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U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
Office of State, Local and Tribal Coordination



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**ICE Response to NSA Questions in a letter dated July 11, 2012**

**Issue: Why, specifically, did ICE suspend its 287(g) Task Force Agreements in Arizona? Moreover, why did this suspension occur with no prior notice to, or discussion with, ICE's partner law enforcement agencies in Arizona?**

**Response:**

In accordance with its ongoing programmatic oversight of the 287(g) program, ICE reviews all existing 287(g) Memoranda of Agreement (MOA) for the Task Force Model, the Jail Enforcement Model and combined models, referred to as the Joint Model, that are due to expire each year to determine which MOAs to renegotiate based upon cost effectiveness and productivity. MOAs remain in effect for three (3) years from the date of signing unless terminated earlier by either party. During the MOA's effective period, either party, upon written notice to the other, may terminate or suspend the MOA at any time.

During the review process, ICE took into consideration the President's budget reduction for the 287(g) program and the nationwide activation of ICE's Secure Communities interoperability, which has proven to be more consistent, efficient and cost effective in identifying criminal and other priority aliens for removal.

More specifically, ICE's review of the enforcement statistics for those Task Force programs operating in the State of Arizona demonstrated that over time they became less efficient than other ICE programs. As encounters recorded by task force officers decreased significantly since 2011, it became evident that Arizona 287(g) Task Force partnerships were no longer productive. Based upon these facts, as well as the pending budget reduction for the 287(g) program, ICE discontinued these agreements. It is important to note that the seven (7) impacted Arizona law enforcement agencies had Joint Model MOAs, and as such, only the Task Force portion of the agreement was terminated. This termination does not impact the Jail Enforcement portion of the agreement, which remains in effect, nor did it impact Arizona Department of Corrections, which is also a Jail Enforcement Model program. The ICE Homeland Security Investigations Special Agent-in-Charge Phoenix and the Office of Enforcement and Removal Operations Phoenix Field offices reached out to the 287(g) partners in the state of Arizona to advise them of the decision.

It is important to note, the Arizona Area of Responsibility Law Enforcement Agency Response Unit (LEAR) will still enable Arizona's state and local law enforcement agencies to directly report to ICE immigration violators 24 hours a day, seven days a week. LEAR determines the nationality, immigration status, and amenability to removal, makes arrests, lodges immigration detainees, provides transportation, and processes those aliens subject to removal. Since its inception in September 2006, it has led to more than 28,000 arrests.

**Issue: In light of ICE's suspension of its 287(g) Task Force Agreements in Arizona, should other local partner agencies in States with laws similar to Arizona's, such as Alabama, Georgia, and South Carolina, assume that they will face similar action by ICE as they comply with laws enacted by their State legislatures?**

**Response:**

The recent Supreme Court decision raises the possibility of a significant increase in the number of inquiries and referrals from Arizona and other similarly situated states. The Court's decision does not disturb ICE's existing

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discretion in deciding which aliens should be taken into custody and/or processed for removal from the United States. In addition, the decision does not impact the Secretary's June 15, 2012 announcement regarding the application of prosecutorial discretion by U.S. Customs and Border Protection and ICE (as well as U.S. Citizenship and Immigration Services) with respect to certain individuals who entered the United States as children, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.

ICE will continue to work closely with state, local and tribal law enforcement agencies in all states to respond to the local community's specific needs through other ICE programs, such as the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) initiative, which was developed to promote the various programs and tools that ICE offers to assist state, local and tribal law enforcement agencies.

In addition, the Law Enforcement Support Center (LESC) continues to serve as a national ICE point of contact for law enforcement agencies. The LESC provides timely immigration status and identity information, as well as real-time assistance to local and state law enforcement agencies by phone or via an Immigration Alien Query through the National Law Enforcement Telecommunications System.

**Issue: Is ICE aware of the betrayal felt by its local law enforcement partners in Arizona? Does ICE appreciate the ripple effect of its singular action in Arizona on law enforcement trust nationwide? How can local law enforcement foster better communication and relations with ICE to avoid future situations like the one in Arizona?**

**Response:**

ICE very much considers state and local law enforcement agencies as partners. The decision to terminate 287(g) Task Force partnerships in the state of Arizona, was based upon an examination and review of statistics, which aided in the decision. ICE will continue to interact and communicate with state, local and tribal law enforcement, both at the local and national level. ICE also understands the importance of proactive communication and interaction, at the state and national level. ICE is open to discussion on any issues that may arise in the present and foreseeable future.

**Issue: Local law enforcement perceives its relationship with ICE as increasingly unilateral and its partnership with DHS/ICE as deteriorating. Is this perception unwarranted? Is there anything ICE can say to alleviate this concern?**

**[OSLTC response]**

**Response:**

The perception of ICE's relationship with state and local law enforcement as deteriorating is unwarranted. ICE's relationship with law enforcement agencies is thriving and has never been better. ICE interaction and representation at meetings and conferences, at the local and national level, has increased significantly, the past few years. Programs such as the Border Enforcement Security Task force (BEST), Operation Community Shield, Criminal Alien Program, Customs Cross-Designation, Document and Benefit Fraud Task Forces (DBFTTs) are some examples where ICE works hand in hand with our state and local law enforcement partners. In addition, the Office of State, Local, and Tribal Coordination interacts with national organizations, representing state, local and tribal law enforcement on an increasing ongoing basis each fiscal year, working to build and strengthen relationships, with our state and local law enforcement partners. As stated in an email to the NSA President from ICE, dated July 3, 2012, ICE very much appreciates its relationship with the NSA and sheriffs.

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**Issue What are ICE’s intentions for the future in regard to the 287(g) program, as well as its training of local law enforcement under the program? Where does ICE see its relationship with local law enforcement agencies — which are bound to adhere to State law — headed when local law enforcement have illegal immigrants in custody on whom ICE has no detainer?**

**Response:**

As previously stated, ICE remains committed to working closely with state, local, and tribal law enforcement agencies in all states. Let me also assure you and your membership that there is no planned phase out of the 287(g) program between ICE and its law enforcement partners throughout the United States. In light of the nationwide activation of Secure Communities federal biometric information sharing, the focus on other ICE enforcement programs, and the President’s proposed \$17 million dollar budget reduction of the 287(g) program, ICE has begun to discontinue the least productive 287(g) Task Force Model agreements in those jurisdictions where Secure Communities is already in place. ICE will no longer be considering any 287(g) Task Force Model requests from state and local jurisdictions. However, ICE will still consider requests to participate in the more cost efficient 287(g) Jail Enforcement Model. Participating agency personnel will continue to receive training consistent with the Immigration Authority Delegation Refresher Program and any additional training required by ICE.

Secure Communities does not authorize state and local law enforcement officers to enforce federal immigration law. Rather, it uses an existing federal biometric information sharing capability between U.S. Department of Homeland Security (DHS) and the Department of Justice (DOJ) to help carry out ICE’s priorities. Once this information-sharing capability is activated for a jurisdiction, the fingerprints that state and local law enforcement submit to the Federal Bureau of Investigations to be checked against DOJ’s biometric identification system for criminal history records are automatically sent to DHS’s biometric system to check against its immigration and law enforcement records. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE takes enforcement action—prioritizing the removal of individuals who have been convicted of a criminal offense, pose a threat to public safety, have repeatedly violated our immigration laws, or are recent illegal entrants.

The Secure Communities screening process is more consistent, efficient and cost effective in identifying and removing criminal and other priority aliens. To give you additional background, at the end of Fiscal Year 2009 (FY09), this federal biometric information sharing capability was deployed to 88 jurisdictions across the nation. That year, only 35 percent of ICE’s removals were criminal aliens. At the end of FY11, Secure Communities deployed this capability to 1,595 jurisdictions. In FY11, 55 percent of all ICE’s removals were criminal aliens – the highest percentage of criminal aliens removed in decades. These successes are a direct result of Secure Communities’ expansion of this federal biometric information sharing capability and it highlights the effectiveness of ICE’s overall effort to establish clear priorities and focus our agency resources.

**Issue Finally, does ICE agree that there is much at stake in regards to future cooperation between ICE and local law enforcement as a result of ICE’s controversial action in Arizona? And, does ICE understand that NSA and local law enforcement are not seeking confrontation but positive dialogue with ICE on national security and protecting our communities?**

**Response:**

In Director Morton’s testimony earlier this week before the U.S. House of Representatives Committee on Homeland Security Subcommittee on Border and Maritime Security, he expressed the reality of finite resources requiring law enforcement, at all levels, to use resources strategically and wisely to accomplish their missions.

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ICE is mindful of the concerns that have been raised, including those of NSA officials, and we are committed to working with our state and local law enforcement partners on smart, effective immigration enforcement strategies that will help strengthen and secure our homeland and make our communities safer.