

**THE 287(G) PROGRAM: ENSURING THE INTEGRITY  
OF AMERICA'S BORDER SECURITY SYSTEM  
THROUGH FEDERAL-STATE PARTNERSHIPS**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON MANAGEMENT,  
INTEGRATION, AND OVERSIGHT

OF THE

COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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PARTNERSHIPS**

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**Wednesday, July 27, 2005**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON MANAGEMENT,  
INTEGRATION AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 210, Cannon House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, Cox, Linder, Reichert, McCaul, Dent, Meek, Thompson, and Christensen.

Mr. ROGERS. [Presiding.] This hearing will come to order.

Today's hearing will focus on the current efforts by state and local law enforcement in enforcing federal immigration laws under a program referred to as the 287(g) Program.

I first would like to welcome our distinguished guests today and thank them for taking the time out of their busy schedule to be here. I know you all have a lot to do, and it is awful kind of you to come by and visit with us.

It is a special pleasure for me to welcome a witness from my home state of Alabama. Major Charles E. Andrews is the chief of the Administrative Division of the Alabama Department of Public Safety and works on the front lines with the 287(g) Program.

Section 287(g) of the Immigration and Nationality Act provides a powerful tool to state and local law enforcement. Under this section of the Act, police departments can establish partnerships with federal immigration officers to reduce crime by identifying folks who are not in the United States legally.

In my home state of Alabama, for example, the Department of Public Safety entered into a memorandum of understanding with the Department of Homeland Security in September of 2003 to participate in the 287(g) Program. This partnership allowed 21 state troopers to be deputized to enforce federal immigration laws during the course of performing their normal duties.

In addition, the state of Alabama uses these officers at six Department of Motor Vehicles offices to review suspicious identity documents. These officers have the authority necessary and training to contact the Federal Law Enforcement Support Center to check the immigration status and identities of suspects.

If the Center determines that the suspects should be taken into custody, officers from the Homeland Security Department's Bureau of Immigration, Customs and Enforcement, or ICE, will do so within 72 hours.

The 287(g) Program also in operation at other parts of the country. Florida initially authorized the training of 35 state and local law enforcement officers. Recently, an additional 27 officers were added to work on the Florida Regional Domestic Security Task Forces, which perform immigration enforcement functions as a part of their investigation.

And in California, Los Angeles County signed a 6-month memorandum of understanding for a 287(g) pilot program. Under this agreement, federal immigration officers train and certify so-called custody assistants. These officials perform immigration enforcement functions at the post-conviction stage of criminal proceedings.

We are pleased to have with us today expert witnesses who will discuss how the 287(g) Program works, how the program improves security and how the Department of Homeland Security manages the program.

Our first panel, we will hear from Mr. Paul Kilcoyne, ICE's deputy assistant director of investigations. We will also hear from Mr. Mark Dubina, special agent supervisor for the Tampa Bay Regional Operations Center at the Florida Department of Law Enforcement, as well as Major Charles E. Andrews, chief of the Administrative Division of the Alabama Department of Public Safety.

I would like to mention at this point that the committee originally was going to hear from Alabama's assistant attorney general, Mr. Herron Lowe. Unfortunately, Mr. Lowe became ill over the weekend. But we are pleased that Major Andrews was available on such short notice, and we certainly wish Mr. Lowe a speedy recovery.

Our second panel features experts on law enforcement who will share their views on the 287(g) Program. Dr. Kris Kobach is from the University of Missouri-Kansas City School of Law, and Chief Jimmy Fawcett is the sixth vice president for the International Association of Chiefs of Police.

I once again want to thank the witnesses and look forward to their testimony on this important topic.

And with that, I will recognize the ranking member, my friend and colleague from Florida, Mr. Kendrick Meek.

#### PREPARED STATEMENT OF HON. MIKE ROGERS

The hearing will come to order. This hearing will focus on the current efforts by state and local law enforcement in enforcing Federal immigration laws under a program referred to as the "287(g) Program."

I would first like to welcome our distinguished witnesses, and thank them for taking time out of their full schedules to be with us today. It is a special pleasure for me to welcome our witness from my home state of Alabama—Major Charles E. Andrews, Chief of the Administrative Division of the Alabama Department of Public Safety—who works on the front lines with the 287(g) Program.

Section 287(g) of the Immigration and Nationality Act provides a powerful tool to state and local law enforcement. Under this section of the Act, police departments can establish partnerships with Federal immigration officers to reduce crime by identifying folks who are not in the United States legally.

In my home state of Alabama, for example, the Department of Public Safety entered into a Memorandum of Understanding with the Department of Homeland Security in September 2003 to participate in the 287(g) Program. This partnership al-

lowed 21 state troopers to be deputized to enforce Federal immigration law during the course of performing their normal duties.

In addition, the state of Alabama uses these officers at six Department of Motor Vehicle offices—or, DMVs—to review suspicious identity documents. These officers have the authority and necessary training to contact the Federal Law Enforcement Support Center to check the immigration status and identities of suspects. If the Center determines that the suspect should be taken into custody, officers from the Homeland Security Department's Bureau of Immigration and Customs Enforcement—or, ICE—will do so within 72 hours.

The 287(g) Program also is in operation in other parts of the country. Florida initially authorized the training of 35 state and local law enforcement officers. Recently, an additional 27 officers were added to work on Florida's Regional Domestic Security Task Forces, which perform immigration enforcement functions as part of their investigations.

And, in California, Los Angeles County signed a six-month Memorandum of Understanding for a 287(g) pilot program. Under this agreement, Federal immigration officers train and certify six so-called "custody assistants" to perform immigration enforcement functions at the post-conviction stage of criminal proceedings.

We are pleased to have with us today expert witnesses who will discuss how the 287(g) Program works; how the Program improves security; and how the Department of Homeland Security manages the Program.

On our first panel we will hear from **Mr. Paul Kilcoyne** (*pronounced: Kilcoyn*), the Deputy Assistant Director of Investigations for the Bureau of Immigration and Customs Enforcement within the Department of Homeland Security; **Mr. Mark Dubina** (*pronounced doo-beena*), Special Agent Supervisor for the Tampa Bay Regional Operations Center, at the Florida Department of Law Enforcement; and **MAJOR CHARLES E. ANDREWS**, Chief of the Administrative Division of the Alabama Department of Public Safety.

I would like to mention at this point that the committee originally was going to hear from Alabama's Assistant Attorney General—Mr. J. Haran Lowe—but he got pretty sick over the weekend. So, we are pleased that Major Andrews was available on such short notice, and we wish Mr. Lowe a speedy recovery.

Our second panel features two experts on law enforcement who will share their views on the 287(g) Program. **Dr. Kris W. Kobach** (*pronounced kow-back*) is from the University of Missouri-Kansas City School of Law, and **Chief Jimmy Fawcett** is the Sixth Vice President for the International Association of Chiefs of Police.

I once again thank the witnesses for joining us today, and look forward to their testimony on this important topic.

**Mr. MEEK.** Thank you, Mr. Chairman. I am glad to be here this morning.

I would also like to welcome our witnesses to our subcommittee.

This hearing, as you stated before, has been called to assess the 287(g) Program. As a former state law enforcement officer myself, I strongly believe our laws must be enforced. I also have a first-hand knowledge of what the state law enforcement officer will face on a daily basis.

For the federal government to establish and develop effective partnerships with the state and local enforcement agencies are important.

I am also aware of the conflict and burdens that are facing state law enforcement officers that are expected to protect and serve the public and enforce local and state laws. And on top of that now federal laws.

The topic of today's hearing, the 287(g) Program, is another example of federal enforcement responsibilities that state and locals are asked to take on. Only two states in the Union and one county participate in 287(g) Program. Florida is one of them.

The Florida Department of Law Enforcement has a limited program that allows agencies to apprehend undocumented aliens if they are participating in a joint investigation with Immigration and Customs Enforcement. I certainly believe that we should en-

force immigration laws and work to prevent illegal immigration into this country.

However, the International Association of Chiefs of Police has pointed out in its December report, Mr. Chairman, that I would also like to ask unanimous consent to enter into the record—

Mr. ROGERS. Without objection.

Mr. MEEK. —some concerns. And we have also had representatives that have testified before us in our joint hearing just recently.

The concerns have been raised about the adequacy of training regarding to various immigration laws, the potential of civil rights and civil liberties violations and the impact on local immigrant communities.

One concern I have is that because of the 287 Program, some immigrant groups have grown fearful of going to law enforcement officers to be able to provide information, even on local law enforcement issues.

The other concern I have is that this administration continues to pass on federal responsibilities to protect the homeland but falls short of providing support, and I mean financial support. An example is state criminal alien assistance programs, which reimburse states and local governments for the cost that they incur for incarcerating undocumented aliens.

Mr. Chairman, once again, I would like to ask unanimous consent to be able to enter this chart into the record.

FOR THE RECORD

Table 1: Post 9/11 Decreases in SCAAP Funding Reimbursement to States

States	FY 2001	FY 2002	FY 2003	FY 2004	Reductions Since 9/11
Alabama	\$334,040	\$317,951	\$109,483	\$71,952	\$262,088
Arizona	23,814,068	24,183,895	165,629	9,083,367	-14,730,701
California	225,683,084	220,241,046	95,304,541	111,899,215	-113,783,869
Florida	28,623,740	27,956,315	11,188,630	14,267,545	-14,356,195
Illinois	14,396,351	15,788,246	5,476,520	3,338,261	-11,058,090
New Jersey	11,749,542	10,944,836	5,507,306	7,901,622	-3,847,920
New Mexico	1,672,821	2,331,916	1,482,546	679,399	-993,422
Texas	45,270,617	51,677,007	20,950,723	24,740,836	-20,529,781

Source: Developed by the Minority Staff of the Homeland Security Committee based on the Congressional Research Service's Analysis of SCAAP award data compiled by the Department of Justice—BJA.

Mr. ROGERS. Without objection.

Mr. MEEK. Since 9/11, the appropriated funding to this program has been decreased by 50 percent, going from \$565 million in fiscal year 2001 to about \$3 million in fiscal year 2004. And I think it is important we pay very, very close attention to this federal program that has been decreased.

Rather than shifting the burden and throwing small amounts of money to the state and local governments, the administration

needs to provide additional resources to the Department of Homeland Security to carry out its mission of enforcing the nation's immigration laws.

The 9/11 Act, which passed overwhelmingly in December, and the president signed into law, calls for the number of Border Patrol agents to be increased by 2,000 per year. The Immigration and Custom Enforcement investigators should be increased by 800 per year, and the number of detention bed space to be increased by 8,000 per year. However, the president's budget only covers a fraction of this commitment and inadequate funding for the strategy.

This should be a part of a comprehensive risk-based approach of protecting our homeland, and that is what hopefully, Mr. Chairman, we will be able to come to today. The Department needs additional ICE agents, Border Patrol resources so that the Department of Homeland Security can effectively carry out its mission so that we can do what the American people have sent us here to do.

Mr. Chairman, I also have some additional comments as it relates to this program, but I think it is important since we passed the 9/11 bill, and I know that we join in on this effort, of making sure that we provide the funding to federal law enforcement officers, but also we are asking state and local law enforcement officers to carry out federal duties that we need to make sure that they have the resources to do so.

So I am glad to be here at this committee hearing, and I look forward to our witnesses' testimony.

Mr. ROGERS. Thank you.

The chair now recognizes the ranking member of the full committee, the gentleman from Mississippi, Mr. Thompson, for any statement he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman and Ranking Member Meek. I want to welcome our guests here today who will give their testimony to the committee.

Today's hearing focuses on two very important issues: Assuring the integrity of America's border security and the role of state and local law enforcement in enforcing federal immigration laws.

The enforcement of the immigration laws are inherently federal responsibility. Congress must thoroughly review any program or proposal to shift this burden to state and local governments.

Today's hearing examines the 287(g) Program. This program permits state and local law enforcement officers to be trained and deputized by the federal government to enforce civil provisions of federal immigration laws.

Since this provision was passed in 1996, only Alabama, Florida and Los Angeles County have chosen to participate in this program.

Personally, Mr. Chairman, I wonder why so few states have signed up for this program. Are there implications from participation or lack of participation in this program? Specifically, does it impact local budgets, adversely affect relationships with immigration communities or burden agencies in a manner that takes their focus off local crime priorities?

Concerns have been raised by many that state and local law enforcement officials participating in the program are not sufficiently trained or knowledgeable about the complex body of our immigra-

tion laws to enable them to properly enforce them. I am concerned that this may cause problems, such as confusion over immigration laws, liability concerns, civil rights and civil liberties violations, loss of immigration communities' cooperation with law enforcement, which we all know is so vitally important.

Before we place any additional federal responsibilities on our state and local governments, we need to examine the hundreds of other responsibilities that the government has passed on to our state and local partners. We need to be certain that we are not bringing states and localities to a boiling point at a time when we need them most to protect the homeland.

Although state and local law enforcement assistance programs saw their funding decreased, as already been shown by the ranking member's chart, there has continued to be that steady decline.

Mr. Chairman, I look forward to the testimony, I look forward to some assessment as to why other states and localities have chosen not to participate in this program and whether or not it has served its usefulness and should be evaluated as to whether or not it should continue.

Thank you very much, Mr. Chairman. I yield back.

Mr. ROGERS. Thank you. The gentleman yields back.

To make sure that we have a fuller picture of the funding that you referenced, I would like to put into the record the SCAT funding for all 50 states so that we can see how comparable the numbers are that were submitted by the ranking member. So without objection, those will be admitted to the record.

We now are pleased to recognize our two distinguished panels of witnesses before us today.

I would like to remind the witnesses that their entire statements will be submitted for the record, so if you would like to give a more abbreviated version verbally, your full statement will be submitted for the record. And you will have up to 5 minutes for your oral statements before you move on to the next panelist.

The chair now calls the first panel and recognizes Mr. Paul Kilcoyne, deputy assistant director of the Office of Investigations, U.S. Immigration and Customs Enforcement, to testify.

Mr. Kilcoyne?

#### **STATEMENT OF PAUL KILCOYNE**

Mr. KILCOYNE. Thank you very much.

Mr. Chairman and distinguished members of the committee, thank you for the opportunity to speak to you today about the important work that is being accomplished by U.S. Immigration and Customs Enforcement, or ICE, in partnership with our state and local enforcement.

ICE is aware of the critical role state and local law enforcement has in the broad homeland security mission. State and local law enforcement officers are not only the first responders when there is an incident or attack against the United States, but also during the course of their daily duties, they may encounter foreign-born criminals and immigration violators who could threaten our national security or public safety.

Special agents assigned to 26 ICE field offices throughout the United States coordinate the ICE response when notified by state

or local officials of ongoing criminal activity within ICE's enforcement jurisdiction. ICE's law enforcement jurisdiction is broad and is necessary to accomplish its mission of protecting the United States and its people by deterring and investigating threats arising from the movement of people and goods into and out of the United States while simultaneously addressing vulnerabilities to our nation's borders and systems.

Under Section 287(g) of the INA, the Secretary of Homeland Security has the authority to enter into formal written agreements with state and local political jurisdictions to authorize state and local law enforcement officers to perform immigration enforcement functions.

The law requires that a written MOU be signed between the parties. The MOU is comprehensive and defines the scope and limitations of each authority to be exercised under Title 8. It mandates a rigorous, multi-week training program that encompasses immigration and naturalization law, statutory authority, racial profiling and cultural awareness training, which mirrors the training that ICE agents receive.

Each 287(g) MOU establishes the supervisory structure over the state and local officers with authority and prescribes an agreed upon complaint process governing officer conduct during the life of the agreement.

ICE is expanding the use of 287(g) agreements as an appropriate force multiplier into state and local jails. This will have a significant impact on ICE's ability to identify and remove criminal aliens from non-federal criminal justice systems. ICE believes that the 287(g) Program will produce enormous dividends when used within the state and local jail systems.

State or local corrections officers with immigration authority under the program and under ICE supervision could identify, process and lodge detainers against criminal aliens. Such a partnership between ICE and a jail could result in more criminal aliens being removed from the United States.

I assure you of ICE's commitment to establishing and maintaining effective partnerships and information sharing with state and local law enforcement agencies. Such partnerships are essential to carrying out ICE's mission of deterring criminal activity and threats to the national security and public safety.

We are very appreciative of the work of the many state and local law enforcement officers who assist ICE's daily mission and are pleased to be able to assist them primarily by providing 24 by 7 access to the Law Enforcement Support Center in Vermont, whose personnel query all available criminal record and alien status databases.

The LESC is the focal point for the National Crime Information Center, or NCIC Program, and has a permanent NCIC unit dedicated solely to receiving, resolving and entering as well as maintaining every record deemed eligible for entry into NCIC.

ICE is committed to utilizing the NCIC as a way to inform state and local law enforcement about wanted and fugitive aliens. ICE has entered over 155,000 records into NCIC. At the present time, the majority of those records are deported felons but also include absconders and persons with outstanding ICE criminal warrants.

There is a significant law enforcement information value in the records that ICE is entering in NCIC. The information value goes directly to issues of both public and officer safety. The ICE NCIC information may be key in assisting state and local law enforcement officers making the real-time critical decisions that they are required to make every day.

Another way the LESC is working to facilitate the timely flow of information to our state and local partners is through an automated electronic notification to the LESC when a criminal alien is booked into a county, state or local jail. An electronic query is automatically sent to the LESC every time an inmate claims foreign place of birth during the jail booking process. This process is called Blind Booking and virtually eliminates any claim of profiling.

Currently, there are seven jails utilizing the LESC blind booking concept. They are Anaheim, San Diego and San Mateo in California, El Paso and Travis Counties in Texas, Metro-Dade in Florida and Maricopa jail in Arizona.

In those jails, detainees can be lodged directly by the LESC with subsequent follow-up by local ICE officers. Blind Booking quickly provides jails with important identity and status information about criminal aliens in their custody and, at the same time, assists ICE in its efforts to locate and remove criminal aliens from the United States.

In closing, I would like to reemphasize that the future of the 287(g) Delegation of Authority Program will better serve the people of the United States and ICE's mission being utilized in the nation's prisons and jails. This will allow ICE to maximize the potential of the 287(g) Program by increasing the number of incarcerated criminal aliens identified and removed from the United States.

I want to thank this committee for the opportunity to speak to you today, and I look forward to answering any questions you may have.

[The statement of Mr. Kilcoyne follows:]

PREPARED STATEMENT OF PAUL M. KILCOYNE

Mr. Chairman and distinguished members of the committee. Thank you for the opportunity to speak to you today about the important work that is being accomplished by U.S. Immigration and Customs Enforcement (ICE) in partnership with state and local law enforcement. ICE is aware of the critical role state and local law enforcement has in the broad homeland security mission. State and local law enforcement officers are not only the first responders when there is an incident or attack against the United States, but, also, during the course of their daily duties they may encounter foreign-born criminals and immigration violators who could threaten our national security or public safety. ICE recognizes that critical role and partners with state and local law enforcement agencies nationally and locally through a variety of arrangements that increase the overall effectiveness of federal, state and local law enforcement and our joint ability to protect the homeland.

Special Agents assigned to 26 ICE field offices throughout the United States coordinate the ICE response when notified by state or local officials of ongoing criminal activity within ICE's enforcement jurisdiction. ICE's law enforcement jurisdiction is broad and the mission of protecting the United States and its people by deterring and investigating the movement of people and goods into and out of the United States and apprehending illegal aliens within the United States, while simultaneously addressing vulnerabilities to our Nation's borders and systems.

ICE recognizes that combating terrorism and criminal activity is best accomplished from a multi-agency/multi-authority approach that encompasses federal, state and local resources, skills and expertise. In addition to direct enforcement actions, ICE believes sharing information with our state and local partners in law en-

forcement is a critical component of the vision of the DHS and ICE to ensure the safety of the United States and the American people.

ICE has provided a wide variety of training opportunities for state and local law enforcement officers. Before the formation of the Department of Homeland Security (DHS), the Immigration and Naturalization Service cooperated with the International Association of Chiefs of Police (IACP) to provide a two-day field-training course "Responding to Alien Crime." This course provided information concerning criminal aliens to law enforcement agencies throughout the United States. In 2003, ICE produced a new video training course in cooperation with the IACP. Over 250 law enforcement officers in Phoenix and Sierra Vista, Arizona; Dallas, Texas; Philadelphia, Pennsylvania and Miami, Florida attended the new course. Also in 2003, ICE provided a basic block of instruction in immigration law and procedures to 654 Alabama State Troopers. Sixteen classes were held in seven different locations. That instruction was given in preparation for implementation of a Section 287(g) agreement with the State of Alabama to allow certain State Troopers to perform immigration enforcement functions under ICE supervision.

Under Section 287(g) of the Immigration and Nationality Act (INA), the Secretary of Homeland Security has the authority to enter into formal written agreements with state and local political jurisdictions to authorize state and local law enforcement officers to perform immigration enforcement functions. The law requires that a written Memorandum of Understanding be signed between the parties. All selected law enforcement officers must receive the appropriate training in immigration law and procedure and must be individually certified. ICE must supervise all selected officers when they are using their immigration authority under Section 287(g). Properly constructed, mutually agreed upon Section 287(g) agreements are a dynamic, yet closely monitored force multiplier for ICE in its commitment to protect America's communities.

The written agreement in the form of a Memorandum of Understanding is the keystone to the effective execution of Section 287(g). It must be comprehensive and define the scope and limitations of each authority to be exercised under Title 8. It mandates a rigorous, multi-week training program that encompasses immigration and naturalization law, statutory authority, racial profiling and cultural awareness training, which mirrors the training that ICE agents receive. It establishes the supervisory structure over the officers with authority under Section 287(g) and prescribes an agreed-upon complaint process governing officer conduct during the life of the agreement.

After September 11, Florida officials were increasingly concerned about the number of terrorist related cases in Florida, many involving foreign nationals, and established seven Regional Domestic Security Task Forces throughout the state. In 2002, the Florida Department of Law Enforcement entered into the first Section 287(g) agreement. Thirty-five officers assigned to the regional task forces participated in an extensive training program, graduated and were certified to perform the duties of immigration officers. In April 2005, ICE completed the second 287(g) Delegation of Authority course, under the existing Florida MOU. ICE trained and cross-designated 27 law enforcement officers from various agencies throughout the State of Florida. This agreement has been successful and productive. The Florida task forces have conducted over 170 investigative cases and recorded numerous arrests.

Building on the success of the Florida agreement, ICE and the State of Alabama signed a written agreement in September 2003 to provide immigration enforcement authority to a selected group of 21 Alabama State Troopers. Like their Florida colleagues, those troopers received extensive training in immigration and nationality law and procedure at the DHS Center for Domestic Preparedness in Anniston, Alabama. They are now certified and have the authority to perform immigration enforcement functions incidental to their normal duties as patrol officers or at driver licensing stations. They are also trained and certified to transport and detain aliens unlawfully present in the United States.

ICE has expanded the use of Section 287(g) Delegation of Authority agreement as an appropriate force multiplier into state and local systems. This will have a significant impact on ICE's ability to identify and remove criminal aliens from the non-federal criminal justice system. ICE believes that the 287(g) Delegation of Authority program will produce enormous dividends when used within the state and local jail systems. State or local correctional officers, with immigration authority under Section 287(g) and under ICE supervision, could identify, process and lodge detainees against criminal aliens. Such a partnership between ICE and a jail could result in more criminal aliens being removed from the United States.

I assure you of ICE's commitment to establishing and maintaining effective partnerships and information sharing with state and local law enforcement agencies. Such partnerships are essential to carrying out ICE's mission of deterring criminal

alien activity and threats to national security and public safety in the United States. We are very appreciative of the work of the many state and local law enforcement officers who assist ICE daily in its mission and we are pleased to be able to assist them.

ICE maintains a vast repository of immigration related information. ICE will continue to share that information with all of our partners in law enforcement. In fiscal year 2004, the ICE Law Enforcement Support Center (LESC) provided immigration related information requested by our state and local law enforcement partners and federal colleagues on nearly 668,000 occasions. This represents an increase of over 73,000 responses from the previous fiscal year. The LESL regularly responds to over 60,000 queries per month.

The LESL is the vital ICE point of contact with our country's entire law enforcement community. The LESL is on the cutting edge of the federal effort to share critical enforcement information with state, county, local and even international law enforcement officers. It provides timely immigration status and identity information and real-time assistance to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity. The LESL operates 365 days a year, 24 hours a day, 7 days a week assisting law enforcement agencies with information gathered from 8 immigration databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III) and other state criminal history indices. Access to the LESL is fully electronic and uses the same telecommunications system—NLETS—familiar to and used by all of law enforcement for over three decades. Responses to requests for information sent to the LESL are routinely received and returned within an hour. Since the LESL was established in 1994, the primary users have been state or local law enforcement officers seeking information about aliens encountered in the course of their daily duties. The rapidly growing number of queries submitted and answered by the LESL demonstrates its acceptance and effectiveness in the law enforcement community.

The merging of 22 agencies and bureaus into the Department of Homeland Security provides new access to law enforcement databases that will now be used by the LESL to significantly broaden its enforcement capabilities. For example, the LESL now has access to intelligence information from multiple DHS databases, including SEVIS and US VISIT. This will improve the LESL's ability to provide timely, critical information to state and local law enforcement agencies around the Nation, as well as to international enforcement agencies.

The LESL is also the focal point for the ICE NCIC program and has a permanent NCIC unit dedicated solely to receiving, resolving, entering and maintaining every record deemed eligible for entry into NCIC. ICE is committed to utilizing NCIC as a way to inform state and local law enforcement about wanted and fugitive aliens. ICE has entered over 155,000 records in NCIC. At the present time, the majority of those records are deported felons, but they also include persons with outstanding ICE criminal warrants, a small number of National Security Entry-Exit Registration System (NSEERS) violators and absconders.

There is significant law enforcement information value in the records that ICE is entering in NCIC. That information value goes directly to issues of public and, specifically, officer safety. The ICE NCIC information may be key in assisting state and local law enforcement officers make the real time critical decisions that they are required to make every day. ICE has recently consolidated and enhanced its response to state and local law enforcement agencies seeking assistance in immigration related enforcement matters, including requests for NCIC hit confirmations, status and identity information and assistance in instances of suspected over-the-road alien smuggling.

Additionally, the LESL provides training to state, local and other federal law enforcement officers on how to access its information and on ICE roles and responsibilities. The LESL is currently developing an Office of Law Enforcement Liaison that will have among its responsibilities providing training to law enforcement nationwide. In the last 24 months, LESL agents trained federal, state and local law enforcement officers in Alabama, Arkansas, Arizona, California, the District of Columbia, Florida, Georgia, Idaho, Maryland, Minnesota, Mississippi, Nevada, New York and Texas.

Another way the LESL is working to facilitate the timely flow of information to our state and local partners is through an automated electronic notification to the LESL when a criminal alien is booked into a state, county or local jail. An electronic query is automatically sent to the LESL every time an inmate claims foreign place of birth during the jail booking process. This process is called "Blind Booking" and virtually eliminates any claim of profiling. Currently, there are seven jails utilizing the LESL's "Blind Booking" concept. They are: Anaheim, San Diego and San Mateo in California; El Paso and Travis Counties in Texas; Metro-Dade in Florida and

Maricopa County, Arizona. In those jails, detainees can be lodged directly by the LESC with subsequent follow-up by local ICE officers. In some of those jails, ICE officers assigned to dedicated jail units interview individuals identified through the automated booking process. "Blind Booking" quickly provides jails with important identity and status information about criminal aliens in their custody and, at the same time, assists ICE in its efforts to locate and remove criminal aliens from the United States.

ICE and DHS coordination with law enforcement around the country has expanded significantly since September 11.

Another unique ICE asset, the ICE Forensic Documentary Laboratory (FDL), also serves the needs of state and local law enforcement and our federal colleagues. The FDL provides a wide variety of forensic and intelligence services in support of the DHS mission to enforce immigration laws and combat document fraud. The FDL is unique among Federal crime laboratories both in its dedication to the forensic examination of documents, and its integration of an operational intelligence and training capability. In addition to directly supporting DHS field officers, it also offers its services to other federal, foreign, and state and local governmental entities. For example, the FDL has performed forensic document and fingerprint examinations for numerous state and local police agencies, Departments of Motor Vehicles, and local prosecutors' offices. The FDL has also provided training in fraudulent document recognition to the International Association of Chiefs of Police (IACP), state and local police agencies, and motor vehicle departments. The FDL developed the Guide to Selected U.S. Travel and Identity Documents (M-396), a highly instructive pocket guide for state and local law enforcement and other governmental personnel who encounter immigration and other U.S. documents.

In closing, I would like to re-emphasize that the future of the 287(g) Delegation of Authority Program will better serve the people of the United States and ICE's mission being utilized in the Nation's prison and jails. This will allow ICE to maximize the potential of the 287(g) Program by increasing the number of incarcerated criminal aliens identified and removed from the United States.

I want to thank the distinguished members of this Committee for the opportunity to speak before you today. I look forward to answering any questions you may have.

#### **International Association of Chiefs of Police**

##### **ENFORCING IMMIGRATION LAW: THE ROLE OF STATE, TRIBAL AND LOCAL LAW ENFORCEMENT**

The September 11th attacks have affected the manner in which law enforcement agencies view their responsibilities and duties. In the ensuing two years, state and local law enforcement agencies have done a magnificent job in meeting the challenges presented by this new reality, and we have done much to make our communities and our citizens safer and more secure.

Law enforcement has used a variety of methods, including increased cooperation with federal law enforcement, reassessment of current training and patrol methods, and greater communication and intelligence sharing between and among law enforcement agencies.

But the specter of foreign terrorists has also brought the state and local law enforcement community face-to-face with a critical and fundamental question that will likely help shape the way we police our communities: namely, what role should state and local law enforcement play in the enforcement of federal immigration laws?

Significantly, in the 111-year history of the IACP, the membership has never adopted a resolution or policy position on this vital question. The reason for this silence is clear. There is a significant difference of opinion in the law enforcement profession on this issue.

Many law enforcement executives believe that state and local law enforcement should not be involved in the enforcement of civil immigration laws since such involvement would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations. They believe that this lack of cooperation could diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve.

Other law enforcement executives believe that it is appropriate for state and local law enforcement to play an active role in immigration enforcement because individuals who are in the country illegally have violated the law and should be treated in the same fashion as other criminals. They feel that it is the duty of state and local law enforcement to assist the federal government and to apprehend and detain these individuals.

Both viewpoints raise valid arguments and it is easy to understand why no consensus has been reached and no policy position has been adopted by the IACP.

This document is not intended to rule on this fundamental philosophical question. It is the IACP's belief that the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision that must be made by a police chief, working with their elected officials, community leaders and citizens.

Instead, this issue brief was prepared to provide background information on the current status of immigration enforcement efforts, examine the concerns and obstacles that currently hinder enforcement efforts by the state, tribal and local law enforcement community, and to set forth the elements necessary to secure the support of the IACP for legislative proposals addressing the question of immigration enforcement by non-federal law enforcement agencies.

#### BACKGROUND INFORMATION:

##### IMMIGRATION & ILLEGAL ALIENS IN THE UNITED STATES

At the outset, it is important to note that state, tribal and local police are **not required to enforce federal immigration laws**. The federal government and its agencies are the authorities responsible for enforcement of immigration law. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration.

The following is a brief review of the most common status classifications.

#### (1) **Legal Immigrants & Visa Holders:**

**Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Immigrant visas are normally issued to foreigners at U.S. consulates in their home countries. Along with a foreign passport, the visa entitles them to enter the United States. Once here, immigrants receive a card from the INS indicating they are permanent residents. This card used to be green, so that immigrants are still referred to frequently as "greencard holders."

**Refugees** are persons outside their country of citizenship who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion if they return. Some are resettled every year in the United States: the total number is determined annually by the President in consultation with Congress. Asylum applicants arrive in the United States and request safe haven here: their number depends on how many aliens show up asking to be recognized as refugees

**Nonimmigrant visa holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA.

#### (2) **Illegal Aliens**

**Illegal aliens** are foreign nationals who have entered the U.S. without any legal status. The most common ways are by either crossing a land or sea border without being inspected by an immigration officer, or simply by violating the terms of a legal entry document. Legal aliens are entitled to enter and remain in the U.S. as long as they maintain the terms of their status.

#### (3) **Alien Absconders**

**Alien absconders** are foreign nationals who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

It is currently estimated that there are between 8-10 million illegal aliens living in the U.S., with another estimated 800,000 illegal aliens entering the country every year. Of this total, the Department of Homeland Security has estimated that 450,000 are "alien absconders". Finally, an estimated 86,000 are criminal illegal aliens—people convicted of crimes committed in the U.S. and who should have been deported but have, through a variety of reasons, remained in the United States.

#### OBSTACLES/CONCERNS OVER

##### LOCAL INVOLVEMENT IN IMMIGRATION ENFORCEMENT

#### **Confusion Over Immigration Laws: Criminal Versus Civil Violations**

Immigration laws differ from the criminal laws local police officers deal with most regularly in that immigration laws contain both civil and criminal aspects. For example, an illegal entrant into the United States has committed a federal felony violation, and state and local law enforcement officers are legally empowered to arrest and detain the individual. However, legally admitted aliens who have overstayed their visas have committed a civil violation, and state and local police have no authority to arrest and detain them.

Therefore, the IACP is greatly concerned that if the names of 314,000 deportable aliens are placed into the NCIC system without the benefit of a felony warrant being issued for their arrest, state and local law enforcement officers will be placed in the position of being asked to detain and arrest these individuals without possessing the proper authority to do so.

This situation concerns some in the law enforcement community who fear that immigration enforcement by state and local police could lead the government to burden state and local agencies with enforcement of still other federal civil violations.

#### ***Training Requirements***

Currently, state and local police do not have the training or expertise to enforce immigration laws, and in this time of shrinking local budgets, many executives feel they do not have the resources to tackle this additional federal issue. There are federal agencies specifically charged with the enforcement and application of the complex immigration laws and regulations. These agents do not handle street disorder, robberies, murders, traffic problems, and a host of other issues facing state and local officers. These federal agencies are designed, and their agents are specifically trained, to enforce these immigration laws.

Addressing immigration violations such as illegal entry or remaining in the country without legal sanction would require specialized knowledge of the suspect's status and visa history and the complex civil and criminal aspects of the federal immigration law and their administration. This is different from identifying someone suspected of the type of criminal behavior that local officers are trained to detect. Whether or not a person is in fact remaining in the country in violation of federal civil regulations or criminal provisions is a determination best left to these agencies and the courts designed specifically to apply these laws and make such determinations after appropriate hearings and procedures. Without adequate training, local patrol officers are not in the best position to make these complex legal determinations.

#### ***Limitations on Arrest without a Warrant***

Local police agencies must also comply with the laws of their own states. These laws may limit their ability and authority to detain and arrest persons on suspicion of being in the country in violation of federal laws. These limitations may have little to do with immigration specifically but more general police powers, such as the power to arrest without a warrant.

The fact that state law may not authorize local police to detain persons for illegal immigration is recognized by the federal agencies as shown by the language of some of the civil detention notices currently being placed on the NCIC system. These notices to detain include the qualifiers "If permitted by state and local law" and "If permitted in your jurisdiction." Federal immigration officers do not face such restrictions, because the federal immigration laws allow them to detain and interrogate a person as to their right to be or remain in the United States without a warrant.

#### ***Liability Concerns***

When local police have waded into immigration enforcement, it has often come with disastrous and expensive consequences. To list just one example, in 1994 the police in Katy, Texas, conducted raids in search of illegal immigrants. More than 80 of those persons temporarily detained were Hispanics who were either U. S. citizens or foreign nationals who were in the country legally. The Katy Police Department faced numerous lawsuits alleging civil rights violations.

This example illustrates the legal risk that law enforcement agencies and officers are exposed to when they attempt, in good faith, to enforce federal immigration law.

#### ***Chilling Effects on Immigrant Cooperation***

Immigration enforcement by state and local police could have a chilling effect in immigrant communities and could limit cooperation with police by members of those communities. Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many families with undocumented family members also include legal immi-

grant members, this would drive a potential wedge between police and huge portions of the legal immigrant community as well.

This will be felt most immediately in situations of domestic violence. For example, many law enforcement agencies have been addressing the difficult issues related to domestic abuse and the reluctance of some victims to contact the police. This barrier is heightened when the victim is an immigrant and rightly or wrongly perceives her tormentor to wield the power to control her ability to stay in the country. The word will get out quickly that contacting the local police can lead to deportation or being separated by a border from one's children. Should local police begin enforcing immigration laws, more women and children struggling with domestic violence will avoid police intervention and help.

**IACP POSITION:**

**LEGISLATION ADDRESSING IMMIGRATION ENFORCEMENT**

Given the concerns and obstacles outlined above, the IACP believes that at a minimum, any legislation seeking to have state and local law enforcement agencies participate in immigration enforcement must contain the following essential elements.

***Voluntary:***

Because the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision, the IACP believes that any legislative proposal to enlist the assistance of non-federal agencies in immigration enforcement must be based on the completely *voluntary cooperation* of state/local law enforcement agencies.

Therefore, any legislative proposals that seek to coerce cooperation through the use of sanction mechanisms that would withhold federal assistance funds from states or localities is unacceptable to the IACP.

***Authority Clarification:***

In order to clarify the authority of state, tribal and local law enforcement to act in matters related to immigration enforcement, it is necessary for the federal government to issue a clear and complete statement that outlines the role of state, local and tribal law enforcement agencies in this effort and enumerates the legal authority of state, local and tribal law enforcement officers to act in these matters.

In addition, in cases involving aliens with civil violations, it is the IACP's belief that if the federal government wants to have state and local law enforcement officers apprehend and detain these deportable aliens, then it must first secure a federal criminal arrest warrant for these individuals. In this fashion, state and local law enforcement officers will be certain that the actions they take in dealing with these individuals is consistent with their legal authority and the policies of their agencies.

***Incentive Based Approach***

Legislative proposals addressing immigration enforcement should provide law enforcement agencies with an incentive to perform immigration enforcement. Under such an incentive based approach, agencies that agree to perform immigration enforcement activities as set forth in the legislation would be eligible to receive federal assistance funds that may be used for a variety of uses related to immigration enforcement. For example, agencies should be authorized to use these funds to:

- (1) Cover the personnel costs associated with the enforcement effort.
- (2) Cover the costs of training programs for their law enforcement officers.
- (3) Cover the costs associated with housing and transportation of these individuals prior to their release into federal custody.

***Liability Shield:***

Legislative proposals addressing immigration must provide:

- (1) Personal liability immunity to state, tribal and local law enforcement officials for enforcing federal immigration laws within the scope of their duties.
- (2) Immunity for state, tribal or local agencies enforcing immigration laws unless their personnel violated criminal law in such enforcement.

***Training Resources:*** The legislation should also ensure that the federal government will provide the financial assistance necessary to develop and provide a training program for state, local and tribal law enforcement officers 011 federal immigration law and how they should respond when they encounter suspected illegal aliens and absconders. (However, specific-training requirements, including the number of hours or topics to be covered, should be the responsibility of law enforcement administrators, who should design training programs appropriate to their agencies.)

Mr. ROGERS. Thank you, Mr. Kilcoyne.

The chair now recognizes Mr. Mark Dubina, special agent supervisor, Tampa Bay Regional Operations Center, Florida Department of Law Enforcement, Regional Domestic Security Task Force supervisor, for your statement.

**STATEMENT OF MARK DUBINA**

Mr. DUBINA. Mr. Chairman and distinguished members of the committee, I would like to begin by thanking this committee for the opportunity to represent the state and local officers throughout Florida who are designated to serve in the first of its kind 287(g) Cross-Designation Program.

After the atrocities of September 11, 2001, the state of Florida quickly assessed its ability to detect and respond to domestic security and terrorist events. From these efforts, the state of Florida created seven Regional Domestic Security Task Forces.

In November 2001, the Florida legislature met in special session and codified the Domestic Security Task Force structure in statute. Their mission is to employ the coordinated resources of various local, state and federal agencies to prevent, preempt and disrupt any terrorist attack or other domestic security threats within the state of Florida or in the event of such an attack they can respond to the incident—

Mr. ROGERS. Excuse me, Mr. Dubina, could you pull your microphone a little bit closer? We cannot hear you.

Mr. DUBINA. Is that better?

Mr. ROGERS. There you go.

Mr. DUBINA. Starting again, their mission is to employ the coordinated resources of various local, state and federal agencies to prevent and preempt or disrupt any terrorist attack or other domestic security threats within the state of Florida or in the event of an attack, to effectively respond to the incident to facilitate recovery and investigations.

At the time, it was quite apparent that these RDSTF law enforcement components could become force multipliers for limited legacy INS officers to address immigration issues with a potential nexus to terrorism. In December 2001, INS and FDLE leadership met to discuss the concept of using the provisions of Section 287(g) and consensus was reached as to the need for such a program.

The initiative proposal led to a final memorandum of understanding which was signed by the United States Attorney General Ashcroft, Governor Bush, INS Commissioner Ziegler and FDLE Commissioner Moore in July 2002. In December 2003, this MOU was renewed and signed by Department of Homeland Security Undersecretary Hutchinson and Florida Governor Bush.

The MOU outlines a number of terms and conditions for this 287(g) authority. Implementing the provisions of the MOU began during April 2002. Soon after, the Immigration Officer Academy crafted a 6-week training course featuring the delegation of authority curriculum. On July 9, 2002, the first ever Section 287(g) training course began. The training was tough and thorough. On August 15, 2002, the course graduated all 35 participants.

The state of Florida, through the RDSTFs expended considerable energy and time communicating the purpose of the program to various ethnic groups. Some cultural groups expressed concerns re-

lated to any INS authority being delegated to state and local officers. The Office of the Governor, the RDSTFs and legacy INS diligently worked to produce an informative brochure that explained in simple terms and multiple languages the mission of the program.

Further, all parties held open meetings and used media outlets to communicate exactly what Florida's intentions were with this program to the ethnic groups with concerns, including community and religious leaders. I am proud to say on behalf of all the regions we have adhered to the spirit and letter of the MOU.

I cannot overemphasize the highly focused nature of the Florida initiative. In all cases, the ICE team leader to the RDSTF, the FDLE special agent supervisor and the local ICE immigration supervisor must agree on a decision to arrest or detain a person, pursuant to 287(g) authority. We also mutually share and understand the concerns of our community and the participating agencies. As of today, not one formal complaint has been filed with FDLE related to this program.

Florida strongly supported an additional 287 delegation of authority training program, and in March of this year a second class was convened. During April, the ICE Academy graduated 27 additional task force agents, and they were deployed back into the regions.

To date, the 287(g) initiative arrests cover a broad spectrum of activity. We have detained single individuals involved in what appears to be surveillance activities in sensitive locations. We have also conducted extensive investigations that have resulted in illegal aliens being apprehended working in restricted or secured areas of airports, seaports and nuclear plants.

In those cases where an immigrant is cleared of suspicion but still has immigration issues, the subject is afforded the same consideration as any illegal alien not encountered under these circumstances.

Ironically, this training and experience has proven to be a benefit to the immigrant communities they serve because the agents are more readily able to clear a person that is suspected of suspicious activity by having access to the wealth of information contained in ICE databases and training curriculum.

As with all preventive measures, we will never know for sure just how many terrorists or other criminal operations we have disrupted or impacted; however, we can state that our commitment to follow all leads from citizens, the private sector and other government agencies continues in a diligent and organized manner.

Additionally, participating agencies have recognized this authority, coupled with appropriate training and oversight, adds value to their organizations.

In closing, Florida strongly supports the continuation of the 287(g) Cross-Designation Program. Again, thank you for this tremendous opportunity, and I look forward to your questions.

[The statement of Mr. Dubina follows:]

PREPARED STATEMENT OF MARK F. DUBINA

Mr. Chairman and distinguished Members of the Committee. I would like to begin by thanking this Committee for the opportunity to represent the state and local officers throughout Florida, who are designated to serve in the first of its kind 287(g)

Cross Designation Program. All of these men and women have served on Florida's Regional Domestic Security Task Forces, and are committed to a partnership with federal law enforcement to ensure the domestic security of the citizens and visitors in the State of Florida. These partnerships are vital in creating bonds that allow law enforcement at all levels to work together against future terrorist attacks targeting the State of Florida and our nation.

Please allow me to start with a history of the 287(g) Cross Designation Program in Florida. After the atrocities of September 11, 2001, the State of Florida quickly assessed its abilities to detect and respond to domestic security and terrorist events. Governor Jeb Bush directed Florida Department of Law Enforcement (FDLE) and Department of Emergency Management (DEM), to lead Florida's efforts in determining its preparedness. Within one month, over 1,000 agencies including Law Enforcement, Fire, Emergency Management, Health and the private sector were polled in this project. From these efforts, the State of Florida created seven Regional Domestic Security Task Forces (RSDTF's), generally coinciding with the geographic areas served by existing FDLE Regional Operations Centers. These task forces have served as the cornerstone of Florida's domestic security and anti-terrorism efforts since that time, and have achieved great success.

In November 2001, the Florida Legislature met in special session and codified the domestic security task force structure into statute. These task forces serve under the policy direction of a multi-disciplined oversight council, and at the regional level are co-chaired by a sitting Sheriff and the FDLE Special Agent in Charge serving that region. Their mission is to employ the coordinated resources of various local, state and federal agencies to prevent, preempt and disrupt any terrorist attack or other domestic security threats within the State of Florida; or, in the event of such an attack, to effectively respond to the incident to facilitate recovery and investigation. The law enforcement component of the Regional Domestic Security Task Force is coordinated by the FDLE. As stated, the RDSTF is comprised of law enforcement, fire/rescue, medical, emergency response and preparedness components. Law enforcement is the discipline responsible for coordinating with Federal authorities regarding enforcement efforts concerning immigration violations. It was quite apparent, based upon the nature of the 9/11 attacks and the limited Federal immigration resources in Florida at that time, that these RDSTF law enforcement components could become force multipliers to address immigration issues with a potential nexus to terrorism.

The current ICE/RDSTF initiative evolved from a previous FDLE request to allow state law enforcement personnel to have direct access to the Legacy Immigration and Naturalization Service (INS) record systems and databases. In December 2001, the INS Assistant District Director for Investigations (ADDI) and FDLE leadership met to discuss the concept of using the provisions of Section 287(g) and consensus was reached as to the need for such a program.

The initial proposal consisted of employing the time-proven, multi-agency law enforcement task force approach, combined with the delegation of authority provisions of Section 287(g) of the Immigration and Nationality Act (INA). The initiative would designate a cadre of RDSTF-assigned state and local law enforcement officers who would be trained by INS in immigration law enforcement matters. INS enforcement authority would be delegated to those officers under Section 287(g) and they would work under the direct supervision of an INS Supervisor and the assigned RDSTF Special Agent Supervisor.

The vetted 287(g) initiative was presented to Governor Bush, who concurred and directed FDLE to immediately pursue implementation. Shortly thereafter, Governor Bush presented the concept to Legacy INS Commissioner Ziglar and Attorney General Ashcroft in Washington, both of whom agreed the initiative should go forward.

Legacy INS administrators began an in-service campaign to present the initiative proposal to the various levels of the Legacy INS command structure. These efforts, given the first-time and highly unique nature of the proposal, were often problematic. However, with the Legacy INS Commissioner's approval already a given, the initiative was accepted by the Legacy INS command at the Eastern Regional Office and Headquarters.

With these conceptual approvals, members of the Legacy INS Office of Investigations (Miami) began working closely with FDLE to produce a draft written proposal for submission to INS Headquarters. After several revisions, a formal initiative proposal was finalized and ultimately approved by INS, DOJ and FDLE. The initiative proposal led to the finalization of a Memorandum of Understanding (MOU) which, after additional revision, was signed by United States Attorney General Ashcroft, Governor Bush, Commissioner Ziglar and Commissioner Moore in July 2002. In December 2003, this Memorandum of Understanding was renewed and signed by De-

partment of Homeland Security Under Secretary Hutchinson and Florida Governor Bush.

The Memorandum of Understanding (MOU) outlines a number of terms and conditions for this 287(g) authority. The foundation for these terms is that all investigative efforts must have a nexus to domestic security and counter terrorism. Other key terms included that all Regional Domestic Security Task Force members assigned to the 287(g) Program had to commit to serve a minimum of one year under this authority. All members were subject to a full background not only from the RSDTF, but also INS/ICE. They further had to attend and pass proficiency testing provided by INS/ICE.

Implementing the provisions of the MOU began during April 2002 when Legacy INS Investigations selected seven Acting Supervisory Special Agents (ASSA's) and posted them in the seven RDSTF locations. The assigned ASSA's immediately engaged in operational liaison and local training efforts with the RDSTF. They also began initiating cases and making arrests in conjunction with the RDSTF. This spirit of cooperation was crucial during the initial phases of the program.

Soon thereafter, the Immigration Officer Academy crafted a six-week training course featuring the delegation of authority curriculum. Legacy INS and FDLE, working with law enforcement agencies participating in the RDSTF, finalized the selection of 35 veteran law enforcement investigators as the initial cadre of delegated-authority officers.

On July 9, 2002 the first-ever Section 287(g) training course began. The course covered immigration and nationality law, immigration criminal laws, removal statutes, civil rights, cultural diversity, alien processing, INS structure and record systems and employed the same testing criteria and techniques as basic Immigration Officer Training. On August 15, 2002, the course graduated all 35 participants, who then returned to their assigned RDSTF locations and became operational.

During this formative period, the State of Florida, through the RSDTF's, expended considerable energy and time communicating the purpose of the program to various ethnic groups. This program received considerable publicity in Florida during its development in part because this was a new concept, but also due to Florida's highly diverse population and migrant farming communities. Some cultural groups expressed concerns related to any INS authority being delegated to state and local officers. The Office of the Governor, the RSDTF's and Legacy INS diligently worked to communicate exactly what Florida's intentions were with this program to the ethnic groups with concerns, including community and religious leaders representing Hispanics, Haitians and persons from countries in the Middle East. All participating agencies collaborated on, and later produced, an informative brochure that explained in simple terms, and multiple languages, the mission of the program. Additionally, we did not miss an opportunity to communicate our message via the print, radio and television media. I am proud to say on behalf of all the regions we have adhered to the spirit and letter of our MOU. Within this program there have been no examples where persons have been arrested or detained that were not directly related to a domestic security complaint or focused investigation. I cannot over emphasize the highly focused nature of the Florida initiative. In all cases, the ICE Team Leader to the RDSTF (formerly the INS ASSA), the FDLE Special Agent Supervisor and the local ICE Immigration Supervisor must agree on a decision to arrest or detain a person pursuant to the 287(g) authority. We respect individual rights and abide by all applicable state and federal law. We also mutually share and understand the concerns of our community and the participating agencies. Additionally, proactive criminal investigations involving the United States Attorney's Office receive further review to assure compliance with all applicable Federal laws and procedures. As of today, not one formal complaint (a procedure is provided for within the MOU) has been filed with FDLE related to this program.

The reorganization of a number of federal agencies including INS into the Department of Homeland Security presented some challenges to our 287(g) Program. Not only has the Department of Homeland Security undertaken the massive responsibility of deciding appropriate roles and relationships within its structure, the Florida Department of Law Enforcement itself in October 2003 received a new Executive Director, Commissioner Guy Tunnell. During the months between September and December 2003, no direct action could be taken by our Cross Designated agents, as the Memorandum of Understanding was under revision and had not yet been finalized. In the Tampa Region, we carried on by working with the ICE Special Agent in Charge and his colleagues. I am proud to say that our previous accomplishments and established relationships served us well during this transition, and we continue to reap the benefits of these focused and highly coordinated efforts.

Florida strongly supported an additional 287(g) Delegation of Authority Training Program, and in March of this year a second class was convened. During April, the

ICE Academy graduated twenty-seven (27) additional Task Force Agents that were deployed back into the regions. Immediately following the graduation, senior leadership from FDLE and ICE met to discuss the future of the program. Each Region was directed to assess the current state of the program and develop a plan for continued operations. In Tampa Bay, regional ICE and FDLE leadership decided to continue to focus on areas that had provided value in the past. Proactive investigations concerning the impact of illegal immigrants on critical infrastructure, and diligent follow-up on complaints received concerning persons who appear to pose a domestic security threat, were and remain our regional priorities.

There are currently ten (10) Regional Domestic Security Task Force Agents assigned to the ICE/RDSTF 287(g) project in the Tampa Bay area. These Agents represent seven different city, county and state agencies, and have statewide investigative and arrest authority granted by FDLE for the purpose of conducting domestic security investigations. The Task Force Agents (TFA's) work on a variety of assignments, but their first priority is to work on investigations concerning foreign nationals that are suspected of being involved in domestic security related issues. Many of the investigations to date have concerned nationals or citizens of countries designated as sponsors of terrorism or countries in areas of geographic concern. Additional investigations targeting unauthorized persons working in critical infrastructure have also resulted in a number of arrests and deportations. To date over 100 persons have been arrested, and many more have been interviewed by trained officers who can more adequately determine if a person poses a threat based a number of variables, including knowledge gained by participating in the extensive ICE 287(g) training.

To date, the arrests cover a broad spectrum of activity. We have arrested single individuals involved in what appears to be surveillance activities of sensitive locations. We have also conducted extensive investigations that have resulted in illegal aliens being apprehended working in restricted or secured areas of airports, seaports and nuclear plants. As with all preventive measures, we will never know for sure just how many terrorist or other criminal operations we has disrupted or impacted; however we can state that our commitment to follow all leads from citizens, the private sector and other government agencies in a diligent and organized manner continues.

Operation "Open Water" is one example of how the 287(g) authority can be utilized in a multi-agency task force environment, and is representative of similar RDSTF operations in the State of Florida. Operation Open Water is a long-term investigation that was initiated based on a RDSTF effort to investigate instances of identity fraud and false statements used by subjects to obtain employment and access to restricted areas at the Port of Tampa. The investigation revealed the identities of subjects at the Port of Tampa who compromised or circumvented statutorily mandated port security measures by violating State of Florida or Federal laws. The investigation resulted in a number of indictments which lead to arrests, detentions and removals. The investigation was successful because it combined the efforts of a number of FDLE programs/initiatives and the training and expertise of the ICE 287(g) trained Agents and the ICE Lead Worker assigned to the RDSTF. In each case we also look for problems in the system, and work with the appropriate authorities to close loop holes, strengthen procedures, or recommend regulatory and/or statutory changes.

The 287(g) authority granted to these specialized Agents has never been considered the single solution for any issue involving an immigrant suspect. Complete investigations surrounding these, and other persons of concern, are required to assure that law enforcement officers are following all leads to a logical conclusion. The 287(g) authority is one of many valuable tools in the legal "tool belt" afforded these Task Force Agents to impact suspects in domestic security cases. Participating agencies recognize this authority, coupled with appropriate training and oversight, add value to their organizations. Even today, this program acts as a force multiplier by allowing authorized local and state agents to screen incoming complaints and identify persons and leads worthy of follow-up investigation, without initially contacting the regional ICE office with every lead or complaint. Those leads or complaints that require further examination receive more attention at the appropriate levels.

Ironically, this training and experience has proven to be a benefit to the immigrant communities because the Agents are more readily able to clear a person that is suspected of suspicious activity by having access to the wealth of information contained in ICE databases. In those cases where an immigrant is cleared of suspicion, but still has immigration issues, the subject is afforded the same consideration as an illegal alien not encountered under those circumstances.

In closing, Florida strongly supports the continuation of the 287(g) Cross Designation Program. We believe this authority provides a strong force multiplier for our

federal partners and our collective efforts to prevent another terrorist attack. We remain ready and willing to assist our federal partners in these efforts. By remaining committed to our use of the trained personnel in domestic security related investigative efforts, we are assuring that these highly skilled officers will be put to the best use—thereby better protecting Florida and the nation.

Again, thank you for this tremendous opportunity and I look forward to your questions.

Mr. ROGERS. Thank you, Mr. Dubina.

The chair now recognizes the Major Charles E. Andrews, chief of the Administrative Division of the great state of Alabama, Department of Public Safety, for your statement.

#### **STATEMENT OF CHARLES ANDREWS**

Major ANDREWS. Mr. Chair, distinguished members of the committee, thank you for the opportunity to be here and talk about the 287(g) Program in Alabama.

The Alabama Highway Patrol began in 1935 and in the succeeding years has developed into the Alabama Department of Public Safety. The Alabama Department of Public Safety consists of the Administrative, Highway Patrol, Driver's License, Alabama Bureau of Investigations Service and Protective Services Divisions, employing 676 officers.

In early 2003, the state of Alabama, through Governor Bob Riley's office, approached the Immigration and Naturalization Service. This contact was precipitated by the increase in forged documents presented by individuals applying for the Alabama driver's license and non-driver identification cards and the lack of presence of and access to immigration officers.

At the time the Governor's Office contacted federal agencies, there were only three INS officers in the entire state of Alabama and in fact the state had only recently been assigned two of the three officers. Alabama U.S. Senator Jeff Sessions and his staff were helpful in communicating information about the 287(g) Program and establishing contact with INS.

In April of 2003, Walt Hemple, a senior agent with INS, presented a briefing regarding the 287(g) Program to the Department's divisions, commanders and the DPS director, the Department's Montgomery headquarters. In discussions that followed this briefing, the Department and the Governor's Office determined that the 287(g) Program would aid public safety in its duty to protect and serve the citizens of the state of Alabama.

In May, the Department began negotiating a memorandum of understanding with INS and in September 2003, the state of Alabama signed a memorandum of understanding with the U.S. Department of Homeland Security. This memorandum was authorized by the Immigration and Nationality Act of 1996, as amended by Section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, codified at 8 USC Section 1357(g).

When the Alabama Department of Public Safety entered into the MOU, it believed it was the right course of action. Now, almost 2 years later, we can say we are certain that the 287(g) Program was and remains the right course of action.

In December of 2003, Alabama State troopers and driver's license examiners received a 4-hour course of training in immigration documents and law from Walt Hemple and other ICE agents. In Octo-

ber 2003, 21 state troopers successfully completed 5 weeks of extensive immigration training and were sworn in by ICE to enforce federal immigration law.

The first training class began September 3, 2003 and comprised a 5-week course taught at the Center of Domestic Preparedness, a Department of Homeland Security facility, located near Anniston, Alabama. The teaching staff was made up of instructors from the Federal Law Enforcement Training Center at Glencoe, Georgia. Subjects covered included nationality law, immigration law, document inspection and fraudulent documents, bias-based policing, statutory authority, removal charges and juvenile processing.

Because the ICE training was held at the Center for Domestic Preparedness, the troopers were able to take part in ICE booking procedures at nearby Etowah County ICE holding facility and work with ICE at Atlanta's Hartsfield International Airport.

Under the terms of the MOU, Public Safety spent about \$40,000 in overtime and other expenses during the training of the 21 troopers. The Department of Homeland Security paid the remaining costs for the training.

As part of the MOU, the Department has developed an outreach program to communicate with constituents the purpose of Alabama's involvement in the 287(g) Program. This outreach began when Juan Carlos Lara, a consular officer with the Mexican Consulate in Atlanta, Georgia, addressed the troopers while they were still training at the Center for Domestic Preparedness. The Department also hosted a program in Montgomery for leaders of foreign national organizations and other interested parties from throughout the state in 2003.

The director of the Department has taken part in a number of panel discussions at various gatherings of foreign nationals in Birmingham and other locales throughout the state. The Department's Public Information staff has appeared on numerous radio talk shows that cater to foreign nationals and regularly conducts interviews regarding the program.

The main point the Department works to communicate is that Alabama's program is reactive and not proactive and that troopers must have state probable cause before they arrest anyone.

It is important to note, too, that the MOU includes a formal complaint procedure and that DPS has not received the first complaint regarding its 287(g) participation.

Since their October 3, 2003, graduation, these ICE-trained troopers have made several arrests of illegal immigrants in the course of their regular duties, including 44 cases accepted for federal prosecution. Five of these arrests were of previously deported illegal immigrants with felony convictions. The MOU troopers also have made two cases of bulk cash smuggling and seized \$690,113.

Make no mistake, these 21 ICE-trained troopers are not federal immigration officers. They remain Alabama state troopers with primary duties in the Alabama Department of Public Safety's Highway Patrol and Driver's License divisions, and that is precisely why the 287(g) Program has been so successful in Alabama. These troopers enforce federal immigration law only as needed while carrying out their regular duties as Alabama state troopers.

Alabama's MOU with Homeland Security is a reasonable, common-sense platform that results in a win-win outcome both for the law enforcement community and for the citizens whom we serve.

Thank you for this opportunity to testify.  
[The statement of Major Andrews follows:]

PREPARED STATEMENT OF CHARLES E. ANDREWS

The Alabama Highway Patrol began in 1935, and in the succeeding years, has developed into the Alabama Department of Public Safety. The Alabama Department of Public Safety consists of the Administrative, Highway Patrol, Driver License, Alabama Bureau of Investigation, Service and Protective Services divisions, employing 676 sworn officers.

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When the Alabama Department of Public Safety entered into the MOU, it believed it was the right course of action. Now, almost two years later, we can say with certainty the 287(g) program was and remains the right course of action.

In the summer of 2003, Alabama state troopers and driver license examiners received a four-hour course of training in immigration documents and law from Walt Hempel and other ICE agents. In October 2003, 21 state troopers successfully completed five weeks of extensive immigration training and were sworn in by ICE to enforce federal immigration law.

This first training class began September 3, 2003, and comprised a five-week course taught at the Center for Domestic Preparedness, a DHS facility located near Anniston, Alabama. The teaching staff was made up of instructors from the Federal Law Enforcement Training Center at Glencoe, Georgia.

Subjects covered included Nationality Law, Immigration Law, Document Inspection and Fraudulent Documents, Bias-based Policing, Statutory Authority, Removal Charges, and Juvenile Processing. Because the ICE training was held at the Center for Domestic Preparedness, the troopers were able to take part in ICE booking procedures at the nearby Etowah County ICE holding facility and work with ICE at Atlanta's Hartsfield International Airport. Under the terms of the MOU, Public Safety spent about \$40,000 in overtime and other expenses during the training of the 21 troopers. The Department of Homeland Security paid the remaining costs for the training.

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active, not proactive, and that troopers must have state probable cause before they arrest anyone. It is important to note, too, that the MOU includes a formal complaint procedure and that DPS has not received the first complaint regarding its 287(g) participation.

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Make no mistake: these 21 ICE-trained troopers are not federal immigration officers. They remain Alabama state troopers with primary duties in the Alabama Department of Public Safety's Highway Patrol and Driver License divisions, and that is precisely why the 287(g) program has been so successful in Alabama. These troopers enforce federal immigration law only as needed while carrying out their regular duties as Alabama state troopers.

Alabama's MOU with Homeland Security is a reasonable, common-sense platform that results in a win-win outcome both for the law enforcement community and for the citizens whom we serve.

I mentioned arrests a few moments ago. Have we made a significant number of arrests as part of this program? No, and we wouldn't expect to. But the arrests themselves are significant.

The first arrest was of a Korean man who applied for an Alabama driver license. He presented as his own a resident alien card belonging to a female. When the driver license examiner ran an NCIC report, which is routine procedure in Alabama, the examiner learned the applicant had prior convictions for armed robbery and two cases of possession of controlled substances. An MOU trooper detained the subject until ICE officers arrived.

Three examples of arrests made by MOU-trained Highway Patrol troopers are:

In one incident, a trooper stopped a vehicle on an interstate in Alabama for a routine traffic violation. The trooper found that both occupants of the vehicle had outstanding warrants and were aggravated felons. Both also had been previously deported. The two were turned over to ICE.

A second incident involved a van in Tuscaloosa County traveling on Interstate 20/59, which was stopped for a traffic violation by one of our Motor Carrier Safety units. The trooper received conflicting information from both the driver and front-seat passenger. There were a total of 16 persons in the van, which was going to Atlanta. They were detained, taken to the Tuscaloosa Post, and ICE was called. The MOU troopers started interviewing the driver, front-seat passenger and the other 14 passengers and initiated the necessary paper work. When the Immigration agents arrived, the troopers had processed the 16 occupants, including interview sheets and fingerprint cards. The two drivers were charged with trafficking, and the other passengers were returned home by ICE. Troopers charged the driver with various DOT violations.

The third incident involved a stop of a foreign national for speeding on Interstate 65. The trooper ran the driver's license number and discovered it was not on file. The trooper contacted an MOU-trained trooper who, along with an ICE agent, went to the scene. Using the National Records database, the ICE-trained trooper was able to determine that the driver previously had been arrested in Denver in 1969, for entering the United States illegally. The driver was taken into custody by the ICE agent and transported to the ICE facility in Etowah County. The state trooper charged the driver with no state driver license, no proof of insurance and traveling 87 mph in a 50 mph construction zone.

Since the 1990s, the department has fielded an extremely aggressive anti-fraud program in driver licensing, with which the 287(g) program is entirely consistent. Just in the course of driver licensing, troopers make almost 5,000 arrests each year on a multitude of charges and outstanding warrants. One such arrest occurred November 22, 2004, in Opelika. A driver license examiner consulted one of our MOU troopers regarding a Social Security card she believed to be fraudulent. After examining the card, the MOU trooper determined it was, indeed, fraudulent. The trooper called the Social Security Administration and tried to verify the Social Security number on the card, but the number was invalid. The name on the card was Lisa Simone Hamilton. The MOU trooper called the female applicant into her office, told her she was under arrest for possession of a forged instrument, second degree, because of the Social Security card, and then tried to place handcuffs on her. The applicant immediately began to yell, "It's not mine!" then pushed the trooper, grabbed her purse and tried to leave the office. The woman continued to resist arrest to the point of breaking the arm of one of the driver license examiners and breaking the glass out of the front door. Once outside the building, the trooper was able to gain

control of the applicant and cuff one arm while she was on the ground. An ambulance arrived and transported the injured driver license examiner to the hospital, and the applicant was then placed into a patrol car and transported to jail. It was determined that her name was Uchechukwuka Odita and she already was engaged in deportation proceedings. She also had in her possession a U.S. passport bearing the same name as the Social Security card. The passport, however, had Ms. Odita's picture on it.

The Alabama Department of Public Safety's responsibility is to protect and to serve everyone in Alabama, and the 287(g) program is a valuable tool that helps Alabama's troopers do a better job protecting and serving our state and nation. That is why the Alabama Department of Public Safety, Governor Riley and Senator Sessions have requested and ICE has agreed to retraining the 21 ICE-trained troopers and training a second class of 25 troopers.

FOR THE RECORD

**CAS Wage and Baggage Handler Point Paper for John Martin**

**I. Screener Compensation.** As of June 30, 2005, Covenant Aviation Security's (CAS) base wage for Screeners at San Francisco International Airport is as follows:

San Francisco Airport (SFO)	Screener	Lead Screener	Supv Screener
CAS Avg Direct Labor Rate	\$17.74 per hour	\$23.39 per hour	\$27.91 per hour

In terms of comparing CAS' wages and benefits at SFO to the TSA's wages and benefits in the San Francisco Bay area, neither CAS nor SFO have access to TSA's current wage information. The last published wage data from the TSA is from August, 2004. At that time, the comparison between CAS' hourly wages and benefits and the TSA's is as follows:

Covenant Aviation Security Wages and Benefits at SFO	Screener	Lead Screener	Supv Screener
CAS Direct Labor Rate	\$17.39	\$22.93	\$27.36
1. CAS Fringe Benefit Rate	35%	35%	35%
3. Combined CAS Wage and Fringe Benefit Rate	\$23.48	\$30.96	\$36.94
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TSA Wages and Benefits in the Bay Area	Screener	Lead Screener	Supv Screener
1. TSA's Direct Labor Rate	\$14.92	\$19.44	\$23.17
2. TSA's Fringe Benefit Rate	44.75%	44.75%	44.75%
3. Combined TSA Wage and Fringe Benefit Rate	\$21.59	\$28.14	\$33.53

CAS' wages and benefits are fully compliant with the requirements of the Aviation Transportation Security Act (ATSA), the Fair Labor Standards Act, and all TSA contract requirements.

**II. Baggage Handlers.** CAS currently employs 73 Baggage Handlers at SFO. Their current wages are \$12.61 per hour. When CAS' benefit package is included, their total remuneration (wage plus fringe benefits) is \$16.96 an hour.

The purpose of Baggage Handlers at SFO is to relieve CAS' Screeners from the burden of lifting and carrying heavy baggage. This allows CAS' Screeners to focus exclusively on screening passengers, thereby increasing screening efficiency. Also, because the Baggage Handlers position has a greater physical capabilities requirement than does a Screener position (couple with the fact that CAS Baggage Handlers go through extensive "safety lifting" training), the introduction of Baggage Handlers as greatly reduced the frequency and severity of on-the-job injuries to CAS' Screening force. As a result, Baggage Handlers are seen by CAS' Screening workforce as a welcomed complement to CAS' overall screening operation. CAS Screeners and Baggage Handlers work together as an integrated team, and because each

position is able to focus on what they do best, there is greater team cohesion and *esprit de corps* than was the case before CAS introduced Handlers. In addition, there is a natural career progression from being a Baggage to becoming a Screener (i.e. because CAS Baggage Handlers have already passed background checks, they are given the opportunity to become Screeners if they are able to pass the additional Screening tests).

CAS' Baggage Handlers fall under the cognizance of the Service Contract Act (SCA) and CAS currently exceeds the SCA's minimum requirements. Also, because CAS has absorbed its Baggage Handlers within the TSA' Full-Time-Equivalency (FTE) staffing allotment for SFO, the introduction of Baggage Handlers did not increase contract value.

Mr. ROGERS. Thank you, Mr. Andrews, for your statement.

Thank all the panelists for your statement.

At this time, I have a few questions I would like to ask.

First, Mr. Andrews, one of the concerns that has been voiced by immigrant groups about the 287(g) Program is their concern over racial profiling. Can you describe for us your Alabama experience on this issue and any concerns or problems that have arisen with regard to racial profiling?

Major ANDREWS. Yes, sir. Before we entered into this agreement, the policy of the Alabama Department of Public Safety was not to condone racial profiling. We have a formal policy against that, which also applies to the 287(g) Program. There is a complaint process that is required as a part of the memorandum of understanding where complaints or comments can be filed with either the Department of Public Safety or with the ICE supervisors concerning any complaints of racial profiling.

And we have policies in order to deal with any officer that engages in such conduct, and it is not acceptable, not tolerated by our Department.

Mr. ROGERS. To your knowledge, have there been any complaints about racial profiling in your state—

Major ANDREWS. No, sir.

Mr. ROGERS. —since the inception of the program?

Major ANDREWS. No, sir.

Mr. ROGERS. Thank you.

Mr. Dubina, I would like to ask the same question of you with regard to Florida. Are you aware of any complaints in Florida with your experience in the 287(g) Program with racial profiling?

Mr. DUBINA. No, sir. And to echo the words of the Major, most of what he said applies in Florida also. I would also again like to point out that not only in these officers' training as Florida law enforcement officers, certified officers, but also in their training as ICE designated officers, they go through a series of programs involving cultural sensitivity and racial profiling issues so that they are very aware that those are concerns of the community and their supervisors.

Mr. ROGERS. And I would ask each of you a question in each of your respective states, Mr. Dubina and Mr. Andrews. We have referenced a number of officers who participated in this training. Is it your belief that there would be a high demand for more of this training if we made the funds available?

I will start with you, Mr. Dubina.

Mr. DUBINA. Well, I think one thing we have to realize is that this is very intense training, it is 5 weeks, and then there is a commitment to ICE following the training. So while I believe there are

agencies out there, including my own agency, that would like to further take advantage of this program, I do not see in the future literally hundreds of people being involved. I think it is a very focused directed program, and the people that come out of there are highly trained and very professional in the way they do their business.

Mr. ROGERS. Mr. Andrews?

Major ANDREWS. I agree with Mr. Dubina. We are very selective in the individuals that we select to participate in this program. I do believe that we see them as a force multiplier. There is a need for some additional troopers to be trained in this area, because we constantly encounter individuals who presented us with fraudulent documents, and as we get into checking their backgrounds, we find more and more of them who are not here legally.

Mr. ROGERS. Thank you.

Mr. Kilcoyne, in your written testimony, you state that the 287(g) Program will "better serve the people of the United States in ICE's vision in the nation's prisons and jails."

Now, we have heard testimony today from the panelists about how well this program has worked in Florida and Alabama in its current status. Your remarks seem to support what we have heard from several states that the Department has either considering or has already set a policy.

In the future, the 287(g) Program will only be implemented in the custodial setting, and your remarks seem to support that suggestion. Is that true?

Mr. KILCOYNE. Yes, sir, it is. And I think we have to keep in mind that with existing resources and existing assets that we have, we have to be able to manage this program effectively and wisely so that the end result does not occur as what occurred before in that if a call comes in to the LESC or to an ICE office, that there is a van-load or a car-load of suspected illegal aliens alongside the highway and we are not able to respond at all, then we have not accomplished anything if we are making the stop and not being able to respond or the state and locals are making the stop and we are also not able to respond.

The lessons that I think we have learned from Alabama and Florida is that we have to make sure that in those two states, through using the steering committee concept, through continued dialogue with the management of the entities there, that we maintain a very focused approach to this.

Implementation of the program, as the gentleman from Florida Department of Law Enforcement stated, we just recently focused on the airport, on violent sexual offenders or predators. The seaports, those are people who have access to critical locations and critical areas within those airports or within the seaport.

The same with expanding it in Alabama where the Major mentioned the fraudulent documents, obtaining other documents. Those are the individuals that we want to focus on, because when they come into the Department of Motor Vehicles within Alabama, chances are they are bringing other documents with them to obtain additional fraudulent documents. So they bring the evidence with them, and we are able to go after an organization who is supplying

the documents or it gives us a starting point for criminal investigation.

What we are trying to do is to work smarter with the application of the program into the jails where we have a focus on those individuals who are going to be in custody for a period of time for the charges that got them there originally, whether it is burglary or drunk driving or car theft or whatever.

Then we are able to manage our resources so that as that individual does his time, that we are able to, upon release for the charges that got him there in the first place, we are able to take them, put them on a plane or a bus or a whatever and deport them out of the United States.

Now, if we manage that correctly, there is a byproduct for the states, and that would be the reduction in cost that the state or county would have to incur for supervision on probation or parole. So we are able to take them and remove them, and then they do not have to incur the costs for that type of supervision. That is the direction with the resources that we have available that we are trying to go. Improve and continue to sharpen the focus in Florida and Alabama and expand it in that direction is the direction that we are trying to go.

Mr. ROGERS. Thank you. Unfortunately, my time has expired.

The chair now recognizes the ranking member, Mr. Meek of Florida, for any questions he may have.

Mr. MEEK. Thank you so very much, Mr. Chairman.

Mr. Kilcoyne, I want to ask you another question as it relates. You mentioned the memorandums of understanding and also this committee that is supposed to be formed, I know, in the Florida Department of Law Enforcement with the commissioner and with Homeland Security to talk about the effectiveness of the 287 Program. Also, the same language is in the MOU as it relates to Alabama.

What have we found as it relates to the effectiveness of protecting the homeland?

Mr. KILCOYNE. Well, I think one of the important—addressing the first part, as far as the steering committee—I think that it is essential for this program to work and to work effectively is that there is an open and continued dialogue at the local level between the Special Agent in Charge for ICE, the Special Agent in Charge for the Florida Department of Law Enforcement; in Alabama, between our Special Agent in Charge or our Resident Agent in Charge and the command staff for the Highway Patrol.

They need to be able to use this program and focus this program on the specific needs with specific examples as they have both testified to.

Mr. MEEK. I am sorry, I do not want to cut you off, but I have limited time and I have a couple other questions.

But I want to—especially if you could address the part of domestic security and counterterrorism, the steering committee, because that is in the MOU. When we talk about counterterrorism I know that your testimony has been mainly targeted toward once an individual is already arrested that they run through the system.

Miami-Dade County, a county I represent, is a part of that effort in making sure that these individuals are not released and that

you are able to keep them. But I am talking about for the trained individuals. From what I understand—and correct me if I am wrong, Major or Special Agent—in Florida, we have 35 individuals that were trained, I think, in August of 2002 and 27 law enforcement. And I guess do we have also DO inspectors that were a part of that, 27 of them. And in Alabama, I understand that 21 troopers have gone through this program since 2003.

I am trying to figure out as it relates to the counterterrorism, because what we are trying to heads toward here is making sure that our federal dollar, if we are to participate, continue to try to build more dollars on to it. And there has been efforts here by members of this committee to put money into this program, and it was not shallow language, it was main language.

How are we targeting that, the steering committees, versus landscape architect gets pulled over for expired tag and we find out that he is an illegal alien and we want to deport him. In the reality, how quick does that deportation take place, and how is that individual found as a high value individual to be deported?

Mr. KILCOYNE. Well, I think as the Major talked about as far as the bulk cash smuggling case, other cases in the DMVs in Florida, the efforts in the airports and the seaports, I mean, what we are trying to do is go after criminal aliens and those individuals that are involved in criminal activity and not the landscaping type of individuals.

When you go after and you come across, it is an investigative tool or an interdiction type of a tool for both of those departments to use to be able to get you into an organization to identify a system or a border security vulnerability in that.

For example, in Alabama, if the troopers were to stop a van and the van would have workers in it or people who have paid money to be transported from Mexico to the Carolinas, let's say, well, our real interest is the individual that is driving the van, the organization that is receiving the money from those individuals.

How are the individuals getting through the border? Where is the money going? What are they buying? What else are they bringing in? Are they bringing in contraband, narcotics? Are they bringing in just people? Are they bringing cash backwards? That is what we are looking for, that is the ultimate goal in this, because that is our mission.

Mr. MEEK. So, Mr. Kilcoyne, your testimony is that we are expecting a state trooper or a local law enforcement officer to carry out that kind of investigation based on the training that they have?

Mr. KILCOYNE. No. Let me—

Mr. MEEK. I see members are here. We are going to have, I believe, another round or so. We will be able to talk about it a little bit more. I am very interested in the program, because I know when law enforcement officers are trained in a certain thing, need it be breathalyzer or need it be enforcement as it relates to drugs, recognition expert, it is training.

I do not know how far we can take it, but I am mainly concerned about the cost that these local law enforcement agencies have to undertake in this issue. And also maybe the individuals we should have here before us, Mr. Chairman, in the future are state legislatures that are having to pay and also administrators that are hav-

ing to replace those individuals when they come off the road for the training.

I am very interested in the program. I am not against the program. I just want to make sure that it is making itself attractive to members of Congress and the administration because there has not been any money earmarked for states to be able to draw down, and there is an effort here to do that.

So thank you.

And I am sorry, Mr. Chairman, for going over.

But our second round you can save your answer. Giving you first shot at it.

Mr. KILCOYNE. Thank you.

Mr. ROGERS. The gentleman yields back.

The chair now recognizes the chairman of the full committee, Mr. Cox from California, for any questions he may have.

Mr. COX. Thank you, Mr. Chairman.

This is a very, very important hearing from my standpoint because we are starting to dig into the questions of why we have not done a much better job of implementing Section 287(g) and why it costs so darn much and why we are hearing from states that the biggest impediment to implementation is in fact ICE and that ICE is not supportive of the program.

These are comments that we hear repeatedly from states that are of great concern to this committee, and I hope that we can do a much better job in the future of using this very, very important tool of law enforcement.

I know, because I have had so many conversations with law enforcement around the country, that many, many states and subdivisions of states are interested in partnering with the federal government and sharing this responsibility, which is the nature of homeland security. When we created the Department of Homeland Security and when we, as a nation, embarked upon this mission of homeland security, the touchstone was then and is now and will be in the future sharing in ways that we never did before.

Obviously, the nation is overwhelmed by the number of people violating our immigration laws with impunity, and, obviously, the number of federal officers is inadequate to the task of enforcing the law against so many people. What we need is a force multiplier. We have that in the men and women in uniform across our country that enforce routinely other federal laws.

What the federal law in this case requires is that anyone operating under the jurisdiction of a state or local government who wishes to enforce immigration law can do so if they are trained in federal law.

So my first question for our ICE witness, Mr. Kilcoyne, is whether or not in your view there is anything that requires that this training in federal law be done by the federal government?

Mr. KILCOYNE. Well, I believe it is ICE's responsibility, since we are responsible for the Title 8 violation of law, I think it is our responsibility to manage this program and to conduct the training.

Mr. COX. But I want to ask the question more specifically. Do you think there is any reason that in addition to the federal government performing this training that somebody else could not perform the training?

Mr. KILCOYNE. Such as contractors, the state government?

Mr. COX. Well, let me read you the law. The law says that, "An officer or employee of the state or political subdivision of a state performing a function of the immigration law shall have knowledge of and adhere to federal law relating to the function."

Now, is there anything in that that requires that that knowledge be imparted by the federal government? I learned a whole lot about federal law by going to law school, and my law school was not owned and operated by the federal government. I have learned a lot about federal law in many other ways. Is there anything in nature or law that requires that this training be done by the federal government and by ICE? Can we get more people involved in this and do it faster, better and cheaper?

Mr. KILCOYNE. That I do not know. I mean, I would have to defer to the policy makers and the attorneys to give a definitive answer to that that we could get back to you on.

Mr. COX. Well, I am looking at some numbers here—Mr. Chairman, do you have that data that we were just discussing, here is it right here—that suggests that we are looking at \$171,000 for training for 50 students. And I apologize that I was not here if you have gone over these figures before, Mr. Chairman, but what is the source of this figure?

Mr. ROGERS. We received this this morning just before the hearing. I had asked yesterday of our staff—

Mr. COX. ICE is the source of this?

Mr. ROGERS. The source from ICE, yes, sir, the training costs.

Mr. COX. So, Mr. Kilcoyne, are you telling this committee that the number, \$171,104, is correct for a basic class for 50 students?

Mr. KILCOYNE. Let me check on that. Yes, that is correct. That is from a number that the ICE Academy staff put together as to what the cost is to put on one of the cross-training classes.

Mr. COX. Mr. Chairman, I see that my time has expired. I think that number is way, way, way too high, that the taxpayers are being ripped off and that we are not accomplishing the statutory purpose as the author of the legislation that we are talking about here, the 287(g) provision. I have a pretty strong sense of what is the intent of Congress here. It is very clear that ICE is frustrating it.

I yield back.

Mr. ROGERS. Thank you, Mr. Chairman, and I agree. There is a series of questions I know I am going to have in my second round about these particular numbers, which we received just before the hearing today, but I think they are astronomical and indefensible, and I do want to know more about them.

With that, the chair will yield for the ranking member of the full committee, Mr. Thompson of Mississippi, for any questions he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Following that line of questioning, Mr. Kilcoyne, are we taking resources from ICE that could go for hiring full-time people to support this program?

Mr. KILCOYNE. At this time, no. During the timeframe that we put these training courses on for both Alabama and Florida, we were in a hiring freeze, so we had these individuals available to

provide the training. Now we are in kind of the flipside to that in that we have ramping up again for hiring of basic immigration enforcement agents for—

Mr. THOMPSON. Thank you. So the freeze is off. So if my state decides to participate in this program, will it take some resources that you have dedicated to hiring personnel to provide that training?

Mr. KILCOYNE. I believe so, yes.

Mr. THOMPSON. Thank you.

I want to also talk about—this is to Major Andrews—if one of your troopers find one of the violators and they have to go to court under this present program, who pays for that trooper's time when they have to go to court?

Major ANDREWS. At the present time, the Department of Public Safety absorbs those expenditures.

Mr. THOMPSON. Mr. Chairman, that is one of my concerns is on its face this program looks like the force multiplier takes effect, but it is really a cost to local government, and you take that trooper who is in court is now off the roads of the state of Alabama, and those communities that they are sworn to serve and protect are one less sworn officer to do their duty.

So I am concerned that we are just kind of shifting this federal responsibility to the local level, and even when we do it, we do not accept our responsibility to pay for the cost of it. So it is almost like smoke and mirrors that we are putting this burden.

Moving a little further, Mr. Kilcoyne, what is the complaint process under the MOU?

Mr. KILCOYNE. The complaint process is a very complex, detailed part of the MOU. There is an appendix to it, so both signatories understand the process to be able to utilize their own existing complaint process, and then it would come up to either the Major's level or my level and be dealt with collectively, if need be. But it would be what you as a motorist would have in your state as a way to complain about the way you were dealt with, the same as if it was us involved.

Mr. THOMPSON. Excuse me. So if the Florida Department of Public Safety had a complaint based on an arrest or some situation, who has jurisdiction of the complaint? Is it Florida or the Department of Public Safety or is it ICE?

Mr. KILCOYNE. Well, I think it would depend on exactly what part and what the issues of the complaint were. If it was the initial stop or the way the individual was dealt with up until the point where they were turned over to us, then Florida would handle that. If it was after they were turned over to us, then we would handle that part of the complaint.

Mr. THOMPSON. Well, if you would, for both Florida and Alabama, I would like for you to provide this committee with the written complaint procedures for either one of those situations that you said, whether it is the initial stop or whether it is one where ICE has the responsibility.

I am a little concerned that it might not be as clear as it needs to be, and in all respect, when you put the two jurisdictions together, that individual who is stopped is probably traumatized and in some situations would not know what to do. So I would like to

see for myself what the written policy that you have established for complaints.

Now, that goes to the point of the forms that you provide the individual who have complaints or whatever the process is. I think members of the committee would want to see it.

Mr. KILCOYNE. Okay. We can get that to you.

Mr. THOMPSON. Thank you very much.

I yield back, Mr. Chairman.

Mr. ROGERS. Gentleman yields back.

I thank the ranking member for his questions. He makes an excellent point about what has been the practice, and that is that we have been seeing cost shifting from us to the state and local government.

I would like for the record, though, to emphasize that in this year's authorization this committee authorized \$40 million for this program, and the Appropriations Committee is appropriating \$5 million of that.

And in this appropriations, the state and local governments will be allowed to reimburse their local governments for the backfill and overtime costs, so we will see that practice stopped, respectively. But you are right, it has been happening.

Mr. THOMPSON. Well, if the gentleman will yield, I think, Mr. Chairman, one of the concerns is that is probably one of the reasons we have not had any—

Mr. ROGERS. I agree.

Mr. THOMPSON. —participation in the program. I do not think people see the value.

Mr. ROGERS. I agree. Thank you.

And with that, the chair now recognizes the gentleman from Pennsylvania, Mr. Dent, for any questions he may have.

Mr. DENT. Well, thank you.

Mr. Kilcoyne, I had a question for you. What benefits, especially security benefits, has ICE realized by taking advantage of willing partners such as Florida and Alabama? And I will just say in my state of Pennsylvania I have had law enforcement officials say to me when they have apprehended an illegal alien for whatever reason that they get very little support from ICE.

My point is, if we encourage our local law enforcement officials to participate in this program, I would just like to get your perspectives on the success of Florida and Alabama and what do I tell my local law enforcement officials?

Thank you.

Mr. KILCOYNE. Well, I believe the successes are, again, giving ICE an opportunity to take the stop or the encounter that the state police or the Florida Department of Law Enforcement or even in Pennsylvania to take that and to try to disrupt and dismantle the organization responsible for that with our new authorities as far as the combined agencies with the authorities from Customs and the INS.

And the departments, let's say, in your state, in Pennsylvania, where you have been working very diligently with, especially in the Pittsburgh area, to allow them immediate access to the Law Enforcement Support Center so that they can make determinations on the side of the highway or in their precincts or their posts or wher-

ever they may be conducting the interview and to get them that information back as quickly as possible and in some instances where an identification and a determination has been made to issue a detainer to hold that individual until we can get there.

The successes are there has been several hundred cases and leads between Alabama and Florida, organizations responsible for the manufacturing of fraudulent documents or feeder documents, breeder documents, the seizure of cash by the troopers from organizations responsible for the movement of these individuals. That is where we are trying to go to try to identify those individuals who have access to sensitive locations, to secure locations.

And it is a way for the local law enforcement, whether it is in a highway stop setting or in the Department of Law Enforcement in Florida setting through, let's say, the detectives, or even in a jail setting, it is just another tool for those agencies to be able to make sure that we know exactly who the individual is and what their status is here and if they should be deported out of the country or if they can provide information on those organizations responsible for how they got here. That is our end game is to try to disrupt and dismantle the organizations responsible for the flow of these individuals across the border.

Mr. DENT. Well, I guess I just wanted you to be aware of the concerns that were expressed to me by my state police and local police. Well, it just seems to me that we are not a border state, not like Texas or California or Arizona where I am sure you have to deal with this on a much broader and larger basis, but in a state like mine where we have less of an issue with illegals so that we have an issue but not as big as some of the other states, that they are experiencing difficulties. I cannot imagine what some of these other states are going through.

So I just wanted to make sure that I got that point out on the record, and I will talk to my state police and make them aware of your comments here today, and hopefully things will improve. Thank you.

Mr. ROGERS. The gentleman yields back.

The chair now recognizes the gentlelady from the Virgin Islands, Ms. Christensen, for any questions she may have.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I would like to start with Mr. Kilcoyne. I would like to know how is this program a risk-based approach to homeland security? What ICE's enforcement priorities and where does 287(g) fall in that list?

For example, if you had the choice, would you rather see money go to CIP enforcement or to training for this program?

Mr. KILCOYNE. Well, the cost and the money to establish the training program for this is going to be expensive, obviously, if the 20 or 30 jails, large facilities, around the nation come online with this. That is why we have been trying to manage it in a manner that is responsible with the resources and monies that we do have.

Certainly, training is very, very important, so we address any of the concerns that either the state legislators may have or the advocacy groups may have so that we are focusing it on criminal aliens and just not people who are here that are not in that criminal alien category.

Mrs. CHRISTENSEN. But I heard you say that before in a response to another question as well. Is it that clear in your training—and I guess the state police representatives could also answer—that what they are assisting ICE with is in criminal and not just the other, as was referred to, maybe the gardener or the people who are working here?

Because some of the stories that have been related to us do not suggest that this is being utilized just in going after criminal issues with regard to illegal immigrants, but it is kind of taking a broad brush to all illegal immigrants and in some cases profiling those that are not illegal.

Mr. KILCOYNE. Well, I can assure you that the training that we provide and the supervision that we provide to the troopers or to the agents with the FDLE do not vary from what our mission is. And the mission is focused on criminal organizations, those individuals who pose a threat to the border security or systems within the United States, whether it is the transportation system or the financial system or whatever system it may be.

Now, one of the key components of the training is that they, and the Major mentioned this, that once an encounter occurs or a stop is affected, that it is for the reasons, whether it is a Terry stop or state probable cause stop for whatever, weaving within the lanes, bald tires, whatever it may be that gets those individuals stopped.

And the focus of our training and the way we want this applied is that it is another tool to be able to identify those individuals so that we are not releasing someone who should not be released back into the community.

Mrs. CHRISTENSEN. Before my time is up, let me ask Major Andrews, Mr. Dubina, this is taking local and state officers away from their regular duties, and do not you find that it has an adverse impact on doing what your primary mission is?

Major ANDREWS. In Alabama, the program is set up where this is an additional duty assignment for the officers. The officers still focus on their primary mission and their primary duties. We provided them this training in case they encounter an individual, whether he has violated some section of the Alabama code or he has attempted to come to one of our driver's license issuance offices to obtain a driver's license or a non-drive identification card.

As they are performing their normal duties and they encounter these individuals, in the past, we did not have a resource by which to deal with them. I, myself, have made traffic stops in which I encounter individuals, sometimes they are van-loads. All I had was a traffic violation, but I did not have the resources to further investigate the incident.

With the 287(g) Program, those resources have been provided. We have access to the Law Enforcement Support Center.

There was a stop that was made in Tuscaloosa County in which there were 16 individuals in a van. Prior to the 287(g) Program, we probably would have written an individual traffic citation and sent them on their way. However, because of the 287(g) Program, one of our ICE-trained troopers was contacted and responded.

As a result of that, two of the individuals, the driver and one other individual, ended up being charged with felony cases and being deported. The other 14 individuals were processed and inter-

viewed, fingerprinted by the ICE troopers. And when the ICE agents arrived there on the scene, basically all of the paperwork necessary to process these individuals had been done. So it expedited our ability to address that issue.

Mr. DUBINA. And if I could follow up, the officers that are trained in Florida, this is their primary duty, the investigation of domestic security, antiterrorism cases. So they are not diverted in any way by this program. It is nothing more than a benefit to them, an additional tool in their law enforcement tool belt to help them find people, understand what they are doing, and if they are doing something illegal, that is another tool for us to impact them or their organizations.

So as a direct answer to your question, ma'am, this is not any drain on our resources. These people are designated to do this type of work.

Mr. ROGERS. The gentlelady yields back.

The chair now recognizes the gentleman from Georgia, Mr. Linder, for any questions he may have.

Mr. LINDER. Thank you, Mr. Chairman.

Major Andrews, have you taken this course?

Major ANDREWS. No, sir, I have not taken the 5-week course. However, when we first entered into the agreement with this program, we provided 4 hours of training to all of our troopers, our communications personnel and our driver's license examiners in what to look for if an individual presented you with a fraudulent document, what the documents were that proved that you were legally here in the country.

And also one of the most important resources we learned about was the Law Enforcement Support Center. And prior to this, myself nor any other troopers that worked for me had knowledge of this Law Enforcement Support Center.

In the past, we had run individuals through the National Crime Information Center. That would tell us if there were any domestic warrants or warrants on them. However, once we learned about the Law Enforcement Support Center, we started running individuals through there too, and that is where we learned as to whether or not they were wanted for immigration violations or absconders or what have you. And at that point, if we had a state law violation or we discovered this, we would contact the ICE about these individuals. So it has been an eye-opening experience for our agency.

Mr. LINDER. And that 4-hour course you gave them, did those troopers then go on to this other basic class?

Major ANDREWS. The 21 that were selected for the basic class did attend the 4-hour course also; yes, sir.

Mr. LINDER. Did they learn a whole lot more in the basic class than they do in the 4-hour course?

Major ANDREWS. Yes, sir, most definitely. The 4-hour case is more to give them an overview of what they may encounter and how they should react to it. And once they encounter some of these situations, it may well be well beyond the training that they are capable of.

And as I said earlier, because there was a lack of ICE agents in Alabama at the time, we did not have a means by which how to prioritize these as to whether or not we needed to contact ICE or

hold them or what else to do, in some instances, being practical to stop a van-load of people and hold them for 24 or 48 hours while you are waiting for a response from an ICE agent.

Gratefully, all those circumstances have improved now, but prior to that, basically, if you stopped and you issued them a traffic citation, he left, he never responded to his traffic citation and that was the end of it.

Mr. LINDER. Mr. Dubina, do your troopers all take this course?

Mr. DUBINA. I have not personally taken the course.

Mr. LINDER. Have your troopers all taken it?

Mr. DUBINA. We do not have any Florida Highway Patrol troopers participating in the program. A number of our Florida Department of Law Enforcement officers or agents, along with some sheriffs deputies, some other state law enforcement officers from the Department of Transportation and some city police officers have taken the course, sir.

Mr. LINDER. What percentage of the agents that are dedicated to this mission have taken the course?

Mr. DUBINA. Well, in my squad, in Tampa, which I could speak most accurately of, all of the FDLE agents assigned to my squad have taken the course.

Mr. LINDER. Was it worth their time?

Mr. DUBINA. My personal opinion, it was well worth their time. And, again, for the reasons I have stated before, they are now much better able to assess what type of person they are dealing with and whether this person is actually a threat to the community or not on a domestic security level.

There is a lot of training that really gives these officers an insight into the immigration system and why people get here and why they should or should not be here. And I really feel that that background for these officers is invaluable when they run across these people and have to question them.

We have got one shot at these people most of the time. Major Andrews commented right on point, if you run into one of these people and you do not know what you are doing and you have to let them go, that may have been your only shot to impact their activity in this country.

Mr. LINDER. Could you locally handle this course?

Mr. DUBINA. Well, I think the challenge would be finding appropriate instructors to teach the course. I do not think it is so much a function of a government agency as it is assuring that the course is properly trained.

Obviously, in law enforcement, in general, we have people that come in and teach us curriculum that is required by state statute to maintain your certification, and those people are not employed by the Department of Law Enforcement or another county or state entity. And if they are, usually they are teaching on their own time, they are not teaching as part of their full-time duties.

Mr. LINDER. Well, it just strikes me, if we use this course to train trainers, we could get a lot further across the country in training troopers. Would you agree with that?

Mr. DUBINA. Well, again, I think it goes to the point of the selection of who uses a trainer. It is very complicated material, so you would have to be very discrete or your selection process would have

to be pretty thorough in the types of people you train to do that. Obviously, I think the people who do well in this program are the people that are interested in the program and want to excel in it. And so given that environment, I think that is a possibility that you could look into.

Mr. LINDER. Thank you.

Thank you, Mr. Chairman.

Mr. ROGERS. The gentleman yields back.

The chair now recognizes the gentleman from Texas, Mr. McCaul, for any questions he may have.

Mr. MCCAUL. Thank you, Mr. Chairman.

I was proud to support you in the amendment to provide \$40 million for this training. I think in the post-9/11 world having federal, state and locals working together is a good idea. I think in my experience in law enforcement, state and locals are often deputized, they participate in joint terrorism task forces, and I view this issue of immigration as one of national security. It impacts my home state of Texas on a daily basis.

I have two impediments, though, that I want to raise with the panel to get your comments. Of course, my district I have Austin and Houston, and both of those cities have what is called a sanctuary policy, which essentially ties the hands of local law enforcement and their ability to even inquire into the status of someone they pull over for a traffic violation or the like.

I want to get your comments on that policy, and I also wanted to raise the issue of detention space, and perhaps this is better for the ICE official. I know that on the border we do not have enough detention space to detain those coming in from other than Mexico.

As a federal prosecutor, many of my defendants that were detained were not put in a federal facility but rather in a state facility. And it is becoming a growing issue, and of course as state and locals get into the area of enforcing our immigration laws, I think it is going to become even more of an issue.

There is a bill pending to provide greater funding for state and locals for incarceration and reimbursements.

So having said that, I just would appreciate your comments on those two main issues.

Mr. DUBINA. Well, if I could comment on your issue about the sanctuary cities. In my region, we have several police chiefs that are outspokenly against things like the CLEAR Act where you are taking routine patrol officers who do not have any immigration training and putting them into an environment where they are asked to enforce immigration law. And at least one of those same police chiefs actively supports our program and has actually sent one of his detectives through this 287(g) Program. So I think that speaks volumes about the stance of local and county law enforcement when you talk about this issue.

We obviously have discussed today it is a very complicated body of law, and to put a routine patrol officer in a situation of having to deal with it without having any background at all with the nuances of the law and obviously the rights these individuals are duly afforded, I think is a disservice to the officer and also to the immigrant community that they are dealing with.

Mr. MCCAUL. Which is why we provided the funding for this training. But then again, we are stuck with local policies as not being able to inquire as to the status.

Mr. DUBINA. Back on point—if I strayed off, I apologize—again, we have police chiefs that in general do not support their officers dealing with immigration matters but have embraced this 287(g) Program because it is focused and because the training is thorough, and there is a specific mission there.

Major ANDREWS. In Alabama, we do not have any cities that I am aware of that have a designation of sanctuaries. Even if we did, I do not think that there would be a lot of impact as far as the way that we carry out the 287(g) Program, because there is always some violation of the state code, especially when we are dealing with traffic enforcement. You are going to have individuals out there that are going to speed, they are going to run traffic lights, they are going to run stop signs, and we are going to encounter them. And many of these individuals will have engaged in some form of criminal behavior.

And in a lot of instances when you are dealing with—if your officers have some background in what to look for, the document that they offer to them, be a driver's license, be an identification card, be it a resident alien card, that officer can look at it and determine as to whether or not he needs to take any further action because he has been issued a fraudulent document, which is a violation of the law in Alabama within itself.

So from that standpoint, I do not believe that we have a handicap in implementing a 287(g) Program.

Mr. MCCAUL. That is a good point.

Mr. Kilcoyne, do you have a comment on the detention space issue?

Mr. KILCOYNE. Yes. Actually, on the detention space, that is actually another entity within ICE other than the Office of Investigations, but I am very well aware of the fact that bed space, detention space is a large issue in this and has an impact on the overall program.

If we respond to a trooper who has stopped a van-load in the state of Alabama and we process everyone, we identify everyone and there is no bed space, chances are they may end up going down the highway with a notice to appear at a later date.

So that is why we are trying to manage this program correctly. And I believe, and I would like to emphasize again, we believe that the best way to manage this program in the future until adequate resources and funding for beds to address the problem is through the application in the jails or the prisons so that you can control when that individual is going to be released for those particular charges that got him stopped in the first place, whether it is drunk driving or burglary or whatever he may be there for.

So I think that is the most prudent way to manage this program and continue on with what we are doing in Alabama and in Florida.

The issue that you raised as to how are we dealing with the sanctuary cities and the input there, that was an issue in Los Angeles when we were recently discussing the MOU with Los Angeles County. And this is one of the reasons that in the law that you deal

with the governing body over the police departments so that there is a checks and balance there.

What we ended up with in Los Angeles was the fact that we would deal with and process those individuals that were convicted in state or municipal court there in Los Angeles and were going to go serve a sentence for whatever crime they may be serving. So that would be your pool of individuals to process would be those convicted people.

I think that I have talked to, and the program managers have talked to, a variety of departments and entities around the United States and that is an issue why we have not expanded this program in a lot of places because there are conditions. I believe one of the other panel members on the second panel will address some of those issues.

But I think, again, going back to a smart application of this and making modifications to the MOU or the deployment of the program to fit the needs of the specific requester, such as with Los Angeles County, and that is just another tool as you have heard, in their toolbox to hold an individual, to make sure that criminal is not released back into the community. And the county or the state does not have to incur the supervision costs for probation and parole.

So I mean, that is why this is kind of as a new agency and really a new managed program, this is kind of a work in progress as we proceed down the road.

Mr. McCAUL. Well, thank you, and I see my time has expired. Thank you, Mr. Chairman.

Mr. ROGERS. The gentleman yields back.

The chair now recognizes the gentleman from Washington, Mr. Reichert, for any questions he may have.

Mr. REICHERT. Thank you, Mr. Chairman.

Welcome, and thank you for your service. I was in law enforcement for 33 years and up until January of this year I was the sheriff in Seattle. So I know some of the issues that you are talking about.

About a year or two ago, one of our state troopers stopped someone for speeding, on a freeway in Ken County, Seattle area. He wrote the ticket and allowed the person to drive away, and 2 months later they discovered that he had Al Qaida connections.

My first question is, weren't your agencies already involving in dealing with and countering illegal immigrants prior to September 11 and even after September 11 without this training.

Major ANDREWS. Yes, sir. As I said earlier, in Alabama, we did encounter them. The difference now is that we have the tool by which we can run records checks through NCIC and also through the Law Enforcement Support Center to help us identify who these individuals are.

There are many instances. We spoke previously about our one-time with the individual. We may arrest him, he may have to be released, but then he never shows back up again.

Under the program, as it exists now in Alabama, if we stop that individual and he presents us with some type of document that the first officer who encounters him determines it is just not something

right about this document, he needs to check further. We have the resources to do it now.

His first step is to try and run this individual through the Law Enforcement Support Center. The second step is to contact one of these ICE-trained troopers. We can get that individual in and further investigate as to whether or not this person has a legal right to be here or if there are any other inquiries.

Mr. REICHERT. Did it take you less time before the training than it does now or does—from your normal daily activities that you encounter these people before the training and that you still do today? Did it take you less time then to handle the problem or less time today after the training?

Major ANDREWS. It took us less time before we had the training, because we would probably just have written a ticket and let the individual go.

Mr. REICHERT. And let the individual go. How much more time, do you think, are you losing a lot of time away from your daily duties? And the other question I want to add on to that is what other duties actually that are non-law enforcement related, maybe for both of you, that you pulled away from every day that you can give examples of. Immigration may be one of those but not your primary duty. But what other duties?

Major ANDREWS. Well, in Alabama, all of our troopers take on additional duties being members of the traffic homicide investigation squad, the tactical operation units, which are SWAT teams, emergency response units for disasters and natural manmade—

Mr. REICHERT. What about medical emergencies? You have to respond to those every now and then. They really are not a part of your—

Major ANDREWS. They are not, but they are a part of public service.

Mr. REICHERT. Mental illness calls—

Major ANDREWS. Yes, sir.

Mr. REICHERT. —those kinds of calls. Those are things that cops do every day in the course of their daily duties, and they hand those duties off to someone else professional in that field; is that right? This is part of your job.

Major ANDREWS. Yes, sir. This is part of our job, and in a lot of instances, irregardless of what happens, we are going to be the first person there on the scene, and the officer has to use discretion as to how much further, how much involvement he needs to have into this before he hands it off to someone else.

Mr. REICHERT. Homelessness another example.

Major ANDREWS. Yes.

Mr. REICHERT. Real quick, I think for all advocates of training, and I can see just by looking at the training record here some of the training you go through in this program—civil rights training, human rights training, victim witness training, use of force training.

I mean, this is additional training that helps benefit not only the police departments across the country and sheriffs' offices across the country in addressing this problem were talking about today, but in every aspect of your job.

And isn't it true that the more training you get, the less complaints you get?

Mr. DUBINA. I think that is absolutely true, and I think there have been studies that bear that out. Again, I will go back to what I said before: I think in many cases it is benefited the immigrant who is being questioned, because the officer has a higher level of training. He understands what he is trying to get out of this person, he understands what the person's status is. He understands very quickly is this person a problem from a immigration standpoint or is he not? The average patrol officer, which I have been also, does not have that level of understanding or training.

Mr. REICHERT. Mr. Chairman, if I could just ask one real quick question. I know my time is expired. Along with the training thought, I am going to assume that both of your agencies have an investigative arm that investigates complaints. Each of your agencies has an internal investigations unit, and they would investigate any complaint on any traffic—any complaint that came into your agency; isn't that true?

Major ANDREWS. Yes, sir, that is true. We have a Standards and Integrity Unit that is specifically set up to handle any type of complaint that comes in, whether it be a profiling complaint, whether it be that, "The officer was not courteous to me that day."

Mr. REICHERT. It is a civil rights complaint. Isn't it true that you work with the FBI and the U.S. Attorneys Office on those complaints?

Major ANDREWS. That is correct, sir.

Mr. REICHERT. Okay.

Thank you, Mr. Chairman.

Mr. ROGERS. I thank the gentleman for yielding back.

The chair would like to ask a few more questions, have another round if other members want to ask questions as well.

Mr. Kilcoyne, did I understand you correctly that the money being spent by ICE is being spent to hire more agents for this training currently?

Mr. KILCOYNE. No. I believe that there would be—we have a limited training staff. That staff, since there is going to be more agents hired, would be teaching those individuals to get those folks out into the field. However, we are looking at a variety of options working with our Training Division and exploring the possibility of using contract trainers, retired people who have left, who have the expertise and the knowledge for these very sensitive topics, to be able to teach.

Mr. ROGERS. But is this correct that to date all the costs that ICE has associated with the 287(g) Program has been coming out of ICE headquarter funding, FLETC funding, Academy funding, and there has been no specific line item for salaries. Is that a correct statement?

Mr. KILCOYNE. Correct, for the 287(g) Program, yes.

Mr. ROGERS. I want to go back to where we left off on the questioning in my first round, but before I do that I would like to ask the ranking member and other members of the committee, I have made reference to ICE's submission of some cost estimates for training that we have had submitted today, and without objection,

I would like to have these submitted to the record for us to consider them further. Without objection, they are admitted.

And I do not want to spend any more time on those cost estimates. I want some time to kind of ponder those and make sure I understand them better before I criticize them, if I criticize them.

I do want to ask one point of clarification. The cost difference between basic class and advanced class I know \$900 for tuition for the advanced class. Is there no tuition for the basic class? You see what I am talking about? Down under advanced class, on the third line, it says, "\$161,000 plus \$900 tuition, estimated." There is no reference to tuition above that in the basic class.

Mr. KILCOYNE. The difference there would be for the \$900 tuition is if we held the training at the FLETC Academy as opposed to delivering it in the field. We were able, for example, in Alabama be able to bring the cost down quite a bit by using the Homeland Security facility in Anniston.

Mr. ROGERS. Okay. Thank you.

Mr. KILCOYNE. That, I believe, answers that.

Mr. ROGERS. Excellent. Thank you.

I want to go back now, though, to where we left off earlier talking about this 287(g) being applied in the custodial setting. You, gentlemen, heard Mr. Kilcoyne's reference to that being the policy or the planned policy going forward. Has that been the application that you have been utilizing primarily in your state?

And I will start with you, Major Andrews?

Major ANDREWS. No, sir. Our application takes place at the time that we encounter the individuals.

Mr. ROGERS. And do you agree with that proposed policy change or do you think it would be of higher and best use applied as you have currently been using it?

Major ANDREWS. I believe that you are going to have to look at the circumstances in the different jurisdictions. I believe in Alabama, in our particular situation, the way that we apply it is a better solution.

Mr. ROGERS. Okay. Mr. Dubina?

Mr. DUBINA. Yes. Well, I think it was stated in the record that Miami-Dade is anticipating being part of that program. I do not know about it. We do not at the Florida Department of Law Enforcement involve ourselves in corrections. So it is not part of our program.

To make a value judgment on which is better, I would rather just say that we strongly support our involvement in the program and we would like it to continue and would ask you to do anything you could to make arrangements for that to occur.

Mr. ROGERS. Good. Well, all the evidence seems to be that it is working well now as it is being utilized in your two states, and I hate to see that limiting direction being taken.

I do want to go back to a point that was left off with the ranking member in his questioning on this backfill point. I know that currently you have not been able to get backfill pay for your officers when they are replaced while they are gone for training. In this authorizing legislation in the upcoming appropriation, you will.

Do you think that is going to enhance the likelihood that your agencies and other agencies within your state will be likely to participate?

I would, again, start with Mr. Andrews.

Major ANDREWS. Yes, sir. When we sent those 21 officers to be trained, someone had to do their duties while they were there, so we encountered some instances of overtime and issues of that. But the Department took the position that it was a valuable program and resources were not available to cover our costs, so we ate the costs at that time.

Should we be able to continue to do that in the future, I do not have an answer to that question, but it would definitely be a positive note for funding to be provided for backfill.

Mr. ROGERS. Well, I would make the point, having been here, being a former state legislator in Alabama and still a resident there, I know about the gross shortages of state troopers that we have in our state, and it is commendable that the leadership of the Alabama Department of Public Safety saw this as being important and was willing to do it out of their hide. But you are to be commended for that.

My time has expired.

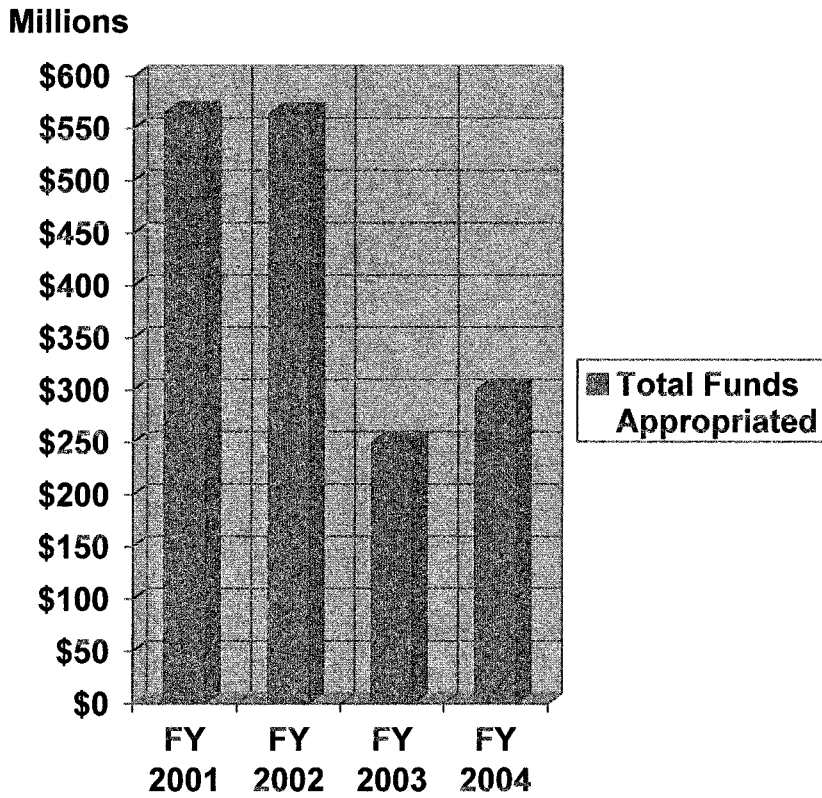
With that, I will yield to the ranking member of the subcommittee for any additional questions he may have.

Mr. MEEK. Thank you, Mr. Chairman.

Mr. Kilcoyne, I know that you were in the process of answering a question, and that question I am trying to remember at this particular time, but I am pretty sure that we will get around to it. It seems like you have gotten your share of questions today.

Mr. Chairman, I want to also enter another graph here for the record, the total national funding for the State Criminal Alien Assistance Program, to show the decline in funding from 2001, some \$565 million down to \$300 million right now total appropriated funds.

### Post 9/11 Declines in National Funding for the State Criminal Alien Assistance Program (SCAAP)



Source: Generated by the Minority Staff, Homeland Security Committee based on CRS Report for Congress, RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*. January 21, 2005.

Mr. ROGERS. Without objection.

Mr. MEEK. Thank you so very much, Mr. Chairman.

Also, some of the efforts—and, Major Andrews, I know that my good friend, the sheriff here, now congressman, shared some practical questions with you as it relates to the overall duties of a law man, law woman out there on the road. But you do have some counties that are covered by troopers. You may have a trooper covering two or three counties. Is that an accurate statement?

Major ANDREWS. Yes, sir. We do have situations because of the number of us that we do have troopers sometimes they are the only trooper working that county or he may be on call for two or three countries, as you just said.

Mr. MEEK. Yes, sir. One of the major concerns that I have with this issue is, a, I know that we are working toward the funding issue, but it is almost like we have—in my opening statement, I talk about the 9/11 bill that we passed, I mean, a bipartisan bill that every member of Congress voted for just about. And the funding and the resources that are supposed to go to ICE, better yet the administration is not putting forth the money to pay for ICE officers, this program is not in the president's budget. The program that I just mentioned, the State Criminal Alien Assistance Program, is not in the president's budget for funding. And so I am wondering where we are going with this.

Special Agent, you shared with us that you are a team of agents, and I know exactly what the Florida Department of Law Enforcement does, and they are an investigative agency, not an everyday kind of law enforcement kind of thing. So I am assuming that your agents are focused on possible targets, possible individuals of interest. And being able to identify them when you may have something is important. You may not be able to call the ICE officers in the Bay Area to be able to come and say, "What do you think" kind of thing because they are probably stretched thin, as we know they are underfunded at this time.

I think what is also important, and, Mr. Kilcoyne, it is kind of hard for me to ask you these questions, sir, because you are the deputy assistant director and you are doing—some of the stuff you are doing what you are told and especially what Congress has told you to do as it relates to your investigation. But I think what is important here to understand that if it comes down to ICE discretionary decision on what they are going to do and what they are not going to do, it is going to be hiring more ICE officers, even for the money that is in appropriations bill now. That is for 25 new ICE officers that can be fully trained and that can be out doing what they do.

Now, I also pulled out a report a little earlier from the International Association of Chiefs of Police. This is not the Kendrick Meek report. These are law men and law women who are administrators that understand what is going on. They have some concerns.

And I must say, as it relates to the steering committees, and that is why I am very interested in that, and I think, Mr. Kilcoyne, that is what you were in the process of answering some of the priorities of that committee, it goes along as it relates to infusion, as it relates to the training of immigration laws. And it goes on to talk

about limitations on arrests without warrants, liability concerns, some of these issues that are out there. I do not know if there are being addressed by these steering committees in Alabama or in Florida.

And I guess the second part of that question, Mr. Kilcoyne, and anyone on the panel can get into it, who is on these steering committees? Just folks that carry badges or do we have individuals like prosecutors, do we have public defenders, do we have individuals—what kind of steering committee is this, because the numbers that have been trained thus far, as it relates to the DLE or the Alabama Department of Public Safety, I mean, the numbers are still very, very small.

So for us to say we have a project and it is doing great, I mean, we are talking about less than, I would assume, 1 percent or 1.5 percent or even less than that of state law enforcement or even local law enforcement personnel. So for us to get a real snapshot, I think it is important with this early program that we have now to be able to tailor it in a way that it can be around for years to come, the integrity of the program, also the funding. So I just want to make sure that we are doing the right thing here.

I have made pretty much a statement here. The Congress has already spoken on it. The chairman, author of the legislation, and now here we are some 9 years later, or 10, who is counting, of a program where we only have two states and one local jurisdiction involved in it. You mentioned something about corrections and it went into further local jurisdictions as it relates to working with ICE and detecting individuals that come in that are here illegally or on some sort of watch list.

Who is on these coordinating committees? Could you answer that question? steering committees.

Mr. KILCOYNE. The steering committees are comprised of the local managers for the ICE Special Agent in Charge office in that particular area, whether it is in Tampa or Miami or in Alabama. The individuals that have input in addition to the local level would be the counsel for ICE or counsel for the Department of Public Safety or for the Department of Law Enforcement, someone at my level, someone at the Special Agent in Charge level, the program manager level from headquarters to make sure that the program, as it is being employed in that particular area, is consistent with the charter, if you will, of the MOU and the focus of the agencies and that we are not out there doing roundups or just general immigration work.

Mr. MEEK. Do you have—I am sorry, Mr. Chairman, I just wanted to have some latitude here—do you have statistical data as it relates to strategic or counterterrorism arrests that have come out of this program? Do you have any data that would support the success of the program?

Mr. DUBINA. The original MOU with INS, legacy INS, called for them to maintain the data on people arrested. I can tell you that in my region we have arrested or detained over 100 people, pursuant to the designation. But I cannot go beyond—at this moment, I do not have the stats with me to talk about what they are statewide.

Mr. MEEK. One of the things that I will definitely have an issue as it relates to the longevity, that data is going to be important now, especially if the Senate agrees to this \$5 million appropriation. I mean, that information is going to be important.

And so these steering committees and the integrity of these steering committees, not saying that it is not there, I am just saying that making sure that the full input is there because it takes one or two incidents and then folks say, "Well, you know, I do not know about the funding for that program."

And individuals of Congress and some folks here on this committee, we are the Homeland Security Committee, we are the cheerleaders for homeland security if anybody in this Congress. I mean, I do not want you to look up here and see us a cheerleaders, but I am just sharing with you, that is what we do. On Armed Services, I serve on that committee too. We are the committee to go fight for the men and women in uniform beyond any other committee.

I am saying that to say that I see some issues here, some other members on the committee see some issues, and we need to resolve those issues if we want to move forward in being able to have this program. And we have to have meaningful numbers of how this actually works.

The Florida Department of Law Enforcement, I am going to tell you right now, this is low-hanging fruit for you all, because you investigate. You are part of a task force. But when you start getting into local law enforcement, you start getting into state troopers, which I used to be and have great respect for state troopers, the real issue, it comes down to their everyday responsibilities and what they do.

You take a trooper off the road involved in an INS investigation, we are talking 2 weeks in some instances if you are in court because an individual may very well be deported.

So I am looking at that, I am looking at the money that is being given, and if we start paying overtime, time and a half for a trooper to be in court, it may not necessarily mean anything in investigations because it is just a part of the investigation, that is the culture of the investigation. It is court time. That is when we start—and I understand the reason that the chair and some police chiefs have as it relates to those individuals.

So I am looking forward to staying more in tune. I would love, Director Kilcoyne, if any statistical data the MOU calls for, from what I understand, what I was told, any statistical data as it relates to the kind of individual that we have been able to arrest, and I will not even go into the thing of detain, because folks are detained at the—I am detained at the airport for 5 or 6 minutes on any given month. So that is not detained.

I want to know who did we get, who did we catch, and where are they now?

And where are they now, Mr. Chairman, I think, is the underlying question here, because they are sitting down at a local jail waiting on deportation. That is an unfunded mandate to local government.

So I did more of a statement, Mr. Chairman, than a question, but I just wanted to get that on the record so that we can tighten up what we are doing right now.

Mr. ROGERS. The gentleman yields back.

The chair would now recognize Mr. Reichert for any additional questions he may have. No?

The chair would now recognize the ranking member of the full committee, Mr. Thompson, for any additional questions he may have.

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Mr. Kilcoyne, are you aware of the quarterly review that the MOUs call for?

Mr. KILCOYNE. Yes.

Mr. THOMPSON. Are they being done?

Mr. KILCOYNE. I believe they are being done at the local level and then sent to the program manager here at headquarters that is on my staff.

Mr. THOMPSON. Can you provide this committee with the quarterly reviews for each MOU from the inception of the MOU to present?

Mr. KILCOYNE. Yes, I believe we could get you that, as well as the results and arrests and the statistics as part of a package.

Mr. THOMPSON. I want to further that information from our ranking member's position. I think it is important for us to see what benefit that we have derived from training the troopers in Alabama statistically, and I think you have to break it out in terms of not just detained but obviously if there was a conviction or a deportation or something like that.

For my own information, how many ICE agents do we have in Alabama now?

Mr. KILCOYNE. The exact number I do not have right in front of me, I can get you that. But I know that the offices that we had previously in that state were augmented by obviously the INS people as far as the Customs and INS joining together. But the actual numbers and breakdown, I can get you that exactly.

Mr. THOMPSON. Major Andrews talked about that there were three in his testimony before the troopers went to training.

Major, do you know how many ICE agents are there now?

Major ANDREWS. At the current time, I believe that there are four. However, you have to take into consideration that when Immigration and Customs Enforcement all were consolidated up under the Department of Homeland Security, there was some additional individuals that were brought in. I do not know the exact number of agents now.

I do know that in major cities, our ICE-trained troopers have an INS supervisory agent to respond to, and there are four of those.

Mr. THOMPSON. Okay.

Mr. Kilcoyne, an ICE agent, how long would a full-time employed ICE agent have to be trained?

Mr. KILCOYNE. To start the Academy and to finish the Academy?

Mr. THOMPSON. That is correct.

Mr. KILCOYNE. I believe that the training is about 5 months.

Mr. THOMPSON. And the training for the program here is 5 weeks?

Mr. KILCOYNE. Yes. The training for the application, both in Florida and in Alabama, was about 176, just a little shy of 180 hours of training.

Mr. THOMPSON. Are the qualifications for ICE agents the same as qualifications for Florida Department of Law Enforcement officials and Alabama Department of Public Safety individuals?

Mr. KILCOYNE. When you say the qualifications, are you talking about the job entry qualifications or are you talking about the qualifications to be certified to pass the test to complete the training?

Mr. THOMPSON. Well, you know, we have people who are performing job responsibilities who are not ICE agents, and we have certified them. And I am trying to see whether or not ICE requires a certification of people you send through the training.

Mr. KILCOYNE. Well, the candidates that the departments send in, they have to pass all of the courses that are presented to them.

As far as what the requirements to get them hired by their own agency is, may be the same, may be different. I do not know exactly what those are.

Mr. THOMPSON. So you are saying as long as those individuals are sworn law enforcement officers, ICE is satisfied?

Mr. KILCOYNE. There is a vetting process for those individuals to be submitted to us to make sure that they do not have any prior discipline problems or any other issues for them to come into this program.

Mr. THOMPSON. Can you provide this committee with the standards that ICE require from a vetting standpoint for those people who enter into the program?

Mr. KILCOYNE. Yes, we can.

Mr. THOMPSON. They are in writing?

Mr. KILCOYNE. No, they are not; however, I can give you the framework of what the expectation is based on the conversations that we have with the two departments.

Mr. THOMPSON. So we take people into a program without any written standards for vetting.

Mr. KILCOYNE. Well, the standards are the standards established by the agency and the agency submitting individuals, as they have mentioned earlier, that want to be in this program and have met the rigorous standards to get them employed and retained by their home agency.

Mr. THOMPSON. I understand that, but this is a program sponsored by ICE, supported by the taxpayers, and we have not set a standard for vetting the people that is, in my mind, objective because it is not written. But, nonetheless, I appreciate your truthfulness.

I yield back, Mr. Chairman.

Mr. KILCOYNE. If I could continue, in the MOUs, there is specific language that reads, "The director of the department, for example, in Alabama, that the director of the DPS will nominate to ICE candidates for the initial training and certification under this MOU. Each candidate nominated ICE may request any information necessary for a background check and evaluation for suitability to participate in the initiative.

All candidates must be U.S. citizens. All candidates must have at least 3 years experience as a sworn law enforcement officer. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances. Should a candidate not be approved, a substitute candidate may be submitted. So long as such substitutions happened in a timely manner and does not delay the start of the training.

Any future expansion in the number of participating troopers or scheduling of additional training classes may be based on an oral agreement of the parties but will be subject to all of the requirements of the MOU.

So the standards are set in the MOU, but as far as the written—  
Mr. THOMPSON. I understand.

Mr. KILCOYNE. Okay.

Mr. THOMPSON. So your testimony now is that nobody has gone through the training provided by ICE that ICE has not done on the background checks on.

Mr. KILCOYNE. If the information is supported. I believe the way it is written in here is that must be approved by ICE and must be able to qualify for the appropriate federal security clearances.

So far, we have not had anyone who we have had to dig deeper on based on the information and the recommendation from the departments.

Mr. THOMPSON. Mr. Chairman, I am just a little concerned that ICE is probably, and could be rightfully so, relying on the people who are submitted, but they are nonetheless not doing their due diligence to make sure that the people who come through the program meet the standards for ICE. And from what I gather, as long as the people are sent from an area, that is as far as it goes unless you can tell me otherwise.

Mr. KILCOYNE. I mean, we are relying heavily on the fact that they are a sworn law enforcement officer for the state of Florida or the state of Alabama.

Mr. THOMPSON. But you also are aware that there are standards that federal law enforcement people have that are different than local law enforcement officers.

Mr. KILCOYNE. I understand that, sir.

Mr. THOMPSON. And that we are training people for a federal program.

Mr. KILCOYNE. I understand that.

Mr. THOMPSON. Thank you.

Mr. ROGERS. Gentleman yields back. I thank the gentleman.

I want to thank the panelists for your time. You have been very kind and generous, very helpful for us.

With that, the witnesses are excused, and I now call up the second panel.

The chair now recognizes Kris Kobach, professor, University of Missouri—Kansas City School of Law, for any statement you have.

Mr. Kobach?

#### **STATEMENT OF KRIS KOBACH**

Mr. KOBACH. Thank you, Mr. Chairman. It is an honor to be before you today to talk about what is, I believe, a proven mechanism for improving law enforcement, improving the rule of law in immi-

gration and improving the security of our homeland, namely Section 287(g).

I was directly involved in overseeing both the Alabama and the Florida MOUs from my perspective as Council to Attorney General Ashcroft when the Florida MOU was concluded and in the initiating stages of the Alabama MOU.

But I would stress that my testimony should not be taken as the official position of the U.S. Department of Justice. I am testifying in my personal capacity as a law professor.

At the outset, it is important to define, I think, the precise scope of the authority we are talking about. Many observers, especially in the press, have confused Section 287(g) authority with the inherent arrest authority that all state and local police possess with respect to immigration violations.

The inherent authority that local police possess was recognized publicly by the Attorney General in June 2002 following an Office of Legal Counsel opinion coming from the Department of Justice.

In that statement, the Attorney General stated the conclusion of the opinion, which was unequivocal, that arresting aliens who have violated either criminal provisions of the Immigration Nationality Act or civil provisions rendering an alien deportable is within the inherent authority of the states, and that authority has never been preempted by Congress. And it is simply the power to arrest an alien who is removable, detain the alien temporarily and transfer him to the custody of ICE.

Every year, the Law Enforcement Support Center, about which you have heard several comments already today, received more than 300,000 calls from state and local police. The vast majority of those calls have nothing to do with 287(g) authority, but those calls are exercises of the inherent arrest authority.

In contrast, Section 287(g) confers a much broader spectrum of enforcement powers, more than just merely the power to arrest and transfer, it is, as we have heard, the power to investigate, the power to collect evidence, assemble a case for removal or prosecution, the power to take custody of the aliens on behalf of the federal government and other powers involved in routine law enforcement.

Appropriately, in 1996, Congress expressly recognized in the statute that the creation of 287(g) did not displace the inherent arrest authorities that police may exercise from time to time.

Well, the success of the program in Florida I think was immediately apparent. In the first year, under the Florida MOU, the trained officers specifically made 165 arrests, including the bust of a phony document ring in the Naples area. In Alabama, since September 2003, the troopers have made nearly 200 immigration arrests.

And although there are important similarities between the MOUs in Alabama and Florida, I think it is important to recognize that the MOUs meet different needs in each of those communities, and that is one of the benefits of the 287(g) Program is that it can be tailored to meet the important law enforcement needs that are different in each jurisdiction.

One of the important aspects of Florida's MOU, as we have heard, is that it was in the wake of 9/11 and it was tailored to the exigencies of terrorism. State and local police are often in the best

position to come into contact with alien terrorists operating in the United States.

Four members of the 9/11 cohort were stopped by state and local law enforcement through routine traffic violations. In all four of those instances, the alien was illegally present in the United States. Also relevant from Florida's perspective was the fact that many of the 9/11 cohort had been operating in Florida prior to the attacks or they entered the United States through Florida. Also relevant was the fact that the 20th hijacker, Mohamed Al Khatani, attempted to enter through the Orlando Airport, and he was stopped by a vigilant immigration inspector.

In contrast, Alabama faced a different challenge. Alabama had experienced, as we have heard, widespread increases in so many document production at the DMV and had seen an increase, generally, in immigration violations but felt underserved by ICE. They used Section 287(g) to address that problem.

Now, these are not the only needs that Section 287(g) can address, and I think it is important to recognize that 287(g) has a lot of untapped potential here. Perhaps the greatest law enforcement threat today in the United States is the risk of violent alien street gangs. A few statistics can illustrate the scope of this problem.

I think most people are aware of Mara Salvatrucha 13 or MS-13, which is certainly the most notorious alien street gang. It started as a Salvadoran street gang in the Los Angeles area. It now has more than 10,000 members in 33 states. And it still remains smaller than the largest alien street gang, which is the 18th Street Gang, also originating in Los Angeles, which has more than 20,000 members in Los Angeles alone.

In both gangs, the majority of members of the gangs are illegal aliens. That is important here, because that allows law enforcement an additional tool in dealing with the incredible violence that these gangs bring to their communities. Wherever MS-13 or the 18th Street Gang goes, killings inevitably follow.

To give you some statistics out of Los Angeles, the various gangs accounted for 291 of the city's 515 homicides in 2004, and that is an increase of more than 12 percent over the 2003 numbers.

Because so many of those gang members are here illegally, sustained enforcement of immigration law can have a massive impact in dealing with the gang violence. And this was demonstrated in March of 2005 when with Operation Community Shield, ICE arrested 103 MS-13 gang members in an operation that lasted several weeks.

Now, the way it worked is local law enforcement provided ICE with lists of known gang members' names. Those names were then run against the ICE databases. ICE basically found every match where an individual was here illegally and was also a member of the gang, as ascertained by the local law enforcement. ICE then moved in with the help of local law enforcement and made the arrests, and in one fell swoop 103 MS-13 members, including one of the most notorious leaders nationally, were arrested.

That is a powerful example of how immigration enforcement can be used as a tool in dealing with these street gangs.

Well, Operational Community Shield was a successful episode, but its limitation is precisely that—it was an episode. These law

enforcement officers in jurisdictions that have gang problems are coming into contact with gang members every day, and in many cases, officers have told me they have seen gang members who are known deportees. They know the person has been deported previously or they have very good information that the individual is here illegally.

Well, they can, if they had Section 287(g) authority, they could be routinely and regularly and constantly exercising this immigration enforcement power to take off the street those gang members who are confirmed illegal aliens, doing the checking into the databases themselves instead of having an episodic approach, as we have seen with Operation Community Shield.

We heard on the first panel about the possibility of limiting 287(g) to prisons. I think this would be a bad idea to limit—it is certainly a good idea in prisons, but to limit it to that context would be unfortunate. It would miss the opportunity to defeat these alien street gangs, it would miss the opportunity to solve problems like we saw in Alabama prior to the 287(g) MOU. And I believe it would be contrary to the express will of Congress.

In my capacity as Counsel to the Attorney General, I looked at a great deal at the statutory context of Section 287(g) or 8(USC) 1357, and it is clear that the intent of that statutory text is not limited to prisons. Indeed, one might argue that the prison context is an extrapolation off the main intent, which is primarily what we are seeing in Alabama. If ICE were to limit 287(g) context, it would be a grave mistake.

With the success of Florida and Alabama, we are now poised, we are in a position to move forward and expand this program. Despite the improvements ushered in by the Immigration Reform Act of 1996 we have seen the breakdown of that rule of law continue for the past 9 years the obviously 9/11 highlighted the importance of immigration enforcement in the war on terrorism.

The infrastructure for the MOU is in place. We have the training system set up, we have the models of past MOUs. The success of Florida and Alabama is prompting other jurisdictions to knock at the door of ICE. Interest has been expressed publicly by leaders in Arizona, Connecticut, Orange and San Bernardino County California and other jurisdictions.

However, first ICE needs to have a dedicated staff who have the resources and who are 200 percent focused on this mission of expanding the Section 287(g) and responding to state requests in a timely manner.

Second, state and local law enforcement agencies need the assurance that they will be compensated for their expenses. As we have heard, there are costs associated with transportation to the training location. In some cases, substitutes need to be provided for the officers who are away receiving this training. And while many jurisdictions, such as Alabama and Florida, are willing to foot the bill in the short term because they know that in the long term better immigration enforcement will result in cost savings for their jurisdiction because the other attendant problems that follow with the breakdown of the rules on immigration do not occur.

Many jurisdictions just cannot even begin to take that first step until they see that they are going to be reimbursement.

It is become a cliché to say that since 9/11 we have to have better cooperation between state and federal law enforcement if we want to improve our homeland security. All too often I believe those words are empty, they are devoid of real meaning. It is just something people say.

In contrast, Section 287(g) is a real program with proven results. It is a tangible way for state and law enforcement to significantly improve the enforcement of immigration law and the homeland security of the United States. I wholeheartedly urge this committee to support its expansion.

[The statement of Mr. Kobach follows:]

PREPARED STATEMENT OF KRIS W. KOBACH

Mr. Chairman and Members of the Committee, it is an honor and privilege to appear before you today to discuss a proven mechanism for securing our homeland and restoring the rule of law in immigration: Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g). I was involved in overseeing the first application of Section 287(g) during my service as Counsel to the U.S. Attorney General from September 2001 through July 2003. After Florida's successful Section 287(g) agreement, I did everything I could to ensure that Alabama's request for a Section 287(g) agreement was met with a timely and satisfactory commitment from the Justice Department, which was then carried out by the Department of Homeland Security. However, my testimony should not be taken to represent the past or present position of the U.S. Department of Justice. I offer my testimony solely in my private capacity as a Professor of Law.

Section 287(g) Authority Versus Inherent Arrest Authority

At the outset, it is important to define precisely the scope of the authority we are discussing. Many observers in the press have confused the relatively broad Section 287(g) Authority, which represents a delegation of enforcement power from Congress to the states, with the narrower inherent arrest authority that the states have always possessed. A few comments clarifying this distinction may be helpful at this point.

The inherent authority of local police to make immigration arrests was recognized by the Justice Department's Office of Legal Counsel (OLC) and was announced by Attorney General Ashcroft on June 6, 2002. OLC's unequivocal conclusion was that arresting aliens who have violated either criminal provisions of the Immigration and Nationality Act (INA) or civil provisions of the INA that render an alien deportable "is within the inherent authority of the states."<sup>1</sup> Such inherent arrest authority has never been preempted by Congress. This inherent authority is simply the power to arrest an illegal alien who is removable, detain the alien temporarily, and then transfer the alien to the custody of the Bureau of Immigration and Customs Enforcement (ICE).

In contrast, Section 287(g) delegates authority that is considerably broader than the power to merely arrest an alien and transfer him to ICE custody. Section 287(g) encompasses the spectrum of basic enforcement powers. Such 287(g) authority includes not only the power to arrest and transfer, but also the power to investigate immigration violations, the power to collect evidence and assemble an immigration case for prosecution or removal, the power to take custody of aliens on behalf of the federal government, and other general powers involved in the routine enforcement of immigration laws. This broader enforcement authority can only be delegated to state and local law enforcement agencies through a formal Memorandum of Understanding (MOU), which effectively deputizes members of state or local law enforcement agencies to perform the "function[s] of an immigration officer." 8 U.S.C. § 1357(g).

Appropriately, Congress expressly recognized in 1996 that the creation of Section 287(g) would not displace the inherent arrest authority that local police might choose to exercise from time to time and without express delegation from the federal government:

Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

<sup>1</sup>ATTORNEY GENERAL'S REMARKS ON THE NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM, June 6, 2002.

- (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
- (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C. § 1357(g)(10).

#### **The Success of Section 287(g) Thus Far**

To date, two states—Florida and Alabama—have signed Section 287(g) agreements with the federal government. The Florida MOU became effective on July 7, 2002. Under that agreement, 35 Florida law enforcement officers were trained for six weeks and were delegated specific immigration enforcement powers, including the power to interrogate, the power to collect evidence, and the power to conduct broad immigration investigations. The success of the program was immediately apparent. In the first year under the Florida MOU, the trained state officers made 165 immigration arrests, including the bust of a phony document production ring in the Naples area.

The Alabama MOU was signed on September 10, 2003. Under the agreement, the first group of 21 Alabama state troopers undertook five weeks of immigration enforcement training, which they completed in October 2003. The Alabama officers received training in the procedures of immigration investigations, the identification of fraudulent immigration documents, the use of national immigration databases, the details of immigration law, and specific document requirements for illegal aliens. Since then, the Alabama troopers have made nearly 200 immigration arrests. A second class of 25 troopers will receive training in October 2005.

#### **Targeting Different Problems in Different Jurisdictions**

Although there are many similarities between the MOUs of Florida and Alabama, it is important to recognize that the law enforcement environments of the two states were different, and the MOUs in each met different needs. Florida's initial interest in seeking a Section 287(g) agreement was driven in part by the exigencies of 9/11 and the recognition that state and local law enforcement can increase their effectiveness in the war against terrorism with the addition of Section 287(g) enforcement authority. State and local police officers are often in the best position to come into contact with alien terrorists operating in the United States. Four members of the 9/11 terrorist cohort were stopped by state and local law enforcement in the United States for routine traffic violations. In all four of those instances, the aliens were illegally present in the United States. (The four hijackers who were stopped by police were Nawaf al Hazmi, Mohammed Atta, Hani Hanjour, and Ziad Jarrah.) Also relevant was the fact that several of the 9/11 hijackers had either entered the United States through Florida or had operated in Florida while preparing for the attack. The suspected twentieth hijacker, Mohamed Al Khatani, also flew to Orlando International Airport; but he was denied entry by a vigilant immigration inspector. Accordingly, the desire to counter alien terrorists was central to the Florida MOU at the time of its inception.

In contrast, Alabama faced a different challenge. Alabama had experienced widespread and increasing violations of federal immigration law by aliens in its jurisdiction. However, the distribution of INS manpower left Alabama underserved, in the judgment of Alabama's law enforcement leadership and members of its congressional delegation. At times, as few as three INS interior enforcement agents were operating in the state. Recognizing that breakdown of the rule of law in immigration carries with it attendant public safety threats, Alabama addressed the INS manpower shortage by committing its own officers to the task.

These are not the only needs that Section 287(g) authority can address. Other jurisdictions will find other uses for an MOU. Perhaps the greatest law enforcement threat of recent years is the rise of violent alien street gangs. A few statistics illustrate the scope of the problem. Mara Salvatrucha-13 (MS-13), the most notorious and fastest-growing alien gang, started as a Salvadoran gang in Los Angeles in the late 1980s. MS-13's more than 10,000 members now operate in at least 33 states. And MS-13 still remains smaller than the largest alien gang, the 18th Street Gang—which started in Los Angeles with primarily Mexican membership and then expanded nationwide. It is estimated to have more than 20,000 members in the Los Angeles area alone. In both gangs, the majority of members are illegal aliens. The gangs generate cash in different ways in different parts of the country. But by far, the most common forms of activity are drug trafficking, theft, gun trafficking and immigrant smuggling. Where MS-13 or the 18th Street Gang establish a presence, the killings inevitably follow. In Los Angeles, the various street gangs accounted for

291 of the city's 515 homicides in 2004—an increase of 12.4% in gang killings over 2003.

Because so many of these gang members are aliens without lawful presence in the United States, sustained enforcement of immigration laws can have a massive impact in fighting this national scourge. This was demonstrated in March 2005, when ICE announced the arrest of 103 members of MS-13 in an effort spanning several weeks known as Operation Community Shield. Although all of the aliens were arrested for violations of federal immigration laws, approximately half had prior arrest records of prior convictions for violent crimes.

Local police departments provided to ICE lists of names of known alien gang members. ICE then ran those lists through its databases to determine which of those aliens were legally present in the country. After determining that the alien gang members were illegally present, ICE conducted a series of arrests with the help of local law enforcement. This operation demonstrated powerfully how immigration enforcement can serve as an invaluable tool to combat gangs when illegal aliens comprise a substantial proportion of gang members. In dealing with these deadly gangs, state and local police need every law enforcement tool at their disposal.

Section 287(g) authority can be particularly useful in dealing with alien street gangs. Operation Community Shield was a successful episode, but its limitation is precisely that—it was an episode. Every day, police officers in gang-ridden jurisdictions encounter alien gang members who are known to have been previously deported or who are suspected of being unlawfully present in the United States. Section 287(g) authority would enable those jurisdictions to continuously and routinely remove those illegally-present gang members from the streets of our communities. With police officers trained in immigration enforcement, the checking of gang members' names against national databases and the enquiring into immigration violations could be done locally, quickly, and regularly.

Another need that Section 287(g) agreements can address is the problem of massive numbers of removable felons incarcerated in state prison systems across the country. ICE's institutional removal program is intended to identify and take custody of such felons before they are released. Unfortunately, many felons slip through the cracks. Training state law enforcement officers to screen incarcerated felons and determine which ones are removable can fill in the gaps and ensure that criminals who are not entitled to remain in the United States are, in fact, removed. The agreement being considered in Los Angeles County, California, is an example of an MOU that addresses this need.

#### **Existing Infrastructure and Additional Funding**

With the demonstrated success of Section 287(g) authority in Florida and Alabama, we are now in a position as a nation to expand this program. Indeed, we need to expand this program. Despite the statutory improvements ushered in by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the breakdown of the rule of law has only worsened in the intervening nine years. In addition, the attacks of 9/11 highlighted the importance of securing our borders in the war against terrorism.

The infrastructure for additional MOUs is already in place. The training model has been developed. And the success of Florida and Alabama is prompting law enforcement agencies across the country to knock on ICE's door. Interest has been expressed publicly in leaders in Arizona, Connecticut, Orange County and San Bernardino County, California, and other jurisdictions. However, two things are missing. First, ICE needs to dedicate personnel to the task of responding to such requests for Section 287(g) agreements in a timely manner. Second, state and local law enforcement agencies need assurance that they will be compensated for their expenses. The costs of transportation to the training location and providing temporary replacements for law enforcement personnel who are participating in the training can be substantial. Indeed, the existing wording of Section 287(g) deters some local law enforcement agencies from enquiring further: the immigration enforcement functions are to be "carr[ie]d out. . .at the expense of the State or political subdivision." While many some jurisdictions are willing to foot the bill in the short run, because they realize that better immigration enforcement will prevent other more costly law enforcement problems from arising in the long run, other jurisdictions are unable to contemplate any additional expenses. The infusion of federal dollars into the Section 287(g) program will remove that impediment for jurisdictions that would otherwise seek to participate.

It has become a cliché since 9/11 to say that enhanced state-federal cooperation is essential if we are to improve our homeland security. All too often those words are devoid of real meaning. However, Section 287(g) is a program that facilitates

systematic, structured cooperation with proven results. I wholeheartedly urge this Committee to support its expansion.

Mr. ROGERS. Thank you, Dr. Kobach.

The chair now recognizes Chief Jimmy Fawcett, sixth vice president of the International Association of Chiefs of Police, for any remarks that you may have. Chief Fawcett?

#### **STATEMENT OF JIMMY FAWCETT**

Chief FAWCETT. Mr. Chairman, distinguished members of the subcommittee, I am pleased to be here with you this morning to provide the comments of the International Association of Chiefs of Police on this important and challenging issue.

The questions of what role should state, tribal and local law enforcement should play in the enforcement of federal immigration laws has long been discussed and debated among members of our association. Significantly, in the 112-year history of the IACP, the membership has never adopted a resolution or policy position on this vital question, and the reason for this silence is clear: There is a significant difference of opinion in the law enforcement profession on this issue.

Many law enforcement executives believe that state, tribal and local law enforcement should not be involved in the enforcement of civil immigration laws since such involvement would likely have a chilling effect on both legal and immigrants reporting criminal activity or assisting police in criminal investigations. They believe that this lack of cooperation could diminish the ability of law enforcement agencies to effectively police their communities and protect the community they serve.

Other law enforcement executives believe that it is appropriate for law enforcement to play an active role in immigration enforcement, because individuals who are in the country illegally have violated the law and should be treated in the same fashion as other criminals. They feel that it is the duty of law enforcement to assist the federal government and to apprehend and detain these individuals.

Both viewpoints raise valid arguments, and it is easy to understand why no consensus has been reached and no policy position has been adopted by the IACP. It is the IACP's strong and fundamental belief that the question of state, tribal or local law enforcement's participation in immigration enforcement is in the inherently local decision that must be made by the police chief, working with their elected officials, community leaders and citizens.

However, given the increasing importance of this issues, the IACP Executive Committee, in the fall of 2004 developed and released a position paper, that you have, that examines the concerns and obstacles that currently hinder enforcement efforts by the law enforcement, and it sets forth what we determined should be key elements of any immigration enforcement activity by non-federal law enforcement agencies.

In our policy paper, the IACP identified the following obstacles and concerns with the involvement of state, local and tribal officials in immigration enforcement. These include confusion over immigration law, training requirements, limitations on arrests without war-

rants, liability concerns and the chilling effects on immigrant cooperation with law enforcement officials.

Given these concerns, the IACP believes that any effort seeking to have state, tribal or local law enforcement agencies participate in immigration enforcement must, at a minimum, contain the following essential elements.

First, because of the question of law enforcement's participation in immigration enforcement is an inherently local decision, the IACP believes that any legislative proposal to enlist the assistance of non-federal agencies in immigration enforcement must be based on the completely voluntary cooperation of these law enforcement agencies.

Second, in order to clarify the authority of state, tribal and local law enforcement to act in matters related to immigration enforcement, it is necessary for the federal government to issue a clear and complete statement that outlines the role of such law enforcement agencies in this effort and enumerates the legal authority of these officers to act in these matters.

Third, it is imperative that state, tribal and local officers receive training on the enforcement of immigration law. Addressing immigration violations such as illegal entry or remaining in the country without legal sanction require specialized knowledge of the suspect's status and visa history and the complex civil and criminal aspects of the federal immigration law and their administration.

This is significantly different from identifying someone suspected of the type of criminal behavior that local officers are trained to detect, and without adequate training, local patrol officers will not be in the best position to make these complex legal determinations.

Straying from my document a little bit that you have already received, another major concern, and I cannot overstate this, is resources. We are all strapped at this time for our resources. Our local budgets are being cut, federal dollars are being cut that we have received in the past, and so resources are going to be a major component for our agencies to participate.

Finally, it is important that any immigration enforcement initiative provide a liability shield that provides both personal liability immunity to law enforcement officials for enforcing federal immigration laws within the scope of their duties and immunity for enforcing immigration laws unless their personnel violated criminal law in such enforcement.

While the IACP has not yet adopted a position either in support or opposition to the 287(g) Program, I would like to conclude my remarks by noting that the program does appear to satisfy many of the conditions set forth in our position paper. Participation in the program is strictly voluntary. The authority of state, tribal and local officers to enforce immigration laws is clarified, and designated state and local law enforcement officers receive specialized immigration enforcement training.

In short, the 287(g) Program appears to establish an effective and productive partnership between federal enforcement agencies and willing state, tribal and local law enforcement officials. The Department of Homeland Security and the U.S. Immigration and Customs Enforcements Agencies are to be commended for the cooperative approach they have adopted, as both law enforcement offi-

cials and the nation seeks a solution to this complicated and important issue.

That concludes my remarks. Thank you.  
[The statement of Chief Fawcett follows:]

PREPARED STATEMENT OF CHIEF FAWCETT

Good Morning Mr. Chairman and Members of the Subcommittee:

I am pleased to be here with you this morning to provide the comments of the International Association of Chiefs of Police on this important and challenging issue.

The question of what role should state and local law enforcement play in the enforcement of federal immigration laws has long been discussed and debated among members of the law enforcement community. Significantly, in the 112-year history of the IACP, the membership has never adopted a resolution or policy position on this vital question and The reason for this silence is clear. There is a significant difference of opinion in the law enforcement profession on this issue.

Many law enforcement executives believe that state and local law enforcement should not be involved in the enforcement of civil immigration laws since such involvement would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations. They believe that this lack of cooperation could diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve.

Other law enforcement executives believe that it is appropriate for state and local law enforcement to play an active role in immigration enforcement because individuals who are in the country illegally have violated the law and should be treated in the same fashion as other criminals. They feel that it is the duty of state and local law enforcement to assist the federal government and to apprehend and detain these individuals.

Both viewpoints raise valid arguments and it is easy to understand why no consensus has been reached and no policy position has been adopted by the IACP. It is the IACP's strong and fundamental belief that the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision that must be made by a police chief, working with their elected officials, community leaders and citizens.

However, given the increasing importance of this issues, the IACP Executive Committee, in the fall of 2004 developed and released a position paper that examined the concerns and obstacles that currently hinder enforcement efforts by the state, tribal and local law enforcement community, and to set forth the what we determined should be key elements of any effort immigration enforcement activities by non-federal law enforcement agencies. At this time, I would like to submit a copy of this position paper for the record.

In our policy paper, the IACP identified the following obstacles and concerns over the involvement of state and local officials in immigration enforcement these included Confusion over Immigration Laws; Training Requirements; Limitations on Arrest Without Warrant; Liability Concerns and the Chilling Effects on Immigrant Cooperation with state and local law enforcement officials.

Given these concerns, the IACP believes that at a minimum, any effort seeking to have state and local law enforcement agencies participate in immigration enforcement must, at a minimum contain the following essential elements.

First, Because the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision, the IACP believes that any legislative proposal to enlist the assistance of non-federal agencies in immigration enforcement must be based on the completely voluntary cooperation of state/ local law enforcement agencies.

Second, in order to clarify the authority of state, tribal and local law enforcement to act in matters related to immigration enforcement, it is necessary for the federal government to issue a clear and complete statement that outlines the role of state, local and tribal law enforcement agencies in this effort and enumerates the legal authority of state, local and tribal law enforcement officers to act in these matters.

Third, it is imperative that state and local officers receive training on the enforcement of immigration laws. Addressing immigration violations such as illegal entry or remaining in the country without legal sanction require specialized knowledge of the suspect's status and visa history and the complex civil and criminal aspects of the federal immigration law and their administration. This is significant different from identifying someone suspected of the type of criminal behavior that local officers are trained to detect and without adequate training, local patrol officers will not be in the best position to make these complex legal determinations.

Finally, it is important that any immigration enforcement initiative provide a liability shield that provides both Personal liability immunity to state, tribal and local law enforcement officials for enforcing federal immigration laws within the scope of their duties and Immunity for state, tribal or local agencies enforcing immigration laws unless their personnel violated criminal law in such enforcement.

***The 287(g) Program***

While the IACP has not yet adopted a position, either in support or opposition to the 287(g) program, I would like to conclude my remarks by noting that the program does appear to satisfy many of the conditions set forth in our position paper. Participation in the program is strictly voluntary; the authority of state and local officers to enforce immigration law is clarified and designated state and local law enforcement officers receive specialized immigration enforcement training.

Law enforcement executives throughout the nation are committed to doing all that can be done to protect our communities from crime and violence.

Mr. ROGERS. Thank you, Chief Fawcett.

I have a few questions I would like to ask.

In listing to your concerns and priorities, as you mentioned in your statement, the current program addresses the first three. Of course, the fourth, resources, is something we talked about on the earlier panel and we feel like the upcoming authorization and appropriation is going to allow more local governments to practically participate because there will be the opportunity for backfill expenses to be covered.

The liability shield you referenced, is that a big obstacle, in your view, to participation in this program?

Chief FAWCETT. It is a major concern for local governments before they can make a commitment to be a participant in these programs. So I would say that, yes, we are going to have to address the local communities' concerns.

Mr. ROGERS. Dr. Kobach, what do you think about the liability shield being a hurdle?

Mr. KOBACH. I have heard from local law enforcement agencies who are concerned about that specific issue. Obviously, it was not a prohibitive concern for Alabama or Florida. There are also, depending on the state legal environment you are operating in, the officers are safer from liability than in other states. So it really depends on the context.

I think there is no question that that would encourage some local law enforcement agencies who are worried about that particular problem, and I would agree with the other witness that there are some that are.

Mr. ROGERS. I would ask this: In the view of each of you, do you think that that would be an insurmountable obstacle for the majority of other states?

Obviously, it has not been a concern for Alabama or Florida, but I will start with you, Chief, do you think that with most states' local governments that that particular shortcoming would be insurmountable?

Chief FAWCETT. Mr. Chairman, I believe that comparing the local agency with the state agency is very different and that the approaches at the local level where the agency is held to a higher degree of accountability is going to be very different than at the state level. And so I think that in the local communities, if their officers are to be involved in these enforcement efforts, that they are going to want to see some immunity or they are going to want to see some protection.

Mr. ROGERS. You made reference to the local officers being held to a higher standard than the state officers. What do you mean?

Chief FAWCETT. Not higher but they are more closely scrutinized because their communities are smaller, their councils, their governments watch their activities more closely, they direct their operations more closely. In the state of Texas where I am from, our legislature meets every other year, and so while there are governing agencies that are active year-round there, there is still the vastness of the state and then what happens at the local level.

Mr. ROGERS. Dr. Kobach?

Mr. KOBACH. Yes. I do not think it is an insurmountable problem. I think that it can, in part, be overcome by information. The worries about the liability risk are greater than the reality of it. Once the officers receive the training, then they become unlikely to make a mistake that would trigger an actionable violation of anyone's civil rights.

And then, secondly, it is important to remember that these officers are not turned loose and out there operating completely alone. At every step of the way, they are coordinating with supervisors at ICE. And so their decisions are being shared with people who have a great deal of experience in the area.

And then, finally, I would say you ultimately have someone moving into the immigration court system. And so that is where oftentimes if there are challenges to the enforcement of immigration law, in my experience, I see many of those challenges occur because of the immigration judge's decision or the refusal to see certain—you do not see that many challenges to the initial apprehension of someone being taken into custody.

Mr. ROGERS. I have one last question, my time is about expired.

I did want to address to you, Dr. Kobach. You made reference, I thought pretty effectively earlier, about how bad the people are that we are trying to detect with programs like this, and you made reference to the gangs more in this region. Can you speak briefly to the effectiveness of this program at discerning who these really bad illegal aliens are in Florida and Alabama?

Mr. KOBACH. Yes. The program allows the officers to have, as has been mentioned by the prior panelists, access to databases and greater familiarity with the patterns of alien smuggling, the patterns of drug smuggling that often are concurrent with those.

Mr. ROGERS. But can you give us a couple of examples, I guess is what I am asking.

Mr. KOBACH. I do not have specific anecdotes that I brought testimony about today.

Mr. ROGERS. Okay. But in your view, your review of these two particular state pilot projects they have been effective at detecting the kind of people that you described in these gangs.

Mr. KOBACH. Oh, absolutely. And I think the Operation Community Shield, even though that was not a 287(g) Program, that clearly is something that 287(g) could accomplish. So if you take that example, and there you have specific individuals who are—the name of the leader of MS-13 was El Guapo was his gang name, and he was arrested by simply matching his name against the fact that he was illegally in the country. Those are clear examples of how you can locate specific individuals who are in the leadership

or in the membership of these gangs and use immigration law to take them off the street.

Mr. ROGERS. Thank you. My time has expired.

The chair now recognizes the ranking member, Mr. Meek, for any questions he may have.

Mr. MEEK. Thank you.

Mr. Kobach, I want to ask you a question. You referred to there was testimony in the last panel saying we need to limit 287 to corrections only?

Mr. KOBACH. I believe that they said the focus going forward would be in correctional institutions. It was unclear to me exactly whether it would be limited or whether it would be focused or—

Mr. MEEK. I know that there was a program that they were talking about that was discussed within local jurisdictions. Mr. Kilcoyne mentioned it.

Mr. KOBACH. I believe he was referring to the Institutional Removals Program, which is something that did not operate with state and local enforcement when making the determination.

Mr. MEEK. Sure. You seem to have numbers that ICE does not have at this point, and if they do have it, they do not know they have it. You mentioned of the issue of arrests, and you came up with some specific numbers. You said over 200 arrests that have been made in Florida and a number of them in Alabama. Where did you get that data?

Mr. KOBACH. Almost 200 in Alabama. Those numbers, I believe, came from a release by the Alabama law enforcement community. I know that Senator Sessions used those numbers on the floor of the Senate not too long ago. And in terms of the Florida numbers those numbers were made public, I believe, shortly after the one-year anniversary of the Florida Program, and ICE certainly has those numbers. They may not have chosen to include in their testimony.

Mr. MEEK. Are they 287 numbers or are they general numbers?

Mr. KOBACH. Yes, they are 287(g) numbers. Because, again, there was a lot of focus on the Florida program and the Department of Justice and we were looking for what those numbers were.

Mr. MEEK. Do you know what is interesting in this whole thing, we have been sitting here for about—I guess the committee started at 10 and we are almost going on 3 hours now. And I am getting quite confused because I do want the numbers, and I would assume that the assistant to the director would have those numbers.

I asked the director of the whole Florida operation, and then we had the Major here from the troopers in Alabama that are intimately involved in it, and they could not come up with any solid numbers. I think it would be good for us, for the future of the program to be able to—let's figure out what the numbers are, and let's look at strategic value as it relates to the individuals that are being arrested.

Are the numbers, like I mentioned before, the landscape architect that had the broken headlight or is it the individual, the person of interest that we felt that by arresting this individual that we have saved lives? Because this is a very, very and could be a very, very—it is already expensive for the two pilot programs in the county that we have in it now.

I wanted to ask you, because you have been a professional in this thing, and you were over at the Justice Department and from what I can read of your bio, you have educated yourself well. But I wanted to ask you this: As it relates to the 9/11 bill we passed last December, I think that a number of individuals knew that there were stovepipe issues you did refer to, and I knew it was going to come up sometime during this hearing, about the small number of hijackers that were stopped by the law enforcement individuals that stopped them on the road.

I can tell you there are a lot of what-ifs prior to 9/11. If we would have had better intelligence, if we would have listened to this FBI agent who said we need to watch out for these guys that are training. So there are a lot of ifs out there. I just want to narrow it down. If you had a choice between providing the funding to be able to hire additional ICE officers or border security individuals or funding this program, the 287 Program, which one would you think would be a sound investment for members of Congress to invest in if you were where I am sitting now?

Mr. KOBACH. Thank you for that question. I think it is a very good question and a tough question. Let me just respond one more point about the numbers. I believe those numbers are actually in the quarterly report and because the prior witnesses may not have had those reports in front of them. I am sure the numbers are gettable, so I am sure you can obtain them.

With respect to your question about the hijackers and the what-ifs and where should the money go, I would look at this way: Look where the money goes when we try to hire ICE agents. I was in the Department of Justice at the time of 9/11, and we were shocked to find that our number of interior enforcement agents was so low, just below 2,000 for the entire country. We then set about hiring as fast as we could.

Well, where are we today? About the same number, right around 2,000. This is after 9/11. What is going on? A couple of things are going on. One is that it is difficult to hire fast enough to keep up with the money that is coming in for the hiring. In many instances, especially right after 9/11, INS was competing against the air marshals, against the FBI, against other law enforcement agencies that were also trying to hire.

Secondly, attrition. The federal law enforcement ranks are seeing attrition as baby boomers retire, just like private industry is too. And so seeing those numbers grow is very difficult in the federal.

But let's look at your question and that is where would you invest the money? Well, let's use the numbers that we heard, \$170,000 or so for a class of 50 people. Well, that is roughly \$3,500 per student—a one-time expenditure of \$3,500. In contrast, right now, the modular cost to hire and train one ICE agent is \$198,000. After that, you then pay a salary every year, and let's say it starts around \$80,000 and goes up. So you are talking \$198,000 and then \$80,000 every year after that, and you get one individual.

It seems to me that your money goes a lot further if you—I am not saying you should not do both but your money goes further if for \$3,500 you get another set of feet on the street and that individual is out there, and if he does happen to run into Mohammed

Atta who is getting a speeding ticket, he can actually act in a more effective way than most police officers can act.

Mr. MEEK. I have a couple more questions for you.

Mr. Chairman, I hope there is a second round.

I know we have another member here, but I have a couple more questions for you. I appreciate that response because that was good.

And, also, we want to get your source for the numbers so that we can have it, because I think that is important. I mean, now we are talking about appropriations. We definitely have already talked and taken action on authorization. There is going to have to be some hard numbers out there because there will be some staffers looking for that kind of stuff. But I will ask in the second round when we get to it.

Mr. ROGERS. Thank the gentleman. The gentleman yields back.

The chair now recognizes the gentleman from Washington, Mr. Reichert, for any questions he may have.

Mr. REICHERT. Thank you, Mr. Chairman.

How many members are in the IACP?

Chief FAWCETT. Approximately 20,000, sir.

Mr. REICHERT. Twenty thousand.

Chief FAWCETT. Yes, sir.

Mr. REICHERT. I am a past member of IACP and also a lifetime member of the NSA, and having participating in those two groups, it is not surprising to me that you could not get agreement on this document, and you know what I am talking about.

Chief FAWCETT. Yes, sir.

Mr. REICHERT. But it is good news, though, that you did come up with four things, the voluntary aspect, which is addressed in 287(g). Most of the things that—well, all of them really, the role must be clear, I think, the Texas police chief and the sheriff, that is something we have to have a clear role in responsibility training. Have you had a chance to look at the training program, the schedule? Has IACP evaluated the training program at all?

Chief FAWCETT. We have not yet, sir.

Mr. REICHERT. You are aware of some of the items. I think I mentioned earlier some of the items. Are those not items that most officers receive in their initial basic training?

Chief FAWCETT. Many of the items that you spoke of earlier are required in our continuing training.

Mr. REICHERT. Yes. Even some of those training blocks are they not training blocks that must be continued training throughout an officer's career, refresher courses?

Chief FAWCETT. Yes, sir.

Mr. REICHERT. And so this training is provided to the agency that volunteers to be a participant. Does that not reduce the cost in some way for your training program?

Chief FAWCETT. Possibly, not entirely. It is going to depend on the requirements of the state. I can see where it could be beneficial in my state, providing the training got certification from my licensing agency, which could be done.

Mr. REICHERT. In any training that you do, isn't there always a backfill cost?

Chief FAWCETT. Yes, sir, there is.

Mr. REICHERT. It would be nice, though, for the federal government in this case to provide that backfill cost since we are assisting them in this way, local law enforcement I am referring to.

Mr. Chairman, I think I will stop with that. Thank you.

Mr. ROGERS. The gentleman yields back.

The chair now recognizes the ranking member for any additional questions he may have.

Mr. MEEK. Yes, sir.

Doctor, I wanted to just ask you, the 9/11 Commission, and I am pretty sure you had an opportunity to take a look at some of their findings, they do not speak of 287. They speak of hiring of more ICE agents and they call for a number which the administration still has not risen to the occasion to be able to fund this at that level.

But as it relates to the 287 issue, it may be a good solution for the federal government and the federal purpose of trying to head off the issue of illegal immigrations or individuals that are here illegally. But in the long-term effects, because those are mainly where my questions are going towards long-term effects of the program, it is almost like the Department of Homeland Security. I do not look at it as a right now kind of thing. I look at where we are going to be in another 5 or 6 years, how the country will feel about the Department of Homeland Security.

You know the Patriot Act issue was just on the floor. We have a House and Senate version, I guess, that is close, and we are going to go to conference on it. It is how everyday Americans feel about the Patriot Act, which is a tool that is supposed to help them protect themselves. This 287 issue I think is on the early years, and it is kind of politically good founding kind of thing, "Hey, guess what? We are going to train local law enforcement officers in identifying individuals that are here illegally.

And we know that there will be some issues. After 9/11, there were issues about profiling and there were not issues about profiling. There were issues about sensitivity, then there were not issues about sensitivity. But now it is going to be issues of funding and longevity and soundness of the program.

And that is the reason why I was questioning the assistant director of the last panel about these steering committees. Is it just all of us that are carrying badges and identifications on the law enforcement end or is there a need to bring in some other folks as this thing continues to broaden?

Because I believe when we get out of the Florida Department of Law Enforcement area, which is the Florida version of the FBI or investigative agency, we start getting into uniform personnel and then the issues that come along with that. I am not talking about the issues of profiling only, I am talking about the issues that deal with overtime, deal with individuals off the road.

Can we afford to do that and then stand behind the legislation we passed in December, the 9/11 bill? And those are the questions, and I know those are issues that you will be studying and also the chiefs will be looking at as they move forward.

Mr. KOBACH. I think your question touches on a number of subjects, and I will try to give as precise an answer as I can.

With respect to the 9/11 Commission and Section 287(g) authority, I think it is fair to say that 287(g) was not squarely within the scope of the 9/11 Commission's research. There was no MOU in effect at the time of 9/11, and they were looking at the mistakes that were made within that legal context at the time.

I have read the 9/11 report and the appendices, and there is really nothing about it you are right, but I do not think it is because they considered 287(g) and rejected it, I just do not think it was squarely within the ambit of their concerns.

As far as the long-term effects of the program, and your thoughts down the road 5 or 6 years, where would we like to be, where would we like to spend our money? Well, I would like to answer that question. Let's imagine that Congress had an unlimited amount of money or virtually unlimited amount of money to give to ICE or that there was a very, very deep well, say, to draw from.

Mr. MEEK. Have you seen the deficit lately?

[Laughter.]

Mr. KOBACH. I hasten to add, it does not match.

Mr. MEEK. A deep line of credit.

Mr. KOBACH. A deep line of credit. Let's suppose that ICE could hire as many as they wanted and as many as they could. Because of the hiring barriers, which I saw firsthand right after 9/11 and which still exist in ICE, I would be very surprised if we could go from 2,000 even to 4,000. I do not think you could double ICE's interior enforcement strength in 6 years. I doubt you could even get to 3,000 because of the incredible barriers of hiring, training and retaining.

So when you consider the numbers here and you consider the fact that we have, by most estimates, well over 10 million illegal aliens in the country, of which a certain small percentage present either terrorist or law enforcement problems, if you are dealing with a haystack that big and you only have 2,000 officers for the entire country, you need to have some help from the law enforcement officers who every day are out there on the streets.

And you can get that help even at the fairly high cost of training right now, you can get the help for about \$3,500 for another set of feet that is attuned to immigration violations and can assist if there is someone out there who is illegally present in the country and either poses a criminal threat or a terrorist threat.

Mr. MEEK. Dr. Kobach, I mean, I hear what you are saying and I agree with you, and we can go back and forth, and I want to thank you for coming before the panel also.

Chief, I want to thank you for coming also and sitting through the first panel and getting some, I guess, additional thoughts from those individuals that are dealing with it hands on.

But I think it is important for us to understand that we here, and the chairman has had a number of hearings surrounding this issue of enforcement of immigration laws, and we have had the Department that have come forth, I mean, ICE has come forth, "Oh, we can do the 2,000 agents, no problem in training them," okay. I would even go as far as stretching out if we were to have the Customs and Border Protection, "Oh, sure, we can do that. That is no problem. We can handle it."

As a matter of fact, we had a director of the Academy from Georgia, Glencoe, who was here, the director, who said that we can do it, no problem.

The real issue is making sure, yes, to train law enforcement officers is a good thing to recognize things, drug traffickers in the Florida Highway Patrol. I went to training for that, I went to training for drug recognition expert. But, see, I was a state trooper and we were going after the individuals that were speeding and running, like the Major talked about, traffic lights, also drug traffickers that are out there.

Some of the investigative issues that we need for a strategic counterterrorism work out there are for these law enforcement agencies that they focus on individuals of interest. If you are working in an airport and you were to train airport officers, to be able to recognize individuals that may be on the watch list or to be able to see activity where you say, "Wow, something is not right about this guy with the backpack in a transit area and we just had a problem." Those kind of individuals I can understand it.

When we start getting out into the general law enforcement community, and it is good to have as many eyes and feet out there as possible, then we have issues.

I am not here to debate the issues. I am just here to say these are some of the thoughts that we need to have in our minds as we move forward. Every member voted for the amendment to add more money to this program, even on the floor. Pretty much every member of the committee, I am not sure, I have not pulled the voting sheet, voted for the authorization bill that authorized even more money going toward it.

And so as we look at this, Mr. Chairman, I am just going to say this in closing, because I do not need an answer to this statement, I think that it will be important for us to continue to bring local law enforcement individuals to the table and ask them what they may need from us, what are some of the issues that they found, even after if we were to get this money to them and they were to be able to do the backfill and be able to pay the overtime and do all of these issues that are there.

From what I understand, this money can be used for overtime and court costs, I guess. Because this is going to be a preventive maintenance kind of thing. And you are right, attrition is a reality in every job, but it is important that we police this thing appropriately, and I will use that word, "police it," for the longevity of the program if we are going to keep integrity there of the program so that individuals are not stretched thin like in community policing. Community policing dollars are no longer there like they used to be. Now we have other issues that are out there. And so I think that is very, very important.

So, Mr. Chairman, I am glad that we did have this hearing. I am glad that you continue to—I should have said this when the Major was here from Alabama—this is something that you feel very strongly about. You have not only talked with staff but with me on the subject and the Florida and the Florida legislature.

We were the second state in the Union to pass legislation as it relates to homeland security. I served on that committee, know the professionalism of the Florida Department of Law Enforcement. It

is ironic that you would be the chairman and I would be the ranking member, and it would be the only two states in the program.

But I will tell you this, for this program to stand, and I think as it relates to the muster of the courts, and I am willing to see what may happen, as it relates to decisions and these state law enforcement officers that are trained, if someone was to challenge their authority to do it, and you have addressed that in your testimony about how this would actually work. And you spoke toward immunity. I think law enforcement officers have some level of protections as it relates to sovereign immunity. But when we start talking about civil, I do not know exactly where we are.

And, in closing, Mr. Chairman, I know I am asking quite a bit of latitude, but can you address the immunity issue? I do not know if such a thing can be given through federal statute. I do not think it can. I think it is a very touchy area. Anyone on the panel could try to address that a little further. And, you know, individuals who believe in individual rights may have an issue with that too.

Mr. KOBACH. Well, I could just say you are right that complete immunity is virtually impossible to provide. If an officer does something that constitutes a violation of someone's constitutional rights, no statutory immunity is going to prevent the officer from suffering some consequences from that. So immunity is a word that has many meanings.

Chief FAWCETT. If I might, on the part of IACP and probably we should have done a better job in our concluding remarks when we were talking about those concerns of ours that had been addressed. And, certainly, the liability issue in some part because of cross-deputization, has addressed some of those concerns.

And of course, like my colleague here said, that as long as they are acting within the scope of their authority, protection should be there. But for those who act outside the scope of their authority are committing illegal acts and there should not be protection there.

Mr. ROGERS. Gentleman yields back.

I would like to revisit one point and emphasize it, and that is what we heard from our earlier panelists and we have heard echoed in Dr. Kobach's remarks is, this has been a very effective program for the states that have utilized it and also in Los Angeles in the one county that we have had a pilot program.

And what I have discerned from the remarks of the panelists is that these states were willing to take the money out of their hide and participate even though they were not reimbursed for backfill, because they saw the inherent benefit in making their community safer by participating in this.

These are really bad people that we are trying to find. It is important for our national security but it is also for these state and communities' security as well.

With that, I want to thank the witnesses for their testimony. It has been very helpful, and I appreciate you being here, taking time out of your busy schedule.

I would remind the witnesses that there may be members of the committee who have questions that were not here, had to leave, that they would want to submit to you, and the record will be left open for 10 days. If members do have questions, I would ask that you write a response in writing and submit it back for the record.

And with that, and without objection, this committee hearing is adjourned.  
[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

