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Report to the Chairman, Committee on
Homeland Security, House of
Representatives

January 2021

IMMIGRATION ENFORCEMENT

ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements

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GAO@100 Highlights

Highlights of [GAO-21-186](#), a report to the Chairman, Committee on Homeland Security, House of Representatives

Why GAO Did This Study

The 287(g) program authorizes ICE to enter into agreements with state and local law enforcement agencies to assist with enforcing immigration laws. The program expanded from 35 agreements in January 2017 to 150 as of September 2020.

GAO was asked to review ICE's management and oversight of the program. This report examines (1) the extent to which ICE has developed performance goals and measures to assess the 287(g) program; (2) how ICE determines eligibility for 287(g) program participation and considers program resources; and (3) how ICE conducts oversight of 287(g) program participant compliance and addresses noncompliance. GAO reviewed ICE policies and documentation, and interviewed officials from ICE headquarters and field offices. GAO also interviewed 11 LEAs selected based on the type of 287(g) agreement, length of participation, and facility type (e.g. state or local). While not generalizable, information collected from the selected LEAs provided insights into 287(g) program operations and oversight of program participants. GAO analyzed data on 287(g) inspection results and complaints from fiscal years 2015 through 2020.

What GAO Recommends

GAO recommends that ICE (1) establish performance goals and related performance measures; (2) assess the 287(g) program's composition to help leverage its resources and optimize program benefits; and (3) develop and implement an oversight mechanism for the WSO model. DHS concurred with the recommendations.

View [GAO-21-186](#). For more information, contact Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov.

January 2021

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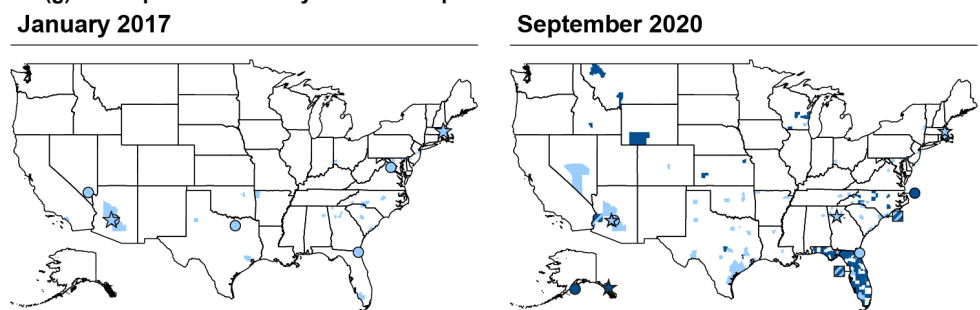
ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements

What GAO Found

Within the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) met its goal to expand the 287(g) program. However, ICE has not established performance goals that cover all program activities, such as ICE's oversight of its law enforcement agency (LEA) partners, or measures to assess the program's performance, such as the percentage of LEA partners in compliance with annual training requirements. As a result, ICE is not well-positioned to determine the extent to which the program is achieving intended results.

ICE considers a number of factors, such as LEAs' capability to act as an ICE force multiplier, when reviewing their suitability to join the program; however, ICE has not assessed how to optimize the use of its resources and program benefits to guide its recruitment of future 287(g) participants. For example, ICE has two models in which LEAs can participate with varying levels of immigration enforcement responsibilities. In the Jail Enforcement Model (JEM), designated state or local officers identify and process removable foreign nationals who have been arrested and booked into the LEA's correctional facility, whereas in the Warrant Service Officer (WSO) model, the designated officers only serve warrants to such individuals. However, ICE has not assessed the mix of participants for each model that would address resource limitations, as each model has differing resource and oversight requirements. By assessing how to leverage its program resources and optimize benefits received, ICE could approach recruitment more strategically and optimize program benefits.

287(g) Participants in January 2017 and September 2020



Legend
Light blue square: Jail Enforcement model
Dark blue square: Warrant Service Officer model
Star symbol: Statewide agency
Circle symbol: City agency

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-186

ICE uses a number of mechanisms to oversee 287(g) JEM participants' compliance with their agreements, such as conducting inspections and reviewing reported complaints. However, at the time of GAO's review, ICE did not have an oversight mechanism for participants' in the WSO model. For example, ICE did not have clear policies on 287(g) field supervisors' oversight responsibilities or plan to conduct compliance inspections for WSO participants. An oversight mechanism could help ICE ensure that WSO participants comply with their 287(g) agreement and other relevant ICE policies and procedures.

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Abbreviations

CRCL	Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
JEM	Jail Enforcement Model
LEA	Law enforcement agencies
MOA	Memorandum of Agreement
OIG	Office of Inspector General
OPR	Office of Professional Responsibility
WSO	Warrant Service Officer

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January 27, 2021

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

Dear Mr. Chairman:

In recent years, the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) expanded the 287(g) program, from 35 agreements across 35 state and local law enforcement agencies (LEAs) in January 2017 to 150 agreements across 147 LEAs, as of September 30, 2020.¹ Statutorily authorized in 1996, ICE can enter into agreements through the 287(g) program with state and local LEAs that provide them with certain immigration enforcement authorities, specified by section 287(g) of the Immigration and Nationality Act.² ICE is responsible for the enforcement of immigration laws within the United States, including, through its Criminal Alien Program, the identification, arrest, detention, and removal of foreign nationals who are removable and incarcerated within federal, state, and local prisons and jails. The 287(g) program enables trained and designated state and local officers from LEAs participating in the program to assist ICE in the enforcement of immigration laws to the extent permitted by their 287(g) agreements. These agreements cover two program models—the Jail Enforcement Model (JEM) in which designated state and local officers identify and process removable foreign nationals who have been arrested and booked into the LEA's correctional facilities and the Warrant Service Officer

¹Exec. Order No. 13767, § 10, 82 Fed. Reg. 8793, 8795 (Jan. 30, 2017) (Issued Jan. 25); Exec. Order No. 13768, § 8, 82 Fed. Reg. 8799, 8800 (Jan. 30, 2017) (Issued Jan. 25). In January 2017, Executive Orders 13767 and 13768 stated that it is Executive Branch policy to empower state and local law enforcement agencies to perform immigration enforcement functions within the United States to the maximum extent permitted by law. See GAO, *Border Security and Immigration: Initial Executive Order Actions and Resource Implications*, [GAO-18-470](#), (Washington, D.C.: June 12, 2018) for more information regarding the executive orders. LEAs participating in the 287(g) program may have up to two types of 287(g) agreements, as discussed later in the report.

²Subsection (g) of section 287 of the Immigration and Nationality Act, Pub. L. No. 82-414, title II, ch. 9, § 287(g), 66 Stat. 163, 233-34 (1952), as added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, title I, subtitle C, § 133, 110 Stat. 3009, 3009-563 to -564. The first 287(g) program agreement under the statute was signed in 2002.

(WSO) model in which state and local officers serve administrative warrants on removable foreign nationals in their correctional facilities.³

We have previously reported, along with the DHS Office of Inspector General (OIG), on a number of challenges ICE has faced in the management and oversight of the 287(g) program.⁴ Most recently, in September 2018, the DHS OIG reported that ICE had inadequate staffing that hindered program oversight, due to ICE expanding the program without analyzing program needs to determine the number of additional staff needed to do so.

You requested that we review ICE's management and oversight of the 287(g) program. This report examines: (1) the extent to which ICE has developed performance goals and measures to assess the 287(g) program; (2) how ICE determines the eligibility of state and local law enforcement agencies for participation in the 287(g) program, and the extent to which ICE considers program resources; and (3) how ICE conducts oversight of 287(g) program participating agencies' compliance with federal immigration enforcement responsibilities in their agreement, and the extent to which ICE addresses any noncompliance.

To address all three objectives, we met with officials from 11 state and local LEAs participating in the 287(g) program to obtain information on the process for entering into 287(g) agreements with ICE, the type of 287(g) program at their facilities, and ICE's oversight of the program at their facilities.⁵ We selected these 11 LEAs to reflect the different types of 287(g) agreements; lengths of time participating in the program; and types of LEA facilities, such as county or regional correctional facilities,

³Administrative warrants facilitate the arrest and detention of a removable foreign national, pending a decision on whether they should be removed from the United States. The administrative nature of such warrants means that they are issued for civil violations of immigration law as opposed to criminal offenses for which an investigative agency may seek a judicial warrant. See 8 U.S.C. § 1226(a). See also 8 C.F.R. § 287.5

⁴GAO, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, [GAO-09-109](#) (Washington, D.C.: Jan. 30, 2009); Department of Homeland Security, Office of Inspector General, *The Performance of 287(g) Agreements*, OIG-10-63 (Washington, D.C.: March 4, 2010); and *Lack of Planning Hinders Effective Oversight and Management of ICE's Expanding 287(g) Program*, OIG-18-77 (Washington, D.C.: Sept. 19, 2018). DHS took action to address the recommendations from these reports.

⁵Selected LEA participants are located in Florida, Maryland, Texas, and Virginia.

among other factors.⁶ We also met with 287(g) program officials from five ICE Enforcement and Removal Operations (ERO) field offices responsible for overseeing the selected LEAs to discuss ICE's policies and processes for ensuring LEAs' compliance with their agreements. While the information we obtained from our interviews with selected LEAs and ICE field officials cannot be generalized to all 287(g) program LEA participants and ICE field offices, it provides insights into 287(g) program operations and the processes used by ICE to oversee 287(g) program participants.

To determine the extent to which ICE developed performance goals and measures to assess the 287(g) program, we reviewed 287(g) performance information, such as prior goals, measures, and other information, and compared that information against leading practices for assessing program performance.⁷ More specifically, we interviewed ICE officials at headquarters about their planning and use of performance information and reviewed documentation related to performance assessment of the program, such as the prior *Fiscal Year 2011-2016 287(g) Strategic Plan*. We also collected enforcement data on persons encountered, detained, and removed by LEA participants in the 287(g) program, which ICE identified as performance information. We assessed the reliability of the enforcement data by interviewing ICE officials about how, if at all, they use enforcement data, and any potential reporting limitations. ICE cited challenges, such as linking data to the 287(g) program, potential duplicates, and unclear definitions of data. As a result,

⁶The 287(g) program has two types of agreements—JEM and WSO. Selected LEAs included eight under JEM, two WSOs, and one LEA using both the JEM and WSO model. After our interviews, one JEM participant left the program, and another JEM participant switched to the WSO model.

⁷We have previously stated that performance goals and measures are important management tools that can serve as leading practices for planning at lower levels within federal agencies, such as individual programs or initiatives. For example, see GAO, *Veterans Justice Outreach Program: VA Could Improve Management by Establishing Performance Measures and Fully Assessing Risks*, [GAO-16-393](#) (Washington, D.C.: Apr. 28, 2016); *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: Nov. 22, 2002); *Program Evaluation: Strategies to Facilitate Agencies' Use of Evaluation in Program Management and Policy Making*, [GAO-13-570](#) (Washington, D.C.: June 26, 2013); *Performance Measurement and Evaluation: Definitions and Relationships*, [GAO-11-646SP](#) (Washington, D.C.: May 2011); *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005).

we did not use ICE's enforcement data for the purposes of reporting outputs related to the 287(g) program, as discussed later in the report.

To determine ICE's process for reviewing and approving state and local LEAs for participation in the 287(g) program and the extent ICE considers resources during this process, we interviewed relevant ICE and DHS officials and reviewed budget information and documentation used during the 287(g) application and review process. In particular, we reviewed ICE's 287(g) program application and review process for JEM and WSO models, program budget, and staff resources from fiscal years 2015 through 2020 to capture information prior to and after ICE's expansion of the 287(g) program (i.e. increasing the number of LEAs participants) in January 2017.⁸ We also interviewed officials from ICE's ERO headquarters and field offices, ICE's Office of Professional Responsibility (OPR), and DHS Office for Civil Rights and Civil Liberties (CRCL). We compared information on ICE's process for reviewing and approving 287(g) program applicants against leading practices for successful program management in *The Standard for Program Management* and the components of sound planning as identified in previous GAO reports.⁹

To determine the extent to which ICE conducts oversight of the 287(g) program and addresses any noncompliance, we reviewed documentation such as ICE oversight policies, procedures, and inspection documents, analyzed data of JEM participants' annual inspections and complaints related to the 287(g) program, and interviewed officials to identify ICE

⁸As previously discussed, in January 2017, Executive Orders 13767 and 13768 stated that it is Executive Branch policy to empower state and local law enforcement agencies to perform immigration enforcement functions within the United States to the maximum extent permitted by law. This timeframe captures two fiscal years prior and after the Executive Orders. We also included fiscal year 2020 information since it was the most recent fiscal year for which data were available.

⁹Project Management Institute, Inc., *The Standard for Program Management*®, 4th ed. (Newtown Square, PA: 2017). The components of sound plans include (1) purpose, scope, and methodology; (2) problem definition, causes, and operating environment; (3) goals, objectives, activities, and performance measures; (4) resources, investments, and risks; (5) roles, responsibilities, and coordination; and (6) integration among and with other entities. For example, see GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, [GAO-04-408T](#) (Washington, D.C.: Feb. 3, 2004) and GAO, *Social Security Disability: Additional Performance Measures and Better Cost Estimates Could Help Improve SSA's Efforts to Eliminate Its Hearings Backlog*, [GAO-09-398](#) (Washington, D.C.: Sept. 9, 2009). Although there is no established set of requirements for all plans, components of sound planning are important because they define what organizations seek to accomplish, identify specific activities to obtain desired results, and provide tools to help ensure accountability and mitigate risks

procedures for conducting oversight of LEA participants.¹⁰ For example, we reviewed inspection documents, such as OPR's inspection operations manual and annual 287(g) program inspection reports, and analyzed OPR inspection findings (deficiencies and areas of concern) to determine the number and types of findings for LEAs that OPR inspected from fiscal year 2015 through 2020.¹¹ In addition, we reviewed relevant processes used by OPR's Joint Intake Center, and DHS's OIG and CRCL to describe how ICE and other DHS entities receive and address any complaints related to the 287(g) program.¹² We compared ICE oversight procedures against ICE guidance outlined in the standard 287(g) memorandum of agreement (MOA) and internal control principles related to establishing and operating monitoring activities in the *Standards for Internal Control in the Federal Government*.¹³ In particular, we analyzed ICE's oversight efforts against the internal control principles related to monitoring the internal control system, evaluating the results of monitoring activities, and remediating identified deficiencies. We also obtained and analyzed complaint data from OPR, DHS OIG, and CRCL to determine the number of 287(g)-related complaints each office received and the resolution of the complaints from fiscal years 2015 through 2020. To determine the reliability of ICE and DHS entities' complaint data, we reviewed the data to identify any anomalies and interviewed ICE and DHS officials from the three agencies to resolve data discrepancies. We determined that the data were sufficiently reliable for the purposes of reporting the number and type of resolution for complaints related to the 287(g) program. Additional details on our scope and methodology are in appendix I.

We conducted this performance audit from November 2019 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

¹⁰OPR inspects about half of the state and local LEAs participating in the JEM model every fiscal year, resulting in each JEM LEA receiving an inspection at least once every two years.

¹¹We reviewed OPR inspection results from fiscal year 2015-2020 to reflect results two fiscal years prior and post the program expansion.

¹²The Joint Intake Center is responsible for obtaining, reviewing, and referring allegations of misconduct by ICE personnel and contractors, including allegations against the 287(g) program participants, among other responsibilities.

¹³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Overview of ICE's 287(g) program

In 1996, Section 287 of the Immigration and Nationality Act was amended to enable state and local law enforcement officers to perform certain delegated immigration enforcement functions on behalf of federal immigration authorities.¹⁴ From its inception, the 287(g) program was intended to provide additional resources—in the form of state and local law enforcement officers—to assist in the enforcement of immigration laws.¹⁵ Further, according to ICE documentation, the agency's mission for the 287(g) program is to enhance the safety and security of communities by partnering with LEAs to address criminal activity committed by removable foreign nationals.¹⁶ State and local LEAs apply to participate in the 287(g) program by submitting an application, which undergoes review by ICE officials, and entering into an agreement with ICE once the application is approved. The 287(g) agreements are executed in the form of a MOA that defines the scope and limitations of the authority designated to the state or local LEA, including personnel eligibility standards, training requirements, and complaint-reporting procedures. For example, LEA personnel nominated to be a 287(g) designated officer must undergo a background security check and pass initial and other recurring training requirements to maintain their authorization. ICE issues

¹⁴Pub. L. No. 82-414, title II, ch. 9, § 287(g), 66 Stat. at 233-34 (1952), as added by Pub. L. No. 104-208, div. C, title I, subtitle C, § 133, 110 Stat. at 3009-563 to -564 (1996).

¹⁵GAO, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, [GAO-09-109](#), (Washington, D.C.: January 30, 2009).

¹⁶A "foreign national" in this report is synonymous with the term "alien" in the Immigration and Nationality Act, i.e., a person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3), (a)(22). A foreign national may be removable on statutory grounds of inadmissibility, Immigration and Nationality Act (INA) § 212(a), 8 U.S.C. § 1182(a), if they have no prior lawful admission; or deportability, INA § 237, 8 U.S.C. § 1227, if they were previously lawfully admitted. See 8 U.S.C. § 1229a(e)(2). The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the United States), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

credentials to designated state and local officers to reflect their ICE authority. The MOAs:

- permit trained and designated officers at the participating LEAs to perform delegated immigration enforcement activities only under ICE officials' direction and oversight;
- allow participating LEAs to hold foreign nationals determined to be removable for up to 48 hours to transfer them into ICE custody; and
- allow ICE to suspend or revoke participating LEAs or individual officer's authority at any time.

ICE has two models of the 287(g) program—JEM and the WSO model—in which state and local LEAs can participate.¹⁷

1. **JEM:** Under JEM, implemented in September 2005, trained and designated state and local officers interview or screen foreign nationals charged with or convicted of an offense and held in a jail or correctional facility to determine whether they are potentially subject to removal from the United States. Specifically, designated state and local JEM officers are to screen foreign nationals to determine immigration status and removability, including fingerprinting, photographing, and interviewing. Designated officers can also take sworn statements from the potentially removable foreign nationals for ICE to review.¹⁸ In addition, designated officers can lodge immigration detainers and serve warrants to those arrested foreign nationals determined to be in violation of U.S. immigration law and potentially removable from the United States.¹⁹ JEM state and local officers also prepare charging documents used in immigration courts for removal proceedings.

¹⁷LEAs can participate in either or both model of the program.

¹⁸LEA participants under JEM have ICE computer equipment and systems installed within their correctional facilities to screen arrested individuals' biographic information against DHS databases.

¹⁹An immigration detainer is a notice from ICE to a federal, state, local or tribal law enforcement agency, which articulates probable cause for removability and requests for such agency to detain and transfer custody of a foreign national to ICE. Administrative warrants of arrests or removal enables ICE to arrest and detain an individual who may be removable on criminal or other grounds of removability such as lacking valid immigration status, pending a decision on removal from the United States, as provided by Section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a).

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2. **WSO:** ICE implemented the WSO model of the program in April 2019, which provides a narrower cooperative agreement than JEM. Under the WSO model, designated state and local officers have the more limited authority to serve and execute administrative warrants to removable foreign nationals in their jail or correctional facility at the time of a foreign national's release from criminal custody.²⁰ Designated state and local officers in the WSO model do not interview or process individuals to determine their removability from the United States. Instead, ICE officers assigned to the Criminal Alien Program process potentially removable individuals when state or local officials identify that an arrested individual is foreign born (i.e., determine the country of birth) during the general jail or correctional facility booking process.²¹ When ICE determines the arrested individual is a foreign national and potentially subject to removal, ICE officers may direct the designated state or local LEA officers to serve the administrative warrant of arrest or removal provided by ICE.

In response to Executive Orders 13767 and 13768, which directed executive agencies, including ICE, to encourage maximum participation of state and local LEAs in the program, the number of participants in the 287(g) program has grown in recent years.²² Specifically, from January 2017 through September 30, 2020, the number of 287(g) agreements increased by more than 300 percent (from 35 to 150 respectively).²³ LEAs participating in the WSO model accounted for 73 of the 150 agreements across the 147 LEA participants as of September 30, 2020. According to ICE officials, ICE oversees a total of 730 designated state and local officers (286 and 444 officers in the JEM and WSO model respectively) across the 147 LEAs participating in the program as of September 30,

²⁰Administrative warrants facilitate the arrest and detention of a removable foreign national, pending a decision on whether they should be removed from the United States. The administrative nature of such warrants means that they are issued for civil violations of immigration law as opposed to criminal offenses for which an investigative agency may seek a judicial warrant. See 8 U.S.C. § 1226(a). See also 8 C.F.R. § 287.5.

²¹Through the Criminal Alien Program, ICE identifies and arrests removable foreign nationals incarcerated within federal, state, and local prisons and jails. According to 287(g) designated state and local officers from two of the three WSO participants we met with, their facility booking process requires them to identify an arrested individual's nationality.

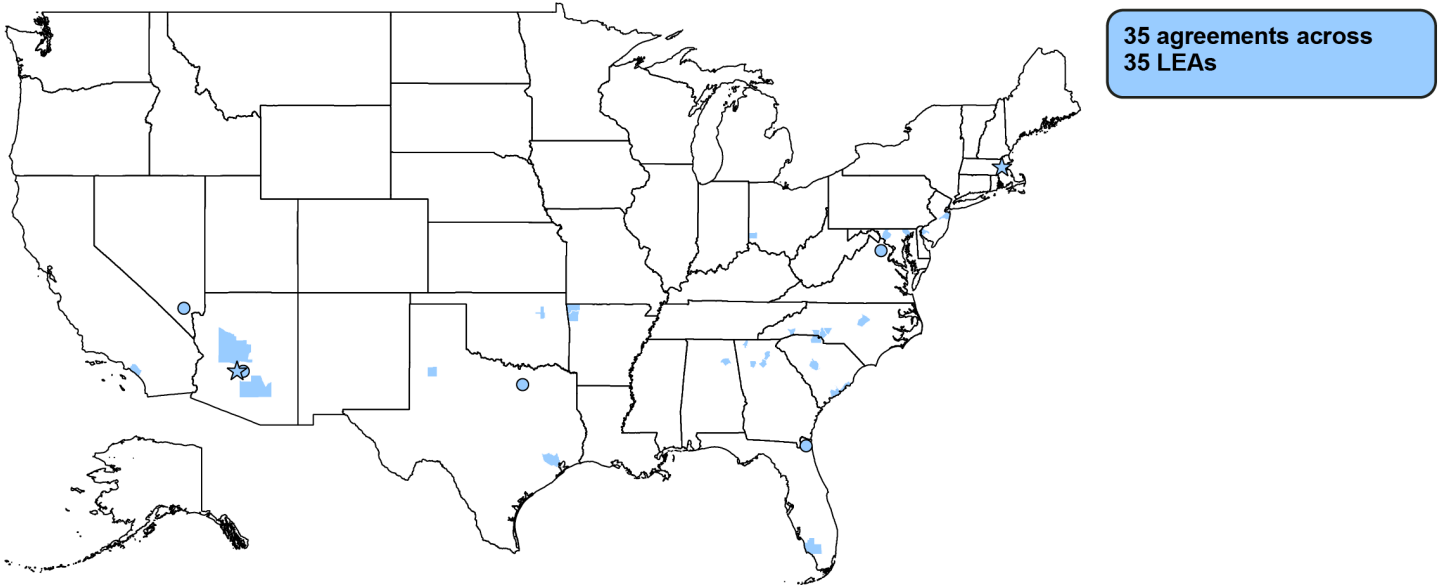
²²Exec. Order No. 13767, § 10, 82 Fed. Reg. at 8795 (Jan. 30, 2017) (Issued Jan. 25); Exec. Order No. 13768, § 8, 82 Fed. Reg. at 8800 (Jan. 30, 2017) (Issued Jan. 25).

²³The number of designated state and local officers varies across LEAs participating in the 287(g) program. According to state and local participants and ICE 287(g) field officials, the number of trained and designated state and local officers depends on the LEAs personnel availability and jail operations.

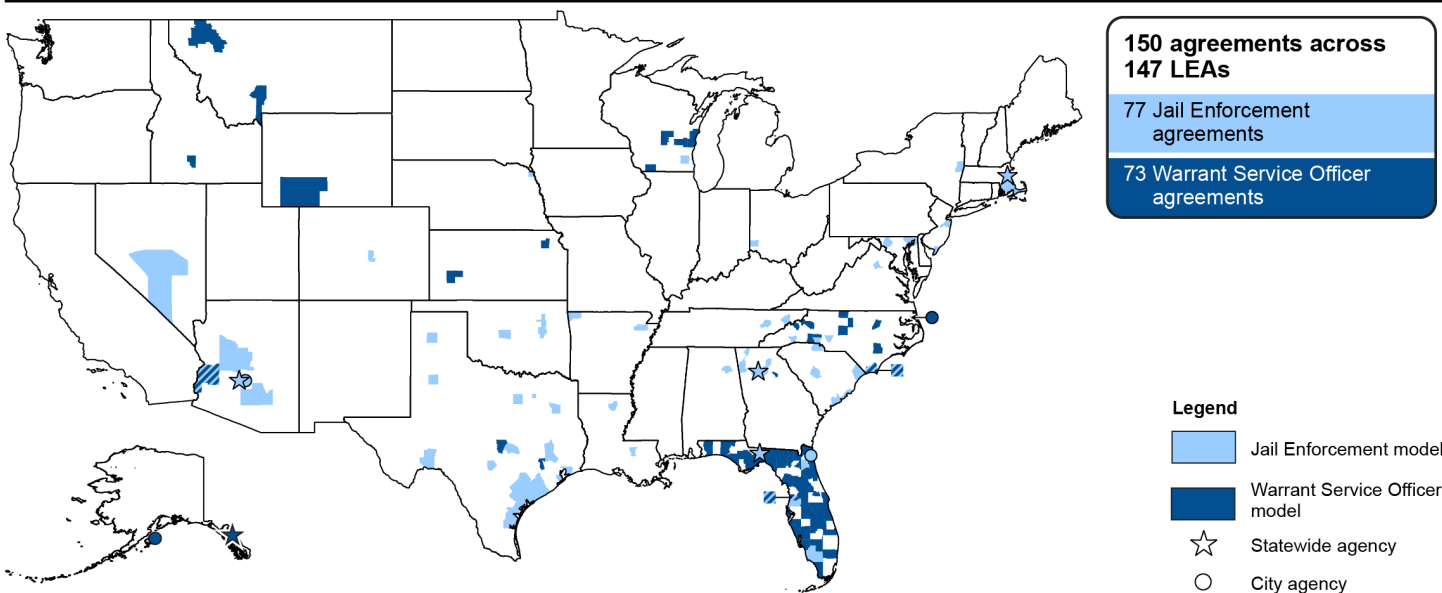
2020. See figure 1 for a map illustrating the number of state and local LEAs participating in the JEM and WSO model of ICE's 287(g) program in January 2017 and as of September 2020.

Figure 1: State and Local Law Enforcement Agency (LEA) Jurisdictions with Signed 287(g) Agreements as of September 30, 2020

January 2017



September 2020



Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-186

ICE 287(g) Oversight Roles and Responsibilities

ICE established the 287(g) program under ERO, which is responsible for conducting civil immigration enforcement actions, to include administrative arrests, detentions, and removals. More specifically, the 287(g) program falls under ERO's Criminal Alien Division through which ICE identifies and arrests removable foreign nationals incarcerated within federal, state, and local prisons and jails. According to ICE, the 287(g) program serves as a force multiplier to its Criminal Alien Program within the Division, as designated state and local officers perform certain functions of an immigration officer in relation to the identification, arrest, or detention of potentially removable foreign nationals in the United States.

Within the Criminal Alien Division, the Program Management Office is responsible for managing the 287(g) program budget. The 287(g) Unit office is responsible for supporting the implementation of the 287(g) program at participating LEAs and coordinating with ICE field officials to provide operational oversight of participating state and local LEAs. In particular, ERO Field Office Directors are responsible for administering the 287(g) program at the field level.²⁴ Field supervisory-level employees, such as 287(g) Field Program Managers or 287(g) Supervisory Detention and Deportation Officers, are to conduct operational oversight and direct supervision of participating LEAs that are in their area of responsibility, under the authority of the Field Office Director.²⁵ For example, 287(g) field supervisors are responsible for overseeing the designated state and local officers to ensure they carry out the immigration enforcement responsibilities specified in their MOAs, and reviewing and signing off on all paperwork that designated state and local officers prepare in processing removable foreign nationals.

Additionally, ICE's OPR 287(g) Inspection Unit is responsible for conducting inspections of state and local LEAs to assess compliance with the 287(g) program, as provided by the MOA. Further, within DHS, the OIG and CRCL can receive and are responsible for reviewing 287(g)-related allegations of officer misconduct.

²⁴ERO operates across 24 areas of responsibility nationwide, each led by a Field Office Director.

²⁵287(g) field supervisors also receive guidance and direction from 287(g) headquarters officials.

ICE Does Not Have Goals and Related Measures to Fully Assess the Performance of the 287(g) Program

Performance Goal and Measures

Performance goals are the specific results an agency expects its program to achieve in the near term.

Performance measures are concrete, objective, observable conditions that permit the assessment of progress made toward the agency's goals.

Source: GAO. | GAO-21-186

ICE met its goal to expand 287(g) program participation, but does not have performance goals, with related measures, to fully assess program performance. To address Executive Orders 13767 and 13768, in fiscal year 2017, ICE established a goal to expand the 287(g) program and set annual targets for expansion efforts. For example, for fiscal year 2020, ICE officials said they set a target to expand the 287(g) program through the submission of 40 requests for new partner jurisdictions, and the addition of 35 new partner jurisdictions, which ICE met.²⁶

Though ICE established and met the agency's goal to add LEA participants to the program, it has not established performance goals that cover all activities undertaken to operate and manage the 287(g) program once LEAs join. In addition, ICE has not established performance measures to assess its progress towards achieving goals set for managing and administering the program. Performance goals and measures directly related to 287(g) program activities would help give ICE officials managing the program a more complete picture of the program's performance and potential areas for improvements. In particular, ICE manages and oversees the program largely through its MOAs with partner LEAs, but has not established goals and measures for the provisions that address program management in the MOAs. For example, ICE has not established performance goals or measures related to LEA partner annual training requirements, a key provision of the 287(g) MOA to ensure state and local officers maintain their authorization to perform 287(g) program duties.²⁷ Additionally, ICE does not have goals or measures related to its oversight of LEA partners, such as ICE's inspection of JEM LEAs to determine their compliance with their MOA, as discussed below.²⁸ Further, ICE has not set performance goals or measures related to its new and growing WSO model within the 287(g) program.

ICE previously set goals for the 287(g) program in its Fiscal Year 2011-2016 287(g) Strategic Plan and developed related performance

²⁶ICE added 63 new agreements across 60 partner jurisdictions to the 287(g) program in fiscal year 2020 (57 WSO model and 6 JEM agreements).

²⁷As discussed later, ICE requires designated state and local officers in the JEM to complete annual and refresher trainings for maintaining ICE 287(g) authorization and recertification.

²⁸As discussed later, ICE conducts inspections of every state and local LEAs participating in the JEM of the 287(g) program to assess their compliance with the terms of their MOAs once every two years.

measures.²⁹ One ICE management official told us that while ICE stopped using the prior *Fiscal Year 2011-2016 287(g) Strategic Plan*, the prior goals and measures are still in effect operationally. However, we found that while ICE has implemented some actions that are in-line with the prior goals, such as updating 287(g) program guidance and coordinating across components to conduct 287(g) program oversight, it did not measure its progress towards those prior goals. More specifically, ICE generally did not track or report results for the prior performance measures from fiscal years 2015 through 2020. Specifically, while ICE reported on the number of state and local LEAs participating in the 287(g) program for fiscal year 2019 in its report to Congress, it did not report results on the other prior performance measures, such as the percentage of stakeholders satisfied with 287(g) program partnerships or the percentage of active officers in compliance with training requirements.³⁰ Additionally, as previously mentioned, these prior measures did not address the new WSO model, which is a growing model within the 287(g) program.

ICE officials also told us they do not track or measure the results of the prior 287(g) program performance measures and evaluate trends over time due to changing priorities and political sensitivities surrounding the program. However, we have previously reported on the importance of

²⁹The prior 287(g) program 2011-2016 goals were to: (1) implement the 287(g) program through agreements with those state and local law enforcement agencies that intend to use the authority in alignment with ICE enforcement priorities; (2) effectively coordinate and manage 287(g) program agreements through defined oversight and program monitoring; and (3) achieve operational excellence through improved policies, tools, and procedures that support 287(g) program efficiency. The prior 287(g) performance measures were (1) number of state and local LEAs participating in the 287(g) program; (2) percentage of stakeholders (internal, LEAs, and external) who are satisfied with 287(g) Program partnerships; (3) percentage of 287(g) LEA participants that adhere to the terms of the revised 287(g) MOA and exercise the delegated authority consistent with ICE priorities; (4) percentage of active officers in compliance with training requirements; (5) percentage of MOA deficiencies identified through OPR reviews that are remediated on time; and (6) percentage of data entry errors.

³⁰Department of Homeland Security, Immigration and Customs Enforcement, *287(g) End-of-Year Report*, Fiscal Year 2019 Report to Congress (June 22, 2020). This report was compiled pursuant to language in the Joint Explanatory Statement (Conference Report), H. Rep. No. 116-9 (Feb. 13, 2019), accompanying the Department of Homeland Security (DHS) Appropriations Act, 2019, Pub. L. No. 116-6, div. A, 133 Stat. 13, 15-44, and in the Joint Explanatory Statement, 164 Cong. Rec. H2045, H2544 (daily ed. Mar. 22, 2018), and H. Rep. No. 115-239 (July 21, 2017), accompanying the DHS Appropriations Act, 2018, Pub. L. No. 115-141, div. F, 132 Stat. 348, 605-635. The Joint Explanatory Statement that accompanied the DHS Appropriations Act, 2019, continued the 2018 directive.

performance goals and measures that allow agencies to measure progress over time.³¹ Further, agencies can develop goals and measures so that the results demonstrate the value of the program, withstanding external factors, such as a politically changing environment. ICE officials said beyond its goal of expanding the program, which is ICE's primary goal for the 287(g) program, other goals and measures would be supplemental. However, one program goal related to expanding the program does not tell ICE how well the 287(g) program is achieving its stated purpose of enhancing the safety and security of communities with its existing participants.

ICE officials noted they report other information related to 287(g) program activities. In addition to its annual report to Congress, ICE collects and reports information related to 287(g) participants' activities monthly on its public website, such as select examples of persons encountered, detainers served, and persons removed. However, officials told us there were numerous limitations with these data. For instance, ICE officials said they track encounters, detained persons, and removals separately, but have difficulty linking all of these individual enforcement actions to each other or the 287(g) program. Thus, at the time of our review, ICE could not determine the total number of encounters through the 287(g) program that resulted in the detention or removal of the individual.³² Moreover, officials from three of the five ICE field offices and four of the 11 LEAs we interviewed noted other factors—some outside of their control—that may impact the number of individuals LEA partners will encounter. For instance, an LEA participating in the 287(g) program may have a low number of encounters due to various factors, such as their geographic location or the Coronavirus Disease 2019 (COVID-19) pandemic.

³¹For example, see GAO, *Drug Control: Certain DOD and DHS Joint Task Forces Should Enhance Their Performance Measures to Better Assess Counterdrug Activities*, [GAO-19-441](#) (Washington, D.C.: July 2019).

³²ICE officials also cited other limitations with the encounter data, such as that the data do not capture encounters from LEA participants in the 287(g) WSO model, potential duplicate records of the same individual, and possible varying interpretations of what an encounter is by different LEAs. Given these reliability issues, we found the data related to persons encountered, detained, and removed unreliable for reporting outputs related to the 287(g) program. According to ICE officials, since January 2020, the 287(g) Unit has worked with ICE's Law Enforcement Systems and Analysis unit, which uses, among other things, data collection and analysis to deliver tools, studies, and recommendations to assist ICE with decision-making and planning, and the ERO Field Offices, to identify and correct 287(g) cases that were not linked to a 287(g) event, as required. Further, ICE officials said they are currently developing a system to collect statistics for the WSO model and to identify a solution for unlinked JEM 287(g) data.

Therefore, the numbers of encounters or detainers served would not provide an indication of how well the LEA partner is accomplishing 287(g) program activities it undertakes on behalf of ICE.

Leading practices call for agencies to establish goals and associated performance measures to monitor and report program accomplishments on an ongoing basis.³³ We have also previously reported that performance goals and measures can help the executive branch and congressional committees make decisions about the programs they implement and oversee, respectively.³⁴ For instance, agencies can use the results of performance measures to make decisions that affect future strategies, planning and budgeting, identifying priorities, and allocating resources, such as those related to 287(g) program participation recruitment or oversight. For instance, establishing a performance measure assessing the percentage of active officers in compliance with training requirements would help identify participants that need additional oversight or training. Leading practices also demonstrate that assessing program efforts could help ICE officials and Congress monitor the extent to which the 287(g) program is achieving intended results, identify the need for and subsequently make any improvements to the program, and inform funding decisions.

³³GAO, *Veterans Justice Outreach Program: VA Could Improve Management by Establishing Performance Measures and Fully Assessing Risks*, [GAO-16-393](#) (Washington, D.C.: Apr. 28, 2016).

³⁴We previously identified key attributes of effective performance measures based on our prior work, Office of Management and Budget Circular No. A-11, and the Government Performance and Results Act of 1993, among other sources. See GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: Nov. 22, 2002). For more information related to performance measures, see GAO, *Program Evaluation: Strategies to Facilitate Agencies' Use of Evaluation in Program Management and Policy Making*, [GAO-13-570](#) (Washington, D.C.: June 26, 2013); *Performance Measurement and Evaluation: Definitions and Relationships*, [GAO-11-646SP](#) (Washington, D.C.: May 2011); and *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005).

ICE Considers Various Factors for State and Local Participation in the 287(g) Program, but Has Not Assessed How to Optimize Program Resources and Benefits

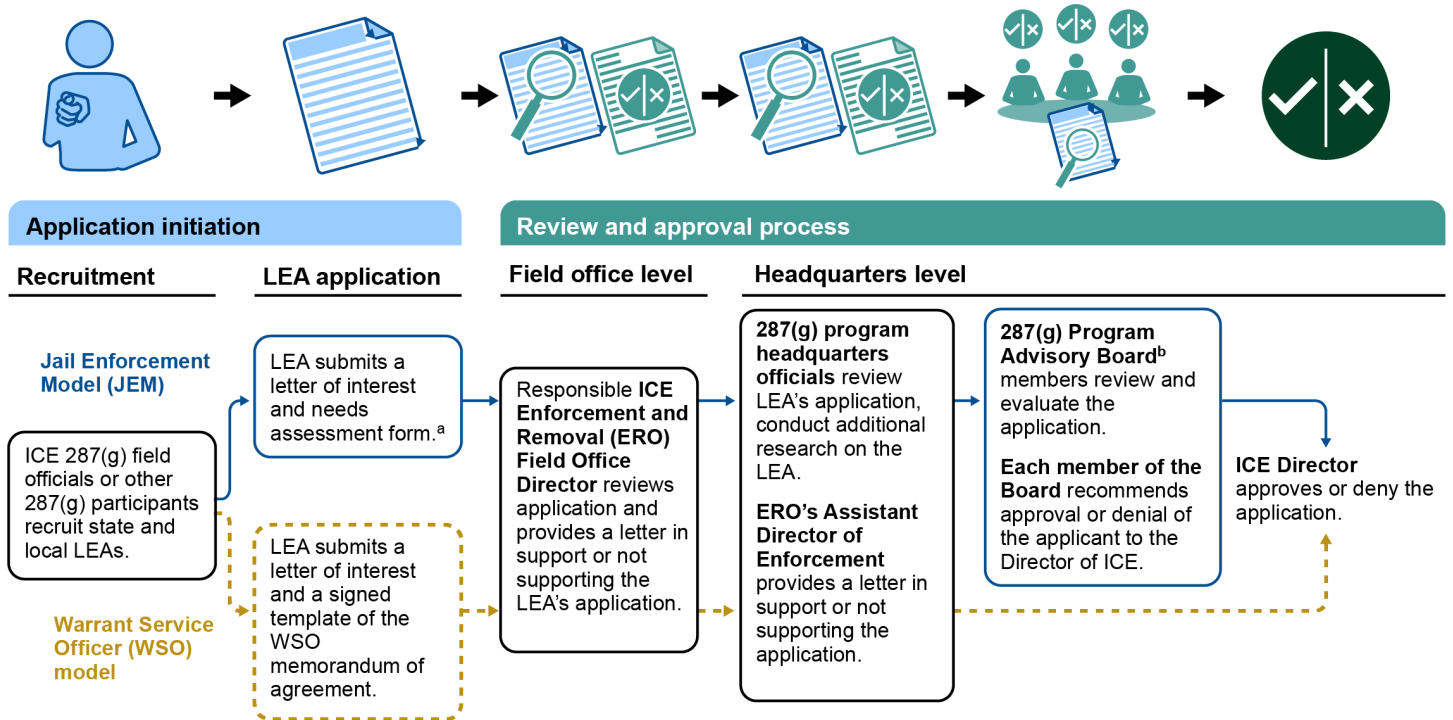
ICE Considers Various Factors to Approve State and Local Participation in the 287(g) Program, Including Agencies' Capabilities and Civil Liberties and Rights Issues

ICE has an application and review process for state and local LEAs seeking to participate in either the JEM or WSO model of the 287(g) program. This process includes the evaluation of a LEA's application by the responsible ERO Field Office Director, 287(g) program officials at ERO headquarters, and, for JEM applicants, the 287(g) Program Advisory Board.³⁵ However, the Director of ICE makes the final decision on whether an LEA will participate in the program.³⁶ See figure 2 for a detailed overview of the ICE 287(g) program application and review process for both models.

³⁵The responsible Field Office Director and ERO Assistant Director of Enforcement submit a memorandum either in support or not in support of the LEA's application to join the program. The 287(g) Program Advisory Board is the governance body that evaluates a LEA's application on the suitability of a state or local LEA for participation in the 287(g) program and submits recommendations to either approve or deny applications to ICE's Director. Board membership comprises seven voting and three non-voting federal government representatives within ICE and other DHS components. The Board also submits recommendations to the ICE ERO Director to terminate existing partnerships.

³⁶According to ICE officials, in reviewing applications, the ICE Director considers the LEA's application itself, as well as supplementary information provided by 287(g) program headquarters' officials and the Program Advisory Board, such as data on law enforcement trends in the LEA's jurisdiction and lawsuits or other civil actions. Further, ICE documentation indicates that ICE's Director approved all but one state and local LEA that applied to join the program from fiscal years 2015 through 2020.

Figure 2: U.S. Immigration and Customs Enforcement (ICE) Application and Review Process for Law Enforcement Agencies' (LEAs) Participation in the 287(g) Program



Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-186

^aThe needs assessment includes, among other things, information on the LEA's governance structure (such as the political entities that are required to approve the joining of the program), booking and intake capabilities, other operational agreements with ICE, and data on the estimated number of foreign nationals without lawful immigration status in the LEA's jurisdiction.

^bThe 287(g) Program Advisory Board, which is the governance body empowered with the authority to evaluate 287(g) program applicants for JEM, submits recommendations to the ICE Director on the suitability of a state or local LEA for participation in the 287(g) Program. Board membership is comprised of seven voting and three non-voting representatives within ICE and other DHS components. The Board also submits recommendations to the ICE Director to terminate existing partnerships.

According to ICE documentation and agency officials, ICE evaluates the LEA's suitability to join either model of the 287(g) program primarily based on factors, such as the (1) availability of ICE and LEA resources, (2) LEA's capability to act as an ICE force multiplier, and (3) LEA's record on civil rights and civil liberties.

- **Availability of resources:** For both the JEM and WSO models of the 287(g) program, ICE funds the training of state and local officers selected to participate in the program, the salaries and expenses for ICE staff who conduct oversight of participating LEAs, detention costs

of removable foreign nationals identified through the 287(g) program, and other expenses. In addition, ICE funds the information technology equipment installed at the LEA facility for JEM participants. As such, ICE Field Office Directors and ERO 287(g) program headquarters officials are to consider the availability of ICE and LEA resources when evaluating a LEA's request to join either model of the program. For each applicant, the Field Office Director is to determine whether the field office has the staff resources to provide adequate oversight and operational support to the 287(g) program applicant.³⁷ For example, officials from three of the five ICE ERO field offices we interviewed said that they considered field staff resources and their proximity to LEAs before agreeing to support an additional 287(g) program participant in their area of responsibility.

In addition, ERO 287(g) headquarters officials said they determine whether ICE has funding available to support the training and continued oversight of 287(g) designated state and local officers before supporting the application of additional agencies. ICE may also consider the LEA's resources, such as the number of officers they will nominate to carry out the immigration enforcement duties, bed space availability to house detained individuals at the jail or correctional facility, and information technology capability to securely access and store ICE systems and databases.

- **LEA's capability to act as a force multiplier:** For 287(g) JEM applicants, ICE evaluates the LEA's potential to act as a force multiplier for ICE by reviewing data that indicate the LEA's likelihood of encountering individuals who are potentially removable from the United States. For example, ICE collects and reviews historical data on the number of encounters and detainers lodged by ICE in the LEA jurisdiction as an indication of the approximate number of potentially removable individuals the LEA could identify and arrest per year.³⁸

³⁷Staff resources includes staff salary and expenses funded from the 287(g) program budget or field office budget. 287(g) program-funded positions are the Field Program Managers (Detention and Deportation Officer) and Supervisory Detention and Deportation Officer who is responsible for direct oversight of the state or local LEA participants. Other field office funded personnel, such as Assistant Field Office Directors, supervisory detention and deportation officers, and deportation officers, may provide oversight and operational support to LEA participants.

³⁸As previously mentioned, under a JEM agreement, designated state and local officers screen arrested individuals to determine nationality and removability, lodge immigration detainers, and serve warrants to removable foreign nationals. Designated state and local officers under a WSO agreement have the more limited authority to serve and execute administrative warrants.

Among other things, ICE also reviews the estimated average number of foreign-born individuals arrested by the LEA per month, information that JEM applicants provide in their needs assessment.³⁹ ICE 287(g) program officials from one of the five field offices we met with said they also consider whether an ICE field office needs additional help with immigration enforcement activities.

ICE does not request or review an assessment of LEAs' capabilities for WSO applicants because designated state and local officers have the more limited function of serving ICE's prepared administrative warrants, according to ICE officials. Further, WSO participants do not need to access or use ICE systems, and therefore, ICE does not need to assess this capability.

- **LEA's record on civil rights and liberties:** DHS's CRCL, a Program Advisory Board voting member, conducts a search to identify any civil rights complaints and allegations against LEA applicants for JEM as well as any trends or other news of potential misconduct that may involve the LEA applicant. CRCL provides this information to board members for their consideration, when deciding to recommend the LEA's request to participate in the JEM in their recommendation to ICE Director.⁴⁰ According to a Program Advisory Board governance document, investigations of LEA personnel and allegations of wrongdoing alone should not be determinative, but rather, part of the entire record when rendering a decision on whether to support a 287(g) agreement with the applicant.⁴¹

For WSO applicants, ERO 287(g) headquarters officials said they conduct research to determine whether the LEA has any derogatory

³⁹The needs assessment includes, among other things, information on the LEA's governance structure (such as the political entities that are required to approve the joining of the program), booking and intake capabilities, other operational agreements with ICE, and data on the estimated number of foreign nationals without lawful immigration status in the LEA's jurisdiction.

⁴⁰CRCL provided information may include Department of Justice cases and settlements on criminal or civil violations, other lawsuits of misconduct, statistics on traffic stops or arrests that may suggest racial bias, and LEA officials public remarks which may be deemed as inflammatory in the news or social media, among others.

⁴¹Of the JEM applicants the Board reviewed from fiscal year 2015 through 2020, seven LEA applicants received votes opposing their applications from a Program Advisory Board member after consideration of the LEAs' record on civil rights and liberties. One of the seven opposing votes by Board members was subsequently changed to a recommendation to join the program after concerns were addressed. ICE's Director approved these applicants after reviewing additional information that satisfied concerns about the LEAs' record on civil rights and civil liberties issues, ICE officials told us.

information that may hinder its participation in the program, such as lawsuits or other civil actions. If 287(g) headquarters officials identify derogatory information, they provide it to the ICE Director for review, according to ICE officials.

ICE Has Not Assessed How to Leverage Its Resources and Optimize Program Benefits in Its Expansion of the 287(g) Program

As previously discussed, in fiscal year 2017, ICE established a broad goal to expand the 287(g) program in response to the January 2017 Executive Order.⁴² According to ICE officials, the 287(g) program has faced resource constraints with program expansion, and ICE anticipates further expansion of the program in future years. Nonetheless, ICE has not assessed how to optimize the use of its resources and program benefits to guide its recruitment of future 287(g) participants.

Specifically, from fiscal years 2015 through 2020, ICE received about \$24.3 million and expended around \$23.3-\$24.3 million per year for state and local officers' training, oversight of LEAs, detention, information technology equipment, legal reviews, inspections, and LEA compliance reviews for the 287(g) program. See table 1 below for an overview of 287(g) program expenditures from fiscal years 2015 through 2020.

Table 1: U.S. Immigration and Customs Enforcement (ICE) 287(g) Program Expenditures, Fiscal Years 2015 through 2020 (Dollars (\$) in thousands)

Types of expenditure	Fiscal Year						Total
	2015	2016	2017	2018	2019	2020	
ICE Criminal Alien Program salaries and other work related costs for 287(g) program oversight	6,348	6,715	8,980	11,720	12,243	11,378	57,385
ICE Custody Operations costs for detention space	12,638	13,354	9,075	6,256	6,419	6,245	53,988
ICE Office of the Chief Information Office costs for information technology support	3,018	2,874	3,868	3,915	3,465	4,248	21,387
ICE Office of Principal Legal Advisor costs for 287(g) program legal reviews and other policy issues	365	336	394	412	425	457	2,390
ICE Office of Professional Responsibility costs for compliance reviews 287(g) program participants	1,036	715	963	1,158	1,765	1,444	7,080
ICE Office of State Local and Tribal Coordination	763	—	—	—	—	—	763
Total	24,168	23,995	23,280	23,462	24,317	23,771	142,992

Source: U.S. Immigration and Customs Enforcement information. | GAO-21-186.

⁴²Exec. Order No. 13768, § 8, 82 Fed. Reg. at 8800 (Jan. 30, 2017) (Issued Jan. 25).

Note: Numbers may not sum to totals due to rounding. (—) = no expenditures reported by ICE. Fiscal year 2020 expenditures are as of September 28, 2020.

These expenditures supported the implementation, operations, and oversight of 35 agreements with LEA participants in fiscal year 2017 and more than four times that number, 150 agreements, in fiscal year 2020.⁴³ According to ICE 287(g) program management officials and as reported by DHS OIG, ICE's 287(g) field supervisors faced challenges overseeing the increased number of LEAs resulting from the expansion of the program.⁴⁴ In particular, in 2018, the DHS OIG reported that ICE field officials and 287(g) field supervisors raised concerns about their ability to effectively manage and oversee the new JEM participants with the same resources at their disposal. According to the 2018 DHS OIG report, ICE estimated 40 additional 287(g) personnel were needed to conduct oversight.⁴⁵ Since then, ICE hired 13 additional 287(g) field supervisors, as of October 2020. In addition, the DHS OIG reported that ICE did not base its estimate of the additional staff it needs to hire on an analysis of 287(g) program needs. As of fiscal year 2020, the program reached its capacity for the current number of LEA participants, given its funding level, and ICE plans to request additional funds for continued expansion, according to ICE 287(g) officials.

With the addition of the WSO model to the 287(g) program in 2019, ICE has two options for state or local LEA participation in the program with differing resource and oversight requirements. For JEM, ICE funds the implementation and operations costs, such as costs for the 4-week initial and 1-week biennial training, information technology equipment, and field oversight activities. In contrast, the WSO model is generally less resource intensive, according to ICE officials. In particular, ICE funds the implementation costs associated with ICE officials travel to provide a 1-day training for the selected state or local officers at LEAs participating in

⁴³DHS requested, but did not receive, additional funding for the continued expansion of the 287(g) program for fiscal years 2018 through 2020.

⁴⁴Department of Homeland Security, Office of Inspector General, *Lack of Planning Hinders Effective Oversight and Management of ICE's Expanding 287(g) Program*, OIG-18-77 (Washington, D.C.: Sept. 19, 2018).

⁴⁵ICE requested funding for a total of 77 ICE 287(g) personnel, which includes 287(g) field officials in fiscal year 2019 Congressional Budget Justification. ICE currently has 35 field supervisors to conduct oversight of LEAs participating in the 287(g) program. According to ICE officials, they reallocated staff resources to meet operational needs. For example, they reassigned supervisory staff to a different ERO field office area of responsibility to help with supervision of additional LEAs that joined the program in that area.

the WSO model. ICE 287(g) program management and field officials stated that fewer resources are required for the oversight of LEA participants in the WSO model because the model requires minimal oversight by 287(g) program officials, which we discuss later in this report.

In addition, each model of the 287(g) program provides different benefits to ICE. According to ICE officials, JEM participants act as a force multiplier to ICE field offices. In particular, ICE officials stated that JEM participants provide additional opportunities for ICE to identify and process potentially removable individuals, which allows ICE to reallocate resources towards conducting other enforcement actions.⁴⁶ According to 287(g) program officials we met with from one of the five field offices, JEM participants can also help to reduce the number of ICE deportation officers that ERO field offices need to assign to certain areas and may help with immigration enforcement activities in areas where ICE ERO resources are not located. On the other hand, WSO LEA participants serve warrants to individuals who ICE deportation officers already identified and determined to be potentially removable. Officials we met with from two of the five field offices said WSO participants help reduce the time ICE deportation officers spend travelling to serve warrants.

Although the 287(g) program has expanded with two models varying in resource requirements and benefits provided, ICE has not proactively assessed recruitment needs that best leverage the use of its resources and optimize the benefits received. In particular, while ICE sets annual targets for the number of LEAs the agency would like to add to the program, it does not assess and identify the ideal number and mix of JEM and WSO LEAs to recruit to best leverage its resources. As previously discussed, ICE determines whether it has the resources available when a LEA applies to join the program and 287(g) headquarters' officials said once LEAs join the program, they retroactively reallocate resources, if needed, to accommodate additional staff resources in certain field

⁴⁶ICE deportation officers conduct immigration enforcement, including the identification and arrest, transportation, detention, case management, and removal of foreign nationals from the United States.

locations.⁴⁷ In addition, ICE 287(g) program headquarters officials said they do not coordinate with ERO field offices to identify the types of LEAs—such as LEAs that cover multiple jurisdictions, LEAs in locations where existing ERO field resources need additional support, or LEAs with central booking facilities—that would optimize the benefits received. However, assessing the program composition—mix of models, number, and types of jurisdictions—to guide its recruitment of LEAs could help ICE better leverage its limited resources and proactively plan for various staffing needs in different locations.

ICE 287(g) headquarters officials said that they do not determine the type of LEAs to recruit because it is difficult to predict how many and which LEAs will express interest in joining the program during any given year.⁴⁸ Officials noted that participation in the 287(g) program is voluntary and the LEAs ultimately decide in which model to participate. However, for a previous expansion effort in 2015, ICE drafted an assessment of its 287(g) program to identify some factors it would consider to leverage resources and optimize benefits during its recruitment of additional LEAs, such as which ERO field office locations need additional personnel resources and LEAs that service multiple jurisdictions. ICE would benefit from a similar assessment for its current and future expansion effort to ensure that it is maximizing benefits under constrained resources. Further, ICE officials commented that they may need to approach the recruitment of additional LEAs more strategically, given the program's resource limitations.⁴⁹

⁴⁷According to 287(g) headquarters officials, factors that ICE considers when determining how to reallocate staff resources include the number of encounters and removals processed by the new LEA or field office, the proximity of the LEA to the nearest ERO field office, and the duties performed by the LEA (i.e. whether the LEA is a JEM or WSO participant), among others. ICE 287(g) program management officials also stated that ERO is working toward a workload staffing model and incrementally reviewing JEM participants to determine whether the WSO would be a better-suited model based on their experience with and the rapid expansion of WSO participants in fiscal year 2020.

⁴⁸ICE 287(g) program headquarters officials said that they coordinate with ERO Field Office Directors to identify the number of state and local LEAs that show interest in joining the program and to develop annual targets for the number of LEAs they would like to join the program.

⁴⁹As previously mentioned, ICE officials had projected that the 287(g) program funding would be fully executed in fiscal year 2020. Due to the impact of COVID-19 pandemic on agencies operations, the program may have surplus funds from the fewer program activities, such as training for LEA personnel.

The Project Management Institute's *Standard for Program Management* calls for agencies to use key planning elements to help ensure successful program benefits management, including defining, creating, and maximizing benefits.⁵⁰ In addition, we have previously called for organizations to develop sound plans that (1) identify specific activities necessary to obtain desired results/benefits and (2) allocate resources to ensure accountability and mitigate risks.⁵¹ Assessing how to leverage its program resources and optimize benefits received would better position ICE to ensure that potential participants have the required financial, personnel, and physical resources to accomplish 287(g) program objectives. In addition, such an assessment would enable ICE to more strategically approach recruitment, sign agreements, and allocate resources to LEAs in a manner that optimizes program benefits.

ICE Uses a Number of Mechanisms to Monitor 287(g) Participants' Compliance, but Does Not Review Compliance across the Program

ICE uses a number of mechanisms to oversee 287(g) participants' compliance with agreements for one model of the program. Specifically, ICE field officials have responsibilities for overseeing state and local LEAs participating in JEM. JEM participants are subject to biennial inspections by OPR to assess their compliance with the terms of their MOAs with ICE. Further, ICE uses complaint reporting and resolution procedures as part of its monitoring of state and local LEAs participating in the 287(g) program. However, at the time of our review, ICE did not have an oversight mechanism for LEAs participating in the WSO model of the 287(g) program.

⁵⁰Project Management Institute, Inc., *The Standard for Program Management*®, 4th ed. The purpose of the benefits analysis and planning phase is to establish the program benefits management plan and develop the benefits metrics and framework for monitoring and controlling both the components and the measurement of benefits within the program.

⁵¹The components of sound plans include (1) purpose, scope, and methodology; (2) problem definition, causes, and operating environment; (3) goals, objectives, activities, and performance measures; (4) resources, investments, and risks; (5) roles, responsibilities, and coordination; and (6) integration among and with other entities. For example, see [GAO-04-408T](#) and [GAO-09-398](#). Although there is no established set of requirements for all plans, components of sound planning are important because they define what organizations seek to accomplish, identify specific activities to obtain desired results, and provide tools to help ensure accountability and mitigate risks.

ICE Field Officials Use Various Mechanisms to Monitor 287(g) JEM Participants' Compliance and Address Issues of Noncompliance

ICE 287(g) program field supervisors have primary program oversight responsibilities for state and local LEAs participating in JEM. Field officials, including 287(g) supervisors, we met with from the five offices stated they monitor JEM participants' compliance with their MOA through the following mechanisms:

- **Ongoing coordination:** ICE 287(g) program field supervisors we spoke to from all five field offices stated they communicate with designated state and local officers on a daily basis, answering questions, and addressing any issues that may arise during the processing of potentially removable individuals. State and local officials we met with from all nine LEAs participating in JEM described positive working relationships with ICE—specifically, that ICE is readily available to answer phone calls or emails from designated state and local officers, and has strong partnerships with sheriffs and wardens at participating LEAs. Additionally, ICE field supervisors conduct regularly scheduled and ad hoc site visits to LEAs' facilities in their area of responsibility, according to all field office officials with whom we spoke. The proximity of participating LEAs to the ICE field office, travel budget, and length of participant's involvement in the program affects the frequency of field supervisors' on-site visits, according to ICE field officials. In addition, they said that ICE field supervisors hold meetings, as needed, with jail facility management, sheriffs, and wardens to discuss overall program operations, including any personnel issues with designated state and local officers, and changes in jail procedures, policies, or regional trends that may affect 287(g) program operations.
- **Document reviews:** Designated state and local officers under JEM agreements are to complete paperwork during 287(g) processing, including warrant of arrest, warrant of removal, detainers, and charging documents.⁵² ICE 287(g) program field supervisors we spoke to from all five ICE field offices stated they review and sign 287(g) processing paperwork completed by designated state and local officers for accuracy and completion before authorizing a detainer and an accompanying warrant of arrest or removal. ICE 287(g) program field supervisors said that they also review charging documents used in immigration courts for removal proceedings that are prepared by JEM state and local officers.

⁵²U.S. Department of Homeland Security, *Record of Deportable or Inadmissible Alien*, Form I-213 (revised August 1, 2007); *Warrant for Arrest of Alien*, Form I-200 (revised September 2016); *Immigration Detainer-Notice of Action*, Form I-247A (March 2017).

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- **Tracking training completion:** ICE field supervisors from four of five field offices with which we held interviews stated they monitor designated state and local officers' completion of DHS's annual training requirements for maintaining ICE 287(g) authorization and recertification, as well as the biennial refresher training at the Federal Law Enforcement Training Centers in Charleston, South Carolina.⁵³ In particular, state and local officers use an online training platform to complete their required annual training. Field supervisors monitor the online training platform to ensure designated state and local officers comply with their training requirements and send reminder notifications to officers who need to complete training, according to field supervisors. Field supervisors we met with from three ICE field offices stated they also provide designated state and local officers additional training following the 4-week or biennial training officers receive at the Federal Law Enforcement Training Centers. This supplemental training provides designated state and local officers additional practical experience, such as conducting mock interviews and sharing updated laws or policies prior to their biennial refresher training at the Federal Law Enforcement Training Centers.

⁵³ICE ERO in coordination with the Federal Law Enforcement Training Centers developed a curriculum—Immigration Authority Delegation Program—to train the state and local officers participating in JEM. Federal Law Enforcement Training Centers training includes a 4-week initial training for selected state and local officers to be 287(g) designated immigration officers and a 1-week refresher course, administered every two years.

Examples of Additional Actions to Ensure 287(g) Program Compliance and Enhance Operations, as Reported by Some U.S. Immigration and Customs Enforcement (ICE) Field Officials and State and Local Participants

- **Review of weekly intake logs:** An ICE field supervisor reviews weekly intake logs from participating state and local law enforcement agencies (LEAs) in their area of responsibility and runs background checks on the individuals identified in the log to verify designated state and local officers and ICE have not missed any potentially removable individuals, according to officials we interviewed.
- **Community of practice for field supervisors:** ICE field supervisors from one of the five field offices told us that they meet weekly to discuss LEA participants in their areas of responsibility and share ideas for improving program operations.
- **LEA 287(g) onboarding:** Officials from one LEA stated that they collaborated with their ICE field supervisor to develop an internal 4 to 8-week training program for designated state and local officers returning from the 4-week training received at the Federal Law Enforcement Training Center. The training aligns with the LEA's agreement and ensures new designated state and local officers understand their 287(g) duties and can independently perform case processing.
- **Internal support to new officers:** Officials from one LEA stated that experienced designated state and local officers provide support to new designated state and local officers to incorporate the facility's internal operational procedures into their 287(g) program duties.

Source: GAO review of ICE 287(g) field officials' and LEA participants' statements. | GAO-21-186

ICE field supervisors are to follow ICE policy on 287(g) program oversight to address issues of noncompliance.⁵⁴ The policy states that ICE can address noncompliance issues at any time for various reasons by suspending the entire agreement with a state or local LEA, or suspending or revoking authorization for individual state and local officers. State and local officers' immigration enforcement authorization can be revoked or suspended for reasons such as workplace misconduct issues, whether during the performance of 287(g) program-related duties or not, and failure to complete training requirements. ICE field supervisors we met

⁵⁴U.S. Immigration and Customs Enforcement, *Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority*, 13001.1 (February 24, 2012).

with from four of five field offices said they have, on at least one occasion, suspended or revoked a state and local officer's authorization for noncompliance. Specifically, field supervisors said they suspended state and local officers' 287(g) authorizations for failure to complete training and due to complaints against a designated state and local officer.⁵⁵

ICE Uses Inspections as a Compliance Mechanism and Has Implemented Corrective Actions to Address Some Commonly Identified Issues

ICE's 287(g) Inspections Unit, within OPR, conducts inspections of state and local LEAs participating in the JEM of the 287(g) program to assess their compliance with the terms of their MOAs, other ICE or program policies, and to ensure the effectiveness of ICE field offices' oversight and support of state and local LEA partners. These inspections consist of:

- facility tours and observation of designated state and local officers performing daily 287(g) program procedures;
- document reviews of 287(g) case processing paperwork, designated state and local officers' training records, steering committee meeting agenda and minutes, revocation of state and local officers' authority (if applicable), and any complaints and allegations, among other documents; and
- interviews with, among others, local ICE field office leadership, state and local LEA's leadership and management, designated state and local officers, and detainees processed by the LEA participant.⁵⁶

OPR inspects about half of the state and local LEA participants with JEM agreements every fiscal year, resulting in inspections of each state and local LEA participant at least once every two years. During these annual inspections, OPR may identify deficiencies or areas of concerns at the inspected LEA.⁵⁷ If the LEA has four or more deficiencies and areas of concerns from an inspection, OPR also generally conducts a follow-up

⁵⁵The termination of a MOA by the LEA or ICE results in the revocation of state and local officers' 287(g) authorizations, according to ICE 287(g) program guidance.

⁵⁶According to the MOA and 287(g) Steering Committee Charter, participating LEAs, in coordination with the local ICE field office, hold steering committee meetings as needed to improve program oversight, identify issues and concerns regarding immigration enforcement activities, increase transparency with the public, and receive input from community stakeholders. The steering committee meetings are to be publicly advertised with a set agenda and minutes submitted to ICE and the LEA following the meeting.

⁵⁷OPR defines a "deficiency" as a violation of written policy linked to the terms of the MOA, ICE policy, or operational procedure. OPR defines an "area of concern" as an issue that reduces the effectiveness of 287(g) program operations but does not violate the MOA or written policy.

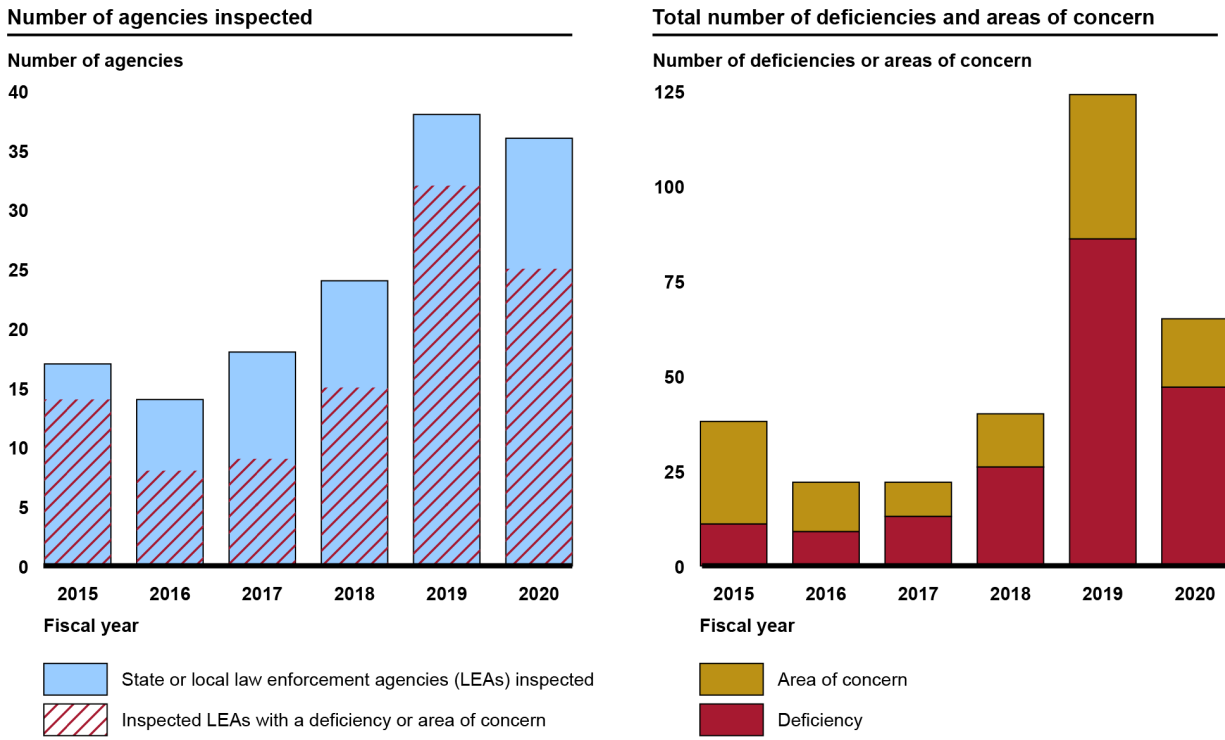
review within 6 months of the inspection to determine whether the field office and LEA resolved the findings previously identified.⁵⁸ OPR then is to provide 287(g) program headquarters officials in ERO and the relevant ICE field office a detailed report with the inspection's findings at the conclusion of each LEA participant's inspection. In addition, OPR publishes a report on the results of all inspections conducted and findings reported within a fiscal year. These reports provide information to assist ICE in reviewing and improving the 287(g) program's operations and effectiveness.

Our review of OPR inspection results found that from fiscal years 2015 through 2020, OPR conducted 147 inspections and identified a number of deficiencies or areas of concerns for LEAs inspected, as shown in figure 3. In particular, OPR identified deficiencies or areas of concern for at least half of the LEAs inspected each year.⁵⁹ In addition, OPR inspection results showed an increase in the number of inspected LEAs that had a deficiency or area of concern since the expansion of the 287(g) program in 2017, from about half of the LEAs inspected in 2017 (nine of 18) to over two-thirds of LEAs inspected in 2020 (25 of 36). For example, in fiscal year 2019—the year in which many new LEA participants were inspected for the first time—OPR reported a total number of 124 deficiencies and areas of concern (86 and 38 respectively) for LEAs inspected. OPR also reported 18 of the 38 inspected LEAs had four or more deficiencies and areas of concern, requiring OPR to conduct a follow-up review for these LEAs.

⁵⁸A follow-up review, called a focus review, can consist of a desk review or site visit, depending on the nature of the issues. For example, according to OPR officials, they would conduct a site visit to verify that LEA displayed the complaint poster in the jail or correctional facility while OPR would review information in ICE's system to verify the proper completion of 287(g) program documentation. OPR determines whether a deficiency or area of concern was resolved or unresolved based on these follow-up reviews.

⁵⁹According to 287(g) program headquarters officials in ERO, they may not agree with some of the deficiencies and areas of concerns identified by OPR during annual inspections. According to OPR officials, 287(g) inspections and findings are based on DHS and ICE policies and the 287(g) MOA, and ICE 287(g) officials may disagree with some inspection findings based on the procedures practiced in the field.

Figure 3: Number of State and Local Law Enforcement Agencies (LEAs) Inspected and Deficiencies and Areas of Concern Identified by the Office of Professional Responsibility (OPR) within U.S. Immigration of Custom Enforcement (ICE) 287(g) Program Inspections, Fiscal Years 2015 through 2020



Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-186

Note: OPR defines a deficiency as a violation of written policy linked to the terms of the memorandum of agreement (MOA), ICE policy, or operational procedure. OPR defines an “area of concern” as an issue that reduces the effectiveness of 287(g) program operations, but does not violate the MOA or written policy.

In addition, across these same six fiscal years, OPR reported several categories of recurring deficiencies and areas of concern related to, among other things, the complaint process, training, and providing and documenting interpreter or translation services during immigration screening. Specifically, the most common deficiencies related to LEA requirements and identified by OPR inspection results from fiscal year 2015 through 2020 were:

- State and local officers failed to meet their annual training requirements to maintain their 287(g) authorization for conducting immigration enforcement duties (40 of 194 total deficiencies); and

- State and local officials failed to disseminate information, explain, or report complaints according to ICE policy and procedures (27 of 194 total deficiencies).

Further, in fiscal years 2019 and 2020, OPR identified a number of new deficiencies and areas of concerns related to 287(g) program field supervisors' failure to perform oversight responsibilities according to policy and procedures. For example, 42 of 86 total deficiencies in fiscal year 2019 and 16 of 47 total deficiencies in fiscal year 2020 were related to ICE field supervisors' failure to (1) monitor designated state and local officers' training, (2) suspend LEA's authority for not completing required training, and (3) report complaints against designated officers according to ICE procedures. Table 2 provides an overview of the types of deficiencies OPR reported from fiscal year 2015 through 2020.

Table 2: Types of Deficiencies Identified by the Office of Professional Responsibility within U.S. Immigration of Custom Enforcement (ICE) 287(g) Program Inspections, Fiscal Years 2015 through 2020

	Fiscal Year					
	2015	2016	2017	2018	2019	2020
State and local officers failed to meet training requirements	2	—	4	2	18	14
State and local officials failed to disseminate information or explain complaint procedures, or report complaints and their resolutions according to ICE policy	2	4	2	10	3	6
State and local officers did not provide, offer, or document the use of interpreter or translation services	1	3	4	2	4	7
State and local officers failed to meet annual review of LEAs or steering committee requirements	2	—	—	1	9	1
State and local officers failed to provide ICE with 287(g) statistical data	—	—	—	1	1	—
State and local officers failure to secure personally identifiable information or ICE credentials, or the improper release of ICE 287(g) information	—	1	1	8	3	2
State and local officer were unfamiliar with guidance for issuing detainees	—	—	1	—	—	—
State and local officials failed to properly screen, process and serve detainees, and or release foreign-born individuals according to 287(g) protocols	4	1	1	2	4	—
State and local officials were unfamiliar with guidance for issuing ICE detainees	—	—	1	—	—	—
ICE failure to follow protocols for monitoring and reporting on state and local officers' training requirements	—	—	—	—	24	6
ICE supervisors failed to suspend state or local officials 287(g) authority or retrieve ICE identification after suspension	—	—	—	—	16	8
ICE supervisors failed to meet complaint procedural requirements (i.e. reporting)	—	—	—	—	2	2
ICE failed to renew system interconnection agreements or provide system updates	—	—	—	—	2	—
ICE failed to provide record of state and local officer's authorization to perform 287(g) duties	—	—	—	—	—	1
Total	11	9	13	26	86	47

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-186

Note: ICE Office of Professional Responsibility defines a deficiency as a violation of written policy that can be specifically linked to the terms of the 287(g) memorandum of agreement, ICE policy, or operational procedure. (—) = no deficiency identified.

OPR inspection results from fiscal year 2015 through 2020 indicate that state and local officers' failure to offer, use, or document the use of interpreter or translation services as the most common area of concern (44 of 119 total areas of concern), as shown in table 3 below.

Table 3: Types of Areas of Concern Identified by the Office of Professional Responsibility within U.S. Immigration and Customs Enforcement (ICE) 287(g) Program Inspections, Fiscal Years 2015 through 2020

	Fiscal Year					
	2015	2016	2017	2018	2019	2020
State and local officers failed to offer, use, or document the use of interpreter or translation services	5	1	5	5	18	10
State or local officers or jail procedures resulted or could result in inadequate processing of individuals	15	7	2	1	3	4
State or local officers were unfamiliar with requirements or failed to report U.S. citizenship claims	1	—	1	1	7	1
State or local officers were unfamiliar with or failed to properly explain complaint procedures or were unfamiliar with reporting requirements	1	2	1	5	3	2
ICE official was unfamiliar with or failed to follow complaint reporting requirements	—	—	—	—	2	—
ICE official was unfamiliar with requirements or failed to report U.S. citizenship claims	—	—	—	—	2	1
ICE official and state or local officers were unfamiliar with information security requirements	3	1	—	1	1	—
ICE and state or local law enforcement agency did not meet steering committee requirements (i.e., to publically advertise or maintain a Steering Committee Charter) ^a	—	1	—	—	1	—
Other ^b	2	1	—	1	1	—
Total	27	13	9	14	38	18

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-186

Notes: ICE Office of Professional Responsibility defines an "area of concern" as an issue that reduces the effectiveness of 287(g) program operations but does not violate the 287(g) memorandum of agreement or written policy. (—) = no area of concern identified.

^aAccording to the MOA and 287(g) Steering Committee Charter, participating LEAs, in coordination with the local ICE Field Office, hold steering committee meetings as needed to improve program oversight and receive input from community stakeholders. The steering committee meetings are to be publically advertised with a set agenda and minutes submitted to ICE and the LEA following the meeting.

^bOther includes a designated state or local officer not being familiar with the 287(g) memorandum of agreement and an ICE field supervisor allowing a designated state or local officer to use a signature stamp to sign 287(g) forms, among others.

To address deficiencies and areas of concerns identified from OPR inspections, ICE field officials implement corrective actions at individual LEAs. Specifically, ERO produces a closeout memo once corrective

action plans address individual participant’s deficiencies and areas of concern. Our review found that ICE addressed and closed out all deficiencies and areas of concern identified at 45 of the 47 LEAs that had an OPR inspection finding in fiscal years 2018 and 2019 inspections.⁶⁰ According to ICE officials, ERO has also implemented certain actions to address recurring deficiencies and areas of concern or other trends across the program, identified by OPR inspections.⁶¹ In regards to training, in fiscal years 2017 and 2020, ERO issued a procedural update enabling 287(g) field supervisors to monitor state and local officers’ training status via the online training platform and implemented a national training coordinator position. In addition, ERO held a training session for 287(g) field supervisors in September 2019 in response to the high number of deficiencies related to 287(g) field oversight duties and requirements identified during OPR fiscal year 2019 inspections.⁶² According to ICE officials, 287(g) headquarters program managers and field supervisors regularly discuss commonly identified deficiencies and areas of concern, and share best practices for mitigating these issues.⁶³

Given how recently some of the corrective actions taken by ERO to address OPR inspection findings have occurred, it is difficult to determine whether these corrective actions have had an effect. For example, ERO 287(g) program officials said they do not yet know the effect of the training coordinator on meeting annual training requirements since that role is relatively new. Therefore, it is too soon to determine whether

⁶⁰The status of the remaining two LEAs inspected in fiscal year 2018 is unclear, as closeout reports were not provided for the LEAs and were not included in OPR’s fiscal year 2020 follow-up reviews. Results from OPR’s fiscal year 2018 follow-up reviews indicate that the five LEAs—who had four or more total deficiencies and areas of concern—resolved 14 of the 15 deficiencies and all nine areas of concern identified in fiscal year 2018 inspection. Additionally, OPR conducted 15 of the 18 planned follow-up reviews for LEAs inspected in fiscal year 2019, and the results indicate that the 15 LEAs resolved 53 of 64 deficiencies and 20 of 21 areas of concern.

⁶¹According to OPR officials, while OPR is part of the 287(g) program oversight process, they do not make recommendations on how to address issues, which is ERO’s responsibility. ERO disseminates individual inspection reports to the local Field Office Director to address identified deficiencies and areas of concern.

⁶²The September 2019 training session covered training oversight policy and procedures, as many field supervisors were unaware of the training oversight policy and procedures, as well as MOA updates and OPR findings.

⁶³OPR defines “best practices” as positive program-specific practices that foster compliance with the MOA.

corrective actions are addressing recurring deficiencies and areas of concern throughout the program.

ICE and DHS Entities Have Mechanisms for Reporting 287(g) Program-Related Complaints

ICE uses complaint reporting and resolution procedures as part of its monitoring of state and local LEAs participating in the 287(g) program. During the processing of potentially removable foreign nationals, designated state and local officers generally read or translate to individuals how they may report any complaints. Additionally, JEM participants are to display posters in their facility's 287(g) processing area that further inform individuals' of their rights and potential ways to a report a complaint, as shown in figure 4.

Figure 4: 287(g) Program Complaint Process Posters in English and Spanish to Be Displayed in Jail Enforcement Model Participants' Processing Areas

287(g) Program Complaint Process

Do you have a civil rights or civil liberties complaint?

Under the U.S. Immigration and Customs Enforcement (ICE) 287(g) program, some local and state law enforcement agencies are authorized to enforce U.S. immigration laws.

If you are being questioned about your immigration status in the United States, or have been served with immigration documents by personnel acting on behalf of ICE, and you believe your rights were violated, you have the right to make a complaint.

Anyone can file a complaint on your behalf, including: a relative, friend, law enforcement agencies (LEAs), a law enforcement officer from a participating LEA, or anyone from the public.


As an immigration detainee, you have the right:

- To be treated fairly;
- Not to be discriminated against based on your race, color, ethnicity, or national origin;
- Not to be subject to excessive use of force or abusive conditions;
- To an environment that provides for your safety, care, and well-being;
- To use a phone or the Internet to make a complaint;
- Not to be retaliated against for making a complaint or asking for help.

If your rights have been violated, contact one of the following entities by phone, e-mail, or U.S. mail to make a complaint or ask for help.

- ▶ Call toll-free: **800-323-8603** DHS Inspector General
877-246-8253 ICE Office of Professional Responsibility
- ▶ Email: **Joint.Intake@dhs.gov**
- ▶ U.S. Mail: **DHS, ICE Office of Professional Responsibility**
P.O. Box 14475, Pennsylvania Avenue NW
Washington, DC 20044 *(May take up to 4 weeks for security screening)*

You do not have to give your name. Your call will be kept confidential. A copy of your complaint will be forwarded to the DHS Office for Civil Rights and Civil Liberties (CRCL).



U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) works with state and local law enforcement agencies and the public to protect the integrity, effectiveness, and efficiency of the 287(g) program.

Programa 287(g)

Procedimiento para Presentación de Quejas

¿Tiene usted alguna queja sobre un derecho o libertad civil?

Bajo el programa 287(g) del Servicio de Inmigración y Control de Aduanas de los Estados Unidos, (ICE) algunas agencias del orden público tanto local como estatal están autorizadas a imponer las leyes de Inmigración de los Estados Unidos.

Si usted esta siendo interrogado sobre su estatus inmigratorio en los Estados Unidos o se le ha entregado documentos de inmigración por personal actuando en nombre de ICE y usted cree que se le han infringido sus derechos, usted tiene el derecho de presentar una queja. **Cualquier persona puede presentar una queja en su nombre**, incluyendo: un familiar, un amigo, agencias de orden público (LEAs), un oficial del orden público de una LEA participante o cualquier persona civil.

Como un detenido de Inmigración usted tiene el derecho de:

- Ser tratado(a) con justicia;
- No ser discriminado(a) por razón de su raza, color, etnia u origen nacional;
- No ser sometido(a) al uso de fuerza excesiva o condiciones de abuso;
- Estar en un ambiente que le proporcione seguridad, cuidado, y bienestar;
- De utilizar el teléfono o el Internet para presentar una queja;
- No recibir represalias por haber presentado una queja o haber pedido ayuda.

Si se han infringido sus derechos, contáctenos por teléfono o correo electrónico para presentar una queja o pedir ayuda.

- ▶ Llame gratis: **800-323-8603** Inspector General de DHS
877-246-8253 Oficina de Responsabilidad Profesional de ICE
- ▶ Electrónico: **Joint.Intake@dhs.gov**
- ▶ Dirección en los Estados Unidos: **DHS, ICE Office of Professional Responsibility**
P.O. Box 14475, Pennsylvania Avenue NW
Washington, DC 20044
(La verificación de seguridad puede durar hasta 4 semanas.)

Usted no tiene que dar su nombre. Su llamada será confidencial. Se enviara una copia de su queja a la Oficina de Derechos y Libertades Civiles de DHS (CRCL).



U.S. Immigration and Customs Enforcement

El Servicio de Inmigración y Control de Aduanas de los Estados Unidos (ICE) trabaja con las agencias de ejecución de la ley y el público para proteger la integridad, la eficacia y la eficiencia del programa 287 (g).

Source: U.S. Immigration and Customs Enforcement. | GAO-21-186

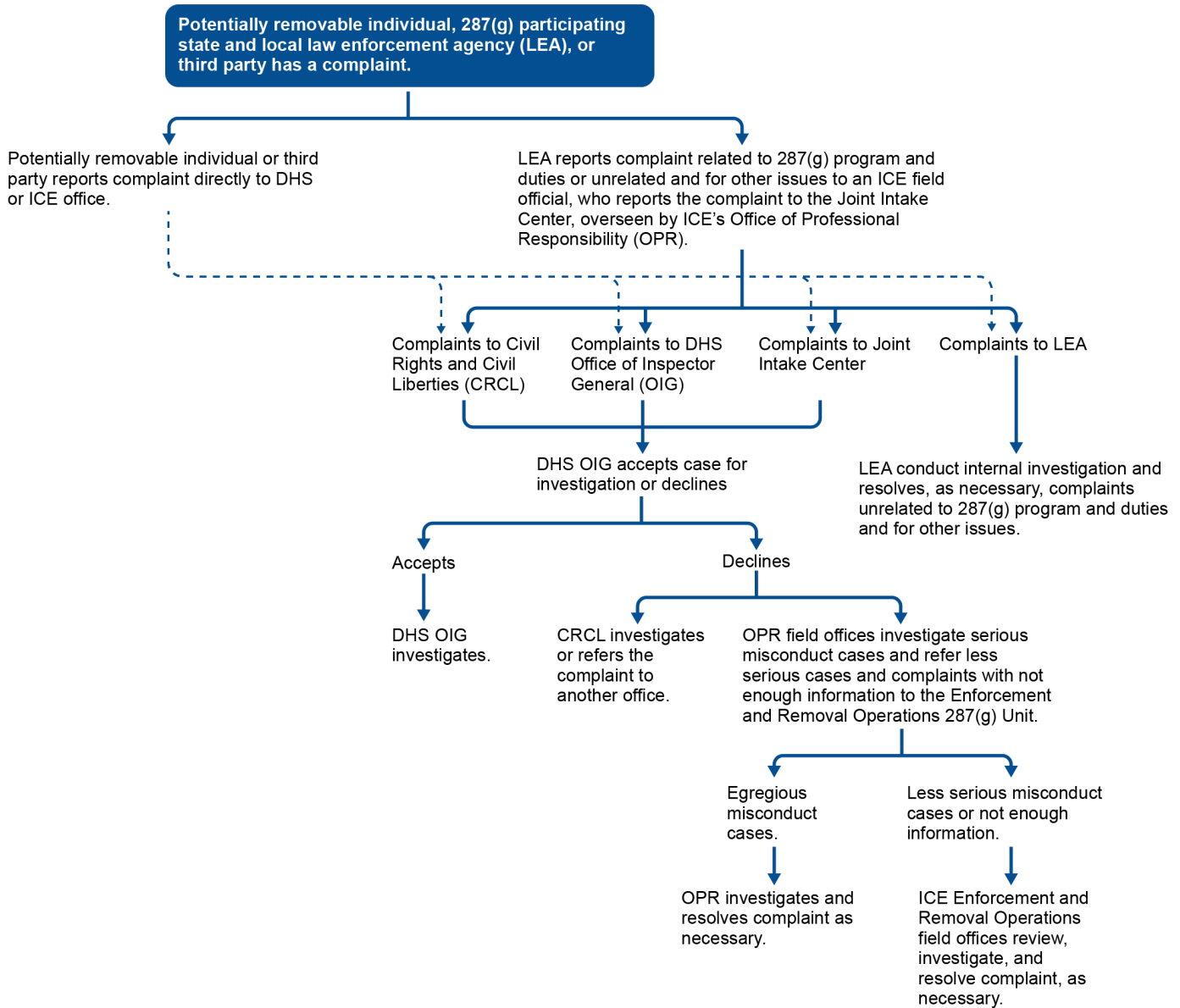
An individual processed under the 287(g) program at a state or local correctional facility can directly report a complaint to 287(g) designated officers at the facility, the ICE OPR Joint Intake Center, or the DHS OIG. DHS CRCL can also receive complaints. Once an allegation of misconduct or another complaint, it goes through various internal processes within DHS and ICE offices to determine which entity will investigate the allegation, according to officials. For instance, by policy,

ICE OPR's Joint Intake Center automatically elevates complaints it receives to the DHS OIG. According to ICE OPR officials, the DHS OIG will then decide to investigate or refer the complaint back to the Joint Intake Center, where it may go through further review by ICE or the LEA, depending on the evidence and seriousness of the complaint.⁶⁴ In particular, according to ICE officials, ICE OPR or ERO investigate and resolve 287(g) complaints determined to be related to officers' 287(g) duties while the LEAs internally investigate and resolve the misconduct issues and other complaints unrelated to a designated state or local officer's 287(g) duties.⁶⁵ Figure 5 illustrates how 287(g) complaints—those related to the performance of 287(g) duties and other complaints of misconduct involving a 287(g) designated state or local officer—may be submitted and transferred across different DHS and ICE offices that receive, refer, and investigate them.

⁶⁴DHS OIG refers most 287(g)-related complaints they receive back to the ICE OPR's Joint Intake Center. According to officials, DHS OIG may initiate an investigation when allegations involve waste, fraud, or abuse of DHS programs, and/or allegations of corruption regarding DHS employees or contractors. If DHS OIG refers a 287(g) complaint back to the Joint Intake Center, OPR field offices are to review the complaint and investigate egregious misconduct allegations, which includes criminal and non-criminal allegations, such as use of force or harassment. According to OPR, it refers less serious complaints, such as disciplinary actions for tardiness, to ERO for investigation and resolution.

⁶⁵According to the MOA, LEAs are also required to notify ICE of complaints against LEA personnel who are not designated state and local officers, but may be performing immigration enforcement duties that are in violation of the LEA's 287(g) agreement. If reported, the LEA is responsible for investigating and resolving such complaints.

Figure 5: Process for Addressing 287(g) Complaints Submitted through Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) Office



Source: GAO analysis of Department of Homeland Security information. | GAO-21-186

We reviewed complaint data from DHS CRCL, DHS OIG, and ICE's OPR Joint Intake Center identified as related to the 287(g) program and reviewed potential actions taken in response.

-
- **CRCL:** CRCL maintains data on various allegations related to violations of civil rights and civil liberties at DHS offices and entities, including complaints or allegations identified as related to the 287(g) program. From fiscal year 2015 through 2020, CRCL received two allegations related to the 287(g) program. CRCL may investigate a complaint related to the 287(g) program and use its findings to make recommendations for improving policy, implementation, training, or oversight aimed at reducing the risk of civil rights or civil liberties violations in the future, according to CRCL officials.⁶⁶ According to CRCL officials, CRCL did not recommend policy changes related to 287(g) complaint process from fiscal year 2015 through 2020. However, CRCL officials said they provided feedback to ICE on program changes that may affect program compliance and sent ICE complaints or other concerns raised about the 287(g) program during CRCL's community engagement.⁶⁷
 - **DHS OIG:** The DHS OIG tracks and maintains complaints received on various issues related to fraud, waste, and abuse and mismanagement or other criminal and noncriminal misconduct at DHS offices and entities, including those related to ICE 287(g) program.
 - From fiscal year 2015 through 2020, DHS OIG received 135 complaints identified as related to the 287(g) program. Of those 135, the OIG referred 129 complaints to ICE and did not request a response from ICE on the action taken for the referred complaints.⁶⁸
 - **OPR Joint Intake Center:** The Joint Intake Center collects data on complaints and allegations related to criminal and non-criminal misconduct, including those related to the 287(g) program.⁶⁹ As previously mentioned, LEA participants are required to report to ICE complaints or allegations related to designated state and local officers performing 287(g) duties. They are also required to report to ICE general non-287(g) program complaints that may result in disciplinary

⁶⁶CRCL closed the two 287(g) program allegations they received with no further action.

⁶⁷CRCL Community Engagement Section hosts events and activities to respond to community concerns and provide information on DHS programs, activities, and issues. These events and activities include community roundtable meetings with state and local governments, as well as public town halls and listening sessions with targeted stakeholders, such as religious leaders, recent immigrants, and law enforcement.

⁶⁸The remaining six complaint cases were either converted into investigations, referred to another agency within DHS, or closed and not referred to another agency.

⁶⁹The Joint Intake Center maintains data on allegations of misconduct in the Joint Integrity Case Management System.

actions or a criminal investigation/civil lawsuit for a 287(g) state or local designated officer, such as an allegation of driving under the influence.

From fiscal year 2015 through 2020, the Joint Intake Center received 146 complaints identified as related to the 287(g) program. According to ICE officials, 19 of these complaints were allegations against designated state or local officers alleging misconduct during their 287(g) program duties with detainees. ICE officials indicated that the remaining 127 complaints are records of misconduct by state and local officials unrelated to their 287(g) authority, such as a reprimand for insubordination to their supervisor. We found that approximately 73 percent (107 of the 146 complaints) of all complaints reported to the Joint Intake Center for the 287(g) program resulted in management notifications, which require further action at the ERO field office level.⁷⁰ Our August 2019 report on ICE's management and oversight of detention facilities found that the ERO's Administrative Inquiry Unit did not have reasonable assurance that ERO field offices were investigating or resolving nearly all complaints categorized as management notifications.⁷¹ We recommended that ICE require ERO field offices to record any actions taken on and the resolutions of these types of complaints.⁷² ICE concurred with our recommendation and plans to implement a database that will enable ERO field offices to record this information. According to an Administrative Inquiry Unit official, ERO field offices have not been required to notify the unit on whether they reviewed or took any actions on management

⁷⁰We also found 11 of the 19 complaints ICE identified as allegations of misconduct that occurred during 287(g) program duties were management notification cases. Management notification cases are complaints sent to ERO field offices to review and determine whether to conduct a full management inquiry. A management inquiry is when there is a noncriminal or minor allegation of misconduct that the program office addresses independent of Office of Professional Responsibility oversight. See GAO, *Immigration Detention: ICE Should Enhance Its Use of Facility Oversight Data and Management of Detainee Complaints*, [GAO-20-596](#) (Washington, D.C.: August 19, 2020) for more information.

⁷¹[GAO-20-596](#).

⁷²[GAO-20-596](#). As previously discussed, OPR refers less serious complaints to ERO for investigation and resolution. ERO's Administrative Inquiry Unit receives these complaints and will review and investigate these cases involving employee misconduct or refer cases to the field offices for further action. We found of the 11 of the 19 complaints ICE identified as allegations related to the 287(g) program that were categorized as management notifications, seven were resolved by the local field office, management, or an internal investigation by the LEA and four had no record of the case or could not identify the subject of the incident.

notification cases. However, the Administrative Inquiry Unit is planning to ask ERO field offices to notify the unit of any actions taken on the cases, according to this official.

ICE Does Not Have an Oversight Mechanism for Warrant Service Officer Participants' Compliance with Their 287(g) Memorandum of Agreements (MOA)

As previously stated, ICE implemented the WSO model of the 287(g) program in April 2019 in one state with 10 participating LEAs. As of September 2020, there were 73 participants in 11 states across the country. As previously stated, ICE has a number of mechanisms in place to oversee JEM participants' compliance with their MOA, including ICE field offices' oversight of state and local officers, inspections of LEA participants, and procedures to report 287(g)-related complaints. For WSO participants, ICE headquarters and field officials we spoke with said that oversight primarily consists of ensuring served warrants are signed, which field deportation officials who prepare the warrants informally oversee.⁷³ In addition, according to 287(g) program officials, depending on the field office, a 287(g) field supervisor or a field deportation officer is responsible for overseeing the communication and information related to the 287(g) processes for WSO participants in their area of responsibility. While ICE conducts some field oversight of WSO participants, ICE does not have mechanisms for monitoring MOA compliance for participants using the WSO model. For example:

- ICE does not have clear policies on 287(g) field supervisors' oversight responsibilities specific to WSO participants. ICE policies on field oversight of state and local 287(g) program participants address, among other things, ICE responsibilities for reviewing paperwork and data entered into ICE systems by state and local officers participating in JEM, monitoring completion of state and local officers' annual training and recertification, and suspending and revoking state and local officers' immigration enforcement authority.⁷⁴ According to ICE 287(g) program headquarters' officials, these policies are relevant to field oversight of both JEM and WSO participants; however, the policies do not clearly identify roles and responsibilities for WSO oversight. For example, 287(g) program officials were uncertain if the policy for suspending and revoking state and local officers'

⁷³These deportation officers are other field staff under the Criminal Alien Program and do not oversee 287(g) program.

⁷⁴U.S Immigration and Customs Enforcement, *Field Oversight of 287(g) Program*, 11152.01 (December 7, 2010); *Directive Technical and Procedural Update "Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority*, 13004.2 (July 5 2017); *Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority*, 13001.1 (February 24, 2012).

immigration enforcement authority apply to WSO participants. In July 2020, 287(g) program headquarters officials stated that ICE is in the process of updating policies to reflect the WSO model of the program.

- ICE does not plan for OPR to conduct compliance inspections of WSO participants. In particular, in January 2020, OPR officials told us they were in the process of determining how their office might conduct inspections of WSO participants for compliance with their agreement; however, as of March 2020, OPR no longer planned to conduct WSO inspections, at the request of 287(g) headquarters officials. ICE 287(g) field officials we met with from three of the five field offices emphasized the importance of OPR inspections to help them identify the 287(g) procedures in need of improvement at participating JEM LEAs. For example, 287(g) supervisors noted that OPR identified deficiencies or areas of concern related to how state and local officers were conducting the 287(g) complaint procedures and they made changes to improve that process.
- ICE does not have clear procedures for WSO participants to meet some of their MOA requirements. Similar to the JEM agreement, the WSO agreement lays out additional requirements for its participants, such as requirements for reporting complaints, carrying and presenting credentials when performing 287(g) duties, and providing interpretation services to individuals if needed. However, while JEM participants are to explain the availability of ICE 287(g) program complaint reporting mechanism to potentially removable foreign nationals they process, two WSO participants we spoke with said that they do not explain the complaint reporting process when serving warrants, so it is unclear whether individuals would know that they could make a complaint.⁷⁵

At the time of our review, ICE headquarters officials stated they do not need to establish a mechanism for monitoring WSO participants' compliance because the scope of responsibilities for WSO participants is limited to serving administrative warrants prepared, reviewed, and signed by ICE. WSO participants also do not have annual training requirements and do not use ICE databases and equipment, according to ICE officials. ICE officials further stated that they emphasize the importance of designated state and local officers communicating with field deportation officers during the one-day training WSO participants receive. However, designated officers under the WSO model act as ICE officers while

⁷⁵Officials from the two WSO participants we met noted that they would report any relevant complaints from the detainee to their 287(g) field supervisors or deportation officer.

performing their delegated immigration enforcement duties and are subject to the same standards of conduct and ethics as designated officers under the JEM model and other ICE officers.

Though WSO and JEM procedures may differ, it is important that ICE has sufficient oversight to ensure that all WSO requirements are met as this model of the 287(g) program continues to grow. The WSO agreement states that ICE will review participants on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for individual training or guidance from ICE 287(g) headquarters.⁷⁶ Moreover, *Standards for Internal Control in the Federal Government* states that management should establish and operate monitoring activities to monitor the internal control system and evaluate the results, potentially using separate evaluations.⁷⁷ Further, while training helps to highlight the requirements and expectations of the designated officers in the WSO model, training received by the designated officers may vary. For example, officials we met with from all three WSO participants cited varying lengths of training time for their designated officers, ranging from an hour and a half to the expected 8-hours. In addition, officials we met with from one of the three WSO participants stated that the designated state and local officers did not fully understand their WSO responsibilities after receiving the training. While we recognize the limited scope of the WSO model, developing an oversight mechanism specific to that model could help ICE ensure WSO participants comply with their MOA and uphold ICE's expected standards of conduct.

Conclusions

The 287(g) program provides ICE with additional state and local law enforcement officers to assist with immigration enforcement activities, including screening foreign nationals to determine immigration status and removability and lodging immigration detainers and serving administrative warrants. Since January 2017, 287(g) program participation has increased by over 300 percent (35 agreements in January 2017 to 150 as of September 30, 2020) and, as a result, ICE is now responsible for managing and overseeing 147 LEAs with 730 state and local law

⁷⁶Section F of the WSO agreement describe ICE supervisory responsibilities: The actions of participating law enforcement agency personnel will be reviewed by ICE officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for individual training or guidance.

⁷⁷[GAO-14-704G](#). Management can determine the scope and frequency of these internal control evaluations based on the assessment of risks, effectiveness of ongoing monitoring, and rate of change within the entity and its environment.

enforcement officers who act as ICE officers. While ICE has processes to review LEAs' application to join the program and for the implementation and operation of the program at LEAs' facilities, it could benefit from further efforts to assess the 287(g) program's needs and performance to help with planning and decision-making. In particular, ICE does not have performance goals and measures to fully assess the program's progress towards meeting intended results and use performance information to help make decisions for program oversight or other improvements, as needed. Further, ICE could benefit from assessing how to leverage resources and optimize program benefits so that it can more strategically approach recruitment, and allocate resources to potential LEA participants as the program continues to grow. Moreover, while ICE has a number of mechanisms to conduct oversight of JEM participants, it lacks an oversight mechanism for WSO participants. By developing and implementing such a mechanism, ICE can help ensure that WSO participants comply with their 287(g) agreement and other relevant ICE policies and procedures.

Recommendations for Executive Action

We are making the following three recommendations to ICE.

1. The Director of ICE should establish performance goals and related performance measures to assess and manage the performance of the 287(g) program. (Recommendation 1)
2. The Director of ICE should assess 287(g) program composition to help leverage program resources, optimize program benefits, and guide 287(g) expansion efforts. (Recommendation 2)
3. The Director of ICE should develop and implement an oversight mechanism to monitor Warrant Service Officer participants' compliance with their Memorandum of Agreement with ICE. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to DHS. DHS provided comments, which are reproduced in appendix II. DHS also provided technical comments, which we incorporated, as appropriate. DHS concurred with our three recommendations and described actions planned or underway to address them.

In particular, DHS concurred with our first recommendation that ICE should establish performance goals and related performance measures to assess and manage the performance of the 287(g) program, stating that ICE is developing a 287(g) strategic plan that will outline the program's goals, objectives, and performance measures. As part of this effort, DHS

stated that ICE plans to develop a mechanism to measure progress towards achieving the 287(g) program mission and identify any strategic areas that may require adjustments or revisions.

With respect to our second recommendation that ICE should assess 287(g) program composition to help leverage program resources and optimize program benefits, DHS concurred, stating that ICE is developing a mechanism to review current and future 287(g) participants to determine the mix of state and local LEAs in the JEM and WSO models of the program to optimize program resources.

DHS also concurred with our third recommendation that ICE should develop and implement an oversight mechanism to monitor WSO participants' compliance with their 287(g) Memorandum of Agreement. Specifically, DHS stated that ICE is developing an internal oversight review mechanism to monitor and ensure WSO participants' compliance with their MOA. In addition, DHS stated that ICE ERO will develop guidance on topics such as credentials and revocation for the program participants.

The actions described above, if implemented effectively, should address the intent of our recommendations.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, and the Acting Secretary of the Department of Homeland Security. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix III.

Sincerely yours,



Rebecca Gambler
Director, Homeland Security and Justice

Appendix I: Objectives, Scope, and Methodology

This report addresses the following three questions: (1) To what extent has U.S. Immigration and Customs Enforcement (ICE) developed performance goals and measures to assess the 287(g) program? (2) How does ICE determine the eligibility of state and local law enforcement agencies for participation in the 287(g) program, and to what extent does ICE consider program resources? (3) How does ICE conduct oversight of 287(g) program participating agencies' compliance with federal immigration enforcement responsibilities in their agreement, and to what extent does ICE address any noncompliance?

To address all three objectives, we selected and met with officials from 11 state and local law enforcement agencies (LEA) participating in the 287(g) program as of January 2020 located in Florida, Maryland, Texas, and Virginia to obtain information on 287(g) program operations. We selected these LEAs to reflect the different types of 287(g) agreement (either the Jail Enforcement Model (JEM) or Warrant Service Officer (WSO) model), lengths of time participating in the program, and types of LEA facilities such as county or regional correctional facility, among other factors.¹ We conducted site visits and interviews in person for four of the selected LEAs and interviewed the remaining seven on the phone.² During these interviews, we spoke with jail administrators, 287(g) designated state and local officers, or the LEA leadership, such as sheriffs, about the process for entering into agreements with ICE, the type of 287(g) program at their facilities, and ICE's oversight of the program at their facilities. We also met with 287(g) field officials and ICE field leadership from five Enforcement and Removal Operations (ERO) field offices responsible for overseeing the selected LEAs about ICE's policies and processes for supervising state and local designated officers and ensuring the LEA's compliance with their agreement. While the information we obtained from our interviews with selected LEAs and ICE officials cannot be generalized to all 287(g) LEA participants and ICE field offices, it provides insights into 287(g) program operations and the processes used by ICE to oversee 287(g) participants.

To determine the extent to which ICE developed performance goals and measures to assess the 287(g) program, we reviewed 287(g)

¹Selected LEAs include eight under JEM, two WSOs, and one LEA using both the JEM and WSO model. Of the selected LEAs, one JEM participant left the program, and another JEM participant switched to the WSO model.

²We also toured the 287(g) processing areas at the correctional facility for the four LEAs we visited.

performance information, such as prior goals, measures, and other information, and compared that information against leading practices for assessing program performance.³ Specifically, we interviewed ICE officials at headquarters about their planning and use of performance information and reviewed documentation related to their performance assessment, such as the *Fiscal Year 2011-2016 287(g) Strategic Plan*, the prior 287(g) Program Performance Measures Guide, and 287(g) field program managers' goals. We also collected and analyzed enforcement data on persons encountered, detained, and removed by LEA participants in the 287(g) program, which ICE identified as performance information. To assess the reliability of these data, we interviewed ICE officials about how, if at all, it used the enforcement data, and any potential reporting limitations. We also asked officials at select ICE field offices and LEAs about what data they report to ICE headquarters and how, if at all, they use the data. ICE cited a number of limitations with 287(g) program data related to persons encountered, detained, and removed, as discussed in the report. We were unable to use these data for the purposes of reporting outputs related to the 287(g) program. Specifically, ICE cited challenges, such as linking data to the 287(g) program, potential duplicates, and unclear definitions of data.

To determine ICE's process for reviewing and approving state and local LEAs to participate in the 287(g) program and the extent ICE considers resources during this process, we compared information on ICE's process for reviewing 287(g) applicants from fiscal years 2015 through 2020 against leading practices for successful program management in *The Standard for Program Management* and the components of sound

³We have previously stated that performance goals and measures are important management tools that can serve as leading practices for planning at lower levels within federal agencies, such as individual programs or initiatives. For example, see GAO, *Veterans Justice Outreach Program: VA Could Improve Management by Establishing Performance Measures and Fully Assessing Risks*, [GAO-16-393](#) (Washington, D.C.: Apr. 28, 2016); *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, [GAO-03-143](#) (Washington, D.C.: Nov. 22, 2002); *Program Evaluation: Strategies to Facilitate Agencies' Use of Evaluation in Program Management and Policy Making*, [GAO-13-570](#) (Washington, D.C.: June 26, 2013); *Performance Measurement and Evaluation: Definitions and Relationships*, [GAO-11-646SP](#) (Washington, D.C.: May 2011); *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005).

planning as identified in prior GAO reports.⁴ We selected this timeframe to gather information on ICE's application and review process prior to and post ICE's expansion of the 287(g) program in January 2017.⁵ In particular, we reviewed documentation such as examples of letters of interest and needs assessments LEAs provide during the application process, ICE guidance on factors they should consider when reviewing LEA's application, and meeting minutes from 287(g) Program Advisory Board meetings detailing information discussed and resulting votes on LEA's application. We also interviewed officials from ICE ERO headquarters and field offices, ICE Office of Professional Responsibility (OPR), and DHS Office for Civil Right and Civil Liberties (CRCL) to obtain information about their role in the recruitment of LEAs, preparation and review of LEAs application, and the decision to approve or deny LEAs' application. We also interviewed selected LEAs to learn about their experience entering into an agreement with ICE. In addition, we reviewed budget information and interviewed ERO headquarters and field officials about 287(g) program resources, such as the allocation of the program budget and staff resources.

To determine the extent to which ICE conducts oversight of the 287(g) program and addresses any noncompliance, we reviewed documentation, analyzed data of JEM participants' annual inspection and complaints related to the 287(g) program, and interviewed officials to identify ICE

⁴Project Management Institute, Inc., *The Standard for Program Management*®, 4th ed. (Newtown Square, PA: 2017). The components of sound plans include (1) purpose, scope, and methodology; (2) problem definition, causes, and operating environment; (3) goals, objectives, activities, and performance measures; (4) resources, investments, and risks; (5) roles, responsibilities, and coordination; and (6) integration among and with other entities. For example, see GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, [GAO-04-408T](#) (Washington, D.C.: Feb. 3, 2004) and GAO, *Social Security Disability: Additional Performance Measures and Better Cost Estimates Could Help Improve SSA's Efforts to Eliminate Its Hearings Backlog*, [GAO-09-398](#) (Washington, D.C.: Sept. 9, 2009). Although there is no established set of requirements for all plans, components of sound planning are important because they define what organizations seek to accomplish, identify specific activities to obtain desired results, and provide tools to help ensure accountability and mitigate risks.

⁵As previously discussed, in January 2017, Executive Orders 13767 and 13768 stated that it is Executive Branch policy to empower state and local law enforcement agencies to perform immigration enforcement functions within the United States to the maximum extent permitted by law. This timeframe captures two fiscal years prior and post the Executive Orders. We also included fiscal year 2020 information since it is the most recent year.

policies and procedures for conducting oversight of LEA participants.⁶ We compared ICE oversight procedures against ICE identified guidance outlined in the memorandum of agreement (MOA) and the internal control principles, in the *Standards for Internal Control in the Federal Government*, related to establishing and performing activities to monitor the internal control system, evaluating the results of the monitoring, and remediating identified deficiencies.⁷ More specifically, we reviewed documents including the MOAs for both models of the program and ICE policies and procedures for program implementation and field supervisors' oversight responsibilities. Further, we reviewed inspection documents, such as OPR's 287(g) *Inspections Unit Operations Manual* for fiscal year 2020 and annual 287(g) inspection reports, as well as corrective action plans and closeout reports, for individual LEAs inspected to identify ICE's inspection policies and procedures for determining LEAs' compliance with their MOA and describe how ICE addresses issues identified from the inspections. Using OPR's inspection findings, we analyzed the number and types of findings (deficiencies and areas of concern) for LEAs that had an inspection from fiscal year 2015 through 2020.⁸ We also interviewed officials from OPR, ICE field offices and select LEAs to describe the 287(g) program's annual inspection and reporting process for monitoring the field office and individual LEAs' compliance with their agreements and responsibilities.

In addition, we reviewed relevant processes used by OPR's Joint Intake Center, and the DHS Office of Inspector General (OIG) and CRCL to describe how ICE and other DHS entities receive and address complaints related to the 287(g) program. We obtained and analyzed complaint data from OPR, DHS OIG, and CRCL to determine the number of 287(g)-related complaints each office received and the resolution of the complaints from fiscal years 2015 through 2020. To determine the reliability of ICE and DHS entities' complaint data, we reviewed the data to identify any anomalies and interviewed officials from the three agencies to resolve data discrepancies in the Joint Intake Center data provided. We determined that the data were sufficiently reliable for the purposes of

⁶OPR inspects about half of the state and local LEAs participating in the JEM model every fiscal year, resulting in each JEM LEA receiving an inspection at least once every two years.

⁷[GAO-14-704G](#).

⁸We reviewed OPR inspection results from fiscal years 2015-2020 to reflect results two fiscal years prior and post the program expansion.

reporting the number and type of resolution for complaints related to the 287(g) program.

We conducted this performance audit from November 2019 to January 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

January 4, 2021

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-21-186, "IMMIGRATION ENFORCEMENT: ICE Can Further Enhance Its Planning and Oversight of State and Local Agreements"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's recognition of the coordination between U.S. Immigration and Customs Enforcement (ICE) and local law enforcement agencies (LEA) to protect the homeland and enhance the safety our communities. The ICE Enforcement and Removal Operations (ERO) 287(g) Program enhances the safety and security of communities by creating partnerships with state and local law enforcement agencies to identify and remove illegal aliens from the United States. Section 287(g) of the Immigration and Nationality Act authorizes the Director of ICE to enter into agreements with state and local LEAs to designate officers to perform certain immigration law enforcement functions. State and local officers who partner with ICE receive training and function under the supervision of ICE officers. These mutually beneficial agreements allow state and local LEAs to act as a force multiplier in the identification, arrest, and service of warrants and detainers on foreign-born individuals arrested on criminal charges.

Since 2017, ERO expanded the 287(g) Program from 35 to 150 partnerships, and in fiscal year 2019, the 287(g) Program developed an additional model, the Warrant Service Officer (WSO) model, in response to requests for operational flexibilities from members of the National Sheriffs' Association and the Major County Sheriffs of America. The

**Appendix II: Comments from the Department
of Homeland Security**

WSO was created for jurisdictions that seek to cooperate with federal immigration enforcement efforts but are precluded from honoring ICE detainers as a matter of state law or local policy. As of November 2020, ICE had established 73 WSO agreements with law enforcement agencies in 11 states, credentialed 444 state and local 287(g) WSO Officers, and facilitated more than 500 arrests. The ICE 287(g) Program continues to receive overwhelmingly positive feedback from its partners. DHS remains committed to working together with state and local law enforcement to create efficiency and, in turn, providing a tremendous benefit to public safety.

The draft report contained three recommendations, with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H

CRUMPACKER

JIM H. CRUMPACKER, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

Digitally signed by JIM H
CRUMPACKER
Date: 2021.01.04 12:05:04
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Attachment

**Attachment: Management Response to Recommendations
Contained in GAO-21-186**

GAO recommended that the Director of ICE:

Recommendation 1: Establish performance goals and related performance measures to assess and manage the performance of the 287(g) program.

Response: Concur. ICE ERO is developing a 287(g) strategic plan that will outline the program goals, objectives, and performance measures. As part of this effort, the 287(g) Program Unit will also develop a mechanism to measure progress towards achieving the 287(g) program mission, as well as identify any strategic areas that may require adjustments or revisions. Estimated Completion Date (ECD): September 30, 2021.

Recommendation 2: Assess 287(g) program composition to help leverage program resources, optimize program benefits, and guide 287(g) expansion efforts.

Response: Concur. ICE ERO is in the process of developing a mechanism to review current and future 287(g) participants to determine the assortment of LEAs in the Jail Enforcement Model (JEM) and WSO model to optimize program resources. ICE ERO will identify factors to consider when assessing whether an LEA would be a force multiplier for the JEM model, or a better fit for the WSO model. ICE ERO will then employ these factors when assessing new LEAs who express interest in joining the program, as well as determining whether existing LEAs should change models. ECD: September 30, 2021.

Recommendation 3: Develop and implement an oversight mechanism to monitor Warrant Service Officer participants' compliance with their Memorandum of Agreement with ICE.

Response: Concur. ICE ERO is in the process of developing an internal oversight review mechanism to monitor and ensure WSO participant compliance with the 287(g) Memorandum of Agreement (MOA) signed with each LEA. This oversight review plan will consist of conducting interviews and reviewing documentation to ensure compliance with the MOA and policies, as applicable. In addition, ICE ERO will develop guidance on topics such as credentials and revocation for the program participants. ECD: September 30, 2021.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov

Staff Acknowledgments

In addition to the contact named above, Meg Ullengren (Assistant Director), Elizabeth Dretsch, Jamarla Edwards (Analyst-in-Charge), Kelsey Hawley, Eric Hauswirth, Jenna Lada, Sasan J. “Jon” Najmi, Michelle Serfass, and Adam Vogt made key contributions to this report.

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