



Department of Homeland Security Office of Inspector General

The Performance of 287(g) Agreements Report Update





Homeland
Security

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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (P.L. 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 progress made toward implementing recommendations from our prior report, OIG-10-63, *The Performance of 287(g) Agreements*, issued in March 2010. We also address the use of 287(g) funds, challenges in conducting compliance reviews of 287(g) agreements, and performance measures used to determine the success of the 287(g) program in achieving its goals. 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.

A handwritten signature in black ink, appearing to read "Carlton I. Mann".

Carlton I. Mann
Assistant Inspector General for Inspections

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Abbreviations

| | |
|---------|--|
| DHS | Department of Homeland Security |
| DRO | Office of Detention and Removal Operations |
| ENFORCE | Enforcement Case Tracking System |
| ERO | Enforcement Removal Operations |
| FOD | Field Office Director |
| HSI | Homeland Security Investigations |
| ICE | U.S. Immigration and Customs Enforcement |
| IDENT | Automated Biometric Identification System |
| IEA | immigration enforcement agent |

| | |
|------|--|
| JEO | jail enforcement officer |
| LEA | law enforcement agency |
| MSU | Mission Support Unit |
| MOA | Memorandum of Agreement |
| OBPP | Office of Budget and Program Performance |
| OCIO | Office of the Chief Information Officer |
| ODO | Office of Detention Oversight |
| OI | Office of Investigations |
| OIG | Office of Inspector General |
| OPR | Office of Professional Responsibility |
| OSLC | Office of State and Local Coordination |
| OTD | Office of Training and Development |
| RAC | Resident Agent in Charge |
| SAC | Special Agent in Charge |
| TFO | task force officer |
| TOPS | Table of Organization Position System |

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Section 287(g) of the *Immigration and Nationality Act*, as amended, authorizes the Department of Homeland Security's Immigration and Customs Enforcement to delegate federal immigration enforcement authorities to state and local law enforcement agencies. The *Department of Homeland Security Appropriations Act, 2010*, and accompanying House Report 111-157 and Conference Report 111-298, require that we report on the performance of 287(g) agreements with state and local authorities.

This report is an update to OIG-10-63, *The Performance of 287(g) Agreements*, issued in March 2010, which included 33 recommendations to strengthen management controls and improve oversight of 287(g) program operations.

In this review, we determined that Immigration and Customs Enforcement needs to continue efforts to implement our prior recommendations. We identified challenges that may reduce the effectiveness of a review process intended as a resource for ensuring compliance with 287(g) program requirements. We also noted that there were insufficient controls and supporting documentation to verify that 287(g) inspection funds were used solely as intended. In addition, we identified the need for a more comprehensive approach for determining the success of 287(g) program goals. Immigration and Customs Enforcement needs to (1) establish a process to ensure effective management controls and accountability over the 287(g) program and related funding, (2) develop and implement a strategy for ensuring the success of the compliance review process, and (3) establish a comprehensive approach for determining whether 287(g) program goals for removing criminal aliens who pose a threat to public safety are being achieved.

We are making 16 recommendations for Immigration and Customs Enforcement to improve overall operations of the 287(g) program.

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 amended the *Immigration and Nationality Act (INA)* by adding section 287(g).² Under this section, the Secretary of Homeland Security is authorized to enter into written agreements with state and local law enforcement agencies (LEA) to facilitate the delegation of immigration enforcement functions to select law enforcement officers.³ The law requires that this delegation of immigration enforcement authorities be executed through formal, written agreements, referred to as Memorandum of Agreements (MOAs).

MOAs are executed between the Assistant Secretary for Immigration and Customs Enforcement (ICE) and the participating agency's authorized representative. The agreements outline terms and conditions under which participating LEA personnel will function as immigration officers. Pursuant to these MOAs, designated officers who receive appropriate training and function under the supervision of sworn ICE officers are permitted to perform immigration law enforcement duties.

The federal government did not enter into any 287(g) agreements between 1996 and 2002. From 2002 to 2006, DHS delegated enforcement authorities to six jurisdictions. After 2006, the 287(g) program expanded as interest in interior immigration enforcement at the state and local levels increased, and more dedicated funding for 287(g) program efforts was made available.

MOAs designate the 287(g) program model that jurisdictions are authorized to use. Participating jurisdictions employ a Detention Model, Task Force Officer (TFO) Model, or both, referred to as the Joint Model.⁴

The Detention Model involves partner officers exercising their immigration-related authorities only while assigned to jail or

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.)

⁴ The name for Jail Enforcement model was changed to Detention model in the revised MOA.

correctional facilities. Officers identify and initiate immigration proceedings for aliens subject to removal that have been charged with or convicted of an offense.

The TFO Model is composed of partner officers assigned to task force operations supported by ICE or partner officers in the field who are supervised by ICE. Officers exercise their immigration-related authorities during criminal investigations involving aliens within their jurisdiction or as directed by the ICE Special Agent in Charge (SAC).

In July 2009, ICE released a new template for 287(g) agreements to replace existing agreements. According to DHS officials, new 287(g) agreements will:

- Promote consistency by ensuring that all state and local law enforcement partners use the same standards in implementing the 287(g) program;
- Align 287(g) local operations with major ICE enforcement priorities—specifically, the identification and removal of criminal aliens;
- Address concerns that individuals may be arrested for minor offenses as a guise to initiate removal proceedings by requiring participating local law enforcement agencies to pursue all criminal charges that originally caused the offender to be taken into custody;
- Define the objectives of the 287(g) program, outline the immigration enforcement authorities granted by the agreement, and provide guidelines for ICE supervision of local agency officer operations, information reporting and tracking, complaint procedures and implementation measures; and
- Strengthen ICE oversight of the program to allow ICE to better utilize the resources and capabilities of its law enforcement partners across the nation.

ICE required 287(g) jurisdictions to sign a new agreement to continue participation in the program. As of August 1, 2010, ICE has 71 MOAs, with 26 TFO Models, 32 Detention Models, and 13 Joint Models.

For Fiscal Year (FY) 2006, Congress appropriated \$5 million for the 287(g) program. By 2011, program funding had increased to \$68.3 million, as shown in Table 1.

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% |
| 2011* | \$68.3 | 0.5% |

Source: ICE Office of State and Local Coordination
 * FY 2011 budget request.

The ICE Office of State and Local Coordination (OSLC) maintains responsibility for management and oversight of the 287(g) program. OSLC coordinates with Homeland Security Investigations (HSI) and Enforcement Removal Operations (ERO) to provide day-to-day supervision for 287(g) officers.⁵ HSI maintains supervisory responsibility over 287(g) task force activities, and ERO supervises jail enforcement officer (JEO) immigration enforcement functions. The ICE Office of the Chief Information Officer (OCIO) furnishes and installs information technology equipment, and provides technical support for 287(g) officers' access to DHS systems. The Office of Training and Development (OTD) designs and delivers 287(g) training.

Within the ICE Office of Professional Responsibility (OPR), the 287(g) Inspections Group assesses the effectiveness of ICE field offices in supervising and supporting 287(g) programs, as well as ICE and LEA compliance with program policies and MOA requirements. The 287(g) Inspections Group conducts compliance reviews to assess conformance with conditions of MOAs between ICE and participating LEAs, and provides ICE management with feedback on the administration of the program by local ICE offices.

In FY 2009, Congress earmarked \$5 million specifically for 287(g) compliance reviews. For FY 2009, ICE completed 20 compliance

⁵ Homeland Security Investigations and Enforcement Removal Operations were formerly known as the Office of Investigations and the Office of Detention and Removal Operations, respectively.

review reports. For FY 2010, 22 of 24 compliance reviews have been completed as of August 2010.

Results of Review

Our report provides updated information on the status of ICE efforts to address recommendations in our prior report, *The Performance of 287(g) Agreements*, dated March 2010. We also analyzed operations of the 287(g) Inspections Group to identify measures that can improve the efficiency and effectiveness of their efforts to determine compliance with 287(g) program requirements. In addition, we reviewed ICE's implementation of the revised MOA, and identified specific aspects that may enhance ICE's ability to achieve program objectives, as well as challenges that may reduce its effectiveness in improving program operations.

ICE Needs to Continue Efforts to Implement Prior OIG Recommendations Regarding 287(g) Program Operations

Our March 2010 report, *The Performance of 287(g) Agreements*, included 33 recommendations for ICE to strengthen management controls, promote effective program operations and address related risks. ICE concurred with 32 of the 33 recommendations.

Based on our analysis of documentation provided by ICE, we closed Recommendations 3, 11, 19, 28, and 33. To close a recommendation, we must agree with the actions ICE has taken, or plans to take, to resolve our concerns. Corrective actions planned or taken by ICE for these recommendations included (1) establishing and implementing data entry requirements; (2) establishing a process to ensure that LEAs notify OPR of complaints against 287(g) officers and other LEA personnel improperly performing immigration enforcement activities; (3) determining whether the civil rights law training was adequate; (4) posting 287(g) complaint reporting procedures on ICE's public website and in participating LEA facilities; and (5) evaluating the use of 287(g) vehicles to determine whether they are used as intended, and properly disposed of. Appendix C details the status of the remaining 28 open recommendations.

ICE has made efforts to implement improvements in program operations in some areas identified during our prior field work. However, for other important areas, ICE has provided action plans and related documentation that do not fully address critical issues outlined in our prior report.

The 287(g) program provides benefits to enhance the safety and security of participating communities, as well as challenges for ICE that may

reduce its effectiveness. Implementing corrective actions outlined in our report should enable ICE to achieve more effective, efficient, and economical operations within the program.

Recommendation

We recommend that Immigration and Customs Enforcement:

Recommendation #1: Take timely and appropriate actions to implement OIG recommendations intended to strengthen management controls and improve oversight of 287(g) operations.

Management Comments and OIG Analysis

We evaluated ICE's written comments and have made changes to the report where we deem appropriate. A summary of ICE's written responses to our recommendations and our analysis of the responses follow the recommendation. A copy of ICE's response, in its entirety, appears in Appendix B.

ICE Response: ICE concurred with Recommendation 1.

ICE has already taken significant actions to strengthen management controls over 287(g) operations. Additionally, the ICE OSLC 287(g) group (OSLC) has taken aggressive steps to ensure accuracy in data collection, with a follow-up process that includes the dissemination of monthly encounter statistics to the appropriate Special Agent-in-Charge (SAC) and Field Office Director (FOD) field offices for data quality reviews. OSLC is also working towards developing its performance measures in coordination with the Office of Budget Performance and Planning (OBPP). These measures require the collection of monthly data for one fiscal year to establish a baseline to sufficiently analyze the performance of each 287(g) program. OSLC has been collecting monthly data for FY 2010, and will have a base line by the end of September. This will allow OSLC to report on its performance for the first quarter of FY 2011. These changes were initiated in the timeliest fashion with the intention of strengthening management controls of the program and improving oversight of the program.

Based on ICE's actions to take timely and appropriate actions to implement OIG recommendations, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: The intent of this recommendation is for ICE to focus on the remaining 28 open recommendations outlined in our March 2010 report in a timely and appropriate manner. While the actions proposed by ICE are intended to strengthen management controls and improve oversight of 287(g) operations, they do not fully address all recommendations included in our prior report. This recommendation will remain **unresolved and open** as ICE continues its efforts to resolve the remaining 28 open recommendations from our previous report.

Management Controls Over Funds Allocated For 287(g) Inspections Need to Be Established

In our prior review, we noted improvements in 287(g) program operations based on reviews conducted by the 287(g) Inspections Group within OPR. 287(g) program reviews are designed to assess conformance with conditions of the MOA between ICE and LEA, provide OSLC and ICE management with feedback on the administration of the 287(g) program, and determine whether any detainee rights have been violated.

Given the sensitivity of the 287(g) program and the 287(g) Inspections Group's success in identifying issues for management attention, we recommended in our prior report that ICE adopt a more aggressive review process. Of the total amount appropriated for the 287(g) program in the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009*, Congress specifically earmarked \$5 million in the accompanying conference report for 287(g) compliance reviews. We conclude that challenges encountered in (1) reconciling information such as payroll data with staffing plans, (2) reviewing inadequate financial records, and (3) analyzing incomplete data provided by ICE have resulted in insufficient evidence for us to make a determination regarding the appropriateness of expenditures claimed against these funds. Therefore, there is a potential that ICE may be in violation of the Purpose Statute, which requires that appropriations be used only for their intended purposes, and the *Anti-deficiency Act*, which prohibits agencies from spending in excess of available appropriations.⁶

287(g) Inspections Group Funding Allocation

According to OMB Circular A-123, "Management Responsibility for Internal Control," management is responsible for developing

⁶ 31 U.S.C. 1301 and 31 U.S.C. 1341.

and maintaining effective internal controls to ensure that resources are used consistent with agency missions. In addition, internal controls must be established that reasonably ensure that funds and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation.

In FY 2009, Congress allocated \$5 million to OPR specifically for conducting compliance reviews. In FY 2010, OPR received \$6.046 million to facilitate 287(g) program reviews. As part of this review, our objective was to confirm the validity of expenditures against those funds. We made numerous requests for specific program funding data, and received varying explanations from program officials regarding the absence of data related to staffing, payroll, and other expenses charged against 287(g) program funds. OSLC program managers eventually explained that there was no process to ensure that all OPR field agents being paid from or supported by 287(g) funds were actually conducting reviews that specifically aligned with the 287(g) mission. In the absence of internal controls and supporting documentation to monitor and track the use of program resources, there is no assurance that funds allocated to the 287(g) program were used as intended.

The ICE Office of Budget and Program Performance (OBPP) allots 287(g) funds as part of the overall appropriated budget for each ICE program. According to OBPP officials, funds are apportioned quarterly, based on approved spend plans that OBPP reviews and revises jointly with the affected program area and OSLC at the end of each quarter. OPR's Mission Support Unit (MSU) submits spend plans for 287(g) inspections that identify projected operational costs. OBPP's financial management system uses a unique project code that allows OBPP and OSLC to monitor allotments and expenditures against 287(g) funds. OBPP officials stated that they compile daily 287(g) Status of Funds Reports for OSLC to use in following up with affected programs when discrepancies occur.

We requested financial and personnel information for FYs 2008 to 2010 for the 287(g) Inspections Group. Since Congress allocated \$5 million in FY 2009 specifically for compliance reviews conducted by OPR, we requested additional financial information regarding obligations and expenditures for FY 2009 to support the use of 287(g) funds. However, no data for FY 2008 were provided, and only partial data for FYs 2009 and 2010 were received.

As illustrated in Table 2, documentation provided by OBPP showed that of the \$5 million allocated in FY 2009 for compliance reviews, OPR obligated \$4,420,648 for compliance review expenses, and expended \$424,762 for service-wide costs, and \$13,000 against FY 2009 obligations. These expenses and obligations total \$4,485,410. The remaining \$141,590 has not been expended or obligated.

Table 2: FY 2009 287(g) Funds Obligated or Expended

| Object Class: | Amount |
|-------------------------------------|--------------------|
| Compliance Review Expenditures: | |
| Payroll | 3,059,239 |
| Permanent Change of Station Moves | 240,583 |
| Travel and Transportation of Things | 455,649 |
| Contracts | 218,305 |
| Supplies and Utilities | 65,400 |
| Equipment | 381,472 |
| Object Class Total | \$4,420,648 |
| Service-wide Costs | \$424,762 |
| Expenditures-to-date Against FY2009 | |
| Obligations | \$13,000 |
| Unobligated | \$141,590 |
| Total | \$5,000,000 |

We requested additional information from OBPP, including supporting documentation for compliance review expenditures, and definitions for items within each object class category; however, we either did not receive a response or were informed that the requested information was not available. In addition, OBPP officials stated that ICE's financial management system does not allow for specific expenses to be tracked to individual staff members.

To determine the accuracy of the cost information provided, we attempted to calculate an approximate cost of a 287(g) compliance review for a specific object class category identified in Table 2. We selected Travel and Transportation of Things, where ICE documentation showed that a total of \$455,649 was obligated.

In FY 2009, OPR inspected 20 program sites. Five of these program sites were located within driving distance of OPR headquarters in Washington, DC. Staffing records provided by OPR showed that, excluding the five sites, the equivalent of 72

staff members conducted 15 287(g) reviews. Therefore, we divided OBPP's budgeted amount for Travel and Transportation of Things (\$455,649) by OPR staffing records for the number of

equivalent staff members (72) to determine OBPP's estimate of \$6,329 per person for travel related to compliance reviews. We did not receive documentation to support the calculation for this estimate.

In contrast, we calculated travel expenses of approximately \$2,300 per person for each inspection. We selected the most costly inspection site location, and obtained related costs for the government contracted airfare, lodging fees, and per diem rates.⁷

We requested information on the 287(g) Inspections Group's FY 2010 budget of \$6.046 million, and were provided with spend plans that showed projected costs for program expenditures; however, we were unable to determine whether these expenditures aligned with 287(g) objectives. MSU officials said that the 287(g) Inspections Group and the Office of Detention Oversight (ODO) have mutually supporting missions that are not subject to funding or mission exclusivity; therefore, spend plans did not segregate funds used solely for 287(g) inspections.

OPR Personnel Inappropriately Supported by 287(g) Funds

According to ICE officials, OPR has been increasing its workforce since the inception of the 287(g) inspection program. However, due to conflicting data from ICE officials, we were unable to determine the number of OPR personnel working on 287(g) related assignments, or personnel whose salaries were paid from 287(g) program funds.

ICE uses the Table of Organization Position System (TOPS) for hiring data and projections, the Federal Financial Management System financial accounting system to track budget expenditures and balances, and the National Finance Center for payroll services. Our review of documents provided from these systems showed

⁷ We calculated the approximate travel cost for the inspection at the Arizona Department of Corrections because this was one of the most expensive site visits based on location and per diem rates in effect from June 8 to 12, 2009. The roundtrip airline city pair fare from Washington, DC to Phoenix, AZ in FY 2010 was \$1,318 (figures not available for FY 2009). The maximum GSA lodging rate is \$89 each day, or \$534 for six days (plus additional taxes). The per diem for meals and incidental expenses is \$71 each day, or \$426 for six days. Travel expenses as we calculated should be approximately \$2,278 per person for six days.

conflicting information that precluded reconciling employees who actually participated in 287(g) inspections with employees who were actually paid from 287(g) inspection funds.

The TOPS report showed that OPR had 19 full-time staff in FY 2009 who were to be paid from 287(g) inspection funds; however, six of those positions were not shown on the FY 2009 payroll reports. Payroll reports listed 38 individuals whose salaries were either partially or entirely paid from 287(g) funds, with an average of 9 pay periods for each of these field agents paid from 287(g) inspection funds.

A review of completed inspection reports with names of contributing staff members showed that only 4 of the 19 staff members listed on the TOPS report actually participated in 287(g) inspections in FY 2009. However, 13 of the 19 staff members on the TOPS report were paid from 287(g) inspection funds. Payroll reports showed that only 9 of the 38 employees - 6 members of the 287(g) Inspections Group and 3 field agents - paid from 287(g) inspection funds actually conducted at least one compliance review.

An MSU official explained that 287(g)-funded field agents have inspection responsibilities as collateral duties. Therefore, man-hours, and not positions, are used to budget for compliance inspections. Field agents' individual man-hours are collectively totaled to represent the equivalent of full-time employees. For these 38 individuals, a total of 33,983 man-hours were paid from 287(g) inspection funds. Using a standard work year of 1,928 hours, 33,983 hours equates to approximately 18 full-time employees.

We were unable to obtain records to reconcile man-hours charged to 287(g) inspection funds with the actual number of hours that field agents performed 287(g) inspection-related duties. However, we question whether the equivalent of 18 full-time employees, or 33,983 man-hours, were used to support 287(g) compliance reviews.

To guard against potential violations of the *Purpose Statute* and the *Anti-Deficiency Act*, ICE must ensure that funds are not spent in excess of appropriations, but are spent in accordance with the purpose and limits of each appropriation. However, ICE has not implemented procedures to ensure the integrity and accountability

over 287(g) program resources. As a result, we were unable to confirm that these resources were used appropriately.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #2: Establish an appropriate structure along with sufficient internal controls to manage and oversee 287(g) funds to ensure appropriate use.

Recommendation #3: Develop a process to ensure that adequate supporting documentation is maintained to track and monitor the allocation, obligation, and expenditure of funds.

Recommendation #4: Segregate funds by program area.

Recommendation #5: Conduct a review of 287(g) funds allocated for inspections to ensure that these funds were used as intended.

Recommendation #6: Re-evaluate the current staffing strategy of using man-hours instead of dedicated positions for conducting 287(g) inspections.

Management Comments and OIG Analysis

ICE Response: ICE concurred with Recommendation 2.

ICE Office of the Chief Financial Officer (OCFO) will establish the budget structure so that the Office of Professional Responsibility (OPR) can implement a new 287(g) program office structure. The new structure will be fully implemented by October 1, 2010.

A certified program manager (PM) position to oversee all aspects of the OPR 287(g) program was announced (Vacancy Announcement LAQ-OPR-386239-MD-330) on September 17, 2010. The PM will oversee the planning, direction, and timely execution of the program; determine goals and objectives; working with OBPP, develop measures that evaluate performance; make recommendations for program improvement; manage all resources; and manage organizational changes as well as changes to the content of the program.

The new structure includes a staff of ten Special Agents working from OPR field offices who are solely dedicated to the 287(g) program. These agents will work in alignment with the staff of twelve 287(g) personnel at OPR Headquarters and report to the PM.

Based on ICE's establishment of a new structure for the management and oversight of 287(g) funds to ensure appropriate use, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: The new structure for the management and oversight of 287(g) funds as described in ICE's response does not clearly address management and oversight of 287(g) funds by OBPP and the certified program manager. In addition, ICE did not describe internal controls in its proposed budget structure that provided assurance that funds will be used as intended. The response also does not define the alignment between Special Agents and personnel at OPR Headquarters as part of the new structure. This recommendation will remain **unresolved and open** until ICE provides clarification regarding its proposed structure, with associated internal controls to ensure appropriate management over 287(g) funds.

ICE Response: ICE concurred with Recommendation 3.

A Fiscal Year (FY) 2011 spend plan was formulated in conjunction with an operational plan that outlines the requirements and funding needed in support of the ICE OPR 287(g) program. On October 1, OCFO will establish a specific organizational code for the 287(g) program office that ensures only payroll and general expenditures in support of the program are charged to the 287(g) program. The OPR PM will be charged with tracking all obligations and expenditures of 287(g) funds to ensure the funds are used for the appropriate and stated purpose.

Based on ICE's development of a process to ensure that adequate supporting documentation is maintained to track and monitor funds, we request this recommendation be considered Resolved and Closed.

OIG Evaluation: The FY 2011 spend plan and operational plan ICE cites in its response do not address the maintenance of adequate supporting documentation to track the allocation, obligation and expenditure of 287(g) funds. Based on what we

learned during our fieldwork, spend plans are projections of expenditures that may be needed for the operation of the 287(g) program, and do not provide sufficient documentation to support monies actually spent. Efforts to establish an organizational code strictly for 287(g) payroll and general expenditures, and designate a program manager to track all obligations and expenditures should assist ICE in tracking the allocation, obligation and expenditure of funds. However, a process for maintaining documentation to support all expenditures of 287(g) funds is needed. This recommendation will remain **unresolved and open** until ICE establishes such a process.

ICE Response: ICE concurred with Recommendation 4.

For FY 2011, ICE has established a specific organizational code in its financial management system that allows the 287(g) program office to ensure only payroll and general expenditures in support of the program are charged to the 287(g) program. The PM will be charged with tracking all obligations and expenditures (to include payroll) to ensure they are used for the appropriate and stated purpose.

OIG Evaluation: At the time of our fieldwork, ICE had a unique project code for 287(g) program expenditures that allowed OBPP and OSLC to monitor 287(g) funds. However, the spend plan ICE's Mission Support Unit provided did not distinguish between 287(g) funding from the Office of Detention Operations. This recommendation will remain **unresolved and open** until ICE develops a clearly defined process to ensure that 287(g) funds are segregated from other ICE program areas. This should include a description of how the establishment of a specific organizational code will serve as an appropriate means of tracking 287(g) expenditures in comparison to the unique project code that was used during our fieldwork.

ICE Response: ICE concurred with Recommendation 5.

ICE has completed a comprehensive review of 287(g) funds expenditures for FY 2009 and FY 2010. All 287(g) program requirements have been properly coded to either the 287(g) program or OPR's base program funding for FY 2010. Further analysis of FY 2009 expenditures has been completed and the ICE Burlington Finance Center will be processing actions that will result in the FY 2009 expenditures being an accurate reflection of

costs incurred in support of the 287(g) program. These actions and adjustments will be completed by September 25, 2010.

Also, an FY 2011 spend plan was formulated in conjunction with an operational plan that outlines the requirements and funding needed in support of the 287(g) program. OCFO will monitor budget performance and the OPR PM will be charged with executing all budget obligations and expenditures of 287(g) funds to ensure the funds are used for the appropriate and stated purpose.

Based on the comprehensive review conducted and reallocation of funds, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and open** pending receipt of the results of ICE's review of 287(g) program expenditures for FYs 2009 and 2010. This should also include any adjustments that reflect how 287(g) funds were spent.

ICE Response: ICE concurred with Recommendation 6.

As a result of a re-evaluation, ICE will use dedicated positions in support of the 287(g) program, and will no longer use the man-hours model. OCFO will monitor budget performance and the OPR PM will be charged with executing all budget obligations and expenditures, including payroll, to ensure funds are used for the appropriate and stated purpose. Additionally, ICE OPR created and implemented an FY 2011 operational plan that outlines the program requirements and resources needed to execute the plan.

Based on our re-evaluation and decision to use dedicated positions in its staffing strategy, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and open** pending verification of dedicated positions in support of the 287(g) program. ICE's re-evaluation of its staffing strategy and subsequent decision to use dedicated positions in lieu of man-hours in support of the 287(g) program satisfies the intent of this recommendation.

Challenges for the 287(g) Inspections Group Need to Be Mitigated

Standards for internal control require all personnel to possess and maintain a level of competence that allows them to accomplish their assigned duties. The standards further require that management identify the appropriate knowledge and skills needed for jobs, and provide the necessary training for these jobs. We determined that (1) creative staffing methodologies provide an appearance of sufficient and competent staff to conduct required 287(g) compliance reviews, (2) field staff members trained to conduct 287(g) compliance reviews are not always available to participate when needed, and (3) hiring for 287(g) inspections has not been effective because filling vacancies at the field level is a higher priority. Because of the sensitivity of the 287(g) program and the need to ensure that program objectives are achieved, the ability of the 287(g) Inspections Group to conduct appropriate compliance reviews should be an ICE priority.

Several Barriers May Reduce the Effectiveness of the 287(g) Inspections Group in Achieving Its Mission

287(g) compliance reviews can help ensure that program goals are achieved. As part of our review, we observed an inspection conducted at a 287(g) program site that had been in operation for two years.

The field work consisted of 19 interviews with ICE and LEA officials, observations, and file reviews to assess compliance with terms of the MOA and related ICE policies. The team identified several program deficiencies, and made recommendations to ICE field office staff and LEA officials. OPR was in the process of finalizing the inspection report at the end of our field work.

ICE needs to ensure that the 287(g) Inspections Group serves as a resource by minimizing barriers that reduce the effectiveness of the inspection review process.

Staffing

Insufficient staffing has the potential to prevent the 287(g) Inspections Group from the timely completion of their assigned reviews. At the time of our review, the 287(g) Inspections Group included four full-time staff dedicated to 287(g). To augment its staff, the 287(g) Inspections Group relies on staff members from a

pool of 25 OPR field agents trained to conduct compliance reviews.

We identified instances in which requests for field agents to assist with 287(g) compliance inspections were denied because field agents were unavailable or had scheduling conflicts. In these situations, agents who were ultimately assigned to the inspection team may be unfamiliar with the 287(g) program, and often have no training or experience to assess LEAs compliance with MOAs.

Before we started our review, we notified OPR of our plans to accompany the review team on a specific inspection site of our choice. For the 287(g) compliance inspection that we observed, two members were a part of the core inspection team, and two members were from the pool of field agents who had attended the 287(g) training. The other team member was a field agent who had no experience conducting 287(g) inspections, and had been sent to replace a 287(g) field agent who was in the pool.

The Current Structure of the 287(g) Inspections Group Needs to Be Analyzed

In June 2009, OPR conducted a 287(g) inspection training session for 25 field agents to establish a pool of field agents to assist with 287(g) inspections. Our review of documents and related staffing reports showing staff members on 287(g) inspections indicated that the 25 field agents who completed the training did not consistently provide assistance with compliance inspections.

Field offices receive notification of upcoming inspections and staffing requirements several weeks before the actual inspection date. However, we identified several instances of requests for assistance being denied. In addition, since field agents in the pool report to their respective Resident Agent in Charge (RAC), assisting with compliance inspections is not considered a priority.

Because of the difficulties obtaining assistance from the field, the Assistant Special Agent in Charge (ASAC) or Deputy Special Agent in Charge (DSAC) is notified of the situation when a RAC will not release an agent to assist with an inspection. This has occasionally resulted in an agent being provided. In those circumstances, agents provided usually were not trained in the 287(g) program, or familiar with the inspection process.

The 287(g) Inspections Group has filled seven of twelve full-time positions. However, four of these positions include a unit chief, an agent, and two analysts who do not perform inspections. The other three positions were filled by two agents and an analyst who actually conduct the compliance inspections on a full-time basis.

Four of the five vacant headquarters positions are GS-14 1811 agent positions. An OPR official described difficulties in filling the vacant 1811 positions because vacancies in the field are usually a higher priority. In addition, fewer agents want to come to headquarters as part of the 287(g) Inspections Group due to the potential of limited career advancement opportunities.

Consideration needs to be given to the current structure of the 287(g) Inspections Group. This structure, including reporting lines and field employees who are not fully dedicated to conducting 287(g) inspections, and the use of man-hours instead of dedicated positions, may not result in an optimum use of resources. The structure also minimizes the importance of inspection efforts by not ensuring the availability of an appropriate level of staff to conduct the reviews. OPR would benefit if workforce allocations were realigned to ensure a more dedicated staff for performing 287(g) compliance reviews.

Status of Corrective Actions Needs to Be Provided to the 287(g) Inspections Group

Corrective actions taken by management to resolve findings and recommendations are an essential element for improving program operations. An agency should establish a system that provides for a complete record of the action taken to ensure prompt resolution and implementation of recommendations. ICE OPR conducts inspections of the 287(g) program to determine ICE and LEA compliance with MOAs, and provides recommendations for improvement. However, corrective actions taken in response to these recommendations are not formally communicated to the 287(g) Inspections Group. As a result, there is less assurance that follow-up on deficiencies disclosed during previous compliance reviews will be conducted during future inspections.

In March 2009, OSLC issued guidance, *Procedures for Addressing OPR 287(g) Reports*, describing steps that OSLC should take to ensure prompt resolution of inspection report recommendations or issues of concern. According to an OSLC official, a detailed evaluation of OPR inspection findings is completed as inspection

reports are finalized. OSLC tracks the inspection findings and recommendations with the corrective actions. OSLC sends inspection report findings through appropriate channels to the affected field office manager, who responds to OSLC with the corrective actions taken to resolve the findings.

Our review of the 287(g) OPR Review Data tracking system indicated that from September 2009 to July 2010, the 287(g) Inspections Group made 64 recommendations, of which 44 have been closed. In FY 2009, three outstanding recommendations were referred to DHS' Office of Inspector General, or to ICE HSI, and are still pending. The remaining 17 recommendations remain open and have been referred to ICE field offices.

An ICE official said that there is no process to inform the 287(g) Inspections Group of corrective actions taken on inspection-related recommendations, or even when the recommendations have been resolved. This precludes verifying corrective actions taken and determining whether desired results were achieved.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #7: Re-evaluate the current staffing strategy for the 287(g) Inspections Group, including reporting lines and field employees who are not fully dedicated to conducting 287(g) inspections.

Recommendation #8: Develop a process to staff inspections with field agents who have sufficient knowledge of the 287(g) program and the necessary skills for effective performance.

Recommendation #9: Ensure that staff members paid from 287(g) funds actually participate in 287(g) compliance reviews.

Recommendation #10: Ensure that the 287(g) Inspections Group is notified of actions taken as a result of recommendations in their inspection reports.

Recommendation #11: Develop a process to ensure that planned inspections include a review of actions taken to address previously identified deficiencies and other issues, as needed.

Management Comments and OIG Analysis

ICE Response: ICE concurred with Recommendation 7.

OCFO established the budget structure so that OPR can implement a new 287(g) program office structure. This new structure will be fully implemented by October 1, 2010.

As detailed in our response to Recommendation 2, the PM position will oversee all aspects of the 287(g) program and was announced (Vacancy Announcement LAQ-OPR-386239-MD-330) on September 17, 2010.

Also, as discussed earlier, the new structure includes a staff of ten Special Agents solely dedicated to the 287(g) program and working from OPR field offices.

Based on ICE's establishment and implementation of a new 287(g) program office structure, we request this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and open** pending our receipt of the new staffing strategy, including reporting lines and field employees dedicated to conducting 287(g) inspections.

ICE Response: ICE concurred with Recommendation 8.

The ICE has planned a training session for all new 287(g) employees during the first quarter of FY 2011. Additionally, by having a permanent staff dedicated to conducting 287(g) inspections, staff members will be able to receive on-the-job training from other 287(g) employees during the first half of FY 2011 and beyond.

Based on ICE's development of a process to ensure that inspections are staffed with field agents who have sufficient knowledge of the 287(g) program, and possess the necessary skills for effective performance, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and open** pending our receipt and evaluation of the planned agenda for the FY 2011 training session.

ICE Response: ICE concurred with Recommendation 9.

Under the new ICE inspections structure, all staff members paid from 287(g) funds will be dedicated to the 287(g) program.

As we detailed in our response to Recommendation 2, OFCO will oversee budget execution and OPR PM will oversee execution of the 287(g) program.

Based on the new structure, ICE will ensure that staff paid from 287(g) funds actually participate in 287(g) compliance reviews. Therefore, we request this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and open** pending our receipt of ICE's process for ensuring that only dedicated 287(g) staff will be paid from 287(g) funds.

ICE Response: ICE concurred with Recommendation 10.

As of September 2010, ICE OSLC began to provide OPR the responses from the field offices regarding issues, deficiencies, concerns and recommendations highlighted in 287(g) inspection reports. The OPR 287(g) Inspections Section will monitor and document these responses and validate the stated corrective actions during the next scheduled inspection or during a follow-up inspection, if one is warranted.

Based on our actions to ensure the ICE 287(g) Inspections Group is notified of actions taken as a result of recommendations in their inspection reports, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and closed**.

ICE Response: ICE concurred with Recommendation 11.

ICE OPR 287(g) Inspections Section will review the field actions taken in response to previously identified deficiencies and issues prior to its next scheduled inspection, and verify their completion during the inspection process. If a follow-up inspection is warranted, one will be conducted by the OPR 287(g) Inspections Section.

Based on our development of a process to ensure that planned inspections include a review of actions taken to address previously identified deficiencies and other issues, as needed, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: This recommendation is **resolved and open** pending our receipt and review of documentation describing the follow-up inspection process.

ICE and LEA Compliance With Revised MOA Cannot Be Readily Determined

The MOA defines the scope and limitations of the authority to be designated to the LEA, and authorizes participating officers to exercise a range of immigration enforcement activities that differ in terms of the program model and function. In July 2009, ICE released a new template for 287(g) agreements to replace existing agreements.

A primary revision to the MOA is the addition of a Standard Operating Procedure (SOP) Template that establishes uniform general procedures for the implementation and oversight of the 287(g) program. Specifically, the SOP describes (1) arrest priority levels, (2) supervision of the TFO and detention models, (3) data collection, and (4) training. Both MOAs also include an appendix outlining the complaint procedure. We focused on these areas to determine the potential effects that the revised MOA may have on improving 287(g) program operations.

287(g) Arrest Priority Levels

Our initial 287(g) report noted that ICE's primary performance measure for the 287(g) program is the number of aliens encountered by 287(g) officers. However, this performance measure did not (1) align with ICE's three-tier priority level system for arrest and detention of aliens, or (2) provide a focus on aliens who pose a threat to public safety or are a danger to the community, which, according to ICE, is a primary purpose for their collaboration with LEAs. In this review, we determined that ICE should develop performance measures with goals for determining 287(g) program success in removing criminal aliens who pose a threat to public safety or a danger to the community.

The revised MOA template identifies three categories of aliens that are a priority for arrest and detention. The highest priority, Level 1, consists of aliens who have been convicted of or arrested for major drug or violent offenses. Level 2 includes aliens who have been convicted of or arrested for minor drug or property offenses. Level 3 includes aliens who have been convicted of or arrested for other offenses.

According to the MOA template, participating LEAs under each model must identify and remove criminal aliens based on the three priority levels for arrest and detention. The MOA also requires LEAs to use their 287(g) program in either the TFO Model or Detention Model according to ICE priorities.

A December 2009 memorandum, *Monitoring the Exercise of 287(g) Authority*, advised all SAC and Field Office Directors (FOD) of their responsibility in ensuring that LEA partners adhere to the terms of the revised 287(g) MOA, and exercise the delegated authority consistent with ICE priorities. To meet this requirement, ICE requires LEAs to submit monthly data showing all encounters within each priority level. ICE monitors the data to determine whether LEA arrest activities are consistent with ICE priority levels. However, we did not identify any measures that SACs or FODs should use to compare LEA encounter, arrest, and removal actions to ICE priority levels.

Using data submitted by LEAs, each SAC and FOD provides a monthly report to HSI and ERO, respectively, describing how the 287(g) program is working in regard to ICE arrest priorities. If the program is not operating according to ICE priorities, the memo should also include actions taken by the SAC or FOD to improve LEAs' compliance. However, we did not identify a follow-up process to ensure that any actions taken by an LEA actually result in better adherence to ICE priorities.

Based on the monthly reports from SACs and FODs, OSLC prepares a quarterly report, *Adherence to ICE Priorities*, for both TFO and detention models to show statistical data on alien encounters by priority level. ICE began tracking statistics by priority level in December 2009.

We reviewed the April 2010 quarterly report which included ICE arrest for the first half of FY 2010. During this period, there were a total of 757 TFO encounters, of which 83 (11%) were for Level 1 offenses and 158 (21%) were for Level 2 offenses. For the same

period, there were a total of 25,908 JEO encounters, of which 6,039 (23%) were for Level 1 offenses, and 6,317 (24%) were for Level 2 offenses

Table 3 shows the total number of TFO and JEO encounters for the 287(g) program during the first three quarters of 2010. Level 1, Level 2, and Level 3 encounters represented 23%, 26%, and 19%, respectively, of total encounters.

Table 3. 287(g) Encounters by Priority Arrest Level

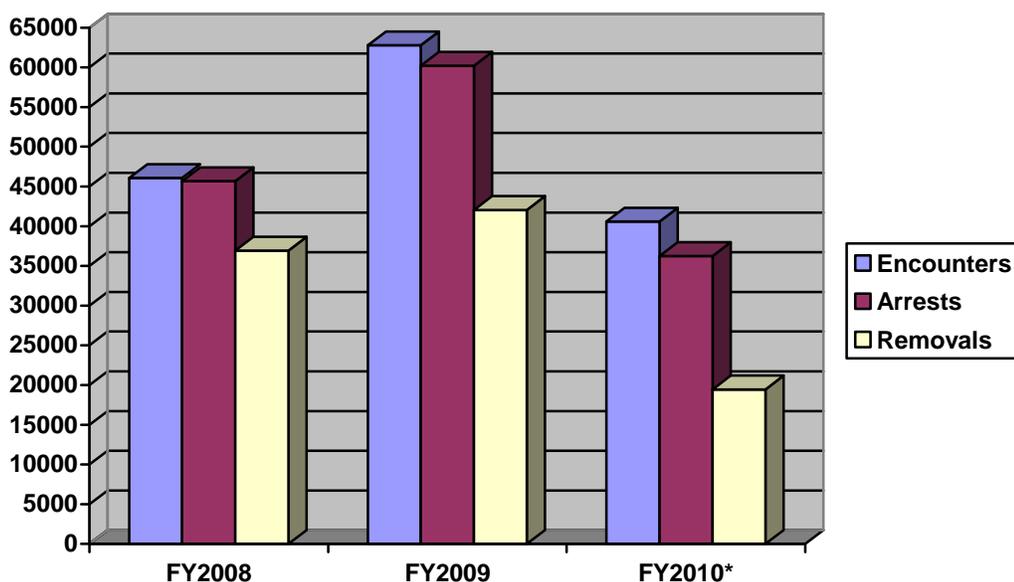
| Priority Level | FY2010 Encounters | | | |
|-----------------|---------------------|---------------------|---------------------|--------|
| | 1 st Qtr | 2 nd Qtr | 3 rd Qtr | Total |
| Level 1 | 3,064 | 3,199 | 3,266 | 9,529 |
| Level 2 | 3,002 | 3,756 | 4,031 | 10,789 |
| Level 3 | 2,102 | 2,548 | 2,990 | 7,640 |
| Traffic - DUI | 1,870 | 1,729 | 1,744 | 5,343 |
| Traffic - Other | 2,051 | 2,268 | 2,226 | 6,545 |
| Other Criminal | 101 | 35 | 5 | 141 |
| None | 146 | 160 | 188 | 494 |
| No Data | 39 | 54 | 8 | 101 |
| Totals | 12,375 | 13,749 | 14,458 | 40,582 |

Source: Office of State and Local Coordination

ICE officials developed a revised MOA in part to align 287(g) local operations with major ICE enforcement priorities – specifically, the identification and removal of criminal aliens. ICE maintains data on program encounters, arrest, and removal statistics for the 287(g) program, as shown in Figure 1.

Figure 1 shows aliens encountered, arrested, and subsequently removed through the 287(g) program in FYs 2008, 2009, and 2010.

Figure 1: 287(g) Program Encounter, Arrest, and Removal Statistics



*FY 2010 data thru 6/30/2010

However, performance measures that incorporate arrest, detention, and removals within each of the priority levels have not been established.

ICE has emphasized the three-tiered arrest priority levels in the revised MOA. In addition, the process ICE has established for monitoring the priority level of arrests and removals is a positive step towards ensuring that LEAs adhere to the MOA. ICE needs to develop a more comprehensive approach to determine whether the overall goals of the 287(g) program are being achieved. A comparative analysis between data collected by ICE, such as 287(g) program encounters, arrest, and removals within each priority level could provide additional data for ensuring that 287(g) resources are managed effectively.

We have previously made recommendations for ICE to develop procedures to ensure that 287(g) resources are allocated according to ICE's priority framework. However, in the absence of performance measures linked to specific program goals, ICE's success in identifying and removing criminal aliens cannot be fully determined.

287(g) Supervision

Similar to the previous MOA, the revised MOA SOP template provides a general outline of ICE supervisory responsibilities for directing 287(g) program activities. The revised MOA also includes this language: “To establish supervisory and other administrative responsibilities, the SAC/FOD will specify supervisory and other administrative responsibilities in an accompanying agreed-upon SOP.”

At the sites that we visited, 287(g) officers were supervised by lieutenants and sergeants who had received 287(g) training. Because the detention facilities and police departments operate continuously, at least one LEA supervisor was on duty at all times. We were informed that the LEA supervisors were able to contact a 287(g) program ICE supervisor when needed for any immigration-related information.

In our prior report, we made several recommendations for ICE to establish guidance and ensure consistency in 287(g) supervision, as well as to enhance program oversight. ICE needs to implement our recommendations, and continue making efforts to ensure effective supervision of 287(g) officers and immigration enforcement operations.

287(g) Training

In our March 2010 report, we recommended that ICE ensure that basic training for 287(g) students includes coverage of MOAs, and public outreach and complaint procedures. We also determined that ICE instructors were not consistently covering training modules on MOAs, and public outreach and complaint procedures even though this training was included in the curriculum. In addition, the 287(g) training program should be enhanced to include an appropriate level of coverage on immigration benefits, asylum, and victim and witness protections.

The MOA specifies that ICE will provide Immigration Authority Delegation Program (IADP) training tailored to the immigration functions to be performed. The current curriculum includes the following subject areas which were also in effect during our prior review:

- Terms and limitations of the MOA
- Scope of immigration officer authority

-
- Relevant immigration and nationality law
 - Document examination
 - 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 complaints procedures
 - Liability issues
 - Cross-cultural issues
 - Obligations under federal law and the Vienna Convention on Consular Relations

According to ICE officials, recent changes have been made to the 287(g) basic training program. Specifically, ICE extended the immigration documentation examination from six to 12 hours. In addition, two days are dedicated to scenario-based instruction where role players, acting as aliens, are processed by the participants. However, these changes have not impacted those areas of the curriculum that we identified in our prior report as needing improvements.

287(g) Program Training for LEA Supervisors

Our prior review determined that LEA supervisors would be better positioned to provide an effective operating environment for 287(g) officers if they understood the 287(g) program, and the duties and responsibilities of their staff who are participating in the program. At that time, ICE was considering providing LEA supervisor training to improve operating conditions.

In April 2010, we attended the OSLC 2010 LEA Training Conference for LEA managers with supervisory responsibility over 287(g) officers. The purpose of the conference was for ICE to communicate information about the 287(g) program, and for LEAs to share information with representatives from other 287(g) participating jurisdictions. Representatives from 55 of the 71 active 287(g) jurisdictions attended the conference. The conference agenda included MOA review, 287(g) policies and procedures, the Enforcement Case Tracking System (ENFORCE), LEA inspections, civil rights and civil liberties, media relations, and TFO and Detention Models best practices.

LEA participants told us that they thought the training was beneficial, and would prefer it to be an annual event. However, ICE officials said they were not certain whether LEA supervisory

training would continue even though they believed it benefited the program. We included a recommendation in our prior report for ICE to develop training and provide basic program information for LEA managers to increase their understanding and encourage support of 287(g) activities.

Data Collection

The prior MOA required participating jurisdictions to track data and statistical information about implementation of the program. The new MOA does not require the collection of any data other than information from the ENFORCE database. However, ICE reserves the right to request that specific tracking or arrest data be maintained.

Our prior report includes a recommendation for ICE to establish collection and reporting standards that provide objective data to increase monitoring of the methods participating jurisdictions use in carrying out 287(g) functions and their effect on civil liberties. We believe such information would provide additional means to monitor program operations. ICE did not concur with this recommendation, and responded that they will conduct an assessment of the goal of this recommendation to ensure that ICE's 287(g) partners protect the civil liberties of every individual they encounter.

Accuracy of Data in ENFORCE

According to the MOA, ENFORCE is the primary processing system for alien removals, and is the main resource for statistical information for the 287(g) program. In addition, ICE and 287(g) officers use ENFORCE as the primary system to collect alien arrest data. ICE officials told us that data from ENFORCE is used to determine LEAs compliance with ICE arrest priorities.

The MOA requires ICE supervisors to conduct audits of ENFORCE computer system entries and records made by LEA officers. When errors are identified, the ICE supervisor should notify the LEA, and, the LEA is to submit a plan to ensure that steps are taken to correct, modify, or prevent recurring data entry errors. However, ICE did not provide guidance for conducting audits of system entries and records, or for ensuring that the LEAs have implemented an effective process for maintaining data integrity.

Based on the monthly statistical data from SACs and FODs, OSLC prepares a quarterly report, Adherence to ICE Priorities, for both TFO and Detention Models to show statistical data on alien encounters by priority level. ICE began tracking statistics by priority level in December 2009. The April 2010 report included 706 entries that were coded as “no data,” which means that a record was not completed properly.

A comparison of entries coded as “no data” in FYs 2009 and 2010 shows a significant reduction in improperly completed records. Table 4 shows 287(g) data for encounters. For FY 2009, 18,828 entries were coded as “no data.” For FY 2010, entries included under the “no data” code represented less than 1% of total data entries.

Table 4. 287(g) Encounters by Priority Level

| Encounter Code | FY 2009* | Percentage of FY 2009* Total | FY 2010* | Percentage of FY 2010* |
|-----------------------------|----------|------------------------------|----------|------------------------|
| Priority Levels 1, 2, and 3 | 7,508 | 16% | 27,958 | 69% |
| Traffic | 2,643 | 6% | 11,888 | 29% |
| Other Criminal | 18,175 | 38% | 141 | 0% |
| None | 286 | 1% | 494 | 1% |
| No Data | 18,828 | 40% | 101 | 0% |
| FY Total | 47,440 | | 40,582 | |

Source: Office of State and Local Coordination

*Information represents data for first 3 quarters of fiscal year.

Accurate data entry is critical for performance measurements, resource allocation, and statistical tracking. ICE should continue to enhance efforts to improve the accuracy and integrity of statistical data input by the LEAs, and ensure the effectiveness of actions taken by the SAC or FOD to comply with ICE arrest priority levels.

287(g) Officers Need to Be Knowledgeable of Complaint Procedures

Our prior review reported that members of the public were unaware of the complaint process, and that several past MOAs did not include details on how to file a complaint. However, as part of this review, we noted that some LEAs were not fully aware of all the complaint reporting requirements as outlined in the revised MOA.

Appendix B of the MOA requires LEAs to notify ICE OPR and their ICE supervisors immediately of any complaints or allegations against 287(g) officers that may result in employer discipline, criminal investigation or civil lawsuit. Contrary to this requirement, an LEA did not report ongoing criminal proceedings and legal action to OPR or the local SAC office. Specifically, a 287(g) officer had resigned because of allegations of misconduct that were not related to immigration duties. However, the LEA indicated that he did not know that this was a reportable action since it was not related to immigration functions.

The complaint process is a vital tool for ensuring effective monitoring of the integrity of 287(g) immigration enforcement officials in a highly sensitive environment. Therefore, ICE needs to ensure that all 287(g) officers are knowledgeable of all complaint procedures.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #12: Establish and implement a comprehensive process for determining whether 287(g) program goals are being achieved. This should include analyses of encounters, arrests, and removal statistics for each priority level.

Recommendation #13: Establish a follow-up process for SACs and FODs to ensure that actions taken by LEAs to improve their compliance with ICE priority levels are actually working to achieve overall program goals of identifying and removing criminal aliens.

Recommendation #14: Develop a process to review and verify the accuracy of ENFORCE system data entries.

Recommendation #15: Establish a process for ICE supervisor to ensure the effectiveness of plans submitted by LEAs for correcting errors, preventing recurring data entry errors, and maintaining data integrity.

Recommendation #16: Ensure that 287(g) officers and their supervisors are knowledgeable of all complaint procedure requirements for notifying appropriate ICE officials of complaints or allegations involving the violation of the terms of the MOA, or

of any sort that may result in employee discipline or an employee becoming the subject of a criminal investigation or civil lawsuit.

Management Comments and OIG Analysis

ICE Response: ICE concurred with Recommendation 12.

The ICE OSLC 287(g) group is developing its performance measures in coordination with the OBPP. The measures require the collection of monthly data for an entire year in order to establish a baseline to sufficiently analyze the performance of each

287(g) program. ICE has been collecting monthly data for FY 2010, and will have a base line by the end of September. This will allow 287(g) to report on the performance for the first quarter of FY 2011.

On December 9, 2009 a memorandum titled “*Monitoring the Exercise of 287(g) Authority*” was signed advising all Special Agents in Charge (SACs) and Field Office Directors (FODs) of their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities. This guidance memorandum will help to ensure that accurate data is captured.

Pending ICE’s establishment and implementation of a comprehensive process for determining whether its 287(g) program goals are being achieved, we request this recommendation be considered Resolved and Open.

OIG Evaluation: ICE’s response does not identify the type of data to be collected or the process for analyzing such data. This recommendation remains **unresolved and open** pending ICE’s establishment and implementation of a comprehensive process for determining whether 287(g) program goals are being achieved.

ICE Response: ICE concurred with Recommendation 13.

ICE established a follow-up process for SACs and FODs to ensure that actions taken by LEAs are actually working to achieve overall program goals of identifying and removing criminal aliens.

OSLC 287(g) disseminates monthly encounter statistics to the appropriate SAC and FOD field offices for data quality reviews. The SAC/FOD field offices analyze the encounter statistics, correct errors to maintain data integrity, and prepare a quarterly memorandum to the 287(g) headquarters component for analysis. After the analysis is completed, OSLC prepares a memorandum to the Deputy Assistant Secretary for Operations summarizing how the 287(g) Task Force and Jail Enforcement model programs are exercising their delegated authority, consistent with ICE priorities.

On December 9, 2009 a memorandum titled “*Monitoring the Exercise of 287(g) Authority*” was signed advising all Special Agents in Charge (SACs) and Field Office Directors (FODs) of their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities.

Although the 287(g) staff currently located in OSLC will transition to Enforcement and Removal Operations in the near future, the staff will continue to ensure accuracy in data collection for each quarterly review. ICE has established the following follow-up process:

1. A query run is conducted by ICE 287(g) staff to obtain data sets.
2. A 287(g)-dedicated Data Quality Specialist reviews this data on a monthly basis. This review includes a review of data sets for data quality issues, with close attention being paid to Criminal Offense Levels, Processing Dispositions, Criminal Convictions, and Removal Categories.
3. Once errors are identified, Data Correction tasking request(s) are submitted to the appropriate program office for further review, concurrence and, ultimately, distribution to the field.
4. Thereafter, 287(g) data is reviewed weekly to ensure that data corrections are being made. If data has not been created or corrected, those items are targeted for the next monthly data quality review.

Based on the follow-up process established, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: ICE’s response focuses on the results of a data query that does not incorporate a process for SACs and FODs to ensure that actions taken by LEAs result in increased compliance

with ICE priority levels. This recommendation remains **unresolved and open** until ICE establishes and implements such a follow-up process.

ICE Response: ICE concurred with Recommendation 14.

Since October 2008, ICE has refined its processes for reviewing ENFORCE system data entries. 287(g) staff now tasks SAC and FOD offices with the correction of thousands of records to update criminal conviction information, ICE severity levels, and various other data values. 287(g) staff also continues to task SAC and FOD offices with monthly data corrections and reviews.

On December 9, 2009 a memorandum titled “*Monitoring the Exercise of 287(g) Authority*” was signed advising all Special Agents in Charge (SACs) and Field Office Directors (FODs) of their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities.

In support of this memorandum, 287(g) staff disseminates monthly encounter statistics to the appropriate SAC and FOD field offices for data quality reviews. The SAC/FOD field offices analyze the encounter statistics, correct errors to maintain data integrity, and prepare a quarterly memorandum to the 287(g) staff for analysis. Once the analysis is completed, a memorandum is prepared for the Deputy Assistant Secretary for Operations to provide a summary of how the 287(g) Task Force and Jail Enforcement model programs are exercising their delegated authority, consistent with ICE priorities. In order to ensure accuracy in data collection for each quarterly review, ICE established the process described in our response to recommendation 13.

Based on the process established to review and verify the accuracy of ENFORCE system data entries, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: In its response, ICE indicated that it has refined its process for reviewing ENFORCE system data entries. However, ICE did not describe its process for reviewing and verifying the accuracy of ENFORCE system data. This recommendation will remain **resolved and open** our receipt of such information.

ICE Response: ICE concurred with Recommendation 15.

Since October 2008, ICE has refined its processes of reviewing ENFORCE system data entries. ICE also continues to task SAC and FOD offices with monthly data corrections and reviews. Additionally, ICE has created, and continues to refine, a processing guideline which is provided to 287(g) points of contact. This manual details data values to be entered into specific fields, and further identifies fields that are mandatory entry.

ICE has also requested many changes to ENFORCE, forcing 287(g) users to process according to a pre-determined method so that users select data from a limited list of values which match ICE priorities.

ICE has provided Subject Matter Experts to several working groups, whose goal is to develop data collection methods specific to ICE priorities and which impact future data collection of 287(g) user entered data.

Finally, as detailed in our response to recommendation 14, a memorandum dated December 9, 2009 titled "*Monitoring the Exercise of 287(g) Authority*" was signed advising all Special Agents-in-Charge (SACs) and Field Office Directors (FODs) regarding their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities.

Based on the process established for an ICE supervisor to ensure the effectiveness of plans submitted by LEAs for correcting errors, preventing recurring data entry errors, and maintaining data integrity, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: ICE's response did not address this recommendation. This recommendation remains **unresolved and open** pending our receipt of a process for ICE supervisors to ensure the effectiveness of plans submitted by LEAs for correcting errors, preventing recurring data entry errors, and maintaining data integrity.

ICE Response: ICE concurred with Recommendation 16.

ICE's Office of Training and Development (OTD) worked closely with the 287(g) program to add a new course titled "Officer Integrity and Complaint Procedures" to the 287(g) curriculum, which specifically addresses this recommendation. This recommendation is also being addressed in the supervisory training currently being developed.

Based on the establishment of a revised curriculum with new courses, ICE requests this recommendation be considered Resolved and Closed.

OIG Evaluation: The purpose of this recommendation is to ensure that 287(g) participants are knowledgeable of the reporting requirement involving complaints of any sort, pursuant to the Liability and Responsibility section in the MOA. Based on our review of the training materials for ICE's new course titled "Officer Integrity and Complaint Procedures," we concluded that the revised curriculum did not provide sufficient information for ICE to ensure that 287(g) officers were aware of making notifications to ICE officials concerning complaints or allegations involving any sort of behavior that could result in employee discipline, a criminal investigation or civil lawsuit. We consider this recommendation **unresolved and open** pending receipt of a revised curriculum with sufficient information to ensure that 287(g) officers are aware of their responsibility to notify ICE officials of any type of complaint or allegation.

Appendix A

Purpose, Scope, and Methodology

We conducted this review in response to the *Department of Homeland Security Appropriations Act, 2010*, and accompanying House Report 111-157 and Conference Report 111-298. Specifically, our objectives were to determine whether (1) ICE and law enforcement agencies with active 287(g) agreements were complying with the terms of respective agreements, and (2) ICE is effectively using compliance reviews to assess compliance with 287(g) agreements. We also examined ICE's progress in responding to recommendations outlined in our March 2010 report, *The Performance of 287(g) Agreements* (OIG-10-63).

We conducted our fieldwork from March to July 2010 and interviewed LEA officials, 287(g) officers and ICE personnel working with the 287(g) program. We also observed facilities and program activities at seven participating 287(g) program locations. In addition, we traveled to Nashville, TN to observe and evaluate ICE OPR's inspection of the Tennessee Department of Public Safety's 287(g) program in May 2010.

The prior review of the 287(g) program included site visits to LEAs that encompassed the largest number of LEA officers active in the program, and 287(g) arrests and removals. It also included locations with indications of possible violations based on reports of civil rights concerns in media report, court cases, and complaints and investigations. For this review, we selected program sites that had been operating for more than one year. Selection criteria also included (1) number of active LEA officers, (2) number of 287(g) arrests and removals, (3) program model type, and (4) reviews by other oversight bodies. We observed 287(g) activities at:

- Arizona Department of Public Safety, Phoenix, AZ
- Frederick County Sheriff's Office, Frederick, MD
- Herndon Police Department, Herndon, VA
- Mecklenburg County Sheriff's Office / Jail Central, Charlotte, NC
- Prince William County Adult Detention Center, Manassas, VA
- Tennessee Department of Public Safety, Nashville, TN
- York County Sheriff's Office, York, SC

We performed analyses to determine the use of funds allocated for 287(g) compliance inspections. However, we were unable to determine the appropriateness of expenses and obligations against

Appendix A

Purpose, Scope, and Methodology

these funds due to inadequate documentation and procedures that did not adequately track expenditures.

We analyzed operations of the 287(g) Inspections Group to identify ways to improve the effectiveness and efficiency of their review process for evaluating compliance with agreements. We also performed document reviews and analyses of 287(g) agreements, standard operating procedures, directives and policies, budgetary information, training materials, program data, and statistical information regarding the ICE 287(g) program.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Appendix B
Management Comments to the Draft Report

Office of the Chief Financial Officer

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

September 27, 2010

MEMORANDUM FOR: Carlton I. Mann
Assistant Inspector General for Inspections
Office of Inspector General

FROM: Radha C. Sekar 
Chief Financial Officer

SUBJECT: Management Response to OIG Draft, "The Performance of 287(g)
Agreements Update" dated September 10, 2010

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the draft report. We have reviewed and concur with the all recommendations. Attached is our response to each of the 16 recommendations. ICE will continue working to resolve all identified weaknesses.

Should you have questions or concerns, please contact Michael Moy, OIG Portfolio Manager, at (202) 732-6263, or by e-mail at Michael.Moy@dhs.gov.

Attachments

www.ice.gov

Responses for OIG Draft Report Recommendations – 287(g) Update

Recommendation # 1: Take timely and appropriate actions to implement OIG recommendations intended to strengthen management controls and improve oversight of 287(g) operations.

ICE Response: ICE concurs with the recommendation. As the responses below indicate, ICE has already taken significant actions to strengthen management controls over 287(g) operations. Additionally, the ICE OSLC 287(g) group (OSLC) has taken aggressive steps to ensure accuracy in data collection, with a follow-up process that includes the dissemination of monthly encounter statistics to the appropriate Special Agent-in-Charge (SAC) and Field Office Director (FOD) field offices for data quality reviews. OSLC is also working towards developing its performance measures in coordination with the Office of Budget Performance and Planning (OBPP). These measures require the collection of monthly data for one fiscal year to establish a baseline to sufficiently analyze the performance of each 287(g) program. OSLC has been collecting monthly data for FY 2010, and will have a base line by the end of September. This will allow OSLC to report on its performance for the first quarter of FY 2011. These changes were initiated in the timeliest fashion with the intention of strengthening management controls of the program and improving oversight of the program.

Based on ICE's actions to take timely and appropriate actions to implement OIG recommendations, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 2: Establish an appropriate structure along with sufficient internal controls for the management and oversight of 287(g) funds to ensure appropriate use.

ICE Response: ICE concurs with the recommendation. ICE Office of the Chief Financial Officer (OCFO) will establish the budget structure so that the Office of Professional Responsibility (OPR) can implement a new 287(g) program office structure. The new structure will be fully implemented by October 1, 2010.

A certified program manager (PM) position to oversee all aspects of the OPR 287(g) program was announced (Vacancy Announcement LAQ-OPR-386239-MD-330) on September 17, 2010. The PM will oversee the planning, direction, and timely execution of the program; determine goals and objectives; working with OBPP, develop measures that evaluate performance; make recommendations for program improvement; manage all resources; and manage organizational changes as well as changes to the content of the program.

The new structure includes a staff of ten Special Agents working from OPR field offices who are solely dedicated to the 287(g) program. These agents will work in alignment with the staff of twelve 287(g) personnel at OPR Headquarters and report to the PM.

Responses for OIG Draft Report Recommendations – 287(g) Update

Based on ICE's establishment of a new structure for the management and oversight of 287(g) funds to ensure appropriate use, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 3: Develop a process to ensure that adequate supporting documentation is maintained to track and monitor the allocation, obligation, and expenditure of funds.

ICE Response: ICE concurs with the recommendation. A Fiscal Year (FY) 2011 spend plan was formulated in conjunction with an operational plan that outlines the requirements and funding needed in support of the ICE OPR 287(g) program. On October 1, OCFO will establish a specific organizational code for the 287(g) program office that ensures only payroll and general expenditures in support of the program are charged to the 287(g) program. The OPR PM will be charged with tracking all obligations and expenditures of 287(g) funds to ensure the funds are used for the appropriate and stated purpose.

Based on ICE's development of a process to ensure that adequate supporting documentation is maintained to track and monitor funds, we request this recommendation be considered Resolved and Closed.

Recommendation # 4: Ensure an appropriate segregation of funds by program area.

ICE Response: ICE concurs with the recommendation. For FY 2011, ICE has established a specific organizational code in its financial management system that allows the 287(g) program office to ensure only payroll and general expenditures in support of the program are charged to the 287(g) program. The PM will be charged with tracking all obligations and expenditures (to include payroll) are used for the appropriate and stated purpose.

Based on ICE's actions to ensure an appropriate segregation of funds by program area, we request this recommendation be considered Resolved and Closed.

Recommendation # 5: Conduct a review of 287(g) funds allocated for inspections to ensure that these funds were used as intended.

ICE Response: ICE concurs with the recommendation. ICE has completed a comprehensive review of 287(g) funds expenditures for FY 2009 and FY 2010. All 287(g) program requirements have been properly coded to either the 287(g) program or OPR's base program funding for FY 2010. Further analysis of FY 2009 expenditures has been completed and the ICE Burlington Finance Center will be processing actions that will result in the FY 2009 expenditures being an accurate reflection of costs incurred in support of the 287 (g) program. These actions and adjustments will be completed by September 25, 2010.

Also, an FY 2011 spend plan was formulated in conjunction with an operational plan that outlines the requirements and funding needed in support of the 287(g) program. OCFO will monitor budget performance and the OPR PM will be charged with executing all

Responses for OIG Draft Report Recommendations – 287(g) Update

budget obligations and expenditures of 287(g) funds to ensure the funds are used for the appropriate and stated purpose.

Based on the comprehensive review conducted and reallocation of funds, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 6: Re-evaluate the current staffing strategy of using man-hours instead of dedicated positions for conducting 287(g) inspections.

ICE Response: ICE concurs with the recommendation. As a result of a re-evaluation, ICE will use dedicated positions in support of the 287(g) program, and will no longer use the man-hours model. OCFO will monitor budget performance and the OPR PM will be charged with executing all budget obligations and expenditures, including payroll, to ensure funds are used for the appropriate and stated purpose. Additionally, ICE OPR created and implemented an FY 2011 operational plan that outlines the program requirements and resources needed to execute the plan.

Based on our re-evaluation and decision to use dedicated positions in its staffing strategy, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 7: Re-evaluate the current staffing strategy for the 287(g) Inspections Group, including reporting lines and field employees who are not fully dedicated to conducting 287(g) inspections.

ICE Response: ICE concurs with the recommendation. OCFO established the budget structure so that OPR can implement a new 287(g) program office structure. This new structure will be fully implemented by October 1, 2010.

As detailed in our response to Recommendation 2, the PM position will oversee all aspects of the 287(g) program and was announced (Vacancy Announcement LAQ-OPR-386239-MD-330) on September 17, 2010.

Also, as discussed earlier, the new structure includes a staff of ten Special Agents solely dedicated to the 287(g) program and working from OPR field offices.

Based on ICE's establishment and implementation of a new 287(g) program office structure, we request this recommendation be considered Resolved and Closed.

Recommendation # 8: Develop a process to ensure that inspections are staffed with field agents who have sufficient knowledge of the 287(g) program, and possess the necessary skills for effective performance.

ICE Response: ICE concurs with the recommendation. The ICE has planned a training session for all new 287(g) employees during the first quarter of FY 2011. Additionally, by having a permanent staff dedicated to conducting 287(g) inspections, staff members

Responses for OIG Draft Report Recommendations – 287(g) Update

will be able to receive on-the-job training from other 287(g) employees during the first half of FY 2011 and beyond.

Based on ICE's development of a process to ensure that inspections are staffed with field agents who have sufficient knowledge of the 287(g) program, and possess the necessary skills for effective performance, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 9: Ensure that staff members paid from 287(g) funds actually participate in 287(g) compliance reviews.

ICE Response: ICE concurs with the recommendation. Under the new ICE inspections structure, all staff members paid from 287(g) funds will be dedicated to the 287(g) program.

As we detailed in our response to Recommendation 2, OFCO will oversee budget execution and OPR PM will oversee execution of the 287(g) program.

Based on the new structure, ICE will ensure that staff are paid from 287(g) funds actually participate in 287(g) compliance reviews. Therefore, we request this recommendation be considered Resolved and Closed.

Recommendation #10: Ensure that the 287(g) Inspections Group is notified of actions taken as a result of recommendations in their inspection reports.

ICE Response: ICE concurs with the recommendation. As of September 2010, ICE OSLC began to provide OPR the responses from the field offices regarding issues, deficiencies, concerns and recommendations highlighted in 287(g) inspection reports. The OPR 287(g) Inspections Section will monitor and document these responses and validate the stated corrective actions during the next scheduled inspection or during a follow-up inspection, if one is warranted.

Based on our actions to ensure the ICE 287(g) Inspections Group is notified of actions taken as a result of recommendations in their inspection reports, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 11: Develop a process to ensure that planned inspections include a review of actions taken to address previously identified deficiencies and other issues, as needed.

ICE Response: ICE concurs with the recommendation. ICE OPR 287(g) Inspections Section will review the field actions taken in response to previously identified deficiencies and issues prior to its next scheduled inspection, and verify their completion during the inspection process. If a follow-up inspection is warranted, one will be conducted by the OPR 287(g) Inspections Section.

Responses for OIG Draft Report Recommendations – 287(g) Update

Based on our development of a process to ensure that planned inspections include a review of actions taken to address previously identified deficiencies and other issues, as needed, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 12: Establish and implement a comprehensive process for determining whether 287(g) program goals are being achieved. This should include analyses of encounters, arrests, and removal statistics for each priority level.

ICE Response: ICE concurs with the recommendation. The ICE OSLC 287(g) group is developing its performance measures in coordination with the OBPP. The measures require the collection of monthly data for an entire year in order to establish a baseline to sufficiently analyze the performance of each 287(g) program. ICE has been collecting monthly data for FY 2010, and will have a base line by the end of September. This will allow 287(g) to report on the performance for the first quarter of FY 2011.

On December 9, 2009 a memorandum titled “*Monitoring the Exercise of 287(g) Authority*” was signed advising all Special Agents in Charge (SACs) and Field Office Directors (FODs) of their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities. This guidance memorandum will help to ensure that accurate data is captured.

Pending ICE’s establishment and implementation of a comprehensive process for determining whether its 287(g) program goals are being achieved, we request this recommendation be considered Resolved and Open.

Recommendation # 13: Establish a follow-up process for SACs and FODs to ensure that actions taken by LEAs to improve their compliance with ICE priority levels are actually working to achieve overall program goals of identifying and removing criminal aliens.

ICE Response: ICE concurs with the recommendation. ICE established a follow-up process for SACs and FODs to ensure that actions taken by LEAs are actually working to achieve overall program goals of identifying and removing criminal aliens.

OSLC 287(g) disseminates monthly encounter statistics to the appropriate SAC and FOD field offices for data quality reviews. The SAC/FOD field offices analyze the encounter statistics, correct errors to maintain data integrity, and prepare a quarterly memorandum to the 287(g) headquarters component for analysis. After the analysis is completed, OSLC prepares a memorandum to the Deputy Assistant Secretary for Operations summarizing how the 287(g) Task Force and Jail Enforcement model programs are exercising their delegated authority, consistent with ICE priorities.

Responses for OIG Draft Report Recommendations – 287(g) Update

On December 9, 2009 a memorandum titled “*Monitoring the Exercise of 287(g) Authority*” was signed advising all Special Agents in Charge (SACs) and Field Office Directors (FODs) of their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities.

Although the 287 (g) staff currently located in OSLC will transition to Enforcement and Removal Operations in the near future, the staff will continue to ensure accuracy in data collection for each quarterly review. ICE has established the following follow-up process:

1. A query run is conducted by ICE 287(g) staff to obtain data sets.
2. A 287(g)-dedicated Data Quality Specialist reviews this data on a monthly basis. This review includes a review of data sets for data quality issues, with close attention being paid to Criminal Offense Levels, Processing Dispositions, Criminal Convictions, and Removal Categories.
3. Once errors are identified, Data Correction tasking request(s) are submitted to the appropriate program office for further review, concurrence and, ultimately, distribution to the field.
4. Thereafter, 287(g) data is reviewed weekly to ensure that data corrections are being made. If data has not been created or corrected, those items are targeted for the next monthly data quality review.

Based on the follow-up process established, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 14: Develop a process to review and verify the accuracy of ENFORCE system data entries.

ICE Response: ICE concurs with the recommendation. Since October 2008, ICE has refined its processes for reviewing ENFORCE system data entries. 287(g) staff now tasks SAC and FOD offices with the correction of thousands of records to update criminal conviction information, ICE severity levels, and various other data values. 287(g) staff also continues to task SAC and FOD offices with monthly data corrections and reviews.

On December 9, 2009 a memorandum titled “*Monitoring the Exercise of 287(g) Authority*” was signed advising all Special Agents in Charge (SACs) and Field Office Directors (FODs) their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities.

In support of this memorandum, 287(g) staff disseminates monthly encounter statistics to the appropriate SAC and FOD field offices for data quality reviews. The SAC/FOD field offices analyze the encounter statistics, correct errors to maintain data integrity, and prepare a quarterly memorandum to the 287(g) staff for analysis. Once the analysis is

Responses for OIG Draft Report Recommendations – 287(g) Update

completed, a memorandum is prepared for the Deputy Assistant Secretary for Operations to provide a summary of how the 287(g) Task Force and Jail Enforcement model programs are exercising their delegated authority, consistent with ICE priorities. In order to ensure accuracy in data collection for each quarterly review, ICE established the process described in our response to recommendation 13.

Based on the process established to review and verify the accuracy of ENFORCE system data entries, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 15: Establish a process for ICE supervisor to ensure the effectiveness of plans submitted by LEAs for correcting errors, preventing recurring data entry errors, and maintaining data integrity.

ICE Response: ICE concurs with the recommendation. Since October 2008, ICE has refined its processes of reviewing ENFORCE system data entries. ICE also continues to task SAC and FOD offices with monthly data corrections and reviews. Additionally, ICE has created, and continues to refine, a processing guideline which is provided to 287(g) points of contact. This manual details data values to be entered into specific fields, and further identifies fields that are mandatory entry.

ICE has also requested many changes to ENFORCE, forcing 287(g) users to process according to a pre-determined method so that users select data from a limited list of values which match ICE priorities.

ICE has provided Subject Matter Experts to several working groups, whose goal is to develop data collection methods specific to ICE priorities and which impact future data collection of 287(g) user entered data.

Finally, as detailed in our response to recommendation 14, a memorandum dated December 9, 2009 titled "*Monitoring the Exercise of 287(g) Authority*" was signed advising all Special Agents-in-Charge (SACs) and Field Office Directors (FODs) regarding their responsibility for ensuring that law enforcement agency (LEA) partners adhere to the terms of the revised 287(g) Memorandum of Agreement (MOA) and exercise the delegated authority consistent with ICE priorities.

Based on the process established for an ICE supervisor to ensure the effectiveness of plans submitted by LEAs for correcting errors, preventing recurring data entry errors, and maintaining data integrity, ICE requests this recommendation be considered Resolved and Closed.

Recommendation # 16: Ensure that 287(g) officers are knowledgeable of all complaint procedure requirements for notifying appropriate ICE officials of complaints or allegations involving the violation of the terms of the MOA, or of any sort that may result in employee discipline or an employee becoming the subject of a criminal investigation or civil law suit.

Responses for OIG Draft Report Recommendations – 287(g) Update

ICE Response: ICE concurs with the recommendation. ICE’s Office of Training and Development (OTD) worked closely with the 287(g) program to add a new course titled “Officer Integrity and Complaint Procedures” to the 287(g) curriculum, which specifically addresses this recommendation. This recommendation is also being addressed in the supervisory training currently being developed.

Based on the establishment of a revised curriculum with new courses, ICE requests this recommendation be considered Resolved and Closed.

Appendix C

Recommendations from Prior Report

Status of Recommendations From Prior OIG Report, *The Performance of 287(g) Agreements, dated March 2010*

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.

ICE Response: ICE conducts ongoing quality reviews on data input by 287(g) officers in ICE systems. The comprehensive quality review process is documented through two memoranda signed by the Deputy Assistant Secretary. *Monitoring the Exercise of 287(g) Authority*, dated December 9, 2009, and *Field Guidance on Monitoring the Exercise of 287(g) Authority*, dated January 19, 2010, advise all Special Agents in Charge (SAC) and Field Office Directors (FOD) of their responsibility in ensuring law enforcement agencies (LEAs) adhere to the terms of their Memorandum of Agreement (MOA) with ICE and exercise their delegated authority consistent with ICE priorities. On a monthly basis, the LEAs are tasked with reviewing their statistics, and submitting them to ICE. ICE continuously monitors this information for data quality, and gathers statistics on encounters respective to the Criminal Threat Levels.

OIG Response: The intent of this recommendation is to focus on the collaboration between ICE and LEAs in identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community. Documents provided by ICE outline a process for collecting and maintaining alien arrest data. However, ICE has not identified a process for collecting and maintaining related alien detention and removal data in each priority level. This recommendation will remain **resolved and open** pending our receipt of information describing such a process.

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

ICE Response: ICE conducts ongoing quality reviews on data input by 287(g) officers in ICE systems. The comprehensive quality review process is documented in two memos, *Monitoring the Exercise of 287(g) Authority* and *Field Guidance on Monitoring the Exercise of 287(g) Authority*. On a monthly basis, the LEAs are tasked with reviewing their statistics, and submitting them to ICE. ICE continuously monitors for data quality and gathers statistics on encounters respective to the Criminal Sensitivity Levels.

ICE also includes detailed descriptions of Criminal Sensitivity Levels in Appendix D of each MOA with an LEA. This information is provided to ensure resources are managed effectively. ICE requires the LEAs to manage their resources dedicated to 287(g) authority under the MOA. Appendix D reflects the categories of aliens that are a priority for arrest and detention with the highest priority being Level 1 criminal aliens.

OIG Response: The referenced memoranda and quarterly summaries provide a framework for ICE to monitor the exercise of 287(g) authority by capturing statistical information that will assist in measuring adherence to ICE priorities. As part of the data review process, each

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Recommendations from Prior Report

SAC/FOD provides a monthly memo to the Office of Investigations (OI) and Office of Detention and Removal Operations (DRO) detailing, in part, how the 287(g) program is working in relation to ICE priorities. If the 287(g) program is not operating according to ICE priorities, the memo should address what actions are being taken by the Special Agents in Charge (SAC) and Field Office Directors (FOD) to ensure compliance with ICE priorities. In order to strengthen this process, follow-up procedures should be developed and implemented to ensure that measures taken by the SAC/FOD result in increased compliance with ICE priorities. In addition, to better ensure the accuracy of statistics used to determine compliance with ICE priorities, a corrective action plan should be developed to minimize entries coded as “No Data,” which represents a record that was not completed properly.

Our March 2010 report identified the need for performance measures with specific target levels for arrest, detention, and removal priority levels. The December 9, 2009 response ICE provided indicated that OSLC has drafted a revised performance measure that will consider the nature of the criminal offense based on the severity of the crime, and will establish a baseline and communicate targets for each severity level. These targets will reflect both prioritizations based on crime level, as well as average volume of encounters within each crime level. However, additional information regarding target levels was not included as part of the June 2010 status of recommendations provided by ICE.

This recommendation will remain **unresolved and open** pending our receipt of additional documentation that outlines ICE’s efforts to further identify and ensure adherence to ICE priority levels.

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

ICE Response: ICE provides a draft of the *Curriculum Design Plan Report, ICE Training for Managing 287(g) Agents and Officers, Office of Training and Development*, dated May 2010 for OIG Review. Implementation of this new curriculum is scheduled for the first quarter of Fiscal Year 2011. In addition, ICE provides a draft of the *Office of State and Local Coordination, 287(g) Communications Plan, FY 2011 to 2012, v 0.12*, for OIG review.

OIG Response: This recommendation will remain **resolved and open** pending our receipt of the final versions of these documents.

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

ICE Response: Operational responsibilities are carried out by OI and DRO. ICE will construct a cost model to reflect the need to assign supervisors to field offices to address the requirement of overseeing state and local law enforcement officers with 287(g) authorities. Due to the wide differences between the supervisory requirements, the model will have two categories to include 287(g) officers operating under the jail model, and

Appendix C

Recommendations from Prior Report

those officers operating under the task force model. While a jail setting generally lends itself to standardization, the focus, scope, and activity of task forces are too variable to apply standard requirements.

The ICE Office of Budget will work with DRO and OI to formulate standard ratios for supervising jail settings, and, on a case by case basis, develop individual task force needs. As new task forces are created, a specific 287(g) supervisory requirement will be part of the planning process. As needed, individual field offices will have the ability to justify additional requirements for either model beyond the established requirement.

As an integral part of this plan, ICE will institute a time to revisit these requirements and adjust them based on actual experience. Also, as jurisdictions and the number of 287(g) officers change, these changes will be included in supervisory requirements planning for the following budget.

OIG Response: The ICE response describes the development of a cost model to reflect the need to assign supervisors for overseeing 287(g) officers. Since a cost model focuses on converting resource data into cost data, ICE needs to also develop a staffing model that addresses a sufficient quantity and quality of workforce to supervise 287(g) officers. This recommendation will remain **unresolved and open**.

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

ICE Response: ICE provides drafts of the *Curriculum Design Plan Report, ICE Training for Managing 287(g) Agents and Officers, Office of Training and Development*, dated May 2010, and *Office of State and Local Coordination, 287(g) Communications Plan, FY 2011 to 2012, v 0.12*, for OIG review. Implementation of this new curriculum is scheduled for the first quarter of Fiscal Year 2011. Through this documentation, ICE ensures that 287(g) staff and field personnel provide a cohesive and standardized message.

OIG Response: The ICE response indicates that the purpose of the new curriculum is to ensure that 287(g) staff and field personnel provide a cohesive and standardized message. However, the intent of this recommendation focuses on the personnel delegated responsibility for supervising 287(g) officers. We noted that nonsupervisory ICE personnel without the technical knowledge were performing supervisory tasks over 287(g) officers. Therefore, ICE needs to provide information regarding controls to ensure that only authorized staff with appropriate knowledge, skills, and abilities serve in a supervisory capacity over 287(g) officers. This recommendation will remain **unresolved and open** pending our receipt of such information.

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

Appendix C

Recommendations from Prior Report

community-based immigration enforcement activities; and (3) performance feedback requirements for 287(g) officers.

ICE Response: Responsibilities in the area of training are carried out by the Office of Training and Development (OTD). OTD is currently working with the Office of State and Local Coordination (OSLC) in the development of curriculum for ICE supervisors and program managers who work with 287(g) officers in the field. This curriculum will address all of these issues, and should be implemented within the next six months.

Under consideration is a program to assign all 287(g) IADP graduates to a field training program and placed on probation for a period of twelve months after graduation. During the probationary period, the graduates will be closely monitored by ICE supervisors and/or program managers, and should meet individually with each other at least bi-weekly to discuss performance, goals and any necessary remedial/corrective action or training.

Additionally, ICE's comprehensive quality review process is documented through two memoranda, *Monitoring the Exercise of 287(g) Authority*, dated December 9, 2009, and *Field Guidance on Monitoring the Exercise of 287(g) Authority*, dated January 19, 2010. These memos advise all SACs and FODs of their responsibility in ensuring LEAs adhere to the terms of their MOA with ICE, and exercise their delegated authority consistent with ICE priorities. ICE is also providing the following documentation for OIG Review in order to assess how ICE addresses potential inconsistencies in supervision of the 287(g) officers and the process for data quality reviews:

1. *DRAFT: Curriculum Design Plan Report, ICE Training for Managing 287(g) Agents and Officers, Office of Training and Development (OTD), May 2010*
2. *DRAFT: Office of State and Local Coordination, 287(g) Communications Plan, FY2011-2012, v 0.12*
3. *DRAFT Policy: Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority*
4. *DRAFT Policy: Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority*
5. *287(g) Task Force Model Adherence to ICE Priorities, April 16, 2010"*
6. *287(g) Jail Enforcement Model Adherence to ICE Priorities, April 30, 2010*

OIG Response: This recommendation is **resolved and open** pending receipt of the final versions of the referenced performance management policies, and the outcome of considerations for a field training program.

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Recommendations from Prior Report

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.

ICE Response: ICE's comprehensive quality review process is documented through two memoranda signed by the Deputy Assistant Secretary, Mr. Alonzo Peña. The memos: *Monitoring the Exercise of 287(g) Authority, Dec 9, 2009*, and *Field Guidance on Monitoring the Exercise of 287(g) Authority, Jan 19, 2010*, advise all SACs and FODs of their responsibility in ensuring LEAs adhere to the terms of their MOA with ICE and exercise their delegated authority consistent with ICE priorities. These memos are both provided for OIG review.

ICE provides the *DRAFT Policy: Review, Suspension, and Termination of 287(g) Memoranda of Agreement*, which addresses the methodology for determining whether to modify, extend or terminate agreements. In addition, two examples of Quarterly Reviews are provided for OIG review, entitled *287(g) Task Force Model Adherence to ICE Priorities*, dated April 16, 2010, and *287(g) Jail Enforcement Model Adherence to ICE Priorities*, dated April 30, 2010.

OIG Response: This recommendation is **resolved and open** pending our receipt of the final policy regarding the review, suspension and termination of 287(g) MOAs.

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

ICE Response: ICE is currently in the process of finalizing guidance to the LEAs to establish and implement steering committees with external stakeholders. This guidance and implementation details will be provided to the LEAs with sufficient lead time so they can execute by the first quarter of FY 2011.

OIG Response: This recommendation is **resolved and open** pending receipt of the referenced guidance.

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

ICE Response: ICE provides the *DRAFT Policy: Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority* for OIG review. Final signature of this policy is scheduled for the third quarter of FY 2010.

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Recommendations from Prior Report

OIG Response: This recommendation will remain **resolved and open** pending receipt of the final version of the referenced policy document.

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 Response: Prior to becoming a 287(g) officer, candidates must complete a comprehensive questionnaire providing information regarding any past complaints or allegations/investigations. ICE provides the *287(g) Partnership Questionnaire Form 70-009 form*, dated April 2010, for OIG review. Once the law enforcement officer is an active 287(g) officer, their files are maintained by the LEA, and are continuously monitored and reviewed by the OPR during regular inspections. ICE provides Appendix B, *Complaint Procedure*, and the *Nomination of Personnel* sections of the MOA for OIG review. All complaints received by ICE are referred to the Joint Intake Center for further investigation. The *DRAFT Policy, Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority* ensures frequent and consistent monitoring. In addition, the *DRAFT Policies* entitled *Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority* directive, and *Review, Suspension, and Termination of 287(g) Memoranda of Agreement* directive make the review of complaints, allegations, and investigations involving individual LEA personnel part of the suitability and recertification process for individual officers and the review of the MOA, as a whole.

OIG Response: This recommendation is **resolved and open** pending receipt of the final referenced policies and directives.

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

ICE Response: ICE provides full time resources to support the implementation of 287(g) programs at the LEA level. ICE also ensures that these resources are utilized in alignment with ICE priorities and Criminal Sensitivity Levels 1, 2, and 3.

ICE's comprehensive quality review process is documented through two memoranda signed by the Deputy Assistant Secretary. The memos, *Monitoring the Exercise of 287(g) Authority* and *Field Guidance on Monitoring the Exercise of 287(g) Authority*, advise all SACs and FODs of their responsibility in ensuring law enforcement agencies adhere to the terms of their MOA with ICE and exercise their delegated authority consistent with ICE priorities.

ICE understands that each LEA has customized local standards of operation, and encourages LEAs to share their lessons learned and best practices amongst one another. A 287(g) LEA Training Conference was held in April 2010 to have LEAs share their customized operations, yet ensure that LEAs follow ICE priorities, and are compliant with MOA requirements.

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Two examples of Quarterly Reviews are also provided for OIG review, entitled *287(g) Task Force Model Adherence to ICE Priorities* and *287(g) Jail Enforcement Model Adherence to ICE Priorities*.

OIG Response: This recommendation addresses the variations when 287(g) officers exercise their immigration enforcement authority. For example, we observed that some jail models screen only convicted criminals, whereas others screen everyone entering the facility. Also, some task force officers inquired about immigration status during traffic stops while others only did so during ICE-led investigations. The referenced memoranda direct managers to supervise the officers and ensure compliance with the MOA; however, neither the MOA nor the memoranda address variances in operational procedures. This recommendation will remain **unresolved and open**.

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

ICE Response: Responsibilities in the area of inspections and audits of the program are carried out by OPR. Currently, ICE has 62 program sites with 287(g) authority. To date, OPR has completed 41 inspections. By the end of FY 2011, OPR anticipates completing a total of 72 program site inspections. OPR plans to conduct a total of 24 program site inspections in FY 2011. OPR expects the number of 287(g) inspections to increase in FY 2012 as vacancies are filled and staffing levels increase.

After this initial inspection cycle, OPR will re-evaluate the feasibility and appropriateness of increasing its frequency of OPR 287(g) inspections, and report its findings to the OIG. The OPR inspections scheduling process is determined by various factors; including but not limited to:

- Known age of the program
- Known vulnerabilities
- Size of the program
- Time since last inspection
- Leads from alleged misconduct/investigations and/or
- Special requests from ICE management

OIG Response: This recommendation is **resolved and open** pending our receipt of planned FY 2011 inspections, and an evaluation of the frequency of inspections.

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.

ICE Response: The DHS Civil Rights and Civil Liberties (CRCL) group is a stakeholder on the ICE 287(g) Advisory Board. CRCL's participation in the OSLC Advisory Board was designed to address the past performance of each LEA, including civil rights and civil

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Recommendations from Prior Report

liberties factors, as part of the site selection and MOA review processes. Also, ICE asked CRCL to present during the April 2010 287(g) LEA Training Conference as a keynote speaker. The presentation was geared towards raising awareness of the CRCL mission, and review how 287(g) processes incorporate CRCL reviews.

ICE provides the *Office of State and Local Coordination, 287(g) Program Strategic Plan, FY2011-2012, Draft, v 0.3*, for OIG review. This documentation addresses CRCL in the Advisory Committee Section. Also of note is that by the first quarter of FY 2011, an OSLC Advisory Committee Governance Structure will be developed to outline and document roles and responsibilities for the OSLC Advisory Committee.

The draft directive, *Review, Suspension, and Termination of 287(g) Memoranda of Agreement*, addresses this recommendation by including such factors as credible allegations of misconduct, negligence, discrimination on account of race or ethnicity, or other civil rights violations by officers of a participating LEA in ICE's periodic and ad hoc reviews of 287(g) MOAs.

OIG Response: The focus of this recommendation is to address past performance of each LEA, including civil right and civil liberties factors, as part of the site selection and MOA review process. This issue is not addressed in the ICE response or in supporting documentation. In addition, the specific role that CRCL will play as part of the OSLC Advisory Board is currently not included in the OSLC Strategic Plan. Also, a requirement for applicants to provide information about past and pending civil rights allegations has not been addressed. This recommendation remains **unresolved and open**.

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.

ICE Response: CRCL is a stakeholder on the ICE 287(g) Advisory Board. CRCL's participation in the OSLC Advisory Board was designed to address the past performance of each LEA, including civil rights and civil liberties factors, as part of the site selection and MOA review processes.

Additionally, ICE asked CRCL to present during the April 2010 287(g) LEA Training Conference as a keynote speaker. The presentation was geared towards raising awareness of the CRCL mission, and how 287(g) processes incorporate CRCL reviews.

ICE provides the *Office of State and Local Coordination, 287(g) Program Strategic Plan, FY 2011-2012, Draft, v 0.3* for OIG review, in particular referring to Appendix B, pg. A-7, which describes the roles and responsibilities of the Advisory Board. Also, by the first quarter of FY 2011, an OSLC Advisory Committee Governance Structure will be developed to outline and document roles and responsibilities for the OSLC Advisory Committee.

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OIG Response: The OSLC Strategic Plan outlines the roles and responsibilities of the Advisory Board in general terms. This recommendation will remain **resolved and open** pending our receipt of the OSLC Advisory Committee Governance Structure documenting its roles and responsibilities, and specific duties and responsibilities for CRCL involvement in the MOA review process regarding LEAs past or present involvement in civil rights and civil liberties issues.

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 Response: The DHS Civil Rights and Civil Liberties (CRCL) group is a stakeholder on the ICE 287(g) Advisory Board. This Advisory Board is made up of representatives from all ICE components. Also, ICE asked CRCL to present during the April 2010 287(g) LEA Training Conference as a keynote speaker. The presentation was geared towards raising awareness of the CRCL mission, and review how 287(g) processes incorporate CRCL reviews.

In addition, ICE provides the “*Office of State and Local Coordination, 287(g) Program Strategic Plan, FY2011-2012, Draft, v 0.3*” for OIG review, in particular, referring to Appendix B, pg. A-7, which describes, in detail, the roles and responsibilities of the Advisory Board. Also, by the first quarter of FY 2011, an OSLC Advisory Committee Governance Structure will be developed to outline and document roles and responsibilities for the OSLC Advisory Committee.

OIG Response: The focus of this recommendation is the availability of adequate resources for field offices to properly supervise newly approved LEAs for participation in the 287(g) program. However, documents referenced in ICE’s response do not address this issue. ICE’s initial response to this recommendation made reference to an Internal Advisory Committee that would review and assess field office recommendations about pending 287(g) MOA applications. However, the current ICE response does not include any information regarding committee procedures that would be responsive to this recommendation, which remains **resolved and open**.

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

ICE Response: ICE does not concur, as stated in the original response.

OIG Response: ICE’s initial response to this recommendation included their conduct of an assessment of the goal of this recommendation to ensure that ICE’s 287(g) partners protect

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the civil liberties of every individual they encounter. This recommendation remains **unresolved and open** pending our receipt of the results of the assessment described by ICE.

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

ICE Response: Responsibilities in the area of training are carried out by OTD. On the first day of training, attorney instructors review the core terms of the MOA with the 287(g) students. The students are also provided with a hand out which clearly illustrates the MOA generalities in the boiler plate format. The students are provided the opportunity to ask specific questions pertaining to the MOA, and they are also encouraged to seek further guidance from their partner organization supervisors and ICE supervisors and/or program managers in regards to the specific language of their agency-specific MOA and the terms of the agreement as they relate to their individual 287(g) duties.

Public outreach principles are covered extensively in cross cultural communications. Instruction in complaint procedures is also covered on the first day of training, and further addressed during the officer integrity block of instruction.

OIG Response: We documented in our initial report that although the 287(g) basic training materials and course schedule include MOAs, public outreach and complaint procedures, we noted that ICE instructors had not consistently delivered these training modules. Therefore, the intent of our recommendation is for ICE to ensure that these materials are actually provided to 287(g) participants during basic training. This recommendation remains **unresolved and open**.

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.

ICE Response: ICE provides the *DRAFT: Guidelines for Overall Structure of 287(g) Post Academy Training Program* for OIG review, as well as the *DRAFT: Curriculum Design Plan Report, ICE Training for Managing 287(g) Agents and Officers, Office of Training and Development*, dated May 2010.

OIG Response: This recommendation remains **resolved and open** pending verification of a final job training program manual, as implemented.

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.

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ICE Response: Responsibilities in the area of training are carried out by OTD. The special status aliens and the victim assistance elements of the 287(g) basic training program (IADP) include an overview of the asylum and victim and witness protections. Students are instructed in the proper methods for assisting victims of human trafficking or abuse or other vulnerable aliens. The court's holding in *American Baptist Churches v. Thornburg* is specifically explained and discussed in the alternate order of removal block of instruction. The assessment of a student's ability to meet the training objectives throughout the entire course is measured in multiple choice exams and a series of hands-on, realistic, scenario-based practical exercises conducted in the final week of training.

OIG Response: ICE's response describes the training program that was in effect during our review. Changes to 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 have not been implemented. This recommendation remains **unresolved and open**.

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.

ICE Response: ICE provides the draft policy, *Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority*, for OIG review.

OIG Response: This recommendation remains **resolved and open** pending our receipt of final policy from ICE, as implemented.

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.

ICE Response: ICE provides the draft, *Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority*, and *Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority* for OIG review. These draft directives fulfill this recommendation that ICE designate responsibilities and provide guidance for issuing and enforcing revocation notices for designated immigration officers who do not complete required training.

OIG Response: This recommendation remains **resolved and open** pending our receipt of the final directives, as implemented.

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

ICE Response: Responsibilities in the area of training are carried out by OTD. The 287(g) students are advised about the proper utilization of interpreters during the Alien Processing and I-213 blocks of instruction in the Immigration Authority Delegation

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Program (IADP). Additionally, the use of interpreters is covered in depth during the Sworn Statements block of instruction.

OIG Response: This recommendation remains **unresolved and open**. Instructions referenced in the ICE response do not provide detailed guidelines on the circumstances in which interpreter support should be used to assist with immigration duties and responsibilities.

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

ICE Response: ICE provides the *DRAFT: Office of State and Local Coordination, 287(g) Communications Plan, FY 2011-2012, v 0.12*, for OIG review.

OIG Response: This recommendation remains **resolved and open** pending our receipt of the final communications plan as implemented.

Recommendation #27: Ensure the accuracy of information disseminated to the public about the goals of the 287(g) program, its various operations, and how immigration enforcement activities are carried out in the actual working environment.

ICE Response: ICE provides the *DRAFT: Office of State and Local Coordination, 287(g) Communications Plan, FY2011-2012, v 0.12*, for OIG review.

OIG Response: This recommendation remains **resolved and open** pending our receipt of the final communications plan as implemented.

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.

ICE Update: Responsibilities in the area of training are carried out by OTD. During the training program (IADP), all 287(g) students are instructed that, as the first mandatory step in any official encounter, they must identify themselves by name, agency, and title and should never assume that the person encountered knows who s/he is, even if wearing a raid jacket, badge, etc. This issue is clearly covered in Alien Encounters lesson plan for IADP.

OIG Response: Our report indicated that 287(g) officers do not wear distinctive clothing, and do not regularly display credentials during the conduct of all 287(g) related activities. Due to the sensitive nature of this issue, ICE needs to not only provide classroom instruction from a lesson plan, but establish clear requirements regarding this issue. This recommendation remains **unresolved and open**.

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Recommendation #30: Develop training and provide basic program information for LEA managers who maintain an oversight role for 287(g) officers in order to increase their understanding of the program and encourage their support of 287(g) activities.

ICE Response: ICE provides the draft, *Curriculum Design Plan Report, ICE Training for Managing 287(g) Agents and Officers, Office of Training and Development*, dated May 2010 for OIG review.

OIG Response: The draft document provided by ICE includes language that this training will provide ICE managers a comprehensive understanding of the 287(g) program and their duties and responsibilities required under the program. This recommendation will remain **resolved and open** pending receipt of the final training document, and basic program information that will be provided to LEA managers with an oversight role for 287(g) officers.

Recommendation #31: Establish and implement standard immigration system access profiles for 287(g) officers to ensure that officers have the access needed to perform immigration functions. These access profiles should be customized by program model to address the different functions that TFOs and jail enforcement officers (JEO) perform.

ICE Response: ICE ensures that all 287(g) officers have access to the necessary tools to perform immigration functions. A PICS profile (*PICS Access Request Form* provided for OIG review) enables access to CIS, NFTS, CLAIMS and ENFORCE. It is at the SACs' discretion to provide TECS access to TFOs for case management, as needed.

ICE provides Section 2 of the *Password Issuance and Control System, Security Officer User Manual* for OIG review.

OIG Response: Based on documentation provided, the *Password Issuance and Control System, Security Officer User Manual* does not provide information regarding access to CIS, NFTS, CLAIMS and ENFORCE. According to the manual, the PICS database contains information about all INS employees, contractors, other governmental agency employees, and Foreign Service nationals identified in DHS Personnel Security. This recommendation remains **resolved and open**.

Recommendation #32: Develop a process for performing regular checks to ensure that aliens identified through the 287(g) program are not held in unauthorized facilities while in ICE custody.

ICE Response: Responsibilities in the area of custody are carried out by DRO. All individuals encountered through the 287(g) program and taken into ICE custody will only be placed in ICE authorized facilities. FODs will ensure designated 287(g) program supervisors conduct quarterly checks to ensure all aliens identified through the 287(g) program are not held in unauthorized facilities while in ICE custody. FODs are responsible for communicating and sharing this information with staff within their respective areas of responsibility to ensure compliance with this guidance.

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Recommendations from Prior Report

OIG Response: This recommendation remains **resolved and open** pending our receipt of guidance regarding the process used to conduct and verify quarterly checks to ensure that aliens identified through the 287(g) program are not held in unauthorized facilities while in ICE custody.

Appendix D
Side-by-side Comparison of OLD MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|----------------------|---|---|
| Introduction | “ICE authorizes up to a maximum of eight (8) nominated, trained, and certified LEA personnel...” | Deleted |
| | “It is the intent of the parties that these delegated authorities will enable the LEA to identify and process immigration violators and conduct normal state-based criminal investigations in the state...” | “It is the intent of the parties that these delegated authorities will enable the Agency to identify and process immigration violators and conduct criminal investigations under ICE supervision...” |
| | “points of contact for purposes of this MOA are identified in Appendix A” | Deleted from Introduction and moved to new Section XXI Points of Contact. |
| I. Purpose | Purpose is “to set forth terms and conditions pursuant to which selected LEA personnel...will be nominated, trained, and thereafter perform certain functions of an immigration officer”. | Almost verbatim, but new introductory sentence “to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community...” |
| | “This MOA also describes the complaint filing procedures...” | Deleted, but complaint procedure remains Appendix B. |
| II. Authority | Section 287(g) of INA | No change |
| III. Policy | MOA sets forth the: <ul style="list-style-type: none"> • Scope of the immigration officer functions. • Duration of authority conveyed. • Specific lines of authority, including requirement that LEA personnel are subject to ICE supervision while performing immigration-related duties. | Similar language and new provision: <ul style="list-style-type: none"> • Requires Agency to collect program information or data. • See also Section V. |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|---|---|
| Assignments¹ | LEA personnel must receive authorization through training (Section VIII). | Training re-addressed in Section VIII Training. |
| | Enumerates the LEA personnel authorized to conduct the immigration office functions. | Deleted |
| | “The LEA officers will immediately contact the SAC... when matters of investigative interest to ICE should arise in the course of performing immigration-related duties...” | Deleted |
| IV. Designation of Authorized Functions | LEA personnel are authorized to perform the listed functions. <i>For list, see section below on the SOP.</i> | “Approved participating Agency personnel will be authorized to perform immigration officer functions outlined in 287(g)(1) of the INA..., subject to the limitations contained in the Standard Operating Procedures (SOP) in Appendix D to this MOA.” |
| V. Detention and Transportation Issues | LEA should pursue to completion prosecution charges that caused alien to be arrested. | Now in Section I, Policy. |
| | ICE will only assume custody once an alien has been convicted and served their sentence. | Now in Section I, Policy |
| | ICE will assume custody of alien with prior conviction and when detention is required by statute. | Now in Section I, Policy |
| | ICE DRO FOD will determine if ICE should assume custody of alien on a case-by-case basis if extenuating circumstances exist. | Similar language. |

¹ Section deleted from new MOA Template, but certain provisions re-addressed in other sections.

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|------------------------------------|---|--|
| | DRO is responsible for managing limited ICE resources and may exercise discretion by declining aliens. | Similar language. |
| | | New provision: “ICE and the Agency will prioritize the detention of aliens in conformity with ICE detention priorities.” |
| | If ICE deems necessary, Agency will enter into IGSA to house aliens after completion of sentence for reimbursable fee. | Similar language. |
| | “The LEA facility will be expected to meet ICE detention standards for either a less than 72-hour or over-72 hour facility as determined by ICE and consistent with the anticipated detention period.” | “If ICE and the Agency enter into an IGSA, the Agency must meet the applicable ICE National Detention Standards.” |
| | If ICE deems it necessary, Agency will enter into IGSA to transport aliens after completion of sentence to ICE-designated facility for reimbursable fee. | The Agency must receive prior approval from ICE for transportation or ICE will make no reimbursement. |
| | If ICE deems it necessary, LEA will provide ICE office space free of charge at LEA for ICE supervisory employees to work. | Moved to Section X, Cost and Expenditures. |
| | LEA will transport removable alien to ICE facility upon completion of sentence so no further detention costs are incurred by ICE. LEA must notify and coordinate with ICE supervisor prior to moving alien. | Deleted |
| VI. Nomination of Personnel | “ICE may request any information necessary for a background check to include, but not limited to, submission | “[ICE’s independent] background check requires all candidates to complete a background questionnaire. This |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---------|--|---|
| | of fingerprints and a personal history questionnaire to evaluate a candidate’s suitability...” | questionnaire requires, but is not limited to, the submission of fingerprints, a personal history questionnaire, and the candidate’s disciplinary history...” |
| | Candidates must be able to qualify for appropriate federal security clearances. | Deleted and new provision: “In addition to the Agency background check, ICE will conduct an independent background check for each candidate.” |
| | | New provisions: <ul style="list-style-type: none"> • LEA must conduct current criminal background check within past 5 years. • LEA must provide all information and materials to ICE upon request. • Agency will provide written privacy waiver signed by candidate allowing ICE continuous access to candidate’s disciplinary records upon ICE request. |
| | Candidate must be US citizen | Same |
| | All candidates must have at least 2 years of LEA experience. | <ul style="list-style-type: none"> • For TFO: Moved to Appendix D, SOP Template. TFO Model - Nominating Personnel: Should have at least 1 year of experience. • For Detention Model: Deleted |
| | Approved officers will use 287(g) authority for at least 2 years. | Same and new provisions: <ul style="list-style-type: none"> • If approved officer in bargaining unit, Agency must have agreement with exclusive representative to keep person in position for at least 2 years. • Above requirement may be lifted at ICE’s discretion for good cause. |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---------|--|---|
| | Candidates in jail populations must have experience supervising inmates, maintaining the security of a facility, enforcing rules and regulations governing inmate accountability and conduct, and the ability to handle individuals from different backgrounds. | <ul style="list-style-type: none"> • Moved to Appendix D, SOP Template. Detention Model - Nominating Personnel and language almost verbatim. • New provisions: Must have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions. |
| | TFOs' work experience should consist of interviewing witnesses, interrogating subjects, providing constitutional rights warnings, obtaining statements and executing search and seizure warrants, with emphasis on officers who have planned, organized and conducted complex investigations relating to violations of criminal and civil law. | Moved to Appendix D, SOP Template. TFO Model - Nominating Personnel and language almost verbatim. |
| | TFOs must be sworn/certified officers, possess arrest authority, and be authorized to carry firearms. | <p>Same and new provision: Must be employed full time by Agency.</p> <p>New provision: All candidates must certify he/she is not prohibited from carrying firearms pursuant to state or federal law.</p> |
| | "All candidates must be approved by ICE and must be found eligible for access to sensitive information." | "All candidates must be approved by ICE and must be able to qualify for access to appropriate DHS and ICE databases." |
| | Can substitute for candidates who are not approved as long as it does not delay training. | Same |
| | Future expansion of approved officers or scheduling additional training can be based on an <i>oral agreement</i> . | Same |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|---|---|
| VIII.² Training of Personnel | ICE provides 4-week training that covers: <ul style="list-style-type: none"> • Terms and limitations of MOA • Scope of immigration officer authority • Relevant immigration law • ICE Use of Force Policy • Civil rights laws • DOJ June 2003 Memo regarding Use of Race by LEA • Outreach and complaint procedures • Liability issues • Cross-cultural issues • Obligation under federal law and Vienna Convention on Consular Relations notifications | Moved to Appendix D SOP Template: “ICE will provide participating Agency personnel with Immigration Authority Delegation Program (IADP) training consistent with the accompanying SOP.” Appendix D, SOP Template, does not mention 4-week training, but topics covered almost verbatim. |
| | ICE may provide additional training after one year participation and local training offered on ongoing basis. | Same and new provision: “An OSLC designated official shall, in consultation with OTD and local ICE officials, review on an annual basis, and if needed, refresh training requirements.” |
| | | New provisions: <ul style="list-style-type: none"> • 287(g) training program, the Immigration Authority Delegation Program (IADP), will be taught by ICE instructors and tailored to the immigration functions to be performed. • ICE OTD will proctor examinations during IADP. Agency nominee must pass each exam with a minimum score of 70% to receive certification. During entire duration of IADP, the |

² Note numbering mistake; no section VII

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|--|---|
| | | Agency nominee will be offered a maximum of one remediation examination. |
| IX. Certification and Authorization | <ul style="list-style-type: none"> • ICE will certify in writing, to ICE SAC or FOD, names of LEA personnel who successfully complete training and pass all required testing. • Upon receipt of certification, ICE SAC or FOD will provide participating Agency personnel a signed authorization letter. • Authorization for initial period of one year. • LEA will also receive copy of authorization. • Authorization can be withdrawn/revoked at any time and is effective as soon as other party notified. • Termination of MOA serves as immediate revocation for all authorized officers. • LEA and SAC/FOD responsible for notifying all appropriate personnel of withdrawal/revocation. | Same |
| | “The ICE supervisory officer, or designated team leader, will evaluate the activities of all certified personnel certified under this MOA.” | “Only those certified Agency personnel who receive authorization letters issued by ICE and whose immigration enforcement efforts are subject to a designated ICE supervisor may conduct immigration officer functions described in this MOA.” |
| | | New provisions: |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---|--|--|
| | | <ul style="list-style-type: none"> • Must successfully complete IADP training as described in SOP before receiving authorization. • Must pass ICE examination after instruction – does NOT state ICE equivalent examination. • Upon completion of training, program personnel considered “certified” – does NOT state considered equivalent to ICE officer. • Certified user will receive “Delegation of Authority” credentials. • Personnel will sign for the credentials (Form G-570) which will go in ICE records. • Revocation must be documented in writing, which should include date of withdrawal. • LEA must notify ICE when officer is no longer participating in 287(g) program so appropriate action can be taken, including termination of user account access to DHS and ICE systems. |
| <p>X. Costs and Expenditures</p> | <ul style="list-style-type: none"> • LEA responsible for officer’s salary, benefits, and overtime. • ICE will provide instructors and training material and are responsible for salary and benefits of its instructors. • If ICE deems training is direct benefit of government, the government may | <p>Same and new provisions:</p> <ul style="list-style-type: none"> • Agency will cover the costs of all Agency personnel’s travel, housing, and per diem affiliated with the training required for participation in this MOA. • Agency responsible for all expenses at its facility regarding cabling and power upgrades. • Agency responsible for any |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|-----------------------------------|---|--|
| | <p>reimburse candidates for travel, housing, and per diem. LEA responsible for salaries and benefits.</p> <ul style="list-style-type: none"> • ICE responsible for purchase, installation, and maintenance of technology. • Use of equipment limited to authority outlined in MOA. • ICE will provide technical support and software upgrades. • All equipment remains property of ICE and shall be returned upon termination. • LEA responsible for all administrative supplies. | <p>installation and recurring costs associated with Agency’s own communication lines.</p> |
| <p>XI. ICE Supervision</p> | <ul style="list-style-type: none"> • Immigration enforcement activities will be supervised by ICE and can be conducted only under ICE supervision or guidance. • ICE must be notified within 24 hours of issuing a detainer. • ICE will review LEA officer actions on an ongoing basis to ensure compliance. • ICE will supervise only for immigration related activity. • LEA officer must abide by DHS and ICE policies (including Use of Force). • Any conflicts between DHS/ICE and LEA policies should be stated | <p>Same and new provisions:</p> <ul style="list-style-type: none"> • “To establish supervisory and other administrative responsibilities, the SAC/FOD will specify the supervisory and other administrative responsibilities in an accompanying agreed-upon SOP.” • ICE will supervise investigations conducted in conjunction with immigration enforcement functions. |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---|---|---|
| | ASAP and resolved by SAC/FOD and LEA. | |
| XII. Reporting Requirements | LEA responsible for tracking and maintaining data and statistical information. | Agency not required to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves right to request the Agency to provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular alien’s arrest. |
| | ICE may request data for comparison with own data, statistical reporting requirements, and to assess progress/success of LEA 287(g) program. | Similar <i>See also Appendix D SOP/Data Collection</i> |
| XIII. Liability and Responsibility | To the extent allowed by state law, the LEA shall immediately notify ICE of existence and nature of all complaints, as well as, resolution of complaint. | Same, except Agency shall immediately notify local POC for ICE Office of Professional Responsibility and the SAC/FOD. |
| | <ul style="list-style-type: none"> • LEAs are responsible for covering any personal/property costs for their officers “incurred by death, injury, or incidents giving rise to liability.” • 287(g) authorized officers are considered federal employees only as it relates to the <i>Federal Tort Claims Act</i> and worker’s compensation claims. • LEA officers agree to comply with federal standards and guidelines. | Same |
| | Participating Agency personnel named as defendants in litigation | Same. Also new provision: Requests for representation by USDOJ should be in form of |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
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| | <p>arising from activities carried out under this MOA may request in writing to the US Attorney General to be represented by the USDOJ and such request will be handled in coordination with the SAC and/or FOD.</p> | <p>written memorandum addressing each and every allegation in the complaint, explaining as well as admitting or denying each allegation.</p> |
| | <p>The LEA agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers.</p> | <p>Same and new provisions:</p> <ul style="list-style-type: none"> • Includes providing access to appropriate databases, personnel, and documents. • Failure to do so may result in termination of this MOA and failure of an officer to cooperate may result in revocation of such individual’s authority provided under this MOA. |
| | | <p>New provisions:</p> <ul style="list-style-type: none"> • Agency agrees to cooperate with federal personnel conducting MOA compliance reviews to provide access to appropriate databases, personnel and documents, as necessary. • Agency and ICE are each responsible for compliance with <i>Privacy Act of 1974</i> and ENFORCE Systems of Records Notice. |
| <p>XIV. Complaint Procedures</p> | <p>“The complaint reporting and resolution procedure...is included at Appendix B.”</p> | <p>Same</p> |
| <p>XV. Civil Rights Standards</p> | <p>Must abide by all federal civil rights statute and regulations.</p> | <p>Same</p> |
| | <p>LEA will provide language interpreters as needed for subjects with limited English.</p> | <p>Moved to new Section XVI, Interpretation Services: Same and new provisions:</p> <ul style="list-style-type: none"> • Agency will maintain a list of qualified language interpreters. |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|--|---|
| | | <ul style="list-style-type: none"> Agency officers will be instructed on administrative procedures to obtain interpretation services. Qualified interpreter means one who can interpret effectively, accurately, and impartially, using any specialized vocabulary. Any interpreter must be identified by name in records. |
| XVI. Interpretation Services | Section did not exist. | See analysis above on Section XV, Civil Rights and Standards. |
| XVI. Communication [Steering Committee³] | SAC/FOD and LEA shall establish steering committee that will meet (at a location or teleconference) periodically to review and assess immigration enforcement activities and compliance with MOA. | SAC/FOD and LEA shall meet at least annually, and as needed, to review and assess immigration enforcement activities and compliance with MOA. |
| | | New provision: “When necessary, ICE and the Agency may limit the participation of these meetings in regards to non-law enforcement personnel.” |
| | <ul style="list-style-type: none"> Participants will be supplied with jurisdiction immigration enforcement information. First meeting should be held within 9 months of establishment. | Same |
| XVII. Community Outreach | LEA can conduct outreach. ICE can participate if LEA requests. | Same New provision: <ul style="list-style-type: none"> Nothing in this MOA shall limit ICE’s own community outreach program. |
| XIX. Release of Information to the | LEA may share information about the MOA to groups | Same and new provision: Per ICE practice, Agency may |

³ Old MOA section title

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|--|--|
| Media and Other Third Parties [Relations with the News Media⁴] | interested in the law enforcement activities. | only provide MOA to media outlets after it has been signed. |
| | LEA agrees to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. | Agency agrees to coordinate with ICE prior to releasing any information relating to, or exchanged, under this MOA including any SOPs developed. |
| | All contact with the media involving investigations conducted under this MOA by TFOs will be done pursuant to ICE policy. POCs are identified in Appendix C. | Same |
| | | <p>New provisions:</p> <ul style="list-style-type: none"> • Any information relating to the MOA is under control of ICE and subject to federal disclosure laws. • Any Agency documents created relating to the MOA shall not be considered public records. • Release of statistical information regarding the 287(g) program must be coordinated with ICE Office of Public Affairs. |
| XX. Modification to this MOA | Proposed in writing and approved by signatories. | Proposed in writing and approved and signed by signatories. Modification to Appendix D shall be done in accordance with the procedures outlined in the SOP. |
| XXI. Points of Contact | Section did not exist, but stated in the Introduction as identified in Appendix A. | Identified in Appendix A and can be updated at any time by providing a revised Appendix A to the other party to this MOA. |
| XXII. Duration and Termination of this MOA | MOA will remain in effect until terminated by either party. | <ul style="list-style-type: none"> • MOA in effect for 3 years unless terminated by either party. |

⁴ Old MOA section title

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---------------------------------------|--|---|
| | <ul style="list-style-type: none"> MOA can be terminated by either party at any time with written notice. A program can be temporarily suspended with oral or written notification. Both parties must be notified. | <ul style="list-style-type: none"> At expiration of 3 year effective period, ICE and Agency shall review the MOA and modify, extend, or permit the MOA to lapse. <p>Same</p> |
| | | <p>New provisions:</p> <ul style="list-style-type: none"> Upon good faith determination that Agency is not fulfilling its duties, ICE shall notify Agency in writing that it has 90 days to demonstrate a continued need for program services. If continued need not demonstrated, MOA will be terminated or suspended. Upon subsequent demonstration of need, Agency will bear all reinstatement costs. |
| Appendix A Points of Contact | Self-explanatory | Same |
| Appendix B Complaint Procedure | Complaints filed against LEA personnel in course of their non-immigration related duties will remain domain of LEA. | Same |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|---|--|
| | | <p>New provision: Agency must immediately notify SAC and ICE OPR of any complaint or allegation against any participating Agency personnel involved in violating MOA that may result in receiving employer discipline or be subject to a criminal or civil lawsuit.</p> |
| | <p>LEA will handle complaints filed against non-designated and non-certified personnel who may exercise immigration authority, which will be monitored by the Steering Committee.</p> | <p>Same, except such complaints must be forwarded to SAC or FOD and not monitored by Steering Committee.</p> |
| | <p>OPR and LEA Administrative Investigations Unit will coordinate complaint receipt and investigation.</p> | <p>Deleted</p> |
| | <p>When appropriate, ICE OPR will forward complaints to DHS OIG for review and ensure notification to DOJ CRD. If investigation by DHS OIG or DOJ CRD warranted, this does not preclude the entities working with the LEA to investigate.</p> | <p>Deleted</p> |
| | <p>ICE OPR and LEA will adhere to existing policies and procedures of their respective agencies.</p> | <p>Deleted</p> |
| <p>1. Complaint and Allegation Reporting Procedures</p> | <p>Reporting procedures shall be disseminated as appropriate by the LEA within facilities under its jurisdiction in English and other languages as appropriate.</p> | |
| | <p>Complaints may be accepted from any source (e.g. ICE,</p> | <p>Same and new provision: ICE will immediately forward</p> |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---------------------------------------|---|--|
| | <p>LEA, participating LEA personnel, inmates, and public).</p> <p>Complaints may be reported to the following federal authorities:</p> <ul style="list-style-type: none"> • Telephonically to ICE OPR at Joint Intake Center. • Telephonically to RAC of ICE OPR in jurisdiction. • Via mail to OPR. | <p>complaint to DHS CRCL.</p> <p>Same, except telephonically to DHS OIG instead of RAC of ICE OPR.</p> |
| | <p>Complaints may be reported to:</p> <ul style="list-style-type: none"> • LEA’s Professional Standards Section, or • Supervisor of any participating LEA personnel or to the incumbent Sheriff | <p>Deleted</p> |
| <p>2. Review of Complaints</p> | <ul style="list-style-type: none"> • LEA will report all complaints received to ICE OPR. • ICE OPR will verify participating personnel’s status. • Complaints received by any ICE entity will be reported to ICE OPR per existing ICE policies and procedures. • ICE OPR will make initial determination of ICE investigative jurisdiction and refer complaint to the appropriate office. • ICE OPR will share complaints received involving LEA personnel with LEA’s International Investigation Office. Both offices will then | <p>Same</p> |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|---|---|
| | coordinate appropriate investigative jurisdiction, which may include joint investigation. | |
| 3. Complaint and Allegations Resolution Procedures | ICE OPR will undertake complete review of each complaint according to existing ICE allegation criteria and reporting requirements. | Same |
| | “As stated above, ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRD.” | Same |
| 3.A. Referral of Complaints to Agency’s Internal Investigation’s Unit | ICE OPR will refer complaints to LEA’s Internal Investigations Office, as appropriate, for resolution. | Same |
| 3.B. Interim Action Pending Complaint Resolution | Requirements of the LEA policy shall be honored and if appropriate, an individual may be removed from program pending resolution. | Reference to LEA policy requirements deleted and “if appropriate” language deleted from ICE’s power to revoke. |
| 3.C. Time Parameters for Resolution of Complaints or Allegations | Complaint expected to be resolved within 90 days. | Same |
| 3.D. Notification of Resolution of a Complaint or Allegation | ICE OPR will coordinate with LEA’s Investigations Unit to ensure notification, as appropriate, to the subject(s) of a complaint regarding resolution. | ICE OPR will coordinate with LEA’s Investigations Unit to ensure notification, as appropriate, to the ICE SAC, the subject(s) of a complaint, and the person filing the complaint regarding resolution. |
| | | New provision: <ul style="list-style-type: none"> • These Complaint Reporting and Allegation Procedures are ICE’s internal policy and may be supplemented and modified by ICE unilaterally. • ICE will provide Agency |

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--|--------------------------|---|
| | | <p>with written copies of any supplements or modifications.</p> <ul style="list-style-type: none"> • These Complaint Reporting and Allegation Procedures apply to ICE and do not restrict or apply to other federal investigative organizations. |
| Appendix C Public Information Points of Contact | Self-explanatory | Self-explanatory, no change |
| Appendix D Standard Operating Procedures (SOP) Template⁵ | Appendix did not exist. | <ul style="list-style-type: none"> • Purpose is to establish standard, uniform procedures for implementation and oversight of 287(g) delegation of authority. • SOP can be modified only in writing and by mutual acceptance by both the SAC/FOD and designated Agency. • 2 models: Task Force Officer or Detention. |
| Prioritization | Provision did not exist. | <p>“ICE retains sole discretion in determining how it will manage its limited resources...” Agency resources should be prioritized to the following levels:</p> <p>Level 1 – Aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping.</p> <p>Level 2 – Aliens who have been convicted of or arrested for minor drug offenses and/or mainly property offenses, such as burglary, larceny, fraud, and money laundering; and</p> |

⁵ Under old MOA model, certain provisions are in other sections.

Appendix D
Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---------------------------------------|---|---|
| | | Level 3 – Aliens who have been convicted of or arrested for other offenses. |
| Training | See Section VIII above | See Section VIII above |
| Data Collection | See Section XII, Reporting Requirements | <p>See Section XII, Reporting Requirements, and new provisions:</p> <ul style="list-style-type: none"> • ENFORCE is primary processing system for alien removals and main resource for statistical information for 287(g) program. • ENFORCE entries must be completed in accordance with ICE policies and OSLC guidance. • Agency not required to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves right to request the Agency to provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular alien’s arrest.⁶ • ICE may request data for comparison with own data, statistical reporting requirements, and to assess progress/success of LEA 287(g) program.⁷ <p>Agency and ICE are each responsible for compliance with <i>Privacy Act of 1974</i> and ENFORCE Systems of Records Notice.</p> |
| Task Force Officer (TFO) Model | Participating LEA personnel has power and authority to: | <p>Same and new provisions:</p> <ul style="list-style-type: none"> • Agency is authorized to |

⁶ These provisions repeated verbatim under Section XII, Reporting Requirements

⁷ Certain provisions repeated verbatim under Section XII, Reporting Requirements

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Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|------------------------|---|---|
| | <ul style="list-style-type: none"> • Interrogate anyone believed to be an alien as to his right to be or remain in United States. • Arrest without warrant any alien attempting to unlawfully enter the United States. • Arrest without warrant for immigration related felonies which have been committed. ICE must be notified of arrest within 24 hours. • Serve warrants. • Administer oath and take evidence to complete required criminal alien processing. • Prepare charging documents for ICE signature. • Issue immigration detainers and I-213. • Detain and transport alien to ICE approved detention facilities. | <p>perform pursuant to tiered level of priorities.</p> <ul style="list-style-type: none"> • Execute search warrants. • Issue arrest warrants for immigration violations. <p>ICE requires the Agency to focus its use of the 287(g) program in accord with ICE’s priorities.</p> |
| TFO/Supervision | Provision did not exist. | <ul style="list-style-type: none"> • If alien deportable, must contact ICE for approval before arresting. • Agency must ensure proper record checks completed, obtaining necessary court/conviction documents and upon arrest, processing through ENFORCE/IDENT and served with proper charging documents. • ICE must be notified and approve an enforcement operation before initiation. • ICE supervisor is responsible |

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Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|--------------------------------|--|--|
| | | <p>for requesting and reviewing A-files for completeness, approval of all arrests, and TECS checks and input.</p> <ul style="list-style-type: none"> • SAC/FOD must inform LEA of updated DHS policy. • ICE supervisor must audit LEA ENFORCE/IDENT system data periodically. • If errors in data input, ICE must notify LEA supervisor and request plan/timeline for correcting problem. • ICE will provide guidance for proper federal prosecution of case. • A-files must be signed by ICE to be considered complete. • A-files may only be stored at LEA only if ICE personnel are on site and able to secure A-files. <p>DHS personnel must have access to facilities where files stored.</p> |
| TFO/Nominated Personnel | See Section VI Nomination of Personnel | See Section VI Nomination of Personnel |
| Detention Model | <p>Participating LEA personnel has power and authority to:</p> <ul style="list-style-type: none"> • Interrogate anyone believed to be alien as to his right to be or remain in United States. • Arrest without warrant any alien attempting to unlawfully enter the United States. • Arrest without warrant for immigration related felonies which have been committed. ICE must be notified of arrest within 24 hours. | <p>Same, except deleted:</p> <ul style="list-style-type: none"> • Arrest without warrant any alien attempting to unlawfully enter the United States. • Arrest without warrant for immigration related felonies that have been committed. ICE must be notified of arrest within 24 hours. <p>New provision: ICE requires the Agency to focus its use of the 287(g) program in accord with ICE’s priorities.</p> |

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Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|------------------------------|--|---|
| | <ul style="list-style-type: none"> • Serve warrants • Administer oath and take evidence to complete required criminal alien processing. • Prepare charging documents for ICE signature. • Issue immigration detainers and I-213. • Detain and transport alien to ICE approved detention facilities. | |
| Detention/Supervision | Provision did not exist. | <p>“287(g) delegation of authority Detention Model is designed to identify and remove aliens...pursuant to the tiered level of priorities...” The roles and responsibilities include:</p> <ul style="list-style-type: none"> • Notifying ICE within 24 hours of any detainers placed under 287(g). • Coordinating with ICE transport of aliens in timely manner. • Ensuring proper record checks completed, obtaining necessary court/conviction documents and, upon arrest, processing through ENFORCE/IDENT and serving proper charging documents. • ICE must be notified and LEA must report all aliens claiming United States citizenship to FOD – FOD will notify DRO HQ. • ICE supervisor is responsible for requesting and reviewing A-files for completeness, approval of all arrests, and |

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Side-by-Side Comparison of Old MOA vs. New MOA Template

| SECTION | Old MOA | New MOA |
|---|---|--|
| | | TECS checks and input. <ul style="list-style-type: none"> • FOD must inform Agency of updated DHS policy. • ICE supervisor must audit LEA ENFORCE/IDENT system data periodically. • If errors in data input, ICE must notify LEA supervisor and request plan/timeline for correcting problem. |
| Detention/ Nominated Personnel | See Section VI, Nomination of Personnel | See Section VI, Nomination of Personnel |

Appendix E
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Appendix F

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