

**An Impact Review of the
United States Bureau of Immigration and
Customs Enforcement 287(g) Program
Upon the County of Morris**



**SUBMITTED TO THE
MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS**

Report Compiled and Submitted by the Morris County Sheriff's Office:

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October 19, 2007

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A "Triple Crown" Accredited Agency

October 19, 2007

John Bonanni, County Administrator
County of Morris
P.O. Box 900
Morristown, New Jersey 07963

RE: 287(g) Impact Review

Dear Mr. Bonanni:

Your August 7, 2007, correspondence indicated that Mayor Cresitello of Morristown has approached the Morris County Board of Chosen Freeholders ("the Board") to consider partnering with the Town of Morristown and the United States Bureau of Immigration and Customs (ICE) to perform limited immigration law enforcement functions under what is known as the 287(g) Program. You noted that the County's involvement would necessitate the use of our Correctional Facility and our officers and you indicated that Board has requested the Morris County Sheriff's Office's input on this matter. Your correspondence further noted that the Board has requested we provide it with a list of issues that we believe may be affected by Morris County's participation in the Program, along with an analysis of how such issues may or may not be addressed in a satisfactory manner. You requested that such issues should include, but not be limited to, staffing needs, training needs (both initial and ongoing training), capacity of the jail to handle up to an additional sixty (60) inmates/detainees at one time and your ability to segregate such inmates/detainees pursuant to the requirements of the Program, risk management issues, and budgetary issues.

In addition to the foregoing, you note that the Board has requested our thoughts with regard to expanding the Program's applicability in Morris County beyond Morristown if other towns express a desire to participate in the Program.

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As you know, we have sought information directly from the Department of Homeland Security, Immigration and Customs Enforcement (ICE) and have not received a response to date. Immediately after receiving your August 7, 2007 correspondence, our agency drafted a series of questions which we felt important to answer prior to providing the Board with our review. We submitted these questions to Chris Croteau of ICE in August. Shortly thereafter, we requested a meeting with Chris Croteau and James Pallante, both ICE representatives.

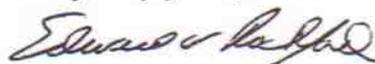
At that meeting, we discussed some of the questions, but did not receive complete answers to them. We then corresponded via e-mail and telephone to Mr. Croteau who indicated that he had forwarded our questions "down to legal" and he did not know when they would be completed. To date, other than the Town of Morristown forwarding answers to us that they would "anticipate" we would receive from ICE, we have not received answers to our questions directly from ICE. We do still feel the answers to the questions submitted to ICE are important and integral to obtaining the most comprehensive knowledge concerning the 287(g) Program. Thus, as a result of the absence of ICE's answers to these pertinent questions, we unfortunately may not be able to answer or address all of the Board's questions or issues as completely as we all may wish.

However, in an effort to continue to gather information for the Board, we thought it important to seek input from other law enforcement agencies with experience with participation in the 287(g) Program or similar federal programs. To this end, we met personally with Passaic County Sheriff's Office's Warden Charles Myers and Deputy Warden Steve Myers as well as with Lieutenant Michael Suplicki. They also recommended we speak with Assistant County Counsel Matthew Malfa, which we did have the opportunity to do.

We further discussed the pertinent issues with Bergen County Sheriff Leo McGuire. In addition, we reached out to Bergen County Counsel Esther Suarez and met personally with Assistant Bergen County Counsel James Sattley in Bergen County. They allowed us to review their files and to discuss with them the issues surrounding participation in this Program.

Based upon our fact gathering from these varied sources, we have compiled a factual report and enclose same for the Board's review.

Very truly yours,



Edward V. Rochford

Enc.

***AN IMPACT REVIEW OF THE UNITED STATES BUREAU OF
IMMIGRATION AND CUSTOMS ENFORCEMENT 287(g) PROGRAM
UPON THE COUNTY OF MORRIS***

***I. What is the Section 287(g) Program and How Does it Differ From the
Current Morris County Correctional Facility procedure?***

What is the 287(g) Program?

The Illegal Immigration Reform and Immigration Responsibility Act (IIAIRA) of September 30, 1996, amended the Immigration and Nationality Act by adding Section 287(g), a program that authorizes the Secretary of the Department of Homeland Security (DHS) to enter into a written Memorandum of Agreement (MOA)(sometimes termed Memorandum of Understanding) with state and local law enforcement to authorize qualified personnel to perform certain acts of an Immigration Officer.

What is the program designed to do?

According to representatives from the Bureau of Immigration and Customs Enforcement (ICE), the federal agency within DHS that is charged with implementation of the program, 287(g) is designed to enable state and local law enforcement personnel, in the course of their normal duties, to question and detain individuals for potential removal from the United States if these individuals are identified as criminal illegal aliens – individuals who pose a significant threat to national security and public safety.

Don't we already have that authority?

Police may currently arrest and detain criminal illegal aliens; but must rely on ICE agents to process the paperwork necessary to start the deportation process. Section 287(g) empowers participating state and local agencies to process these individuals directly and to enter their names into the ICE system for potential deportation.

What procedure does the County of Morris currently follow when an inmate is incarcerated in the County jail and is suspected of being in the United States illegally?

As per instructions and directives from ICE, our Correctional Facility inquires of an inmate if he or she was born outside of the United States. If the answer is "Yes" the information is faxed to the ICE office once a week, as per their directive, on Mondays. Usually ICE sends someone to interview the inmate, but not always. ICE completes the investigation and within 48 hours a detainer is sent to our Facility instructing us to hold the inmate. Usually, after the inmate is sentenced, ICE office will respond within 48 hours to remove the detainee from our custody. If ICE does not respond to our fax, the inmate is discharged from our jail after his case has been adjudicated. This procedure is followed with all inmates; not only for the prisoners of Morristown. It is done for all police agencies in the County of Morris.

We currently have 32 such inmates and ICE moves the inmates 24 to 48 hours after we advise them their criminal matter has been satisfied. From January 1, 2006 to June 30, 2007 we had 62 inmates who were transferred to ICE (in this country illegally) during this period. To our knowledge, the Federal Government has never refused to pick up a prisoner who was determined to be here illegally.

If the inmate is here illegally what will the Federal Government do after we make notification?

ICE makes the determination if they are legal aliens. Once ICE is notified they may or may not come to interview the inmate. If the inmate is interviewed and ICE determines they are here illegal they will place an INS detainer on the individual. Once the detainee's criminal matters have been adjudicated, INS will remove the inmate from the jail.

What is the program *not* designed to do?

The 287(g) program is not designed for rounding up illegal aliens in random street operations. It is not designed to impact issues such as excessive occupancy and day worker activities. In outlining the program, ICE representatives have repeatedly emphasized that it is designed to identify individuals who pose a significant threat to public safety for potential deportation, to include individuals convicted of state or felony offenses.

Will police officers inquire about citizen status to victims of or witnesses to a crime?

Current policies regarding witnesses and victims of crime will not change after certain officers are trained under Federal Statute 287(g). Current policy recognizes the rights of victims and witnesses, and requires all officers to treat victims and witnesses with fairness, compassion and dignity.

II. Costs & Procedural Considerations Associated with the Program

Training

Local law enforcement officers can receive immigration enforcement training-called "287(g) cross designation training"--through the Bureau of Immigration and Customs Enforcement (ICE), which is part of Homeland Security.

Training is provided by ICE and lasts for approximately five weeks. Training topics include, but are not limited to: immigration and criminal law; document examination; cross cultural communications and intercultural relations; alien status; ICE operations; statutory authority; removal charges; and avoidance of racial profiling. Upon successful completion of the coursework, trained officers receive official certification from ICE called "287(g) Authority." Recertification is required. According to ICE, instruction and training materials are provided by ICE at no cost to participating local and state agencies. As part of its 287(g) program, ICE is customarily responsible for participants' travel expenses, mileage, lodging and related expenses.

The cost for the five-week program is about \$500 per officer, "including student handouts, workbooks, training materials and law books." The location of the training is the Federal Law Enforcement Training Center in Glynco, Georgia. The recertification cost is unknown at this time.

Once a police agency applies and gets approval, ICE and the agency create a memorandum of agreement to outline the specific responsibilities appropriate for the law enforcement group's needs and capabilities. ICE then develops a specialized training course for that agency, focusing on immigration law, civil rights, intercultural relations and the issues surrounding racial profiling.

After completing the course, officers receive certification from ICE that allows them special authority regarding immigration violators. After certification, ICE continues to provide supervision and support to officers, providing access to the national database for help in determining whether a suspect is an immigration violator.

The ICE program provides state and local law enforcement with the authorization to identify, process and detain immigration offenders they encounter during daily law enforcement activity, regardless of whether a crime is occurring or has been committed by that individual.

Should the County of Morris decide to participate in the 287(g) program, a Memorandum of Agreement would define the scope and limitations of the authority to be designated. It also establishes the supervisory structure for the officers working under the cross-designation and prescribes the agreed upon complaint process governing officer conduct during the life of the MOA. Under the statute, ICE will supervise all cross-designated officers when they exercise their immigration authorities. Once the scope of limitations of the MOA has been reached, the assistant secretary of ICE, and the governor, a senior political entity, or the head of the local agency may sign the MOA, requesting the cross-designation. It has been suggested that an agency can also enter into an IGSA (Intergovernmental Services Agreement), which in this case would be basically a financial agreement between the County and ICE. However, the two agreements differ in their protection and authority afforded to this agency, its personnel and the County.

While we have seen sample MOAs and IGSA's, we have requested a sample MOA and/or IGSA directly from ICE, as it would be extremely helpful to review the language to which we would be required to agree; but ICE has not provided those documents to us. A review of that language would be helpful and indeed pertinent in our review of the issues in this matter; however, at this time, we cannot comment further on any of those issues that particular document may require or present as we were not provided the agreement language. However, we can be sure that depending upon the type of agreement and the specific language, there will be issues concerning the exercise of authorities, supervisory structure and cross-designation between the agencies.

What is a "classification system" and what is the purpose of a "classification system"?

Experience has shown that accurately classifying inmates is crucial to safely managing a direct supervision facility. The classification process begins with the inmate's entry into the custody of

the MCCF and continues throughout his/her incarceration. The initial classification requires facility staff to collect information about the inmate which has been or can be verified. Information is received by the Court, legal documents, social service interviews, medical staff evaluations, previous institutional records, if available and staff interviews.

The classification process, which is based upon objective criteria, establishes the elements for classification. The information received is used by our facility's Classification Committee to effect informed decisions about the inmate at all phases of the inmate's stay in custody. The first and foremost of these decisions is the inmate's housing assignment.

The initial classification of an inmate takes approximately three to five days. During this process, new admission males are housed within housing unit 2B, unless directed otherwise by medical staff. All female inmates are housed within housing unit 2D regardless of their classification designation. Upon completion of the classification process, an inmate is classified as Minimum, Medium, Maximum or Special Needs and housed accordingly. In order to control inmate behavior and limit inmate violence, the various custody levels are not housed together.

Inmate classification designations are reviewed on a scheduled basis. In addition, each day some inmates are re-classified based upon changes in legal status or institutional behavior record. When re-classification occurs, inmates are housed accordingly. [N.J.A.C. 10A:31-22.1 and 22.2].

In order to effectively accomplish the classification process, a Classification Committee consisting of the following staff will be utilized and consists of:

- One Sergeant five days per week, eight hours per day (Day Shift)
- One Correction Officer five days per week, eight hours per day (Day Shift)
- One Correction Officer five days per week, eight hours per day (Evening Shift)
- Three Social Service Civilians five days per week, eight hours per day (Day Shift)
- One Classification Clerk (Civilian) five days per week, eight hours per day (Day Shift)

Are there special classification rules for suspected illegal immigrants?

All detainees are classified through the objective classification system discussed above. If an illegal immigrant is in the jail with criminal charges pending, they would undergo the aforementioned classification process.

If the county chooses to accept INS detainees, with their only "hold" being for INS purposes, they would not be integrated into our system and would be housed separately. Furthermore, INS facilities operate under their own Detention Manual and rules, which mandates a classification system for those detainees. Due to that mandated system and the fact that we only have 1 open unit, we would only be capable of holding a specific classification of detainee; i.e., min-med-max no females.

Housing Units

Our facility currently consists of eight (8) separate housing units; four (4) of these units are located on the second floor and four (4) units are located on the third floor. Five (5) of these units house general population male inmates who have been classified as minimum, medium or maximum security. Housing units 2A and 2C house minimum security inmates; units 3A and 3B house medium security inmates and unit 3C house maximum security inmates. The inmates confined to those units are double-bunked and each unit contains a maximum capacity of 64 inmates. The total capacity for this category of inmates is 320.

The staffing pattern for these units is one Correction Officer seven days per week, twenty-four hours per day.

Unit 2B houses all new admission males for approximately three (3) days or until the new admission process has been completed. Once completed, each inmate is re-assigned to a unit which corresponds to his classification designation. The inmates confined to this unit are double-bunked and the unit contains a maximum of 64 inmates. Obviously, this situation leaves open questions for which we do not yet have the answers.

Based on information that you have received from other Wardens or correction professionals, do we have to provide any special services to detainees?

INS facilities are governed by a Detention Manual that must be adhered to. There are numerous operational modifications that we would have to initiate.

If we open the vacant housing unit what would our staffing requirements be? Why? Couldn't we staff that unit by paying overtime to our officers?

Direct supervision jails such as ours are predicated upon the continuity of the staff working with a designated inmate population. If the unit was manned, utilizing overtime, we would lose that continuity. Different officers would be assigned different shift and the concept would be adulterated.

Staffing Costs:

In order to open a new housing unit for the specific purpose of housing Federal Immigration detainees, the Bureau of Corrections would require 5.4 officers for the unit itself. The aforementioned figure is based upon a shift relief factor of 1.8 and the need to staff the unit for 3 shifts, 24 hours a day, 7 days a week ($3 \times 1.8 = 5.4$).

The opening of the closed housing unit would also require an additional officer stationed on our 3rd floor corridor. That post would also require 5.4 officers based upon the same formula as noted above. The Corridor Officers control the movement of inmates, supervise inmate sanitation workers, provide security for the civilian staff; i.e., doctors, psychologists, counselors, etc. In addition, they are the response unit for physical and/or fire emergencies all of which is required pursuant to N.J.A.C. 10A:31.

Additionally, Bureau of Corrections would require 2 additional Sergeants for the midnight shifts (1.8 X 1 shift = 1.8) and we would require 2 additional nurses for the midnight shift (1.8 X 1= 1.8)

We would also need a **Spanish speaking teacher and Counselor.** Research indicates that the majority of the detainees we may encounter will be Spanish speaking.

The financial breakdown for Staffing Costs is based upon the current salary figures and will escalate over time. It should also be noted that the figures provided do not include benefits, as this will have to be calculated by the County Treasurer.

<u>Position</u>	<u>Additional Staff</u>	<u>Approximate Cost</u>
Sergeant	2	\$175,092.00
Officer	11	\$516,945.00
Nurse	2	\$ 99,348.00
Teacher	1	\$ 45,000.00
Counselor	1	
Estimated Total		\$836,385.00

It is important to note that, according to Chris Croteau, ICE would not reimburse the County for any start up costs such as those mentioned.

Structural Renovations

The design and construction of the correctional facility did not provide for a religious/educational area. We have satisfied this mandated regulation by use of a closed housing unit. Therefore, if we were to open the last vacant unit, some type of building modification or renovation would need to occur in order to provide **religious/educational area** in order to be in compliance with N.J.A.C. 10A:31 as well as ACA accreditation standards. We are unable to provide a cost analysis due to the complex nature of architectural designs, construction costs, etc.

It should be noted that upon the construction and opening of the Correctional Facility, a perimeter fence was never considered as Board did not want the facility to resemble a jail. Historically, during discussions concerning the site of the Correctional Facility within Morris Township, a verbal agreement was entered into between the County and the Morris Township Committee that the Correctional Facility would not exhibit any “razor” wire around the jail and there would not be a fence around the entire perimeter of the Correctional Facility. However, if participation in the Program is to occur, the fence would be a priority as it is imperative to maintain the integrity and security of the facility in order to maintain public, staff and inmate security and safety.

Special fencing would be required for the perimeter of our jail because the current entrance gate does not provide perimeter security; it merely is meant to stop traffic flow. Individuals and protesters may easily penetrate the property from multiple points of entry. Please see the attached fencing proposal from Essex Fence Company reflecting cost of the proper fencing, as proposed, which entails a chain link fence ten feet (10 feet) in height and one thousand and six-hundred and seventy-one (1,671) feet long made from 1 ¼” 9 gauge galvanized steel with a 20 foot double gate included and two 4 foot wide single swing gates and concrete footings. In addition, it should also be noted that we have repeatedly requested through our annual capital request, which has been denied to date, a storage area for supplies and equipment. We have had to use the closed unit’s recreation area as an additional storage area. Should we need to open this closed unit, we would need a storage area/ or structure with the estimated cost to be \$100,000.00.

Structural Cost

<u>Project</u>	<u>Cost</u>
Building Renovation/Construction	unknown
Perimeter Fence	\$143,791.00
Storage Facility	\$100,000.00
Estimated Total	\$243,791.00

Ancillary Services Cost-Medical, Food, Sanitation & Maintenance

We should anticipate that should the County participate in the Program, that there will be an increase in various medical related areas such as pharmaceutical, diagnostic, laboratory and dental services. We would estimate an increase to our medical costs of at least \$100,000.00.

At our current contract price, we would incur an additional \$131,700.00 for food costs, calculated at \$1.89 X 3 meals daily X 365 days X 64 possibly additional inmates.

Also, with the opening of the vacant unit, we would estimate a cost of an additional \$20,000.00 in sanitation and maintenance related costs.

<u>Service</u>	<u>Cost</u>
Medical	\$100,000.00
Food	\$131,700.00
Sanitation/Maintenance	\$ 20,000.00
Estimated Total	\$251,700.00

Staffing, Structural and Ancillary Costs -Estimated Total \$1,331,876.00

Inmate Cost

The accounting firm of Deloitte & Touche LLP conducted a study for the County of Morris in January 1997 which “projected” the cost per inmate, per day, in our new Correctional Facility. In 1997, that rate was \$191.06 per inmate, per day. Taking into account inflation, that rate is most probably higher today. We contacted Vicki Taylor, the individual in charge of the negotiation of the daily rate that ICE would agree to pay per illegal detainee. She indicated that the current maximum daily reimbursement rate in the northeast United States is \$95.00 per day, per inmate. She stated that it is doubtful that ICE would pay more than the \$95.00 per day and they definitely would not pay us \$191.06 per inmate, per day.

Non-Economical Issues

As noted above, the opening of our closed unit will present an immediate need for an area to provide religious services along with education services as mandated by N.J.A.C. 10A:31 and our ACA accreditation standards.

Also, as noted above, we currently utilize the vacant unit to store supplies and equipment due to the lack of space afforded to us upon our move to the present facility.

The cleanliness and minimized maintenance cost for operating this facility are a direct result of having the vacant unit which provides us the ability to continually rotate units thus providing routine preventative maintenance and extensive cleaning of all the housing units.

Since the opening of the facility, our population has exceeded 350 inmates on a number of occasions which has forced us to open all units albeit on a temporary basis. Additionally, we have encountered at least 6 large scale raids with the admission of over 50 detainees.

Should the county choose to participate in the 287(g) program, it is important to realize that then either of the above scenarios occur (population exceeding over 350 inmates or large scale raid) we will not have the cell space to provide to any agency requesting same. We are prohibited by N.J.A.C., 10A:31 to “triple bunk” or place three persons in a single cell.

Of equal importance to note, is that should the County elect to participate in this Program, we would not be able to accept female inmates or male medical/mental health inmates due to our inability to separate them from the general population.

Additional Issues

Our communications with other Correctional Facility Wardens who have experimented with this program have informed us that should we choose to participate in this program, we need to prepare for public protests, regular adversarial contact with the ACLU, UN inspector visits and voluminous lawsuits filed by various parties (including inmates and third parties such as the ACLU or other human rights advocates groups).

We met with Warden Chuck Meyers and Deputy Warden Steve Meyers of the Passaic County Sheriff's Office to discuss their experience with this Program. They provided us with a report documenting their experience with the Program and we have attached same for the Board's reference. To summarize their findings, they indicate that as a result of holding inmates being detained by the INS through the signed Intergovernmental Agreement and Memorandum of Understanding, the department becomes an agent of the INS. Thus, as such an agent, the department must comply with the ICE Detention Standards as set forth in their Detention Operations Manual. The ICE Manual differs from the rules and regulations set for by N.J.A.C. 10A:31 in reference to the operations of Adult County Correctional Facilities. In our case, as we are accredited, our standards may be closer to those of ICE, but there are still substantial differences, as discussed above, that will cause increases to the cost of operating the Correctional Facility.

Passaic County Sheriff's Office states that as per ICE regulations, they were required to remove their Canine Teams from the facility which they say greatly impacted the overall security and control of the facility and inmates. As a result of this impact, they needed to commission the creation of a Special Operations Response Team costing them \$80,000.00. In our case, we most probably would not have to remove our canine team, but pursuant to the ICE Detention Operation Manual, canines may not be near or even on the same floor as an ICE detainee.

The Passaic County Sheriff's Office, in our discussions and as you will see, in their report, indicates that as a result of their participation in the Program, they were subjected to a several month long audit by the Inspector General's Office. During the audit, they state that INS personnel scrutinized all aspects of their correctional operations. The Passaic County Sheriff's Office indicated that the inspectors were overreaching and overbearing and frequently interrupted facility operations. At one point, the Sheriff was forced to have them removed from the facility as a result of their actions. The INS final assessment resulted in identifying areas of non-compliance with the ICE Detention Operation Manual. The ICE Detention Operation Manual may be reviewed in its entirety at <http://www.ice.gov/partners/dro/opsmanual/index.htm>

In addition to these issues, the Passaic County Sheriff's Office noted that during the period of time they housed INS detainees, they had five (5) demonstrations at their correctional facility. During those protests, they had to keep peace and additional security precautions were utilized causing their agency to incur overtime to supplement normal staffing. They indicate in their report that they called in at least 20 additional correctional personnel each time to afford the proper exterior and additional interior security teams. Passaic County Sheriff's Office also noted that during these protests, they needed to deploy uniformed patrol units of at least 4 patrol units and 1 supervisor to secure the demonstration area. Additionally, they deployed mounted police for crowd control which consisted of at least 3 officers with mounts.

The Passaic County Sheriff's Office also reported that they utilized crime scene investigators during these protests to gather still photos and video in order to document the demonstration. This entailed the assignment of 2 detectives. Further, each of these demonstrations required specially trained Riot Control teams, which is a deployment of 10 officers. Special Weapons teams for lethal force protection were also utilized which required deployment of 8 sniper/observers and at least 1 supervisor.

The Passaic County Sheriff's Office estimate that the total costs incurred for regular officers (without differentials) for a three hour detail at overtime rate would be \$9,772.65. With equipment, film, fuel among other various incidentals, the cost would be over \$10,000 for each protest totaling approximately \$50,000 spent for demonstrations. The Passaic County Sheriff's Office also warns of "media fallout". They indicate that this will be an ongoing issue and recall that detainee rights groups such as Desi Rising Up and Moving (DRUM), New Jersey Action Network, Life or Liberty and the New Jersey Civil Rights Defense Committee were constantly authoring internet blogs and published papers "slandering" their department and their Sheriff with the alleged mistreatment of the detainees. These groups also contacted the media on a continuing basis on behalf of the incarcerated detainees causing the local and national media to contact the correctional facility for investigative reports and to conduct interviews of the detainees. Passaic County Sheriff's Office also reports that the inmates filed numerous lawsuits citing poor living conditions, lack of food and sanitation and substandard medical care. The Passaic County Sheriff's Office indicated that these issues all require additional staff time. In addition, they needed to utilize their County Counsel to answer the subsequent lawsuits that although considered "frivolous" still needed to be defended resulting in costs to the County. Passaic County Assistant County Counsel indicated to us that the detainees increased their jail population and thus increased their amount of litigation as well.

In addition to the above noted issues, it may also be important to know that there was an agreement between the former Freeholder Board and the Township of Hanover that the County would not house state or federal inmates. In speaking with Hanover Township Mayor Ron Francioli, he states that "that the Township of Hanover would oppose the County housing Federal detainees."

Further, the United States Marshal Service had previously requested the County house Federal inmates and this proposal was rejected by the County twice. In 1993, the County applied to the Court to request the New Jersey Department of Corrections remove State inmates and the County prevailed in that action.

Legal Issues

Upon meeting with Assistant County Counsel James Sattley and examining the litigation files for the lawsuits filed by illegal detainees housed in their correctional facility, we learned that over a period of five (5) years, there were a total of eleven (11) lawsuits filed. The subjects of those suits were varied and included alleged mistreatment and failure to provide adequate medical treatment as well as the deprivation of other civil rights.

The total cost of litigation and settlements over that period of time in relation to those illegal detainees was in excess of \$200,000. Assistant County Counsel Sattley opined that the cost would have exceeded this amount if more of the litigation costs were handled by outside counsel. Due to the size of their County Counsel's office, some of the litigation was handled "in house", thus decreasing the legal costs and fees. One of the lawsuits filed against Bergen County entailed a transgender detainee that filed suit claiming that the County was responsible for his

failure to achieve his change in gender as he alleged they did not provide him with his prescribed hormones. He claimed the County failed to provide him with proper medical care.

In addition, it was noted that ICE is generally dismissed from any lawsuits by way of motion in Federal Court leaving the local agency (in this case, possibly Morris County and the Morris County Sheriff's Office and Bureau of Corrections) to defend the civil rights claims.

In addition to those legal issues, there is the issue of liability and responsibility between our Correctional Facility and the Bureau of Immigration and Customs. It is our understanding from the discussions with Chris Croteau of ICE, that upon signing the Memorandum of Agreement, we would then have special computers and computer software installed from which we would be linked into the government's system. Further, it is our understanding that ICE does not pay for this specialized equipment; nor does it reimburse the County for same. We would note, in this regard, that in our Correctional Facility's experience, the information may not always be up to date and we would not have any control over this. This may be a concern should we need to rely upon and subsequently act upon this information, thus possibly subjecting our Correctional Facility and the County to liability.

III. Questions Submitted to ICE

As you know, after receiving County Administrator John Bonanni's August 7, 2007 correspondence, we immediately drafted a series of questions which we felt important to have answered prior to providing the Board with our report. We submitted these questions to Chris Croteau of ICE in August and shortly thereafter, we requested a meeting with representatives from ICE. At that meeting with Chris Croteau and James Pallante, we discussed the questions, but, did not receive answers to them. We then corresponded via e-mail and communicated via telephone attempting to obtain answers to the questions so that we would be able to provide same to the Board. However, to date, despite intervention and assistance from the Town of Morristown, we have not received answers to our questions and Chris Croteau has indicated that our questions we posed and forwarded to him, he forwarded to his legal department and that is where they remain. As you will note, however, we have discussed in this report answers to some of these questions as a result of speaking with other agencies.

Those questions include:

Are any special computers required, and is there special software? Who pays for that? Are there any "maintenance" charges we would be responsible for?

Are there any special reporting requirements? Daily, weekly, monthly, etc?

Are all medical expenses covered? If an inmate has to be hospitalized, who "guards" him/her at the hospital? If it is our responsibility to guard the detainee who pays for the overtime? How often is the County reimbursed for any medical or overtime expenses? What are the Federal Guidelines for medical issues for inmates, are there any procedures that we are prohibited from doing, do we have to "clear" any procedures through your office or your medical staff first?

What expenses are included in the negotiated daily rate?

Morris County had the accounting firm of Deloitte & Touche LLP do a study in January 1997 which “projected” the cost per inmate, per day, in the new facility. In 1997 that rate was \$ 191.06 per inmate, per day. Due to inflation that figure is probably higher today. Can you tell me if the Federal Government would consider a daily rate of over \$200.00 per day, per inmate? How often will the County receive payment for the daily rate?

Do the inmates have any special visitation rights as it pertains to family, friends, or representatives of this Country?

Are there any special religious rights?

Are there any special meal requirements?

How do we handle a language barrier if the detainee only speaks a language we are not familiar with?

Are there any special clothing requirements?

If we have an inmate who is a “problem” and we ask to have him/her removed, will we be able to do that, and how soon will the inmate be removed? Will your office provide transportation for that inmate?

Are we responsible for any special Federal Regulations concerning detainees?

Will any of our officers or employees be governed by the “Hatch” Act and could this lead them to be disqualified for running for any public office?

If a lawsuit is filed either by an inmate or an outside group, against an officer, employee, County or individual, who defends that person or entity and who pays for our defense? How is the defense attorney selected? Do we have a “choice” when selecting an attorney? Will the Federal Government pick up all costs associated with a lawsuit, depositions, fees, etc? Would a case be settled against our wishes?

How many lawsuits have been filed in New Jersey because of 287(g), and what were the lawsuits for? Can you give us copies of each complaint, and the status of each one?

Is there presently a moratorium on the 287(g) Program?

Will the Morristown Police Department/Town of Morristown receive 287(g) status if the County does not participate? If no, what is the reason?

Have any Counties in New Jersey dropped out of the program in the past 3 years?

Have any Counties in New Jersey joined the program in the past 3 years?

Who transports the inmates to and from Federal Court for hearings/trials?

How many detainees do you estimate we will receive during:

- a) The first 3 months*
- b) The next 3 months*
- c) The first year*

Will we be required to house detainees who were arrested in other jurisdictions or who were being house in a jail or prison outside of Morris County?

Are detainees allowed to have money put in their “commissary” account?

Are we required to give the detainee “contact” visits?

Are the detainees allowed to make “collect” telephone calls?

Are there any special visitation rights or procedures for an attorney representing a detainee?

If an organization or a group of people stage a rally at the jail, and officers are on overtime because they are needed to control the situation, who is responsible for the overtime?

If an emergency occurred after normal business hours, would we be able to contact a representative of ICE and have a call back within a reasonable period of time?

We also requested from ICE, copies of contracts with other jails/prisons, but have not received same. In addition, we requested a copy of ICE’s contract with Corrections Corporation of America for the Elizabeth, NJ facility, but have not received that document either.

IV. Summary

As noted above, participation in the 287(g) Program would entail costs for Correctional Facility renovation, additional staff (salary and benefits), ancillary costs (medical, food, sanitation and maintenance), equipment, supplies, vehicles, training and overtime that would need to be borne by the County, in the estimated amount of **\$1,331,876.00**.

In addition, it is important to recall that in 1997 Deloitte & Touche projected our cost per inmate at \$191.06, which would be higher today due to inflation. When speaking to ICE’s representative in charge of negotiation for the daily reimbursement rate paid for each inmate, she indicated that the current maximum daily reimbursement rate for the northeast United States is \$95.00 per day per inmate. However, those costs do not include any estimate for legal costs for defending 287(g) inmate suits.

In considering participation in the Program, it is extremely important to determine what resources or benefits would be gained by the County of Morris that we do not currently have if local law enforcement officers are delegated federal immigration authority.

It was and still is our intent to provide the Board with a factual and comprehensive review of the 287(g) Program. While we do feel that this report does summarize some of the important aspects to consider with regard to the Program, we do still feel that it would be extremely helpful to have ICE answer our questions.

We are in receipt of correspondence from the Town of Morristown, received this Monday, October 15, 2007. The Town of Morristown indicates in their correspondence that “We have not been authorized to answer the Sheriff’s questions on behalf of the U.S. Immigration and Customs Enforcement (ICE), but are merely sharing information provided to Morristown to facilitate the County’s review of Morristown’s request that the County support its 287(g) application”.

The correspondence then sets forth what Morristown has termed “Anticipated Answers” to each of the questions that our agency posed to ICE. While we do appreciate the Town of Morristown trying to assist us in procuring the answers to these questions, understandably we cannot utilize “Anticipated Answers” drafted by the Town of Morristown to the questions that we posed directly to ICE in order to formulate a factual report that is meant to guide the Board to a fully informed decision on this matter. We not believe it would be prudent to use answers that we are unsure are correct and of which the origin is unknown. We also do not understand how Morristown is privy to an “Anticipated Answer” when we are still awaiting a response from ICE.

The Town of Morristown’s correspondence further notes that it wishes for the County of Morris to enter into an Intergovernmental Services Agreement (IGSA) and that is “all it needs”. The Town of Morristown explains that this IGSA would be a financial agreement between the County and ICE to house federal detainees arrested by Morristown that are awaiting deportation. The Town of Morristown, in its correspondence, advocates for the County to enter an IGSA; but then admits that there “are benefits to the County and Morris County Sheriff’s Office (MCSO) to entering into an MOA that could be intertwined with an IGSA to maximize the indemnification and defense of MCSO personnel...”. Obviously, it would not be responsible to enter into a type of agreement that may provide *less* protection than another (i.e. for indemnification and defense options) to our agency, our personnel and the County. We have enclosed a sample of the Memorandum of Understanding between the Sheriff’s Office of Mecklenburg County (North Carolina) and ICE provided to us by the Town of Morristown. We are still awaiting a sample Memorandum of Understanding (or Memorandum of Agreement) so that we may review the terms of the *specific* Agreement that they would wish us to enter.

Most importantly, whether it would be an IGSA or MOA entered into by the County, the estimated amount of \$1,331,876.00 would still need to be expended in order to participate in the 287(g) Program.

In addition, should the Board decide not to participate in the 287(g) Program, as an alternative to suggest to the Town of Morristown, the Board should know that many county law enforcement agencies travel in excess of ½ hour to transport an inmate to a correctional facility. Perhaps an alternate option for the Town of Morristown, should Mayor Cresitello still wish to participate in the 287(g) program, is for the detainees to be transported to Elizabeth which is ½ hour distance

from Morristown. Of course, should that be an option that the Town of Morristown would like to explore, we can discuss with them how our agency may be of assistance in that regard.

We hope that our review of the pertinent issues will be helpful in your decision-making process. Of course, should we receive complete and substantive answers to our questions from ICE, we will at that time, supplement our review for you. Please let us know if you should need anything further.
