



287(g) End-of-Year Annual Report

January 27, 2020

Fiscal Year 2018 Report to Congress



**Homeland
Security**

U.S. Immigration and Customs Enforcement

Message from the Deputy Director and Senior Official Performing the Duties of the Director

January 27, 2020

I am pleased to present the following “287(g) End-of-Year Annual Report” for Fiscal Year (FY) 2018, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to language in the Joint Explanatory Statement and House Report 115-239, which accompany the FY 2018 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-141).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:



The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to me at (202) 732-3000.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Albence', written over a light blue horizontal line.

Matthew T. Albence
Deputy Director and Senior Official Performing the Duties
of the Director
U.S. Immigration and Customs Enforcement

Executive Summary

The following report provides an operational summary of the ICE 287(g) Program for FY 2018. ICE firmly supports the 287(g) Program, which is a successful force multiplier in the identification and processing of aliens subject to removal from the United States. Participating state and local agencies allow ICE Enforcement and Removal Operations to refocus its jail screening assets in those jurisdictions to other at-large threats within the community. The report demonstrates the program's success through performance data regarding FY 2018 encounters and FY 2018 removals related to previous 287(g)-encountered aliens.

The report also provides comprehensive data regarding the occurrence of steering committee meetings as described in the memorandum of agreement. Lastly, the report discusses the impact of budgetary constraints on future program expansion, as directed by the 2017 Executive Order (EO) 13768, *Enhancing Public Safety in the Interior of the United States*. Following issuance of the EO, ICE more than doubled the number of participating jurisdictions, which was 78 at the end of FY 2018. At current funding levels, ICE will find it difficult to maintain proper oversight of its current partners.

Report Scope

House Report 115-239 directed ICE to provide an annual report to the Committee on the 287(g) Program, due not later than 60 days after the end of each fiscal year, including:

- Details on steering committee membership and activities for participating jurisdictions.
- Performance data, including:
 - Nationality,
 - Level of criminality,
 - Enforcement priority level of individuals placed into removal proceedings by 287(g) designated officers, and
 - Funding.
- Any plans for future expansion of, or changes to, the program.



287(g) End-of-Year Annual Report

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I. Legislative Language

This document was compiled pursuant to legislative language set forth in the Joint Explanatory Statement and House Report 115-239, both accompanying the Fiscal Year (FY) 2018 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-141).

The Joint Explanatory Statement states:

ICE is directed to provide an annual report on the 287(g) program, as specified in House Report 115-239.

House Report 115-239 states:

ICE is directed to provide an annual report to the Committee on the 287(g) program, due not later than 60 days after the end of each fiscal year, including details on steering committee membership and activities for participating jurisdictions; performance data, including nationality, level of criminality, and enforcement priority level of individuals placed into removal proceedings by 287(g)-designated officers; and any plans for future expansion of or changes to the program.

II. Background

Program Overview

1. Mission

The 287(g) Program serves as a force multiplier for U.S. Immigration and Customs Enforcement (ICE) at the state and local levels and is one of ICE's top partnership initiatives. Participation by law enforcement agencies (LEA) is voluntary and requires execution of a memorandum of agreement (MOA) between ICE and the partnering LEAs. The MOA sets forth the scope and duration of delegated authority, the training requirements, and the terms of ICE supervision. It also requires the partnering LEA to follow DHS and ICE policies when its designated immigration officers (DIO) perform delegated immigration enforcement functions. Since implementation of the President's Executive Order (EO) 13768, *Enhancing Public Safety in the Interior of the United States*, ICE has expanded its national footprint significantly through its use of 287(g) partnerships. At the close of FY 2018, ICE had 78 signed MOAs with partnering LEAs.

2. History

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g), which authorizes the Secretary of Homeland Security¹ to "enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the [Secretary] to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law."

¹ This granted authority to the Attorney General; these authorities later were codified in 8 U.S. Code § 1103, "Powers and duties of the Secretary, the Under Secretary, and the Attorney General."

III. Operations

A. Operations and Program Execution

- The ICE 287(g) Program provides oversight, along with the DHS Office for Civil Rights and Civil Liberties, and funding to ensure that the national 287(g) Program enhances the safety and security of local communities through compliance with the formal MOA.
- The 287(g) Program currently utilizes the Jail Enforcement Model (JEM), which is designed to identify, lodge detainers against, and process for removal all criminal and other priority aliens arrested and booked into the partnering LEA's detention facility. ICE Enforcement and Removal Operations' (ERO) detention and deportation officers provide oversight to the DIOs.
- DIOs are authorized to question aliens about their immigration status and removability, to serve warrants for immigration violations, and to issue immigration detainers at state and local detention facilities. DIOs also prepare, for ICE officers' review and signature, charging documents that are used in immigration courts for removal proceedings.
- At the close of FY 2018, ICE had 78 signed MOAs and 378 DIOs. The ICE Acting Director has seven additional LEA requests for participation in the program for final approval, which, upon approval and execution of the required MOAs, will generate approximately 35 new DIOs.

B. Steering Committee Meetings

- 287(g) steering committee meetings were established to assess the immigration enforcement activities conducted by participating LEA personnel, and to ensure compliance with the terms of the MOA.
- In FY 2018, 32 steering committee meetings were conducted. Participants of these meetings included the leadership of the local LEAs, representatives from ICE ERO, representatives from the ICE Office of Public Affairs, and members of the community and nongovernmental organizations. Table 1, below, shows the LEAs that held steering committee meetings:

Table 1. FY 2018 Steering Committee Meetings

State	MOA Name	Date of Meeting
AZ	Arizona Department of Corrections	8/3/2018
AZ	Mesa Police Department	9/13/2018
AZ	Pinal County Sheriff's Office	9/28/2018
AZ	Yavapai County Sheriff's Office	9/5/2018
FL	Collier County Sheriff's Office	12/11/2017
FL	Jacksonville Sheriff's Office	11/27/2017
GA	Cobb County Sheriff's Office	10/31/2017
GA	Gwinnett County Sheriff's Office	11/14/2017
GA	Hall County Sheriff's Office	11/14/2017
GA	Whitfield County Sheriff's Office	11/1/2017
MA	Bristol County Sheriff's Office	1/11/2018
MA	Plymouth County Sheriff's Department	10/30/2017
MD	Frederick County Sheriff's Office	6/13/2018
MD	Harford County Sheriff's Office	6/27/2018
NC	Cabarrus County Sheriff's Office	2/22/2018
NC	Gaston County Sheriff's Office	11/1/2017
NC	Henderson County Sheriff's Office	4/25/2018
NC	Mecklenburg County Sheriff's Office	11/29/2017
NC	Wake County Sheriff's Office	11/28/2017
NJ	Cape May County Sheriff's Office	9/27/2018
NJ	Monmouth County Sheriff's Office	9/27/2018
NJ	Salem County Sheriff's Office	9/27/2018
NV	Las Vegas Metropolitan Police Dept.	12/19/2017
NV	Nye County Sheriff's Office	12/20/2017
OH	Butler County Sheriff's Office	10/11/2017
SC	Charleston County Sheriff's Office	12/19/2017
SC	Horry County Sheriff's Office	12/6/2017
SC	York County Sheriff's Office	4/24/2018
TN	Knox County Sheriff's Office	7/11/2018
TX	Lubbock County Sheriff's Office	9/17/2018
TX	Potter County Sheriff's Office	8/7/2018
VA	Prince William Regional Adult Detention Center	10/5/2017

C. Program Performance Data

In FY 2018, the 287(g) Program had 25,622 encounters with individuals from 175 countries. Of those encountered, 6,743 were convicted criminals. Table 2, below, shows the 20 highest numbers of individuals encountered by countries of citizenship in FY 2018:

Table 2. Top 20 Encountered by Countries of Citizenship

Citizenship	Number of Encounters
Mexico	8,828
El Salvador	1,791
Guatemala	1,748
Honduras	1,595
Cuba	700
Dominican Republic	440
Haiti	301
Jamaica	293
Colombia	257
Brazil	253
Vietnam	207
Nigeria	198
India	195
China, Peoples Republic of	194
Canada	161
Marshall Islands	155
Peru	141
Kenya	139
Cape Verde	136
United Kingdom	136

The LEAs in the 287(g) Program had encounters that initiated 7,043 removals effected in FY 2018. It should be noted that the encounters for these removals may have occurred in previous fiscal years. These removals pertained to individuals from 96 countries. The “criminality” of the individuals removed is as follows:

- 5,386 convicted criminals
- 1,472 pending criminal charges
- 185 other immigration violators

Table 3, below, shows the top removals by country of citizenship:

Table 3. Top Removals by Country of Citizenship

Citizenship	Number Removed
Mexico	4,684
Guatemala	799
Honduras	606
El Salvador	454
Brazil	49
Colombia	37
Nicaragua	31
Dominican Republic	27
Jamaica	24
Peru	24
Ecuador	21
Venezuela	20
Nigeria	13
Philippines	13
Argentina	11
Chile	11
South Korea	11
Marshall Islands	10
Spain	9
United Kingdom	9

D. Enforcement Actions

In accordance with EO 13768, all individuals encountered by the 287(g) Program fall into the following categories:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

IV. Funding and Execution

A. Current Level

The 287(g) Program has an annual appropriation that expires at the end of each fiscal year. Funds for the program are appropriated to ERO programs/projects/activities (PPA) through ICE's Management and Administration. Because the program requires multifunctional support to operate effectively, funding is distributed to five program offices supporting this work. As such, funding priorities have equitable consideration to ensure operational effectiveness at every level. The funding distribution and program purposes are below:

ICE 287 (g) Program Resources			
PPA/PPA Level II Office	FY 2019 Funding	FY 2019 Full-time Positions (FTP)	Activities
ERO/Criminal Alien Program/287(g) Program Management Office	\$13,895,907	55	Oversees the program, including issuing charging documents, providing immediate guidance to resolve emerging issues, and ensuring compliance with program policies and their respective MOAs; and Works with each ICE component to manage and execute program resources, to train state and local personnel, and to review funding of component activity.
ERO/Custody Operations	\$4,075,348	0	Supports detention contract costs in locations with existing MOAs.
Management and Support/Office of the Chief Information Officer (OCIO)	\$3,994,210	4	Responsible for the engineering, purchase, installation, sustainment, and management services of all information technology (IT) equipment deployed inside the state and local facilities.
Management and Support/Office of Professional Responsibility (OPR)	\$1,935,535	14	Responsible for assessing the effectiveness of ERO field offices that supervise 287(g) programs, as well as ICE and LEA partners' compliance with program policies and 287(g) MOA requirements; Provides ICE leadership with an independent evaluation of the 287(g) Program; and Serves a member of the 287(g) Program Advisory Board.
Office of the Principal Legal Advisor (OPLA)	\$420,000	2	Advises on the negotiations of proposed MOAs between ICE and partner LEAs and on operational matters affecting the program; Serves as a member of the 287(g) Program Advisory Board; and Advises on litigation matters, including coordination with the Department of Justice, program testimony, talking points, and other correspondence; and Provides legal training to state and local enforcement personnel.
Total	\$24,321,000	75	

All funds are used to support operations and maintenance costs. There are no system requirements, capabilities, or services supporting this program. Although the program has experienced no funding challenges through FY 2018, EO 13768, authorizing the expansion of the 287(g) Program, did not appropriate funding in support of the program's growth. The program used existing resources to hire 14 additional personnel to provide increased oversight in response to the growth.

The methodology used to determine cost increase was based on an estimated number of new MOAs anticipated; the number of personnel, IT equipment, training courses, and inspections to be performed; and detention costs analyzed using the historical performance information of each potential MOA site.

B. History of Funding

The program's funding level and functional participation has evolved. As the program experienced slowed participation, funding levels and dedicated functional productivity also slowed, ultimately resulting in adjustments across the program. The slowed productivity did not alleviate the need for the support, nor did the reduced productivity warrant continued dedicated support.

PPA's	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012 PB	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
HSI	5,000,000	7,571,000	7,571,000	9,592,000	11,533,000	11,533,000	11,533,000	8,048,215	-	-	-	-	-
287 (g) PMO	-	6,829,000	7,618,000	9,299,000	19,817,000	16,782,014	16,875,014	8,723,242	13,935,128	13,935,128	9,956,129	13,935,128	13,895,907
OSLTC	-	-	-	-	-	3,034,986	3,034,986	1,654,835	900,000	900,000	810,318	-	-
OCIO	-	-	7,500,000	11,150,000	11,120,000	11,120,000	11,170,000	7,756,260	3,994,210	3,994,210	3,994,210	3,994,210	3,994,210
ERO/COPS	-	-	16,995,000	18,199,000	18,199,000	18,199,000	18,199,000	33,507,237	3,207,348	3,207,348	7,207,348	4,075,348	4,075,348
OPR	-	-	-	5,000,000	6,046,000	6,046,000	5,842,000	5,089,075	1,983,535	1,983,535	1,983,535	1,935,535	1,935,535
OPLA	-	-	-	434,000	546,000	546,000	638,000	287,470	300,779	300,779	369,460	380,779	420,000
OAQ	-	-	-	456,000	713,000	713,000	768,000	624,275	-	-	-	-	-
OCFO	-	-	-	-	73,000	73,000	261,000	-	-	-	-	-	-
TOTAL	5,000,000	14,400,000	39,684,000	54,130,000	68,047,000	68,047,000	68,321,000	65,690,609	24,321,000	24,321,000	24,321,000	24,321,000	24,321,000

C. Program Needs

In response to EO 13768, anticipated growth was estimated at 30 new programs in FY 2017, and continued growth moving forward. In preparation for the continued growth, planned expenditures for additional resources were requested in FY 2019 to cover the costs of training for the state and local officers, oversight, detention costs, IT equipment, legal reviews, inspections, and compliance reviews. In addition to increasing the existing staff, the program potentially would add other support staff, such as instructors, enforcement assistants, and contract professionals. The table below showed the staffing plan if the funding increase had been received:

PPA/PPA Level II Office	FY 2019 President's Budget		FY 2018 Enacted	
	Funding	FTP	Funding	FTP
ERO/Criminal Alien Program/287(g) Program Management Office	\$33,713,000	91	\$13,895,907	55
ERO/Custody Operations	\$27,349,000	0	\$4,075,348	0
Management and Support/OCIO	\$8,319,000	5	\$3,994,210	4
Management and Support/OPR	\$5,148,000	27	\$1,935,535	14
OPLA	\$991,000	4	\$420,000	2
Total	\$75,520,000	127	\$24,321,000	75

Methodologies to determine cost increases in each functional area were based on the estimated number of newly anticipated MOAs, and the number of personnel, IT equipment, training courses, inspections to be performed, and detention costs using the historical performance information of each potential MOA site.

V. Program Future Expansion Plan

The program continues to solicit state and local agencies to identify potential partners and will continue doing so in response to EO 13768. Although funding at the current level allows for 85 partners, it hinders further expansion of resources and limits new partnerships. The program remains ready to initiate new JEM agreements in anticipation of receiving a funding increase.

Warrant Service Officer (WSO) Program

The WSO Program was created to provide an opportunity for jurisdictions that seek to cooperate with ICE, but that are precluded from honoring ICE detainers as a matter of local policy or law. Although limited in scope, the WSO Program provides an effective solution for those jurisdictions precluded from honoring a detainer.

The WSO Program derives its authority from section 287(g) of the Immigration and Nationality Act, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; however, it is different from the 287(g) JEM Program. Unlike the 287(g) JEM Program, WSOs will not interview individuals regarding alienage and removability. Rather, pursuant to an MOA, ICE will train, certify, and authorize nominated state or local law enforcement officers only to serve and execute administrative warrants of arrest, and to serve warrants of removal against designated aliens in their agency's jail or correctional facility at the time of an alien's scheduled release from criminal custody. This will facilitate the transfer of an alien's custody to ICE.

VI. Conclusion

Since its inception, the 287(g) Program has experienced varying levels of partnership interest. ICE continues to use 287(g) partnerships to assist state and local agencies in ensuring the safety of their communities while working to expand the program consistent with EO 13768, *Enhancing Public Safety in the Interior of the United States*. We look forward to working with the House and Senate Committees on Appropriations to secure the additional resources necessary to sustain and expand the 287(g) Program.

Appendix: Abbreviations

Abbreviation	Definition
DHS	Department of Homeland Security
DIO	Designated Immigration Officer
EO	Executive Order
ERO	Enforcement and Removal Operations
FTP	Full-time Positions
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
IT	Information Technology
JEM	Jail Enforcement Model
LEA	Law Enforcement Agency
MOA	Memorandum of Agreement
OCIO	Office of the Chief Information Officer
OPLA	Office of the Principal Legal Advisor
OPR	Office of Professional Responsibility
PPA	Program/Project/Activity
WSO	Warrant Service Officer