

## **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 Town of Herndon, Virginia Herndon Police Department, hereinafter referred to as HPD or LEA, pursuant to which ICE authorizes up to a maximum of 7 nominated, trained, and certified HPD personnel to perform certain immigration enforcement functions as specified herein. It is the intent of the parties that these delegated authorities will enable the HPD to identify and process immigration violators in jurisdiction of Herndon, VA. ICE and HPD points of contact for purposes of this MOA are identified in Appendix A.

### **I. PURPOSE**

The purpose of this MOA is to set forth the terms and conditions pursuant to which selected Herndon Police Department personnel (participating HPD personnel) will be nominated, trained, and thereafter perform certain functions of an immigration officer within and outside of Herndon, Virginia, under the direct supervision of ICE. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating Herndon Police Department personnel as members thereof. However, the exercise of the immigration enforcement authority granted under this MOA to participating HPD personnel shall occur only as provided in this MOA. This MOA also describes the complaint procedures available to members of the public regarding immigration enforcement actions taken by participating HPD personnel pursuant to this agreement.

### **II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act (INA), also codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the 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 scope of the immigration officer functions that DHS is authorizing the participating HPD personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating HPD personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA. For the purposes of this MOA, ICE officers will provide supervision for participating HPD personnel only as to immigration enforcement functions. The Herndon Police Department retains supervision of all other aspects of the employment and performance of duties by participating HPD personnel.

#### IV. ASSIGNMENTS

Before participating HPD personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete mandatory 5-week training, as described in Section VIII, in the enforcement of federal immigration laws and policies as provided by ICE instructors and thereafter pass examinations equivalent to those given to ICE officers. Only participating HPD personnel who are selected, trained, authorized, and supervised, as set out herein, have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

Participating HPD personnel performing immigration-related duties pursuant to this MOA will be HPD officers assigned to one of the following units or a unit by another name performing the same functions: Violent Fugitive Apprehension Squad (VFAS), Criminal Investigations Section (CIS), Anti-Gang Unit, Drug Enforcement Unit, and Operations (OPS). Participating HPD personnel will be exercising their immigration-related authorities during the course of criminal investigations involving aliens encountered within Herndon, VA. Any combination of these officers or others may be assigned and/or co-located as task force officers to assist ICE agents with criminal investigations.

The mission of these various LEA assignments are summarized as follows:

- Violent Fugitive Apprehension Squad (VFAS): The LEA personnel assigned to the VFAS unit are charged with the responsibility of identifying high-risk felons who are wanted for crimes or offenses that represent a significant threat to public safety.
  
- Criminal Investigation Section (CIS): The LEA personnel assigned to CIS by statute are charged with the responsibility of identifying criminal enterprises and other forms of organized criminal activities.
  
- Anti-Gang Unit: The LEA personnel assigned to the anti-gang unit engage in law enforcement actions that are targeted against gang activity.
  
- Drug Enforcement Unit: The LEA personnel assigned to these various drug enforcement units are involved with illegal trafficking in narcotics investigations, quite often they encounter individuals who may be in the country illegally.
  
- Operations Unit: The LEA personnel assigned to this unit are involved in the prevention of general criminal activity involving among others Group A offenses and a Group B offense and apprehension of criminals who commit such crimes. Group A crimes are listed in the Appendix D "Group A Offenses," attached and incorporated by reference and the Group B offense of driving under the influence.

## **V. DESIGNATION OF AUTHORIZED FUNCTIONS**

For the purposes of this MOA, participating HPD personnel will be authorized to perform the following functions pursuant to the stated authorities, subject to the limitations contained in this MOA :

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 those individuals who are convicted of State or Federal felony offenses, Group A offenses, or the Group B offense of driving under the influence.

- The power and authority to arrest without warrant any alien entering or attempting to unlawfully enter the United States, or any alien in the United States, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA § 287(a)(2) and 8 C.F.R. § 287.5(c)(1);
- 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. INA § 287(a)(4) and 8 C.F.R. § 287.5(c)(2). Notification of such arrest must be made to ICE within twenty-four (24) hours;
- The power and authority to serve warrants of arrest for immigration violations pursuant to 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 Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R. 238.1; INA Section 241(a)(5), 8 C.F.R. 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3) 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 covered by this MOA under the directions of ICE supervisors;
- The power and authority to issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories covered by this MOA under the directions of ICE supervisors; and
- The power and authority to detain and transport (8 C.F.R. § 287.5(c)(6)) arrested aliens to ICE-approved detention facilities.

## **VI. DETENTION ISSUES**

The Herndon Police Department is expected to pursue to complete prosecution of the state or local charges that caused the individual to be taken into custody. ICE will assume custody of individuals who have been convicted of a State or local offense only after such individuals have concluded service of any sentence of incarceration. ICE will also assume custody of aliens with prior criminal convictions and when immigration detention is required by statute. The ICE Detention and Removal Field Officer Director or his/her designee will assess on a case-by-case basis the appropriate removal vehicle to be employed and/or whether to assume custody of individuals that do not meet the above criteria based on special interests or other extenuating circumstances after processing by the HPD. The immigration laws provide ICE Detention and Removal Operations (DRO) with the discretion to manage limited ICE detention resources, and ICE Field Office Directors may exercise this discretion, in appropriate cases, by declining to detain aliens whose detention is not mandated by federal statute.

Herndon Police Department will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which, the HPD will provide, for a reimbursable fee, detention of incarcerated aliens in designated ICE facilities, upon the completion of their sentences. The approved ICE facility will be expected to meet the ICE detention standards for either a less than 72-hour or over 72-hour facility as determined by ICE, and consistent with the anticipated detention period.

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

Upon completion of processing and release from the HPD's custody of an individual who participating HPD personnel have determined to be a removable alien, the alien will be transported by the HPD on the same day to an ICE designated office or facility, after notification to and coordination with the ICE supervisory officer, so that no further detention costs will be incurred by ICE.

## **VII. NOMINATION OF PERSONNEL**

The Herndon Police Department will nominate candidates for initial training and certification under this MOA. For each candidate, ICE may request any information necessary for a background check and to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. All candidates must be United States citizens. All candidates must have at least two years of work experience with HPD. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances.

Should a candidate not be approved, a substitute candidate may be submitted if time permits such substitution to occur without delaying the start of training. Any future expansion in the number of participating HPD personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOA.

#### **VIII. TRAINING OF PERSONNEL**

ICE will provide participating HPD personnel with the mandatory 5-week training tailored to the immigration functions to be performed. Training will take place at a mutually designated site in Northern Virginia, and will utilize ICE-designed curriculum and competency testing.

Training will include, among other things: (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 HPD 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, unless either party terminates this MOA pursuant to Section.XVII, below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or a designated team leader.

#### **IX. CERTIFICATION, AUTHORIZATION, AND TERMINATION**

The ICE Training Division will certify in writing to the ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia the names of those HPD personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia will provide the participating HPD personnel with a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to the HPD. The ICE supervisory officer, or designated team leader, will evaluate the activities of all personnel certified under this MOA.

Authorization of participating LEA personnel to act pursuant to this MOA may be revoked at any time by ICE or the LEA. Such revocation will require immediate notification to the other party to this MOA. The Chief of the Herndon Police Department and the ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA shall constitute revocation of all immigration enforcement authorizations delegated hereunder.

## **X. COSTS AND EXPENDITURES**

Participating HPD personnel will carry out designated functions at HPD expense, including salaries and benefits, local transportation, and official issue material.

ICE will provide the instructors and training materials. The HPD is responsible for the salaries and benefits, including overtime, for all of its personnel being trained or performing duties under this MOA, and for those personnel performing the regular functions of the participating HPD personnel while they are receiving training. The HPD will cover the costs of all HPD candidates' travel, housing, and per diem affiliated with the training required for participation in this agreement. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines that it is necessary, the HPD will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which HPD will provide, for a reimbursable fee, transportation for all incarcerated aliens, upon the completion of their sentences, or upon completion of processing in those circumstances in which state or local prosecution is not available, to a facility or location designated by ICE. If ICE determines that it is necessary, HPD will provide ICE, at no cost, with an office within each participating HPD facility for ICE supervisory employees to work.

ICE agrees to be responsible for the purchase, installation, and maintenance of technology (computer/LAFIS/Photo and similar hardware/software) necessary to support the investigative functions of participating HPD personnel at each HPD facility with an active 287(g) program. The use of this equipment is to be limited to the performance of responsibilities authorized by this MOA under section 287(g) of the INA by participating HPD personnel. ICE also agrees to provide the necessary technological support and software updates for use by participating HPD personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased or provided by ICE, shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, or when deemed necessary by the ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia.

## **XI. ICE SUPERVISION**

Immigration enforcement activities conducted by the participating HPD personnel will be supervised and directed by ICE supervisory officers or the designated team leader in Virginia. Participating HPD personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer, or when acting pursuant to the guidance provided by an ICE agent. Participating HPD 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 HPD 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 additional training or guidance.

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

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating HPD 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 HPD personnel will be expected or required to violate or otherwise fail to maintain the HPD'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 HPD's rules, standards, or policies, the conflict shall be promptly reported to the ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia, or designees, and the Chief of Police, or designee, when circumstances safely allow the concern to be raised. The ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia and the Chief of the Herndon Police Department shall attempt to resolve the conflict.

## **XII. REPORTING REQUIREMENTS**

The HPD will be responsible for tracking and maintaining accurate data and statistical information for their 287(g) program, including any specific tracking data requested by ICE. Upon ICE's request, such data and information shall be provided to ICE for comparison and verification with ICE's own data and statistical information, as well as for ICE's statistical reporting requirements and to assess the progress and success of the LEA's 287(g) program.

## **XIII. LIABILITY AND RESPONSIBILITY**

If any participating HPD personnel are the subjects 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 HPD shall, to the extent allowed by state law, immediately notify ICE 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 by participating HPD personnel shall be handled as described below.

Except as otherwise noted in this MOA or allowed by federal law, the HPD will be responsible and bear the costs of participating HPD personnel with regard to their property or personnel expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating HPD personnel will only be treated as federal employees for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function as authorized by this MOA. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOA that participating HPD personnel will enjoy the same defenses and immunities 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 HPD 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 ICE Special Agent in Charge and/or the ICE Field Office Director in Virginia. Requests for representation must be presented to the ICE Office of the Chief Counsel at 901 N. Stuart Street, 7<sup>th</sup> Floor, Arlington, VA 22003. 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 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 HPD personnel.

The HPD agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers. It is understood that information provided by any HPD 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).

As the activities of participating HPD personnel under this MOA are undertaken under federal authority, the participating HPD 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.

#### XIV. COMPLAINT PROCEDURES

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

#### XV. CIVIL RIGHTS STANDARDS

Participating HPD personnel who perform certain federal immigration enforcement functions are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating HPD 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 HPD as needed.



## **.XVI. REQUIRED REVIEW OF ACTIVITIES**

The ICE Special Agent in Charge in Virginia and the Chief of the Herndon Police Department shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities conducted by the participating HPD personnel and to ensure compliance with the terms of this MOA. The steering committee will meet periodically in Virginia at locations to be agreed upon by the parties, or via teleconference. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Herndon, VA. An initial review meeting will be held no later than nine months after certification of the initial class of participating HPD personnel under Section IX, above.

## **XVII. COMMUNITY OUTREACH**

The HPD 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 HPD's request.

## **XVIII. RELATIONS WITH THE NEWS MEDIA**

The HPD may, at its discretion, communicate the form and substance of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOA. This MOA also describes the complaint procedures available to members of the public regarding actions taken by participating HPD personnel pursuant to this agreement.

The HPD hereby agrees to coordinate with ICE regarding information to be released to the media or the public regarding actions taken under this MOA. The points of contact for ICE and the HPD for this purpose are identified in Appendix C.

## **XIX. MODIFICATION OF THIS MOA**

Modifications to this MOA must be proposed in writing and approved by the signatories.

## **XX. DURATION AND TERMINATION OF THIS MOA**


This MOA will remain in effect from the date of signing until it is terminated by either party. 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. Notice of termination or suspension by ICE shall be given to the Chief of the Herndon Police Department. Notice of termination or suspension by the HPD shall be given to the ICE Special Agent in Charge in Virginia.

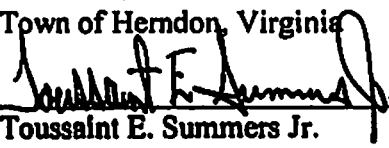
Except for the provisions contained in Section XII, this MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

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


Date: 2/27/07

  
Julie L. Myers  
Assistant Secretary  
Immigration and Customs Enforcement  
Department of Homeland Security

Date: \_\_\_\_\_

Town of Herndon, Virginia  
  
by Toussaint E. Summers Jr.  
Chief of Police

Date: 3/21/07

Town of Herndon, Virginia  
  
by Stephen J. DeBenedittis  
Mayor

Date: MARCH 15, 2007

**APPENDIX A**

**POINTS OF CONTACT**

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

**For the Herndon Police Department:**

**Chief**                    b6,b7c  
**Captain**                b6,b7c  
**Lieutenant**           b6,b7c  
**Herndon, VA.**

**For ICE DRO:**

                              b6,b7c  
**Deputy Field Office Director**  
**Detention and Removal Operations**  
**2675 Prosperity Avenue, 3<sup>rd</sup>. Floor**  
**Fairfax, VA. 22031**

**For ICE OI:**

                              b6,b7c  
**Assistant Special Agent in Charge**  
**2675 Prosperity Avenue, 4<sup>th</sup> Floor**  
**Fairfax, VA 22031**

## **APPENDIX B**

### **COMPLAINT PROCEDURE**

**This MOA is an agreement between DHS/ICE and the Herndon Police Department, hereinafter referred to as the "Law Enforcement Agency" (LEA), 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 individuals' 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, and certification 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 Manual of Policy and Procedures, or equivalent rules, regulations or procedures. The LEA will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOA. The number and type of the latter complaints will be monitored by the Steering Committee established under Section XV of the MOA.**

**In order to simplify the process for the public, complaints against participating LEA personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the LEA Internal Affairs function will coordinate complaint receipt and investigation.**

**The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRD). The ICE OPR will coordinate complaints related to participating personnel with the LEA's Internal Affairs function as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRD, this will not preclude the DHS OIG, DOJ CRD, or ICE OPR from conducting the investigation in coordination with the LEA's Internal Affairs function, when appropriate.**

**The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the LEA's Internal Affairs function will follow applicable LEA policies and procedures, personnel rules, state statutes, and collective bargaining agreement requirements.**

## **1. Complaint Reporting Procedures**

Complaint reporting procedures shall be disseminated as appropriate by the LEA 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.

Complaints will be accepted from any source (e.g.: ICE, LEA, participating LEA personnel, inmates, and the public).

Complaints can be reported to federal authorities as follows:

1. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253, or
2. Telephonically to the Resident Agent in Charge of the ICE OPR office in Fairfax, VA, or
3. Via mail as follows:

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I Street, NW  
Room 3260  
Washington, D.C. 20536

Complaints can also be referred to and accepted by any of the following LEA entities:

1. The LEA Internal Affairs function
2. Any supervisor of the participating LEA personnel; or

LEA Internal Affairs function as follows:  
Chief Toussaint E. Summers, Jr.  
Herndon Police Department

## **2. Review of Complaints**

All complaints (written or oral) reported to the LEA directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA with the assistance of the Special Agent in Charge of the ICE Office of Investigations in Virginia. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures, and to the Chief of the Herndon Police Department.

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

Complaints reported directly to the ICE OPR will be shared with the LEA Internal Affairs function 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 Resolution Procedures**

Upon receipt of any complaint, the 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 existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

#### **A. Referral of Complaints to LEA's Internal Affairs function.**

The ICE OPR will refer complaints, as appropriate, involving LEA personnel to the LEA's Internal Affairs function for resolution. The Chief of the Town of Herndon Police Department will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

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

Whenever any participating LEA personnel are under investigation and subject to interrogation by LEA for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of the Herndon Police Department's policy shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOA pending resolution of an inquiry.

#### **C. Time Parameters for Resolution of Complaints**

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

#### **D. Notification of Resolution of a Complaint**

ICE OPR will coordinate with the LEA's Internal Affairs function to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.

## **APPENDIX C**

### **PUBLIC INFORMATION POINTS OF CONTACT**

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

**For the Herndon Police Department:**

**Lieutenant Jerry S. Keys, Herndon Police Public Information Officer  
Anne Curtis, Town Public Information Officer**

**For ICE:**

**Public Affairs Officer Ernestine Fobbs  
Office of Public Affairs and Internal Communication  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
425 I Street NW  
Washington, DC 21009**

## Appendix D

### GROUP A OFFENSES

OFFENSE	CRIME AGAINST
Arson	Property
Assault Offenses:	
Aggravated Assault	Person
Simple Assault	Person
Intimidation	Person
Bribery	Property
Burglary/Breaking & Entering	Property
Counterfeiting/Forgery	Property
Destruction Damage/Vandalism:	
of Property	Property
Drug/Narcotic Offenses:	
Drug/Narcotic Violations	Society
Drug Equipment Violations	Society
Extortion/Blackmail	Property
Extortion/Blackmail	Property
Fraud Offenses:	
False Pretenses/Swindle	
Confidence Game	Property
Credit Card/Automatic Teller	
Machine Fraud	Property
Impersonation	Property
Welfare Fraud	Property
Wire Fraud	Property
Gambling Offenses:	
Betting/Wagering	Society
Operating/Promoting/Assisting	
Gambling	Society
Gambling Equipment Violations	Society
Sports Tampering	Society
Homicide Offenses:	
Murder & Nonnegligent	
Manslaughter	Person
Negligent Manslaughter	Person
Justifiable Homicide	Not a Crime
Kidnapping/Abduction	Person
Larceny/Theft Offenses:	
Pocket-picking	Property
Purse-snatching	Property
Shoplifting	Property
Theft From Building	Property
Theft From Coin Operated	
Machine or Device	Property
Theft From Motor Vehicle	Property
Theft of Motor Vehicle Parts	
or Accessories	Property
All Other Larceny	Property
Motor Vehicle Theft	Property



## GROUP A OFFENSES

OFFENSE	CRIME AGAINST
Fornography/Obscene Material	Society
Prostitution Offenses:	
Prostitution	Society
Assisting or Promoting Prostitution	Society
Robbery	Property
Sex Offenses, Forcible:	
Forcible Rape	Person
Forcible Sodomy	Person
Sexual Assault With An Object	Person
Forcible Fondling	Person
Sex Offenses, Nonforcible:	
Incest	Person
Statutory Rape	Person
Stolen Property Offenses	Property
Weapon Law Violations	Society