



FOIA Case Number: 09-4646
U.S. Department of Homeland Security: 07-20-09
Suspension Date: 07-30-09

July 14, 2009

Via Overnight Delivery and via e-mail to ICE-FOIA@dhs.gov
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW, Room 585
Washington, DC 20536

Re: **FREEDOM OF INFORMATION ACT REQUEST**
Expedited Processing Requested

To Whom It May Concern:

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS'
RIGHTS PROJECT

PLEASE RESPOND TO:
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2660
F/212.549.2654
WWW.ACLU.ORG

CALIFORNIA OFFICE
39 DRUMM STREET
SAN FRANCISCO, CA 94111-4805
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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

This is a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522, implementing regulations 8 C.F.R. § 103.10 and 6 C.F.R. § 5, and any other applicable regulations.

I. Request for Information

The American Civil Liberties Union ("ACLU") Immigrants' Rights Project hereby requests disclosure of the following records in your possession:

- The new standardized § 287(g) Memorandum of Agreement ("MOA") referenced in the July 10, 2009 Department of Homeland Security ("DHS") press release ("July 10 release") available at www.dhs.gov/ynews/releases/pr_1247246453625.shtm (enclosed); and
- The eleven new MOAs referenced in the July 10 release, which DHS has entered into with the following agencies: Gwinnett (GA) County Sheriff's Department.; Monmouth (NJ) County Sheriff's Office; Rhode Island Department of Corrections; Delaware Department of Corrections – Sussex Correctional Institution; Houston (TX) Police Department; City of Mesquite (NV) Police Department; Morristown (NJ) Police Department; City of Mesa (AZ) Police Department; Florence (AZ) Police Department; Guilford County (NC) Sheriff's Office; Charleston County (SC) Sheriff's Office.

II. Request for Expedited Processing

The ACLU seeks expedited processing of this request. Expedition is available for requests "(I) in cases in which the person requesting the records demonstrates a compelling need; and (II) in other cases

determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). *See also ACLU v. Department of Justice*, 321 F. Supp. 2d 24, 27–28 (D.D.C. 2004). FOIA directs agencies to “process as soon as practicable any requests for records to which [they have] granted expedited processing.” 5 U.S.C. § 552(a)(6)(E)(iii).

With respect to entities “primarily engaged in disseminating information,” a compelling need is demonstrated by an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Among the factors to be considered as to whether there is a compelling need are “whether the request concerns a matter of current exigency to the American public” and “whether the consequences of delaying a response would compromise a significant recognized federal government activity.” *ACLU*, 321 F. Supp. 2d at 29.

There is a compelling need for the information requested. The July 10 release indicates that DHS will require all 66 existing 287(g) participants to enter into the new standardized MOA. That process is reportedly ongoing and expected to be completed in under three months. In addition, DHS reported that 42 additional MOA requests were pending in February 2009.¹ Even assuming that the 11 new agreements announced on July 10 were among the 42 pending requests, DHS is likely considering at least 97 MOAs — covering thousands of officers — based on the new standardized agreement.

It is therefore extremely important that the public have access to the new standardized MOA and newly-signed MOAs to evaluate whether appropriate measures have been taken to address the significant flaws in the program identified by the Government Accountability Office, Members of Congress, the press, police, advocacy groups, and others²

¹ Statement of Richard M. Stana, Government Accountability Office, to House Committee on Homeland Security, March 4, 2009, www.gao.gov/new.items/d09381t.pdf (“GAO Statement”).

² *See, e.g.*, GAO Statement, *supra*; House Committee on Homeland Security Hearing, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law,” Mar. 4, 2009; House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights, and Civil Liberties Hearing, “The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws,” Apr. 2, 2009; Police Foundation, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, www.policefoundation.org/pdf/strikingabalance/Narrative.pdf; “More Immigration Non-Solutions,” *N.Y. Times*, July 13, 2009, at A18; University of North Carolina

and to allow interested parties to express their views before new agreements are entered into. A delay in responding to this request would compromise the public's confidence in law enforcement and its interest in an informed and timely debate about matters of urgent concern.

III. Request for Fee Waiver

The ACLU additionally requests a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation omitted)).

The ACLU is a national organization that works to defend and preserve individual rights and freedoms provided by the Constitution and the laws of the United States for all people, including the basic constitutional rights to privacy, free expression, and due process of law. The ACLU has more than 500,000 members. Some of the major activities of the organization include gathering information on issues of public significance, using its editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials, and distributing those materials to the general public.

Disclosure pursuant to this request is in the public interest. First, the records pertain directly to the operations and activities of the federal government. Access to this information is a prerequisite for the public to meaningfully evaluate the 287(g) program. Second, the ACLU has significant "knowledge [and] expertise as may be necessary to understand this information," 28 C.F.R. Part 16.11(k)(2)(iii). The ACLU has obtained, compiled and analyzed information relating to the

287(g) program and to state and local involvement in immigration enforcement for years.³ Thus, release of this information to the organization is likely to contribute to public understanding of the issue.

Furthermore, the ACLU meets the definition of a representative of the news media under FOIA because it is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into distinct work, and distributes that work to an audience.” *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Because it qualifies as a representative of the news media, DHS should find that the ACLU possesses the “intention to effectively convey information to the public.” 28 C.F.R. Part 16.11(k)(2)(iii).

Finally, disclosure is not in the ACLU’s “commercial, trade, or profit interest[.]” 28 C.F.R. § 16.11(b)(1). The ACLU is a “non-profit, non-partisan, public interest organization.” *See Judicial Watch*, 326 F.3d at 1310. The purpose of the request is to monitor and vindicate legal rights; it is unrelated to commercial business, trade, or profit.

Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU and its regional affiliates. For example, the Federal Bureau of Investigation, Office of Intelligence Policy and Review, and Office of Information and Privacy of the Department of Justice have previously declined to charge the ACLU fees associated with FOIA requests. The fees should likewise be waived in this instance. If a fee waiver is denied, the requestors are prepared to pay fees up to \$25. We ask that you inform us first if fees in excess of \$25 may be charged, though we reserve the right to appeal a denial of fee waivers.

IV. No Basis for Withholding or Delay

There is no colorable basis for withholding the requested records. During the Bush Administration, U.S. Immigration and Customs Enforcement (“ICE”) provided all MOAs in existence as of April, 2008 in response to a FOIA request. ICE specifically determined “[a]fter carefully reviewing the 287(g) Memorandum of Agreements ... that they are appropriate for public release” without any deletions or

³ See, e.g., ACLU Written Statement for April 2, 2009 Joint Hearing, www.aclu.org/images/asset_upload_file968_39242.pdf.

exemptions.⁴ In addition, ICE affirmatively makes available 47 MOAs, of the President dated Jan. 21, 2007). Since § 207(g) MOAs were not subject to withholding even under the previous policy, it is plain that the MOAs requested here must be released.

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Moreover, even leaving aside our entitlement to expedited processing, the requested records can and should be provided immediately, or at most in a matter of days. The responsive documents are plainly identified in the request, require no search, and are readily available for transmission. Indeed, they should have been posted online at the same time as the July 10 statement. As the Attorney General has explained, "Open government requires agencies to work proactively and respond to requests promptly. ... [A]gencies should readily and systematically post information online *in advance of any public request*."⁵ In any event, "when information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner."⁶

If this request is denied in whole or in part, we additionally ask that you justify all deletions by reference to specific provisions under the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver.

Thank you for your prompt attention to this matter. As explained above, the requested records can and should be produced immediately. We remind you that under the statute, the request for expedited processing must be determined within ten (10) calendar days and this request for records must be determined within twenty (20) days. *See* 28 C.F.R. § 16.5(d)(4); 5 U.S.C. § 552 (a)(6)(A)(i).

⁴ See final response to FOIA request DIS 2-01 OI:MS:ID, 08-FOIA-2009 DLM. ICE provided approximately 16 additional MOAs signed between April and September, 2008, in response to a subsequent request.

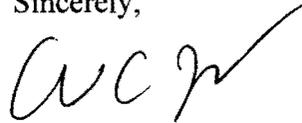
⁵ www.dhs.gov/xlibrary/assets/foia/ag_foia_memo2009-03-19.pdf, at 3 (emphasis added).

⁶ *Id.*

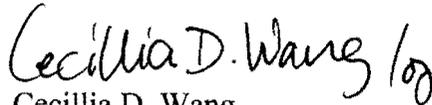
ICE FOIA Office
July 14, 2009
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Please furnish all applicable records to: ACLU Immigrants' Rights Project, 125 Broad St., 18th Fl., New York, NY 10004. Electronic copies may be sent to ojadwat@aclu.org. If you have any questions regarding this matter, please telephone Omar Jadwat at (212) 549-2620.

Sincerely,



Omar C. Jadwat
ACLU Immigrants' Rights Project
125 Broad St., 18th Fl.
New York, NY 10004

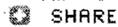


Cecillia D. Wang
ACLU Immigrants' Rights Project
39 Drumm St.
San Francisco, CA 94111

Encl.



Secretary Napolitano Announces New Agreement for State and Local Immigration Enforcement Partnerships & Adds 11 New Agreements



Release Date: July 10, 2009

For Immediate Release
Office of the Press Secretary
Contact: 202-282-8010

Department of Homeland Security (DHS) Secretary Janet Napolitano announced today that U.S. Immigration and Customs Enforcement (ICE) has standardized the Memorandum of Agreement (MOA) used to enter into "287(g)" partnerships—improving public safety by removing criminal aliens who are a threat to local communities and providing uniform policies for partner state and local immigration enforcement efforts throughout the United States. Additionally, today ICE announced eleven new 287(g) agreements with law enforcement agencies from around the country.

"This new agreement supports local efforts to protect public safety by giving law enforcement the tools to identify and remove dangerous criminal aliens," said Secretary Napolitano. "It also promotes consistency across the board to ensure that all of our state and local law enforcement partners are using the same standards in implementing the 287(g) program."

The new MOA aligns 287(g) local operations with major ICE enforcement priorities—specifically, the identification and removal of criminal aliens. To address concerns that individuals may be arrested for minor offenses as a guise to initiate removal proceedings, the new agreement explains that participating local law enforcement agencies are required to pursue all criminal charges that originally caused the offender to be taken into custody.

The new MOA also defines the objectives of the 287(g) program, outlines the immigration enforcement authorities granted by the agreement and provides guidelines for ICE's supervision of local agency officer operations, information reporting and tracking, complaint procedures and implementation measures.

"The 287(g) program is an essential component of DHS' comprehensive immigration enforcement strategy," said ICE Assistant Secretary John Morton. "The new agreement strengthens ICE's oversight of the program and allows us to better utilize the resources and capabilities of our law enforcement partners across the nation."

DHS and ICE will begin working with their current 287(g) partner agencies to re-sign the standardized agreements—ultimately, only those agencies with newly signed agreements will be permitted to continue enforcing immigration law. A "sunset clause" will keep the MOA in effect for three years from the date of signing unless terminated by either party.

To date, ICE has trained more than 1,000 officers operating under 66 local 287(g) agreements between DHS and law enforcement agencies nationwide. Since January 2006, these 287(g)-trained officers are credited with identifying more than 120,000 individuals, predominantly in jails, who are suspected of being in the country illegally.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 added Section 287(g) to the Immigration and Nationality Act, which authorizes the DHS Secretary to enter into agreements with state and local law enforcement agencies to perform immigration officer functions. Pursuant to these MOAs, designated officers who receive appropriate training and function under the supervision of sworn ICE officers are permitted to perform immigration law enforcement duties.

The eleven new agreements are with the following jurisdictions: Gwinnett (GA) County Sheriff's Department.; Monmouth (NJ) County Sheriff's Office; Rhode Island Department of Corrections; Delaware Department of

Corrections – Sussex Correctional Institution; Houston Police Department; City of Mesquite (NV) Police Department; Morristown (NJ) Police Department; City of Mesa (AZ) Police Department; Florence (AZ) Police Department; Guilford County (NC) Sheriff's Office; Charleston County (SC) Sheriff's Office.

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This page was last reviewed/modified on July 10, 2009.



U.S. Immigration
and Customs
Enforcement

August 25, 2009

Omar Jadwat
ACLU
125 Broad Street, 18th Floor
New York, NY 10004

Re: **09-FOIA-4646**

Dear Mr. Jadwat:

This is the final response to your July 14, 2009, Freedom of Information Act (FOIA) request to Immigration and Customs Enforcement (ICE), seeking new standardized 287 (g) MOA referenced in the July 10, 2009 Department of Homeland Security press release as well as eleven new MOA's referenced in this release. Your request was received in this office on July 20, 2009.

In responding to a FOIA Request, Immigration and Customs Enforcement will search for responsive documents in its control on the date the search began. We began our search on July 20, 2009.

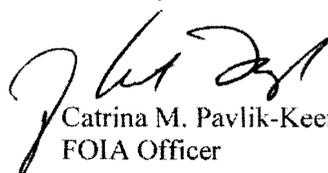
We are granting your request under the FOIA, Title 5 U.S.C. § 552, as amended, and DHS' implementing regulations, 6 C.F.R. Chapter I and Part 5. After carefully reviewing the responsive documents, I determined that they are appropriate for public release. They are enclosed in their entirety; no deletions or exemptions have been claimed.

The Office of State and Local Coordination (OSLC) informed our office that there have been no new Memorandums of Agreement (MOAs) signed since the new standardized 287(g) MOIA was released. Law Enforcement Agencies (LEAs) have only been notified that ICE is supporting their requests to participate in the 287(g) program.

You have a right to appeal the above determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you need to contact us about this request, please refer to **09-FOIA-4646**. You may contact this office at (202) 732-0300.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 23 Pages

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) constitutes an agreement between United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and the Law Enforcement Agency (AGENCY), pursuant to which ICE delegates nominated, trained, certified, and authorized AGENCY personnel to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that these delegated authorities will enable the AGENCY to identify and process immigration violators and conduct criminal investigations under ICE supervision, as detailed herein, within the confines of the AGENCY'S AREA OF RESPONSIBILITY. The AGENCY and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

I. PURPOSE

The purpose of this collaboration is to enhance the safety and security of communities by focusing resources on identifying and processing for removal criminal aliens who pose a threat to public safety or a danger to the community. This MOA sets forth the terms and conditions pursuant to which selected AGENCY personnel (participating AGENCY personnel) will be nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the AGENCY'S area of responsibility. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating AGENCY personnel as members of the AGENCY. However, the exercise of the immigration enforcement authority granted under this MOA to participating AGENCY personnel shall occur only as provided in this MOA.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Public Law 107-296, authorizes the Secretary of DHS, acting through the Assistant Secretary of ICE, 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 MOA constitutes such a written agreement.

III. POLICY

This MOA sets forth the following: 1) the functions of an immigration officer that DHS is authorizing the participating AGENCY personnel to perform; 2) the duration of the authority conveyed; 3) the supervisory requirements, including the requirement that participating AGENCY personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA; and 4) program information or data that the AGENCY is required to collect as part of the operation of the program. For the purposes of this MOA, ICE officers will provide supervision for participating AGENCY personnel only as to immigration enforcement and/or immigration investigative functions as authorized in this MOA. AGENCY retains supervision of all other aspects of the employment and performance of duties by participating AGENCY personnel.

The **AGENCY** is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the **AGENCY** has jurisdiction.

ICE will assume custody of an alien 1) who has been convicted of a State, local or Federal offense only after being informed by the alien's custodian that such alien has concluded service of any sentence of incarceration; 2) who has prior criminal convictions and when immigration detention is required by statute; and 3) when the ICE Detention and Removal Field Office Director or his designee decides on a case-by-case basis to assume custody of an alien who does not meet the above criteria.

IV. DESIGNATION OF AUTHORIZED FUNCTIONS

Approved participating **AGENCY** personnel will be authorized to perform immigration officer functions outlined in 287(g)(1) of the INA regarding the investigation, apprehension, or detention of aliens in the United States, subject to the limitations contained in the Standard Operating Procedures (SOP) in Appendix D to this MOA.

V. DETENTION AND TRANSPORTATION ISSUES

ICE retains sole discretion in determining how it will manage its limited detention resources and meet its mission requirements. ICE Field Office Directors (FODs) may, in appropriate cases, decline to detain aliens whose detention is not mandated by Federal statute. ICE and the **AGENCY** will prioritize the detention of aliens in conformity with ICE detention priorities. ICE reserves the right to detain aliens to the extent provided by law.

If ICE deems it necessary, the **AGENCY** will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which the **AGENCY** will provide, for a reimbursable fee, detention of incarcerated aliens in **AGENCY** facilities, upon the completion of their sentences. If ICE and the **AGENCY** enter into an IGSA, the **AGENCY** must meet the applicable ICE National Detention Standards.

In addition to detention services, if ICE deems it necessary, the IGSA may include a transportation component for the transportation of all incarcerated aliens for a reimbursable fee. Under a transportation IGSA, the **AGENCY** will transport all incarcerated aliens in its facilities who are subject to removal, upon completion of their sentences, to a facility or location designated by ICE. Reimbursement to the **AGENCY** will occur only when the **AGENCY** obtained prior approval of ICE for the transportation. ICE will not reimburse if the **AGENCY** did not obtain prior approval from ICE.

The parties understand that the **AGENCY** will not continue to detain an alien after that alien is eligible for release from the **AGENCY**'s custody in accordance with applicable law and **AGENCY** policy, except for a period of up to 48-hours, excluding Saturdays, Sundays, and any Federal holiday, pursuant to an ICE detainer issued in accordance with 8 C.F.R. § 287.7, absent an IGSA in place as described above.

VI. NOMINATION OF PERSONNEL

The **AGENCY** will nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens. The **AGENCY** is responsible for conducting a criminal background check within the last five years for all nominated candidates. Upon request, the **AGENCY** will provide all related information and materials it collected, referenced, or considered during the criminal background check for nominated candidates to ICE.

In addition to the **AGENCY** background check, ICE will conduct an independent background check for each candidate. This background check requires all candidates to complete a background questionnaire. The questionnaire requires, but is not limited to, the submission of fingerprints, a personal history questionnaire, and the candidate's disciplinary history (including allegations of excessive force or discriminatory action). ICE reserves the right to query any and every national and international law enforcement database to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. Upon request by ICE, the **AGENCY** will provide continuous access to disciplinary records of all candidates along with a written privacy waiver signed by the candidate allowing ICE to have continuous access to his or her disciplinary records.

The **AGENCY** agrees to use due diligence to screen individuals nominated for training and agrees that individuals who successfully complete the training under this MOA will perform immigration officer functions authorized under 287(g) of the INA for a minimum of two years. If **AGENCY** personnel under consideration are in a bargaining unit, that **AGENCY** must, prior to the execution of the MOA, have an agreement with the exclusive representative that allows the designated officers to remain in their position for a minimum of two years. This requirement may be lifted solely at the discretion of ICE for good cause in situations that involve, among other things, imminent promotion, officer career development, and disciplinary actions. Failure by the **AGENCY** to fulfill this commitment could jeopardize the terms of this MOA, and ICE reserves the right, under these circumstances, to take appropriate action as necessary, including terminating this MOA.

All **AGENCY** candidates shall have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions.

All **AGENCY** task force officer candidates must be sworn/certified officers, must possess arrest authority, must be authorized to carry firearms, and must be employed full-time by their respective **AGENCY**. Each **AGENCY** candidate must certify that he/she is not prohibited from carrying a firearm pursuant to State or Federal law, including, but not limited to, the Lautenberg Amendment (18 U.S.C. § 922(g)(8) or (9)).

All **AGENCY** candidates must be approved by ICE and must be able to qualify for access to appropriate DHS and ICE databases. Should a candidate not be approved, a qualified substitute candidate may be submitted. Such substitution must occur without delaying the start of training. Any future expansion in the number of participating **AGENCY** personnel or scheduling of additional training classes may be based on an oral agreement between the parties and is subject to all the requirements of this MOA and the accompanying SOP.

VIII. TRAINING OF PERSONNEL

ICE will provide participating **AGENCY** personnel with Immigration Authority Delegation Program (IADP) training consistent with the accompanying SOP.

IX. CERTIFICATION AND AUTHORIZATION

Before participating **AGENCY** personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete the IADP training, as described in the accompanying SOP. The IADP will be provided by ICE instructors who will train participating **AGENCY** personnel in the enforcement of Federal immigration laws and policies, the scope of the powers delegated pursuant to this MOA and civil rights and civil liberties practices. Participating **AGENCY** personnel must pass an ICE examination after instruction. Upon completion of training, those **AGENCY** personnel who pass the ICE examinations shall be deemed “certified” under this MOA.

ICE will certify in writing the names of those **AGENCY** personnel who successfully complete training and pass all required test(s). Upon receipt of the certification, the ICE Special Agent in Charge (SAC) and/or the ICE Field Office Director (FOD) in **JURISDICTION** will provide the participating **AGENCY** personnel a signed authorization letter allowing the named **AGENCY** personnel 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 letter to the **AGENCY**. Only those certified **AGENCY** personnel who receive authorization letters issued by ICE and whose immigration enforcement efforts are subject to a designated ICE supervisor may conduct immigration officer functions described in this MOA.

Along with the authorization letter, ICE will issue the certified **AGENCY** personnel official Delegation of Authority credentials. Upon receipt of the Delegation of Authority credentials, **AGENCY** personnel will provide ICE a signed receipt of the credentials on the ICE Record of Receipt – Property Issued to Employee (Form G-570).

Authorization of participating **AGENCY** personnel to act pursuant to this MOA may be withdrawn at any time and for any reason by ICE or the **AGENCY**, and must be memorialized in a written notice of withdrawal identifying an effective date of withdrawal and the personnel to which the withdrawal pertains. Such withdrawal may be effectuated immediately upon notice to the other party. The **AGENCY** and the ICE SAC and/or the ICE FOD in **JURISDICTION** will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

The **AGENCY** will immediately notify ICE when any certified and/or authorized **AGENCY** personnel is no longer participating in the 287(g) program so that appropriate action can be taken, including termination of user account access to DHS and ICE systems.

X. COSTS AND EXPENDITURES

Participating agencies are responsible for personnel expenses, including, but not limited to, salaries and benefits, local transportation, and official issue material. The AGENCY is responsible for the salaries and benefits, including 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 AGENCY personnel while they are receiving training. The AGENCY will cover the costs of all AGENCY personnel's travel, housing, and per diem affiliated with the training required for participation in this MOA. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines the training provides a direct service for the Government and it is in the best interest of the Government, the Government may issue travel orders to selected personnel and reimburse travel, housing, and per diem expenses only. The AGENCY remains responsible for paying salaries and benefits of the selected personnel.

ICE will provide instructors and training materials.

Subject to the availability of funds, ICE will be responsible for the purchase, installation, and maintenance of technology (computer/IAFIS/Photo and similar hardware/software) necessary to support the investigative functions of participating AGENCY personnel at each AGENCY facility with an active 287(g) program. Only participating AGENCY personnel certified by ICE may use this equipment. ICE will also provide the necessary technological support and software updates for use by participating AGENCY personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased or provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, or when deemed necessary by the ICE Special Agent in Charge and/or the ICE Field Office Director in JURISDICTION.

The AGENCY is responsible for covering all expenses at the AGENCY facility regarding cabling and power upgrades. If the connectivity solution for the AGENCY is determined to include use of the AGENCY's own communication lines - (phone, DSL, site owned T-1/T-3, etc), the AGENCY will be responsible for covering any installation and recurring costs associated with the AGENCY line.

The AGENCY is responsible for providing all administrative supplies, such as paper, toner, pens, pencils, or other similar items necessary for normal office operations. The AGENCY is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints and flexi cuffs, etc.

Also, if ICE deems it necessary, the AGENCY will provide ICE, at no cost, with an office within each participating AGENCY facility for ICE supervisory employees to work.

XI. ICE SUPERVISION

Immigration enforcement activities conducted by the participating AGENCY personnel will be supervised and directed by ICE supervisory officers or designated ICE team leaders. Participating AGENCY personnel are not authorized to perform immigration officer functions except when working under the supervision or guidance of ICE. To establish supervisory and other administrative responsibilities, the SAC/FOD will specify the supervisory and other administrative responsibilities in an accompanying agreed-upon SOP.

Participating AGENCY personnel shall give timely notice to the ICE supervisory officer within 24 hours of any detainer issued under the authorities set forth in this MOA. The actions of participating AGENCY personnel will be reviewed by ICE supervisory 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 AGENCY personnel only as to immigration enforcement functions and for investigations conducted in conjunction to this authority. The AGENCY retains supervision of all other aspects of the employment of and performance of duties by participating AGENCY personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating AGENCY personnel in exercising these authorities shall be DHS and ICE policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating AGENCY personnel will be expected or required to violate or otherwise fail to maintain the AGENCY'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 supervisory officer or a DHS or ICE policy and the AGENCY's rules, standards, or policies, the conflict shall be promptly reported to the SAC and/or the FOD in JURISDICTION, or designees, and the AGENCY, or designee, when circumstances safely allow the concern to be raised. The SAC and/or the FOD in JURISDICTION and the AGENCY shall attempt to resolve the conflict.

XII. REPORTING REQUIREMENTS

ICE does not require the AGENCY to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves the right to request the AGENCY provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular alien's arrest. ICE may use this data to compare and verify ICE's own data, and to fulfill ICE's statistical reporting requirements, or to assess the progress and success of the AGENCY's 287(g) program.

XIII. LIABILITY AND RESPONSIBILITY

If any participating **AGENCY** personnel are the subject of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation or civil lawsuit, the **AGENCY** shall, to the extent allowed by State law, immediately notify the local point of contact for the ICE Office of Professional Responsibility (OPR) and the SAC/FOD of the existence and nature of the complaint. The resolution of the complaint shall also be promptly reported to ICE. Complaints regarding the exercise of immigration enforcement authority, as specified herein, by participating **AGENCY** personnel shall be handled as described below.

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 **AGENCY** will be responsible and bear the costs of participating **AGENCY** personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating **AGENCY** personnel will be treated as Federal employees only 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 on behalf of ICE as authorized by this MOA. 8 U.S.C. § 1357(g)(7); 28 U.S.C. § 2671. It is the understanding of the parties to this MOA that participating **AGENCY** personnel will enjoy the same defenses and immunities for their in-scope acts that are available to ICE officers from personal liability arising from tort lawsuits based on actions conducted in compliance with this MOA. 8 U.S.C. § 1357(g)(8).

Participating **AGENCY** personnel named as defendants in litigation arising from activities carried out under this MOA 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 will be handled in coordination with the SAC and/or the FOD in **JURISDICTION**. Requests should be in the form of a written memorandum prepared by the defendant addressing each and every allegation in the complaint, explaining as well as admitting or denying each allegation against the defendant. Requests for representation must be presented to the ICE Office of the Chief Counsel at the **ADDRESS**. Any request for representation and related correspondence must be clearly marked "Subject to Attorney-Client Privilege." The Office of 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 Headquarters Office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and an advisory statement opining whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff, Civil Division, Department of Justice. ICE will not be liable for defending or indemnifying acts of intentional misconduct on the part of participating **AGENCY** personnel.

The **AGENCY** 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, and documents. Failure to do so may result in the termination of this MOA. Failure of an officer to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The **AGENCY** 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 AGENCY 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 AGENCY personnel under this MOA are undertaken under Federal authority, the participating AGENCY 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 relates to the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

The AGENCY and ICE are each responsible for compliance with the Privacy Act of 1974, as applicable, and related system of records notices with regard to data collection and use of information under this MOA. The applicable Systems of Record Notice for privacy compliance is the ENFORCE Systems of Records Notice, 71 FR 13987, dated March 20, 2006.

XIV. COMPLAINT PROCEDURES

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

XV. CIVIL RIGHTS STANDARDS

Participating AGENCY personnel are bound by all Federal civil rights laws, regulations, guidance relating to non-discrimination, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003 and 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.

XVI. INTERPRETATION SERVICES

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

The AGENCY will maintain a list of qualified interpreters or companies it contracts with to provide such interpreters. Participating law enforcement personnel will be instructed on the proper administrative procedures to follow to obtain the services of an interpreter. A qualified interpreter means an interpreter who can interpret effectively, accurately, and impartially, using any specialized vocabulary. If an interpreter is used when a designated officer is performing functions under this MOA, the interpreter must be identified, by name, in records.

XVII. COMMUNICATION

The ICE Special Agent in Charge and/or the ICE Field Office Director in JURISDICTION, and the AGENCY shall meet at least annually, and as needed, to review and assess the immigration enforcement activities conducted by the participating AGENCY personnel, and to ensure compliance with the terms of this MOA. When necessary, ICE and the AGENCY may limit the participation of these meetings in regards to non-law enforcement personnel. The attendees will meet in JURISDICTION at locations to be agreed upon by the parties, or via teleconference. The 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 immigration enforcement activity in JURISDICTION. An initial review meeting will be held no later than nine months after certification of the initial class of participating AGENCY personnel under Section IX, above.

XVIII. COMMUNITY OUTREACH

The AGENCY may, at its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOA. ICE may participate in such outreach upon the AGENCY's request. Nothing in this MOA shall limit ICE's own community outreach program.

XIX. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES

The AGENCY may, at its discretion, communicate the substance of this agreement to organizations and groups 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 AGENCY is authorized to do the same.

The AGENCY hereby agrees to coordinate with ICE prior to releasing any information relating to, or exchanged under, this MOA, including any SOPs developed for the implementation of this MOA. Information obtained or developed as a result of this MOA is under the control of ICE and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations, and executive orders. Insofar as any documents created by the AGENCY contain information developed or obtained as a result of this MOA, such documents shall not be considered public records.

The release of statistical information regarding the 287(g) program must be coordinated with the ICE Office of Public Affairs. The AGENCY hereby agrees to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. All contact with the media involving investigations conducted under this MOA by Task Force Officers (TFO) will be done pursuant to ICE policy. The points of contact for ICE and the AGENCY for this purpose are identified in Appendix C.

Appendix B to this MOA describes the complaint procedures available to members of the public regarding actions taken by participating AGENCY personnel pursuant to this agreement.

XX. MODIFICATIONS TO THIS MOA

Modifications to this MOA must be proposed in writing and approved and signed by the signatories. Modification to Appendix D shall be done in accordance with the procedures outlined in the SOP.

XXI. POINTS OF CONTACT

ICE and **AGENCY** points of contact for purposes of this MOA are identified in Appendix A. Points of contact (POC) can be updated at any time by providing a revised Appendix A to the other party to this MOA.

XXII. DURATION AND TERMINATION OF THIS MOA

This MOA will remain in effect for three (3) years from the date of signing unless terminated earlier by either party. At the expiration of the three year effective period, ICE and the AGENCY shall review the MOA and modify, extend, or permit the MOA to lapse. During the MOA's effective period, either party, upon written notice to the other party, may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect immediately upon receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate such suspension. Notice of termination or suspension by ICE shall be given to the **AGENCY**.

Notice of termination or suspension by the **AGENCY** shall be given to the SAC and/or the FOD in **JURISDICTION**. Upon a good faith determination that the **AGENCY** is not fulfilling its duties, ICE shall notify the **AGENCY**, in writing, and inform the **AGENCY** that it has 90 days to demonstrate a continued need for 287(g) program services. If this continued need is not demonstrated by the **AGENCY**, the authorities and resources given to the **AGENCY** pursuant to this MOA will be terminated or suspended. Upon a subsequent demonstration of need, all costs to reinstate access to such authorities and/or program services will be incurred by the **AGENCY**.

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: _____

Date: _____

Assistant Secretary
Immigration and Customs Enforcement
Department of Homeland Security

APPENDIX A
POINTS OF CONTACT

The ICE and **AGENCY** points of contact for purposes of implementation of this MOA are:

For the **AGENCY**:

For ICE DRO:

For ICE OI:

APPENDIX B

COMPLAINT PROCEDURE

This Memorandum of Agreement (MOA) is between the US Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Law Enforcement Agency, (AGENCY), pursuant to which selected AGENCY personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating AGENCY 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 these complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

The MOA sets forth the process for designation, training, certification, and authorization of certain AGENCY personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the AGENCY and be handled in accordance with the AGENCY's Manual of Policy and Procedures, or equivalent rules, regulations, or procedures.

If any participating AGENCY 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 employer discipline or becoming the subject of a criminal investigation or civil lawsuit, the AGENCY shall, to the extent allowed by State law, immediately notify ICE 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 promptly reported to ICE. The ICE notifications should be made to the Special Agent in Charge (SAC) and the Office of Professional Responsibility (OPR) points of contact in JURISDICTION. Complaints regarding the exercise of immigration enforcement authority by participating AGENCY personnel shall be handled as described below.

The AGENCY will also handle complaints filed against AGENCY personnel who are not designated and certified pursuant to this MOA but are acting in immigration functions in violation of this MOA. Further, any such complaints regarding non-designated AGENCY personnel shall be forwarded to the SAC or the FOD in JURISDICTION.

In order to simplify the process for the public, complaints against participating AGENCY personnel relating to their immigration enforcement can be reported in the following manner "Complaint and Allegation Reporting Procedures."

1. Complaint and Allegation Reporting Procedures

Complaint reporting procedures shall be disseminated by the **AGENCY** within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures. Such reporting procedures shall also be included within facility manuals for detainees who have been processed under the 287(g) program. Such material must include up-to-date contact information necessary to file the complaint.

Complaints will be accepted from any source (e.g., ICE, **AGENCY**, participating **AGENCY** personnel, inmates, and the public). ICE will immediately forward a copy of the complaint to the DHS Office for Civil Rights and Civil Liberties Review and Compliance.

Complaints can be reported to Federal authorities as follows:

- A. Telephonically to the DHS Office of the Inspector General (DHS OIG) at the toll free number 1-800-323-8603, or
- B. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C., at the toll-free number 1-877-246-8253, email Joint.Intake@dhs.gov, or
- C. Via mail as follows:
 - Department of Homeland Security
 - Immigration and Customs Enforcement
 - Office of Professional Responsibility
 - P.O. Box 14475
 - Pennsylvania Avenue NW
 - Washington D.C. 20044

2. Review of Complaints

All complaints or allegations (written or oral) reported to the **AGENCY** directly that involve **AGENCY** personnel with ICE delegated authority will be reported to ICE OPR. ICE OPR will verify participating personnel status under the MOA with the assistance of the Special Agent in Charge of the ICE Office of Investigations in **JURISDICTION**. Complaints received by any ICE entity will be reported directly to ICE OPR as per existing ICE policies and procedures.

ICE OPR, as appropriate, will make an initial determination regarding ICE investigative jurisdiction and refer the complaint to the appropriate ICE office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to ICE OPR will be shared with the **AGENCY**'s Internal Investigations Unit when the complaint involves **AGENCY** personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

3. Complaint and Allegations Resolution Procedures

Upon receipt of any complaint or allegation, ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to the reporting requirements as stated above and as they relate to the DHS OIG and CRCL and/or the DOJ CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints or Allegations to the AGENCY's Internal Investigations Unit.

The ICE OPR will refer complaints, as appropriate, involving AGENCY personnel to the AGENCY's Internal Investigations Unit for resolution. The facility commander will inform ICE OPR of the disposition and resolution of any complaints or allegations against AGENCY's participating officers.

B. Interim Action Pending Complaint Resolution

When participating AGENCY personnel are under investigation for any reason that could lead to disciplinary action, demotion, or dismissal, or are alleged to have violated the terms of this MOA, ICE may revoke that individual's authority and have that individual removed from participation in the activities covered under the MOA.

C. Time Parameters for Resolution of Complaints or Allegations

It is expected that any complaint received will be resolved within 90 days of receipt. However, this will depend upon the nature and complexity of the substance of the complaint itself.

D. Notification of Resolution of a Complaint or Allegation

ICE OPR will coordinate with the AGENCY's Internal Investigations Unit to ensure notification as appropriate to the ICE SAC in JURISDICTION, the subject(s) of a complaint, and the person filing the complaint regarding the resolution of the complaint.

These Compliant Reporting and Allegation Procedures are ICE's internal policy and may be supplemented or modified by ICE unilaterally, ICE will provide AGENCY with written copies of any such supplements or modifications. These Complaint Reporting and Allegation Procedures apply to ICE and do not restrict or apply to other investigative organizations within the federal government.

APPENDIX C

PUBLIC INFORMATION POINTS OF CONTACT

Pursuant to Section XVIII of this MOA, the signatories agree to coordinate appropriate release of information to the media regarding actions taken under this MOA before any information is released. The points of contact for coordinating such activities are:

For the **AGENCY**:
Public Affairs Officer

For ICE:

Public Affairs Officer **ADD NAME**
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
ADD LOCATION AND CONTACT INFORMATION

APPENDIX D

STANDARD OPERATING PROCEDURE (SOP) TEMPLATE

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of the 287(g) delegation of authority program within the Special Agent in Charge (SAC)/Field Office Director (FOD) area of responsibility. This appendix can be modified only in writing and by mutual acceptance of both the SAC/FOD and the [designated AGENCY level].

There are two models for the 287(g) program, a Task Force Officer (TFO) model or a Detention model. Pursuant to this MOA, AGENCY has been delegated authorities under the [TFO/Detention] model as outlined below.

Prioritization:

ICE retains sole discretion in determining how it will manage its limited resources and meet its mission requirements. To ensure resources are managed effectively, ICE requires the AGENCY to also manage its resources dedicated to 287(g) authority under the MOA. To that end, the following list reflects the categories of aliens that are a priority for arrest and detention with the highest priority being Level 1 criminal aliens. Resources should be prioritized to the following levels:

- Level 1** – Aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping;
- Level 2** – Aliens who have been convicted of or arrested for minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering; and
- Level 3** – Aliens who have been convicted of or arrested for other offenses.

Training:

The 287(g) training program, the **Immigration Authority Delegation Program (IADP)**, will be taught by ICE instructors and tailored to the immigration functions to be performed. ICE Office of Training and Development will proctor examinations during the IADP. The AGENCY nominee must pass each examination with a minimum score of 70 percent to receive certification. If the AGENCY nominee fails to attain a 70 percent rating on an examination, the AGENCY nominee will have one opportunity to remediate the testing material and re-take a similar examination. During the entire duration of the IADP, the AGENCY nominee will be offered a maximum of one remediation examination. Failure to achieve a 70 percent on any two examinations (inclusive of any remediation examination), will result in the disqualification of the AGENCY nominee and their discharge from the IADP.

Training will include, among other topics: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) civil rights laws; (vi) the U.S. Department of Justice “Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies,” dated June 2003; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligation 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 **AGENCY** personnel are trained and certified, ICE may provide additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration officer functions. Local training on relevant issues will be provided as needed by ICE supervisors or designated ICE team leaders. An OSLC designated official shall, in consultation with OTD and local ICE officials, review on an annual basis and, if needed, refresh training requirements.

Trained **AGENCY** personnel will receive, as needed, a DHS email account and access to the necessary DHS applications. The use of the information technology (IT) infrastructure and the DHS/ICE IT security policies are defined in the Interconnection Security Agreement (ISA). The ISA is the agreement between ICE Chief Information Security Officer (CISO) and **AGENCY** Designated Accreditation Authority (DAA). **AGENCY** agrees that each of its sites using ICE-provided network access or equipment will sign the ISA, which defines the IT policies and rules of behavior for each user granted access to the DHS network and applications. Failure to adhere to the terms of the ISA could result in the loss of all user privileges.

Data Collection:

ENFORCE is the primary processing system for alien removals and is the main resource for statistical information for the 287(g) program. All ENFORCE entries must be completed in accordance with established ICE polices and adhere to OSLC guidance.

ICE does not require the **AGENCY** to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves the right to request specific tracking or arrest data be maintained and provided for comparison and verification with ICE’s own data and statistical information. This data may also be used for ICE’s statistical reporting requirements or to assess the progress and success of the **AGENCY**’s 287(g) program.

The **AGENCY** and ICE are each responsible for compliance with the Privacy Act of 1974, as applicable, and related system of records notices with regard to data collection and use of information under this MOA. The applicable Systems of Record Notice for privacy compliance is the ENFORCE Systems of Records Notice, 71 FR 13987, dated March 20, 2006.

TASK FORCE OFFICER (TFO) MODEL:

Participating **AGENCY** personnel performing immigration-related duties pursuant to this MOA will be **AGENCY** officers certified and authorized by ICE, and assigned to task force operations supported by ICE. Those participating **AGENCY** personnel will exercise their immigration-related authorities during the course of criminal investigations involving aliens encountered within the **AGENCY JURISDICTION** or as directed by the SAC.

The participating **AGENCY** personnel are authorized to perform the following functions in the investigation, detention, and removal of aliens in the United States as allowed for the TFO model (INA 287(g)), pursuant to the tiered level of priorities set forth in Appendix D's "Prioritization" section:

- The power and authority to interrogate any person reasonably believed to be an alien about his right to be or remain in the United States and to process an alien solely based on an immigration violation (INA §§ 287(a)(1) and (2)) will be delegated only on a case-by-case basis. To exercise such authority, a TFO first must obtain approval from an ICE supervisor, who will approve the exercise only to further the priorities of removing serious criminals, gang members, smugglers, and traffickers and when reasonable suspicion exists to believe the alien is or was involved in criminal activity. When an alien is arrested for the violation of a criminal law, a TFO may process that alien for removal subject to ICE supervision as outlined in this agreement;
- The power and authority to arrest without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if there is reason to believe that the person so arrested has committed such felony and if there is likelihood of the person escaping before a warrant can be obtained (INA § 287(a)(4) and 8 C.F.R. § 287.5(c)(2)). Arrested individuals must be presented to a federal magistrate judge or other authorized official without unnecessary delay (INA § 287(a)(4); Fed. R. Crim. P. 5). Notification of such arrest must be made to ICE within twenty-four (24) hours;
- The power and authority to arrest for any criminal offense against the United States if the offense is committed in the officer's presence pursuant to INA § 287(a)(5)(A) and 8 C.F.R. § 287.5(e)(1);
- The power and authority to execute search warrants pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(1);
- The power and authority to issue arrest warrants for immigration violations pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(2);
- 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)), to complete required criminal 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 (INA § 239, 8 C.F.R. § 239.1; INA § 238, 8 C.F.R. § 238.1; INA § 241(a)(5), 8 C.F.R. § 241.8; INA § 235(b)(1), 8 C.F.R. § 235.3) including the preparation of a Notice to Appear (NTA) application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors;
- The power and authority to issue immigration detainers (INA § 236, INA § 287, and 8 C.F.R. § 287.7) and Form I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors; and
- The power and authority to detain and transport (INA § 287(g)(1) and 8 C.F.R. § 287.5(c)(6)) arrested aliens subject to removal to ICE-approved detention facilities.

As noted under Appendix D’s “Prioritization” section, ICE requires the **AGENCY** to focus its use of the 287(g) program in accord with ICE’s priorities.

Supervision:

A 287(g) delegation of authority task force is designed to proactively respond to, identify, and remove criminal aliens that reside within the **AGENCY’s** jurisdiction pursuant to the tiered level of priorities set forth in Appendix D’s “Prioritization” section. The following identifies each entity’s roles and responsibilities. These roles and responsibilities include, but are not limited to:

If an **AGENCY** conducts an interview and verifies identity, alienage, and deportability, they must contact ICE for arrest approval. No arrest for a violation of Title 8 is to be conducted by an **AGENCY** task force officer without prior approval from the ICE supervisor.

The **AGENCY** is responsible for insuring proper record checks have been completed, obtaining the necessary court/conviction documents, and, upon arrest, insuring that the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents.

Prior to an **AGENCY** conducting any enforcement operation that will involve the use of its 287(g) delegation of authority, the **AGENCY** must provide the ICE supervisor with a copy of the operations plan, and the SAC/FOD must concur and approve with the plan prior to it being initiated.

The ICE supervisor is responsible for requesting alien files, reviewing alien files for completeness, approval of all arrests, and TECS checks and input. The SAC/FOD office is responsible for providing the **AGENCY** with current and updated DHS policies regarding the arrest and processing of illegal aliens.

On a regular basis, the ICE supervisor is responsible for conducting an audit of the IDENT/ENFORCE computer system entries and records made by the LEA officers. Upon review and auditing of the IDENT/ENFORCE computer system entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for the **AGENCY**. The ICE supervisor will notify the **AGENCY** of any errors in the

system and the **AGENCY** is responsible for submitting a plan to ensure that steps are taken to correct, modify, or prevent the recurrence of errors that are discovered.

ICE will provide the **AGENCY** with guidance for presenting any criminal prosecution cases that are referred for Federal prosecution.

Consistent with applicable standard operating procedures, the creation of an A-file cannot be completed until the A-file is signed by the appropriate ICE supervisor. A-files can be maintained at an **AGENCY** facility as long as there is an ICE representative assigned to that facility and that representative has a work area where documents can be adequately secured. Representatives from DHS must be permitted access to the facility where ICE records are maintained.

Nominated Personnel:

AGENCY candidates working with task force operations shall have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions. The applicants should have a minimum of one year of law enforcement experience that includes experience in interviewing witnesses, interrogating subjects, providing constitutional rights warnings, obtaining statements, and executing search and seizure warrants. An emphasis should be placed on officers who have planned, organized, and conducted complex investigations relating to violations of criminal and civil law.

DETENTION MODEL:

Participating **AGENCY** personnel performing immigration-related duties pursuant to this MOA will be **AGENCY** officers assigned to detention operations supported by ICE. Those participating **AGENCY** personnel will exercise their immigration-related authorities only during the course of their normal duties while assigned to **AGENCY** jail/correctional facilities. Participating **AGENCY** personnel will identify and remove criminal aliens that reside within the **AGENCY's** jurisdiction pursuant to the tiered level of priorities set forth in Appendix D's "Prioritization" section.

The participating **AGENCY** personnel are authorized to perform the following functions as allowed by 287(g) of the INA for the Detention Model:

- The power and authority to interrogate any 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)) 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 warrants of arrest for immigration violations pursuant to INA § 287(a) and 8 C.F.R. § 287.5(e)(3);

- 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)), to complete required criminal 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 (INA § 239, 8 C.F.R. § 239.1; INA § 238, 8 C.F.R. § 238.1; INA § 241(a)(5), 8 C.F.R. § 241.8; INA § 235(b)(1), 8 C.F.R. § 235.3) including the preparation of a Notice to Appear (NTA) application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors;
- The power and authority to issue immigration detainers (INA § 236, INA § 287, and 8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors; and
- The power and authority to detain and transport (INA § 287(g)(1) and 8 C.F.R. § 287.5(c)(6)) arrested aliens to ICE-approved detention facilities.

As noted under Appendix D’s “Prioritization” section, ICE requires the **AGENCY** to focus its use of the 287(g) program in accord with ICE’s priorities.

Supervision:

A 287(g) delegation of authority detention model is designed to identify and remove aliens amenable to removal that are incarcerated within the **AGENCY’s** detention facilities pursuant to the tiered level of priorities set forth in Appendix D’s “Prioritization” section. The following identifies each entity’s roles and responsibilities. These roles and responsibilities include, but are not limited to:

The **AGENCY** shall provide notification to the ICE supervisor of any detainers placed under 287(g) authority within 24 hours.

The **AGENCY** shall coordinate transportation of detainees processed under 287(g) authority in a timely manner, in accordance with the MOA and/or IGSA.

The **AGENCY** is responsible for insuring proper record checks have been completed, obtaining the necessary court/conviction documents, and, upon arrest, insuring that the alien is processed through ENFORCE/IDENT and served with the appropriate charging documents.

The **AGENCY** must immediately report all encounters of an individual who claims U.S. citizenship to the FOD through their chain of command. The FOD shall make the appropriate notification to DRO headquarters.

The ICE supervisor is responsible for requesting alien files, reviewing alien files for completeness, approval of all arrests, and TECS checks and input. The FOD office is

responsible for providing the AGENCY with current and updated DHS policies regarding the arrest and processing of illegal aliens.

On a regular basis, the ICE supervisors are responsible for conducting an audit of the IDENT/ENFORCE computer system entries and records made by the AGENCY's officers. Upon review and auditing of the IDENT/ENFORCE computer system entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for AGENCY. The ICE supervisor will notify the AGENCY of any errors in the system and the AGENCY is responsible for submitting a plan to ensure that steps are taken to correct, modify, or prevent the recurrence of errors that are discovered.

Nominated Personnel:

All AGENCY jail enforcement officer candidates shall have specific experience that should consist of having supervised inmates. Candidates must show that they have been trained on and concerned with maintaining the security of the facility. Candidates must have enforced rules and regulations governing the facility on inmate accountability and conduct. Candidates must also show an ability to meet and deal with people of differing backgrounds and behavioral patterns.