

# WebMemo



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## Enforcing Immigration Laws: State and Local Law Assistance Needed

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On March 4, the House Homeland Security Committee held a hearing on a GAO report related to oversight of 287(g), a program granting Immigrations and Customs Enforcement (ICE) the ability to train state and local police to enforce federal immigration laws. GAO emphasized the need for such increased oversight to better define the role of ICE and state and local law enforcement.

Additional oversight, however, should be flexible and implemented in a way that respects the Constitution and existing laws; recognizes the professionalism, experience, and know-how of state and local law enforcement; and preserves this highly valuable program.

**Immigration Disarray.** Prior to 287(g), ICE and state and local law enforcement struggled to enforce America's immigration laws. Not only was ICE overwhelmed, but state and local law enforcement felt nervous about engaging in enforcement activities based on the false perception that immigration enforcement was the federal government's duty. When a state or local law enforcement officer did apprehend an individual who could not demonstrate legal presence in the U.S., the officer would simply notify ICE and wait for them to come and get the individual. In practice, this meant many illegals went free and immigration laws were not enforced.

Section 287(g) helps address this problem by letting ICE enter into agreements with state and local law enforcement, granting them the ability to access ICE databases and "act in the stead of ICE agents by processing illegal aliens for removal." Participating

officers go through a background check, attend an extensive training course, and pass mandatory certifications. The program is important for the following reasons:

- *It protects the homeland.* Using ICE databases, participants can identify serious criminals and arrest them. For example, Alabama state troops were able to apprehend and identify a Laotian citizen who was "a registered sex offender and a previously deported Mexican citizen who was originally convicted of drug trafficking." The 287(g) program also contributes to the security of the homeland by helping to identify and apprehend immigration law violators who pose a threat to U.S. security.
- *It engages the state and local government.* The Constitution recognizes that the federal government has the duty to "provide for the common defense" and create naturalization laws. However, this in no way precludes the ability of state and local governments to enforce federal laws or enact and enforce their own laws. And the Tenth Amendment's concept of federalism leaves areas unregulated by federal or state law to the people. As long as state and local governments operate

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within the parameters of the Constitution and federal law, their sovereign authority to look after their citizens should not be questioned.

- *It tackles illegal immigration.* There are approximately 11 million illegal immigrants in the United States. These individuals often fail to pay taxes and strain government services, thereby placing a particularly large burden on state and local governments, which usually end up footing the bill. The 287(g) program helps to restore rule of law by taking action against those who break the law and enter the U.S. illegally.

**The GAO Report.** The GAO report emphasized that ICE had not done enough to explain the objectives and procedures for the 287(g) program. For instance, GAO was concerned that ICE officials had not communicated to participants the main objective of the 287(g) program. The report proposes that the program's objective should be to only address serious criminal activity and that officers who check the immigration status of those committing minor offenses are in violation of the spirit of the program. But GAO admits that such an objective is not required in the statute or the legislative history, and the law does not prevent 287(g) participants from inquiring into the immigration status of those apprehended for minor offenses.

The fallacy of the GAO's suggested objective could not be clearer than in the example of Mohammad Atta. Atta, one of the September 11 hijackers, was pulled over in a minor traffic stop two days before the 9/11 attacks. Under GAO's proposed objectives, because Atta's traffic offense was minor, it would not have warranted an inquiry into his immigration status. But had the officer inquired into his immigration status—even though it was only a minor offense—they would have found he was in the country illegally and could have prevented his participation in the attacks, or perhaps prevented 9/11 all together.

The report also cites fears that the program decreases reporting of crimes (by those fearing questions about their immigration status) and that an officer could engage in racial profiling. Undoubtedly, these programs need to be used in a way that safeguards the liberties and rights of U.S. citizens;

however, the GAO offered no statistics to demonstrate that such potential abuse was a reality. In fact, 27 out of the 29 participants had instituted community outreach efforts to ease these concerns—from newspaper articles to TV spots and public meetings.

**Avoiding Micromanagement.** The worst outcome of this report would be for Congress and DHS to micromanage the 287(g) program to the point that it becomes worthless. Refining may be necessary on certain elements of the program, but large scale reorganization, massive oversight mechanisms, or cessation of the program are not necessary. Consequently, Congress and DHS should:

- *Define the objective broadly.* The GAO report rightly recognizes the need to have an objective. However, the report's objective should recognize the constitutional ability of the states to enforce laws and be flexible enough to represent the program's diverse participation. The best objective in this instance is the most simple: to enforce the immigration laws of the United States. Such enforcement should not be predicated on whether an individual is committing a serious crime or a minor crime.
- *Let law enforcement do its job.* The GAO emphasizes that ICE should do more to prescribe how 287(g) participants should use their authority. But Americans trust law enforcement officers to do their jobs enforcing U.S. criminal laws—trust that should be granted to those enforcing U.S. immigration laws as well. Micromanaging immigration enforcement officers' decision-making process could dissuade them from participating. ICE should instead look for ways to be supportive of law enforcement. One example would be to allow states and cities to use homeland security grants to pay for their 287(g) participation, including overtime costs for state and local law enforcement agents assisting in immigration enforcement investigations.
- *Allocate more money.* Officials cited a shortage of resources as a reason behind the perceived lack of oversight. But the report emphasizes that ICE has taken strides to align its resources in a way that saves money. For example, it has reduced a backlog of applications and addressed equip-

ment delays and problems. But given the tremendous benefits, Congress should allocate more funding to these programs in order to address these resources shortages and expand the program.

- *Institute flexible performance measures.* The GAO report cited a lack of performance metrics as one of the 287(g) program's ongoing problems. While it is important to have metrics to gauge program success, doing so should not involve a one-size-fits-all approach. One of the easiest ways to track progress is to better define the data reporting process. GAO emphasized that the law requires participants to track data, but ICE had not defined how to collect and report the information. This data will help ICE to

see progress—progress that should be reported to Congress annually.

**The 287(g) Program's Valuable Role.** Congress should recognize the valuable role 287(g) plays in keeping America safe, combating illegal immigration, and engaging state and local governments—and ensure that it and ICE create an environment that encourages the growth and expansion of 287(g) and other similar programs.

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