

MEMORANDUM OF AGREEMENT

287(g) Jail Enforcement Model

I. PARTIES

This Memorandum of Agreement (MOA) constitutes an agreement between U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and Florida Department of Corrections (Department), pursuant to which ICE delegates to nominated, trained, certified, and authorized Department personnel the authority to perform certain immigration enforcement functions as specified herein. The Department and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

II. PURPOSE

The purpose of this collaboration is to enhance the safety and security of communities by focusing resources on identifying and processing removable aliens who have been arrested and booked into the Department's correctional facilities. This MOA sets forth the terms and conditions pursuant to which selected Department personnel (participating Department personnel) will be nominated, trained, and approved by ICE to perform certain limited functions of an immigration officer within the Department's correctional facilities. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating Department personnel as members of the Department. However, the exercise of the immigration enforcement authority delegated under this MOA to participating Department personnel shall occur only as provided in this MOA.

III. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Pub. L. No. 107-296, authorizes the Secretary of DHS 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. Such authority has been delegated by the Secretary to ICE, and this MOA constitutes such a written agreement.

IV. RESPONSIBILITIES

ICE retains sole discretion in determining how it will manage its limited resources and meet its mission requirements. ICE will assume custody of an alien only after said individual has been released from Department custody.

A. DESIGNATION OF AUTHORIZED FUNCTIONS

Approved participating Department personnel will be authorized to perform only those immigration officer functions set forth in the Standard Operating Procedures (SOP) in Appendix A.

B. NOMINATION OF PERSONNEL

The Department will use due diligence to screen and nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens, have knowledge of, and authority to enforce, laws and regulations pertinent to their law enforcement activities and their jurisdictions, and have been trained on maintaining the security of Department facilities, and have the authority to enforce rules and regulations governing inmate accountability and conduct.

ICE will conduct a background investigation and make an eligibility determination on each candidate prior to personnel being authorized to perform duties under this MOA.

All Department candidates must be approved by ICE and must be able to qualify for access to the appropriate DHS and ICE databases/systems and associated applications. Should a candidate not be approved, a qualified substitute candidate may be submitted.

C. TRAINING OF PERSONNEL

Before participating Department personnel receive authorization to perform immigration officer functions under this MOA, they must successfully complete delegation of immigration authority training provided by ICE on relevant administrative, legal, and operational issues tailored to the immigration enforcement functions to be performed.

The training will be taught by ICE instructors and tailored to the immigration enforcement functions to be performed. Each Department nominee must pass each examination with a minimum score of 70-percent to receive certification. If a Department nominee fails to attain a 70-percent rating on an examination, the Department nominee will have an opportunity to review the testing material and re-take a similar examination. During the entirety of training, the Department nominee will be offered a maximum of one remedial examination. Failure to achieve a 70-percent rating on any two examinations (inclusive of any remedial examination), will result in the disqualification of the Department nominee and discharge of the nominee from the training.

Participating Department personnel will also be required to complete refresher training as needed, but not more frequently than every two years after the initial course completion. Participating Department personnel will also complete any additional training required by ICE on relevant administrative, legal, and operational issues related to the immigration officer functions to be performed.

D. CERTIFICATION AND AUTHORIZATION

Upon successful completion of initial training, Department personnel shall be deemed “certified” under this MOA.

ICE will certify in writing the names of those Department personnel who successfully complete training and pass all required test(s). Upon receipt of the certification, the ICE Field Office Director (FOD) will provide the participating Department personnel a signed authorization letter allowing the named Department personnel to perform specified functions of an immigration officer. ICE will also provide a copy of the authorization letter to the Department. ICE will also execute ICE Form 70-006, Designated Immigration Officer. Only those certified Department personnel who receive authorization letters and ICE Form 70-006 issued by ICE and whose immigration enforcement efforts are overseen by ICE may conduct immigration officer functions described in this MOA.

Along with the authorization letter and ICE Form 70-006, ICE will issue the certified Department personnel official immigration officer credentials. Participating Department personnel shall carry their ICE-issued credentials while performing immigration officer functions under this MOA. Such credentials provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, when a participating Department employee ceases his/her participation, or when deemed necessary by the FOD.

Department personnel may have their delegated authority revoked at any time for any reason. However, where a revocation would effectively amount to the suspension/termination of the entire MOA (i.e. where a revocation would leave no participating Department personnel available to carry out responsibilities under the 287(g) program), ICE will follow the suspension and termination notice processes described in Section VIII, below. The letter of authorization issued to Department personnel will remain valid until the Department personnel is revoked via the issuance of a letter of revocation signed by the FOD. The Department and FOD will be responsible for notification to the appropriate personnel in their respective agencies. The suspension or termination of this MOA, a process described in Section VIII, shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

E. COSTS AND EXPENDITURES

ICE is responsible for the installation and maintenance of the Information Technology (IT) infrastructure. The use of the IT infrastructure and the DHS/ICE IT security policies are defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE's Chief Information Security Officer and the Department's Designated Accreditation Authority. The Department agrees that each of its sites using an ICE-provided network access or equipment will sign the ISA, which defines the DHS ICE 4300A Sensitive System Policy and Rules of Behavior for each user granted access to the DHS network and software applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

The Department is responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material used in the execution of the Department's mission. ICE will provide instructors and training materials. The Department is responsible for the salaries and benefits, including any overtime, of all of its personnel being trained or performing duties under this MOA and of those personnel performing the regular functions of the participating Department personnel while they are receiving training. ICE is responsible for the costs of the Department personnel's travel expenses while in a training status, as authorized by the Federal Travel Regulation and the ICE Travel Handbook. These expenses include housing, per diem and all transportation costs associated with getting to and from training. ICE is responsible for the salaries and benefits of all ICE personnel, including instructors and supervisors.

The Department is responsible for providing all administrative supplies (e.g. paper, printer toner) necessary for normal office operations. The Department is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints, etc.

F. ICE SUPERVISION

Immigration enforcement activities conducted by participating Department personnel will be supervised and directed by ICE. Participating Department personnel are not authorized to perform immigration officer functions except when working under the supervision or direction of ICE. Additional supervisory and administrative responsibilities are specified in Appendix A.

The actions of participating Department personnel will be reviewed by ICE officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for individual training or guidance.

For purposes of this MOA, ICE officers will provide supervision of participating Department personnel only to immigration enforcement functions as authorized in this MOA. The Department retains supervision of all other aspects of the employment of and performance of duties by participating Department personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating Department personnel in exercising these delegated authorities under this MOA shall be DHS and ICE policies and procedures. ICE is responsible for providing the Department with the applicable DHS and ICE policies. However, when engaged in immigration enforcement activities, no participating Department personnel will be expected or required to violate or otherwise fail to maintain the Department's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.

If a conflict arises between an order or direction of an ICE officer or a DHS or ICE policy and the Department's rules, standards, or policies, the conflict shall be promptly reported to the points of contact in Section VII, who shall attempt to resolve the conflict.

G. INTERPRETATION SERVICES

Participating Department personnel will provide an opportunity for aliens with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the Department as needed. Whether or not an interpreter is used, the record should always include questions and answers concerning the need for an interpreter.

The Department will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. A qualified interpreter, which may include Department personnel, means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary.

H. LIABILITY AND RESPONSIBILITY

Except as otherwise noted in this MOA or allowed by Federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the Department will be responsible and bear the costs of participating Department personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability, as long as not inconsistent with State or Federal law.

Participating Department personnel will be treated as Federal employees only for purposes of the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1), 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function on behalf of ICE as authorized by this MOA. *See* 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. In addition, it is the understanding of the parties to this MOA that participating Department personnel performing a function on behalf of ICE as authorized by this MOA will be considered acting under color of Federal authority for purposes of determining liability and immunity from suit under Federal or State law. *See* 8 U.S.C. § 1357(g)(8).

Participating Department personnel named as personal-capacity defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. *See* 28 C.F.R. § 50.15. Absent exceptional circumstances, such requests must be made in writing. Department personnel who wish to submit a request for representation shall notify the local ICE Office of the Principal Legal Advisor (OPLA) field location at 3535 Lawton Rd, Suite 100, Orlando, FL 32803. OPLA, through its headquarters, will assist Department personnel with the request for representation, including the appropriate forms and instructions. Unless OPLA concludes that representation clearly is unwarranted, it will forward the request for representation, any supporting documentation, and an advisory statement opining whether: 1) the requesting individual was acting within the scope of his/her authority under 8 U.S.C. § 1357(g) and this MOA; and, 2) such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Tort Litigation Section, Civil Division, Department of Justice (DOJ). Representation is granted at the discretion of DOJ; it is not an entitlement. *See* 28 C.F.R. §

50.15.

The Department agrees to cooperate with any Federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, individuals in custody and documents, as long as it is not inconsistent with State and Federal laws. Failure to do so may result in the termination of this MOA. Failure of any participating Department employee to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The Department agrees to cooperate with Federal personnel conducting reviews to ensure compliance with the terms of this MOA and to provide access to appropriate databases, personnel, and documents necessary to complete such compliance review. It is understood that information provided by any Department 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 (1967), and its progeny.

As the activities of participating Department personnel under this MOA derive from Federal authority, the participating Department personnel will comply with Federal standards and guidelines relating to the Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny, which govern the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

The Department and ICE are each responsible for compliance with the Privacy Act of 1974, 5 U.S.C. §552a, DHS Privacy Act regulations, 6 C.F.R. §§ 5.20-5.36, as applicable, and related system of records notices with regard to data collection and use of information under this MOA.

I. CIVIL RIGHTS STANDARDS

Participating Department personnel are bound by all Federal civil rights laws, regulations, and guidance relating to non-discrimination, including the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014; Executive Order 13,166, "Improving Access to Services for Persons with Limited English Proficiency," (Aug. 2000); Title VI of the Civil Rights Act of 1964, as amended, 42. U.S.C. § 2000 et seq., which prohibits discrimination based upon race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance; and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability and requires the Department to provide effective communication to individuals with disabilities, and/or Title II of the Americans with Disabilities Act of 1990, which also prohibits discrimination based on disability and requires the Department to provide effective communication to individuals with disabilities.

V. REPORTING AND DOCUMENTATION

A. COMPLAINT PROCEDURES

The complaint reporting procedure for allegations of misconduct by participating Department personnel, including activities undertaken under the authority of this MOA, is included in Appendix B.

B. COMMUNICATION

The FOD, or the FOD's management representative, and the Department shall make every effort to meet at least annually to ensure compliance with the terms of this MOA. When necessary, ICE and the Department may limit the participation of these meetings in regard to non-law enforcement

personnel. The attendees will meet at a location to be agreed upon by the parties, or via teleconference. An initial review meeting between ICE and the Department should be held within approximately 12 months of the MOA's operational date.

C. COMMUNITY OUTREACH

The Department, in coordination with the local ICE Field Office, will engage, as necessary, in Steering Committee meetings to enhance support for the 287(g) mission, and to ensure compliance with the terms of this MOA.

D. RELEASE OF INFORMATION TO THIRD PARTIES

The Department may, at its discretion, communicate the substance of this agreement to media and other third parties expressing an interest in the law enforcement activities to be engaged in under this MOA. It is the practice of ICE to provide a copy of this MOA, only after it has been signed, to requesting media outlets; the Department is authorized to do the same.

The Department hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA. For releases of information to the media, the Department must coordinate in advance of release with the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval prior to any release. The points of contact for ICE and the Department for this purpose are identified in Appendix C. For releases of information to all other parties, the Department must coordinate in advance of release with the FOD or the FOD's representative.

Information obtained or developed as a result of this MOA, including any documents created by the Department that contain information developed or obtained as a result of this MOA, is under the control of ICE and shall not be disclosed unless: 1) permitted by applicable laws, regulations, or executive orders; and 2) the Department has coordinated in advance of release with (a) the ICE Office of Public Affairs, which will consult the ICE Privacy Office for approval, prior to any release to the media, or (b) an ICE officer prior to releases to all other parties. Department questions regarding the applicability of this section to requests for the release of information shall be directed to an ICE officer.

Nothing herein limits Department's compliance with state public records laws regarding those records that are solely state records and not ICE records.

VI. MODIFICATIONS TO THIS MOA

Modifications to this MOA, including the Appendices, must be proposed in writing and approved and signed by both parties.

VII. POINTS OF CONTACT

ICE and the Department's points of contact (POCs) for purposes of this MOA are:

For the Department: Secretary of the Florida Department of Corrections
For DHS: Miami Field Office Director

VIII. EFFECTIVE DATE, SUSPENSION, AND TERMINATION OF THIS MOA

This MOA becomes effective upon signature of both parties and will remain in effect until either party terminates or suspends the MOA. Termination by the Department shall be provided, in writing, to the local Field Office.

ICE reserves the right to conduct an internal review of this MOA every three years. In instances where serious misconduct or violations of the terms of the MOA come to the attention of ICE, the ICE Director may, upon recommendation of the Executive Associate Director for Enforcement and Removal Operations, elect to immediately suspend the MOA pending investigation of the misconduct and/or violations.

Notice of the suspension will be provided to the Department, and the notice will include, at a minimum, (1) an overview of the reason(s) that ICE is suspending the 287(g) agreement, (2) the length of the temporary suspension, and (3) how the Department can provide ICE with information regarding the alleged misconduct and/or violations, as well as any corrective measures it has undertaken.

ICE shall provide the Department with a reasonable opportunity to respond to the alleged misconduct and/or violations and to take actions to implement corrective measures (e.g., replace the officer(s) who are the focus of the allegations). ICE will provide the Department timely notice of a suspension being extended or vacated.

If the Department is working to take corrective measures, ICE will generally not terminate an agreement. The termination of an agreement is generally reserved in instances involving problems that are unresolvable and detrimental to the 287(g) Program.

If ICE decides to move from suspension to termination, ICE will provide the Department a 90-day notice in advance of the partnership being terminated. The notice will include, at a minimum: (1) An overview of the reason(s) that ICE seeks to terminate the 287(g) agreement; (2) All available data on the total number of aliens identified under the 287(g) agreement; and (3) Examples of egregious criminal aliens identified under the 287(g) agreement. ICE's decision to terminate a MOA will be published on ICE's website 90 days in advance of the MOA's termination.

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

Date: CHRISTOPHER M
CRONEN

Digitally signed by CHRISTOPHER
M CRONEN
Date: 2020.08.21 09:55:42 -04'00'

Date: 08/17/2020

Mark S. Inch

C.M. Cronen
Assistant Director, Enforcement
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
Department of Homeland Security

Mark S. Inch
Secretary
Florida Department of Corrections

APPENDIX A

STANDARD OPERATING PROCEDURE (SOP)

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of this MOA within the FOD area of responsibility.

Pursuant to this MOA, the Department has been delegated authorities under the Jail Enforcement Model (JEM) Program as outlined below. The 287(g) JEM Program is designed to identify and process removable aliens within the Department's correctional facilities.

Authorized Functions:

Participating Department personnel performing immigration-related functions pursuant to this MOA will be Department officers assigned to detention duties. Those participating Department personnel will exercise their immigration-related authorities only during the course of their normal duties while assigned to the Department's correctional facilities.

Participating Department personnel are delegated only those authorities listed below:

- The power and authority to interrogate any person detained in the participating Department's correctional facilities who the officer believes to be an alien about his or her right to be or remain in the United States, 8 U.S.C. § 1357(a)(1) and 8 C.F.R. § 287.5(a)(1), and to process for immigration violations any removable alien or those aliens who have been arrested for violating a Federal, State, or local offense;
- The power and authority to serve and execute warrants of arrest for immigration violations, 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3), on designated aliens in Department correctional facilities at the time of the alien's scheduled release from criminal custody in order to transfer custody of the alien to ICE;
 - Upon transfer of the alien's custody to ICE, the alien will continue to be held in the Department's correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the Department will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the Department's correctional facility.
- The power and authority to serve warrants of removal, 8 U.S.C. § 1357(a) and 8 C.F.R. §§ 241.2(b)(2), 287.5(e)(3), on designated aliens in Department correctional facilities at the time of the alien's scheduled release from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes;
 - Upon transfer of the alien's custody to ICE, the alien will continue to be held in the Department's correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the Department will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the Department's correctional facility.
- The power and authority to administer oaths and to take and consider evidence, 8 U.S.C. § 1357(b) and 8 C.F.R. § 287.5(a)(2), to complete required alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of

affidavits and the taking of sworn statements for ICE supervisory review;

- The power and authority to prepare charging documents, 8 U.S.C. §§ 1225(b)(1), 1228, 1229, and 1231(a)(5); 8 C.F.R. §§ 235.3, 238.1, 239.1, and 241.8, including the preparation of a Notice to Appear or other charging document, as appropriate, for the signature of an ICE officer;
- The power and authority to detain and transport, 8 U.S.C. § 1357(g)(1) and 8 C.F.R. § 287.5(c)(6), arrested aliens subject to removal to ICE-approved detention facilities; and
- The power and authority to issue immigration detainers, 8 U.S.C. §§ 1226 and 1357, and 8 C.F.R. § 287.7, and I-213, Record of Deportable/Inadmissible Alien, for processing aliens.

Additional Supervisory and Administrative Responsibilities:

Participating Department personnel are only authorized to conduct immigration enforcement functions while under the direction and supervision of ICE.

Additional supervisory and administrative responsibilities for each entity include, but are not limited to:

- Participating Department personnel must notify ICE of any immigration detainer issued under the authority conferred by the MOA as soon as possible, but no longer than approximately 24 hours.
- Participating Department personnel are responsible for ensuring proper record checks have been completed.
- Participating Department personnel must report all encounters with asserted or suspected claims of U.S. citizenship to ICE immediately, but generally within one hour of the claim.
- Administrative files (A-files) are Federal records, subject to the Federal Records Act and applicable Federal confidentiality statutes. It follows that the utilization and handling of the A-files must be consistent with applicable laws and DHS and ICE policy. ICE is responsible for requesting A-files and reviewing them for completeness. A-files can be maintained at a Department facility as long as there are ICE personnel assigned to that facility and the personnel have a work area where documents can be adequately secured and stored by ICE personnel. Representatives from DHS must be permitted access to the facility where ICE records are maintained at a reasonable time and in a reasonable manner as long as access is not inconsistent with any Department procedures or policies.

APPENDIX B

COMPLAINT PROCEDURE

The training, supervision, and performance of participating Department personnel pursuant to the MOA, as well as the protections for U.S. citizens' and aliens' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through the complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

If any participating Department personnel are the subject of a complaint or allegation involving the violation of the terms of this MOA or a complaint or allegation of any sort that may result in that individual receiving professional discipline or becoming the subject of a criminal investigation or civil lawsuit, the Department shall, to the extent allowed by State law, make timely notification to an ICE officer within 48 hours of the Department receiving notice of the complaint or allegation, excluding weekends, of the existence and nature of the complaint or allegation. The results of any internal investigation or inquiry connected to the complaint or allegation and the resolution of the complaint shall also be reported to an ICE officer, as soon as practicable, but no later than 30 days from the date of the resolution. It is the responsibility of the ICE officer to ensure notification is made to the ICE Office of Professional Responsibility (OPR) via the Joint Intake Center (JIC) at JointIntake@cbp.dhs.gov.

The Department will also handle complaints filed against Department personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Any such complaints regarding non-designated Department personnel acting in immigration functions must be forwarded to an ICE officer within 48 hours of the Department receiving notice of the complaint. It is the responsibility of the ICE officer to ensure notification is made to JIC.

287(g) Complaint Process posters will be displayed in processing areas of the Department to ensure aliens encountered under the 287(g) Program are aware of the complaint process. Posters will be displayed in English and Spanish. If the alien understands a language other than English or Spanish or is unable to read, Department personnel will read and/or translate the complaint process in a language the alien understands.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section V(D) of this MOA, the signatories agree to coordinate appropriate release of information to the media, provided the release has been previously approved by both the ICE Privacy Officer and Public Affairs Officer, regarding actions taken under this MOA before any information is released. The points of contact for coordinating such activities are:

For the Department:

Public Affairs Officer

For ICE:

Public Affairs Office
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Washington, DC 20536
202-732-4242