

# WebMemo



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## Section 287(g): State and Local Immigration Enforcement Efforts Are Working

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State and local law enforcement across the country have begun to tackle their jurisdictions' illegal immigration woes. One such program, Section 287(g), allows Immigration and Customs Enforcement (ICE) to train state and local police to enforce federal immigration laws.

The Government Accountability Office (GAO), however, claimed in a March report that the programs were unorganized and a source of racial profiling. But a report by the Davidson County (TN) Sheriff's Office provides a very different take, emphasizing that 287(g) is highly valuable.

Congress should continue its support for 287(g) and other state and local ICE programs by allocating more funding to ICE ACCESS programs like 287(g) and Department of Homeland Security (DHS) resources. It should simultaneously make it easier for state and local governments to use homeland security grants to pay for program participation. Finally, it should ensure that program progress is reported to Congress annually.

**A Force Multiplier.** ICE and state and local law enforcement have long struggled to enforce America's immigration laws. Previously, when a state and local law enforcement officer apprehended 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 illegal aliens went free and immigration laws were not enforced.

In 1996, however, Congress created 287(g) programs as an amendment to the Immigration and

Nationality Act (INA). ICE now offers a full menu of immigration-enforcement-related assistance programs for state and local law enforcement called ICE ACCESS.

These programs allow DHS to enter into Memorandums of Agreement with state and local law enforcement. In the case of 287(g), this status allows law enforcement entities to "act in the stead of ICE agents by processing illegal aliens for removal." Before officers can take such steps, however, they are required to undergo a five-week training course, a background check, and mandatory certifications. There are currently 29 jurisdictions around the U.S. participating in 287(g) programs.

**Mixed Reviews: GAO and the Case of Davidson County.** On March 4, the GAO issued a report that was highly critical of 287(g) programs, including accusations that 287(g) was poorly run, lacked oversight, and could lead to racial profiling. While the report used no statistics to confirm that profiling was occurring, the charges managed to ignite a firestorm of criticism at House hearings on the issue.

A recent report by the Davidson County Sheriff's office, however, paints a different picture of 287(g)

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programs. The Sheriff's Office has reportedly arrested and processed for removal over 5,300 illegal aliens in two years (many with current or previous criminal charges). These efforts have also led to a 31 percent decline in arrests of "foreign-born" individuals and a 46 percent decline in "illegal aliens committing crimes."

The report also addressed the racial profiling issue detailed in the GAO report. Davidson County emphasized that the individuals removed through 287(g) did not disproportionately affect a particular race, as those arrested represented 61 different countries of origin.

Furthermore, as the percentage of foreign-born individuals arrested in the county has decreased 31 percent since the program's inception, there is nothing to support a claim of racial profiling. In fact, Davidson County emphasized that it had never received allegations of profiling and had engaged in extensive community communication efforts to decrease concerns.

**Benefits of 287(g).** As evidenced in the Davidson County report, ICE ACCESS programs, including 287(g), have the following benefits:

- *They help fight crime.* Using ICE databases, 287(g) participants can identify serious criminals and arrest and remove them from the United States. For example, Davidson County was able to get 90 gang leaders off the streets through its 287(g) efforts.
- *They are effective in removing illegal immigrants.* There are approximately 11 million illegal immigrants in the United States. These individuals often strain government services, placing a particularly large burden on state and local governments, who often end up footing the bill. Programs like 287(g) help restore rule of law by removing those individuals who break the law and enter the U.S. illegally.
- *They respect federalism.* State and local governments have the right 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 within the parameters of the Constitution and federal law, their sovereign authority to look after their citizens is not in question.

**Next Steps.** The Davidson County report emphasizes why 287(g) programs work and why they should be continued. Similar success stories have been highlighted by many jurisdictions around the country. For instance, the sheriff of Frederick County, Maryland, relayed similar positive benefits from its 287(g) program in the March congressional hearings.<sup>1</sup>

Congress should recognize the success of 287(g) and other ICE ACCESS programs and do the following:

- *Maintain support for ICE ACCESS programs.* Congress should ensure that these programs continue. Doing so recognizes the constitutional ability of the states to enforce federal immigration laws, decreasing both crime and illegal immigration, while protecting the U.S. border.
- *Require more communication to Congress.* Congress should require DHS to brief them on ICE ACCESS programs annually. This will give Congress an opportunity to exercise oversight over the progress, ask questions, and receive feedback from the program.
- *Allocate more resources to participants.* GAO officials cited a shortage of resources as a reason behind the perceived lack of organization/oversight of 287(g). Congress should fully fund these ICE ACCESS programs and expand them. For example, DHS could allow states and cities to use homeland security grants to pay for their participation, including overtime costs for state and local law enforcement agents assisting in immigration enforcement investigations.

**The Valuable Role of States and Localities.** Congress should recognize the valuable role that

1. Hearings, *Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law*, Committee on Homeland Security, U.S. House of Representatives, 111th Cong., 1st Sess., March 4, 2009, at <http://homeland.house.gov/hearings/index.asp?ID=173> (April 20, 2009).

state and local law enforcement can and do play in keeping America safe, combating illegal immigration, and protecting the nation's borders—and encourage the growth and expansion of 287(g) and other similar programs.

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