# 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 Benton County Sheriff's Office (BCSO), pursuant to which ICE delegates nominated, trained, certified, and authorized BCSO personnel to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that these delegated authorities will enable the BCSO to identify and process immigration violators and conduct criminal investigations under ICE supervision, as detailed herein, within the confines of the BCSO's area of responsibility. The BCSO 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 BCSO personnel (participating BCSO personnel) will be nominated, trained, and approved by ICE to perform certain functions of an immigration officer within the BCSO's area of responsibility. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating BCSO personnel as members of the BCSO. However, the exercise of the immigration enforcement authority granted under this MOA to participating BCSO 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 BCSO personnel to perform; 2) the duration of the authority conveyed; 3) the supervisory requirements, including the requirement that participating BCSO personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA; and 4) program information or data that the BCSO 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 BCSO personnel only as to immigration enforcement and/or immigration investigative functions as authorized in this MOA. BCSO retains supervision of all other aspects of the employment and performance of duties by participating BCSO personnel.

The BCSO is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the BCSO 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 Operations (DRO) Field Office Director (FOD) 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 BCSO 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 may, in appropriate cases, decline to detain aliens whose detention is not mandated by Federal statute. ICE and the BCSO 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 BCSO will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which the BCSO will provide, for a reimbursable fee, detention of incarcerated aliens in BCSO facilities, upon the completion of their sentences. If ICE and the BCSO enter into an IGSA, the BCSO 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 BCSO 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 BCSO will occur only when the BCSO obtained the prior approval of ICE for the transportation. ICE will not reimburse if the BCSO did not obtain prior approval from ICE.

The parties understand that the BCSO will not continue to detain an alien after that alien is eligible for release from the BCSO's custody in accordance with applicable law and BCSO 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 BCSO will nominate candidates for ICE training and approval under this MOA. All candidates must be United States citizens. The BCSO is responsible for conducting a criminal background check within the last five years for all nominated candidates. Upon request, the BCSO 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 BCSO 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 BCSO 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 BCSO 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 BCSO personnel under consideration are in a bargaining unit, that BCSO 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 BCSO 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 BCSO candidates shall have knowledge of and have enforced laws and regulations pertinent to their law enforcement activities and their jurisdictions.

In the task force model setting, all BCSO 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 the BCSO. Each BCSO 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 BCSO 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 BCSO 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.

## VII. TRAINING OF PERSONNEL

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

## VIII. CERTIFICATION AND AUTHORIZATION

Before participating BCSO 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 BCSO 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 BCSO personnel must pass an ICE examination after instruction. Upon completion of training, those BCSO personnel who pass the ICE examinations shall be deemed "certified" under this MOA.

ICE will certify in writing the names of those BCSO 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 FOD in New Orleans, Louisiana, will provide the participating BCSO personnel a signed authorization letter allowing the named BCSO 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 BCSO. Only those certified BCSO 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 BCSO personnel official Delegation of Authority credentials. Upon receipt of the Delegation of Authority credentials, BCSO 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 BCSO personnel to act pursuant to this MOA may be withdrawn at any time and for any reason by ICE or the BCSO, 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 BCSO and the ICE SAC and/or the ICE FOD in New Orleans, Louisiana, 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 BCSO will immediately notify ICE when any certified and/or authorized BCSO 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.

## IX. 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 BCSO 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 BCSO personnel while they are receiving training. The BCSO will cover the costs of all BCSO 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 BCSO 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 BCSO personnel at each BCSO facility with an active 287(g) program. Only participating BCSO personnel certified by ICE may use this equipment. ICE will also provide the necessary technological support and software updates for use by participating BCSO 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 SAC and/or the ICE FOD in New Orleans, Louisiana.

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

The BCSO is responsible for providing all administrative supplies, such as paper, toner, pens, pencils, or other similar items necessary for normal office operations. The BCSO 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 BCSO will provide ICE, at no cost, with an office within each participating BCSO facility for ICE supervisory employees to work.

## X. ICE SUPERVISION

Immigration enforcement activities conducted by the participating BCSO personnel will be supervised and directed by ICE supervisory officers or designated ICE team leaders. Participating BCSO 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 BCSO 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 BCSO 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 BCSO personnel only as to immigration enforcement functions and for investigations conducted in conjunction to this authority. The BCSO retains supervision of all other aspects of the employment of and performance of duties by participating BCSO personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating BCSO 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 BCSO personnel will be expected or required to violate or otherwise fail to maintain the BCSO'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 BCSO's rules, standards, or policies, the conflict shall be promptly reported to the SAC and/or the FOD in New Orleans, Louisiana, or designees, and the BCSO, or designee, when circumstances safely allow the concern to be raised. The SAC and/or the FOD in New Orleans, Louisiana, and the BCSO shall attempt to resolve the conflict.

## XI. REPORTING REQUIREMENTS

ICE does not require the BCSO to provide statistical or arrest data above what is entered into ENFORCE; however, ICE reserves the right to request the BCSO 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 BCSO's 287(g) program.

## XII. LIABILITY AND RESPONSIBILITY

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

Participating BCSO 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 BCSO 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 BCSO 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 New Orleans, Louisiana. 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 P.O. Box 1128, Oakdale, Louisiana 71463-1128. 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 BCSO personnel.

The BCSO 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 BCSO 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 BCSO 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 BCSO personnel under this MOA are undertaken under Federal authority, the participating BCSO 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 BCSO 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.

## XIII. COMPLAINT PROCEDURES

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

## XIV. CIVIL RIGHTS STANDARDS

Participating BCSO 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.

## XV. INTERPRETATION SERVICES

Participating BCSO 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 BCSO, as needed.

The BCSO 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.

## XVI. COMMUNICATION

The ICE SAC and/or the ICE FOD in New Orleans, Louisiana, and the BCSO shall meet at least annually, and as needed, to review and assess the immigration enforcement activities conducted

by the participating BCSO personnel, and to ensure compliance with the terms of this MOA. When necessary, ICE and the BCSO may limit the participation of these meetings in regards to non-law enforcement personnel. The attendees will meet 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 Benton County. An initial review meeting will be held no later than nine months after certification of the initial class of participating BCSO personnel under Section VIII, above.

## XVII. COMMUNITY OUTREACH

The BCSO 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 BCSO's request. Nothing in this MOA shall limit ICE's own community outreach program.

## XVIII. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES

The BCSO 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 BCSO is authorized to do the same.

The BCSO 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 BCSO 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 BCSO hereby agrees to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. In the task force model setting, 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 BCSO 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 BCSO personnel pursuant to this agreement.

## XIX. 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.

## XX. POINTS OF CONTACT

ICE and BCSO 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.

## XXI. 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 BCSO 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 BCSO.

Notice of termination or suspension by the BCSO shall be given to the SAC and/or the FOD in New Orleans, Louisiana. Upon a good faith determination that the BCSO is not fulfilling its duties, ICE shall notify the BCSO, in writing, and inform the BCSO that it has 90 days to demonstrate a continued need for 287(g) program services. If this continued need is not demonstrated by the BCSO, the authorities and resources given to the BCSO 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 BCSO.

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: OCT 15 2009

John Morton
Assistant Secretary
Immigration and Customs Enforcement
Department of Homeland Security

Date: 10/08/09

Keith Ferguson
Sheriff
Benton County Sheriff's Office

## APPENDIX A

## POINTS OF CONTACT

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

For the BCSO:

Sheriff Keith Ferguson or Chief Deputy Don Townsend
1300 S.W. 14th Street
Bentonville, AR 72712
479-271-1008

For ICE DRO:

John Milian
Assistant Field Office Director
1250 Poydras Street
Suite 325
New Orleans, LA 70113
504-599-7866

For ICE OI:

Roland Jones
Assistant Special Agent in Charge
1250 Poydras Street
Suite 2200
New Orleans, LA 70113
504-310-8890

## 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 Benton County Sheriff's Office, (BCSO), pursuant to which selected BCSO personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating BCSO 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 BCSO 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 BCSO and be handled in accordance with the BCSO's Manual of Policy and Procedures, or equivalent rules, regulations, or procedures.

If any participating BCSO 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 BCSO 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 SAC and the Office of Professional Responsibility (OPR) points of contact in New Orleans, Louisiana. Complaints regarding the exercise of immigration enforcement authority by participating BCSO personnel shall be handled as described below.

The BCSO will also handle complaints filed against BCSO 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 BCSO personnel shall be forwarded to the SAC or the FOD in New Orleans, Louisiana.

In order to simplify the process for the public, complaints against participating BCSO 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 BCSO 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, BCSO, participating BCSO personnel, inmates, and the public). ICE will immediately forward a copy of the complaint to the DHS Office for Civil Rights and Civil Liberties (CRCL) 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 BCSO directly that involve BCSO 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 SAC of the ICE Office of Investigations in New Orleans, Louisiana. 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 BCSO's Internal Investigations Unit when the complaint involves BCSO 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 BCSO's Internal Investigations Unit.

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

B. Interim Action Pending Complaint Resolution

When participating BCSO 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 BCSO's Internal Investigations Unit to ensure notification as appropriate to the ICE SAC in New Orleans, Louisiana,, the subject(s) of a complaint, and the person filing the complaint regarding the resolution of the complaint.

These Complaint Reporting and Allegation Procedures are ICE's internal policy and may be supplemented or modified by ICE unilaterally. ICE will provide BCSO 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 BCSO:

Sheriff Keith Ferguson or Chief Deputy Don Townsend
1300 SW 14th St.
Bentonville, AR 72712
479-271-1008

For ICE:

Temple Black
Public Affairs Officer
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
1250 Poydras Street
Suite 2200
New Orleans, LA 70113
504-310-8887

## 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 SAC/FOD area of responsibility. This appendix can be modified only in writing and by mutual acceptance of the SAC/FOD, the BCSO Chief Deputy, the ICE Office of State and Local Coordination (OSLC) and the ICE Office of the Principal Legal Advisor (OPLA).

There are two models for the 287(g) program, a Task Force Officer (TFO) model or a Detention model. Pursuant to this MOA, BCSO has been delegated authorities under the TFO and Detention models 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 BCSO 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 (OTD) will proctor examinations during the IADP. The BCSO nominee must pass each examination with a minimum score of 70 percent to receive certification. If the BCSO nominee fails to attain a 70 percent rating on an examination, the BCSO nominee will have one opportunity to remediate the testing material and re-take a similar examination. During the entire duration of the IADP, the BCSO 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 BCSO 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 BCSO 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 BCSO 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 BCSO Designated Accreditation Authority (DAA). BCSO 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 BCSO 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 BCSO's 287(g) program.

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

The participating BCSO 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 interview any person reasonably believed to be an alien about his right to be or remain in the United States and to take into custody for processing 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(c)(3);

- 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 serve arrest warrants 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 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 BCSO to focus its use of the 287(g) program in accord with ICE's priorities. The participating BCSO personnel will concentrate their efforts primarily on conducting criminal investigations of federal and state felonies that will have maximum impact on human smuggling, human trafficking, egregious illegal alien employers and the victimization of illegal aliens.

Supervision:

A 287(g) delegation of authority task force is designed to proactively respond to, identify, and remove criminal aliens that reside within the BCSO'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 the BCSO 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 a BCSO task force officer without prior approval from the ICE supervisor.

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

Prior to the BCSO conducting any enforcement operation that will involve the use of its 287(g) delegation of authority, the BCSO 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 BCSO 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 BCSO. The ICE supervisor will notify the BCSO of any errors in the system and the BCSO 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 BCSO 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 a BCSO 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:

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

The participating BCSO 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 subject to removal to ICE-approved detention facilities.

As noted under Appendix D's "Prioritization" section, ICE requires the BCSO 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 BCSO'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 BCSO shall provide notification to the ICE supervisor of any detainers placed under 287(g) authority within 24 hours.

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

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

The BCSO 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 BCSO 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 BCSO'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 BCSO. The ICE supervisor will notify the BCSO of any errors in the system and the BCSO 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 BCSO 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.