

Executive Memorandum

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Section 287(g) Is the Right Answer for State and Local Immigration Enforcement

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State and local law enforcement have an important role to play in federal immigration investigations. Section 287(g) of the Immigration and Nationality Act (INA) provides the legal authority for state and local enforcement to investigate, detain, and arrest aliens on civil and criminal grounds. Any comprehensive border and immigration security legislation by Congress should include provisions for strengthening and expanding programs authorized under §287(g).

Comprehensive Reform Needed. Any effective solution for reducing illegal border crossings and the unlawful population in the United States must address all three aspects of the problem: internal enforcement of immigration laws, international cooperation, and border security. Internal enforcement and international cooperation are essential to reducing and deterring the flood of illegal entrants into the United States, making the challenge of securing America's borders affordable and achievable. Nothing less than a comprehensive reform will do.

This reform must include restoring the integrity of U.S. immigration laws. The federal enforcement agencies lack the capacity to pursue aggressively all immigration violations that represent serious criminal and national security threats, much less effectively deter any who wish to defy U.S. immigration

laws. The Department of Homeland Security (DHS) does not even have enough resources to deport criminal aliens released from prisons. Furthermore, effective domestic counterterrorism operations and interstate criminal investigations require close cooperation of federal, state, and local investigators.

State and local governments need to provide more support, but it must be balanced with equally compelling priorities. Any participation should:

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- Section 287(g) of the Immigration and Nationality Act provides the authority for state and local enforcement to investigate, detain, and arrest aliens on civil and criminal grounds.
 - Any comprehensive border and immigration security legislation should strengthen and expand programs authorized under Section 287(g).
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- Respect federalism,
- Safeguard the liberties and rights of U.S. persons,
- Not impose huge unfunded mandates on state and local governments,
- Contribute to reducing the unlawfully present population in the United States and deter illegal entry,
- Help to combat transnational threats and violent and organized criminal offenders, and

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- Strengthen community policing, facilitating greater cooperation between law enforcement and communities.

At the very least, in the normal course of criminal investigations, state and local law enforcement should neither ignore immigration law nor hesitate to cooperate with federal immigration officials. In the case of counterterrorism and violent and organized crime, more concerted effort is needed.

The Right Answer. A program that can meet all of these essential requirements already exists. Section 287(g) of the INA allows the DHS and state and local governments to enter into assistance compacts. Both sides must agree on the scope and intent of the program before it is implemented, which gives states and local communities the flexibility to shape the programs to meet their needs. State and local law officers governed by a §287(g) agreement must receive adequate training and operate under the direction of federal authorities. In return, they receive full federal authority to enforce immigration law, thereby shifting liability to the federal government and providing the officers with additional immunity when enforcing federal laws.

A §287(g) pilot program with the State of Florida could serve as a national model. Florida specifically limits its officers' civil immigration enforcement to situations in which they are part of a security or counterterrorism operation that is supervised by Immigration and Customs Enforcement (ICE) officers. The Florida program outlines the criteria for selecting the participating officers, including U.S. citizenship, three years of law enforcement experience, and at least an associate's degree. Selected officers receive intensive training and must pass a final competency exam. The program also establishes ways for people to file grievances against the program and its officers. The Florida initiative demonstrates how to craft a program that meets federal as well as state and local needs.

Building a National Program. As part of a comprehensive border and immigration reform pack-

age, Congress should build on the §287(g) pilot program by requiring the DHS to:

- **Appoint** a national spokesperson (a respected and prominent former state or local government or law enforcement official) to promote the program;
- **Draft** a strategy for implementing §287(g) nationwide;
- **Create** a national center for lessons learned and best practices; and
- **Report** to Congress each year on the progress of the program.

Congress should also:

- **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 federal immigration enforcement investigations;
- **Provide** ICE with sufficient funds to train and supervise up to 5,000 state and local law enforcement officers nationwide over the next two years; and
- **Require** that any participating state or local government must have a stakeholder engagement plan that briefs local communities on the scope and intent of the program and solicits community engagement and involvement in community policing.

Conclusion. Section 287(g) provides protection to states and their law officers while requiring that well-trained officers conduct immigration investigations. It also allows states and local governments to tailor programs to meet their unique circumstances and requirements. Any comprehensive border and immigration security legislation should strengthen and expand programs authorized under §287(g).

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