

Immigration and Custom Enforcement's 287(g) Program: Empowering Sheriffs to Address Illegal Immigration

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"Our partnership with ICE has undoubtedly made San Bernardino County a safer place to live."

— San Bernardino County Sheriff Rod Hoops

The success story of the San Bernardino County Sheriff's Office is one of many resulting from local and state law enforcement's involvement in section 287(g) programs. Section 287(g) allows ICE to deputize state and local law enforcement personnel to fulfill the duties of federal immigration officers. This delegation of federal immigration authority to local law enforcement officers has proven an asset in the federal government's effort to enforce immigration laws and, in 2008 alone, led to the identification of over 90,000 removable aliens.

Background and Operation of Section 287(g) Program

The Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") was passed by the U.S. Congress in 1996 and provided a broad series of amendments to the Immigration and Nationality Act of 1952 ("INA"). Section 287(g) of IIRIRA was Congress' response to the overburdened federal immigration system. More specifically, Section 287(g) authorizes the Department of Homeland Security, Immigration and Customs Enforcement ("ICE") to deputizes state and local law enforcement personnel so that these local officers can enforce federal immigration laws. The language of section 287(g) is written broadly, allowing ICE discretion in specifying the duties of these local officers, the duration of their authority, and ICE's supervision of these officers.

To participate in 287(g) programs, a Sheriff is required to enter into a written Memorandum of Agreement ("MOA") with ICE. The statutory guidelines of section 287(g) necessitate that these MOAs outline the responsibilities and extent of authority of the Sheriff's deputies carrying out federal immigration laws. The MOA must also specify ICE's structure for supervising the deputies and ensuring that the participating Sheriffs' Offices put the directives of the program into action.

Once an MOA is executed, a Sheriff designates deputies to participate in the program, and these deputies then undergo an evaluation including an examination of their disciplinary records and a background investigation in order to determine whether these deputies qualify for the added responsibility of enforcing federal immigration laws. The evaluation also determines whether these officers have sufficient experience to participate in the 287(g) program.

Once qualified, deputies typically then participate in ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) training at the Federal Law Enforcement Training Center (FLETC) ICE Academy in Charleston, SC. The number of state and local officers trained through ICE's 287(g) ACCESS program has increased from five participating agencies in 2005 to sixty-seven participating agencies in 2008.

Depending on the powers and duties outlined within the MOA, ACCESS certified deputies then function in the place of ICE agents. These deputies combat violent crimes, human smuggling, gang activity, and narcotics smuggling, among other felonies which may be encountered in their day-to-day duties. On a practical level, the authority of ACCESS certified deputies ranges from preparing notices for alien felons to appear in immigration court to the actual transportation of alien detainees to ICE approved detention facilities.

In the case of San Bernardino County, the Sheriff's Department booked over 108,000 287(g) detainees into county jails in 2008. The Sheriff's ICE trained custody assistants were able to screen inmates, place detainees, and ensure that those who were in this country illegally, and had committed crimes, were deported. San Bernardino County Sheriff's Department custody assistants interviewed 4,007 inmates and placed 2,347 immigration holds. In 2008 they conducted 3,720 interviews and placed 2,359 holds.

Typically, deputies also have direct access to ICE databases in order to allow them to quickly obtain immigration status information on their suspects. Except for charging

Current List of 287(g) Local Law Enforcement Participants

State	MOA Name	Type	Signed
AL	AL State Police	TFO	9/10/2003
AL	Etowah County Sheriff's Office	JEO	7/8/2008
AR	Benton County Sheriff's Office	JEO/TFO	9/26/2007
AR	City of Springdale Police Department	TFO	9/26/2007
AR	Rogers Police Department	TFO	9/25/2007
AR	Washington County Sheriff's Office AR	JEO/TFO	9/26/2007
AZ	AZ Department of Corrections	JEO	9/16/2005
AZ	AZ Department of Public Safety	TFO	4/15/2007
AZ	City of Phoenix Police Department	TFO	3/10/2008
AZ	Maricopa County Sheriff's Office	JEO/TFO	2/7/2007
AZ	Pima County Sheriff's Office	JEO/TFO	3/10/2008
AZ	Pinal County Sheriff's Office	JEO/TFO	3/10/2008
AZ	Yavapai County Sheriff's Office	JEO/TFO	3/10/2008
CA	Los Angeles County Sheriff's Office	JEO	2/1/2005
CA	Orange County Sheriff's Office	JEO	11/2/2006
CA	Riverside County Sheriff's Office	JEO	4/28/2006
CA	San Bernardino County Sheriff's Office	JEO	10/19/2005
CO	CO Department of Public Safety	TFO	3/29/2007
CO	El Paso County Sheriff's Office	JEO	5/17/2007
FL	Bay County Sheriff's Office	TFO	6/15/2008
FL	Brevard County Sheriff's Office	JEO	8/13/2008
FL	Collier County Sheriff's Office	JEO/TFO	8/6/2007
FL	FL Department of Law Enforcement	TFO	7/2/2002
FL	Jacksonville Sheriff's Office	JEO	7/8/2008
FL	Manatee County Sheriff's Office	JEO	7/8/2008
GA	Cobb County Sheriff's Office	JEO	2/13/2007
GA	GA Department of Public Safety	TFO	7/27/2007
GA	Hall County Sheriff's Office	JEO/TFO	2/29/2008
GA	Whitfield County Sheriff's Office	JEO	2/4/2008
MA	Barnstable County Sheriff's Office	JEO	8/25/2007
MA	Framingham Police Department	TFO	8/14/2007
MA	MA Department of Corrections	JEO	3/26/2007
MD	Frederick County Sheriff's Office	JEO/TFO	2/6/2008
MO	MO State Highway Patrol	TFO	6/25/2008
NC	Alamance County Sheriff's Office	JEO	1/10/2007
NC	Cabarrus County Sheriff's Office	JEO	8/2/2007
NC	Cumberland County Sheriff's Office	JEO	6/25/2008
NC	Durham Police Department	TFO	2/1/2008
NC	Gaston County Sheriff's Office	JEO	2/22/2007
NC	Henderson County Sheriff's Office	JEO	6/25/2008
NC	Mecklenburg County Sheriff's Office	JEO	2/27/2006
NC	Wake County Sheriff's Office	JEO	6/25/2008
NH	Hudson City Police Department	TFO	5/5/2007
NM	NM Department of Corrections	JEO	9/17/2007
NV	Las Vegas Metropolitan Police Department	JEO	9/8/2008
OH	Butler County Sheriff's Office	JEO/TFO	2/5/2008
OK	Tulsa County Sheriff's Office	JEO/TFO	8/6/2007
SC	Beaufort County Sheriff's Office	TFO	6/25/2008
SC	York County Sheriff's Office	JEO	10/16/2007
TN	Davidson County Sheriff's Office	JEO	2/21/2007
TN	TN Department of Safety	TFO	6/25/2008
TX	Carrollton Police Department	JEO	8/12/2008
TX	Farmers Branch Police Dept.	TFO	7/8/2008
TX	Harris County Sheriff's Office	JEO	7/20/2008
VA	City of Manassas Police Department	TFO	3/5/2008
VA	Herndon Police Department	TFO	3/21/2007
VA	Loudoun County Sheriff's Office	TFO	6/25/2008
VA	Manassas Park Police Department	TFO	3/10/2008
VA	Prince William County Police Department	TFO	2/26/2008
VA	Prince William County Sheriff's Office	TFO	2/26/2008
VA	Prince William-Manassas Adult Detention Center	JEO	7/9/2007
VA	Rockingham County Sheriff's Office	JEO/TFO	4/25/2007
VA	Shenandoah County Sheriff's Office	TFO	5/10/2007

JEO = Jail Enforcement Officers

TFO = Task Force Officers

Source: Immigration Custom Enforcement (2009)

documents, which must be issued by an ICE agent, ACCESS certified deputies are empowered at every step of the process to handle the identification, processing, and transportation of alien felons.

Although the immigration functions of ACCESS certified deputies are performed at the cost of the participating law enforcement agency, the training, equipment, and ICE supervision of ACCESS certified deputies is federally funded. Inmates within state prisons and local jails found to be removable aliens can be transferred to an ICE approved facility, relieving the state and local government of the costs associated with detaining the alien. MOAs can provide that ICE and the participating Sheriff's Office enter an Inter-Governmental Service Agreement (IGSA) to provide reimbursement for the transportation and detention of the aliens. Furthermore, participating agencies can apply for grants from the Department of Justice's State Criminal Alien Assistance Program ("SCAAP") for partial reimbursement of incarceration costs.

GAO Examination of the Section 287(g) Program

The execution of section 287(g) MOAs has not been without controversy. For example, in January 2009, the Government Accountability Office ("GAO") examined the 287(g) program and came to several conclusions which have the potential for significant changes in ICE's protocol and the practical application of the program by Sheriffs nationwide. Through an in-depth investigation of 29 of the 67 participating local law enforcement agencies, GAO reviewed: (1) the extent of controls ICE has created to properly implement the 287(g) program, (2) the opinions of participating agencies and their communities, and (3) how the programs resources are being used and monitored. ICE assisted the GAO in producing this report, offering technical suggestions.

A central concern raised by GAO was the lack of ICE management controls allowing for consistency in supervision, reporting, and application of 287(g) authority. GAO noted that while senior ICE officials attest to the 287(g) program's focus on enhancing the safety and security of communities by targeting alien felons,

program-related documents such as information pamphlets, fact sheets, MOAs and other training materials do not specify this objective. Additionally, GAO raised concerns regarding inconsistencies in the description of how local law enforcement agencies are to use their authority within these program-related documents. For example, GAO noted that while MOAs typically authorize ACCESS certified officers to “interrogate any person believed to be an alien as to his right to be or remain in the United States, none of [the MOAs] mentioned that an arrest should precede use of 287(g) authority”.

The GAO expressed concern that ICE’s supervisory structure of the 287(g) program neither defines the responsibilities of supervising ICE agents nor describes the “nature or extent of supervision.” Although supervising ICE agents are instructed under the MOAs to continuously evaluate all actions taken by ACCESS certified officers utilizing their immigration enforcement authority, how these ICE agents are to conduct this review is left unspecified within the MOAs and program-related documents. Hypothetically, one Sheriff’s Office could have an ICE agent on site providing daily oral evaluations while another Sheriff’s Office could be subject to bi-monthly written assessments produced remotely. The nature of either type of supervision is unclear. Interviews by GAO with supervising ICE officers yielded vastly different results, ranging from no direct supervision to front-line support of 287(g) ACCESS certified officers.

GAO also raised concern regarding the fact that MOA agreements do not typically specify how qualified local and state law enforcement agencies are supposed to report their 287(g) data. In 20 of the 29 MOA examples analyzed by the GAO, law enforcement agencies were only instructed to keep accurate data and statistical information, including data specified by ICE. This requirement was made without any specification by ICE, leaving participating agencies without clear direction on what information they are obliged to collect.

The GAO Report concluded by recommending that ICE: (1) clarify the authority of participating 287(g) officers, (2) document the objectives of the program, (3) develop reporting guidelines, (4) provide precise guidelines for supervision to ensure each of these issues are rectified, and (5) craft a plan to put these changes into action.

Future Changes to 287(g) Programs

In response to the GAO Report, ICE’s Office of State and Local Coordination (“OSLC”) is in the process of producing a Strategic Plan to provide the necessary solutions in designing future MOAs.

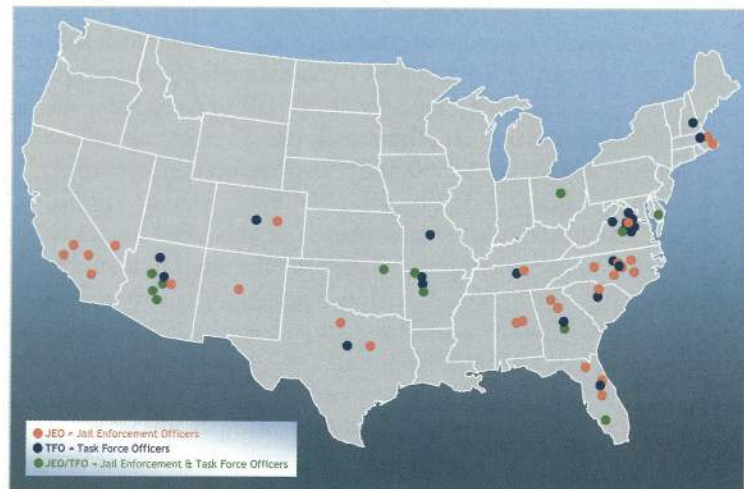
Map 1 (2002 to 2006)



Map 2 (2007)



Map 3 (2008)



This plan will provide a template to be used nationally which will clearly define the objectives of 287(g) authority for every participating local law enforcement office. The template specifies required procedures and activities for ACCESS certified officers and supervising ICE agents in fulfilling their respective roles, relieving previous ambiguity. OSLC's plan is expected to define unified reporting requirements of all jurisdictions, incorporating the local law enforcement agency into ICE's ENFORCE arrest booking system. The ENFORCE database, once revamped, will allow clear classifications of crimes encountered by participating agencies, allowing ICE to evaluate whether 287(g) jurisdictions are conforming to the established objectives of the program. The Strategic Plan will also be used in conjunction with a communications plan to confirm that all participants are consistently informed of the Strategic Plan's provisions.

ICE has also announced that it will implement Standard Operating Procedures ("SOP"), narrowly tailored to the individual law enforcement agencies. These SOPs will accompany the MOAs and will be required to be executed within 90 days of signing an MOA. The SOPs will acknowledge and expand OSLC's Strategic Plan, allowing for specificity in matters such as the administration of required reporting data and the appropriate activities of 287(g) trained officers and their ICE supervisors as applicable to the goals of the particular jurisdiction. Incorporation of these strategies is underway as ICE plans to soon publish its Mission Action Plan further detailing recent measures taken under the 287(g) program.

Conclusion

In deciding whether or not to participate in the section 287(g) program, Sheriffs' Offices should weigh the costs and benefits of participating in the program. It is clear from the GAO report that some 287(g) participants have suffered as the result of unsuccessful implementation of the program, but ICE's response to the GAO report demonstrates a promising future for the program. Participating Sheriffs' Offices remain pleased with the "reduction in crime, removal of repeat offenders, and other safety benefits" as noted by the GAO report. With a current waitlist

of 42 agencies, the section 287(g) program is becoming a critical law enforcement tool for enforcing federal immigration laws. To date, over 90,000 removable aliens have been identified as a result of nearly 1,000 section 287(g) ACCESS certified officers. ☀

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GREENING



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HDR

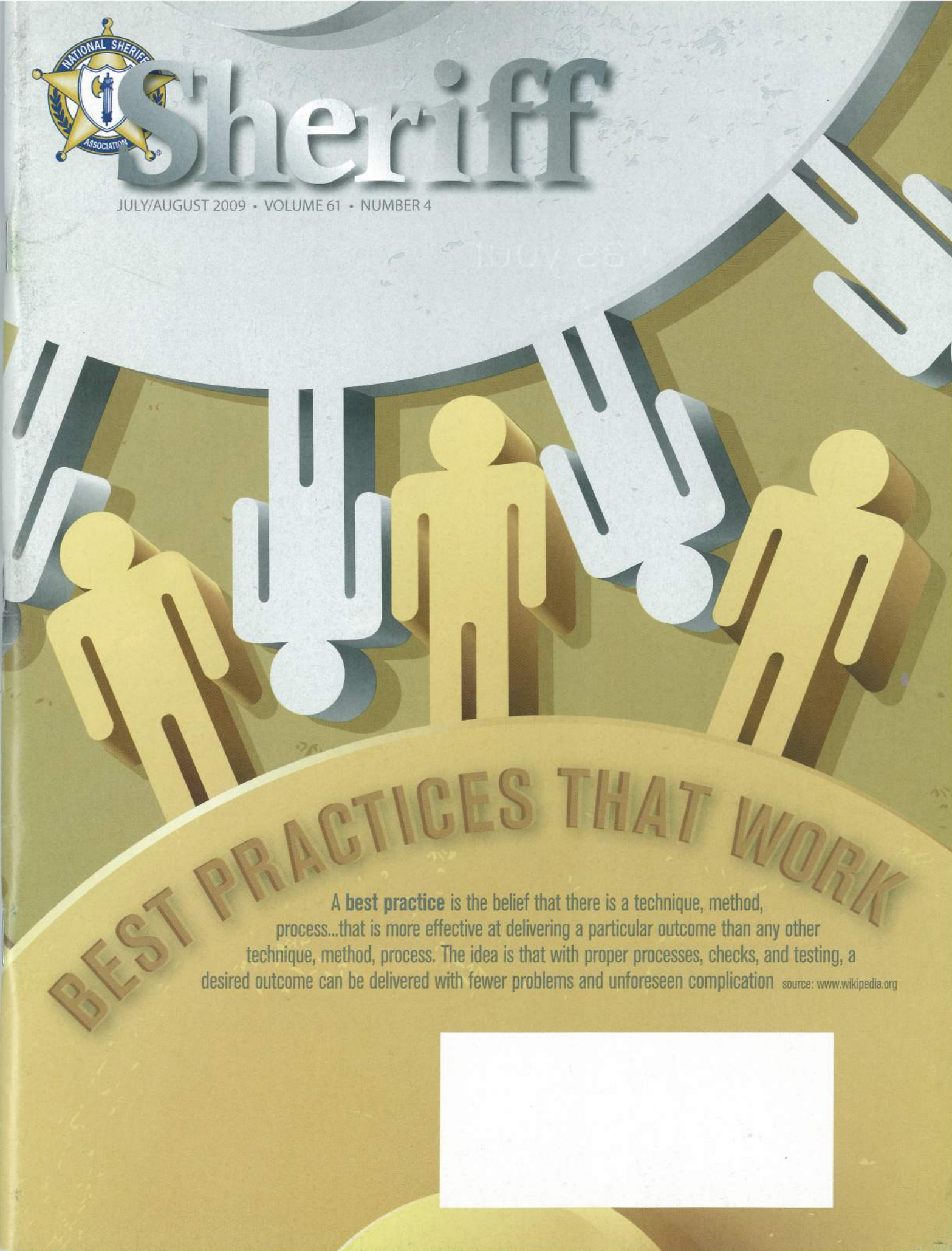
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A **best practice** is the belief that there is a technique, method, process...that is more effective at delivering a particular outcome than any other technique, method, process. The idea is that with proper processes, checks, and testing, a desired outcome can be delivered with fewer problems and unforeseen complication source: www.wikipedia.org

