

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS) and the Arizona Department of Corrections (ADOC) under which U.S. Immigration and Customs Enforcement (ICE) authorized, nominated, trained and certified ADOC personnel to perform certain immigration enforcement functions as specified herein. The ADOC represents the State of Arizona in the implementation and administration of this MOU. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in Arizona.

I. PURPOSE

The purpose of this MOU is to set forth the terms and conditions for this agreement to authorize selected ADOC personnel (participating ADOC personnel) to perform certain functions of an immigration officer, and how those participating ADOC personnel will be nominated, trained, authorized, and supervised in performing the immigration enforcement functions specified in this MOU.

Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by participating ADOC personnel as members of the ADOC. The exercise of immigration enforcement authority granted under this MOU to participating ADOC personnel shall occur only as provided in this MOU.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Under Secretary for Border and Transportation Security, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

III. POLICY

This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the participating ADOC personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating ADOC personnel be subject to ICE supervision while performing immigration related duties pursuant to this MOU. For the purposes of this MOU, ICE officers will provide

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supervision for participating ADOC personnel only as to immigration enforcement functions. ADOC retains supervision of all other aspects of the employment of and performance of duties by participating ADOC personnel.

Before participating ADOC personnel will be authorized to perform immigration officer functions granted under this MOU, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this agreement. Only participating ADOC personnel who are selected, trained, authorized and supervised as set out herein have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

The ICE and ADOC points of contact for purposes of this MOU are identified in Appendix A.

IV. DESIGNATION OF FUNCTIONS

For the purposes of this MOU, the functions that may be performed by participating ADOC personnel are indicated below with their associated authorities:

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> The power to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States. INA § 287(a)(1) and 8 C.F.R. 287.5(a)(1). 	<ul style="list-style-type: none"> Interrogate in order to determine probable cause for an immigration violation
<ul style="list-style-type: none"> The power and authority to administer oaths and to take and consider evidence. INA § 287(b) and 8 C.F.R. 287.5(a)(2). 	<ul style="list-style-type: none"> Complete required criminal alien processing, to include fingerprinting, photographing, and interviewing, for ICE supervisor review
<ul style="list-style-type: none"> The power to issue detainers. 8 C.F.R. 287.7. 	<ul style="list-style-type: none"> Prepare immigration detainers and 213, Record of Deportable/Inadmissible Alien for aliens in categories established by ICE supervisors Prepare affidavits and take sworn statements

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> The authority to prepare charging documents. INA Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R. 238.1; INA Section 241(a)(5), 8 C.F.R. 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3. 	<ul style="list-style-type: none"> Prepare, as needed, a Notice to Appear (NTA) or other removal charging document, as appropriate including Notice of Intent to Administratively Remove, Notice of Intent to Reinstate Removal, or Notice of Intent to Expediently Remove for signature of ICE officer for aliens in categories established by ICE supervisors

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating ADOC personnel in exercising these authorities shall be DHS policies and procedures. However, when engaged in immigration enforcement activities, no participating ADOC personnel will be expected or required to violate or otherwise fail to maintain ADOC standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or ADOC rules, standards, or policies.

V. NOMINATION OF PERSONNEL

The Director, Arizona Department of Corrections, will initially nominate to ICE, eight (8) correction officer candidates and two (2) supervisory correction officer candidates for training and certification under this MOU. All candidates and supervisors will be operationally assigned by ADOC to carry out the duties contemplated by the parties, with the principal place of assignment being ASPC - Phoenix, Alhambra Unit and ASPC - Perryville, Lumley Unit.

ADOC will endeavor not to reassign approved candidates from their primary place of duty for a period of at least two years following training and certification of approved candidates as outlined in this MOU. Further, to the extent possible and practicable, ADOC will give ICE sixty (60) days' notice of its intent to reassign any approved candidate.

For each candidate nominated, ICE may request any information necessary for a background check and evaluation for suitability to participate in the enforcement of immigration authorities under this MOU. All candidates must be United States citizens. All candidates must be competent English/Spanish bilingual speakers. All candidates will have at least two years' correctional work experience for ADOC. No candidate will be married to a person illegally present within the United States or knowingly have family associations which could adversely impact their ability to perform ICE functions under this MOU. All candidates must be approved by ICE and must be able to qualify for appropriate security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of

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participating ADOC personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOU.

VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated and accepted ADOC personnel tailored to the designated immigration functions and types of cases typically encountered by ADOC correctional personnel at a mutually designated site in Phoenix, Arizona, utilizing ICE designed curriculum and competency testing. Training will include presentations on this agreement, elements of this MOU, scope of immigration officer authority, immigration and nationality law, cross-cultural issues, the ICE Use of Force Policy, civil rights law, the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability and other relevant issues. ICE will provide all training materials. ADOC is responsible for the salaries and benefits for any of its personnel being trained or performing duties under this MOU. ADOC will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this agreement.

All nominated and accepted personnel will receive specific training regarding their obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating ADOC personnel are trained and certified ICE will provide certified personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions, until either party terminates this MOU pursuant to Section XVII, below. Local training on relevant administrative, legal and operational issues will be provided on an ongoing basis by ICE supervisors.

VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Phoenix, Arizona, the names of those ADOC personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the Special Agent in Charge will provide to the participating ADOC personnel a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to ADOC. The activities of personnel certified under this MOU will be evaluated by the ICE Immigration Enforcement Agents as addressed in Section IX, below.

Authorization of any participating ADOC personnel to act pursuant to this MOU may be revoked at any time by ICE or ADOC. Such revocation will require immediate notification of the other party to this MOU. The Director, Arizona Department of Corrections and the ICE

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Special Agent in Charge in Phoenix will be responsible for notification of the appropriate personnel in their respective agencies. If any participating ADOC personnel is the subject of a complaint of any sort that may result in that individual receiving employer discipline of anything other than of a *de minimus* nature or becoming the subject of a criminal investigation, ADOC shall, to the extent allowed by state law, immediately notify ICE of the complaint. The resolution of the complaint shall be promptly reported to ICE. Complaints regarding exercise of immigration enforcement authority by any participating personnel shall be handled in accordance with Section XII, below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.

VIII. COSTS AND EXPENDITURES

Participating ADOC personnel will carry out designated functions at ADOC expense, including salaries and benefits. Any movement of ADOC prisoners who happen to be aliens will only be for ADOC's own purposes and at ADOC expense. ICE will provide training personnel, training materials and supervision.

IX. ICE SUPERVISION

Immigration enforcement activities of the participating ADOC personnel will be supervised and directed by ICE Immigration Enforcement Agents (IEA) in Phoenix, Arizona. Participating ADOC personnel cannot perform any immigration officer functions pursuant to DHS authorities herein except when working under the supervision of an ICE officer. Participating ADOC personnel shall give notice to the ICE IEA as soon as practicable after, but in all cases within 24 hours, of any detainer issued under the authorities set forth in this MOU. The actions of participating ADOC personnel will be reviewed by the ICE IEA's on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For the purposes of this MOU, ICE IEA's will provide supervision of participating ADOC personnel only as to immigration enforcement functions. ADOC retains supervision of all other aspects of the employment of and performance of duties by participating ADOC personnel.

If a conflict arises between an order or direction provided by the ICE IEA and ADOC rules, standards, or policies, the conflict shall be promptly reported to the ICE Special Agent in Charge in Phoenix or designee and the Director, Arizona Department of Corrections or designee when circumstances safely allow the concern to be raised. The Special Agent in Charge and the Director, Arizona Department of Corrections, shall attempt to resolve the conflict.

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X. LIABILITY AND RESPONSIBILITY

ADOC will bear its own costs and be responsible for any liability created as a result of any act or action of its personnel, property and resources.

Participating ADOC personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 *et seq.*, when performing a function as authorized by this MOU. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOU that participating ADOC personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with this MOU. 8 U.S.C. § 1357(g). ICE will not be responsible for any intentional misconduct on the part of any participating ADOC personnel.

Participating ADOC personnel who are named as defendants in litigation arising from activities carried out under this MOU may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and be presented to the Office of the Chief Counsel at 2035 N. Central Avenue, Phoenix, Arizona 85004. Any request for representation must be clearly marked on each written communication that the information is "Subject to Attorney-Client Privilege." The Chief Counsel will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit to the ICE Office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and a statement of the view of ICE with respect to whether such representation would be in the interest of the United States to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

ADOC agrees to cooperate with any federal investigation related to this MOU to the extent of its available powers. It is understood that information provided by any ADOC personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 526 (1967).

The Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. See also *United States v. Henthorn*, 980 F.2d 29 (9th Cir. 1991). As the activities of participating ADOC personnel under this MOU are undertaken under federal authority, the participating personnel will comply with federal standards and guidelines relating to such cases.

XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES

Pursuant to this MOU, participating ADOC personnel will perform certain federal immigration enforcement functions. In doing so, these participating personnel are bound by a federal civil rights statutes and regulations, as well as policy directives, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating ADOC personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreter will be provided by ADOC as needed.

XII. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating ADOC personnel designated, or activities undertaken, under the authority of this MOU is included at Appendix B.

XIII. REQUIRED REVIEW OF ACTIVITIES

The ICE Assistant Secretary and the Director, Arizona Department of Corrections, shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in Phoenix, Arizona at locations to be agreed upon by the parties. The reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in the State of Arizona. An initial review meeting will be held no later than nine months after certification of the initial class of participating ADOC personnel under Section VII, above.

XIV. COMMUNITY OUTREACH

ADOC will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE may participate in such outreach upon ADOC request.

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XV. RELATIONS WITH THE NEWS MEDIA

As part of its commitment to the communities it serves, ADOC may, in its discretion, communicate the intent, focus, and purpose of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU.

ADOC hereby agrees to coordinate with ICE any release of information to the media regarding actions taken under this MOU. The points of contact for ICE and ADOC for this purpose can be found at Appendix C. Both parties recognize the need to respond timely to media requests.

XVI. MODIFICATION OF THIS MOU

Any modifications to this MOU must be proposed in writing and approved by the signatories.

XVII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until terminated by either party.

Either party, upon written notice to the other party may terminate it at any time. Such notice shall be delivered personally or by certified or registered mail. Termination of the MOU shall take effect immediately after receipt of such notice.

Either party may, upon written or oral notice to the other party, temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the Director, Arizona Department of Corrections. Notice of termination or suspension by ADOC shall be given to the ICE Special Agent in Charge in Phoenix, Arizona.

Except for the rights of participating ADOC personnel as described in Section X, this MOU does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOU, each party represents it is fully authorized to enter into this agreement, and accepts the terms, responsibilities, obligations and limitations of this Agreement, and agrees to be bound thereto to the fullest extent allowed by law.

 9/19/05

Randy Beardsworth
Acting Under Secretary
Border and Transportation Security
Department of Homeland Security

Date



Dora B. Schiro
Director
Arizona Department of Corrections

Date September 16, 2005



John P. Clark
Acting Assistant Secretary
U.S. Immigration and Customs Enforcement

Date 9-19-05

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