



One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

April 2, 2009

John Torres
Acting Assistant Secretary
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th St., SW
Potomac Center North
Washington, D.C. 20536

Dear Mr. Torres:

On March 4, 2009, the Committee on Homeland Security held a hearing entitled "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law," to evaluate the program's management and implementation.

In his testimony, Mr. William Riley, Acting Director of the Immigration and Customs Enforcement's (ICE) Office of State and Local Coordination, highlighted ongoing and planned reforms to the current 287(g) program. Mr. Riley indicated that the ICE Office of Personal Responsibility (OPR) is currently conducting a compliance review of the Memoranda of Agreement (MOA) entered into between ICE and local law enforcement agencies under the 287(g) program. Additionally, Mr. Riley stated that ICE is in the process of redrafting an MOA template for use in future agreements. It is anticipated the new template will include both improved guidance on fundamental programmatic concerns such as the nature and extent of ICE supervisory activities and a limitation on the duration of the agreement.

The redrafting and reissuance of these MOAs will bring about a level of clarity and transparency that has been missing in this program. I write to commend this effort and recommend that as ICE considers necessary modifications to the MOA template, it also take the following suggestions into consideration:

1. Consult with the Government Accountability Office (GAO) or the DHS Office of Inspector General (OIG) on the new MOA template structure. Congress has asked both organizations to investigate 287(g) program implementation in recent years. GAO presented their findings at last month's hearing, and language in the FY09 Appropriations Act directed the OIG to examine how the program has been implemented.¹ The work

¹ P.L. 110-320.

these two organizations have done with the program may offer valuable insight as ICE drafts the new MOA template.

2. Ensure consistency in program implementation through use of new templates for all MOAs. The new template is anticipated to address a number of 287(g) program management concerns. The Committee suggests ICE use this template for both future agreements and existing ones. Adopting the new template for all agreements ensures all participating local law enforcement agencies and supervising ICE agents are operating from the same set of guidelines. Replacing all MOAs with the updated template will prove more efficient in the long term.

3. Develop a transparent and robust complaint process. The existing 287(g) program complaint process provides insufficient guidance on how to file a complaint and is structured in a fashion that may create a conflict of interest within ICE. The Committee recommends that ICE involve the DHS Office for Civil Rights and Civil Liberties in the complaint process.

I look forward to working with you on this critical management issue. If you have any questions or concerns, please contact Cherri Branson, Chief Oversight Counsel, at 202-226-2616.

Sincerely,

A handwritten signature in black ink, appearing to read "Bennie G. Thompson". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping tail.

Bennie G. Thompson
Chairman
Committee on Homeland Security