Texas Immigration LAW COUNCIL

UNDERSTANDING THE 2025 ICE-TEXAS ATTORNEY GENERAL 287(G) AGREEMENT

This agreement, signed in January 2025, represents an unprecedented application of Section 287(g) of the Immigration and Nationality Act, a provision that allows ICE to delegate immigration enforcement authority to state and local law enforcement agencies. While 287(g) agreements have existed for years–typically with county sheriff's departments and local police, this marks the first time a state attorney general's office has received such authority. Unlike traditional agreements focused on jails or law enforcement functions, this grants statewide immigration enforcement authority to the Texas Attorney General's Office whose primary role is civil enforcement, legal representation of the state, and limited criminal enforcement. Currently, Texas Attorney General officers and employees are only authorized to conduct cyber-crimes and Medicaid fraud investigations (unless invited by a local prosecutor to investigate other matters) and are not authorized to engage in routine patrol work. Under ICE supervision, these authorized personnel can now question individuals about immigration status, make immigration-related arrests, process cases, and maintain custody of individuals - though they must promptly transfer arrestees to ICE-approved custody. This model could serve as a template for other states seeking to expand their role in immigration enforcement, while raising important questions about oversight, coordination between agencies, and impacts on community relationships with law enforcement. The implications extend beyond Texas, potentially reshaping how states engage in immigration enforcement nationwide.

LEGAL FRAMEWORK AND AUTHORITY

This agreement draws its authority from Section 287(g) of the Immigration and Nationality Act [8 U.S.C. § 1357(g)], as amended by the Homeland Security Act of 2002. The framework establishes a unique partnership where ICE maintains direction and supervision over immigration enforcement functions, while the Texas Attorney General's Office (AG) retains control over all other aspects of personnel employment and duties. Unlike traditional agreements with local law enforcement, this statewide authority creates new dynamics in federal-state immigration enforcement cooperation.

DESIGNATION OF AUTHORIZED FUNCTIONS

The agreement grants specific powers to the AG personnel under federal authority:

1. Interrogation Powers - INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1)
    a. Can question any person believed to be a non-citizen about their right to be/remain in the U.S.
    b. Can process immigration violations for those arrested for state/federal crimes
2. Arrest Authority
    a. Without Warrant - INA § 287(a)(2) and 8 C.F.R. § 287.5(c)(1)
        i. Can arrest non-citizens entering/attempting to enter unlawfully in their presence or view
        ii. Can arrest non-citizens in the U.S. if there is reason to believe the non-citizen is in violation of law and is likely to escape before a warrant is obtained
        iii. After arrest, participating personnel must promptly transfer arrested individuals to ICE custody for examination by an authorized immigration officer regarding their right to be in the U.S.
    b. For Felonies - INA § 287(a)(4) and 8 C.F.R. § 287.5(c)(2)
        i. Can arrest without warrant for immigration-related felonies
        ii. Must have reason to believe the non-citizen is in U.S. in violation of the law and likely to escape before a warrant can be obtained
3. Processing and Documentation Authority
    a. Can serve/execute arrest warrants for immigration violations - INA § 287(a) and 8 C.F.R. § 287.5(e)(3)
    b. Can administer oaths and take and consider evidence to complete processing to include fingerprinting, photographing, interviewing, preparing affidavits, and taking sworn statements for ICE - INA § 287(b) and 8 C.F.R. § 287.5(a)(2)
    c. Can prepare charging documents including Notice to Appear - INA § 239, 8 C.F.R. § 239.1; INA § 238, 8 C.F.R § 238.1; INA § 241(a)(5), 8 C.F.R § 241.8; INA § 235(b)(l), 8 C.F.R. § 235.3
    d. Can issue immigration detainers - 8 C.F.R. § 287.7 – and complete I-213 (Record of Deportable/Inadmissible Alien)
4. Custody and Transportation Authority - 8 C.F.R. § 287.5(c)(6)
    a. Can take and maintain custody of non-citizens arrested by ICE or those arrested by other state or local agencies on ICE's behalf
    b. Can take custody of non-citizens arrested under immigration laws and transport those individuals to ICE-approved detention facilities

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DETENTION AUTHORITY AND REQUIREMENTS

The agreement establishes specific rules for detention and custody transfers:

Prosecution Priority
The AG's office must complete prosecution of any state or local charges that led to the person being taken into custody before ICE can assume custody. ICE will only take custody of individuals who have completed serving any sentence of incarceration. However, the ICE Field Office Director can assess cases individually and may make exceptions based on special circumstances.

Detention Facilities
If the AG's office operates detention facilities, they may enter into a separate Inter-Governmental Service Agreement (IGSA) with ICE to provide detention services for payment. These facilities must:

- Meet state standards for detention facilities used for U.S. citizens
- Comply with federal Prison Rape Elimination Act requirements
- Not face higher eligibility requirements than those for detaining U.S. citizens
- Follow all applicable federal laws

Custody Transfers
After processing at AG detention facilities, if an individual is determined to be removable:

- They will be arrested by participating AG personnel on ICE's behalf
- They must be transported to ICE on the same day, or
- With ICE's consent, they may continue being detained at AG facilities under ICE custody
- They can only be released to ICE custody

KEY OPERATIONAL ELEMENTS

Duration and Timing

- Effective Date: January 31, 2025
- Term: Remains in effect until terminated by either party
- Termination Process: Can be terminated at any time with written notice
- Suspension: Either party can temporarily suspend activities due to resource constraints or competing priorities

Personnel Requirements and Selection
The chief officer of the AG's office must nominate candidates who meet specific criteria:

- Must be U.S. citizens
- Must have minimum of two years of law enforcement experience
- Must pass ICE background checks
- Must qualify for federal security clearances
- Must be able to access DHS/ICE databases/systems
- Cannot have any significant disciplinary issues

Candidates can be replaced if not approved, as long as training isn't delayed. The number of participating personnel can be expanded through mutual agreement.

Training Requirements
Participating personnel must complete a comprehensive mandatory ICE training program and pass examinations equivalent to those given to ICE officers. The training, which must be refreshed annually and supplemented with ongoing local instruction from ICE supervisors, covers immigration law and authority, civil rights requirements, use of force policies, public outreach procedures, cross-cultural issues, and international treaty obligations.

Supervision Structure

- ICE maintains oversight of all immigration enforcement functions
- AG's office retains control of standard employment matters
- Direct communication (in-person, phone, radio, etc.) with ICE supervisors required at all times
- ICE can revoke individual personnel authority with 48-hour notice
- Must have at least one ICE official embedded for assigned missions

Resource Allocation

- AG's office covers: personnel costs, salaries, benefits, local transportation
- ICE provides: training, IT infrastructure, supervision
- ICE covers: travel expenses during training periods
- Separate agreements possible for detention services (Inter-Governmental Service Agreement - IGSAs)

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HOW THIS AGREEMENT DIFFERS FROM TYPICAL 287(G) PROGRAMS

This agreement represents a significant departure from traditional 287(g) agreements in several keyways:

Unique Partner Agency
Unlike typical agreements with sheriff's departments or local police, this is the first known 287(g) agreement with a state attorney general's office. This means enforcement will be conducted by investigators who typically handle civil matters and crimes related to cyber-security and Medicaid fraud rather than law enforcement officers or jail personnel.

Statewide Jurisdiction
While most 287(g) agreements operate within specific counties or facilities, this agreement grants authority across Texas. This broader geographic scope allows for coordination with other state-level enforcement initiatives and creates a more expansive enforcement capability.

Investigative Focus
AG investigators typically work on civil enforcement actions and specialized cases such as cyber-security and Medicaid fraud. This specialized focus differs significantly from the routine immigration screening conducted in jails or by law enforcement officers under traditional 287(g) agreements.

Multi-Level Coordination
The agreement requires coordination between federal, state, and potentially local authorities, creating more complex operational requirements than typical local-federal partnerships.

IMPACT ON TEXAS COMMUNITIES

This agreement creates a new type of immigration enforcement presence in Texas. Communities may encounter these authorities during civil investigations rather than routine law enforcement interactions. While constitutional rights remain unchanged, the involvement of state-level investigators may result in more detailed, longer-term investigations that combine immigration matters with other law enforcement priorities.

The agreement raises significant concerns about chilling effects on community cooperation with law enforcement. The Texas Attorney General's Office is tasked with providing several victim services, primarily through the Crime Victims' Services Division. Victims and witnesses of crimes may be deterred from reporting or cooperating with AG investigations and victim services if they fear immigration consequences for themselves, family members, or communities. This could particularly impact areas like:

- Reporting labor trafficking or exploitation
- Coming forward about consumer fraud targeting immigrant communities
- Reporting notario fraud or other immigration services scams
- Serving as witnesses in important state prosecutions
- Seeking child support for minor children

A current, real-world example of these concerns can be seen in Colony Ridge, a predominantly Latino housing development near Houston where the Texas Attorney General has sued developers for alleged predatory lending practices in March of 2024. Most recently, this community was targeted for immigration enforcement raids in February 2025, resulting in over 100 arrests. Under this new agreement, the AG's office could potentially combine both functions–investigating fraud while simultaneously processing residents for immigration violations–creating a significant barrier to community cooperation in the very fraud case the AG is pursuing.

There are also concerns that this authority could be used as a pretext for investigations targeting certain communities, organizations, or local governments. The broad scope of the AG's investigative authority, now combined with immigration enforcement powers, creates potential for investigations that might begin as immigration matters but expand into examinations of nonprofits, religious organizations, or local governments that work with immigrant populations.

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SIGNIFICANCE FOR OTHER STATES

This agreement establishes a precedent for state-level involvement in immigration enforcement. Other state attorneys general may seek similar agreements, potentially reshaping how immigration enforcement operates nationwide. The success or challenges of this program could influence future state-federal cooperation models in immigration enforcement elsewhere.

OVERSIGHT AND ACCOUNTABILITY

The agreement includes multiple accountability measures:

Complaint Procedures

Anyone can file complaints regarding participating AG personnel through:

- ICE Office of Professional Responsibility
- Phone: 1-833-4ICE-OPR
- Email: ICEOPRIntake@ice.dhs.gov
- Texas AG's Internal Affairs Division
- Direct supervisors of participating personnel

Complaints must be resolved within 90 days, though complexity may affect timing. Both ICE and the AG's office maintain oversight of the complaint process.

Supervision and Review

ICE maintains supervisory authority over all immigration enforcement activities, with required regular performance reviews and ongoing training requirements. The AG's office handles standard employment matters, creating a dual supervision structure that aims to ensure compliance with both federal and state standards.

Looking Forward

The implementation of this agreement will likely influence future immigration enforcement policies at both state and federal levels. Its unique structure and broad scope make it a potential model for other states while raising important questions about the evolving nature of state involvement in immigration enforcement. Continued monitoring of its implementation, effectiveness, and impact on communities will be crucial for understanding its long-term implications for immigration enforcement nationwide.

Note: This analysis is for informational purposes only. Practitioners should consult the full agreement text and relevant legal counsel for specific guidance.