

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Mecklenburg County, North Carolina (County), and the Sheriff's Office of Mecklenburg County, North Carolina (MCSO) to create a project under which ICE authorizes nominated, trained and certified personnel in the MCSO to perform certain immigration enforcement functions as specified herein. The MCSO represents the County in the implementation and administration of this MOU. It is the intent of the parties that this agreement will result in enhanced capacity to deal with immigration violators in the County.

I. PURPOSE

The purpose of this MOU is to set forth the terms and conditions for this agreement to authorize selected MCSO personnel to perform certain functions of an immigration officer within the County, and how participating MCSO personnel will be nominated, trained, authorized and supervised in performing the immigration enforcement functions specified in this MOU. (Hereafter, MCSO personnel who are nominated, trained, authorized, certified and supervised in accordance with the terms of this MOU may from time to time be referred to as Participating MCSO Personnel.)

Notwithstanding any term or condition of this MOU to the contrary, nothing herein shall otherwise limit the jurisdiction, powers or rights (including without limitation, the right to run for elected positions or accept appointed positions) normally possessed by employees of the MCSO or the County; or the jurisdiction, powers and rights of Participating MCSO Personnel in their capacity as employees of MCSO. The exercise of immigration enforcement authority granted under this MOU to Participating MCSO Personnel shall occur only as provided in this MOU and shall be limited to activities in the County.

II. AUTHORITY

Section 287(g) of the Immigration and Nationality Act, 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 for U. S. Immigration and Customs Enforcement, to enter into written agreements with a State or any political subdivision of a State to enable qualified personnel to perform certain functions of an immigration officer. This MOU constitutes such a written agreement.

III. POLICY

This MOU sets forth the scope of the immigration officer functions that DHS is authorizing the Participating MCSO 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 MCSO Personnel shall be subject to ICE supervision while performing immigration related duties pursuant to this MOU. MCSO retains supervision of all other aspects

of the employment of and performance of duties by Participating MCSO Personnel.

Before Participating MCSO Personnel will be authorized to perform immigration officer functions granted under this MOU, they must successfully complete mandatory training in the enforcement of federal immigration laws and policies as provided by DHS instructors and pass examinations equivalent to those given to ICE officers. This MOU further sets forth requirements for regular review of this MOU. Only Participating MCSO Personnel have authority pursuant to this MOU to conduct the immigration officer functions enumerated in this MOU.

The ICE and MCSO points of contact for purposes of this MOU are identified in Appendix A.

IV. DESIGNATION OF FUNCTIONS

For the purposes of this MOU, the functions that may be performed by Participating MCSO Personnel with their associated authorities are indicated below:

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none">• The power to interrogate any alien or 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).• 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).• The power to issue detainers. 8 C.F.R. 287.7.	<ul style="list-style-type: none">• Interrogate in order to determine probable cause for an immigration violation.• Complete required criminal alien processing, to include fingerprinting, photographing, and interviewing for ICE supervisor review.• Prepare affidavits and take sworn Statements.• Prepare immigration detainers for aliens in categories established by ICE supervisors

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> • The authority to prepare charging documents. INA § 239; 8 C.F.R.239.1; INA § 238; 8 C.F.R 238.1; INA § 241(a)(5); 8 C.F.R 241.8; INA § 235(b)(1); 8 C.F.R. 235.3. • Transportation of aliens. INA § 236. 	<ul style="list-style-type: none"> • Prepare, as needed, a Notice to Appear (NTA) or other removal charging document, as appropriate, including Notice of Intent to Administratively Remove, Notice of Intent to Reinstate Removal, or Notice of Intent to Expediously Remove for signature of ICE officer for aliens in categories established by ICE supervisors.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the Participating MCSO Personnel in exercising these authorities shall be DHS policies and procedures. However, when engaged in immigration enforcement activities, no Participating MCSO Personnel will be expected or required to violate or otherwise fail to maintain MCSO standards of conduct, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law, or MCSO rules, orders, standards, or policies.

V. NOMINATION OF PERSONNEL

The Sheriff of MCSO will initially nominate eight (8) deputy sheriff candidates and two (2) supervisory deputy sheriff candidates to ICE for initial training and certification under this MOU. All MCSO candidates and supervisors will be operationally assigned by MCSO to carry out the duties contemplated by the parties, with the principal places of assignment being the Central Jail Facility.

For each candidate nominated, ICE may request any information necessary for a background check and evaluation for suitability to participate in the enforcement of immigration authorities under this MOU. All candidates must be United States citizens. All candidates shall either be competent English/Spanish bilingual speakers or have readily available interpreter services provided by MCSO. All candidates will have at least two years' work experience for MCSO. No

candidate will be married to a person illegally present within the United States or knowingly have family or any other associations which could adversely impact their ability to perform ICE functions under this MOU. All candidates must be approved by ICE and must be able to qualify for appropriate security clearances. Should a candidate not be approved, a substitute candidate may be submitted, so long as such substitution happens in a timely manner and does not delay the start of training. Any future expansion in the number of Participating MCSO 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 MOU.

MCSO will endeavor not to reassign approved candidates from their primary place of duty for a period of at least two years following training and certification of approved candidates as outlined in this MOU. Further, to the extent possible and practicable, MCSO will give ICE sixty (60) days notice of its intent to reassign any approved candidate.

VI. TRAINING OF PERSONNEL

ICE will provide appropriate training of nominated MCSO personnel tailored to the designated immigration functions and types of cases typically encountered by MCSO. Training of such MCSO personnel will be at a mutually designated site in Charlotte, North Carolina, utilizing ICE designated curriculum and competency testing. Training will include but not necessarily be limited to, presentations on this agreement and elements of this MOU, the scope of immigration officer authority, cross-cultural issues, the ICE Use Of Force Policy, civil rights law, the Department of Justice "Guidance Regarding The Use of Race By Federal Law Enforcement Agencies" dated June 2003, public outreach and complaint procedures, liability, and other relevant issues. ICE will provide all training materials. MCSO is responsible for the salaries and benefits for any of its personnel being trained or performing duties under this MOU. MCSO will cover the costs of all candidates' travel, housing and per diem while involved in training required for participation in this agreement.

All nominated and accepted personnel will receive specific training regarding their obligations 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 MCSO Personnel are trained and certified, unless any party terminates this MOU pursuant to Section XVII below, ICE will provide such personnel with additional updated training on relevant administrative, legal and operational issues related to the performance of immigration officer functions. Local training on relevant administrative, legal and operational issues will be provided on an ongoing and timely basis by ICE supervisors.

VII. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge in Atlanta, Georgia, the names of those MCSO personnel who successfully complete training and pass all required testing. Upon receipt of the ICE Training Division certification, the Special Agent in Charge, Atlanta, Georgia, will provide to the Participating MCSO Personnel 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 MCSO. The activities of all Participating MCSO Personnel with regard to ICE functions will be evaluated by the ICE Immigration Enforcement Agents as addressed in Section IX below.

Authorization of any Participating MCSO Personnel to act pursuant to this MOU may be revoked at any time by ICE or MCSO. Such revocation will require immediate notification by the revoking party to ICE or MCSO, as the situation requires. The Sheriff of MCSO or his Deputy Chief and the ICE Special Agent in Charge in Atlanta, Georgia or the Assistant Special Agent in Charge in Charlotte, North Carolina will be responsible for notification of the appropriate personnel in their respective agencies. If one of the Participating MCSO Personnel is the subject of a complaint of any sort that may result in that individual receiving employer discipline of anything other than of a *de minimus* nature or becoming the subject of a criminal investigation, MCSO shall, to the extent allowed by state law, immediately notify ICE of the complaint. If permitted by state law, the resolution of the complaint shall be promptly reported to ICE. Complaints regarding exercise of immigration enforcement authority by any Participating MCSO Personnel shall be handled in accordance with Section XII below. The termination of this MOU shall constitute revocation of all immigration enforcement authorizations conveyed hereunder.

VIII. COSTS AND EXPENDITURES

Except as specifically provided otherwise herein, Participating MCSO Personnel will carry out ICE functions designated in this MOU as delegated to MCSO at MCSO expense, including salaries and benefits. ICE shall reimburse MCSO for all costs attendant to incarceration of ICE detainees, including housing costs at the federal rate.

IX. ICE SUPERVISION

Immigration enforcement activities of the Participating MCSO Personnel will be supervised and directed by ICE in Charlotte, North Carolina. Participating MCSO Personnel cannot perform any immigration officer functions pursuant to the authorities granted under this MOU except when working under the supervision of ICE. Participating MCSO Personnel shall give notice to the ICE as soon as practicable after, and in all cases within 24 hours, of any detainer issued under the authorities set forth in this MOU. The actions of Participating MCSO Personnel will be reviewed by ICE on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for any individual.

For the purposes of this MOU, ICE will provide supervision of Participating MCSO Personnel only as to immigration enforcement functions. MCSO retains supervision of all other aspects of the employment of and performance of duties by Participating MCSO Personnel or any MCSO personnel in the process of training hereunder.

If a conflict arises between an order or direction provided by ICE and MCSO rules, standards, orders or policies, the conflict shall be promptly reported to the Assistant Special Agent in Charge, Charlotte, and the Sheriff of MCSO or his designee as soon as circumstances safely allow the concern to be raised. The Assistant Special Agent in Charge and the Sheriff of MCSO or his designee shall attempt to resolve the conflict.

X. LIABILITY AND RESPONSIBILITY

MCSO will bear its own costs and be responsible for any liability created as a result of any act or action of its personnel, or damage to its property or resources, which occur outside the scope of this agreement.

Participating MCSO Personnel shall not be treated as federal employees except for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 267 1-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq. when performing a function as authorized by this MOU. 8 U.S.C. § 1357(g)(7). Participating MCSO Personnel will have the same immunities and defenses as do ICE officers from personal liability from tort suits based on actions conducted in compliance with this MOU. 8 U.S.C. § 1357(g)(8). ICE will not be responsible for any intentional misconduct on the part of any Participating MCSO Personnel.

Participating MCSO Personnel who are named as defendants in litigation arising from activities carried out under this MOU 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 be presented to the Office of the Chief Counsel, at 77 Forsythe Street, Room 385, Atlanta, Georgia, 30303. Any request for representation must be clearly marked on each written communication that the information is "Subject to Attorney-Client Privilege." 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 a statement of the views of ICE with respect to whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff of the Civil Division of the Department of Justice.

MCSO agrees to cooperate with any federal investigation related to this MOU to the full extent of its available powers. It is understood that information provided by any MCSO 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. 87 S.Ct. 616, 17 L.Ed.2d 526 (1967).

The Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150. 92 S.Ct. 763. 31 L.Ed.2d 104 (1972), relates to disclosure of potential impeachment information about potential witnesses or affiants in a criminal case or investigation. See also *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991). As the activities of Participating MCSO Personnel under this MOU are undertaken under federal authority, to the extent Participating MCSO Personnel are performing services hereunder, unless specifically provided otherwise herein, Participating MCSO Personnel will comply with federal standards and guidelines relating to such cases or any subsequent cases that establish federal standards adopted by ICE and provided to MCSO.

XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES

Pursuant to this MOU, Participating MCSO Personnel will perform certain federal immigration enforcement functions. While doing so, unless specifically provided otherwise herein, Participating MCSO Personnel are bound by all federal civil rights statutes and regulations, as

well as policy directives, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

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

XII. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by Participating MCSO Personnel or for activities undertaken under the authority of this MOU is included at Appendix B.

XIII. REQUIRED REVIEW OF ACTIVITIES

The ICE Assistant Secretary and the Sheriff of MCSO shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOU. The steering committee will meet periodically in Charlotte, North Carolina at locations to be agreed upon by the parties. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOU. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable and available, statistical information on increased immigration enforcement activity in the County. An initial review meeting will be held no later than nine months after certification of the initial class of Participating MCSO Personnel under Section VII., above.

XIV. COMMUNITY OUTREACH

MCSO will, in its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOU. ICE may participate in such outreach upon MCSO request.

XV. RELATIONS WITH THE NEWS MEDIA

As part of its commitment to the communities it serves, MCSO may at any time and in its discretion, communicate the intent, focus, and purpose of this agreement to the media, organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOU.

The parties hereto agree that MCSO and ICE will coordinate any release of information to the media regarding specific actions taken by any party under this MOU. The points of contact for ICE and MCSO for this purpose can be found at Appendix C. Both ICE and MCSO recognize the need to respond to media requests in a timely manner.

XVI. MODIFICATION OF THIS MOU

Any modifications to this MOU must be proposed in writing and approved by the signatories. However, modification or amendment of any statute, regulation, case, act or any other authority cited herein shall be deemed to be automatically updated to include any such modification or amendment. ICE shall be responsible for ensuring that Participating MCSO Personnel are fully and timely apprised of such modifications or amendments and receive appropriate and timely training if necessitated by such modifications and amendments.


XVII. DURATION AND TERMINATION OF THIS MOU

This MOU will be in effect from the date of signing until terminated by any party hereto. Any party to this MOU, upon sixty (60) days prior written notice to the other parties, may terminate it at any time. Such notice shall be delivered personally or by certified or registered mail.


In the event of an unforeseen emergency or other exigent circumstances, ICE or MCSO may, upon written notice to the other, temporarily suspend activities under this MOU when resource constraints or competing priorities necessitate. ICE and the MCSO must agree in writing to begin activities under this MOU after such suspension. Notice of termination or suspension by ICE shall be given to the Sheriff of MCSO. Notice of termination or suspension by MCSO shall be given to the ICE Assistant Special Agent in Charge in Charlotte, North Carolina.

Except for the rights of Participating MCSO Personnel as described herein, this MOU 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.

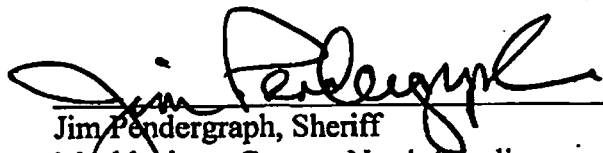
By signing this MOU, each party represents it is fully authorized to enter into this agreement and accepts the terms, responsibilities, obligations and limitations of the Agreement, and agrees to be bound thereto to the fullest extent allowed by law.


Julie L. Myers
Assistant Secretary
U.S. Immigration and Customs Enforcement

Date: 2/27/06


Parks Helms, Chairman of the Board of
Commissioners, Mecklenburg County,
North Carolina

Date: 2/7/06


Jim Fendergraph, Sheriff
Mecklenburg County, North Carolina
Date: 2/7/06

APPENDIX A

POINTS OF CONTACT FOR MOU IMPLEMENTATION

As called for in Section III of the MOU, the ICE and MCSO points of contact for purposes of implementation of this MOU are:

For the County:

**Jim Pendergraph, Sheriff
Mecklenburg County Sheriff's Office
700 East Fourth Street
Charlotte, North Carolina 28202**

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For ICE:

**Assistant Special Agent in Charge
3700 Arco Corporate Drive
Suite 300
Charlotte, NC 28271**

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APPENDIX B

COMPLAINT PROCEDURE

This MOU is a joint agreement between DHS/ICE, the County and the MCSO, in which selected MCSO personnel are authorized to perform immigration enforcement duties in specific situations under federal authority. As such, the training, supervision, and performance of certain MCSO personnel pursuant to the MOU, 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 MOU have agreed to follow.

The MOU sets forth the process for designation, training and certification of designated MCSO 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 MCSO and be handled in accordance with MCSO policies and procedures. MCSO will also handle complaints filed against MCSO personnel who may exercise immigration authority, but who are not designated and certified under this MOU. The number and type of the latter complaints will be monitored by the steering committee established under Section XIII of the MOU.

In order to simplify the process for the public, complaints against Participating MCSO Personnel relating to their immigration enforcement actions can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (ICE OPR) and the MCSO Office of Professional Compliance (MCSO OPC) 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). It is contemplated by the parties that MCSO's existing complaint processes for Participating MCSO Personnel will be utilized to the extent they do not conflict with this agreement.

The ICE OPR will coordinate complaints related to Participating MCSO Personnel with the MCSO OPC 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 MCSO OPC, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the MCSO OPC will follow applicable MCSO policies and procedures, personnel rules, North Carolina statutes and any other guidelines established for operation of the MCSO.

I. Complaint Reporting Procedures

A. Dissemination of Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated as appropriate by MCSO 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.

B. Acceptance of Complaints

Complaints will be accepted from any source (e.g., ICE, MCSO, personnel operating under the authority of this MOU, and the public).

C. Reporting Mechanisms

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 Telephonically to the Office of the Special Agent in Charge of the ICE OPR office in Plantation, Florida, at 954-327-4100; or;

2. 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

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 at MCSO :

1. The Sheriff of Mecklenburg County
Mecklenburg County Sheriff's Office
700 East Fourth Street, Charlotte, NC 28202 Phone: 704-336-2543; or

2. Mecklenburg County Sheriff's Office
The Office of Professional Compliance
901 Elizabeth Avenue
Charlotte, North Carolina 28204
Attention: Commander Rick E. Sanders
Phone: 704-336-8347

D. Review of Complaints

1. All complaints (written or oral) directly reported to MCSO, which involve activities connected to immigration enforcement activities by MCSO authorized under this MOU, will be reported to the ICE OPR. The ICE OPR will verify Participating MCSO Personnel status under the MOU with the assistance of the Assistant Special Agent in Charge of the ICE Office of Investigations in Charlotte, North Carolina.

2. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures and shall also be reported to MCSO OPC by the Assistant Special Agent in charge of the ICE Office in Charlotte, North Carolina.

For both of the above, 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 Sheriff of MCSO or his designee, including MCSO OPC, anytime the complaint involves MCSO personnel. Both offices will then coordinate appropriate investigative jurisdiction which may include initiation of a joint investigation to resolve the issue(s).

II. 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 CRT. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints to MCSO

The ICE OPR will refer complaints, as appropriate, involving MCSO personnel to the MCSO

for resolution. The MCSO OPC 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 MCSO Personnel are under investigation and subject to interrogation by MCSO for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of all applicable MCSO Manuals or Orders of Policy and Procedure shall be honored and shall be deemed controlling. If appropriate, an individual may be removed from participation in the activities covered under the MOU 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.

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the MCSO OPC 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 XV of the MOU, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOU. The points of contact for coordinating such activities are:

For MCSO:

Julia Rush, Director of Communications
Mecklenburg County Sheriff's Office
700 East Fourth Street
Charlotte, North Carolina 28202
704-336-3667; Pager: 704-518-1914

For ICE:

Public Affairs Officer
Office of Public Affairs and Internal Communication
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
425 I Street, NW, Room 7232
Washington, DC 20536
(202) 514-2648