

EXHIBIT J



Department of Homeland Security Office of Inspector General

The Performance of 287(g) Agreements



OIG-10-63

March 2010

Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

MAR - 4 2010

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the performance of 287(g) agreements between Immigration and Customs Enforcement and state and local law enforcement agencies. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

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Table of Contents/Abbreviations

Executive Summary	1
Background	2
Results of Review	5
Overview of the 287(g) Program	5
ICE and LEAs Have Not Complied With All Terms of 287(g) Agreements	7
287(g) Performance Measures Do Not Align With Program Objectives	8
Recommendations	9
ICE Needs to Establish Guidance for Supervising 287(g) Officers and Activities	10
Field Office Staffing Plans Need to Incorporate 287(g) Supervisory Responsibilities	10
Recommendations	11
ICE Needs to Ensure Consistency in 287(g) Supervision	12
Recommendation	13
ICE Needs to Enhance 287(g) Program Oversight	14
A Comprehensive Review Process Is Needed to Assess Ongoing 287(g) Agreements	14
Recommendations	15
Steering Committees Have Not Been Used to Assess Immigration Enforcement Activities	15
Recommendation	16
Suitability Reviews Have Not Been Performed Consistently	16
Recommendation	18
Guidelines for Handling Complaints and Allegations Against 287(g) Officers Need To Be Developed	18
Recommendations	19
ICE Needs to Ensure Proper Guidance and Supervision for Variations Within the Jail Enforcement and Task Force Program Models	19
Recommendation	21
More Frequent Inspections of 287(g) Program Sites Could Improve Overall Program Operations	21
Recommendation	22

Table of Contents/Abbreviations

Application Review and Selection Process Needs to Be Enhanced	22
Civil Rights and Civil Liberties Considerations Are Not Consistently Weighed in the 287(g) Application Review and Selection Process	22
Recommendations	24
Data from ICE Field Offices Need to Be Fully Evaluated During the 287(g) Application Review and Selection Process	24
Recommendation	25
ICE Needs to Establish 287(g) Data Collection and Reporting Requirements to Address Civil Rights Issues	25
Recommendation	27
287(g) Training Does Not Fully Prepare Officers for Immigration Enforcement Duties	27
287(g) Basic Training Does Not Satisfy MOA Requirements	27
Recommendations	29
Hands-On Training in Immigration Systems and Processing Needs to Be Increased	30
Recommendation	31
Knowledge of Immigration Benefits and Protections Needs to Be Reinforced	31
Recommendation	32
287(g) Officers Did Not Consistently Complete Refresher Training	32
Recommendation	33
The Use of Interpreters Is Inconsistent	33
Recommendations	34
ICE Needs to Increase the Availability and Accuracy of 287(g) Program Information	34
There Are Barriers to Obtaining 287(g) Program Information	35
Recommendations	36
ICE Needs to Improve the Accuracy of 287(g) Program Information Provided to the Public	36
Recommendation	37
Inadequate Information Is Available on the Complaint Process	38
Recommendations	38

Table of Contents/Abbreviations

287(g) Program Information and Training for LEA Supervisors Can Improve the Operating Environment	39
Recommendation	40
287(g) Officers Need More Consistent Access to DHS Information Systems	40
Recommendation	42
Additional Issues Identified	42
ICE Has Used Unauthorized Detention Facilities to Detain Aliens Identified Through the 287(g) Program	43
Recommendation	43
ICE Vehicles Have Been Underutilized	44
Recommendation	44
Management Comments and OIG Analysis	45

Table

Table 1: 287(g) Program Funding	4
Table 2: 287(g) Encounters and Removals	6
Table 3: Jurisdictions Participating in the 287(g) Program	83

Appendices

Appendix A: Purpose, Scope, and Methodology	62
Appendix B: Management Comments to the Draft Report	64
Appendix C: 287(g) Application and Approval Process	77
Appendix D: ICE ACCESS Programs	79
Appendix E: 287(g) Program Jurisdictions	83
Appendix F: Major Contributors to This Report	86
Appendix G: Report Distribution	87

Table of Contents/Abbreviations

Abbreviations

ACCESS	Agreements of Cooperation in Communities to Enhance Safety and Security
CIS	Central Index System
CLAIMS	Computer Linked Application Information Management System
DHS	Department of Homeland Security
DOJ	Department of Justice
DRO	Office of Detention and Removal Operations
ENFORCE	Enforcement Case Tracking System
GAO	Government Accountability Office
ICE	U.S. Immigration and Customs Enforcement
IDENT	Automated Biometric Identification System
IEA	immigration enforcement agent
IGSA	Inter-Governmental Service Agreement
IT	information technology
JEO	jail enforcement officer
LEA	law enforcement agency
LESC	Law Enforcement Services Center
MOA	Memorandum of Agreement
NFTS	National File Tracking System
NGO	nongovernmental organization
OCIO	Office of the Chief Information Officer
OI	Office of Investigations
OIG	Office of Inspector General
OPR	Office of Professional Responsibility
OSLC	Office of State and Local Coordination
REPAT	Removal of Eligible Parolees Accepted for Transfer
TFO	task force officer
U.S.C.	United States Code

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*Department of Homeland Security
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Executive Summary

The Department of Homeland Security's Immigration and Customs Enforcement delegates federal immigration enforcement authorities to state and local law enforcement agencies through its authority under section 287(g) of the *Immigration and Nationality Act*, as amended. The *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009*, and accompanying House Report 110-862, require that we report on the performance of 287(g) agreements with state and local authorities.

287(g) agreements set general parameters for program activities and establish a process for Immigration and Customs Enforcement to supervise and manage program activity. Pursuant to Memoranda of Agreement with state and local law enforcement agencies, Immigration and Customs Enforcement permits designated officers to perform certain immigration enforcement functions.

We observed instances in which Immigration and Customs Enforcement and participating law enforcement agencies were not operating in compliance with the terms of the agreements. We also noted several areas in which Immigration and Customs Enforcement had not instituted controls to promote effective program operations and address related risks. Immigration and Customs Enforcement needs to (1) establish appropriate performance measures and targets to determine whether program results are aligned with program goals; (2) develop guidance for supervising 287(g) officers and activities; (3) enhance overall 287(g) program oversight; (4) strengthen the review and selection process for law enforcement agencies requesting to participate in the program; (5) establish data collection and reporting requirements to address civil rights and civil liberties concerns; (6) improve 287(g) training programs; (7) increase access to and accuracy of 287(g) program information provided to the public; and (8) standardize 287(g) officers' access to Department of Homeland Security information systems.

We are making 33 recommendations for Immigration and Customs Enforcement to strengthen management controls and improve its oversight of 287(g). Immigration and Customs Enforcement concurred with 32 of the recommendations.

Background

In September 1996, Congress authorized the executive branch to delegate immigration enforcement authorities to state and local government agencies. The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*¹ added section 287(g) to the *Immigration and Nationality Act*.² Under Section 287(g), the Secretary of Homeland Security is authorized to enter into agreements with state and local law enforcement agencies for the purpose of delegating immigration enforcement functions to select officers.³ The law requires that this delegation of immigration enforcement authorities be executed through formal, written agreements.

The federal government did not enter into any 287(g) agreements with state or local jurisdictions until 2002. Over the next 4 years, the Department of Homeland Security (DHS) delegated immigration enforcement authorities to six jurisdictions. After 2006, however, increased interest in interior immigration enforcement at the state and local levels and more dedicated funding for federal 287(g) program efforts brought substantial growth to the program. As of June 2009, DHS had 66 active agreements with state and local law enforcement agencies (LEA) in 23 states, and 833 active 287(g) officers.

The agreements are executed in the form of a Memorandum of Agreement (MOA) between the Assistant Secretary for Immigration and Customs Enforcement (ICE) and the participating agency's authorized representative. 287(g) agreements authorize participating officers to exercise a range of immigration enforcement functions that differ in terms of the program's model and function. The MOAs define the scope and limitations of the authority to be designated to the LEA.

MOAs identify 287(g) personnel eligibility standards, training requirements, and complaint-reporting procedures. The MOAs require state and local participants to enter program data into ICE information systems, and abide by federal civil rights statutes and regulations, including Department of Justice (DOJ) "Guidance Regarding the Use of Race by Federal Law Enforcement

¹ P.L. 104-208, sec. 133, Sept. 30, 1996.

² Codified at 8 U.S.C. 1357(g).

³ The text of 8 U.S.C. 1357(g) specifically names the Attorney General, rather than the Secretary of Homeland Security, as having this authority. However, this and other immigration enforcement functions of the Immigration and Naturalization Service were transferred to the Department of Homeland Security under the Homeland Security Act of 2002. (6 U.S.C. 251.)

Agencies.” The agreements permit LEAs to perform immigration enforcement activities only under ICE supervision, and allow ICE to suspend or revoke participating officers’ authority at any time.

MOAs also indicate which of two ICE program models the jurisdiction is to use. ICE authorizes participating jurisdictions to employ a jail enforcement model, task force model, or a combination of the two.

- *Jail Enforcement Model.* Under this model, 287(g) officers working in state and local detention facilities identify and process removable aliens who have been charged with or convicted of an offense. ICE refers to 287(g) officers operating in these settings as jail enforcement officers (JEO). JEOs generally work under the supervision of ICE Office of Detention and Removal Operations (DRO) personnel.
- *Task Force Model.* Under this model, 287(g) officers identify and process removable aliens in community settings. They do so during their regular duties as patrol officers, detectives, or criminal investigators; or in close coordination with ICE in task force settings. ICE refers to these 287(g) officers as task force officers (TFO). TFOs work under the supervision of ICE Office of Investigations (OI) personnel.

287(g) officers are authorized to question aliens as to their immigration status and removability, serve warrants for immigration violations, and issue immigration detainers for state and local detention facilities to hold aliens for a short time after completing their sentence. 287(g) officers prepare charging documents for ICE agents’ signature that are used in immigration courts, processing aliens for removal, and transporting aliens to ICE detention facilities. Many are also authorized to arrest aliens attempting to unlawfully enter the United States, as well as aliens already unlawfully present.

In July 2009, ICE released a new template for 287(g) agreements to replace existing agreements. ICE announced that only jurisdictions with newly signed agreements would be permitted to continue enforcing federal immigration laws, and provided 90 days for participating LEAs to sign a new agreement based on this template. As of October 2009, ICE had signed agreements with 61 LEAs based on the revised MOA template. ICE had agreed in principle with 6 other LEAs on the terms of the new MOA

template, but the MOAs for these LEAs were still pending final approval by a local governing body.⁴

As shown in table 1, funding for the 287(g) program has increased significantly on an annual basis since FY 2006, when \$5 million was allocated for ICE to facilitate agreements, to \$54.1 million in FY 2009.

Table 1. Allocated 287(g) Program Funding

Fiscal Year	Funding <i>in millions</i>	Percentage Change
2006	\$5.0	
2007	\$14.4	188%
2008	\$42.1	192%
2009	\$54.1	29%
2010	\$68.0	26%

Source: ICE Office of State and Local Coordination.

ICE does not provide direct funding to participating jurisdictions, although it does provide financing for officer supervision activities, training, and related expenses, as well as information technology (IT) equipment and services. Participating LEAs are responsible for salaries and benefits of their personnel performing immigration-related functions under the agreement. The LEAs are also responsible for travel costs, housing, and per diem associated with required training for participation in the program. ICE does, however, reimburse some jurisdictions for housing aliens in ICE custody at their facilities under separately negotiated Inter-Governmental Service Agreements.

Within DHS, management and oversight of the 287(g) program was initially provided by ICE OI. In December 2007, ICE transferred these responsibilities to the newly formed Office of State and Local Coordination (OSLC). In addition to setting program policy and providing oversight, OSLC oversees budget, asset management, and procurement services for the 287(g) program. OSLC coordinates with the ICE Office of Training and Development to design and deliver the 287(g) training program. OSLC also facilitates other ICE operations with state and local LEAs (see appendix D).

OSLC was initially staffed by eight detailed employees. OSLC was authorized to hire eight employees in FY 2009, and requested

⁴ Refer to appendix E for a list of participating jurisdictions.

funding for an additional 21 for FY 2010. As of June 2009, OSLC had five full-time employees, 12 detailed staff members, and nine contractors.

OI and DRO field offices provide day-to-day supervision and support for 287(g) officers. The ICE Office of the Chief Information Officer (OCIO) furnishes and installs IT equipment, and provides technical support for 287(g) officers' DHS system access needs.

Results of Review

Overview of the 287(g) Program

A primary objective of the 287(g) program is to enhance the safety and security of participating communities. Our review identified several aspects of the 287(g) program that are working to achieve program objectives, as well as challenges that may reduce its effectiveness.

Benefits of the 287(g) Program

DHS officials describe the 287(g) program as a force multiplier for ICE. According to ICE OI agents, 287(g) officers provide assistance such as following up on leads and performing investigative research and surveillance. DRO staff acknowledged the positive effect that 287(g) officers have had on their workload by identifying removable aliens, conducting interviews to determine alien status and removability, preparing charging documents, and entering alien information into ICE information systems. Assistance from 287(g) officers gives ICE greater flexibility in directing its immigration law enforcement resources and functions.

Immigration enforcement efforts under the 287(g) program account for a significant portion of nationwide ICE removal activity. 287(g) officers identified 33,831 aliens who were removed from the United States by ICE in FY 2008, which represents 9.5% of all ICE removals during that fiscal year. In addition, the cross-designation of state and local patrol officers, detectives, investigators, and correctional officers working in conjunction with ICE allows local and state officers more latitude to investigate violent crimes, human smuggling, gang and organized crime activity, sexually related offenses, narcotics smuggling, and money laundering.

Table 2. 287(g) Encounters and Removals

	2006	2007	2008	2009	Total
Individuals Identified for Removal	6,224	24,400	49,847	62,714	143,185
Fugitive Aliens (Absconders)	3	112	750	1,816	2,681
Previously Removed from US	482	3,547	6,433	7,952	18,414

Source: ICE Office of State and Local Coordination.

By using state and local LEA personnel to perform immigration enforcement functions, the federal government reduces its costs for these efforts. ICE is responsible for providing supervision, training, computer equipment, and its installation and support costs. Participating LEAs are responsible for all other expenses, including 287(g) officer salaries and benefits. Entry-level ICE special agents and immigration enforcement agents (IEA) cost approximately \$269,784 and \$137,666, respectively, during the first year of service.⁵ In contrast, participating 287(g) officers who perform similar functions cost ICE \$20,252 during their first year of service.⁶ As such, ICE has increased the number of officers participating in federal immigration enforcement efforts. As of July 2009, 833 active LEA officers were participating in the 287(g) program, which represents a 4% increase in the size of ICE's workforce

Challenges for the 287(g) Program

The most extensive immigration enforcement role for state and local law enforcement agencies occurs as part of the 287(g) program. Through the program, state and local LEAs assume federal immigration enforcement powers. As such, the 287(g) program often assumes a high profile in communities in which it operates, and is one of DHS' most visible and scrutinized programs at the state and local levels.

ICE has taken measures to address related challenges and improve overall program management in FY 2009. These include preparing a draft OSLC strategic plan to identify key program tools, processes, and stakeholders, and align goals and objectives with DHS goals; communicating its immigration enforcement priorities

⁵ Average first-year costs for ICE special agents and IEAs include salary, benefits, travel, recruitment, screening, training, office supplies and equipment, vehicles, weapons, operations and maintenance expenses, uniforms, and furniture.

⁶ Average first-year costs for 287(g) officers include training and training related expenses, as well as IT equipment, equipment installation, and support.

to 287(g) program sites; setting a three-tier priority framework for arresting and detaining aliens identified through the program; and, developing standardized 287(g) agreements with partner jurisdictions. These measures represent positive steps in establishing a more effective program; however, significant challenges in administering the 287(g) program continue to exist.

In delegating federal immigration enforcement authorities to state and local LEAs, ICE maintains responsibility for ensuring that local law enforcement officers function under the supervision of ICE officers. In addition, ICE must provide 287(g) officers with appropriate training on the complexities of immigration law and practice. The challenge for ICE is to balance its need for additional resources with efforts to ensure that these activities are conducted in accordance with the MOAs. In addition, ICE must ensure that its 287(g) efforts achieve a balance among immigration enforcement, local public safety priorities, and civil liberties.

ICE and LEAs Have Not Complied With All Terms of 287(g) Agreements

MOAs constitute the written agreement between ICE and the LEA to allow qualified personnel to perform certain functions of an immigration officer. However, 287(g) MOAs primarily consist of broad-ranging terms and conditions for ICE's delegation of immigration enforcement authorities, with a limited number of specific requirements that direct day-to-day 287(g) operations.

For areas of the MOA that provide specific guidance and requirements, we observed instances where 287(g) program practices were not in compliance with the MOA.

- Prior to July 2009, MOAs required ICE field offices and LEAs to establish steering committees to meet periodically to review and assess the immigration enforcement activities conducted by the participating personnel and to ensure compliance with MOAs. However, only one of the seven jurisdictions we visited had established a steering committee that met on a regular basis.
- MOAs indicate whether jurisdictions are authorized to perform immigration functions in community-based task force settings, jail enforcement settings, or both. The MOAs between ICE and four of the jurisdictions we visited indicated that 287(g) authority was to be used in a task force setting only; however, each of these jurisdictions had also used 287(g) authorities in jail settings.

- MOAs indicate that ICE will train 287(g) officers on the terms and limitations of the MOA and on public outreach and complaint procedures. However, 287(g) officers informed us that ICE instructors have not consistently delivered training on these topics during their basic training course.

These three issues are addressed in more detail in our report, along with other areas in which ICE needs to provide increased guidance and direction to promote more effective and efficient 287(g) program operations.

287(g) Performance Measures Do Not Align With Program Objectives

Developing good performance measures is critical to ensure that programs are getting desired results. According to the Program Assessment Rating Tool used to achieve the goals of the *Government Performance and Results Act*, performance measurement indicates what a program is accomplishing and whether results are being achieved. It also provides managers with information on how resources and efforts should be allocated to ensure effectiveness and keep program partners focused on key program goals. Performance measures should be outcome oriented, relate to the overall program purpose, and have ambitious targets.

According to ICE's July 2009 MOA template, the purpose of collaborations between ICE and LEAs is to identify and process for removal criminal aliens who pose a threat to public safety or a danger to the community. ICE's primary performance measure for the 287(g) program is the number of aliens encountered by 287(g) officers. ICE also collects information on the number of aliens identified through the 287(g) program who are subsequently removed by ICE. However, with performance measures that do not focus on aliens who pose a threat to public safety or are a danger to the community, there is reduced assurance that the goal of the 287(g) program is being met.

ICE has developed a risk-based approach to ensure that program resources are allocated to identify and determine the immigration status of aliens arrested for crimes that pose the greatest risk to the public. To this end, ICE has identified categories of aliens that are a priority for arrest and detention, with the highest being Level 1 aliens. This category consists of those who have been convicted of or arrested for major drug offenses or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping. Level 2 aliens are those who have been convicted of or arrested for minor drug offenses or property offenses such as burglary, larceny, fraud, and money laundering. Level 3 includes aliens who have

been convicted of or arrested for other offenses. 287(g) resources are to be prioritized according to these levels. However, although ICE has developed priorities for alien arrest and detention efforts, it has not established a process to ensure that the emphasis of 287(g) efforts is placed on aliens that fall within the highest priority level.

We obtained arrest information for a sample of 280 aliens identified through the 287(g) program at four program sites we visited. Based on the arresting offense, 263, or 94%, were within one of the three priority levels; however, only 26, or 9%, were within Level 1, and 122, or 44%, were within Level 2. These results do not show that 287(g) resources have been focused on aliens who pose the greatest risk to the public.

ICE performance measures do not account for task force officer investigations, prosecutions, or convictions. Information on task force officers' investigative work and subsequent criminal prosecutions is maintained in TECS, the system ICE uses to track its investigations. However, ICE has not established any TECS reporting requirements for the program or used TECS information in any 287(g) program performance measures.

With no specific target levels for arrest, detention, and removal priority levels, and with performance measures that do not account for all investigative work and criminal prosecutions, ICE cannot be assured that the 287(g) program is meeting its intended purpose, or that resources are being appropriately targeted toward aliens who pose the greatest risk to public safety and the community.

Recommendations

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #1: Establish a process to collect and maintain arrest, detention, and removal data for aliens in each priority level for use in determining the success of ICE's focus on aliens who pose the greatest risk to public safety and the community.

Recommendation #2: Develop procedures to ensure that 287(g) resources are allocated according to ICE's priority framework.

Recommendation #3: Establish and implement TECS data entry requirements that reflect investigative efforts and related prosecutions associated with the 287(g) program.

ICE Needs to Establish Guidance for Supervising 287(g) Officers and Activities

The Government Accountability Office's (GAO) "Standards for Internal Control in the Federal Government" emphasize the need for good human capital policies and practices, including proper supervision. 287(g) agreements specify that ICE personnel will supervise and direct immigration enforcement activities conducted by LEA officers. However, we observed inconsistencies in the level and type of supervision over 287(g) program officers and related activities in participating jurisdictions. This inconsistency could jeopardize the integrity of the 287(g) program and its ability to perform immigration enforcement activities appropriately.

Field Office Staffing Plans Need to Incorporate 287(g) Supervisory Responsibilities

ICE field offices are responsible for supervising and directing 287(g) program activities, as well as ongoing activities in other ICE-directed programs. ICE has developed field office staffing plans for DRO and OI that reflect desired supervisory staffing ratios. However, the number of 287(g) officers supervised is not considered in field office staffing templates.

ICE field office staffing templates establish a maximum employee-to-supervisor ratio of nine to one. The templates were developed for ICE supervisors to ensure adequate supervision and support of ICE employees. A similar staffing template that excludes administrative tasks should be designed to account for the added responsibilities that ICE field offices undertake in supervising 287(g) officers.

ICE supervisors with additional responsibility for 287(g) officers often maintained actual staffing levels in excess of staffing template recommendations. At one site we visited, an ICE supervisor was responsible for three ICE employees and nineteen 287(g) officers. At another location, an ICE supervisor was responsible for two ICE employees and eighty 287(g) officers.

In several locations, ICE supervisors are responsible for providing oversight for both 287(g) activities and other ICE programs. For example, in DRO field offices with the Criminal Alien Program or Secure Communities, many of the supervisors overseeing these programs also supervise 287(g) program activities as a collateral duty.

ICE managers in three field offices advised us that imbalances in supervisory staffing ratios can be attributed, in part, to 287(g) agreements being approved without field office requests for additional supervisory staff being filled.

ICE supervisors have frequently delegated day-to-day direction of 287(g) program activities to nonsupervisory ICE subordinates. At six of the seven sites we visited, we identified 287(g) officers who received guidance from nonsupervisory special agents and IEAs. These ICE agents said that they did not receive recognition, pay, or training for these additional duties.

287(g) officers advised us that nonsupervisory ICE personnel who provide day-to-day guidance did not have the technical knowledge to serve in this capacity. 287(g) officers indicated that they received contradictory guidance from different ICE personnel, and were not able to obtain definitive instructions. They explained that this situation has resulted in uncertainties about the quality of their work and has hampered their productivity.

ICE's approach to 287(g) supervisory staffing has not consistently resulted in effective program supervision. To ensure that 287(g) activities are carried out in accordance with the MOA and other applicable guidance, ICE needs to implement a structure that ensures sufficient supervision of all 287(g) officers and related immigration enforcement activities. This issue should be addressed prior to any expansion of the 287(g) program.

Recommendations

We recommend the Assistant Secretary for Immigrations and Customs Enforcement:

Recommendation #4: Establish a process to ensure effective supervision of 287(g) officers and immigration enforcement operations.

Recommendation #5: Develop controls to ensure that supervisory responsibilities for 287(g) supervisors are considered when determining staffing ratios in ICE field offices.

Recommendation #6: Ensure that 287(g) supervision is provided by authorized staff with the appropriate knowledge, skills, and abilities.

ICE Needs to Ensure Consistency in 287(g) Supervision

We identified a pattern of inconsistencies in ICE supervisory practices regarding (1) the frequency and type of contact between 287(g) officers and ICE agents, (2) ICE participation and oversight responsibilities in community-based federal immigration enforcement operations, and (3) feedback on the performance of 287(g) officers.

Communications Between ICE Supervisors and 287(g) Officers

Communications between ICE supervisors and 287(g) officers varied widely. We noted levels of communication between ICE supervisors and agents and 287(g) officers that ranged from daily interaction to no contact at all. At some locations, ICE supervisors and agents interact daily with 287(g) officers. At one location, however, ICE agents responsible for supervising the 287(g) program acknowledged that they had no direct contact with dozens of 287(g) officers within their jurisdiction.

ICE agents who are co-located with the 287(g) officers they supervise have frequent face-to-face contact. ICE agents who supervise 287(g) operations from offsite locations rely on telephonic and electronic communications to provide guidance to officers. ICE agents from one field office reported visiting a remote program site they are responsible for only once a month, and said that they focus on reviewing 287(g) officer data entries to determine whether additional guidance is needed.

Community-Based Immigration Enforcement Operations

Variations in supervisory approaches are also evident in ICE agents' participation in 287(g) community-based immigration enforcement operations. At some locations, ICE agents were present for all TFO activities that could result in an arrest. However, at other locations, ICE agents were rarely present when TFOs arrested suspected aliens under 287(g) authority.

In some locations, ICE supervisors required TFOs to prepare operational plans for field activities and submit them to ICE for review and approval prior to implementation. At another program site, ICE did not require TFOs to provide operational plans even for large-scale undertakings; however, LEA representatives at this location provided ICE with operational plans as a courtesy.

Because 287(g) officers also enforce state and local laws, ICE supervisors must decide when it is necessary to supervise their activities. For example, one LEA advised ICE that its crime sweep operations were predicated under state law. Therefore, ICE agents decided that they did not need to be present for these operations or approve related operational plans. However, our review of data on nine crime sweeps conducted by this LEA showed that more than half of the arrests during two sweeps were based strictly on federal immigration violations. In addition, more than half the arrests for all nine crime sweep operations resulted in federal immigration charges.

To date, ICE has not issued guidance clarifying field office responsibilities concerning their participation in LEA field operations or approval of operational plans for immigration enforcement activities.

Supervisory Feedback on 287(g) Officer Performance

ICE supervisory practices related to 287(g) officer performance feedback also varied among sites. ICE agents at some locations provided formal feedback for LEA supervisors to use in preparing overall performance appraisals for 287(g) officers. In other locations, ICE agents provided performance feedback to 287(g) officers' LEA supervisors informally. This feedback is almost always oral. At one site, ICE agents provided oral performance feedback directly to 287(g) officers, but not to their LEA supervisors.

In the absence of consistent supervision over immigration enforcement activities performed by 287(g) jurisdictions, there is no assurance that the program is achieving program goals and operating in accordance with the MOA and other guidance.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #7: Develop and implement 287(g) field supervision guidance that includes, at a minimum (1) the frequency and type of contact required between 287(g) officers and ICE supervisors; (2) the preparation, review, and approval of operational plans for community-based immigration enforcement activities; and (3) performance feedback requirements for 287(g) officers.

ICE Needs to Enhance 287(g) Program Oversight

According to MOAs in place at the time of our fieldwork, ICE could provide program oversight through several methods, including conducting assessments of current MOAs and establishing local steering committees that review and assess immigration enforcement activities conducted by local LEAs. However, ICE has not used these methods effectively to enhance oversight of 287(g) operations and activities. As a result, ICE has limited its ability to ensure that local jurisdictions are conducting 287(g) activities as intended.

A Comprehensive Review Process Is Needed to Assess Ongoing 287(g) Agreements

MOAs include language that allows either ICE or participating LEAs to terminate agreements at any time. However, ICE had not established a comprehensive process for assessing, modifying, and terminating current agreements.

The MOAs between ICE and four of the jurisdictions we visited indicated that 287(g) authority was to be used in a task force setting only. However, each of these jurisdictions had also used 287(g) authorities in jail settings for several years. In one of these locations, both ICE and LEA managers were aware of this discrepancy; however, ICE had not modified the MOA to reflect the program activity in effect, or required the LEA to amend its program to comply with the MOA. As of June 2009, ICE had terminated one agreement in response to a request from the participating LEA.

The new MOA template ICE issued in July 2009 includes a requirement for ICE and the participating LEAs to review their agreements after 3 years to determine the need for modification, extension, or termination. During our fieldwork, ICE began preparing a draft directive for conducting these reviews. The draft includes a process for OSLC to determine the cost-effectiveness of the program and whether it continues to be in the best interest of ICE. However, it does not include the specific types of information that ICE should consider as part of this process.

Key aspects related to an LEA's 287(g) operation that are not included in the draft directive for reviewing MOAs include (1) current or previous concerns expressed by field office staff or by other DHS offices with relevant information about a particular jurisdiction; (2) media attention or community concerns that contribute to adverse conclusions about the 287(g) program; (3)

lawsuits or complaints; (4) potential civil rights and civil liberties violations; and (5) ICE's ability to provide effective supervision and oversight. These areas should be assessed as situations warrant. Such reviews could occur outside the 3-year review cycle outlined in the MOA template.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #8: Establish and implement a comprehensive process for conducting periodic reviews, as well as reviews on an as-needed basis, to determine whether to modify, extend, or terminate 287(g) agreements. At a minimum, this process should include an assessment of (1) current or previous concerns expressed by field office staff; (2) media attention or community concerns that contribute to negative or inappropriate conclusions about the 287(g) program; (3) lawsuits or complaints; (4) potential civil rights and civil liberties violations; and (5) ICE's ability to provide effective supervision and oversight.

Steering Committees Have Not Been Used to Assess Immigration Enforcement Activities

Prior to July 2009, MOAs between ICE and 287(g) LEAs required a steering committee to review and assess immigration enforcement activities, with a focus on ensuring compliance with MOAs. However, few program sites have established steering committees. Only one of the seven jurisdictions we visited had a steering committee that met on a regular basis. ICE's Office of Professional Responsibility (OPR) identified only one active steering committee at eight other program sites in its reports of inspections conducted from May 2008 to March 2009.

At a minimum, committee membership was to include the heads of the LEA and the ICE field office that supervises participating officers. However, past MOAs did not specifically require participation from community stakeholders or experts to provide advice and guidance on the direction of the program. Several community and nongovernmental organization (NGO) representatives said that it would be valuable to have community perspectives represented in these forums, and that external stakeholder involvement would increase transparency and accountability.

The revised MOA template released in July 2009 eliminated the requirement for steering committees. ICE officials determined that there was no need for formal committee meetings since LEA and ICE representatives generally communicate on a regular basis to address program issues.

Steering committees served as the sole oversight bodies described in 287(g) agreements with a focus on ensuring compliance with the MOAs at the local level. Steering committees should not be narrowly viewed as a means to enhance ICE and LEA communications, but as a way to (1) improve program oversight and direction, (2) identify issues and concerns regarding immigration enforcement activities, (3) increase transparency, and (4) offer stakeholders opportunities to communicate community-level perspectives. By eliminating the requirement for steering committees and not fostering participation by community stakeholders, ICE reduces its ability to gain an independent perspective on 287(g) operations.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #9: Require 287(g) program sites to maintain steering committees with external stakeholders, with a focus on ensuring compliance with the MOA.

Suitability Reviews Have Not Been Performed Consistently

MOAs in effect at the time of our fieldwork required state and local law enforcement officers nominated for the 287(g) program to be able to qualify for appropriate federal security clearances. ICE procedures require that all 287(g) officers be vetted before they are authorized to perform immigration enforcement functions or provided access to DHS systems. However, ICE had not established a system to ensure that suitability reviews were conducted for all 287(g) officers.

OPR may determine that a 287(g) officer candidate is unsuitable based on an indication of misconduct or negligence in employment, criminal or dishonest conduct, or intentional false statements. Other findings that may warrant an unsuitable determination include deception or fraud, refusal to furnish testimony, alcohol abuse, use of illegal or controlled substances, knowing or willful engagement in acts designed to overthrow the

government, or any statutory or regulatory bar from accessing ICE systems.

From the initiation of the 287(g) program through 2007, ICE OI determined officers' suitability for immigration enforcement functions on an informal basis. ICE OI did not maintain records documenting the process or outcome of 287(g) officers' suitability reviews.

In May 2007, when ICE OPR assumed responsibility from OI for ensuring that suitability requirements were met, it was unable to confirm the suitability status of 287(g) officers who were active at that time. Therefore, an OPR representative reported to us that it vetted all 287(g) officers again as a precaution to ensure their suitability for performing federal immigration enforcement activities. However, OPR did not have documentation that showed it had vetted all 287(g) officers, even though ICE granted them 287(g) authorities and provided access to DHS information systems.

OSLC maintains records and monitors 287(g) officers' program and training status. We reviewed OSLC and OPR records to identify instances where suitability determinations had not been performed for current or former 287(g) officers. We compared OSLC training records to OPR records for 287(g) officers who had received positive suitability determinations, and found that OSLC records identified 57 officers for whom OPR had no record of a suitability review. Of these, nine were active 287(g) officers. In addition to these officers, OSLC records showed another officer as active, even though OPR had not completed the officer's suitability review.

OCIO maintains records on 287(g) officers' DHS information system access and activity. We compared OCIO records to OPR information to determine whether all 287(g) officers with access to DHS information systems had undergone suitability reviews. One 287(g) officer had active DHS accounts even though OPR had revoked his 287(g) officer status. Eight other 287(g) officers for whom OPR had not completed a suitability review had access to DHS systems. One of these 287(g) officers was actively using his account.

ICE cannot ensure that 287(g) officers meet the appropriate qualifications to perform immigration enforcement duties without effective controls to ensure that officers are properly vetted. ICE's current vetting practices expose DHS information systems to

increased risk of data integrity issues and inappropriate or unauthorized access.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #10: Establish a process to periodically cross-check OPR, OSLC, and OCIO records to confirm 287(g) officers' eligibility and suitability to exercise authorities granted under 287(g) MOAs.

Guidelines for Handling Complaints and Allegations Against 287(g) Officers Need to Be Developed

ICE field offices are responsible for monitoring all 287(g) officers under their supervision to determine whether they have engaged in conduct that would make them unsuitable to continue in a federal immigration enforcement capacity. To assist in this effort, the July 2009 MOA template requires LEAs to immediately notify ICE of any complaint or allegation filed against 287(g) personnel involving (1) violations of the MOA or (2) any actions that might result in employer discipline, a criminal investigation, or a civil lawsuit. In addition, it requires LEAs to report complaints received regarding non-287(g) personnel performing federal immigration functions. However, ICE OPR agents and LEA internal investigation representatives whom we interviewed were either not aware of this requirement or did not have a clear understanding of their respective roles in the process.

ICE can suspend or revoke an officer's 287(g) authority if the officer (1) performs immigration enforcement activities that are not within the scope of the MOA or (2) uses immigration enforcement authority in a way that could reflect negatively on ICE or create an appearance of impropriety or a conflict of interest. LEA internal investigations units are responsible for investigating related allegations and information and reporting them to ICE field offices and OPR. However, ICE has not provided guidance on how information about allegations, complaints, and other indications of misconduct should be reported, maintained, or used as part of the suitability determination process. In addition, information regarding complaints, allegations, or the results of LEA investigations is not used as part of the recertification process.

At the time of our fieldwork, ICE did not retain information regarding allegations and investigations of 287(g) personnel or non-287(g) personnel exercising federal immigration authorities in violation of MOAs. Such data should be maintained and used as part of a continuing process to ensure adequate oversight of officers performing immigration enforcement activities.

Recommendations

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #11: Establish a process to ensure that LEAs report to OPR any allegations or complaints against 287(g) officers and other LEA personnel alleged to have improperly performed immigration enforcement activities, as well as the results of any subsequent investigations.

Recommendation #12: Establish and implement procedures on how the results of complaints, allegations, and subsequent investigations against LEA personnel conducting immigration enforcement activities should be maintained and used as part of the suitability and recertification processes.

ICE Needs to Ensure Proper Guidance and Supervision for Variations Within the Jail Enforcement and Task Force Program Models

The 287(g) program incorporates both a jail enforcement and a task force program model. ICE has used these models as the basis for delegating specific authorities to participating officers and developing model-specific program requirements that incorporate qualification standards and supervision requirements.

Distinctions between these two program models are outlined in the revised MOA template released in July 2009. According to these revisions, TFOs are authorized to perform immigration functions that differ from those allowed for JEOs. TFOs are also subject to different selection and supervision requirements. These distinctions are appropriate because of the differences in operating environments, but do not take into consideration the wide variations that exist within each program model as part of daily field operations.

During our fieldwork, we noted operational differences within the same program model as implemented by various LEAs. However,

ICE guidance for each program model does not take into consideration the different levels of guidance or supervision that may be required to monitor immigration enforcement activities associated with each variation.

Jail Enforcement Model

During our site visits, we noted that jurisdictions operating under the jail enforcement model screen significantly different populations. For example, four jurisdictions screen only convicted criminals for immigration status and removability. The remaining jurisdictions screen the immigration status of all individuals detained in their facilities. These differences in jail model approaches may justify different operating protocols and requirements to address differences in risk.

Task Force Model

Task force model operations vary more widely than jail enforcement operations. Some task force programs are structured around a task force with an ICE-led hierarchy, with a specific criminal investigative focus. Other task force operations include 287(g) investigators directed by LEA managers with a primary focus on violations of state laws such as identity theft and identity fraud, for which access to immigration information is beneficial. Still other task force operations include 287(g) officers in patrol vehicles who use immigration authorities following traffic stops or domestic violence issues. Each of these operations is associated with different levels of vulnerability to civil rights or MOA violations that may require distinct approaches to supervision.

Based on the risks of civil rights violations or other actions not in compliance with the MOA, different jurisdictions' approaches to carrying out immigration enforcement activities may require different levels of supervision and guidance. To ensure the effectiveness of each task force operation, ICE needs to establish corresponding instructions and protocols and provide appropriate levels of supervision.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #13: Establish specific operating protocols and requirements for operational variances identified in task force and jail enforcement program models.

More Frequent Inspections of 287(g) Program Sites Could Improve Overall Program Operations

ICE OPR began conducting field inspections of 287(g) programs in 2008, and was appropriated funds for this purpose in FY 2009.⁷ OPR performs inspections to assess ICE field office effectiveness in supervising and supporting 287(g) programs, and ICE and LEA compliance with ICE policies and the terms of the MOAs.

As of September 2009, OPR had completed twenty-four 287(g) field inspections and 13 inspection reports. OPR inspections have identified program activities that were not in compliance with MOAs, and recommended appropriate corrective actions. These reports have also highlighted significant program issues and concerns, including credentialing and IT deficiencies, and inconsistencies in data entry and collection.

In March 2009, OSLC formalized its process for addressing OPR recommendations by instituting semiannual reporting on the progress of corrective actions until the recommendations are closed. Continuing management attention to OPR inspection results may help ensure that program activities are in compliance with the MOAs, and assist ICE in refining program activities and guidance.

At current staffing levels, OPR plans to inspect 287(g) program sites once every 3 to 4 years. Given the sensitive nature of the 287(g) program and OPR's success in identifying issues for management attention, ICE should consider inspecting program sites more frequently to provide increased oversight. A more aggressive inspection process may require a corresponding increase in inspection staffing levels.

⁷ See the Explanatory Statement associated with *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009* (P.L. 110-329), Div. D, Title II, p. 636.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #14: Study the feasibility and appropriateness of increasing the frequency of OPR 287(g) inspections, and report findings to the OIG.

Application Review and Selection Process Needs to Be Enhanced

The current process for reviewing applications for 287(g) program participation does not include an appropriate level of emphasis on civil rights issues. In addition, data from ICE field offices responsible for supervising approved 287(g) programs are not always properly considered in the decision regarding a jurisdiction's approval for participation. Because of the sensitivity of civil rights issues and the need for appropriate supervision of 287(g) officers, ICE must ensure that civil liberties concerns and the ability to provide adequate supervision are included in the selection process.

Civil Rights and Civil Liberties Considerations Are Not Consistently Weighed in the 287(g) Application Review and Selection Process

One aspect of DHS' primary mission is to ensure that civil rights and civil liberties are not diminished by its efforts, activities and programs aimed at securing the homeland.⁸ In its draft strategic plan, OSLC states that it seeks to build trusting partnerships with communities to further enforcement of federal immigration laws. This can be achieved, in part, through mutual respect for and recognition of civil rights and civil liberties. Therefore, the potential effects of a 287(g) agreement on a community's civil rights and civil liberties should be part of the application process.

OSLC explained that a jurisdiction's civil rights and civil liberties history has been a consideration in past site selection efforts. However, an emphasis on civil rights and civil liberties was not formally included in the 287(g) application, review, and selection process, or in draft procedures for modifying, extending, or terminating existing MOAs. 287(g) applications do not include information concerning civil rights complaints, lawsuits, or consent decrees that applicant jurisdictions are subject to, or other information that may be useful in assessing the civil rights and civil

⁸ 6 U.S.C. 111 (b)(1)(G).

liberties standing of the applicant. In 2009, OSLC increased the number of ICE offices that participate in the selection process; however, none of these offices are responsible for assessing civil rights and civil liberties issues.

In a January 2009 report, GAO disclosed that more than half of the twenty-nine 287(g) LEAs it contacted during its audit reported that community members in their jurisdictions expressed concerns that the use of 287(g) authority would lead to racial profiling and intimidation by law enforcement officials.⁹ NGOs critical of the 287(g) program have charged that ICE entered into agreements with LEAs that have checkered civil rights records, and that by doing so, ICE has increased the likelihood of racial profiling and other civil rights violations.

Claims of civil rights violations have surfaced in connection with several LEAs participating in the program. Two LEAs currently enrolled in the program were defendants in past racial profiling lawsuits that they settled by agreeing to collect extensive data on their officers' contacts with the public during traffic stops, and adopt policies to protect the community against future racial profiling. Another jurisdiction is the subject of (1) an ongoing racial profiling lawsuit related to 287(g) program activities; (2) a lawsuit alleging physical abuse of a detained alien; and (3) a DOJ investigation into alleged discriminatory police practices, unconstitutional searches and seizures, and national origin discrimination. DHS is a defendant in a lawsuit regarding the allegedly improper detention and deportation of a U.S. citizen by a 287(g) officer from yet another participating LEA. A determination in these lawsuits has not been made.

Several 287(g) program observers have suggested that ICE should closely review jurisdictions with a history of racial profiling before allowing them to enter into 287(g) agreements. Some NGOs assert that 287(g) authority should be revoked from certain LEAs currently participating in the program on the basis of civil rights and civil liberties violations.

To address these issues, ICE needs to direct increased attention to the civil rights and civil liberties records of current and prospective 287(g) jurisdictions. We recognize the difficulties involved in assessing a jurisdiction's past performance in this regard and forecasting future vulnerability to civil rights abuses. Nevertheless,

⁹ GAO, *Immigration Enforcement — Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (GAO-09-109), January 30, 2009, preface.

ICE must include consideration of civil rights and civil liberties factors in the site selection and MOA review processes.

Recommendations

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #15: Require 287(g) applicants to provide information about past and pending civil rights allegations, and incorporate a civil rights and civil liberties review as part of the documented 287(g) site selection and MOA review processes.

Recommendation #16: Include a representative on the advisory committee to provide insights into civil rights and civil liberties issues as part of the approval process.

Data from ICE Field Offices Need to Be Fully Evaluated During the 287(g) Application Review and Selection Process

Recently, ICE has taken steps to enhance its initial application review process for prospective 287(g) LEAs (see appendix C). ICE officials stated that 287(g) applicants are assessed to determine whether other programs and assistance offered under the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) program better meet their needs.¹⁰

As of June 2009, ICE had approved 66 of 117 applications for participation in the 287(g) program.¹¹ As of July 2009, ICE had not approved or denied any 287(g) applications during FY 2009 pending the issuance of a new MOA template.

OSLC reports that it relies on OI and DRO field offices to help identify the best-fit ACCESS partnership options for interested jurisdictions. OSLC staff reported that ICE field offices expressed concerns about 69 LEA applications for 287(g) authority and recommended that these applications not be approved. ICE denied applications for 53 of these 69 applications, but approved the remaining 16 despite objections from the field units responsible for providing direct program supervision.

¹⁰ Refer to appendix D for a complete list of ICE ACCESS programs and services.

¹¹ The Immigration and Naturalization Service approved one application for a 287(g) program before ICE was established. As of July 2009, one agreement that ICE signed after approving a 287(g) application had since been terminated.

In several other cases, ICE field offices supported approving 287(g) applications only under certain conditions, such as an increase in staff to ensure adequate supervision of 287(g) officers. However, ICE approved some of these applications without satisfying these field office conditions. As a result, field offices did not have the staff that they deemed appropriate to provide sufficient support and supervision.

ICE cited a number of reasons for denying 287(g) applications, and sometimes indicated multiple reasons for denying individual applications. According to OSLC information, the need for more field staff for supervision factored into the decision to deny more than half of the 51 applications disapproved. ICE denied about a quarter of applications, in part, because of insufficient ICE funding for either 287(g) officer training or IT requirements. ICE denied other applications because it determined the jurisdiction had a limited need for the program or believed its needs could be met by other ICE programs and services. In other cases, ICE denied applications because of limitations in detention space to house aliens who could be identified through the prospective 287(g) program. Some jurisdictions reconsidered or withdrew their applications.

Because of the need to provide sufficient oversight to ensure that 287(g) officers properly carry out immigration enforcement activities, ICE needs to make certain that input from ICE field offices is fully considered and evaluated during the application review and selection process.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #17: Develop a process to ensure that information submitted from ICE field offices as part of the application review process is fully taken into consideration before a final decision is made. This recommendation should include provisional approvals that require resource considerations to ensure proper supervision and oversight.

ICE Needs to Establish 287(g) Data Collection and Reporting Requirements to Address Civil Rights Issues

GAO's "Standards for Internal Control in the Federal Government" recognize the need for program managers to have data to determine

whether they are meeting their agencies' goals. Although 287(g) MOAs include basic guidelines for data collection and reporting, they do not require ICE or LEAs to collect information that would assist in addressing allegations of civil rights violations within 287(g) programs.

To address concerns regarding arrests of individuals for minor offenses being used as a guise to initiate removal proceedings, DHS officials said that the MOA requires participating LEAs to pursue all criminal charges that originally caused an individual's arrest. However, ICE does not require LEAs to collect and report on the prosecutorial or judicial disposition of the initial arrests that led to aliens' subsequent immigration processing under the 287(g) program. This information could help to establish how local prosecutors and judges regarded an officer's original basis for arresting aliens. Without this type of information, ICE cannot be assured that law enforcement officers are not making inappropriate arrests to subject suspected aliens to vetting by 287(g) officers for possible removal.

In one facility that screens all individuals detained, an ICE supervisor described a situation in which a state highway patrol officer transported an accident victim to a participating county jail to determine the victim's immigration status. The ICE supervisor explained that the accident victim was not brought to the jail to be charged with an offense, but to have a 287(g) officer determine the victim's deportability. The victim was detained until a 287(g) officer could respond.

To determine the potential for inappropriate 287(g)-related arrests and detentions, we requested specific information on the prosecutorial disposition of arrests from the seven jurisdictions in our review. However, because ICE does not require participants to collect this information, only four of the seven jurisdictions were able to provide us with prosecutorial data. These jurisdictions provided data on 263 alien arrests for criminal charges. Our analysis showed that authorities initiated the prosecution of 260 of 263, or 99%, of the aliens arrested for criminal charges. While these data indicate that prosecutors have pursued charges for 287(g)-related arrests, it does not provide confirmation that civil rights violations have not occurred.

ICE does not collect other information that could assist in determining whether civil rights violations have occurred. Information that would be useful in assessing whether unlawful profiling has occurred include: (1) the basis for and circumstances surrounding TFO stops, searches, and arrests, and (2) information on the race and ethnicity of individuals stopped, searched, and arrested by TFOs.

ICE should consider requiring LEAs to maintain data regarding (1) the circumstances and basis for TFO contacts with the public, (2) the race and ethnicity of those contacted and arrested, and (3) the prosecutorial and judicial disposition of 287(g) arrests.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #18: Establish collection and reporting standards that provide objective data to increase monitoring of methods participating jurisdictions use in carrying out 287(g) functions, and their effect on civil liberties. Collection and reporting requirements could include (1) the circumstances and basis for TFO contacts with the public, (2) the race and ethnicity of those contacted, and (3) the prosecutorial and judicial disposition of 287(g) arrests.

287(g) Training Does Not Fully Prepare Officers for Immigration Enforcement Duties

GAO's "Standards for Internal Control in the Federal Government" emphasize management's commitment to competence. This guidance states that all personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties. It also states that management should identify knowledge and skills needed for jobs, and provide necessary training.

LEAs serving as 287(g) officers must maintain broad-based knowledge of their role and the constraints on methods of enforcement in a legal and institutional system that operates differently from local criminal justice systems. State and local enforcement of federal immigration law must account for local, state, and federal laws that govern the rights of community residents and the obligations of localities. Our analysis of the training provided to new 287(g) officers identified several areas that need to be enhanced to ensure that 287(g) officers have the skills to carry out their immigration enforcement functions effectively.

287(g) Basic Training Does Not Satisfy MOA Requirements

287(g) MOAs require participating officers to pass examinations equivalent to those given to ICE officers before they can use federal immigration enforcement authorities. To assess compliance with this requirement, we compared examinations administered to 287(g) officers with those given to ICE IEAs who

perform similar functions. Examinations given to 287(g) officers during basic training are comparable in length, complexity, and subject matter to those taken by entry-level IEAs, and require the same 70% passing score, with a single retest opportunity.

The MOAs require basic training on 10 subjects:

- Terms and limitations of the MOA
- Scope of immigration officer authority
- Relevant immigration law
- ICE Use of Force Policy
- Civil rights laws
- Department of Justice “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies”
- Public outreach and complaint procedures
- Liability issues
- Cross-cultural issues
- Obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national

For seven of the subjects, the course content and length are either comparable to or exceed related training provided to IEAs. However, the curriculum provides limited coverage of three topics: civil rights law; the terms and limitations of the MOA; and public outreach and complaint procedures.

Training on Civil Rights Law

New 287(g) officers receive a brief training block on civil rights law. The lecture covers the authorities and duties of law enforcement officers; search, seizures, and rights; the Fourth amendment; and, due process requirements for aliens and other persons encountered during immigration enforcement activities. In contrast, entry-level IEAs receive an additional 20 hours of instruction on the Fourth Amendment and its protections related to stops, searches, seizures, and arrests.

Some 287(g) jurisdictions require their officers to take annual courses on civil rights and civil liberties protections. Moreover, state and local LEAs require their sworn officers with arrest authority to attend and graduate from certified law enforcement academies that provide some instruction on civil rights law. There are no national requirements, however, on the length of instruction law enforcement academies are to provide in this area. Some law

enforcement academies devote as much as 24 hours of instruction on Fourth Amendment protections, while others set aside 4 hours of training for this area.

287(g) officers exercise their authorities in community settings and need a thorough understanding of Fourth Amendment protections, including when it is appropriate to consider race or national origin when making a stop or determining whether to question an individual. In some cases, TFOs have received instruction on Fourth Amendment protections in law enforcement academies. However, there are no national requirements regarding the length of instruction law enforcement academies are to provide on Fourth Amendment protections.

Training on Terms and Limitations of the MOA and Public Outreach and Complaint Procedures

The terms and limitations of the MOA and public outreach and complaint procedures are not sufficiently addressed in ICE's basic training course. The course schedule shows that these subjects are to be presented in 1-hour training modules. However, 287(g) officers informed us that, despite its inclusion in the course schedule, ICE instructors have not consistently delivered the training module. Officers in several locations advised us that they did not receive instruction on the MOA or complaint process as part of the basic training course, and were unfamiliar with both. In addition, 287(g) officers are not tested on their understanding of these topics.

Local immigration enforcement activities encompass complex laws in an evolving environment. As such, training is a critical factor in helping to ensure that (1) 287(g) officers exert immigration enforcement authorities in accordance with federal and local immigration laws, (2) exposure to civil rights violations is minimized, and (3) officers are familiar with the terms and limitations of the agreements under which they operate, as well as the process for reporting and addressing related complaints.

Recommendations

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #19: Determine whether the current timeframe for civil rights law training is adequate to achieve appropriate

coverage, and modify timeframes and coverage as needed to ensure that sufficient training is provided.

Recommendation #20: Ensure that 287(g) basic training includes coverage of MOAs, and public outreach and complaint procedures.

Hands-On Training in Immigration Systems and Processing Needs to Be Increased

287(g) officers need immigration processing knowledge and skills in order to perform federal immigration enforcement functions. However, ICE supervisors and 287(g) officers informed us that basic training does not adequately prepare them for the practical requirements of their work.

Processing an alien for removal requires broad-based knowledge of immigration forms, systems, and processing methods, including the following:

- Requesting, creating, and organizing Alien files (A-files), which represent the physical record of all immigration-related documents for noncitizens
- Interpreting documents in the files
- Navigating and operating immigration electronic information systems (i.e., Automated Biometric Identification System (IDENT) and Enforcement Case Tracking System (ENFORCE))
- Preparing alien processing forms, including the Record of Deportable Alien, Form I-213

The basic training program for 287(g) officers provides 29 hours of instruction on A-file review, IDENT and ENFORCE processing, and I-213 preparation. By contrast, new ICE officers performing immigration enforcement functions receive 41 hours of training on immigration processing.

Some 287(g) officers reported that they did not receive hands-on training on ENFORCE during basic training, and that training did not prepare them to process cases independently. One 287(g) officer commented that after basic training, he came away with zero knowledge of how to process a case. An ICE supervisor explained that after completing basic training, 287(g) officers had no idea of how to create or process A-files.

Several 287(g) officers reported that they do not process aliens in their custody because of insufficient confidence in their knowledge

of ENFORCE. Therefore, after taking an undocumented alien into custody, they request assistance from DRO for ENFORCE processing. Requiring ICE officers to perform this function reduces the effectiveness of 287(g) officers as a force multiplier.

At the end of our fieldwork, ICE initiated efforts to address reported immigration processing issues through refresher training on ENFORCE at specific locations on an as-needed basis. Since we observed a widespread need for increased immigration processing knowledge, a more methodical approach is warranted to ensure that all 287(g) officers are properly trained.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #21: Enhance the current 287(g) training program to provide comprehensive coverage of immigration systems and processing. At a minimum, this should include hands-on experience during the 287(g) basic training course, on-the-job training, and periodic refresher training.

Knowledge of Immigration Benefits and Protections Needs to Be Reinforced

To assess individuals' immigration status and removability properly, immigration officers must be familiar with (1) the asylum process, (2) immigration benefits, and (3) victim and witness protections. Accordingly, training in these areas is included in the 287(g) basic training objectives.

The 287(g) basic training course includes 2 hours of instruction on special status immigrants and 2 hours on victim and witness awareness. However, ICE does not instruct 287(g) officers on significant immigration benefits, such as the *Nicaraguan Adjustment and Central American Relief Act*¹² and the *American Baptist Churches v. Thornburg* Stipulated Settlement Agreement.¹³

Instructional design standards require the assessment of student retention of information associated with identified training objectives. However, as part of the four examinations administered during the 287(g) basic training course, only three

¹² P.L. 105-100, Title II (codified as amended in scattered sections of title 8 of the U.S.C.).

¹³ 760 F. Supp. 796 (N.D. Cal. Jan 31, 1991).

questions relate to victim and witness protections and asylum. No examination questions address the asylum process or immigration benefits.

287(g) officers at several program sites were not knowledgeable about the asylum process, immigration benefits, and victim and witness protections. An appropriate level of knowledge in these areas could minimize processing errors and reduce the risk of wrongful detention and deportation. ICE needs to take measures to increase competencies in these areas.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #22: Ensure that an appropriate level of coverage on immigration benefits, asylum, and victim and witness protections is included as part of the 287(g) basic training agenda.

287(g) Officers Did Not Consistently Complete Refresher Training

In 2007, ICE identified annual online refresher training modules for 287(g) officers to complete through its web-based Virtual University. Officers are required to complete eight 287(g) training modules, as well as three courses required for all ICE employees.¹⁴

While OSLC has directed that ICE field office staff ensure that 287(g) officers complete Virtual University refresher training annually, we identified inconsistencies in compliance with this directive. As of March 2009, 88% of active 287(g) officers who were vetted by ICE prior to FY 2008 had not completed all required refresher training. In addition, 76% of officers vetted before FY 2008 had not completed 287(g) training offered through Virtual University.

Several ICE program supervisors in field offices were not aware of annual refresher training requirements. ICE supervisors who manage 287(g) operations in five of the six jurisdictions we visited were not knowledgeable of the requirements. In addition, one ICE

¹⁴ 287(g) officers must complete the following courses to meet ICE refresher training requirements: Refresher Training Course Navigation, The Orantes Injunction, Consular Notification and Access, Board of Immigration Appeals Decisions, Revised DHS / U.S. Citizenship and Immigration Services Documents, Nonimmigrant Refresher Training, Electronic Sources of Information, Stop Trafficking Refresher Training, Information Assurance Awareness Training, Records Management, and Prevention of Sexual Harassment.

supervisor told us that he was unaware that Virtual University could be used for 287(g) training.

In response to this issue, OSLC plans to formalize its refresher training guidance, and has developed a draft ICE directive on annual recertification of 287(g) officers that was under review by ICE headquarters at the time of our fieldwork. The draft directive states that 287(g) officers must recertify annually by successfully completing select Virtual University courses. The draft directive places responsibility on ICE field offices to notify OSLC when officers fail to complete recertification courses. OSLC is to review Virtual University administrative records and issue revocation notices for officers who do not complete required training.

Because of the complexities of federal immigration law and its constantly changing environment, refresher training is critical in reinforcing immigration enforcement knowledge and providing legal and program updates. Therefore, ICE needs to increase its efforts to ensure that 287(g) officers maintain immigration skills and keep abreast of changes in immigration enforcement requirements.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #23: Establish and issue guidance to field office staff for 287(g) officer annual recertification training that emphasizes completion of online refresher training courses.

Recommendation #24: Designate field office responsibilities for monitoring and enforcing compliance with training guidance to include, at a minimum, issuing and enforcing revocation notices for 287(g) officers who do not complete required training.

The Use of Interpreters Is Inconsistent

To complete processing and removal actions, immigration officers may need to communicate with aliens in languages other than English. Accordingly, ICE requires new DRO officers to establish Spanish-language proficiency or successfully complete a 5-week Spanish Language Training Program. By contrast, 287(g) officers do not receive language training or an assessment to determine their language competency.

MOAs in effect during our fieldwork required that participating LEA personnel provide an opportunity for subjects with limited English language proficiency to request an interpreter. However, ICE has not provided specific guidance on the circumstances in which 287(g) officers should proactively seek interpreter services. Therefore, the use of interpreters varies across program sites and among 287(g) officers. For example, officers without specific language skills often rely on officers with such skills for assistance, or call a language line that provides interpretation services telephonically. However, we spoke with officers who said 287(g) officers with few or no foreign language skills have interviewed and processed non-English-speaking aliens without the aid of interpreters. One 287(g) officer said that he does not speak any Spanish, but used what is referred to as a “cheat sheet” of questions in Spanish to determine aliens’ removability during interviews. Another 287(g) officer admitted to being reluctant to speak Spanish due to his minimal grasp of the language, but served warrants and read non-English-speaking aliens their rights in Spanish.

The absence of detailed guidance for using interpreter services can increase processing errors, as well as the potential for aliens to either be misunderstood or to misinterpret information provided during processing. To address these vulnerabilities, ICE needs to develop and implement clear guidelines describing the circumstances under which 287(g) officers should use interpreter support. These guidelines should also encompass foreign language skills assessments.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #25: Develop and implement clear guidelines for using interpreter support to assist with immigration duties and responsibilities.

ICE Needs to Increase the Availability and Accuracy of 287(g) Program Information

In a January 2009 memorandum to the heads of executive branch agencies, the President committed to disclose information rapidly in forms that the public can readily find and use. In addition, he wrote that executive departments and agencies should put information about their operations and decisions online and make it readily available to the

public.¹⁵ Consistent with these aims, one of OSLC's primary goals is to build awareness and understanding of ICE ACCESS programs through communication and education of the media, NGOs, and the general public. However, at the time of our fieldwork, 287(g) information on the ICE public website consisted of brief fact sheets, testimony, and statements by ICE and DHS officials. In addition, information describing 287(g) operations to the public has included inaccuracies.

There Are Barriers to Obtaining 287(g) Program Information

The significant effect the 287(g) program can have on participants' communities creates a need for community members to be well informed about the program. However, community and NGO representatives advised us that obtaining information about the 287(g) program is often a daunting task.

We obtained the following comments from community and NGO representatives regarding access to 287(g) information:

- ICE had restricted the release of basic program materials, including prior 287(g) MOAs.
- LEAs informed them that they could not respond to any information requests because ICE has blocked the release of program information.
- ICE has not been forthcoming with 287(g) program information, such as program policies and statistics, unless the NGOs filed a Freedom of Information Act request, which can be time-consuming and costly to process.

ICE managers in the field and LEA officials agreed that ICE does not do enough to disseminate program information to the public, and described ICE outreach efforts as minimal. Some LEAs reported difficulty obtaining program information from ICE.

ICE and NGO representatives explained how a local elected official frequently tied remarks about the 287(g) program to enforcement efforts executed under other authorities. They expressed concerns that members of the public may develop false impressions about the program as a result. One ICE manager in the area said that by not disseminating more information to the

¹⁵ President Barak Obama, Memorandum for the Heads of Executive Departments and Agencies, "Transparency and Open Government," January 21, 2009. (http://www.whitehouse.gov/the_press_office/Transparency_and_Open_Government)

public, ICE had effectively ceded the role of primary spokesperson for the 287(g) program to this elected official, which was counterproductive because of the inflammatory nature of these statements.

ICE should increase efforts to ensure that the public is informed about 287(g) program and ongoing operations. One method to accomplish this is through improved access to and availability of program information. ICE's recent posting of the current 287(g) MOAs on its public website represents a positive step in this direction.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #26: Establish a process to provide the public and other stakeholders with comprehensive information about the 287(g) program and associated operations.

ICE Needs to Improve the Accuracy of 287(g) Program Information Provided to the Public

We identified ICE statements about the 287(g) program that did not reflect actual program activities. Such information reduces public awareness regarding 287(g) operations and activities.

ICE provided misleading information to the public in a September 2007 Fact Sheet. Information in this fact sheet included ICE's explanation that "The 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."¹⁶ However, 287(g) officers have used their authorities during large-scale street operations with the aim of detaining individuals for minor offenses and violations of local ordinances.

The fact sheet also explained that the program was "designed to identify individuals for potential removal who pose a threat to public safety as a result of an arrest and/or conviction for state crimes." The fact sheet added that "Police can only use 287(g) authority when people are taken into custody as a result of

¹⁶ ICE, *ICE Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, September 6, 2007.

violating state or local criminal law.”¹⁷ However, 287(g) officers have apprehended aliens for federal immigration violations even when the aliens had no prior arrests on state or local charges.

ICE has provided an incomplete picture of activities carried out under the program’s task force model. According to ICE testimony, 287(g) officers working under the task force model are to assist ICE with long-term investigations and large-scale enforcement activities.¹⁸ However, we identified task force officers who focus exclusively on cases related to violations of state laws and had never assisted ICE with long-term investigations or large-scale enforcement activities.

The July 2009 MOA template for 287(g) activities indicates that task force officers are to be assigned to task force operations supported by ICE, and exercise their immigration-related authorities during criminal investigations involving aliens.¹⁹ However, task force officers are not always part of a task force, and many do not conduct criminal investigations. In several program sites, 287(g) task force officers operate in separate patrol vehicles and use their immigration authorities when they identify possible removable aliens while performing their regular LEA duties. These officers apply their 287(g) authorities following traffic stops or domestic violence calls, rather than in the furtherance of a specific ICE-directed criminal investigation, as indicated by program materials.

To foster an environment of transparency and trust, ICE must provide accurate information about the 287(g) program and related operations. Doing so would promote greater awareness and confidence as part of a comprehensive effort to broaden public knowledge of immigration enforcement programs and related efforts.

Recommendation

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #27: Ensure the accuracy of information disseminated to the public about the goals of the 287(g) program,

¹⁷ Ibid.

¹⁸ Statement of William F. Riley, Acting OSLC Executive Director, before the U.S. House of Representatives Committee on Homeland Security, March 4, 2009, p. 3.

¹⁹ ICE, Revised MOA Template, July 2009, p. 19.

its various operations, and how immigration enforcement activities are carried out in the actual working environment.

Inadequate Information Is Available on the Complaint Process

A transparent complaint process is a way to ensure that a program is operating as intended. Since ICE has provided limited information about the 287(g) program, those who encounter 287(g) officers are not likely to recognize actions that violate the MOA. Moreover, because the only description of the complaint process in most jurisdictions is contained in the MOAs and because ICE and LEAs had not clearly disseminated them at the time of our fieldwork, members of the public are unaware of how to file a complaint. Furthermore, several past MOAs did not include details on how to file a complaint.

A related issue is an awareness of when it is appropriate to file a complaint regarding immigration enforcement activities under the 287(g) program. For example, those encountered by law enforcement officers cannot distinguish between 287(g) officers and other types of officers from the same jurisdiction. 287(g) officers do not wear distinctive clothing, and until recently, did not have credentials to validate their immigration enforcement authority. Because 287(g) officers do not regularly display credentials during operations or interviews to determine alien status and removability, many people remain unclear as to whether the officers they encounter are 287(g) certified. Therefore, there are uncertainties about filing a complaint in situations that may involve inappropriate LEA actions.

NGOs and community groups have received complaints attributed to the 287(g) program. Representatives advised us that it was difficult for individuals to pursue many of these complaints because of insufficient information about the complaint process. For example, at the time of our fieldwork 287(g) complaint reporting procedures were not available in ICE or LEA facilities where individuals affected by the 287(g) program are most likely to see them.

Recommendations

We recommend that the Assistant Secretary for Immigration and Customs Enforcement:

Recommendation #28: Publish 287(g)-complaint reporting procedures on ICE's public website, and ensure that these

procedures are posted in participating LEA buildings, and shared at community meetings.

Recommendation #29: Require 287(g) officers to identify themselves and display their credentials during federal immigration arrests, before initiating interviews regarding alien status and removability, and as part of other immigration processing activities.

287(g) Program Information and Training for LEA Supervisors Can Improve the Operating Environment

GAO's "Standards for Internal Control in the Federal Government" state that programs should foster a positive control environment. The 287(g) program's work environment is influenced by several factors outside of ICE, most notably by LEA officials within the participating jurisdiction. While ICE has the authority to supervise and direct officers in their performance of 287(g) program activities, LEA officials often control the operating environment in which 287(g) officers perform their immigration functions. LEA managers responsible for the overall supervision of officers participating in the 287(g) program can adversely affect program operations. As a result, ICE's ability to supervise and direct 287(g) efforts is influenced by its relationship with the LEA and 287(g) officers.

The following scenarios are examples of a LEA supervisors' influence on the success of 287(g) program activities:

- An LEA supervisor removed ICE computer equipment from 287(g) officers' workspace without explanation and locked it in a closet, limiting their ability to process aliens.
- At another program site, 287(g) personnel reported low morale because of infrequent recognition from their supervisors and managers for their federal immigration enforcement work.
- LEA supervisors who regarded the 287(g) program favorably indicated that additional information about the program would help them to support it more effectively.

Training for LEA supervisors varied from site to site. Some LEA supervisors attended 287(g) basic training and were certified to perform federal immigration enforcement functions, while others received no training. LEA supervisors who had completed the