



# CHANGES TO THE 287(G) PROGRAM

*ICE made a new template agreement for 287(g) MOUs. We explain the most significant changes in the agreements.*

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## The Most Important Changes to 287(g) in 2020

ICE recently renewed seventy-five jail-model 287(g) agreements around the country, with revised memoranda of Agreement (MOAs). Many of the changes to the MOA are not substantive, others may reflect internal operations without much effect on the ground, while others may have a significant impact on how 287(g) operates. Below we explain some of the key changes that ICE has made to the jail-model MOAs. The [WSO-model](#) MOAs have some differing provisions where described below.\*

### 1. No End Dates on the Agreements

Traditionally, 287(g) agreements were set to last for three years from when they were signed, or some similar term. Now ICE has simply removed any language about expiration of the agreement. The MOU can still be terminated at any time by either party, but there will not be a specific time where county officials make a renewal decision. This is an important change for advocacy against 287(g) because many campaigns previously focused on pressuring county governments not to renew when the contract was set to expire.

### 2. Furthers Baseless Arrests

ICE has removed language directing the local law enforcement agency, including Sheriffs and Police Departments, to pursue all arrest charges to completion. This enables officers to arrest someone and funnel them into deportation proceedings without bringing any charges in criminal court. For example, an officer might arrest someone for a minor offense when their real motive is to bring them into the jail, investigate their immigration history, and transfer them to immigration detention, without even intending to charge them with a crime. Although it is illegal for law enforcement to arrest someone without probable cause of a crime, it is extremely easy for them to find or allege a minor violation as a basis to take someone into custody and then transfer them to ICE.

*WSO agreements still retain the language about pursuing charges to completion. However it is unclear if or how ICE enforces this requirement or ever takes any action to discourage racial profiling.*

### 3. Taking People into Federal Immigration Custody

Under the new MOAs, 287(g) officers can transfer custody of a person from the sheriff's department to ICE, without that person leaving the jail. This means that legally speaking, the person will be in immigration detention, even though they haven't gone anywhere. This transfer of custody will take place even if the jail does not have

\* For more information about the 287(g) program in general, see: [www.ilrc.org/287g](http://www.ilrc.org/287g).

a detention contract to rent some of its bed space to ICE, although only for 48 hours, by which time the person must be moved to longer term ICE detention.

#### 4. Mandatory hold for 48 hours

The 287(g) agreements now require that law enforcement hold noncitizens up to 48 hours after executing an ICE arrest warrant. If the jail also has a contract to rent beds to ICE, sometimes known as an Intergovernmental Services Agreement or IGSA, they may hold them even longer, and ICE will reimburse for the costs. Otherwise, the sheriff's department bears the cost of this 48 hours detention. This new hold requirement is an effort to replace the function of ICE detainers, since so many federal courts have found LEAs liable for unlawful detention when holding someone on an ICE detainer. Now ICE is trying to recreate that hold period via 287(g) authority. The hold is achieved through an immigration warrant and arrest instead of a detainer request.

#### 5. No details on how to file complaints

Previous MOAs laid out procedures for people detained by LEA for ICE to complain to ICE about civil rights violations. The new contract entirely removes the section detailing these procedures, the points of contact, and the process for handling complaints. This further diminishes accountability when the LEA violates the rights of noncitizens detained for ICE.

*WSO agreements retain the more detailed complaint procedure information from prior MOAs.*

### Other Changes

*ICE also made other changes to reduce requirements and qualifications for designated 287(g) officers, eliminated details on required training and background checks, and got rid of the requirement that individual officers make a 2-year commitment, allowing LEAs more flexibility to move officers in and out of the 287(g) program. ICE also took on payment responsibility for the travel and expenses of local officers during the training program. Previously the local LEA partner was responsible for paying those costs. Additionally, ICE added procedures to protect the LEA's ability to continue the 287(g) program even in light of serious misconduct or violations.*

**For exact details on what has changed, see the following redlined contract.**

**Crossed out red text has been removed, and green highlighted text has been added.**



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#### About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

## MEMORANDUM OF AGREEMENT 287(g) Jail Enforcement Model

### I. PARTIES

This Memorandum of Agreement (MOA) constitutes an agreement between U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and Bristol County Sheriff's Office, **hereinafter the law enforcement agency (LEA)**, pursuant to which ICE delegates to nominated, trained, certified, and authorized LEA personnel the authority to perform certain immigration enforcement functions as specified herein. ~~It is the intent of the parties that these delegated authorities will enable the LEA to identify and process for removal, under ICE supervision, aliens in LEA jail/correctional facilities who fall within ICE's civil immigration enforcement priorities.~~ The LEA and ICE enter into this MOA in good faith and agree to abide by the terms and conditions contained herein.

### II. PURPOSE

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

### III. AUTHORITY

Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g) (1996), as amended by the Homeland Security Act of 2002, Pub. L. No. 107-296, authorizes the Secretary of DHS to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. Such authority has been delegated by the Secretary to ICE, and this MOA constitutes such a written agreement.

### ~~III. POLICY~~

~~This MOA sets forth the following: 1) the functions of an immigration officer that DHS is authorizing the participating LEA personnel to perform; 2) the duration of the authority conveyed; 3) the supervisory requirements, including the requirement that participating LEA personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA; and 4) program information or data that the LEA 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 LEA personnel only as to immigration enforcement functions as authorized in this MOA. The LEA retains supervision of all other aspects of the employment and performance of duties by participating LEA personnel.~~

### IV. RESPONSIBILITIES

ICE retains sole discretion in determining how it will manage its ~~detention resources and advance its mission~~ limited resources and meet its mission requirements. **[This highlighted language was previously in 2018 Appendix D.]** ICE will assume custody of an alien only after said individual has been released from LEA custody. ~~ICE will prioritize the detention of aliens in conformity with its civil immigration enforcement priorities. ICE reserves the right to detain aliens to the extent provided by law.~~

~~The LEA is expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the LEA has jurisdiction. Subject to its civil immigration enforcement priorities, ICE will assume custody of an alien for purposes of removal, only after said individual has been released from LEA custody. The LEA agrees to use its 287(g) authority in a manner consistent with ICE's civil immigration enforcement priorities.~~

(2)

#### A. DESIGNATION OF AUTHORIZED FUNCTIONS

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

#### ~~V. OPTIONAL INTER-GOVERNMENTAL SERVICE AGREEMENTS~~

~~ICE and the LEA may enter into an Inter-Governmental Service Agreement (IGSA) pursuant to which the LEA will continue to detain, for a reimbursable fee, aliens for immigration purposes, if ICE so requests, following completion of the alien's criminal incarceration. If ICE and the LEA enter into an IGSA, the LEA must meet applicable detention standards.~~

~~In addition to detention services, ICE and the LEA may enter into an IGSA provide for transportation services relating to incarcerated aliens. Under a transportation IGSA, the LEA will transport incarcerated aliens who have completed their criminal sentences to a facility or location designated by ICE, if ICE makes such a request. Reimbursement to the LEA will occur only when the LEA obtained prior ICE approval for the transportation. ICE will not reimburse if the LEA did not obtain prior approval from ICE.~~

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

#### B. NOMINATION OF PERSONNEL

The LEA will ~~nominate candidates for ICE training and approval~~ **use due diligence to screen and nominate candidates for ICE training and approval** under this MOA. All candidates must be United States citizens, ~~All LEA candidates shall~~ have knowledge of ~~and have enforced,~~ **and authority to enforce**, laws and regulations pertinent to their law enforcement activities and their jurisdictions, ~~All LEA candidates shall have experience supervising inmates,~~ **and** have been trained on maintaining the security of LEA facilities, and have ~~enforced~~ **the authority to enforce** rules and regulations governing inmate accountability and conduct. ~~Candidates must also show an ability to meet and deal with people of differing backgrounds and behaviors.~~

~~The LEA is responsible for conducting a criminal background check covering the last five years for all nominated candidates. Upon request, the LEA will provide all related information and materials it collected, referenced, or considered during the criminal background check for nominated candidates to ICE.~~

~~The LEA 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 section 287(g) of the INA for a minimum of two years. If LEA personnel under consideration are in a collective bargaining unit, the LEA 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 two-year requirement may be waived 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 LEA to fulfill this commitment could jeopardize the terms of this MOA.~~

~~In addition to the LEA background check, ICE will conduct an independent background check investigation and make an eligibility determination on each candidate prior to personnel being authorized to perform duties under this MOA. 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 all national and international law enforcement databases to evaluate a candidate's suitability to exercise immigration enforcement functions under this MOA. Upon request by ICE, the LEA will provide continuous access to disciplinary records of an candidates along with a written privacy waiver signed by the candidate allowing ICE to have continuous access to his or her disciplinary records.~~

All LEA candidates must be approved by ICE and must be able to qualify for access to the appropriate DHS and ICE databases/systems and associated applications. Should a candidate not be approved, a qualified substitute candidate may be submitted. ~~Any future expansion in the number of participating LEA personnel or scheduling of additional training classes is subject to all the requirements of this MOA and the accompanying SOP.~~

### C. TRAINING OF PERSONNEL

Before participating LEA personnel receive authorization to perform immigration officer functions under this MOA, they must successfully complete the ~~Immigration Authority Delegation Program (IADP)~~ ~~delegation of immigration authority~~ training provided by ICE ~~on relevant administrative, legal, and operational issues tailored to the immigration enforcement functions to be performed.~~

The ~~IADP~~ training will be taught by ICE instructors and tailored to the immigration enforcement functions to be performed. Each LEA nominee must pass each examination with a minimum score of 70-percent to receive certification. If an LEA nominee fails to attain a 70-percent rating on an examination, the LEA nominee will have ~~1~~ ~~an~~ opportunity to review the testing material and re-take a similar examination. During the entirety of ~~training the IADP~~, the LEA nominee will be offered a maximum of one remedial examination. Failure to achieve a 70-percent rating on any two examinations (inclusive of any remedial examination), will result in the disqualification of the LEA nominee and discharge of the nominee from the ~~IADP~~ training.

~~Training will include, among other topics: (i) discussion of the terms and limitations of this MOA; (ii) the scope of delegated immigration officer authority; (iii) relevant immigration laws; (iv) ICE's civil immigration enforcement priorities, including prosecutorial discretion; (v); civil rights laws; (vi) the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014, and related DHS guidance; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) obligations related to consular notification concerning the arrest or detention of foreign nationals.~~

Participating LEA personnel will also be required to complete refresher training **as needed, Immigration Authority Delegation Refresher Program (IADRP)** but not more frequently than every two years; **after the initial course completion.** Participating LEA personnel will also **complete** and any additional training required by ICE on relevant administrative, legal, and operational issues related to the immigration officer functions to be performed.

~~ICE will review the training requirements annually and reserves the right to amend them.~~

~~Trained LEA personnel will receive a DHS email account and access to the necessary DHS systems and associated 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's Chief Information Security Officer (CISO) and the LEA's Designated Accreditation Authority (DAA). The LEA agrees that each of its sites using an 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.~~

#### D. CERTIFICATION AND AUTHORIZATION

Upon successful completion of initial training, LEA personnel shall be deemed "certified" under this MOA.

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

Along with the authorization letter **and ICE Form 70-006,** ICE will issue the certified LEA personnel official immigration officer credentials. ~~Upon receipt of the credentials, LEA personnel will provide ICE a signed receipt of the credentials on the ICE Record of Receipt – Property Issued to Employee (Form G-570).~~ Participating LEA personnel shall carry their ICE-issued credentials while performing immigration officer functions under this MOA. Such credentials provided by ICE shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, when a participating LEA employee ceases his/her participation, or when deemed necessary by the FOD ~~in [CITY, STATE].~~



~~Authorization of participating~~ LEA personnel ~~to act pursuant to this MOA~~ may be withdrawn have their delegated authority revoked at any time for any reason, by ICE and must be memorialized in a written notice of withdrawal identifying an effective date of withdrawal and the personnel to whom the withdrawal pertains. Such withdrawal may be effectuated immediately upon notice to the LEA. However, where a revocation would effectively amount to the suspension/termination of the entire MOA (i.e. where a revocation would leave no participating LEA personnel available to carry out responsibilities under the 287(g) program), ICE will follow the suspension and termination notice processes described in Section VIII, below. The letter of authorization issued to LEA personnel will remain valid until the LEA personnel is revoked via the issuance of a letter of revocation signed by the FOD. The LEA and ~~the ICE FOD in [CITY, STATE]~~ will be responsible for notification to the appropriate personnel in their respective agencies. The suspension or termination of this MOA, a process described in Section VIII, shall constitute immediate revocation of all immigration enforcement authorizations delegated hereunder.

~~The LEA will notify ICE within 48 hours of when participating LEA personnel cease their participation in the 287(g) program, so that appropriate action can be taken in accordance with ICE policies, including inventorying and retrieval of credentials and termination of user account access to the appropriate DHS and ICE databases/systems and associated applications.~~

#### E. COSTS AND EXPENDITURES

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

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

~~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 LEA remains responsible for paying salaries and benefits of the selected personnel.~~

~~Subject to the availability of funds, ICE will be responsible for the purchase, installation, and maintenance of technology (computer/Integrated Automated Fingerprint Identification System/Photo and similar hardware/software) necessary to support the immigration enforcement functions of participating LEA personnel at each LEA facility with an active 287(g) program. Only participating LEA personnel certified by ICE may use this equipment. ICE will also provide the necessary technological support and software updates for use by participating LEA 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 FOD.~~

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

The LEA is responsible for providing all administrative supplies ~~such as paper, toner, pens, pencils, or other similar items~~ (e.g. paper, printer toner) necessary for normal office operations. The LEA is also responsible for providing the necessary security equipment, such as handcuffs, leg restraints ~~and flexi-cuffs~~, etc.

~~Also, if requested by ICE, the LEA will provide at no cost to ICE, an office within participating LEA facilities from which ICE supervisory employees can work.~~

## F. ICE SUPERVISION

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

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

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

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LEA personnel in exercising these delegated authorities under this MOA shall be DHS and ICE policies and procedures. ICE is responsible for providing the LEA with the applicable DHS and ICE policies. However, when engaged in immigration enforcement activities, no participating LEA personnel will be expected or required to violate or otherwise fail to maintain the LEA'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 LEA 's rules, standards, or policies, the conflict shall be promptly reported to the points of contact ~~listed~~ in ~~Appendix A Section VII~~, who shall attempt to resolve the conflict.

## G. INTERPRETATION SERVICES

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

The LEA 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, which may include LEA personnel, 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.~~

## [Previously XI.] ~~REPORTING REQUIREMENTS~~

~~The LEA will provide statistical or aggregated arrest data to ICE, as requested by ICE. The LEA will also provide specific tracking data and/or any information, documents, or evidence related to the circumstances of a particular arrest upon request. 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 LEA's 287(g) program.~~

## H. LIABILITY AND RESPONSIBILITY

Except as otherwise noted in this MOA or allowed by Federal law, and to the extent required by 8 U.S.C. § 1357(g)(7) and (8), the LEA will be responsible and bear the costs of participating LEA personnel with regard to their property or personal expenses incurred by reason of death, injury, or incidents giving rise to liability.

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

Participating LEA personnel named as **personal-capacity** defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. See 28 C.F.R. § 50.15. Absent exceptional circumstances, such requests must be made in writing. LEA personnel who wish to submit a request for representation shall notify the local ~~ICE Office of the Chief Counsel at [Address]~~ **ICE Office of the Principal Legal Advisor (OPLA) field location at JFK Federal Building 15 New Sudbury Street, Room 425 Boston, MA 02203.** OPLA, through its headquarters, ~~The Office of the Chief Counsel will in turn notify the ICE Headquarters Office of the Principal Legal Advisor,~~ will assist LEA personnel with the request for representation, including the appropriate forms and instructions. Unless OPLA concludes that representation clearly is unwarranted, it will forward the request for representation, any supporting documentation, and an advisory statement opining whether: 1) the requesting individual was acting within the scope of his/her authority under 8 U.S.C. § 1357(g) **and this MOA**; and, 2) such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Tort Litigation Section, Civil Division, Department of Justice (DOJ). Representation is granted at the discretion of DOJ; it is not an entitlement. **See 28 C.F.R. § 50.15. Subject to DHS Policy, ICE may defend or indemnify acts of intentional misconduct on the part of the participating LEA personnel only to the extent authorized by law.**

The LEA agrees to cooperate with any Federal investigation related to this MOA to the full extent of its available powers, including providing access to appropriate databases, personnel, individuals in custody and documents. Failure to do so may result in the termination of this MOA. Failure of any participating LEA employee to cooperate in any Federal investigation related to this MOA may result in revocation of such individual's authority provided under this MOA. The LEA 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 LEA 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 LEA personnel under this MOA ~~are undertaken under~~ **derive from** Federal authority, the participating LEA personnel will comply with Federal standards and guidelines relating to the Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny, which govern the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

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

## I. CIVIL RIGHTS STANDARDS

Participating LEA personnel are bound by all Federal civil rights laws, regulations, and guidance relating to non-discrimination, including the U.S. Department of Justice "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity," dated December 2014;<sup>2</sup> Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," (Aug. 2000); 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; and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability and requires the LEA to provide effective communication to individuals with disabilities, and/or Title II of the Americans with Disabilities Act of 1990, which also prohibits discrimination based on disability and requires the LEA to provide effective communication to individuals with disabilities.

## V. REPORTING AND DOCUMENTATION

### A. COMPLAINT PROCEDURES

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

### B. COMMUNICATION

The ICE FOD in [CITY, STATE], or the FOD's management representative, and the LEA shall make every effort to meet at least annually, ~~and as needed, to review and assess the immigration enforcement activities conducted by the participating LEA personnel, and~~ to ensure compliance with the terms of this MOA. When necessary, ICE and the LEA may limit the participation of these meetings in regards to non-law enforcement personnel. The attendees will meet in [CITY, STATE] ~~at locations~~ at a location 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 [CITY, STATE]. An initial review meeting will be held no later than nine months after certification of the initial class of participating LEA personnel under Section VII, above.~~ between ICE and the LEA should be held within approximately 12 months of the MOA's operational date.

### C. COMMUNITY OUTREACH

The LEA, in coordination with the local ICE Field Office, will engage, as necessary, in Steering Committee meetings ~~and may engage other community outreach with individuals and organizations expressing an interest in this MOA to enhance support for the 287(g) mission, and to ensure compliance with the terms of this MOA. ICE may participate in such outreach upon the LEA's request. Nothing in this MOA shall limit ICE's own community outreach efforts.~~

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

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

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

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

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

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

## VI. MODIFICATIONS TO THIS MOA

Modifications to this MOA, including the Appendices, must be proposed in writing and approved and signed by both parties. ~~Modification to Appendix D shall be done in accordance with the procedures outlined in the SOP.~~

## VII. POINTS OF CONTACT

ICE and the LEA 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.~~

### **[Previously in Appendix A]**

For the LEA: Bristol County Sheriff's Office, Sheriff

For DHS: Boston, Field Office Director

## VIII. ~~DURATION~~ EFFECTIVE DATE, SUSPENSION, AND TERMINATION OF THIS MOA

This MOA ~~will remain in effect from the date of signing to June 30, 2019 unless terminated earlier by either party~~ becomes effective upon signature of both parties and will remain in effect until either party terminates or suspends the MOA. Termination by the LEA shall be provided, in writing, to the local Field Office.

(1)

~~Prior to the expiration of the effective period, ICE and the LEA shall review the MOA for consideration whether to 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 or suspend the MOA at any time. A termination or suspension notice by ICE shall be delivered personally or by certified or registered mail to the LEA and termination or suspension shall take effect immediately upon receipt of such notice. Notice of termination or suspension by the LE shall be given to the ICE FOD in [CITY, STATE] and termination or suspension shall take effect immediately upon receipt of such notice. Upon a subsequent demonstration of need, all costs to reinstate access to such authorities and/or program services will be incurred by the LEA.~~

In instances where serious misconduct or violations of the terms of the MOA come to the attention of ICE, the ICE Director may, upon recommendation of the Executive Associate Director for Enforcement and Removal Operations, elect to immediately suspend the MOA pending investigation of the misconduct and/or violations.

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

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

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

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

This MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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

## **APPENDIX A STANDARD OPERATING PROCEDURE (SOP)**

The purpose of this appendix is to establish standard, uniform procedures for the implementation and oversight of the ~~287(g) delegation of authority program~~ **this MOA** within the FOD area of responsibility. ~~This appendix can be modified only in writing and by mutual acceptance of ICE and the LEA.~~

Pursuant to this MOA, the LEA has been delegated authorities under the Jail Enforcement ~~Officer Model (JEM) (JEO) model~~ Program as outlined below. ~~A The 287(g) JEO model JEM Program~~ **is designed to identify and process** ~~aliens amenable for removal within the LEA's jail/correctional facilities pursuant to ICE's civil immigration enforcement priorities.~~ **removable aliens within the LEA's jail/correctional facilities.**

**Prioritization:**

**[This sentence was moved to IV. Responsibilities in the 2020 Contract].** 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 LEA to also manage its resources dedicated to 287(g) authority under the MOA. To that end, the LEA shall follow ICE's civil immigration enforcement priorities.~~

**Authorized Functions:**

Participating LEA personnel performing immigration-related functions pursuant to this MOA will be LEA officers assigned to **detention duties** ~~detention operations supported by ICE~~. Those participating LEA personnel will exercise their immigration-related authorities only during the course of their normal duties while assigned to the LEA's jail/correctional facilities. ~~Participating LEA personnel will identify and process for removal aliens in LEA jail/correctional facilities who fall within ICE's civil immigration enforcement priorities.~~

Participating LEA personnel are delegated only those authorities listed below:

- The power and authority to interrogate any person detained in the participating law enforcement agency' s detention center who the officer believes to be an alien about his or her right to be or remain in the United States, 8 U.S.C. § 1357(a)(l) and 8 C.F.R. § 287.5(a)(1), and to process for immigration violations any removable alien or those aliens who have been arrested for violating a Federal, State, or local offense;
- The power and authority to serve **and execute** warrants of arrest for immigration violations, 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.5(e)(3), **on designated aliens in LEA jail/correctional facilities at the time of the alien's scheduled release from criminal custody in order to transfer custody of the alien to ICE;** (3)
  - **Upon transfer of the alien' s custody to ICE, the alien will continue to be held in the LEA's jail/correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the LEA will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the LEA's jail/correctional facility.** (4)



- The power and authority to serve warrants of removal, 8 U.S.C. § 1357(a) and 8 C.F.R. §§ 241.2(b)(2), 287.5(e)(3), on designated aliens in LEA jail/correctional facilities at the time of the alien's scheduled release from criminal custody that executes the custodial transfer of the alien to ICE for removal purposes;
  - Upon transfer of the alien's custody to ICE, the alien will continue to be held in the LEA's jail/correctional facilities for no more than 48 hours unless there exists an agreement pursuant to which the LEA will continue to detain, for a reimbursable fee, aliens for immigration purposes. In the absence of an agreement, if the alien is not transferred to an ICE field office or an immigration detention facility within 48 hours, the alien shall be released from the LEA's jail/correctional facility.
- The power and authority to administer oaths and to take and consider evidence, 8 U.S.C. § 1357(b) and 8 C.F.R. § 287.5(a)(2), to complete required alien processing, including fingerprinting, photographing, and interviewing of aliens, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;
- The power and authority to prepare charging documents, 8 U.S.C. §§ 1225(b)(1), 1228, 1229, and 1231 (a)(5); 8 C.F.R. §§ 235.3, 238.1, 239.1, and 241.8, including the preparation of a Notice to Appear (NTA) or other charging document, as appropriate, for the signature of an ICE officer;
- The power and authority to detain and transport, 8 U.S.C. § 1357(g)(1) and 8 C.F.R. § 287.5(c)(6), arrested aliens subject to removal to ICE-approved detention facilities; and
- The power and authority to issue immigration detainers, 8 U.S.C. §§ 1226 and 1357, and 8 C.F.R. § 287.7, and 1-213, Record of Deportable/Inadmissible Alien, for processing aliens.

#### **Additional Supervisory and Administrative Responsibilities:**

~~Immigration enforcement activities conducted by the participating LEA personnel will be supervised and directed by ICE supervisory officers.~~ Participating LEA personnel are ~~not authorized to perform~~ **only authorized to conduct** immigration ~~officer~~ **enforcement** functions ~~except when working under the supervision or guidance of ICE~~ **while under the direction and supervision of ICE.**

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

- ~~When issuing any immigration detainer, participating~~ **Participating** LEA personnel ~~must follow applicable DHS and ICE policies, and~~ must notify the ICE supervisor of any immigration detainer issued under the authority conferred by the MOA ~~within 24 hours as soon as possible,~~ **but no longer than approximately 24 hours.**
- ~~The LEA shall coordinate transportation of detainees processed under the authority conferred by the MOA in a timely manner, in accordance with the MOA and/or IGSA.~~
- ~~All alien processing in applicable ICE databases/systems and associated applications must be completed in accordance with established ICE policies and guidance.~~

- ~~The LEA is~~ **Participating LEA personnel are** responsible for ensuring proper record checks have been completed, ~~obtaining the necessary court/conviction documents, and ensuring that the alien is served with the appropriate charging documents.~~
- ~~The LEA~~ **Participating LEA personnel** must report all encounters with asserted or suspected claims of U.S. citizenship to ~~the ICE FOD in [CITY, STATE] through their chain of command within one hour of the claim.~~ **ICE immediately**, but generally within one hour of the claim. ~~The FOD shall make the appropriate notification to ERO headquarters.~~
- ~~On a regular basis, the ICE supervisors are responsible for conducting an audit of the processing entries and records made by the LEA's officers. Upon review and auditing of the entries and records, if errors are found, the ICE supervisor will communicate those errors in a timely manner to the responsible official for the LEA and ensure that steps are taken to correct, modify, or prevent the recurrence of errors that are discovered.~~
- Administrative files (A-files) are Federal records, subject to the Federal Records Act and applicable Federal confidentiality statutes. It follows that the utilization and handling of the A-files must be consistent with applicable laws and DHS and ICE policy. ~~The ICE supervisor~~ ICE is responsible for requesting A-files and reviewing them for completeness. A-files can be maintained at an LEA facility as long as there are ICE personnel assigned to that facility and the personnel have a work area where documents can be adequately secured and stored by ICE personnel. Representatives from DHS must be permitted access to the facility where ICE records are maintained.

## APPENDIX B COMPLAINT PROCEDURE

(5)

~~This Memorandum of Agreement (MOA) is between the U.S. Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) and the [NAME OF SHERIFF'S OFFICE], pursuant to which selected LEA personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating LEA 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 LEA 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 LEA and be handled in accordance with the LEA's applicable rules, policies, and procedures.~~

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

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

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

~~In order to simplify the process for the public, complaints against participating LEA personnel relating to their immigration enforcement can be made according to the procedures outlined below:~~

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

## 1. ~~Complaint and Allegation Reporting Procedures~~

~~Complaint reporting procedures shall be disseminated by the LEA within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that all individuals are aware of the availability of such procedures. Such material must include up-to-date contact information necessary to file the complaint.~~

~~Complaints will be accepted from any source (e.g., ICE, LEA, participating LEA 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).~~

~~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 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 [Jointintake@cbp.dhs.gov](mailto:Jointintake@cbp.dhs.gov), or~~

~~C. Via mail as follows:~~

~~Department of Homeland Security  
U.S. 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 LEA directly that involve LEA personnel with ICE delegated authority will be reported to ICE OPR via the JIC. ICE OPR will verify participating personnel status under the MOA with the assistance of the ICE Headquarters. 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 LEA's Internal Investigations Unit when the complaint involves LEA 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, 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 Civil Rights Division. Complaints will be resolved using the existing procedures, supplemented as follows:~~

#### ~~A. Referral of Complaints or Allegations to the LEA's Internal Investigations Unit.~~

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

#### ~~B. Interim Action Pending Complaint Resolution~~

~~When participating LEA 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 suspend or revoke an individual's immigration enforcement 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 LEA's Internal Investigations Unit to ensure notification as appropriate to the JIC, 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 LEA 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.~~