, though our analysis does not control for economic conditions or other factors which may influence migration patterns, and we could not determine whether patterns of outmigration are likely to persist in the long run.

Respondents did not describe substantial outmigration from Las Vegas, Los Angeles, or Colorado

99 See American Civil Liberties Foundation of Georgia (ACLF), *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) has Torn Families Apart and Threatened Public Safety* (Atlanta, GA: ACLF, 2009), www.acluga.org/racial%20profiling%20Cobb.pdf; ACLF, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (Atlanta, GA: ACLF, 2010), www.acluga.org/GwinnettRacialReportFinal1.pdf; Casa de Maryland, *Frederick County Immigration Enforcement: Fighting Crime or Just Fighting Immigrants?* (Silver Spring, MD: Casa de Maryland, 2008), www.casademaryland.org/storage/documents/frederick%20report.pdf; Singer, Wilson, and DeRenzis, *Immigrants, Politics, and Local Response in Suburban Washington*.

100 See for example, Vaughn, *Attrition through Enforcement*.



— jurisdictions which operate more targeted 287(g) programs. Nor could we test the patterns of population movement in these jurisdictions versus neighboring jurisdictions because no directly comparable jurisdictions without 287(g) programs are available for them.¹⁰¹

Census Bureau survey data. Based on American Community Survey (ACS) data, we found measurable Hispanic noncitizen population losses two to three years after 287(g) implementation in three of our study sites: Cobb, Frederick, and Prince William counties (see Table 4).¹⁰² When we compare these counties with neighboring ones, in all three cases the neighboring counties without 287(g) programs experienced either Hispanic noncitizen population gains or no significant changes. We chose to track the Hispanic noncitizen population because it most closely approximates the unauthorized population, and there are no reliable measures of the unauthorized population at the county level. Hispanics more generally may also leave these areas, regardless of citizenship or legal status, if they feel that 287(g) programs and related policing activities generate an unwelcoming climate.

The extent of population change following 287(g) implementation varies among these three jurisdictions. The greatest percentage drop — 61 percent — occurred in Frederick County between 2007 and 2009, reversing an earlier trend of Hispanic population growth from 2005 to 2007.¹⁰³ Neighboring Montgomery County saw its Hispanic noncitizen population rise 19 percent from 2007 to 2009, and the other major Maryland suburban counties of Prince George’s and Howard also saw gains from 2007 to 2009. Montgomery County, in particular, has been more welcoming toward immigrants than Frederick County, in that there has never been public consideration of 287(g) or similar immigration enforcement measures.

Prince William County also experienced a substantial drop — 21 percent between 2007 and 2009 — in the number of Hispanic noncitizens after implementation of 287(g) and adoption of its immigration policing ordinance.¹⁰⁴ As in Frederick County, this drop represents a reversal of the pattern before 287(g) implementation. Loudon County, in which 287(g) programs were implemented in 2007 and 2008, experienced a more modest drop of 14 percent in its Hispanic noncitizen population from 2007 to 2009.¹⁰⁵ Fairfax County, which borders both Frederick and Loudon counties, saw its Hispanic noncitizen population increase by 9 percent during this period, reversing declines in some earlier years. Fairfax County, like Montgomery County, has been more welcoming toward immigrants and 287(g) implementation or other immigration enforcement measures have not been considered. The other nearby suburban jurisdictions of Arlington County and Alexandria City had slightly increasing or stable Hispanic noncitizen populations during this period.

A recent evaluation of the Prince William County immigration enforcement ordinance also showed evidence of Hispanic immigrant population losses after that ordinance was adopted alongside the

101 Los Angeles County is adjacent to three other counties operating 287(g) jail programs — Orange, Riverside, and San Bernardino — and other counties without programs are much smaller and therefore not comparable. The Las Vegas Metropolitan Police Department covers virtually the entire metropolitan area, making comparison with surrounding, more rural districts not feasible. Impacts of the 287(g) task force in Colorado have been spread across the state, making it difficult to measure migration changes there without finding a comparable state.

102 Gwinnett County implemented its 287(g) program in fall 2009, too late to influence population trends that could be measured in the 2009 American Community Survey (ACS) data.

103 Frederick County implemented its 287(g) program in February 2008. The absolute drop in the number of Hispanic citizens in Frederick County between 2007 and 2009 was about 3,000, almost within the margin of error for the ACS data. However, the magnitude of the change in percentage terms suggests that this trend is significant, as does the consistency of the direction of change, with population losses in both 2008 and 2009.

104 Prince William County implemented the 287(g) program in its jail in July 2007, and the countywide task force in February 2008. The Manassas and Manassas Park task forces were implemented in March 2008. The debate over local immigration policing laws, however, began in early 2007. The absolute drop in Prince William County’s Hispanic noncitizen population from 2006 to 2009 was almost 8,000, well outside the ACS margin of error.

105 The Herndon task force was implemented in March 2007 and the countywide task force in June 2008. The absolute drop in the Hispanic noncitizen in Loudon County was less than 2,000 people, within the ACS margin of error.



287(g) program.¹⁰⁶ The evaluation uses a variety of sources, including ACS data, school enrollment data, vital records of births to Hispanic mothers, and calls to the county's Spanish-language hotline. The study estimates a loss of between 2,000 and 6,000 unauthorized immigrants, based on analysis of the changing composition of the county's Hispanic population.¹⁰⁷ We cannot independently verify this estimate, because no reliable estimates of county-level unauthorized populations exist. The lower bound of 2,000 would be within the ACS margin of error, but the upper bound of 6,000 would be statistically significant and is within the same range as our estimate of a Hispanic noncitizen population loss of 8,000.

Table 4. Hispanic Noncitizen Populations, Selected Study Sites and Neighboring Counties, 2005-2009

Month(s) 287(g) Started		Hispanic Noncitizen Population					Change 2007-2009
		2005	2006	2007	2008	2009	
Central Counties in Atlanta metropolitan area							
Cobb	February 2007	37,700	<i>35,600</i>	36,500	<i>34,500</i>	<i>34,800</i>	-4.6%
DeKalb	---	34,900	41,000	45,500	<i>41,900</i>	45,300	-0.5%
Fulton	---	35,200	39,700	<i>38,800</i>	43,200	45,800	17.9%
Gwinnett	October 2009	65,700	72,400	<i>67,500</i>	<i>65,000</i>	70,000	3.8%
Central Counties in Washington, DC. metropolitan area							
<i>Maryland Counties</i>							
Frederick	February 2008	3,200	3,800	5,000	<i>4,800</i>	<i>2,000</i>	-61.1%
Howard	---	4,300	4,100	<i>2,600</i>	2,800	3,300	24.8%
Montgomery	---	50,400	52,100	56,100	<i>55,000</i>	66,600	18.7%
Prince George's	---	46,500	51,000	<i>50,300</i>	52,600	51,300	1.9%
<i>Virginia Counties</i>							
Arlington	---	15,900	16,200	<i>15,600</i>	<i>13,700</i>	15,300	-1.9%
Fairfax	---	56,000	<i>53,600</i>	57,200	<i>55,300</i>	62,700	9.6%
Loudon	March 2007, June 2008	9,300	11,100	12,800	<i>11,300</i>	<i>11,100</i>	-13.5%
Prince William	July 2007, February 2008, March 2008	28,200	33,200	<i>32,100</i>	<i>26,200</i>	<i>25,500</i>	-20.6%
City of Alexandria	---	8,200	<i>8,000</i>	9,100	<i>7,900</i>	9,800	7.0%

Note: Figures in red italics denote population loss from previous year or overall negative population change.

Source: MPI Analysis of 2005-2009 ACS data from Census Bureau American Factfinder,

http://factfinder.census.gov/home/saff/main.html?_lang=en.

106 See Center for Survey Research (CSR), *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy: Final Report 2010* (Charlottesville, VA: University of Virginia, Weldon Cooper Center for Public Service, CSR, November 2010), 64-71, www.pwcgov.org/docLibrary/PDF/13188.pdf.

107 These characteristics include a drop in the share of Hispanics who are noncitizens, single men, and limited English proficient.



Cobb County, Georgia, where the 287(g) program has been especially controversial, shows a modest decline in its Hispanic noncitizen population. Between 2007 and 2009, the county's Hispanic noncitizen population fell by about 5 percent or less than 2,000 people — within the ACS margin of error.¹⁰⁸ Still, this population loss stands in contrast to stable or growing populations in the other three major Atlanta metropolitan counties.

Hispanic school enrollment data. To reinforce our analysis of ACS data, we examined Hispanic enrollment in public elementary and secondary schools during the same years.¹⁰⁹ Schools do not record the citizenship or immigration status of children or their parents, but the overall Hispanic student population can be considered a proxy for children of immigrants — particularly the unauthorized who are mostly from Mexico and Central America.¹¹⁰ School enrollment data are more difficult to interpret in that they cover all Hispanic children, not only those in unauthorized or noncitizen families, and because they cannot be used to determine the movement of people without children.¹¹¹

In the same three sites that showed Hispanic noncitizen population declines in the ACS data — Cobb, Frederick, and Prince William counties — growth in Hispanic school enrollment dropped significantly during the school year immediately after 287(g) programs were implemented, and dropped more than in nearby counties during the same time period. However, in contrast with the findings from the ACS data, Hispanic school enrollment rebounded during the following school year in all three counties.

The Cobb County school district's Hispanic enrollment grew by 10.8 percent between October 2005 and October 2006, but only by 5.6 percent between October 2006 and October 2007 (during the first year of 287(g) implementation). Hispanic enrollment actually fell by 0.3 percent between October 2007 and October 2008 (see Figure 6). The school district in Marietta, the largest city within Cobb County, experienced a similar decline from 2006 through 2008. Both Cobb County and Marietta experienced a rebound in 2009. There was a smaller decline in the growth of Hispanic enrollment in neighboring Gwinnett County, but that county's enrollment never fell; Gwinnett County did not implement its 287(g) program until fall 2009, after the 2009 enrollment data were collected. Neither Fulton nor DeKalb, the two other major Atlanta metropolitan counties, experienced the dip in Hispanic enrollment seen in Cobb County and Marietta; DeKalb County's enrollment actually grew faster in 2008 than in 2007 — suggesting that some Hispanic students may have transferred out of Cobb County.

Data on Hispanic enrollment trends for Frederick and Prince William counties show similar trends relative to neighboring school districts. Frederick County saw its Hispanic enrollment growth drop from 11.5 percent between September 2006 and September 2007, to just 2.3 percent between September 2007 and September 2008 (the year in which 287(g) was implemented).¹¹² Neighboring Montgomery County, which has a much larger Hispanic population, saw its Hispanic enrollment growth increase slightly from 3.5 to 3.8 percent during this period. But Frederick County's Hispanic enrollment growth rate rebounded to 6.1 percent in September 2009.

¹⁰⁸ Cobb County implemented its program in February 2007.

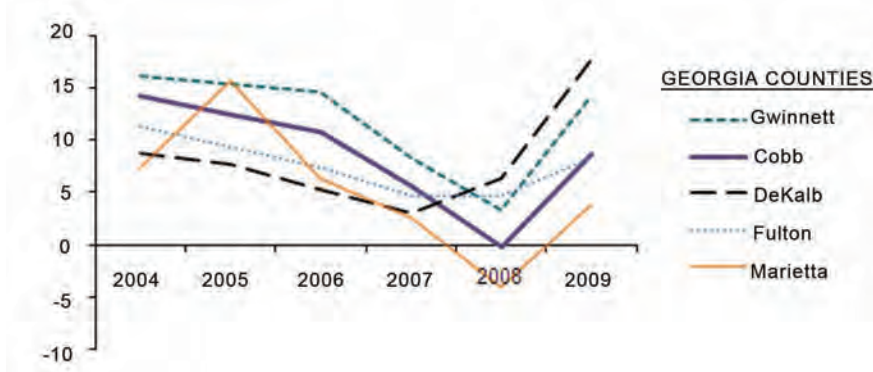
¹⁰⁹ We also did not examine school enrollment patterns for Los Angeles County, Las Vegas, or Colorado.

¹¹⁰ In most of our study jurisdictions except Los Angeles, the Hispanic population has grown rapidly during recent years, and most Hispanics adults are immigrants — often recently arrived and unauthorized. The vast majority of Hispanic children, however, are US-born citizens with noncitizen, often unauthorized parents.

¹¹¹ The Prince William County evaluation suggested that much of the outmigration of Hispanics occurred among single men, and that the number of families with children did not change very much. See Center for Survey Research, *Evaluation Study of Prince William County*, xiv.

¹¹² MPI analysis of enrollment data from the Maryland Department of Education, www.mdreportcard.org/.

Figure 6. Annual Percentage Growth in Hispanic Enrollment, Selected School Districts in the Atlanta Metropolitan Area, Fall 2004 to Fall 2009

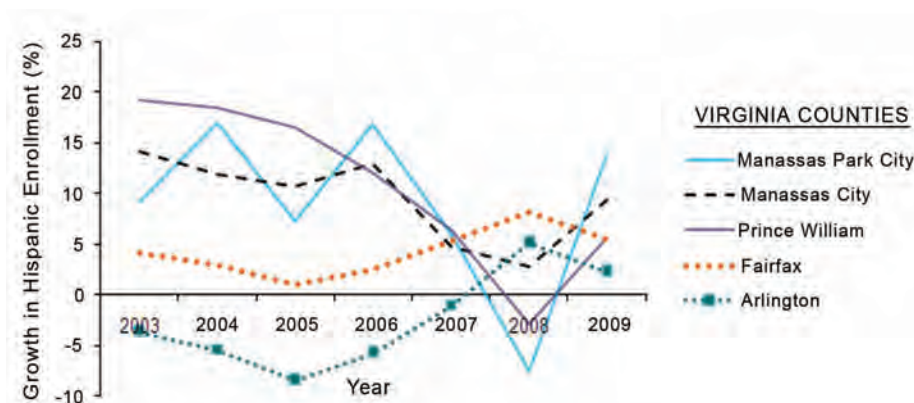


Note: Data represent annual enrollment growth from October to October.
Source: MPI analysis of data from the Georgia Department of Education.

Prince William County's Hispanic enrollment grew by 6.3 percent from October 2006 to October 2007, but then fell by 2.9 percent from October 2007 to October 2008 — the first year of 287(g) implementation there (see Figure 7). Hispanic enrollment in Manassas Park, the second-largest city in Prince William County, also fell between 2007 and 2008. But Hispanic enrollment actually increased more quickly from 2007 to 2008 than earlier in Fairfax and Arlington, and school officials in Arlington attributed the increase there to the "Prince William effect."¹¹³ Prince William County experienced a rebound in Hispanic school enrollment in fall 2009, just as did Frederick and Cobb counties.

The Hispanic school enrollment data we analyzed suggest a significant initial impact of 287(g) implementation: a modest outmigration of Hispanic families during the often-controversial times when these programs are debated and first go into effect. Modest short-term outmigration is notable in three districts where 287(g) programs have been especially controversial: Cobb, Frederick, and Prince William counties. Yet the enrollment data also suggest that Hispanic families either returned to these jurisdictions or have been replaced by new Hispanic families more than a year after 287(g) implementation.

Figure 7. Annual Percentage Growth in Hispanic Enrollment, Selected School Districts in the Virginia Suburbs of Washington, DC, Fall 2003 to Fall 2009



Note: Data represent annual enrollment growth from October to October.
Source: MPI analysis of data from the Virginia Department of Education.

¹¹³ Scott McCaffrey, "School Officials Ponder Ramifications of 'Prince William Effect,'" *Arlington Sun Gazette*, August 20, 2008, www.sungazette.net/articles/2008/08/20/arlington/news/nw969b.txt.



The school enrollment and ACS data display similar patterns: short-term declines in Hispanic populations in 287(g) jurisdictions relative to neighboring counties without 287(g) programs. Immigration enforcement may well have influenced these declines, because neighboring counties without 287(g) programs or protracted public debates regarding immigration enforcement did not experience declines and in some cases showed increases. Indeed, those increases could reflect movement from the study counties. The degree of apparent population shift varies from site to site, with greater percentage changes in Frederick and Prince William counties than Cobb County. In the longer term, however, the rebound in Hispanic school enrollment in all three jurisdictions signals that even if some immigrant families move out, others may move in after the initial controversies surrounding 287(g) programs subside.

FINDING 16 Roadblocks and Traffic Stops Associated with 287(g) Program Lead Immigrant Populations to Avoid Public Places

In addition to short-term outmigration, we also found evidence of fear, distrust of police, and immigrants avoiding public spaces in the study sites of Cobb, Gwinnett, Frederick, and Prince William counties, and to a lesser extent in Colorado. These impacts have arisen because of the combination of widespread traffic enforcement in immigrant neighborhoods and the subsequent processing of traffic violators through the 287(g) program — a combination that means minor traffic violations can result in removal.

Police departments in these jurisdictions have employed roadblocks and other traffic operations that have resulted in large numbers of arrests in or near immigrant communities, sometimes near public schools or places of worship. In these same communities, we heard reports of police stopping immigrants for a variety of minor traffic violations, including broken taillights or turn signals, cracked windshields, improperly tinted windows, impeding the flow of traffic, failure to come to a complete stop at a stop sign, and having the wrong color warning flag on the rear of a truck.¹¹⁴ Police officers defend roadblocks and traffic stops as legitimate responses to public safety concerns such as drunk driving and traffic accidents, and these public safety concerns were common in immigrant neighborhoods in our study sites

These operations may be perceived by the public as racial profiling, even when in the eyes of the police they serve legitimate law enforcement goals. When they operate in tandem with 287(g) programs and lead to a high number of removals of people committing only traffic offenses, these operations can generate widespread distrust of the police. Such distrust in turn prompts immigrants to change their behavior to avoid contact with police and other authorities.

In four study counties where traffic operations have resulted in removals through the 287(g) program, community respondents were especially likely to report that immigrants were venturing into public places with less frequency, failing to report crimes or otherwise interact with police, interacting less with schools and other institutions,¹¹⁵ patronizing local businesses less often,¹¹⁶ and changing their driving patterns.¹¹⁷

114 Community respondents reported many such cases, and they have been documented in various reports. See for example, American Civil Liberties Foundation of Georgia, *Terror and Isolation in Cobb*, 9.

115 For instance, in Cobb County hundreds of immigrant parents customarily attended meetings with teachers and events such as college fairs before the 287(g) program began. According to community respondents, post-287(g) implementation, participation dropped off to such an extent that schools canceled meetings and events. In the same district, the number of English as a Second language classes for parents dropped from ten to three. In addition, some immigrants stopped attending worship services, and churches changed the schedules of their activities. Fewer immigrants accessed needed social and psychological services. For example, one group that operates counseling sessions for families experiencing domestic violence saw attendance in these sessions drop about 10 percent after 287(g) was implemented; before that attendance had risen substantially for several years in a row.

116 Study participants reported that, combined with the recession, immigration enforcement resulted in closure of many small immigrant-owned businesses and a reduction in immigrant-owned media (such as newspapers and radio stations) that rely on advertising revenue from these businesses.

117 More specifically, living in fear of arrest and removal, unauthorized immigrants in these jurisdictions have developed a



Reports assessing the 287(g) program also commonly include observations by community leaders that state and local police involvement in immigration enforcement generates fear and distrust of police and other authorities among immigrant communities.¹¹⁸ While we did not obtain systematic data on crime reporting, we did ask both law enforcement officers and community respondents to comment on trends in crime and reporting of crime in their jurisdictions.

Some law enforcement officials we interviewed in Frederick County and Colorado confirmed that immigrants were more hesitant to report crimes as a result of the 287(g) program (and SB 90 in Colorado) and that immigrants were more likely to be crime victims as a result, though others disagreed. Law enforcement officials in Prince William County and the Georgia sites also denied that 287(g) program implementation had reduced crime reporting. Community respondents across all of these jurisdictions reported that immigrants were less likely to report crimes after the 287(g) program was implemented, but did not have systematic evidence to back up these claims.

One of our jurisdictions, Prince William County, has tracked measures of satisfaction with the police.¹¹⁹ The Prince William County survey showed a steep drop among Hispanics in their view of the “overall performance” of the police, from above 90 percent in 2006 (just before 287(g) was implemented) to 73 percent in 2008. During this period, Hispanic satisfaction with “police attitude and behaviors” declined even faster, from above 80 percent to 54 percent.

Hispanics’ ratings on both measures, however, rebounded significantly by 2009, as the local immigration controversy died down and as the police department’s efforts to allay community concerns about the 287(g) program and the local immigration enforcement ordinance began to reap rewards. In fact, by 2010, Hispanics’ confidence in the police department’s overall performance had rebounded fully to match the level of non-Hispanic confidence (at 92 percent each; see Figure 8). But in 2010, Hispanics still rated the Prince William County police more poorly than non-Hispanics on three other measures — with the greatest gap in ratings of the county’s immigration policy (34 versus 84 percent). While the Prince William County surveys do not establish a causal link between the 287(g) program and Hispanic attitudes toward the police, they do provide a cautionary note to departments pursuing and implementing 287(g) agreements.

In two of our other study sites — Los Angeles County and Las Vegas — community respondents did not express nearly as many serious concerns about the 287(g) program’s local impacts than respondents in Cobb, Gwinnett, Frederick, and Prince William counties. Respondents in Los Angeles and Las Vegas reported that immigration enforcement has produced anxiety among immigrant populations, but that concern was diffuse and linked to enforcement efforts generally, often without regard to whether the enforcement was federal or local.

In Los Angeles, the County Board of Supervisors unanimously accepted the revised 287(g) agreement with ICE in October 2010 despite controversies and public protests over continuation of the program. While some of our community respondents in Los Angeles expressed concerns about the program’s impacts, these concerns were not sufficient to dissuade any of the county supervisors from voting against renewal of the revised agreement, even though some supervisors had voted against the program when it first began in 2002.

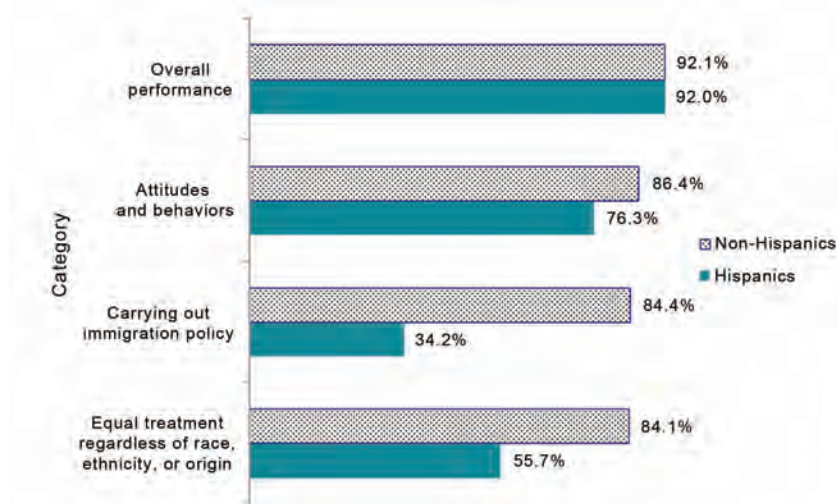
number of methods to avoid roadblocks and traffic stops. Because Cobb, Gwinnett, Frederick, and Prince William counties are suburban and lack strong public transportation networks, it is not possible for unauthorized immigrants to stop driving altogether. Study respondents told us that unauthorized immigrants have developed various strategies to respond to traffic enforcement, including driving only when necessary (to take children to school, for example); not driving at night or on the weekends; biking or using taxis where feasible; paying for delivery of groceries; relying on US-born children, even those who are not of driving age; texting information to others regarding roadblocks or traffic stops; and avoiding areas where roadblocks and stops are common. The last two strategies exacerbate community fears by raising potentially unnecessary alarm and perpetuating the assumption that certain areas of the community are unsafe for immigrants.

118 American Civil Liberties Foundation of Georgia, *Terror and Isolation in Cobb* and *The Persistence of Racial Profiling in Gwinnett*; Casa de Maryland, *Frederick County Immigration Enforcement*.

119 Center for Survey Research, *Evaluation Study of Prince William County*, 125-135.



Figure 8. Measures of Satisfaction with the Prince William County Police, 2010



Source: Center for Survey Research, *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy: Final Report 2010*, 125-135.

Several factors may contribute to the relatively low level of community concern about 287(g) in Las Vegas and Los Angeles. Both Las Vegas and Los Angeles County have placed a relatively lower share of detainers on persons arrested for traffic violations — although the absolute numbers placed on traffic violators are substantial (685 in Los Angeles and 285 in Las Vegas). As a result of their targeted approach, these jurisdictions give immigrants less reason to believe that ordinary interactions with police will lead to detention and removal. In addition, there have been no major research reports and few media stories about the 287(g) program in these locations to stir community concern. Finally both Los Angeles and Las Vegas are large jurisdictions with large unauthorized populations and both are in the throes of a severe economic downturn. It may be that any community reaction to the 287(g) program is muted by the much larger political and economic forces active in these two metropolitan areas.

FINDING 17 Community Impacts and Tensions Are Greater Where 287(g) Exists Alongside State and Local Immigration Enforcement Legislation

The same political pressures that led to adoption of 287(g) programs have also given rise to legislation aimed at restricting or reducing the unauthorized population. In the five sites in our study that have passed their own state and local immigration control measures (see Appendix 4), the confluence of these laws and the 287(g) program has heightened the program's impact on immigrants and increased their mistrust of the police.

In Georgia and Maryland, laws making driving without a license a jailable offense have been among the most significant avenues for the arrest and subsequent removal of noncitizens for traffic violations, particularly in 287(g) jurisdictions. Respondents in Cobb and Gwinnett counties reported that it is common for police officers to pull over immigrants for a broad variety of minor violations and then take them to the county jails on charges of improper identification. In fact, almost 500 of the noncitizens with ICE detainers placed by Gwinnett County's 287(g) program in the first 14 months of operation had been charged only with driving without a license.¹²⁰ Respondents in Frederick County

¹²⁰ Between October 15, 2009 and December 15, 2010, 487 immigrants with detainers had only a driver's license violation (15 percent of the total 3,203 detainers placed). See Gwinnett County Sheriff's Department, "Gwinnett County Sheriff's Department 287g." Cobb County does not post similar statistics on its website, but Cobb County placed detainers on over 1,100 traffic violators in FY 2010, and Cobb County's share of traffic violators is substantially higher than Gwinnett County's (see Figure 4).



also described driving without a license as a common reason for immigrants being arrested and placed in removal proceedings.

In Colorado, respondents' concerns about the community impacts of heightened police involvement in immigration enforcement ultimately revolve much more around SB 90, which requires all law enforcement agencies to report suspected unauthorized immigrants they arrest to ICE, than the state's narrower 287(g) program. To the extent that state or local police officers have engaged in inappropriate immigration enforcement, including alleged racial profiling, respondents we interviewed appeared more concerned about SB 90 than the 287(g) program. Respondents worried that SB 90 could eventually result in a large number of removals for minor offenses, once Secure Communities becomes active in county jails across the state.

The debate in 2007-08 over Prince William County's ordinance authorizing the police to screen the immigration status of anyone in their custody galvanized protests and political activism on both sides of the issue, and media outlets reported widespread fear and panic in the immigrant community.¹²¹ The 287(g) program was implemented during the period of this debate and was caught up in the controversy. The community reaction became more muted after the county changed its policy to inquire about immigration status only after people are taken into custody in the county jail. The 287(g) task force and jail models remain in effect, but are far less controversial than they were initially, when the broader county statute was in effect.

In all five of these jurisdictions, state and local enforcement ordinances have interacted with the 287(g) program to heighten anxiety and concerns in immigrant communities. In these jurisdictions, fears about the intentions and operations of law enforcement agencies derive as much from state and local laws as from the 287(g) program itself.

FINDING 18 Positive Community Outreach Can Improve Public Perceptions of the Program

ICE and its partner law enforcement agencies have provided varying degrees of information about the 287(g) program. In most places, ICE has been relatively silent, providing very little public information about the program. But some partner agencies have made efforts to publicize data, policing practices, and other aspects of immigration enforcement in their jurisdictions.

These outreach efforts have not always eased community concerns, however: the sheriffs in Cobb, Gwinnett, and Frederick counties have all met with program supporters, but in the eyes of their critics have not been willing to engage with opponents. At times, the sheriffs have been confrontational. For instance, on their websites, both the Cobb and Gwinnett sheriffs published extensive critiques of advocates' reports criticizing their 287(g) programs.¹²² The Frederick County sheriff met with immigrant- and civil-rights advocates in 2008 to brief them on the 287(g) program, but participants in the meeting described it as hostile and counterproductive; and respondents reported limited communication between the sheriff's office and these stakeholders since the meeting.

In contrast, the Prince William County and Las Vegas police departments have made significant efforts to educate the public about the 287(g) program and allay immigrants' mistrust of the police. In Prince William County, the police department has developed a brochure, in both English and Spanish, which clearly delineates how police implement both the county ordinance and the department's 287(g) task force, named the Criminal Alien Unit. The brochure, which is posted on the Internet and available at all police stations, states that:

¹²¹ Singer, Wilson, and DeRenzi, *Immigrants, Politics, and Local Response in Suburban Washington*.

¹²² Cobb County Sheriff's Office, "Response of the Cobb County Sheriff's Office to the ACLU Report on 287(g)" (November 9, 2009, 1-2); Gwinnett County Sheriff's Office, "Sheriff Conway's Rebuttal to ACLU on Racial Profiling."



- ALL PERSONS who are under physical custodial arrest for a violation of state or local law will be questioned regarding their immigration status.
- Enforcement by the Criminal Alien Unit will primarily address SERIOUS CRIMINAL activity.
- Police officers WILL NOT conduct routine immigration checkpoints or round-ups.
- Police officers WILL NOT physically arrest an individual solely for the purpose of questioning citizenship or immigration status (emphasis in original).¹²³

The latter two points in the brochure have been important in allaying community fears about the 287(g) task force, since it is roadblocks and traffic stops that generate the most fear among immigrants.¹²⁴ Police Chief Charlie Deane and his senior officers have made more than 300 presentations since the policies were first debated in 2007 to reinforce the messages in the brochure and to show that they take seriously any allegations of racial profiling or other civil-rights infractions. They have met with the media, community groups, congregations, and others to discuss these issues. By the time of our visits in spring 2010, Hispanic confidence in the police had rebounded; controversies surrounding policing activities had subsided; and the chief and his officers had stopped doing presentations due to lack of interest.¹²⁵

Las Vegas Sheriff Gillespie goes on the radio frequently and discusses the 287(g) program during some of his appearances. The Las Vegas Metropolitan Police Department operates citizen academies to inform the public on department activities. While not always 287(g)-focused, these more general outreach activities have helped instill a sense of trust in the police among the city's Hispanic community.

We did not observe similar, positive public outreach by police departments or sheriff's offices in our other sites. In fact, most of the jail models we included in the study — including the jail in Prince William County — operate quietly; the sheriffs and jail superintendents generally avoid publicity about 287(g).¹²⁶ Across all sites, ICE has been reticent about the program and reluctant to release public information. In fact, those jurisdictions that do release their own information have had to clear public releases with ICE, a process potentially made more cumbersome by the revised 2009 template's emphasis on preclearance of all information with ICE.

The confrontational discourse in Frederick, Cobb, and Gwinnett counties stands in marked contrast to the community outreach conducted by the Prince William County and Las Vegas police departments. Though the roles of these various departments and the local contexts differ significantly, we find that constructive community outreach can help allay fears in immigrant communities, while confrontational language may further escalate community concerns and tensions regarding the 287(g) program.

V. Conclusions and Recommendations

The 287(g) program has been a highly visible and controversial initiative. The program's enforcement results have been relatively modest: about 10 percent of removals from the United States come from 287(g) referrals, and that proportion has been declining since the peak year of 2008. Yet the program

¹²³ Prince William County Police Department, "Local Enforcement Response to Illegal Immigration."

¹²⁴ The brochure also states that officers will protect victims of crimes and witnesses, and that racial profiling is expressly prohibited.

¹²⁵ Center for Survey Research, *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy*.

¹²⁶ Most of our other study sites do provide data and fact sheets about the 287(g) program on their websites: Cobb County, Gwinnett County, Frederick County, and Las Vegas. But none except Prince William County Police Department has conducted extensive public outreach and education campaigns.



provides an important window into the delegation of immigration enforcement authority to state and local officials, a relatively recent new trend in immigration enforcement, as well as into the impacts of immigration enforcement within the United States in general.

The Bush and Obama administrations both have sought to use the 287(g) program to broaden the government's reach in immigration enforcement by augmenting enforcement resources. In 2009, ICE issued a new template intended to clarify the Obama administration's goals for the program. Public statements by top administration officials suggest that the 287(g) program should focus on identifying and removing "dangerous criminals," defined as Level 1 and 2 offenders, first and foremost. But the revised 2009 template and ICE's oversight have allowed the program to function in a broader fashion where resources permit — as they often do.

Because ICE's enforcement directives are open to varying interpretations, some 287(g) jurisdictions have taken what we term a universal approach to enforcement, placing detainers on virtually all unauthorized immigrants they encounter in jails or during policing operations. Other jurisdictions, by contrast, more narrowly target national security and public safety threats and eschew wide-ranging immigration enforcement.

Among our study sites, three operate universal models (Cobb, Gwinnett, and Frederick counties), while one (Las Vegas) is highly targeted toward Level 1 and 2 offenders. The three other sites (Colorado, Los Angeles County, and Prince William County) fall in between, focusing on nonserious offenders to a lesser extent than do the universal sites but to a greater extent than Las Vegas. Beyond our study sites, the universal model is common across the Southeast, with ten jurisdictions in the region issuing a majority of immigration detainers on traffic offenders. The preponderance of the universal model in the Southeast appears to reflect political pressures that stem from public reaction to the recent and rapid growth of immigrant populations in the region.

We found that the universal 287(g) programs have generated significant costs for both the federal government and local immigrant communities. Federal costs include not only training and supervision of 287(g) officers (whose salaries are paid by state and local governments), but also substantial downstream detention, removal, and adjudication costs. In jurisdictions that identify a large number of high-value targets, the 287(g) program may be cost-effective because of the public safety returns. But in jurisdictions that net primarily traffic offenders and those who have committed misdemeanors, the cost-benefit return of the program to the federal government is questionable.

At the state and local level, public criticisms have been muted and community impacts relatively limited in Las Vegas and Los Angeles — the jurisdictions we studied with the two most targeted programs — but the impacts in jurisdictions practicing more universal enforcement have been serious. Immigration enforcement that ensnares large numbers of traffic violators and minor offenders lends itself to racial profiling by police (or at least gives rise to the perception that police engage in profiling). Universal enforcement also has led to outmigration of immigrants, at least in the short term, in several jurisdictions, as well as negative impacts such as loss of economic activity, withdrawal of immigrants from public life, and fear and mistrust of the police. Taken together, the downstream costs to ICE and disproportionately negative community impacts raise serious questions about the value of universal versions of the program.

Some variation in enforcement approaches among participating jurisdictions is inevitable in any delegation scheme, given differences in geography and context. State and local partners will expect and require at least some authority to implement their delegated authority in line with their own conditions and priorities. But the wide variation reflected in our study suggests that state and local actors, rather than ICE, are significantly defining the programs' enforcement priorities. In many cases, jurisdictions have signed onto the program in order to identify and remove as many unauthorized immigrants as possible regardless of the severity and nature of their criminal offenses (or whether they have criminal convictions at all).



The administration's public statements and policy guidelines have emphasized the intent to pursue a targeted enforcement strategy in tandem with a lesser emphasis on identifying and removing nonserious offenders. Thus, the wide variation we observe within the 287(g) program sows public confusion and undermines the federal government's credibility about the scope and purpose of its immigration enforcement mission.

We conclude that, insofar as the majority of unauthorized immigrants are not dangerous criminals, do not face existing removal orders, and have long histories in their communities, the 287(g) program should follow a targeted, not a universal model. A targeted model would mean that the scope of enforcement would be directed primarily at the identification and removal of serious offenders. Articulating and implementing a targeted enforcement strategy within the interior of the country is especially important when enforcement authority has been delegated, as is the case with the 287(g) program. As this report makes clear, the very jurisdictions most in need of federal oversight and a clearly articulated enforcement strategy are also those now given the greatest leeway to chart their own enforcement course.

A. Lessons for Secure Communities

Many of our findings about the 287(g) program also apply to Secure Communities and other current partnerships between ICE and state and local law enforcement agencies. Secure Communities is more efficient than the 287(g) program because it piggybacks on existing technology and allows a small number of ICE officers to screen arrestees for immigration violations, eliminating the need for costly training and supervision of local officials. Partly for this reason, the program has already grown to cover 868 jurisdictions in 35 states (as of December 2010). ICE plans call for full implementation nationwide by 2013.¹²⁷

Yet as in the 287(g) program, Secure Communities can generate incentives for officers to arrest people primarily on the suspicion that they are unauthorized immigrants, knowing that they will be screened through the program and likely placed in removal proceedings. Indeed, Secure Communities may be even more susceptible to this problem since there are no formal agreements defining the activities of participating law enforcement agencies, and local officers do not receive federal training in immigration enforcement. As in most 287(g) jail models, Secure Communities jurisdictions generally process arrestees from other jurisdictions that are not enrolled in the program, creating a similar problem of diffuse accountability. And once a state enrolls in Secure Communities all of its local jurisdictions are required to participate in the program, at least with regard to forwarding fingerprint data to ICE.

The critical difference between 287(g) and Secure Communities lies in who conducts immigration status screening, issues detainers, and initiates removal proceedings. Under 287(g), state and local officers have the authority to perform these functions; under Secure Communities, ICE officers retain this authority. Thus, in Secure Communities jurisdictions, ICE officials can determine which individuals should be detained and processed for removal, or released, even when universal screening identifies people who may be removable but are not high-priority targets such as dangerous criminals, threats to national security, or immigrants who already have removal orders. The proliferation across the country of immigration screening through Secure Communities will make it all the more essential that ICE and partner agencies have clear guidance and procedures, in order to avert the adverse outcomes and public controversies — but on a much larger scale — that we and other researchers have observed in the 287(g) program.

¹²⁷ ICE, "Secure Communities: Activated Jurisdictions," accessed December 14, 2010, www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf.



B. Recommendations

Some critics of the 287(g) program have called for its termination, citing the adverse community impacts described earlier. The data we received from ICE and the evidence from our site visits, however, underscore that the program amplifies ICE's enforcement capacity and can be implemented in a targeted fashion with limited negative community impact. In addition, even if 287(g) were terminated, suspicion of police among immigrant communities would likely persist. Secure Communities and other partnerships between ICE and state and local agencies, along with state and local immigration enforcement laws and ordinances, the current climate of heightened enforcement, and public concern about illegal immigration, will continue to generate suspicion of law enforcement in immigrant communities.

We therefore recommend that ICE take additional steps to ensure that the 287(g) program functions consistently across jurisdictions according to the targeted enforcement model promoted in the 2009 revised template and in public statements by DHS and ICE leadership — and that the agency reconfirm that the program is intended to target primarily serious criminals or people who have prior criminal convictions, represent a threat to national security, or have prior removal orders. To achieve this goal, ICE should:

1. Adopt a post-conviction policy for 287(g) enforcement programs. Accordingly, state and local 287(g) officers place would detainers on noncitizens only after their conviction for Level 1 and 2 offenses, unless they meet one of the other conditions listed above. In addition, there should be a strong presumption against issuing detainers on those convicted for Level 3 and traffic violations.
2. Work with the US Department of Justice (DOJ) to investigate accusations of racial and ethnic profiling in 287(g) jurisdictions, including in law enforcement agencies that feed into 287(g) jails but do not themselves have agreements with ICE. DOJ and ICE should require jurisdictions participating in the program to provide race and ethnicity data on traffic stops and other police encounters as well as on arrests, criminal charges, and the prosecutorial and judicial disposition of 287(g) arrests. ICE also should require 287(g) officers to fill in the “Initial Encounter” field in ENFORCE uniformly and completely, and should experiment with this field as a tool to monitor initial encounters that lead to arrests, particularly when those arrests are made by non-287(g) officers. The DHS Office of Inspector General made this recommendation in a March 2010 report, but ICE rejected it based on logistical grounds, and OIG found the issue unresolved in its follow-up September 2010 report.¹²⁸
3. Ensure that existing 287(g) jurisdictions target their program operations toward Level 1 and 2 offenders as well as the other priorities listed above, and discontinue agreements with jurisdictions that do not adhere to these priorities. Regional ICE offices should place these priorities at the center of their day-to-day oversight of the program, and ICE headquarters should engage in a rigorous and routine review of each agreement. The agency should set benchmarks for jurisdictions that are not complying with the priorities and draft clear guidelines for placing jurisdictions on probation and for terminating agreements. Such steps have already been taken by terminating Maricopa County's task force agreement. Benchmarks and criteria for probation and termination should include evidence of substantial deviation from the focus on dangerous criminals and other priorities as well as evidence of racial profiling or other civil-rights violations.
4. Conduct a cost-benefit analysis of the 287(g) program along with other interior enforcement strategies. Analyzing all the federal, state, and local costs involved in identifying, detaining, and removing noncitizens across 287(g), the Secure Communities program, CAP, and other partnerships could help reveal the relative value of the 287(g) program and other partnerships. Such an analysis should include downstream detention, adjudication, and removal costs. The analysis also should incorporate community impacts and consider

¹²⁸ DHS OIG, *The Performance of 287(g) Agreements*, 53; DHS OIG, *The Performance of 287(g) Agreements: Report Update OIG-10-124*, (Washington, DC: OIG, DHS, 2010), 55, www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-124_Sep10.pdf.



the relative costs of pursuing dangerous criminals versus lower-value targets, as well as operating different programs in jurisdictions of different sizes

5. Carefully consider, based on the preceding cost-benefit analysis, whether the 287(g) program warrants expansion. If the program is to be expanded, ICE should limit new agreements to jurisdictions without a documented history of racial profiling and where programs are likely to be operated in a targeted fashion. ICE should collect data on where immigrants who have committed Level 1 and Level 2 offenses are located and use these data to decide where to establish targeted 287(g) enforcement programs. New 287(g) agreements should not be initiated in jurisdictions believed to have few serious offenders, even when local leaders approach ICE with interest in the program. ICE should also involve key stakeholders, including local police chiefs and representatives of the immigrant community, in decisions regarding when and where to initiate new agreements.
6. Provide more and clearer information to local communities about the goals and implementation of 287(g) programs. ICE should eliminate the prohibition in the revised 2009 template on public release of data by partner agencies. The program should be transparent, and members of the community should be able to monitor the program at the local level.
7. Promote real dialogue between ICE field offices and local communities. ICE offices should engage in direct community outreach, including through regular (perhaps semiannual) meetings with stakeholder groups and other key constituencies to explain how the program operates. These meetings could be organized through the types of steering committees envisioned in the original agreements for many 287(g) jurisdictions and referred to in the revised 2009 template. The steering committees should be broadly constituted forums for public input, and not limited to ICE and law enforcement agencies. ICE should also hold open forums or informal comment periods before signing new agreements and renewing existing ones. Giving the public a formal role at these different stages of the process would improve the accountability and public perception of the program and address potential community costs (such as increased fear of law enforcement).

The findings and recommendations in this report also apply to Secure Communities, CAP, and other programs which involve the transfer of potentially removable immigrants from state and local police custody to ICE. All such interior enforcement programs can be properly targeted toward dangerous criminals, threats to national security, and other high-value groups, but they also run the risk of drawing in many low-value targets such as Level 3 and traffic offenders. The way the program operates in three of our study sites, particularly in Las Vegas, shows that it is possible to have a partnership between ICE and state or local law enforcement that does not substantially threaten or intimidate immigrant communities. ICE's enforcement partnerships with state and local agencies substantially shape overall federal policy toward the unauthorized population. As a result, such programs have significant impacts on immigrant communities overall and the integration of immigrants and their families over the longer-term future.



VI. Appendices

Appendix 1. Research Questions and Methodology

The study focused on an overarching question, which we believe is central to understanding the 287(g) program's operation in practice and its implications for immigration law enforcement more generally:

Should the 287(g) program focus primarily or exclusively on identifying and removing people the federal government has identified as its top enforcement priorities, namely those who represent security threats, have committed serious crimes, or have accumulated multiple immigration law violations? Or should the program remove as many unauthorized immigrants as possible, even if they do not fit one of these priorities?

In order to address this central question and provide a thorough review of how the program operates at the ground level, we focused on the following subquestions during our fieldwork and data analysis:

- What have been the outcomes of the program, defined in terms of the numbers of persons processed and the types of criminal or civil violations for which they were charged?
- What are the goals of the 287(g) program, and do they differ between ICE and the involved state and local agencies?
- Are the program's established and publicly espoused goals being met?
- What are the political, economic, and social contexts at the state and local levels in which 287(g) agreements have been implemented, and how do those contexts affect program implementation and outcomes?
- How have 287(g) agreements been implemented, and to what extent have the programs focused on serious criminals versus the unauthorized population more generally?
- How is ICE engaging in program oversight and supervision? Is supervision effective in helping ICE ensure the program meets federal goals?
- What are the costs associated with the program, and how are they shared between ICE and its state and local partners?
- What have been the impacts of 287(g) agreements on immigrants, their families, and communities? Is there any evidence that immigrants have left 287(g) jurisdictions in large numbers because of the program? How and why do impacts vary across jurisdictions?
- How transparent are 287(g) program goals and operations, and what efforts have ICE and its partner agencies undertaken to provide public information and solicit public input?
- What changes have occurred over time in 287(g) program implementation and impacts?
- How have the 2009 template and standardized agreements affected program implementation and impacts?
- What is the relationship of the 287(g) program to Secure Communities and other ICE partnerships with state and local law enforcement agencies? What lessons can be learned from the implementation and effects of 287(g) that might be relevant to the effective implementation of Secure Communities and other enforcement programs that involve collaboration with state and local officials?

Before conducting this fieldwork, our study team reviewed the pre-2009 agreements entered into by all active 287(g) jurisdictions and compared them to the agreements negotiated in 2009, after ICE developed a new template.¹²⁹ We then met with ICE national staff, as well as with national immigrant-rights and civil-rights groups that have expressed concern about 287(g) and other ICE partnerships with state and local law enforcement. Based on these investigations and our review of the existing

¹²⁹ Rodríguez et al, *A Program in Flux*.



literature assessing the 287(g) program, we selected seven sites to visit in order to explore the program in operation (see Table 1). In selecting sites, we sought to include:

- a mix of jail, task force, and hybrid models;
- a combination of smaller and larger sites in terms of numbers of immigrants processed;
- a mixture of older and newer programs;
- at least some programs where stakeholders had reported adverse impacts on immigrant communities;
- geographic variation (a mixture of Southeastern and Western sites);¹³⁰ and,
- sites where state and local law enforcement agencies and immigrant community respondents demonstrated willingness to participate in the study.

Although Arizona has been the focus of much attention, we did not choose a site there because a variety of factors would have complicated our research. The state has been the site of numerous immigration-related initiatives since 2007, including the Legal Arizona Workers Act currently on review at the Supreme Court and SB 1070. Arizona also has been embroiled in public and legal controversy related to high-profile enforcement sweeps conducted by Maricopa County Sheriff Joe Arpaio. These events, coupled with the public and legal controversies surrounding the termination of Maricopa County's 287(g) task force program, have created a highly charged political context and a compromised research environment.

We then obtained data from ICE on the characteristics of individuals with ICE detainers (i.e., noncitizens processed and placed in ICE custody by 287(g) officers) based on the ENFORCE database. We used these data to assess the proportion of people with ICE detainers who meet ICE's Level 1, 2, and 3 criteria. The data are for individuals encountered by 287(g) officers from October 2009 through August 2010 (the first ten months of FY 2010). These data are not available for prior fiscal years because ICE mandated the coding of the priority levels starting only in August 2009.

Once we began work in our study sites, we interviewed ICE supervisors for various 287(g) programs as well as sheriffs, police chiefs, and officers in participating law enforcement agencies in all of our jurisdictions. Thus, we were able to obtain an inside picture of 287(g) operation by interviewing program staff along the chain of command from ICE leadership down to the level of 287(g) officers in local jails and state and local task forces.

Working with governmental and nonprofit contacts across the country, we also interviewed a wide variety of stakeholders in communities with 287(g) agreements, including state and local elected officials, public school district staff and board members, public and community-based service providers, religious and community leaders, immigration lawyers, immigrant- and civil-rights groups, and officials of foreign consulates.

We conducted community interviews with more than 100 people across our study sites. We contacted elected officials and advocates on both sides of the issue in all of our study sites, but vocal supporters of the 287(g) program refused to meet with us in several jurisdictions.

The interviews with ICE officers, state and local law enforcement officials, and community respondents were all structured using discussion guides with questions that were consistent among respondents within sites and across the sites. The guides were structured around the primary research questions described above. The interviews were approximately one to two hours in length. We promised our respondents confidentiality in order to encourage a candid discussion. In some cases, our findings are also informed by published statements from interview respondents. Where we quote respondents and others, the statements are from published sources, not our interviews.

We conducted all interviews during spring and summer 2010, waiting until at least six months after implementation of the new template in fall 2009, in order to allow time for the terms of the new agreement to begin to take effect.

¹³⁰ There are only a handful of 287(g) sites outside of the Southwest and Southeast.

**Appendix 2. Active 287(g) Memoranda of Agreement, August 2010**

State	Law Enforcement Agency	Model	Date Signed
Massachusetts	Massachusetts Department of Corrections	Jail Enforcement	IN NEGOTIATION
Arizona	Arizona Department of Corrections	Jail Enforcement	09/16/2005
Arizona	Arizona Department of Public Safety	Jail & Task Force	04/15/2007
Arizona	City of Mesa Police Department	Jail & Task Force	11/19/2009
Arizona	City of Phoenix Police Department	Jail & Task Force	03/10/2008
Arizona	Florence Police Department	Task Force	10/21/2009
Arizona	Maricopa County Sheriff's Office	Jail Enforcement	02/07/2007
Arizona	Pima County Sheriff's Office	Jail & Task Force	03/10/2008
Arizona	Pinal County Sheriff's Office	Jail & Task Force	03/10/2008
Arizona	Yavapai County Sheriff's Office	Jail & Task Force	03/10/2008
Arkansas	Benton County Sheriff's Office	Jail & Task Force	09/26/2007
Arkansas	City of Springdale Police Department	Task Force	09/26/2007
Arkansas	Rogers Police Department	Task Force	09/25/2007
Arkansas	Washington County Sheriff's Office	Jail & Task Force	09/26/2007
California	Los Angeles County Sheriff's Office	Jail Enforcement	02/01/2005
California	Orange County Sheriff's Office	Jail Enforcement	11/02/2006
California	Riverside County Sheriff's Office	Jail Enforcement	04/28/2006
California	San Bernardino County Sheriff's Office	Jail Enforcement	11/19/2005
Colorado	Colorado Department of Public Safety	Task Force	03/29/2007
Colorado	El Paso County Sheriff's Office	Jail Enforcement	05/17/2007
Connecticut	City of Danbury Police Department	Task Force	10/15/2009
Delaware	Delaware Department of Corrections	Jail Enforcement	10/15/2009
Florida	Bay County Sheriff's Office	Task Force	06/15/2008
Florida	Collier County Sheriff's Office	Jail & Task Force	08/06/2007
Florida	Florida Department of Law Enforcement	Task Force	07/02/2002
Florida	Jacksonville Sheriff's Office	Jail Enforcement	07/08/2008
Georgia	Cobb County Sheriff's Office	Jail Enforcement	02/13/2007
Georgia	Georgia Department of Public Safety	Task Force	07/27/2007
Georgia	Gwinnett County Sheriff's Office	Jail Enforcement	10/15/2009
Georgia	Hall County Sheriff's Office	Jail & Task Force	02/29/2008
Georgia	Whitfield County Sheriff's Office	Jail Enforcement	02/04/2008
Maryland	Frederick County Sheriff's Office	Jail & Task Force	02/06/2008
Minnesota	Minnesota Department of Public Safety	Task Force	09/22/2008
Missouri	Missouri State Highway Patrol	Task Force	06/25/2008
Nevada	Las Vegas Metropolitan Police Department	Jail Enforcement	09/08/2008
New Hampshire	Hudson City Police Department	Task Force	05/05/2007
New Jersey	Hudson County Department of Corrections	Jail & Task Force	08/11/2008
New Jersey	Monmouth County Sheriff's Office	Jail Enforcement	10/15/2009
New Mexico	New Mexico Department of Corrections	Jail Enforcement	09/17/2007
North Carolina	Alamance County Sheriff's Office	Jail Enforcement	01/10/2007
North Carolina	Cabarrus County Sheriff's Office	Jail Enforcement	08/02/2007
North Carolina	Durham Police Department	Task Force	02/01/2008
North Carolina	Gaston County Sheriff's Office	Jail Enforcement	02/22/2007



State	Law Enforcement Agency	Model	Date Signed
North Carolina	Guilford County Sheriff's Office	Task Force	10/15/2009
North Carolina	Henderson County Sheriff's Office	Jail Enforcement	06/25/2008
North Carolina	Mecklenburg County Sheriff's Office	Jail Enforcement	02/27/2006
North Carolina	Wake County Sheriff's Office	Jail Enforcement	06/25/2008
Ohio	Butler County Sheriff's Office	Jail & Task Force	02/05/2008
Oklahoma	Tulsa County Sheriff's Office	Jail & Task Force	08/06/2007
Rhode Island	Rhode Island State Police	Task Force	10/15/2009
South Carolina	Beaufort County Sheriff's Office	Task Force	06/25/2008
South Carolina	Charleston County Sheriff's Office	Jail Enforcement	11/09/2009
South Carolina	York County Sheriff's Office	Jail Enforcement	10/16/2007
Tennessee	Davidson County Sheriff's Office	Jail Enforcement	02/21/2007
Tennessee	Tennessee Department of Safety	Task Force	06/25/2008
Texas	Carrollton Police Department	Jail Enforcement	08/12/2008
Texas	Farmers Branch Police Department	Task Force	07/08/2008
Texas	Harris County Sheriff's Office	Jail Enforcement	07/20/2008
Utah	Washington County Sheriff Office	Jail Enforcement	09/22/2008
Utah	Weber County Sheriff's Office	Jail Enforcement	09/22/2008
Virginia	Herndon Police Department	Task Force	03/21/2007
Virginia	Loudoun County Sheriff's Office	Task Force	06/25/2008
Virginia	Manassas Park Police Department	Task Force	03/10/2008
Virginia	Manassas Police Department	Task Force	03/05/2008
Virginia	Prince William County Police Department	Task Force	02/26/2008
Virginia	Prince William County Sheriff's Office	Task Force	02/26/2008
Virginia	Prince William-Manassas Regional Jail	Jail Enforcement	07/09/2007
Virginia	Rockingham County Sheriff's Office	Jail & Task Force	04/25/2007
Virginia	Shenandoah County Sheriff's Office	Jail & Task Force	05/10/2007

Source: ICE, "Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act" (Fact Sheet, October 29, 2010), www.ice.gov/news/library/factsheets/287g.htm.



Appendix 3. Basic Elements of 287(g) Versus Other ICE Partnerships with State and Local Law Enforcement

	287(g) Jail Enforcement Model	287(g) Task Force Model	Criminal Alien Program (CAP)	Secure Communities	No Major Partnership with ICE
Who arrests?	Officers without ICE training	Officers with ICE training	Officers without ICE training	Officers without ICE training	Officers without ICE training
Who screens immigration status?	State, local officers with ICE training	State, local officers with ICE training	ICE field officers	ICE officers remotely*	ICE field officers
Who is screened?	All inmates booked into jail**	Persons encountered during policing operations	Certain inmates/arrestees, depending on ICE priorities	All inmates booked into jail	Certain inmates/arrestees, depending on ICE priorities
How are people screened?	287(g)-trained officer conducts interview and uses ICE databases	287(g)-trained officer conducts interview and uses ICE databases	ICE field officer conducts interview and uses ICE databases	Fingerprints automatically compared to immigration databases; ICE reports results	ICE field officer conducts interview and uses ICE databases
Who issues detainees and charging documents?	State, local officers with ICE training	State, local officers with ICE training	ICE field officers	ICE field officers	ICE field officers
How is the program funded?	ICE pays for training and technology; state and local agencies bear personnel costs	ICE pays for training and technology; state and local agencies bear personnel costs	ICE pays all costs	ICE pays for databases and for access to databases	ICE pays all costs

* ICE officers at the LESC receive and review data about previous encounters with immigration authorities, and then make a final determination.

** Screening occurs after conviction in Los Angeles, but upon booking in all the other jail models.

Appendix 4. State and Local Immigration Enforcement Legislation in the Seven Study Sites

Georgia sites. The State of Georgia has passed a number of laws broadening police authority to enforce immigration laws. In 2006, the Georgia General Assembly passed SB 529, an omnibus immigration bill that restricts unauthorized immigrants' access to public benefits and includes language encouraging state and local law enforcement agencies to adopt 287(g) programs.¹³¹ SB 529 also requires police officers to check the immigration status of individuals arrested for driving under the influence and felonies.¹³² And in 2007, as Cobb County implemented its 287(g) program, the Georgia Legislature passed SB 350, making driving without a license a jailable offense on the first arrest,

¹³¹ Georgia's first two 287(g) programs — the jail enforcement program in Cobb County and the Georgia Department of Public Safety's statewide task force — were implemented in 2007, not long after Senate Bill 529 passed.

¹³² Georgia General Assembly, Senate Bill 529, *Georgia Security/Immigration Compliance Act*, enacted April 17, 2006, www.legis.state.ga.us/legis/2005_06/pdf/sb529.pdf.



and a felony on the fourth arrest.¹³³ SB 350, also signed into law, also requires officers to screen the immigration status of people jailed after conviction for driving without a license.

Our two Georgia study jurisdictions — Cobb and Gwinnett counties — have also passed or considered local ordinances restricting unauthorized immigrants' access to public benefits and services. Cobb County's ordinance also limits the number of people who may reside in a household, though the law has not been implemented in light of pending legal challenges to similar ordinances in other jurisdictions.¹³⁴

Frederick County, MD. As in Georgia, a Maryland state law passed in 2006 makes driving without a license a jailable offense.¹³⁵ In 2009, the state passed a law making unauthorized immigrants ineligible for driver's licenses, though unauthorized immigrants who already have licenses may renew them through 2015.¹³⁶ At the local level, the Frederick County Commission has debated a number of high-profile immigration ordinances since 2005, including proposals to require public schools to report the immigration status of their students to school district officials, and to require the county and county contractors to verify electronically the immigration status and work authorization of new hires. In 2009, the county commission submitted a resolution urging the state to ask the US Congress to convene a constitutional convention to consider amendments that would combat illegal immigration.¹³⁷

Prince William County, VA. Virginia has passed a law criminalizing the hiring of unauthorized workers (which is similar to federal law on the matter), but the state has no law comparable to Georgia's SB 350 mandating jail time for driving without a license. Prince William County has aggressively pursued immigration-related legislation, to the extent that it has attracted the national spotlight. In summer 2007, the Board of Supervisors debated but never passed a resolution that would have restricted county services for the unauthorized. Around the same time, the county jail entered into a 287(g) jail agreement, and the Board of Supervisors passed a resolution calling for the county police department to enter into a task force agreement. In October 2007, while the police department's 287(g) agreement was in negotiation, the county supervisors passed a resolution authorizing police to screen the immigration status of anyone in their custody whom they had probable cause to suspect was unauthorized.¹³⁸ The resolution, however, could not be implemented due to cost, as the police chief estimated it would cost more than \$3 million to install cameras in patrol cars and hire attorneys to insulate the department from racial profiling lawsuits. In spring 2008, just as the department's 287(g) task force was being implemented, the Board of Supervisors changed the policy to require screening for status only after immigrants were taken into custody and booked at the county jail.¹³⁹

133 Georgia General Assembly, Senate Bill 350, *Drivers' Licenses*, enacted May 14, 2006), www1.legis.ga.gov/legis/2007_08/pdf/sb350.pdf. The Georgia Legislature has also considered but not passed several other immigration-related pieces of legislation. One would increase state reimbursement for prisoners housed in county facilities with 287(g) agreements, thereby creating financial incentives to participate in the program. A second would have mandated that applicants for driver's licenses pass the written driver's test in English. A third, which may be revived in 2011, would ban enrollment of unauthorized students in state institutions of higher education.

134 Cobb County's housing ordinance is similar to the measure adopted by Hazleton, PA, which the US Court of Appeals for the Third Circuit invalidated in September 2010 on the grounds that it preempts federal law and is therefore unconstitutional. Cherokee County, a neighboring suburban county in Georgia, also adopted a similar ordinance, but it, too, remains the subject of litigation and is not currently in effect. For more on local ordinances regarding housing and unauthorized immigrants, see Rigel C. Oliveri, "Between a Rock and a Hard Place: Landlords, Latinos, Anti-Illegal Immigrant Ordinances, and Housing Discrimination," *Vanderbilt Law Review* 62, no. 1 (January 2009), 55-125, <http://law.vanderbilt.edu/publications/vanderbilt-law-review/download.aspx?id=3684>.

135 Maryland General Assembly, House Bill 524, 2006 Regular Session, *Criminal Offenses - Driving Without a License - Arrest and Penalties*, enacted May 2, 2006, <http://mlis.state.md.us/2006rs/billfile/hb0524.htm>.

136 Maryland General Assembly, House Bill 387, 2009 Regular Session, *Vehicle Laws - Lawful Status in the United States - Material Compliance with Federal Requirements*, enacted May 7, 2009, <http://mlis.state.md.us/2009rs/billfile/hb0387.htm>.

137 Frederick County (MD) Board of County Commissioners, *2009 Legislative Package*, enacted November 21, 2008, 92-96, www.frederickcountymd.gov/documents/Board%20of%20County%20Commissioners/Legislative%20Affairs/2009%20Legislative%20Package.PDF.

138 Singer, Wilson, and DeRenzis, *Immigrants, Politics, and Local Response in Suburban Washington*.

139 Ibid.



Colorado. The Colorado Legislature has passed a number of immigration-related laws in recent years. Lawmakers authorized the 287(g) program itself in 2006 with SB 225. The law created the Immigration Enforcement Unit (IEU), the state’s 287(g) task force, and authorized it to enforce the statute’s provisions against human smuggling and trafficking.

The arguably more significant state law, however, has been SB 90, also passed in 2006. The law requires officers to report to ICE any immigrants they arrest and have probable cause to believe are not legally present in the United States. The statute also prohibits law enforcement agencies from developing “sanctuary” policies that would prohibit officers from making such reports and requires cooperation with federal immigration authorities.

Appendix 5. Level of Most Serious Offense for Immigrants Processed, All Active 287(g) Jurisdictions, FY 2010

Jurisdiction	Total Detainers	Level 1	Level 2	Level 3	Traffic	No Offense	Other*
All jurisdictions nationally	39,772	9,165	10,576	7,276	11,878	510	367
AL Department of Public Safety	2		1		1	-	-
Alamance County Sheriff’s Office	237	26	57	47	107	-	-
AZ Department of Corrections	2,611	1,645	572	70	322	1	1
AZ Department of Public Safety	206	63	115	11	1	16	-
Bay County Sheriff’s Office	70	8	40	8	8	5	1
Beaufort County Sheriff’s Office	45	6	5	4	-	2	28
Benton County Sheriff’s Office	38	7	28	2	-	1	-
Butler County Sheriff’s Office	161	4	22	75	60	-	-
Cabarrus County Sheriff’s Office	181	21	37	14	109	-	-
Carrollton Police Department	67	2	26	21	15	1	2
Charleston County Sheriff’s Office	39		4	19	16	-	-
City of Mesa Police Department	58	6	8	27	17	-	-
City of Phoenix Police Department	1		1		-	-	-
City of Springdale Police Department	26	1	6	17	-	2	-
CO Department of Public Safety	397	15	17	46	51	268	-
Cobb County Sheriff’s Office	1,622	160	190	179	1,088	4	1
Collier County Sheriff’s Office	611	100	311	130	50	8	12
Cumberland County Sheriff’s Office	7	2	3		2	-	-
Davidson County Sheriff’s Office	1,373	190	101	239	789	12	42
Durham Police Department	44	7	2	2	-	-	33
El Paso County Sheriff’s Office	202	34	47	79	42	-	-
Etowah County Sheriff’s Office	20	2	10	3	4	1	-
Farmers Branch Police Dept.	6	3			-	3	-
FL Department of Law Enforcement	6	1	2		-	3	-
Frederick County Sheriff’s Office	198	18	21	39	120	-	-
GA Department of Public Safety	9	1		2	-	6	-
Gaston County Sheriff’s Office	282	27	56	23	174	-	2



Guilford County Sheriff's Office	8	3	1	1	1	2	-
Gwinnett County Sheriff's Office	1,964	368	426	505	619	46	-
Hall County Sheriff's Office	624	67	141	98	315	-	3
Harris County Sheriff's Office	4,907	1,222	1,526	602	1,468	2	87
Henderson County Sheriff's Office	203	15	41	38	108	1	-
Herndon Police Department	36	9	18	4	1	4	-
Hudson City Police Department (NH)	1				-	1	-
Hudson County Department of Corrections (NJ)	229	109	52	66	2	-	-
Jacksonville Sheriff's Office	345	36	111	84	113	-	1
Las Vegas Metropolitan Police Dept	1,413	766	247	112	285	-	3
Los Angeles County Sheriff's Office	2,874	583	1,121	460	655	23	32
Loudoun County Sheriff's Office	47	2	22	6	12	1	4
MA Department of Corrections	27	16	1	10	-	-	-
Maricopa County Sheriff's Office	6,359	1,243	2,046	1,002	2,061	6	1
Mecklenburg County Sheriff's Office	1,723	435	233	149	901	1	4
MN Department of Public Safety	15		3	1	7	4	-
MO State Highway Patrol	2				-	2	-
Monmouth County Sheriff's Office	73	10	17	45	1	-	-
Orange County Sheriff's Office	1,941	409	670	218	483	64	97
Pinal County Sheriff's Office	102	14	19	36	32	-	1
Prince William County Police Department	17	1	5	1	7	1	2
Prince William-Manassas Adult Detention Center	829	146	240	212	230	-	1
Rhode Island State Police	5		4	1	-	-	-
Riverside County Sheriff's Office	856	334	392	121	7	1	1
Rockingham County Sheriff's Office	56	3	10	29	13	1	-
Rogers Police Department	77	6	45	18	5	-	3
San Bernardino County Sheriff's Office	3,342	584	868	1,717	170	1	2
Shenandoah County Sheriff's Office	24	6	6	10	1	-	1
TN Department of Safety	18	1	8	5	1	3	-
Tulsa County Sheriff's Office	755	101	111	162	368	12	1
Wake County Sheriff's Office	1,437	243	294	278	621	1	-
Washington County Sheriff's Office AR	143	21	55	38	28	-	1
Washington County Sheriff's Office UT	1				1	-	-
Whitfield County Sheriff's Office	450	33	61	136	220	-	-
Yavapai County Sheriff's Office	199	11	78	45	65	-	-
York County Sheriff's Office	151	19	22	9	101	-	-

* Includes small numbers of offenses coded as "drugs," "civil," "other criminal," or "no data."

Notes: Includes detainers issued by 287(g) officers between October 1, 2009 and August 2, 2010. A number of jurisdictions that did not issue any detainers are excluded from this table.

Source: ICE, Office of State and Local Coordination (OSLC).



Glossary

Aggravated Felony. An immigration law term that covers many federal and state crimes of varying degrees of severity. Conviction of an aggravated felony provides a ground for removal from the United States, renders a noncitizen subject to mandatory detention pending removal, and makes him or her ineligible for most forms of relief from removal that entitle the noncitizen to remain in the United States. Noncitizens convicted of aggravated felonies are prohibited from reentering the United States for the rest of their lives unless they are granted a waiver by the federal government.

Board of Immigration Appeal (BIA). Division within the Department of Justice that handles appeals of decisions by immigration judges (IJs) and district directors of the Department of Homeland Security. BIA primarily reviews orders of removal and appeals of removal. BIA consists today of 15 members, though the number varies.

Criminal Alien Program (CAP). A program through which ICE places federal immigration officers in federal and state prisons and local jails to screen inmates for immigration status and to determine which noncitizens should be taken into immigration custody.

ENFORCE. The Department of Homeland Security's database and case management system that houses information about encounters, arrests, detention, and removal of noncitizens. ENFORCE tracks individuals in DHS custody from their first encounter with an immigration enforcement officer, through the issuance of a Notice to Appear (NTA), during detention or when a noncitizen is released pending his or her immigration hearing, and finally through actual removal.

Hybrid Model. The type of 287(g) program that combines the functions of the task force model (i.e., immigration screening in the field) with the jail enforcement model (i.e., immigration screening in the jail or prison setting).

Immigration/ICE Detainer. A document that allows a state or local official to hold an individual on immigration charges for up to 48 hours, until ICE takes that individual into custody. ICE typically issues detainers, but state and local 287(g) officers can also do so.

Immigration Judges (IJ). Civil servants within the Department of Justice who preside over removal hearings and review applications for relief from removal, including asylum applications. The decision of an IJ is administratively final unless appealed to BIA. Approximately 230 IJs sit in approximately 55 immigration courts across the nation.

Immigration and Nationality Act (INA). Statute passed in 1952, and amended multiple times since, constituting the federal immigration code governing almost all immigration-related matters and delegating authority to the various executive officials who administer the immigration laws.

Intergovernmental Service Agreement (IGSA). An agreement reimbursing state prisons and local jails for holding noncitizens on immigration charges. IGSA generally take two forms: (1) agreements that reimburse prisons and jails for holding inmates on immigration charges for up to 72 hours; and (2) agreements providing reimbursement for indefinite periods.

Jail Enforcement Model. The type of 287(g) program that delegates authority to detention officers in state prisons and local jails to screen inmates for immigration status, place detainers on individuals who are potentially removable, issue charging documents such as the NTA to begin the removal process, and transfer potentially removable immigrants into ICE custody. Under this model, all 287(g) program activities take place within the walls of the state prison or local jail.



Lawful Permanent Resident (LPR). A noncitizen legally admitted for permanent residency in the United States, based on family ties, employment, or other criteria set out in the INA. LPRs may apply to naturalize after five years of continuous US residency (three if married to a US citizen).

Level 1 Offender. As defined by the template that ICE issued to revise the 287(g) program in 2009, a noncitizen who has been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping. The June 2010 ICE memorandum on enforcement priorities defines this category to include noncitizens convicted of aggravated felonies or of two or more felonies carrying prison terms of a year or more. The data analyzed in this report employ the 2009 template's definition, which was in effect during FY 2010 when our research was undertaken.

Level 2 Offender. As defined by the 2009 revised template, a noncitizen who has been convicted of or arrested for minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering. The 2010 memorandum on enforcement priorities defines this category as noncitizens convicted of one felony or three or more misdemeanor crimes carrying prison terms of less than one year. The data analyzed in this report employ the 2009 template's definition.

Level 3 Offender. As defined by the 2009 revised template, a noncitizen convicted of "other offenses," which can include both misdemeanors and civil offenses. As defined by the June 2010 memo on enforcement priorities, Level 3 offenders are convicted of crimes punishable by less than one year (i.e., misdemeanors), and do not include people with only civil violations. The data analyzed in this report employ the 2009 template's definition.

Memorandum of Agreement (MOA). The official agreement negotiated by ICE with state or local authorities that delineates the powers and responsibilities of the latter under the 287(g) program. The Assistant Secretary for Immigration and Customs Enforcement and certain state or local elected officials in participating jurisdictions (e.g., governors, county supervisors, or mayors) must sign the agreements.

Notice to Appear (NTA). The formal document that initiates removal proceedings, lays out the charges for which a noncitizen is to be removed, and grants an immigration judge jurisdiction to review the removal. ICE typically issues NTAs, but state and local officers with 287(g) training and designation can also do so.

Overstayer. An unauthorized immigrant who has remained in the United States after the expiration of a valid visa, such as a tourist visa, student visa, or temporary work permit.

Removal (formerly termed "exclusion" or "deportation"). A formal civil immigration procedure for deporting a noncitizen from the United States or not allowing the admission of a noncitizen at the border or a port of entry. Noncitizens can be deported for violations of immigration or criminal law. Noncitizens can be inadmissible for lacking valid immigration documents, and for national security, health, or foreign policy concerns.

Section 287(g). The Section of the Immigration and Nationality Act that authorizes federal officials to enter into agreements with state and local law enforcement agencies, agreements which enable the latter to perform certain immigration enforcement functions.

Secure Communities. A program through which ICE uses federal databases to screen the legal status and previous immigration violations of inmates in state prisons and local jails. Screening is integrated into existing procedures for checking arrestees' fingerprint data against FBI databases for commission of other federal and state crimes. In participating jurisdictions, prints are automatically forwarded to ICE, and ICE officers notify state and local officials if inmates may be subject to removal.

Task Force Model. The type of 287(g) program that delegates authority to state and local police officers to screen individuals they encounter during policing operations for immigration status; to conduct immigration enforcement operations jointly with federal authorities or on their own; to issue arrest



warrants for potentially removable immigrants; to execute search warrants where immigration violations are suspected; to arrest and hold potentially removable immigrants for up to 48 hours; to issue charging documents to begin the removal process; and to transfer potentially removable immigrants into ICE custody. Task force 287(g) program activities can take place in the field by special immigration units or with 287(g) officers working alongside non-287(g) officers during the course of their regular duties.

Traffic Offender. A noncitizen convicted of traffic offenses such as driving without a license or driving under the influence. In the data we obtained from ICE for this report, traffic offenses are disaggregated from Level 1, 2, or 3 offenses even though they theoretically could fall into any one of the three priority levels. According to ICE, all but a very small number of serious traffic violations fall into Level 3.

Unauthorized Immigrant. A noncitizen who has entered the United States without inspection, overstayed a valid visa, or who has been ordered removed.

Voluntary Departure/Voluntary Removal. A practice through which an ICE officer or immigration judge permits a noncitizen to leave the United States voluntarily, at his or her own expense, in exchange for avoiding a formal order of removal. A noncitizen who accepts voluntary departure is not subject to felony prosecution for re-entry, or to the five or ten-year bar to re-entry that applies to persons who have been formally removed. Acceptance of voluntary departure also can enable the noncitizen to avoid detention. The vast majority of noncitizens leave the United States through voluntary departure rather than formal removal.



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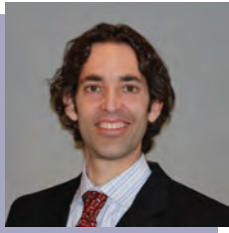
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About the Authors



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The Migration Policy Institute is a nonprofit, nonpartisan think tank dedicated to the study of the movement of people worldwide. MPI provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic and thoughtful responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

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