

## **MEMORANDUM OF AGREEMENT**

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

### **I. PURPOSE**

The purpose of this MOA is to set forth the terms and conditions for authorization of selected ACSO personnel (participating ACSO personnel) to perform certain functions of an immigration officer within Alamance County, and how those participating ACSO personnel will be nominated, trained, authorized and supervised in performing the immigration enforcement functions specified in this MOA. Nothing herein shall otherwise limit the jurisdiction, powers normally possessed by participating ACSO personnel in their capacity as employees of ACSO. However, the exercise of immigration enforcement authority granted under this MOA to participating ACSO personnel shall occur only as provided in this MOA 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 to enter into written agreements with a State or any political subdivision of a State so that qualified personnel may 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 ACSO 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 ACSO Personnel shall be 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 ACSO personnel only as to immigration enforcement functions. ACSO retains supervision of all other aspects of the employment of and performance of duties by participating ACSO personnel.

Before participating ACSO personnel will be authorized to perform immigration officer functions granted under this MOA, 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 MOA further sets forth requirements for regular review of this MOA.

Only Participating ACSO personnel have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

The ICE and ACSO points of contact for purposes of this MOA are identified in Appendix A.

#### IV. DESIGNATION OF FUNCTIONS

For the purposes of this MOA, the functions that may be performed by participating ACSO personnel with their associated authorities are indicated below:

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> <li>• 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)</li> <li>• 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)</li> <li>• The power to issue detainers. 8 C.F.R. 287.7</li> </ul>	<ul style="list-style-type: none"> <li>• Interrogate in order to determine probable cause for an immigration violation</li> <li>• Complete required criminal alien processing, to include fingerprinting, photographing, and interviewing for ICE supervisor review</li> <li>• Prepare affidavits and take sworn Statements</li> <li>• Prepare immigration detainers and I-213, record of Deportable/Inadmissible Alien for aliens in categories established by ICE supervisors</li> </ul>

AUTHORITY	FUNCTIONS
<ul style="list-style-type: none"> <li>• 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</li>   <li>• Transportation of aliens. INA § 236</li> </ul>	<ul style="list-style-type: none"> <li>• Prepare 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 Expediently Remove for signature of ICE officer for aliens in categories established by ICE supervisors</li>   <li>• Transport Aliens</li> </ul>

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

The parties understand that ACSO will not continue to detain an alien after that alien is eligible for release from ACSO custody in accordance with applicable law and ACSO policy, except for a period of up to 48 hours, excluding Saturday, Sunday and any holiday, pursuant to a DHS detainer issued in accordance with 8 C.F.R. § 287.7.

## **V. NOMINATION OF PERSONNEL**

The Sheriff of Alamance County will nominate to ICE candidates for initial training and certification under this MOA.

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 MOA. All candidates must be United States citizens. All candidates must have at least two years' work experience as sworn law enforcement officers. 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 MOA. 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 nominated, so long as the substituted nomination occurs in a timely manner and does not delay the start of training. Any future expansion in the number of participating ACSO 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.

ACSO 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 MOA. Further, to the extent possible and practicable, ACSO will give ICE sixty-days (60) notice of its intent to reassign any approved candidate.

## **VI. TRAINING OF PERSONNEL**

ICE will provide appropriate training of nominated ACSO personnel tailored to the designated immigration functions and types of cases typically encountered by ACSO personnel. Training of such ACSO personnel will be at a mutually designated site, utilizing ICE designated curriculum and competency testing. Training will include presentations on this agreement and elements of this MOA, 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 the instructors and all training materials. ACSO is responsible for the salaries and benefits, including overtime, for any of its personnel being trained or performing duties under this MOA. ACSO 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 ACSO personnel are trained and certified, unless any party terminates this MOA pursuant to Section XVII below, ICE may 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 or designated team leader.

## 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 ACSO 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 ACSO personnel a signed authorization to perform specified functions of an immigration officer until termination of this agreement. ICE will also provide a copy of the authorization to ACSO. The ICE staff as addressed in Section IX below will evaluate the activities of all participating ACSO personnel with regard to ICE functions.

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

## VIII. COSTS AND EXPENDITURES

Participating ACSO personnel will carry out designated functions at ACSO expense, including salaries and benefits, local transportation, and official issue material. ICE will provide training personnel, training materials and supervision.

ICE agrees to provide the necessary technological support and software and software updates of those systems tied directly into ICE or other federal databases used by ICE to accomplish complete investigations.

This MOA does not constitute an obligation to expend funds by either party. Unless otherwise agreed in writing, each party shall bear any costs it incurs in relation to this MOA. ICE expenditures will be subject to federal budgetary processes and availability of funds pursuant to applicable laws and regulations. The parties expressly acknowledge that this MOA in no way implies that Congress will appropriate funds for such expenditures.

#### **IX. ICE SUPERVISION**

Immigration enforcement activities of the participating ACSO personnel will be supervised and directed by ICE in Cary, North Carolina. Participating ACSO personnel cannot perform any immigration officer functions pursuant to the authorities granted under this MOA except when working under the supervision of ICE. Participating ACSO 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 MOA. ICE will review the actions of participating ACSO personnel 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 MOA, ICE will provide supervision of participating ACSO personnel only as to immigration enforcement functions. ACSO retains supervision of all other aspects of the employment of and performance of duties by participating ACSO personnel or any ACSO personnel in the process of training hereunder.

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

#### **X. LIABILITY AND RESPONSIBILITY**

ICE and ACSO understand and agree that except as otherwise noted in this MOA and allowed by federal law, each will be responsible for their own liability and bear their own costs with regards to property and resources, or personnel expenses incurred by reason of death, injury or incidents giving rise to liability.

Participating ACSO personnel shall not be treated as federal employees except 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 ACSO 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 MOA, 8 U.S.C. §

1357(g)(8). ICE will not be responsible for any intentional misconduct on the part of any Participating ACSO personnel.

Participating ACSO personnel who are 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 be presented to the Office of the Chief Counsel, at 77 Forsyth 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.

ACSO 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 ACSO 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 ACSO personnel under this MOA are undertaken under federal authority, to the extent participating ACSO personnel are performing services hereunder, unless specifically provided otherwise herein, participating ACSO personnel will comply with federal standards and guidelines relating to such cases.

#### XI. CIVIL RIGHTS STANDARDS AND PROVISION OF INTERPRETATION SERVICES

Pursuant to this MOA, participating ACSO personnel will perform certain federal immigration enforcement functions. In doing so, these participating ACSO 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 ACSO personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by ACSO as needed.

## **XII. COMPLAINT PROCEDURES**

The complaint reporting and resolution procedure for allegations of misconduct by participating ACSO personnel or for activities undertaken under the authority of this MOA is included at Appendix B.

## **XIII. REQUIRED REVIEW OF ACTIVITIES**

The ICE Assistant Secretary and the Sheriff of ACSO shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities that have been conducted pursuant to this MOA. The steering committee will meet periodically in North Carolina at locations to be agreed upon by the parties or by teleconference. These reviews are intended to assess the use made of immigration enforcement authority and to ensure compliance with the terms of this MOA. 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 Alamance County. An initial review meeting will be held no later than nine months after certification of the initial class of Participating ACSO personnel under Section VII, above.

## **XIV. COMMUNITY OUTREACH**

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

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

As part of its commitment to the communities it serves, ACSO 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 MOA.

The parties hereto agree that ACSO and ICE will coordinate any release of information to the media regarding specific actions taken by any party under this MOA. The points of contact for ICE and ACSO for this purpose can be found at Appendix C.

## **XVI. MODIFICATION OF THIS MOA**

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

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

This MOA will be in effect from the date of signing until terminated by any party hereto. Any party to this MOA, upon sixty-days (60) 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. Notice of termination or suspension by ICE shall be given to the Sheriff of ACSO. Notice of termination or suspension by ACSO shall be given to the ICE Resident Agent in Charge in Cary, North Carolina.

In the event of an unforeseen emergency or other exigent circumstances, ICE or ACSO may, upon written notice to the other, temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. ICE and the ACSO must agree in writing to begin activities under this MOA after such suspension.

**XVII. OTHER PROVISIONS**

This MOA is an internal arrangement between the Parties. Except as provided for in Section X, 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.

Nothing in this MOA is intended to conflict with current law or regulation or the directives of Parties. If a term of this MOA is inconsistent with such authority, then the term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.

By signing this MOA, 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

11/10/07  
Date: Julie Myers

Larry Sharpe, Chairman,  
Board of Commissioners  
Alamance County, North Carolina

Larry Sharpe  
Date: 10/5/06

Terry S. Johnson  
Terry S. Johnson, Sheriff  
Alamance County, North Carolina

Date: 10-02-06

## **APPENDIX A**

### **POINTS OF CONTACT FOR MOA IMPLEMENTATION**

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

**For the County:**

**Terry Johnson, Sheriff  
Alamance County Sheriff's Office  
109 S. Maple Street  
Graham, NC 27253**

b6

**For ICE:**

**Resident Agent in Charge  
140 Centrewest Court  
Suite 100  
Cary, North Carolina 27513**

b2Low

## **APPENDIX B**

### **COMPLAINT PROCEDURE**

This MOA is a joint agreement between DHS/ICE, the County and the Alamance County Sheriff's Office (ACSO); in which selected ACSO personnel are authorized to perform immigration enforcement duties in specific situations under federal authority. As such, the training, supervision, and performance of participating ACSO 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 designated ACSO 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 ACSO and be handled in accordance with ACSO policies and procedures. The ACSO will also handle complaints filed against ACSO 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 XIII of the MOA.

In order to simplify the process for the public, complaints against participating ACSO 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 ACSO Office of Professional Compliance 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 ACSO personnel with the ACSO 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 ACSO OPC, when appropriate.

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

## **I. Complaint Reporting Procedures**

### **A. Dissemination of Complaint Reporting Procedures**

Complaint reporting procedures shall be disseminated as appropriate by the ACSO 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, ACSO, personnel operating under the authority of this MOA, 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
2. Telephonically to the Office of the Special Agent in Charge of the ICE OPR office in Plantation, Florida, at 954-327-4100; 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

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 ACSO entities:

1. The Sheriff of Alamance County .  
Alamance County Sheriff's Office  
109 South Maple Street  
Graham, North Carolina 27253  
(336) 570-6300
2. Alamance County Sheriff's Office  
Division of Professional Standards (DPS)  
109 South Maple Street  
Graham, North Carolina 27253  
Attention: Major Ron Parrish  
Phone: (336) 570-6311
3. The supervisor of any participating ACSO personnel

#### D. Review of Complaints

1. All complaints (written or oral) directly reported to ACSO, which involve activities connected to immigration enforcement activities by ACSO authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify Participating ACSO Personnel status under the MOA with the assistance of the Resident Agent in Charge of the ICE Office of Investigations in Cary, 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 ACSO DPS by the Resident Agent in charge of the ICE Office in Cary, 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 ACSO or his designee, including ACSO DPS, anytime the complaint involves ACSO 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 ACSO DPS**

The ICE OPR will refer complaints, as appropriate, involving ACSO personnel to the ACSO DPS for resolution. The ACSO DPS 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 ACSO personnel are under investigation and subject to interrogation by ACSO for any reason that could lead to disciplinary action, demotion, or dismissal, the requirements of all applicable ACSO 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 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.

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

ICE OPR will coordinate with the ACSO DPS 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 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 ACSO:

Sheriff Terry Johnson  
Alamance County Sheriff's Office  
109 South Maple Street  
Graham, North Carolina 27253  
(336) 570-6311

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